

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
AT NEW PLYMOUTH**

**IN THE MATTER**

of the Resource Management Act  
1991 (the "RMA")

**AND**

**IN THE MATTER**

of an application by Airport Farm  
Trustee Limited to the Taranaki  
Regional Council for an air  
discharge consent relating to a  
poultry farm at 58 Airport Drive,  
New Plymouth (5235-3.0) (the  
"Application")

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**MEMORANDUM ON BEHALF OF THE NEW PLYMOUTH DISTRICT COUNCIL IN  
RELATION TO THE PANEL'S REQUEST FOR FURTHER INFORMATION**

**Dated:** 4 March 2022

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**Govett Quilliam**  
THE LAWYERS

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**MAY IT PLEASE THE COMMISSIONERS:**

1. During the hearing of Airport Farm Trustee Limited's application on 15 and 16 February 2022, the New Plymouth District Council was asked to provide the Commissioners with the following additional information:
  - 1.1 the relevant New Plymouth Proposed District Plan ('PDP') zone provisions for Area R (which is zoned as 'Special Purpose - Future Urban') and for Area Q (which is zoned as 'General Residential' with a 'DEV 1 – Bell Block Area Q Structure Plan Development Area' overlay);
  - 1.2 Submissions on the PDP in respect of Area R and Area Q;
  - 1.3 Any officer's response to the submissions on Area R and Area Q;
  - 1.4 The rules and/or objectives and policies relating to the 400m buffer required in the ODP; and
  - 1.5 The PDP Hearing Panel's Interim Guidance on the proposed Strategic Direction Objectives in the PDP.
2. A copy of the above documents and provisions are provided with this memorandum, and a summary of the relevant information is provided below.

***Proposed District Plan ('PDP') zone provisions for Area R and for Area Q***

- 2.1. The area known as "Area R" is zoned in the PDP as a Special Purpose - Future Urban Zone. As noted in the overview to the zone chapter, this zone applies to land that has been identified as being suitable for urbanisation in the future. When the land is ready to be developed for urban purposes, it will be re-zoned to enable that to occur (e.g. to a residential or industrial zone) and an approved structure plan will be required before it can be developed. Until such time, land within this zone may be used for a range of agricultural, pastoral and horticultural activities, but other types of activities are to be managed and/or avoided to ensure the activities occurring within the zone are compatible with and do not compromise potential future urban uses. In the notified PDP, free-range poultry farming falls under the definition of rural

industry (see the definition nesting tables) and is a non-complying activity in the Future Urban Zone. As such, if the notified rules in the PDP come into effect, it would be a non-complying activity for the existing intensive indoor poultry farm to become a free-range poultry farm.

- 2.2. The area known as “Area Q” is zoned in the notified PDP as General Residential and it is subject to a structure plan overlay titled “*DEV 1 – Bell Block Area Q Structure Plan Development Area*” (the “Area Q Structure Plan”). The rules in the Area Q Structure Plan Development Area apply in addition to the underlying zone rules. Area Q provides for three stages of development. The first two stages comprise 594 feasible lots on a total of 85 hectares and Stage 3E will create an additional 155 potential lots totalling 22 hectares. In the notified PDP, residential subdivision and/or residential development in the Stage 3E area in accordance with the Area Q Structure Plan and the Residential Zone rules is a prohibited activity until Area R (FUZ) has been rezoned to an urban zone through a statutory plan change process and released upon completion of the realignment of Airport Drive<sup>1</sup>.

### ***Submissions on the PDP in respect of Area R and Area Q***

- 2.3. The submissions on the PDP made in relation to Area R and Area Q are provided with this memorandum. The submissions which are of particular relevance are:

#### ***Area R***

- 2.3.1. Darren Erb and Tracey Dempster (Submitter #560) – these submitters oppose the proposed zoning of their site at 22 Airport Drive as Special Purpose - Future Urban Zone. The submitters support Area R being developed for urban purposes but do not consider the Future Urban Zone supports timely development for that purpose, given the signalling within the HBDCA of a 2028 start date for Area R. The relief sought is for the site to be zoned either Local Centre or Mixed Use Zone and for any consequential amendments to allow for this change so

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<sup>1</sup> Refer to rule DEV1-R27 <https://districtplan.npdc.govt.nz/eplan/#Rules/0/184/1/0/0>

that it may be developed with activities that will service the local community in a timely fashion.

