

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

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**Legal submissions of Counsel on behalf of Timaru District Council – Hearing B (B1 Rural and B2 Urban Zones)**

**12 July 2024**

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## May it please the Hearing Panel:

### Introduction

- 1 These legal submissions are made on behalf of the Timaru District Council (**Council**) in relation to the Timaru Proposed District Plan (**PDP**). The purpose of these submissions is to assist the Hearing Panel (**Panel**) by setting out issues relevant to this topic hearing - Hearing B (B1 Rural Zones and B2 Urban Zones).
- 2 These submissions address:
  - (a) Section 42A reports prepared on behalf of the Council;
  - (b) Key issues to be addressed in this hearing;
  - (c) Matters relevant to the Panel's assessment, including specific comments on particular issues relating to relevant considerations, scope of permissible amendments and reverse sensitivity;
  - (d) Comments on the Council's approach toward Clandeboye;
  - (e) An update on progress relating to the Blandswood submissions; and
  - (f) General procedural matters, namely arrangements for section 42A officer replies.

### Section 42A reports

- 3 The Council has prepared three section 42A reports in relation to the matters being heard in Hearing B. They are:
  - (a) **Section 42A report: Rural Zones** – prepared by Mr Andrew MacLennan. Mr MacLennan is a consultant planner from Incite. He has 10 years planning experience, including as a section 42A reporting officer in a number of First Schedule planning processes; and
  - (b) **Section 42A report: Urban Zones – General Industrial and Port Zones** – prepared by Ms Alanna Hollier. Ms Hollier is a Senior Planner at TDC and has been involved in the District Plan Review for over a year. She authored the section 42A report on Part 1 and overarching matters (including definitions) for Hearing A.
  - (c) **Section 42A report: Residential; and Commercial and Mixed Use Zones** – prepared by Ms Liz White. Ms White is an

independent planning consultant with over 17 years planning experience. Ms White has been involved in the TDC District Plan Review since 2019, including drafting plan provisions for the Residential and Commercial and Mixed Use Zones and preparing the section 32 reports relating to those zones.

- 4 The section 42A officers will also file summaries of their reports on 17 July 2024, in accordance with the Panel's directions on format<sup>1</sup> and timing.<sup>2</sup> In short, those summaries will address:
  - (a) Any corrections or updates to recommendations; and
  - (b) A list of issues raised in evidence prior to the hearing, including identifying (where possible, on the basis of the evidence):
    - (i) issues that are resolved; or
    - (ii) issues that remain outstanding pending hearing of evidence.
- 5 At the time of filing these submissions, further submitter evidence was expected but had not yet been received (i.e. the Redwood Group (submitter #228) and H B (submitter #75)). The section 42A authors may need to update their summaries at the hearing in respect of this evidence if it is not received prior to filing those summaries.
- 6 It is noted here for completeness that Ms White is not available to attend Hearing B on 22 and 23 July 2024, but will be in attendance on 24 July 2024. As far as possible, submitters on the Residential and Commercial and Mixed Use Zones have been scheduled for the days Ms White will be in attendance. In the event that issues relating to the Residential and Commercial and Mixed Use Zones are raised in her absence, Ms White will review the relevant footage before appearing on 24 July.

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<sup>1</sup> Minute 7 requires s42A authors to focus on matters relating to the correction and updating of recommendations since the s42A report was issued rather than repeating matters in the s42A report, at [7](a). Minute 8 requires s42A authors prepare a list of issues raised in evidence prior to the hearing and sets out the format required, at [8].

<sup>2</sup> Being 2 working days before the start of the hearing - Minute 8, at [8](a)(i).

## **Key issues to be addressed in Hearing B**

7 The section 42A summaries will contain a full list of issues raised in evidence pre-circulated to the Panel, but the key issues raised in submissions generally can be summarised as follows:

(a) Rural zones:

- (i) Definitions of primary production and intensive primary production;
- (ii) Provisions relating to firefighting water supply, educational facilities, the use of airstrips and helicopter landing areas, residential development, gravel extraction and protecting rural industrial activities from reverse sensitivity effects;
- (iii) Appropriate zoning for the Waihi School site and Blandswood; and
- (iv) Appropriate zoning and provisions for Fonterra's Clandeboye dairy manufacturing site.

(b) Industrial and Port zones:

- (i) Provisions relating to ancillary activities, non-industrial activities and reverse sensitivity effects and air quality;
- (ii) Appropriate zoning and provisions for Fonterra's Clandeboye dairy manufacturing site; and
- (iii) Appropriate zoning for various other sites.

