

Before the Independent Commissioners

Under the Resource Management Act 1991

In the matter of a hearing on submissions on the proposed Te Tai o Poutini Plan (TTPP)

Topic 20: Settlement Zone and its Precincts

Submitter: **Russell Robinson and Brunner Builders Limited (S515)**

Closing Legal submissions on behalf of Russell Robinson and Brunner Builders Limited

9 September 2024

Submitters' solicitors:

Alex Booker | Kelsey Barry

Anderson Lloyd

Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011

PO Box 13831, Armagh, Christchurch 8141

DX Box WX10009

p + 64 3 379 0037

alex.booker@al.nz | kelsey.barry@al.nz

**anderson
lloyd.**

May it please the Commissioners

- 1 These legal submissions are provided on behalf of Russell Robinson and Brunner Builders Limited (**Submitters**) to respond to matters raised by the Panel at the reconvened hearing on 26 August 2024. In particular, these submissions address:
 - (a) identification of Wetland 6 on the Development Area Plan (**DAP**);
 - (b) the robustness of the Moana North DAP;
 - (c) management of effects relating to the Moana Landfill; and
 - (d) whether there is a threshold triggering a requirement for Council potable water supply.
- 2 These matters are addressed below.
- 3 The Panel also requested that Mrs South's working table for wastewater treatment capacity be provided. This is **attached in Appendix 1**. However, Mrs South has pointed out (as she did at the reconvened hearing), that this table is likely out of date given that Grey District Council (**GDC**) have had Stantec undertake an assessment – following which GDC have expressly confirmed capacity for the proposed rezoning to Mr Robinson.¹

Identification of Wetland

- 4 Wetland 6 is the only wetland assessed as significant under the regional criteria, by virtue of it containing Rohutu. Evidence for the submitter, both written and verbally at the reconvened hearing, is that identification of Wetland 6 (or any other wetlands) on the DAP is not required. It is therefore submitted that identification of Wetland 6 (or any other wetlands) is not required, and is not necessary in the scheme of the TTPP.² It is the preference of the Submitter not to include identification of Wetland 6..
- 5 That said, the Panel has clearly signalled its preference for Wetland 6 to be identified on the DAP. Should the Panel consider it necessary to ensure the proposed rezoning is the most appropriate outcome for the Site, the Submitter has provided a version of the DAP with the identification of this wetland (**Alternative DAP**).

¹ The Panel was provided with this correspondence at the hearing on 2 August 2024, and Ms Easton was previously provided with the correspondence as part of GDC's feedback to her on the proposal.

² I am not aware of any other instance in the TTPP where a wetland is mapped, and note that significant wetlands are to be mapped in Schedule 1 and 2 of the Regional Land and Water Plan, as directed by the Regional Policy Statement (Chapter 8, Policy 6).

- 6 Wetland 6 is identified as 'indicative' on the DAP because the wetland has not been surveyed by a licensed cadastral surveyor, and Mr Nichol has advised that the GPS coordinates obtained during his 2021 visit have an accuracy of +/- 3m. The Alternative DAP is sufficiently accurate to ensure protection of values, which is ensured regardless of identification in any case pursuant to new matter of discretion DA – R1 V (requiring consideration of adverse effects on the significant values).

Moana North Development Area Plan

- 7 The Panel have enquired as to the robustness of the proposed Moana North provisions to implement the DAP, in particular whether it is appropriate for development to be 'in general accordance with' the DAP, and as to the legal effect of "notes" within the DAP.
- 8 The notified TTPP requires that *subdivision is in general accordance with any development plan in place for the site*,³ changes have not been proposed to the '*in general accordance with*' aspect of this wording in the Officer's Report. The Environment Court has also recently endorsed, albeit through consent orders, the requirement for roads in a private plan change context to be located *generally in accordance with* stated plans, or *generally in the location of* stated plans.⁴ In addition, Mr Barr's evidence is that the specific tolerances recorded in the "notes" on the DAP provide sufficient guidance to allow an objective assessment of what is 'in general accordance'.⁵ In my submission the "notes" form part of the DAP and therefore are required to be met to the same extent that the rest of the DAP is. For greater certainty, the "notes" have been renamed "tolerances".
- 9 In the interest of ensuring a greater level of robustness, and removing any risk of subjective interpretation, the provisions referencing the DAP have been amended from 'in general accordance with' to 'in accordance with'. The road, footpaths and wetland are identified as indicative, and tolerances provided to confirm what remains 'in accordance with' those indicative features. The identification of features on a plan as indicative continues to be accepted by the Environment Court in a plan change context both for

³ SUB – R5 8., SUB – R14 1.

