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 RICHMOND POHARA HOLDINGS LIMITED (SUBMITTER 21 ON CHANGE 1 AND SUBMITTER 184 ON PC81) ON SCOPE

DATED 19 October 2026

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Introduction and summary

1. These legal submissions are filed on behalf of Richmond Pohara Holdings Limited (**RPHL**), which is Submitter 28 on Change 1 to the Tasman Regional Policy Statement (**Change 1**) and Submitter 184 on Tasman Resource Management Plan Change 81 (**PC81**). These submissions address the s 42A report recommendation and supporting TDC legal submissions that submission points 184.1 to 184.5 are not "on" PC81 and the request by Tasman District Council (**TDC**) for an interim determination on scope.

2. In summary, RPHL submits that Its submission points are "on" PC81:

    a. 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," include an objective of "*sufficient residential capacity to meet demand in the urban environment **and rural centres***", and make other significant changes to urban growth-related provisions from RPS objectives down to district rules, must be considered to have a very wide ambit. RPHL'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.

    b. 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" as RPHL's submission does.

    c. RPHL's submission seeks changes to Change 1 to include clear provisions for housing development in settlements outside Urban Environment towns. There is no challenge to whether RPHL's submission is "on" Change 1. If that relief is accepted, consequential changes to implement Change 1 can be anticipated.

    d. The s 32 report fails to comply with s 32(3)(b) as its examination does not include the existing TRMP objectives that are relevant to PC81's objectives and would remain if PC81 takes effect. It is the failure that has left RPHL's submission appearing not to be "on" PC81, rather than the submission actually being out of scope.

    e. It is entirely unreasonable for TDC to rely on the fact that the FDS does not identify Pōhara as an area for greenfield expansion as a reason for RPHL's submission being out of scope, when RPHL has been repeatedly advised by TDC that Pōhara would be part of a plan change despite not being in the FDS. That approach is unfair to RPHL and contrary to its legitimate expectations based on previous engagement with TDC. An interpretation of scope that is consistent with fairness to RPHL and its legitimate expectations should be preferred.

    f. Genuinely interested persons have fair notice of the relief through the submission and cross-submission process.

3. RPHL submits that 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.

4. These submissions focus on submission points 184.1 and 184.2 (rezoning) and 184.3 (lack of urban growth provisions for Pōhara in PC81) which are RPHL's primary relief. Submission points 184.4 and 5 are briefly addressed at paragraphs 51 - 52 below.

Submission is "on" PC81

Relevant 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. RPHL agrees with counsel for TDC that the leading authorities are *Clearwater Resorts Limited v Christchurch City Council*[1] *and Palmerston North City Council v Motor Machinists.*[2] The Court's preferred approach in *Clearwater* was:[3]

    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",[4] 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 first limb is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change.

9. In *Bluehaven Management Limited & Rotorua District Council v Western Bay of Plenty District Council*,[5] the Environment Court expressly dealt with Kós J's observations in *Motor Machinists* about the role of the s 32 evaluation and report

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[1] *Clearwater Resorts Limited v Christchurch City Council* [2003] ELHNZ 79
[2] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.
[3] At [66]
[4] *Beachlands South Limited Partnership v Auckland Council* [2024] NZEnvC 35 at [34]
[5] *Bluehaven Management Limited & Rotorua District Council v Western Bay of Plenty District Council* [2016] NZEnvC 191

in determining whether a submission falls within the ambit of a plan change. The Environment Court concluded that a submission point or approach that is not expressly addressed in the Council's s 32 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. Otherwise, the Court reasoned, a Council would be able to ignore potential options for addressing the matter that is the subject of the plan change and prevent submitters from validly raising those options in their submissions.

