

**BEFORE THE INDEPENDENT HEARINGS PANEL
APPOINTED BY THE TIMARU DISTRICT COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of a submission on the Proposed Timaru District Plan

**LEGAL SUBMISSIONS FOR FENLEA FARMS LIMITED (SUBMITTER
NUMBER 171) AND A ROONEY (SUBMITTER NUMBER 177)**

17 January 2024

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MAY IT PLEASE THE PANEL:

Introduction

- 1 These legal submissions are made on behalf of Fenlea Farms Limited (submitter number 171) (**FFL**) and Mr. Rooney (submitter number 177) in respect of their submissions on the proposed Timaru District Plan. These submissions only relate to the Sites and Areas of Significance to Māori (**SASM**) chapter.
- 2 FFL is the registered proprietor of the following land (relevant to this chapter):
 - 2.1 158 Prattley Road, Timaru, contained in record of titles CB534/214 and CB22K/533 and legally described as Rural Section 37684, Rural Section 37685 and Rural Section 37686 and Lot 7 on Deposited Plan 4764 (**Property**), identified on **Figure 1** below.



Figure 1: 158 Prattley Road, Timaru

- 3 FFL sought, by way of submission point 171.31, that SASM-R6 Intensively Farmed Stock was amended by either deleting SASM-R6.2 or changing the activity status to controlled rather than non-complying. The section 42A report author¹ recommends the deletion of SASM-R6 entirely.
- 4 FFL supports the above recommendation of the s42A author and does not intend to adduce evidence, on the basis that the s42A report has accepted the submission seeking the deletion of the rule. If, following the filing of evidence by other submitters, it appears that there is still some support for SASM-R6,

¹ At 8.15.13 of their report

FFL reserves the right to provide rebuttal evidence, particularly in relation to consistency with other district plans and economic impacts.

- 5 By way of submission points 171.27 and 171.28, FFL also sought for the SASM overlays to be deleted or reduced in extent in relation to the Property. The s42A recommendation² is that these are to be retained as notified.
- 6 Due to the s 42A recommendation that SASM-R6 is deleted, FFL does not wish to provide any additional evidence in relation to submission points 171.27 and 171.28.
- 7 Both FFL and Mr. Rooney (in submission points 171.29 and 177.11 respectively) sought for SASM-P4 to be amended to “recognize the impact of access on existing rural activities”. The s 42A author³ recommended that no such amendment is necessary. Due to the clarification from the s42A author that the policy is only to **retain** existing access, and not in any way require enhanced access (although it is encouraged), FFL and Mr. Rooney are comfortable that the proposal will not impact their existing rural activities.
- 8 In submission points 171.30 and 177.12, FFL and Mr. Rooney sought for SASM-P8 to be amended to recognize existing rural use of sites within SASM overlays. The s 42A author does not recommend that this submission is accepted⁴, although recommends that SASM-P5 and SASM-P8 are effectively combined with the direction being amended to avoid the adverse effects on identified values that would compromise those things set out in the notified SASM-P5.
- 9 FFL and Mr. Rooney consider that the recommendations of the s42A author is inappropriately reliant on existing use rights. At paragraph 8.8.21, the report notes that existing use rights are provided for under s10 of the RMA, and it is not necessary or appropriate for the PDP to replicate these rights. With respect, I submit that position is inconsistent with caselaw, and inefficient for both the Council and those reliant on existing use rights.
- 10 The Court in *Advance Properties Group Ltd v Taupo District Council*⁵ acknowledged that a reluctance to rely on existing use rights (as established under s10) is perfectly understandable, given the “often ill-defined edges and terms of existing uses, and the high potential for frequent litigation and

² At 8.2.36

³ At 8.5.17

⁴ At 8.6.31

⁵ [2014] NZEnvC 126

uncertain outcomes about them”⁶. The Court concluded it is not satisfactory to leave present activities dependent on s10 existing use rights for future activities⁷.

- 11 Reliance on existing use rights will be lessened, if the proposal to delete the SASM rules controlling farming activities are upheld by the Panel. It is incredibly inefficient, and uncertain, for both the panel and resource users, if existing use rights have to be relied upon. This must be an important consideration for the Panel in its decision making. If the recommendation by the s42A report author to remove the rules is rejected, subsequent changes to objectives, policies and rules should be included to legitimise existing activities within the permitted parameters of the Plan.
- 12 At this stage, FFL and Mr. Rooney do not intend to appear at the hearing, and asks that the submissions and these legal submissions be tabled for consideration. Should this position change on the basis of evidence filed by other parties, this will be communicated to the Panel prior to the due date of legal submissions (30 January 2025).
- 13 However, if the Panel have questions in relation to the above submissions where additional input from the submitter would be useful, FFL is happy to either appear in person, or provide answers to written questions.

Dated 17 January 2025



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⁶ See paragraph [66]

⁷ See paragraph [88]