

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

UNDER the Resource Management Act 1991

IN THE MATTER of a submission on the Te Tai o Poutini
Plan Variation 2 – Coastal Natural
Hazards Mapping

BY **MICHAEL GEORGE SNOWDEN**
Submitter

**SUBMISSION OF MICHAEL GEORGE SNOWDEN ON VARIATION 2 TO
THE TE TAI O POUTINI PLAN**

Dated: 30 August 2024

MAY IT PLEASE THE PANEL

Introduction

- [1] This is a submission on behalf of Michael Snowden (**Submitter**) on the proposed Te Tai o Poutini Plan (**TTPP**) variation 2 – Coastal Natural Hazards Mapping (**Variation**).
- [2] The Submitter could not gain an advantage in trade competition through this submission.
- [3] The Submitter wishes to be heard in support of this submission.
- [4] If others make a similar submission, the Submitter will consider presenting a joint case with them at the hearing.

Background

- [5] The Submitter made original submission #492 in relation to the proposed TTPP generally, dated 11 November 2022 (**original submission**). The original submission is discussed below in relation to the coastal natural hazard rules.
- [6] The Submitter, through Kahu Properties Limited, owns 5.05 ha of land at Okuru, South Westland, legally described as:
 - (a) Lot 5 DP 3034; and
 - (b) Section 6 SO 11816.

(Submitter properties)
- [7] The Submitter properties are attached at **Appendix 1**.
- [8] The Submitter has applied for a land use consent (RCA220133) to establish a dwelling and shed with associated earth bunding and planting on the Submitter properties. This application is still being processed.
- [9] The Submitter also holds land use consent RC-2024-0084-01 from the West Coast Regional Council, enabling the Submitter to undertake earthworks at the Submitter properties. The implementation of this

consent will further modify the topography of the Submitter properties (in addition to permitted works already done onsite). The change in topography has also occurred after the latest LiDAR data used to inform the Variation, making that data outdated.

[10] Maps of the current topography at the Submitter properties is attached at **Appendix 2**.

[11] Under the Variation mapping, part of the Submitter properties are included in the 'Alert' mapping layer (purple), with an additional area included in the 'Severe' mapping layer (red). This area is shown in the map attached at **Appendix 3**.

[12] The areas are different to the current proposed TTPP alert and severe mapping layers as shown in purple and blue hatched respectively in the map attached at **Appendix 4**.

[13] It is in the above context that this submission is made.

Submission

[14] The Submitter opposes the Variation in its current form.

Mapping

[15] The Variation mapping is opposed on the following basis:

(a) Counsel for the Submitter sent a letter to the TTPP Committee dated 20 May 2024, before the Variation was notified. This letter was on behalf of a number of property owners affected by the Variation, including the Submitter. This letter is relied on as part of this submission, notably in terms of:

(i) the Variation mapping being inconsistent with Part 2 of the New Zealand Coastal Policy Statement (**NZCPS**), the West Coast Regional Policy Statement (**RPS**), and guidance regarding the mapping of coastal hazards from the Ministry for the Environment (**MfE**);

- (ii) issues with the methodology of NIWA reports which informed the mapping of the Variation;¹
 - (iii) issues regarding the uncertainties of erosion and inundation hazards in the Variation mapping, stemming from the NIWA reports;
 - (iv) the application of NZCPS Policies 24 and 25;
 - (v) ineffective and insufficient consultation being undertaken; and
 - (vi) the Variation process being inconsistent with processes followed in other recent plan review processes in different jurisdictions.
- (b) The Submitter seeks the mapping be revised and that the Submitter properties, in particular, be removed from any alert or severe coastal hazard overlay.
- (c) This letter is attached to this submission as **Appendix 5**.

[16] While it is noted that the Council's website states the Variation does not propose any changes to the relevant proposed TTPP rules, the Submitter opposes the associated coastal hazard overlay rules on the following basis:

Scope

- (a) The Submitter lodged the above original submission which addressed, in part, the coastal hazard policies and rules in the proposed TTPP.
- (b) The Variation regarding the mapping has fundamentally changed the planning framework for new owners affected by the coastal natural hazard rules and the proposed TTPP generally.

