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 – Hearing E

17 April 2025

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May it please the Hearing Panel:

Introduction

1 This Memorandum of Counsel is filed on behalf of the Timaru District Council (**Council**) in relation to the Timaru Proposed District Plan (**PDP**). The purpose of this memorandum is to respond to the questions raised by the Hearing Panel (**Panel**) in Minute 24.

2 The Panel sought further information from the section 42A officers, which is being filed contemporaneously with this memorandum. Mr Willis's interim reply notes that further work is required in relation to the Panel's requests to:

(a) work with other submitters on the "effects management hierarchy approach" in the context of the EI policies;[1] and

(b) advise whether he recommends accepting the matters of control or discretion for EI-R22, EI-R25 and EI-R26.[2]

3 An extension of time to 30 May 2025 for Mr Willis to file a further statement addressing these matters is therefore respectfully requested.

4 Further information was also sought from Mr Hakkaart and Mr Henry. Mr Hakkaart's evidence has also been filed. The question asked of Mr Henry was:[3]

> During the Panel's site visits to properties with proposed SASM-8 and SASM-9, the Panel observed that there are in a number of cases of existing woodlots/plantation forestry above or adjacent to limestone outcrops where examples of Māori rock art are known to exist. Has there been any geological or hydrological analysis of the impact of woodlots/plantation forestry on limestone, and/or the preservation of Māori rock art?

5 Aoraki Environmental Consultancy Ltd has advised that the most appropriate person to respond to that question is Ms Amanda Symon from the Ngāi Tahu Māori Rock Art Trust. Ms Symon has therefore prepared and filed a brief statement of evidence which addresses this question.

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[1] Minute 24, at [8].

[2] Minute 24, at [9](g).

[3] Minute 24, at [12](a).

6 The Panel also requested that counsel file a memorandum addressing the following matters:

(a) whether any decisions on variations to the PDP need to also be made by the deadline for making decisions on the PDP under clause 10 of the Resource Management Act 1991 (**RMA**), as extended by the Minister;

(b) whether the effect of plan provisions on property values is a relevant consideration under section 32 of the RMA;

(c) which chapters 'prevail' or 'take precedence' over others in the PDP and why, and what the Council means by provisions taking 'precedence' over others; and

(d) whether consequential amendments can be made to the Subdivision chapter.

7 These matters are addressed below.

Timeframes for decisions

8 Ordinarily, the Council must notify decisions on the PDP no later than 2 years after the date of notification. However, the Minister has granted an extension of time for notifying decisions to 22 March 2026. The Panel has queried whether any decisions on variations to the PDP must also be made by this deadline.

9 The specific requirement for making decisions under clause 10(1) of Schedule 1 is as follows:

> A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.

10 Clause 10(2)(a) provides that the decision must include the reasons for accepting or rejecting the submissions.[4]

11 The Panel has been delegated "*all those powers and functions required to carry out and complete the plan hearing process for the full plan review process in accordance with Schedule 1 of the Resource Management Act 1991*".[5] It does not have delegated power to decide

[4] Clause 10(2)(a).

[5] Resolution 2024/51 of the Timaru District Council.

that a variation to the PDP will be promulgated in response to submissions – any such decision is a function of the Council.

12 If the Panel considers that a variation or plan change is required to address matters raised in submissions, it could decide to recommend that the Council initiate a new plan process (i.e., a variation or plan change). This decision would constitute the decision "on the provisions and matters raised in submissions" required by clause 10(1).

13 Any variation or plan change would constitute a new process in terms of Schedule 1. It would need to be notified under clause 5 of Schedule 1, and decisions on the provisions and matters raised in submissions on the variation or plan change (which are defined as a "proposed plan" under section 43AAC) be notified within two years of notification.

14 In short, decisions on any variation to the PDP or plan change that may be initiated by the Council in response to the Panel's decisions do not need to be made by 22 March 2026.

Relevance of property values

15 Several submissions on the Sites of Significance to Māori (SASM) chapter have suggested that the recognition of SASMs on private land will affect property values. The Panel has queried whether potential impacts on property values are a relevant consideration under section 32 of the RMA.

16 As set out in the opening legal submissions for Hearing A,[6] section 32 requires the Panel to:

(a) examine the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the RMA;[7]

(b) examine whether the proposed provisions are the most appropriate way to achieve the objectives.[8]

17 The examination of provisions in (b) must identify other reasonably practicable options for, and assess the efficiency and effectiveness of, the provisions in achieving the proposed objectives.[9] For the purposes of the "efficiency and effectiveness" assessment, the Panel must

[6] Legal submissions of counsel on behalf of Timaru District Council, 30 April 2024 at [20].

[7] Section 31(1)(a).

[8] Section 32(1)(b).

