BEFORE THE INDEPENDENT HEARING PANEL
APPOINTED BY 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

FURTHER LEGAL SUBMISSIONS FOR TASMAN DISTRICT COUNCIL

HEARING STAGE 1

27 October 2026

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MAY IT PLEASE THE PANEL:

A. INTRODUCTION

1. These are further legal submissions on behalf of the Tasman District Council (**TDC**). The purpose of these further submissions is to address the directions at Minute 2, plus two additional matters Counsel thought it would be helpful to address now.

2. These submissions do not respond to the legal submissions of parties in response to the scope issues identified by TDC. TDC is still considering whether it can assist the Panel by responding to any of those legal submissions.

B. OUTLINE OF SUBMISSIONS

3. These submissions address:

   3.1. Part C - the interaction between PC81 and PC79 and how the SPP Panel should approach the interaction through the hearing process.

   3.2. Parts D and E - implications of the Planning Act 2026 and changes to national direction under the Planning Act. For thoroughness changes to national direction under the RMA since the start of 2026 are also addressed.

   3.3. Part F - implications of amendments to the RMA through the Planning Act's transitional provisions, including ss 76(6) and 104(1A).

   3.4. Part G - the Council's request for an interim decision/recommendation regarding scope, and the delegations held by the SPP Panel to do so.

   3.5. Part H - the power to accept or reject late submissions.

C. HOW TO ADDRESS C1 AND PC81 RELATIONSHIP WITH PC79 WHEN THE LATTER IS UNDER APPEAL

4. The following submissions address the relationship between PC79 and PC81. Three submitters have requested that Council address the relationship between PC79 and PC81 as a preliminary matter.[1] One submitter is the appellant in *Talley v Tasman District Council* (**Appeal**), A and S Talley. The others are Mt Hope Holdings Ltd and Appleby 88 Ltd.[2]

5. The Appeal means there is uncertainty about the deferred zoning provisions being advanced by PC81 because objectives, policies, and methods relied on in PC81 are dependent on the deferred zone framework established by PC79 and challenged in the Appeal.

Executive Summary

6. C1 and PC81 were drafted contemplating a deferred zoning framework being in place. PC81 proposes to apply the deferred zoning framework established through PC79, which is under appeal. TDC accepts the Appeal creates uncertainty around the deferred zone provisions.

7. After describing PC79 and the changes it proposed to the TRMP (including identifying where deferred zone provisions were not changed), these submissions address the lawfulness of the notification of PC81 while PC79 provisions are under appeal. Although Council considers complete deletion of the deferred zone framework unlikely, it acknowledges there is a risk the Plan could retain operative objectives and policies supporting deferred zoning but lose the 'updated' PC79 objectives and policies and legal mechanism needed to implement them. This creates uncertainty regarding the effectiveness, efficiency and legal certainty for some PC81 provisions. The appropriate time to address this issue is as part of the substantive considerations at HS3 – HS5. This is because the extent to which it is appropriate to approve PC81 in circumstances where PC79 may result in a lacuna or gap, goes to the efficiency and effectiveness of those parts of PC81.

[1] The issue does not have a direct bearing on the consideration of C1 because it primarily relates to methods in PC81, as such there are only limited references to C1 in this section of these legal submissions.
[2] Appleby 88 is a further submitter only.

8. Council's position is that this uncertainty should be addressed as a substantive planning matter rather than as a procedural obstacle to PC81 continuing. The IHP will ultimately need to assess whether deferred zoning remains the most appropriate method for the PC81 sites in light of the circumstances with PC79 at the time of that substantive consideration.

What is PC79?

9. Both PC79 and PC81 are proposed plans as defined by s 43AAC.[3]

10. PC79 was notified in late 2024 and, relevantly, proposed a new deferred zoning framework for the TRMP. Deferred zoning is method the TRMP uses to identify land considered appropriate for future urban development, where that development is contingent on satisfaction of a precondition.[4] In this district the precondition is usually the provision of infrastructure.[5] Until that infrastructure is provided the site retains an underlying zoning that is usually some type of rural zoning. Once the infrastructure is provided, that is the 'trigger' for the applicable provisions to change or 'flip' to those from its 'destination' urban zone.

11. There was a deferred zone framework in the TRMP prior to notification of PC79. The PC79 s 32 report says that the Council had:

> …identified that the method used by the TRMP to lift zone deferments from relevant land, when services have become available, may not be legally robust. As a consequence of this advice, Council chose to pause 'uplifting deferments' on land that is now serviced and ready for development until the TRMP method is amended.[6]

12. The proposed deferred zone objectives and policies in PC79 operate in addition to some operative objectives and policies that were not amended by PC79 and not proposed to be amended by PC81 (for instance objective 6.3.2.2 and policy 6.3.3.4).

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[3] Proposed plan "means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 or given limited notification under clause 5A of that schedule but has not become operative in terms of clause 20 of that schedule."
[4] The nomenclature is [underlying zone] "deferred" [destination zone]. For instance, "Rural 1 deferred Residential".
[5] Less frequently, development sequencing.
[6] PC79 s 32 Report Executive Summary at page 4

13. Decisions of PC79 were made in early 2026 and were appealed to the Environment Court in April 2026. Counsels' review of the Appeal concludes one point of contention concerns the operation of the deferred zoning method[7] in rule 17.14.2.2 and Schedule 17.14A.[8] The rule and a representative part of the Schedule (from PC79) are attached as Appendix 1.

14. Deletion of the PC79 provisions under appeal is advanced as alternative relief if concerns regarding the method and supporting objectives and policies are not resolved.

15. We note:

    15.1. In PC79 Māpua and Motueka deferred zone sites were removed from Schedule 17.14A, meaning they cannot be flipped under the PC79 deferred zoning method, even though they still show as deferred zones in the planning maps.[9] The Appeal does directly challenge this part of the decision.

    15.2. Rule 17.14.2.2 is not operative but does have legal effect pursuant to s 86B RMA, as the Council has issued its decisions on submissions pertaining to those rules.

