

**BEFORE THE TIMARU DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Timaru District Plan Hearing D

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**STATEMENT OF EVIDENCE OF NATHAN HOLE BEHALF OF  
ROONEY GROUP LIMITED AND OTHERS  
Dated 25 October 2024**

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## **MAY IT PLEASE THE HEARING PANEL:**

1. My full name is Nathan Henry Hole. I am employed by Rooney Group Limited (**RGL**) as Senior Advisor – Environmental Policy & Projects.
2. I hold the qualification of Bachelor of Science (Environmental Science) from Lincoln University.
3. I have over 16 years' experience working as a resource management planner for both district and regional councils, including 9 years as Planning and Regulations Manager at Mackenzie District Council, and Team Leader – Consents and Compliance at Timaru District Council from November 2018 to August 2021. I have been employed by RGL in my current role since August 2021.
4. I am providing this evidence in my capacity as an employee of RGL, not as an independent expert, although my evidence represents my professional view and is within my area of expertise.
5. I am authorised to provide this evidence on behalf of Rooney Group Limited, Rooney Holdings Limited, Rooney Earthmoving Limited, Rooney Farms Limited, Timaru Developments Limited and Mr GJH Rooney (**Rooney Group**).
6. While I am an employee of RGL, I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and agree to comply with it. 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**

7. In relation to the matters being considered by Hearing D, Rooney Group only made submissions in relation to the Natural Environment provisions. The scope of my evidence is limited to those submissions.
8. In relation to Rooney Group's submissions that are not covered in this evidence, these have been addressed by Ms White's section 42A recommendations. No further evidence will be provided on these matters.

## CONSENTING OVERLAP WITH SECTION 13 RESOURCE MANAGEMENT ACT 1991 LAND PROVISIONS

9. Rooney Group submitted on the Proposed Timaru District Plan (**PDP**) noting that it contains confusing and unnecessary overlap with consenting for Regional Council activities within the beds of rivers. With respect I consider that the section 42A report does not address the point raised in Rooney Group's submissions.
10. I acknowledge that the Canterbury Regional Policy Statement (**CRPS**) includes a method<sup>1</sup> allowing for District Councils to control the use of land within lakes and riverbeds for maintenance of indigenous biological diversity where they have identified (in a District Plan) an area of significant indigenous vegetation or a significant habitat of indigenous fauna, that includes a bed of a lake or river. However this is discretionary, not mandatory for the District Plan.
11. Section 30 of the Act gives Canterbury Regional Council (**CRC**) the function of controlling activities in the beds of lakes and rivers, and as the relevant consent authority they apply Part 2 of the Resource Management Act 1991 (**RMA**), the CRPS and its criteria, and any other relevant considerations including identified values. CRC actively consider section 6 matters in their regional plans and resource consent processing.
12. Rooney Group is concerned that the result of inclusion of regulatory provisions in the PDP for areas subject to s13 of the Act is duplication of process. The need for two resource consents has associated and significant increases in cost, for no additional environmental protection. The matters considered by CRC can and clearly do include section 6 requirements, so the consideration of areas covered under section 13 by the District Council as consent authority would not increase the scope of consideration of effects or add any value to their management.
13. For example, recent draft consent conditions sent to Rooney Group by Waimate District Council for a gravel extraction consent contain exactly the same set of conditions requiring bird surveys and buffer distances to bird habitat within the bed of the river, that are included in the CRC consent for the same site. No less than 14 other matters covered in CRC's consent conditions are mirrored in the draft District Council consent conditions. These include:
  - Conditions controlling timing, duration and volume of extraction

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<sup>1</sup> Page157 Canterbury Regional Policy Statement 2013 – Method 5 to Policy 10.3.1 (Activities in river and lake beds and their riparian zones)

- a requirement for gravel returns to now be sent to two consent authorities
- specifications on depth of excavation and buffer distances
- accidental discovery protocol conditions
- oil, fuel and spills management conditions
- controls on hours/days of operation
- conditions controlling site access

14. Rooney Group fails to see how this duplication of effort in administration of and compliance with consents is enhancing sustainable management or protecting section 6 values. It does however add significant cost to the consent applicant, and the community as those costs are passed on. This duplication is neither efficient nor effective in terms of Part 2.

15. If these are to be included, Rooney Group seeks that the Council also adopt the approach provided for in Method 9<sup>2</sup> of the CRPS “Consider including standards in plans that remove the requirement for a resource consent for the use of land in a bed of a lake or river, if a resource consent from another local authority is granted for the same activity.”.