[9] Section 32(1)(b)(i) and (ii).

identify and assess the benefits and costs of the anticipated environmental, economic, social and cultural effects of the proposed provisions.[10]

18 The "provisions" the Panel must examine for appropriateness in this context are:

(a) the SASM overlay; and

(b) the rules and policies that apply within that overlay.

19 These provisions are proposed as a means of recognising and providing for the relationship of Māori, and their culture and traditions, with their ancestral lands, water, sites, waahi tapu and other taonga in terms of section 6(e).

20 The question then is whether the impact on property values can be considered when identifying and assessing the benefits and costs of the anticipated effects of the proposed SASM overlay, policies and rules.

21 The Courts have considered whether the potential devaluation of property is an "effect" that can be considered under the RMA, and determined that any impact on property value is simply a measure of other effects, cautioning against "double-weighting". In that regard, an evaluation of the impact on property value can be used to confirm the decision-maker's opinion of the scale of an effect but not as an additional or separate factor.[11]

22 The Environment Court in *Tram Lease v Auckland Transport*[12] summarised the approach as follows:

> [57] The starting point is that effects on property values are generally not a relevant consideration, and that diminution of property values will generally simply be found to be a measure of adverse effects on amenity values and the like: Foot v Wellington City Council.
>
> [58] Similarly in Bunnik v Waikato District Council, the Court held that if property values are reduced as a result of activities on an adjoining property, then any devaluation experienced would no doubt reflect the effects of that activity on the environment. The Court held that it was

[10] Section 32(2)(a).

[11] *Chen v Christchurch City Council* C102/97 at page 18 – 19, followed in *Foot v Wellington City Council* W073/98, at [255].

[12] *Tram Lease v Auckland Transport* [2015] NZEnvC 195.

> preferable to consider those effects directly rather than the market's response, because the market can be an imperfect measure of environmental effects.
>
> [59] In Hudson v New Plymouth District Council, the Court held that people concerned about property values diminishing were inclined to approach the matter from a rather subjective viewpoint. The Court held that such people become used to a certain environment, and might consider that property values would drop after physical changes occurred, however a purchaser who had not seen what was there before, would take the situation as he/she/it found it at the time of purchase, and might not be greatly influenced by matters of moment to the present owner or occupier.

23 It is noted that the *Foot* decision referred to in the above passage is a decision on a proposed plan. In considering section 32, the Court said:

> [334]…Mr Mitchell queried how the height controls which have the effect of so significantly devaluing eight properties can be seen as an economically efficient way of protecting or enhancing the properties' amenities.
>
> [335] We reject [that] view in the light of what we have said on valuation issues earlier in this decision.

24 In considering impacts on property values in *City Rail Link Ltd v Auckland Council*,[13] the Environment Court further cautioned that:

> [64] It is also relevant to re-state that decisions in cases like this should not be made based on people's fears that might never be realised. In *Shirley Primary School v Christchurch City Council* the Court held that "whether it is expert evidence or direct evidence of such fears, we have found that such fears can only be given weight if they are reasonably based on real risk."

25 In short, when assessing the costs and benefits of the effects of the proposed SASM overlay, policies and rules, the Panel's focus should be on their environmental, economic, social and cultural effects – effects on property values can be assessed if relevant evidence is provided to quantify the actual effects of the provisions on landowners. To try to count impacts on property value in addition to other environmental effects on landowners (such as the potential costs and

[13] *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at [193].

risks associated with having to obtain a resource consent) could lead to improper double-weighting.

26 While a number of submitters have made assertions that the existence of a SASM will affect the value of property, there is no expert valuation evidence from a registered valuer before the Panel that would assist in quantifying the effects of the SASM policy and rule framework. Such opinion evidence is the role of independent experts in valuation, such as a registered valuer. To be a material factor, any effects on property value would need to affect a property in a material way compared to the general market for such land and persist over time. There is no expert evidence that indicates any short, medium or long term impacts on property values that can be given any weight in this case.

27 In some cases, submitters are largely accepting of the policy and rule framework, but oppose the SASM overlay itself on the basis that its mere existence will affect property values. It is submitted that, in those cases, the Panel should be mindful of the caution issued by the Court in the *City Rail Link* case.

Relationship between Plan chapters

28 Transpower made a range of submissions relating to the relationship between the objectives, policies and rules of Energy and Infrastructure Chapter with the underlying zone chapters, particularly in relation to the National Grid, creating tension between Energy and Infrastructure policies and the area-specific policies in the Proposed District Plan.[14]

29 Ms White addressed the issue in her section 42A summary for Hearing B, noting that she agreed in principle that there is a lack of direction in the PDP regarding the way that infrastructure is addressed at a policy level in the area-wide chapters, and that there is a need to address potential tension or conflict between the policies in the Energy and Infrastructure and area-wide chapters.[15] Following discussion with other Hearing B s42A officers, along with Mr Willis (section 42A officer for the Energy and Infrastructure chapters), Ms White proposed in her interim

[14] Statement of Evidence of Ainsley Jean McLeod on behalf of Transpower New Zealand Limited (5 July 2024), at [36] – [38].