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

- (c) The TTPP rules directly flow from the coastal natural hazard mapping overlays, as proposed to be varied by the Variation.
- (d) In response to the letter Counsel for the Submitter sent to the Committee on 20 May 2024, the Committee's legal counsel (Wynn Williams) replied in a letter dated 7 June 2024. This letter acknowledged that the rules hearing will be delayed until the mapping Variation catches up, so the hearings are heard all as one. Therefore, the Submitter considers there must be sufficient scope for submissions on the rules and related coastal hazard provisions as well as mapping, through this Variation.
- (e) This letter is attached to this submission as **Appendix 6**.
- (f) There is no prejudice to other parties in allowing for scope for submissions to include those on the rules relevant to the Variation, as the submissions on the Variation will be notified allowing for further submissions on the provisions. That the mapping and provisions/rules changes will be heard together in one hearing means that earlier submitters and later submitters will all follow the same timeframes.
- (g) As was found in *Clearwater*² and similar cases regarding scope, there would be significant prejudice to those landowners now affected and interested in the new overlays if they were not able to participate in rules policies and objectives which are now engaged as a result of the Variation. This is as a result of applying the first *Clearwater* limb of the test, in understanding scope by reference to whether the status quo of the planning framework has changed as a result of notification of a proposed plan. The Variation fundamentally changes the status quo of the existing planning framework (and the proposed TTPP as originally notified) by amending and introducing new alert and severe overlay areas.

² *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch, AP34/02, 14 March 2003. Also see *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519.

Mapping and the Submitter properties

- (h) While the Submitter does not accept the mapping for the Variation as it currently stands, the Submitter further considers that the 'alert' and 'severe' mapping for the Variation, and specifically concerning the Submitter properties, is out of date.
- (i) Appendix 3 shows the proposed mapping for the Variation. This does not take into account land use consent RCA220133 and changes in the topography of the Submitter properties, as shown in Appendix 2, that have occurred onsite under permitted rules. In particular, the 'alert' mapping layer in hatched purple at Appendix 3 includes an area of previously lower-lying land at the south-west corner of the Submitter properties that has been filled in.
- (j) This further supports the Submitter requests for exclusion of the properties from the Variation.
- (k) In addition, the Submitter considers that the effects of any potential hazards identified in the TTPP and Variation can be remedied or mitigated with earthworks. This should be reflected in the provisions to enable building and use of the Submitter properties.

Rules

- (l) The rules relevant to the Variation require more clarity regarding the relationship between the legal effect / operative status of the rule and savings/exemptions for when resource consents (and established activities) are granted and/or implemented prior to the date the proposed TTPP gains legal effect / becomes operative. Specifically:
 - (i) where consents are considered to have been given effect to, or partially given effect to, in terms of s 125 of the Resource Management Act 1991 (**RMA**), the new coastal hazard overlay and related provisions do not apply;
 - (ii) where there has been a previous subdivision of a single title for predominantly lifestyle or residential purposes, but those

new subdivided sections are not yet built on, the new coastal hazard overlay and related provisions do not apply; and

- (iii) where existing use rights apply in terms of ss 10, 10A, and 20A of the RMA, the new coastal hazard overlay and related provisions do not apply.
- (m) The rules require clarity as to what 'lawfully established' means in terms of the Variation and the proposed TTPP. The Submitter seeks instead that terminology consistent with the RMA is used, and that greater savings protection is afforded to property owners who have bought and invested in lifestyle or residential properties, or which have obtained resource consents for buildings, or which have developed on the basis of existing use rights.
- (n) the statuses of some activities under proposed TTPP rules relevant to the Variation are unnecessarily restrictive and should be reduced. Specifically;
 - (i) discretionary and non-complying activities under Rules NH-R43 and NH-R44 respectively should be reduced to restricted discretionary; and
 - (ii) permitted activities under Rules NH-R1 and NH-38 should be expanded to include a provision for existing structures as a permitted activity.
- (o) It is submitted that the above clarifications and changes are consistent with the NZCPS direction not to increase risk per Policy 25, as opposed to implementing a blanket avoidance or reduction of risk in a plan.

