

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 District Plan

**STATEMENT OF PRIMARY EVIDENCE OF KIM MARIE SEATON ON BEHALF
OF PRIMEPORT TIMARU LIMITED
AND TIMARU DISTRICT HOLDINGS LIMITED**

**HEARING STREAM D
HAZARDS AND RISKS (EXCLUDING NATURAL HAZARDS)**

Dated: 25 October 2024

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EXECUTIVE SUMMARY

1. My full name is Kim Marie Seaton. I am a principal planner practicing with Novo Group Limited in Christchurch.
2. My evidence relates to the submissions and further submissions of PrimePort Timaru Ltd (**PrimePort**) and Timaru District Holdings Limited (**TDHL**) on the Proposed Timaru District Plan (**PDP**) as relevant to Hearing Stream D.
3. For the reasons set out below:
 - (a) I consider that it is not appropriate for the Contaminated Land chapter to contain provisions protecting indigenous biodiversity.
 - (b) I support amending Objective HS-O2 to include reference to increased scale or intensity of sensitive activities.
 - (c) I consider that clause (3) of Policy HS-P1 should explicitly exclude the PORTZ, and that the clause as currently written is potentially confusing and would benefit from being rewritten.
 - (d) I agree with BP et al that Clause (4) of Policy HS-P1 should become a separate policy.
 - (e) I support the recommended changes in the Section 42A Report to Policy HS-P4, and Rule HS-R1, to refer to 'sensitive locations' rather than 'sensitive environments', so as to narrow the range of areas to be considered in the Hazardous Substances chapter. However, the 'sensitive locations' definition requires amendment to more clearly exempt the Port Zone (**PORTZ**).
 - (f) I support amending Rule HS-R2 to enable upgrade, addition and alterations to existing Major Hazard Facilities (**MHF**).
 - (g) I consider that the heading of Rule HS-R4 should be amended to remove reference to 'additions to major hazard facilities'.
 - (h) I have no issues with the recommended changes in the Section 42A Report to the definition of 'hazardous facility'.
 - (i) I support the proposed amendments to the Planning Maps to clarify the location of the MHFs within the PORTZ.

INTRODUCTION

4. My full name is Kim Marie Seaton. I am a principal planner practicing with Novo Group Limited in Christchurch.
5. I hold the qualifications of a Bachelor of Arts and a Master of Regional and Resource Planning from the University of Otago.
6. I have 25 years of experience as a resource management planner with particular experience in land use development planning as a consultant to property owners, investors, developers and community organisations, and through processing resource consents for district councils.
7. I am authorised to provide this evidence on behalf of both PrimePort and TDHL, a company with a shareholding interest in PrimePort.

CODE OF CONDUCT

8. I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023, and agree to comply with it. My qualifications as an expert are set out above. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

9. I have previously given evidence for PrimePort and TDHL at Hearing Streams A and B.
10. This evidence relates to those parts of the submissions and further submissions of PrimePort and TDHL on the Proposed Plan that relate to Hearing Stream D, and which include:
 - (a) A new Contaminated Land rule sought by Forest and Bird;
 - (b) Hazardous Substances chapter:
 - (i) Objective HS-O2 Sensitive activities;
 - (ii) Policy HS-P1 New Major Hazard Facilities and additions to existing Major Hazard Facilities;