    15.3. PC79 also proposed other amendments to the TRMP that are not material to PC81, have not been appealed and have been made operative.[10]

Timing and Background

16. We set out a timeline of PC79 and PC81 below:

    16.1. The application to obtain an exemption to the plan stop and to use the SPP process under s 80C RMA was sent to the responsible Minister in September 2025.[11] A draft PC81 was included that used the PC79 deferred zone framework. The

[7] Along with necessary changes to the objectives and policies.
[8] These provisions list the deferred zone sites and requirements to 'uplift' the deferral.
[9] Recommendations on submissions to Proposed Plan Change 79 to the Tasman Resource Management Plan 9 February 2026, PC79 Decision from paragraph 80.
[10] PC79 Schedule of Amendments - operative and non-operative provisions.
[11] An earlier application for an exemption to the plan stop under s 80U was abandoned given the decision to pursue an SPP.

application was then subject to amendment and further work at the request of the Minister.

16.2. The PC79 decision was notified on or about 13 March 2026.

16.3. The Minister's approval to use the SPP was received on or about 9 April 2026.

16.4. The appeal on PC79 was dated 30 April 2026 and served on the Council shortly after.

16.5. Council was then faced with a decision about what it should do with those parts of PC81 that proposed deferred zoning for certain sites. Amongst relevant considerations were:

a. The deferred zone sites are part of the development capacity that Council has calculated is required under the NPS-UD (acknowledging the underlying figures are contested).

b. Deferred zoning is an established method used in the TRMP.

c. The signals in the Planning Bill were that it would preserve the deferred zone method under the new system.[12]

16.6. Council proceeded to notify PC81 (and C1) as approved by the Minister in June 2026.

The Issue

17. Regrettably, the relevant parts of PC79 have not progressed as quickly (to becoming operative) as TDC would have preferred.

18. Under traditional RMA plan-making processes, it is not unusual to have multiple variations on a proposed plan or plan changes underway, some of which overlap. If an issue arises it is often resolved by allowing one plan change to progress to a point where it 'catches up' to the other.

[12] Eventually confirmed by ss 115 and 116 Planning Act 2026, which provide for rules that are contingent upon specified conditions being met before they apply.

That approach is not available here because PC79 is being considered under the 'standard' First Schedule RMA process, as it was notified prior to the s 80P plan stop provisions taking effect. PC81 on the other hand is proceeding under the SPP framework. The SPP deliberately operates on a separate statutory pathway that does not allow appeals to the Environment Court in the same way as the 'standard' First Schedule RMA process. Accordingly, there is no mechanism by which they can be aligned procedurally.

19. Thus, what are the consequences if PC79 were declined in its entirety by the Environment Court, leaving the TRMP without a deferred zone framework?

Possible Outcomes of PC79 Appeal

20. In general terms the possible outcomes of the Appeal include:

    20.1. Retention of decisions-version PC79.[13]

    20.2. Retention of decisions-version PC79 with amendments.

    20.3. Deletion of decisions-version PC79 from the TRMP.

21. TDC considers deletion of the deferred zone framework in its entirety unlikely but accepts it is a possible outcome. In that scenario, the deferred zone provisions advanced through PC81 would remain, but the operative mechanism through which deferment is uplifted would be removed from the Plan.

22. However, even if that were to occur, it is not clear that the result would be the removal of all parts of the deferred zoning framework from the TRMP. On its face, if the relief currently sought in the appeal were granted, some operative provisions would remain in place as they cannot and are not appealed, so there is no jurisdiction to delete those provisions.[14]

[13] That is, those provisions under appeal.
[14] See objectives at 6.3.2 and 6.3.3. The provisions not under appeal are shown as non-marked-up text.

23. Thus, there could be an outcome where the operative (rule 17.14.2(a) – (e)) and proposed method (rule 17.14.2.2 and Schedule 17.14A) are deleted, leaving policy provisions contemplating deferred zones but no way to 'action' them, resulting in 'orphaned' provisions.[15] This outcome gives rise to issues of certainty as a matter of law and the overall efficiency and effectiveness of the provisions in achieving PC81's objectives.

24. TDC accepts that this could be a suboptimal outcome and remedial action may be required. That may involve removing the deferred zone provisions, initiating a further plan change, or pursuing another statutory process under the new planning regime to address the mismatch.[16] Alternatively there may be a consenting pathway available under the underlying zone once infrastructure is in place or able to be conditioned.

Authorities

25. There do not appear to be any analogous authorities where two parallel but overlapping planning processes are being undertaken with no prospect of those processes being merged.

26. The closest authority appears to be *Christchurch International Airport Ltd v Waimakariri District Council*[17] (*CIAL*). That addressed a 'standard-track' RMA process alongside a streamlined planning process but is distinguishable because the intensification streamlined planning process being undertaken was mandatory pursuant to s 80F and the two processes were (at least substantively) contemporaneous.[18] Therefore the description of the relationship between the two instruments has limited application.

27. Procedural decisions relating the Queenstown Lakes District Council's Proposed District Plan (**QPDP**), including *Tussock Rise Ltd v Queenstown Lakes District Council*[19] and *Arthurs Point Outstanding*

[15] The deletion of rule 17.14.2(a) – (e) has not been appealed.
[16] In some respects, the situation is similar to a declaration proceeding challenging the lawfulness of a planning provision. Where such a challenge succeeds, remedial action by the planning authority is required.
[17] [2026] NZEnvC 84.
[18] Based on Counsels' understanding. We are aware that at least two Panel members were involved with the matter.
[19] [2019] NZEnvC 111.

Natural Landscape Society Inc v Queenstown Lakes District Council[20] commented on the "complex procedure" adopted by the QLDC in its review of its Operative District Plan.

28. In *Tussock Rise* the Court was dealing with an application to strike out an appeal on scope grounds. It was alert to issues arising where strategic chapters were under appeal creating uncertainty with how changes to those chapters would impact on other planning processes that were 'ahead' of those parts of the review. The Court then observed the decision to notify other sections of the QPDP "may have been premature"[21] and then said:

> [24] It may not be illegal for the Council to adopt the process it has. However, the process certainly has implications as to fairness both to landowners such as TRL in this case and to other unknown persons potentially affected. For example, some consideration of an appeal on Chapter 3 of the [Q]PDP may show that the strategic objectives or policies concerning urban development may need to be altered to give effect to the NPS-UDC referred to above and discussed later. That in turn could mean that TRL's submission and notice of appeal become directly on Stage 1 of the [Q]PDP.

29. However, it appears by the time the Court substantively considered the QPDP appeals the issue has been resolved to the extent the relevant provisions were by then beyond challenge, see for instance *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council*.[22]

30. While not of substantive help, like the Queenstown example, it is submitted the approach adopted by TDC is not unlawful:

    30.1. Amongst other things, in s 31:

        a. A territorial authority must establish, implement and review objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district, s 31(1)(a).

