BEFORE THE INDEPENDENT HEARING PANEL
APPOINTED BY TASMAN DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the First Schedule to the Act
AND	
IN THE MATTER	of Proposed Change 1 to the Tasman Regional Policy Statement and Proposed Plan Change 81 to the Tasman Resource Management Plan

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LEGAL SUBMISSIONS FOR TASMAN DISTRICT COUNCIL AS TO SCOPE

HEARING STAGE 1

12 October 2026

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MAY IT PLEASE THE PANEL:

A. INTRODUCTION

1. In a memorandum of counsel dated 6 October 2026, Tasman District Council (**TDC**) gave notice in accordance with the direction in Minute 1 of the procedural issues TDC wishes to raise.

2. As set out in that memorandum, several submissions on proposed Change 1 to the Tasman Regional Policy Statement (**C1**) and proposed Plan Change 81 to the Tasman Resource Management Plan (**PC81**) raise questions as to whether the relief sought is "on" C1 and/or PC81 for the purposes of cl 6(1) of Schedule 1 to the Resource Management Act 1991 (**RMA**).

3. These legal submissions are filed in accordance with the direction at paragraph 71 of Minute 1. They:

   (a) set out the legal framework for determining whether a submission is "on" a proposed policy statement or plan change;

   (b) identify the scope of C1 and PC81 as notified; and

   (c) apply that framework to the submission points identified as raising issues of scope.

4. These submissions should be read alongside the Hearing Stage 1 (**HS1**) s 42A report, which identifies the submission points raising scope issues and sets out the reporting officer's assessments and recommendations.

5. As signalled at paragraph 18 of counsel's memorandum dated 6 October 2026, TDC seeks an interim determination of the scope issues. That determination is sought to clarify which relief may proceed to substantive consideration and inform the preparation of reporting and evidence for subsequent hearing stages.

B. LEGAL FRAMEWORK

6. Under cl 78(4) of Schedule 1 to the RMA, the Minister's direction must provide for the opportunity for written submissions on C1 and PC81. Step 4 of the Resource Management (Direction to Tasman District Council to

Enter the Streamlined Planning Process for Plan Change 81 to the Tasman Resource Management Plan and Change 1 to the Tasman Regional Policy Statement) Notice 2026 addresses this requirement.

7. Clause 6(1) of Schedule 1 to the RMA provides for submissions "on" a notified proposed policy statement or plan change. Whether the relief sought is "on" C1 or PC81 therefore determines whether the Panel has jurisdiction to consider that relief.

8. The legal principles relevant to determining whether a submission is "on" a plan change are well-settled. The leading authority is the High Court decision in *Clearwater Resort Ltd v Christchurch City Council*.[1] It sets out a two-limb test:[2]

   (a) whether the submission addresses the changes to the pre-existing status quo advanced by the proposed plan change; and

   (b) whether there is a real risk that people affected by the plan change (if modified in response to a submission) would be denied an effective opportunity to participate in the plan change process.

9. In *Palmerston North City Council v Motor Machinists Ltd*,[3] the High Court elaborated on the requirements of this two-stage test:[4]

> First, the submission could only fairly be regarded as "on" a variation "if it is addressed to the extent to which the variation changes the pre-existing status quo". That seemed to the Judge to be consistent with the scheme of the Act, "which obviously contemplates a progressive and orderly resolution of issues associated with the development of proposed plans".
>
> Secondly, "if the effect of regarding a submission as 'on' a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected", that will be a "powerful consideration" against finding that the submission was truly "on" the variation. It was important that "all those likely to be

[1] *Clearwater Resort Ltd v Christchurch City Council* AP 34/02, 14 March 2003, Young J.
[2] Ibid at [66].
[3] *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.
[4] Ibid at [54] – [55]. The discussion relates to variations but applies equally to plan changes.

affected by or interested in the alternative methods suggested in the submission have an opportunity to participate".[19] If the effect of the submission "came out of left field" there might be little or no real scope for public participation. In another part of paragraph [69] of his judgment William Young J described that as "a submission proposing something completely novel". Such a consequence was a strong factor against finding the submission to be on the variation.

10. The Court explained that the first limb is the dominant consideration and operates as a filter, requiring a direct connection between the submission and the degree of change proposed to the existing plan. The inquiry requires consideration of both the breadth of the alteration to the status quo proposed by the plan change and whether the submission addresses that alteration.[5] Put another way, the submission must reasonably fall within the ambit of the plan change.

11. The Court identified the s 32 evaluation as one means of assessing the ambit of a plan change. Kós J held that if a submission raises matters that ought to have been addressed in the s 32 evaluation, but were not, that indicates that the submission is unlikely to be "on" the plan change.[6] In *Mackenzie v Tasman District Council*,[7] the High Court confirmed that the s 32 evaluation is not a test in its own right, but may assist in identifying the extent of the changes proposed, alongside consideration of the existing plan and the notified plan change. The Court also held that the s 32 evaluation was not required to assess alternatives concerning land whose management regime was not specifically addressed by the plan change.[8]

12. The absence of an option from the s 32 evaluation is not, however, determinative of scope. In *Bluehaven Management Ltd v Western Bay of Plenty District Council*,[9] the Environment Court held that a submission point or approach that is not expressly addressed in the Council's s 32

[5] Ibid at [80].
[6] Ibid at [76] and [81].
[7] *Mackenzie v Tasman District Council* [2018] NZHC 2304.
[8] Ibid at [98] – [104].
[9] *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191.

analysis ought not to be considered out of scope of the plan change, if it was an option that *should* have been considered in the s 32 analysis.[10]

13. Another relevant consideration is whether the plan change alters the management regime applying to the particular resource, including a particular parcel of land. Where that management regime is not altered by the plan change, a submission seeking a new or different management regime for that resource is unlikely to be "on" the plan change.[11]

14. That does not mean that a submission seeking to extend a notified zoning change to additional land will necessarily be outside scope. *Motor Machinists* recognised that incidental or consequential extensions of proposed zoning changes may be permissible, provided that no substantial further section 32 analysis is required to inform affected persons of the comparative merits of the change.[12] However, a precautionary approach is required where a submission proposes more than incidental or consequential further changes to the notified plan change.[13] Whether such relief is "on" the plan change is therefore a matter of fact and degree, assessed by reference to the nature and breadth of the notified change and the relief sought.

15. *Motor Machinists* itself illustrates the application of these principles to a submission seeking to extend a notified rezoning. The plan change proposed to rezone 7.63 ha of residential land to Outer Business Zone (**OBZ**), predominantly along Palmerston North's ring road. The submitter's relief sought to extend that zoning to two residentially zoned lots it owned on Lombard Street. Those lots were 10 lots removed from the ring road, although they formed part of the same site as three lots already zoned OBZ.

16. The Court held, on the facts of that case, that the submitter's proposed spot zoning was not within the ambit of the existing plan change as it involved more than an incidental or consequential extension of the re-zoning proposed by the plan change.[14] Kós J further held that the

[10] Ibid at [34] – [39].
[11] At [81].
[12] At [81].
[13] At [91].
[14] At [86].

inclusion of a re-zoning of two isolated lots in a side street could be said to "come from left field".[15] The Court considered that adjoining landowners had not been directly notified and might not have appreciated from the summary of submissions that their interests could be affected. Neither limb of the *Clearwater* test was therefore satisfied.

17. *Calcutta Farms Ltd v Matamata-Piako District Council*[16] provides a contrasting example of a submission seeking to extend notified residential zoning to additional land. The plan change identified land for future residential growth at Matamata, favouring Tower Road, while the submitter sought Residential zoning and a Future Residential Policy Area over its land at Banks Road, outside the notified rezoning. The Court held that the first limb was satisfied because the submission proposed an alternative location for residential growth, directly addressing the changes advanced by the plan change. The second limb was also satisfied because Banks Road had been the preferred growth location during earlier public consultation, before Tower Road was selected. Accordingly, both limbs of the *Clearwater* test were satisfied and the submission was within scope.

18. Turning to the second limb, that limb is concerned with procedural fairness. It asks whether there is a real risk that persons directly or potentially affected by the change sought through a submission have been denied an effective opportunity to respond to those changes through the plan change process.[17] This reflects the more limited procedural safeguards applying to changes advanced through submissions, compared with changes included in the notified proposal itself.

19. As such, in *Motor-Machinists* Kós J posited that:[18]

> To override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources.

20. The two limbs are related but distinct. A submission may address an alteration to the status quo proposed by the plan change and therefore

[15] At [89].
[16] *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187.
[17] Ibid at [82] and [91].
[18] At [82].

satisfy the first limb but nevertheless fall outside scope where there is a real risk that persons potentially affected by the relief sought have been denied an effective opportunity to participate.

21. Whether a submission is "on" a plan change is a jurisdictional question that is distinct from the merits of the relief sought. The scope inquiry does not involve an assessment of whether the relief would result in a preferable planning or policy outcome. That assessment arises only if it is first established that the submission is "on" the plan change.

