

**BEFORE THE HEARING PANEL IN TIMARU**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the hearing of submissions in relation to the Proposed  
Timaru District Plan

---

**LEGAL SUBMISSIONS ON BEHALF OF PRIMEPORT TIMARU LIMITED  
AND TIMARU DISTRICT HOLDINGS LIMITED**

**HEARING STREAM E  
(INFRASTRUCTURE, SUBDIVISION AND CULTURAL VALUES)**

Dated: 30 January 2025

---

**BUDDLE FINDLAY**

Barristers and Solicitors  
Christchurch

Solicitor Acting: **Cedric Carranceja**  
Email: [cedric.carranceja@buddlefindlay.com](mailto:cedric.carranceja@buddlefindlay.com)  
Tel 64 3 371 3532 / 64 3 353 2323 PO Box 322 DX WX11135 Christchurch 8013

## **MAY IT PLEASE THE HEARINGS PANEL**

### **1. INTRODUCTION**

- 1.1 These legal submissions are presented on behalf of PrimePort Timaru Ltd (**PrimePort**) and Timaru District Holdings Limited (**TDHL**). PrimePort and TDHL are submitters and further submitters (#175 and #186 respectively) on the Proposed Timaru District Plan (**PDP**).
- 1.2 These legal submissions relate to the following matters for Hearing E:
- (a) the definitions of 'urban development', 'urban area', 'lifeline utilities' and 'regionally significant infrastructure';
  - (b) the Energy and Infrastructure provisions;
  - (c) the Stormwater Management provisions;
  - (d) the Transport provisions;
  - (e) the Subdivision provisions;
  - (f) the heritage listing HHI-75 in Schedule 3; and
  - (g) mapping updates.

### **2. OVERVIEW**

- 2.1 PrimePort and TDHL have lodged submissions and further submissions with the aim of ensuring that the Port of Timaru (**Port**) and all supporting and related activities occurring within the PORTZ are appropriately recognised and provided for in the PDP.
- 2.2 At this hearing, PrimePort and TDHL will be calling evidence from:
- (a) Tony Cooper, Project Manager/Engineer of PrimePort, who discusses the need to exclude the Port from esplanade provision and landscaping requirements for car parking. He will also outline the impracticality of an absolute requirement to reduce emissions for regionally significant infrastructure and lifeline utilities, and the lack of necessity for stormwater management rules in the PDP.
  - (b) Eoghan O'Neill, Engineer, who explains why the stormwater chapter seems an unnecessary addition to the PDP given the other regulatory controls the Council already has to implement its

stormwater quantity and quality objective through its bylaw. Mr O'Neill also comments on onerous, unworkable and unclear aspects of the SM provisions.

- (c) Kim Seaton, Planner, assesses the provisions and definitions that PrimePort and TDHL have submitted on, and makes recommendations for amendments.

2.3 PrimePort and TDHL also refer to, and continue to rely on, evidence presented at:

- (a) Hearing A by Frazer Munro, General Manager of TDHL, who outlined the strategic and regional significance of the Port and the PORTZ.<sup>1</sup> Amongst other things, Mr Munro outlines the health, safety and security concerns within the Port Area which make it appropriate to exclude public access and esplanade provision requirements from the Port.
- (b) Hearing D by Tony Cooper, who outlined the strategic and regional significance of MHFs located in the Special Purpose Port Zone (**PORTZ**), and the anticipated requirements for new fuel storage tanks in the zone.

2.4 For the most part, the issues raised by PrimePort and TDHL relevant to Hearing E – PORTZ have been addressed in the section 42A reports. These submissions comment on those issues, while setting out further changes requested.

### **3. LEGAL FRAMEWORK**

3.1 The standard RMA considerations that apply to a district plan review were set out in the legal submissions for PrimePort and TDHL for Hearing A, and remain relevant for Hearing E.<sup>2</sup>

### **4. RECOGNITION OF THE PORT IN HIGHER ORDER PLANNING DOCUMENTS**

4.1 The importance of the Port and its associated infrastructure and activities is reflected in national and regional planning documents which the PDP is

---

<sup>1</sup> Statement of Evidence of Frazer James Munro for Hearing A dated 22 April 2024 ([here](#)).