[20] [2019] NZEnvC 150.
[21] *Tussock Rise* at [20].
[22] [2021] NZEnvC 189 at [28].

b. There is a further direction to establish, implement and review objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district, s 31(1)(aa).

30.2. There is a wide discretion for a local authority to notify changes to its plans to assist it to carry out its functions in order to achieve the purpose of the RMA, ss 72 and 73(1A).

30.3. The discretion is exercised in accordance with (*inter alia*):

a. Schedule 1, including commencing a change to an operative plan under cl 2;[23] or

b. The streamlined processes in subparts 5 and 5A of part 5[24].

(Relevantly, C1 and PC81 are being progressed under sub-part 5).

30.4. When notifying a plan change under subpart 5, s 80C(4) forbids an SPP plan change being notified under cl 5 without the Minister's approval i.e. granting an application to do so.

30.5. Clauses 77 - 78 Schedule 1 require the Minister to make directions for the progression of the SPP.

30.6. The powers to notify planning instruments have been circumscribed by the plan stop provisions in s 80P RMA.

30.7. A draft planning instrument using the streamlined planning process is exempted from the plan stop by s 80U(1) and (2)(a).

31. The Minister has:

31.1. Directed the use of the SPP for C1 and PC81.

[23] *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 190 at [31] – [33].
[24] Plus the freshwater planning process in subpart 4.

31.2. Meaning C1 and PC81 are exempted from the plan stop provisions.

32. C1 and PC81 must proceed in accordance with the Minister's directions, including the timeframes imposed and the relevant Schedule 1 provisions.[25]

33. Therefore, it is submitted the issue for the IHP is how it should approach any uncertainty created by parallel planning processes as a matter of orderly plan-making, in light of any legal and practical consequences arising from uncertainty at the time the matter is considered.

34. A key part of this will be the determination of the overall efficiency and effectiveness of the provisions in achieving the objectives.

35. This could be assessed in at least two ways:

35.1. Whether the deferred zones in PC81 would be the most appropriate way to achieve the objectives (as defined by s 32) if PC79 were deleted in its entirety, meaning there would be no method that allows the deferred zoning to be 'uplifted' but some objectives that contemplate deferred zones, along with a consenting pathway through the underlying zone.[26]

35.2. Whether the deferred zones in PC81 would be the most appropriate way to achieve the objectives if PC79 retains the objectives and policies and method.

36. These are substantive considerations. To fully understand the extent of any uncertainty and if the provisions proposed by TDC will achieve the objectives substantive planning evidence, including s 42A analysis, will be required to inform either an approval of the proposed deferred zones or a s 32AA analysis.

37. Because, PC79 continues to progress, the timing of when it is addressed during this process is therefore material.

[25] Subject to the power to withdraw the planning instrument under cl 88.
[26] This could be seen as creating a Future Urban Zone-type method that identifies land for future development subject to a resource consent under the existing zone or a future plan change. Questions clearly arise here as to if that would be an appropriate outcome.

38. It is submitted that the appropriate stage for substantive consideration of the relationship between PC79 and PC81 is HS3. By that stage, TDC anticipates there will be clarity as to the likelihood of the PC79 appeal being resolved and, if so, on what terms.

39. It is also noted that there are submissions seeking removal of deferral for particular sites and the application of the 'destination zone' immediately.[27] TDC's position is that those submissions are within scope and require substantive determination, further supporting the need to address the relationship between PC79 and PC81 as a substantive issue.

Fairness

40. One issue raised by A and S Talley concerns procedural fairness. The concern is understood to be the potential for unfairness to the party challenging the lawfulness of TDC's deferred zoning approach in PC79, and how that appeal may ultimately affect PC81.

41. The question of fairness should be considered by reference to what is at issue in this proceeding. The issue is not whether deferred zoning, as a method, is lawful but whether it should apply to the PC81 sites, especially in light of the submissions of A and S Talley. In those circumstances, the existence of the separate challenge to the method does not, of itself, make it unfair for the present process to continue. As we have identified above the issue can be viewed as a substantive one, to be determined through the application of ss 32 and 32AA.

42. Accordingly, the first step is to identify, from the appeal and any relevant PC81 submission,[28] what the submitter is asking the decision-maker to do. Once that is identified, the impact of that uncertainty can be assessed against the scope and effect of that relief.[29]

43. When that exercise is being undertaken there are significant procedural safeguards "baked in" to the plan change and SPP processes, which include the following:

[27] For example, CKSV Māpua Limited Partnership.
[28] Notably, A & S Talley e.g. from paragraph 141.
[29] There is a potential intersection here with the scope issue that has been raised by Mt Hope Holdings and Appleby 88 on the Talley submission.

43.1. The requirements of natural justice and procedural fairness apply to the decision-making process, as provided for by Schedule 1 RMA and the Minister's direction.

43.2. The Panel must exercise the statutory power conferred on it for the purpose for which that power was conferred.

43.3. The Panel must take into account considerations that are legally relevant to its decision and must not allow irrelevant considerations to influence that decision. The existence and status of an overlapping planning process is relevant for its substantive assessment.

43.4. The Panel must approach the decision with an open mind and without predetermination. In particular, it should not proceed on an assumption that the outcome of the parallel process is settled.

43.5. The Panel must reach its own conclusions on the material properly before it.

43.6. The ultimate decision, including the weight attributed to the parallel process, must be rationally connected to the statutory purpose and to the material before the Panel. The Panel should therefore distinguish between what can be settled in the PC81 process and what remains contingent, contested or unresolved, and explain how its outcomes are reasoned if it decides to approve or decline parts of PC81.

Conclusion

44. The appropriate course is therefore to retain the relevant sites and provisions within PC81 pending consideration in HS3 – HS5. This preserves the Panel's ability to determine, on the merits and having regard to the submissions and evidence, whether there is too much uncertainty as to outcome to approve the deferred zones, while allowing consideration whether any site should be rezoned to its 'destination zone'.

45. Particularly in light of the extended timetable, by HS3 TDC anticipates further progress will have been made with PC79, thereby enabling the Panel to assess and determine, with greater certainty, the role that deferred zoning should play within PC81.

D. PLANNING ACT and C1 & PC81

46. Minute 2 directed TDC to provide an addendum s 42A report and associated legal submissions addressing the implications of new legislation (namely the Planning Act 2026 and Natural Environment Act 2026) and changes to national direction.

