Tasman Resource Management Plan

PROPOSED PLAN CHANGE NO. 79

Deferred Zoning

Legal Submissions Received
and
Tabled Legal Submissions Received

Due Date and Time: 4pm Tuesday 17 June 2025

Contents

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Proposed Plan Change 79 to the Tasman Resource Management Plan
AND	A submission and further submissions by Andrew and Susan Talley

---

LEGAL SUBMISSIONS OF COUNSEL FOR A&S TALLEY

17 June 2025

Solicitor acting
Rachel Conner
Hazelton Law
Level 29
Plimmer Towers
2-6 Gilmer Terrace
Wellington

P: 04 472 7571
E: rachel.conner@hazelton.co.nz

Counsel
P D Tancock / D W Ballinger
Harbour Chambers
Level 1
5 Cable Street
Wellington

P: +64 21 496 823
E: Phernne.Tancock@legalchambers.co.nz
duncan.ballinger@stoutstreet.co.nz

1. INTRODUCTION

1. These submissions are made by counsel for A&S Talley, who are a submitter and further submitter on Plan Change 79 (submitter 2915, further submitter PC79.2915.1).

2. The Talley's have filed planning evidence from Mr Phillip Percy, which focuses on the detailed relief sought to PC79 and reasons for that.

3. Rather than repeat Mr Percy's evidence, the topics these legal submissions will address are:

   (a) The reasons why the operative provisions in the deferred zoning chapter were unlawful;

   (b) The legal principles that should inform the drafting of replacement provisions in the deferred zoning chapter;

   (c) The scope to address the objectives and policies framework for Māpua and Motueka;

   (d) Information requirements to retain deferred zoning locations in Schedule 17.14A; and

   (e) Concerns with how the Council is handling natural hazards issues.

4. In summary, the key issue explained by these submissions is that the provisions currently proposed by PC79 do not address an ultra vires (lawfulness) issue with the operative provisions. The whole purpose of this plan change is to address the legal issue with the operative provisions. There appears to be a narrow pathway for the panel to recommend replacement provisions that meet the legal requirements of the RMA. But if this is not possible (due to, for example, lack of information from Council officers), then this plan change ought to be declined.

5. There are also other significant issues with the Council's approach to this plan change, which cannot be easily rectified within the structure and scope of the provisions that have been notified.

1.1 Why the operative provisions are unlawful

6. This plan change has come about because A&S Talley identified an issue with the deferred zoning procedure and rules in chapter 17.14 of the Tasman Resource Management Plan (TRMP). Similar planning provisions in other plans had been found by the Environment Court to be ultra vires. A key purpose of the plan change is to introduce new provisions that provide for a legally robust deferred zone framework.

7. To achieve that purpose, you will need to have a clear understanding of what is unlawful about the operative provisions in Chapter 17.14. These submissions will assist your understanding of that.

8. The operative deferred zone rules in Chapter 17.14 of the TRMP allow a change to the underlying zoning of identified areas when certain conditions are met relating to the provision of services. As an example, the rezoning process allows for an uplift of zone in the following way:

   (a) Where the relevant service (such as reticulated water or stormwater) is to be provided by a person other than the Council, then a concept engineering plan is submitted to the Council for approval;

   (b) The Council may then resolve that the relevant service has been provided or can be provided to the satisfaction of the Council;

   (c) The deferred zoning then becomes effective from the date of the Council's resolution, and the plan is amended without further formality.

9. If land is rezoned using the process in the operative plan, then the nature of activities that can occur on the land and the rules applicable to that land will change. For example, a change from Rural 1 Zone to Residential Zone will mean that subdivisions can occur as a controlled activity with a significantly smaller minimum lot size.