22. Turning to further submissions, further submissions are provided for in cl 8 of Schedule 1 to the RMA. Relevantly for HS1 it provides:

> (2) A further submission given under subclause (1) or (1A) must be limited to a matter in support of or in opposition to the relevant submission made under clause 6 or 6A.

23. Further submissions may only be made in support of, or in opposition to, submissions already made. Thus, a further submission cannot be a vehicle for a new submission. Where a further submission seeks changes beyond those sought in the primary submission, the further submission will be invalid to that extent.

24. If the primary submission to which a further submission relates is not "on" the plan change, the further submission will logically also not be "on" the plan change and thus will have the same jurisdictional problem.

C. THE SCOPE OF C1 AND PC81

25. These submissions address certain submission points identified by TDC as raising particular issues of scope. The balance of the submissions and further submissions where scope was signalled as an issue in the Summary of Decisions Requested are addressed in the s 42A report. Following further analysis, TDC considers that some of those submission points are within scope and no longer require determination as a preliminary issues.

26. Before addressing each submission in turn, we first set out the scope of C1 and PC81 as notified. Although the changes are closely related, each proposes distinct amendments to its respective planning instruments.

Whether relief is "on" either change must be assessed by reference to those amendments.[19]

27. The starting point is the notified provisions and, for PC81, the planning maps and spatial schedules. The supporting s 32 evaluations assist in identifying the planning issues addressed and the nature and extent of the proposed changes. The broader purposes of giving effect to national policy statements and providing development capacity inform that assessment, but do not themselves define the scope of either change.

Change 1

28. C1 updates the Tasman Regional Policy Statement (**TRPS**) to give effect in part to the National Policy Statement on Urban Development (**NPS-UD**) and have regard to the Nelson Tasman Future Development Strategy 2022-2052 (**FDS**).

29. Section 7.2 of the C1 s 32 report summarises the proposed amendments to the TRPS.[20] The principal changes comprise:

    (a) a new general objective concerning Tasman's contribution to a well-functioning Nelson Tasman urban environment;

    (b) three new urban-development objectives addressing sufficient housing and business land capacity, housing diversity, and planned urban form with responsiveness to unanticipated or out-of-sequence plan change proposals;

    (c) three new policies and associated methods addressing the outcomes sought from residential and business development, criteria for significant development capacity, and a hierarchy of commercial centres; and

[19] It is noted the documents and information relied on in these submissions is all referenced in the s 42A report and is in the public domain and available through the TDC website.
[20] C1 s 32 Evaluation Report, section 7.2, particularly Table 7.

(d) amendments to existing provisions recognising changing urban amenity values and the need for managed urban expansion and intensification.

30. C1 therefore proposes targeted changes to the regional urban-development framework. It does not undertake a comprehensive review of the TRPS.

PC81

31. PC81 amends the Tasman Resource Management Plan (**TRMP**) through a combination of objectives, policies, rules, zoning and spatial-planning provisions. Section 7.2 of the PC81 s 32 report summarises the proposed amendments.[21] The principal changes comprise:

(a) residential growth and housing-capacity provisions, including the new section 6.4A, Land for Residential Activities;

(b) a new Medium Density Residential Zone and associated design, land-use and subdivision provisions;

(c) selected residential, rural residential and business-land rezonings, including deferred zoning linked to infrastructure provision;

(d) Outline Spatial Plans (**OSPs**) and associated provisions for the coordinated development of identified areas;

(e) a commercial centres hierarchy and amendments concerning commercial and business activities;

(f) provisions for papakāinga and workers' accommodation; and

(g) associated amendments concerning amenity, infrastructure, road traffic noise, definitions and other matters addressed by the notified proposal.

32. The spatial reach of PC81 varies according to the amendment concerned. Some provisions apply across a zone or more generally, while the notified rezonings and OSPs identify particular land and locations. The scope

[21] PC81 s 32 Evaluation Report, section 7.2, particularly Table 7.

assessment must therefore identify both the provision or planning outcome engaged by the relief and the land or activities to which the notified change applies.

33. The PC81 s 32 report notes, in a section addressing scope,[22] PC81 implements selected growth locations informed by the FDS and subsequent spatial planning. It does not propose to rezone every FDS growth site or reconsider every potential development location in the District. It records that PC81 is "intentionally limited in scope" and it is not intended to undertake a comprehensive review of the TRMP.[23]

Strategic Planning Context

34. Section 5.2 of the HS1 s 42A report outlines the strategic planning and engagement processes underpinning PC81, including the FDS, Reimagining Richmond South, the Richmond Spatial Plan and the Māpua Masterplan. This provides context for the assessment of the site-specific and spatial submission points below.

35. Those processes informed the locations and planning responses selected for implementation through PC81. Their relevance to scope depends on the relief sought and the outcome of the earlier process. Previous identification or consultation may support foreseeability of changes to a growth area, while a decision not to progress an option may support an understanding that it was not being advanced through PC81.

36. Under the heading "Enabling Intensification", the s 32 report says:[24]

> A primary focus of PC81 is to enable greater levels of intensification within existing urban areas, particularly in Richmond, Brightwater, Motueka, Wakefield and Māpua.

37. Then, under "Providing Greenfield Housing Land Capacity" it says:[25]

[22] See Section 2.5 at page 18.
[23] Ibid at page 20. The same approach was adopted for C1.
[24] At Section 1.3 page 3.
[25] Ibid.

> In addition to intensification, PC81 provides for managed greenfield growth in selected locations identified through the FDS and supporting spatial planning processes.

38. Identification of areas where growth is targeted provides an indication of where PC81 anticipates that intensification and growth.

39. Section 2.5 discusses scope and lists topics that are not intended to be within the scope of PC81.[26] Most of these matters are "high-level" and relate to strategic, not site-specific, issues.

40. At Section 5.2, the s 32 report makes a point in the options assessment of identifying the sites that are proposed to be rezoned but were not addressed in the FDS. This point can be viewed through the lens of the following statement from the Executive Summary:[27]

> The strategic direction of PC81 can be summarised as follows:
>
> 1. to implement the first ten years of residential and business land capacity as identified in the FDS, according to identified demand in the HBA;
>
> 2. to increase the variety of homes available within towns and urban centres, including helping to address housing typology gaps identified in the HBA;
>
> 3. to locate residential and business growth in appropriate urban locations, having regard to infrastructure capacity and environmental constraints;
>
> 4. to identify, support and reinforce the role and function of commercial centres across the district; and
>
> 5. to provide for the long-term planned growth of Māpua in accordance with the MMP, including maintaining capacity beyond the initial ten-year period. [Emphasis added].

41. This strategic direction is material for scope because it sends a message that PC81's approach to implementing the first ten years of growth is

[26] At page 20.
[27] At Section 1.1 page 1.

linked to the land identified in the FDS, which is itself recognised as a strategic document in the s 32 evaluation.

42. Sites included in PC81 but not identified in the FDS can therefore be regarded as exceptions to the general approach adopted by PC81. In terms of *Bluehaven*, this provides relevant context for assessing whether other sites, not included in PC81, ought to have been considered in the s 32 evaluation.

43. That said, it is important to be alert that the planning history informs (from an evidential perspective), but does not determine, the scope assessment. The questions remain whether the particular relief addresses the changes to the status quo proposed by C1 or PC81, and whether there is a real risk that potentially affected persons have been denied an effective opportunity to participate. These questions will often turn on the circumstances of the particular site or sites. We turn to the identified submission points on that basis.

D. APPLICATION TO THE SUBMISSION POINTS

Orange Family Trust & Orange Building Group Ltd (OS162.4 and OS162.19)

44. Orange Family Trust and Orange Building Group Ltd (**Orange**) seek to include the White Road (Richmond South) area identified as FDS site T-038 within the Richmond urban-growth framework (see Figure 1 of the HS1 s 42A report).

45. OS162.4 seeks amendments to:

(a) extend the Richmond Urban Area to include T-038;

(b) apply Rural 1 Deferred Medium Density Residential zoning through Planning Map 80-24;

(c) include a White Road (Richmond South) OSP in Schedule 16.3D; and

(d) include T-038 in Schedule 17.14A as a deferred-zone location linked to infrastructure identified for delivery within the next 10 years of the Long Term Plan.

46. OS162.19 seeks the same substantive outcome through deferred Medium Density Residential zoning, a new OSP and associated deferred-zone provisions. The two submission points should therefore be assessed together and treated consistently.

Limb 1

47. Assessing the first limb, the relief engages the urban-growth, housing-capacity, deferred-zoning, infrastructure-sequencing and OSP mechanisms introduced or amended by PC81. T-038 is also contiguous with existing areas of development in Richmond and directly adjoins T-122a and T-35a, which are proposed for deferred urban zoning.[28] However, that connection should also be assessed against the spatial extent of the notified changes.

48. T-038 was not identified or evaluated for residential rezoning through PC81 and assessed in the s 32 report. Thus, Orange's relief would extend the geographical reach of the notified proposal.