47. An addendum s 42A report has been filed with these submissions. That report, based on the analysis in these legal submissions, provides a methodology for the assessment of changes to C1 and PC81 that may be required following the enactment of the Planning Act and a preliminary assessment of some affected provisions.

48. At the time that direction was given TDC had briefed advice from Aidan Cameron to provide an opinion on the relationship between the Planning Act and RMA as signalled in Minute 1. That opinion is attached as Appendix 2 and relied upon by TDC and Counsel.

49. It is submitted the enactment of the Planning Act has only limited implications for C1 and PC81, which remain RMA processes being advanced under the SPP.

50. The opinion points out that the transition will occur gradually, maybe on a region-by-region basis, on dates set by Order in Council as provided for by cl 4 Schedule 1. The approximate timeframes for preparation of plans in cl 9 Schedule 1 are as follows:

    50.1. September 2027 – first tranche of national policy direction and national standards published.

    50.2. March - June 2028 – second and third tranche of national standards (ecosystem and human health under NEA and plan provisions to support development of plans).

50.3. Draft Regional Spatial Plan notified for public consultation within 21 months of Royal Assent, or within 9 months after national policy direction is released, whichever is later.

50.4. By March 2029 – Regional Spatial Plan decisions.

50.5. By December 2029 – Natural Environment Plan and Land Use Plans notified.

51. In addition, s 2(8) Planning Act and s 2(3) NEA provide that any part of the Act that has not come into force four years after Royal Assent (i.e. by 30 September 2030) comes into force then. This includes section 344 Planning Act, which repeals the RMA.

52. During the transition period, which commences on 30 October 2026, and continues until replacement plans under the new system are operative, RMA plan changes proceed based on the established legal framework under that Act.

53. One exception is the identification of initial national standards[30] under the Planning Act or Natural Environment Act (**NEA**). Once any initial national standard is made, in the event of inconsistency with any of the instruments listed at s 43AC RMA, the initial national standard prevails. There are no initial national standards applicable to PC81 in force (or at all).

54. MCERT[31] is consulting on Illustrative National Policy Direction (**INPD**).[32] The INPD addresses several areas that would be relevant for C1 and PC81, especially in respect to Theme 1: Housing and Development and Theme 2: Infrastructure.[33] However, the INPD is not an initial national standard. The draft that has been published for comment is consistently marked "Not government policy – illustrative draft material" at the bottom of each page and has not been notified under cl 10(2) Schedule 1 Planning Act. It does not therefore have any legal effect for C1 or PC81.

[30] See definition is s 2 RMA.
[31] Ministry of Cities, Environment, Regions & Transport.
[32] Illustrative National Policy Direction.
[33] Note sub-themes competitive urban land markets and well-functioning urban areas, which echo the NPS-UD policy approach.

55. Mr Cameron's opinion identifies the principal relevant change from the Planning Act as the introduction of new ss 104(1A) and 76(6) RMA. The implications of those provisions for C1 and PC81 are discussed below.

56. Finally, it is noted that the TRMP is a unitary plan and there are changes to Chapters 31 and 36, which regulate matters (e.g. stormwater discharges) that will be governed by the NEA. Clause 1 Schedule 1 to the NEA incorporates the transitional provisions in Schedule 1 to the Planning Act. Accordingly, the same steps govern the transition from the RMA to the NEA, and the NEA likewise has only limited implications for C1 and PC81.

E. NATIONAL DIRECTION UNDER THE RMA

57. The IHP will be alert to changes to national direction under the RMA during 2026 through Government's National Direction Programme. It follows from the analysis above that this national direction will be relevant for C1 and PC81.

58. Attached as Appendix 3 is a table listing the fifteen new or amended instruments completed under the National Direction Programme.[34]

59. Of particular note for this process are the National Environmental Standards for Papakāinga and National Policy Statement for Natural Hazards and amendments to the National Policy Statement for Highly Productive Land. All these, along with other relevant policy or standards will be addressed as relevant in the appropriate hearing stage/s.

F. SECTIONS 76(6) & 104(1A)

60. This part of these submissions addresses the amendments to the RMA introduced by the Planning Act, particularly ss 76(6) and 104(1A) and related provisions.

61. The amendments, which commence on 30 October 2026, restrict the matters consent authorities may consider when assessing district land use activities and the circumstances in which district plan rules may require resource consent. Although primarily directed at resource

[34] National direction changes that affect consenting - Planning.govt.nz

consenting, the amendments have implications for the preparation and content of district plans pursuant to s 76(6).[35]

62. These submissions address:

62.1. The operation of the new s 104(1A) and the matters excluded from consideration.

62.2. The relationship between s 104(1A) and the district plan rule-making powers under s 76(6).

62.3. The related amendments to consenting processes.

62.4. The implications of these amendments for the Panel's consideration of PC81.

Executive Summary

63. The Planning Act introduces mandatory restrictions on the matters that may be considered when assessing district land use activities and on the circumstances in which district plan rules may require resource consent. Although primarily directed at resource consenting, the amendments also affect PC81 through s 76(6). Section 76(6) cross-references the restrictions in s 104(1A) and as such, these submissions address the latter section first, before discussing how s 76(6) will impact PC81.

64. It is open to Council to address any necessary changes through the ongoing plan change process. The application of these amendments to individual PC81 provisions will be addressed substantively at Hearing Stages 3 - 5, in accordance with the statutory framework outlined above.

Section 104(1A): Excluded matters

65. Section 104(1A)[36] requires consent authorities, when considering the effects of a district land use activity, to disregard specified matters. These are:

[35] On account of the provisions primarily addressing land use rules the focus of these submissions is on PC81.

65.1. The following matters relating to residential activities, except in relation to the protection of historic heritage:

a. The area of glazing (subs (a)(i));

b. The presence or absence of balconies (subs (a)(ii));

c. The outdoor living space (subs (a)(iii));

d. The internal layout (subs (a)(iv));

e. The size of a residential unit (subs (a)(v)); and

f. The size of landscaped areas, except in relation to permeability (subs (a)(vi));

65.2. Negative effects of development on trade competition, including on competing providers of input goods and services (subs (b));

65.3. Effects on retail distribution (subs (c));

65.4. Any lack of demand for a project or the fact that a project is not financially viable (subs (d)(i) and (ii));

65.5. The type of residents to be housed in a new development (subs (e)); and

65.6. Views from private property (subs (f)).

66. The exclusion of these matters is mandatory. The use of "must disregard" in s 104(1A) means that consent authorities have no discretion to consider those matters when assessing the effects of district land use activities.

