

**BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE TIMARU DISTRICT COUNCIL**

UNDER: the Resource Management Act
1991

IN THE MATTER OF: Submissions and further
submissions in relation to the
Proposed Timaru District Plan

**LEGAL SUBMISSIONS ON BEHALF OF CHRIS & SHARON MCKNIGHT
(SUBMITTER NO. 30)**

HEARING STREAM G – REZONE REQUEST FOR GROWTH

Dated: 07 July 2025

GRESSON DORMAN & CO
Solicitors
PO Box 244, Timaru 7940
Telephone 03 687 8004
Facsimile 03 684 4584
Solicitor acting: Lucy O'Brien
lucy@gressons.co.nz
Counsel acting: Monique Thomas (Barrister)

May it please the Hearing Panel:

1 INTRODUCTION

- 1.1 These legal submissions are presented on behalf of Chris & Sharon McKnight (**the Submitters**) in relation to their submission point 30.1 on the Proposed Timaru District Plan (**PDP**). Submission point 30.1 seeks the rezoning of land at 60 Landsborough Road from General Rural Zone (**GRUZ**) to Rural Lifestyle Zone (**RLZ**), and the extension of the Brookfield Specific Control Area Overlay (**Brookfield SCA**) over the rezoned land.
- 1.2 As confirmed in the planning evidence of Mr Ross, the land sought to be rezoned to RLZ is a 2.6ha site adjacent to the Submitters' existing Brookfield Road rural residential subdivision.¹ The Submitters no longer seek any Open Space Zoning of the land at 60 Landsborough Road for the reasons described by Mr Ross.² The balance of the land at 60 Landsborough Road is therefore proposed to remain zoned GRUZ.
- 1.3 As confirmed in the expert evidence lodged on behalf of the Submitters³, the rezoning sought is a very modest extension to the existing RLZ and would enable both efficient use of the Site and its natural and physical resources, as well as existing infrastructure. Any adverse effects associated with the future development of the land sought to be rezoned can be avoided or mitigated at time of subdivision.
- 1.4 It is also noted that the rezoning is not opposed by way of any further submissions.⁴
- 1.5 These legal submissions address the following matters:
 - (a) The existing environment;

¹ The extent of the land sought to be rezoned is shown in Annexure A to the evidence of Mr Ross and is referred to in these legal submissions as the Site.

² Evidence of Andrew Ross at [4.6].

³ Mr Andrew Rabbidge (Site/Development History), Mr Ian Millner (Highly Productive Land); Mr Chris Greenshields (Landscape); Mr Andrew Ross (Planning).

⁴ Two Further Submissions (108.3FS and 160.3FS) were received in support of the relief requested in submission point 30, seeking the Panel "*apply the relief sought in the original submission and apply this logic across all district zoning rules.*"

- (b) The matters raised in the s42A report and discussions between the Submitters' planner (Mr Ross) and the Section 42A Reporting Officer (Mr Bonis) following the lodging of evidence.

1.6 These legal submissions do not repeat the provisions of the Resource Management Act 1991 (**the Act/RMA**) relevant to the Panel's assessment of a rezoning request in the context of the PDP, given these are well set out in the legal submissions of counsel for the District Council (Hearing A)⁵ and in the s42A Report⁶. However we submit the following general caselaw principles are also relevant to the Panel's decision:

- (a) Section 32 requires a value judgement as to what on balance is the most appropriate, when measured against the relevant objectives.⁷ 'Appropriate' means suitable, and there is no need to place any gloss upon that word by incorporating that it be superior;⁸ and
- (b) When considering the appropriateness of a zoning of a site, such an assessment must start with a 'clean sheet of paper' and focus on the purpose of the RMA. There should be no presumption in favour of any one zoning, and in particular, there is no presumption that the established zoning under the Operative Plan should continue unless good cause for an alternative is discovered.⁹

2 THE EXISTING ENVIRONMENT

2.1 Mr McKnight's Statement of Evidence for Hearing B, and the evidence of Mr Rabbidge for Hearing G, provides some background to the Brookfield Road subdivision/development which is known as Brookfield Heights (**Brookfield Heights**).¹⁰ Brookfield Heights contains a total of 30 lots, with 26 of those lots ranging between 5,000m² to 6,000m². There are 4 larger lots within the southern section of the subdivision which range between 1.1ha. to 1.79ha.

