

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**

1 July 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 Olgivie and Partners, Baseline Planning, Fiona Aston Consultants, Nelson City Council, and Avanzar Consulting Limited, prior to Baseline Group Marlborough.
- 3 I have been engaged 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) Rural Living Zone Minimum allotment size;
  - (b) Rezoning the Nine Mile Area; and
  - (c) Rezoning 211 Utopia Road.
- 6 In preparing this statement of evidence I have considered the following documents:
  - (a) The provisions of the TTPP;
  - (b) Section 42A officers report on Rural Zones (excluding Settlement Zone), prepared by Lois Easton;

- (c) The Section 42A officers report on Settlement Zones prepared by Lois Easton; and
- (d) National Policy Statement for Highly Productive Land 2022 (NPS – HPL).

### **Introduction**

- 7 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, specifically a 3.4424 ha vacant block of land located 625 m south of Stafford Street on Nine Mile Road, and a 3.4705 ha property at 211 Utopia Road east of Westport.
- 8 Mr. O'Toole has made a submission seeking his properties are rezoned to enable further development, and to meet the demands for Rural Lifestyle Zoned land he has observed through his role at Jeninan Homes.

### **Rural Living Zone Minimum Allotment Size**

- 9 Mr. O'Toole has made a submission seeking the minimum allotment size in the Rural Living Zone is reduced from the current 1 ha to a minimum 4000 m<sup>2</sup>. In Mr. O'Toole's view and experience 1 ha or similar sized allotments, and even some 2 – 3 ha allotments are of a size which do not generate a meaningful full-time income. This means those living on rural lifestyle blocks are not utilising these to make an income, but rather are seeking a particular lifestyle that provides for larger allotments with a more rural than urban feel. This means those living on rural lifestyle type properties are more likely required to seek employment off the property in order to supplement living on a rural site.
- 10 The Section 42A officer has noted in a number of places<sup>1</sup> there is a history of ad-hoc development across the West Coast which has created reverse sensitivity effects and fragmentation of rural land, presumably due to the current planning provisions. I note for the Buller District there is no minimum allotment size in the rural zone but there is a default discretionary activity status for subdivision. In Greymouth the Rural Zone has a 1 ha minimum allotment size and the Rural-Residential Zone has a 4,000 m<sup>2</sup> minimum allotment size, as a controlled activity. In Westland, the Rural zone has a 5,000 m<sup>2</sup> minimum allotment size as a discretionary activity. This represents a reasonably unregulated allotment size for the rural parts of the West Coast currently, and therefore the resulting existing patterns of development has arisen due to market demand for sections, and landowners willing to subdivide.

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<sup>1</sup> Including Paragraphs 107 and 213 of the Section 42A Report for the Rural Zones.

- 11 Given the history of ad-hoc development and based on Mr. O'Toole's experience with housing demand throughout the West Coast, it is apparent there is demand for sections with a sense of rural space, but without containing so much land its unmanageable, along with the demands of full-time employment off site.
- 12 I understand from the Section 42A Report<sup>2</sup> the aim of the TTPP is to bring more certainty at to those areas which can be further developed or intensified for urban and small-scale rural activities, and those areas which need to be better protected to retain rural production land and avoid reverse sensitivity effects.
- 13 This is proposed to be achieved by providing a range of zones with minimum allotment sizes and a range of sub-overlays (precincts) within these zones to provide further variation in the allotment sizes. Currently the TTPP proposes minimum allotment sizes as set out in the following table:

Zone	Minimum allotment size
General Residential Zone	350 m <sup>2</sup>
Large Lot Residential Zone	1,000 m <sup>2</sup>
Medium Density Residential Zone	200 m <sup>2</sup>
Neighbourhood Centre Zone	350 m <sup>2</sup>
Settlement Zone	Unsewered – 1,000 m <sup>2</sup>
Coastal Precinct	Sewered – 500 m <sup>2</sup>
Settlement Centre Precinct	
Settlement – Rural Residential Precinct	4,000 m <sup>2</sup>
Rural Lifestyle	1 ha
General Rural	4 ha
General Rural – Highly productive land Precinct	10 ha
Future Urban zone	4 ha

- 14 The Section 42A officer has concluded the reduction in the Rural Lifestyle Zone is not necessary, as it would overlap with the allotment area of the Settlement Zone (Rural Precinct) area. I note the National Planning Standards include both the Settlement Zone and the Rural Lifestyle Zone, but do not discuss splitting these zones into further divisions, as effectively achieved by the inclusion of the rural

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<sup>2</sup> Refer to Paragraph 213 of the Section 42A Report for the Rural Zones.

precinct in the Settlement Zone. I also note there are a number of overlaps in the above table for zones which provide for different areas and intended outcomes.