<sup>2</sup> Legal submissions on behalf of PrimePort and TDHL for Hearing A dated 30 April 2024 at paragraphs 3.1 to 3.8 and appendix 1 ([here](#)).

required to "give effect to".<sup>3</sup> Briefly, relevant themes in the higher order documents include:

- (a) ensuring subdivision, use and development does not adversely affect the safe and efficient development, operation and use of the Port;<sup>4</sup>
- (b) providing for the efficient, safe and effective development, operation, maintenance and upgrade of the operation of the Port;<sup>5</sup>
- (c) providing for a range of associated activities that have an operational requirement to be located in that environment;<sup>6</sup>
- (d) avoiding development that may result in reverse sensitivity effects that constrain the ability of the Port to be developed and used.<sup>7</sup>

4.2 The legal submissions for Hearing A more fully discuss the New Zealand Coastal Policy Statement (**NZCPS**) and the Canterbury Regional Policy Statement (**CRPS**) provisions that remain relevant for this hearing.<sup>8</sup>

## 5. DEFINITIONS

### 'Urban development' and 'urban area'

5.1 PrimePort and TDHL lodged further submissions opposing in part submissions by Canterbury Regional Council seeking amendments to the definitions of 'urban development' and 'urban area', on the basis that these terms do not clearly include the PORTZ.

5.2 The s42A reporting officer (Mr Willis) has recommended a definition of "urban environment" that expressly lists various urban zones, but does not expressly mention the PORTZ.<sup>9</sup> In the interests of clarity and for reasons given in the evidence of Ms Seaton, the reporting officer's proposed definition should be amended to expressly include the PORTZ as follows:

#### Urban development

means development within an area zoned as a Residential Zone, Settlement Zone, Commercial and Mixed Use Zone, General Industrial Zone, [Port Zone](#), an Open Space Zone or a Sport and

<sup>3</sup> Section 75(3) RMA.

<sup>4</sup> NZCPS policy 9; CRPS objective 8.2.3.

<sup>5</sup> NZCPS policy 9; CRPS policy 8.3.6(1).

<sup>6</sup> CRPS policy 8.3.6(2).

<sup>7</sup> CRPS policy 8.3.6(4).

<sup>8</sup> Legal submissions on behalf of PrimePort and TDHL for Hearing A dated 30 April 2024 at paragraphs 4.2 to 4.8 ([here](#)).

<sup>9</sup> Section 42A report of Mr Willis at paragraph 6.4.6 ([here](#)).

Active Recreation Zone that is adjacent to the aforementioned zones. It also includes development outside of these zones which is not of a rural or rural-lifestyle character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. For the avoidance of doubt, it does not include the provision of regionally significant infrastructure in Rural Zones.

- 5.3 The s42A reporting officer has removed the use of the term "urban area" from the Energy and Infrastructure and Transport chapters being considered in Hearing E, and notes that the term will be considered further in Hearings F and G.<sup>10</sup> On that basis, PrimePort and TDHL will comment on the definition of "urban area" in later hearings.

#### 'Lifeline utilities' and 'regionally significant infrastructure'

- 5.4 PrimePort lodged submissions seeking retention of the notified definitions of 'lifeline utilities' and 'regionally significant infrastructure' as they appropriately include the Port. The strategic and regional significance of the Port and the PORTZ, and the recognition of the Port as a lifeline utility is discussed in Mr Munro's evidence for Hearing Stream A.<sup>11</sup> PrimePort supports the reporting officer's recommended definitions of 'lifeline utilities' and 'regionally significant infrastructure' as they continue to include the Port.<sup>12</sup>

## **6. ENERGY AND INFRASTRUCTURE CHAPTER**

### Integration with other chapters

- 6.1 The reporting officer has recommended that the following wording be inserted into the introduction of Energy and Infrastructure (EI) chapter:<sup>13</sup>

The objectives and policies in this chapter take precedence over the objectives and policies in any Zone Chapter of Part 3 – Area Specific Matters.

- 6.2 While the above insertion helpfully clarifies that the objectives and policies of the EI Chapter prevail over the zone chapters for infrastructure generally, the statement causes problems for the Port specifically because the Port, unlike other infrastructure (such as telecommunications infrastructure), is specifically managed by the bespoke objectives and policies in the PORTZ chapter.

---

<sup>10</sup> Section 42A report of Mr Willis at paragraphs 6.5.7 to 6.5.14 ([here](#)).

<sup>11</sup> Statement of Evidence of Frazer James Munro for Hearing A dated 22 April 2024 at paragraphs 15 to 36 ([here](#)).

<sup>12</sup> Section 42A report of Mr Willis at paragraphs 6.6.5 and 6.10.19 ([here](#)).

<sup>13</sup> Section 42A report of Mr Willis at paragraph 6.18.29 ([here](#)).

- 6.3 Ms Seaton provides evidence explaining how the proposed insertion to give precedence to the EI objectives and policies would inadvertently undermine the application of the PORTZ objectives and policies to the Port. This issue can easily be addressed by amending the reporting officer's recommended wording as follows:

Except in relation to the Port of Timaru operations, ~~T~~he objectives and policies in this chapter take precedence over the objectives and policies in any Zone Chapter of Part 3 – Area Specific Matters.

- 6.4 A similar integration issue arises with rules as a consequence of the reporting officer's recommendation to insert the following wording in the beginning of the rules section of the EI chapter (tracked changes are the reporting officer's):

Rules in Sections A - Section F of this chapter take precedence over rules in any Zone Chapter of Part 3 — Area Specific Matters - Zone Chapters and the Zone Chapter rules do not apply.