⁵ At [19] – [30].

⁶ Section 4.

⁷ *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298, at [45]

⁸ *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298, at [45]

⁹ *Guthrie v Dunedin City Council* ENC Christchurch C174/2001, at [14].

¹⁰ Statement of Evidence of Christopher McKnight (Submission Point 60.47) on behalf of Milward Finlay Lobb, dated 05 July 2024. Mr McKnight is a director and shareholder of Quarry Hills Development Limited – the Developer of Brookfield Heights.

Titles have been issued and the roading and infrastructure is now in place¹¹. The lots have been defined by post and rail fencing, some of which can be seen in the Graphic Supplement attached to the landscape evidence of Mr Greenshield¹².

- 2.2 A global land use consent (102.2021.54.1) was granted by the District Council on 28 April 2021, allowing all household units¹³ within the Brookfield Heights subdivision to have a maximum total building area of 450m². That consent forms part of the existing environment for the purposes of the rezoning proposal.¹⁴

3 MATTERS RAISED IN THE SECTION 42A REPORT

- 3.1 The Reporting Officer addresses the McKnight Submission at pages 226 – 233 of his s42A Report. He recommended (on the basis of information provided prior to the preparation of his report) that the rezoning request be rejected principally due the requirements of the NPS-HPL given the part of the Site contains LUC-3 soils.¹⁵ However, he considered that the proposal could be considered to further the relevant provisions of the PDP if certain matters identified in his report could be addressed to the Panel's satisfaction. Those matters were:¹⁶

- (a) Confirmation of the scope of the submission;¹⁷
- (b) The LUC-3 classification of part of the Site and the NPS-HPL;
- (c) Evidence resolving matters raised by Ms Pflüger and within the cultural assessment; and
- (d) Resolution in relation to the 'offer' of reserve land (proposed as part of a subdivision application for the Site, which is currently on hold).¹⁸

¹¹ See for example Context Photograph D, page 4 of the Landscape Graphic Supplement attached to the landscape evidence of Mr Greenshields.

¹² See for example Context Photograph E, page 4 of the Landscape Graphic Supplement attached to the landscape evidence of Mr Greenshields; Viewpoints 3 (page 7) and 5 (page 9) of the Landscape Graphic Supplement.

¹³ including garaging, but excluding decks and hard-surfacing.

¹⁴ *Queenstown Lakes District Council v Hawthorn Estate Ltd & anor* [2005] NZCA 114 at [39] – [57].

¹⁵ s42A Report, at [13.3.17].

¹⁶ s42A Report, at [13.3.8].

¹⁷ s42A Report, at [13.3.6].

¹⁸ Subdivision Application 101.2022.280.

- 3.2 The expert evidence lodged on behalf of the Submitters addresses each of these matters. This is confirmed by the Reporting Officer in his s42A Summary Statement. There, Mr Bonis considers:
- (a) The analysis of Mr Millner [in relation to the NPS-HPL] is sufficient in terms of the consideration under clause 3.10.¹⁹
 - (b) The extension of the Brookfield SCA as described in the evidence of Mr Ross can be recommended to be accepted, subject to further consideration as to plan mechanism(s) to provide certainty to secure the mitigation recommended by Mr Greenshields and agreed by Ms Pflüger relating to visual effects on the skyline from public viewpoints, noting the PDP already contains specific provisions relating to the Brookfield SCA.²⁰
 - (c) Based on the evidence received, there are no issues associated with the application of the NPS-HPL, and appropriate controls exist in relation to earthworks to manage impacts on cultural values to reasonable levels.²¹
- 3.3 Mr Ross and Mr Greenshields have developed an additional draft SCA standard to secure the mitigation recommended by Mr Greenshields. The wording for the proposed standard has been provided to Mr Bonis and Ms Pflüger for comment and will be tabled at the hearing.
- 3.4 Noting that the recommendation of the S42A officer is not binding on the Panel, we address the expert evidence on behalf of the Submitters below.

