

**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

**LEGAL SUBMISSIONS FOR KAIKOURA BUSINESS PARK LIMITED REGARDING
PLAN CHANGE 4**

Dated: 20 March 2024

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INTRODUCTION

- 1 Kaikoura Business Park 2021 Limited (**KBP** or **the Applicant**) has requested a private plan change (**PC4**) to the Operative Kaikoura District Plan, to re-zone approximately 21.6 ha of rural land in Kaikoura, to a new proposed 'Light Industrial Zone'.
- 2 The objective of KBP is to transform the application site from a relatively undeveloped and unproductive rural site into a Business Park where Light Industrial and other compatible activities will be able to establish and operate without the need to obtain resource consents.

THE SITE AND PROPOSED REZONING

- 3 The site is located at 69 Inland Kaikōura Road, Peketā, approximately 5km south of the Kaikōura township, at the intersection of State Highway 1 and the Inland Kaikōura Road. The land is legally described as Lot 2 DP 501321 & approved Lot 20 SU-2021-1765-00 (**the Site**). PC4 seeks to introduce a new Light Industrial Zone (**LIZ**) to the Operative Kaikōura District Plan (KDP), and rezone the Site to LIZ.
- 4 The Site is currently zoned Rural under the KDP and was previously used for farming. The surrounding sites are also zoned Rural, including those on the other side of State Highway 1, and the Inland Kaikōura Road. To the east, on the other side of the Inland Kaikōura Road is the Kowhai River. The ocean is approximately 350 metres to the south of the Site.
- 5 An area of land to the north, west and south of the Site has recently been subdivided into sections which are approximately two hectares in size, which is permitted under the current Rural zoning. Some of those sections already contain completed dwellings, with dwellings on other sites at various stages of the building consent and construction process.
- 6 The size and shape of individual sites within the proposed LIZ have not been finalised at this stage. However, the Applicant has provided an Outline Development Plan which also shows the realignment of the Inland Kaikōura Road.

- 7 The Light Industrial Zone anticipates light industrial activities, together with commercial and retail activities limited in size and nature to be compatible with light industrial activities and not have adverse effects on the Kaikōura town centre.

EVIDENCE

- 8 The submitter has provided the following evidence:
- (a) **Simon Marshall** regarding Infrastructure;
 - (b) **Glen Wright** regarding Lighting;
 - (c) **Kyra Xavia** regarding Lighting;
 - (d) **Jeremy Trevathan** regarding Acoustics;
 - (e) **Andy Carr** regarding Transport;
 - (f) **Tim Heath** regarding Economics;
 - (g) **Hamish Williams** regarding Archaeology;
 - (h) **Michael Nugent** regarding Geotechnical Conditions;
 - (i) **Helen Davies** regarding Contamination of Soil;
 - (j) **Liz Gavin** regarding Landscape;
 - (k) **Morgan Tracy-Mines** regarding Ecology;
 - (l) **Geoff Dunham** regarding Soils.
- 9 The evidence filed by KBP shows that there are significant positive effects that will arise from the proposed rezoning and little, if any, negative consequences.

KEY ISSUES

- 10 The issues to be addressed are as follows:
- (a) The statutory framework for assessing proposed plan change decisions;
 - (b) The application of relevant statutory documents such as the Regional Policy Statement and various National Policy Statements
 - (c) What are the potential positive effects of the proposed rezoning compared to the zoning in the KDP?

- (d) What are the potential negative effects of the proposed rezoning compared to the zoning in the KDP?