- 6.5 The above recommendation would similarly undermine the application of the rules of the PORTZ chapter on Port activities for reasons given by Ms Seaton. This issue can also be addressed easily by amending the reporting officer's recommended wording as follows:

With the exception of rules in the PORTZ applying to Port Activities, ~~R~~ules in Sections A - Section F of this chapter take precedence over rules in any Zone Chapter of Part 3 — Area Specific Matters - Zone Chapters and the Zone Chapter rules do not apply.

#### Objective EI-O1

- 6.6 PrimePort lodged a submission opposing a submission by Forest and Bird to require regionally significant infrastructure and lifeline utilities to contribute to emissions reductions.
- 6.7 Mr Cooper provides evidence discussing the methods by which PrimePort supports emissions reductions. However, he also explains why emission reductions are not always practicable to achieve in the Port environment, such as with anticipated future needs to establish new fuel tanks which would not, in and of themselves, reduce emissions.<sup>14</sup> Mr Cooper's previous evidence for Hearing D elaborates on the anticipated need for new fuel tanks in the PORTZ.<sup>15</sup> In order to provide greater certainty that emissions reductions are not an absolute requirement for regionally significant

<sup>14</sup> Statement of Evidence of Tony Cooper for Hearing E dated 23 January 2025 at paragraphs 23 to 28 ([here](#)).

<sup>15</sup> Statement of Evidence of Tony Cooper for Hearing D dated 25 October 2024 at paragraphs 17 to 25 ([here](#)).

infrastructure, it is submitted that the reporting officer's recommended objective EI-O1.3 should be amended as follows:

Regionally Significant Infrastructure and Lifeline Utilities are effective, resilient, efficient and safe and:

3. contribute to the economy, support emissions reduction [where practicable](#) and supports a high standard of living; and

#### Objective EI-O2 and Policy EI-P2

6.8 PrimePort lodged a submission seeking to retain objective EI-O2 and policy EI-P2 as notified.<sup>16</sup>

6.9 The reporting officer's recommended amendments to notified objective EI-O2 are tracked as follows:<sup>17</sup>

The adverse effects of Regionally Significant Infrastructure ~~and~~ Lifeline Utilities and other infrastructure:

1. are avoided in ~~sensitive environments~~ the areas identified in EI-P2.1.a unless there is a functional need or operational need for the infrastructure to be in that location and no practical alternative locations, in which case they must be remedied or mitigated managed by applying the effects management hierarchy set out in EI-P2 or EI-PX for the National Grid;
2. are avoided, remedied or mitigated ~~to achieve~~ having regard to the relevant objectives for the underlying zone in other areas.

6.10 The reporting officer's recommended amendments to notified policy EI-P2 include the insertion of a new effects management hierarchy in sub-clause 3,<sup>18</sup> which is cross-referenced in amended objective EI-O2.

6.11 The reporting officer's amendments which are of particular concern to PrimePort are:

- (a) a new requirement that the adverse effects of Regionally Significant Infrastructure and Lifeline Utilities are to be avoided in specified sensitive areas unless there is "*no practical alternative location*";
- (b) a new requirement that if Regionally Significant Infrastructure and Lifeline Utilities have a functional or operational need to be located in specified sensitive areas, then a new effects management

<sup>16</sup> PrimePort also lodged a further submission supporting a submission by Waka Kotahi NZ Transport Agency seeking to retain objective IE-O4 as notified.

<sup>17</sup> Section 42A report of Mr Willis at paragraph 6.21.18 ([here](#)).

<sup>18</sup> Ibid at paragraph 6.26.24 ([here](#)).

hierarchy is applied instead of the notified requirement to remedy or mitigate adverse effects.

- 6.12 Ms Seaton explains that the reporting officer's proposed addition of the wording "*and no practical alternative locations*" creates an unnecessarily high policy hurdle for the Port. It is submitted this additional hurdle is inconsistent with higher order documents which provide for:
- (a) the efficient, safe and effective development, operation, maintenance and upgrade of the operation of the Port;<sup>19</sup> and
  - (b) a range of associated activities that have an operational requirement to be located in that environment.<sup>20</sup>
- 6.13 Ms Seaton also gives evidence that while the new effects management hierarchy is reasonable in some of the specified sensitive environments, it is unnecessarily onerous and inconsistent with policies in the CRPS for the hierarchy to be applied to urban areas of the coastal environment.<sup>21</sup>
- 6.14 Ms Seaton recommends changes to the reporting officer's recommended EI-O2 and EI-P2 to address these concerns:
- (a) Amend the reporting officer's version of objective EI-O2.1 to state:

The adverse effects of Regionally Significant Infrastructure, Lifeline Utilities and other infrastructure:

    - 1. are avoided in the areas identified in EI-P2.1.a unless there is a functional need or operational need for the infrastructure to be in that location ~~and no practical alternative locations~~, in which case they must be managed by applying the effects management hierarchy set out in EI-P2 or EI-PX for the National Grid;
  - (b) Amend the reporting officer's version of policy EI-P2.1.a to clearly exclude the urban parts of the Coastal Environment (or alternatively exclude the PORTZ), so that the new effects management hierarchy in policy EI-P2.3 does not apply, as follows:
    - 1. Except as provided for by Policy EI-PX, provide for Regionally Significant Infrastructure, Lifeline Utilities and other infrastructure where any adverse effects are appropriately managed by:
      - a. seeking to avoid adverse effects on the identified values and qualities of Outstanding Natural Landscapes and

<sup>19</sup> NZCPS policy 9; CRPS policy 8.3.6(1).

<sup>20</sup> CRPS policy 8.3.6(2).

<sup>21</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraphs 30-37 ([here](#)).



Outstanding Natural Features, Visual Amenity Landscapes, the Coastal Environment [outside urban areas \[or alternatively: outside the Port Zone\]](#), Significant Natural Areas, High Naturalness Waterbodies Areas, Sites of Significance to Māori, historic heritage, cultural, and archaeological areas, riparian margins, bat protection areas and notable trees, in accordance with the relevant Part 2 - District Wide provisions applying to those areas; and

Objective EI-O4, Policy EI-P1 and Policy EI-P3

- 6.15 PrimePort lodged a submission supporting notified objective IE-O4, policy EI-P1 and policy EI-P3. Ms Seaton raises no issues with the reporting officer's recommended amendments to these provisions.<sup>22</sup>

Rule EI-R1 (Operation, maintenance and repair, or removal of infrastructure)

- 6.16 PrimePort lodged a further submission opposing a submission by Forest and Bird to amend rule EI-R1 so that removal of infrastructure is not permitted in the coastal environment.<sup>23</sup> Forest and Bird's submission is rejected by the reporting officer.<sup>24</sup> As explained by Ms Seaton, the reporting officer's recommended wording of rule EI-R1 is acceptable to PrimePort.<sup>25</sup>

Rule EI-R26 (Construction of new underground and above ground water systems infrastructure, including involving water supply, wastewater systems and stormwater infrastructure)

- 6.17 PrimePort and TDHL made further submissions supporting a submission by Rooney Holdings to delete Rule EI-R26(2) as it is onerous.<sup>26</sup> Rather than deleting the rule, the reporting officer has proposed amendments that are intended to limit the rule to requiring resource consent for above ground reservoirs, storage ponds and treatment facilities for network utilities.<sup>27</sup> However, the amended wording remains sufficiently broad that it would still require restricted discretionary activity resource consent for any and all above ground stormwater infrastructure including swales and rain gardens.

---

<sup>22</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraphs 38-40 and 43 ([here](#)).

<sup>23</sup> Forest and Bird submission 156.63.

<sup>24</sup> Section 42A report of Mr Willis, Appendix 2 (Recommended Responses to Submission Points) page 49 ([here](#)).

<sup>25</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 44 ([here](#)).

<sup>26</sup> Rooney submission 174.14.

<sup>27</sup> Section 42A report of Mr Willis at paragraph 6.44.5 ([here](#)).

- 6.18 Ms Seaton suggests the rule could be amended to clarify that minor stormwater infrastructure like swales and rain gardens are excluded from this rule.<sup>28</sup>

## 7. STORMWATER MANAGEMENT CHAPTER

- 7.1 PrimePort and TDHL lodged further submissions supporting a submission by Kāinga Ora seeking to delete the whole Stormwater Management (**SM**) chapter.narra

- 7.2 It is submitted that the regime proposed in the SM chapter has numerous problems including:

- (a) unnecessary duplication of:
  - (i) the Council's powers to approve or decline stormwater discharges to its network under its existing bylaw;
  - (ii) stormwater management under regional planning documents and regional consenting;
- (b) imposing onerous and unworkable stormwater quality and quantity requirements;
- (c) lack of flexibility;
- (d) lack of clarity;
- (e) legal issues associated with fettering Council's discretion to consider stormwater applications under the bylaw and/or purporting to amount to a bylaw amendment without going through proper procedure under the Local Government Act 2002 (**LGA**).

### Unnecessary duplication

- 7.3 The SM chapter contains a single objective (SW-O1) which states:

Subdivision, use and development within areas serviced by the Council's reticulated stormwater network do not increase peak demand on stormwater management systems or reduce water quality in the reticulated stormwater network.