¹⁹ s42A Summary Statement, at [27(a)].

²⁰ s42A Summary Statement, at [40(a)].

²¹ s42A Summary Statement, at [40(a)].

LUC Classification and the NPS-HPL

- 3.5 Part of the Site is classified as Highly Productive Land (**HPL**) (LUC-3) under the transitional provisions of the NPS-HPL. However, the Site is not considered to contain 'versatile soil' as defined in the Canterbury Regional Policy Statement (**CRPS**),²² nor is the Site shown to contain HPL in the recently released draft CRPS (although it is acknowledged that the draft RPS has no statutory effect).
- 3.6 The Submitters were optimistic that proposed amendments to the NPS-HPL to remove LUC-3 land from the definition of HPL (and subsequent amendments to clauses 3.4 and 3.5(7)) would have taken effect by now, rendering a highly productive land assessment unnecessary.
- 3.7 However that has not yet happened. It appears those amendments will now be progressed as part of the Government's package of National Direction changes in Phase 2 of the RMA reforms, for which public consultation closes on 27 July 2025.
- 3.8 The Submitters have therefore provided the required assessment of the proposal against the exemptions in clause 3.10 of the NPS-HPL to support the rezoning request.²³
- 3.9 Section 75(3) of the RMA requires the District Plan to give effect to any relevant NPS. Whilst there is a direction to avoid rezoning of HPL in clause 3.7 NPS-HPL, the expert evidence of Mr Millner confirms the rezoning of the Submitters' land is exempt from that direction (pursuant to clause 3.10) because:
- (a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and
 - (b) the subdivision, use, or development:

²² Canterbury Regional Policy Statement – Glossary & Definitions, pg 245. 'Versatile Soil' means *land classified as Land Use Capability I or II in the New Zealand Land Resource Inventory*.

²³ Statement of Evidence of Ian Millner (Highly Productive Land), dated 27 June 2025.

- (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and
 - (ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and
 - (iii) avoids any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and
- (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

3.10 Mr Millner concludes that the rezoning sought by the Submitters is not precluded by the NPS-HPL, and both Mr Millner and Mr Ross conclude that the rezoning sought is consistent with the Objective 4 and Policy 6 NPS-HPL.²⁴

Landscape and Visual Matters

3.11 The Site is not part of an area identified in the PDP as having any specific landscape or amenity values.²⁵

3.12 A landscape assessment of the rezoning proposal has been undertaken by Mr Greenshields.²⁶ His assessment of the Site notes that the proposed RLZ extension area is highly modified, is devoid of any vegetation and holds little natural value; this is reflective of the historic pastoral farming land use. The surrounding landscape character is mixed, with the backdrop of the Site from the west being framed by the rural lifestyle character and amenity as consented by RC101/102.2015.220.²⁷

²⁴ Statement of Evidence of Andrew Ross, at [8.15], Statement of Evidence of Ian Millner, at [6.3].

²⁵ As demonstrated by the lack of such overlays over the Site in the Proposed District Planning Maps.

²⁶ Statement of Evidence of Christopher Greenshields (Landscape), dated 27 June 2025.

²⁷ Statement of Evidence of Chris Greenshields, at [5.2].

- 3.13 Mr Greenshields concludes that the effects on landscape and visual amenity due to the RLZ extension will be low as the proposed RLZ area and the existing Brookfield RLZ will integrate visually as one overall development, especially given the proposed extension of the Brookfield SCA.²⁸
- 3.14 It is submitted the proposed subdivision rules, together with the Brookfield SCA standards (including the proposed additional standard to be tabled by Mr Ross), will ensure that any development of the rezoned land will complement and respond appropriately to the landscape values of the Site and the wider environment.

