

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 – Minute 50

20 January 2026

Council's solicitors:

Michael Garbett | Jen Vella
Anderson Lloyd
Level 12, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p: + 64 3 477 3973
michael.garbett@al.nz | jen.vella@al.nz

**anderson
lloyd.**

May it please the Hearing Panel:

- 1 This memorandum of counsel is filed on behalf of the Timaru District Council (**Council**) in relation to the Proposed District Plan (**PDP**) and in response to Minute 50 – Amendments to National Direction.
- 2 The Hearing Panel has requested that counsel:
 - (a) provide legal submissions addressing the impact, if any, of the gazetted changes to the relevant national directions to our decision-making process;
 - (b) update the Panel if there are any material changes to the s42A author recommendations because of the amendments to national directions;
 - (c) advise the Panel if the amendments affect the Council's timeline for making the plan operative.

National Policy Statements Gazetted

- 3 On 15th December 2025, the Government had released ten new or amended pieces of national direction. Three of the instruments are new and seven are amendments to existing instruments, as listed below:
 - (a) Resource Management (National Environmental Standards for Detached Minor Residential Units) Regulations 2025 (**NES-DMRU**) (new);
 - (b) National Policy Statement for Natural Hazards 2025 (**NPS-NH**) (new);
 - (c) National Policy Statement for Highly Productive Land Amendment 2025 (**amended NPS-HPL**);
 - (d) New Zealand Coastal Policy Statement Amendment 2025 (**amended NZCPS**);
 - (e) National Policy Statement for Indigenous Biodiversity Amendment 2025 (**amended NPS-IB**);
 - (f) National Policy Statement for Freshwater Management Amendment 2025 (**amended NPS-FM**);
 - (g) Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2025 (**amended NES-F**);

- (h) National Policy Statement for Infrastructure 2025 (**NPS-I**) (new);
- (i) National Policy Statement for Renewable Electricity Generation Amendment 2025 (**amended NPS-REG**); and
- (j) National Policy Statement for Electricity Networks Amendment 2025 (**amended NPS-EN**).

4 These instruments came into effect on 15 January 2026.

The impact, if any, of the gazetted changes to the relevant national directions to our decision-making process

Giving effect to national policy statements

5 The Council's position on the approach to giving effect to national policy statements (**NPSs**) which were introduced after notification of the PDP¹ was set out in counsel's legal submissions for Hearing A² and Hearing D³. Those submissions can be summarised as follows:

- (a) the PDP was prepared prior to the new/amended NPSs coming into force and has not attempted to fully give effect to them;
- (b) how they are to be given effect to will depend on their specific provisions;
- (c) in the absence of a direction to amend the plan without recourse to Schedule 1, implementation requires a Schedule 1 process;
- (d) each NPS contains timeframes for implementing/ giving effect to them;
- (e) there is no statutory requirement that the NPSs be fully given effect to through the current plan review, and a comprehensive section 32 evaluation of the PDP against those instruments has not been undertaken;
- (f) any changes to the PDP to give effect to the new/amended NPSs must be within the scope of submissions and should not prejudice

¹ At that time, these were the National Policy Statement on Indigenous Biodiversity 2023, the National Policy Statement on Highly Productive Land 2022, and the amended National Policy Statement on Urban Development 2020.

² Legal submissions of Counsel on behalf of Timaru District Council (30 April 2024), at [24] – [27].

³ Legal submissions of Counsel on behalf of Timaru District Council – Hearing D (4 November 2024), at [11] – [28].

any persons who may not have had adequate notice and opportunity to submit on the changes; and

(g) where there is scope, the Panel may consider it appropriate to make changes that better give effect to parts of the NPS; however, the Panel should consider whether the proposed changes raise a risk of either prejudice or inconsistent implementation of the policy documents.

6 In considering submissions on giving effect to the NPS-IB in particular, counsel submitted that:⁴

The key questions for the Panel in this instance are:

(a) *Can* the amendments sought be made, ie, is there scope in the submissions?

(b) *Must* the amendments sought be made now, ie, is the PDP required to give effect to the NPS-IB?

