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Dear Chris

CHANGES TO TASMAN REGIONAL POLICY STATEMENT AND RESOURCE MANAGEMENT PLAN (C1 / PC81) – RELATIONSHIP WITH PLANNING ACT 2026

1. I understand that Tasman District Council requires advice regarding the relationship between Change 1 to the Tasman Regional Policy Statement ("**C1**") and Plan Change 81 to the Tasman Resource Management Plan ("**PC81**") and the Planning Act 2026. I also understand that this advice is requested in response to a direction from the Independent Hearings Panel ("**IHP**") to provide legal submissions addressing the implication of that new legislation, and may be provided to the Panel for its consideration.

2. In summary, the Planning Act 2026 has relatively limited implications for the plan changes currently before the IHP. As the IHP has identified, there are a number of transitional provisions which amend the Resource Management Act 1991 ("**RMA**") and which commence on 30 October 2026. Those provisions are addressed in more detail below. Outside of those provisions, however, there is relatively limited overlap between the two regimes, which remain distinct and separate until the end of the transition period (due to be at some point in 2030).

The transition period

3. The transition period under the Planning Act 2026 will commence on 30 October 2026, that is one month after the Act received Royal Assent.[1] Pursuant to cls 4 to 6 of Schedule 1, that transition will occur gradually (and may occur on a region-by-region basis) on dates set by Order in Council.

[1] Planning Act 2026, sch 1, cl 3.

4. Generally speaking, Orders in Council cannot be made transitioning regions (or the nation) into the new legislation until regional spatial plans are decided, and proposed land use and natural environment plans have been notified for submissions. During that time, the RMA will continue to apply while national policy direction is set, regional spatial plans decided, and land use and natural environment plans prepared.

PC81 and C1 are RMA instruments, not Planning Act instruments

5. PC81 and C1 are, obviously, instruments under Schedule 1 of the RMA, and are being progressed by way of the streamlined planning process under Part 5 of Schedule 1. By letter dated 16 October 2026, Minister Bishop has extended the date for decisions on PC81 and C1 to 18 June 2027 (that is, approximately eight months from now). National policy direction under the Planning Act 2026 is likely to be issued in no more than 12 months' time.[2] National standards (as to which, see below) cannot be issued until after national policy direction is issued.[3]

6. However, and save in one important respect (discussed further below),[4] there is no interplay between the RMA and national instruments issued under the Planning Act. The same applies to regional spatial plans. The intention remains that national policy direction will inform regional spatial plans, and that regional spatial plans will inform proposed land use plans and natural environment plans.

7. There is nothing in the Planning Act which requires a proposed district plan or plan change under the RMA to give effect to national policy direction under the Planning Act, or to implement a regional spatial plan, prior to the end of the transition period. At that point, the RMA will cease to apply.

Amendments to the RMA the day after Royal Assent

8. Amendments made to the RMA the day after Royal Assent do nor bear on these processes.[5]

Amendments to the RMA 1 month after Royal Assent

Sections 104(1A) and 76(6)

9. The most significant amendment of relevance to PC81 and C1, as a result of the transitional arrangements, is the introduction of s 104(1A) of the RMA.

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2 Planning Act 2026, Sch 1, cl 9(1).
3 Planning Act 2026, Sch 1, cl 9(2).
4 Namely, the ability for the Minister to set initial national standards under cl 10 of Schedule 1 of the Planning Act 2026.
5 Namely, the repeal of subpart 2 of Part 5 (as it relates to Mana Whakahono a Rohe); and provisions relating to aquaculture activities, discharges, and insurance and indemnities.

10. Section 104(1A) identifies a number of matters which, when considering the effects of a district land use activity, a consent authority must disregard. For completeness, these are set out in full below:

> (a) any of the following where they relate to residential activities (except in relation to the protection of historic heritage):
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> (i) the area of glazing:
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> (ii) the presence or absence of balconies:
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> (iii) the outdoor living space:
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> (iv) the internal layout:
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> (v) the size of a residential unit:
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> (vi) the size of landscaped areas (except in relation to permeability):
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> (b) negative effects of development on trade competition, including on competing providers of input goods and services:
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> (c) effects on retail distribution:
>
> (d) in relation to a project,—
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> (i) any lack of demand for the project; or
>
> (ii) the fact that the project is not financially viable:
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> (e) the type of residents to be housed in a new development:
>
> (f) views from private property.

11. Section 76(6), also to be introduced on 30 October 2026, provides that a rule in a district plan must not require a resource consent for an activity **solely** because it relates to a matter specified in s 104(1A). This will be an active constraint on the IHP when determining submissions on PC81 and C1. Where, for example, a proposed rule in PC81 requires a certain amount of outdoor living space to be provided in order for that activity to occur as a permitted activity, that rule is now ultra vires the IHP's powers.

12. Where a proposed provision in PC81 or C1 does not **solely** relate to a matter specified in s 104(1A), then there is no bar to it being included. I am not particularly familiar with the Tasman context, and so it is challenging to provide examples of provisions that might "fit" into that category. However, one such provision I am aware of is the Maunga Viewshafts and Height Sensitive Overlays in the Auckland Unitary Plan. The purpose of those viewshafts is to

protect views from the public domain towards the maunga. However, those viewshafts may also have incidental benefits for views from private property towards the maunga.

