

**BEFORE THE HEARINGS PANEL
FOR THE PROPOSED TE TAI O POUTINI PLAN**

UNDER	the Resource Management Act 1991
IN THE MATTER	of a hearing on the proposed Te Tai o Poutini Plan Variation 2: Coastal Hazards
FOR	VANCE & CAROL BOYD Submitter 447
AND	MICHAEL GEORGE SNOWDEN Submitter 492

**LEGAL SUBMISSIONS FOR SUBMITTERS 447 AND 492 ON VARIATION 2
TO THE TE TAI O POUTINI PLAN**

Dated: 18 March 2025

MAY IT PLEASE THE PANEL

Introduction and executive summary

- [1] These submissions are presented on behalf of Vance & Carol Boyd (Submitter 447) and Michael Snowden (Submitter 492) (**Submitters**), in support of their submissions on the proposed Te Tai o Poutini Plan (**TTPP**) variation 2 – Coastal Natural Hazards Mapping (**Variation**).
- [2] These submissions should be read in conjunction with the evidence presented by Anita Collie on behalf of 5 submitters, including the Boyds and Mr Snowden. Lay evidence is also presented by Mr Boyd in support of his submission.
- [3] The original scope of the Variation as notified on 27 June 2024 excluded the mapping of coastal hazards. However, following legal advice¹ the Committee decided to re-notify the Variation on 21 November 2024, which included the mapping of coastal hazards now being within the scope of the Variation. Subsequently, the Submitters seek amendments to the mapping as set out in the below submissions.
- [4] In summary, the Submitters seek the following amendments to the Variation:²
 - (a) That the proposed mapping overlays are not accepted, and the property is excluded from the coastal hazard overlays.
 - (b) Specific amendments to policies NH-P2, NH - P10 and NH-P12.
 - (c) Specific amendments to rules NH-R1, NH-38, NH-R43 and NH-R44.
 - (d) Regarding the planning maps and overlays generally, these should be amended for the reasons provided, particularly with regard to Hannah's Clearing.
- [5] Overall, it is the Submitters' case that the planning evidence, and proposed amendments to the Variation, of Ms Collie should be preferred

¹ As per Minute 53 from the Committee dated 4 November 2024.

² Evidence of Anita Collie, at [27].

and her recommendations adopted, compared to the S 42A report and rebuttal evidence from Council.