(c) *Should* the amendments sought be made, ie, even if the NPS-IB is not required to be given effect to through this process, should the amendments nevertheless be made in light of the specific circumstances?

7 Counsel submits that the same principles apply to the new and amended NPSs that came into effect on 15 January 2026. The section 42A authors have considered whether amendments to their recommendations are required in response to the new and amended NPSs in light of these principles (see below).

8 Counsel has also reviewed the provisions relating to timing of implementation of the new and amended NPSs to inform the "must" question. None of the NPSs contain any provisions that would require the Council to amend the PDP through this process. Any amendments to a plan must still follow the full Schedule 1 process, including public notification and submissions.

Impact of new and amended national environmental standards

9 The Resource Management Act 1991 (**RMA**) contains specific requirements for amending plans and proposed plans to remove duplication or conflict with a national environmental standard (**NES**).

⁴ Legal submissions of Counsel on behalf of Timaru District Council – Hearing D (4 November 2024), at [13].

10 In short:

- (a) PDP rules that are more stringent than the NES will not prevail over the NES, unless the NES expressly allows that.⁵ In particular, where the PDP rules also permit an activity permitted by an NES and the terms and conditions of that rule cover the same effects as the NES, the NES prevails.⁶
- (b) Where there is duplication or conflict between the PDP and NES, the Council is required to remove that duplication or conflict without using a Schedule 1 process.⁷ A conflict includes where a PDP rule is more stringent than the NES and the NES does not expressly say that is allowed.⁸
- (c) Generally speaking, the duplication or conflict must be removed as soon as practicable after the date on which the NES came into force.⁹ The exception is that, where the NES specifies the extent to which an existing rule continues to have effect or the time period during which a rule continues to have effect, the PDP must be amended in accordance with the specifications in the NES.¹⁰

11 TDC therefore needs to ensure there is no duplication or conflict between the PDP and the NES, but this role is for the Council rather than the Panel, whose delegation is limited to carrying out the plan hearing process for the full plan review process in accordance with Schedule 1.¹¹

12 TDC has commenced its review of the PDP in light of the new and amended NESs. TDC does not consider that it is practicable for it to make any changes at least until the Panel's draft decision is released at the end of the month. At that stage, TDC will consider options for

⁵ RMA, section 42B.

⁶ RMA, section s43A(5)(c).

⁷ RMA, section 44A.

⁸ RMA, section 44A(2).

⁹ RMA, sections 44A(4) and (5).

¹⁰ RMA, section 44A(3).

¹¹ This position was accepted by the Environment Court in *Mangawhai Harbour Restoration Society v Northland Regional Council* [2022] NZEnvC 119 at [11], where the Minister of Conservation sought amendments to remove inconsistency between the regional plan and the NES-F but the Court recorded that it had no jurisdiction to make the amendment sought by the Minister because the issue was not addressing the plan or in any submission.

removing any duplication or conflict, and take appropriate steps to comply with the requirements of the RMA.

Are there any material changes to the s42A author recommendations as a result of the new / amended national direction

- 13 Counsel has consulted with the s42A authors as to whether they wish to alter their recommendations in light of the new/ amended NPSs. None of the section 42A authors wish to amend their recommendations.

Liz White

- 14 Ms White has reviewed the amended NPS-IB. She does not consider it necessary to change any of her recommendations made in her original s42A report for the reasons already given in her consideration of the NPS-IB.
- 15 In summary, Ms White considers that Clauses 3.10(2) and 3.11 are interrelated and the exemptions in clause 3.11 require evaluative judgements to be made, which would require further consideration in terms of how they might apply in this district. It is also likely that this would require further changes to the proposed rules to implement the policy direction. Giving effect to these clauses could require significant changes to the PDP provisions, could give rise to natural justice issues and is therefore better undertaken in an integrated manner when the Council makes changes to give effect to the NPS-IB in full.

Nick Boyes

- 16 Mr Boyes has reviewed the NPSs in light of his chapters. He does not consider any changes are required to the PDP or his recommendations, either because the recommended provisions already give effect to the NPSs or the chapters are not impacted by the NPSs.

