



**DECISION ON SUBMISSIONS**

**TIMARU DISTRICT PLAN  
PROPOSED PLAN CHANGE NO. 21**

**BROUGHS GULLY OUTLINE DEVELOPMENT PLAN**

**16 SEPTEMBER 2017**

**Commissioner Allan Cubitt**

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## 1. INTRODUCTION AND BACKGROUND

1. I was appointed by the Timaru District Council to hear, consider and decide on the submissions made on Proposed Plan Change Number 21 (“PPC21”) to the Operative Timaru District Plan. My appointment as Hearings Commissioner was made pursuant to Section 34A of the RMA. That delegation was made to ensure an appropriate separation is maintained between the Councils role as the regulatory authority that has promoted the plan change and its position as the final arbiter on the plan change.
2. PPC21 proposes to incorporate an outline development plan (ODP) and associated provisions into the operative Timaru District Plan, for existing Residential 1 and Residential 4 zoned land at Brouchs Gully. The objective of ODP is to enable the development of the sites covered by the structure plan area in a co-ordinated fashion.
3. Section 2 of the Plan Change proposal documentation<sup>1</sup> sets out a thorough description of the area impacted by the plan change and the background of the process leading up to notification. Hence, I do not propose duplicate that here. However, by way of summary, I note the following key elements of the plan change proposal:
  - a. The ODP covers an area of approximately 27ha, with 28 different land owners within the area.
  - b. The topography of the area is rolling rural grassland with a natural gully running west-east centrally through the site. This opens out into a central basin at the bottom of Brouchs Gully.
  - c. A small portion of the western slopes of the area is traversed by electricity transmission lines that form part of the National Grid and the local distribution network.
  - d. The plan change includes changes to the subdivision provisions that seek to provide for an equitable distribution of cost for infrastructure.

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<sup>1</sup> Proposed Plan Change to the Timaru District Plan – Brouchs Gully Outline Development Plan, prepared by Planz Consultants, dated November 2016, Section 2, pages 9-12.

- e. The ODP includes a number of infrastructure features across a number of sections that will need to be vested upon development.
4. My role in this process is to consider the submissions received on PPC21, the evidence presented at the hearing, and the reports of Council Consultant Planner before making a decision on the submissions for the plan change proposal. In this capacity, I have the option to accept or reject the submissions, or accept the submissions in part. As required by the Act, my decision gives reasons for accepting or rejecting the submissions and also includes the consequential alterations to PPC21 arising from the decision. The decision adopts a similar format to that contained within the Section 42A for ease of reference.
5. Once the appeal period has ended, the full Council provides final approval to the plan change and any subsequent amendments to the plan change that have been made.

## **2. THE PROCESS**

6. The plan change was notified on 15 December 2016 and five primary submissions were received. A public notice calling for further submissions was notified on 6 March 2017 and one further submission was received.
7. From his analysis of the submissions, Mr Langman identified seven (7) key issues in contention in relation to the plan change proposal. These are:
  - a. General drafting
  - b. The electricity network
  - c. Infrastructure (general)
  - d. Rooding
  - e. Stormwater
  - f. Wastewater
  - g. Water services
8. Mr Langman grouped the submission points in this manner for the purpose of reporting on them. While he discussed the key issues in the body of the report, he also analysed each submission and made a recommendation on them accordingly. For ease of reference, I have followed Mr Langman's approach as far as possible.

9. Mr Langman also advised that a subdivision and resource consent has been lodged in relation to the land owned by Port Bryson Property Limited and Hilton Trust Limited (PB/HT) at the eastern end of the plan change area. This is at the bottom of the catchment, in the location where stormwater ponds are proposed. I am advised that the subdivision consent was lodged prior to the plan change being notified, and that the land use consent was lodged after the plan change was notified to enable a commercial storage facility to be established on residentially zoned land. At the time of hearing, Mr Langman advised both applications were on hold pending requests for further information. Because neither of the consents have been issued, Mr Langman did not consider them as part of the environment and noted that *“even if the subdivision is granted, this does not preclude the future use of land identified within the outline development plan being used for stormwater treatment.”*
10. Mr Langman also advised that the Timaru District Council sought an Order from the Environment Court to give legal effect to certain provisions in the plan change from the date of notification

### 3. THE HEARING AND SUMMARY OF EVIDENCE HEARD

11. The hearing of the Plan Change and the submissions received was conducted at the Timaru District Council head office on King George Place, Timaru, on the 2<sup>nd</sup> of August 2017. I viewed the site at the conclusion of the hearing.
12. The following people attended the hearing:

#### The Council Plan Change Team

The Council was represented by the following people:

- Ms Jen Crawford – Legal Counsel.
- Mr Frazer Munro – Council Development Manager.
- Mr Elliot Duke – Chartered Professional Engineer.

#### Independent Reporting Officer

- Mr. Marcus Langman – Consultant Planner, and Section 42A Report writer

### Submitters

The following submitters appeared:

- Port Bryson Property Limited and Hilton Trust Limited, who were represented by the following people:
    - Mr Philip Maw - Legal Counsel.
    - Mr Bruce Pipe – Director of both the submitter companies.
    - Mr Robert Hall – Civil and Environmental Engineer.
  - Transpower New Zealand Ltd – Ainsley McLeod, Consultant Planner.
  - Canterbury Regional Council – Carmel Rowlands (Team Leader Planning) and Liz White, Consultant Planner.
13. All expert evidence was pre-circulated and is available from Council should anyone wish to read all of the evidence presented. A brief summary of the evidence and legal submissions is presented below.

### The Reporting Officer

14. **Mr Langman** prepared a comprehensive Section 42A report that was taken as read at the hearing. He summarised his position at the hearing and reiterated his interim position that the Council's proposal appears to better satisfy the objectives and policies of the plan, particularly when efficiency and effectiveness matters are had regard to, than the status quo. He also addressed the National Policy Statement on Urban Development Capacity, advising that while the objectives of that document are generally relevant to the proposal, policies PA2, PA3 and PA4 are also relevant at a high level. Mr Langman also noted that both Ms White for the Canterbury Regional Council and Ms McLeod for Transpower New Zealand Limited concur with his recommendations. In relation to roading matters, he highlighted the fact that no contrary evidence had been provided so he continued to rely on the evidence of Mr Munro for the Council on roading matters and did not recommend any changes in relation to this issue.
15. Mr Langman reiterated his position that the submission of Port Bryson Property Limited and Hilton Trust Limited was not specific enough to determine alternative stormwater arrangements, or who might be impacted by those changes. His reason

for this was that no alternative plan was provided as part of the submission so it would be difficult for any further submitter to determine whether they might be affected by a yet to be determined stormwater and roading design.

#### The Council

16. **Ms Crawford** then introduced the Council's case and presented legal submissions addressing the key issues. She outlined the current difficulties for development in the area and highlighted the work and consultation that Council has undertaken to address these issues through this process. Ms Crawford advised that the modifications proposed by the s42A report are accepted by Council and that they also accept the amendments proposed by Transpower and the Canterbury Regional Council. However, she advised that the Council remains of the opinion that no other changes are needed to address a number of issues raised by submitters including the cost sharing rule.
17. In relation to the PB/HT submission, Ms Crawford submitted that this is an individual solution to their land at the bottom of the catchment. She went on to outline where the two live resource consent applications sit within the plan change context. In relation to the land use consent for storage activities, she submitted that if this was granted in the form requested, it would have the potential to frustrate PPC21.
18. Ms Crawford then addressed the environmental results anticipated by PPC21, which she submitted will be positive. With respect to the statutory matters that must be considered, Ms Crawford considered the key question is whether the change is more appropriate than the status quo. She then outlined the mandatory assessment requirements. She noted that both the application planner and the reporting officer consider that the plan accords with the relevant requirements. She submitted that the Section 32 analysis indicates that the current use of the site does not represent an efficient use of resources and that the change is a more appropriate method to enable urban development. She highlighted the fact that BPB/HT submission did not suggest an alternative to the cost sharing model and that Mr Munro's evidence explains how that model works and the costs of not having such a model.
19. Ms Crawford finished by dealing with matters of scope and submitted there is a jurisdictional issue if I was to move the indicated locations of the stormwater

detention areas as this was not 'on' the plan change and discussed the case law around this issue. To be 'on' the plan change, the submission must be reasonably said to fall within the ambit of the plan change and satisfy the requirement that there is no real risk that persons affected by the additional changes have been denied the opportunity to respond. Ms Crawford submitted that those landowners who did not submit will be affected and interested by the infrastructure being moved onto their land.