- 7.4 However, the Council already has the ability to ensure that subdivision, use and development within areas serviced by the Council's reticulated

---

<sup>28</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 45 ([here](#)).

stormwater network do not increase peak demand on stormwater management systems or reduce water quality in the reticulated stormwater network pursuant to its Consolidated Bylaw 2018 (**Bylaw**).<sup>29</sup> In fact, the Council's ability to approve or decline any application to discharge stormwater to its stormwater management system allows for wider considerations than those specified in proposed objective SW-O1.

- 7.5 Chapter 15 (Water Services) of the Bylaw contains the following statement regarding the scope of the chapter:

The purpose of this chapter of the bylaw is to enable Council to meet its statutory duties and obligations and to set standards of supply, installation, and control of water and waste waters to ensure the maintenance of a healthy community...

This chapter of the bylaw provides for the...

- (c) Regulation and control of discharges of wastewater and stormwater.

[our underlining for emphasis]

- 7.6 Clause 1502.1 of the Bylaw requires every person who proposes to discharge stormwater to the Council's stormwater network infrastructure to complete an application, pay prescribed charges, and provide all details required by the Council. Clause 1502.2 confirms that the Council has a discretion to approve or decline any application.
- 7.7 Under clause 105, any person who discharges stormwater to the Council's stormwater network infrastructure without first obtaining Council's approval breaches the Bylaw, with penalties under clause 107 including fines and injunctions following conviction.
- 7.8 Clauses 1528 to 1529 outline various criteria for Council to consider when determining whether to accept, prohibit or cancel approvals for discharges into its stormwater network. Amongst other things:
- (a) Clause 1528.1(d) provides that any connection to the Council's network shall be upon application and Council's approval "*which may include specific requirements*".
- (b) Clause 1528.1(e) provides that the Council may require "*pre-treatment works as necessary to regulate the quality, quantity and*

---

<sup>29</sup> Timaru District Consolidated Bylaw 2018 (available to download [here](#)).

*rate of stormwater discharge, or other constituents or characteristics of the stormwater discharges, prior to the point of discharge".*

- (c) Clause 1529.1 anticipates that the Council can prohibit "*any contaminants which in the opinion of Council have the potential to cause a breach of Council general authorisations or discharge consents*".
- (d) Clause 1530.1 anticipates that the Council can cancel approvals where discharges, in the opinion of Council:
  - (i) "*causes damage to any part of the stormwater network infrastructure or endangers the health and safety of any person as a result of such a discharge*"; or
  - (ii) "*may cause Council to be in breach of any general authorisation or discharge consent*".

- 7.9 Accordingly, it is evident that the Bylaw provides Council with wide discretion to consider whether or not to approve, prohibit or cancel stormwater discharges into its system, and in doing so, is able to regulate the quality, quantity and rate of discharges while accounting for its need to comply with Council general authorisations and discharge consents.
- 7.10 In these circumstances, it is entirely unnecessary for the PDP to impose rules and standards that purport to duplicate the function of the Bylaw that already enables Council to approve or decline a discharge into its network in fulfilment of Council's stated PDP objective SW-O1. As Mr Cooper observes, the Council can already set conditions before approving stormwater connections to its network, including recently requiring stormwater attenuation for stormwater discharges from sealing a container yard in the PORTZ.<sup>30</sup>
- 7.11 Mr O'Neill provides evidence that in his experience, it is unusual for District Plan rules to contain water quality and quantity standards and triggers, as these are typically found in infrastructure design standards, stormwater management plans or codes of practice, with connections to the network controlled by bylaws.<sup>31</sup> He considers that given Council's existing ability to

---

<sup>30</sup> Statement of Evidence of Tony Cooper for Hearing E dated 23 January 2025 at paragraphs 33 ([here](#)).

<sup>31</sup> Statement of Evidence of Eoghan O'Neill for Hearing E dated 23 January 2025 at paragraph 11 ([here](#)).

implement its stormwater quantity and quality objectives through the Bylaw, the SM chapter in the PDP seems an unnecessary addition.<sup>32</sup>

- 7.12 Mr Cooper expresses concerns that adding stormwater rules to the PDP when the Bylaw is already in place adds an unnecessary regulatory step, with a further layer of decision-making, adding to uncertainty, cost and complexity for developments.<sup>33</sup>
- 7.13 Ms Seaton also notes that stormwater management matters are already also managed via Canterbury Regional Council's Land and Water Regional Plan (**LWRP**) and the Regional Coastal Environment Plan (**RCEP**).<sup>34</sup> Mr Cooper explains that within PrimePort's operating area, stormwater is not discharged into Council's stormwater system but is collected via private drainage systems and discharges into the harbour. These are either consented by Canterbury Regional Council or authorised by regional planning documents.<sup>35</sup> Ms Seaton provides an example of one such discharge being permitted under rule 7.1(b) of the RCEP as confirmed by a certificate of compliance (CRC201020).<sup>36</sup> Accordingly it is submitted that it is also unnecessary for the District Plan to double-handle stormwater discharges authorised by regional consents or planning documents by purporting to impose further consenting requirements.