Andrew Willis

- 17 Mr Willis has reviewed the NPS-NH, amended NZCPS, NPS-I, amended NPS-REG and amended NPS-EN. He does not consider any changes are required to the PDP or his recommendations in light of the NPSs. Mr Willis considers that, for the most part, there is good alignment between the NPSs and the PDP. Where there is not complete alignment, some of the changes required would be significant. Given the complexity of the chapters and limited scope in submissions to make changes that would better align or give effect to an NPS, this would be in part only and it would be more appropriate to give effect to all NPSs

as a whole via a separate plan change to better allow the council to consider, and consult with the community as to how they should be given effect to.

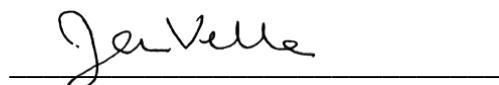
Andrew Maclennan

- 18 Mr Maclennan has reviewed the amended NPS-HPL. Mr Maclennan had already recommended changes to the Versatile Soils chapter to align it with the requirements of the NPS-HPL as far as possible, while not pre-empting the mapping process to be undertaken by the Canterbury Regional Council (see section 9.3 Identification of Versatile Soils - Definition, Policy VS-P1 –, and Versatile Soils Overlay). This included recommending that the definition of “Versatile Soils” is replaced with a definition of “Highly Productive Land”, which replicates the definition included in Section 1.3 of the NPS-HPL, which has not changed.
- 19 Any references to the “National Policy Statement for Highly Productive Land 2022” should be updated to refer to the amended version.

Matt Bonis

- 20 Mr Bonis anticipated the changes to the NPS-HPL in relation to urban development on LUC 3 land in his section 42A report and clearly identified where amendments to the NPS-HPL could affect the Panel's decision-making. Mr Bonis' analysis of the effect of the amended NPS-HPL on his recommendations relating to the Growth chapter is set out in a memorandum, attached at **Appendix A**. He does not wish to amend his recommendations, but notes that he considers the matter relating to submission number 190 (North Meadows) to be finely balanced.

Dated this 20th January 2026



Jen Vella
Counsel for Timaru District Council

Appendix A
Memorandum of Matt Bonis (14 January 2026)

Memo

To:	Jen Vella - Anderson Lloyd Aaron Hakkart - Timaru District Council
From:	Matt Bonis – Planz Consultants
Date:	14 January, 2026
Subject	Minute 50 – Amendments to National Direction

Purpose and interpretation

This Memo responds to the Proposed Timaru District Plan (PTDP) Panel Minute 50.

Minute 50 seeks guidance as to any material changes to the s42A author recommendations given amendments to national direction (National Policy Statements and Standards) as gazetted on 18 December 2025, which are to come into effect on 15 January 2026¹.

The amendments to the National Policy Statement on Highly Productive Land (**amended NPS-HPL**) are relevant to Hearing G – Growth. The amendments (amongst other matters):

- exempt **urban** development and **urban** rezoning on LUC 3 land from the NPS-HPL restrictions with immediate legal effect (clauses 3.5(7) and 3.6).

LUC-3 classified land remains under the transitional provisions², as deemed as *Highly Productive Land*³ under the amended NPS-HPL. The exemption introduced in Clauses 3.6(6) does not apply to non-*urban rezonings*⁴, such as zoning requests for Rural Lifestyle.

Response

The s42A Report identified the Government’s stated intention⁵ of removing LUC-3 restrictions for rezoning requests associated with the application of the NPS-HPL. Section 42A recommendations were predicated on the statutory framework in force at the time of drafting⁶, but identified where that opinion would change if the NPS-HPL was no longer applicable to the amending proposal⁷. It was

¹ PTDP Panel Minute 50 [4(b)]

² Until mapped in regional policy statements before 31 December 2027 (clause 4.1(2))

³ Application of Clause 3.5(7)(a)(ii), except where (b) is applicable.

⁴ Refer Definition of ‘urban’ Clause 1.3 Interpretation.

⁵ Cabinet Paper: Replacing the Resource Management Act 1991 – Approach to development of new legislation (24 March 2025), at paragraph 127

⁶ Topic G. S42A [5.1.12]

⁷ Topic G. S42A [5.1.15]

also noted that for many amending proposals with transitional LUC-2 classifications, the amendments to the NPS-HPL would have no bearing.