20. **Mr Munro** then presented his evidence which dealt with his involvement in the project (since its inception in March 2015) and issues relating to roading, the consequential effects of an alternative stormwater attenuation area and the functionality of the financial contributions model. With respect to the roading issues raised, he did not consider the changes proposed to the cul de sac design appropriate given the functions they provided. He also highlighted the design issues with relocating the Lancewood Terrace extension.
21. Turning to the consequential effects of an alternative stormwater attenuation area, he highlighted the evidence of Mr Duke and quantified these effects through the financial contribution model. These would be in the order of \$3500 per allotment while there would also be intangible costs such as a reduction in useable recreation area and the ability to make future improvements. He also advised that alternative designs would reduce transportation network connectivity and the alignment of the sewer main.
22. To enable development within the ODP area, he acknowledged Council's role and that this is facilitated through the financial contributions model proposed. He explained how this was to work and that it is designed to ensure all contributions account for potential yield from existing sites as well as the development costs of each site. This will see some sites receive financial credits with the net financial effect on Council being zero. He considered the benefit of the model is that it will enable all sites to be developed in a cost-effective manner. He highlighted this in his supplementary evidence which illustrated how the Gleniti model works.
23. Mr Munro also addressed the recent heavy rain event in Timaru and advised that there were no significant flooding issues on the State Highway where it crosses the bottom of Brouchs Gully. He advised that he had discussed the event with land



owners and that all flows remained well within the existing formed grass channel that flows through the site.

24. **Mr Duke** then presented his evidence which focussed on the civil engineering design matters raised in submissions, in particular the relocation of the stormwater management area and how this affects the overall layout and design of infrastructure for the area. Mr Duke outlined the iterative design process that was undertaken and highlighted some of the alternative designs considered and the issues with them. In summary, the effects of the alternative stormwater layout included an increase in the volume of earthworks, a reduction in the potential harvest of fill material, decreased ability for future improvements, a decrease in usable recreational area, and a decrease in developable area.
25. Mr Duke then addressed a number of issues raised by Mr Hall in his evidence. He advised that consideration was given to effects on individual landowners but also, primarily, to the most efficient use of the whole site. Of all the designs considered, he was of the opinion that this was the most efficient and effective design for the overall catchment, which would provide the greatest site wide benefits. He also noted that the site was not within the 100-year Coastal Erosion hazard area or the Coastal Inundation hazard zone of the relevant plans. Mr Duke then stated that Mr Hall was incorrect to say that the eastern bund was at or below sea level when it was in fact a minimum of 3.75 above MSL.
26. On the basis of these factors, he did not consider the site to be vulnerable to inundation from coastal storms in the foreseeable future. He agreed with Mr Hall that coastal erosion processes need to be considered but noted that the SH and main trunk railway separate this site from the direct impact of coastal erosion processes. He went on to outline the factors that will influence the design of the outfall structure and was of the opinion that a gravity outfall will be able to be maintained for the anticipated design life. Noting that the detailed design had yet to be carried out, he agreed with Mr Hall that secondary flows will need to be carefully designed and a detailed risk assessment, including a dam break analysis undertaken. He finished by stating that onsite attenuation alone would not be sufficient to address stormwater management over the site.

Port Bryson Property and Hilton Trust

27. **Mr Maw** made a number of initial comments in relation to the evidence that had been presented before he turned to his written submissions. In response to the Councils 'concept of equality', he submitted that it is not an equitable solution and pointed out that it is not surprising that only two submitters opposed the proposal because they are the submitters who are being used as a dumping ground for everyone else's stormwater. In his submission, scant regard had been given to the submitters development options.
28. Turning to his written submissions, Mr Maw first outlined the background to the submitters position, highlighting the recent consent application history and the strategic importance of the land for the submitters self-storage facility. He advised that the submitters had been working with Council to provide all required information for the subdivision to be granted and the land developed accordingly. Mr Maw submitted that the proposed expansion of the storage business and the residential development on Lot 8 will be frustrated by PPC21. However, Mr Maw did note that the status of the activity is non-complying, and that such an application would need to meet the gateway tests for a non-complying activity.
29. Mr Maw then addressed the scope issue raised in relation to relocating the stormwater facilities and set out the case law relating to the issue as he saw it. He essentially advised that the relief sought must be incidental to, consequential upon, or directly connected to the change, and submitters must be given fair and adequate notice of what is proposed. If the plan change could be amended without real opportunity for participation by those potentially affected, then case law indicated that is a powerful consideration against the submission being truly 'on' the plan change. Mr Maw submitted both tests have been met and referred to the s32 assessment, the content of the original submission and the further submission process to illustrate the point.
30. Mr Maw then went on to address the practicality of implementing Councils preferred design and location of the stormwater management area, with a large portion of it being located within the submitters property, and who will oppose forced acquisition of their property. In his submission, the current location of this infrastructure is therefore not the most appropriate, effective or efficient to achieve the objective of

PPC21. Because of the opportunity costs to the submitter, he considered Mr Duke's alternative design to be more efficient and effective and that none of the issues raised by Mr Duke limit the feasibility of this design. He outlined similar issues with the Councils preferred design and also raised issues with the financial contributions model.

31. **Mr Pipe** read from a comprehensive statement of evidence, which outlined his qualifications and experience, the background of the submitters, the resource consent timeline for their property, and the timeline for PPC21. He highlighted a number of adverse impacts that PPC21 would have for his property if it was approved in its current form. These included the construction of an earth dam on Lot 7 of his subdivision; additional land for reserve purposes will take the balance of Lots 7 and 8; a sewer line/easement to the south of the dam across Lots 2 and 3; a cul-de-sac design for the road head, which requires more land than a 'hammerhead' design. Mr Pipe also outlined his concern with the risk that would be posed by a retention dam and its overflow path, and how this could also impact on issues regarding insurance for his existing storage activity and potential cost in terms of lost business. The location of the lower flow path for site and the location of the sewer main were also of concern to Mr Pipe.
32. Mr Pipe advised that the area of land lost to PPC21 to be in excess of 4,000m<sup>2</sup>, or 6 residential sections. This equated to be 50% of the land he had left to develop, given the area that already accommodates the existing house and associated buildings. Mr Pipe was concerned that PPC21 would frustrate the expansion of his storage business and the opportunity cost of not undertaking this activity was in the vicinity of \$810,000 - \$1,000,000. He went on to outline a number of concerns with the cost sharing model, which was not, in his opinion, a fair and equitable system. Mr Pipe indicated his support for Mr Duke's version 10a for the stormwater infrastructure, subject to the matters set out in his evidence.
33. **Mr Hall** presented a summary of his evidence in relation to flooding matters and sea level rise. He clarified that the downstream effects of water flow from the two stormwater infrastructure options contained in Mr Duke's evidence would be the same based on the design capacity of the infrastructure, regardless of its location. However, in his view, little attention has been given to the detrimental effect of

Councils preferred option on the submitters land. Mr Hall was concerned at the elevation of the eastern bund, which he suggested as being below sea level, which would be problematic for a gravity outfall in a location which he considered vulnerable from coastal storms. The consequence of this is the need for a larger storage area than intended. He believed this problem would become more acute in the future given the coastal dynamics in the Washdyke Lagoon. Given these problems, he was of the view that eastern bund is not appropriate and other options should be considered. Mr Hall recommended a multiple stepped storage system throughout the site, with or without on-site attenuation. He also confirmed that Mr Dukes alternative design would be an acceptable stormwater solution.

