

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 Disstrict Plan

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

**HEARING STREAM B
URBAN ZONES – GENERAL INDUSTRIAL ZONE AND PORT ZONE**

Dated: 13 July 2024

BUDDLE FINDLAY

Barristers and Solicitors
Christchurch

Solicitor Acting: **Cedric Carranceja**
Email: 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 B:
- (a) the objectives, policies, rules and other provisions of the Port Zone (**PORTZ**);
 - (b) the PORTZ planning maps including Height Specific Control Area (**HSCA**) Overlay; and
 - (c) the proposed definitions of port activity and reverse sensitivity.

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 Kim Seaton, Planner, who assesses the provisions and definitions that PrimePort and TDHL have submitted on, and makes recommendations for amendments that she considers to be most appropriate in section 32 terms.
- 2.3 PrimePort and TDHL also refer to, and continue to rely on, evidence presented at Hearing A by Frazer Munro, General Manager of TDHL, who outlined the strategic and regional significance of the Port and the PORTZ.¹ In that evidence, he explained why it is vital for the ongoing operations of the Port and supporting and related activities to have the regulatory flexibility, ability and certainty to carry out approved activities, including to develop, relocate, expand, upgrade, or otherwise change permitted activities within the PORTZ without being compromised by the establishment of sensitive activities in the meantime.

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

- 2.4 All issues raised by PrimePort and TDHL relevant to Hearing B – PORTZ have been addressed in the section 42A report by Ms Alanna Hollier, with the sole exception appearing to be a remaining difference in opinion regarding the definition of "reverse sensitivity".

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 B.²

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 required to "*give effect to*".³ 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;⁴
 - (b) providing for the efficient, safe and effective development, operation, maintenance and upgrade of the operation of the Port;⁵
 - (c) providing for a range of associated activities that have an operational requirement to be located in that environment;⁶
 - (d) avoiding development that may result in reverse sensitivity effects that constrain the ability of the Port to be developed and used.⁷
- 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.⁸

² 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](#)).

³ Section 75(3) RMA.

⁴ NZCPS policy 9; CRPS objective 8.2.3.

⁵ NZCPS policy 9; CRPS policy 8.3.6(1).

⁶ CRPS policy 8.3.6(2).

⁷ CRPS policy 8.3.6(4).

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

5. PROVISIONS OF THE PORTZ

- 5.1 As noted by Ms Hollier, almost all of the notified provisions for the PORTZ were not submitted on, or were supported by submissions.⁹ Ms Hollier recommends retention of these provisions as notified, and this is supported by PrimePort and TDHL. Ms Seaton's planning evidence provides reasons for supporting the notified provisions, including that they give effect to relevant provisions of the NZCPS and CRPS and promote the purpose of the RMA.¹⁰ Planning evidence is also provided by Ms Tait for Fonterra and Ms Trevilla for BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited in support of the PORTZ provisions.¹¹

Policy PORTZ-P1

- 5.2 There is one submission, by Property Income Fund No 2 Limited (**Property Income**), seeking to amend policy PORTZ-P1 to broaden the range of permitted activities in the PORTZ to align with that of the general industrial zone. PrimePort and TDHL lodged further submissions opposing this relief, on the basis that:
- (a) enabling a wider range of industrial activity could potentially allow industrial activity that has no operational need to locate adjacent to the Port; and
 - (b) there is limited land supply for industrial activity adjacent to the Port.
- 5.3 PrimePort and TDHL agree with Ms Hollier's recommendation to reject the relief sought by Property Income, including for the reasons that enabling industrial activities more broadly in the PORTZ:
- (a) is contrary to the purpose of the zone; and
 - (b) has the ability to undermine the operation of the Port by foreclosing opportunities for port and port related activities to establish and develop in the zone.¹²

⁹ Section 42A report of Alanna Hollier for Hearing B dated 20 June 2024 at paragraphs 6.2.1 to 6.2.3 ([here](#)).