49. The site was however identified in the FDS, as shown in Figure 7, which is reproduced below. The FDS undertook a multi-criteria analysis to identify suitable sites and outlined areas in the combined Nelson Tasman Region with potential for future housing and growth. As noted in the s 42A report, the FDS anticipated that the final boundaries of identified growth areas would be subject to future planning processes.[29]

50. Importantly, PC81 identifies its strategic direction as implementing the first ten years of residential and business land capacity identified in the FDS, according to demand identified in the HBA.[30] The FDS therefore provides relevant context for identifying the changes to the status quo advanced by PC81, including the location and timing of land to be made available for urban growth.

[28] See Zone map 53 for T-35a and T-122a at Zone Map 53
[29] See page 16 of the FDS.
[30] PC81 s 32 report at page 1.

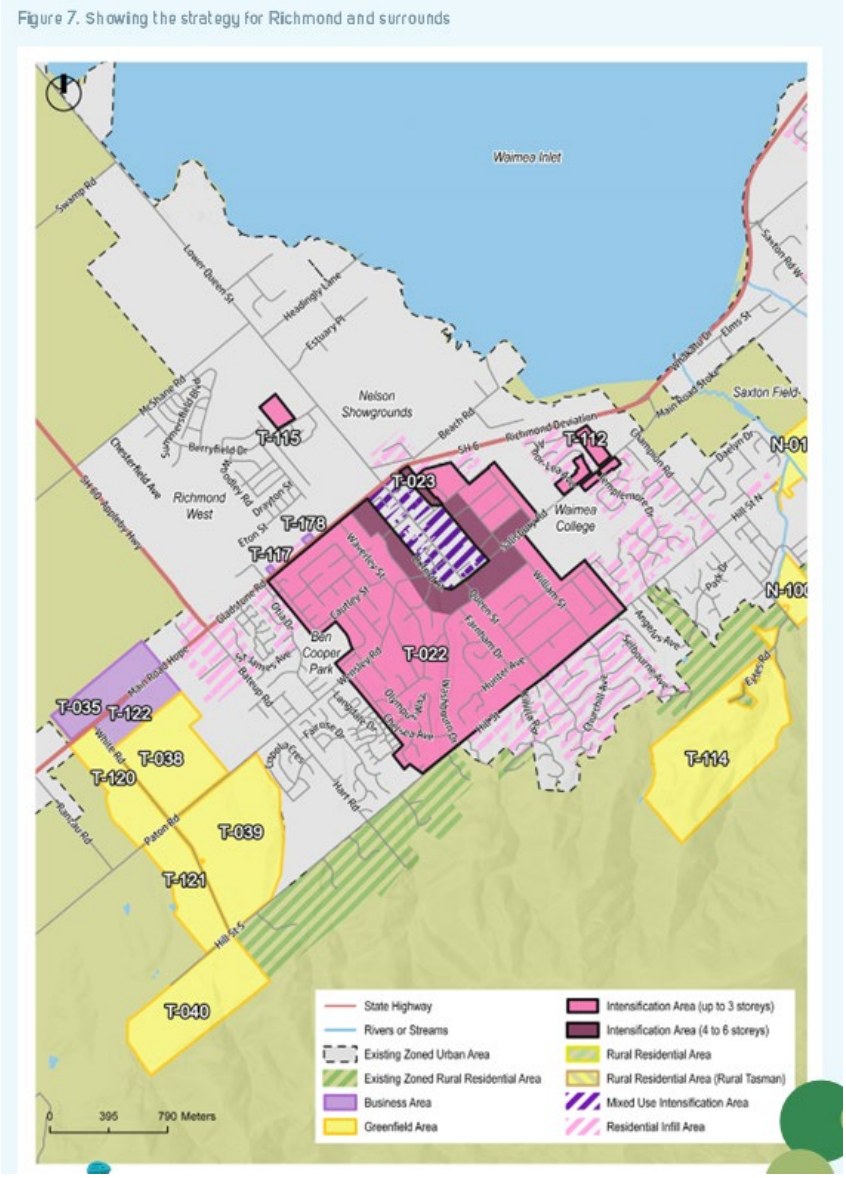


Figure 1: Richmond FDS development strategy

51. In addition, T-038's physical relationship with the existing Richmond urban area and adjoining notified growth sites provides a specific spatial connection with PC81, beyond a general reliance on PC81's purpose of providing development capacity. This distinguishes the relief from proposals concerning land geographically separate from the growth areas identified through PC81 when determining the status quo that is proposed to be changed by PC81.

52. The submission therefore addresses the extent to which PC81 changes the existing framework for residential growth at Richmond. Although it would extend the notified rezoning to additional land, it proposes an alternative location for residential growth that is sufficiently connected,

both substantively (on topic) and spatially, to the changes advanced by PC81. The first limb is therefore satisfied.

Limb 2

53. The second limb raises competing considerations. T-038's identification in the FDS, its consideration through earlier Richmond South structure planning and public engagement, and its relationship with the adjoining notified growth sites support an argument that its future urbanisation was reasonably foreseeable.[31] As discussed in Part C, however, that planning history does not itself establish that affected persons had an effective opportunity to participate in the particular changes now sought through PC81.

54. Orange's proposed zoning and OSP extend across seven properties not owned by Orange.[32] Some affected landowners have submitted on PC81, including in support of residential or deferred residential zoning within T-038. Orange has also consulted with a number of neighbouring landowners, as recorded in their submission. That participation and consultation are relevant, but do not, of themselves, resolve whether there is a real risk that other persons potentially affected by, or interested in, the wider rezoning have been denied an effective opportunity to participate. Equally, the absence of a submission from a particular owner does not, by itself, establish that risk.

55. Likewise, T-038's identification in the FDS and the consultation undertaken through that process are not, of themselves, sufficient to establish that potentially affected persons had an effective opportunity to participate given in the changes now sought. This is particularly material as that Orange's relief extends to land not owned by the submitter.

56. Nevertheless, the submission is not proposing something completely novel,[33] and Orange has undertaken at least some engagement with

[31] The recommendations on the FDS sites were subject to public notification and consultation (under the Local Government Act). They were publicly notified when the decision was made.
[32] See s 32AA accompanying submission at paragraph 88, page 24.T
[33] In *Clearwater*, at [69], William Young J said that "…a submission proposing something completely novel…" was a strong factor against finding the submission to be on the variation.

nearby owners. The contiguous nature of the site with the existing Richmond urban area and other sites proposed for rezoning also weighs in favour of the second limb 2 being satisfied. We confirm that that is TDC's position.

Conclusion

57. On balance, **the submission is on PC81** and there is scope to consider the substantive relief sought. This conclusion rests on the particular circumstances of T-038 and its relationship with the notified changes, rather than its identification in the FDS alone.

Kate Hanna (OS121.1)

58. Kate Hanna seeks Residential zoning of the remaining Rural 1 portion of 52 Cupola Crescent. The property is already partly zoned Residential and, as recorded in the submission, lies within the Richmond South Development Area and FDS site T-039, see figure below.[34]

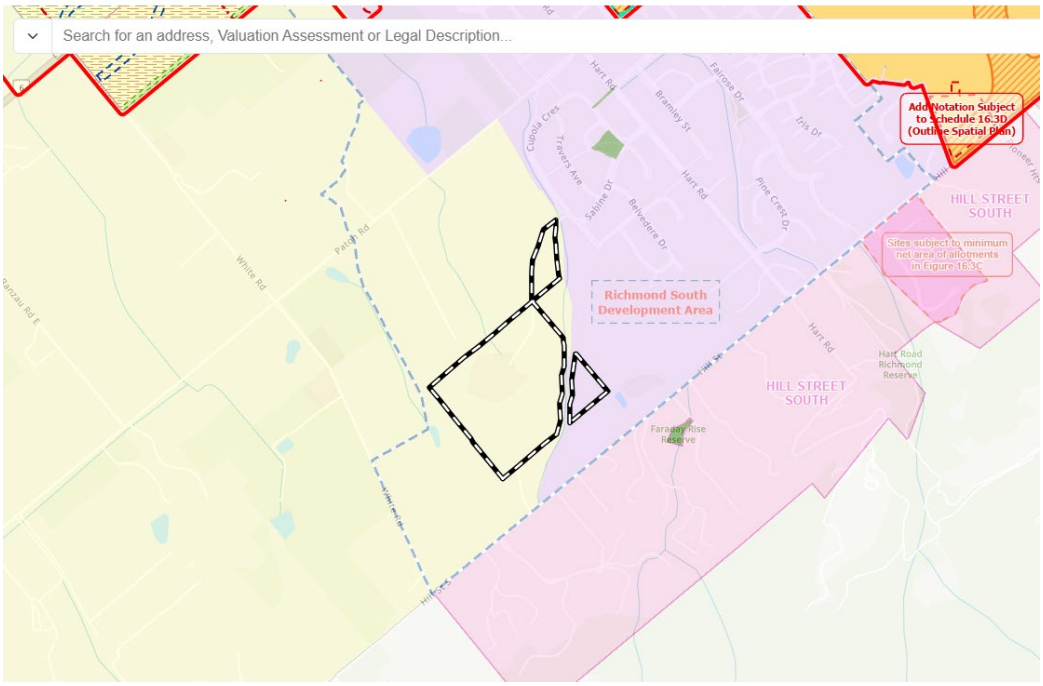


Figure 2: 52 Cupola Crescent

Limb 1

[34] Image taken from e-plan October 2026.