2.3.2. Kevin and Glenis McDonald (Submitter #293) support the future urban development in Area R and “the sooner the better”.

### **Area Q**

2.3.3. Allen Juffermans (Submitter #182) and Anne Johnson (Submitter #440) seek to rezone more land on Airport Drive as residential or rural lifestyle and to include the land at 115 Airport Drive within Area Q.

2.3.4. Don Crow (Submitter #298) supports the development of Stage 2 and 3 of Area Q and seeks that the activity status for residential development in Stage 3E be amended to non-complying. He also supports a permitted activity standard for erecting buildings in Stage 3E.

### **Section 42A Reports on Area R and Area Q**

2.4. The section 42A Report in relation to the Future Urban Zone<sup>2</sup> recommends that Intensive Indoor Primary Production be classified a non-complying activity (see new rule FUZ-R20)<sup>3</sup>. At paragraph 145 of the report it states:

“Intensive farming can often have off-site odour effects which require large buffer areas to mitigate adverse effects and these activities are not compatible with future urbanisation. Future urbanisation and the introduction of residential housing and living activities around intensive farming activities is likely to lead to reverse sensitivity effects and this will compromise to the future intent and purpose of the FUZ to provide for urbanisation within the identified FUZ areas.”

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<sup>2</sup> It can also be viewed at this link - <https://proposeddistrictplan.npdc.govt.nz/media/y0lf2ybk/hearing-17-b-appendix-1-recommended-amendments-to-fuz-chapter.pdf>

<sup>3</sup> The Reporting Planner’s recommended amendments to the zone provisions can be viewed at this link - <https://proposeddistrictplan.npdc.govt.nz/media/y0lf2ybk/hearing-17-b-appendix-1-recommended-amendments-to-fuz-chapter.pdf>

- 2.5. In section 42A Report in relation to the Area Q Structure Plan<sup>4</sup> the reporting planner recommends<sup>5</sup> that residential subdivision and/or residential development in the Stage 3E area in accordance with the Area Q Structure Plan and the Residential Zone rules should become a non-complying activity until Area R (FUZ) has been rezoned to an urban zone through a statutory plan change process and released upon completion of the realignment of Airport Drive. The implication of this is that if this recommendation is accepted by the Hearings Panel, consent applications to establish residential development directly across the road from the Airport Drive Poultry Farm may be made as soon as the PDP comes into effect (without the need for Area R to have been rezoned).

***ODP and PDP provisions relating to a 400m buffer***

- 2.6. Under the ODP, rule 30 in the Rural Environment Zone provides that the minimum setback for habitable dwellings from the perimeter of an intensive poultry farming operation, which is not on the same site, is 300m where the farm has between 60,000 – 80,000 poultry and 400m where the farm has more than 80,000 poultry. This rule does not apply in the Residential Environment Area zones or the Future Urban Development Overlay.
- 2.7. Under the PDP, RPROZ-S2 makes it a restricted discretionary activity to construct a building for a sensitive activity (which includes residential dwellings) within 400m of an established intensive indoor primary production building in the Rural Production Zone. This standard does not apply in the General Residential or Future Urban Zone.
- 2.8. With respect to the Panel's query: "*Once Area Q 3A becomes live residential A, would the presence of the farm within the 400m buffer area referred to, change the activity status of residential subdivision and/or residential development?*", residential subdivision and/or residential development in Area Q, Stage 3E can occur once Area R is rezoned and the realignment of Airport Drive is completed and the

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<sup>4</sup> It can also be viewed at this link - <https://proposeddistrictplan.npdc.govt.nz/media/w1xn0pi5/hearing-18-section-42a-report-structure-plan-development-area.pdf>

<sup>5</sup> The Reporting Planner's recommended amendments to the Structure Plan can be viewed here - <https://proposeddistrictplan.npdc.govt.nz/media/wywh2dmx/hearing-18-appendix-1-recommended-amendments-to-dev1-bell-block-area-q-structure-plan-development-area.pdf>

activity status of those activities will be subject to the General Residential zone provisions. As notified, the presence of the poultry farm within 400m of a site within Area Q, Stage 3E will not alter the activity status of a residential subdivision or development.

