

**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

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

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

Dated: 4 November 2024

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## **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 D:
- (a) the proposed provisions of the Contaminated Land chapter;
  - (b) the proposed objectives, policies, rules and other provisions of the Hazardous Substances chapter;
  - (c) the proposed definitions of 'hazardous facility' and 'sensitive location'; and
  - (d) the planning maps and schedule of Major Hazard Facilities (**MHF**).

### **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:
- (a) Tony Cooper, Project Manager/Engineer of PrimePort, who outlines the strategic and regional significance of MHFs located in the Special Purpose Port Zone (**PORTZ**). He will explain why it is essential for the PDP to enable the efficient and ongoing operation, maintenance, repair and upgrade of existing MHFs and the construction of new MHFs within the PORTZ. He will also discuss the importance for the Port and other businesses to have the ongoing ability to establish smaller hazardous facilities in the PORTZ.
  - (b) Kim Seaton, Planner, who assesses the provisions and definitions that PrimePort and TDHL have submitted on, and makes recommendations for amendments.

- 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, including petrochemical and bulk liquid storage requirements and supply within the PORTZ.<sup>1</sup> Amongst other things, Mr Munro mentions that:
- (a) Petroleum products imported direct to the Port enables low-cost fuel supply to the region.<sup>2</sup>
  - (b) If the Port was unable to operate in an economically efficient and effective manner, or was forced to restrict its operations, importers and exporters will consider alternative supply chain transport options, resulting increased costs of petroleum products.<sup>3</sup>
- 2.4 For the most part, the issues raised by PrimePort and TDHL relevant to Hearing D – PORTZ have been addressed in the section 42A report by Mr Andrew Willis.<sup>4</sup> These submissions comment on those issues, while setting out further changes requested.

### **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 D.<sup>5</sup>

### **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".<sup>6</sup> 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;<sup>7</sup>

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

<sup>2</sup> Ibid, at paragraph 26.

<sup>3</sup> Ibid, at paragraph 30(b).

<sup>4</sup> Section 42A Report: Contaminated Land and Hazardous Substances dated 11 October 2024 ([here](#)).

<sup>5</sup> 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](#)).

<sup>6</sup> Section 75(3) RMA.

<sup>7</sup> NZCPS policy 9; CRPS objective 8.2.3.

- (b) providing for the efficient, safe and effective development, operation, maintenance and upgrade of the operation of the Port;<sup>8</sup>
  - (c) providing for a range of associated activities that have an operational requirement to be located in that environment;<sup>9</sup>
  - (d) avoiding development that may result in reverse sensitivity effects that constrain the ability of the Port to be developed and used.<sup>10</sup>
- 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.<sup>11</sup>

## 5. CONTAMINATED LAND PROVISIONS

- 5.1 PrimePort and TDHL lodged submissions supporting the Contaminated Land chapter having no rules, and further submissions opposing a submission by Forest and Bird seeking to insert a rule to protect environmental health/indigenous biodiversity.<sup>12</sup>
- 5.2 As noted in the section 32 report for Contaminated Land<sup>13</sup>:
- (a) The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NESCS**) contains a national rule framework for managing contaminated land.
  - (b) A District Plan must not contain rules that duplicate or conflict with the NESCS.<sup>14</sup>
  - (c) Noting that the NESCS does not provide objective and policy guidance on contaminated land for consent applicants or Council staff to rely on, the Council has proposed a Contaminated Land chapter that provides objective and policy direction for assessing resource consent applications made under the NESCS.
- 5.3 Forest and Bird has provided no evidence to support its relief to insert a rule into the chapter. PrimePort and TDHL support Mr Willis' recommendation

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<sup>8</sup> NZCPS policy 9; CRPS policy 8.3.6(1).

<sup>9</sup> CRPS policy 8.3.6(2).

<sup>10</sup> CRPS policy 8.3.6(4).

<sup>11</sup> Legal submissions on behalf of PrimePort and TDHL for Hearing A dated 30 April 2024 at paragraphs 4.2 to 4.8 ([here](#)).

<sup>12</sup> Submission 156.84.

<sup>13</sup> Versatile Soils and Contaminated Land S.32, May 2022 ([here](#)).