67. However, the exclusions are specific. Section 104(1A) does not prevent consideration of other environmental effects associated with a district land use activity. The matters excluded must therefore be interpreted

[36] Planning Act, Schedule 12.

according to their text, in light of the purpose of s 104(1A) and its statutory context.[37]

68. Section 104(1B) separately provides that, when considering an application for a district land use consent, a consent authority may disregard a national environmental standard, plan or proposed plan, national policy statement or regional policy statement to the extent that it regulates, or purports to regulate, a matter specified in s 104(1A). Unlike s 104(1A), this power is discretionary

Interpretation of the excluded matters

69. The application of s 104(1A) requires consideration of the meaning and extent of the specified matters. While some are relatively clear, others may give rise to uncertainty, particularly where a district plan provision addresses both an excluded matter and other environmental effects.

70. The matters specified in s 104(1A)(a) are expressly limited to residential activities, subject to an exception for the protection of historic heritage. The remaining exclusions in sub-paragraphs (b)–(f) are not subject to that same express limitation.

71. In interpreting the exclusions, the legislation should not be read so narrowly that excluded matters can continue to be considered indirectly, nor so broadly that it excludes consideration of effects not identified in s 104(1A).

72. The exclusions in s 104(1A) reflect, in part, those contained in s 17 of the Planning Act (formerly clause 14 of the Planning Bill). As explained in the Departmental Report to the Select Committee,[38] the transitional RMA amendments were intended to introduce a "limited and targeted" set of exclusions, rather than the full effects-management framework under the new planning system.[39] However, several of the exclusions in s 104(1A) are expressed in substantially the same terms as those in s 17 Planning Act. The departmental reports and Select Committee

[37] Legislation Act 2019, section 10(1).
[38] Copies of the reports referred to in this part have been filed with TDC's bundle of cases.
[39] Ministry for the Environment, *Departmental Report 2: Planning Bill and Natural Environment Bill,* pp. 153 – 154.

commentary concerning clause 14 therefore provide relevant guidance as to the intended scope of those corresponding exclusions, notwithstanding that they relate to the broader framework under the Planning Act.

73. We offer the following observations on the interpretation of the some of the exclusions:

73.1. "the area of glazing": the exclusion is directed at the amount or extent of glazing, rather than other effects associated with windows, such as overlooking or loss of privacy arising from their placement or orientation;

73.2. "the outdoor living space": the exclusion is not expressly limited to the size or area of outdoor living space. It may therefore extend to matters such as its location, dimensions and configuration;

73.3. "the size of landscaped areas": the exclusion is expressly directed at the extent of landscaped areas, while preserving consideration of permeability. Landscape effects were not intended to be excluded under the transitional amendments.[40] A distinction may therefore be drawn between requirements concerning the size of landscaped areas and those directed at managing landscape or visual effects, although the application of the exclusion will depend on the purpose and operation of the particular provision;

73.4. "trade competition": the exclusion was intended to extend beyond direct competition between businesses to competition involving providers of input goods and services, including land. The intention was to prevent landowners from opposing development or rezoning of other land on competitive grounds, and to exclude consideration of the resources required to

[40] Ibid, p 153.

operate an activity and competition for access to those resources;[41]

73.5. "retail distribution": these effects are distinguished from trade competition, in that they concern the impact of one retail centre on another and the distribution of retail activities throughout a district. The exclusion was intended to prevent consideration of the size and function of retail centres as a means of determining which types of retail activities should locate within particular centres, while retaining consideration of effects such as traffic and noise.[42] Accordingly, the exclusion of effects on retail distribution may have implications for provisions concerning commercial centres. However, it does not necessarily preclude consideration of other environmental effects associated with commercial development;

73.6. project "demand" and "financial viabil[ity]": the exclusion was intended to prevent consideration of whether there is insufficient demand for a project or whether it is financially viable, on the basis that these are matters for those undertaking the development rather than the planning system. These matters are distinguished from the positive consideration of demand or financial viability, which may support a development proposal;[43] and

73.7. "views from private property": the exclusion was intended to prevent consideration of views from private property in planning and consenting decisions. Departmental advisers acknowledged concerns that the exclusion could prevent consideration of legitimate interface effects between neighbouring properties, but considered it consistent with the intention to narrow the planning system and remove subjective amenity effects from consideration.[44] The extent to which the exclusion affects

[41] Ministry for the Environment, *Departmental Report 3: Planning Bill and Natural Environment Bill*, at pp. 74 – 75; Environment Committee, *Planning Bill: Commentary* (Select Committee report, 20 July 2026), p 22.
[42] Ministry for the Environment, *Departmental Report 3*, pp. 75 – 76.
[43] Ministry for the Environment, *Departmental Report 3*, pp. 76 – 77; Select Committee report, p. 22.
[44] Ministry for the Environment, *Departmental Report 3*, p 79.

provisions directed at managing other visual or landscape effects (per ss 6 and 7 RMA) will require consideration of the particular effects those provisions seek to manage.

74. The purpose and operation of individual plan provisions will be relevant to determining whether they address an excluded matter or other environmental effects that remain capable of consideration. This is a substantive consideration that requires fulsome analysis of the proposed provisions of PC81. TDC therefore proposes to address the matter in detail in HS3 – HS5, where the details of the rules are to be interrogated in detail.

Section 76(6): Restrictions on district plan rules

75. Section 76(1) empowers territorial authorities to make district plan rules for the purpose of carrying out their functions under the RMA and achieving the objectives and policies of the plan. In making rules, territorial authorities must have regard to the actual or potential effects of activities on the environment, particularly adverse effects (s 76(3)).

76. New section 76(6) qualifies that general rule-making power by providing that a rule must not require resource consent for an activity solely because it relates to a matter specified in s 104(1A). This restriction is consistent with the mandatory requirement in s 104(1A) to disregard those matters when considering the effects of district land use activities. As noted by Mr Cameron, there are no transitional provisions that apply to s 76(6) so it has immediately legal effect on PC81.

77. The restriction in s 76(6) is not expressed as a general prohibition on regulating matters specified in s 104(1A). The word "solely" limits its application to rules requiring resource consent only because an activity relates to an excluded matter. A rule that also addresses other environmental effects is not prohibited by s 76(6).