16. A provision should be included in all Ecosystem and Indigenous Biodiversity rules where the proposal is to require resource consent, which removes the requirement for a consent where CRC has granted consent for the same activity. This provision should also remove the requirement to lodge an application under the PDP where a resource consent for the same activity in that location has been sought from CRC, or where that activity is permitted by a regional plan.

17. To achieve this we seek the PDP is amended to add an additional note to the rules, as follows (or similar):

**Ecosystems and Indigenous Biodiversity Rules**

**Note:** *Activities not listed in the rules of this chapter are classified as a permitted under this chapter. For certain activities, consent may be required by rules in more than one chapter in the Plan. Unless expressly stated otherwise by a rule, consent is required under each of those rules. The steps plan users should take to determine what rules apply to any activity, and the status of that activity, are provided in Part 1, HPW — How the Plan Works - General Approach.*

**Note:** *These rules do not apply to activities in the beds of lakes and rivers where a resource consent for the same activity has been sought from Canterbury Regional Council, or the activity is permitted by a rule in a Regional Plan.*

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<sup>2</sup> Page 158 Canterbury Regional Policy Statement 2013 – Method 9 to Policy 10.3.1 (Activities in river and lake beds and their riparian zones)

18. This avoids the duplication of consideration of section 6(c) matters by two authorities for the same activity in the same area. It also ensures there is no potential for misalignment and avoids the applicant paying consent fees to two authorities for no environmental benefit, given the criteria are set out in the CRPS.
19. The partially operative Selwyn District Plan (**SDP**) is an example of a new generation district plan that avoids duplication with regional council consenting with references in the introductions to the Ecosystems and Indigenous Biodiversity, Natural Character, and Earthworks chapters providing clarity that CRC is responsible for consenting activities within the beds of lakes and rivers.
20. The Earthworks chapter states: *"...This chapter does not apply to earthworks within the beds of lakes and rivers and the Coastal Marine Area, which are managed under the regional planning framework."*
21. The Ecosystems and Indigenous Biodiversity chapter states: *"The control of planting and removal of vegetation and other activities within the beds of lakes or rivers are the function of regional councils under section 30 of the Resource Management Act 1991."*
22. The Natural Character chapter states: *"...The Canterbury Regional Council also has jurisdiction to manage wetlands, lakes and rivers, including land uses in the beds of water bodies. This section of the District Plan focuses on the natural character of the margins of wetlands, lake and rivers (collectively referred to as surface water bodies), thereby avoiding duplication with Regional Council functions."*
23. The Waimakariri Proposed District Plan under an advice note in the Earthworks chapter (EW-AN1) states: "Earthworks within the beds of lakes and rivers is regulated under the regional planning framework (Canterbury LWRP)."
24. Part D Rural Zones of the operative Timaru District Plan provides a permitted activity rule<sup>3</sup> for gravel extraction in riverbeds which states: *"Extraction of gravel from riverbeds that is permitted by a rule in a Regional Plan or which has been granted resource consent from the Canterbury Regional Council under the Resource Management Act 1991."*

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<sup>3</sup> Page 47 Part D Rural Zones, Rule 1.11.1.22(b) – Operative Timaru District Plan

25. Avoiding consenting duplication in the PDP would make it a more efficient and effective planning document, avoiding unnecessary additional costs to the community.
26. District Councils are also not as well equipped as Regional Councils to assess the effects of activities within the beds of rivers as they are not typically responsible for these types of issues. They do not usually employ staff with specific expertise, thereby necessitating the use of external consultants (increasing expense and placing undue pressure on a limited number of experts available to the parties), or the employment of further staff, adding pressure to the Council.

### **ASSESSMENT AND IDENTIFICATION OF SNAs (ECO-P1 AND APP5)**

27. Rooney Group considers that the District Council should not be undertaking the identification and mapping of SNAs over land within the beds of rivers and lakes (section 13 RMA land). The CRPS does not require district councils to identify SNAs covering section 13 land. CRC is the lead authority with regard to managing activities within the beds of rivers and lakes, including assessing any adverse effects associated with activities such as disturbance of the riverbed. Unnecessary duplication, over-regulation, misalignment, and confusion should be avoided.