(c) Residential, Commercial and Mixed Use Zones:

- (i) Provisions relating to retirement villages, emergency services facilities, building coverage and landscaping, fencing, firefighting water supply, residential amenity, verandah and active frontage requirements and residential activities in the MUZ;
- (ii) Appropriate provisions for the large format retail site at Showgrounds; and
- (iii) Appropriate zoning for various sites, including the Bidwill Hospital site, Ara's Timaru Campus, Southern Centre Precinct, Hally Terrace/ King St, Temuka, and Evans Street/ Grants Road, Timaru.

- 8 Some of these matters are identified in evidence as being resolved. The section 42A summaries will indicate where this is the case. Some of these issues are not the subject of evidence, but may be raised by submitters attending the hearing.

### **Matters relevant to Panel's assessment**

- 9 The matters relevant to the Panel's assessment of submissions are set out in the Council's legal submissions for Hearing A (30 April 2024).<sup>3</sup> Those submissions address the statutory assessment to be undertaken by the Panel, how the Panel should approach giving effect to National Policy Statements that came into force after the PDP was prepared, and principles relevant to the scope of amendments the Panel can make to the PDP.
- 10 The memorandum of counsel filed in response to Minute 10 (1 July 2024) sets out further legal principles relating to the scope of permissible amendments to address submissions.<sup>4</sup>
- 11 The legal principles set out in our previous legal submissions are relevant to matters being addressed in Hearing B. Specific comments on particular issues relevant to the panel's assessment that arise in the context of the pre-circulated evidence are addressed below.

### *Relevant considerations - The Redwood Group*

- 12 Evidence filed by the Redwood Group<sup>5</sup> (submitter #228) raises issues relating to the fairness of rezoning the Showgrounds land, following the purchase of that land from the Council's holding company based on expectations of particular zoning.
- 13 The Panel will be aware that contractual arrangements for the purchase of land, including a purchaser's expectations for the use of that land, are not relevant considerations in a First Schedule plan-making process. The Panel is required to make its decision in accordance with the legal framework, generally set out in *Colonial Vineyard Ltd v Marlborough District Council*<sup>6</sup> and summarised in legal submissions for Hearing A, including section 32.

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<sup>3</sup> Legal submissions of Counsel on behalf of Timaru District Council (30 April 2024), at [19] – [30].

<sup>4</sup> Memorandum of Counsel on behalf of Timaru District Council – Response to Minute 10 (1 July 2024), at [9] to [12].

<sup>5</sup> Hudson evidence, at [29].

<sup>6</sup> [2014] NZEnvC 55.

- 14 One of the purposes of appointing a hearing panel made up of mostly independent Commissioners to make decisions on the PDP is to ensure that those decisions can be made unfettered by other matters the Council or its organisations are involved in, in other capacities. Contractual arrangements of previous land sales and any persons expectations about future zonings is not relevant to the current task of establishing what the plan should be in the future.

*Scope - Aitken, Johnston and RSM Trust Ltd*

- 15 Mr Aitken, Mr Johnston and RSM Trust Limited (submitter no #237) (**Aitken et al**) submission seeks that their land (at 27 Hally Terrace and 168 King St, Temuka) is re-zoned from General Residential Zone (**GRZ**) to Town Centre Zone (**TCZ**), which aligns more closely to the Commercial 1 zoning in the Operative District Plan. The section 42A report recommends against the rezoning on the basis that it would result in an isolated pocket of TCZ, and would only be appropriate if properties to the south were also re-zoned, which is outside the scope of the original submission.
- 16 Ms Clay's planning evidence suggests that it would be appropriate to re-zone those properties if it was within the scope of the original submission to do so. That evidence suggests that an appropriate approach would be to rezone the entire area as TCZ, but allow for residential activity on the ground level to accommodate those parties (who may not be submitters) who wish to continue residential activity.<sup>7</sup>
- 17 It is respectfully submitted that the rezoning of properties to the south of Hally Terrace/ King Street is not within the scope of permissible amendments that can be made by the Panel because the potential rezoning of those properties was not fairly and reasonably raised in the original submission, was not a foreseeable consequence of any changes directly proposed in the submission and may therefore give rise to prejudice to landowners who have not had the opportunity to respond or contribute to the relief now being sought.
- 18 We make the following observations in that regard:
- (a) The submitters filed two separate submissions using the Council's standard Form 5 template, with a fulsome submission attached to each form;

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<sup>7</sup> Evidence of Mary Clay on behalf of Melvin George Aitken, Paul Alexander Johnston, RSM Trust Limited, at [22].