10. The legal issue with this operative rule framework is as follows.

11. The process for rezoning land is inconsistent with the plan change processes in the Resource Management Act 1991 (RMA). The only way that the RMA provides for a council or privately initiated plan change to occur is by way of a plan change process pursuant to Schedule 1 of the Act. This will generally require public notification, the preparation of evaluation reports, an opportunity for public submissions, a hearing, and then appeal rights to the Environment Court. The RMA does not allow for other mechanisms outside the Act to change a plan.

12. These important procedures would be side-stepped by the deferred zoning mechanism in the operative plan. Rezoning occurs by way of a 'Council resolution' and acceptance of a servicing proposal. There is no transparent process for evaluating the effects of the proposed zone change on the environment and whether it is consistent with higher order planning documents. There is no opportunity for the public to make written and oral submissions on the zone change, or appeal right.

13. The Environment Court declared that similar plan provisions at issue in *Queenstown Airport Corporation Ltd v QLDC* were unlawful and in breach of the RMA.[1] In this 2014 decision, the Court was invited to consider the lawfulness of proposed plan rules that provided for the activity status to change depending on whether there was compliance with an approved outline development plan. Approval of an outline development plan was to occur by way of a resource consent.

14. The Environment Court held that the status of an activity must derive from the RMA and its subsidiary planning instruments. Activity status cannot derive from the grant of a resource consent or compliance with a resource consent.[2] The Court said:

[1] *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93.
[2] At [158] and [183].

> [183] We agree with Mr Bartlett that under s 87A (or correctly s 77B) the status of an activity derives from the Act and its subsidiary planning instruments and not from a resource consent. In summary we find rules 12.19.1.1 and 12.20.3.2–4 are ultra vires s 77B of the Act insofar as the rules require compliance with a resource consent which is not a standard, term or condition that is specified in the plan change.

15. The Court also said that the classification of an activity depends on the prior exercise of the consent authority's discretion to grant resource consent for an outline development plan.[3] It said that:

> [178] A second related difficulty with the permitted activity rule is that the classification of the activity proceeds from the exercise of the consent authority's discretion whether to grant a limited discretionary application for [outline development plan] activities. Thus the plan change does not convey in clear and unambiguous terms the use to which the land may be put.

16. Therefore, the proposed Queenstown rules were declared to be unlawful.[4]

17. The Environment Court decision in *Queenstown Airport* also says that the status of an activity must not depend on subjective inputs. It referred to the High Court decision in *Power v Whakatane District Council*, which says that "a Council may not reserve, by express subjective formulation, the right to decide whether or not a use comes within the category of permitted use".[5] The Court said, based on this proposition, that it struggled to understand how the classification of permitted activities can proceed from a grant of a resource consent.[6]

[3] At [178].
[4] At [171]–[183].
[5] At [182], referring to *Power v Whakatane District Council* HC Tauranga CIV-2008-470-456 at [45].
[6] At [183].

18. These principles were confirmed by a Full Court of the Environment Court in *Re Auckland Council*. The Court said the *Queenstown* case was "clear and correct" to hold that the status of an activity "must derive from the [RMA] and its subsidiary instruments, rather than from a resource consent."[7]

19. Many local authorities have accepted that deferred zoning procedures are unlawful in light of the *Queenstown* and *Re Auckland* decisions.

20. By way of example, in developing the Proposed Waikato District Plan in 2018, Waikato District Council evaluated a deferred zoning approach as one option. It described this option as enabling a zone change to occur with a Council resolution to that effect once appropriate infrastructure is in place. That option was immediately discarded because it was "ultra vires the [RMA] and relies on processes outside the district plan to determine the zoning". The documentation relating to this plan change is referred to in the expert evidence of Phil Percy.

