

THE MATTER OF THE Resource Management Act 1991

AND

IN THE MATTER OF an application by Wills Family Trust  
for a Plan Change (No 12) to the Timaru District Plan

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Decision of the Hearings Panel of the Timaru District  
Council

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## Introduction

The Private Plan Change application was lodged with Timaru District Council (TDC) on 8 July 2009 and formally received on 10 July 2009. Lodgment occurred prior to the enactment of the Resource Management (Simplifying and Streamlining) Amendment Act, 2009.

The Council engaged planning consultants, MWH New Zealand Limited, to undertake an assessment of the private plan change request in terms of the First Schedule of the RMA. The purpose of the assessment was to determine a recommendation on how Council should proceed with processing the request.

The assessment and recommendation were undertaken in two reports:

- Report 1: Assessed the adequacy of information initially lodged and made recommendations on what further information should be requested. It was recommended that Council request further information under Clause 23(1) of the First Schedule, including:
  - a) An assessment of the current activities on site against the Industrial L provisions, to determine whether they meet the proposed zone performance standards; and
  - b) Any further information requirements arising from evaluations by the Council's District Services department.
- Report 2: Recommended how TDC should proceed with the plan change request and why.

No further information was requested by the Council. At the Resource Planning and Regulation Committee Meeting of 20 October 2009 a decision was made to accept the plan change request in whole pursuant to Clause 25(2) (b) of the First Schedule of the RMA and proceed to public notification.

The plan change was publicly notified as Proposed Plan Change 12 (PPC 12) on Saturday 7 November 2009, with submissions closing on Monday 7 December 2009. Four submissions were received during the notification period. The submissions were generally supportive of the proposed plan change; however, they all requested certain amelioration measures to be provided.

The Summary of Submissions was publicly notified from Saturday 19 December 2009 until Friday 22 January 2010. No further submissions were received.

The hearing of the application and the submissions received was held at the Timaru District Council on 24 March 2010.

## Background to Proposed Plan Change

A number of resource consents have been granted to provide for the current development and use of the subject site. These include the following:

- Resource Consent No. 2570 was granted on 30 April 1996 to establish the Wills Furniture Complex with frontage to State Highway 1;

- Resource Consent No. 5109 (RC5109) was granted on 17 December 2003 by the Hearings Committee to extend the Wills Furniture Complex retail showroom and joinery factory and to construct a new agricultural showroom and servicing business (Power-Farming) fronting State Highway 8 which specialised in farm machinery and heavy vehicles sales and repair. Condition No. 2 of Resource Consent No. 5109 of was appealed to the Environment Court. The Environment Court amended condition No. 2 of RC5109 to read:

*"That a maximum of seven (7) retail outlets, including the furniture showroom, be established at the Hilton Highway/SH1 location, but the new business activity be restricted to the following:*

- (a) Homeware retailers;*
- (b) Kitchen showroom;*
- (c) Interior design;*
- (d) Retail activity that meet the definition of retailing in the Timaru District Plan which are located in tenancies 2 and 5 as shown in bold outlined in the attached plan;*
- (e) A boutique coffee shop.*

*'Homeware retailers' shall mean an offering for sale articles relating to one's home or intended for use in the home".*

There have been on-going issues of non-compliance with the consent conditions of RC5109 particularly with respect to signage, tenancy occupation, access and parking. On 4 December 2009 condition No. 2 of RC5109 was amended to enable a complimentary retailer (not specifically homewares) to occupy shop No. 4, which has a floor area of 165m<sup>2</sup>.

- (d) Retail activity that meet the definition of retailing in the Timaru District Plan which are located in tenancies 2 and 4 as shown in bold outlined in the attached plan, but shall also include use of tenancy 4 as a hair dresser*

Resource Consent No. 6250 was granted on 20 December 2006 for a four lot subdivision. At the time of subdivision Lot 1 contained the Power-Farming complex, Lot 4 the Wills Furniture complex and the remaining two lots in the centre of the site remained vacant.

