BEFORE THE HEARING PANEL APPOINTED BY THE TASMAN DISTRICT COUNCIL

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

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LEGAL SUBMISSIONS ON BEHALF OF TĀKAKA AERO HEIGHTS LTD (SUBMITTER S114) ON SCOPE

DATED 19 October 2026

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Introduction and summary

1. These legal submissions are filed on behalf of Tākaka Aero Heights Limited (**TAHL**), which is Submitter OS114 and a further submitter on the submission by the New Zealand Transport Agency. These submissions address the s 42A report recommendation that the rezoning relief sought by TAHL is not "on" PC81 and the request by Tasman District Council (**TDC**) for an interim determination on scope.

2. The TAHL site is at 262 Tākaka-Collingwood Highway. The area surrounding the site is transitioning from a predominantly rural production environment to a mix of rural residential and proposed light industrial land uses. The eastern boundary adjoins existing Rural Residential zoned land.[1] Land opposite the Takaka-Collingwood Highway is proposed to be rezoned Rural Residential through PC81 (T-140a Little Ōnahau). Land in close proximity is proposed to be rezoned Light Industrial through PC81 (T-182a). Tākaka Aerodrome is immediately west of the site and has a designation for the purpose of the Aerodrome.[2] The site is not highly productive land.[3]

3. TDC accepts that the TAHL submission meets limb 1 of the approach in *Clearwater Resorts Limited v Christchurch City Council*,[4] but says it does not meet limb 2.

4. In summary, TAHL submits that:

    a. Its submission is "on" PC81. Change 1 and PC81 propose broad, region/district-wide changes to urban development planning framework. A change to the regional policy statement and accompanying plan change that are intended to give effect to the NPS-UD, apply across the district/region, seek to provide for "well-functioning urban environments," and make significant changes to urban growth-related provisions from RPS objectives down to district rules, must be considered to have a very wide ambit. TAHL's submission seeks an alternative position on areas proposed for residential zoning so its submission relates to the extent to which PC81 changes the status quo. While PC81 represents TDC's position on what is required to implement the NPSUD, it must be open to parties to submit that it has not "gone far enough". Genuinely interested persons have fair notice of the relief through the submission and cross-submission process. TDC's reasons for limb 2 not being met are artificial or contrary to authorities.

    b. The Panel does not have the power to make an interim determination on scope that affects a submitter's ability to participate in subsequent hearings, as sought by TDC.

Submission is "on" PC81

Law

5. Clause 6 of Schedule 1 of the RMA enables a person to make a submission "on" a proposed policy statement or plan change. TAHL agrees with counsel for TDC that the leading authorities are *Clearwater* and *Palmerston North City*

[1] The Rangihaeata Rural Residential Closed Zone
[2] Evidence of Jane Bayley at 7.
[3] Evidence of Jane Bayley at 8.
[4] *Clearwater Resorts Limited v Christchurch City Council* [2003] ELHNZ 79

Council v Motor Machinists.[5] The Court's preferred approach in *Clearwater* was:[6]

a. A submission can 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.

b. But 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, this is a powerful consideration against any argument that the submission is truly "on" the variation.

6. Paragraph [69] of *Clearwater* is important:

> [69] It may be that the process of submissions and cross-submissions will be sufficient to ensure that all those likely to be affected by or interested in the alternative method suggested in the submission have an opportunity to participate. In a situation, however, where the proposition advanced by the submitter can be regarded as coming out of "left field", there may be little or no real scope for public participation. Where this is the situation, it is appropriate to be cautious before concluding that the submission (to the extent to which it proposes something completely novel) is "on" the variation.

7. Two points can be taken from that paragraph. First, the High Court recognised that the process of submissions and cross-submissions may be sufficient to ensure all those likely to be affected by relief sought in a submission have an opportunity to participate, as long as the proposition does not come out of "left field". Second, while *Clearwater* is sometimes described as providing a "two-limb test",[7] the second *Clearwater* limb is not a separate test but more akin to a check on the conclusion reached under the first limb.