- 15 Looking to examples in other regions, some of which have had the benefit of recent development utilising the National Planning Standards, the following table includes examples of how other Councils have managed their rural zones to provide for the differing needs of their communities:

District	Rural Zones	Minimum allotment sizes
Kapiti Coast District Council	Rural Lifestyle	Average area 1 ha and minimum individual 4,000 m <sup>2</sup>
	Rural Dunes - Rural Zone	Clusters of 12 or less between 4,000 m <sup>2</sup> and 1 ha with a balance area, and an average allotment size of 4 ha.
	Rural Hills – Rural Zone	20 ha average Minimum 1 ha
	Rural Plains – Rural Production zone	6 ha Average Minimum 1 ha.
Marlborough District Council	Rural Environment Zone	20 ha
	Rural Environment Zone Close to urban centre (Wairau Plain or Omaka Valley Area)	8 ha
	Rural Living Zone	7,500 m <sup>2</sup>
	Coastal Environment Zone	30 ha
	Coastal Living Zone	Sewered – 2,000 m <sup>2</sup> front section and 2,500 m <sup>2</sup> rear section Unsewered – 4,000 m <sup>2</sup>
Tasman District Council	Rural 1 Zone	12 ha
	Rural 1 Coastal Zone	3 ha
	Rural 2 and 3 Zones	50 ha
	Rural Residential Zone	Variable and include the following with reticulated wastewater - 2,000 m <sup>2</sup> , 2,500 m <sup>2</sup> , 1,500 m <sup>2</sup> 3,000 m <sup>2</sup> , 5,000 m <sup>2</sup> .

		To larger lots without reticulated wastewater – 1ha, 2ha, 4 ha.
Selwyn District Plan (partially operative)	General Rural Zone (note: no rural lifestyle zone appears in this plan)	High Country 120 ha Port Hills ONL 100ha Port hills above 60 contour and west plains and foothills – 40 ha East Plains 20 ha Inner plains and port hills below 4 ha. Range of specified areas between 800 m <sup>2</sup> , 10,000 m <sup>2</sup> .
Timaru District Council (proposed plan)	General Rural Zone	40ha
	Rural Lifestyle Zone	10 ha in specified area 2 ha in specified area Sewered - 5000 m <sup>2</sup> Unsewered - 2 ha

- 16 Based on Mr. O’Toole’s experience of demand for one-acre sections (approximately 4,000 m<sup>2</sup>) and considering the provisions established in other districts, I consider there is merit in providing greater flexibility in the minimum allotment size of the Rural Living Zone, to provide for the demand of this niche land type.
- 17 This land type, where adjoining existing urban areas provides for a transition between urban and larger scale Rural Zones to assist in managing potential reverse sensitivity effects between Urban and Rural Zones. Within the Rural Living Zone, dwellings are to be setback 10 m from internal boundaries which provides for those properties adjoining Rural Zones to include internal landscaping and separation to reduce potential reverse sensitivity effects with surrounding rural zone primary production activities.
- 18 Looking at the definition of the Settlement Zone under the National Planning Framework, it seems this zone is intended to provide for both mixed land use types (residential, commercial, light industrial activities). The Settlement Zone is described in the TPPP (Part 3 – Rural zones – Rural zones objectives and policies) as follows: *Settlement Zone covers all the wide range of settlements that are outside of the four main towns throughout the West Coast/Te [Tai o Poutini](#). Because of the range of conditions within the Settlement Zone there are three Precincts within the Zone - SETZ - PREC2 -Settlement Centre Precinct, SETZ*