#### Onerous and unworkable requirements

- 7.14 Mr O'Neill comments on the onerous and unworkable nature of the proposed stormwater standards in the SM chapter. In summary:
- (a) The PDP's proposal to require stormwater discharges to achieve "stormwater neutrality" as currently defined is both onerous and unnecessary as the definition of "stormwater neutrality" not only seeks to require post-development runoff rates to not exceed pre-development rates, but also requires post-development volumes to not exceed pre-development volumes. The key principle of stormwater neutrality is to achieve neutrality of flow rates to manage adverse effects, not volume.<sup>37</sup>

---

<sup>32</sup> Ibid at paragraph 13.

<sup>33</sup> Statement of Evidence of Tony Cooper for Hearing E dated 23 January 2025 at paragraph 34 ([here](#)).

<sup>34</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 48 ([here](#)).

<sup>35</sup> Statement of Evidence of Tony Cooper for Hearing E dated 23 January 2025 at paragraph 31 ([here](#)).

<sup>36</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 58 ([here](#)).

<sup>37</sup> Statement of Evidence of Eoghan O'Neill for Hearing E dated 23 January 2025 at paragraphs 14 to 21 ([here](#)).

- (b) The impervious area trigger of 30m<sup>2</sup> in standard SW-S2 is quite onerous relative to other Councils. For example, Christchurch City uses a trigger of 150m<sup>2</sup> for flat commercial sites less than 5000m<sup>2</sup>, alongside a requirement that the area must be greater than 70% coverage of the site with impermeable area.<sup>38</sup>
- (c) The approach proposed in the standards would go beyond a neutral position of stormwater discharge but rather a greatly reduced post-development flow compared to pre-development flow, which is far more onerous than any other approach to stormwater neutrality Mr O'Neill has encountered in New Zealand.<sup>39</sup>
- (d) The proposed minimum treatment contaminant removal rates detailed in table 7 of standard SW-S4 (renumbered as SW-S3 in the recommending officer's version) are high compared to published removal data for commonly used proprietary treatment devices which are considered to be best practice devices and approved for use by Councils in New Zealand and elsewhere.<sup>40</sup> Research has shown that stormwater devices typically have lower removal efficiencies for heavy metals and nutrients where the influent concentrations are already low. There are no proprietary devices available in New Zealand capable of meeting table 7 under all circumstances.<sup>41</sup> Accordingly, it is submitted the rates are unworkable.

#### Lack of flexibility

- 7.15 Mr O'Neill points out that inclusion of technical stormwater standards as rules in the PDP can make it quite difficult for the Council to change these in future if they are found to have impracticalities in their application, as there would be a need to undertake a notified plan change process. This is more cumbersome and expensive compared to updating a Code of Practice or Infrastructure Design Standard.<sup>42</sup>
- 7.16 Mr O'Neill also mentions that a requirement to achieve stormwater neutrality (in terms of flows) for every site will not generate positive outcomes in all cases. In some cases, like in the Port Zone, better

---

<sup>38</sup> Ibid at paragraph 22.

<sup>39</sup> Ibid at paragraphs 23 to 28.

<sup>40</sup> Ibid at paragraph 33.

<sup>41</sup> Ibid at paragraph 38.

<sup>42</sup> Ibid at paragraph 12.

outcomes can be achieved by not attenuating stormwater flows, but rather allowing stormwater to discharge quickly into the coast prior to the arrival of peak stormwater flows from the upstream catchment.<sup>43</sup> Accordingly, the proposed standards lack flexibility to avoid consenting requirements where stormwater discharges without attenuation would achieve better outcomes than with attenuation.

#### Lack of clarity and certainty

7.17 Ms Seaton and Mr O'Neill comment on a number of instances where there is a lack of clarity and certainty in the provisions of the SM chapter. These include:

- (a) several cross referencing errors;<sup>44</sup>
- (b) a lack of clarity in the proposed definition of "impervious surface";<sup>45</sup>
- (c) a lack of clarity on whether provisions apply to the Port zone.<sup>46</sup> That includes the reporting officer considering that there is no rule in the SW chapter applying to the PORTZ that requires compliance with SW-S2 (at paragraph 6.65.3 of the s42A report), but SW-S2 (as notified) is referred to in SW-S3, which is referred to in a rule in the SW chapter applying to the PORTZ (see rule SW-R4);
- (d) a lack of clarity in communicating to plan users how "certification" of a treatment system (as referred to in the reporting officer's version of proposed standard SW-S3 under the new numbering) will be achieved.<sup>47</sup>

#### Legal issues

7.18 Both the notified and the reporting officer versions of the SM provisions outline the standards for a proposed discharge activity. If these standards are met, then the notified version mentions that the Council "will grant permission" to connect to the Council's reticulated network, while the reporting officer version mentions that the Council "will grant a stormwater discharge certificate" under the Bylaw to connect to the Council's reticulated network. Thus both versions provide a statement effectively confirming that

---

<sup>43</sup> Ibid at paragraphs 29 to 31.