8. In *Motor Machinists*, the High Court said one way of analysing the issue is to ask "whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change". While the Court gave a "particular lot" as an example of the resource affected by a plan change, the context of that case was a very limited rezoning of particular sites, not a region/district-wide change to the planning framework. It is not authority that a plan change must affect the zoning of a particular lot in order for a submission seeking a different outcome for that lot to be "on" the plan change. The Court also said that the *Clearwater* approach "does not exclude altogether zoning extension by submission."[8]

9. There is an additional aspect to this issue, not addressed in TDC submissions, which stems from the hierarchical nature of planning instruments, with a lower order instrument needing to give effect to those above it in the hierarchy, and the internal hierarchy where plan provisions must implement objectives. That means there is potential for changes to be made to a planning instrument to support vertical/horizontal integration and alignment, give effect to policy change, and fill the absence of policy direction. A top-down approach is required so that consequential amendments may be required to achieve integration with overarching objectives and policies drawn from higher level

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[5] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.
[6] At [66]
[7] *Beachlands South Limited Partnership v Auckland Council* [2024] NZEnvC 35 at [34]
[8] At [81]

policy statements. In relation to changes supporting such vertical integration, the High Court in *Albany North Landowners* said:[9]

> Given the logical requirement for a plan to function in this way, these changes would normally be considered to be reasonably anticipated.

10. Where a regional policy statement change or plan change is introduced to implement a national policy statement, "it must be open to parties to argue that it did not sufficiently do so or that further provisions should be included"[10] and "it must always be open to a party to submit that the changes have not gone far enough" (per *Beachlands South Limited Partnership v Auckland Council*[11]). The Court in *Beachlands* held that:

> [57] The question of a well-functioning environment is clearly a very broad term relating to issues of infrastructure, housing and business capacity, and the response of planning. The very breadth of that wording, in our view, means that the RPS as a whole could be open to a wide range of changes.

11. The RPS changes at issue in *Beachlands* consisted of three NPS-UD components, namely well-functioning urban environments, qualifying matters, and climate change resilience. In refusing to strike out Beachlands' submission but acknowledging that the scope of specific relief sought would require further consideration in the substantive hearing, the Court made clear this does not mean anything goes. The focus is on the NPS-UD components implemented by the RPS changes and the RPS chapters that are subject to change:

> [62] … to the extent that the proposals deviate from the three headings of well-functioning urban environment, climate change resilience, and qualifying matters, they will be increasingly difficult to justify before the Court.
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> [63] … the provisions that were in frame include B2, B7, B8 and B10. Where changes are sought beyond these, these are going to be increasingly difficult to establish before the Court.

12. District or region-wide implementation of national direction is a very different context to the minor rezoning changes under consideration in *Motor Machinists*. Neither that case nor *Clearwater* was decided in the context of a plan change that sought to implement mandatory requirements of national direction (a distinction noted in *Beachlands*).[12] In this broader context, a realistic approach should be taken to the question of whether there are portions of the public who have not been able to participate. The Court in *Beachlands* concluded that "this secondary issue is of less concern in a case such as this where there are broad changes."[13]

13. In *Albany North Landowners v Auckland Council* the High Court considered whether "upzoning" recommendations made by an independent hearings panel were within the scope of submissions. The appellants argued that a number of the generalised submissions seeking upzoning (relied on for the panel's recommendations) were so far reaching that they were not "on" the proposed Auckland Unitary Plan (PAUP). The IHP recommendation upzoned more than 29,000 homes previously identified by the Council as out of scope. While generalised submissions sought residential intensification across the Auckland

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[9] *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [96]
[10] *Beachlands South Limited Partnership v Auckland Council* [2024] NZEnvC 35 at [46]
[11] At [48]
[12] At [52]
[13] At [56]

region, none of the submissions specifically identified these 29,000 homes for residential intensification of the type recommended by the IHP.[14] The Court held:

> [166] Generally speaking, the IHP's recommendations were plainly within the jurisdictional scope of these submissions on the PAUP. First, there is nothing "left field" about the recommendations or the submissions. The extent and form of urban residential intensification was a major issue raised by the s 32 reports, with the precise extent, form and location of such intensification left open for final resolution through the notified hearing process. These submissions (among other) simply address this major issue by seeking substantially greater provision for residential intensification throughout Auckland. … Accordingly, **it should have come as no surprise to any person genuinely interested in residential intensification and or residential amenity to see the competing positions thoroughly ventilated in submissions on the PAUP**.

14. The Court was satisfied that as a summary of submissions made to the IHP (summary of decisions requested) had been made publicly available, which described the broad effect of the submissions, this "alert[ed] the reader to the potential for significant changes to the proposed plan as it relates to provision for residential intensification".[15] The Court found that any landowner genuinely interested in preserving local residential amenity, when presented with those submissions, "must have appreciated that broad and detailed changes to the nature and extent of residential zoning throughout Auckland were sought by a number of parties."[16] The Court said that "a reasonable level of diligence is to be expected by landowners genuinely interested in preserving the status quo, whether at a site specific or more general neighbourhood or zone level. It is not sufficient to simply examine the PAUP maps or the summary of submissions on those maps, which as the s 32 report signalled, were based on preliminary assessments of growth only".[17] When considering the extent to which affected persons are fairly on notice of potential changes, the question is what might be expected of a reasonable person in the community at large genuinely interested in the implications of the PAUP for him or her".[18] The PAUP and s 32 report did not "purport to fix a final frame for residential intensification" or "give rise to any reasonable expectation as to outcome".[19] While that case related to a full plan review rather than a plan change, the Court's findings are of a general nature.

15. Submissions or appeals seeking rezoning of sites that had not been identified for rezoning in the proposed plan change were assessed as "on" the plan change in *Calcutta Farms Ltd v Matamata-Piako District Council*[20] and *Tussock Rise Ltd v Queenstown Lakes District Council*.[21]

16. The Court in *Calcutta Farms* found that the plan change in question (PC47):

> … did involve changes to the management regime for residential activity and areas to be designated as future residential activity areas, so that it was open to Calcutta Farms to lodge a submission seeking an alternative position on the areas proposed in PC47 to either be Residential Zones or Future Residential Policy Areas, which is

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[14] At [162]
[15] *Albany North Landowners* at [169]
[16] At [170]
[17] At [172]
[18] At [176]
[19] At [178]
[20] *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187
[21] *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111

> what it did. It did therefore address in its submission the extent to which PC47 changes the existing status quo.

17. The Court was not persuaded against scope by legal submissions comparing the scale of residential entitlement in PC47 as notified (24.6ha Residential, 50ha Future Residential) with the relief sought by Calcutta Farms (a further 26ha Residential and a new 126ha Future Residential area). The Court said the scale and degree of a proposal can assist in determining whether a submission is "on a plan change" but is not determinative. Much will turn on the nature of the plan change. On a broad-scale review of the need for future residential areas, "the difference and scale and degree of what is proposed by Calcutta Farms is a matter going to the merits of the submission rather than to its validity".[22]

18. In relation to fairness to affected persons, the Court took into account that the proposal for future residential development at Matamata had been raised as an issue previously, there were only a few parties directly affected, and the interests of any affected parties who had not submitted were likely to be met by the Council and a neighbour's case opposing the appeal.[23] The Court distinguished *Motor Machinists* where what was proposed had come from left field.[24] There was "a real issue to be determined …, particularly in relation to the population predictions that underpin the land budget allocations for the Residential zoned areas and Future Residential Policy Areas in Matamata."[25]