78. However, the fact that a rule addresses other environmental effects does not mean that every aspect of the rule remains effective. Where resource consent is required for other reasons, the consent authority must still disregard the matters specified in s 104(1A) when considering the effects of the district land use activity.

79. Accordingly, the implications of s 76(6) extend beyond rules that expressly require consent for an excluded matter. Consideration must also be given to whether non-compliance with a performance standard triggers a consent requirement solely because of such a matter, and whether associated matters of discretion or assessment criteria remain capable of application.

Section 76A: Amendments to district plans

80. New s 76A provides a separate, discretionary, mechanism for territorial authorities to amend district plans during the transition period without following the process in Schedule 1 of the RMA. The provision permits territorial authorities to remove provisions relating to matters specified in s 104(1A) or modify provisions to the extent necessary to ensure those matters no longer apply or are considered.

81. It is not necessary to rely on s 76A to address the implications of s 104(1A) for PC81. The relevant proposed provisions can be considered through the ongoing plan change process.

82. Accordingly, Council may advance amendments to PC81 to address any inconsistency with s 76(6), or the implications of s 104(1A), without invoking s 76A. Any amendments must nevertheless comply with the statutory requirements governing the plan change process, including further evaluation under s 32AA, as required.

83. Additionally, the amendments do not require the Panel to undertake a wider review of existing TRMP provisions that may be affected by s 104(1A). Any such review is a separate matter for Council, which may use the mechanism provided by s 76A during the transitional period. However, as part of such a review it would be logical for TDC to align changes to be made under s 76A (notably drafting changes) with those necessary for PC81 to ensure the TRMP is internally consistent.

Related Amendments to Consenting Process

84. The Planning Act also makes consequential amendments to the RMA to give effect to the exclusions in s 104(1A) throughout the resource consent process. In particular:

84.1. Notification: New ss 95D(f) and 95E(d) require consent authorities to disregard effects described in s 104(1A) when assessing adverse effects for public and limited notification, respectively, of district land use consent applications;

84.2. Further information: New s 92(2AA) prevents consent authorities from requesting further information or commissioning reports concerning those effects;

84.3. Non-complying activities: Amended s 104D(1)(a)(ii) excludes effects described in s 104(1A) from the assessment of whether adverse effects will be minor. New s 104D(3) requires consent authorities to disregard provisions in a plan or proposed plan that regulate, or purport to regulate, those effects when applying the objectives and policies gateway under s 104D(1)(b) to district land use consent applications; and

84.4. Assessment of environmental effects: New clause 7(3) of Schedule 4 provides that an assessment of environmental effects for a district land use activity need not address effects described in s 104(1A).

85. New s 104AA also establishes an alternative permitted activity pathway. Under that provision, a consent authority may give notice that a district land use activity is permitted despite non-compliance with a rule or standard relating to a matter specified in s 104(1A). The notice may be issued following receipt of a resource consent application or on the consent authority's own initiative.

86. The Planning Act also introduces s 18B to the RMA, which imposes additional procedural principles during the transition period on persons exercising functions relating to resource consent decisions or notices of requirement under that Act. These supplement the existing procedural principles in s 18A. The principles do not directly relate to the plan-making process.

Implications for PC81

87. Although PC81 was notified before ss 104(1A) and 76(6) come into force on 30 October 2026, there are no transitional provisions exempting plan changes underway from addressing those provisions. Accordingly, those provisions will apply to decisions on PC81 (and C1) made after that date.

88. The amendments have implications for the proposed PC81 provisions. Section 76(6) restricts Council's rule-making powers, while s 104(1A) and the related amendments limit the matters that may be considered through subsequent resource consenting processes.

89. The amendments do not impose a general requirement to remove all references to matters specified in s 104(1A) from district plans or proposed district plans. However, proposed rules that require resource consent solely because of an excluded matter would be inconsistent with s 76(6). Other provisions may also require reconsideration where their application or effectiveness is affected by the exclusion of those matters from resource consent assessments.

90. The exclusions in s 104(1A) do not impose an equivalent restriction on the matters that may be considered when preparing or evaluating district plan provisions under ss 31(1)(a) and (b), 32(1)(c) and 32(2)(a). However, those exclusions are relevant to the evaluation of proposed provisions, including the anticipated benefits and costs of their implementation. The weight appropriately given to excluded matters in that evaluation will depend on the purpose and operation of the particular provisions. These considerations are also relevant to any further evaluation required under s 32AA.[45]

91. In considering the proposed PC81 provisions, the relevant questions for the Panel include whether:

    91.1. A proposed rule requires resource consent “solely” because an activity relates to a matter specified in s 104(1A).

[45] See Mr Cameron’s opinion.

91.2. Non-compliance with a proposed performance standard triggers a consent requirement that may be inconsistent with s 76(6).

91.3. Proposed provisions addressing both excluded matters and other environmental effects remain capable of application.

92. As identified in the Addendum s 42A Report, particular attention is required to the proposed residential development standards, the Medium Density Design Matrix and the commercial centres provisions. The interpretation of the excluded matters, as outlined above, will be important in determining whether amendments are required.

93. The review should distinguish between amendments necessary to ensure compliance with s 76(6) and amendments that may be appropriate because the proposed provisions will no longer operate as intended. The latter may require further planning assessment, having regard to the evaluation requirements identified above.

G. INTERIM RECOMMENDATION ON SCOPE FOR SUBMISSIONS

94. In its memorandum dated 12 October 2026, the Tasman District Council ("Council") indicated it wished to raise the possible delivery of an interim decision on scope issues.

95. At least one party has submitted there is no legal authority for the IHP to issue an interim decision on scope prior to making its recommendations on C1 and PC81.

96. These submissions address the statutory framework and identify procedural options available to the Panel should it consider that an early indication on scope would assist the efficient conduct of the hearing process.

Statutory Framework

97. Section 39(1)[46] requires the IHP to establish procedures that are appropriate and fair in the circumstances. This enables management of the hearing efficiently while ensuring that participants are treated fairly and afforded a reasonable opportunity to present their case.

[46] See cl 98(1) Schedule 1.

98. Those procedures inform the IHP's ultimate statutory function to make recommendations to the Council on C1 and PC81 pursuant to cl 85 and 98 Schedule 1.

99. Clause 100 Schedule 1 provides that the IHP's recommendations may be set out in one or more written reports. There is no requirement that all recommendations be provided in a single report at the conclusion of the hearing process.

