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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LEGAL SUBMISSIONS BY COUNSEL FOR A&S TALLEY RELATING TO SCOPE ISSUES

19 October 2026

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MAY IT PLEASE THE PANEL:

Introduction

1. These submissions are filed on behalf of Andrew and Susan Talley (Submitter 160). Mr and Mrs Talley lodged further submissions (FS319.9, FS319.11 and FS319.12) in support of Jan Heijs' submission points on PC81 numbered 246.3, 246.5 and 246.6.

2. The Hearing Stage 1 s 42A report recommends that those three submission points from Mr Heijs are outside scope, and that associated further submissions by Mr and Mrs Talley fall away.[1]

3. The Talleys oppose those recommendations. They submit:

    a. Submission points 246.3 and 246.6 are "on" PC81. Read as a whole, Mr Heijs' submission is directed at the new development PC81 enables, in particular the Seaton Valley growth area. The s 42A report's premise that the relief would apply across the District misreads his submission. If the Panel considers any part of the relief reaches beyond PC81, the answer is to confine it to the growth areas and provisions PC81 introduces or amends, rather than treat the entire submission point as out of scope.

    b. Submission point 246.5 is "on" PC81. It identifies inconsistent flow-path terminology in the text of PC81 and seeks the consistent use of one defined term.

Legal framework

4. The legal test for determining whether a submission point is on the plan change is the two-limb test in *Clearwater Resort Ltd v Christchurch City*

[1] Section 42A report for hearing stage 1, at [129]–[132], [153]–[156] and [208].

Council,[2] as elaborated in *Palmerston North City Council v Motor Machinists Ltd*.[3]

5. A submission is "on" a plan change if it addresses the extent to which the plan change alters the pre-existing status quo, and if treating it as "on" does not create a real risk that affected persons are denied an effective opportunity to participate.

6. Scope is assessed element by element. The s 42A report says that where a submission seeks more than one form of relief, the scope of each element is considered separately.[4] A submission point can therefore be partly within scope. Council has applied that approach to other submission points:

    a. It splits the Tasman Bay Estates package, finding submission point 36.2 within scope and submission points 36.1 and 36.3–36.5 outside.[5]

    b. It finds the Ministry of Education's submission points 138.6, 138.15, 138.17, 138.20, 138.21 and 138.32 within scope "on a limited basis", provided the relief is confined to provisions opened by PC81 and does not import the wider definition sought in 138.1.[6]

7. An alternative method within the provisions that PC81 opens up is within scope, even where a broader version of the same relief is not. Council takes this approach in respect of submission points regarding dark sky and lighting controls. A district-wide Dark Sky framework (submission point 1.1) is outside scope. But lighting controls directed

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[2] *Clearwater Resort Ltd v Christchurch City Council* AP 31/02, 14 March 2003 at [66].
[3] *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [54]–[55].
[4] Hearing Stream 1 section 42A report at [42].
[5] Hearing Stream 1 section 42A report at [83].
[6] Hearing Stream 1 section 42A report at [171]–[173] and Appendix A.

at the effects of development enabled by PC81, within the provisions PC81 opens (submission points 61.4 and 116.2), are within scope.[7]

8. The correct response to a submission point that reaches further than the plan change is therefore to confine it to the part that is "on" the plan change, not to treat the entire point as out of scope. Whether the confined relief should be granted is a merits question.

Mr Heijs's submission points 246.3 and 246.6: streams, wetlands and stormwater in the PC81 growth areas

9. The s 42A report summarises Mr Heijs's submission points 246.3 and 246.6 as seeking stream, riparian, wetland, stormwater and water-sensitive design controls "that would apply more broadly across development in the district". It concludes the relief is not confined to PC81's growth provisions and would affect landowners beyond the growth areas.[8]

10. This is not an accurate summary of Mr Heijs's position. Read as a whole, his submission is directed at the development PC81 enables, and at Seaton Valley in particular.