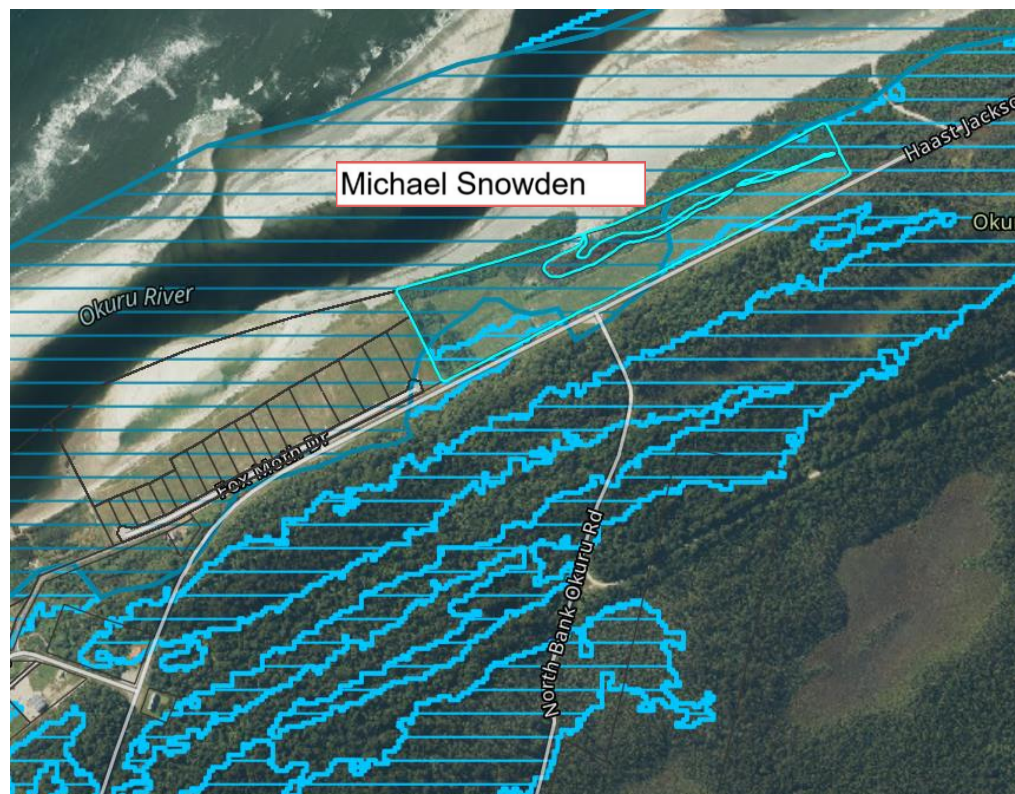
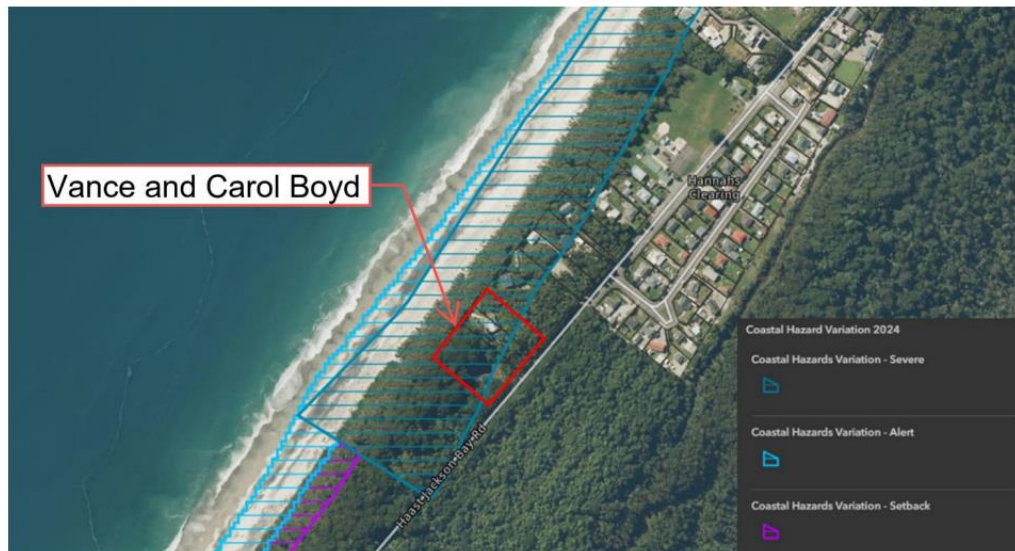
- [6] The Submitters own rural-residential properties that have been granted their respective resource consents for residential buildings. There is a legitimate expectation that they should be able to build these consented dwellings and utilise their land. The Variation creates unnecessary and further barriers to this. It creates further anomalies in terms of future variations to those consents already held to build, minor alternations and expansions, and replacement.
- [7] The proposed amendments to the Variation, as set out in the Submitters' submissions, enable a more efficient and sensible approach to the use of the land, helping the variation to meet the purpose and s 7 of the RMA. The Submitters seek absolute clarity in the drafting such that the rules can be interpreted with certainty and precision by any planner down the line.
- [8] Counsel also reiterates the position set out in the letter sent to the TTPP Committee dated 20 May 2024, particularly regarding the NZCPS and the appropriateness of adopting a 50-year hazard assessment timeframe in this context rather than the 100-year timeframe currently adopted in the Variation. The key issue is that there are serious questions to be tried in respect of the science and methodology of the mapping, though many submitters do not have the resources and opportunity to engage technical expert evidence to rebut this. Given such uncertainties with the mapping methodology, it is submitted that a corresponding flexible approach should be applied to rules, policies, and objectives applying the coastal hazard overlays.
- [9] This letter is included in these legal submissions as **Appendix 1**.

The Submitters' properties

- [10] Ms Collie sets out a description of the Submitters' properties in her evidence, which Counsel adopts. The Boyds own land in Hannah's Clearing, while Mr Snowden owns land in Okuru. Both properties are located on the ocean-side of Haast-Jackson Bay Road and are subject

to a number of overlays, including the Coastal Hazard Severe overlay (and Coastal Hazard Alert overlay for Mr Snowden's property).

- [11] The below screenshots demonstrate the properties in relation to the coastal hazard overlays:



- [12] Both Submitters' main issue for this hearing is regarding erosion, and the hazard assessment of such that has given rise to the above mapping

in relation to their properties. The Submitters, and several other parties who made submissions on the Variation, say this is flawed.

Statutory framework

NZCPS

- [13] Sections 67(3)(b) and 75(3)(b) of the RMA contain requirements for the TTPP to give effect to NZCPS.³ As outlined in the attached letter, Counsel notes the process of identification of hazards over a 100-year planning horizon is clear in policy 24, however the matter of how to manage those risks within the life of the combined plan leaves relatively more discretion.
- [14] Ms Collie's evidence provides a detailed overview of the NZCPS to the submissions and the Variation at large. In particular, objective 5 seeks to *manage* coastal hazard risks through locating new development away from areas prone to these risks (among other measures), with policy 25 directing the TTPP to *avoid* increasing risk of harm from coastal hazards and redevelopment that would also have this effect.
- [15] Policies 25(a) and (b) are directed at subdivision, use or development (including redevelopment) which increases the risk of social, environmental and economic harm and the risk of adverse effects from coastal hazards. The policies do not require the complete avoidance of risk which is defined as '*a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence*'⁴ but rather seek to avoid increasing risk.
- [16] As stated by Ms Collie, the Submitters' residential buildings and planned additions are not 'new developments'. They have existing consents that have been given effect to. By extension, these also meet the definition of 'lawfully established' as recognised under the TTPP.⁵

³ Per *Environmental Defence Society Incorporated v New Zealand King Salmon Co Ltd & Others* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.

⁴ Policy 25(a) and Glossary.