Resource Consent No. 6947 was granted on 11 December 2008 for a hydraulics sales and service business to operate from Lot 2. The business services hydraulic equipment, such as trucks, excavators and other machinery, sells equipment and materials for such machinery and provides a base for off site services, which includes staff going to power stations and freezing works.

## **Proposed Plan Change 12**

The proposal is to rezone Lots 1 - 4 Deposited Plan 413460, an area of approximately 3.5Ha, located on the western side of the Hilton Highway (SH1) in the Washdyke area of Timaru, from Residential 4 to Industrial L. The Plan Change also proposes introducing new site specific performance standards.

The adjoining properties to the north and south of the site are also zoned Residential 4; the properties to the east (on the east side of SH1) are zoned Residential 1; and those to the west (the far side of SH8) are zoned Residential 4 and Recreation 2.

The following changes to the District Plan were requested:

- Amend Planning Map 25 to rezone the subject to the application from Residential 4 to Industrial L;
- Insert the following additional Performance Standard's under Part D4 Industrial Zones, Section 4.2.1 Industrial L Zone:

*Hilton Highway Outline Development Plan (ODP)  
Development of the site indicated in Outline Development Plan – Hilton Highway, shall proceed in general accordance with the Outline Development Plan.*

*The following standards shall also apply to the land within the area defined by the Hilton Highway Outline Development Plan (Part D Appendix 1):*

- *The landscaping strips identified on the ODP shall have an average width of not less than 3m and shall be planted prior to use of any allotment for industrial purposes.*
  - *The landscaping to be established in these strips shall be agreed to in writing by the Timaru District Council prior to planting, and shall be no less than 1.8m high at the time of planting, with species that are capable of reaching a mature height of no less than 15m.*
  - *All buildings within the land contained within the Hilton Highway ODP shall be set back 5 metres from boundaries with road frontages.*
- Insert the following Performance Standard under Part D6, Section 6.8.3 Performance Standards for Parking:

*“Except for Lots 1 - 4 DP 413460, 12 spaces/800sq.m and 1 HGV space/1,000sq.m of Building Floor Area shall be provided.”*

Key aspects of the proposal are defined on the Outline Development Plan, which focuses on the following features:

- Access from the State Highways (SH1 & SH8)
- Landscaping / buffer areas
- Traffic movement within the site
- Building bulk restrictions

## The Hearing

Appearances

### Hearings Panel

Cr M Oliver (Chairman) Cr I Bowan and Cr J Bradley

### Timaru District Council Staff

Gemma Conlon - Senior Planner  
Peter Kloosterman - District Planner  
Linda Anderson - Minutes Secretary

### For the Proposed Plan Change

Ken and Sue Wills - Wills Family Trust  
Mary Clay - Senior Planner, Davis Ogilvie & Partners  
Nicholas Henderson - Davis Ogilvie & Partners

### Submitters

No submitters wished to appear

The Committee considered the Senior Planning Officer's report on submissions to Proposed Plan Change 12 to change the zoning from Residential 4 to Industrial L at 300 Hilton Highway, Washdyke, Timaru (Lots 1-4 DP 413460).

Complete information on the application including copies of all submissions received was incorporated in the Planner's report which had been distributed to all parties prior to the hearing. The report was taken as read.

### **The Applicants**

Mary Clay presented the application on behalf of the Wills Family Trust.

Ms Clay stated:

*"It is to be noted at the outset that the Applicant agrees with and support the assessments and recommendation in the Section 42(A) report".*

Mary Clay, tabled and read written evidence outlining the proposal and clarified particular points raised in the Planner's Section 42(A) Report.

### **Planning Officer**

Gemma Conlon stated she was satisfied with the amended wording regarding landscaping. She agreed with Ms Clay that photomontages of the site as a method for providing reassurance that there will be limited effect on residential amenity would not be necessary.