Summary of relief sought

[17] The Submitter seeks the following specific relief:

Mapping

- (a) That the proposed mapping overlays in the Variation are not accepted, and any further coastal natural hazards mapping

overlays are revised to be consistent with the NZCPS, the RPS, and the MfE coastal hazards mapping guidance.

- (b) That the Submitter properties specifically are excluded from the coastal alert and coastal severe overlays.
- (c) If the above relief is not accepted, then the Submitter considers that the 'Alert' and 'Severe' mapping for the Variation in relation to the Submitter properties is out of date, considering the latest topographic mapping as shown at Appendix 2 and should be amended. Therefore, the Submitter considers that the south-west area of the Submitter properties shown in the Variation mapping in the 'Alert' overlay, should be removed from that overlay.

Rules

- (d) The rules relevant to the Variation are given greater clarity regarding the relationship between the legal effect / operative effect of the rule and savings/exemptions for when resource consents (and established activities) are granted and/or implemented prior to the date the proposed TTPP gains legal effect / becomes operative.
- (e) The rules relevant to the Variation are given greater clarity regarding what 'lawfully established' means in terms of the Variation and the proposed TTPP, particularly that terminology consistent with the RMA is used.
- (f) Rule NH-R43, relating to discretionary activities within the coastal alert overlay zones, and Rule NH-R44, relating to non-complying activities within the coastal severe overlay zones, should be amended to be either of the following:
 - (i) the activities within Rules NH-R43 and NH-R44 should be classed as Restricted Discretionary activities; and/or
 - (ii) in the alternative, the non-complying activities in Rules NH-R43 and NH-R44 should exclude single titles subdivided

for lifestyle or residential purposes as of the date the proposed TTPP rule gains legal effect or becomes operative.

- (g) Rules NH-R1 and NH-38, relating to permitted activities within the coastal hazard overlay zones, should be expanded to include rebuilds, and reasonable extensions, of existing structures (as of the date the proposed TTPP rule gains legal effect or becomes operative) as a permitted activity.

[18] The Submitter seeks the following general relief:

- (a) The below Table of Relief Sought further particularises how the Submitter considers the relevant rules could be amended to achieve the above intentions in this submission, however additional, alternative, consequential, or necessary changes to these provisions may be sought.
- (b) Such other relief as may be required to give effect to this submission, including alternative, consequential or necessary amendments to the proposed TTPP that address the matters raised by the Submitter.

Dated 30 August 2024



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

Table of relief sought

Those parts the Submitter considers should be removed are ~~struck out~~

Those parts the Submitter considers should be included are underlined



Rule	Activity	Activity status where compliance not achieved
All Natural Hazard Overlays		
NH-R1	<p>Reconstruction and Replacement of Lawfully Established Buildings in all Natural Hazard Overlays</p> <p>Activity Status Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. This is the reconstruction/replacement of a building lawfully established at the time of notification of the Plan; <u>2. This is the reconstruction, replacement, or reasonable extension of an existing structure which has either obtained resource consent, or been lawfully established at the time the Plan becomes operative; and</u> 3. The building has been destroyed or substantially damaged due to fire, natural disaster or Act of God; 4. The destroyed/damaged building is reconstructed or replaced within <u>5</u> 2 years in the Westport Hazard, Coastal Severe and Flood Severe Overlays; 5. The destroyed/damaged building is reconstructed or replaced within 5 years in all other natural hazard overlays; and 6. The reconstructed/replaced building is similar in character, intensity and scale to the building that it replaces. 	Refer to specific Natural Hazard Overlay Rules.
Rules for the Coastal Severe and Coastal Alert Overlays		
NH-R38	Repairs and Maintenance to Existing Buildings in the Coastal Severe and Coastal Alert Overlays	NA