⁵ For example, Rule NH-R1 and NH-R38 in the notified version of the TTPP.

West Coast RPS and the TTPP

[17] The RPS provides the framework for managing natural hazard risks in the region. The TTPP must give effect to the WCRPS, ensuring natural hazard provisions balance risk management with enabling appropriate land use and development.

[18] The RPS addresses natural hazards across:

- (a) Chapter 11 – Natural Hazards, which outlines principles for hazard risk management and local authority responsibilities.
- (b) Chapter 9 – Coastal Environment, which contains objectives and policies specific to managing coastal hazards.

[19] The following objectives and policies are particularly relevant:

Provision	Summary
Objective 9.3.1	Coastal hazard risks must be considered for new development.
Objective 9.4	Existing coastal hazard risks should be managed to protect community wellbeing.
Objective 11.1.1	Natural hazard risks must be avoided or minimised.
Policy 11.1	Hazard awareness and controls to prevent inappropriate development.
Policy 11.2	Avoiding hazard risks through appropriate land use planning.
Policy 11.3	Use of best available information on climate change when assessing hazards.
Policy 11.4	Recognises that modifying the environment to reduce hazard

	susceptibility may sometimes be preferable to relocation.
Policy 9.6	Risk management approach to assessing coastal subdivision and development.
Policy 9.7	100-year timeframe for assessing coastal hazard risks.

[20] The key, higher-order TTPP objectives of note are contained in the proposed Natural Hazards chapter. However, the s 42A report has recommended several changes to these objectives:

- (a) **NH - O1** – Subdivision, use and development within the Severe Natural Hazard and the Coastal Hazard Erosion and Inundation Overlays reduces or does not increase the existing risk from natural hazards to people, buildings, and regionally significant infrastructure.
- (b) **NH - O2** – Subdivision, use and development within all other Natural Hazard Overlays minimises the risk from natural hazards to people, buildings, and regionally significant infrastructure.
- (c) **NH - O3** – To only locate regionally significant infrastructure within the Severe Natural Hazard and the Coastal Erosion and Inundation Overlays where there is an operational or functional need to be located within these overlays, and to design infrastructure so as not to increase the risk to people and buildings.
- (d) **NH - O4** – Natural systems and features that reduce the susceptibility of people, buildings, and regionally significant infrastructure to damage from natural hazards are created, retained or enhanced.

- (e) **NH - O5** – To recognise and provide for the impacts of climate change, and its influence on the frequency and severity of natural hazards.
- (f) **NH - O6** – Measures taken to mitigate natural hazards do not increase the risks to people, buildings and regionally significant infrastructure.

Mapping

- [21] Ms Collie notes the conservative approach taken in the coastal hazard mapping, which lacks site-specific analysis and instead applies broad overlays without differentiation of risk levels (noting that the accuracy of the mapping is out of scope for her evidence).⁶ This blanket approach does not account for existing mitigation measures or site-specific conditions, resulting in unnecessary restrictions on consented properties.
- [22] A more refined and risk-based methodology is necessary to align with best planning practice and policy requirements under the WCRPS and NZCPS. The Submitters support amendments that allow for appropriate recognition of consented developments and ensure hazard management provisions are proportionate and justified.

Amendments to TTPP objectives

- [23] Ms Collie supports (generally) a revised drafting of Objective NH-O1, which aligns with NZCPS and WCRPS policies by ensuring that development in hazard overlays does not increase risk but allows for risk reduction (where appropriate).⁷ The Submitters agree that this approach is more consistent with the NZCPS and WCRPS, which require coastal hazard risk management while recognising the rights of existing and lawfully established activities.
- [24] The revised NH-O1 better reflects these principles by allowing for reasonable modifications and extensions to existing buildings, rather than applying a blanket restriction that fails to account for site-specific

⁶ Evidence of Anita Collie, at [43].

⁷ Evidence of Anita Collie, at [51].

conditions. While NH-O2 does not explicitly recognise existing activities, as Ms Collie notes, the rules already allow re-establishment in the Coastal Alert Overlay.

Amendments to TTPP policies

- [25] Ms Collie's evidence highlights the need for clear and justified policy direction in TTPP Variation 2, particularly regarding NH-P2, NH-P10, and NH-P12. These proposed amendments ensure greater efficiency and effectiveness in achieving the objectives of the plan, meeting s 32 of the RMA.
- [26] A key principle of efficiency under section 32 is that planning provisions must be targeted and justified, rather than applying broad, indiscriminate controls without clear benefits. This principle was confirmed in *Horticulture New Zealand Ltd v Far North DC*,⁸ where the Environment Court rejected a blanket 30m setback rule for residential activities in rural zones. The Court found the proposed setbacks an inefficient and ineffective method to address the intended outcomes, with no proper justification.
- [27] From *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*,⁹ the correct approach is, where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime, then that regime should be adopted. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by being enabling so that people can provide for their wellbeing while addressing the effects of their activities.¹⁰ The direction in policy 25 of the NZCPS does not change this case law, in that this direction provides for consideration of increases in risk.