100. Pursuant to cl 100(2), the Panel's recommendations must address specified matters, including the recommendations on matters raised in submissions and the reasons for accepting or rejecting submissions and further submissions. Scope for submissions is clearly a matter that would be addressed in the recommendations.

101. Following receipt of the IHP's recommendations, the Council must determine whether to accept or reject the recommendations in accordance with cl 86 Schedule 1.

Council's Reason for Seeking a Scope Determination

102. The Council seeks an interim recommendation (or indication) on scope issues for the purpose of promoting an efficient hearing process and assisting both the Panel and participating parties.

103. Council must carefully manage finite resources funded by ratepayers. It must also balance the workload demands placed upon its planning and technical advisers. Where submissions may be incapable of being granted because they fall outside the scope of the notified provisions, there is a risk that significant resources will be expended preparing and presenting evidence on matters that cannot lawfully be considered.

104. An early indication from the Panel as to where scope issues may constrain the granting of relief being sought would enable parties to more effectively focus their evidence and submissions on matters capable of determination under the RMA.

105. The Council notes the importance of conducting the process efficiently in light of the Minister's direction that the process be completed by June 2027. Early identification of scope constraints is capable of materially

assisting the timely completion of the hearings and recommendation process.

Available Procedural Options

106. It is submitted that there are two available procedural options through which the outcome sought by the Council may be achieved.

Option One: Interim Recommendation to the Council

107. The first option is for the Panel to provide a recommendation to the Council on identified scope issues, with the Council then making a determination under cl 86 Schedule 1.

108. The Council notes that neither cl 98 nor cl 100 expressly requires recommendations only at the end of the hearing process, which implies there could be multiple hearing streams that may result in issue-specific recommendations. Supporting this, cl 100 refers to recommendations in "one or more written reports". Furthermore, the mandatory contents for the report/s at sub-clause (2) are all matters that do not preclude the issuing of recommendations confined to scope when read in light of s 39.

109. Accordingly, there is an arguable basis for the Panel to provide a report addressing discrete scope matters before the completion of the substantive hearing process.

110. However, this approach is not TDC's preferred option. It would require the preparation of a formal recommendation, consideration by the Council under cl 86, and potentially additional procedural steps before the hearing could continue. The Council therefore considers that this option may introduce unnecessary complexity, delay and administrative burden.

Option Two: Procedural Indications from the Panel

111. The second option is for the Panel to indicate, through an interim recommendation by way of a minute, where submissions, or parts of submissions are likely to be declined because there is no scope for the relief sought.

112. Such indications would not finally determine the rights of any submitter, nor prevent them from being heard on the substance of its submission should it wish to pursue those matters. Rather, the interim recommendations would provide guidance to assist parties to make informed decisions on the allocation of resources for the hearing process.

113. From the Council's perspective, where a submission appears unlikely to be capable of being granted because of scope constraints, the Council may decide not to call evidence in response to that submission. In such circumstances, it would remain open to the submitter to advance its case and satisfy the Panel that the relief sought is within scope and that would be Council's 'risk'.

114. The Council submits that this approach achieves the greatest practical and procedural efficiency, while preserving the ability of all parties to be heard. It does not preclude participation and assists all parties to focus resources on matters that are capable of lawful determination.

H. LATE SUBMISSIONS

115. The HS1 s 42A Report addresses late submissions received and makes recommendations on the same.

116. The IHP's power to accept or reject late submissions is express at cl 98(3) Schedule 1 RMA, which applies to an SPP pursuant to cl 85(1):

> (3) An independent hearings panel may decide to accept or reject any late submission

117. It is submitted that power should be exercised.

118. The powers in ss 37 and 37A RMA are not granted to the IHP by cl 98. Nonetheless the law that has been developed for the consideration of late submissions provides an appropriate structure for the exercise of the power in cl 98(3). Before allowing a late submission, it is submitted the IHP should consider those matters at s37A(1), namely:

118.1. The interest of those who may be directly affected by granting or declining the late submissions.

118.2. The interests of the community to have an adequate assessment of C1 and PC81.

118.3. The duty in s 21 RMA to avoid unreasonable delay.

119. The first two matters are fundamental to ensure a fair and robust process is undertaken. The third matter applies to the exercise of functions under the RMA where no time limit applies but is applicable here.

120. The s 42A report addresses the late submissions and at this time Counsel have no instructions to address you on those matters. However, to the extent any legal issues arise we can assist.

Date 27 October 2026



C P Thomsen / A A Yardley
Counsel for Tasman District Council

Appendix 1 – PC79 Provisions

Rule 17.14.2.1 - 2

17.14.2.1 Deferred land not listed in Schedule 17.14A

For any deferred site that is not listed in Schedule 17.14A, the plan provisions that apply to the original zone and the plan provisions that apply to deferred zoned sites continue to apply regardless of provision 17.14.2.2.

17.14.2.2 Deferred land listed in Schedule 17.14A

(a) The provisions specified in the relevant row of Column C of Schedule 17.14A apply to any activity, including subdivision, land use, structure or building, on land that is subject to a deferred zone listed in Schedule 17.14A, until rule 17.14.2.2.(b) is satisfied.

(b) If the infrastructure required as stated in Schedule 17.14A, Column D is delivered then the relevant provisions of Column G of Schedule 17.14A apply.

For the purpose of rule 17.14.2.2, 'delivered' means infrastructure is:

(i) Physically constructed, or

(ii) Council and a landowner or developer have an agreement that the infrastructure will be constructed within three years of the date of the agreement, and

(iii) Council's Chief Executive Officer has published notice on the Council's website that (i) or (ii) has been satisfied.

Note: 17.14.2.2 includes a recommended Panel amendment. See paragraph 97 of the recommendation report.

(c) In the event that 10 or more years elapses from the operative date of the plan change that added a site to Schedule 17.14A (as specified in the relevant row of Schedule 17.14A, Column I) to the delivery of the necessary infrastructure, then provision 17.14.2.2.(b) must not be applied and the provisions in the relevant row of Column C of Schedule 17.14A will continue to apply thereafter.

