

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THE TIMARU DISTRICT COUNCIL**

**UNDER:** the Resource Management Act 1991

**IN THE MATTER OF:** Submissions and further submissions  
in relation to the Proposed Timaru  
District Plan

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**LEGAL SUBMISSIONS ON BEHALF OF 22 THE TERRACE TIMARU LIMITED  
(SUBMITTER NO. 202)**

**HEARING STREAM F: HAZARDS AND RISKS (NATURAL HAZARDS ONLY) –  
OTHER DISTRICT-WIDE MATTERS**

Dated: 16 April 2025

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## INTRODUCTION

### Interests represented by the Submitter

- 1 These legal submissions are presented on behalf of 22 The Terrace Timaru Limited (**Submitter**) in relation to its submission on the Proposed Timaru District Plan's (**PDP's**) Port Outer Noise Control Boundary Overlay (**Overlay**).<sup>1</sup>
- 2 The Submitter owns 22 The Terrace, Timaru (**Property**), which is currently operated as a carpark, but is subject to Resource Consent 102.2022.160.1 (**Consent**) authorising the development of a new mixed use (residential and commercial) building.
- 3 The Property is located within the City Centre Zone and the Overlay covers the entire Property. The Submitter's submission seeks removal of the Overlay from the Property.

### Structure of legal submissions

- 4 These legal submissions address the concerns of the Submitter following the release of the Section 42A Report: Light and Noise<sup>2</sup> and in light of the recommendations therein in response to submissions. Matters are dealt with in the following order:
  - (a) Relevant considerations for the Panel's determination of the Submission Point;
  - (b) The Submitter's summary position on the PDP's planning framework for managing reverse sensitivity effects arising from noise generated by PrimePort Timaru and recommendations in the Section 42A Report; and
  - (c) The decision sought by the Submitter.

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<sup>1</sup> Submission point 202.3 (**Submission Point**).

<sup>2</sup> *Proposed Timaru District Plan Section 42A Report: Light and Noise, Report on submissions and furthers submissions*, Author: Liz White (dated 25 March 2025) (**Section 42A Report**).

## Witnesses

- 5 Evidence by **Mr Timothy Michael Gresson**, a director of the Submitter, has been filed on behalf of the Submitter.

## RELEVANT CONSIDERATIONS FOR THE PANEL'S DETERMINATION

- 6 It is submitted that the following considerations are relevant to the Panel's consideration of submissions on the PDP, and more specifically, the PDP's proposed planning framework for managing reverse sensitivity effects associated with the current and future operation of PrimePort Timaru and Ms White's recommendations:

- (a) The statutory framework for district plans and related principles established by caselaw; and
- (b) The evidence available to the Panel, including in the form of reports prepared by or for TDC in support of the PDP's proposed planning framework for reverse sensitivity (as notified) or included in the Section 42A Report, and evidence filed by or on behalf of submitters.

- 7 As the Panel will be aware, the statutory framework for district plan rules traverses several sections of the Resource Management Act 1991 (**RMA**). Of particular relevance to the Submission and the matters addressed in the legal submissions that follow in relation to the Submitters' concerns following the release of the Section 42A Report, those provisions direct that the PDP must state:<sup>3</sup>

- (a) The objectives for the district; and
- (b) The policies to implement the objectives; and
- (c) The rules to implement the policies.

- 8 In relation to the rules applying to "noise sensitive activities" within the Overlay and the requirements of section 32 RMA, we submit that the following general caselaw principles are relevant to the Panel's considerations:

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<sup>3</sup> RMA, section 75(1).

- (a) Section 32 requires a value judgment as to what on balance, is the most appropriate, when measured against the relevant objectives.<sup>4</sup> ‘Appropriate’ means suitable, and there is no need to place any gloss upon that word by incorporating that it be superior.<sup>5</sup>
- (b) Where the purpose of the RMA and objectives of the Plan can be met by a less restrictive regime, then that regime should be adopted.<sup>6</sup> Such an approach reflects the requirement in section 32(1)(b)(ii) to examine the efficiency of the provision and promotes the purpose of the RMA by enabling people to provide for their well-being while addressing the effects of their activities.<sup>7</sup>

9 We also note recent confirmation from the High Court as to the necessity for evidence to inform the section 32 RMA evaluation,<sup>8</sup> and consequently, robust justification for the approach adopted in any proposal (e.g., proposed plan) following that evaluation.

## **SUBMITTER’S SUMMARY POSITION ON THE PDP**

### **Implementation of objectives and policies**

- 10 In his evidence, Mr Gresson has addressed the implications of the Property being located entirely within the Overlay for future residential development of the Property.<sup>9</sup> Mr Gresson notes in this regard the additional consenting burden arising by Rule NOISE-R9 if a development does not comply with the noise insulation and ventilation Standards NOISE-S3 and NOISE-S4.
- 11 It is submitted that the additional consenting burden, and resulting increase in costs and compliance associated with future development of “noise sensitive activities” in the City Centre Zone will act as a deterrent to potential developers and landowners. This is in conflict with the outcomes

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<sup>4</sup> *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298, at [45].

