

Before the Hearings Panel  
appointed by Tai o Poutini Plan Committee.

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Under the Resource Management Act 1991

In the matter of proposed Te Tao o Poutini Plan

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**Statement of evidence of Anna Jane Bensemman**

15 March 2024

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## **Qualifications and experience**

- 1 My name is Anna Jane Bensemann.
- 2 I am a Senior Planner and Director of Baseline Group Marlborough, based in Blenheim. I hold a Bachelor of Science in Geography from Canterbury University and a Masters Degree in Applied Science majoring in Environmental Management from Lincoln University. I have over 15 years' planning experience in resource management, having worked for both local authorities and in private practice. I have held positions as a Policy Adviser for Federated Farmers, and as a Planner with; Davis Olgvie and Partners, Baseline Planning, Fiona Aston Consultants, Nelson City Council, and Avanzar Consulting Limited, prior to Baseline Group Marlborough.
- 3 I have been asked by Frank O'Toole (Submitter S595 and Further Submitter FS235) to give planning evidence as an expert Planner in relation to the matters raised in his submission and further submission to the proposed Te Tao o Poutini Plan (TTPP).

## **Code of conduct for expert witnesses**

- 4 I have read the Environment Court's Code of Conduct in the Environment Court of New Zealand Te Kōti Taiao o Aotearoa Practice Note 2023 and agree to comply with it. My qualifications as an expert are set out above. The matters addressed in my evidence are within my area of expertise, however where I make statements on issues that are not in my area of expertise, I will state the source of information I have relied upon. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in my evidence.

## **Scope of evidence**

- 5 I have prepared evidence in relation to the subject of Mr. O'Toole's submissions and further submissions relating to:
  - (a) Subdivision - Policies (General),
  - (b) Subdivision – Policy 6, and
  - (c) Subdivision – Rule 6.
- 6 I note the matters to be addressed as part of this hearing specifically relate to the Subdivision, Financial Contributions and Public Access parts of the proposed TTPP. The S42A Officers report sets out in paragraph 54 the matters which are not considered as part of this hearing and are deferred to other hearings to the TTPP later in 2024. These include minimum allotment sizes (SUB – S1) and matters relating to the management of natural hazard risks. While Mr. O'Toole has

submission points which are relevant to these matters, I have not considered them as part of this evidence, and these will be addressed as part of further evidence on those specific topics.

7 In preparing this statement of evidence I have considered the following documents:

- (a) The provisions of the TTPP,
- (b) Section 42 A officers report Subdivision, Financial Contributions and Public Access, prepared by Briar Belgrave and Ruth Evans,
- (c) National Policy Statement for Highly Productive Land 2022 (NPS – HPL), and
- (d) The New Zealand Coastal Policy Statement 2010 (NZCPS).

### **Introduction**

8 Mr. O'Toole is a franchise owner for the West Coast Jeninan Homes and has an interest in supporting West Coast landowners develop new houses. Additionally, Mr. O'Toole owns land in and near Westport. Growth of towns and communities requires the availability of land to provide for new development which is, in part, achieved through subdivision to create vacant land, along with infill subdivision.

9 In my experience, when the provisions relating to subdivision of land require significant assessment by an applicant to meet the threshold for acceptance, this comes at a financial cost to applicant. Typically, through the need to provide expert reports. Often these costs can mean the difference between a development being financially viable, or not. It can be the key reason landowners do not attempt to develop land. In my view, planning provisions need to be balanced to be clear about where and how development is considered acceptable, and limiting (where possible) the need for technical assessments. This is particularly important in areas (such as Westport) where land prices are generally lower compared to other parts of New Zealand and the costs of obtaining technical expertise is higher, both likely due to the more remote location<sup>1</sup>.

### **Subdivision – Policies (General)**

10 Mr. O'Toole has supported a number of submissions that seek to introduce an additional policy to support instances where development is enabled. The wording of this policy is as follows:

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<sup>1</sup> According to Mr. O'Toole in his experiences with landowners in Westport.