⁴ *Kainga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218. This is the most recent but not the only example – the Queenstown Lakes District Plan also contains a policy requiring that development is delivered "in general accordance" with a Structure Plan, Policy 45.2.1.1.

⁵ Supplementary Evidence of Craig Barr, at [17] – [26].

roading,⁶ and other features such as neighbourhood parks, publicly accessible open space, floodplain/drainage reserves.⁷

- 10 It is submitted that the DAP as proposed is sufficiently robust to ensure that it will be adhered to for a restricted discretionary activity status. Failure to adhere to the DAP will result in a discretionary or non-complying⁸ activity status.

Landfill Discharge Consents

- 11 The Panel is aware that the Site contains the (now closed) Moana Landfill, and that GDC holds discharge permits⁹ in relation to that. The Panel has enquired as to the management of the Moana Landfill following the expiry of the discharge permits.
- 12 The discharge permits allocate liability for discharge to GDC and that liability is unaffected by the proposed rezoning, or the notification of the TTPP more generally. Specifically addressing the Panel's question, the discharge permits (including ongoing liability conditions) give a clear signal as to future management, but ultimately West Coast Regional Council (**WCRC**) is responsible for any consenting/enforcement. In particular:
- (a) The validity of the discharge permits will not be affected by the rezoning, or any subsequent resource consent process.
 - (b) The discharge permits form part of the existing environment, and will continue to do so (including during any resource consent process), until expiry.
 - (c) The regulation of discharges falls within the jurisdiction of WCRC.
 - (d) On expiry of the discharge permits, any discharge will be in breach of section 15 of the RMA¹⁰ and may be subject to enforcement by WCRC, or any other person seeking orders pursuant to section 316 of the RMA. As such, the consent holder (GDC) and the landowner

⁶ *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155.

⁷ *Kainga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218.

⁸ The amended SUB – R13A provides that failure to implement the landscape strip, or any development proposed within No Build Areas or the Moana Landfill, will result in a non-complying activity.

⁹ The discharge of solid waste to the Moana Landfill – RC95042/2, consent duration two years (discharge to land); associated discharge of contaminants to a small unnamed creek from the Moana Landfill – RC95042/1, consent duration 35 years (discharge to water); and associated discharge of contaminants to air from the Moana Landfill – RC95042/3, consent duration 35 years (discharge to air).

¹⁰ Discharge are not permitted activities in the West Coast Regional Air Quality Plan (10.6 Discretionary Activities, Rule 16) or the West Coast Regional Land and Water Plan (18.4.2 Discretionary Discharges to Water, rule 71).

(currently Brunner Builders) will need to determine whether there is a requirement for further consents, and if so, the arrangements for these.

- (e) There are also ongoing liability clauses in the discharge permits, which place liability with the consent holder, currently GDC (noting there is an ability to transfer if certain conditions are met¹¹). The ongoing liability clauses in the discharge permits provide that *the consent holder shall remain liable under the Resource Management Act, amendment or replacement legislation ... for any adverse effect on the environment caused by the exercise of this consent which become apparent during or after the expiry of the consent.*¹² This provides a clear signal for ongoing management.
- 13 It is acknowledged that it is a complicating factor (including for monitoring) that liability under the discharge permits rests with GDC, while the Moana Landfill is owned by Brunner Builders Limited. How this is managed will ultimately need to be considered by the Submitter as part of any future resource consents. However, the situation above remains regardless of zoning, and in my submission the proposed rezoning provides a better outcome for the Moana Landfill than achievable under the notified provisions. Specifically:
- (a) Ms Kellett's evidence at the reconvened hearing was that continued settlement and/or discharges in the absence of additional load (i.e. from structures such as roading or buildings) is unlikely, given the length of time since closure of the Landfill (16 April 2002¹³);
 - (b) The DAP and site-specific provisions now make development within the Moana Landfill a non-complying activity under the TTPP; and
 - (c) A site-specific policy has been included requiring the avoidance of development in the Moana Landfill (the Panel are aware of the implications of an 'avoid' policy, which were discussed at the hearing).
- 14 Options for vesting the Moana Landfill with GDC, or transfer of the discharge permits from GDC to the landowner (currently Brunner Builders Limited) may be considered prior to expiry of the discharge permits, but are outside the jurisdiction of this process. For the purposes of this process, the

¹¹ Resource Management Act 1991, section 137.

