

27 October 2017

Attention Mark Geddes

Timaru District Council
PO Box 522
TIMARU 7940

Fax No 03 687 7209
Pages 14

NOTICE OF APPEAL AGAINST THE DECISION ON PLAN CHANGE 21 TO THE TIMARU DISTRICT PLAN

1. We act for Port Bryson Property Limited and Hilton Trust Limited (**Appellants**).
2. We **enclose**, by way of service, a Notice of Appeal on behalf of Port Bryson Property Limited and Hilton Trust Limited appealing the decision on Plan Change 21 to the Timaru District Plan.
3. The Notice of Appeal does not include Appendices A to C, being a copy of the Appellants' submission on Plan Change 21, a copy of the Decision on Plan Change 21, and the alternative stormwater design.
4. Please advise if you require a hard copy of the Notice or of the Appendices.
5. The Notice of Appeal, including all Appendices, was filed with the Environment Court today.

Yours faithfully
Wynn Williams



Philip Maw
Partner

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**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2017-CHC

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First Schedule of the Act

BETWEEN **PORT BRYSON PROPERTY LIMITED and HILTON TRUST LIMITED**

Appellants

AND **TIMARU DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL AGAINST DECISION ON PLAN CHANGE 21 TO THE
TIMARU DISTRICT PLAN
27 October 2017**

**WYNN WILLIAMS
LAWYERS
CHRISTCHURCH**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
PLAN CHANGE**

Clause 14(1) of Schedule 1, Resource Management Act 1991

To the Registrar

Environment Court

Christchurch

- 1 Port Bryson Property Limited and Hilton Trust Limited (**Appellants**) appeal against a decision of the Timaru District Council (**Council**) on Plan Change 21 (Broughs Gully Outline Development Plan) (**Plan Change 21**).
- 2 The Appellants made a submission on Plan Change 21.
- 3 The Appellants are not trade competitors for the purposes of section 380D of the Resource Management Act 1991 (**RMA**).
- 4 The Appellants received notice of the decision on 15 September 2017.
- 5 The decision was made by the Council.
- 6 The decision that the Appellants are appealing is:
 - (a) Plan Change 21 in its entirety.
- 7 In particular and without limiting the generality of the above, the parts of the decision that the Appellants are appealing are:
 - (a) The parts of the decision that relate to the location of the stormwater retention ponds and swales (identified in green on the Broughs Gully Outline Development Plan contained with Appendix C of Part D2 (**ODP**)), and the areas to be set aside as local purpose reserves, to the extent that they cover the land owned by the Appellants;
 - (b) The parts of the decision that relate to the location of the sewer (identified in red on the ODP) to the extent that it crosses the land owned by the Appellants;

- (c) The parts of the decision that relate to construction and vesting of infrastructure including Rule 6.3.8(19) that requires it to be the developer's responsibility for the construction and vesting of infrastructure at the time of subdivision;
- (d) The parts of the decision that relate to cost sharing for infrastructure development; and
- (e) The parts of the decision relating to the scope of relief available to the Appellants in relation to the location of stormwater retention ponds and swales on other land within the area covered by the ODP.

Reasons for appeal

Location of the stormwater retention ponds and swales, and local purpose reserves

8 The stated purpose of Plan Change 21 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.

9 It is unclear from the decision how the Council intends to achieve this purpose given the land on which the stormwater retention ponds and swales are intended to be located, is owned by the Appellants. It is evident that in order to implement the stormwater infrastructure, a disproportionately large proportion of the Appellants' property will need to be acquired and the Appellants compensated accordingly. The Appellants will strenuously oppose any forced acquisition of their property as the property was strategically acquired to enable the expansion of an existing self-storage business.

10 In light of the Appellants' clear opposition to any compulsory acquisition of their land, the location of the stormwater retention ponds and swales, and the local purpose reserves, is not the most appropriate way to achieve the objectives of Plan Change 21.

11 The location of the stormwater area is not effective if the Council cannot obtain the land. It is not the most efficient way to achieve the objectives of Plan Change 21 because of the significant opportunity costs

associated with a loss of expansion potential for the existing self-storage business owned and operated by the Appellants.

- 12 Alternative locations are available within the ODP area for the stormwater infrastructure. Those alternative locations more appropriately achieve the purpose of Plan Change 21 because they effectively and more equitably distribute the burdens and benefits of the infrastructure of Plan Change 21, and locate it in areas where acquisition or vesting of the land is more likely to be achieved.
- 13 In particular, alternative locations include:
 - (a) multiple small containment areas similar to the Council's stormwater management plan for the new Gleniti subdivision; and
 - (b) the alternative stormwater design presented by Mr Elliot Duke on behalf of the Council at the Council hearing and contained in **Appendix C**. For clarification, the alternative preferred stormwater design is that shown on the right hand side of Appendix C.
- 14 The Section 32 Evaluation was inadequate, including that it:
 - (a) fails to identify other reasonably practicable options of achieving the objectives of the Proposal. In particular, other options for locating stormwater infrastructure have not been appropriately considered in light of the state of the existing environment;
 - (b) fails to assess the efficiency and effectiveness of the provisions in achieving the objectives of the Proposal; and
 - (c) fails to identify and assess the benefits and costs of the environmental, economic and social effects that are anticipated from the implementation of the provisions. In particular, the costs of locating stormwater and sewer infrastructure on the Appellants' land.

Location of the sewer line

- 15 The location of the sewer, as shown on the ODP, is not the most appropriate way to achieve the objectives of Plan Change 21. It places an inappropriate and inequitable burden on the Appellants given they already have significant existing infrastructure in place. For example, they already have a pumping station located on their land to pump sewer to the Council sewer main.