The Council's summary of Mr Heijs' submission

11. Mr Heijs lodged a 29-page submission. He presents background material and then summarises a number of issues and recommendations on PC81 by topic. Council's summary of submissions has split this into nine submission points (246.1 to 246.9).[9]

12. Splitting the submission into submission points does not present a fair summary of the submission. In particular:

    a. The summaries of submission points 246.3 and 246.6 are taken largely from the "Issues" paragraphs in section 4 of the

[7] Hearing Stream 1 section 42A report at [126]–[128].
[8] Hearing Stream 1 section 42A report at [129]–[131].
[9] Council's summary of decisions requested on PC81, submission points 246.1 to 246.9 (Jan Heijs).

submission,[10] together with paragraph 3.2.5 and a reference to the Long Bay Structure Plan case discussed in section 2.7. They largely omit the corresponding "Recommendations" paragraphs, which is where Mr Heijs states the relief he seeks.[11]

b. The Council's summary also omits paragraph 4.1, in which Mr Heijs explains that section 4 sets out his "recommended approach for PC81", and the express link at paragraph 4.4.2(h) to "Seaton Valley as well as for any other wetlands in or downstream of development areas proposed under PC81".

13. The Panel will need to refer to the content of Mr Heijs's submission, read in its full context, in order to determine the extent to which the relief sought is within scope. The Council's summary of submissions is not a fair basis upon which to analyse his submission.

The relief sought in submission points 246.3 and 246.6

14. Mr Heijs frames his relief by reference to PC81 throughout:

a. He submits that "for any new developments, *which is the scope of PC81*, [Low Impact Design] should be required" (at 2.5.4).

b. He describes PC81 as "the opportunity to fix that [the absence of Low Impact Design aspects] *at least for the development areas proposed*" (at 2.6.9).

c. He seeks that Low Impact Design "be required to manage stormwater in *all developments proposed under PC81*" (at 4.2.2(b)).

d. He seeks that constructed treatment wetlands not be integrated with natural wetlands, and that Council confirm in PC81 that this "will be addressed in Seaton Valley as well as for any other

[10] Mr Heijs' submission at 4.3.1, 4.4.1, 4.6.1 and 4.8.1.
[11] Mr Heijs' submission at 4.3.2, 4.4.2, 4.6.2 and 4.8.2.

wetlands in or downstream of *development areas proposed under PC81*" (at 4.4.2(g)–(h)).

15. These references show that the submission points are all targeted at the development areas proposed or opened up by PC81.

16. Turning to the relief itself, submission point 246.3 corresponds to Mr Heijs' recommendations on stream ecosystems. It recommends there be no deletion, piping or modification of streams except for ecological improvement or access, minimum riparian margins, and keeping or restoring natural stream morphology.[12] Submission point 246.6 corresponds to his recommendations on minimising changes in stormwater runoff, providing fit-for-purpose stormwater treatment, keeping constructed treatment wetlands separate from natural wetlands, and following the full Low Impact Design process.[13] All of those recommendations sit within section 4 of his submission, which opens under the heading "My recommended approach for PC81".

17. Mr Heijs, who is not a planner, says that he has left it to the Panel to translate his outcomes into appropriate plan text (at 4.1.2–4.1.3).

18. Whether relief is reasonably and fairly raised in submissions must be assessed in a realistic and workable fashion, rather than from the perspective of legal nicety, considering the whole relief package detailed in the submissions.[14] Read in that way, the recommendations are directed at the PC81 development areas.

