

BEFORE THE TIMARU DISTRICT PLAN HEARINGS PANEL

UNDER: the Resource Management Act 1991

IN THE MATTER OF: Submissions and further submissions in relation to the
Proposed Timaru District Plan

STATEMENT OF PRIMARY EVIDENCE OF MARY CLAY ON BEHALF OF MELVIN GEORGE AITKEN, PAUL
ALEXANDER JOHNSTON, RSM TRUST LIMITED
(SUBMITTER NO. 237)

Dated: 5 July 2024

HEARING STREAM B
PART B2 – URBAN ZONES
RESIDENTIAL AND COMMERCIAL AND MIXED USE ZONES

SUMMARY STATEMENT

- 1. The Aitkens Family submission on the Proposed Timaru District Plan (PTDP) sought to retain the current Commercial zoning relating to land they own at 27 Hally Terrace, Temuka and 168 King Street, Temuka. The properties in question, are currently zoned Commercial 1 (COM 1), under the Operative Timaru District Plan.*
- 2. The Timaru District Council has proposed a zoning of General Residential Zone (GRZ) on the subject properties.*
- 3. Aitken et al., in their submission regarding 27 Hally Terrace (submission point 237.5), requested the land be zoned Town Centre Zone (TCZ) rather than the proposed General Residential Zone (GRZ) as this better aligns with current zoning of Commercial 1 (COM 1). The land is situated on the eastern edge of Temuka's town centre and is currently part of a Commercial 1 zone, despite having residential characteristics. The submitters argue that rezoning to TCZ is more appropriate, preserving commercial use potential and avoiding the reduction in commercial zoning that the GRZ proposal entails. Ms. White's s42A report suggests that rezoning to TCZ would create an isolated pocket and is unnecessary due to no shortfall of commercially zoned land. However, the submitters counter that retaining the commercial zoning aligns with future development needs and planning principles. They propose a solution allowing mixed-use zoning to accommodate both residential and commercial activities. This approach, they argue, better serves the property's proximity to the town centre and the expectations of both current and future property uses.*
- 4. Additionally, with regards to the submission on 168 King Street, Temuka (known as submission point 237.9) the submitter sought that the land in question was zoned TCZ, rather than the proposal to change the zone from Commercial to GRZ. I note that Ms. White has recommended that this submission be accepted. The site in question adjoins an existing non-residential activity to the east, and is opposite commercial activities to the west and south. I therefore consider that the continued zoning of this land for commercial purposes is far more logical than a residential zoning, and reflects the lands suitability under the requirements of the Act for assessment in a plan change context. Retaining the TCZ zoning is more suitable and logical, reflecting the current and future land use for that land also.*

STATEMENT OF EVIDENCE

1. My full name is Mary Katherine Clay. I am employed by Avanzar Consulting Ltd, as their Principal Planner and have been in this position since December 2013.
2. I hold the qualifications of a Bachelor of Science (Geography) from Canterbury University and a Master of Applied Science (Environmental Management) from Lincoln University.
3. I am a planner contracted by Davis Ogilvie (Aoraki) Ltd to provide planning services on their behalf. I have over 23 years of experience as a Planner, two of which being in the UK and the remainder in New Zealand, both as a Council Planner, and, for the last 17 years as a planning consultant. My work has been varied, and has included preparation of resource consents, assessment of environmental effects, policy preparation, plan changes, submissions and other similar work for private clients, as well as processing consents, processing plan changes, and preparing plan changes and policy for Councils as the client.
4. Following receipt and review of the Section 42A Report, authored by Ms. White, Davis Ogilvie (Aoraki) Ltd have engaged my services on behalf of the Aitkens Family.
5. I am authorised to provide this evidence on behalf of submitters Melven George Aitken, Paul Alexander Johnson and the RSM Trust Limited. They are the family representatives of the land in question. They are concerned about the restrictions that the proposed changes to zoning of their property may have on their future plans.
6. My evidence relates to the submission points 237.5 and 237.9 of the Proposed Timaru District Plan (PDP).
7. I am familiar with both the Operative District Plan and relevant Proposed District Plan documentation associated with the proposal and the s42A report prepared in advance of this hearing. I am familiar with the township of Temuka and have carried out site inspections of the sites to which this evidence refers.
8. I am familiar with the **Code of Conduct for Expert Witnesses** in the Environment Court Practice Note (2014) and have complied with the Code in preparing this evidence. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
9. With regard to 27 Hally Terrace in their original submission (known as submission point 237.5), Aitken et al. sought that 27 Hally Terrace be zoned Town Center Zone (TCZ). The land in question, 27 Hally Terrace, is currently zoned Commercial 1 (COM 1), under the Operative Timaru District

Plan. Through their Proposed District Plan, the Timaru District Council has proposed a zoning of General Residential Zone (GRZ).