- (b) The submissions attached to the forms specifically identified the properties in relation to which each submission relates;
- (c) The submission relevant to 27 Hally Terrace and 168 King Street, Temuka addresses the relief sought in respect each property – supporting the zoning on all identified properties, other than 27 Hally Terrace and 168 King Street;
- (d) The submission in relation to both of those properties is the same and opposes the GRZ and seeks a TCZ;
- (e) While the submission seeks "*any consequential or similar relief that is necessary to deal with the concerns and the issues raised in this submission or any subsequent further submissions*", it does not make any mention of the wider area or other properties that might also benefit from a change in zone;
- (f) No further submissions were received on this submission and no other submissions relate to this area;
- (g) Given that there are no other original or further submissions in relation to this issue, it is not clear whether landowners of the other land proposed to be rezoned by the submitter wish to retain the GRZ or would support the TCZ.

*Other potential scope issues – Bidwill Hospital Trust, Willowridge, The Redwood Group*

- 19 The Council notes that the Panel may wish to consider, and/or invite further analysis from submitters as to, whether the relief sought in the evidence filed by the following submitters is within the scope of their original submissions:
  - (a) Bidwill Hospital Trust (submitter #225) – the submission sought relief relating to existing hospitals, but the permitted activity rule sought extends to any health facility or activity operated by the Bidwill Trust (whether existing or not). There would be no scope issue if the rule was to apply to existing facilities.
  - (b) Willowridge Developments Limited (submitter #235) – the submission sought to rezone land from Neighbourhood Centre Zone (NCZ) to Local Centre Zone (LCZ). The relief now sought seeks to alter the objectives, policies and rules of the LCZ and/or NCZ in addition to rezoning the land. Those changes would affect the whole LCZ and NCZ and may not be reasonably foreseeable consequences of the relief sought in submission.

- (c) The Redwood Group (submitter #228) – the submission sought to provide for specific activities in the Large Format Retail Zone (LFR) or retain the existing commercial zoning. The evidence now seeks to provide for activities not specifically sought in the submission (or previously included in the former commercial zoning), although they are the type of activities that may be generally anticipated in a commercial area.

*Reverse sensitivity – Fonterra, NZ Pork Industry Board, Hort NZ*

- 20 Matters relating to reverse sensitivity are raised in the submissions and evidence relating to:
  - (a) Fonterra (submitter #165), which seeks a noise control boundary<sup>8</sup> and setbacks from areas used for wastewater irrigation at the Clandeboye site; and
  - (b) NZ Pork Industry Board (submitter #247) and Hort NZ (submitter #245), which seek to alter the activity status of certain sensitive activities or require setbacks from primary production activities.<sup>9</sup>
- 21 In order to assist the Panel's consideration of those submissions, key principles developed in case law relating to reverse sensitivity are addressed below.
- 22 The Environment Court, in *Winstone Aggregates v Matamata-Piako District Council*,<sup>10</sup> established the following principles<sup>11</sup> in relation to reverse sensitivity:
  - (a) Activities should internalise their effects unless it is shown, on a case by case basis, that they cannot reasonably do so. Emitted effects are to be avoided, remedied or mitigated by the emitter, to the greatest degree reasonably possible;
  - (b) There is a greater expectation of internalisation of effects of newly established activities than of older existing activities because new activities are not encumbered by existing plant and processes.

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<sup>8</sup> Note that the proposed noise control boundary will be considered in the context of the NOISE chapter in Hearing F.

<sup>9</sup> See evidence of Vance Hodgson for Hort NZ, and evidence of Vance Hodgson for NZ Pork Industry Board (submitter #347).

<sup>10</sup> (2004) 11 ELRNZ 48.

<sup>11</sup> These have been commonly adopted, for example in *Wilson v Selwyn District Council* NZEnvC (C023/04), *Waikato Environmental Protection Society Inc v Waikato Regional Council* [2008] NZRMA 431 and *Ngatarawa Development Trust v Hastings District Council* (W017/08).



