

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

**HEARING STREAM A  
PART 1 – INTRODUCTION AND GENERAL PROVISIONS  
GENERAL DEFINITIONS  
HIGH LEVEL STRATEGIC DIRECTIONS**

Dated: 22 April 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 Land Holdings (**TDHL**) on the Proposed Timaru District Plan (**PDP**).
3. For the reasons set out below, I consider that:
  - (a) Strategic Objective SD-O4 is acceptable but may need to be revisited through the Natural Hazards chapter hearing;
  - (b) the amendments recommended in the Section 42A report to Strategic Objectives SD-O6, SD-O8(iv) and SD-010 are appropriate;
  - (c) the new objective proposed by Forest and Bird to require adverse effects to be avoided, remedied or mitigated, and the new definition of risk proposed by the Director General of Conservation, are unnecessary and, in regard to risk, inappropriate;
  - (d) the definition of reverse sensitivity should include reference to approved and permitted activities;
  - (e) the definition of sensitive activity should not exclude reference to seasonal worker accommodation; and
  - (f) there is insufficient evidence to support the inclusion of areas of importance to highly mobile species in the definition of sensitive environment.

## **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. My evidence relates to those parts of the submissions and further submissions of PrimePort and TDHL on the Proposed Plan that relate to Hearing Stream A, and which include:
- (a) Strategic Objectives in the Strategic Directions chapter:
    - (i) SD-O4 Natural Hazards;
    - (ii) SD-O6 Business Areas and Activities;
    - (iii) SD-O8 Infrastructure;
    - (iv) SD-O10 Community and Open Space.
  - (b) A new Urban Form and Development objective sought by Forest and Bird.
  - (c) Definitions:
    - (i) "reverse sensitivity";
    - (ii) "risk";
    - (iii) "sensitive activity";
    - (iv) "sensitive environment".
10. 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 National Planning Standards;
- (d) Relevant National Policy Statements;
- (e) The PrimePort and TDHL submissions and further submissions on the PDP;
- (f) The section 42A reports dated 5 April 2024 by Mr Willis and 5 April 2024 by Ms Alanna Hollier; and
- (g) The evidence of Mr Munro for PrimePort and TDHL in respect of this hearing.

## **THE SUBMISSIONS**

11. The PrimePort and TDHL submissions and further submissions seek to ensure the Port of Timaru (**the Port**) and supporting or related activity are appropriately recognised and provided for in the PDP. This is achieved in part through support for a Special Purpose Port Zone (**PORTZ**), and through support for the inclusion of the Port in the definitions of "*Lifeline Utility*" and "*Regionally Significant Infrastructure*". There are many objectives, policies and rules/standards of the PDP that PrimePort and TDHL support and which will be addressed in this and subsequent PDP hearings. There are also some provisions that PrimePort and TDHL do not consider are appropriate in their notified form and those will be addressed also. Collectively, the submissions seek to ensure that the PDP enables the effective and efficient operation of the Port as Regionally Significant Infrastructure, and of the supporting or related activities that occur within the remainder of the PORTZ.

## **STRATEGIC AND REGIONAL SIGNIFICANCE OF THE PORT AND THE PORT ZONE**

12. Mr Munro, in his brief of evidence, outlines the significance of the Port to Timaru District and the wider Canterbury Region, particularly in respect of the contribution the Port makes to the import and export of freight and the value and role of the Port to the economy. I accept and rely on Mr Munro's evidence.

13. I note that the Port is specifically referenced in the PDP definitions of "*Lifeline Utilities*" and "*Regionally Significant Infrastructure*". The inclusion of the Port in the latter definition is consistent with the CRPS, which also defines the Port of Timaru as "*Regionally Significant Infrastructure*". Although those definitions are not under consideration in this hearing, I reference them now as the importance of the Port to the District and Region is relevant to the consideration of the strategic and urban form objectives of the PDP, which I consider below. Mr Munro has similarly touched on those definitions by way of introducing the Port and its activities to the Panel and I rely on his evidence where specified.