13. In that scenario, there is no restriction on the inclusion of a rule that requires consent to infringe the viewshaft, provided it is not solely for the purpose of protecting private views. There is also no limit on the effects that can be considered under ss 31(1)(a) and (b), 32(1)(c) and 32(2)(a), in relation to the district plan-making process. Accordingly, the IHP could take into account the incidental benefits provided to views from private property as part of the effects assessment.

14. However, it would remain open to a decision-maker, and indeed may be appropriate, to give less weight to those matters which are otherwise excluded under s 104(1A) in that scenario. Those matters will carry no weight, and cannot be considered, at the resource consent stage, and so it would make little sense for those matters to feature in the assessment of effectiveness and efficiency under s 32.

15. Importantly, there are no transitional provisions that apply to plan changes that have commenced prior to the coming into effect of ss 104(1A) and 76(6).[6] That means the provisions "bite" on any decisions to be made after they commence, including on PC81 and C1.

16. There is, however, no obligation on the IHP to "weed out" any offending provisions in the existing Tasman Resource Management Plan as part of this plan change process. Section 76A of the RMA (on 30 October 2026) will provide that a territorial authority may, during the transition period, amend provisions in a district plan without using the Schedule 1 process, to:

    a. remove provisions relating to matters specified in s 104(1A); and/or

    b. modify provisions to the extent necessary to ensure that matters specified in s 104(1A) no longer apply or are no longer considered.

17. Nor would it be within the scope of PC81 or C1, as I understand it, to enable the IHP to undertake that exercise. That task may be separately undertaken by Tasman District Council.

18. I have not endeavoured, in this opinion, to offer a view on the meaning of the various matters in s 104(1A),[7] as I understand that is a matter you are considering separately.

Initial national standards

19. As indicated above, the other principal amendment to the RMA with *potential* implications for PC81 and C1 is the introduction of initial national standards.

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6 Cf, Schedule 12 Part 12 as it relates to plan changes and resource consents relating to discharges.

7 For example, what is meant by "views from private property".

20. Pursuant to cl 10 of Schedule 1 of the Planning Act, the Minister may, before the specified transition date, identify any national standard made under the Act or the Natural Environment Act 2026 as an "initial national standard".

21. An initial national standard may identify provisions including national rules and other content as relevant to decision-making under the RMA.[8] However, an initial national standard cannot directly amend an RMA plan, direct a local authority to amend an RMA plan, or direct that an RMA plan be amended without implementing the Schedule 1 process in the RMA.[9] The Minister must be satisfied that the content of an initial national standard will be workable in the context of the RMA, as far as practicable.[10]

22. National standards can include objectives, policies, rules, methods or requirements that are relevant to their purpose.[11] They may also provide for national rules.[12] They may also direct plan content, although those provisions are specific to land use and natural environment plans under the Planning Act.[13]

23. Section 43AC provides that if there is any duplication between an initial national standard and a national policy statement; a New Zealand coastal policy statement; a national environmental standard; a regional policy statement; or a plan or proposed plan, the initial national standard prevails.

24. No national instruments (including national standards, initial or otherwise) has been notified under s 65 of the Planning Act 2026. The current "illustrative" national policy direction including an indicative list of national standards for each theme (which do not form part of that direction). Formal statutory consultation on the proposed national policy direction is due to occur at some point in 2027. Whether any initial national standards will be consulted on alongside that national policy direction remains to be seen. However, it is unlikely that process would be concluded by September 2027, and any initial national standards are unlikely to be issued until that date (at a minimum), which will be after the decisions on PC81 and C1 are required.[14]

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8 Planning Act, Sch 1, cl 10(3).
9 Sch 1, cl 10(4).
10 Sch 1, cl 10(5).
11 Planning Act, s 58(1).
12 Planning Act, s 58(2). In that sense, they are similar to national environmental standards under the RMA. References in ss 43B to 43E of the RMA, as they relate to the relationship between national environmental standards and rules or consents, water conservation orders, designations, and bylaws are read as if the reference to a national environment standard or standard includes a rule in an initial national standard.
13 National Planning Standards will continue to govern the content of district plans, until the end of the transition period.
14 https://www.planning.govt.nz/planning-system-overview/key-milestones/

25. Other amendments, including the new procedural principles in s 18B, are specific to consenting.

Conclusion

26. In summary, the Planning Act 2026 has relatively limited implications for the plan changes currently before the IHP.

27. The principal (and most significant) implications arise as a result of the coming into force of s 104(1A) to the RMA. The IHP will need to carefully consider those provisions, and the extent to which a proposed provision relates solely to a matter which is excluded by that subsection, or is otherwise affected by the absence of weight to be given to those considerations in the new system.

28. Otherwise, the provisions of the RMA (as they relate to planning processes, and in particular, the streamlined planning process in Part 5 of Schedule 1) remain largely unaffected. As a result, the case law applying to the Schedule 1 process, including *Colonial Vineyard*,[15] are likely to continue to apply with undiminished force.

Yours sincerely,



Aidan Cameron
Barrister

15 *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].