

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

**IN THE MATTER OF** The Resource Management Act 1991 (**RMA**  
or **the Act**)

**AND**

**IN THE MATTER OF** Proposed Plan Change 4 (**PC4**) to the  
Kaikoura District Plan (**KDP** or **the Plan**)  
brought by Kaikoura Business Park Limited  
(**KBP**)

**AND**

**IN THE MATTER OF** the Hearing of Submissions and Further  
Submissions on PC4

---

**RIGHT OF REPLY FOR KAIKOURA BUSINESS PARK LIMITED REGARDING PLAN  
CHANGE 4**

Dated: 10 April 2024

---

Presented for filing by:  
Margo Perpick  
Saunders & Co  
PO Box 18, Christchurch  
027 227 2026  
margo.perpick@saunders.co.nz

1 I provide this Right of Reply in response to the comments made by the Commissioners at the hearing held on Monday 25 March 2024.

### **Hutton's Shearwater Charitable Trust further submission**

2 Commissioner Solomon made comment on the further submission made by the Hutton's Shearwater Charitable Trust (the **Trust**), in support of the Kaikoura Dark Skies submission. In this further submission, the Trust stated:<sup>1</sup>

*"We have been assured that there will be no direct above horizon lighting, and that attempts will be made to turn off all lighting during low cloud or fog conditions during the breeding season from August to April, and particularly during the fledging season of March to mid April."*

3 In making the above statement, the further submission by the Trust raises a new point that is not introduced in the original submission of the Kaikoura Dark Skies submission. The Dark Skies submission does not make any mention of the Hutton's Shearwater or breeding and fledging seasons, nor does it mention attempts to turn off all lighting during low cloud or fog conditions during these seasons.

4 Clause 8 of Schedule 1 in the Resource Management Act 1991 sets out that a further submission can only support or oppose a submission. It cannot extend the scope of an original submission.

5 The ambit of a further submission is discussed in the Environment Court decision of *Hilder v Otago Regional Council*.<sup>2</sup> In *Hilder*, Mr Hilder lodged a further submission opposing the submissions made by the Careys Bay Association Incorporated and Port Otago Limited on the publicly notified proposed regional coastal plan for Otago.

6 Mr Hilder's further submission in opposition to the Careys Bay Submission was disallowed. Counsel for the Regional Council submitted that Mr Hilder's further submission was invalid because it went beyond the scope permitted

---

<sup>1</sup> Further Submission by the Hutton's Shearwater Charitable Trust, 2<sup>nd</sup> paragraph.

<sup>2</sup> *Hilder v Otago Regional Council* ENC Christchurch C122/97, 26 November 1997

by a further submission in that it sought a new form of relief and was not simply in support or opposition to an original submission.

7 The Court went on to state that:<sup>3</sup>

*“The submission and further submission procedure is designed to ensure there is full and widespread public knowledge of any proposal to amend a publicly notified Plan so that further submissions can be lodged either in support of or in opposition to such a proposal. If Mr Hilder’s further submission were to be allowed this legislative intent would be undermined because there would be no opportunity for any further submission in opposition to the relief sought.”*

8 The Issue of lighting in relation to the Hutton’s Shearwater can be dealt with by the lighting requirements in Amendment 2 to the *Appendix 1 – Landscape, Amenity and Energy efficiency Guidelines* at provision 7 (a) (vi), which sets out that the lighting is to have automatic motion sensors and daylight controls such that the lights are only on from dusk to dawn, and when motion has been detected, maximum on time of 5 minutes.<sup>4</sup>

### **Highly productive land**

9 The question was asked whether Mr Dunham was right to assess the land separately, with respect to the HPL land and the non-HPL land within the site. In relation to this issue, Commissioner Chrystal referred to the Environment Court decision of *G M & J Drinnan v Selwyn District Council*.<sup>5</sup>

10 The *Drinnan* decision involves a different factual scenario to that surrounding Kaikoura Business Park’s PC4 application. The Drinnans owned 10 ha of land on the outskirts of Prebbleton, within which they grazed cattle on 2.2 ha of the land. The 2.2 ha area is situated between a District Council recreational park and the southern boundary of PC72 (a private plan change request).

11 The PC72 land was identified for future urban development and the Drinnans submitted on PC72, seeking to extend the area to be rezoned for urban development to include their 2.2 ha block of land. Because the PC72 land had

<sup>3</sup> At page 7, 5<sup>th</sup> paragraph from the top.

<sup>4</sup> Further Evidence of Anna Bensemann dated 9 April 2024 at [4].

<sup>5</sup> *Drinnan v Selwyn District Council* [2023] NZEnvC 180.

the advantage of an exception under the NPS-HPL, the Drinnan's argument was that their land should be assessed together with PC72. The Court did not accept this argument.

12 However, the decision then went on to say, more pertinently, that:<sup>6</sup>

*"The application of the NPS-HPL to the rezoning of highly productive land (only) is the only interpretation of its provisions that is reasonably available. Policy 5 of the NPS-HPL applies to highly productive land and not to other land..."*

13 That is the approach that Mr Dunham takes in his assessment.

### **Restrictive Covenant**

14 The question arose whether an entity that purchases part of the Plan Change land from Kaikoura Business Park would also be subject to the agreement that has been entered into with former submitters Hopkins and Paul. That matter can be dealt with by way of a restrictive covenant on the Kaikoura Business Park land, which means a purchaser of the KBP land would be aware of and bound by that agreement as it would be attached to the land as a form of restrictive covenant. The restrictive covenant is attached at **Appendix A**.