21. In the Waipa District Council (Plan Change 13) example the operative plan contained deferred zoning provisions, which the Council recognised were ultra vires and promoted a plan change to resolve. In that case the Council had identified that the deferred zoning mechanism had a technical and legal issue, and opted to change the plan to reflect best practice. The Council's preferred option was to remove the ability to uplift via a Council resolution, and require the so-called "Growth Cells" to undergo a plan change process to uplift the deferred zoning.[8] The Deferred Zones that the Council implemented required the future intended zoning to be introduced through a plan change process with comprehensively designed and co-ordinated infrastructure provision.[9]

[7] *Re Auckland Council* [2016] NZEnvC 56, [2016] NZRMA 319 at [97] and [104].
[8] Decisions of Independent Commissioner on Waipa District Council Proposed Plan Change 13 dated 20 September 2021 at [1.7.19]–1.7.20].
[9] Waipa Proposed Plan Change 13, Decisions Version, at 14.1.3.

22. The operative deferred zoning rules in the TRMP suffer from the same fatal flaw as the provisions that were in issue in the cases just mentioned. They render the zoning of land (and the application of all corresponding rules) dependent on a Council resolution and approval of the services proposal as meeting Council's "satisfaction".

23. The change in zoning and applicable rules therefore would derive from a Council resolution, not from a requirement, condition or permission specified in the TRMP. A Council resolution is a process entirely outside the RMA and depends on a subjective assessment of whether the services proposal meets the Council's 'satisfaction. There are no objectively measurable or stated criteria or standards in the plan for what is required for a satisfactory services proposal. It bypasses the plan change process in Schedule 1 and provides no submission or appeal rights.

24. For these reasons, the operative deferred zoning provisions were unlawful. The Council has accepted that position and has stopped processing any applications to uplift deferred zoning in reliance on them. A key purpose of this plan change is to fix the legal defect and "introduce a legally robust deferred zone framework."[10]

1.2 Drafting of replacement provisions

25. Any replacement provisions must ensure that:

    (a) The status of activities derives from the RMA and subsidiary planning instruments, and not from resource consents and/or other processes; and

    (b) The status of any activity does not depend on subjective assessments – it must be sufficiently certain.

26. The expert planning evidence of Mr Percy will assist you in preparing replacement provisions that do not suffer from the defect in the operative provisions.

[10] Section 42A report at 1.4.1.

27. The crunch point is the definition of “delivered” in proposed rule 17.14.2.2. The wording proposed by officers in the section 42A report is that ‘delivered’ will mean:

> (i) Infrastructure is either physically constructed; or
>
> (ii) Infrastructure is planned and funded to be constructed within the next three years; and
>
> (iii) Whether (i) or (ii) applies, Council’s Group Manager – Community Infrastructure has confirmed that the infrastructure is delivered on the Council’s website.

28. No issue in principle is taken with element (i) as worded. Where infrastructure is physically constructed, it will be objectively clear that it has been constructed because any person will be able to see it.

29. However, the definition of the “infrastructure” that is to be delivered must be sufficiently certain and objective.

30. Many of the infrastructure elements identified in column D to Schedule 17.14A lack the necessary certainty and objectivity required for their use as a trigger rule.

31. For example, at deferred site RS14, there is a requirement for a reservoir to provide an “adequate level of service for water supply”. It is unclear what is meant by ‘adequate’ and the plan provisions contain no yardstick to measure ‘adequacy.’

32. Another problem is that column D makes frequent reference to assets that are described in a long-term plan (LTP 2024). This suggests the description and delivery of infrastructure is contingent on processes of making and amending long-term plans under the Local Government Act 2002. This has several problems.

33. Inclusion in a long term plan is not a guarantee that a particular piece of infrastructure will ultimately be built (or when). Long term plans and the funding priorities and project timings they contain are subject to change.

34. The second problem is that this approach has practical problems in that it may result in ad hoc development where the development of uplift land occurs in advance of the infrastructure earmarked in the long term plan being physically completed. This sequencing issue is particularly concerning where the uplift results in residential activities becoming a permitted activity.

35. The third problem is that the means of the uplift remains contingent on a non-RMA process; the provisions in the Plan that apply to a piece of land are altered if something is included in the long term plan and suffer precisely the same problem as the operative provisions — they rely on a process outside the RMA. Switching the trigger mechanism from a Council Resolution to being included in the long term plan does not fix this problem.