10. The land in question is located on the eastern periphery of the Temuka town centre. The land is currently part of a Commercial 1 zone that comprised the town centre area from where the Temuka bypass veers to the west at the northern end of the town centre and extends down south through to Fraser Street. To the east of the subject site, Hally Terrace extends in a north south direction, effectively creating a boundary between the commercial zone and outer zones. In the Operative District Plan, the Commercial 1 zone extends north to Dyson Street along Hally Terrace, then extends slightly further north to the bypass intersection along King Street to fully include the New World supermarket. The excerpt below shows the current land zoning pattern under the Operative District Plan.



Image 1: Operative Timaru District Plan Planning Maps

This current Commercial 1 zone comprises a range of differing land uses. Along much of Hally Terrace, despite being zoned Commercial 1, some residential dwellings remain, although to the south of 27 Hally Terrace, some of the sites are used for commercial purposes and to the east of Hally Terrace land uses include a container yard and firewood merchant.

11. The submitter sought that the Council's proposal to rezone the land to General Residential Zone (GRZ) was discarded and contended that a Town Centre Zone zoning is more appropriate, and that the proposed change of zoning reduces the scope for commercial use of the land. The excerpt below, shows the Proposed District Plan zoning pattern in the vicinity of the Temuka town centre.

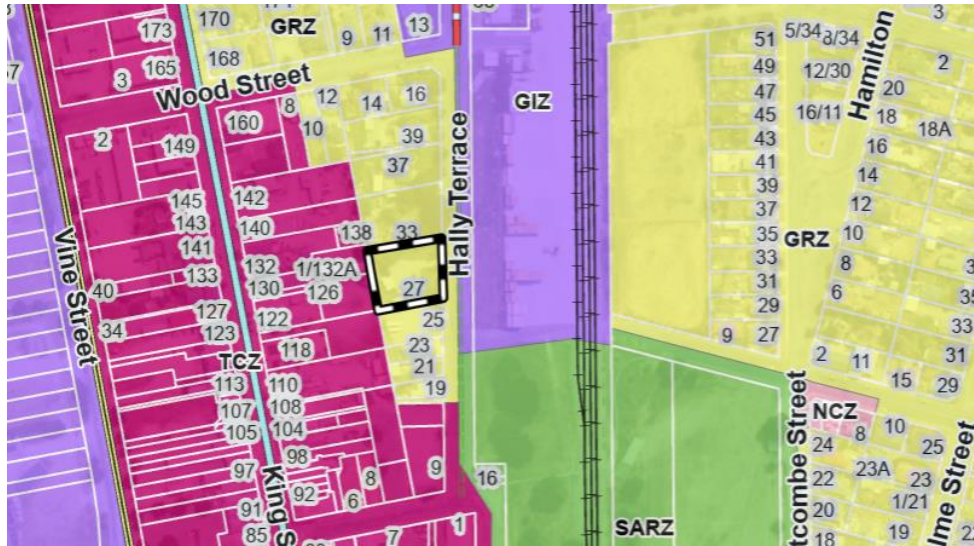


Image 2: Proposed Timaru District Plan Planning Maps

12. It is helpful initially, to consider Ms. White's s42A report, where in paragraph 6.39.21, she states that:

'The boundary between the TCZ and GRZ appears to relate to existing land uses, with residential dwellings being located from 19 Hally Terrace to the north. I accept that GRZ affects the potential for the property to be used for commercial purposes, albeit such a land use could still be considered through a resource consent under the GRZ framework. In my view, rezoning 27 Hally Terrace would result in an isolated pocket of TCZ, and would only be appropriate if the southern properties were also rezoned, which is outside the scope of the submission. Even if these could be considered, my view is that it is not necessary to zone additional land TCZ which currently has a residential land use established, unless there is no shortfall of commercially zoned land, which is not the case in Temuka. I therefore recommend retention of the GRZ for this property.'

13. In considering the relief sought by submitter 237 on this matter, I make reference to the opening legal submissions for Hearing A, which set out the broad legal principles relevant to issues of scope and potential amendments.

14. 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*

15. Furthermore, I note that these principles make it clear that there is a broad scope to make amendments to the Proposed District Plan. It is well accepted 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*
- c) *Somewhere in between.*

16. The subject land at 27 Hally Terrace is zoned under the Operative Plan for commercial use, although has remained residential in appearance and character over the lifetime of the current Operative Plan. Despite its current residential use, the owner of 27 Hally Terrace and other allotments zoned commercial in its vicinity, have all remained aware of the land's commercial zoning and some will, no doubt, have made long term plans, including financial arrangements, based on that commercial zoning.