59. PC81 expressly addresses housing capacity and urban growth at Richmond, and the relief seeks to extend existing Residential zoning within an established area of planned residential expansion. This is, *prima facie*, a strong initial signal that the submission is addressing the extent to which PC81 seeks to change the status quo for residential expansion within Richmond.

60. Policy 6.8.3.10 of the operative TRMP provides for limited southward residential expansion between State Highway 6 north of Hope and Hill Street. The property's partial Residential zoning, location within the Richmond South Development Area and inclusion in T-039 strengthen its connection with the changes advanced by PC81.

61. As with Orange, identification in the FDS does not itself establish scope. That connection is qualified by the notified proposal. PC81 amends the timeframe in Policy 6.8.3.10, rather than its spatial direction, and does not identify or evaluate the remaining Rural 1 portion of 52 Cupola Crescent for residential rezoning. The relief would extend Residential zoning beyond the land selected for rezoning through PC81.

62. Ultimately, the submission is materially similar to Orange and satisfies limb 1. It proposes an alternative location for residential growth within Richmond, directly engaging with the changes advanced by the plan change. The land is also closely connected spatially to areas proposed for rezoning and the existing urban extent of Richmond.

Limb 2

63. Under the second limb, several factors support foreseeability of the relief. T-039 has been identified for growth through the FDS since 2019, and the operative policy framework already contemplates residential expansion in this locality. The property is also partly zoned Residential. Council advises that structure planning for T-039 was undertaken in 2021 with two rounds of public engagement, and that the FDS did not prescribe the phasing or order in which identified sites would be progressed.

64. In this instance, the combination of existing Residential zoning on part of the property, the operative Richmond South policy framework and the previous structure planning and public engagement concerning T-039

weighs in favour of limb 2 being satisfied. The relief is not proposing something completely novel but rather seeks to extend Residential zoning within an area already identified and considered for urban growth. In these circumstances, it is submitted the relief was reasonably foreseeable and that potentially affected persons would not have been unfairly excluded from submitting on a matter of interest to them.

Conclusion

65. OS121.1 **is within scope** and we support the reporting officer's recommendation that it proceed to substantive consideration. That conclusion rests on the particular circumstances of this property and its planning context, rather than its FDS identification alone.

Joshua Rutledge (OS154.1) and Jamie Eggers (OS155.1)

66. Joshua Rutledge and Jamie Eggers both seek Residential zoning of 169 White Road. The property lies within the Richmond South Development Area and forms part of FDS site T-039, as shown in Figure 1 above.

Limb 1

67. The considerations are similar to those for the Hanna property discussed above, including the express consideration of housing capacity and urban growth at Richmond and the application of policy 6.8.3.10. The location of 169 White Road within the Richmond South Development Area and T-039 strengthens the connection between the relief and the urban-growth changes advanced by PC81, although it is not contiguous with an existing residential or other urban zone.

68. While the relief would extend Residential zoning beyond the land selected for rezoning through PC81, it nevertheless addresses the extent to which the status quo is proposed to be amended for urban development in Richmond South. Limb 1 is satisfied.

Limb 2

69. Under the second limb, the planning history provides a reasonable degree of foreseeability as T-039 has been identified as a growth area through the FDS since 2019, the property lies within the Richmond South

Development Area, and the operative policy framework contemplates residential expansion in this locality.

70. We submit that the previous planning and engagement concerning T-039, together with the existing policy direction in the TRMP, supports the conclusion that the relief is reasonably foreseeable and that potentially affected persons have not been deprived of a real opportunity to participate in the plan change process.

Conclusion

71. OS154.1 and OS155.1 are **within scope and on PC81**. As with OS121.1, that conclusion rests on the Richmond South planning history and previous engagement concerning T-039, rather than the site's identification in the FDS alone.

Seaton Palms Limited (OS123.1 – OS123.4)

72. Seaton Palms Limited seeks amendments relating to 6 and 6A Seaton Valley Road, Māpua. In summary, OS123.1–OS123.3 seek to rezone the land from Rural 1 to enable urban development, include it within the Māpua urban-growth and spatial-planning framework, and provide for associated walkway, open-space, reserve, ecological-buffer, stormwater and wetland outcomes. OS123.4 seeks consequential amendments necessary to implement that relief.

Limb 1

73. The first limb is satisfied. PC81 expressly addresses urban growth, housing and business land at Māpua and introduces the Māpua Seaton Valley OSP.[35]

74. Importantly, 6 and 6A Seaton Valley Road are within the notified OSP – Māpua Seaton Valley. Although PC81 retains the Rural 1 zoning of the land, the relief seeks to alter the planning treatment of land already brought within the spatial framework introduced by PC81. It therefore

[35] Schedule 16.3D.10: Outline Spatial Plan - Māpua Seaton Valley, TRMP (as proposed to be inserted by PC81).

directly engages with the extent and form of the changes advanced by the plan change.

Schedule 16.3D.10:Outline Spatial Plan – Māpua Seaton Valley

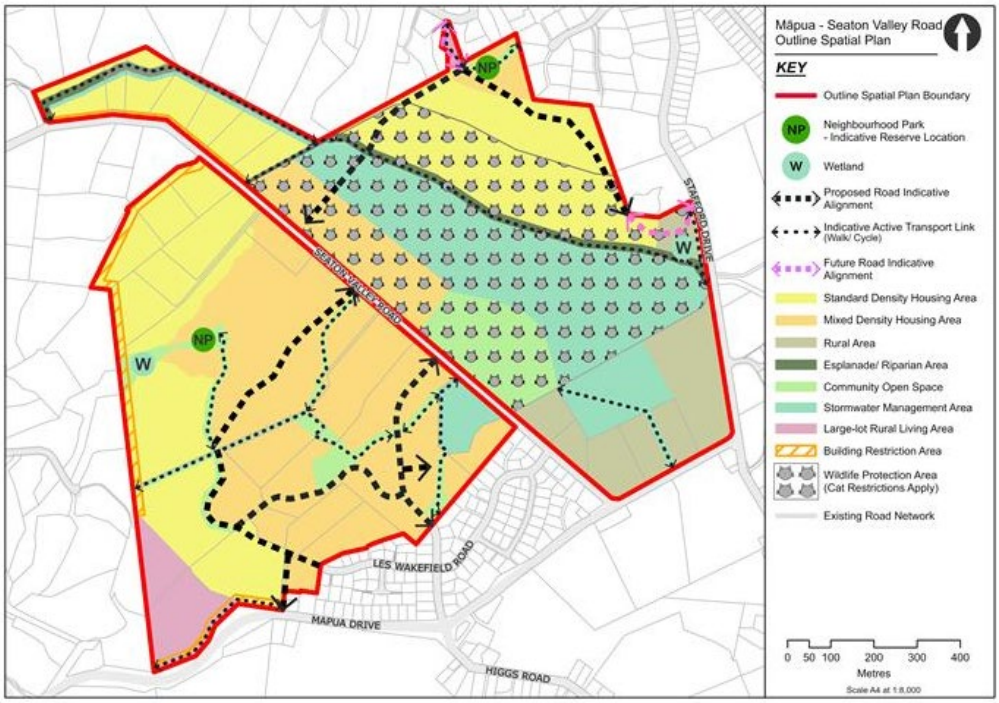


Figure 3: Seaton Palms site is at the south-east of the map

75. The same conclusion applies to the infrastructure, open-space and environmental relief in OS123.3. The notified OSP addresses open space, watercourses and stormwater management across the OSP area. The relief sought therefore engages directly with the spatial and infrastructure matters addressed through PC81 and with how those outcomes are to be provided through development of the land.

Limb 2

76. The second limb is also satisfied.

77. Inclusion of the land within the notified OSP signalled that its future planning and integration with the wider Māpua Seaton Valley area were being addressed through PC81. In that context, potentially affected persons could reasonably have anticipated submissions seeking changes to the planning treatment and development outcomes for land within the OSP, including its zoning.

78. OS123.4 is within scope to the extent that the amendments sought are consequential on OS123.1–OS123.3 and do not introduce materially different relief.

Conclusion

79. OS123.1 – OS123.4 **are on PC81 and within scope**. The site's location within the notified OSP – Māpua Seaton Valley is a significant factor in reaching this conclusion.

Flathills 175 Ltd (OS147.1)

80. Flathills 175 Ltd (**Flathills**) seeks relief relating to 175 and 177 Māpua Drive, which are to be treated as a combined site. The relief seeks to rezone the land consistently with surrounding urban development, include it within the Māpua urban-growth and spatial-planning framework, provide for associated walkway, open-space, ecological-buffer and stormwater infrastructure, and make consequential amendments.