	<p>Activity Status Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. For repairs and maintenance there is no increase in the area of the building; 2. <u>For the rebuild or reasonable extension of an existing structure which has either obtained resource consent or been lawfully established at the time the Plan becomes operative;</u> 3. For reconstruction of a building lawfully established at the time of notification of the Plan where: <ol style="list-style-type: none"> a. The building has been destroyed or substantially damaged due to fire, natural disaster or Act of God; b. The destroyed/damaged building is reconstructed within 5 years in the Coastal Alert overlay and 2 years in the Coastal Severe overlay; c. The reconstructed building is similar in character, intensity and scale to the building it replaces. 	
<p>NH-R43 Option 1</p>	<p>Coastal Alert Overlay: New Buildings for Sensitive Activities and Additions and Alterations of existing Buildings that increase the net floor area for Sensitive Activities</p> <p>Activity Status <u>Restricted</u> Discretionary</p> <p>Where:</p> <ol style="list-style-type: none"> 1. These are located in the Coastal Alert Overlay 	<p>NA</p>
<p>NH-R43 Option 2</p>	<p>Coastal Alert Overlay: New Buildings for Sensitive Activities and Additions and Alterations of existing Buildings that increase the net floor area for Sensitive Activities</p> <p>Activity Status Discretionary</p> <p>Where:</p>	


	<p>1. These are located in the Coastal Alert Overlay.</p> <p><u>Activity Status Restricted Discretionary</u></p> <p><u>Where:</u></p> <p>1. <u>These are located within a single title subdivided for lifestyle or residential purposes at the time the Plan becomes operative.</u></p>	
NH-R44 Option 1	<p>Coastal Severe Overlay: New Buildings for Sensitive Activities and Additions and Alterations of Buildings that increase the net floor area for Sensitive Activities</p> <p>Activity Status Non-complying <u>Restricted Discretionary</u></p> <p><u>Where:</u></p> <p>1. These are located in the Coastal Severe Overlay</p>	NA
NH-R44 Option 2	<p>Coastal Severe Overlay: New Buildings for Sensitive Activities and Additions and Alterations of Buildings that increase the net floor area for Sensitive Activities</p> <p>Activity Status Non-complying</p> <p><u>Where:</u></p> <p>1. These are located in the Coastal Severe Overlay</p> <p><u>Activity Status Restricted Discretionary</u></p> <p><u>Where:</u></p> <p>1. <u>These are located within a single title subdivided for lifestyle or residential purposes at the time the Plan gains legal effect.</u></p>	

Appendix 1 - Map of Submitter properties



	Lot 5 DP 3034
	Section 6 SO 11816

Map Prepared



Submitter properties

DISCLAIMER: This map/plan is illustrative only and all information should be independently verified on site before taking any action. Whilst due care has been taken, Grip gives no warranty as to the accuracy and plan completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.

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1:4000 @ A4

August 20, 2024



Appendix 2 - Maps of current topography on the Submitter properties



NOTES:

- 1) ORIGIN OF LEVELS: NZVD2016
IS V SO 9226 (EAUW) - RL4.04M
- 2) SITE DATUM: NZVD2016
OIT 23 SO 11816 - RL 4.07M
- 3) CONTOUR INTERVAL:
MAJOR = 1.0M
MINOR = 0.2M
- 4) AREAS AND DIMENSIONS ARE SUBJECT TO SURVEY.
- 5) SURVEY INFORMATION HEREON IS A COMBINATION OF GNSS MEASUREMENTS AND PHOTOGRAMMETRY DERIVED FROM UAV FLIGHT 21082022

LEGEND:

- Dwelling Location
- Site Boundary
- Abutting Boundaries
- Top of Bank
- Bottom of Bank
- Minor Contour
- Major Contour
- Fence
- Edge of Seal
- Crown of Road
- Dense Vegetation
- Chip Seal
- Spot Height Label (decimal point is measured position)