36. Mr Percy's evidence discusses a number of other examples of infrastructure elements in the plan that do not meet the requirements of certainty and objectivity.[11]

37. There is a narrow pathway to resolve these issues. If however they are not able to be resolved — for example because you do not have adequate information about the infrastructure requirements in order to draft a sufficiently certain set of replacement provisions — then this plan change process will be totally flawed and will need to be declined so that the Council can start again.

<u>"Delivered" = "Planned and Funded"</u>

38. Another concern arises with respect to element (ii) in the definition of "delivered". This allows infrastructure to be treated as "delivered" where it is planned and funded to be constructed within the next three years.

39. Mr Percy's evidence is that this has a high level of uncertainty and subjectivity in its interpretation and application.[12] The current wording is unlikely to meet the requirement that rules be sufficiently certain.

[11] Evidence of Phil Percy at [80]–[85].
[12] Evidence of Phil Percy at [65].

40. It is submitted that element (ii) in the definition of "delivered" will result in the plan being ultra vires the requirements of the RMA, as set out in the *Queenstown* and *Auckland* decisions. This is because:

    (a) The activity status of activities on the subject land will derive from processes outside of the TRMP, namely the planning and funding of infrastructure by some (unknown) actor;

    (b) The concept of being "planned" is fundamentally uncertain as it relies on a subjective intention to do something in future, when those plans may or may not come to fruition;

    (c) The concept of "funded" is similarly problematic, as it depends on subjective intentions as to how money will be spent; and

    (d) The requirement in (iii) of the definition for a Council manager to "confirm" that the infrastructure has been delivered does not inject any real certainty, because that manager has no objective way of measuring whether the plans and funding of a third party are adequate and will be implemented.

41. The principle that underpins these concerns is that if a change in the effective zoning is to be facilitated through the deferred zoning mechanism, then there must be a high level of certainty that the necessary infrastructure is in place to support the more intensive (e.g. residential) use of the land. It is not in the community interest, and contrary to good planning practice, to enable residential development when it is not supported by infrastructure.

42. The only way to resolve these issues in a way that will avoid the ultra vires problem is to define "delivered" as "physically constructed" only. You should therefore recommend the deletion of element (ii) in the definition of delivered.

1.3 Scope to make changes impacting Māpua

43. The section 32 report provided with the notified version of plan change 79 stated that its scope included all deferred zone locations except for those in or adjacent to Māpua and Motueka.[13] However, as noted in the Talley's submission, because PC79 sought to change the objectives and policies in the Chapter, (that contained provisions relevant to Māpua), further amendment was required to ringfence those two areas from the effect of PC79. Without these amendments, changing the policy framework applicable to the deferred zoning provisions, but not adequately protecting or ringfencing the Māpua or Motueka deferred zones, would mean that the new policy framework would apply to those areas regardless.[14]

44. The approach taken by Council to exclude Māpua and Motueka from the plan change but to leave the provisions that apply to them in the plan, is problematic. This is why the Talleys had requested in their feedback on the draft PC79 and in their submission on PC79 that these be deleted from the plan for the time being, given the intention to be subject to a future plan change.

45. The Officer has recommended a number of changes to the objectives and policies so that they will not apply to Māpua and Motueka, which are supported to the extent that those provisions would no longer apply in Māpua or Motueka deferred zones.