81. The Flathills land is next to the Seaton Palms land in bottom southeastern corner of Figure 3.

Limb 1

82. The first limb is satisfied on the same grounds as Seaton Valley.

83. PC81 expressly addresses urban growth, housing and business land at Māpua and introduces the Māpua Seaton Valley OSP. The Flathills land is within the notified OSP.

84. Although PC81 proposes for the site to retain its Rural 1 zoning, the relief seeks to alter the planning treatment of land already brought within the spatial framework introduced by PC81. It therefore directly engages with the extent and form of the changes advanced by the plan change as the proposed change to the status quo.

85. The connection is particularly direct in relation to the associated spatial and infrastructure relief. The notified OSP identifies an indicative active transport link through the Flathills land and provides for open-space, riparian, wetland and stormwater-management areas within the wider

OSP. The relief concerning walkway, open-space, ecological-buffer and stormwater infrastructure therefore engages directly with features of the spatial framework proposed by PC81.

Limb 2

86. Again, for substantially the same reasons as above, the second limb is also satisfied.

87. Inclusion of the Flathills land within the notified OSP signalled that its future planning and integration with the wider Māpua Seaton Valley area were being addressed through PC81. Potentially affected persons could therefore reasonably have anticipated submissions concerning the zoning and development of the land and the implementation of the spatial features identified through the OSP.

Conclusion

88. OS147.1 is **within scope and on PC81**.

Tasman Bay Estates Ltd (OS36.1 - OS36.5)

89. Tasman Bay Estates Ltd (**TBEL**) seeks a package of amendments to provide for urban growth north of Māpua. The principal relief in OS36.1 is deferred Residential, Medium Density Residential, Commercial and Open Space zoning of approximately 90 ha of land between Horton Road, Mamaku Road and Aporo Road.

90. Associated relief seeks to reclassify Tasman as a Local Service Centre (OS36.2), amend the Tasman-specific provisions in Chapter 6.21 (OS36.3), introduce an OSP for Tasman Village (OS36.4), and amend Schedule 17.14A to identify the infrastructure upgrades required to enable development (OS36.5).

91. The site is shown at Figure 1 of the submission, which is reproduced in the s 42A report at Figure 2.

Limb 1 – OS36.1 and OS36.3 - 5

92. PC81 expressly addresses housing and business capacity, urban growth and the location of future development, including through rezoning and deferred zoning. OS36.1 seeks to apply those mechanisms to Tasman Village as an alternative location for future growth. The relief would, however, extend those mechanisms to a substantial additional area not proposed for urban development through PC81 and not subject to any specific amendments under PC81.

93. The submission records that the site was considered for growth in the FDS but was rejected.[36] It notes that "growth areas identified in Change 1 and PC81 are largely, but not exclusively, growth areas identified through the FDS and MMP [Māpua Masterplan] processes".[37] This is material because it means the reasoning applied to other submissions, for instance Orange, is not directly applicable. To conclude that the submission satisfies the first limb would therefore require the Panel to find that any proposal to apply Residential or Deferred Residential zoning to additional land, regardless of its location, is a submission on the change to the status quo proposed by PC81 (and C1). This would require a very broad definition of the resource to which the management regime being changed applies.

94. It is submitted that this would not be a sound finding. The changes proposed by PC81 are largely informed by the FDS and other strategic planning undertaken by Council. This should not be confused with legal requirement to have regard to the FDS,[38] which does not require strict adherence to the FDS. Rather, Council's decision to identify growth sites primarily by reference to the FDS reflects its progressive and orderly approach to resolving issues associated with the development of proposed plans, as contemplated by the RMA.[39] Except in limited, identified circumstances, Council selected growth sites for implementation through PC81 by reference to the FDS. Those choices inform the extent of the changes to the status quo proposed by PC81.

95. Particularly when it is recognised that the TBEL land is spatially discrete from the closest urban areas addressed by PC81, it is submitted that

[36] At paragraph [4], page 2.
[37] At paragraph [13], page 3.
[38] See cl 3.17 NPS-UD.
[39] See *Mackenzie* at [106] for an example of approval for this approach.

PC81 does not seek to change the status quo as it relates to the TBEL land. Therefore, the first limb is not satisfied.

Limb 2 – OS36.1 and OS36.3 - 5

96. Although the TBEL land was identified as a potential growth area in the draft FDS, it was ultimately excluded from the FDS and subsequently was not included in the final Māpua Masterplan.

97. PC81 does not identify the land for urban development or otherwise signal that deferred urban zoning of this substantial additional area might be introduced through submissions. In those circumstances, it follows that there is a real risk that persons potentially affected by the proposed urbanisation of the land have been denied an effective opportunity to participate.

Conclusion – OS36.1 and OS36.3 - 5

98. Submissions *OS36.1 and OS36.3 - 5* are **not on PC81**.

OS36.2 - Reclassify Tasman as a Local Service Centre

99. The analysis for OS36.2 is different. PC81 introduces a new commercial centres hierarchy through Policy 6.6.3.3 and Table 16.6A and expressly identifies Tasman as a Local Convenience Centre. OS36.2 seeks to amend that classification to Local Service Centre.

100. It is a little unclear in the submission if this relief is a reference to the existing Tasman Village, near Kina Beach.[40] Although TBEL seeks the Local Service Centre classification to meet the needs of the expanded urban population proposed through OS36.1, that rationale does not alter the nature of the relief itself. Whether the additional growth relied on by TBEL can be pursued through PC81 is distinct from whether a submission challenging the notified classification of Tasman is within scope.

101. Therefore, if the relief is seeking a change to the existing centre, the relief would be within scope as it challenges a planning change proposed by

[40] The submission refers to a masterplan prepared by the submitter that would probably help but as far as counsel can tell that plan is not included with the submission.

PC81 to manage the resource (Tasman Village centre) differently. The submission satisfies the first limb.

102. The second limb is also satisfied on that basis. As PC81 expressly identifies Tasman as a Local Convenience Centre, potentially affected persons could reasonably have anticipated submissions seeking to change that classification and have had a real opportunity to participate in the plan change process.

103. OS36.2 is **on PC81 and within scope**.

Seaview Heights (OS140.2)

104. Seaview Heights seeks to rezone five contiguous properties at 40 Seaview Avenue, 5 Lindup Road, 81–85 Rowling Loop, 95 Robinson Road and 2399 Coastal Highway (**Seaview Sites**) from Rural 1 to Rural 1 Deferred Residential, in an area known as Mariri Hills to the south of Motueka.

Limb 1

105. PC81 expressly addresses housing capacity and urban growth at Motueka. TDC's Site Assessment identifies a shortfall of approximately 450 dwellings in Motueka over the next 10 years and acknowledges that Motueka cannot accommodate all projected demand. OS140.2 directly challenges that aspect of PC81 by advancing Seaview Heights as an alternative means of providing additional housing capacity. The relief therefore concerns the same housing-capacity issue addressed by PC81, although it would extend residential zoning beyond the sites selected through the notified plan change.

106. However, as set out above, the issue in contention is not only if the Seaview Sites address the same broad issue but if the submission is addressing a change to the status quo, which is a question of "degree and impression".[41] Further, scope requires an analysis of "direct

[41] *Mackenzie* at [95].

connection between the submission and the degree of notified change proposed to the extant plan".[42]

107. The FDS sites identified for Motueka are shown in the snip below. The Seaview Sites are just off the map under the key.