⁸ *Horticulture New Zealand Ltd v Far North District Council* [2016] NZEnvC 47

⁹ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

¹⁰ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

- [28] Counsel notes that *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* was previous to the *King Salmon* decision referenced above, and did not necessarily deal with the very directive national direction found in the NZCPS. However, the NZCPS, being initially promulgated in 2010, is an instrument of extremely blunt drafting. For the reasons further explained below, considering costs and benefits of a less restrictive or proportionate regime under s 32 is still required in the context of coastal hazards mapping and associated rules.
- [29] Ms Collie's amendments meet this test as they remove unnecessary ambiguity, ensure existing residential activities are properly accounted for, and improve policy alignment with the WCRPS and NZCPS. This makes sense considering the context of the Submitters' resource consents (having been given effect to), and the inefficiency of the Variation as notified with regard to lawfully established uses. These refinements enhance efficiency by reducing unnecessary regulatory burdens while still achieving the plan's hazard management objectives.

Amendments to TTPP rules

- [30] The Submitters seek rules which ensure that the TTPP appropriately recognises and enables reasonable residential use while effectively managing natural hazard risks. The notified provisions of Variation impose unnecessary restrictions on lawfully established activities, failing to provide a balanced and risk-based framework. The Submitters seek targeted amendments that better align with the principles of efficiency and effectiveness under section 32 of the RMA and higher-order planning instruments, as outlined in Counsel's 20 May 2024 letter to the Council.
- [31] A fundamental principle of natural hazard planning is that existing and consented residential development must be appropriately recognised within the planning framework. The Submitters have previously raised concerns that the Variation, as notified, fails to provide a permitted pathway for residential dwellings on vacant, residentially zoned lots, even where the coastal hazard risk has already been assessed and managed through prior consents.

- [32] Ms Collie identifies that this creates an unnecessary restriction on landowners, particularly where mitigation measures are available to reduce risk to an acceptable level. It is my submission that her recommendation that the Variation be amended to better allow for residential dwellings on vacant lots where they are already lawfully established,¹¹ would be an appropriate and clear drafting response in terms of an efficient and effective rule under section 32 given that such already established residential sections would likely have been assessed previously for coastal hazard risks in their creation.
- [33] The Variation also raises concerns that the notified provisions fail to provide for the maintenance and reasonable improvement of existing residential dwellings, even where such modifications do not materially increase risk. Ms Collie highlights that this approach conflicts with Chapter 9 Policy 3(e) of the WCRPS, which allows for lawfully established activities to continue provided that effects remain the same or similar.
- [34] Her proposed rule amendments:
- (a) permit minor and reasonable additions and alterations to existing buildings; and
 - (b) allow for the replacement of buildings that may be damaged or require upgrading, ensuring homeowners can maintain and improve their properties.
- [35] The failure to allow for these activities results in an unreasonable regulatory burden on homeowners, requiring unnecessary consent processes that fail to meaningfully reduce hazard risk.
- [36] Ms Collie identifies that several permitted activity rule criteria require refinement, as they overly restrict development without clear justification. The Submitters' 20 May 2024 letter raised concerns that the current provisions fail to account for site-specific risk mitigation measures, applying blanket restrictions that are not proportionate to actual risk levels. The Submitters support Ms Collie's recommendations to clarify

¹¹ Evidence of Anita Collie, at [78].

and refine thresholds for permitted activities, ensuring minor development does not trigger unnecessary consenting requirements, and to recognise existing hazard mitigation measures, so that sites with appropriate protections are not subject to unnecessary restrictions.

- [37] These refinements enhance the efficiency and effectiveness of the rules (as per RMA s 32), allowing for balanced risk management without imposing unjustified constraints on landowners.

Section 32AA evaluation

- [38] Section 32AA RMA requires that, for undertaking and publishing further evaluations:

32AA Requirements for undertaking and publishing further evaluations

- (1) A further evaluation required under this Act—
- (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the **changes**); and
 - (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
 - (d) must—
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the decision on the proposal is notified; or
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.

...

- [39] Ms Collie's analysis supports the Panel in its role under s 32AA. Her analysis confirms that the proposed amendments address a key gap in the TTPP rules, ensuring that consented activities that have already been assessed for coastal hazards are not unnecessarily subject to additional resource consent requirements. Ms Collie identifies that removing restrictive criteria—such as those relating to the cause of destruction and timeframe for rebuild—simplifies the rule framework while maintaining risk management objectives. This is a key aspect of ensuring a more efficient and effective rule framework in a section 32 sense, while serving the directive intentions as to natural hazards in the strategic and higher order provisions of the TTPP and the NZCPS.
- [40] While the amendments introduce some additional criteria, Ms Collie correctly identifies that these enhance efficiency by providing greater clarity. Conversely, the risk of not acting is that property owners will continue to face unnecessary and duplicative consent processes, creating ongoing uncertainty.