19. In *Tussock Rise*, the site was adjacent to a proposed rezoning area.[26] The Court considered that the Council's basis for seeking to strike out the appeal, being that industrial zoning would be the subject of a later plan change, was not a fair or complete answer because crucial issues of development capacity would have already been resolved:

> [78] The Council's strikeout is unfair to TRL as landowner. It is being left out of a hearing that it has consistently said it wants to be part of (to resolve the boundaries of the residential and industrial (or other) zones in this locality). It is not a fair or complete answer to say (as the Council does), that when the (operative) industrial zone is the subject of a subsequent stage, TRL can seek residential zoning then. The difficulty with that course is that the crucial arguments as to allocation of land with development capacity to either Residential or Industrial zoning, under the NPS-UDC may have already been resolved at the first stage.

20. The Court considered that the summary of submissions (and notice of appeal) gave fair notice of the issues raised:

> [83] … in this case all the submissions, the Council's summary of decisions sought, and the notice of appeal are clear that TRL seeks a (low density) residential zone for the site. I do not see anything unfair, inaccurate or misleading about the summary. I hold that it is fair notice to the public of the issues raised by TRL

Application to TAHL relief

21. TDC considers that the rezoning relief sought by TAHL meets the first limb of *Clearwater.* It acknowledges the relevance of the overall nature of PC81 as a

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[22] At [87]
[23] At [89] – [91]
[24] *Calcutta Farms* at [93]
[25] At [94]
[26] *Tussock Rise* at [69]

growth plan change that includes notifying areas where Rural Residential zoning is proposed under the first limb.

22. However, it considers the second limb is not met:[27]

> 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.

23. The s 42A report also says for this site:[28]

> Limb 2 not satisfied because PC81 did not signal rezoning of the additional land.

24. TAHL submits that TDC's approach is misconceived:

    a. Change 1 and PC81 propose broad, region/district-wide changes to the planning framework for urban development. The "particular resource" affected by Change 1 and PC81 is the region/district's development capacity. Change 1 and PC81 implement the NPS-UD. As in *Beachlands*, it must be open to parties to submit it does not go far enough. Consequential changes at the "method" level to implement higher order objective and policy changes should also be anticipated.

    b. Given PC81's broad scope, whether affected parties have had the opportunity to participate is a secondary issue and of less concern. As in *Clearwater*, that the process of submissions and cross-submissions is sufficient to give notice to those likely to be affected by or interested in the submission.

    c. With respect to Council's reasons, it is artificial to distinguish between rezoning proposals under limb 2 based on whether a site was identified in the FDS. The scale of the proposed rezoning is of little relevance under the second limb, if anything it makes it more likely that interested parties would check what is proposed for the site. The adjoining Tākaka Aerodrome, the State Highway and downstream wetland environment are matters relevant to the substantive assessment of the proposed rezoning, not jurisdiction.

<u>Change 1 and PC81 propose broad, region/district-wide changes to urban development planning framework to implement NPSUD</u>

25. The s 32 report for TRPS Change 1 states that the main purposes of Change 1 are to give effect to the NPS-UD and have regard to the FDS. Tasman has a legal obligation to provide sufficient development capacity of the right type of housing land to meet demand. In TRPS Change 1, Council seeks planned built urban form that ensures effective and efficient outcomes for social, economic, cultural and environmental objectives.[29]

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[27] At 162
[28] Page 28
[29] TRPS Change 1 Section 32 report, p 1.

26. The objectives of TRPS C1 are:[30]

    a. That Council contributes to a well-functioning Nelson Tasman urban environment

    b. That Council provides sufficient housing and business land capacity, to meet expected demand in the urban environment, in alignment with the FDS, while ensuring that important environmental and cultural values are protected

    c. That Tasman provides a variety of housing types, including medium density and papakāinga that achieve quality urban design outcomes

    d. That Tasman's urban centres grow in accordance with a planned built urban form, while remaining responsive to unanticipated or out of sequence plan change proposals for urban development, where those proposals would add significant development capacity and contribute to well-functioning urban environments.