In **summary**, the recommendations contained in my Summary Statement as dated 4 July 2025 remain unchanged⁸. This includes recommendations to **accept** the submissions, as amended by the Joint Witness Statements for:

- C & S McKnight (Sub 30). Extension of Rural Living Zone (RLZ). LUC-3 land only. The amended NPS-HPL Cl3.6(6) is not applicable, as the **Rural Lifestyle** rezoning sought is not an 'urban zoning'. The requirements of cl3.10 remain unaltered, and as stated in the s42A Report the analysis from Mr Millner for the Applicant is considered sufficient⁹.
- D & S Payne (Sub 160). Deletion of FDA11, Rezone to RLZ. Density mechanisms. Contains **LUC-2** land. The amendments to the NPS-HPL Cl3.6(6) are not applicable to the request. The requirements of cl3.10 remain unaltered, and as stated the analysis from Mr Ford for the Applicant is considered sufficient¹⁰.

And to **reject**:

- T Blackler (Sub 231). General Rural Zone (GRUZ). Submission seeks wide relief, incorporating a 'Precinct' to enable development of Retirement Village. Contains **LUC-2** land. The requirements of Clause 3.6(4) are conjunctive and remain applicable to the subject site as the site is not excluded under the inserted Cl3.6(6). In terms of the application of Cl3.6(4)(a), it is the opinion of the s42A Author that the property is not required to provide sufficient development capacity. The remaining policy and merit-based matters remain in dispute as set out in the Joint Witness Statement¹¹.

The remaining recommendations remain unaltered, noting the following:

- Submissions seeking Rural Lifestyle rezonings that are deemed to be NPS-HPL (including LUC-3 land)¹² are not subject to the exclusion in Clause 3.6(6). These include:
 - Sub 98.1 DJ Parris
 - Sub 207.1 and 207.2 Simmons Trust
 - Sub 28.1 R&R Hay
 - Sub 138.1 Sullivan (LUC-2)
 - Sub 32.1 B Selbie (LUC-2)
- Submissions seeking Urban rezonings that are deemed to incorporate LUC-2 land are not subject to the exclusion in Clause 3.6(6). These include:
 - Submissions relating to FDA6: Aitken, Johnston, and RSM Trust Sub 237.1, 237.2.

⁸ [s42A-summary-Matt-Bonis-Growth.pdf](#)

⁹ Topic G. S42A [10.11.19]