Cultural Matters

- 3.15 As confirmed in the evidence of Mr Ross, the notated Sites and Areas of Significance to Māori Overlay (**SASM** Overlay) does not extend to the Site.²⁹ The evidence of Mr Rabbidge and Mr Ross confirms that earthworks on the Site and an increase in impervious surfaces and associated stormwater will not affect Ōtipua Creek.³⁰ Therefore, it is submitted any potential effects of development of the rezoned land on remnants of mahika kai and taonga associated with Ōtipua Creek will be avoided.
- 3.16 Mr Bonis confirms in the s42A Summary Statement his view that the controls described in the Submitters' evidence appropriately manage impacts on cultural values to reasonable levels.³¹

Consent Notice – Rural Living Site Entitlement

- 3.17 The evidence of Mr Rabbidge addresses the covenant registered on the title for Lot 6 (which includes the Site) preventing the creation of further Rural Living Sites on that land.³² The rationale for that covenant being imposed is addressed in evidence by Mr Rabbidge.³³ The covenant was not imposed to mitigate the effects of development on the Site but rather to make it clear that any further entitlement to Rural Living Sites had been exhausted by

²⁸ Statement of Evidence of Chris Greenshields, at [7.8].

²⁹ Statement of Evidence of Andrew Ross, at [9.11].

³⁰ Statement of Evidence of Andrew Ross at [8.18], Statement of Evidence of Andrew Rabbidge (Site/Development History) dated 27 June 2025, at [6.6].

³¹ Section 42A Summary Statement, at [40(a)].

³² Statement of Evidence of Andrew Rabbidge, at [5.15] – [5.19].

³³ Statement of Evidence of Andrew Rabbidge, at [5.15] – [5.19].

Consent 101/102/2015.220. This is emphasised by the fact that the consent notice refers to subdivision in accordance with the District Plan rules as at April 2016. There is no legal impediment to removal of the covenant.

4 CONCLUSION

- 4.1 As noted in the s42A Report, a limited anticipated yield will be enabled by the proposed rezoning. Development of the Site will enable integration with a consented development and existing infrastructure within the existing Brookfield Heights subdivision.
- 4.2 The expert evidence provided on behalf of the Submitters' addresses all of the matters raised in the s42A Report and confirms that the effects of development of the rezoned land would be acceptable, and can be managed appropriately at the time of subdivision. Mr Bonis has recommended, based on the expert evidence lodged and the technical advice he has received, that the rezoning be approved, subject to a plan mechanism(s) to provide certainty to secure the mitigation recommended by Mr Greenshields and agreed by Ms Pflüger relating to visual effects on the skyline from public viewpoints. That mechanism has been provided to Mr Bonis and Ms Pflüger for comment and will be tabled at the hearing.
- 4.3 Use of the Site for rural production purposes is not economically viable. The Site is highly modified and has no biodiversity or ecological values. In our submission the rezoning proposal better achieves the purpose of the Act than the notified zoning when taking in account the Site's proximity to urban areas, the adjacent RLZ and consented development on that land, and the surrounding environment.
- 4.4 The evidence of Mr Ross confirms that in terms of s32 of the Act, the rezoning proposal is the more efficient option given the limited production capacity of the Site, and more effective than retaining the Site as entirely GRUZ.³⁴.
- 4.5 Mr Bonis and Mr Ross agree that the rezoning would overall be consistent with the relevant policies and objectives of the NPS-UD and would not be inconsistent with the relevant objectives and policies of the CRPS.

³⁴ Statement of Evidence of Andrew Ross, at [10.5].

- 4.6 In our submission, the amending proposal should be considered to further the relevant provisions of the PDP and should be approved.



M A Thomas / L K O'Brien

Counsel for Chris & Sharon McKnight

Dated: 07 July 2025