### **STRATEGIC OBJECTIVES - SD-O4**

14. PrimePort and TDHL provided further submissions on changes to SD-O4 sought by Kāinga Ora and BP Oil, Mobil Oil New Zealand Limited, Z Energy, with both of those submitters seeking amendments to provide further clarity within objective SD-O4. On further reflection, I agree with the reasoning set out in the Section 42A report<sup>1</sup>, that the definition of unacceptable risk is made clearer in the natural hazards chapter, and the provisions as proposed, with the focus being broader than human health and safety, is consistent with the CRPS.
15. However, I do note that objective SD-O4 may need to be revisited through the hearing of the natural hazards chapter. In particular, clause (ii) of SD-O4 seeks that development is avoided in areas where risk of natural hazards are assessed as being unacceptable. The natural hazards chapter indicates that this includes areas of high hazard. For example, notified Objective NH-O1 seeks that risk to human life and significant risk to property is '*avoided in high hazard areas*', and '*avoided or mitigated elsewhere to an acceptable level*' (my emphasis). Supporting notified Policy NH-P10 addresses high hazard areas and similarly seeks to '*avoid subdivision, use and development... in, mapped or identified High Hazard Areas*', with listed exceptions. In the PDP as notified, objectives and policies seeking to avoid development in high hazard areas did not appear to affect the PORTZ as the zone was not identified (in the planning maps or any other provision within the District Plan) as being within a "*High Hazard Area*". Subsequent submissions by Environment Canterbury have sought to amend the definition of "*High Hazard Area*", such that, if adopted, clause

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<sup>1</sup> Paragraphs 134, 138-139, Mr Willis's Section 42a report.

(ii) of SD-O4 would have significant adverse implications for development within the PORTZ, and potentially for the operations of the Port as Regionally Significant Infrastructure. Provided there is an opportunity to revisit SD-O4, if necessary, during the Natural Hazards chapter hearing so that natural hazard provisions can be considered holistically, I accept that no further changes to SD-O4 need to be made at this stage. I note that the Section 42A report similarly indicates that it may be necessary to revisit SD-O4<sup>2</sup>.

## **STRATEGIC OBJECTIVES - SD-O6**

16. PrimePort and TDHL provided further submissions on changes to SD-O6 sought by Fonterra Limited.
17. Objective SD-O6 does not specifically reference the PORTZ, in either its notified version or the amendments recommended in the Section 42A report. Read together with the objectives and policies of the PORTZ that clearly seek to constrain the type of business activity that establishes in the PORTZ, I am satisfied that SD-O6 does not encourage an inappropriate “range of business activities to establish and prosper” within the PORTZ. Nevertheless, provision of sufficient land to meet the requirements of a range of existing and new businesses/industries within the District is critical to ensuring undue pressure does not arise on the PORTZ to accommodate non-Port related businesses or industries due to a lack of industrial or business land elsewhere. For this reason, I support the amendments recommended in the Section 42A report to clause (i) of SD-O6.
18. Regarding clause (ii) of objective SD-O6, the Fonterra submission sought reference to inappropriate activities within the zone, and reference to reverse sensitivity effects by way of a new clause (iii). The Section 42A report recommends<sup>3</sup> inserting reference to “*other compatible activities*” to address the concern raised by Fonterra. I agree the insertion of “*and other compatible activities*” into clause (ii) is an appropriate amendment and is consistent with the notified provisions of the General Industrial Zone chapter, notably policy GIZ-P6.
19. I also note that amendments are recommended in the Section 42A report to objective UFD-O1<sup>4</sup>, referencing reverse sensitivity effects, which are

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<sup>2</sup> For example, paragraph 134 of Mr Willis's Section 42a report.

<sup>3</sup> Section 3.10.4 of Mr Willis's Section 42a report.

<sup>4</sup> Paragraph 301 of Mr Willis's Section 42a report.

proposed to address Fonterra's request for a reference to reverse sensitivity effects in objective SD-O6. I agree the insertion of reference to reverse sensitivity effects in UFD-O1 is appropriate, and would address both within zone and inter-zone reverse sensitivity effects.