*Allow subdivision in the RURZ – Rural Zones that does not comply with the minimum lot design and parameters when:*

*a. The site size and configuration is appropriate for development intended by the zone;*

*b. The subdivision design maintains rural character and amenity;*

*c. The increased density does not create adverse effects on critical infrastructure; and*

*d. It can be demonstrated that it is consistent with the quality and types of development envisaged by RURZ - Rural Zone Objectives and Policies.*

- 11 This proposed new policy reflects the wording of proposed Policy SUB – P7 for Residential Zones to provide for consistency in plan writing. The wording seeks to enable development of the rural zone in a flexible manner when subdivision creating allotments smaller than the minimum allotment size is proposed. This takes into consideration there are many constraints to the development of land which mean the minimum allotment size might not be appropriate or where smaller allotments can still meet the outcomes anticipated for the rural zones. This may include the shape of existing landholdings, topography of the site or other physical restrictions, location of access etc.
- 12 The Section 42A report has sought to reject the inclusion of the proposed policy stating, “*The relief sought is not supported as the wording sought by the submitters is inconsistent with the directive of the NPS-HPL, particularly Policy 7 which seeks to avoid the subdivision of highly productive land, except as provided for under the NPS-HPL*”.
- 13 I am unclear why the reporting officer is solely referring to the NPS – HPL as the only reason recommending rejecting the proposed policy. The provisions of the NPS – HPL apply to all land identified as Land Use Class 1, 2 and 3. From reviewing the West Coast Regional Council mapping system identifying HPL land on the West Coast<sup>2</sup>, it appears there is ample land outside of the Land Use Class 1, 2 or 3 which would benefit from the proposed policy. Furthermore, the wording of Policy 7 provides for exceptions within the NPS - HPL that enable the development of rural land under a particular set of circumstances. Given this, I disagree with the Reporting Officers for their reason this policy is not appropriate.
- 14 The planning framework for subdivisions does not include direction as to where it is appropriate to undertake subdivision in Rural Zones that does not meet the specific minimum allotment size. This is in contrast to proposed SUB - P7 of the

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<sup>2</sup> West Coast Regional Council maps accessed March 2024:

<https://gis.westcoast.govt.nz/WestMapsViewer/?map=097b3c420b974eaa8fb074b59c73dbd5>

TTPP, which is specific to Residential Zones and outlines when smaller allotments may be appropriate. This lack of direction in the Rural Zones has the potential to create uncertainty for plan users when it is appropriate to development allotment smaller than the minimum allotment. The proposed policy sought by submitters seeks to provide some direction.

- 15 The Section 42A Officers concern regarding consistency with the NPS – HPL could easily be provided for through an additional clause to the proposed policy providing direction that the subdivision considers the effect on Highly Productive Land in accordance with the NPS - HPL. Such inclusion provides clear direction any effect on HPL land is to be considered should less than minimum allotment size be proposed. Any additional wording relating to matters in an NPS should, in my view, be worded to trigger the need to consider the NPS – HPL rather than referencing the specific clauses of the NPS, to allow for changes to the NPS in the future without triggering the need change the TTPP provisions.

#### **Subdivision – Policy 6**

- 16 Mr. O’Toole has supported a number of submissions that seek to amend the wording of SUB – P6 to remove points a, c, e, and f. The current wording of Policy 6 is as follows:

*Avoid subdivision:*

- a. In the RURZ - Rural Zones that could result in the creation of an unplanned new settlement;*
  - b. In the Earthquake Hazard Overlay that could result in the creation of new allotments;*
  - c. Where detached minor residential units in RURZ - Rural Zones become legally separated from the main residential unit thereby creating cumulative effects on rural character and productivity;*
  - d. Where this could create significant reverse sensitivity issues in relation to the MINZ - Mineral Extraction Zone or Energy Activities;*
  - e. In the Coastal environment outside of areas that are already modified unless adverse effects on the natural character of the coastal environment can be avoided or mitigated; and*
  - f. In areas of significant risk of natural hazards, where this is for the purposes of accommodating and/or servicing people and communities.*
- 17 The intent (as I understand it) of seeking these aspects be removed relates to the highly restrictive nature of the policy given it is prefaced with the requirement to avoid subdivision creating these outcomes. The use of the word “avoid” is quite directive meaning there is no alternative in unique situations where an applicant

can demonstrate such development is appropriate<sup>3</sup>. Therefore, the provisions contained in this policy may effectively form a checklist for decision makers to consider for all subdivisions. Should a development trigger one of these features, then development is effectively prohibited.