Validity of 100-year timeframe for assessing coastal hazards

- [41] The Submitters' position on this topic was set out in Counsel's letter dated 20 May 2024. The below reiterates this, concluding that this is still the Submitters' position.
- [42] The NZCPS and the MfE guidance emphasise the importance of adaptive management and suggest that risk assessments for coastal hazards can consider shorter timeframes, such as 25 or 50 years, in addition to the 100-year timeframe.¹² There is no requirement that only a 100-year is notified or that management of those identified risks could occur outside of simply identifying the 100-year timeframe hazard lines.
- [43] The NZCPS directs identification, but how to manage that subsequently depends on factors such as community risk appetite (informed through consultation), costs, cultural and social consequences). Other recent second-generation plans have conducted informed community consultation based upon a range of timeline mapping, for example,

¹² Including Step 5 – requirement to identify options and pathways - several types of adaptation options are available for adapting to coastal hazards and climate change consistent with NZCPS policy 25 and 27.

Christchurch City and Dunedin. Without any input from the community in terms of risk appetite, there can be no understanding of what are the possible and appropriate adaptive management responses (as opposed to a simple non complying regime in severe overlays).

- [44] Given this, it is still the Submitters' position that the alert and coastal overlays should not be applied to the 100-year timeframe as they are currently proposed under the TTPP. It is entirely within the Panel's jurisdiction to reject the mapping as recommended, or to request further technical information and reports before confirming the same. Such matters are within the scope of submitters' submissions.
- [45] Counsel points to several emails with Dr Terry Hume¹³ and Dr Martin Single,¹⁴ which have been provided with Mr Boyd's supporting lay evidence. Both Drs Martin and Single show that there is opportunity to request this further technical information and reports. Counsel appreciates that such material has not been provided as expert evidence and does not purport to be so, however Mr Boyd will discuss the reasonableness and importance of further information and assessment, or an iterative approach to obtaining the same overtime.
- [46] Even if the panel were minded to accept the hazard overlays as they are currently mapped over the Submitters' properties, the above shows the relevance of alternative management of those hazards. Ms Collie sets out several amendments to the Variation that will help to meet the alternative management of coastal hazards.

Conclusion

- [47] Given the above, Counsel submits:
- (a) the proposed mapping overlays are not accepted, and the Submitters' properties are excluded from the coastal hazard overlays;

¹³ Email from Dr Hume to Rosie Hill dated 10 May 2024.

¹⁴ Email from Dr Single to Mr Boyd dated 15 May 2024.

- (b) in the alternative, the Submitters' proposed amendments should be accepted by the Panel and incorporated into the Variation;
- (c) Ms Collie's analysis should be preferred, given its alignment with the objectives and policies of the NZCPS, WCRPS, and proposed TTPP;
- (d) the mapping as proposed in the Variation is inappropriate given it is a blanket approach that does not align with existing mitigation measures or site-specific conditions, therefore failing to meet best planning practice and policy requirements under the WCRPS and NZCPS, including the tests in *Horticulture New Zealand Ltd v Far North District Council* and *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*;
- (e) Ms Collie's proposed amendments to NH-O1 and NH-O2, and the natural hazard chapter policies better reflect the rights of existing and lawfully established activities, without limiting the Variation to a 'blanket approach', ensuring greater efficiency and effectiveness in achieving the objectives of the plan, meeting s 32 of the RMA;
- (f) Ms Collie's proposed amendments to the natural hazard chapter rules further promote the above; and
- (g) Ms Collie's analysis supports the Panel in its role under s 32AA, confirming that the proposed amendments address a key gap in the TTPP rules.

[48] To summarise, the higher order TTPP provisions, the pRPS, and the NZCPS don't set a 'hard bottom' line in all circumstances for 100 year hazard alert mapping to restrict activities. It can be more nuanced than this. Setting a regulatory framework which balances appropriate risk against the detail of the mapping technicalities that currently inform the Variation is a more efficient and effective approach in light of s 32.

[49] The NZCPS sets direction to assess a 100-year planning horizon for hazards, however, how that translates to an appropriate response to such risk is very much specific to local situations. Many coastal

properties in this district have already been through detailed hazard analysis in their establishment through resource consenting processes.

[50] Having absolute clarity of those properties and dwellings is efficient because those are not being reassessed unnecessarily.

Dated 18 March 2025



.....
R E M Hill / B A G Russell
Counsel for the Submitters

Appendix 1

20 May 2024

West Coast Regional Council
PO Box 66
Greymouth 7840

Attention: Te Tai o Poutini Plan Committee
By email: info@tppp.nz; Michelle.Conland@wrc.govt.nz; Doug.Bray@wrc.govt.nz;
Lois.Easton@wrc.govt.nz

Dear Members of the Te Tai o Poutini Plan Committee

Imminent Notification of Variation to the Te Tai o Poutini Plan (TTPP) – Coastal Hazard Mapping

1. We act for a number of property owners concerned as to the impending variation for coastal hazards. Our clients reside own properties located at Hannah's Clearing and Okuru. We understand that the TTPP Committee has recently agreed to notify a variation to the TTPP (anticipated for 27th June 2024) to include amended coastal hazard (severe) layers. We understand these layers will impose a non-complying consent status for new buildings, significantly impacting our clients' ability to develop and use their land.
2. Our clients have serious concerns regarding:
 - (a) The methodology and adequacy of the NIWA reports informing these hazard overlays;
 - (b) Inadequacy of consultation to date in preparation of the proposed variation (particularly in respect of ascertaining appropriate adaptive management approaches);
 - (c) Incorrect interpretations of the New Zealand Coastal Policy Statement (NZCPS).
3. As detailed below, we consider there are significant uncertainties and potential inaccuracies in the severe coastal hazards mapping that need to be addressed before proceeding with formal Schedule 1 notification under the RMA for any variation. We strongly urge the Committee to delay the notification of this variation until these issues are resolved.