- *PREC3 Coastal Settlement Precinct, and SETZ - PREC4 - Rural Residential Precinct.*

- 19 This differs from the intent of the Rural Living Zone, which does not include commercial or light industrial activities. I also note the introduction to the rural zones under the TTPP (Part 3 – Rural zones – Rural zones objectives and policies) describes the Rural Living Zone in the following terms: *Rural Lifestyle Zone is located around the edges of towns and settlements. It includes areas that were predominantly farmed in the past, but have gradually moved out of economic primary production, although they still may have rural activities occurring.*
- 20 The section 42A officer indicates this zone is intended to be of a size where some primary production uses could occur<sup>3</sup>, which does not seem entirely consistent with the description contained in the TTPP above. The description in the TTPP seems to more reflect there is less *economic* primary production occurring on these smaller allotments. My expertise does not extend to understanding what size parcel of land would generate an economic return from primary production. Mr. O’Toole’s experience with his own properties near Westport would suggest this is closer to the 4-ha size of the proposed General Rural Zone.
- 21 Given there is a clear distinction between intended purpose of the Settlement Zone and the Rural Living Zone, it is my opinion the Rural Living Zone could be reduced in area without compromising the Settlement Zone Rural Precinct. Furthermore, by allowing subdivision to the allotment size requested by Mr. O’Toole it would allow for continued development of areas to the sizes generally accepted in the existing Rural Zones of the three districts subject to the TTPP but limited to specific areas. This avoids the ad-hoc patterns of development previously experienced and continues to provide for greater freedom of choice.

#### **Rezoning of the Nine Mile area**

- 22 Mr. O’Toole owns land (along with a number of other submitters) in the area bound by Westport to the north and Harney’s Road to the south, along the Nine Mile Road. Mr. O’Toole is seeking this is rezoned to Rural Lifestyle to better reflect the existing patterns of development in this area (which are already below 4 ha), and, along with his submission to reduce the minimum allotment size of the Rural Lifestyle, enable further intensification of his land.
- 23 I note the Section 42A officer sets out at paragraph 351 of the report, the Settlement Zone is intended to be the buffer close to existing urban areas. This appears to in conflict with the description of the Settlement Zone under the TTPP, which sets out

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<sup>3</sup> Paragraphs 105 and 351 Section 42A report for Rural Zones.

the Rural Living Zone is intended to provide this function (refer to discussion above). Mr. O'Toole did not seek his land to be rezoned to Settlement Zone Rural Precinct, and rather sought the Rural Living Zone with a reduced minimum allotment size on the basis of the descriptions in the TTPP, rather than the alternative description provided in the Section 42A report.

- 24 At paragraph 445 of the Section 42A report, the reporting officer specifically addresses the site owned by the submitter noting it is both Land Use Class 3 soils, and within the Westport Hazard Overlay with it being unclear whether any of this land will be protected by the Westport Flood Control Scheme.

#### *Flood Risk*

- 25 I have attached the June 2023 Resilient Westport update which provides locations and timelines for new stopbank development areas. This includes along the Buller River encompassing Mr. O'Toole's property. This update provides some level of certainty that flood risk mitigation options are underway, although I acknowledge until such time as flood protection is constructed, there is a risk funding might be lost, or the parameters of the scheme altered. This puts Mr. O'Toole in somewhat of a limbo position, awaiting the outcome of a process where no parties will commit to its certainty, until such time as it is constructed.
- 26 At the time the TTPP was drafted, a greater level of uncertainty existed compared to the certainty provided in the attached update. Rules were included in the Natural Hazards and Subdivisions provisions in relation to development within the Westport Overlay which would still apply even if the area was rezoned, designed to ensure future development only occurred when some form of flood protection was in place, either through the flood protection scheme, or through private onsite site means. Given some initial remediation works towards the Westport Protection Scheme is underway, and given the attached update, increasing levels of certainty this scheme will be put in place are provided.