¹⁰ Statement of Evidence of Kim Marie Seaton for Hearing B dated 5 July 2024 at paragraphs 15 to 17 ([here](#)).

¹¹ Statement of Evidence of Susanna Vrena Tait for Fonterra dated 5 July 2024 at paragraph 9.1 ([here](#)); Hearing Statement of Thomas Trevilla for the Fuel Companies dated 5 July 2024 at paragraph 17 to 19 ([here](#)).

¹² Section 42A report of Alanna Hollier for Hearing B dated 20 June 2024 at paragraphs 8.2.1 to 8.2.4 ([here](#)).

5.4 Planning evidence is provided by Ms Seaton setting out additional reasons for retaining policy PORTZ-P1 as notified.¹³ Property Income has provided no evidence to support its relief.

5.5 For the above reasons, it is submitted that it is most appropriate in terms of section 32 of the RMA for policy PORTZ-P1 to be retained as notified.

6. PORTZ PLANNING MAPS INCLUDING THE HSCA

6.1 For reasons given in the evidence of Ms Seaton, PrimePort and TDHL agree with Ms Hollier's recommendation to:

- (a) remove the HSCA from the PORTZ, which was inserted in error; and
- (b) amend the title of the map layer from "Port Purpose Zone" to "Port Zone, to ensure plan consistency and accuracy.¹⁴

7. DEFINITIONS

Port activity

7.1 PrimePort and TDHL support Ms Hollier's recommendation to retain the definition of "Port Activity" as notified. Ms Seaton considers that the definition appropriately reflects the range of activity that occurs or is anticipated to occur within the PORTZ.¹⁵

Reverse sensitivity

7.2 Ms Hollier continues to recommend amendments to the notified definition of "reverse sensitivity" as follows:

"Reverse sensitivity means the potential for the operation of ~~an-existing~~ lawfully established, permitted or consented activity, or activities otherwise anticipated by the Plan, to be compromised, constrained, or curtailed by the more recent establishment or alteration of another activity which may be sensitive to the actual, potential or perceived adverse environmental effects generated by ~~an-existing~~that activity."

7.3 While Ms Seaton agrees that a reverse sensitivity definition that encompasses a full range of potential reverse sensitivity effects (current and future) is appropriate in the context of the PORTZ, her view remains as that expressed in her Hearing A evidence, including that the proposed

¹³ Statement of Evidence of Kim Marie Seaton for Hearing B dated 5 July 2024 at paragraphs 18 to 19 ([here](#)).

¹⁴ Ibid at paragraphs 20 to 21.

¹⁵ Ibid at paragraph 16(ii).

addition of a reference to "or activities otherwise anticipated by the Plan" introduces considerable uncertainty to the definition.¹⁶

- 7.4 It is submitted that the following suggested changes to the notified version will provide more clarity while giving effect to the higher order policy documents which seek to avoid development that may result in reverse sensitivity effects that constrain the ability of regionally significant infrastructure to be used and developed in response to future growth of population and economic activity in the region:

"Reverse sensitivity means the potential for the operation of an approved, ~~existing~~ lawfully established or permitted activity to be compromised, constrained, or curtailed by the more recent establishment or alteration of another activity which may be sensitive to the actual, potential or perceived adverse environmental effects generated by ~~an existing~~ that activity."

8. TDHL SUBMISSIONS ON CITY CENTRE ZONE PROVISIONS

- 8.1 TDHL lodged submissions in relation to the City Centre Zone. While TDHL continues to support those submissions, it does not intend to separately call evidence or appear to be heard on those matters.

DATED 13 July 2024



C O Carranceja

Counsel for PrimePort Timaru Ltd and Timaru District Holdings Limited

¹⁶ Statement of Evidence of Kim Marie Seaton for Hearing B dated 5 July 2024 at paragraph 22 ([here](#)); Statement of Evidence of Kim Marie Seaton for Hearing A dated 22 April 2024 at paragraphs 26 to 29 ([here](#)).