

**THE COMMISSIONERS PLAN CHANGE 21  
MACKENZIE DISTRICT PLAN**

**Under** the Resource Management Act 1991

**In the matter**

**Between** **ROAD METALS COMPANY LIMITED**  
**Submitter**

**And** **MCKENZIE DISTRICT COUNCIL**  
**Consent Authority**

**Judicial Officer**

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**MEMORANDUM ON BEHALF OF ROAD METALS COMPANY  
LIMITED**

**PLAN CHANGE 21 HEARING**

**21 February 2023**

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## **Introduction:**

1. This submission is filed on behalf of Road Metals (Submitter Number 74).
2. The nature of Road Metals submission addresses the adequacy of the area in Twizel for industrial purposes.
3. On Monday, 20 February 2023, the s42A report was released to all submitters.
4. At page 16 of the report the analysis of Road Metals submission is summarised as follows:

*“Lot 2 DP 487658 and Sec 8 SO 384036 are zoned Rural in the MNDP and are not proposed to be rezoned as part of PC21”.*

5. Road Metals disagrees with the s42A’s observations relating to scope and suggests that the 42A report has not applied the relevant law to the specific submission filed by Road Metals on the issue of a proper analysis of the need for further industrial zoned land within Twizel for the duration of the Plan.
6. A second Minute of Commissioners has also invited submissions and feedback prior to 3<sup>rd</sup> March 2023.

## **Purpose of this Memorandum**

7. The purpose of this Memorandum is to seek a decision from the Commissioners to the PC21 Hearing that the Road Metals submission is within scope.
8. It seeks a decision promptly to assist Road Metals with the preparation of evidence for a hearing during the week beginning 20 March 2023.
9. In so doing, it seeks to:
  - 8.1 Save time during the hearing process by addressing issues of scope in advance of preparation and circulation of evidence; and
  - 8.2 It seeks clarification of issues involving the Commissioners jurisdiction to hear and determine PC21 now.

8.3 It seeks to apply the Law to the submission as filed. It is submitted that this has not occurred either in the 42A Report or in the legal advice received by the panel generally with respect to scope issues on plan changes.

- 9 Evidence for circulation on plan changes is expensive. Road Metals is in the throes of briefing evidence with respect to demand; resource management issues; traffic; landscape; and ecology in support of its submission.
- 10 From its own perspective as a submitter it also does not wish to waste the Commissioners' time in light of the s42A writers' opinion that submission 74 may not be "on" the Plan Change.

### **Important Facts for Consideration of the Issue of Scope**

10. The purpose of Plan Change 21 both in the notified version and in the 42A Report is summarised as the implementation of the spatial plans.
11. The Spatial Plans were adopted by the McKenzie District Council on 29 June 2021
12. The land set out in the Road Metals submission 74 is identified in the preferred option for the Twizel Spatial Plan<sup>1</sup> with an area of approximately 13 hectares within the site identified for industrial use .
13. This area is also specifically recognised with the preferred option for Twizel, on Page 42 of the Mackenzie Spatial Plans as follows (emphasis in **bold**):

*Industrial activities infill existing zoned land and grow away from the town in a **cluster adjacent to the oxidation ponds off Tekapo-Twizel Road (SH8).***

14. Throughout the spatial plan process<sup>2</sup>, it was made clear to the community that the approved Spatial Plans will be used by Council to inform the District Plan Review. To subsequently consider this area is out of scope, would be to undermine the confidence of landowners and the wider community in the Spatial Plan process.

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<sup>1</sup> Page 43 of Mackenzie Spatial Plans

<sup>2</sup> Preferred Option Discussion document March 2021.

15. The land is also identified in Map 33 and zoomed in Map 54 which form part of the notified planning maps relating to PC21.
16. Prior to lodging submissions on Plan Change 21, Road Metals planning advisor Mr Kevin Bligh, spoke to MDC's Planning Manager Aaron Haakart about lodging a submission on Plan Change 21. There was no suggestion during this discussion that such a submission would be out of scope. MDC also saw benefit in Road Metals preparing expert assessments in the context of considering this industrial zoning owing to MDC having resourcing constraints to complete such work.

And specifically in relation to the s42A report there appears to be a distinction made in the section addressing scope between submissions which the Planning Officers record as "outside the scope of PC21 [reference submission 84: Corrections] and the Road Metals submission where it is recorded "not proposed to be rezoned as part of PC21".

17. It appears there is confusion in the 42A Report on matters that are clearly outside of scope and matters relating to the preference of planners as to whether a rezoning should be allowed or not.
18. The latter is an issue for determination by the Commissioners on the evidence adduced at hearing; the former is a bar to consideration.
19. For reasons cited in this submission the Road Metals submission is one of the adequacy of industrial zoned land which is squarely to be addressed by Commissioners in the context of implementation of the spatial plans for Twizel.

### **The Law**

20. The Council has already requested an opinion from its solicitors on issues of scope.
21. We agree with the umbrella summary of the relevant criteria for determining whether a submission is "on a Plan Change or not".