4. Proceeding to notification in advance of resolving these issues will put significant costs on Council in terms of protracted litigation on the Variation and puts landowners at a significant and unfair disadvantage in having to formally rebut erroneous hazard mapping once notified.
5. In terms of hearing streams for the TTPP, we strongly urge that any plan provisions (methods, policies, objectives, rules) for coastal hazards must be heard in the same hearing stream along with the mapping of the severe coastal hazards overlay. If this variation on mapping proceeds after provisions for natural hazards are heard, many landowners affected by the variation will be unjustly and prejudicially affected without a right to participate. Best practice would see rules and overlays to which those relate, to be heard together.

Key Points of Concern

Methodological Issues with NIWA's Report

6. Our clients believe that NIWA's methodology¹, particularly the application of a 100-year risk assessment only for erosion and inundation coastal hazards, is flawed. This assessment appears to have been taken from a literal interpretation of the NZCPS policy 24 and 25.
7. There is no dispute as to the obligations contained in ss67(3)(b) and 75(3)(b) RMA for the TTPP to *give effect to* NZCPS (being a combined regional and district plan).² The process of identification of hazards over a 100 year planning horizon is clear in policy 24, however the matter of how to manage those risks within the life of the combined plan leaves relatively more discretion.
8. Policies 25(a) and (b) are directed at subdivision, use or development (including redevelopment) which *increases the risk* of social, environmental and economic harm and the risk of adverse effects from coastal hazards. The policies do not require the complete avoidance of risk which is defined as ... *a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence*³ ... but rather seek to avoid increasing risk. This requires a comparative exercise based upon existing risk and zoning.
9. Our review of the Committee's April agenda, the NIWA reports, and the existing s32 report for natural hazards⁴, also show that there has been inadequate consideration of alternative timeframes or adaptive management strategies, as is directed in the recent Ministry for the Environment (**MfE**) guidance materials (2024), and as followed in other recent plan review processes in different jurisdictions.

¹ Contained within the NIWA reports (February 2022 Measures and Rouse; March 2022, Bosserelle and Allis) (together the **NIWA reports**).

² Per *Environmental Defence Society Incorporated v New Zealand King Salmon Co Ltd & Others* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.

³ Policy 25(a) and Glossary.

⁴ Report 5

Application of NZCPS Policy 24 and 25

10. The NZCPS and the MfE guidance⁵ emphasise the importance of adaptive management and suggest that risk assessments for coastal hazards can consider shorter timeframes, such as 25 or 50 years, in addition to the 100-year timeframe in order to inform risk management options and pathways. While we accept policy 24 directs a requirement to identify risks to a 100-year planning horizon, this does not translate to a requirement that:
 - (a) Only a 100 year (1:100 AEP) line in the TTPP is notified with an avoidance / non complying regime; nor
 - (b) That management of those identified risks in a TTPP framework could be something different than the above.
11. Put simply, policy 24 directs identification, but how to manage that subsequently depends on factors such as community risk appetite (informed through consultation), costs, cultural and social consequences).
12. Given the consequences of this particular proposal (affecting a significant number of property titles in the severe overlay), the need for informed consultation to feed into a s32 analysis assessing that, is heightened. The absence of 25, 50 and 75 -year mapping for public consumption severely restricts understanding and limits the ability to consider adaptive change with trigger points (per step 5 of the MfE guidance). In principle it is acceptable to consider modelling coastal inundation at the same time as coastal erosion although it depends on locality. The s32 document prepared for the previous overlays suggests significant consultation, but it is not clear upon what actual information around mapping was provided.
13. We have lodged a LGOIMA request for 25 and 50 year mapping which is referenced in the 2022 NIWA report but was not publicised. We have also sought information on the instruction / scope of work provided by Council staff to NIWA to inform this work.
14. A more flexible and adaptive approach may better align with local conditions and community risk appetites – but this can only be understood through community assessment (which is not necessarily available through a schedule 1 notification process, that becomes inherently adversarial).
15. Other recent second generation plans have conducted informed community consultation based upon a range of timeline mapping, for example, Christchurch City and Dunedin. Without any input from the community in terms of risk appetite, there can

⁵ Including Step 5 – requirement to identify options and pathways - several types of adaptation options are available for adapting to coastal hazards and climate change consistent with NZCPS policy 25 and 27.

be no understanding of what are the possible and appropriate adaptive management responses (as opposed to a simple non complying regime in severe overlays).

16. There is a fundamental failure in the committee moving to notify the variation, without assessing these relative costs and benefits in accordance with revised s32 RMA (at least to a draft / high level).
17. We note that the previous s32 documentation for natural hazards is flawed in a number of ways and now requires updating, including because:
 - (a) It is based upon the MfE 2017 guidance for coastal hazards and climate change, not the 2024 guidance;
 - (b) It does not include an appraisal of options for adaption based upon community risk appetite informed by available mapping over different timeframes (as set out above);
 - (c) It will need to be updated in light of the revised severe overlay mapping and this should underpin any decision towards notifying the variation.