- 18 Provision a and c relate to avoiding cumulative effects of subdividing land which may slowly erode the integrity of the Rural Zone. However, these provisions as worded, do not recognise there are some instances where limited subdivision is appropriate. Rather than an “avoid” mechanism the policy recommended by submitters under the Subdivisions - General (Policies) section, noted above in my evidence<sup>4</sup> provides for a more enabling provision which sets guidelines as to where development is, and is not, appropriate.
- 19 Provisions e relates to natural character in the coastal environment, and potentially limits development in any areas not already developed through the requirement to “avoid subdivision” at the beginning of the policy. This is not entirely consistent with the New Zealand Coastal Policy Statement (NZCPS) Policy 13, which makes it clear that development should “*avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character*”<sup>5</sup>. However, the provision e. in Policy 6 seeks to avoid subdivision in the coastal environment in areas which are not modified. The NZCPS goes on to state: “*avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment*”<sup>6</sup>.
- 20 The TTPP identifies areas of Outstanding Natural character, and High Natural Character, however these are not reflected in Policy 6, which seems to apply the provisions to the entire Coastal Environment. While subdivision itself does not necessarily result in changes to natural character, it enables additional development within newly created allotments. Consideration of this effect on natural character can be considered at subdivision stage through building platforms, etc. However, provision f as worded is potentially more restrictive than the NZCPS, and in my view is not necessary to achieve preservation of natural character values. This policy would benefit more from adopting an approach consistent with the NZCPS.
- 21 Provision f relates to natural hazard risks and seems to be more appropriately managed by the provisions contained in Policy 4. This policy seeks to manage

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<sup>3</sup> Consistent with the interpretation of the word avoid from the King Samlon case (2014) and as modified in the more recent Port Otago Limited v Environmental Defence Society Incorporated [2023] NZSC.

<sup>4</sup> Refer to paragraph 10 of my evidence above.

<sup>5</sup> NZCPS – Policy 13 (1)(a).

<sup>6</sup> NZCPS – Policy 13 (1)(b).

significant risks from natural hazards. This provides for greater flexibility for applicants to provide solutions to risks, which may include region wide solutions to some natural hazard risks (i.e. flood protection infrastructure), or changes in technology which enables appropriate mitigation (i.e. foundation design). By including provision f. in Policy 6 there is less ability for these technology advancements to be considered and is effectively a double up with Policy 4.

### **Subdivision – Rule 6**

- 22 SUB – R6 provides the controlled activity status for subdivisions in a Rural Zone and sets out what status a resource consent will be considered as if compliance with R6 matters is not achieved. Clause 4 of this relates to subdivision within Flood Severe, Coastal Severe or Westport Hazard Overlay or the Airport Noise Control Overlay. If located within these zones, subdivision defaults to a non-complying activity. These hazard risk zones cover most of Westport and immediate surrounding areas.
- 23 The hierarchy of restricted discretionary, discretionary and non-complying have, in my experience, function as an indication of likelihood of being successful. With subdivision defaulting to a non-complying activity, it appears the TTPP restricts the potential for a successful subdivision. The supporting objectives and policies associated with flood hazard risk are restrictive (as submitted by Mr. O’Toole). Therefore, the indication of this kind of activity as a non-complying activity means future subdivision in Westport is likely to be limited.
- 24 As an alternative, this activity could be considered as a discretionary activity, where council can consider the provisions of the objectives and policies specific to the flood risk, and greater flexibility is provided for when mitigation measures are achieved for flood risks in Westport.

### **Conclusion**

- 25 Overall, Mr. O’Toole’s further submissions support those applications which seek to make the process of subdivision straightforward. A proposed new policy relating subdivision in the Rural Zones that replicates the enabling policy provided for Residential Zones provides certainty to developers of when its appropriate to consider undersized allotment sizes.
- 26 Requested changes to SUB – P6 reflects the concern this policy will create an absolute check list upon which subdivisions will be prohibited. I have provided what I consider to be a more reasonable approach to this policy that relies on the existing other policies in the TTPP and seeks to ensure provisions align with the NZCPS more accurately.

27 Requested changes to SUB – R6 reflect a concern about the status of subdivision activities within Westport, and highlights this does not reflect future situations associated with suitable flood risk mitigation measures, or an acceptable level of risk for landowners. This request is more closely related to the wider discussions on the risk of flooding in Westport, and the overall effect of provisions for the development and growth of the settlement.

Signed:

A handwritten signature in black ink, appearing to read 'A Bensemann', written in a cursive style.

Anna Jane Bensemann

Dated this 15 day of March 2024