### **Question and Answers Session**

Clr Oliver questioned what would happen to existing consents and conditions and how the Plan Change would function considering the existing consents. Peter Kloosterman explained that the plan change would be over the entire site and that the status of the underlying zone would take effect. Consent holders would then have the opportunity to surrender or partially surrender any existing consents. If the existing consents remained active the consent holders were obliged to comply with the conditions.

Clr Bradley questioned existing trading hours and how they would differ in the Industrial L zone. Peter Kloosterman explained there are no controls within the existing District Plan Industrial L zone in relation to trading hours. Mr Kloosterman elaborated that there were different noise levels depending on the time of day and that any noise would have to abide by the Industrial L rules in the District Plan.

Ken Wills said the access off SH 1 is to be increased to 9 metres in size. A Service application had been made for this work to be completed. It was decided that the amended access layout would be incorporated as a Note to the Outline Development Plan.

Gemma Conlon noted that the Scarlett Hydraulic building footprint was not shown on the Outline Development Plan and wished to have it updated so that the correct information was shown at the time of approval.

### **Applicants Right of Reply**

Mary Clay said the purpose of the Proposed Plan Change is to regularise what is already on site and to ensure existing parties can operate without the need to apply for resource consents on an ongoing basis. Ms Clay said she would produce an amended Outline Development Plan as soon as possible showing the changes agreed to. The issues raised by the submitters have been considered. Mr and Mrs Wills would like a decision as soon as possible.

### **Adjournment**

The Chairman thanked the applicants and announced that a decision would be made as quickly as possible.

The meeting adjourned at 10.00am

## **The Submitters**

The Panel reviewed and assessed the four submissions made in relation to Proposed Plan Change 12 to the Timaru District Plan. Matters raised by those submissions and the decisions requested were summarized in the Section 42A Report circulated to all parties prior to the hearing. The submissions were generally in support of the Plan Change; however, they each defined aspects of the proposal that in their opinion require mitigation measures.

The issues raised in the submissions are:

- Landscaping: effective tree barrier planting; screening; and maintenance;
- Visual effects: to protect existing residential amenity;
- Screening: to mitigate against potential noise and dust;
- Hours of operation: to mirror those existing to maintain residential amenity.

The following submissions are accepted, accepted in part or declined as indicated, pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991.

**Phillip & Raewyn Bensemman** submitted that the trees planted should be restricted to native or non-deciduous species. The submitter states that Willow, Poplar and Gum trees are not effective as visual barriers.

### **Evaluation**

The Performance Standards for Plan Change 12 specify that the trees within the landscape strips shall be agreed to in writing by the Timaru District Council prior to planting. However on the Outline Development Plan it is specified that, "*Landscape Strip to be planted in accordance with Resource Consent 5109*". The Panel understands that Note 5 on the ODP requires that there are 12 trees to be planted along SH8 and six trees along SH1. The Panel considers these controls should remain in place.

As there are effectively two differing systems for establishing the proposed landscaping (one through the existing resource consent and another by approval from the Council), this will create uncertainty about which planting is appropriate. The Panel considers the landscape strips should be planted with indigenous species congruent with the amenity and function of the natural environment to achieve the intended screening. The method for how this is accomplished should be unambiguous. For these reasons the Panel has determined the relevant Performance Standard shall state:

*The landscaping to be established between Lots 3 and 4 shall be agreed to in writing by the Timaru District Council prior to planting and development of the site. A landscape plan and sectional elevation of the proposed planting shall be prepared for approval indicating planting species, slope and level of ground, heights and spacing of planting. The planting shall consist of a mix of species from the list below or similar, and shall be no less than 1.8m high at the time of planting, with species that are capable of reaching a mature height of no less than 15m.*