#### *Highly Productive Land*

- 27 It is noted that Mr. O'Toole's original Submission predates the National Policy Statement for Highly Productive Land (NPS – HPL), and so did not consider its provisions.
- 28 The area south of Westport is identified as being Land Use Class (LUC) 3 and therefore subject to the provisions of the NPS - HPL. Mr. O'Toole has not commissioned a report to establish what, if any, long term constraints are present on his land which would mean land based primary production is not able to be economically viable.



- 29 I acknowledge the West Coast as a whole has a small part of its land form available for primary production activities, limited to river flats and coastal areas. Many parts of this productive land are not identified as LUC 3 soils or higher, including some areas that are also identified as Highly Productive Land Precinct in the TTPP. The LUC 3 land around Westport represents a large contiguous area but is not identified in the TTPP as being within the Highly Productive Land Precinct. The inclusion of the Rural Lifestyle Zone for a portion of the Nine Mile Road would reduce the overall area of this, along with the proposed Rural Lifestyle Zoning of the LUC 3 soils south of Utopia Road and west of Beatons Road. However, the Nine Mile Road area is directly adjoining the southern boundary of Westport at Stafford Street and would therefore not fragment the HPL land.
- 30 The provisions in the Rural Lifestyle Zone include setbacks for buildings from boundaries of 10 m, and minimum allotment sizes (Which Mr. O'Toole suggests at 4,000 m<sup>2</sup> minimum) will ensure there is sufficient separation between the Nine Mile Road area and the balance of the General Rural Zone. This is further emphasised by the separation offered by the road network in this area providing a legible delineation between the General Rural Zone and a Rural Lifestyle Zone along the Nine Mile Road. These features ensure a more cohesive separation between the urban features of Westport township and the General Rural Zone, mitigation reverse sensitivity effects at this urban/rural boundary.
- 31 For the many of the properties along Nine Mile Road, the allotment sizes are less than 4 ha in area, starting from a little over 2,000 m<sup>2</sup>. On these smaller sections genuinely achieving economic returns for productive purposes is limited, and these sections are already utilised as residential lifestyle sections with owners having to have alternative employment to support themselves. This means that despite the rural zoning, and the higher quality land use class soils, this area is not utilised for production activities due to existing title areas. Therefore, there are social and economic benefits to providing for this area as Rural Lifestyle, and it will add to the pool of housing types available on the West Coast, consistent with the lifestyle features that Mr. O'Toole has identified are in demand. Furthermore, it will contribute to the pool of housing available to support the needs of dairy farming activities and other workers on the West Coast, which is a positive effect on the economy.
- 32 Given these features, it is my view the rezoning of the Nine Mile Road area would have a positive effect for the Growth of the Buller District generally.

### **Rezoning of 211 Utopia Road**

- 33 Mr. O'Toole owns 211 Utopia Road located on the northern side of Utopia Road and contained within the proposed General Rural Zone. Mr' O'Toole's neighbours to the south are within the Rural Living Zone, with this zone boundary appearing to

be somewhat ad-hoc and seeking to provide for existing allotments, without a water frontage.

- 34 This site is not identified as LUC 3 soils, unlike land south of Utopia Road and west of Beatons Road which is identified as LUC 3, and yet is proposed to be within the Rural Living Zone.
- 35 The Section 42A reporting officer recommends<sup>4</sup> to exclude this, as 211 Utopia Road is within Coastal Hazard overlays and subject to inundation and erosion, although the reporting officer notes updated mapping does show the risk is lower than the proposed plan.
- 36 It is Mr. O'Toole's view (and submission points to the natural hazards section of the TTPP) based on his experience of living on this site for some time, the bank facing river mouth on his property is not eroding, and he has not experienced significant inundation. This was set out in more detail as part of the original submission by Mr. O'Toole. Neither Mr. O'Toole nor any other individual landowner is likely to be in the financial position to obtain expensive coastal hazard modelling to demonstrate his observations, as these cost many tens of thousands of dollars. However, notes he has observed the northern bank of the Orowaiti River has been accreting in the time he has lived in on this site.
- 37 The TTPP zoning image below does not clearly illustrate how protected Mr. O'Toole's property is from coastal inundation given the sand spit on the northern side of the river (refer to the aerial image below).