REVISION	DETAIL	DATE

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 Surveying and Resource Management - Central Otago

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 LEVEL 3, 80 ARDMORE ST 17A MURRAY TERRACE
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 03 443 5052 03 445 0376

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Project

M SNOWDEN
LOT 5 DP 3034, HAAST -
JACKSON BAY ROAD

Title

SCHEME PLAN
OVERALL
FOR CONSENT

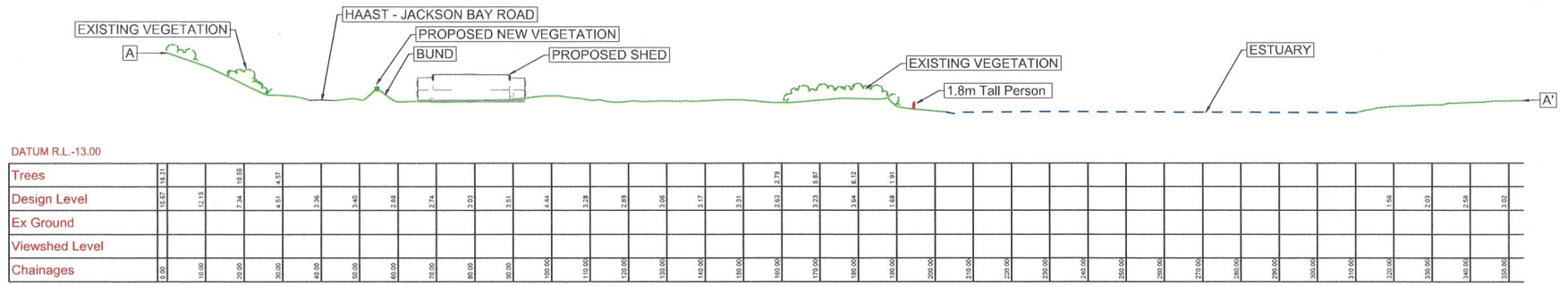
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Scale: AS SHOWN

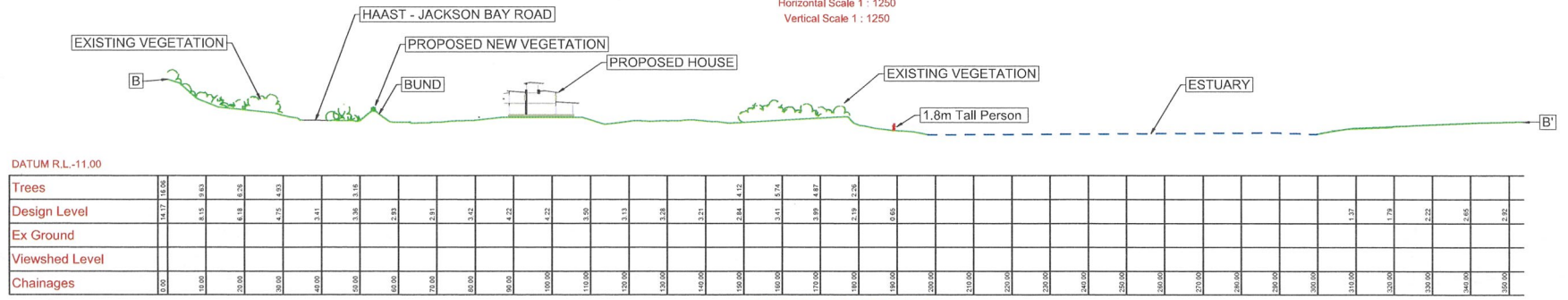
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6325	JDL	NZVD2016
Drawing No:	Sheet No:	Revision: Date Created:
W1756	2 OF 2	A 05/12/2023

SHEET 2 OF 2
SCALE 1 : 750



LONGITUDINAL SECTION A - A'

Horizontal Scale 1 : 1250
Vertical Scale 1 : 1250



LONGITUDINAL SECTION B - B'

