

Before the Hearing Panel
Appointed by the Timaru District
Council

Under the Resource Management Act 1991 (**RMA**)
In the matter of submissions on the Proposed Timaru District Plan

Memorandum of Counsel on behalf of Timaru District Council

Response to Minute 10

1 July 2024

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May it please the Hearing Panel:

Introduction

- 1 This memorandum is filed by counsel for the Timaru District Council (Council) in response to Minute 10, issued by the Hearing Panel on 25 June 2024.
- 2 Minute 10 requests that the section 42A officer for the Rural Zones:
 - (a) respond to issues raised in the memorandum filed by Mr Collins (submitter #141); and
 - (b) clarify what hearing Mr Collins' submission is allocated to.
- 3 A statement of evidence in response to Mr Collins' memorandum has been filed by Mr Andrew Maclellan,¹ who is the Council's consultant planner responsible for the s42A report on Rural Zones.
- 4 The purpose of this memorandum is to:
 - (a) provide a brief overview of the relevant context;
 - (b) set out the legal principles relevant to the scope of amendments the Panel may make in response to the submissions on the proposed zoning for Blandswood, which form the basis for Mr Maclellan's recommendations;
 - (c) confirm that Blandswood submissions will be heard in Hearing B.

Context

- 5 Blandswood comprises a small area of established holiday huts, situated adjacent to the Kowhai Stream. It is currently zoned Rural 4B in the Operative District Plan. The notified version of the Proposed District Plan (**PDP**) proposed to zone that area Open Space Zone (**OSZ**) – Holiday Huts Precinct (PREC4). The section 42A report addresses relevant background and context in section 13.3.²
- 6 Twenty-two submissions were lodged regarding the inclusion of Blandswood within the OSZ. They all oppose the proposed zoning and seek relief that ranges from rezoning to Settlement Zone, to declining

¹ Statement of evidence of Andrew Cameron Maclellan – Response to Minute 10 (1 July 2024).

² Section 42A Report: Rural Zones, pages 187 – 192.

the PDP altogether. A summary of the submissions and relief sought is set out in Mr MacLennan's evidence.³

- 7 That summary also provides further detail as to the reasons for the submission and grounds for the relief sought, which include (but are not necessarily limited to) that the OSZ – PREC4:
- (a) is not appropriate for private land with existing dwellings (submitter #9);
 - (b) would require consent to do anything on the land, and make the section worthless (submitter #24);
 - (c) would result in a vacant section not being able to be built on (submitter #69);
 - (d) would unduly restrict the maintenance, development and improvement of property (submitters #77 and #144); and
 - (e) is unreasonable because, subject to suitable controls, the land is suitable for residential development (submitter #123).
- 8 Mr MacLennan's evidence summarises the reasons for those submissions as follows:

...the key theme within the submissions is that the OSZ is too restrictive, and the reason submitters sought Blandswood to be rezoned as Settlement Zone was to provide greater flexibility within the planning framework to maintain, develop, improve their properties.⁴

Scope of permissible amendments to address submissions – relevant legal principles

- 9 Clause 10(2) of Schedule 1 establishes the matters that must, or may, be addressed in the Panel's decision on provisions and matters raised in submissions. Relevant to these circumstances, clause 10(2)(b) provides that the decision may include:

(i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and

(ii) any other matter relevant to the proposed statement or plan arising from the submissions.

[Emphasis added]

³ Statement of evidence of Andrew Cameron MacLennan - Response to Minute 10, Attachment 1.

⁴ Statement of evidence of Andrew Cameron MacLennan - Response to Minute 10, at [17].

- 10 The opening legal submissions for Hearing A set out the broad legal principles relevant to the scope of amendments the Panel is entitled to make to the PDP.⁵ Those general principles were summarised as follows:

The key principles in considering whether an amendment is within the scope of submissions are helpfully summarised by the High Court in Albany North Landowners v Auckland Council⁶ as follows:

(a) A Council must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan or plan change.⁷

(b) To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution.⁸

(c) The assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic and workable fashion rather than from the perspective of legal nicety.⁹

(d) The "workable" approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably and fairly raised in the submissions.¹⁰

(e) It is sufficient if the change made can fairly be said to be a foreseeable consequence of any changes directly proposed in the submission.¹¹

- 11 It is evident from these general principles that there is a broad scope to make amendments to the PDP. In particular, it is well accepted law that the Panel is entitled to grant any relief within the general scope of:

- (a) An original submission; or
- (b) The proposed change as notified; or

⁵ Legal submissions of counsel for Timaru District Council, at [28] – [30].