<sup>14</sup> See also section 44A of the RMA.

to reject Forest and Bird's requested amendment as it goes beyond NESCS requirements.

## 6. HAZARDOUS SUBSTANCES PROVISIONS

- 6.1 As noted in the section 32 report for Hazardous Substances<sup>15</sup>, section 31 of the RMA was amended in 2017 to remove the control of hazardous substances as an explicit function of a territorial authority. This was intended to ensure RMA controls do not duplicate controls in the Hazardous Substances and New Organisms Act 1996 (**HSNO Act**) and the Health and Safety at Work Act 2015 (**HSW Act**).<sup>16</sup>
- 6.2 PrimePort and TDHL agree with Mr Willis that the PDP need only address matters that are not addressed by the HSNO Act and the HSW Act, and that the appropriate focus for the Hazardous Substances chapter is on MHFs and hazardous facilities, instead of the hazardous substances themselves.<sup>17</sup>
- 6.3 PrimePort and TDHL lodged submissions and further submissions seeking to ensure that the provisions of the PDP adequately enable MHFs and smaller hazardous facilities in the PORTZ. Mr Willis has recommended that these submissions be accepted or accepted in part, resulting in agreed outcomes in many cases.
- 6.4 There is also a high degree of alignment with BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (Oil Companies) in terms of the overall outcomes sought for the hazardous substances provisions as they relate to the PORTZ.

### Objective HS-O2 Sensitive Activities

- 6.5 PrimePort and TDHL lodged further submissions supporting the Oil Companies' submission to include reference to increased scale or intensity of existing sensitive activities in the Objective HS-O2. PrimePort and TDHL support Mr Willis' recommendation to amend proposed Objective HS-O2 to

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<sup>15</sup> Hazardous Substances S.32, May 2022 ([here](#)).

<sup>16</sup> Ministry for the Environment Fact Sheet 2 for the Resource Legislation Amendments 2017 at pages 5 to 6 ([here](#)). The purpose of the HSNO Act as set out in section 4 is to "protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms". The purpose of the HSW Act is to "secure the health and safety of workers and workplaces". This includes giving Worksafe New Zealand responsibility for establishing workplace controls for hazardous substances, including enforcement of the Health and Safety at Work (Hazardous Substances) Regulations 2017 and the Health and Safety at Work (Major Hazardous Facilities) Regulations 2016.

<sup>17</sup> Section 42A Report: Contaminated Land and Hazardous Substances dated 11 October 2024 at paragraph 2.2.6 ([here](#)).

refer to the expansion of sensitive activities, for reasons given in the evidence of Ms Seaton.<sup>18</sup>

### **Clause 3 of Policy HS-P1 New MHFs and Additions to Existing MHFs**

6.6 PrimePort and TDHL lodged submissions opposing policy HS-P1 because the direction in clause 3 is to "avoid" locating MHFs within the PORTZ.<sup>19</sup> An avoidance directive for MHFs within the PORTZ is impractical, onerous, and fails to recognise that MHFs:

- (a) already exist within the PORTZ; and
- (b) they have operational requirements to be there with wider benefits for the region.<sup>20</sup>

6.7 Mr Willis and Ms Seaton agree that it is impractical and onerous that new or additional MHFs could potentially not establish in the PORTZ given the operational requirements for MHFs to locate in the PORTZ.<sup>21</sup> However, they have different views in terms of how to amend policy HS-P1 to provide for that outcome.

6.8 Mr Willis recommends amending clause 3 of policy HS-P1 so that MHFs are only avoided within "sensitive locations" which is to be a newly defined term that it intended to exclude the PORTZ. However, Mr Willis' proposed amendments fail to achieve the intended outcome clause 3 and the new definition would still apply to "High Hazard Areas" which (as currently defined) would capture the PORTZ. It is understood that the definition of 'High Hazard Area' will be not be considered until (likely) Hearing Stream F (Natural Hazards).

6.9 It is submitted that the clearest way to exclude the PORTZ from the avoidance directive in clause 3 policy HS-P1 is to simply preface the clause with the phrase "*Other than within the PORTZ...*" as recommended by Ms Seaton. Ms Seaton recommends further amendments to clause 3 for readability<sup>22</sup>, which will also improve useability and clarity for plan users. Ms Seaton's recommended amendments, supported by PrimePort and TDHL, is for clause 3 to be amended as follows:

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<sup>18</sup> Statement of Evidence of Kim Marie Seaton for Hearing D dated 25 October 2024 at paragraphs 17 to 18 ([here](#)).