[15] Elizabeth Jane White - Section 42A summary statement – Hearing B: Residential and Commercial and Use Zones (17 July 2024), at [10] – [11].

reply that a new sentence be added to the Introduction of the Energy and Infrastructure Chapter as follows:[16]

> *The policies in this chapter take precedence over policies in any Zone Chapter of Part 3 – Area Specific Matters - Zone Chapters.*

30 In his section 42A report, Mr Willis agreed there is a need to address potential tension or conflict between the policies in the EI and area-specific zone chapters and recommended the following amendment be included in the in the Introduction to the Energy and Infrastructure chapter:

> In the case of conflict with any other provision in the District Plan, the NESETA and NES-TF prevail. The objectives and policies in this chapter take precedence over the objectives and policies in any Zone Chapter of Part 3 – Area Specific Matters. In managing the effects of Regionally Significant Infrastructure and other infrastructure, the provisions in Part 2 – District Wide Matters also apply. The application of the rules in relation to other chapters is set out in the Rules section.

31 He also recommended the following amendments to the EI Rules Note:

> Note: …
>
> 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. ~~Unless otherwise specified in this chapter, t~~The provisions of the Development Area Chapter, Designations Chapter and Chapters in Part 2 - District-wide Matters Chapters still apply to activities provided for in Sections A – Section F and therefore resource consent may be required by the rules in Part 2.

32 The Panel has requested:

(a) An analysis of which chapters "prevail" or "take precedence" over others and why across the architecture of the whole PDP; and

(b) Confirmation as to whether the Council intends reference to provisions taking "precedence" to mean "more important/relevance or weight" or "instead of"; and

[16] Elizabeth Jane White – Hearing The – Interim reply: Residential and Commercial and Use Zones (19 September 2024), at Appendix A, page 4.

(c) Examples of drafting solutions from other plans, including the Waimakariri District Plan and particularly as it applies to the Energy and Infrastructure chapter and its relationship to zone chapters and overlays.

33 Counsel has consulted with Council officers and section 42A officers in relation to these matters, and my understanding is set out below.

34 There are a number of places where the PDP provides that the rules in a chapter (for example, some rules in the Energy and Infrastructure chapter) "prevail" over rules in other chapters. In these instances, the intention is that these rules apply "instead of" rules in other chapters. This is made clear in the "Notes" to the rules section of each relevant chapter and are listed in the table below.

Table: Relationship between chapters (rules)

Chapter	Status of rules
EI	• Rules in sections A – F: a. prevails over zone rules. b. Applies in addition to rules in other chapters. • Rules in sections G: a. Applies in addition to rules in other chapters.
TRAN	• Prevails over zone rules; and • Applies in addition of rules in other chapters.
ASW	
CE	
TEMP	• Prevail zone rules where the TEMP has a lower activity status; and • Applies in addition of rules in other chapters.
Other chapters not listed	• Applies in addition to rules in other chapters.
Zones	• As specified above; and • Applies in addition to rules in other chapters.

35 In relation to objectives and policies, the only place where the objectives and policies of one chapter are stated to take precedence over other chapters is the Energy and Infrastructure chapter. As set out in Mr Willis' interim reply, the intention was that the EI objectives and policies would direct how they apply vis a vis other chapters – ie, via EI-O2 and EI-P2.

36 In that regard, Mr Willis recommends that:

(a) EI-O2 provides for the adverse effects of regionally significant infrastructure to be avoided, remedied or mitigated "having regard to" relevant objectives of the underlying zone. "Having regard to" is recommended by Mr Willis to replace "to achieve", reflecting a re-balancing of the EI and zone provisions.[17]

(b) EI-P2 provides for effects to be managed by requiring sensitive design "taking into account" the character and qualities of the surrounding area instead of "to maintain" those character and qualities;

(c) A new Policy EI-PX be included to specifically provide for the National Grid, which directs how adverse effects are to be managed in different areas (ie, urban environments, coastal environment, or other areas).

37 Mr Willis further addresses this matter and provides examples of drafting solutions from other plans in his interim reply.

Consequential amendments to SUB- O1(8)

Background

38 Several submitters[18] sought that some objectives and policies (SUB-O3 and SUB-P5) remove the word "intensive" in relation to primary production, so that that objective and policy address reverse sensitivity effects on all primary production, not only *intensive* primary production.

39 Mr Boyes recommended accepting the submissions in relation to SUB-O3 and SUB-P5 and removing the word "intensive" in relation to primary production.