10. The Court in *Bluehaven* went on to say:

> [37] In that context, we respectfully suggest that one might also ask, in the context of the first limb of the Clearwater test, whether the submission under consideration seeks to substantially alter or add to the relevant objective(s) of the plan change, or whether it only proposes an alternative policy or method to achieve any relevant objective in a way that is not radically different from what could be contemplated as resulting from the notified plan change. The principles established by the decisions of the High Court discussed above would suggest that submissions seeking some major alteration to the objectives of a proposed plan change would likely not be "on" that proposal, while alterations to policies and methods within the framework of the objectives may be within the scope of the proposal.
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> [38] It may be that this issue can be encapsulated by regarding the first test as including an assessment of whether the s 32 evaluation report should have covered the issue raised in the submission. This follows Kós J's wording closely and involves an evaluation of the submission in terms of the issue as it is (or is not) addressed by the proposed plan change and the context in which it arises. In particular, such contextual evaluation should include consideration of whether there are statutory obligations, national or regional policy provisions or other operative plan provisions which bear on the issue raised in the submission. A failure to address the context expressly in the s 32 report may well indicate a failure to consider a relevant matter.

11. Given that approach, it is important to record the requirements for a s 32 report to examine the extent to which:[6]

    a. The objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA, and

    b. Whether the provisions in the proposal are the most appropriate way to achieve the objectives.

12. If the proposal (an **amending proposal**) will amend a regional policy statement, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under (b) must relate to:[7]

    a. the provisions and objectives of the amending proposal; and

    b. the objectives of the existing proposal to the extent that those objectives—

        i. are relevant to the objectives of the amending proposal; and

        ii. would remain if the amending proposal were to take effect.

13. 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

[6] Section 32(1)
[7] Section 32(4)

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 policy statements. In relation to changes supporting such vertical integration, the High Court in *Albany North Landowners* said:[8]

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

14. 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"[9] 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*[10]). 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.

15. 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.

16. 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*).[11] 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."[12]

17. In *Albany North Landowners* the High Court considered whether "upzoning" recommendations made by an independent hearings panel were within the

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

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 region, none of the submissions specifically identified these 29,000 homes for residential intensification of the type recommended by the IHP.[13] 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**.

18. 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".[14] 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."[15] 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".[16] 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".[17] 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".[18] While that case related to a full plan review rather than a plan change, the Court's findings are of a general nature.

19. 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*[19] and *Tussock Rise Ltd v Queenstown Lakes District Council*.[20]

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

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

21. The Court in *Calcutta* 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.[21] The Court distinguished *Motor Machinists* where what was proposed had come from left field.[22] 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."[23]

22. In *Tussock Rise*, the site was adjacent to a proposed rezoning area.[24] 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.

23. 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 RPHL relief

<u>TDC position</u>

24. TDC submits that OS184.1 – OS184.3 do not pass limb 1:

    a. For substantively the same reason as Seaview Heights does not.

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

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

c. 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.

d. Unlike Richmond and Motueka submissions, 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.

e. 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.

f. 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.

25. TDC submits that the relief also fails limb 2:

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

<u>Introduction to RPHL position on points 184.1, 184.2 and 184.3</u>

26. RPHL submits that:

a. TDC has assessed the scope of PC81 on an unduly narrow basis. Change 1 and PC81 provide broad scope and do affect Golden Bay and Pōhara.

b. TDC has failed to address mandatory requirements of s 32 that, if addressed as required, would have required consideration of urban growth in Pōhara. The requirement to assess the provisions of PC81 in relation to the existing objectives of the TRMP is of particular relevance.

c. TDC's approach is unfair and contrary to RPHL's legitimate expectations.

d. Potentially interested persons have received fair notice of the relief sought by RPHL.

Change 1 and PC81 provide broad scope and affect Golden Bay / Pōhara

27. 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.[25]

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

    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.

29. 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.[27]

30. 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.[28] 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

31. PC81 proposes new objectives including 6.4A.2.1: "*Sufficient residential capacity to meet demand in the urban environment* ***and rural centres***". Pōhara is a rural centre: it is identified in the TRMP as a growth centre in Golden Bay.[29]

32. 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 is sufficient, whether zoning provides for well-functioning urban

[25] TRPS Change 1 Section 32 report, p 1.
[26] TRPS Change 1 Section 32 report, p 2.
[27] Section 32 (1) and (2) RMA.
[28] TRMP PC 81 Section 32 report.
[29] 6.11.30 Principal Reasons and Explanation to policies

environments, and the boundaries of areas proposed for rezoning. The "particular resource"[30] affected by Change 1 and PC81 is the region/district's urban development capacity.