34. Mr Hall was also concerned about the location of the flow paths for any flows that may overtop the bund and the possibility of dam failure. He noted that the analysis presented does not include a dam break assessment. He suggested that one way to modify the risk is to incorporate a measure of on-site attenuation on a site by site basis.
35. **Mr Maw** finished his client's case by summarising their position that the subdivision will frustrate PPC21 and that if other lots develop earlier, there will be no stormwater detention areas. In his view, this needs to be considered in terms of the efficiency and effectiveness tests under s32.
36. Mr Maw also provided two plans from Milward Finlay Lobb<sup>2</sup> showing two alternative stormwater arrangements for submitter's land use and subdivision proposal. These plans show the location of attenuation ponds based on on-site detention for both the singular storage activity, and the full subdivision of the subject sites plus the storage activity.

#### Transpower New Zealand Ltd

37. **Ms McLeod** then summarised her statement of evidence. She generally agreed with the conclusions reached in the Section 42A report. In relation to the restricted discretionary activity status discussion for activities that fail to meet the performance standards, Ms McLeod was of the opinion that there is no scope for this and even if

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<sup>2</sup> Option 1 being existing plus new buildings and hardstand, and Option 2 being Option 1 plus 6 new lots plus road, both dated February 2017.

there was, she did not agree with it because it fails to give effect to the direction given by Policies 10 and 11 of the NPSET. She also considered that a non-complying activity status is consistent with a recent High Court interim judgement on the Auckland Unitary Plan.

#### Canterbury Regional Council

38. **Ms Rowlands** and **Ms White** were the final submitters to appear. Ms White addressed her evidence which outlined CRC's support for the change along with a number of changes sought so that the provisions better align with the CLWRP. Ms White confirmed that CRC supported the officer's recommendation and then addressed questions around the policy framework of the RPS in relation to regionally significant infrastructure. While this policy framework may not be strictly relevant to this proposal, she considered that the stormwater could potentially fall under the definition of regionally significant infrastructure. Ms Rowlands advised of the work that had been carried out around the coastal issues for this particular location.

#### Reporting Officers Review

39. Mr Langman provided his review in writing. In relation to the scope issue raised by the PB/HT submission, Mr Langman recommended accepting the submission as being "on point" because any well-informed party could have made a further submission on this point and while there was no specific location identified, all parties were on notice that it could have been any land within the area affected by the proposal.
40. Mr Langman also addressed Mr Dukes alternative plan (version 10a) and noted that this option was undertaken by the Council, not the submitter and that it was generally supported by the affected land owner. In terms of the commercial storage business consent, Mr Langman noted that no information was provided as to whether a decision had been made to notify the application, but he advised that the application hasn't been granted and does not form part of the existing environment. He also advised that no clarity was provided as to whether the driveway area to be filled was impacted by existing easements.
41. In relation to the loss of developable land issue raised by PB/HT, Mr Langman did not agree that the change would create a 50% loss of that area. He noted that the

submitter's calculations appeared to exclude the area of the existing house and shed and did not take into account the loss of land required for attenuation for the mixed subdivision and land use proposal. Mr Langman estimated that a more accurate figure would be between 25-40%, and more likely at the lower end of that range.

42. Turning to the issue of earthworks volume and their cost, Mr Langman noted they were not contested by the submitter for the alternative stormwater arrangement and he suggested that in evaluating costs and benefits, this should be given particular weight. However, he considered very little weight should be given to the future use of the site for storage purposes because resource consent has not been issued for the site (and it is not known whether the storage facility will be permitted). He also noted that no methodology was provided for the estimated opportunity cost and felt the more relevant net opportunity cost is the lost opportunity of developing residential land on the site, rather than a business use that is not yet consented. He noted that this process would take into account development costs. He also noted that no consideration appeared to have been given for alternative locations for the storage facility other than in the location of the proposed stormwater ponds.
43. Mr Langman considered the risk of opposition to acquiring land for stormwater purposes, as a neutral cost, as there might be others that take the same position and that is a risk the Council appears to be comfortable with. He did consider the risk of the stormwater facility failing as a relevant matter but noted that this exists regardless of where the stormwater attenuation takes place, and the alternative design does not remove the risk. He reiterated that dam structures require their own consents, and that will be a matter for the regional council to consider. Mr Langman recommended placing little weight on costs associated with insurance because no expert evidence was put forward.
44. After having regard to the costs and benefits associated with the proposal put forward in evidence (which were quantified where possible), he recommended that the stormwater layout in Version 10 is retained. His primary reasons for this were that there is a greater loss of developable sites, increased costs for earthworks, and reduced recreation reserve area from the alternative. This outweighed the potential net opportunity cost to the landowner of not being able to develop the residential land for a commercial storage facility or other residential purposes.

45. With respect to the cul-de-sac design for Road 3, he noted that while Council accepted a hammerhead design, the practicality of this design with the stormwater management area would need to be carefully considered, as well as amenity for sites at the end of the cul-de-sac. He felt it might be appropriate to signal in the outline development plan that either a cul-de-sac design or a hammerhead design is appropriate.
46. With respect to opposition to the use of financial contributions, he noted no alternative wording was sought so the only alternative available is to delete the provisions altogether. In his view, the financial contributions model both protects the submitters by providing potential for a credit for works undertaken, and spreads the cost among the parties. He did not think there were better or more appropriate alternatives available.
47. The only change he recommended to the proposal (in addition to his previous recommendations) is to amend the Outline Development Plan to enable Road 3 to be completed as either a hammerhead design or a cul-de-sac design.

#### Applicants Reply

48. Ms Crawford provided her reply in writing but made some preliminary comments before the close of the hearing. She highlighted the similarity of the stormwater retention ponds on the subdivision plan presented at the hearing and those on the PPC21 documentation. She then asked Mr Duke to clarify his evidence in relation to the cost of the additional earthworks required under the alternative. Mr Duke provided a quantitative estimate of cost for 7,500 m<sup>3</sup> of additional earthworks at an estimated cost of \$100 per m<sup>3</sup>, which amounted to an additional overall cost of \$750,000 for the alternative as opposed to the \$75,000 he had earlier identified. He also stated that no matter what stormwater system is developed, the water will always end up on the Pipe property, as that where it goes now because of its location at the bottom of the catchment.
49. Ms Crawford then advised that Council accepts the minor amendments proposed by Transpower and could potentially accommodate PB/HT's request regarding a hammerhead design instead of a cul-de -sac at the end of Road 3. This was confirmed in her written reply.

50. However, with respect to the change proposed for the stormwater infrastructure, Ms Crawford remained of the view that because it represents a fundamental redesign and was not properly articulated in a submission, it is not within scope. In her submission, under no circumstances could you reasonably conclude that fair and adequate notice has been given to submitters or any person who might be potentially affected by such changes. Accordingly, such changes do not, in her opinion, meet the legal tests and there is no jurisdiction to grant the relief sought. However, Ms Crawford submitted that no finding in respect to scope is necessary as the alternative lacks merit and no technical evidence was called that rebutted Mr Duke's analysis.
51. With respect to the consents sought by PB/HT, Ms Crawford reiterated that they are not relevant or imminent. She noted that the subdivision is restricted discretionary and even if granted, would not fundamentally inhibit the implementation of PPC21. The land use consent is non-complying and must get through the 104D test.
52. With respect to the financial contribution rules, Ms Crawford reiterated that these have been drafted to easily convert to development contributions under the LGA 2002 when they are removed from the RMA in 2022. Ms Crawford submitted that PB/HT misunderstood how the financial contributions model works – those who benefit pay, those who incur a cost get a credit. She highlighted Council's experience with Gleniti and the fact that it is accepted by all landowners. She submitted that equitable sharing of costs and benefits lies at the heart of PPC21 and highlighted this by referring to the subdivision plans tabled by PB/HT, which show significant stormwater attenuation in the very location proposed under PPC21. She submitted this plan called into question the veracity of the claim that Lots 7 and 8 will be lost from productive use and noted that if PPC21 doesn't go ahead, the cost of the infrastructure will fall entirely on the developer. Ms Crawford submitted the opportunity costs were overstated by PB/HT, as is the potential benefits while development costs have been completely omitted. By comparison she submitted that PPC21 would leave the submitter in a better position.
53. Ms Crawford then finished by addressing legal matters, noting that feasibility of the alternative is not the test but what is the most appropriate – the status quo, or PPC21. She submitted that it meets all the relevant criteria and considered that the broader issues raised by Mr Hall are unlikely to directly impact on the site.