<sup>44</sup> E.g. Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 57 ([here](#)).

<sup>45</sup> Statement of Evidence of Eoghan O'Neill for Hearing E dated 23 January 2025 at paragraphs 40-44 ([here](#)); Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraphs 52-54 ([here](#)).

<sup>46</sup> E.g. Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 63 ([here](#)).

<sup>47</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraphs 65-66 ([here](#)).

Council will grant permission/certification under the Bylaw if the PDP standards are met.

7.19 Both versions of the SM provisions give rise to legal issues as follows:

- (a) The provisions purport to offend principles as to unlawful fettering of the Council's discretion to consider applications to connect to the network under the Bylaw. As noted at paragraphs 7.4 to 7.9 above, the Council has a broad discretion to consider a range of matters when considering applications under the Bylaw. By contrast, specifying standards in the PDP that would compel Council approval of a connection under the Bylaw if the standards are met (and by implication compel Council to decline Bylaw approval if PDP standards are not met), fetters the exercise of Council's discretion under the Bylaw.
- (b) By purporting to alter how and what the Council would consider when processing applications to connect to the network under the Bylaw, the proposed SM provisions in the PDP effectively amount to a change to the Bylaw, without going through the proper lawful procedures for amending bylaws under the LGA.

#### Motive for the SM provisions

7.20 Section 2.2.6 of the section 32 report for the SM chapter acknowledges that some Councils take the approach of managing stormwater through a bylaw and/or service consent process.<sup>48</sup> However, section 2.2.6 goes to state Council's view that reliance on bylaws and service consents have resulted in stormwater considerations being left till late in the development planning process. This appears to be an underlying reason for the Council seeking a SM chapter in the PDP. The relevant part of section 2.2.6 states:

*"Bylaws and service consents are not often the first documents to be considered when planning for a development, solely relying on these documents and/or leaving stormwater to the back end of development considerations has resulted in suboptimal outcomes in the past and will likely continue to do so".*

7.21 To the extent Council seeks to have stormwater issues considered by developers early in their development planning, it is submitted that this can easily be achieved without the proposed SM chapter through alternative methods. For example, the Council could have procedures in place to alert

---

<sup>48</sup> Stormwater S.32 report, May 2022 ([here](#)).



developers at the time of applying for building consent and/or subdivision consent about the need to obtain prior approval to connect to Council's stormwater network under the Bylaw and to design stormwater systems accordingly. A district plan advice note could be used to alert district plan users to the Bylaw.

## **8. TRANSPORT PROVISIONS**

### Policy TRAN-P3 and policy TRAN-P4

- 8.1 PrimePort and TDHL lodged submissions supporting the notified wording of policy TRAN-P3 and further submissions supporting KiwiRail's submission seeking to amend policy TRAN-P4 to refer to land transport infrastructure and functional or operational need. Ms Seaton agrees with the reporting officer's recommended wording for both of these policies.<sup>49</sup>

### Policy TRAN-P8 and standard TRAN-S1

- 8.2 PrimePort and TDHL lodged further submissions supporting Fonterra's submission on policy TRAN-P8 and lodged submissions on standard TRAN-S1, both with the effect of avoiding landscaping requirements for parking areas in the PORTZ.
- 8.3 Ms Seaton agrees with the reporting officer's recommended wording for these provisions so that landscaping requirements no longer apply to the PORTZ.<sup>50</sup>

## **9. SUBDIVISION PROVISIONS**

- 9.1 PrimePort lodged submissions seeking to retain the exclusion of esplanade provision requirements for the PORTZ as collectively provided for by notified policy SUB-P7, standard SUB-S8 and SCHED 12.
- 9.2 PrimePort also lodged a submission seeking to delete the esplanade provision overlay within Lot 2 DP 326715, being land north of Talbot Street within the PORTZ.
- 9.3 PrimePort agrees with the reporting officer that exclusion of esplanade provision requirements from the PORTZ and Lot 2 DP 326715 is

---

<sup>49</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraphs 68-69 ([here](#)); Section 42A report of Mr Willis at paragraphs 6.72.5 and 6.73.9 ([here](#)).