Statutory Framework for Proposed Plan Change Decisions

11 The approach to be taken in making decisions on proposed plan changes was summarised in the recent Environment Court decision of *Middle Hill Ltd v Auckland Council*,¹ (following the Court's decision in *Colonial Vineyard Ltd v Marlborough District Council*²) as follows:

[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:

(e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the RMA;³

(f) whether they accord with Part 2 of the RMA;⁴

(g) whether they give effect to the regional policy statement;⁵

(h) whether they give effect to a national policy statement;⁶

(i) whether they have regard to [relevant strategies prepared under another Act];⁷ and

(j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.⁸

[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Auckland Unitary Plan by:

(a) identifying other reasonably practicable options for achieving the objectives;⁹ and

(b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:¹⁰

i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:

- economic growth that are anticipated to be provided or reduced;¹¹ and

- employment that are anticipated to be provided or reduced;¹² and

¹ [2022] NZEnvC 162 at [29]

² [2014] NZEnvC 55 at [17]

³ RMA, ss 31 and 74(1)(a)

⁴ RMA, s 74(1)(b)

⁵ RMA, s 75(3)(c)

⁶ RMA, s 75(3)

⁷ RMA, s 74(2)(b)

⁸ RMA, s 76(3)

⁹ RMA, s 32(1)(b)(i)

¹⁰ RMA, s 32(1)(b)(ii)

¹¹ RMA, s 32(2)(a)(i)

- ii. if practicable, quantifying the benefits and costs;¹³ and
- iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.¹⁴

12 In *Colonial Vineyard Ltd* the Court adopted an approach of identifying and evaluating the potential positive consequences and potential negative consequences of the two different options that were being assessed by the Court, as a means to evaluate the risks of acting or not acting in respect of each option.¹⁵

13 Ms Bensemann's planning assessment, with reference to the technical evidence produced by the Applicant's other witnesses, shows that each of the tests set out above is answered in the affirmative by the proposed plan change. In summary, and having regard to all relevant considerations, amending the KDP as sought by PC4 would better achieve and give effect to the purpose of the RMA. In particular:

Canterbury Regional Policy Statement

14 PC4 has been confirmed by Environment Canterbury as being generally consistent with the objectives and policies of the Canterbury Regional Policy Statement,¹⁶ and can therefore be viewed as giving effect to the CRPS.

National Policy Statement on Highly Productive Land

15 The requirements of clause 3.6(4)(a), (b) and (c) of the NPS-HPL are met,¹⁷ having regard to the facts that:

- a The Kaikōura District currently lacks the industrial land provision to meet the future requirements of local industrial businesses and effectively distinguish industrial activities from other commercial activities. PC4 is required to provide sufficient development capacity within the district.¹⁸
- b There are no other reasonably practicable and feasible options that would offer the required development capacity more efficiently than the PC4 site because of the distribution of HPL around the existing

¹² RMA, s 32(2)(a)(ii)

¹³ RMA, s 32(2)(b)

¹⁴ RMA, s32(2)(c)

¹⁵ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [68] – [71]

¹⁶ Submission of Environment Canterbury, and evidence of Anna Bensemann, paragraphs [110] – [113]

¹⁷ Evidence of Anna Bensemann, paragraphs [71]-[81] and evidence of Tim Heath paragraphs [75] – [85] and evidence of Geoff Dunham paragraphs [53] – [64].

¹⁸ Heath evidence paragraph 73; NPS-HPL policy 3.6(1)(a)

environment¹⁹ and the economic efficiency of providing business land to the west of the township, around greenfield development areas.²⁰

- c The potential economic benefits associated with PC4 would outweigh any economic costs associated with the loss of 3.6ha of HPL for land-based primary production, taking into account both tangible and intangible values.²¹

National Policy Statement on Indigenous Biodiversity

- 16 The KDC has not identified any Significant Natural Areas (SNAs) on the Applicant Site. Nevertheless, the Applicant has commissioned a report on ecological values,²² with a view to managing any effects on indigenous biodiversity outside of SNAs, using the effects management hierarchy, pursuant to clause 3.16 of the NPS-IB.

- 17 Further, Ms Bensemann has analysed the situation which would occur, should further ecological investigations reveal SNA(s) on the Site, and concluded that the relevant requirements of clauses 3.10 and 3.11 are met.²³

National Policy Statement on Freshwater Management

- 18 Relying on the infrastructure servicing evidence of Mr Marshall,²⁴ Ms Bensemann has concluded that the requirements of the NPS-FM would be given effect to.²⁵

National Policy Statement on Electricity Transmission

- 19 Similarly, the NPS-ET will be given effect to, with consideration of the appropriate proximity to electricity transmissions lines to be given at the time the site is developed.