<sup>5</sup> *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298, at [45].

<sup>6</sup> *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 051, at [59].

<sup>7</sup> *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 051, at [59].

<sup>8</sup> *Rayonier New Zealand Ltd v Canterbury Regional Council* [2024] NZHC 1478.

<sup>9</sup> Mr Gresson’s statement of evidence dated 09 April 2025 (**Mr Gresson’s evidence**), at [10].

envisaged by the PDP stated in Objectives CCZ-O1: The purpose of the City Centre Zone and CCZ-O2; Character and qualities of the City Centre Zone, as follows:

**CCZ-O1 The purpose of the City Centre Zone**

*The City Centre Zone is the main commercial and civic centre for the District and wider South Canterbury sub-region and the primary destination for retail activity, dining and entertainment, and:*

- (1) *Provides for a diverse range of activities, including commercial, visitor accommodation and community facilities; and*
- (2) *Accommodates higher density residential activities which support the viability and vibrancy of the zone.*

**CCZ-O2 Character and qualities of the City Centre Zone**

*The City Centre Zone:*

- (1) *Is a vibrant area that provides an attractive place to live, work and visit; and*
- (2) *Contains built form that contributes to a high-quality streetscape that maintains the character associated with scheduled heritage items and historic heritage areas; and*
- (3) *Accommodates large volumes of people; and*
- (4) *Includes sites used for centralised car parking; and*
- (5) *Contains large-scale, high density buildings; and*
- (6) *Contains activities that are compatible with the amenity values of adjoining Residential Zones and Open Space and Recreation Zones.*

(emphasis added).

- 12 It is further submitted that this conflict offends against the mandatory directive in section 75(1) of the RMA, in relation to the hierarchy of plan provisions requiring rules that implement policies and objectives.

**Overlay extent**

- 13 The Submitter has numerous concerns with the basis on which the Overlay has been mapped. Those concerns are (summarily):

- (a) The acoustic modelling that informed the development of noise contours for the Port Inner and Outer Noise Control Boundary Overlays was undertaken by consultants for PrimePort Timaru (Acoustic Engineering Solutions (**AES**)). This is unusual; in a district planning process, it would normally be expected for a council to commission their own assessment, rather than rely on that undertaken by or for a key stakeholder with a clear interest in the outcome.
- (b) A peer review of AES' Report<sup>10</sup> was conducted by Malcolm Hunt.<sup>11</sup> However, the peer review appears to have been undertaken of the AES Report only, not the acoustic model used to produce the noise contours, which again is unusual.
- (c) The noise contours produced by AES are based on predicted noise generation from a future development scenario at PrimePort Timaru.<sup>12</sup> However, the modelling does not take account of the "future environment" within the City Centre Zone. In accordance with established caselaw, that baseline environment should include not only existing buildings, but also unimplemented resource consents, such as the development authorised at 22 The Terrace by the Consent.
- (d) The noise contours do not reflect the actual area of influence of noise generated by PrimePort Timaru. In this regard, it is noted that:
  - (i) As confirmed by Mr Hunt, the contours "default to property boundaries when a particular modelled contour line passes through a property/site";<sup>13</sup> and

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<sup>10</sup> Report Number: AC18314 – 05 – R1 PrimePort Timaru: Port noise contours, dated 11 February 2022 (**AES Report**).

<sup>11</sup> *Proposed Timaru District Plan Noise Provisions, Review of Port Noise Report and Noise Contour Recommendations*, Author: Malcolm Hunt Associates, dated 24 February 2022 and commissioned by Timaru District Council.

<sup>12</sup> "Scenario 1.2 –All sources, future full port scenario", AES Report at [5.2].

<sup>13</sup> Above n 11, at page 5, and Section 42A Report – Appendix 3 – Noise and Light, Memorandum from Malcolm Hunt, at page 14.

- (ii) Mr Gresson, and others he has spoken to that live or work in buildings on The Terrace, have not and do not experience noise effects generated by PrimePort Timaru.<sup>14</sup>

14 It is submitted that for the reasons addressed, the Overlay reflects an unjustified and unnecessary burden that is inequitable for owners of land subject to the Overlay, such as the Property.

**DECISION SOUGHT BY THE SUBMITTER**

15 The Submitter respectfully requests that the Panel give appropriate consideration to its concerns with respect to the Overlay, i.e., the underlying deficiencies in the overlay mapping exercise and the effect retaining the Overlay would have in terms of deterring future development within the City Centre Zone as envisaged by Objectives CCZ-O1 and CCZ-O2.

16 It is submitted that removal of the Overlay from the Property, as requested by the Submitter, would:

- (a) Satisfy the statutory requirements in relation to district plan provisions, including with respect to the section 32 evaluation and in light of the evidence available to the Panel; and
- (b) Ensure an equitable outcome for the Submitter.

Dated: 16 April 2025



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**Georgina Hamilton / Lucy O'Brien**  
**Counsel for 22 The Terrace Timaru Limited**

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<sup>14</sup> Mr Gresson's evidence, at [20] and [21].