Older activities may also be restricted by their sites which have little scope for buffers within their own boundaries;

- (c) Having done all that is reasonably achievable, internalisation of effects within the site boundary will not be feasible in all cases and there is no requirement in the RMA that that must be achieved;
- (d) To justify imposing any restrictions on the use of land adjoining an effects-emitting site, the industry must be of some considerable economic or social significance locally, regionally, or nationally;
- (e) If that point is reached, and the only feasible means of protecting the industry from reverse sensitivity is to impose restrictions on surrounding land, any such controls on the use of that land should be via a discretionary or restricted discretionary activity status, so as not to amount to a tacit prohibition;
- (f) Where there is a low probability and low impact effects scenario existing beyond the emitting site boundary it is usually better to incur occasional relatively minor effects than to impose controls on adjoining sites owned by others; and
- (g) Those who come to the countryside to live (e.g. rural lifestylers) have to expect some rural smells and they may have to face the choice of accepting that or accepting that there may be controls placed on how they use their land.

23 In *Wilson v Selwyn District Council*<sup>12</sup>, the Court said (in relation to odour) that:

- (a) the main concern is to ensure that adverse effects beyond the boundary are not unreasonable, i.e., offensive, objectionable, or significant; and
- (b) in assessing what is reasonable, the context of the environment beyond the boundary is relevant.

24 In *Winstone Aggregates*, the Court was required to consider the appropriateness of a proposed setback or buffer zone from scheduled industrial sites or intensive farms and effluent treatment ponds. There were multiple appellants and the Court interrogated the specific circumstances of each one. The Court imposed different requirements

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<sup>12</sup> NZEnvC (C023/04).

(eg, from a 500m buffer to none at all), depending on the specific circumstances. For example:

- (a) The regional importance of a quarry resource, impracticality of internalising all noise effects and vulnerability to reverse sensitivity justified some controls on private land;
  - (b) Where one party was not complying with its resource consent or the general duty to avoid unreasonable noise, the Court refused to employ a blanket 500m buffer, but considered a 300m buffer could be justified for odour reasons and on public health grounds;
  - (c) In the absence of specific evidence as to a need for a buffer or whether the effects of an industrial use could be internalised, the Court declined to impose one.
- 25 The upshot of the above is that whether controls are required and the extent of those controls will depend on the specific circumstances and evidence before the Panel.

#### **Fonterra – proposed rezoning of the Clandeboye site**

- 26 Fonterra seeks that its dairy manufacturing site at Clandeboye be rezoned from General Industrial Zone (GIZ) and GRUZ to a Special Purpose Zone (SPZ) - Clandeboye Dairy Manufacturing Zone (CDMZ).
- 27 During the preparation of their reports, the section 42A officers requested information from Fonterra to support the proposal for the purposes of evaluating the merits of a Special Purpose Zone (**SPZ**) or, alternatively, a precinct within the GIZ. The section 42A officers did not receive sufficient information to enable them to recommend a rezoning, but were aware that further evidence would be provided for the purposes of the hearing. The section 42A officers therefore intend to make further recommendations in their reply following the hearing in light of that evidence.
- 28 Fonterra's proposal currently sits across two section 42A reports. Mr MacLennan has assessed the relief sought seeking a SPZ. His view is that, on the basis of the information he had at the time, Fonterra had not demonstrated that a SPZ was needed in terms of the National Planning Standards and that a GIZ precinct may be more appropriate, particularly from a plan architecture perspective. Ms Hollier did not assess the precinct proposal in the absence of sufficient information to do so.

- 29 In light of the overlap between the topics, the section 42A officers intend to, together, provide:
- (a) An agreed section 42A summary addressing the Clandeboye proposal, which will identify (as far as possible) those aspects of the proposal with which they agree in principle and whether they consider any further information is necessary to enable them to undertake their assessment; and
  - (b) An agreed set of recommendations on the Clandeboye zoning proposal in their replies following the hearing.
- 30 We note here that part of the Clandeboye site will need to be considered under the National Policy Statement for Highly Productive Land (i.e. 37 Rolleston Road and 2 – 10 Kotuku Place). The NPS-HPL is briefly addressed in Fonterra's planning evidence,<sup>13</sup> however it does not appear either of those sites are fully considered against the relevant policies of the NPS-HPL or that a pathway through those policies for those sites is charted. The section 42A officers will address this further.