National Policy Statement on Urban Development

- 20 Although the NPS-UD is not strictly applicable, as the KDC is not a Tier 1, 2 or 3 local authority under NPS-UD (because it does not contain an “urban

¹⁹ Heath evidence paragraph 76; NPS-HPL policy 3.6(1)(b)

²⁰ Heath evidence paragraph 79; NPS-HPL policy 3.6(1)(b)

²¹ Heath evidence paragraph 84; NPS-HPL policy 3.6(1)(c)

²² Section 7 of report attached to evidence of Morgan Tracey-Mines

²³ Evidence of Anna Bensemann, paragraphs [92] – [102]

²⁴ Evidence of Simon Marshall, paragraphs [25] – [38]

²⁵ Evidence of Anna Bensemann, paragraphs [103] – [104]

environment”), PC4 has been framed having regard to the useful guidance of the NPS-UD in the elements of a well-functioning urban environment.²⁶

21 This will produce economic and environmental benefits in providing a dedicated area of sufficient capacity to meet Kaikoura District’s demands for light industrial zoned land over the long term, as opposed to a continued practice of locating light industrial uses in other zones through resource consents, or simply not providing the capacity to meet the demand.

22 In *Bunnings Ltd v Queenstown Lakes District Council*²⁷ the Environment Court held that the NPS-UDC 2016²⁸ required a different approach to deciding whether land may be rezoned for development than had been taken up until that time, when it said (emphasis added):²⁹

[148] The NPS-UDC directs a radical change to the way in which local authorities have approached the issue of development capacity for industry in the past. That has traditionally come close to the "Soviet" model of setting aside X ha for the production of pig iron. The ODP, PDP and even the PORPS all come close to that when they direct that non-industrial activities are to be avoided on land zoned industrial.

[149] In contrast the NPS-UDC's substantive policy PA3(b) requires us to have particular regard to providing choices for consumers. The proposal by Bunnings will do that...

[150] Importantly NPS-UDC policy PA3(b) requires us to promote the efficient use of urban land... We find that on the facts the proposal is a more efficient use of the site than waiting for an industrial activity to occur.

[151] The final "outcomes" policy, PA3(c), requires us to have regard to limiting - as much as possible — the adverse impacts of, in this case the Industrial zoning, on the competitive operation of land markets. The proposed activity is not prohibited, and so the undoubted adverse effect on competition in the land market should be limited by granting consent to this unusual application.

[155] There are further, major, problems with the Council's approach to PA1 which become obvious when the NPS-UDC is read as a whole. The spirit and intent of the substantive objectives is to open development doors, not to close them...

²⁶ Evidence of Anna Bensemann, paragraphs [82] – [91]

²⁷[2019] NZEnvC 59

²⁸ These remarks are equally applicable under the NPS-UD 2020

²⁹ Para 148 - 155

- 23 More recently, the Environment Court in the above-mentioned *Middle Hill*³⁰ decision summarised the NPS-UD as follows:

[33] The National Policy Statement on Urban Development 2020 (NPS-UD) is a document to which the plan change must give effect. The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments...

WHAT ARE THE POSITIVE EFFECTS OF THE PROPOSED PLAN CHANGE?

Economic growth for Kaikoura

- 24 Mr Heath considers that PC4 has the potential to provide significant net economic benefits to the Kaikoura industrial economy and the local market.³¹

- 25 Kaikoura currently lacks a specific industrial area/zone, which weakens market certainty for industrial investment in Kaikoura. PC4 would ease these concerns and provide increased surety around longer-term industrial investment in the district. This is important for growing industrial investment and activity in Kaikōura.³² PC4 is essentially required to facilitate the expansion of the Kaikōura industrial economy over the next 30 years.

- 26 These positive effects of PC4 are referred to in a large number of submissions in support of PC4, including the opportunity for growth, the injection of capital, confidence in the town again, and wealth creation in Kaikoura. Submissions have also referred to there being too heavy a reliance on tourism, currently.