46. However, this leaves a policy gap in respect of the deferred zone locations in Māpua and Motueka, because the policy framework is largely silent for development within the Māpua and Motueka deferred zone areas.[15] Ringfencing the plan change so that it excludes Māpua and Motueka may have the unintended consequence of opening the door to development in Māpua and Motueka via resource consent applications, when that is clearly not the intention of PC79.[16]. By excluding Māpua and Motueka from the policies, the Plan ceases to have a specific set of policies to guide decisions on resource consent

[13] Section 32 report, page 5
[14] A&S Talley submission dated 13 December 2024 at [18]–[19].
[15] Phil Percy evidence at [48]
[16] Phil Percy evidence at [48].

applications in deferred zones in Māpua and Motueka. It has the effect of removing the policy that is intended to both limit undesirable development and provide direction on the timing, form and pre-requisites for preferred development. The policy gap created would, for example, make it difficult for the Council to decline a subdivision consent application in circumstances where the necessary infrastructure upgrades to service the subdivision are not delivered. In effect, it would create a much easier consenting pathway for urban development on deferred zone rural land in Māpua and Motueka than is currently the case.

47. That would obviously be undesirable and is inconsistent with the stated intention to exclude Māpua and Motueka from the scope of the plan change (i.e. for the mapped deferred zone areas in Māpua and Motueka to not be impacted by the operation of PC79).

48. Mr Percy's evidence makes a number of suggestions as to how the objectives and policies should be amended to ensure this policy gap is filled.[17]

49. The panel should be clear on the scope to make these changes.

50. The leading authority on the scope of a plan change is the High Court decision in *Palmerston North City Council v Motor Machinists Ltd.*[18] Whether a submission is within scope requires consideration of two limbs:

    (a) Does the submission address the change to the status quo advanced by the proposed plan change?

    (b) Is there a real risk that persons potentially affected by the relief sought have been denied an effective opportunity to participate in the plan change process?

[17] Phil Percy evidence at [32]–[36] and [48]–[51].
[18] *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, [2014] NZRMA 519

51. The first limb involves two aspects: the breadth of the alteration to the status quo by the proposed plan change, and whether the submission addresses that alteration. This can be addressed by considering whether the submission raises matters that should have been addressed in the section 32 evaluation report, or whether the management regime for a particular resource is altered by the plan change.

52. As part of the second limb, it will be relevant whether the relief sought by the submission is incidental or consequential to the changes in the notified document, or whether it is something "completely novel" or that has "come out of left field".

53. The proposals by Mr Percy to "fill the policy gap" are within scope of the plan change because they are incidental and consequential on the changes that the notified plan change seeks to make to the objective and policy framework. Without changes that are directed at preserving the current objective/policy framework for Māpua and Motuekathere would be an unintended shift in the policy framework in a manner contrary to the stated purpose of PC79.

Zoning requests in Māpua

54. The final point to note is that scope is clearly lacking in respect of any requests to change the zoning of land in Māpua and Motueka as part of this process. That was expressly carved out as part of the notified plan change documentation. The submitters therefore support the recommendation in the s 42A report that the requested changes to zoning in Māpua and Motueka are out of scope and must be rejected.[19]

55. A considerably higher level of analysis and information would need to have been presented in the section 32 analysis to justify any zoning changes in Māpua and Motueka.

[19] S42A Report, pg 9

1.4 Information requirements to retain deferred zone sites as part of this plan change

56. Plan Change 79 proposes to retain a number of areas of deferred zone land in the new version of Schedule 17.14A.

57. A&S Talley's submission is that the land identified for deferred zoning and inclusion in the table in Schedule 17.14A has not been subject to a detailed assessment of the environmental effects arising from the potential rezoning, in order to confirm its suitability (or not) for residential (or other intended use). The cursory information included in PC79 is insufficient and inadequate.

58. There has also been no consideration or assessment of the relevant tests in the RMA to determine whether that zoning is ultimately appropriate or not.

59. These sites need to be subject to the Schedule 1 plan change process and relevant information requirements of ss 32, 73, 74, 75, 106, and all relevant National Directions and Standards etc to confirm the suitability of the proposed new zone at a particular site and to ensure that the environmental effects of doing so are understood. This is particularly relevant where the uplifted zone will allow development of the site as a permitted activity without first determining the appropriateness of that activity. A fundamental flaw of PC79 is that it continues to seek to bypass the proper process to rezone land via plan change in the RMA.