*Suitable tree species to use include:*

- *Black Matipo - Pittosporum tenuifolium*
- *Lemonwood - Pittosporum eugenoides*
- *Ribbonwood - Plagianthus regius*
- *Kowhai - Sophora microphylla or Sophora tetraptera*
- *Wineberry - Aristotelia serrata*
- *Cabbage tree - Cordyline australis*
- *Tree Daisy - Olearia dertonii*
- *Broadleaf - Grislinea littoralis*

*The landscaping shall thereafter be maintained and irrigated in accordance with the approved landscape plan. If any plant or tree should die or become diseased it shall be replaced with a plant or tree of the same or similar species and size.*

The Outline Development Plan shall define the requirements for Landscape Strips and Screen Fencing as follows within the Notes:

- *Screen Fencing shall be established along all boundaries of the site with residential zoning. The Screen fencing has to be 2 metres in height. Trees and hedges have to be 2 metres in height at the time of planting.*
- *A 3 metre wide landscape strip shall be established along the road frontage with State Highway 1 and State Highway 8. One tree shall be planted for every 10 metres of frontage.*
- *Landscape Strips to be established in accordance with the performance standards relevant to this land.*

The Hearings Panel accepts the submission of Phillip & Raewyn Bensemann.

**Shirley Joy Ayers** submits that the screen plantings between Lots 3 and 4 should completely block any development on Lot 3 from being seen from the Residential areas.

**Phillip Thomas Reese Jones** submits in support of the Plan Change but seeks:

- the planting between Lots 3 and 4 be at the same level as the foundations of any future building on Lot 3, not as shown on the ODP.
- Screening completely blocks out any future development
- The landscaping strips are maintained

### **Evaluation**

Complete visual screening of any development on Lot 3 through appropriate landscaping would be very difficult to achieve as it is an elevated site. It would also be inordinately restrictive for any future development of the site.

If the land remained zoned Residential 4 it would be a logical expectation that dwellings could be constructed as a permitted activity on the site. Therefore, it is reasonable to expect some vistas of development on the site, albeit residential in character. The Timaru District Plan specifies the maximum height of buildings permitted in the Residential 4 Zone is 8m, compared to 10m in the Industrial L Zone; with setback from boundaries of 4m in the Residential 4 Zone and 5m in the Industrial L Zone. There is a 2m variance between the permitted heights, with industrial buildings requiring an additional 1m setback from boundaries. The Hearings Panel acknowledges the bulk and massing of industrial type buildings can be significantly greater than residential.

The Hearings Panel considers the proposed amendments to the Performance Standards and notes on the ODP, as detailed in first Evaluation to the Bensemman Submission above, should provide effective canopy density and height in order to mitigate any noise, dust and visual impacts arising from industrial development.

The Hearings Panel considers that specific rules pertaining to ground levels of plantings are not necessary to achieve effective screening.

The Hearings Panel accepts in part the submission of Shirley Joy Ayers.  
The Hearings Panel accepts in part the submission of Phillip Thomas Reese Jones.

**Colin Iggo** submits that he supports the Private Plan Change but has concerns regarding the visual amenity. Mr Iggo seeks that the landscape strip between Lot 3 and Lot 4 of Deposited Plan 413460 is established and maintained as a priority

#### **Evaluation**

A Plan Change "sets the scene" whereby certain development can occur in the future as a permitted activity or with minimal restriction, subject to the defined performance standards and, in this case, an Outline Development Plan. A Plan Change cannot proactively impose Performance Standards before any development occurs. Three of the four allotments within the subject area have existing development legally established on them through land use consents. The owner of Lot 3, where the Outline Development Plan denotes that a 3 metre wide evergreen landscaping strip shall be established, can only be required to plant and maintain that vegetation when some development occurs on the site.

The amendments to the Plan Change as a result of the Bensemman submission (above) will provide greater certainty on the quality of the plantings to be established and the maintenance of those plantings. However the initial establishment of those landscaping strips can only occur in conjunction with development on the site.