Employment

- 27 There are also many submissions in support of PC4 which say that PC4 will be beneficial for employment opportunities in the District.

³⁰ [2022] NZEnvC 162

³¹ Evidence of Tim Heath at [94]

³² Tim Heath, at [22]

28 This is particularly important, as population growth of the District is considered likely to continue to track closely with the High growth scenario, based on Stats NZ's latest (June 2023) Medium and High growth scenarios.³³

Providing future land for business and industrial activities and consolidation of industrial activities

29 52% of Kaikōura industrial employment (or 190 industrial employees) are located in the non-business environments (i.e., residential and rural areas) of the district.³⁴

30 Given the high level of dispersal of industrial activity outside of Business Zones, a new special purpose LIZ would help consolidate industrial activity to an area that would increase the agglomeration benefits generated by co-location and confine the negative externalities and disamenities associated with some industrial activities away from the mix of commercial / tourist and residential activity.³⁵

31 Furthermore, facilitating the development of PC4 would 'open up' valuable business land for new commercial development and investment opportunities in the central area of the township in the future. This would be an economically beneficial outcome in terms of effectively fulfilling the envisaged role and function of these commercial areas.³⁶

32 Based on Tim Heath's assessment of the BMU Zone, the existing zoned land area is almost fully occupied, with limited vacant land available for new business activity, totaling around 0.5ha. This means there is very limited capacity or development potential for new industrial activities to set up in Kaikōura, particularly in a location close to a large employment base like Kaikōura township.³⁷

33 While Kaikōura District is not required to provide an NPS-UD buffer (as it is not a tier 1 or Tier 2 authority) it is considered prudent from an economic perspective for long term strategic planning to provide sufficient choice in price and location of industrial land, and avoid any artificially driven land price spikes in the market if growth occurs at a faster rate than anticipated,

³³ Evidence of Tim Heath, at [15]

³⁴ Evidence of Tim Heath, at [26]

³⁵ Evidence of Tim Heath, at [27]

³⁶ Evidence of Tim Heath, at [28]

³⁷ Evidence of Tim Heath, at [41]

particularly given the longer development lead times required to bring new industrial zoned land to the market.³⁸

- 34 Mr Heath states that, having undertaken an economic assessment of the distribution of HPL, encompassing LUC Classes 1-3, within the local context, he considers there are no other reasonably practicable and feasible options that would offer the required development capacity more efficiently than the PC4 site.³⁹

Improved traffic outcomes

- 35 Approval of PC4 will prompt the re-alignment of the Inland Kaikoura Road, to move its intersection with SH1 further away from the bridge over the Kowhai River, and a right-hand turning bay into the Inland Kaikoura Road off of SH1. These improvements to traffic safety are already justified on current traffic numbers, but can be brought forward as part of PC4 conditions.
- 36 A number of submissions have pointed out the congestion which currently occurs within the Kaikōura town centre, specifically the Beach Road congestion. Location of Light Industrial uses to the PC4 Site means that further congestion which would otherwise occur from having to locate such uses in the town centre should be avoided.

WHAT ARE THE POTENTIAL NEGATIVE EFFECTS OF THE PROPOSED PLAN CHANGE?

Amenity and Local Character Effects

- 37 Although the change from the Site's current pastoral use to a Light Industrial Park will result in changes to amenity and local character, there is already a relatively high degree of intensification which could take place under the Site's current rural zoning.

Loss of Productive Soils

- 38 The Site contains a small area (about 3.8ha) of Class 2 land, which qualifies as Highly Productive Soil. However, the economic and other benefits of rezoning the land to Light Industrial outweigh the benefits of retaining the rural zoning,

³⁸ At [33]

³⁹ At [76]

given the various restrictions on production identified in the evidence of Mr Dunham, and the fact that the current zoning enables subdivision to 2ha.

Dark Sky protection

39 The Applicant has put forward measures to ensure that the lighting to be installed in the PC4 area will be designed and installed so as to avoid adverse effects on the Hutton's Shearwater flight paths, and otherwise maintain the benefits of a Dark Sky as much as possible.