- (iii) Policy HS-P4 Hazardous facilities (other than Major Hazard Facilities);
 - (iv) A new policy sought by BP Oil, Mobil Oil New Zealand Ltd, Z Energy (**'BP Oil et al'**);
 - (v) Rule HS-R1 Use and/or storage of hazardous substances in a hazardous facility (excluding Major Hazardous Facilities);
 - (vi) Rule HS-R2 Maintenance and repair of Major Hazard Facilities;
 - (vii) Rule HS-R4 New Major Hazard Facilities and additions to Major Hazard Facilities.
- (c) Definitions of 'hazardous facility' and 'sensitive location';
 - (d) The Planning Maps; and
 - (e) SCHED 2 Schedule of Major Hazard Facilities.
11. In preparing the evidence I present now, I have reviewed and considered the following:
- (a) The Proposed District Plan (**PDP**);
 - (b) The Canterbury Regional Policy Statement (**CRPS**);
 - (c) The New Zealand Coastal Policy Statement (**NZCPS**);
 - (d) The National Planning Standards;
 - (e) Relevant National Policy Statements;
 - (f) The PrimePort and TDHL submissions and further submissions on the PDP;
 - (g) The Section 42A report dated 11 October 2024 by Mr Andrew Willis; and
 - (h) The evidence of Mr Cooper for PrimePort and TDHL in respect of Hearing Stream D.

THE SUBMISSIONS

12. The Port of Timaru (**the Port**) is the location of existing Major Hazard Facilities, being a key location for import and storage of hazardous substances, notably including fuel. The PrimePort and TDHL submissions

and further submissions therefore seek to ensure that the PDP provisions are adequately enabling of Major Hazard Facilities and hazardous substance use and management within the Port Zone (PORTZ).

13. Mr Munro, in his brief of evidence for Hearing Stream A, outlined the significance of the Port to Timaru District and the wider Canterbury Region. He also outlined the range of activities occurring within the Port and wider PORTZ currently, and anticipated in the foreseeable future. That evidence is also relevant to Hearing Stream D and I rely on it where I state that below.

CONTAMINATED LAND

14. PrimePort and TDHL lodged submissions supporting retention of the Contaminated Land chapter containing no rules controlling contaminated land, on the basis it is appropriate to instead defer to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NESCS**). PrimePort and TDHL also made further submissions opposing a submission by Forest and Bird¹ seeking an additional standard or rule be inserted, to protect environmental health/indigenous biodiversity.
15. I agree with the Section 42A report² that Forest and Bird's requested amendment goes beyond what the NESCS requires. The introduction to Chapter CL-Contaminated Land clearly states that the chapter is intended to provide '*objective and policy direction for the assessment of any resource consent application made under the NESCS.*' The requested new standard or rule would not be appropriate in this context. I also agree with Mr Willis that such a provision would likely be difficult for Council to implement. I therefore consider the requested provision is not needed.
16. I note a similar assessment was made by Mr Willis in respect of Forest and Bird's submission on CL-O1, which I agree with.

OBJECTIVE HS-O2 SENSITIVE ACTIVITIES

17. PrimePort and TDHL are further submitters on the BP Oil et al submission 196.59, in respect of Objective HS-O2. That submission seeks to include reference to increased scale or intensity of existing sensitive activities in the objective. PrimePort and TDHL supported the submission. I agree that it

¹ Submission 156.84.

² Paragraph 6.6.7 of Mr Willis's Section 42a report.

would be sensible to reference increased scale or intensity of existing sensitive activities, in some form, into the objective.

18. The Section 42A Report notes that all the MHF listed in SCHED2 are located within Timaru Port where the activity status of sensitive activities is non-complying³. I agree that this is the case, but nonetheless I also agree that it is possible for sensitive activities to seek consent to locate in the PORTZ, and for those activities to expand in time. Whilst the likelihood of that occurring may be low, it is possible. I also agree with the Section 42A Report that there is a Mixed Use Zone at Turnbull Street proposed within 250m of an existing MHF and immediately adjoining the PORTZ. Residential Activities are potentially a permitted activity within that Zone (as notified)⁴. I therefore consider it would be sensible to provide clear policy support for consideration when assessing any expanded sensitive activities in the future. I therefore support the amendments proposed to HS-O2.

POLICY HS-P1 NEW MAJOR HAZARD FACILITIES AND ADDITIONS TO EXISTING MAJOR HAZARD FACILITIES

19. As notified, Policy HS-P1 Clause 3 sought, in effect, to prevent both new and expanded MHF from establishing in sensitive environments. This would have covered the entirety of the PORTZ as the notified definition of 'sensitive environments' includes the coastal environment area, which covers all of the PORTZ. For clarity, the notified version of HS-P1 stated:

'Avoid unacceptable risks of new Major Hazard Facilities and additions to Major Hazard Facilities by:

...