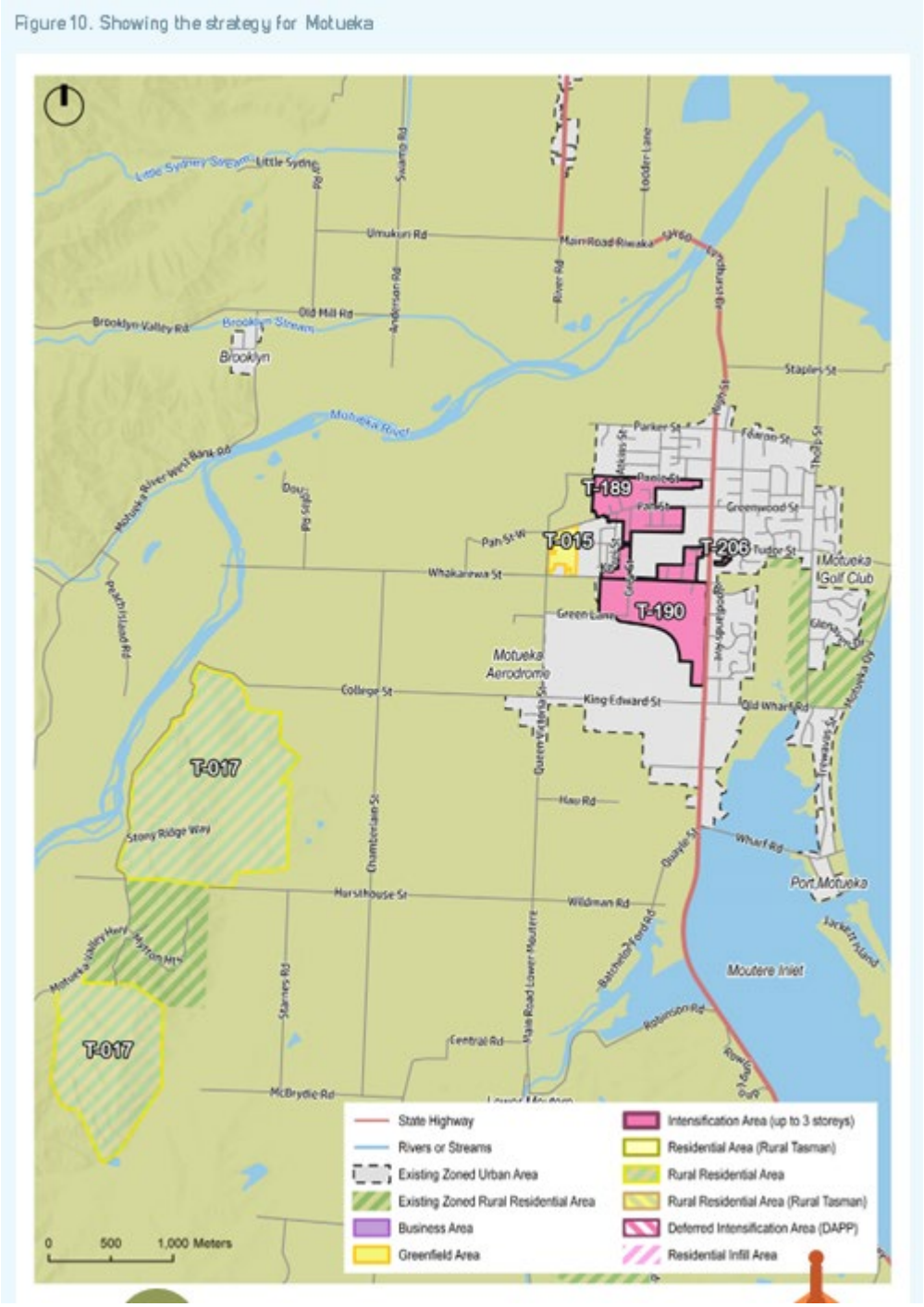


Figure 4: Motueka FDS sites.

[42] *Motor Machinists* at [80].

108. The Seaview Sites have not been signalled as areas for development in any of the strategic documents relied on by PC81. Notably, development of the Mariri Hills was rejected by the FDS.[43] While the reasons for that rejection may be contested by the submitter, for the purpose of limb 1 of the scope assessment, it means there is an insufficient connection between the relief sought and the delivery of growth through sites identified in past strategic work undertaken by TDC. Instead, the submission addresses an alteration to the Plan beyond what PC81 proposes.

109. The submission also raises the prospect of managed retreat from Motueka's eastern coastal zone and identifies the Seaview Sites as a potentially more resilient location for urban development.[44] However, PC81 does not seek to determine the future relocation of Motueka's urban areas or identify locations to accommodate managed retreat. Rather it implements a spatial growth strategy informed by the FDS, through which development of the Mariri Hills had already been considered and rejected. While the submission challenges that strategic approach, the potential need for managed retreat does not mean that rezoning the Seaview Sites was an alternative that ought to have been considered in the s 32 evaluation of PC81. Such an assessment would involve reconsidering the locations selected for urban growth through the preceding strategic planning process, rather than evaluating the changes proposed through PC81.

110. In our submission, the first limb is not satisfied.

Limb 2

111. It will be evident from the analysis above that the second limb cannot be satisfied either.

112. PC81 did not signal the Seaview Sites might be considered as an alternative residential growth area but proceeded with a spatial strategy that had selected other sites for implementation.

[43] See Nelson Tasman Future Development Strategy 2022 – 2052 Technical Report 19 September 2022 (**FDS Technical Report**) at pages 98 and 99.
[44] See page 2.

113. Secondly, the potential for retreat is important again. The nature and timing of any decisions linked to retreat and potential relocation of Motueka's urban areas will be of concern to many people. For PC81 to rezone and signal, through a "submissional side-wind", that Seaview Heights may form part of a response to manged retreat from Motueka would be contrary to the requirement that people be adequately informed of what is proposed to be changed through a plan change process. Put another way, people are entitled to presume that, if the Seaview Sites are not identified in the FDS or PC81, their rezoning is not being contemplated through this process.

114. There is accordingly a real risk that persons potentially interested in or affected by rezoning the Seaview Heights properties would not be given an effective opportunity to participate.

Conclusion

115. OS140.2 is **not on PC81 and is outside scope**. This conclusion rests on the planning history and the exclusion of the site from strategic growth documents at this time.

Richmond Pōhara Holdings Ltd (OS184.1 – OS184.5)

116. Richmond Pōhara Holdings Ltd (**RPHL**) seeks a range of relief directed at providing for additional urban growth at Pōhara in PC81.[45] OS184.1 seeks Residential and Open Space zoning over parts of RPHL's land, together with further analysis under s 32 of the effectiveness of methods for implementing the existing urban-growth and Eastern Golden Bay objectives and policies. OS184.2 seeks Open Space zoning over part of the land, while OS184.3 seeks more generally to amend PC81 to provide for additional urban growth opportunities at Pōhara. OS184.4 and OS184.5 seek, in the alternative, commitments concerning future plan changes and spatial-planning processes.

Limb 1

[45] The scope of the C1 submissions is not being challenged by TDC.

117. It is submitted OS184.1 – OS184.3 do not pass limb 1 for substantively the same reason as Seaview Heights does not.

118. The s 32 report identifies the relevant NPS-UD urban environment as Nelson, Richmond, Brightwater, Wakefield, Māpua and Motueka.

119. PC81 does make amendments concerning Tākaka and Eastern Golden Bay. However, those amendments do not open residential growth at Pōhara for reconsideration. There are two changes that affect Pōhara. Firstly, an area of Papakainga zoning proposed for Onetahua Marae on Pōhara Valley Road (T-227). And secondly, PC81 relocates some existing policies concerning Tākaka and Eastern Golden Bay into Chapter 6.11. Under this second topic, discussion in the s 32 report concerning Pōhara relates to its role as a local centre, compared to Tākaka's CBD zone as the main hub for commercial and service activities.[46]

120. Additionally, unlike the Richmond and Motueka submissions considered above, PC81 does not identify a housing-capacity shortfall or other urban-growth issue at Pōhara that the notified provisions seek to address. The absence of such an issue is material to determining the nature and extent of the changes proposed by PC81, and whether the relief sought has a sufficient connection to those changes.

121. The FDS does not identify Pōhara as an area for greenfield expansion in Golden Bay and it does not appear from the FDS or its supporting documents that this site was assessed. Only one site at Pōhara was assessed for residential development and that was also rejected.[47]

122. OS184.1–OS184.3 would therefore introduce an additional growth location spatially discrete from areas that are proposed to be amended by PC81 and thus are addressing changes beyond the status quo of PC81.

Limb 2

123. RPHL's land was previously identified for future development through Variation 57/Plan Change 8, and the operative TRMP contains policies

[46] Section 10.4 at page 137.
[47] See FDS Technical Report at page 100.

contemplating further growth at Pōhara. That history provides some foreseeability. However, it predates PC81 and does not establish that persons reading the notified plan change could reasonably have anticipated that RPHL's land might be rezoned Residential and Open Space, or that wider urban growth at Pōhara was open for reconsideration through PC81. Pōhara was not identified for greenfield expansion through the FDS or PC81. There is therefore a real risk that persons potentially affected by that additional growth would not have had an effective opportunity to participate in the submission process and would be surprised by any proposal to rezone land at Pōhara.

OS184.4 and OS184.5

124. OS184.4 seeks a timeline for a future plan-change programme if RPHL's substantive relief is declined. OS184.5 seeks a direction concerning Council's future consultation with RPHL in preparing a Regional Spatial Plan under proposed new planning legislation. Neither seeks an amendment to PC81, and those future processes do not form part of the alteration to the status quo proposed by PC81. The first limb is therefore not satisfied.

125. Counsel also note there is a jurisdictional question as to whether the Independent Hearing Panel has the power to make a direction of the kind sought at OS184.4 and OS184.5.

126. The second limb is also not satisfied. Neither PC81 nor its supporting material signalled that Council's future plan-change programme or consultation processes for a Regional Spatial Plan would be considered through PC81. Persons potentially interested in, or affected by, those processes could not reasonably have anticipated that such directions might arise from the notified plan change or had an effective opportunity to participate.

Conclusion

127. OS184.1–OS184.5 are **beyond the scope of PC81**.

<u>Robyn Reid (OS200.1)</u>

128. Robyn Reid seeks to rezone 1427 Moutere Highway, Upper Moutere, to Residential or, alternatively, Deferred Residential. As a further alternative, OS200.1 seeks to identify the site within the Future Urban Growth Framework or a similar strategic growth mechanism, with future development subject to structure planning, infrastructure and other technical assessments and staged implementation.