33. 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"[31];

    d. include an objective specifically relating to residential capacity in rural centres; and

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

    must be considered to have a very wide ambit.

34. As in *Calcutta Farms*, PC81 involves changes to the management regime for residential activity and it is open to submits to lodge a submission seeking an alternative position on areas proposed to be zoned for residential development, which is what RPHL's submission does. Its submission therefore addresses the extent to which PC81 changes the status quo.

35. Change 1 and PC81 make other changes that are of specific relevance to Pōhara. TDC's legal submissions do not acknowledge all of these changes. For example, Change 1 would amend the Introduction at 5.1 to delete reference to the population increasing in "smaller settlements … in Golden Bay". That deletion is opposed by RPHL on the basis that the population is increasing and demand continues to grow at Pōhara. The census data comparison for Pōhara between 2018 and 2023 notes a percentage increase from 510 to 630, an increase of 23.5%. That change is directly relevant to whether additional residential development capacity should be provided for in Pōhara. That is also RPHL's response to one of TDC's reasons for rejecting scope for RPHL's submission (that PC81 does not identify a housing-capacity shortfall or other urban growth issue at Pōhara that the notified provisions seek to address, and 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). Whether there is a housing capacity shortfall is a matter put at issue by RPHL's submission, so no scope finding should rest on TDC's position on that disputed issue.

36. The Council has identified, through the notified version of Change 1 and PC81, how it considers the NPS-UD should be implemented, including for "rural centres". As in *Beachlands,* it must be open to parties to submit that it has not "gone far enough". That is what RPHL's submission does, as shown in this excerpt from its submission:

> While TDC treats Tasman's urban environment as comprising Richmond, Brightwater, Wakefield, Māpua and Motueka and so this does not directly apply to Pōhara, provision of housing capacity in a way that does not produce inappropriate

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[30] *Motor Machinists* at [81]

[31] 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.

> sprawl or conflict with other planning outcomes is nonetheless an issue. The outcomes sought by the NPSUD are best achieved in the Pōhara area by enabling development in areas near to existing housing, which do not have significant productive land, natural or cultural constraints. There are few such areas in Pōhara, making the rezoning of this site the most effective way to implement the NPSUD at Pōhara.

37. 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. For example, RPHL has also requested additional amendments to the TRPS to reinstate or insert clear provisions providing for housing development in other settlements in Tasman District outside the Urban Environment towns, including the coastal settlement of Pōhara, in accordance with the stated issues that the TRPS says are addressed within the TRPS.[32] TDC has not taken issue with the scope of that relief. If the Panel accepts that addition, it may well follow that changes to the TRMP policies and zoning are consequentially required. Submission points 184.3 (TRMP policies) and 184.1 and 184.2 (rezoning) are addressing the "method" level of PC81. The panel should be slow to conclude that these points are not within the scope of consequential changes that may be required as a result of changes to the higher order objectives and policies in the TRPS and TRMP.

Section 32 report fails to address mandatory requirements of s 32(3)

38. The s 32 report for PC81 examines whether the provisions in the proposal are the most appropriate way to achieve the objectives proposed in PC81, as required by s 32(1)(b). However, it does not comply with s 32(3)(b), as its examination does not include the existing TRMP objectives.

39. As set out in Ms McNae's evidence, there are existing TRMP objectives that are relevant to PC81's objectives and would remain if PC81 takes effect. The most relevant is objective 6.4.2: the coastal urban development objective. The s 32 report fails to examine whether the provisions are the most appropriate way to achieve objective 6.4.2. It is the failure in the s 32 report to assess the existing relevant objectives that gives the impression RPHL's submission is not to be "on" PC81, rather than the submission actually being out of scope. The scenario identified in *Bluehaven* has arisen: the Council is ignoring potential options for addressing the matter that is the subject of the plan change and preventing submitters from validly raising those options in their submissions, by making its s 32 report unduly narrow.