Horizontal Scale 1 : 1250
Vertical Scale 1 : 1250



- NOTES:
- 1) ORIGIN OF LEVELS: NZVD2016
IS V SO 9226 (EAUW) - RL4.04M
 - 2) SITE DATUM: NZVD2016
OIT 23 SO 11816 - RL 4.07M
 - 3) CONTOUR INTERVAL:
MAJOR = 1.0M
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REVISION	DETAIL	DATE

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Project

M SNOWDEN
LOT 5 DP 3034, HAAST -
JACKSON BAY ROAD

Title

LONG SECTIONS
OF LOT 5 DP 3034

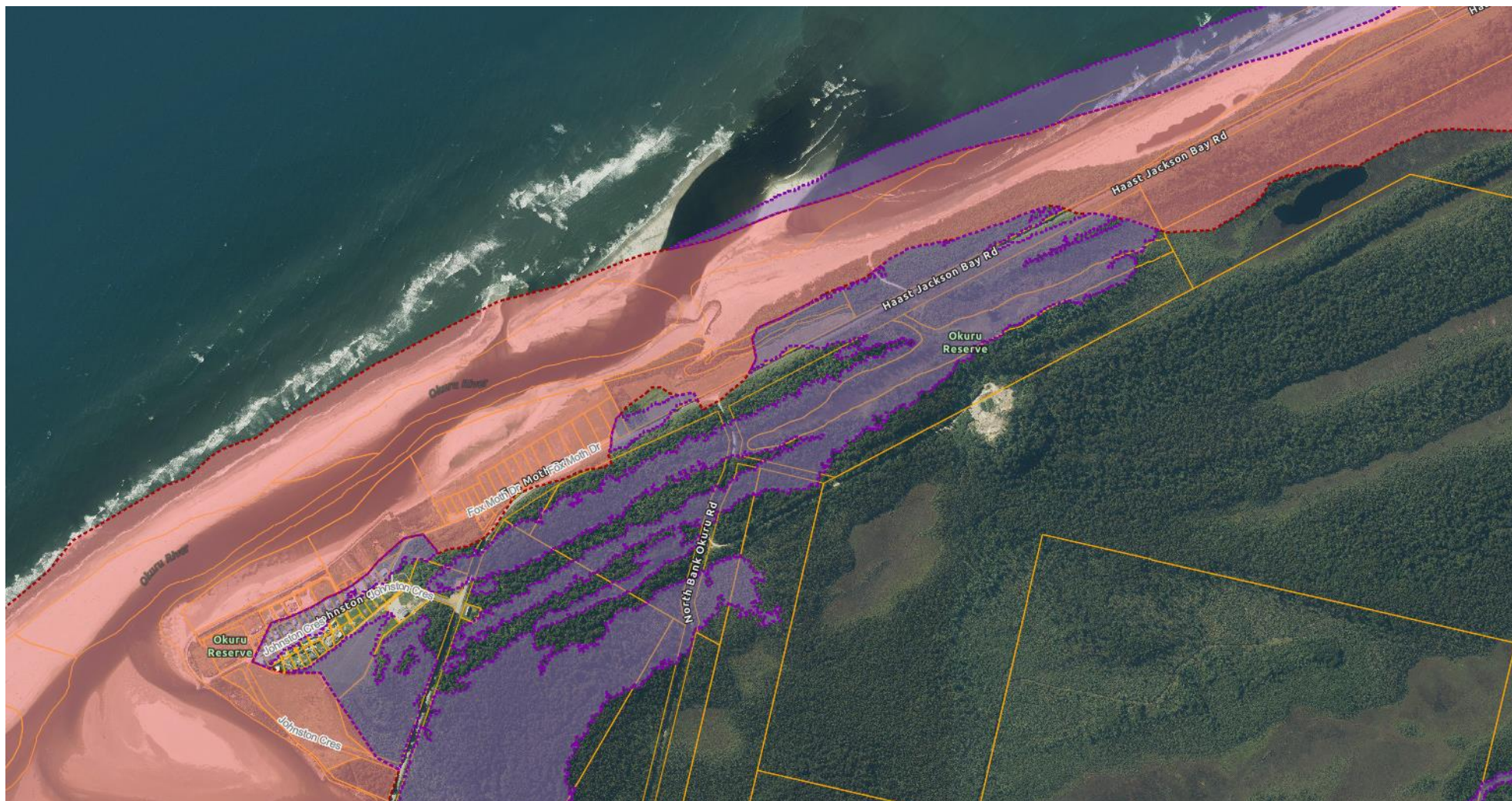
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Scale: 1:1250