3. locating Major Hazard Facilities outside of sensitive environments, except for Natural Hazard Areas (not defined as a High Hazard Area); and...'

20. PrimePort and TDHL opposed clause 3 of Policy HS-P1, on the grounds that it would be an impractical and onerous provision given the operational requirement for MHF to locate within the PORTZ. The evidence of Mr Cooper on behalf of PrimePort and TDHL for this hearing, confirms the location of the existing MHF within the PORTZ (as also now correctly confirmed in the Section 42A Report) and confirms both the necessity of

³ Paragraph 6.17.6 of Mr Willis's Section 42a report.

⁴ MUZ-R8 Residential activities within existing buildings

providing MHF within the PORTZ and the potential demand for both new and expanded MHF in the future. Mr Munro's evidence for Hearing Stream A on behalf of PrimePort and TDHL also addressed petrochemical and bulk liquid storage requirements and supply within the PORTZ⁵. I further note that of the existing MHF within the PORTZ, one is within PREC7 (MHF-2) and the remaining three are located in the PORTZ more generally. Mr Cooper's evidence states that three of the MHFs within the PORTZ are Lifeline Utilities, and I confirm this is the case per the definition of Lifeline Utilities in the PDP that includes '*An entity that produces, processes, or distributes to retail outlets and bulk customers any petroleum products used as an energy source...*'

21. Relying on the evidence of Mr Cooper, I consider it is both appropriate and necessary to ensure that a pathway exists for assessing and, where appropriate, granting consent for new and expanded MHF within the PORTZ. To be clear, I am not suggesting that new or large expansions of MHF should be permitted activities in the PORTZ (and I discuss this further in relation to the rules below), but the Hazardous Substances policies should not prevent or greatly restrict consideration of such facilities in the PORTZ. Policy HS-P1 in its notified form does just that.
22. Mr Willis's response to the PrimePort and TDHL submissions is to agree that the policy is impractical and onerous in its notified form. He has suggested removing reference to 'sensitive environments' and replacing it with 'sensitive locations', which captures a reduced set of sensitive areas⁶. Mr Willis notes that the definition of 'sensitive locations' should exclude the PORTZ, stating:

*'I consider that this definition should exclude the PORTZ for the reasons provided by the submitters.'*⁷

23. I will discuss the proposed definition of 'sensitive locations' further below, but in summary, at least half of the PORTZ would still likely be captured by the proposed definition of 'sensitive locations'. Therefore, whilst it is an improvement, the amended policy does not go far enough in providing for consideration of MHF in all of the PORTZ.

⁵ E.g. see paragraphs 39(i), 40(f), and 45 of Mr Munro's evidence.

⁶ Paragraph 6.18.10 of Mr Willis's Section 42a report.

⁷ Ibid.

24. Further to this, and on further reflection, the current wording of clause (3) is potentially quite confusing. “Natural Hazard Areas”, for example, is capitalised but is not defined. The second part of clause (3), being ‘*except for Natural Hazard Areas (not defined as a High Hazard Area)*’, together with the reference to either ‘sensitive locations’ or ‘sensitive environments’ definitions, makes the clause quite convoluted.
25. I understand the proposed amended clause (3) (including the definition of ‘sensitive locations’) are intended to mean that the avoidance of new MHF would not apply within the PORTZ, but are to be otherwise avoided within the following areas in all other zones:
- i. High Hazard Areas⁸;
 - ii. Drinking Water Protection Areas;
 - iii. Areas within 250m of a MHF; and
 - iv. Areas within 100m of the edge of a Riparian Margin or wetland area.
26. In all other locations, MHF could possibly be consented, where the remaining clauses of HS-P1 are addressed.
27. In my view, the PORTZ needs to be clearly exempted from HS-P1(3). I consider the clearest way of doing this is to put the exemption within the policy, so that Clause (3) would read (adopting the Section 42a Report wording):
- ‘Other than within the PORTZ, locating new Major Hazard Facilities outside of sensitive locations, except for ~~N~~natural ~~H~~hazard ~~A~~areas (not defined as a High Hazard Area); and’***
28. This amendment would meet the primary concern of PrimePort and TDHL more effectively than the amended ‘sensitive locations’ definition offered in the Section 42A Report.
29. However, in terms of the readability, I consider further amendments are required. Adopting the Section 42A Report’s narrower definition of sensitive locations, I suggest a simpler and clearer wording of clause (3) would be:

⁸ Definition to be confirmed through the Natural Hazards chapter hearing.

Other than within the PORTZ, locating new Major Hazard Facilities outside of sensitive locations, except for Natural Hazard Areas (not defined as a High Hazard Area):

i. High Hazard Areas,

ii. Drinking Water Protection Areas,

iii. areas within 250m of a Major Hazard Facility; and

iv. areas within 100m from the edge of a Riparian Margin or wetland area; and

30. Regarding clause (4), PrimePort and TDHL supported this clause on the understanding that the PORTZ was not a high hazard area (it was not mapped on the High Hazard Area Overlay), and that it is appropriate for natural hazard-related effects to be considered for both new and expanded MHF. Currently, clause (4) both as notified and as amended in the Section 42A Report, would only apply to those parts of the PORTZ that are not defined as a High Hazard Area, which is potentially less than half of the PORTZ⁹. In my view, clause (4) should apply to the entirety of the PORTZ, and similarly should apply in all natural hazard areas in other zones.
31. I understand from my reading of the Section 42A Report and subsequent discussions with Mr Willis, that High Hazard Areas were excluded from Clause (4) out of concern that Clauses (3) and (4) could contradict each other if clause (3) sought to avoid MHF in High Hazard Areas but clause (4) implied otherwise. This potential conflict could be resolved, and natural hazard issues addressed in all zones, by accepting the BP Oil et al submission¹⁰ seeking that clause (4) be a separate policy. There remains a possibility that clause (4) or a separate policy could be seen to undermine clause (3) of HS-P1, but I consider HS-P1 is more specific and directive with regard to High Hazard Areas and that read together, HS-P1 would carry greater weight.
32. I therefore recommend that clause (4) be deleted from HS-P1 and included as a separate policy as follows:

HS-PX Major Hazard Facilities and natural hazard areas

⁹ Though this is not able to be confirmed until the definition of High Hazard Areas is addressed in the Natural Hazards chapter hearing in 2025.

¹⁰ Submission 196.60

Ensure that suitable measures are undertaken to:

a. avoid or minimise adverse effects from natural hazards on Major Hazard Facilities; and

b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.'

33. Finally in regard HS-P1, I note that the HS-P1 recommended text under paragraph 6.18.7 of the Section 42A Report is inconsistent with the recommended text in Appendix 1 to that report, insofar as paragraph 6.18.7 does not amend 'sensitive environments' to 'sensitive locations' in clause (3). I assume this is an oversight in paragraph 6.18.7 and the correct text is what is contained in Appendix 1.

POLICY HS-P4 HAZARDOUS FACILITIES (OTHER THAN MAJOR HAZARD FACILITIES)