28. The CRPS provides as follows:

#### **10.3 POLICIES**

##### **10.3.1 Activities in river and lake beds and their riparian zones**

*To provide for activities in river and lake beds and their riparian zones, including the planting and removal of vegetation and the removal of bed material, while:*

1. *recognising the implications of the activity on the whole catchment;*
2. *ensuring that significant bed and riparian zone values are maintained or enhanced;*  
*or*
3. *avoiding significant adverse effects on the values of those beds and their riparian zones, unless they are necessary for the maintenance, operation, upgrade, and repair of essential structures, or for the prevention of losses from floods, in which case significant adverse effects should be mitigated or remedied.*

#### **The Canterbury Regional Council:**

*Will:*

1. *Set out objectives and policies, and may include methods in regional plans to enable and to control activities in river and lake beds.*

#### **Territorial authorities:**

*Will:*

4. *Set out objectives and policies, and may include methods in district plans to control the effects of the inappropriate subdivision, use, development, or protection of land to avoid, remedy or mitigate adverse effects on the values of the **riparian zones** of rivers and lakes.*

*May:*

5. *Control the use of land within lakes and river beds for maintenance of indigenous biological diversity where:*
    - a. *the territorial authority has identified in a district plan an area of significant indigenous vegetation or a significant habitat of indigenous fauna, that includes a bed of a lake or river; or*
    - b. *there are indigenous vegetation clearance provisions in a district plan that apply for areas of the district that are larger than, but include, a bed of a lake or river.*
29. The wording of Policy 10.3.1 is enabling, stating that activities in the beds of rivers and lakes are to be provided for, subject to conditions such as ensuring significant values are maintained. Method 1 which implements this Policy clearly provides that CRC has control of activities in river and lake beds through regional plans.
30. Method 5 provides that a territorial authority 'may' control the use of land within lakes and riverbeds where it has identified in a district plan an area of significant indigenous vegetation or a significant habitat of indigenous fauna, that includes a bed of a lake or river. Clause 2(b) also refers to areas that are larger than, but include, a bed of a lake or river.
31. Despite this wording, the PDP includes a significant number of areas that have been identified as SNAs that occur solely within the beds of rivers. While these areas may well meet the criteria of SNAs, Rooney Group considers that their inclusion in the District Plan as SNAs is not in accordance with the scope of controls that is available to territorial authorities under the CRPS. This is an overreach in the PDP.
32. One of the effects of this overreach is that the PDP rules relating to SNAs then apply to these areas, resulting in a consent requirement from the District Council and the Regional Council for the same activity. I have covered the significant issues with this approach earlier in my evidence.
33. If SNAs that are identified in the beds of rivers are to remain in the District Plan, rules relating to SNAs should exclude these areas where a resource consent is required from CRC or the activity is permitted in a regional plan.

#### **PROTECTION FOR LONG TAILED BATS AND ECO-R4**

34. The Rooney Group submission is not opposing the intention of the PDP to protect the habitat of long-tailed bats through an overlay. The crux of Rooney Group's submission is to seek

clarity for the reason for the layer, and for the PDP to provide a permitted activity pathway for landowners to remove trees within the Bat Protection Area (**BPA**) overlay without going to the unnecessary expense to obtain a resource consent each time a landowner has a need to remove a tree within the BPA.

35. I am of the view that the BPA is a SNA, as it is seeking to identify and protect significant habitat of indigenous fauna. While we fully support Ms White's stated intention to avoid the inefficiencies that would result if BPAs were labelled as SNAs, this would appear to be inconsistent with the CRPS criteria. I would question whether the Council has this discretion. This is an important point as the identification of SNAs is contentious, and more landowners may have submitted in relation to the BPA if they understood that BPA was an SNA to protect the significant habitat of indigenous fauna in accordance with section 6(c) RMA.
36. Rooney Group opposes Ms White's recommendation to accept the Director-General of Conservation Tumuaki Ahurei's submission [166.37] to extend the BPA to match the Canterbury Maps overlay on the basis of natural justice. The Canterbury Maps "*Roosting Habitat of Long-Tailed Bat*" layer is significantly more extensive than that identified in the PDP. As an example, Rooney Farms Limited owns a property at Kerrytown that is not affected by the BPA in the PDP, but two thirds of the property is affected if the Canterbury Maps overlay is applied.
37. ECO-R4 does provide for some trees within the BPA to be cleared as a permitted activity. However, the threshold for the trees specified in PER-2 is low. While the measurements might appear reasonable, they state a circumference, which when converted to diameter, are not large trees. I am not suggesting that these trees cannot be long-tailed bat habitat, but rather that the consenting implications have the potential to be significant.
38. A farm owner with fences near willow trees will be constantly faced with the threat of trees falling across fence lines. For landowners to support the BPA to achieve its purpose of protecting long-tailed bat habitat, ECO-R4 should provide a more efficient and cost-effective pathway for landowners to gain advice prior to clearing any trees within the BPA rather than seeking resource consent. By comparison, PER-1 of ECO-R4 provides for blanket exemptions without any assessment.