27. The Panel will need to consider whether those objectives are the most appropriate way to achieve the purpose of the Act, and whether the TRPS provisions are the most appropriate way to achieve the objectives.[31]

28. The s 32 report for PC81 says that the purpose and primary drivers of PC81 are to give effect to the NPSUD and TRPS and have regard to the FDS and TRPS Change 1. The plan change also provides for additional business development opportunities and seeks to improve the role and functioning of commercial centres across the district.[32] PC81's strategic direction includes:

    > 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

29. This strategic direction is a broad, region/district-wide planning framework for urban development. It requires an expansive consideration of whether the extent of urban zoning (including Rural Residential zoning) is sufficient, whether zoning provides for well-functioning urban environments, and the boundaries of areas proposed for rezoning. The "particular resource"[33] affected by Change 1 and PC81 is the region/district's urban development capacity.

30. A change to the regional policy statement and accompanying plan change that:

    a. are intended to give effect to the NPS-UD;

    b. apply across the district/region;

    c. seek to provide for "well-functioning urban environments"[34]; and

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[30] TRPS Change 1 Section 32 report, p 2.
[31] Section 32 (1) and (2) RMA.
[32] TRMP PC 81 Section 32 report.
[33] *Motor Machinists* at [81]
[34] See *Beachlands* at [57]: The question of a well-functioning environment is clearly a very broad term relating to issues of infrastructure, housing and business capacity, and the response of planning. The very breadth of that wording, in our view, means that the RPS as a whole could be open to a wide range of changes.

d. make significant changes to urban growth-related provisions from RPS objectives down to district rules;

must be considered to have a very wide ambit.

31. As in *Calcutta,* PC81 involves changes to the management regime for residential activity and areas to be designated for residential activity, so that it is open to submitters to seek an alternative position on the areas proposed for residential zoning. In doing so, TAHL's submission addresses the extent to which PC81 changes the status quo.

32. The Council has identified, through the notified version of Change 1 and PC81, how it considers the NPS-UD should be implemented. As in *Beachlands,* it must be open to parties to submit that it has not "gone far enough". That is what TAHL's submission does, in seeking to extend Rural Residential zoning to its site. As set out in Ms Bayley's evidence, a future housing shortfall has been identified in Takaka, in the context of Golden Bay ward having "relatively high population growth".[35] In that context:[36]

> Inclusion of the subject site in PC81 is a realistic and feasible development opportunity capable of contributing toward future housing supply in Golden Bay. Rezoning the subject site to Rural Residential is therefore consistent with the requirement to maintain sufficient development capacity for housing over the short, medium and long term as it would increase plan-enabled capacity and provide greater flexibility in responding to future growth demands.

33. In other words, TAHL's relief is squarely aimed at achieving PC81's strategic direction through an alternative approach to the methods, namely extension of existing and proposed Rural Residential zone boundaries. *Calcutta* and *Tussock Rise* are relevant examples of the Environment Court finding this type of relief to be "on" a plan change.

34. Additionally, the potential for high level changes to RPS and regional/district plan objectives means that consequential changes to methods (including zoning) to achieve vertical integration must be contemplated. The framework for urban development in Golden Bay is not fixed; it is subject to change through the TRPS Change 1 and PC81 process. A submission seeking rezoning is addressing the "method" level of PC81. The panel should be slow to conclude that it is not within the scope of consequential changes that may be required as a result of changes to the higher order TRPS or TRMP objectives and policies.