17. In considering the most appropriate zoning of this land, it is important to consider the future as well as the present. Indeed, the very nature of planning, is that one must 'plan for' the future. However, it appears as though, in seeking the land to be rezoned to residential, that the Council has merely applied the existing land uses to those allotments for which a change is proposed from Commercial 1 to RCZ. Indeed, Ms. White seems to confirm this approach in her comments within paragraph 6.39.21. Her assessment seems to contend that 'rezoning to TCZ' would result in an isolated pocket of TCZ, and would only be appropriate if the properties to the south were also rezoned, which she contends would be out of scope.

18. In fact, I would submit that the rezoning proposal that must be considered is actually from Commercial 1 to GRZ, and that the submitter in this case merely seeks to retain their existing commercial zoning.

19. Ms. White goes on to contend that '*it is not necessary to zone additional land TCZ*'. It is my opinion that this approach is flawed. While I agree that the land is not **currently** being used for commercial purposes, it must be remembered that the site is zoned 'commercial' under the Operative Plan. Therefore, this proposal is not to rezone **additional** land for commercial purposes.

20. Ms. White concludes that there is no shortfall of commercially zoned land and that therefore there is no need for 'additional' commercially zoned land. In any town planning context it is important to ensure that there is sufficient commercially zoned land to allow for future development. In this case, the retention of 27 Hally Terrace as the equivalent commercial TCZ zoning (and possibly other

adjacent land that is zoned commercial under the Operative Plan) would assist in ensuring there is sufficient commercially zoned land for future growth. Indeed, the loss of commercially zoned land, as the Council is proposing here, in a location within the same block as the main shopping street, on a site that abuts allotments that immediately front the main shopping part of King Street, seems illogical. It is also worth noting that should the land be rezoned to GRZ, that the land would be sandwiched between the commercially zoned land to the west, and industrial land immediately to the east and would be only one allotment deep.

21. I do note, that some of the owners of land along Hally Terrace in the vicinity of 27 Hally Terrace, and 27 Hally Terrace itself, may wish to retain the residential uses. Nothing in the Proposed Plan alters the property owner's ability to continue their existing residential use should they so wish. Through allowing the site to retain its commercial use, through zoning it TCZ, those properties (who may wish to remain residential), would lose nothing in terms of amenity, over what they may expect in terms of development under the Operative Plan commercial framework. Furthermore, these properties who anticipated development for commercial purposes in the future may now find that investment in Temuka township is now less desirable if zone is changed to GRZ.
22. From my perspective, and having considered the costs and benefits of various zoning patterns for this land located so close to the main shopping street, i.e., directly abutting commercially zoned sites, a solution may be to allow a wider array of options. It is my view, having considered various options, that a better response may be to allow for a commercial zoning such as TCZ to be allocated to 27 Hally Terrace and neighbouring properties if permitted in terms of scope, and, with a site-specific exception to the rules for the TCZ zone, to allow for residential activity at ground floor level. This would effectively allow those properties currently zoned commercial, who wish to actually use their commercial zoning, to be able to do so in the future, recognizing the proximity of these properties to the Town Centre, but also indicate clearly that residential use remains acceptable.

An exception could be drafted in terms of specific certificates of title, a plan, or described in spatial terms in wording within the plan for example, within the TCZ rules:

TCZ-R5

Activity Status – Permitted

Where:

PER-1

The residential activity is undertaken within a residential unit that is:

1. Located above ground floor level of a building; or
 2. Is located at ground floor level and the residential unit was existing as at 22nd September 2022;
- Except for properties on the western side Hally Terrace in Temuka, between Domain Avenue and Dyson Street, that the requirements 1 and 2 above shall not apply, and that residential activity at ground floor level is a permitted activity.

23. I consider that the option above is a sensible and pragmatic solution to the issue in question, and reflects the needs of the owners of the property at 27 Hally Terrace, whilst not eroding any property rights of surrounding neighbours. Allowing residential activity at ground floor level, in what may effectively be a mixed use zone (given it allows both residential and commercial use), is more appropriate than rezoning the land in question to residential only, which would result in future occupiers expecting a higher level of residential amenity than could reasonably be expected in such close proximity to the main street of Temuka.

24. With regards to the submission on 168 King Street, Temuka (known as submission point 237.9) the submitter sought that the land in question was zoned TCZ, rather than the proposal to change the zone from Commercial to GRZ. I note that Ms. White has recommended that this submission be accepted. It is my opinion that the zoning of the land TCZ is much more suitable than the initially proposed GRZ. It is noted that the site in question adjoins an existing non-residential activity to the east, and is opposite commercial activities to the west and south. I therefore consider that the continued zoning of this land for commercial purposes is far more logical than a residential zoning, and reflects the land's suitability under the requirements of the Act for assessment in a plan change context.

25. **In conclusion**, it is my view that:

- a modified TCZ zoning of 27 Hally Terrace represents the most appropriate zoning of land, and
- it is clear that land at 168 King Street should be retained for future commercial use and therefore be zoned TCZ.

Mary Clay

Principal Planner,

5 July 2024