¹² RC95042/1 – condition 25, RC95042/2 – condition 7, RC95042/3 – condition 6.

¹³ According to the Moana Landfill – Site Closure & Remediation Plan, the Landfill was closed on 16 April 2002.

Panel can be confident that effects within the jurisdiction of the district council can be managed and the proposed rule framework provides for this.

Potable Water Supply

- 15 The evidence of Mrs South is that there are various feasible options for potable water supply to the Moana North Development, and the most appropriate time to confirm which option will be used is at subdivision.¹⁴ GDC has confirmed those options are technically feasible, and can be confirmed at subdivision stage.¹⁵
- 16 The Panel has however enquired as to whether there is a number of residential allotments that would trigger a requirement for Council potable water supply. In response, it is my understanding that a Council has discretion as to whether it will supply water to a new area, and I am not aware of any legislative 'triggers' for the Council to supply water to a new area.
- 17 The Drinking Water Quality Assurance Rules 2022 (**Rules**) categorise drinking water suppliers on the basis of people supplied.¹⁶ The Rules, and the Water Services Act 2021 (**WS Act**), seek to ensure quality drinking water by prescribed monitoring and assurance standards for suppliers, they do not contain a requirement for Council reticulation for a particular number of people supplied. For completeness, I note that domestic self-supply is excluded from the requirements of the WS Act, and therefore the Rules. As such, Moana (utilising self-supply) is not currently required to meet the requirements of the WS Act or the Rules, however if GDC decides to supply potable water it will be, or if the option for community supply is elected for the Moana North Development at subdivision then that supply would be.
- 18 Presently, the WS Act is the primary piece of legislation governing water supply, the Local Government Act 2002 has been amended to accord with the WS Act requirements,¹⁷ and provisions relating to water supply under the Health Act 1956 have been repealed.¹⁸ The present government has signalled a raft of changes to the governance of water supply, and those changes are underway with the repeal of the Three Waters legislation in

¹⁴ Statement of Evidence of Sophie South dated 18 March 2024, at [15] – [17].

¹⁵ Addendum Report – Rural Zones and Settlement Zones, at [16] – second bullet point.

¹⁶ Very small communities (0 – 25 people) and small (26 – 100 people), medium (101 – 500 people) and large (500+ people) 'networked supplies'.

¹⁷ Part 7, subpart 1.

¹⁸ Part 2A.

February and the recent enactment of the Local Government (Water Services Preliminary Arrangements) Act 2024. The recent Act does not introduce triggers for Council supply, and there does not appear to be any intention to do so by the Government – the next bill proposed is to help address funding for local government water supply.

Dated this 9th day of September 2024



Kelsey Barry
Counsel for Russell Robinson and Brunner Builders Limited

Appendix 1 – Table

Area	Operative zoning/density	Notified zoning/density	Potential lots
Moana township (area not calculated, density is the same)	Residential (350m ²)	General Residential (350m ²)	Assume 60 infill lots as per previous assessment
14.5 ha to the east of township, Settlement Zone	Residential (350m ²)	Settlement Zone (500m ² sewer, 1,000m ² unsewered)	414 lots (operative) 290 sewer lots (notified)
Site (26.6ha)	Rural (1ha)	Notified (4,000m ²) Seeking (max. 200 lots)	Site – 245 incl commercial
23.1 ha to the east of Arnold Valley Road	Rural (1ha)	Settlement Zone with Rural Residential Precinct (4,000m ²)	Imply onsite WW
Land north of township (area not calculated, density is the same)	Rural (1ha)	Rural Lifestyle (1ha)	Imply onsite WW