## 4. DECISION

### 4.1 Preliminary Matters

#### *Request to Decline the Plan Change in its Entirety*

54. Under this heading, Mr Langman discussed the scope of the plan change and advised that:

*“The scope includes the proposed plan change, and anything fairly and reasonably raised in original submissions on it, and anything in between<sup>3</sup>. Some of the submissions seek that the whole of the plan change is declined. Anything on the “line” between the existing provisions, the plan change, and the original submissions on it, is therefore within scope.”*

55. He raised this issue because of his concern that there was potential for natural justice issues to arise regarding the possible location of stormwater ponds within the structure plan area as the result of the Port Bryson Limited and Hilton Trust Limited submissions. Those submitters requested that the stormwater ponding be distributed more equitably within the structure plan area. Mr Langman considered the submission lacked specificity, with no specific alternative locations identified. Mr Langman was concerned that landowners, who chose not to submit or further submit, may be prejudiced in this matter as they may not be aware that this was a possible outcome of the plan change.

56. However, before I attend to this matter, I must first address the submission of Port Bryson Limited and Hilton Trust Limited that requested the entire plan change be rejected. While these submitters did seek alternative relief, the relief they sought in the first instance was to reject the proposal in its entirety.

57. When dealing with the scope issue Mr Langman noted that:

*“The area is already zoned for Residential use in the Timaru District Plan. However, given the large size of the catchment, its undeveloped nature, and multiple land ownership, an outline development plan has been developed to assist with the co-*

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<sup>3</sup> *Re Vivid Holdings Limited* (1999) 5 ELRNZ at [19]

*ordinated development of the sites. An outline development plan typically identifies land necessary for roading and infrastructure, as well as any necessary staging. Although not directly relevant to this proposal<sup>4</sup>, the Canterbury Regional Policy Statement sets out typical matters addressed through an outline development plan.”*

58. The purpose of the plan change is set out at Section 3 of the PPC21 documentation and is *“to facilitate coordinated urban development and the cost effective and equitable provision of network servicing infrastructure across a site that is currently in multiple ownership and has significant servicing constraints.”* The reasons the change is considered necessary are set out at Section 4 of the documentation. In summary, the site has been zoned for suburban density development for at least 30 years and can yield a minimum of 180 sections, which is an important contribution towards providing housing choice and urban development capacity in Timaru. However, this yield has not been realised, with the two main reasons being many of the people who currently live there enjoy the lifestyle and don't want to develop, and those that do want to develop, are hindered by the cost and ability to service the area. This last issue is complicated further by the fact that the block is currently in multiple ownership, which makes it difficult to achieve coherent, efficient and connected urban form.
59. The provisions introduced by PPC21 are aimed at addressing this last issue. Their objective is to achieve coordinated urban growth and the efficient and equitable delivery of network services for the site. A thorough Section 32 analysis has been provided with the PC documentation.
60. In response to this submission, Mr Langman formed the view that *“the objectives are considered the most appropriate for achieving the purpose of the Act and the policies and methods are the most appropriate for achieving the objectives, having regard to s32 of the RMA”*. Ms Crawford submitted that the plan change is supported at a policy level and evaluation under section 32 of the RMA demonstrated that the current use of the site does not represent an efficient use of natural and physical resources. She considers the change (which included equitable cost sharing rules) to

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<sup>4</sup> Refer Policy 6.3.3(3). Note that this only applies to the Greater Christchurch Area but is useful as a guide for the contents of an outline development plan.

be the most appropriate method to enable the anticipated urban development on this site.

61. Leaving aside the detail of the provisions for now, I agree with the evidence of Mr Langman and the legal submissions of Ms Crawford. The evidence does demonstrate that the use of an ODP, along with associated equitable cost sharing rules, is the most appropriate planning response to overcome the difficulties of achieving the environmental outcomes already established and tested for this area under the District Plan.
62. Furthermore, the approach proposed is in line with Council's responsibilities under the National Policy Statement on Urban Development Capacity 2016. The NPS provides direction to decision makers on planning for urban environments and recognises the significance of well-functioning urban environments. The preamble of the NPS states that *"well-functioning urban environments provide for people and communities wellbeing's"* and notes that *"local authorities play an important role in shaping the success of our cities by planning for growth and change and providing critical infrastructure."* It goes on to say that *"development capacity must be provided for in plans and also supported by infrastructure. Urban development is dependent on infrastructure, and decisions about infrastructure can shape urban development. This national policy statement requires development capacity to be serviced with development infrastructure, with different expectations from this infrastructure in the short, medium and long-term. It encourages integration and coordination of land use and infrastructure planning."*
63. There are a number of objectives and policies from the NPS that are relevant to this proposal. Objective OA1 requires *"Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing."* It is considered that the ODP approach and associated cost sharing model for infrastructure development will achieve an effective and efficient urban environment in this location. This approach will also achieve Objective OD1, which seeks *"Urban environments where land use, development, infrastructure and other infrastructure are integrated with each other."* By promoting the change for the reasons it has, Council has also acted in accordance Objective OC2, which requires local authorities to *"adapt and respond to*

*evidence about urban development, market activity and the social, economic, cultural and environmental wellbeing of people and communities and future generations, in a timely way.”*

64. As a consequence of the foregoing, declining the plan change in its entirety would not, in my view, be consistent with the purpose of the Act and this submission is rejected accordingly.

#### *Scope – Stormwater Infrastructure location*

65. The issue of scope as raised by Mr Langman above was discussed at length at the hearing. Both legal counsel presented case law to support their arguments. In the end, I have accepted the argument of Ms Crawford on this. While the PB/HT submission regarding the location of the stormwater infrastructure is clearly ‘on’ the plan change in the lay sense – i.e. it is a submission that clearly relates to a relevant plan change matter (it falls within the ambit of the plan change), the legal test around what is ‘on’ the plan change also requires that there is no real risk that persons directly or potentially affected by the changes proposed in the submission are denied an effective opportunity to respond or participate. Mr Maw considered this limb of the test was satisfied by the further submission process, where the summary of submissions noted that the submission requested it be deleted from the submitters land and relocated to other land affected by the proposal. He also noted the s32 reference to the opportunity to vary the ODP.
66. In his review, Mr Langman agreed with Mr Maw’s position while Ms Crawford submitted that this limb of the test is not satisfied. She submitted that this request represented “*a fundamental redesign and was not properly articulated in a submission*” and that the alternatives referred to the hearing by the submitter were not specified in the submission. I tend to agree with Ms Crawford that fair and adequate notice has not been given to those potentially affected by such a significant change and it is likely they would not be expecting the stormwater infrastructure to be relocated from the bottom of the catchment for obvious practical reasons. Hence, I concur with Ms Crawford that a decision to implement any change in location for the stormwater infrastructure at this late stage of the process is most likely out of my

jurisdiction. If I am wrong about this, and I can implement such a change, I have determined below that the current design and location is the most appropriate.

#### *Existing Resource Consent Applications Associated with PB/HT submission*

67. I do not propose to dwell long on this issue as I agree with Ms Crawford that these are not relevant to my consideration here as at the time of writing this decision, no decisions have yet been made. They are not part of the existing environment. The land use consent is for a non-complying activity, the most difficult consent category, so there is no guarantee of a positive outcome for the storage facility and hence there is no lost economic opportunity here for the submitter. With respect to the subdivision, I again agree with Ms Crawford that this does not necessarily frustrate the outcomes sought by the plan change and the stormwater attenuation areas on the plans submitted do look similar to what is proposed under the plan change. If the stormwater infrastructure was to be pushed west under this decision, then it appears the submitter would still have to provide this infrastructure as part of their own discrete development and at their own cost. This does not appear to be an efficient approach to the issue.