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6325	CPR	NZVD2016
Drawing No:	Sheet No:	Revision:
W1766	1 of 1	A
		Date Created:
		30/11/2023

Appendix 3 – Variation mapping of the Submitter properties



Appendix 4 – Current proposed TTPP mapping of the Submitter properties



Appendix 5 - Letter to the TTPP Committee

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



Rosie Hill / Ben Russell

Senior Associate / Solicitor

Email: rosie.hill@toddandwalker.com

Matter ID: 36398



Appendix 6 - Letter from Counsel for the TTPP Committee

7 June 2024

Attention: Rosie Hill | Ben Russell

Level 2
Craigs Investment Partners House,
Five Mile Centre,
36 Grant Road, Frankton, 9300

By email to: rosie.hill@toddandwalker.com

Dear Rosie and Ben,

Te Tai o Poutini Plan – Coastal Hazard Mapping Variation

1. We act for the Te Tai o Poutini Plan Committee in respect of its proposed Te Tai o Poutini Plan (**TTPP**). We refer to your letter dated 20 May 2024 (**Letter**), and subsequent email dated 28 May 2024 in relation to the TTPP – Coastal Hazard Mapping Variation (**Variation**).
2. At paragraph 7 of your letter, you refer to the TTPP as a combined regional and district plan. We wish to clarify at the outset that the TTPP is a *combined district plan* as per section 80 of the Resource Management Act 1991 (**RMA**) and does not include the provisions of the regional plan.¹ As such, the Te Tai o Poutini Joint Committee (**Committee**) only has the functions of the District Councils in respect of preparation of a District Plan and not the functions of the Regional Council.
3. In respect of the Variation, you have identified a number of concerns and seek that notification of the Variation be delayed. The Committee has already resolved to notify the Variation and notification is scheduled to take place on 27 June 2024.² Once the Variation has been notified, the Variation will follow the schedule 1 RMA process, and be considered by the Independent Hearing Panel. We consider that the concerns you have raised are best addressed to the Independent Hearing Panel in a submission on the Variation.
4. To the extent you have raised concerns regarding the Committee's process, including in respect of consultation, we note that there is no obligation on the Committee to consult, except to the limited extent provided for in clause 3 of Schedule 1. Notwithstanding, the Committee did undertake community consultation in respect of the Variation. Details of the consultation can be found in the Agenda for the Committee Meeting on the 14 February 2024.³ Accordingly, we do not consider there is any procedural reasons why notification of the Variation should be delayed.

¹ Local Government Reorganisation Scheme (West Coast Region) Order 2019.

² Lois Eaton 'Te Tai o Poutini Plan – Draft Coastal Natural Hazards Variation – Further Information and Recommendation to Proceed with Variation' dated 29 April 2024.

³ Lois Eaton 'Te Tai o Poutini Plan – Feedback on Draft Coastal Hazards Variation to the Plan and Recommendation to Proceed with Variation' dated 14 February 2024, at paragraph 4.

5. In order to ensure that your client's concerns are able to be addressed, we have recommended to the Committee that the hearing of the coastal hazard provisions, currently scheduled for October 2024 as part of the Natural Hazards topic, be deferred until such time as the notified Variation has "caught up" in the schedule 1 process. This means that submissions on the coastal hazard provisions and on the maps will be heard together.

Yours faithfully
Wynn Williams



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