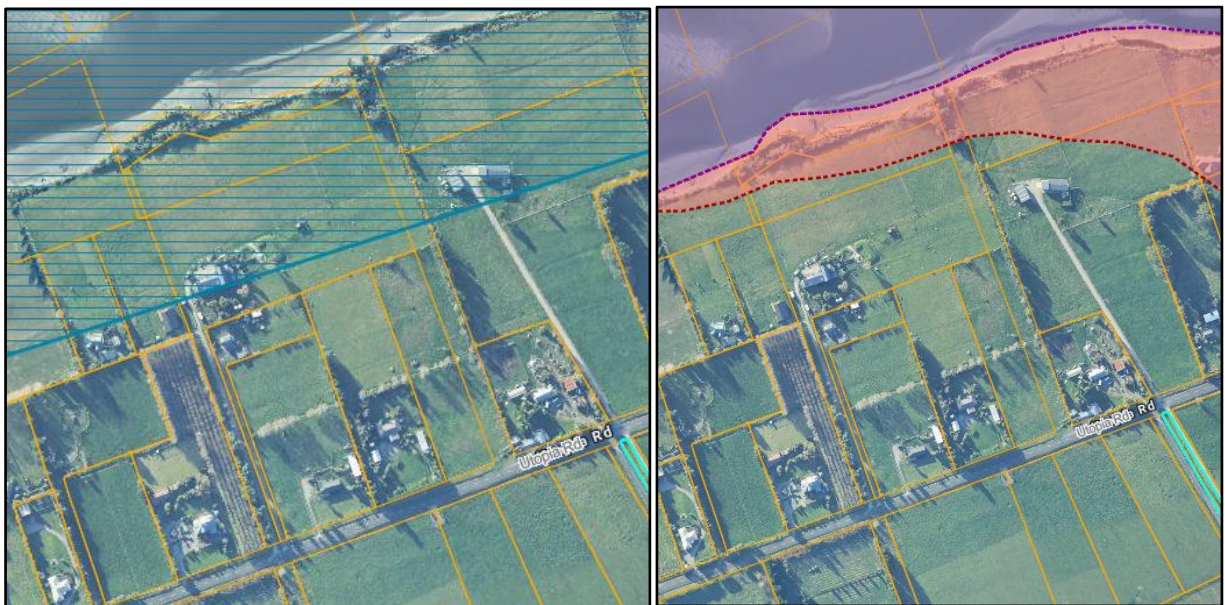
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<sup>4</sup> At Paragraph 446 of the Section 42A report for the Rural Zone.



**Left Image – TTPP zones. Right image - aerial imagery in the same place.**

38 On the basis the only reason this site should not be rezoned is due to its coastal hazard notation and given the proposed variation 2 seeks to move the actual line of hazard area northwards by some 75 m, I see no reason why the Rural Living Zone could not better reflect the coastal hazard overlay, as the intended limitation to land use. To follow the property boundaries in an ad hoc manner, rather than allow the full extent of land outside of risk areas to be utilised for rural living purposes seems like an inefficient use of the land resources. Partial zonings through landholdings, while inconvenient, are not uncommon and allow for the most efficient use of the available land. Furthermore, the proposed variation supports Mr. O’Toole’s observation that the accreting sand spit offers greater protection than reflected in the limitations of the TTPP.



**Left Image: Original TTPP notified Coastal Severe Risk Overlay. Right Image: Proposed Variation 2 Coastal Severe Risk Overlay.**

## Conclusion

- 39 Overall, Mr. O'Toole's is seeking the Rural Living Zone is applied to both his Nine Mile and Utopia Road properties.
- 40 It is also sought this zone allows for a minimum allotment size that better provides for the demand of rural lifestyle living (4,000 m<sup>2</sup>), acknowledging there is less likely to be an economic return from these sites.
- 41 Allowing for greater variation in allotment size would provide for a more efficient use of limited Rural Lifestyle Zoned land and reduce future pressure for undersized allotments in the General Rural Zone, thus avoiding ad-hoc development and further fragmentation of rural land.

Signed:

A handwritten signature in black ink, appearing to read 'A. Bensemann'.

Anna Jane Bensemann

Dated this 1 day of July 2024