## **4.2 General Drafting**

68. As Mr Langman's report noted, the Timaru District Council requested a number of minor editing changes to the provisions. He recommended that these changes be accepted, subject to some minor amendments for drafting clarity. I understand the Council accepted these changes and no further submission opposed the original submission. I have reviewed the changes sought and consider them appropriate, subject to Mr Langman's amendments, and have accepted the submission accordingly.

## **4.3 Electricity Network**

69. The submission of Transpower New Zealand Limited opposed the plan change on the basis that it did not give effect to the NPSET and sought a number of changes to rectify this. As Mr Langman noted, the changes reflect similar provisions that have

recently been included in the Christchurch District Plan, albeit adjusted slightly to recognise the nature of the Broughs Gully ODP area.

70. Mr Langman agreed with the proposed changes although in relation to the non-complying activity status where standards are not met, he was of the view that a restricted discretionary activity would be more appropriate as the matter is reasonably confined. However, he did note that there may be limited scope to make this change (as no one had asked for it), a position that Ms McLeod agreed with. In the end, it did not matter as the Council were comfortable with the non-complying status. In my view, this is the most appropriate outcome given the direction of the NPSET and recent case law as highlighted by Ms McLeod.

#### **4.4 Cost Sharing for Infrastructure Development**

71. The PB/HT submission raised a range of concerns with the financial contribution model and sought to have the relevant rules deleted. No alternative, or amended wording, was proposed by the submitter. In his s42A report, Mr Langman advised that proposed rules provide for the equitable distribution of costs associated with their respective benefits within the plan change area, and requested further information from the submitter before he could recommend any change.
72. Mr Pipe did not consider that the burdens and benefits of the infrastructure was distributed equally throughout the area affected and raised a number of administration issues with the proposed financial contributions model. He recommended that the sewer main be installed by Council, and developers make a capital contribution when they connect, but that the balance of the infrastructure be left to the developers.
73. However, it is this very situation that the Council is trying to avoid. The plan change has essentially been promoted to overcome the difficulties that the current land ownership structure creates for effective, efficient and integrated provision of services to, and development of, the plan change area. As Ms Crawford submitted, the equitable sharing of cost and benefits is at the heart of that, which Mr Munro dealt with at length in his supplementary evidence. He used the Gleniti catchment as an example of how the model works in practise.

74. While no financial model dealing with issues of this nature will be perfect, what is proposed here is, in my view, the most appropriate and practical option available. It has a proven track record where properties that derive a benefit will pay for that benefit, while those who incur a cost will receive a credit. No other option, apart from doing nothing, has been proposed and the do nothing option is one of the main drivers for the change.
75. I also agree with Mr Langman and Ms Crawford that the loss of opportunity and land available for development to the submitter has been somewhat overstated. Applying an equitable cost sharing regime to the development of the submitters land across the entire catchment, as opposed to funding all necessary infrastructure themselves, should leave the landowner in a better position in terms of development costs. It seemed to me that the biggest driver behind this concern was the 'lost opportunity' of expanding the storage business into this area. However, as I have already touched on, the zone does not provide for this activity and it cannot therefore be had regard to.

## 4.5 Roding

76. In relation to the PB/HT submission that sought an alternative 'hammerhead' roding design in place of the cul-de-sac at the end of Road 3, I note that the preference of Council is to retain the cul-de-sac (for practical reasons) but Mr Munro confirmed at the hearing that a hammerhead design was no longer opposed by Council. Either option would, in my view, be in general accordance with the ODP and a change has been made to that effect.
77. Mr Olsen requested a change to the location for the extension of Lancewood Terrace due to severance issues it creates. Mr Langman's report noted that "*developable land appears to remain on both sides of the road on the submitter's land*" and that the route appears logical as it runs with the contour. Mr Munro addressed this issue in his evidence and advised that the longitudinal grades required to relocate the road would exceed the commonly acceptable design guides and as such, he did not support this. No evidence was presented to the contrary and hence I accept Mr Munro's position on this matter.

## 4.6 Stormwater

78. A number of submissions were made in relation to stormwater management issues. The key stormwater issue, relating to the relocation of the infrastructure, has been considered above where I found there to be limited scope to address this submission given the impact it would have on persons not involved in the process. However as foreshadowed above, if I am wrong about the scope issue, I have considered the merits of the proposal.
79. While I understand the concerns raised by Mr Pipe, overall, I consider the proposed location and design to be the most appropriate. While Mr Duke acknowledged that alternative design he assessed at the hearing would achieve the outcomes sought, he did not favour this option for a wide range of reasons. To summarise these, the alternative design:
- Would almost double the earthworks required which would add an additional cost of \$750,000 to the work; increase the maximum grade by 1% on the re-alignment of Lancewood Terrace that would be needed; access to allotments off the road under this design would be made more difficult.
  - Is more constrained by the road design and levels so has less scope to increase storage in the future if required.
  - Reduces the area of developable land by approximately 3000m<sup>2</sup> with a lot of this land being more desirable north facing sites. The land available to the north of the road is a south facing slope, that has a number of limitations for development.
  - Lose a significant area of recreational reserve land, with the gross area being half that of the original but more importantly, usable recreational area would decrease by approximately two thirds.
80. While Mr Pipe addressed aspects of this evidence, no technical evidence was produced that rebutted Mr Duke's opinion. Mr Duke also stated that Lots 7 and 8 of the Mr Pipes subdivision did not appear to be suitable for development as the



northern portion of them lies in a natural depression at the end of the Broughs Gully catchment, which he considered a critical secondary flow path. Mr Pipe confirmed this area will be used for stormwater attenuation under his subdivision plan, which lends support to the location being appropriate to service the wider catchment.

81. Mr Pipe and Mr Hall raised the issue of on-site attenuation but Mr Duke stated that onsite attenuation alone would not be sufficient to address stormwater management over the site. With respect to Mr Hall's broader concerns, I agree that sea level rise and coastal erosion processes are unlikely to have any direct impact on this site within the design period, particularly given the fact that the SH and main trunk railway separate the site from the coast. Issues relating to dam design and safety will be dealt with under the consent process for the structure that will need to follow.
82. Mr Maw advised that PB/HT would not agree to compulsory acquisition of their land for the stormwater infrastructure and the time and cost involved in this process should be factored into whether this is the most appropriate way to achieve the objectives of PPC21. I note that this could be the case for any of the private land identified as necessary for public infrastructure and the mechanism of how or when that land will be acquired is not for this part of the process. Hence, I agree with Mr Langman that this could be considered a neutral cost. However, providing stormwater infrastructure just to the west of Mr Pipes property (under the alternate design assessed) along with the stormwater infrastructure on Mr Pipe's property under the subdivision proposal, would seem rather inefficient to me, particularly when an equitable cost sharing regime is proposed for the plan change area.
83. The PB/HT submission also sought that rules around impervious surfaces be deleted. Mr Langman advised that such limits are typical for residentially zoned land and assist with the control of stormwater discharge in the ODP area, as well as with amenity. He recommended that the submission be rejected, and I agree.
84. Turning now to the further submission from the New Zealand Transport Agency, Mr Langman recommended that it be rejected on the basis that the ODP does not permit or allow a certain volume of discharge; that is the function of a discharge consent from the Regional Council. The reason for developing modelling is to show that there

is sufficient land available to develop appropriate stormwater attenuation, rather than to control volumes or rates of discharge. I agree with Mr Langman's position on this.

85. The Canterbury Regional Council submission recommended minor changes to provide recognition for Waitarakao/Washdyke Lagoon. Mr Langman considered the changes appropriate in the context of that waterbody, and the National Policy Statement for Freshwater Management, and recommended they be accepted. Again, I agree with Mr Langman.