39. As proposed, the full cost of seeking resource consent falls on the landowner despite there being little or no private benefit. The protection of long-tailed bat habitat is a public good and significant care must be taken before simply imposing a wide ranging punitive regulatory approach with associated costs where the burden of protection falls on individuals, raising issues of equity and fairness.
40. Timaru District Council (**TDC**) recently increased its deposit fees for all non-notified land use consents to \$1,800. Despite ECO-R4 having immediate legal effect, TDC has not proposed any assistance to reduce or waive fees, to support the assessment and protection (where required) of habitat each time a tree is to be removed. If the extension of the BPA is to be adopted, which I do not support, approaches such as this may assist in ensuring the effectiveness of the rule, redressing some of the imbalance in relation to private cost verses public benefit.

#### **ECO-R6 - BOUNDARY ADJUSTMENT SUBDIVISION**

41. Rooney Group's submission on ECO-R6 states: *"The submitters **oppose** ECO-R6 as subdivision of land containing a SNA should not be a discretionary activity simply because the site has a SNA within it. The SNA is unlikely to be affected by the subdivision unless the boundary change dissects the SNA."* and seeks the following relief: *"**Amend** ECO-R6 to state "Subdivision of land containing a Significant Natural Area where a new boundary intersects a Significant Natural Area." A new policy should also be introduced to provide for this."*
42. I do not agree with the Ms White's section 42A assessment that subdivisions other than a subdivision where a new boundary dissects an SNA may also have an impact on an SNA. SNAs are often discrete areas within large rural properties. A property owner of land containing an identified SNA should be able to enjoy the same benefits of being able to subdivide their land, where their proposal does not directly affect an SNA, without the activity status being such that all effects of the activity are open for assessment by the Council.
43. If the Hearing Panel is not minded to accept this submission point, then an alternative would be to create a restricted discretionary activity (**RDA**) rule that restricted discretion to the effects on the SNA as well as the other general matters of control under SUB-R2.
44. Other matters such as subdivisional fencing, accessways or buffering vegetation clearance are matters that should stand on their own and be assessed as required against the provisions of

the District Plan as to whether or not those activities require resource consent at the time a person seeks to undertake those activities.

## **NEW RULE ECOSYSTEMS AND INDIGENOUS BIODIVERSITY CHAPTER - CLEARANCE OF INDIGENOUS VEGETATION FOR A QUARRYING ACTIVITY**

45. Rooney Group made a further submission supporting the submissions made by Road Metals Ltd [169.21] and Fulton Hogan Ltd [170.22] seeking a new rule to provide for the clearance of indigenous vegetation that is for a quarrying activity, as a restricted discretionary activity.
46. Rooney Group supports a new rule for a restricted discretionary activity (**RDA**) as this aligns with the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**) to provide for regionally important quarrying activities within the district and region.
47. I consider that it is important to add a rule to the PDP now which provides a framework to implement the NPSIB. An applicant cannot rely on the NPSIB to pass the gateway tests of section 104D RMA where a non-complying activity rule exists such as non-compliance of ECO-R1.
48. A standalone RDA rule would allow for specific consideration of the NPS provisions for a regionally significant quarrying activity within the district.

## **NATURAL CHARACTER**

### **NFL-R9 (SUBDIVISION)**

49. Rooney Group's submission on NFL-R9 states: "*The submitters **oppose** ALL subdivision being discretionary within an ONF, ONL or VAL overlay. This is unnecessarily restrictive. Boundary adjustment subdivisions, or subdivisions facilitating primary production activities should be excluded from the rule, and the VAL overlay removed in its entirety from the rule.*" and seeks the following relief: "**Remove** the VAL overlay from NFL-R9. **Amend** to exclude boundary adjustment subdivisions and subdivision of land used for primary production from the NFL-R9."
50. A boundary adjustment subdivision, particularly in relation to rural properties is unlikely to lead to expectations of buildings as such subdivisions by their nature do not result in the creation of additional records of title. In respect of rural land and properties undertaking primary production activities, a boundary adjustment subdivision should be a straightforward

means for adjoining landowners to increase or decrease their land holding without the Council having full discretion to consider all effects over and above what is proposed to be reserved as a matter of control.

51. Notwithstanding, NFL-R1.2 manages the effects of new buildings being established within the VAL overlay without the need for this consideration of an expectation of new buildings at the time a boundary adjustment subdivision application.
52. If the submission point is not accepted, then a RDA rule would be more appropriate for boundary adjustment subdivisions or subdivision of land used for primary production within the VAL overlay.

**N H Hole**

25 October 2024

Rooney Group Limited