<sup>50</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraphs 70-72 ([here](#)); Section 42A report of Mr Willis at paragraphs 6.75.10 and 6.84.14 ([here](#)).

appropriate given health, safety and security concerns within the Port area.<sup>51</sup> These health, safety and security concerns were outlined in Mr Munro's evidence for Hearing Stream A,<sup>52</sup> and also discussed by Mr Cooper.<sup>53</sup>

- 9.4 PrimePort agrees with the reporting officer that the planning maps should be amended to remove the esplanade provision for the entirety of Lot 2 DP 326718 (noting it lies within the PORTZ).<sup>54</sup>

## **10. HISTORIC HERITAGE LISTING HHI-75**

- 10.1 TDHL lodged a submission requesting that heritage listing HHI-75 (Sailors' Rest/South Canterbury Seafarers' Centre) be removed from Schedule 3 of the Proposed Plan, as TDHL holds a Certificate of Compliance (**CoC**) for the demolition of this building which it intends to implement. Ms Seaton provides evidence of TDHL's intention to demolish this building, and a copy of the CoC.<sup>55</sup>

- 10.2 The reporting officer, Mr MacLennan, has recommended that HHI-75 be retained in Schedule 3 on the basis of a heritage assessment by Dr McEwan that the building meets the heritage criteria for scheduling.

- 10.3 However, Dr McEwan's heritage assessment does not account for the fact that a CoC should not form part of the existing environment where the CoC is likely to be implemented. In particular, an assessment of buildings on sites should reflect the future state of the environment for the following reasons:

- (a) Section 76(3) of the RMA states that when making a rule in a district plan, a territorial authority shall "have regard to the actual or potential effect on the environment of activities including, in particular any adverse effect".
- (b) The "environment", as that term is defined in s 2 of the RMA, encapsulates not only what is currently present on a particular site or within its surroundings, but how they might develop in the future

---

<sup>51</sup> Section 42A report of Mr Boyes at paragraph 7.6.15 ([here](#)).

<sup>52</sup> Statement of Evidence of Frazer James Munro for Hearing A dated 22 April 2024 at paragraphs 49 to 50 ([here](#)).

<sup>53</sup> Statement of Evidence of Tony Cooper for Hearing E dated 23 January 2025 at paragraphs 16-21 ([here](#)).

<sup>54</sup> Section 42A report of Mr Boyes at paragraph 7.6.16 ([here](#)).

<sup>55</sup> Statement of Evidence of Kim Seaton for Hearing E dated 23 January 2025 at paragraph 77 and appendix A ([here](#)).

pursuant to permitted activities or unimplemented resource consents that are likely to be implemented.<sup>56</sup>

- 10.4 Dr McEwan's assessment is inconsistent with well-established case law developed since the Court of Appeal's decision in *Hawthorn*.<sup>57</sup> As was recently accepted by the Independent Hearings Panel in its recommendations on Plan Change 14 for the Christchurch District Plan:<sup>58</sup>

*[382] Mr Joll [for Kāinga Ora] also – correctly in our view – took issue with Dr McEwan's interpretation that unimplemented consents or certificates of compliance (for demolition) should not form part of the existing environment. Ms Boulton made similar submissions with respect to certificates of compliance for building demolition that her client (submitter Christ's College) held for its properties potentially subject to the Inner City West RHA*

*[419] We find ourselves in agreement with Kāinga Ora's submission that the 'environment', as defined in the RMA, does indeed include resource consents for demolition that are able to be implemented, and it logically follows that it 'makes no sense to assess heritage or character against an illusory baseline, where the properties that contribute towards those values are likely to be demolished.'*

- 10.5 In the present circumstances, it was necessary for the Council to identify whether any sites that might be considered for a heritage listing are subject to a consent or CoC for demolition.<sup>59</sup> As noted above, TDHL holds a CoC that authorises demolition of the building proposed to be listed as HHI-75, which TDHL intends to implement.
- 10.6 It is illogical to assess heritage values against an illusory baseline, where the building that contributes towards those values is intended to be demolished. In the present case, the existing CoC must not be disregarded, and heritage listing HHI-75 should be deleted from the PDP.

## **11. OTHER MATTERS – UPDATING MAPPING OF URBAN AREA, PORTZ AND PRECINCT 7**

- 11.1 Ms Seaton provides a copy of a new Certificate of Title issued in August 2024 for reclaimed land. This will necessitate updating the PDP maps, including in terms of defining the urban area, the PORTZ and the extent of Precinct 7. PrimePort respectfully wishes to bring this matter to the hearing panel's attention now, although it is acknowledged that the recommending

---

<sup>56</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

<sup>57</sup> *Ibid.*

<sup>58</sup> Independent Hearings Panel Recommendations Report: Part 5 – City Wide Qualifying Matters on Plan Change 14 to Christchurch District Plan, dated 29 July 2024, at paragraphs 382 and 419 ([here](#)).

<sup>59</sup> Section 139(10) of the RMA provides that a certificate of compliance must be treated "as if it were an appropriate resource consent".

officer (Mr Willis) notes that the mapping of the urban area overlay will be addressed at a later hearing.<sup>60</sup>

**DATED** 30 January 2025



.....

**C O Carranceja**

**Counsel for PrimePort Timaru Ltd and Timaru District Holdings Limited**

---

<sup>60</sup> Section 42A report of Mr Willis at paragraph 6.57.10.