19. PC81 alters the status quo for streams, wetlands and stormwater in the growth areas:

    a. It inserts the Māpua Seaton Valley Outline Spatial Plan (OSP) at Schedule 16.3D.10.[15] The OSP maps wetlands, esplanade

[12] Mr Heijs' submission at 4.6.2; see also 3.2.5.
[13] Mr Heijs' submission at 4.3.2, 4.4.2 and 4.8.2.
[14] *General Distributors Ltd v Waipa District Council* HC Auckland CIV-2008-404-4857, 19 December 2008 at [59]–[60].
[15] Schedule 16.3D.10.

and riparian areas, stormwater management areas and a wildlife protection area around the stormwater detention wetland.

b. It deletes the operative indicative reserve along the Seaton Valley Stream, which was intended as an ecological corridor from the Māpua estuary to the Seaton Valley wetlands, and replaces it with OSP reserves including a 20 m esplanade reserve along the stream.[16]

c. It relies on the Seaton Valley Detention-Wetland (SVDW) to service the growth area. The Infrastructure Report (Appendix 3) records that outstanding design work includes the "potential rerouting of Seaton Valley Stream", tide gates on the stream, and delineation of the "detention", "treatment" and "natural" components of the detention-wetland area.[17]

Limb 1

20. The relief sought by Mr Heijs is addressed squarely to the extent to which PC81 alters the status quo. It is directed at the development areas PC81 enables, at notified provisions, and at Seaton Valley features in the notified OSP. It proposes an alternative method within provisions PC81 opens. So Limb 1 is satisfied.

Limb 2

21. No one reading the notified OSP and the Infrastructure Report could be surprised by a submission seeking stronger protection of the Seaton Valley Stream and its wetlands, opposing the re-routing of the stream, or seeking a different approach to stormwater management in the

[16] Tasman District Council *Proposed Plan Change 81 Site Assessment Report* (June 2026, Appendix 2 to the s 32 evaluation report) at 10.19.5 (T-42, Parks and Reserves), page 316.
[17] Tasman District Council *PC81 Infrastructure Report* (June 2026, Appendix 3 to the s 32 evaluation report) at pages 131–132.

growth areas. Those features are included in the notified OSP and described in the notified supporting reports.

22. The participation risk identified in the s 42A report concerns landowners outside the growth areas.[18] On a fair reading the relief does not affect them; and the relief sought by Mr Heijs can be confined to the development areas within PC81.

Conclusion

23. Submission points 246.3 and 246.6 are within scope and should proceed to merits determination. In the alternative, they are within scope to the extent the relief applies to:

    a. land rezoned by PC81 or within the Outline Spatial Plan introduced by PC81, including the Māpua Seaton Valley OSP, the Seaton Valley Stream and the SVDW; and

    b. the policies, rules and other provisions inserted or amended by PC81.

PC81 246.5: overland flow path terminology

24. The s 42A report treats submission point 246.5 as seeking new plan-wide definitions through a definitions chapter that PC81 did not open.[19]

25. That characterisation is too narrow.

26. Mr Heijs' point is that the terminology "in PC81" is inconsistent and can be confusing.[20] He lists "overland flood flow" and "overland flood flow paths", "overland stormwater flows", "secondary flows and secondary flow paths" and "secondary stormwater flow paths".[21] He notes that Chapter 2 defines "secondary flow path", but narrowly, and does not define "overland flow".[22] He recommends that one term, "Overland

[18] Section 42A report for Hearing Stage 1 at [131].
[19] Section 42A report for Hearing Stage 1 at [154]–[155].
[20] Mr Heijs' submission at paragraph 3.3.3.
[21] Mr Heijs' submission at paragraph 3.3.3.
[22] Mr Heijs' submission at paragraph 3.3.4.

Flow / Overland Flow Paths", be used consistently and defined in Chapter 2 (at 3.3.6).[23]

27. Those inconsistent terms appear in provisions that PC81 inserts. For example, the new Medium Density Residential Zone subdivision rule (Rule 16.3.3A.2) reserves a matter of control over:

> *(33) The physical and legal protection of primary and secondary stormwater flow paths and indicative reserves.*

28. The same rule refers to "flood flow paths" (matter (35)).

29. The new restricted discretionary activity rule 17.1A.3.2 refers to "specified flood flowpaths" as condition (za). It is unclear whether the existing defined term is intended to apply to these provisions, or whether something different is meant.