The Hearings Panel accepts in part the submission of Colin Iggo.

**Phillip & Raewyn Bensemman** submit that the vehicle parking currently provided in front of the Ken Wills retail complex is inadequate during holidays or busy periods. No decision is requested in relation to this submission.

#### **Evaluation**

The Outline Development Plan states, '*No access off SH1 except for existing access to Ken Wills Complex*'. This reflects the current access and vehicle parking as established through Land Use Consent 5109. There are 31 car parking spaces indicated on the ODP, which provide for five retail units and three vacant units (at the time of writing).

The existing shared access from State Highway 8 allows service and heavy vehicles to access the rear of the retail complex, with customer parking being confined to the front carpark adjoining SH1. This provides for, amongst other things, separation of delivery and loading vehicles and customer car parking spaces.

All access to Lots 1, 2 and 3 is through the existing shared access on SH8. There will be no access to these sites from State Highway 1.

There is potential for future customers to developments located on all four allotments to undertake a multi-purpose trip, by parking in one of the parking areas provided and visiting a number of businesses. This provides for a certain degree of overlap of car parking spaces and numbers.

There will be no specific increase in the parking demand at the Wills Furniture Retail Complex as a result of the Plan Change and resultant development. There is the potential for an overflow of visitors to park in areas associated with the adjoining allotments, therefore the Hearings Panel considers that seasonal and sporadic excess demand on vehicle parking is a minor consideration and additional controls are unnecessary.

The Hearings Panel accepts in part the submission of Phillip & Raewyn Bensemman.

**Shirley Joy Ayers** submits that the trading hours for activities within the subject site should stay the same as the existing (Ken Wills) joinery factory and retail shop in order to mitigate any potential noise effects.

**Phillip Thomas Reese Jones** submits in support of the Plan Change but seeks that the commercial units operate on the same hours as those currently existing on the site.

### **Evaluation**

There are currently no controls on the hours of operation of activities in the Industrial L Zone. The Hearings Panel notes the submitters concerns and recognises that should the existing Ken Wills complex be redeveloped in the future, there is opportunity for high volume twenty four hour fast food outlets to establish as permitted activities in the Industrial L Zone.

The Performance Standards within the District Plan relating to Noise and Obtrusive Lighting (fixed lighting, i.e. not from vehicles) for activities adjacent residential uses in the Industrial L Zone are more prescriptive than the existing Residential 4 Zone rules.

Due to the nature of industrial activities and the potential need for service deliveries, and other operations to be performed throughout a 24-hour period, the Panel considers it inappropriate to limit all operational hours. Notwithstanding, the Hearings Panel recognises there is potential for nuisance effects on adjoining residential amenity associated with 24-hour trading.

The Hearings Panel considers it reasonable to limit the hours that businesses are open to the public, without restricting the viability of operators on the site who may need to carry out work outside the general trading hours. For these reasons the Panel has determined the following Performance Standard shall be added and shall state:

*The trading hours (hours open to the public) of activities/business's in the Industrial L Zone at 300 Hilton Highway (Lots 1-4 DP 413460 and any resultant lots) shall be restricted to between 7.00am - 9.00pm.*

The Hearings Panel accepts the submission of Shirley Joy Ayers.  
The Hearings Panel accepts the submission of Phillip Thomas Reese Jones.

## Conclusion

In overview, the Hearings Panel considers it is desirable to rezone Lots 1-4 Deposited Plan 413460, an area of approximately 3.5Ha, located on the western side of the Hilton Highway (SH1) in the Washdyke area of Timaru, from Residential 4 to Industrial L. The Proposed Private Plan Change offers an opportunity for subdivision and consequential light Industrial development on the site.

Aspects of the Plan Change require amendment to appropriately address matters raised by the Reporting Planner, the submitters and the applicants themselves. These include in particular:

- (i) Modifications to the Outline Development Plan, including the "Notes".
- (ii) Modifications to the text of the Plan Change to provide greater certainty and consistency within the Timaru District Plan.