<u>Genuinely interested persons have fair notice of the relief through the submission and cross-submission process.</u>

35. As in *Beachlands*,[37] caution over whether affected parties have had the opportunity to participate is a secondary issue and of less concern in a case such as this where there are broad changes. A submission seeking a zoning extension, in the context of a region/district-wide RPS and plan change that is about urban growth, can hardly be described as "novel" or "left field". The TAHL submission comes within the scenario expressly identified in *Clearwater*, that the process of submissions and cross-submissions is sufficient to ensure that all

[35] Evidence of Jane Bayley at 14, citing the s 32 report for PC81.
[36] Evidence of Jane Bayley at 17.
[37] At [56]

those likely to be affected by or interested in the alternative method suggested in the submission have an opportunity to participate.

36. Realistically, anyone interested in PC81 will have reviewed the summary of submissions (or should have done so). It is artificial to suggest that a genuinely interested person would carefully review the provisions of PC81 itself to inform themselves of the scope of PC81 on that basis, but not then go back to check what outcomes were sought through submissions. As in *Tussock Rise*,[38] the summary of submissions (and notice of appeal) gave fair notice to interested persons of the issues raised.

TDC's reasons for limb 2 not being met are artificial or contrary to authorities

37. With respect to TDC reasons for recommending that the submission does not meet limb 2, it is artificial to distinguish between rezoning proposals under limb 2 based on whether a site was identified in the FDS. Most people are unlikely to remember which areas were identified in a 2022 strategy document or to be alert (or not) to whether a zoning change may be extended to other areas **on that basis**. The FDS has little relevance to the second limb given PC81 proposes to rezone a number of sites that are not in the FDS, as discussed in Ms Bayley's evidence.[39] To put it plainly, no-one would read PC81 and think: *"there might be some sites that are rezoned as a result of submissions, but only if those sites that were identified in the FDS"*.

38. To the extent that the FDS is relevant to genuinely interested people's understanding of the scope of PC81, it supports the conclusion that TAHL's submission is "on" the plan change. As set out in Ms Bayley's evidence, the area of T-140a to be rezoned for rural-residential development that is only one allotment away from the Rangihaeata Rural-Residential Zone was identified in the FDS. A submission seeking relief in kind is something that the general public, and in particular residents of Rangihaeata, would anticipate, particularly in light of the existing and proposed "spot zoning" around the TAHL site:[40]

> 34. As such, I would expect that the Golden Bay public would look at Council's website at the 'Summary of Submissions by Topic – Erratum Version Full Record' on PC81 and would make a further submission on TAHL's original submission if they did not support the extension to the Rural Residential Zone.

39. The scale of the proposed rezoning is of little relevance to jurisdiction, particularly for a submission on a plan change with broad reach.[41] In *Calcutta Farms*, the scale of residential entitlement in PC47 as notified was 24.6ha Residential, 50ha Future Residential, and the relief sought by Calcutta Farms was a further 26ha Residential and a new 126ha Future Residential area. Here, PC81 is intended to enable approximately 4,250 new homes and 80 additional hectares of business land. TAHL's proposed rezoning of 39.3 hectares is small in that context. TDC's reliance on the scale of the rezoning sought by TAHL as a reason the submission fails limb 2 is contrary to case law.

40. The fact that the site is close to the Tākaka Aerodrome, the State Highway and downstream wetlands is not relevant to whether limb 2 is met. These are matters relevant to the substantive assessment of the proposed rezoning, not

[38] At [83]
[39] At 23-26.
[40] Evidence of Jane Bayley at 27-34
[41] At [87]

jurisdiction. There is no authority to support TDC's approach to this part of its reasoning.

41. For those reasons, TAHL submits that its submission is "on" PC81.

No power to make interim ruling that affects participation rights

42. TDC seeks an interim determination of the scope issues to clarify which relief may proceed to substantive consideration and inform the preparation of reporting and evidence for subsequent hearing stages.[42]

43. TAHL submits that there is no power for the Panel to make an interim ruling that then determines a submitter's right to participate in subsequent steps in the hearing process. No such power is provided for in the RMA, or in the Minister's Direction.[43]



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[42] TDC Hearing 1 Legal submissions at 5.
[43] 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