Dated: 10 April 2024



Counsel for Kaikoura Business Park Limited

---

<sup>6</sup> At [16]

**Covenant Instrument to note land covenant**

(Section 116(1)(a) &amp; (b) Land Transfer Act 2017)

**Covenantor****KAIKOURA BUSINESS PARK 2021 LIMITED****Covenantee****MGP CONTRACTING LIMITED (as to record of title 860764)****WELDFIT ENGINEERING LIMITED (as to record of title 860765)****Grant of Covenant**

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

**Schedule A***Continue in additional Annexure**Schedule, if required*

| Purpose of covenant | Shown (plan reference) | Burdened Land<br>(Record of Title) | Benefited Land<br>(Record of Title) or in<br>gross |
|---------------------|------------------------|------------------------------------|----------------------------------------------------|
| Land covenant       |                        | 1073517                            | 860764 and 860765                                  |

**Covenant rights and powers (including terms, covenants and conditions)***Delete phrases in [ ] and insert memorandum number as required.**Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:

[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].

Annexure Schedule

## ANNEXURE SCHEDULE

### 1. INTERPRETATION

---

For the purposes of this land covenant:

**Benefitted Land** means:

- (i) Record of title 860764, being lot 3 deposited plan 527436; and
- (ii) Record of title 860765, being Lot 4 deposited plan 527436.

**Burdened Land** means record of title 1073517, being lot 2 deposited plan 501321 and lot 20 deposited plan 578956.

**Common Boundary** means the common boundary between, and/or adjacent to, the Burdened Land and the Benefitted Land.

**Covenantee** means MGP Contracting Limited and Weldfit Engineering Limited.

**Covenantor** means the covenantor named of the first page of this instrument and includes its successors and assigns,.

### 2. COVENANTS

---

2.1. The Covenantor covenants with the Covenantee as follows:

- 2.1.1. To plant a landscaping strip on the Burdened Land within six (6) metres along the length of the Common Boundary, but excluding any parts of the Burdened Land within this area which are subject to any registered easement(s) or other interests;
- 2.1.2. That no building shall be constructed on the Burdened Land within sixty (60) metres of the Common Boundary;
- 2.1.3. That the maximum height of any buildings constructed sixty (60) metres from the Common Boundary on the Burdened Land shall at that point on the Burdened Land be limited to eight (8) metres in height above the finished ground level at that part of the Burdened Land;
- 2.1.4. That the side of any buildings constructed on the Burdened Land, which are closest to, and which faces the Common Boundary, shall be painted green; and
- 2.1.5. Once any buildings constructed on the Burdened Land, which are closest to the Common Boundary, the Covenantee will also add amenity planting within six (6) metres of that side of the building closest to, and which faces the Common Boundary.

### 3. EXPIRY

---

3.1. The covenants and this instrument shall expire and be of no further effect to the extent that:

- 3.1.1. Any part of the Burdened Land is no longer bordered by any part of the Common Boundary; or
- 3.1.2. All of the Burdened Land if both of the Convenantees, or any part of the Burdened Land which shares the Common Boundary with any one of them,

if a Covenantee ceases to own the Benefitted Land, and/or there is any change in the legal or beneficial ownership of their shares from that as at the date of registration of this instrument where there is a change in the effective management or control of the company, such that the covenants contained in this instrument are personal and will only be of benefit to each of the named Covenantee's and not any successors and assigns of the Benefitted Land.

**(Released Land)**

- 3.2. The Covenantor will be entitled to a removal of this instrument from the records of title for the Released Land and the Covenantor and Covenantee will do all things and sign all documents required to register the removal of this instrument from the affected records of title, including by obtaining the consent of any mortgage or charge holder to the removal of this instrument from the relevant records of title.

**4. ROAD AND RESERVE VESTING**

---

- 4.1. The Covenantee consents to the deposit or registration of any survey plan (**Survey Plan**) by the Covenantor in respect of the Burdened Land which has the effect of vesting or dedicating all or any part of the Burdened Land as any road (**Road**) or reserve (**Reserve**) in any local authority, territorial authority or the Crown, or which creates a utility lot (**Utility Lot**), and agrees that the covenants in this instrument shall cease to apply in respect of the Burdened Land within such Road, Reserve and/or Utility Lot upon the survey approval of the Survey Plan by Land Information New Zealand and this clause will be deemed to be the consent of the Covenantee to the deposit or registration of the Survey Plan.

**5. LIMITED POWER OF ATTORNEY**

---

- 5.1. If the Covenantor determines that:
- 5.1.1. Any additional written consent as Covenantee is required from the owner of each of the Benefitted Land to the depositing of a Survey Plan; and/or
  - 5.1.2. If the Covenantee does not provide the necessary signed documents required to effect the removal of this instrument from the Released Land within fifteen (15) working days of a request to do so by either the Covenantor or its lawyer,

then the Covenantee, and each of them separately, irrevocably appoint the Covenantor (or any nominee of the Covenantor) as their attorney for the limited purpose only of signing any consent necessary in the form required by the Covenantor (including a Client Authority and Instruction Form) to the depositing of any Survey Plan and/or to remove this instrument from any land to be vested as road or reserve and/or to be created as a utility lot and/or the Released Land, whether at the time of depositing of any Survey Plan or if necessary subsequent to that. This power of attorney is given for valuable consideration and is irrevocable.

**6. DISPUTE RESOLUTION**

---

- 6.1. If any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.
- 6.2. If the dispute is not resolved within twenty working days of the date on which the parties began their negotiations, then the parties shall submit to the arbitration of

an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.

- 6.3. If an arbitrator cannot be agreed upon within a further ten days, then an independent arbitrator will be appointed by the President for the time being of the Canterbury Westland branch of the New Zealand Law Society.
- 6.4. Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution.

DRAFT