#### **STRATEGIC OBJECTIVES - SD-O8**

20. PrimePort and TDHL provided further submissions supporting the KiwiRail submission point seeking insertion of reference to reverse sensitivity effects in clause (iv) of objective SD-O8. I agree that clause (iv) would benefit from explicit reference to reverse sensitivity effects and therefore support the amendment recommended in the Section 42A report<sup>5</sup>, though I note Mr Willis's amended SD-O8 has what appears to be a typographical error insofar as it includes clause (iv) as part of clause (iii). Clause (iv) as notified could potentially be interpreted to be referencing managing the adverse effects of regionally significant infrastructure and lifeline utilities. The proposed amendment makes clearer that the reference to managing adverse effects refers to both effects of and on that infrastructure. I therefore agree that the amended clause (iv) is the most appropriate way to achieve the purpose of the RMA.
21. I otherwise support clause (iv) of objective SD-O8 as recognition of, and provision for, "*Regionally Significant Infrastructure*" and "*Lifeline Utilities*" within the District is critical to the current and future well-being of the District. Clause (iv) appropriately reflects and confirms that importance.

#### **STRATEGIC OBJECTIVES - SD-10**

22. Clause (i) of objective SD-O10, as notified, requires the enabling of public access to and along the coastal marine area and margins of identified rivers. PrimePort in its submissions sought this clause be amended to make clear that public access is not to be enabled within the Port of Timaru. The Section 42A report acknowledges that the objective is not consistent with the public access provisions in the public access chapter, which provide for restrictions on public access in some situations, including around regionally significant infrastructure<sup>6</sup>.

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<sup>5</sup> Paragraph 208 of Mr Willis's Section 42a report.

<sup>6</sup> Paragraph 251 of Mr Willis's Section 42a report.



23. Mr Munro in his evidence, has set out the range of reasons why it is necessary and appropriate to restrict public access to the coastal marine area in the Port and I accept that evidence.
24. On further reflection, I accept that specific reference to the Port of Timaru is in itself too narrow given the range of circumstances (not just within the Port) where restriction of access may be necessary. The objective nevertheless needs amending to provide better consistency with the public access chapter. I therefore accept the alternative wording provided in the Section 42A report and consider the amended SD-O10 is the most appropriate way to achieve the purpose of the RMA.

### **URBAN FORM AND DEVELOPMENT**

25. PrimePort and TDHL provided further submissions opposing a submission by Forest and Bird<sup>7</sup> seeking an additional objective be inserted, requiring adverse effects to be avoided, remedied or mitigated. I agree with the Section 42A report<sup>8</sup> that this duty is adequately reflected already in Section 17 of the RMA and other notified provisions of the PDP. I therefore consider the requested new objective is not needed.

### **DEFINITIONS – REVERSE SENSITIVITY**

26. PrimePort and TDHL provided further submissions supporting KiwiRail's submission which requests amendments to the "*reverse sensitivity*" definition to reference approved and permitted activities in addition to "existing". The Section 42A report<sup>9</sup> recommends changes to the reverse sensitivity definition, to incorporate reference to 'permitted or consented' activity, and 'activities otherwise anticipated by the Plan', as activities that may be affected by reverse sensitivity. I agree with the inclusion of reference to 'permitted' activity. I also agree to some extent with the inclusion of 'consented' activity but I prefer the word 'approved' rather than consented, as 'approved' encompasses activities approved through designation as well, rather than just activities approved through resource consent. Whilst inclusion of those references would broaden the definition, it would not broaden it to an inappropriate extent.
27. Using the context of the PORTZ for example, non-ancillary residential activity is a non-complying activity under PORTZ-R4. One of the policies

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<sup>7</sup> Submission 156.48.

<sup>8</sup> Paragraph 282 of Mr Willis's Section 42a report.

<sup>9</sup> Paragraph 200 of Ms Hollier's Section 42a report.

that would be considered if non-ancillary residential activity were proposed is PORTZ-P1, which specifies that residential activities only be allowed in instances where they, among other matters, '*have measures to avoid reverse sensitivity effects on Port and industrial activities*'. The policy is not specific to existing lawfully established Port and industrial activities, and nor should it be as the type of industrial and Port activities in any given location within the PORTZ can change over time, and the scale of adverse effects such as noise or lightspill can also change. It is important that future industrial and Port activity within the PORTZ not be constrained by inappropriate non-ancillary residential activity, even if that residential activity might seem appropriate now. In other words, and to use a hypothetical example, the non-ancillary residential activity should be considered against the possibility of a permitted Port or industrial activity operating 24 hours of day with noise emissions and light spill, not against the existing quiet car park or undeveloped land that is currently lawfully established next door.