Limb 1

129. PC81 provides for greenfield growth at selected locations identified through the FDS and supporting spatial-planning processes. The land at 1427 Moutere Highway is rural land at Upper Moutere and was not identified through the FDS or PC81 for residential growth or future urban development.

130. OS200.1 would therefore introduce an additional settlement growth location spatially discrete from areas proposed to be amended by PC81 and therefore is not within the ambit of PC81 and would, in effect, create a spot zone.

Limb 2

131. The second limb is also not satisfied. PC81 does not identify 1427 Moutere Highway for rezoning or future urban growth. PC81 therefore did not signal that residential growth at this location was open for consideration through the plan change. There is accordingly a real risk that persons potentially affected by the proposed rezoning will not be given an effective opportunity to participate.

Conclusion

132. OS200.1 is **outside scope**.

<u>Hermann Seifried (OS180.4)</u>

133. Hermann Seifried seeks to amend Zone Map 80-29 to extend Residential zoning over hill country land identified in Figure 4 of his submission.

Limb 1

134. PC81 rezones adjoining FDS site T-104b from Rural 1 to Residential, extends the Brightwater Development Area over T-104a and T-104b, and identifies an indicative road linking Jeffries Road and Coppermine Crescent through the submitter's Rural 1 land. OS180.4 seeks to extend Residential zoning over part of that land, which the submitter says would facilitate delivery of the indicative road. The relief therefore has a direct connection with the spatial and zoning changes proposed by PC81 in this locality.

135. While the site was not identified for development in the FDS, its proximity to land proposed for rezoning through PC81, together with the indicative road shown through the submitter's land, weighs in favour of the relief being an incidental or consequential extension to the notified changes. The relief is closely connected to the proposed development of T-104b and would not necessarily have needed to be addressed in the s 32 evaluation.

136. The submission satisfies limb 1. It proposes an additional location for residential growth at Brightwater, directly addressing the changes advanced by the plan change and is spatially linked to areas proposed for rezoning.

Limb 2

137. The second limb is not satisfied.

138. The land sought to be rezoned was not identified for residential growth through the FDS or PC81.

139. The indicative road through the land may provide notice that its relationship with the adjoining growth area could be raised through submissions. However, that signal is limited to the proposed transport connection and does not necessarily indicate that the land itself might be rezoned for residential development.

140. Accordingly, there is a real risk the land could be rezoned by a "submissional sidewind", without interested persons potentially affected by that rezoning having been given an effective opportunity to participate. The second limb is therefore not satisfied.

Conclusion

141. OS180.4 is **not on PC81 and is outside scope** as there is a real risk the Plan could be changed without input from affected or interested persons.

Kairos Trust (OS167.2)

142. Kairos Trust seeks to rezone its land from Rural 2 to Rural Residential. The Trust submits on several matters, but these legal submissions only address the relief seeking to rezone the land and do not discuss OS167.3 – OS167.4, which are addressed in the s 42A report.

143. It is understood that the land referred to in submission OS167.2 is part of that shown as "Silvan Forest" in the image below.[48]

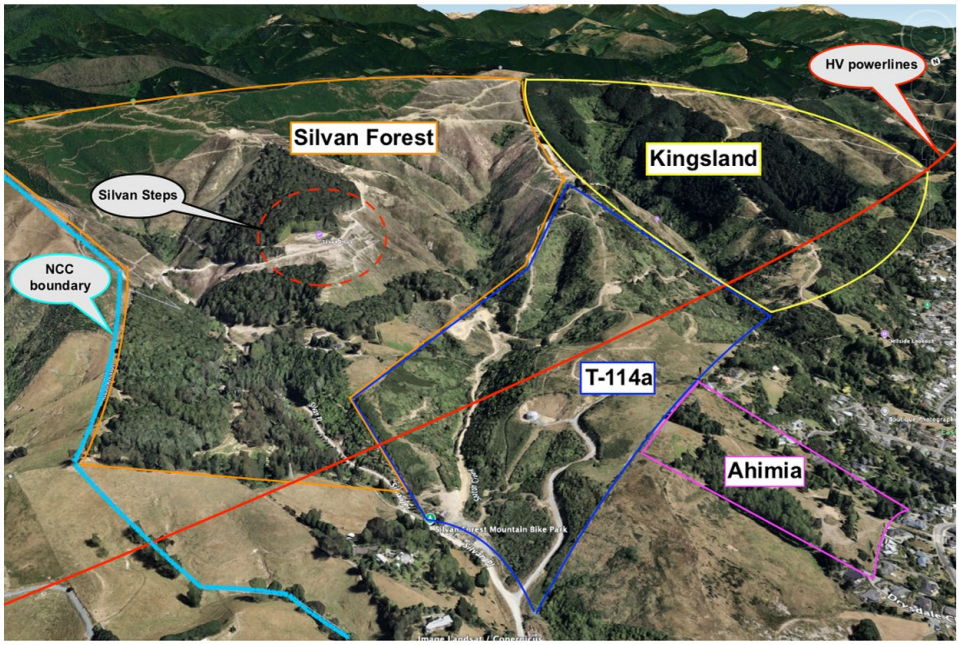


Figure 5: Kairos Trust land.

Limb 1

144. The first limb is satisfied.

145. PC81 proposes to rezone adjoining site T-114a (Eyles Road) from Rural 2 to Rural Residential. The Site Assessment Report at Appendix 2 to PC81 records that T-114a was part of larger site earmarked for

[48] Submission on Proposed Plan Change 81 by Kairos Trust at page 2.

Residential zoning. However, it "has become clear that a developer is unlikely to service this site due to the scale of investment needed".[49] T-114a is therefore now proposed for Rural Residential zoning.

146. The Kairos land adjoins T-114a on two sides and OS167.2 seeks to extend the same Rural Residential zoning across that land. The relief therefore has a direct connection with a zoning change proposed by PC81 in this locality. Whether the submission is "on" the plan change is a question of fact and degree assessed by reference to the nature and breadth of the notified change and the relief sought. PC81 proposes consolidated growth at a large number of Richmond sites along the SH6 corridor identified in the FDS.[50] While the Kairos land was not identified for development in the FDS, its location and proximity to sites proposed for growth in the FDS[51], and the nature of the zoning sought weigh in favour of the relief being an incidental or consequential extension to notified changes, rather than a substantially different proposal requiring an additional s 32 evaluation thus the precautionary approach described in *Motor Machinists* is not required.

Limb 2

147. The second limb is not satisfied. Neither PC81 nor the FDS identifies the Kairos land for Rural Residential zoning.

148. The site's direct relationship with T-114a provides some notice that the appropriate extent of Rural Residential zoning in this locality might be raised through submissions. The submitter also describes an extensive planning history, including engagement with Council. However, that history does not establish that persons reading the notified plan change could reasonably have anticipated that the Kairos land itself might be rezoned Rural Residential. The Court has specifically signalled the need to protect interested persons from changes introduced through submissions, given the more limited procedural safeguards compared with a notified proposal.

[49] Section 2.8.1 at page 68.
[50] See Section 7.1 and Figure 3 at pages 9 – 10.
[51] See site T-114 at page 13 and Figure 7 at page 22 (reproduced as Figure 1 above).

149. PC81 did not identify or assess the landholding for rezoning. There is therefore a real risk that persons potentially affected by Rural Residential development of this additional land would not have had an effective opportunity to participate in the planning process.

Conclusion

150. OS167.2 **is beyond the scope of PC81** on account of the risk interested persons would be excluded from the process.

John Emanuel (OS86.1)

151. John Emanuel seeks to rezone his 4.8 ha Rural 2 property to Rural Residential. The submission is brief and provides limited supporting detail.

Limb 1

152. The first limb is satisfied. PC81 proposes Rural Residential growth in this locality through the rezoning of T-114a, which is located across the road from the Emanuel property. OS86.1 seeks to extend the same zoning to nearby Rural 2 land.

153. For similar reasons to the Kairos Trust submission, there is therefore a sufficiently direct connection between the relief sought and the zoning change proposed by PC81.

Limb 2

154. The second limb is not satisfied for similar reasons to the Kairos Trust submission.

155. The Emanuel property was not identified for Rural Residential growth through either the FDS or PC81. Its proximity to T-114a provides some notice that the appropriate extent of Rural Residential zoning in the locality might be raised through submissions. However, PC81 did not signal that land outside T-114a, including the Emanuel property, might also be rezoned. There is therefore a real risk that persons potentially affected by Rural Residential development of the Emanuel property were not given an effective opportunity to participate on that relief.

Conclusion

156. OS86.1 is **outside scope** on account of the risk interested persons would be excluded from the process.

Tākaka Aero Heights Ltd (OS114.1)

157. Tākaka Aero Heights Ltd seeks to rezone approximately 39.3 ha at 262 Tākaka-Collingwood Highway from Rural 2 to Rural Residential, together with associated and consequential amendments.

Limb 1

158. The first limb is satisfied.

159. PC81 proposes Rural Residential growth in this locality, including rezoning T-140a (Little Ōnahau), directly opposite the submitter's site. The site also adjoins existing Rural Residential zoning. The submitter's site is the irregularly shaped site with the black and white boundary. T-140a is directly to the south and is coloured pink, within a red boundary.