<sup>19</sup> Clause 3 of notified policy HS-P1 is to avoid MHFs within a "sensitive environment" which the PDP defines as (amongst other things) areas within the coastal environment, and areas within 250m from a MHF.

<sup>20</sup> See evidence of Mr Cooper ([here](#)) and Mr Munro ([here](#)).

<sup>21</sup> Section 42A Report at paragraph 6.18.10 ([here](#)); Statement of Evidence of Kim Marie Seaton for Hearing D dated 25 October 2024 at paragraphs 19 to 22 ([here](#)).

<sup>22</sup> Statement of Evidence of Kim Marie Seaton for Hearing D dated 25 October 2024 at paragraph 29 ([here](#)).

3. other than within the PORTZ, locating new Major Hazard Facilities outside of ~~sensitive environments, 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

[changes tracked from notified version of clause 3]

#### **Clause 4 of Policy HS-P1 New MHFs and Additions to Existing MHFs**

- 6.10 PrimePort and TDHL lodged submissions supporting notified clause 4 of Policy HS-P1 on the understanding that it would apply within the PORTZ and provide for MHFs to locate in natural hazard areas where measures are taken to minimise adverse effects, which is a practical requirement.
- 6.11 PrimePort and TDHL also lodged further submissions supporting the Oil Companies' submission to delete notified clause 4 of Policy HS-P1 and instead create a new policy that would provide for MHFs to locate in natural hazard areas where good practice measures are taken to minimise adverse effects, on the understanding that the new policy would apply within the PORTZ.
- 6.12 Mr Willis' recommendation is to retain notified clause 4 with some minor amendments.
- 6.13 However, on further consideration by Ms Seaton, the retention of clause 4 (whether as notified or as amended by Mr Willis) inadvertently results in clause 4 applying to less than half of PORTZ because it would only apply to those parts of the PORTZ that are not (currently) defined as a 'High Hazard Area'.<sup>23</sup>
- 6.14 It is submitted that this conflict is best resolved by deleting clause 4 and creating a new standalone policy that can apply to in any zones (rather than inadvertently excluding some areas). Ms Seaton recommends the following wording:

#### **HS-PX Major Hazard Facilities and natural hazard areas**

Ensure that suitable measures are undertaken to:

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<sup>23</sup> Statement of Evidence of Kim Marie Seaton for Hearing D dated 25 October 2024 at paragraph 30 ([here](#)).

- 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.](#)

6.15 However, PrimePort and TDHL have no issues if the alternative wording of the new policy recommended in the joint statement of evidence of Sarah Westoby and Thomas Trevilla on behalf of the Oil Companies is utilised instead (which includes substituting the reference to "suitable measures" with "good practice measures").<sup>24</sup>

#### **Policy HS-P4 Hazardous Facilities (Other than MHFs)**

6.16 Mr Willis agrees with PrimePort and TDHL submissions that notified policy HS-P4 is problematic for hazards facilities located within the PORTZ because it would be captured by the definition of 'sensitive environment' (which includes the coastal environment). He recommends excluding the PORTZ from needing to comply with the 'sensitive environment' restrictions given its operational and functional needs.<sup>25</sup>

6.17 For reasons given in the evidence of Ms Seaton, PrimePort and TDHL agree with Mr Willis' recommendation to amend policy HS-P4 to refer to 'sensitive locations' instead of 'sensitive environment', provided that the new term 'sensitive locations' is clearly defined to exclude the PORTZ (discussed further at paragraphs 7.2 to 7.3 below). Mr Willis' proposed wording of policy HS-P4 is as follows:

1. Enable hazardous facilities (other than Major Hazard Facilities), provided that:
  - a. The facility is located outside of ~~a sensitive~~ [locations environment \(except for a Flood Assessment Area\)](#); and
  - b. ~~If T~~ [the facility is located within a Flood Assessment Area,](#) ~~where~~ the flood hazard can be mitigated; and
2. Only allow hazardous facilities (other than Major Hazard Facilities) in sensitive [locations environments](#) where the risks ~~to the sensitive environments~~ can be avoided in the first instance, or where avoidance is not possible, minimised.