### **Blandswood – proposed rezoning to SETZ**

#### *Background*

- 31 A number of submissions have raised the issue of the zoning of Blandswood (**Blandswood submissions**), which is currently proposed to be zoned Open Space Zone (**OSZ**) - Holiday Huts Precinct (**PREC4**). The Blandswood submissions largely seek that Blandswood be zoned as Settlement Zone (**SETZ**), or that the current Rural 4B zone be retained or the plan declined. The Director-General of Conservation (**DoC**) is a further submitter on the Blandswood submissions and opposes rezoning to SETZ.
- 32 The section 42A report identified a number of reasons why the author (Mr Maclennan) did not consider SETZ to be appropriate for Blandswood, including that the character of Blandswood did not suit the National Planning Standards description of the SETZ. He suggested that potential amendments to address the issues raised in the submissions could be considered in the context of the OSZ, in Hearing D.
- 33 Mr Collins (a Blandswood submitter) filed a memorandum (23 June 2024), which suggested the submissions do not provide scope for the

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<sup>13</sup> Evidence of Ms Tait, at [6.8.5] to [6.8.17].

Panel to make amendments to the OSZ. Mr MacLennan submitted evidence (1 July 2024), and Counsel filed a memorandum (1 July 2024), addressing the matters raised in Mr Collins' memorandum and setting out the legal principles relevant to the Panel's jurisdiction to make amendments within the scope of submissions.

*Meeting with submitters*

- 34 The Memorandum of Counsel noted that the Council had invited the 22 Blandswood submitters to a meeting with Mr MacLennan to ensure that Council officers properly understood the issues being raised and to enable further consideration to how those issues may be addressed.
- 35 That meeting was held on 5 July, with several submitters in attendance, including Mr Collins. It was agreed that Mr MacLennan would draft a set of provisions that would better address the concerns of those submitters, which could be further discussed between the parties with a view to reaching an agreed position to put to the Panel, if possible.
- 36 Mr MacLennan has commenced that process, but has been slightly delayed due to sickness. The parties were hopeful that further progress would be made before Hearing B, however more time is needed to discuss alternative approaches with the Blandswood submitters. DoC, as a further submitter, has also filed evidence in support of retaining the OSZ. The Council wishes to include DoC in those discussions in the hope that provisions can be agreed between all relevant submitters.

*Proposed way forward*

- 37 The Council respectfully seeks the opportunity to continue discussions with all submitters in relation to appropriate provisions for Blandswood.
- 38 In that regard, the Council proposes that:
  - (a) Mr MacLennan identify options for providing for Blandswood in the PDP and circulates those to the Blandswood submitters and DoC;
  - (b) The Council, Blandswood submitters and DoC discuss those options;
  - (c) An update on progress, and proposed next steps, be provided to the Panel (say, in the section 42A officer's reply to be filed post Hearing B).
- 39 Counsel for DoC has been advised of this proposed approach.

- 40 It is noted for completeness that the planning provisions at Blandswood are somewhat complex due to other rules and overlays that apply in that location. Therefore, there is a potential relationship with biodiversity rules, landscape overlays and natural hazard overlays that need to be considered in developing those provisions. The Council will ensure that all relevant section 42A authors are involved in considering appropriate provisions.

*DoC evidence*

- 41 The planning evidence for DoC seeks amendments that relate to the OSZ, including:
- (a) A new setback of 3m from boundaries that adjoin Natural Open Space Zones (**NOSZ**) for buildings and structures; and
  - (b) An extension of the NOSZ to incorporate public conservation land that has been zoned General Rural Zone.
- 42 It is proposed that these matters be addressed in the context of the proposed discussions above to the extent that is appropriate, or otherwise addressed in the context of the OSZ at Hearing D.

**Procedural matters – section 42A officer replies**

- 43 Minute 8 issued new directions to the section 42A officers, including to provide a reply at the conclusion of each hearing stage to enable them to update their recommendations in light of the evidence heard.<sup>14</sup> The Panel has indicated that it will issue directions for the reply in a minute following each hearing.<sup>15</sup>
- 44 The section 42A officers for Hearing A provided supplementary reports at the conclusion of Hearing A, in accordance with the directions in Minute 7.<sup>16</sup> However, there was no direction to provide a section 42A reply, which would enable section 42A officers to provide a more detailed response to the matters raised, including reasons.
- 45 It is respectfully suggested that the Hearing A section 42A officers could file replies at the same time as the section 42A replies are filed for Hearing B.

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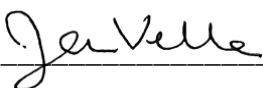
<sup>14</sup> Minute 8, at [8].

<sup>15</sup> Minute 8, at [9].

<sup>16</sup> Minute 7, at [13] and [14].

46 The Council is grateful to the Panel for the time it has dedicated to this hearing.

Dated this 12th of July 2024



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Jen Vella  
Counsel for Timaru District Council