The Hearings Panel may make amendments to a Private Plan Change under Schedule 1, Part 2, Clause 29 (4):

*After considering a plan or change, the local authority may decline, approve, or approve with modifications, the plan or change, and shall give reasons for its decision.*

In conclusion the Hearings Panel considers Private Plan Change No 12 has evolved and become attuned through the process of notification and the submission process. The Panel is of the opinion that with amendments now incorporated, the Plan Change provisions provide appropriately for light Industrial use of the land in a way that addresses both the aspirations of the owner and the community in respect of this site, and gives effect to the purpose of the Resource Management Act 1991.

For the above reasons the Hearings Panel approves with modifications Proposed Plan Change No 12 (private). Wills Family Trust, Washdyke.

The changes to the Timaru District Plan and the Outline Development Plan are as contained in Appendix A.

Signed this 29<sup>th</sup> day of March 2010



Cr Michael Oliver  
Chairman  
Hearings Committee  
Timaru District Council

## Appendix A

The following additions will be made to Chapter 4.2 Rules for Industrial Zones, Chapter 6.8 General Rule Parking and Planning Map 25 of the Timaru District Plan

- 1 Amend Planning Map 25 to rezone the land subject to the application from Residential 4 to Industrial L.
- 2 Insert the Outline Development Plan - Hilton Highway into the District Plan as Part D4 Industrial Zones, Appendix 1: Outline Development Plan, 300 Hilton Highway.
- 3 Insert the following additional Performance Standard's under Part D4, Section 4.2.1 Industrial L Zone, 5.15.

### **Hilton Highway Outline Development Plan (ODP)**

Development of the site indicated in Outline Development Plan – 300 Hilton Highway, shall proceed in compliance with the Outline Development Plan (Part D4 Industrial Zones, Appendix 1: Outline Development Plan, 300 Hilton Highway).

The following performance standards shall also apply to the land within the area defined by the Outline Development Plan – 300 Hilton Highway (Part D4 Industrial Zones, Appendix 1: Outline Development Plan, 300 Hilton Highway).

- The landscaping to be established in the landscape strips shall be agreed to in writing by the Timaru District Council prior to planting and development of the site. A landscape plan and sectional elevation of the proposed planting shall be prepared for approval indicating planting species, slope and level of ground, heights and spacing of planting. The planting shall consist of a mix of species from the list below or similar, and shall be no less than 1.8m high at the time of planting, with species that are capable of reaching a mature height of no less than 15m.
- The approved landscaping shall thereafter be maintained and irrigated in accordance with that plan. If any plant or tree should die or become diseased it shall be replaced with a plant or tree of the same or similar species and size.

Suitable tree species to use for this site include:

- Black Matipo - *Pittosporum tenuifolium*
- Lemonwood - *Pittosporum eugenoides*
- Ribbonwood - *Plagianthus regius*
- Kowhai - *Sophora microphylla* or *Sophora tetraptera*
- Wineberry - *Aristotelia serrata*
- Cabbage tree - *Cordyline australis*
- Tree Daisy - *Olearia dartonii*
- Broadleaf - *Grislinea littoralis*

- The trading hours (hours open to the public) of activities/business's in the Industrial L Zone at 300 Hilton Highway (Lots 1-4 DP 413460 and any resultant lots) shall be restricted to between 7.00am - 9.00pm.
- 4 Insert the following additional Performance Standard for Parking into General Rules - Parking, Section 6.8.3, 9(iii)
- 9(iii) In association with any future development on sites legally described as Lots 1 - 4 DP 413460 and any resultant lots at 300 Hilton Highway in the Industrial L Zone, that 12 car parking spaces/800sq.m and 1 Heavy Goods Vehicle space/1,000sq.m of Building Floor Area shall be provided.