## 4.7 Wastewater

86. Port Bryson Property Limited and Hilton Trust Limited sought that the proposed sewer connections on the ODP be deleted or re-routed, so as to avoid future development on their site. Mr Pipe advised that the current location limits his planned development of both the self-storage and adjacent commercial building. Once the subdivision of 18 Hilton Highway is completed, he advised that the redundant driveway will be filled and built on, becoming part of the self-storage facilities. In his evidence, Mr Pipe suggested the sewer main be relocated north of the 18 Hilton Highway boundary and continue underground to the north of 16 Hilton Highway.
87. Mr Langman did not support this submission in his report, as no alternative has been proposed or shown that might work. At the hearing, he highlighted the various easements that are located within the area, and noted that this issue was not clarified. These easements appear to be related to stormwater, water, electricity and telecommunication services, along with rights of way. The stormwater easement at least, appears to be in favour of land outside the submitters control. This would seem to call into question Mr Pipe's ability to build on this area, which would allow the sewer main to remain in its current location.
88. The Councils evidence was that this route is the most efficient and the efficiency aspect of it did not appear to be challenged. However, as Mr Langman noted, the subdivision provisions provide that subdivision activities be in general accordance with the ODP, and provide a consenting pathway if that cannot be met. If a better alignment is found through that process, then it is unlikely to present as a significant issue.

89. The submission is rejected accordingly.

## 4.8 Water Services

90. Timaru District Council has sought a minor amendment removing water service from the location of services description, as these are not shown in Appendix C. It is appropriate that the submission is accepted accordingly.

## 5. CONCLUSION

91. For the reasons set out in the decisions above and the decision table at Appendix 1, I under delegated authority from the Timaru District Council approve, with the modifications made by the decisions, Proposed Plan Change No 21 – Broughs Gully Outline Development Plan.

92. I also confirm that I am satisfied that this decision, including where I have agreed with the analysis and evaluation of costs and benefits in Mr Langman's report, includes sufficient detail to satisfy the requirements of s32AA(1)(d)(ii).

93. The changes to the Timaru District Plan are as contained in Appendix 2.

Dated this the 16<sup>th</sup> day of September 2017



**Allan Cubitt**  
**Independent Commissioner**

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## **APPENDIX 1 – DECISION TABLE**

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Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
<b>General drafting</b>						
3.10	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Performance Standard 6.3.8(5)	Support with amendments	Amend Section 6.3 Subdivision, Performance Standard 6.3.8(5) as follows:  <i>In the Residential 4 Zone all subdivisions shall comply with a comprehensive development plan for the contiguous land in the same zone, unless the sites have:</i> <i>(a) access to Doncaster or Martin Streets, or</i> <i>(b) are on the south or east side of Old North Road, Blair Street or Mahoneys Hill Road, or</i> <i>(c) <del>and</del> are <del>not</del> within the Broughs Gully Outline Development Plan <del>shown</del> (as set out in Appendix C, Part D2),</i> <i><del>in which case where</del> Where (a), (b) or (c) above does not apply, the development plan need relate only to the existing allotment being subdivided. For the area subject to Appendix C, Part D2, all subdivisions are to be in accordance with the <u>Broughs Gully Outline Development Plan</u>.</i>	Accept in part. Amendments provide clarity. Clause 16 minor change made for clarity (in <b>bold</b> ).  <i>In the Residential 4 Zone all subdivisions shall comply with a comprehensive development plan for the contiguous land in the same zone, unless the sites <del>have</del>:</i> <i>(a) <b>have</b> access to Doncaster or Martin Streets, or</i> <i>(b) are on the south or east side of Old North Road, Blair Street or Mahoneys Hill Road, or</i> <i>(c) <del>and</del> are <del>not</del> within the Broughs Gully Outline Development Plan <del>shown</del> (as set out in Appendix C, Part D2),</i> <i><del>in which case where</del> Where (a), (b) or (c) above does not apply, the development plan need relate only to the existing allotment being subdivided. For the area subject to Appendix C, Part D2, all subdivisions are to be in accordance with the <u>Broughs Gully Outline Development Plan</u>.</i>
3.11	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 6.6.5(2)(c)	Support with amendments	Amend Section 6.6 Roading Hierarchy, Rule 6.6.5(2)(c) as follows:  <i>The sum of <del>the</del> all the benefit costs determined in 6.6.5(2)(b) is subtracted from the total cost of all future and indicative roads determined in 6.6.5(2)(a). This residual cost represents the catchment wide benefit</i>	Accept to improve clarity.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<i>that each property receives from adjoining and surrounding properties developing.</i>	
3.2	<p>Timaru District Council</p> <p>Mail ID: 1043340</p> <p>Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940</p>	Drafting	Policy 2.1.2.2	Support with amendments	<p>Amend Policy 2.1.2.2 as follows:</p> <p><i>Residential 1 Zone (Broughs Gully)</i></p> <p><i>Explanation and Principle Reason</i></p> <p><i>The Broughs Gully Outline Development Plan (<del>ODP</del>) area is shown in Appendix C of Part D2 Residential Zones and comprises 27ha of land situated in the Washdyke area and generally bordered by Jellicoe Street, Old North Road, Mahoneys Hill Road and existing suburban development. It is predominantly zoned Residential 1, but also includes an area of Residential 4 zone to the north.</i></p> <p><i>The Outline Development Plan includes the configuration of land use zoning, roads, services, walkways, stormwater basins and linkages throughout the site. The Rules and Performance Standards of the Residential 1 Zone (and Residential 4 zone for the northern portion of the <del>ODP</del> Outline Development Plan area) shall apply to this zone.</i></p> <p><i>Development of this area in general accordance with the <del>ODP</del> Outline Development Plan will ensure:</i></p> <ul style="list-style-type: none"> <li><i>efficient development of urban zoned land to</i></li> </ul>	Accept to improve clarity.



Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<p><i>provide housing choice;</i></p> <ul style="list-style-type: none"> <li><i>• provision of sewer and stormwater infrastructure on a coordinated basis;</i></li> <li><i>• provision of a connected, safe, and efficient roading network;</i></li> <li><i>• the avoidance of new roading and access connections to major roads;</i></li> <li><i>• the avoidance of adverse effects (including reverse sensitivity effects) on the National Grid;</i></li> </ul> <p>...</p> <p><i>Residential 4 Zone (Low Density Residential; Timaru only)</i></p> <p><i>Explanation and Principal Reason</i>  <i>This is a low density zone provided for at several locations in Washdyke. Amenity values are intended to be of as high a standard as is compatible with its location near an industrial area. An integrated building location and planting regime is to be provided to detail means of achieving maximum visual amenity. A portion of the Residential 4 Zone is included within the Broughs Gully Outline Development Plan area shown in Appendix C of Part D2, with which seeks to achieve the outcomes described above in the Residential 1 Zone (Broughs Gully).</i></p>	

