

Before the Independent Hearing Panel
Appointed by the Mackenzie District Council

Under The Resource Management Act 1991 (**RMA**)

In the matter of proposed Plan Change 21 to the Mackenzie District Plan

**Reply by Counsel for Mackenzie District Council to Memorandum by
Counsel for Road Metals Company Limited**

28 February 2023

Council's solicitors:

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May it please the Commissioners:

- 1 These submissions reply to the submissions by Counsel for Road Metals Company Limited (Road Metals) in a memorandum dated 21 February 2023.

Overview

- 2 It is the Council's position that the submission by Road Metals is not on PC21 and is beyond the scope of this plan change.
- 3 This is because PC21 specifically identifies the changes that were proposed to the industrial zone provisions and several maps. The PC21 documentation did not identify zoning changes to the east of Twizel at all as being within the scope of PC21, including Road Metals' property. Changes to other provisions and parts of the Plan that were not identified by the PC21 documentation are expressly identified as not within the scope of PC21. The section 32 material did also expressly identify that the Road Metals' site and industrial zoning to the east of Twizel (as identified in the Spatial Plans) was not being considered in this stage of the District Plan review and will be further assessed and considered within the scope of a future stage.
- 4 This is not to say that the most appropriate zoning for this site will not be considered as part of the District Plan review. Rather it needs to be assessed in detail as part of a future stage. It is the Council's position that this submission should not be further assessed as part of PC21. Road Metals can fully participate in a future stage (programmed by Council to be Stage 3) where the merits of this proposed zoning can be properly assessed, it is notified as within scope, submissions and further submissions sought and a hearing can occur focused on the merits of this proposal.

Relevant Documents and Facts.

- 5 The relevant originating documents for the Commissioners to consider are set out below (links to them on the Council website):

Public Notice

<https://www.mackenzie.govt.nz/pages/public-notices/2022/proposed-plan-changes-21-and-22-implementation-of-the-spatial-plans-and-light>

PC 21 Overview Report

https://www.mackenzie.govt.nz/_data/assets/pdf_file/0011/677981/PC21-Overview-Report.pdf

Section 32 Report

https://www.mackenzie.govt.nz/_data/assets/pdf_file/0010/677980/PC21-Section-32-Report.pdf

Industrial Zone Changes

https://www.mackenzie.govt.nz/_data/assets/pdf_file/0012/677973/GIZ-General-Industrial-Zone.pdf

Road Metals' Submission

https://www.mackenzie.govt.nz/_data/assets/pdf_file/0017/700541/PC21-Submission-74-Road-Metals.pdf

Submissions of Counsel

- 6 The key originating documents are the Public Notice and the PC21 Overview Report. These consistently identify that PC21 is scoped to implement the Spatial Plans in an identified and manageable range of respects.
- 7 Relevantly, these changes include changes to the general industrial zone provisions (see Part 3 of the Public Notice, and Paragraph 1.1, 3rd bullet point of the PC21 Overview report). There are also some specifically identified changes to planning maps which are listed in Part 4 of the Public notice, and repeated in paragraph 1.4 of the Overview Report. These include maps 31, 33, 44, 44a, 44b, 45 to 49, and 51 to 57, as set out in Appendix 4. None of these proposed to change the zoning of land to the east of the State Highway adjacent to Twizel, nor the Road Metals site (all of which remains Rural).
- 8 At the top of the PC21 Overview Report there is a scope statement which provides:

Proposed Plan Change 21 is part of Stage 2 of the review of the Mackenzie District Plan and includes in its scope the following changes to the Mackenzie District Plan. Changes to other provisions of the Mackenzie District Plan are not within the scope of Plan Change 21.
- 9 It is submitted there is nothing in the Public Notice nor the PC21 Overview Report that expressly identifies the Road Metals' site or the zoning of land to the east of Twizel as within the scope of this plan change.

- 10 Interpreting this, it is clear that PC21 identifies the changes that are currently within scope of PC21 to implement the relevant parts of the Spatial Plans. These do not extend to the Road Metals' land referred to in its' submission.
- 11 Mr Chapman argues in his memorandum (for example paragraphs 28-33, 35 and 36) that because the Spatial Plans "underpin" PC21, and that the Road Metals' submission relating to its site is not "outside the margins of the spatial plan", it is therefore within the scope of PC21. This argument is opposed because documents such as the Spatial Plans that "underpin", or put another way informs PC21, does not itself establish the scope of PC21. PC21 has deliberately identified the aspects of the Spatial Plans that are addressed, and those that are not. It is the originating documents of PC21 that form its scope, not the underlying Spatial Plans.

Section 32 materials

- 12 Paragraph 2.22 of the section 32 materials identifies what has not been considered and is therefore not within scope of PC21. This states:

Areas within the Spatial Plans not included in PC21

2.22. The spatial plans included some areas that have not been included in PC 21. Those areas and the reason they are not included in this stage of the District Plan review are set out below.

...

New area of industrial zoning identified in the Spatial Plans in Twizel, east of the State Highway

2.25. The high-level ecological assessment identified that ecological surveys are required before determining if development in this area is appropriate. Given its location on the east side of the State Highway, there are also traffic effects that need to be considered prior to development occurring, which was a concern raised in community feedback. It is intended that the zoning of this area is revisited as part of Stage 3 of the District Plan review, once further assessment is undertaken of the potential traffic effects and the site's ecological values.

- 13 It is submitted that this section 32 material clearly identifies that the rural zone to the east of Twizel that Road Metals seeks to be rezoned is not assessed, and is stated to be not included in the scope of PC21.

- 14 It is submitted that a plain reading of the PC21 documentation leads to the obvious conclusion that the rezoning of Road Metals land from rural to industrial at this time is not on the plan change, and is out of scope of PC21.
- 15 As the section 32 materials identified, further work needs to be done to assess the merits of whether the Council will promote a change in zoning of this property in a future plan change stage. Road Metals position and desire for an industrial zone will be an issue that can be addressed in a future stage when it is squarely within the scope of that stage. This will involve relevant assessments having occurred, a section 32 assessment being carried out, the plan change notified to identify the site as within scope, and the right for submissions to be made on this issue.
- 16 It is submitted that considering an industrial zoning of this property now is not on PC21 and should not be considered as part of PC21.

Dated this 28th day of February 2023



Michael Garbett
Counsel for the Mackenzie District Council