Specific Issues and Uncertainties in the Mapping – erosion

18. There are specific issues and uncertainties in the current severe overlay mapping that need to be addressed. For instance:
 - (a) The LIDAR data and NIWA's report has revealed inconsistencies in the erosion and inundation risk assessments.
 - (b) The mapping includes areas that have shown no significant long-term erosion trends. Despite clear evidence as to the stability of some areas in terms of coastal erosion, those remain mapped as severe.
 - (c) The mapping provides for no site specific recognition of mitigations on the ground – such as stop bank walls and structures at Okuru, or natural processes of accretion which mitigate erosion processes. NZCPS policy 24(1)(b) requires assessment of *both short-term and long-term natural dynamic fluctuations of erosion and accretion*.
 - (d) Adequate data and historic information about shoreline changes and sediment budgets are needed, along with an understanding of how vulnerable the coast is to climate change.
 - (e) Page 93 of the 2022 NIWA report references the uncertainty of the mapping including in light of the occurrence of a major earthquake not being accounted for although it would significantly affect the shoreline relative to sea level and

that the pulse of sediment transported down rivers will modify (build up) the shoreline.⁶

- (f) We have sought expert input to provide comment on the NIWA reports. We are informed there are further uncertainties as to:
 - (i) What data, if any, other than the erosion at the old dump site at Hannah's Clearing was used to create the map of shoreline changes (Figure 4-34 of the March 2022 report).
 - (ii) There are obvious inaccuracies in some parts of the mapping – for example at Hannah's clearing where the mapping shows a pattern of abrupt change to the inland boundary to the Severe area overlay, suggesting an area between two known data points is extrapolated with straight lines rather than with due consideration of the geomorphology and land-use.⁷ This contradicts with section 3.11 of the NIWA 2022 report, suggesting that hazard areas were manually reviewed.
19. Uncertainty of the projected erosion presents an onerous burden on landowners, and although providing for residential activities as 'permitted' may be too generous, the assessment of historical land-use and the risk under existing subdivision patterns suggests that there is scope for special consideration in addressing a differing activity status for existing residential / lifestyle sections. In other words, existing subdivisions for residential and lifestyle sections have generally been approved according to the ODP approach for discretionary consents within 150 masl – which necessitated a comprehensive hazards risk assessment. Any case for intensification, rezoning, or further infill subdivision would potentially be an increase in risk – as opposed to simply providing a reasonable consenting pathway for existing activities (i.e. single dwellings on single lots)⁸.

Uncertainties for inundation mapping

- 20. In terms of inundation, the NZCPS asks councils to consider, over 100 years, the *"cumulative effects of sea level rise, storm surge and wave height under storm conditions"* and add SLR into the mix (Policy 24.1(e)).
- 21. The approach in the NIWA reports however essentially takes a very high tide combined with a very large storm surge and a very high sea-level anomaly all at the same time. This approach is arguably more 'deterministic' than 'probabilistic'.
- 22. The NIWA methodologies should be clarified and recalibrated in light of the 2024 MfE guidance, and likely held off until later guidance expected this year, is released.

⁶ This is despite the TTMP also stating there is a 75% chance within 50 years scenario of an AF8 event, which would result in coastal accretion. The uncertainty of this consequence could also be built into a more adaptive management approach.

⁷ Refer to the screenshots of GIS overlays provided to the DPR Committee by Mr Boyd.

⁸ Consistent with policy 25 NZCPS – to avoid *increasing* risks of harm and adverse effects.

Consequences of Proceeding with Notification

Ineffective Consultation Process

23. The consultation process to date has been inadequate. Our clients inform us that many affected property owners were not properly informed or engaged. We have sent the Committee's April meeting minutes to a number of our clients who are affected by the overlay, and they were not aware of this process (despite being actively engaged in other TTP matters). Effective consultation is crucial for ensuring that the mapping accurately reflects local conditions and community needs. It is also crucial, as above, and required under MfE guidance to understand and inform any s32 assessment on relative options.
24. It is inefficient and not consistent with the requirements of s32 to put in place rules that might put residents to unnecessary expense of obtaining discretionary consents when the s32 report itself suggests that a little bit of further assessment right now would remove that need⁹.

Contrary to MfE guidance

25. The following are key extracts in relation to the mapping and planning of erosion coastal hazards, and which are contrary to the 2022 NIWA approach to date:
 - (a) Page 19 – the principle of proportionality applies in determining adaption planning processes - decisions affecting small areas and few people and requiring little sunk investment may reasonably consider climate change effects over a shorter timeframe. This should be applied on a community-specific basis and a number of those (such as Hannah's clearing and Okuru) where subdivision consents have already issued for single dwelling use – would qualify as small with little sunk investment.
 - (b) Page 56 - There is likely to be considerable spatial variability in future erosion rates under RSLR (Dickson et al, 2023). The NIWA approach assumes uniformity along the entire West Coast jurisdiction.
 - (c) Page 72 - Councils should engage with the wider community to understand what 'things or objects' of value could be affected by increasing coastal hazards and rising sea levels. This engagement should be done after the coastal hazards and SLR assessments are complete.
 - (i) Consistent with the footnoted examples, we consider this should be done before formal Schedule 1 notification, and as part of feeding into any s32 assessment.