28. Where I have some discomfort is with the inclusion of reference to '*or activities otherwise anticipated by the Plan*'. In my view that phrase introduces considerable uncertainty to the definition. For example, a controlled activity could arguably be considered "anticipated by the District Plan", but I could not say with complete confidence that a restricted discretionary activity is anticipated, and with even less confidence as to whether a fully discretionary activity is anticipated. Ms Hollier states in paragraph 201 of her Section 42A report that the phrase would apply to a '*nuanced set of activities*'. To my mind the nuancing is too subtle and reduces clarity, and for this reason I do not agree with its inclusion. I consider the 'lawfully established permitted activities' that the KiwiRail submission refers to [187.13] are adequately captured by reference to the inclusion of 'approved, existing lawfully established or permitted activity' in the reverse sensitivity definition.

29. Accordingly, I recommend that the notified definition of "reverse sensitivity" is amended as follows:

*'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.'*

## DEFINITIONS – RISK

30. PrimePort and TDHL provided further submissions opposing a submission by the Director General of Conservation, requesting a new definition be added for *Risk*, from the New Zealand Coastal Policy Statement.
31. The Section 42A report declines to accept this amendment<sup>10</sup>, citing the complexity of the term and its use being general and extending to areas beyond natural hazard risk in the District Plan. I agree with the reasoning Ms Hollier sets out and consider the definition should not be included. Further, in my experience it is common practice for District Plans to use the word ‘risk’ without definition of that word, and I have not come across any particular issues arising from the absence of definition.

## DEFINITIONS – SENSITIVE ACTIVITY

32. PrimePort and TDHL provided further submissions supporting a submission by KiwiRail that supported the notified definition of sensitive activity, and opposing in part a submission by Silver Fern Farms that sought to exclude seasonal worker accommodation from the definition of sensitive activity.
33. The Section 42A report recommends rejecting the Silver Fern Farms request to reference seasonal worker accommodation<sup>11</sup>, and I agree with this for the reasons set out by Ms Hollier, including that seasonal worker accommodation is a residential activity, which requires a level of health and safety and amenity that may not be able to be maintained in some zones or adjacent to some activities.
34. With reference to the KiwiRail requested additions to the definition (place of worship, papakāinga and community facilities), I have reviewed Ms Hollier’s reasons for recommending this submission be rejected and on further reflection I agree that their inclusion would not be appropriate, for the reasons set out by Ms Hollier. Notably, this includes because the definitions of papakāinga and community facilities are very broad and include activities that I would not consider are necessarily sensitive (e.g. sporting and recreation activities), and that the sensitive aspects of papakāinga such as residential activity, preschools and marae will otherwise be covered by other references in the sensitive activity definition.

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<sup>10</sup> Paragraph 289 of Ms Hollier’s Section 42a report.

<sup>11</sup> Paragraph 216 of Ms Hollier’s Section 42a report.

## DEFINITIONS – SENSITIVE ENVIRONMENT

35. PrimePort and TDHL provided further submissions opposing a submission by Forest and Bird requesting reference to areas important to highly mobile species be included in the definition of sensitive environment. The Section 42A report declines to accept this amendment, for reasons that basically amount to uncertainty. I agree with the reasoning set out in the Section 42A report<sup>12</sup>, that the submission point should be rejected. From a Section 32AA perspective, I consider the requested change would be inefficient, ineffective and in the absence of much more detailed evidence, the risks to the integrity of the PDP of its inclusion are unacceptable.

## CONCLUSION

36. It appears the issues raised by PrimePort and TDHL relevant to this hearing have been addressed in the section 42A reports. The only matter on which I disagree with the Officers is the inclusion of reference to '*or activities otherwise anticipated by the Plan*', in the definition of reverse sensitivity. I consider that phrase should not be included in the definition.

Date: 22 April 2024

Kim Marie Seaton

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<sup>12</sup> Paragraph 232 of Ms Hollier's Section 42a report.