Fairness to RPHL and legitimate expectation

40. As set out in RPHL's submission, following the Council adoption of the FDS, which excluded RPHL land, RPHL lodged judicial review proceedings. Engagement with Council staff at a meeting on 1 February 2023 confirmed that while Pōhara is not within the list in the FDS it was on the Council's list for consultation for 2023 for the future Tasman Environment Plan. Notes of this meeting are attached to Ms McNae's evidence.

41. In mid-July 2023 RPHL followed up with the Council Planning Policy Manager to see if there had been progress in terms of the forward work programme

[32] Submission at 4.2(b).

assessing the Pōhara settlement. Advice provided at that time confirmed the work programme had changed for Council because of new legislation changes (the Natural and Built Environment Act 2023). There was a pause in the Council work programme, because the new legislation would require a Regional Spatial Plan to be prepared first. The Council was considering being an early adopter of the new Regional Spatial Plan process and setting up a new entity to prepare that Regional Spatial Plan. If that happened there was to be a major rework of the Council planning policy work programme.

42. As a result of this consistent advice, RPHL withdrew its application for judicial review of the decision to adopt the FDS. RPHL decided to instead focus their efforts into the Regional Spatial Plan process.

43. With the October 2023 change of government, the Natural and Built Environment Act 2023 was repealed. As a result, the focus on the Tasman Environment Plan and Regional Spatial Plan process shifted to PC81.

44. At each step in that saga, RPHL has been led to understand that it will have the opportunity to have the question of rezoning at Pōhara tested on the merits. Yet PC81 has been framed in a way that, according to TDC, does not allow RPHL to seek to establish the suitability of this site for urban development.

45. It is entirely unreasonable for TDC to rely on the fact that the FDS does not identify Pōhara as an area for greenfield expansion as a reason for RPHL's submission being out of scope, when RPHL has been repeatedly advised by TDC that Pōhara would be part of a plan change despite not being in the FDS. That approach is unfair to RPHL and contrary to its legitimate expectations based on previous engagement with TDC.

46. An interpretation of scope that is consistent with fairness to RPHL and its legitimate expectations should be preferred. As in *Tussock Rise*, TDC's approach is unfair. RPHL is being left out of a hearing that it has consistently said it wants to be part of. If a time comes when TDC actually promulgates a plan change to rezone land at Pōhara "crucial arguments as to … development capacity… under the [NPSUD] may have already been resolved".[33]

<u>Potentially interested parties received fair notice</u>

47. As in *Beachlands*,[34] 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 rezoning, 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 RPHL submission comes within the scenario expressly identified in *Clearwater*, that the process of submissions and cross-submissions is 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.

48. 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 and fully 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*,[35]

[33] *Tussock Rise*, above note 20, at 78.
[34] At [56]
[35] At [83]

the summary of submissions (and notice of appeal) gave fair notice to interested persons of the issues raised.

49. As set out in Ms McNae's evidence, the request for urban rezoning of this site has been raised repeatedly and consistently including through Variation 57, Plan Change 8 and the Future Development Strategy process. No person with a genuine interest in this site would be surprised that rezoning has been sought through PC81.

50. For those reasons, RPHL submits that its submission points 184.1, 184.2 (rezoning) and 184.3 (urban growth provisions for Pōhara in PC81) are "on" PC81.

Submission points 184.4 and 184.5 (alternative relief)

51. Submission point 184.4 seeks a commitment to future planning work if the requested rezoning is not accepted. TDC says this does not seek an amendment to PC81. This is incorrect. A commitment to future work planning is sought as a non-regulatory method in the TRMP. It is "on" PC81 because it seeks to integrate the PC81 provisions relating to specific "urban environments" with existing provisions requiring that development is enabled at Pōhara (discussed above).

52. Submission point 184.5 seeks consultation during future Regional Spatial Plan preparation if the requested rezoning is not approved. RPHL accepts that this is not a matter for the Panel to determine. It was included in the submission to again raise this issue with councillors and Council officers, in light of the extensive history outlined in the submission and Ms McNae's evidence.

No power to make interim ruling

53. 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.[36]

54. RPHL 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.[37]



Sally Gepp KC / Shoshona Galbreath
Counsel for Richmond Pohara Holdings Ltd

[36] TDC Hearing 1 Legal submissions at 5.
[37] 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