***The PDP Hearing Panel's Interim Guidance on the proposed Strategic Direction Objectives in the PDP***

2.9. On 20 August 2021, the NPDC's PDP Independent Hearings Panel issued Minute 9, which contained its Interim Guidance on the Strategic Directions chapter in the PDP after hearing from submitters on the strategic objectives contained in that chapter. As noted in the minute, the Interim Guidance does not constitute a recommendation from the Panel to the Council, or a Decision of the Council, and it is not binding on submitters, the Council, or on the Panel.<sup>6</sup> However, as the strategic objectives are relevant to the implementation of the proposed plan as a whole, the Interim Guidance was issued to provide guidance and to assist submitters preparing for hearings on other chapters of the PDP.

2.10. The Panel's interim guidance has recommended the following Strategic Direction Objective –

**UFD- 14** - There is sufficient land available to meet the short, medium and long-term housing demands of the district as follows:

1. in the short to medium term (in no particular order):
  - a) Infill;
  - b) Undeveloped residential zones areas, particularly the Structure Plan Development Areas; and
  - c) Residential intensification in and around the city centre, town centres, local centres and around transport nodes where there will be increased housing densities.
2. In addition to the above, in the long term:
  - a) Rezoned Future Urban Zones with approved Structure Plans.

2.11. Accordingly, the Panel's Interim Guidance confirms that the Area Q Structure Plan Development Area forms part of the Council's short to

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<sup>6</sup> Proposed New Plymouth District Plan, Minute 9 of Independent Hearings Panel, at [4].

medium term development capacity to meet expected demand for housing in the District. Under the NPD-UD 2020 “short-medium term” means within the next 10 years.

3. In addition to the above, Counsel also agreed to provide the Commissioners with the correct quote extract from *Re Otago Regional Council* [2021] NZEnvC 164, along with a copy of the judgment (**attached**). This was inadvertently cited incorrectly at paragraph 5.7 of Counsel’s legal submissions. The quote should have read as follows:

[107] Thus relative efficiency and effectiveness of relying on s 128 review of a long-term consent versus short-term consents is a function of the degree of change from the status quo and secondly, we find, the permit holder’s objectives for their business, together with their personal values and circumstances. In this regard, the potential impact of a review of consent on capital investment made over the intervening years, was generally not well considered by economists giving evidence on this topic.

[108] The review option is also resource intense and the risk of not implementing a new water management regime through the review process is borne by the environment. Mr V Hodgson (Horticulture New Zealand) considered reliance on the s 128 review process to implement a future regional plan to be “very risky” because the grant of long-term consents creates the unrealistic expectation of water security, thereby encouraging investment. Given that potential for significant change in the region’s water management strategy, in his opinion the more efficient and effective process is the one proposed by the Regional Council in PC7, i.e. short-term consents, which will be renewed under the proposed policy statement and a new regional plan.

[113] We find relying on s 128 RMA to implement a future regional plan is not an appropriate response to the problems and issues confronting water users and the environment in Otago. Section 128 is limited in its scope and may not include the full range of methods that a future regional plan has to manage fresh water. A short-term consent is more certain, efficient and effective in terms of the ability to set and achieve the outcomes for the new regional plan.

4. The case concerned a plan change which was intended to respond to the concerns held by the Minister for the Environment and by the Otago Regional Council that, if expiring water take and use permits were to be replaced within the next five years, or consent applications were to be filed for previously unconsented activities, they would be considered under an operative regional plan that is not fit for purpose. The court therefore approved policies seeking either to ‘only grant’ or to ‘avoid’ (as the case may be) consents exceeding six

years' duration. The context is therefore different from the present case, but it does illustrate the willingness of the Court to consider short-term consents where the planning framework is in a state of flux.

5. Finally, it is also noted that Ms Williams advised the Panel during the hearing that Area R may be rezoned as Employment and Residential land. This is consistent with the Council's Housing Development Capacity Assessment Report 2021 which states: "Under the ODP, Area R is a rural zone with an FUD overlay for a mixture of residential and employment land. In the PDP, Area R is identified as a Future Urban Zone for a mixture of residential and employment needs (Area R East). The area identified for residential growth to the west of the proposed Airport Drive realignment is 7.4 hectares, with potential for 61 feasible lots. The significant growth to the east of New Plymouth City (that includes development of Area Q) may result in additional business land requirements. As part of the HBA, we estimate that around 14 per cent of the area will be zoned residential and 86 per cent commercial".
  
6. Counsel is instructed that further monitoring and feasibility studies will need to be carried out in order to determine what the ultimate mixture of residential and commercial land will be within Area R, and that no decision has been made yet in that regard.

**DATED:** 4 March 2022



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**LP Wallace**  
**Counsel for the New Plymouth District Council**