34. PrimePort and TDHL submissions on Policy HS-P4 opposed the policy in part, on the basis again that the policy references 'sensitive environments' that would capture the PORTZ in its entirety and be potentially problematic for the consideration of hazardous facilities in the PORTZ. Examples of hazardous facilities in the PORTZ currently are noted by Mr Cooper and include smaller fuel storage tanks. There is also a large cement silo that I understand could possibly fall within the definition of a hazardous facility. Examples of other possible facilities in the future may include additional smaller fuel storage tanks, agricultural stores and other small chemical storage tanks.
35. The Section 42A Report has recommended amendments to HS-P4 that include referencing 'sensitive locations' rather than the much broader definition of 'sensitive environments'. I agree that the definition of 'sensitive environments' is too broad in the context of hazardous substances considerations. It is unclear to me why a Heritage Item extent or Visual Amenity Landscape, to note two examples, would be notably sensitive to a hazardous facility. I therefore agree that a narrower definition of sensitive areas in a hazardous substances context is appropriate.
36. As I discuss below, the proposed definition of 'sensitive locations' needs to be further amended to exclude the PORTZ entirely. Amending the definition of 'sensitive locations' per my recommendation below, would assist with making HS-P4 more workable in the PORTZ context.

37. The Section 42A Report recommends amending clause (1)(a) to remove the text '*except for a Flood Assessment Area*'¹¹. I support removing this text to make the policy more legible and more easily understood.
38. Overall, I support the amended HS-P4 as proposed in the Section 42A Report, subject to the PORTZ being excluded from the definition of 'sensitive locations'. I also agree with the Section 42A Report where it states that it may be necessary to revisit this provision in the hearing addressing Natural Hazards and Coastal Environment, in 2025¹².

RULE HS-R1 USE AND/OR STORAGE OF HAZARDOUS SUBSTANCES IN A HAZARDOUS FACILITY (EXCLUDING MAJOR HAZARD FACILITIES)

39. The PrimePort and TDHL submissions opposed Rule HS-R1 in part, as 'sensitive environments' was defined so broadly as to capture all of the PORTZ, which in effect would mean that any hazardous facility would require resource consent within the entirety of the PORTZ. I consider this would be an onerous consenting burden within the PORTZ, which is an existing industrial urban area where hazardous facilities may have an operational or functional requirement to locate. I therefore support the amendment to PER-1, to reference 'sensitive locations', subject to my recommendation that the PORTZ be exempted from the 'sensitive locations' definition.
40. This would then leave PER-2 applying, where hazardous facilities in a Flood Assessment Area Overlay would be required to establish above specified minimum floor levels. I do note that the Flood Assessment Area Overlay applies across the large majority of the PORTZ. However, in general terms I consider the Restricted Discretionary Activity status is appropriate for consideration of use or storage of hazardous substances in flood affected areas where minimum floor levels are achieved.

RULE HS-R2 MAINTENANCE AND REPAIR OF MAJOR HAZARD FACILITIES

41. PrimePort and TDHL provided submissions in support of Rule HS-R2, seeking that it be retained as notified. The Section 42A Report recommends amendments to the rule, in response to BP Oil et al and other submissions, so that the rule also provides for upgrades, additions and alterations to MHFs, subject to achieving two new standards. I agree that

¹¹ Paragraph 6.21.17 of Mr Willis's Section 42a report.

¹² Paragraph 6.21.12 of Mr Willis's Section 42a report.

allowing some upgrade, addition or alteration, where risk profiles are not increased, is a reasonable request. I also consider it is appropriate to put a limit on the scale of increase that can be permitted without further assessment. It is beyond my expertise to determine whether the 10% figure is appropriate or not and I defer to the evidence of the MHF operators on that matter.

42. The proposed activity status of Discretionary, for non-compliance with Rule HS-R2, is consistent with the status of new MHFs, and would allow for a range of environmental effects and risks to be considered, and for this reason I consider it is appropriate.

RULE HS-R4 NEW MAJOR HAZARD FACILITIES AND ADDITIONS TO MAJOR HAZARD FACILITIES

43. PrimePort and TDHL made submissions in support of the rule, seeking that it be retained as notified. Other submitters have sought to amend HS-R4 so that it only applies to new MHF. The Section 42A Report notes that following the recommended changes to HS-R2, HS-R4 need not be amended to also cover additions/upgrades¹³. On reviewing this issue further, and in light of the changes proposed to HS-R2 to address upgrades and additions to MHF, I consider that the heading to HS-R4 does need to be amended, so that the rule only applies to New MHF, as Mr Willis intends and to provide consistency with HS-R2. The rule heading therefore should be amended as follows:

HS-R4 New Major Hazard Facilities ~~and additions to Major Hazard Facilities~~

DEFINITION - HAZARDOUS FACILITIES

44. PrimePort and TDHL made further submissions in support of BP Oil et al's submission seeking the notified definition Hazardous Facility be retained. The Section 42A Report makes some small changes to that definition in response to other submissions. I have no issue with those recommended changes and make no further comment.