Limb 1

30. A submission seeking clarity and consistency in the wording of notified provisions is clearly "on" a plan change. The inconsistency Mr Heijs identifies is a feature of the change that is proposed by PC81.

31. The Panel can grant the relief within the notified provisions. It could, for example, make amendments so that the PC81 provisions use one term consistently, or are more aligned with existing definitions, or adopt a definition whose application is confined to the PC81 provisions.

Limb 2

32. The s 42A report accepts that people reading PC81 could reasonably have anticipated submissions about stormwater management within PC81's urban-development framework.[24] Making the terminology in notified provisions consistent affects only those already subject to

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[23] Mr Heijs' submission at paragraph 3.3.6.
[24] Section 42A report for Hearing Stage 1 at [155].

those provisions. To the extent a change to the existing definitions could affect operative provisions outside PC81, the relief can be confined to the PC81 provisions.

Conclusion

33. Submission point 246.5 is within scope and should proceed to merits determination. In the alternative, it is within scope to the extent the relief amends, makes consistent or clarifies the flow-path terminology used in provisions inserted or amended by PC81, including through a definition confined to those provisions.

Conclusion and decision sought on Mr Heijs's submission points

34. Mr and Mrs Talley seek a determination that Mr Heijs' submission points are within scope, and that their further submissions on those submissions do not fall away.

Scope issue with Talley submission

35. As a separate topic, counsel was provided with a copy of the memorandum of counsel for Mount Hope Holdings Ltd and Appleby 88 Ltd on procedural issues on 15 October 2026, two working days before these legal submissions were due. That memorandum raises a scope issue with the Talleys' original submission points that relate to the deferred zone framework (at [10]).

36. The Panel's Minute 2 records that the Panel's view is this is best addressed by the Council at the time of Hearing Stage 3.

37. The Talleys' intend to respond to the scope point raised by Mount Hope/Appleby 88 as part of Hearing Stage 3, with the benefit of the Council's response to the Mount Hope/Appleby 88 position.

Timing of Panel directions in Minute 2

38. The Panel granted a request made by Mr. and Mrs. Talley, that the Councils should make technical information available that its experts

have relied upon, and *'that it is critical for the preparation of evidence and any expert evidence that all experts have access to the same materials,*' however, counsel notes that the Panel has directed:[25]

> *'In the case of the Council evidence produced to date, which includes all documents notified as part of C1 and PC81, the Council places all data, information, literature and mathematical models that are referenced in these documents on the Council's webpages for C1 and PC81 no later than 15 working days after this Minute. All parties are to be aware of their availability.'*

39. It is noted that the 15 working days directed means that the Council has until 9 November to make the information available. This would be too late for submitters to utilize any of that information as part of PC1, (as the submitters expert evidence is due by Monday 27 October and submitter legal submissions are due on Thursday 5th November). It is also only one day before the hearing of PC1 commences on the 10 November.

40. It is respectfully requested that the Panel reconsider its direction and require Council to provide this information no later than 5pm Friday 23rd October, to allow submitters experts time to both consider this information when preparing their expert evidence and submissions on PC1.

41. A similar issue arises with Council's failure to address the implications of new legislation and national direction in the s42A Report and legal submissions which the Panel had requested in its first Minute.[26] The Panel has now directed that be filed by 27 October, however it is

[25] Minute 2 Response to Procedural matters raised and directions, paragraph 24(d).
[26] Minute 2 Response to Procedural matters raised and directions, paragraph 22, 23 and 24(f).

expected that it may have some bearing on the preparation of submitter expert evidence for PC1 which is currently due to be filed on the same day - 27 October, (particularly but not limited to planning evidence), if the Council were directed to provide that by Friday 23rd October, that would give a submitters the opportunity to take those matters into account when preparing their evidence.

42. Alternatively, the Panel may be prepared to consider providing a short extension to submitters to allow them time to consider that material.



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Dated the 19th day of October 2026