

**BEFORE THE PROPOSED TE TAI O POUTINI PLAN/WEST COAST
DISTRICT PLAN HEARINGS PANEL**

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

a submission by Freehold Properties
(Investments) LLP (Submitter No. 73)
on the proposed Te Tai o Poutini
Plan/West Coast District Plan

**LEGAL SUBMISSIONS ON BEHALF OF FREEHOLD PROPERTIES
(INVESTMENTS) LLP**

Dated: 24 October 2024

MONIQUE THOMAS
BARRISTER
CHRISTCHURCH
monique@moniquethomas.co.nz

Counsel for the Submitter
PO Box 33058
Christchurch 8244
Phone: 021 868 834

May it please the Commissioners:**Introduction**

1. These legal submissions address the issue of whether Scenic Visitor Zoning of the property at 2902 Franz Josef Highway¹ (*the Site*) is within the scope of the submission by Freehold Properties (Investments) LLP (*FP*) on the proposed Te Tai o Poutini Plan/West Coast District Plan (*TTPP*).
2. Counsel understands that having recently heard from Mr Innes, the witness for FP, about his future intentions for the Site (which are to continue its development for visitor accommodation activity), the Panel has suggested that Scenic Visitor Zoning (*SVZ*) would be a more appropriate zoning for the Site than Settlement Zone (*SETZ – PREC2*) (as referenced in FP's submission). The Council Reporting Planner, Ms Easton, can support SVZ for the Site from a planning perspective.
3. To assist the Panel, FP has asked me to provide legal submissions on the issue on whether zoning of the Site as SVZ is within the scope of its submission.

Relief Sought

4. FP's submission on the TTPP opposes the notified General Rural zoning for the Site. As noted in FP's submission, the established use of the Site is not rural in nature. The Top 10 Holiday Park Franz Josef is located on the Site and has been operating there for more than 20 years. The submission makes it clear that the notified General Rural zoning does not provide for the established visitor accommodation activity on the Site, nor for its ongoing use and development.
5. In terms of relief, FP's submission requests that the Site be zoned Settlement Centre Precinct (*SETZ - PREC2*) as well as "*any consequential changes that may also be required to other provisions in the proposed Plan in order to provide for the requested relief*".

¹ legally described as Lot 3 DP 426218.

Scope – Legal Principles

6. The legal principles to be applied when deciding whether relief sought is within the scope of a submission, in the context of a full review of a plan, is well settled. A related line of caselaw has developed around issues of scope in the context of submissions on a plan change or variation².
7. In *Gock v Auckland Council* [2019] NZHC 276³, the High Court set out the following useful summary of the “ordinary requirements” as to issues of scope on a plan review under the First Schedule to the Resource Management Act 1991 (*RMA*):
 - (a) The paramount test is whether any amendment made to the plan as notified goes beyond what is reasonably and fairly raised in submissions on the plan.⁴
 - (b) That assessment should be approached in a realistic workable fashion.⁵
 - (c) A submission must first raise a relevant resource management issue, and then any decision requested must fairly and reasonably fall within the general scope of the original submission, or the proposed plan as notified, or somewhere in between.⁶
 - (d) The approach requires that the whole relief package detailed in submissions be considered.⁷
 - (e) Consequential changes that logically arise from the grant of relief requested and submissions lodged are permissible, provided they are reasonably foreseeable.⁸

² Such as *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at [166]; *Clearwater Resort Ltd v Christchurch City Council* (HC) Christchurch AP24/02 at [66]; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [80]; *Re Otago Regional Council* [2021] NZEnvC 164, Annexure 2 at [3] – [21].

³ at [43].

⁴ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC) at 171.

⁵ *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at 413.

⁶ *Re an application by Vivid Holdings Ltd* [1999] NZRMA 467 (EnvC) at [19]; *The Church of Jesus Christ Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166 at [19].

⁷ *Shaw v Selwyn District Council* [2001] 2 NZLR 277 (HC) at [31].

⁸ *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 (HC) at [73]–[77].

(f) Such changes can extend to consequential rule changes following agreed relief regarding policy changes, provided the changes are reasonably foreseeable.⁹

(g) There is an implied jurisdiction to make consequential amendments to rules following changes to objectives and policies on the principle that regional and district plans have an internal hierarchical structure.¹⁰

...

8. The High Court's decision in *Gock* is consistent with its decision in *Albany North Landowners v Auckland Council* [2017] NZHC 138. In *Albany North Landowners*, the High Court observed that the PAUP process (and other full reviews of planning documents) are far removed from the relatively discrete variations and plan changes considered in *Motor Machinists* and similar cases. In *Albany North Landowners*, the High Court also held that in a full plan review context, a s32 report does not purport to fix the final frame of the instrument as a whole or as an individual provision and is not therefore determinative of scope.

9. Applying the relevant caselaw to FP's submission:

a. Approached in a realistic workable fashion, the need for an alternative zoning which enables the ongoing use and development of the Site for visitor accommodation activity is reasonably and fairly raised in FP's submission. The submission clearly takes issue with the notified zoning of the Site and states that the notified zone fails to adequately provide for the established visitor accommodation activity, as well as for its ongoing use and development;

b. The relevant summary of submissions clearly identifies the submission as a rezoning request¹¹ and the concern by the submitter that the notified General Rural zoning fails to adequately provide for the established visitor accommodation activity and its ongoing use and development;

⁹ *The Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166 at [47].

¹⁰ *Clark Fortune McDonald & Associates v Queenstown Lakes District Council (No 2)* C89/02, 24 July 2003 at [17].

¹¹ Page 127 of 174.

- c. The submission raises a relevant resource management issue (the zoning of the Site in the notified Plan and the fact that this would not enable ongoing use and development). SCZ can reasonably be considered a zoning somewhere in between the notified Rural zoning and SETZ – PREC2¹². The permitted activity height limit in the SETZ-PREC2 is 12m for example¹³, but 10m in the SCZ¹⁴.
- d. In terms of the whole relief package detailed in the submission, consequential changes required to other provisions in the proposed Plan were referenced such that an alternative to Settlement Zone was reasonably foreseeable.
- e. The public has clearly had a chance to participate through the submission, further submission and hearing processes, such that no person could reasonably be said to have been prejudiced.

Conclusion

- 10. It is common for relief to be amended during the hearing process (for example in response to an officer report, as a result of questions from a hearings panel or in response to testing of evidence during a hearing). This is particularly the case for full plan reviews.
- 11. If the Panel is not minded to zone the Site as SETZ – PREC2 (with rules enabling its ongoing use and development), there is scope within FP’s submission to zone the Site as SVZ. SVZ is:
 - a. a more efficient, effective and appropriate zoning for the Site;
 - b. is consistent with the long established use of the Site;
 - c. based on my review of the notified SVZ objectives, policies and rules, would better achieve the purpose of the Act than any other zoning; and

¹² described on page 437 of the proposed TTPP as settlements where a focal community and commercial area is developing. *"It is anticipated that the Settlement Centre character will develop over time, with more commercial development in particular. This precinct anticipates the possibility that settlement will grow and demand for retail and commercial services will increase, and that community facilities could be developed or expanded with this growth".*

¹³ SETZ- R11.

¹⁴ SVZ-R1(5)(ii).

d. is supported by the reporting Officer.



M A Thomas

Counsel for Freehold Properties (Investments) LLP

24 October 2024