

Before the Hearing Panel
Appointed by the Timaru District Council

Under the Resource Management Act 1991 (**RMA**)
In the matter of submissions on the Proposed Timaru District Plan

Memorandum of Counsel on behalf of Timaru District Council – Hearing G

11 August 2025

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May it please the Hearing Panel:

- 1 This memorandum of counsel is filed on behalf of the Timaru District Council (**Council**) in relation to the Proposed District Plan (**PDP**) and response to Minute 42.
- 2 The Hearing Panel has requested that counsel provide the following:

[15] For Ms Vella:

(a) Ms Dolan (for multiple submitters) recommended that the FDA framework be replaced with a FUZ zone framework. Please address any scope, natural justice, and/or procedural matters that arise, noting that we received no objective, policy and rule framework in support of the request.

(b) Please provide legal submissions in response to the application of Newbury to the setting of a permitted activity rule under s77E for financial contributions.
- 3 These matters are addressed below.
- 4 Section 42A replies from Mr Willis (Financial contributions) and Ms Williams (Designations) are filed contemporaneously. The final version of these chapters are attached at Appendix A, and form part of the The s42A Officers Final Reply Consolidated Set of Provisions.

Matters relating to proposed Future Urban Zone

- 5 Counsel notes that Ms Dolan has advised the Panel that submitters represented by her¹ have withdrawn the relief sought in relation to a Future Urban Zone (FUZ). Potential scope, natural justice and procedural matters in relation to a proposed FUZ no longer arise.
- 6 By way of brief comment, however, in the absence of any proposed FUZ provisions or section 32AA analysis of such provisions, it is not possible to identify parties potentially affected by the proposed FUZ or assess the potential effects of the proposed FUZ.
- 7 The Panel is therefore unable to undertake an analysis as to whether the proposed FUZ is the most appropriate way of achieving the objectives of the PDP. Further, potentially affected parties are unable to identify whether they would be affected.

¹ Warren & Liz Scott (Submitter #28), Tim Blackler (Submitter #231), North Meadows (Submitter #190), Westgarth-Gibson (Submitter #227) and Garry Aitken (Submitters #237).

Matters relating to financial contributions

- 8 The Council is entitled to make a rule requiring a financial contribution for a permitted activity (section 77E(1)).
- 9 Mr Willis recommends a permitted activity rule, with a standard requiring financial contribution. If that standard is not met, the activity becomes restricted discretionary.
- 10 If the financial contribution requested by the Council is paid, the activity is permitted, there will be no resource consent issued and therefore no condition to which the *Newbury* tests² apply. The financial contribution will be calculated in accordance with Appendix 7, and set out in a certificate issued by the Council.
- 11 If the financial contribution is not paid, a resource consent is required as a restricted discretionary activity. A condition requiring a financial contribution would need to comply with the *Newbury* tests, including that it must be fair and reasonable on the merits in the sense that it is the result of reason, fair to both parties, and proportionate.³
- 12 Whether the activity is permitted or restricted discretionary, Appendix 7 sets out how financial contributions will be calculated. Section 2.4 of Appendix 7 sets out circumstances in which the proposed 4% reserves contribution can be waived or altered.
- 13 If an applicant disagrees with the financial contribution calculated by the Council (and agreement cannot be reached through consultation and dialogue), an applicant would need to apply for a resource consent – at which point the *Newbury* tests would apply to a condition requiring a financial contribution.
- 14 Therefore, while the *Newbury* tests would not directly apply in the context of a permitted activity, the Council would need to consider the fairness and reasonableness of the financial contribution being requested in the certificate given that the *Newbury* tests would apply in the event an application was made for a restricted discretionary activity.
- 15 Mr Dixon's evidence illustrates that, as a starting point, a 4% contribution is fair and reasonable in the context of the Council's green space targets set out in the Long-term Plan, although that 4% may be reduced or waived in certain circumstances in accordance with clause

² *Newbury DC v Secretary of State for the Environment* [1981] AC 578.

³ *Retro Developments Ltd v Auckland City Council* (2002) 10 ELRNZ 330, at [48].

2.4 of Appendix 7. If a requested financial contribution is not paid up front, and the proposed activity becomes restricted discretionary, the condition requiring a financial contribution must be fair and reasonable in the *Newbury* sense and could be challenged on that basis.

16 The Council is grateful to the Panel for its attention to these matters.

Dated this 11th August 2025

Jen Vella
Counsel for Timaru District Council

Appendix A

Final Designations and Financial Contributions chapters