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
3.3	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Policy 2.4.2.4	Support with amendments	Amend 2.4.2.4 as follows:  <i>Ensure that development in the Residential 1 and 4 zones <del>at</del>within the Broughs Gully <u>Outline Development Plan</u> (as set out in Appendix C of Part D2) is efficient, coordinated and supported by adequate services and is in general accordance with the roading and servicing layout shown in Appendix C of Part D2.</i>	Accept in part – Clause 16 minor change made for clarity (in <b>bold</b> ).  <i>Ensure that development in the Residential 1 and 4 zones <del>at</del>within the Broughs Gully <u>Outline Development Plan</u> <b>area</b> (as set out in Appendix C of Part D2) is efficient, coordinated and supported by adequate services and is in general accordance with the roading and servicing layout shown in Appendix C of Part D2.</i>
3.4	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 3A.2	Support with amendments	Amend Section 2.6.1 Residential 1 Zone, Rule 3A.2 as follows:  <i>Any <del>proposed</del> activity that does not comply with the location(s) of infrastructure shown on the Broughs Gully Outline Development Plan (as set out in Appendix C of Part D2). Discretion shall be limited to the matter(s) not complied with.</i>	Accept.
3.5	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 4.2	Support with amendments	Amend Section 2.6.1 Residential 1 Zone, Rule 4.2 as follows:  <i><del>In the Residential 1 Zone at</del> <u>Within the Broughs Gully Outline Development Plan</u> (as set out in Appendix C of Part D2), any building, fence or activity that does not meet the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) <del>is non-complying.</del></i>	Reject, replaced with wording from the Transpower submission.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
3.6	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 2.1	Support with amendments	Amend Section 2.6.4 Residential 4 Zone, Rule 2.1 as follows:  <u>Except within the Brouchs Gully Outline Development Plan area (as set out in Appendix C, Part D2) One household unit per allotment provided for as part of a comprehensive development plan in that part of the zone west of Old North Road, or one unit per proposed allotment south or east of Old North Road (unless otherwise restricted by the Outline Development Plan shown in Appendix C, Part D2) , Blair Street, or Mahoneys Hill Road. Council shall restrict its discretion to the environmental effects associated with the matters in Policy 2.1.2.2</u>	Accept in part – Clause 16 and 20A minor change made for clarity (in <b>bold</b> ).  <u>Except within the Brouchs Gully Outline Development Plan area (as set out in Appendix C, Part D2), One household unit per allotment provided for as part of a comprehensive development plan in that part of the zone west of Old North Road, or one <b>household</b> unit per proposed allotment south or east of Old North Road (unless otherwise restricted by the Outline Development Plan shown in Appendix C, Part D2) , Blair Street, or Mahoneys Hill Road. Council shall restrict its discretion to the environmental effects associated with the matters in Policy 2.1.2.2</u>
3.7	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Performance Standard 5.A.1	Support with amendments	Amend Section 2.6.4, Residential 4 Zone, Performance Standard 5.A.1 as follows:  <u>No more than 60% of the area of an allotment <del>can</del> shall comprise of impervious or hardstand surfacing.</u>	Accept.
<b>Electricity network</b>						
5.1	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Whole of the plan change	Oppose	The proposed plan change requires substantial amendment as set out in its submission. Amend the Proposed Plan Change to give effect to the NPSET and CRPS and to meet other statutory obligations including by making specific amendments set out in	Accept as set out in the reasons below.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					Transpower's submission; and such further, alternative or consequential relief as may be necessary to fully give effect to the submission.	
5.2	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Policy 2.4.2.4	Amend	Amend Policy 2.4.2.4 as follows:  <i>Ensure that development in the Residential 1 and 4 zones at Broughs Gully (as set out in Appendix C of Part D2):</i> <ul style="list-style-type: none"> <li><i>efficient, coordinated and supported by adequate services;</i></li> <li><i>and is in general accordance with the roading and servicing layout shown in Appendix C; and</i></li> <li><i>avoids adverse effects (including reverse sensitivity effects) on the safe, effective and efficient operation, maintenance, upgrading and development of the National Grid transmission lines.</i></li> </ul>	Accept.  The operative plan does not include any policy level guidance that otherwise gives effect to the NPS for Electricity Transmission. A plan change to do this was put on hold pending the district plan review. However, as it has been decided to proceed with this plan change, in order to give effect to the NPS for Electricity Transmission, in my opinion it is appropriate that such amendments are made.
5.3	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Rule 5	Amend	Amend the proposed Performance Standards in D2, Residential 1 Zone, Rule 5 and Performance Standards as follows:  <i>5.B.4 No building or activity sensitive to the National Grid shall be located within:</i> <ul style="list-style-type: none"> <li><i>10 metres of the centre line of a National Grid</i></li> </ul>	Accept.  The provisions are specific to the Broughs Gully ODP area and provide for protection of the National Grid. The changes are appropriate for giving effect to the NPS for Electricity Transmission, having regard to the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001).

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<p><u>transmission line on single poles;</u></p> <ul style="list-style-type: none"> <li>• <u>12 metres of the centre line of a National Grid transmission line on pi poles; and</u></li> <li>• <u>12 metres of the foundation of a National Grid transmission line support structure. All buildings, fences, earthworks, vegetation and structures shall comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001)</u></li> </ul> <p><u>5.B.x Fences shall be located greater than 6 metres from a National Grid transmission line support structure.</u></p> <p><u>5.B.x Earthworks:</u></p> <p><u>(a) shall not destabilise a National Grid transmission line support structures;</u></p> <p><u>(b) shall not result in a reduction in the ground to conductor clearance distances below what is required by table 4 of NZECP34:2001; and</u></p> <p><u>(c) shall be no deeper than:</u></p> <ul style="list-style-type: none"> <li>• <u>300mm within 2.2m of a National Grid transmission line support structure or stay wire; and</u></li> </ul>	

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<ul style="list-style-type: none"> <li><u>750mm within 2.2m to 5m of a National Grid transmission line support structure;</u></li> </ul> <p><u>except where the earthworks are vertical holes not exceeding 500mm in diameter beyond 1.5m of a National Grid transmission line support structure or undertaken by a network utility operator.</u></p> <p><u>Advice Note:</u></p> <p><u>(a) Vegetation to be planted around the National Grid should be selected and managed to ensure that it will not breach the Electricity (Hazards for Trees) Regulations 2003.</u></p> <p><u>(b) Buildings and structures in the vicinity of the National Grid must also comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001).</u></p>	
5.4	<p>Transpower</p> <p>Mail ID: 1051170</p> <p>Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch</p>	Electricity network	Rule 4	Amend	<p>Amend D2, Residential 1 Zone, Rule 4, Non-Complying Activities as follows:</p> <p><u>4.2 In the Residential 1 Zone at Broughs Gully (as set out in Appendix C of Part D2), any building, fence, earthworks or activity that does not meet Performance Standards 5.B.4, 5.B.x and 5.B.x the New Zealand Electrical Code of Practice for electrical Safe Distances</u></p>	<p>Accept.</p> <p>The rule is consistent with the direction of the NPS and case law on this issue.</p>

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<del>(NZECP34:2001)</del> is non-complying.	
5.5	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Definitions	Amend	Amend the definition of 'Activity Sensitive to Aircraft Noise' in Part D8 as follows:  <i>Activity Sensitive to Aircraft Noise and Activity Sensitive to the National Grid - Means Boarding or Lodging House or Hostel, Camping Grounds/Caravan Parks, Community Care Facility, Community Facilities, Day Care Centres, Educational Establishments, Home Stay, Hospital, Household Unit, Kohanga Reo, Marae, Papakainga, and Place of Assembly as defined in this District Plan.</i>	Accept in part.  In the Residential chapter of the operative District Plan, this definition is not used, however it is used in the text proposed by Transpower. It is considered that the definition needs to stand on its own, for the purpose of plan integrity and interpretation, even if the subject matter is the same.  Insert new definition of 'Activity Sensitive to Aircraft Noise' in Part D7 as follows:  <i>Activity Sensitive to the National Grid - Means Boarding or Lodging House or Hostel, Camping Grounds/Caravan Parks, Community Care Facility, Community Facilities, Day Care Centres, Educational Establishments, Home Stay, Hospital, Household Unit, Kohanga Reo, Marae, Papakainga, and Place of Assembly as defined in this District Plan.</i>
5.6	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Rule 6.3.8	Amend	Amend the proposed Performance Standards in D6.3, Subdivision, Rule 6.3.8 as follows:  <i>(x) In the Broughs Gully Outline Development Plan area (as set out in Appendix C of Part D2) any lots created must maintain access to the National Grid and must show a building platform that is greater than:</i>	Accept.  This is considered appropriate in terms of the NPS for Electricity Transmission.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<ul style="list-style-type: none"> <li>• <u>10 metres from the centre line of a National Grid transmission line on single poles;</u></li> <li>• <u>12 metres from the centre line of a National Grid transmission line on pi poles; and</u></li> <li>• <u>12 metres from the foundation of a National Grid transmission line support structure.</u></li> </ul> <p>Amend or duplication the 'Note' that follows the Performance Standards in D6.3, Subdivisions to ensure that it clear that this Note also applies to the Broughs Gully Outline Development Plan and subdivision as follows:</p> <p><i>NOTE: Consultation with Transpower New Zealand Limited is necessary when considering <del>construction</del> <u>subdivision</u> within 20 metres of a high voltage electricity transmission line. The New Zealand Electrical Code of Practice (NZECP: 34 2001) contains restrictions on the location of structures and activities in relation to the lines.</i></p>	
5.7	Transpower Mail ID: 1051170 Address: C/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Rule 6.3.6	Amend	Amend D6.3, Rule 6.3.6 Non-Complying Activities in All Zones to include the following:  <u>(x) Any subdivision in the Broughs Gully Outline Development Plan area (as set out in Appendix C of Part D2) that does not meet the Performance Standard in Rule 6.3.8(x).</u>	Accept.  The rule is consistent with the direction of the NPS and case law on this issue.



Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
5.8	Transpower Mail ID: 1051170 Address: C/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Appendix C, Part D2	Amend	Amend the Proposed Outline Development Plan – Broughs Gully to accurately show the National Grid transmission lines (centre line) and to distinguish these lines from electricity distribution lines.	Accept. Provides clarity.
<b>Infrastructure</b>						
2.6	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Infrastructure	Rule 6.3.8(19)	Oppose	That Rule 6.3.8(19) (vesting of infrastructure) be deleted.	Reject. See decision document.
2.7	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Infrastructure	Rule 6.6.5(2)	Oppose	That Rule 6.6.5(2) (cost share agreement) be deleted.	Reject. See decision document.
<b>Roading</b>						
2.4	Port Bryson Property Limited and Hilton Trust Limited	Roading	Appendix C, Part D2	Oppose	That the "rounded" cul-de-sac design be replaced with the Submitters' proposed "hammerhead" design (as illustrated on the preliminary subdivision plans	Accept in part. That the structure plan be amended to enable the development of either a cul-de-sac or hammerhead

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
	Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch				attached as Appendix A)	design at the end of Road 3.
3.8	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Roading	Appendix C, Part D2	Support with amendments	Update Appendix C by: <ul style="list-style-type: none"> <li>• Indicating visually on the map the lots mentioned in relation to Road 1 description</li> <li>• Including description for Road 3</li> <li>• Correcting 'accesses' to 'access' for new vehicle access onto Old North Road</li> <li>• Making symbol within map clearer for the cycle and pedestrian path</li> </ul>	Accept, provides corrections.
4.1	Peter Michael Olsen Mail ID: 1039386 Address: With-held	Roading	Appendix C, Part D2	Oppose	Change road to bottom of our property would be good, as it is now, I have to say no to any agreement put by the Council.	Reject. The location of existing Lancewood Terrace and the contour of the hillside as part of the Pacific Heights subdivision necessitates the road design shown on the ODP.
<b>Stormwater</b>						
1.2	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Stormwater	Controls relating to stormwater	Support	We support the inclusion of specific performance standards that control the area of hard surfacing, treatment of runoff by infiltration systems, and the roofing materials used on individual sites.	Accept. Such provisions provide appropriate mitigation of effects related to stormwater management.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
1.3	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Stormwater	Policy 2.1.2.2	Support with amendments	Amend Explanation to Existing Policy 2.1.2.2 <i>Development of this area in general accordance with the ODP will ensure:</i> <ul style="list-style-type: none"> <li><i>efficient development of urban zoned land to provide housing choice;</i></li> <li><i>provision of sewer and stormwater infrastructure on a coordinated basis;</i></li> <li><i>provision of a connected, safe, and efficient roading network;</i></li> <li><i>the avoidance of new roading and access connections to major roads;</i></li> <li><i>the avoidance of adverse effects (including reverse sensitivity effects) on the National Grid;</i></li> <li><i><u>the avoidance of adverse effects on the water quality and hydraulic functioning of Waitaraka / Washdyke lagoon.</u></i></li> </ul>	Accept. Effects are directly related to Washdyke Lagoon.
1.4	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550,	Stormwater	Policy 2.4.2.4	Amend	Add New Policy 2.4.2.5 <i><u>Ensure that stormwater resulting from development in the Residential 1 and 4 Zones at Brougns Gully (as set out in Appendix C of Part D 2) does not contribute to further degradation of water quality, aquatic</u></i>	Accept the option of adding new Policy 2.4.2.5. The new policy 2.4.2.5 is appropriate and properly gives effect to the National Policy Statement for Freshwater Management.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
	Timaru 7940				<p><u>ecosystems and mahinga kai, and the hydraulic functioning of the Waitarakao / Washdyke lagoon.</u></p> <p>Or alternatively amend New Policy 2.4.2.4</p> <p><i>Ensure that development in the Residential 1 and 4 zones at Broughs Gully (as set out in Appendix C of Part D2 is efficient, coordinated and supported by adequate services, <del>and</del> is in general accordance with the roading and servicing layout shown in Appendix C, and that stormwater discharges do not contribute to further degradation of water quality, aquatic ecosystems and mahinga kai, and the hydraulic functioning of the Waitarakao / Washdyke lagoon.</i></p>	
1.5	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Stormwater	Rule 5.A.2	Support with amendments	<p>Amend Rule 5.A.2</p> <p><i>The runoff from the first 15mm of rainfall in any storm event (regardless of duration) from any impervious or hardstand surfaces (excluding roofs) shall be treated before discharging to a reticulated network. The treatment shall be by infiltration systems, which may include but is not limited to:</i></p> <ul style="list-style-type: none"> <li>• <i>Infiltration basins</i></li> <li>• <i>Rain Gardens</i></li> <li>• <i>Permeable Pavement</i></li> </ul>	<p>Accept.</p> <p>The list is not exclusive.</p>

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
					<ul style="list-style-type: none"> <li>• <i>Constructed Wetlands</i></li> <li>• <del><i>Catchpit Filter Insert</i></del></li> </ul>	
2.2	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Stormwater	Appendix C, Part D2	Oppose	That the Stormwater Retention Ponds and Swales areas identified in the Outline Development Plan insofar as they are located on the Submitters' land be deleted and be accommodated on other land affected by the Proposal.	Reject. See decision document.
2.5	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Stormwater	Rule 5.B.1	Oppose	That Rule 5.B.1 (impervious/hardstand surfacing) be deleted.	Reject. The requirements are typical for residential activity, and it is noted that the discharge will be to a sensitive lagoon. As such, it is considered that a limitation on impervious/hardstand areas is the most appropriate form implementing the objectives of the plan.
FS1	New Zealand Transport Agency PO Box 1479 Christchurch	Stormwater	Var.	Neutral	Seek that any changes as a result of Port Bryson Property Limited and Hilton Trust Limited's submission does not increase stormwater discharge below State Highway 1 compared to existing volumes.	Reject. The ODP does not permit or allow a certain volume of discharge; that is the function of a discharge consent from the Regional Council. The reason for developing modelling is to show that there is sufficient land available to develop appropriate stormwater attenuation, rather than to control volumes or rates of discharge.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
<b>Wastewater</b>						
2.3	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Wastewater	Appendix C, Part D2	Oppose	That the location of the Sewer on the Outline Development Plan insofar as it is shown on land owned by the Submitters be deleted, or in the alternative, that the Sewer be re-routed so that it does not interfere with the proposed future development of the Submitters' property.	Reject. See decision document.
<b>Water services</b>						
3.9	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Water services	Appendix C, Part D2	Support with amendments	Update Appendix C by: <ul style="list-style-type: none"> <li>Removal of water services from the Location of Services description as it is not shown within the map</li> </ul>	Accept in part. Water services location requirements advice note is useful for the public. To provide clarity, this aspect is separated from sewer and stormwater services that have additional locations marked.
<b>Whole of the plan change</b>						
1.1	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Whole of the plan change	The plan change except as set out in submission.	Support with amendments	Environment Canterbury supports the introduction of an outline development plan (ODP) for Broughs Gully.	Accept.

Decision No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Decision
2.1	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Whole of the plan change	Whole of the plan change	Oppose	That the Proposal is rejected in its entirety.	Reject. The objectives are considered the most appropriate for achieving the purpose of the act and the policies and methods the most appropriate for achieving the Objectives, having regard to s 32 RMA.
2.8	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Whole of the plan change	Whole of the plan change	Amend	Any consequential amendments necessary to the objectives, policies, methods or other provisions in order to give full effect to the relief sought.	Reject. See decision document.
3.1	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Whole of the plan change	The plan change except as set out in submission.	Support with amendments	Support proposed Plan Change 21 (Broughs Gully Outline Development Plan) subject to minor text changes being made as set out in the submission.	Accept.

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## **APPENDIX 2 – DECISION VERSION OF THE PLAN CHANGE**

Refer to separate document for appendix