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13 February 2023

Tasman District Council  
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Att: Phil Doole and Katrina Lee

By email: [phil.doole@tasman.govt.nz](mailto:phil.doole@tasman.govt.nz)

Dear Phil

**Applications RM210785 RM210786 – NPS HPL2022**

1. This letter deals with a specific issue arising from our meeting in Richmond on 8 February 2023, which is the consideration of the **National Policy Statement for Highly Productive Land 2022** (NPS HPL). It also raises related issues arising from timeframe breaches and unreasonable delay.

**Delay**

2. As you will be aware, the NPS HPL took effect on 17 October 2022. It is accepted that the Council now has to consider its applicability when considering the above applications for resource consent. However, the only reason for that is because the Council had not yet granted those consents by that date.
3. This is despite the fact that:
  - a. By 15 March 2022, the applicant had provided all further information requested, which remains its position, was all the information that the Council might reasonably require to grant those consents; and
  - b. By 22 September 2022, had provided all other information and confirmations that the Council had subsequently requested (without prejudice to the previous point).
4. Therefore, the only reason the NPS HPL became potentially applicable was due to the Council's breach of its statutory processing timeframes under the Resource Management Act 1991. It is that breach that gives rise to the need to incur the cost of addressing this issue. For completeness, that is not the only loss that arises from the Council's breaches of timeframes or the duty under s21 to avoid unreasonable delay, amongst other duties that apply when processing applications such as the above.

5. The costs include, but are not limited to legal and consultant costs incurred in pointing out errors and responding to incorrect or unfounded requests and requirements. They also include loss of profit due to not being able to construct the shelters for which consent is sought. These costs continue to mount. My client reserves the right to seek compensation for these costs and such further costs as may be incurred as a result of further delays and breaches of duties by the Council. However, that will be a matter to be addressed once the consent processing is at an end. In the interim I address the NPS HPL.

#### **NPS HPL**

6. At present there is no land mapped in an operative regional policy statement for the Tasman District as highly productive land. Therefore the applicant's site does not meet the definition of highly productive land in Clause 1.3(1) NPS HPL. During our meeting, you mentioned that this land is zoned rural and classified as LUC 1, 2 or 3. It seems that the intent of this was to invoke Clause 35(7)(a), which requires the Council to apply the NPS HPL as if the references to highly productive land were references to such land.
7. However, to do so would be an error of law, because that same clause is subject to the exception in clause 35(7)(b)(i), as the application site falls within an area that is land "identified for future urban development". That term is defined in Clause 1.3(1) as follows:

***identified for future urban development** means:*

*(a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or*

*(b) identified:*

*(i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and*

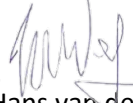
*(ii) at a level of detail that makes the boundaries of the area identifiable in practice*

8. I **attach** for your information the portion of the Council's 10-year plan 2021-2031 that clearly meets all three requirements. This means that the application site is not land that must be treated as that to which the NPS HPL is to be applied as if it were highly productive land.
9. For completeness, by virtue of the fact that it meets this definition, Clause 3.4(2) also means that it must not be mapped as highly productive land in future.

#### **Consequence**

10. The above demonstrates that:
  - a. The policies of the NPS HPL do not apply to the above applications;
  - b. There is no need for the applicant to assess them against these policies and no ability or need for the Council to do so either; and
  - c. This is not an issue that could or ought properly further to hold up processing of these applications.
11. I look forward to your earliest confirmation of the above.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Hans van der Wal', written in a cursive style.

Hans van der Wal  
**Barrister**