[changes tracked from notified version of policy HS-P4]

<sup>24</sup> Joint Statement of Evidence of Sarah Westoby and Thomas Trevilla dated 25 October 2024 at paragraph 8.13 ([here](#)).

<sup>25</sup> Section 42A Report at paragraph 6.23.10 ([here](#)).



## **Rule HS-R1 Use and/or storage of hazardous substances in a hazardous facility (excluding MHFs)**

- 6.18 PrimePort and TDHL lodged submissions opposing notified rule HS-R1 because by referring to 'sensitive environment', it would require resource consent for all new hazardous facilities in the PORTZ, causing an unnecessary burden. Mr Willis agrees that the term 'sensitive environment' is very broad, and recommends that the rule reference the new term 'sensitive locations' instead.<sup>26</sup>
- 6.19 PrimePort and TDHL agree with Mr Willis' recommendation provided that 'sensitive locations' is clearly defined to exclude the PORTZ as intended (see paragraphs 7.2 to 7.3 below).
- 6.20 PrimePort and TDHL have no issues with the Oil Companies' request to exclude underground fuel storage tanks from the application of rule HS-R1.

## **Rule HS-R2 Maintenance and repair of MHFs**

- 6.21 PrimePort and TDHL lodged submissions supporting notified rule HS-R2. For reasons given by Ms Seaton,<sup>27</sup> PrimePort and TDHL agrees with Mr Willis' recommended amendments to allow for some upgrade, addition or alteration to MHFs, as requested by the Oil Companies.

## **Rule HS-R4 New MHFs**

- 6.22 If rule HS-R2 is to be amend to deal with additions to MHFs (as recommended by Mr Willis), then the heading of rule HS-R4 should also be amended to clarify that it no longer applies to MHF additions, as follows:

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

## **7. DEFINITIONS**

### **Definition of 'Hazardous Facility'**

- 7.1 PrimePort and TDHL have no issues with Mr Willis' recommended amendments to the definition of 'Hazardous Facility'.

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<sup>26</sup> Section 42A Report at paragraph 6.23.10 ([here](#)).

<sup>27</sup> Statement of Evidence of Kim Marie Seaton for Hearing D dated 25 October 2024 at paragraphs 41 to 42 ([here](#)).

## New definition for 'Sensitive Location'

- 7.2 As noted at paragraphs 6.17 and 6.18 above, in order for hazardous facilities to be provided for within the PORTZ under amended policy HS-P4 and rule HS-R1, it is important that the proposed new definition of 'sensitive location' (as used in those provisions) clearly excludes the PORTZ.
- 7.3 Mr Willis agrees that the definition of 'sensitive location' should exclude the PORTZ.<sup>28</sup> However, as Ms Seaton explains, Mr Willis' proposed definition of 'sensitive location' does not achieve that outcome because it refers to 'High Hazard Areas' which (currently) still captures the PORTZ.<sup>29</sup> To ensure the PORTZ is excluded from the definition of 'sensitive location', PrimePort and TDHL request the following amendment as recommended by Ms Seaton (changes tracked from Mr Willis' proposed wording)

*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*

*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.*

## **8. PLANNING MAPS AND SCHED 2**

- 8.1 For reasons given by Mr Cooper, PrimePort and TDHL agree with Mr Willis' proposed corrections to the planning maps to identify MHFs in the PORTZ.<sup>30</sup>

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<sup>28</sup> Ibid at paragraph 6.18.10 ([here](#)).

<sup>29</sup> Statement of Evidence of Kim Marie Seaton for Hearing D dated 25 October 2024 at paragraphs 45 to 46 ([here](#)).

<sup>30</sup> Statement of Evidence of Tony Cooper for Hearing D dated 25 October 2024 at paragraph 14 ([here](#)).

**DATED** 4 November 2024

A handwritten signature in blue ink, appearing to read 'C O Carranceja', written over a dotted line.

**C O Carranceja**

**Counsel for PrimePort Timaru Ltd and Timaru District Holdings Limited**