Schedule 17.14A

A	B	C	D	E	F	G	H	I
Deferred Site Location	Deferred Site location number	Plan provisions that apply before services are provided	Infrastructure or servicing that is required to be delivered (Rule 17.14.2.2 refers)	Legal descriptions of land to which Column G planning provisions apply	Where infrastructure or services proposed by developer, references to detailed performance requirements and engineering plans of services agreed with Council	Plan provisions that apply after services are delivered	Date when Column G provisions apply	Number and Operative Date of plan change that adds a deferred site to Schedule 17.14A
McShane Road	RW5	Chapter 5, Site Amenity Effects. Chapter 6, Urban Environment Effects. Chapter 7, Rural Environment Effects. Section 16.3.2.5, Subdivision in any Zone Subject to Deferred Zone Rules. Section 16.3.5, Subdivision - Rural 1 Zone. Chapter 17.5, Rural 1 Zone Rules.	**Wastewater:** Provision for a new trunk pressure main along indicative road layout through development area; provision for new pressure trunk main connection to existing 525mm gravity main along decommissioned rail corridor to the south of RW5 (now NZTA and Great Taste Trail corridor). See AMP ID 96118 in LTP 2024. **Water Supply:** Provision of a new trunk watermain through the mixed business area along the indicative road layout, including connection to existing 200mm watermain under Borck Creek at southern end of Summersfield Boulevard. See AMP ID 86204 in LTP 2024. **Transportation:** Provision for a single mid-block intersection with SH60 that complies with NZTA standards as part of the central access roadway through mixed business area as per indicative road layout on planning maps. The specific location of the intersection of the indicative road with SH6 is flexible subject to complying with the required standards. To be provided by developer, plus some Council funding available. See AMP ID 46094 in LTP 2024.			Chapter 5, Site Amenity Effects. Chapter 6, Urban Environment Effects Section 16.3.2.5, Subdivision in any Zone Subject to Deferred Zone Rules. Section 16.3.4, Subdivision - Business and Industrial Zones Chapter 17.3, Mixed Business Zone Rules.		

Appendix 2 – Aidan Cameron Opinion

AIDAN CAMERON
BARRISTER
LLB/BA

23 October 2026

Chris Thomsen
Partner
Fletcher Vautier Moore
PO Box 90
NELSON 7040

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):
>
> (i) the area of glazing:
>
> (ii) the presence or absence of balconies:
>
> (iii) the outdoor living space:
>
> (iv) the internal layout:
>
> (v) the size of a residential unit:
>
> (vi) the size of landscaped areas (except in relation to permeability):
>
> (b) negative effects of development on trade competition, including on competing providers of input goods and services:
>
> (c) effects on retail distribution:
>
> (d) in relation to a project,—
>
> (i) any lack of demand for the project; or
>
> (ii) the fact that the project is not financially viable:
>
> (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].

Appendix 3 – Amendments to RMA National Direction in 2026

National direction instruments	In force from	Changes made to instruments
New national direction instruments		
New National Environmental Standards for Detached Minor Residential Units (PDF 252KB) NES-DMRU Frequently Asked Questions (PDF 520KB)	15 January 2026 Minor amendment in force from 11 September 2026	Enables one detached minor dwelling of up to 70 m^2 per site without resource consent, where standards are met.
New National Policy Statement for Infrastructure (PDF 239KB)	15 January 2026	Recognises infrastructure as nationally significant and supports efficient development, operation, maintenance and upgrades.
New National Policy Statement for Natural Hazards (PDF 226KB)	15 January 2026	Creates a nationally consistent, risk-based framework for managing natural hazard risks in new developments.
New National Environmental Standards for Papakāinga (PDF 326KB)	2 July 2026	Enables up to 10 papakāinga homes on eligible Māori land as a permitted activity, with streamlined consent pathways for larger developments.
Amended national direction instruments		
Amendments to quarrying and mining provisions (PDF 250 KB) in: • National Policy Statement for Indigenous Biodiversity 2023 • National Policy Statement for Highly Productive Land 2022 • National Policy Statement for Freshwater Management 2020 • Resource Management (National Environmental Standards for Freshwater) Regulations 2020	15 January 2026	Provides more consistent, enabling pathways for quarrying, mining and supporting infrastructure, while retaining environmental safeguards.

National direction instruments	In force from	Changes made to instruments
Amendments to National Policy Statement for Highly Productive Land 2022 (PDF 218KB)	15 January 2026	Exempts urban development and rezoning on Land Use Capability (LUC) 3 land from NPS-HPL restrictions to support housing supply while protecting higher-value productive land.
Amendments to National Policy Statement for Renewable Electricity Generation 2011 (PDF 229KB)	15 January 2026	Gives stronger national support for renewable electricity projects and reduces consenting barriers while recognising Māori interests.
Amendments to National Policy Statement on Electricity Transmission 2008 (renamed to National Policy Statement for Electricity Networks) (PDF 228KB)	15 January 2026	Expands the NPS into a broader electricity networks framework, supporting efficient network development, maintenance and upgrades.
Amendments to New Zealand Coastal Policy Statement 2010 (PDF 229KB)	15 January 2026	Gives greater weight to nationally important coastal activities while continuing to protect coastal values and maintain environmental safeguards.
Amendments to Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 – electric vehicle charging infrastructure (PDF 339KB)	7 May 2026	Creates nationally consistent permitted activity rules for EV charging infrastructure to support faster rollout. Further subsequent changes were made to the NES-ETA later in 2026 (see below).
Amendments to Resource Management (Stock Exclusion) Regulations 2020 (PDF 286KB)	7 May 2026	Narrows stock exclusion requirements for some beef cattle and deer, while retaining requirements for higher-risk stock and grazing activities.
Amendments to Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 (PDF 403KB)	4 June 2026 Minor amendment in force from 8 October 2026	Streamlines reconsenting and supports more flexible, innovative aquaculture operations while maintaining environmental safeguards.
Amendments to Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (PDF 376KB)	4 June 2026	Improves consistency and reduces compliance costs by focusing requirements on higher-risk forestry activities.

National direction instruments	In force from	Changes made to instruments
Amendments to Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (renamed National Environmental Standards for Electricity Network Activities) (PDF 299KB)	8 October 2026	Renames, updates and expands the scope of the NES, creating national rules for transmission and distribution in the electricity network (including previous amendments for EV charging infrastructure) and enabling more routine maintenance and upgrades while maintaining safeguards.
Amendments to Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (PDF 305KB)	8 October 2026	Updates telecommunication facility standards to enable faster infrastructure rollout while retaining local protections for sensitive areas.

Source: Planning New Zealand
National direction changes that affect consenting - Planning.govt.nz