NEW DEFINITION – SENSITIVE LOCATIONS

45. The Section 42A Report suggests a new definition, sensitive locations, for use in the Hazardous Substances chapter, to more narrowly define areas

¹³ Paragraph 6.26.5 of Mr Willis's Section 42a Report.

that may be sensitive to hazardous substance facilities and MHF. I support the use of a narrower definition. The Section 42A Report sets out that the PORTZ is intended to be exempt from the definition¹⁴, to enable consideration of the PORTZ for such facilities. I agree this is appropriate given the existing MHF that are located within the PORTZ and the functional and operational needs for MHF and hazardous substance facilities to locate there.

46. The proposed definition excludes the PORTZ where it is affected by overlays, but does not exclude the PORTZ where it is identified in a Flood Certificate as being a High Hazard Area. Based on flood mapping that I have seen recently in discussions between PrimePort, Environment Canterbury and Timaru District Council staff in relation to coastal hazards, more than half of the PORTZ has the potential to be identified as a High Hazard Area. The definition of High Hazard Area and its applicability to the PORTZ will be addressed in the Natural Hazards and Coastal Environment chapters hearing in 2025. For the purposes of this current hearing, I must assume that the PORTZ may be captured by clause (2) of the 'sensitive locations' definition. Given Mr Willis's intention to exclude the PORTZ from the definition of 'sensitive locations' and Mr Cooper's evidence as to the necessity for locating MHF and hazardous facilities in the PORTZ, in my view the definition should be amended as follows:

Sensitive Locations means:

Excluding the PORTZ

1. Areas within the following Overlays identified on the Planning map, ~~but excluding the PORTZ:~~

a. An Earthquake Fault Awareness Overlay; and

b. A High Hazard Area Overlay; and

c. The Sea Water Inundation Overlay; and

d. The Coastal Erosion Overlay; and

e. A Drinking Water Protection Area; and

f. The area within 250m of an MHF; and

¹⁴ E.g. see paragraph 6.18.10 of Mr Willis's Section 42a Report.

2. the below areas:

a. The area within 100m from the edge of a Riparian Margin or wetland area; and

b. High Hazard Areas identified in a Flood Certificate issued under NH-S1.

47. The definition of 'sensitive locations' is another matter that may need to be revisited in the Natural Hazards and Coastal Environment hearing in 2025.

PLANNING MAPS AND SCHED 2

48. PrimePort and TDHL provided submissions noting errors in the Planning Maps and SCHED2 in respect of the MHF. The Section 42A Report addresses those errors and recommends correcting the Planning Maps. Mr Cooper has agreed that the corrections are appropriate and I rely on Mr Cooper's evidence to support those changes.

CONCLUSION

49. I support the Section 42A Report's recommendation to narrow the range of areas considered to be sensitive to hazardous substances. Based on the evidence of Mr Cooper, I consider it is appropriate to provide for alterations and upgrades, new and expanded MHF and hazardous facilities within the PORTZ, and that there is a notably greater operational requirement for MHF within the PORTZ when compared to other zones. I accept that the Section 42A Report recommendations endeavour to provide a consenting pathway for MHF in the PORTZ, but the recommendations do not go far enough and further amendments are necessary. I also recommend further amendments to Policy HS-P1 clause (3) to improve readability, and the removal of clause (4) to a separate policy. The amendments to MHF mapping are supported.

Date: 25 October 2024

Kim Marie Seaton