- 16 The location of the sewer line would inappropriately interfere with the Appellants' proposed subdivision, expansion and development plans.

Construction and vesting of infrastructure

- 17 The provisions seeking to manage the construction and vesting of infrastructure are vague and uncertain, and have the potential to place an inequitable burden on the Appellants. Further, the requirement to vest infrastructure without an appropriate cost sharing mechanism to provide credits for that vesting (and subsequent loss of land) is neither efficient or effective. This is exacerbated by the inequitable requirement for stormwater detention ponds servicing the whole of the ODP area to be located, largely, on the Appellants property.

Cost sharing

- 18 The cost share agreement referred to in Rule 6.6.5(2) is incomprehensible, does not account for existing infrastructure already in place and is void for uncertainty.

Jurisdiction for an alternative location for the stormwater retention ponds and swales

- 19 The decision found that any amendment to the ODP to implement an alternative location for the stormwater area was outside the jurisdiction of the Council. The decision reasoned that:¹

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 that 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.

- 20 However, any amendment to the location for the stormwater area is clearly within the jurisdiction of the Council on Plan Change 21 and there was fair and adequate notice of such an amendment to the ODP, for the following reasons:

¹ Council's decision, paragraph [66].

- (a) The potential for the ODP layout to be amended through the plan change process was clearly anticipated. The Council's section 32 Assessment, in a section titled "Different layout", states "Within these design criteria there may be opportunities to vary the ODP and still achieve the overall outcomes and purpose of the Plan Change".
- (b) The Appellants' original submission stated that the Appellants' oppose the stormwater retention ponds and swales area to the extent that it covers the land owned by the Appellant and that it should be distributed in a more equitable manner throughout all of the land affected by the ODP.
- (c) The Summary of Submissions published by the Council identified that the Appellants' sought "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." (A public notice calling for further submissions was notified on 6 March 2017).
- (d) The redistribution of stormwater retention facilities (i.e. the relief sought) is directly connected to the plan change. Plan Change 21 seeks to achieve coordinated urban growth and the efficient and equitable delivery of network services for the site. The submission directly relates to the efficient and equitable delivery of network services for the site.
- (e) Secondly, potential submitters (including other landowners within the ODP area) were given fair and adequate notice of the possibility that the stormwater retention facilities would be redistributed throughout the Plan Change 21 process, and there was ample opportunity for other landowners to participate in the process, by lodging a submission or further submission.

General reasons

- 21 Plan Change 21 fails to implement the objectives and policies in the Timaru District Plan.
- 22 Plan Change 21 is contrary to the purpose and principles of the RMA.

Relief

23 The Appellants seek the following relief:

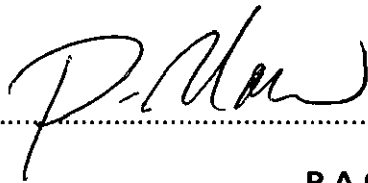
- (a) That Plan Change 21 is rejected in its entirety.
- (b) Alternatively, the Appellants seek:
 - (i) that the Stormwater Retention Ponds and Swales areas identified in the ODP insofar as they are located on the Appellants' land be deleted and be accommodated on other land affected by Plan Change 21 such as either:
 - (1) multiple small containment areas similar to the Council's storm water management plan for the new Gleniti subdivision; or
 - (2) the alternative stormwater design presented by Mr Elliot Duke on behalf of the Council at the Council hearing and contained in **Appendix C** (being the alternative preferred stormwater design shown on the right hand side of **Appendix C**).
 - (ii) that the location of the Sewer on the ODP insofar as it is shown on the land owned by the Appellants 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 Appellants' property;
 - (iii) that Rule 5.B.1 (impervious/hardstand surfacing) be deleted;
 - (iv) that Rule 6.3.8(19) (vesting of infrastructure) be deleted;
 - (v) that Rule 6.6.5(2) (cost share agreement) be deleted; and
 - (vi) any alternative or consequential relief necessary to address the Appellants' concerns.
- (c) With respect to all of the specific items of relief set out in the paragraphs above, the Appellants' seek any consequential amendments necessary to the objectives, policies, methods or other provisions in order to give full effect to the relief sought.

Attached documents

24 The following documents are attached to this notice:

- (a) a copy of the Appellants' submission (**Appendix A**);
- (b) a copy of the relevant decision (**Appendix B**);
- (c) a copy of the alternative stormwater design (**Appendix C**);
- (d) a list of names and addresses of persons to be served with a copy of this notice (**Appendix D**).

DATED this 27th day of October 2017



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P A C Maw

Counsel for the Appellants

Address for service of appellant:

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CHRISTCHURCH 8140

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Contact person: Philip Maw

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Appendix A

A copy of the Appellants submission on Plan Change 21

Appendix B

A copy of the decision of the Council

Appendix C

Alternative stormwater design

Appendix D**A list of names and addresses of persons to be served with a copy of this notice**

Submitter	Contact	Postal Address	Email
Timaru District Council	Kylie Galbraith	PO Box 522, Timaru 7940	kylie.galbraith@timdc.govt.nz
Transpower	Ainsley McLeod	C/- Beca Limited, PO Box 13960, Christchurch	ainsley.mcleod@beca.com
Peter Michael Olsen	Peter Michael Olsen	18 Mahoneys Hill Road, Oceanview, Timaru 7910 ²	
Canterbury Regional Council	Julia Forsyth	PO Box 550, Timaru 7940	julia.forsyth@ecan.govt.nz
New Zealand Transport Agency	Stewart Fletcher	PO Box 1479, Christchurch 8011	planning- christchurch@nzta.govt.nz

² No address for service was given in the submission. This address has been obtained from property records in the area.