⁹ Second generation plan reviews for Christchurch, Dunedin, Northland, and Auckland Council all provided for consultation based upon 30, 50, and / or 100 year coastal erosion timeframes, to inform community feedback for options analysis. See for example: <https://www.aucklandcouncil.govt.nz/environment/what-we-do-to-help-environment/Documents/predicting-auckland-exposure-coastal-instability-erosion.pdf>

- (d) We also understand that further technical guidance on this subject matter is to be released by MfE later this year¹⁰. It would therefore be prudent to hold off notification of the variation until that is received.

Interpretation of NZCPS

- 26. Our clients are concerned about overlapping and duplicating regulation in the form of a non-complying building rule applying to vacant residential allotments, which have already been subdivided in anticipation of residential development and obtained site specific hazard assessments to support the same.
 - (a) Site-specific investigations of potential slope erosion hazards are likely to be more detailed than any district-wide coastal hazard assessment. Council could effectively control and require these assessments on a case by case basis without a blanket presumption of avoidance or a non complying regime. A lesser activity status would be entirely appropriate.
 - (b) In considering what rule may be the most appropriate in the context of the evaluation under s 32 of the Act, the correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*¹¹ namely where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by being enabling so that people can provide for their well-being while addressing the effects of their activities.¹² The direction in policy 25 of the NZCPS does not change this case law, in that this direction provides for consideration of *increases* in risk.
 - (c) the 'avoidance' and 'mitigation' directions from the NZCPS in relation to high risks can equally be undertaken through existing resource consents which have issued residential allotment titles, which appropriately address the risks of coastal erosion on the ground, rather than high level assumptions or modelling. This is a key point of difference to consideration of intensification (i.e. denser subdivision and development or rezoning) in coastal hazard areas as compared to providing just before existing subdivided allotments to develop as anticipated.
- 27. Adaptive management and design are "Acceptance" strategies rather than an avoidance one – i.e. accept the risk (erosion) and the costs consequent on the hazard being realised (relocating buildings). Such an approach is consistent with Objective 5 of the NZCPS which provides:

¹⁰ MfE's website states that broader guidance on the practical steps to take as part of the adaptation process is expected to be published later in 2024. When this *Adaptation Planning Guidance* is released, a condensed technical version of the *Coastal hazards and climate change guidance* will sit alongside it.

¹¹ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council Decision* C153/2004 at [56].

¹² *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

Objective 5: To ensure that coastal hazard risks taking account of climate change, are managed by:

- locating new development away from areas prone to such risks;
- considering responses, including managed retreat, for existing development in this situation; and
- protecting or restoring natural defences to coastal hazards.

28. When assessing the risk of an effect, the High Court has stated that it must be able to satisfy itself (on the balance of probabilities) that the risk of the future event occurring is likely, albeit that it may be a low probability event.¹³ The case law is clear that a mere suspicion of an effect is not enough, as there must be at least a scintilla of evidence (not just a theory) sufficient to support a prognosis of an adverse effect on the environment.¹⁴
29. This is particularly relevant in that policy 24 of the NZCPS is subject to the requirement to take '*into account national guidance and the best available information on the likely effects of climate change on the region or district*'.
30. Council has not provided the evidence to support the notification of a severe hazard layer only based upon high level 1:100 AEP events, with an associated non-complying rule for new buildings. A number of properties within this will have already demonstrated that they have satisfied Policy 3 of the NZCPS by assessing the risk of coastal hazards, and taking steps to mitigate the risk to the point of acceptability through subdivision.
31. At best the NIWA 'lines' are an initial, untested, attempt to decide the initial (draft) location of the hazard lines for the eventual variation. These are not fit for immediate schedule 1 notification along with a non-complying / avoidance building regime.

Conclusion

32. Given the concerns outlined above, we strongly recommend that the TTPP Committee delay / suspend the notification of the coastal hazard mapping variation. A thorough review of the methodology, additional community consultation, and consideration of adaptive management strategies are necessary steps to ensure that the TTPP accurately reflects the risks and needs of the West Coast communities. We suggest prudent steps would be:
- (a) To commission a peer review of the NIWA reports;
 - (b) To publicly notify for comment any further peer review commissioned;
 - (c) To assess community risk appetite and consequences by way of requesting feedback on a range of options on a continuum from risk management

¹³ *R J Davidson Family Trust v Marlborough District Council* (2017) 19 ELRNZ 628 (HC), at [133].

¹⁴ *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 (EnvC).

(avoidance) to adaptive management consistent with Step 5 in the MfE Guidance (and including based upon NIWA 50 year erosion mapping, which is known to exist);

(d) To await further MfE technical guidance being released this year; and

(e) To then use the above to inform any s32 assessment.

33. **Attachments** – extracts from opinions expressed by previous Environment Court Judge Allin, in the context of the Kapiti plan review process.

Yours faithfully

TODD & WALKER LAW



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