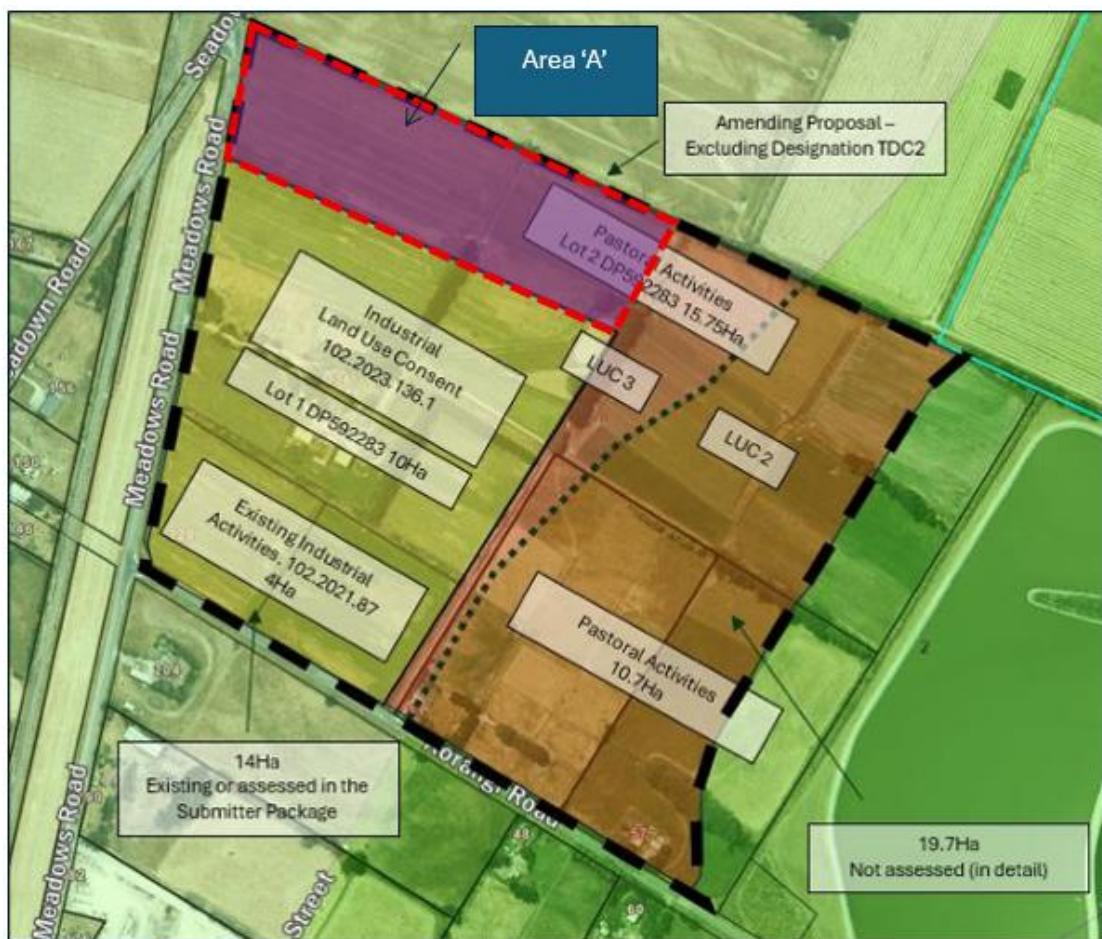
¹⁰ [s42A-summary-Matt-Bonis-Growth.pdf](#) [27(a)]

¹¹ [DRAFT \(SOLO\) Memorandum of Counsel - ENV-2023-AKL-000200 - 29 February 2024](#)

¹² Refer 21 January 2025 Memo 'Applicability of NPS-HPL' – Schedule 1. [Timaru-District-Counsel-Memorandum-of-Counsel-Appendix-A-Memo-re-application-of-NPS-HPL-to-re-zoning-requests-210125.pdf](#)

- Sub No.157 (De Joux) as it relates to FDA14. The site(s) is LUC3, so the exemptions of inserted Cl3.6(6) apply. The remaining policy and merit-based matters remain in dispute¹³.
- For Sub No.190 North Meadows. The balance site contains LUC-2 land. No expert evaluation has been provided in terms of cl3.6(4)(c). I also consider that clauses 3.6(4)(a) and (b) have not been demonstrated.

I draw the Panel's attention to that part of the site identified as LUC-3, as exempt under amended NPS-HPL Clause 3.6(6) which extends along North Meadows Road to the northern boundary of the rezoning request as demarcated by the shelterbelt of trees and water race at the northern boundary of the Kelliher farm. Ms Pfluger also noted that '*the shelterbelt on the northern side of the site currently delineates the boundary of the site*'¹⁴. This area (identified as Area 'A') at some 5.5Ha is shown on the Plan below.



I consider that extending the requested General Industrial Zoning to include Area A would:

- i. Not engage with the NPS-HPL as amended;

¹³ S42A [10.14.15]

¹⁴ Section 42A. Appendix 4 Pfluger [Sub#190]

- ii. As based on the evidence of Ms Pfluger would be consistent with the TPDP **GIZ-O2** and demarcate a defensible urban boundary along North Meadows Road.
- iii. However, I retain the view that the extension would be less appropriate based on the evidence of Mr Heath and Mr Kemp in terms of efficiently integrated with the efficient use of infrastructure (**UFD-O1(2)**) and contributing to a consolidated settlement pattern (**UFD-O1**). However, I consider this matter finely balanced. Overall, I retain my recommendation in the s42A Report¹⁵.

Yours faithfully

PLANZ CONSULTANTS LTD



Matt Bonis

Partner

DDI: 021 79 66 70

EMAIL: matt@planzconsultants.co.nz

¹⁵ Section 42A [12.8.29, 12.8.30].