40 However, SUB-O1(8) also establishes an objective for all new subdivisions to have minimal adverse effects on intensive primary production. Given the recommended amendments to SUB-O3 and SUB-P5, references to *intensive* primary production in SUB-O1(8) are inconsistent with that objective and policy.

[17] [Ref Willis s42A discussion]

[18] Fonterra [165.83], Road Metals [169.30], Fulton Hogan [170.30] and Hort NZ [245.65].

41 The Panel requested that Mr Boyes consult with counsel and advise whether:

> …amendments can be made under RMA, Sch 1 cl10 (consequential amendment) to amend SUB-01(8) to align with changes made to SD Objectives and SUB-O3 and SUB-P5 to ensure that provisions consistently refer to all forms of primary production, not only intensive.[19]

Relevant law on consequential amendments

42 Clause 10 provides that the Panel:

> (1)… must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed… plan concerned;
>
> …
>
> (2)…
>
> …
>
> (b) may include –
>
> (i) matters relating to any consequential alterations necessary to the proposed… plan arising from the submissions; and
>
> (ii) any other matter relevant to the proposed… plan arising from the submissions.

43 Relevant case law principles relating to the scope of amendments that the Panel is entitled to make under clause 10 is summarised in *Gock v Auckland Council* as follows:[20]

> (a) The paramount test is whether any amendment made to the plan as notified goes beyond what is reasonably and fairly raised in submissions on the plan.
>
> (b) That assessment should be approached in a realistic workable fashion.
>
> (c) A submission must first raise a relevant Resource Management issue, and in any decision requested must fairly and reasonably fall within the general scope of the original

[19] Minute 24, at [10(c)].

[20] *Gock v Auckland Council* [2019] NZHC 276 at [43]. See also Memorandum of Counsel (18 December 2024) at [32] - [36].

> submission, or the proposed plan as notified, or somewhere in between.
>
> (d) The approach requires that the whole relief package detailed in submissions be considered.
>
> (e) Consequential changes that logically arise from the grant of relief requested and submissions lodged are permissible, provided they are reasonably foreseeable.
>
> (f) Such changes can therefore extend to consequential rule changes following agreed relief regarding policy changes, provided they are reasonably foreseeable;
>
> (g) There is an implied jurisdiction to make consequential amendments to rules following changes to objectives and policies on the principle that regional and district plans have an internal hierarchical structure.

44 In relation to the type of consequential amendments are contemplated by clause 10(2)(b)(i), Whata J in *Albany North Landowners v Auckland Council*[21] said that, in the context of consequential alterations "necessary" to the proposed plan arising from submissions, the word "necessary" is a fairly strong word falling between expedient or desirable on the one hand and essential on the other.

Analysis

45 The Fonterra submission does not contain a detailed discussion of the matters relevant to the relief sought by it in relation to SUB-O3 and SUB-P5. It simply suggests that the plan should be more explicit in relation to reverse sensitivity effects and provides a tracked change version of the provisions.

46 The Road Metals and Fulton Hogan submissions are identical. Those submissions specifically address the need for all primary production activities to be protected from reverse sensitivity effects, noting that it is not clear why only intensive primary production receives such protection and seek amendments to provide broader protection from reverse sensitivity effects.

47 The Hort NZ submission also supports managing reverse sensitivity effects on subdivision but considers that should apply to all primary production and not limited to intensive primary production. That

[21] *Albany North Landowners v Auckland Council* [2017] NZHC 138. Whata J's comments were made in relation to almost identical wording in the Local Government (Auckland Transitional Provisions) Act 2010.

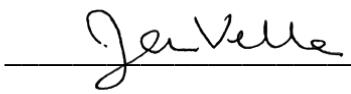
submission notes the links between SUB-O3, SUB-P5 and SUB-R3(9)(d).

48 Having regard to the relevant principles outlined above, the Road Metals, Fulton Hogan and Hort NZ submissions fairly and reasonably raise the point that objectives, policies and rules seeking to protect intensive primary production from reverse sensitivity effects of subdivision should be extended to all primary production. While none of those submitters sought specific amendments to SUB-O1(8), changes to SUB-O1(8), to make it consistent with SUB-O3 and SUB-P5 would logically arise from granting relief in relation to the latter two provisions.

49 Further, given that amending SUB-O3 and SUB-P5 would leave an inconsistency with SUB-O1(8), it is respectfully submitted that amendments are necessary (i.e., more than expedient or desirable, but less than essential) to ensure consistency between the objectives of the proposed plan. In the absence of making such an amendment, SUB-O1(8) would be inconsistent with SUB-O3 and SUB-P5. It is further submitted that this amendment was reasonably foreseeable given the scope of the matters raised in the Road Metals, Fulton Hogan and Hort NZ submissions, such that natural justice considerations are adequately met.

50 The Council is grateful to the Panel for its consideration of these matters.

Dated this 17th of April 2025



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