1.5 Process concerns with how the TRMP deals with natural hazards

60. The submitters are concerned about how the TRMP is dealing with natural hazards, coastal inundation and managed retreat as part of plan change 79.

61. This concern arises because the Council appears to be advancing a number of plan change workstreams responding to natural hazards, climate change and coastal inundation in a manner that lacks integration and does not appear to be evidence-led or properly sequenced. The Talleys are concerned this will have adverse outcomes for the community, including the social and economic burden of inappropriate zoning decisions.

62. A particular difficulty arises in respect of the management of natural hazards on and around the Māpua and Motueka deferred zone sites. Mr and Mrs Talley have consistently advised the Council via submissions and consultation feedback, of their concerns that plan changes and masterplanning are occurring ahead of a comprehensive review of natural hazard management. In their submission on draft plan change 85, the Talleys suggested that there should be a clearer sequencing and integration strategy to avoid misalignment of issues and management responses.

63. They suggest that there should be a pause in some of the Council's processes in order to allow the natural hazards workstream to catch up to the other processes, including doing the scientific assessment and modelling and making decisions based on that risk. While that assessment, modelling and risk assessment may be a resource intensive exercise, it is a critical piece of work that needs to be done up front — not as an afterthought.

64. The Council also should be factoring in the likely timing of the (currently draft) national policy statement on natural hazards, so that it can ensure any plan changes to address natural hazards respond to the direction in that instrument.

65. Counsel appreciates that these matters are outside of the panel's delegated role in respect of plan change 79, but invites you to take these matters into account. The councillors on the hearing panel (Cr Maling and Cr Mackenzie) are invited to bring these concerns to the attention of the wider Council.

1.6 Conclusion

66. There are a number of serious issues with the lawfulness of this proposed plan change, which Mr and Mrs Talley placed on the table quite some time ago and which form the purpose of this plan change process. The ultra vires (lawfulness) issue has not been addressed by the currently proposed provisions. There appears to be narrow pathway for the panel to recommend replacement provisions that meet the legal requirements of the RMA. But if this is not possible (due to, for example, lack of information from Council officers), then this plan change ought to be declined.

67. There are also problems with the objective/policy framework for the deferred zone provisions in Māpua and Motueka, the information requirements for retaining the deferred zone locations in Schedule 17.14A, and the Council's approach to managing natural hazards issues. Mr and Mrs Talley's legal submissions and expert evidence proposes some ways of resolving these, but considerable further refinement and analysis is needed to address the issues and produce an appropriate and robust plan change. It is difficult to achieve an elegant fix-up within the structure and approach that the Council is taking to this plan change.[20]

P D Tancock / D W Ballinger
Counsel for A&S Talley

Dated 17 June 2025

[20] Evidence of Phil Percy at [36].

BEFORE THE TASMAN DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Plan Change 79 to the Tasman Resource Management Plan

---

LEGAL SUBMISSIONS ON BEHALF OF MT HOPE HOLDINGS LIMITED AND APPLEBY 88 LIMITED

17 June 2025

Counsel:
Sally Gepp KC / Shoshona Galbreath
3 Brookside
Nelson 7010

sally@sallygepp.co.nz | 021 558 241
shoshona@sallygepp.co.nz |021 905 314

SALLY GEPP KC
BARRISTER

Introduction

1. These legal submissions are presented on behalf of Mt Hope Holdings Limited and Appleby 88 Limited. Both own land in Tasman affected by Plan Change 79 ("**PC 79**") to the Tasman Resource Management Plan ("**TRMP**") and have made submissions on it.