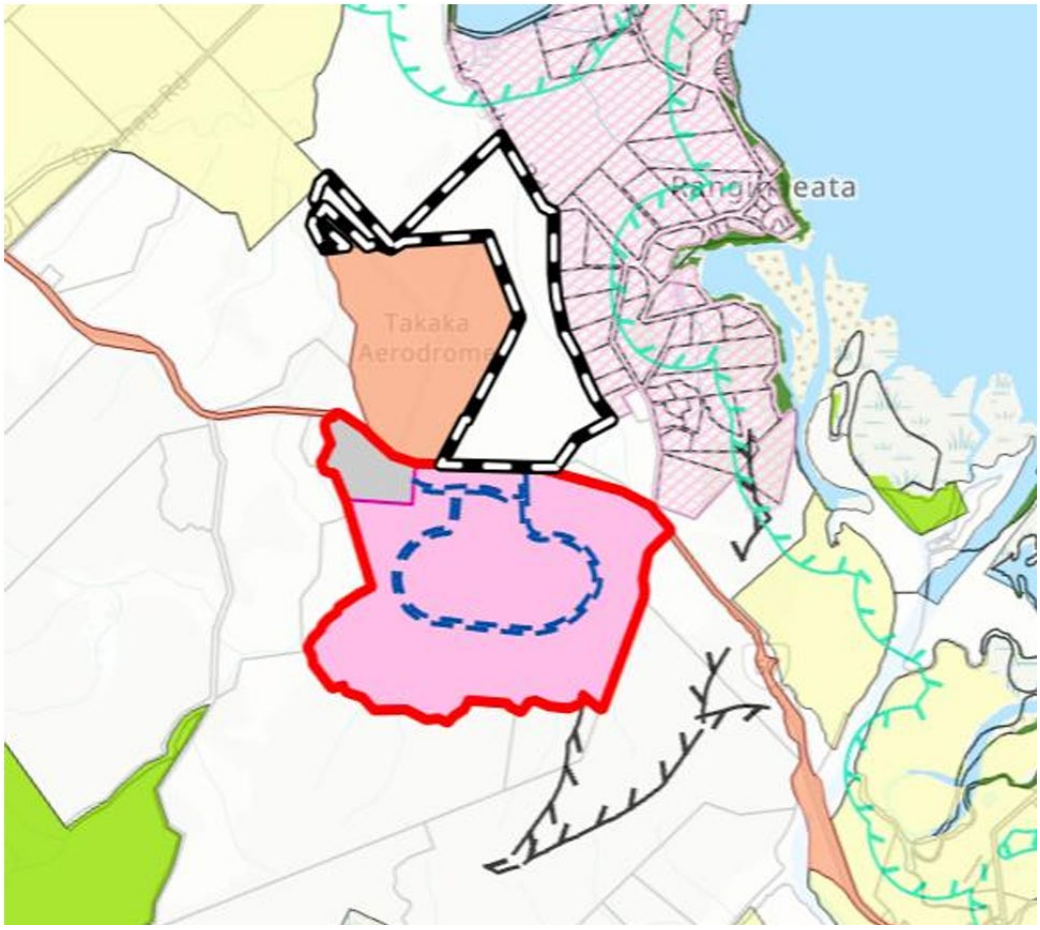


Figure 6: Tākaka Aero Heights site.

160. OS114.1 seeks to extend Rural Residential zoning to the submitter's Rural 2 land and therefore has a direct connection with a zoning change proposed by PC81 in this locality. While the relief involves a substantial additional area, its proximity to T-140aweighs in favour of it being an incidental or consequential extension to the notified changes.. While the site differs from the Kairos land, because it is not within the FDS' SH6 growth corridor, it is submitted that on balance a precautionary approach under this limb is not required here either. The relief sought can be considered an incidental or consequential extension to the notified changes given the overall nature of PC81 as a growth plan change that includes notifying areas where Rural Residential zoning is proposed.

Limb 2

161. The second limb is not satisfied.

162. The submitter's site was not identified for Rural Residential growth through either the FDS or PC81. Its proximity to existing and proposed Rural Residential zoning provides some notice that the appropriate extent of growth in this locality might be raised through submissions. However, PC81 did not signal that this substantial additional area of approximately 39.3 ha might also be rezoned. The scale of the proposed rezoning, together with potentially affected interests associated with the adjoining Tākaka Aerodrome, the State Highway and downstream wetland environment, reinforces the participation concern.

Conclusion

163. OS114.1 is **outside scope** on account of the risk interested persons would be excluded from the process.

<u>Thomas and Loreley Drach (OS273.1)</u>

164. Thomas and Loreley Drach seek Commercial and/or Mixed Business zoning over approximately 6–8 ha or more of land at Gardner Valley Road, west of SH60, including Lot 1 DP 424341. The submission refers to issue 6.15.1.3B and seeks recognition of land adjoining SH60 as

suitable for commercial and mixed-use activities to support the future growth of Māpua and surrounding communities, see Figure 7.

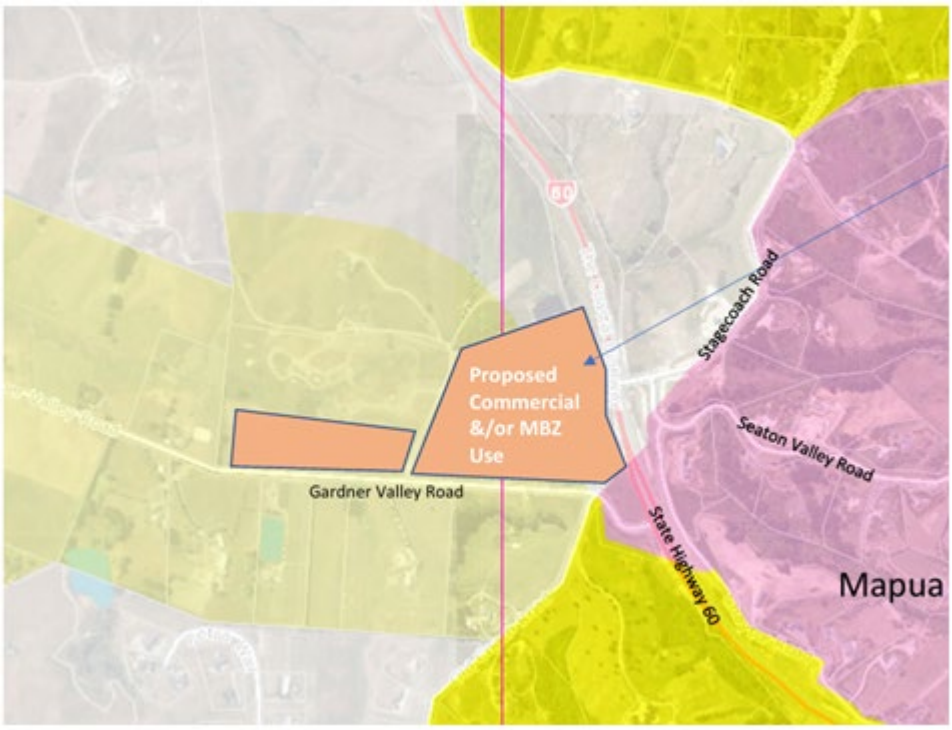


Figure 7: Drach site.

Limb 1

165. PC81 addresses the provision of business and industrial land to support urban growth, including at Māpua, which is not far from the site, and introduces new issue 6.15.1.3B. The submission therefore has some connection with the changes advanced by PC81, insofar as it proposes an alternative location for commercial growth to meet the needs of Māpua.

166. However, PC81 identifies specific locations for urban growth and does not propose commercial or mixed-use zoning over the land identified by the submitters. Furthermore, the submission site is approximately 2.5km from the nearest land that is proposed to be rezoned Commercial or Mixed Business in PC81. Assessing the suitability of this additional location would have required a site-specific s 32 evaluation of matters not addressed through PC81. Given the nature and extent of the notified changes, this was not an alternative that ought reasonably to have been considered in the s 32 evaluation.

167. Limb 1 is therefore not satisfied.

Limb 2

168. The second limb is not satisfied.

169. The land was not identified through PC81 as a commercial growth area, Mixed Business area or location for further investigation. The relief would introduce a new commercial growth location beyond the areas identified in the notified proposal. Persons potentially affected by commercial or mixed-use development in this locality could not reasonably have anticipated that such an outcome might arise through submissions on PC81 and may therefore have been denied an effective opportunity to participate.

Conclusion

170. OS273.1 is **outside the scope of PC81**. The site is in a location that would have justified s 32 assessment beyond what would reasonably be required of PC81. Fairness concerns for interested persons also arise.

E. CONCLUSION

171. TDC requests an interim determination of the scope issues following HS1, particularly those identified in Part D as concerning additional growth areas and site-specific rezonings.

Date 12 October 2026



C P Thomsen / A A Yardley
Counsel for Tasman District Council