Ecological Effects

40 Investigations carried out thus far have indicated that effects on wildlife and its habitat which may be discovered at the time of subdivision / development can be managed by reference to the effects management hierarchy in the NPS-IB.

CONCLUSIONS

41 The proposed rezoning will provide a number of important positive consequences for Kaikōura that are not attainable under the current rural zoning. These include economic growth for Kaikoura, employment opportunities, the consolidation of industrial activities, and beneficial traffic solutions. The positive effects of the proposed rezoning outweigh any negative aspects. There is less risk in acting to approve the plan change than there would be in not acting and declining it.

42 Having regard to the various applicable policy documents, the proposed rezoning would better give effect to the purpose and principles of the RMA.

Dated: 20 March 2024



Counsel for Kaikoura Business Park Limited

Appendix A – Summary of Status of Submissions

Submissions on Kaikoura Business Park Plan Change 4	
Submitter	Status
A McKenzie Angela Meier Angelique Thompson Annelise Thompson Nicholas Anderson Bella Black Brett Bolton Barry Holliday Paul Beadle Hamish Bruch Lynette Buurman Charles MacFarlane Cynon Neilson Alex Cuff C Rye Richard Cleall Heather Clelland Richard Clemett Grant Clifford Richard Cotter Doug Hockey Dennis Thompson Edward Anderson Bruce Ensor Fraser Ibbotson Royden Fearnley Fissenden Fissenden Bros Ltd Tony Flint Peter Ford G Anderson George Hopkins Gemma McKenzie Robin Gibson Kaleb Godsiff Harley Jolly Hillary Watherston Murray Hamilton Bernard Harmon Brent Hole Marcel Hoogerwerd James Hopkins Ian Croucher Grant Irvine Judith Croucher Jason Holliday	Submissions in Support

Matthew Jacobsen Lex Thompson Jeremy Johnston Roger Jones Kieren Gray Spencer Kahu Rick Kjestrup L A Anderson L Bennett Logan Bonnington L Macdonald John Leader Andy Clapshaw Malcolm Lodge A Lund Michael Anderson Matt Bentley Marco Vargas Jo MacFarlane Andrew MacFarlane Scott Mansfield (Kaikoura plumbing and drainage) Alex MConhie Angus McKenzie Oliver Ruddenklau Peter Ryder Sam Parkin Rob Loyle R Ruddenklau R Taylor Richard Watherston R Wilding Sam Wilding Susan Anderson Sophie Anderson Sharon Bartlett Steve Battersby S Dunlea Shaun Johnston Skye Macdonald Gene Simmiss Craig Smith Allan Stevens Daniel Stevenson Vanessa Stokes Geraldine Straker Barry Stuart Susan Macdonald Tim Anderson Tom Baxter Trevor Bolton Keith Taylor John Trewin	
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Joe Tripp Steve Vaughan Willy Pears Will Rutherford Tim Wilding Michael Wilson A Baxter	
ECan	Neutral Do not wish to be heard
<u>Original Submissions in Opposition:</u> Emma and Daryn Hopkins John Leeder Murray Paul Eion Fitzgibbon	Original Submissions in opposition have been withdrawn (in the case of Hopkins and Paul, as a result of a personal agreement made between the submitters and KBP regarding setbacks). Consequently, further submissions that were in support of the original submissions of Hopkins, Leeder, Paul and Fitzgibbon are also withdrawn.
<u>Further Submissions in support of Original Submission in Opposition:</u> Neville John Smith Ben Hurst Andy Hurst Henry Murray Lianne Murray Brian Hopkins Rae Johnston Ashley Cunliffe Penny Cunliffe	
Fire and Emergency NZ	Request to be heard has been withdrawn following updated information regarding water supply and access.
Waka Kotahi	Request to be heard has been withdrawn following KBP's provision of a set of amended conditions for the KBP ODP, which address the matters raised in KDC's original submission.
Kaikoura District Council Staff	Request to be heard has been withdrawn
Dr Larry Field	Request to be heard has been withdrawn, Dr Field strongly supports KBP's efforts in controlling night lighting in the park and no longer feels the need to be heard at a hearing.