⁶ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

⁷ *Albany North*, at [115], referring to *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145.

⁸ *Albany North*, at [115].

⁹ *Albany North*, at [115], referring to *Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd* [2012] NZRMA 552.

¹⁰ *Albany North*, at [115], referring to *Shaw v Selwyn District Council* [2001] 2 NZLR 277.

¹¹ *Albany North*, at [115], referring to *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556.

(c) Somewhere in between.¹²

- 12 In *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council*,¹³ the Planning Tribunal set out categories of permissible amendments resulting from submissions, which was affirmed by the High Court in *Countdown Properties (Northlands) Ltd v Dunedin City Council*.¹⁴ The High Court's decision is helpfully summarised in *Environmental Defence Society Incorporated v Otorohanga District Council*¹⁵ as follows:

[12] ...In the leading case of Countdown Properties (Northlands) Ltd v Dunedin City Council¹⁶ a full court of the High Court considered a number of issues arising out of the plan change process under the Act, including the decision-making process in relation to submissions.¹⁷ The High Court confirmed that the paramount test is whether or not the amendments are ones which are raised by, and within the ambit of, what is reasonably and fairly raised in submissions on the plan change. It acknowledged that this will usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions.¹⁸

[13] In analysing such amendments, the High Court approved of the Planning Tribunal's categorisation¹⁹ of them into five groups, the first four of which are permissible:

- (a) Those sought in written submissions;*
- (b) Those that correspond to grounds stated in submissions;*
- (c) Those that address cases presented at the hearing of submissions;*
- (d) Amendments to wording not altering meaning or fact;*
- (e) Other amendments not in groups (a) – (d).*

[14] The High Court rejected the submission that the scope of the local authority's decision-making under clause 10 is limited to no more than accepting or rejecting

¹² *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].

¹³ (1993) 2 NZRMA 497 (PT).

¹⁴ [1994] NZRMA 145.

¹⁵ [2014] NZEnvC 070.

¹⁶ [1994] NZRMA 145.

¹⁷ *Ibid.* at 164 – 168.

¹⁸ *Ibid.* at 166.

¹⁹ *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 2 NZRMA 497 (PT) at 524 – 529.

a submission...The Court observed that councils need scope to deal with the realities of the situation where there may be multiple and often conflicting submissions prepared by persons without professional help. In such circumstances, to take a legalistic view that a council could only accept or reject the relief sought would be unreal.²⁰

- 13 In light of the above, it is respectfully submitted that the Panel has jurisdiction to amend the PDP to address the grounds raised in the Blandswood submissions as a whole, or to address the issues that submitters raise at the hearing, provided that the amendments were a reasonably foreseeable consequence of the submission. Amendments may be made that accept the specific relief sought by submitters, or alternative amendments may be made that address the issues raised in submissions, regardless of whether the submissions specifically requested alternative relief or not.

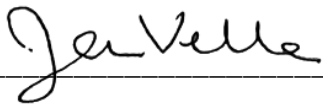
Submissions to be heard in Hearing B

- 14 The Council acknowledges that there has been some confusion as to whether the Blandswood submissions would be heard in Hearing B or Hearing D. The Council has discussed this matter with Mr Collins, and has offered to schedule the Blandswood submissions in Hearing D to enable time for the parties to explore how the Blandswood submissions may be addressed.
- 15 Mr Collins has confirmed his preference that his submission be heard in Hearing B. The Council therefore confirms that the Blandswood submissions are allocated to Hearing B. Submitters have been sent the Notice of Hearing and have been contacted for the purposes of scheduling times for their submissions to be heard.
- 16 The Council has also invited the Blandswood submitters to a meeting with the section 42A officer in advance of the hearing, to ensure that the Council officers properly understand the issues being raised and to enable further consideration to be given to how those issues may be addressed.

²⁰ *Countdown Properties (Northlands) Ltd v Dunedin City Council (supra)* at 165.

17 The Council is grateful to the Panel's consideration of these matters.

Dated this 1st day of July 2024



Jen Vella
Counsel for Timaru District Council