BEFORE THE HEARING PANEL
FOR TASMAN DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of a Streamlined Planning Process under s 80B of 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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MEMORANDUM OF COUNSEL FOR A&S TALLEY RELATING TO PROCEDURAL ISSUES

12 October 2026

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MAY IT PLEASE THE PANEL:

1. This memorandum is filed by counsel for A&S Talley (submitter 13 on C1 to the RPS and submitter 160 on PC81 to the TRMP, and further submitter 38 on C1 and further submitter 319 on PC81). It responds to the Panel's minute 1 dated 24 September 2026.

2. In paragraph 70 of that Minute, the panel asks submitters who wish to raise procedural issues to provide a summary of the issue and the general reasons for it by 1pm on 12 October 2026.

3. A&S Talley raise the following procedural issues.

Interaction between Plan Change 81 and Plan Change 79

4. The Council released its decision on Plan Change 79 on 13 March 2026. Parts of that decision have been appealed to the Environment Court, and the parts that were not appealed became operative on 18 June 2026.

5. Plan Change 81 proceeds on the assumption that the decisions version of Plan Change 79 will be confirmed on appeal. For example:

    a. The schedule of amendments (Appendix 1 to the s 32 report) on page 458–472 adds a number of deferred zone sites to Schedule 17.14A, using the structure of that table as in the Decisions Version of Plan Change 79.

    b. Pages 458–472 of the schedule of amendments also make reference to "Section 16.3.2.5 Subdivision in any Zone Subject to Deferred Zone Rules", which is a rule that relates to

subdivision for land that is, or was formerly, subject to deferred zone rules in section 17.14 of the plan.

6. The panel needs to be aware that these provisions that are proposed to be amended are within the scope of the appeal to the Environment Court on Plan Change 79. The appeal by A&S Talley includes seeking relief that:

   a. Various columns in Schedule 17.14A are deleted or amended;[1]

   b. Section 16.3.2.5 (a rule) is amended;[2] and

   c. That the deferred zoning framework provisions of Plan Change 79 are withdrawn in their entirety.[3]

7. This creates a procedural issue. The panel cannot assume that the decisions version of Plan Change 79 will be confirmed on appeal. There is a possibility that the Environment Court could decide that the deferred zoning framework provisions introduced or amended by Plan Change 79 be withdrawn in their entirety. If that were to occur, then many of the provisions on which Plan Change 81 is based would fall away. There could also be changes to the objectives and policies that are under appeal that would influence the content of provisions within Plan Change 81.

8. There is no discussion in the Council's s 32 report as to how the panel should approach the interaction between the live Plan Change 79 appeal and Plan Change 81.

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[1] Notice of Appeal by A&S Talley dated 30 April 2026 at paragraphs 34–38.
[2] Notice of Appeal by A&S Talley dated 30 April 2026 at paragraph 23.
[3] Notice of Appeal by A&S Talley dated 30 April 2026 at paragraph 40.

9. The Plan Change 79 appeal has been referred to mediation, which is ongoing. That mediation process is confidential. It will not be disclosed to the panel.

10. The appellant (A&S Talley) will discuss with the Council the provision of an update to the panel once any agreed outcomes have been reached from mediation and endorsed by way of consent order. It is unclear when such an update will be able to be provided relative to the hearing streams in Plan Change 81.

11. It is requested that the Council provides an explanation of how it sees this issue playing out in a manner that is fair and efficient to the Plan Change 79 appeal parties, the Plan Change 81 submitters, and the panel.

Cross-examination

12. The panel has a discretion to allow cross-examination during its hearings.[4]

13. The panel has said that it is "not minded" to provide for cross-examination, and has instead proposed a written question and answer process.

14. It would be unlawful for the panel to fully close the door on requests for cross-examination. Issues may emerge during the process that make it appropriate for a party to request, and be granted, leave to cross-examine a witness. Cross-examination is a more robust method for

[4] Schedule 1 clauses 85 and 98(4) of the Resource Management Act 1991.

interrogating differences in expert evidence than the written question and answer method that the Panel may prefer.

15. Counsel requests that the panel make express provision for requests to cross-examine witnesses in its hearing procedures.

Timing of Council rebuttal evidence relative to legal submissions

16. The panel's timeframes for hearing streams 2 to 5 make provision for legal submissions and written representations (longer than 3 pages) to be lodged on the same day as rebuttal evidence from the s 42A report authors.

17. It is inefficient for the s42A rebuttal and legal submissions/written representations to be required on the same day.

18. It is quite possible that the s 42A report authors may change their opinion in response to expert evidence, which would reduce the scope of issues in contention before the panel that submitters need to address in their legal submissions or written representations. Counsel has seen many examples in plan change processes where the provision of submitter expert evidence and then the s 42A rebuttal evidence means that the matters in contention before the panel have narrowed significantly.

19. It would be more efficient if legal submissions and written representations were timetabled to be filed three days <u>after</u> the s 42A rebuttal evidence. That allows the parties to respond to any developments in the s 42A authors' position.

Access to supporting information

20. The panel has suggested it would be helpful for expert conferencing and pre-hearing meetings to occur before the hearings commence, and that expert conferencing may be requested during or after each hearing.

21. The panel also notes that expert witnesses are expected to comply with the Environment Court's Code of Conduct for expert witnesses.

22. The Code of Conduct requires experts to identify the data, information, facts and assumptions considered in forming their opinions, and to specify any literature or other material used or relied on. Experts are also required, if relying on a mathematical model, to include appropriate sensitivity and uncertainty analysis for that model.

23. In order for expert conferencing and/or pre-hearing meetings to be productive and helpful to the panel, it is critical that all participating experts have access to the same data and materials.

24. Counsel requests that the panel issue a direction that the Council's s 42A experts are to make available all supporting information that forms the basis of their evidence, including models and underlying data.

25. Given the expedited timeframes for this process, it would be most helpful if this supporting information is made available as soon as possible so that submitters can provide it to their experts for the purpose of preparing their evidence and participating in expert conferences.

26. The Council has previously been reluctant to release modelling data and similar information, and the submitter has had to resort to making official information requests to receive some information. That should not be necessary within this hearings process.



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PHERNNE TANCOCK/DUNCAN BALLINGER

Counsel for A and S Talley

Dated the 12th day of October 2026