22. Extending the two-limb test in *Clearwater Resort Limited*<sup>3</sup>, the second limb in *Clearwater Resort Limited* has its focus on the extent to which other parties would be prejudiced by a particular submission:
- 19.1 Either because potential submitters were not alerted to the substance of the submission by the notified version of the Plan Change; and
- 19.2 Were not afforded an opportunity to lodge an original submission either in support or in opposition.
23. Prejudice is closely related to whether a submission is considered “left-field”<sup>4</sup> in the context of the purpose of PC21 as notified.

### **Consideration of the Law in Relation to the Submission**

#### *Is the Submission Outside the Purpose of the Variation?*

24. The purpose of the variation is to implement the spatial plans adopted by the McKenzie District Council.
25. The land in question is identified in the spatial plan and it is identified specifically for an industrial purpose<sup>5</sup>. The land in question being alongside the sewerage ponds at Twizel is within Map 33 as notified. In implementing the spatial plan, the overall purpose of PC 21 is to consider the overall growth of the Twizel township and amenities, the Plan Change identifies the interrelationship between the amount of residential/retail and industrial land available for Twizel.
26. On this basis the submission fits squarely within the purpose of the variation.

#### *Is the Submission Left-Field?*

27. The submission does no more than bring into play the adequacy of available industrial land for Twizel growth.
28. It only includes land which the spatial plan has adopted for potential industrial development. The Spatial Plan underpins PC 21 and is relied on by the reporting officers in the 42 A report.

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<sup>3</sup> summarised at paragraph 3 of the legal advice

<sup>4</sup> reference 3(c) of the legal advice

<sup>5</sup> Coloured purple on the spatial plan

29. It does not create any new zones outside the contemplation of PC 21 or the Spatial Plan.
30. In the context of evaluating the needs of Twizel, Industrial development cannot be considered “left-field”. Each Zone is interdependent on the other. The test of what is appropriate for the plan<sup>6</sup> requires an evaluation of the interrelationship - and in particular the needs to separate Zone boundaries to isolate activities which may require 24/7 hours of operation and different noise and amenity thresholds.
31. In that context it is impossible to isolate one zone as being “outside scope” when the nature of the underpinning document is to evaluate growth options for Twizel and ensure that the plan is fit for purpose for the balance of the planning timeframes for PC21
32. Consideration of industrial growth is integral to overall development of the Twizel node. It is impossible to consider industrial development in isolation of all other relevant zonings for Twizel and growth patterns.
33. In the context of the above, the submission is not considered “left field” insofar as it addresses growth for Twizel consistent with the spatial plan.

*Does It Seek to Change the Status Quo?*

34. It clearly does so.
35. But it does not seek to do so outside the margins of the spatial plan. In reading the overall purpose for Plan Change 21 it is clear that adequacy of all zones – particularly industrial, is within the ambit of PC 21.
36. The reference point for consideration of a scope issue is not the status quo of all existing zone boundaries. It is the purpose behind PC 21.

*Does it Create Prejudice for Any Other Parties?*

37. Given that the Plan’s focus is the implementation of the spatial plan – industrial development is part of the overall consideration. Other parties have also submitted on the adequacy of industrial zonings within Twizel, and this is

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<sup>6</sup> Case ....

probably the best indicator that no one is prejudiced by the Road Metals submission.

38. Other submitters have picked up on the Road Metals submission 74 and have submitted on the proposal.<sup>7</sup>

### **Is There a Better Forum for Considering Adequacy of Industrial Zoning for Twizel?**

39. It is not accepted that the fact that there might be another Plan review stage, to occur at some point in the future, is a determining factor for whether a submission is “on” the Plan Change. However, the 42A Report does refer to other stages and particularly likely stage 5 where the rural zoning will be considered.
40. I do not consider that consideration of industrial zonings at that stage is at all appropriate.
41. This stage, where Twizel growth is being considered is the most appropriate stage for determining adequacies of the industrial zone boundaries.

### **Conclusion**

42. For the above reasons on analysis of the Law, the Road Metals submission is within the scope of the Plan Change and should be treated as such.
43. Road Metals require confirmation by the Commissioners in advance of the hearing during the week beginning the 20<sup>th</sup> of March.
44. The issue is of considerable importance, given the financial outlay of Road Metals in preparing evidence for this hearing.

### **Secondary Issue as to the Timing of Evidence.**

1. A decision on the Second Minute is due on 10<sup>th</sup> of March 2023.
2. Road Metals is preparing evidence by a number of experts for Hearing. However, it would be preferable ( so as to avoid amendments required to evidence, if any) if the circulation date could be extended to 15<sup>th</sup> March 2023.

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<sup>7</sup> See further submission Waka Kotahi

3. As a side issue one expert's server is located in Hawkes Bay. Other evidence needs to rely on the advice of this expert. There have been inevitable delays associated with recent climatic effects.
4. This will delay overall evidence circulation.
5. Road Metals request the Commissioners set a revised circulation date of evidence of 15<sup>th</sup> March 2023.

Dated 21 February 2023

A handwritten signature in black ink, appearing to read 'Ewan Chapman', written in a cursive style.

Ewan Chapman  
Solicitor for the Submitter