2. These submissions address:

    a. Each submitter's interest, together with an overview of issues addressed in these submissions for each submitter.

    b. Lawfulness of the PC 79 framework (raised in Andrew and Susan Talley's submission).

    c. Mt Hope Holdings' relief seeking that its land be included in Schedule 17.14A (Deferred Zone Locations).

    d. Plan provisions applying to deferred sites that are not included in Schedule 17.14A.

    e. Scope issues and merits associated with "down zoning" deferred land as part of PC 79 (as sought by Talleys).

    f. Other relief sought by Appleby 88.

A schedule of the wording changes sought by Mt Hope Holdings and Appleby 88 is **attached**.

Mt Hope Holdings Limited – interests and key issues

3. Mt Hope Holdings owns land at 166 Māpua Drive which is currently zoned Rural 1 Deferred Residential.[1] This site is listed in Schedule 17.14A (Deferred Zone Location) in the Operative TRMP but proposed to be removed by PC 79.

4. PC 79 purports to exclude Māpua sites including 166 Māpua Drive from its scope, on the basis that the Māpua Master Plan and subsequent plan change will address the rezoning of deferred zone locations in and adjacent to Māpua.[2] Despite this rationale, the fact remains that sites in Māpua are affected by PC 79:

    a. By being deleted from Schedule 17.14A; and/or

    b. Because they are zoned deferred (but not in Schedule 17.14A) and affected by changes to the planning framework for deferred zones.

[1] The legal description of this land is Lot 2 DP 479544, comprised in RT673259.
[2] Section 32 report, Scope, page 5, Section 2.4 Scope of the Plan Change, page 13.

5. By purporting to leave Māpua out of scope but at the same time making changes that affect Māpua sites, PC 79 has created real difficulty in navigating the effect of its provisions.

6. In its submission Mt Hope Holdings seeks that its land be reinserted to Schedule 17.14A. This is within scope, and appropriate, for the reasons outlined later in these submissions. If that relief is not accepted then Mt Hope Holdings seeks consequential relief to ensure that it is not disadvantaged by the site's removal from Schedule 17.14A, in particular that a consenting pathway is retained for existing deferred zone land not in Schedule 17.14A ("**non-Scheduled sites**"). Removing development rights for such land is not within the scope of the plan change, and preserving the consenting pathway is necessary to avoid prejudice to landowners. This is consistent with the statement in the s 42A report that:[3]

> PC 79 does not and does not intend to 'extinguish' all RMA or TRMP development pathways for locations covered with a deferred zone in Māpua or Motueka (as shown on the operative planning maps). The resource consent and private plan change pathways remain available to these deferred locations.

Appleby 88 – interest and key issues

7. Appleby 88 owns a 2.24 hectare property on Appleby Highway within deferred site location RW5.[4] PC 79 includes this site in new Schedule 17.14A. The site is zoned Rural 1 deferred Mixed Business and PC 79 proposed to retain that same deferral zoning (no change).

8. A key issue for Appleby 88 is ensuring that the PC 79 provisions are appropriate in the two main scenarios in which these provisions will be applied:

    a. The first scenario is the "post-trigger" scenario, i.e. where infrastructure is provided in accordance with the infrastructure requirements set out in Schedule 17.14A and thus the provisions applicable to an application for resource consents for development change to the Column G provisions. Under this scenario it is important to get right the infrastructure requirements listed in Column D, the post-delivery plan provisions in Column G, and other TRMP provisions relevant to this scenario. Some changes sought by Appleby 88 in its submission to address this issue are recommended to be disallowed in the s 42A report. The s 42A also makes new additions to the Schedule 17.14A line for RW5 which are out of scope and do not reflect how infrastructure may in fact be delivered.

---

[3] Section 42A Report, page 16.

4 Legally described as Lot 2 DP 528570, held in Record of Title 856882.

b. The second scenario is where a developer seeks to proceed with development prior to the infrastructure requirements in Schedule 17.14A being delivered (i.e. before the "trigger point" is reached). It is necessary to ensure a consenting pathway is retained for the development of deferred zoned land listed in Schedule 17.14A ("**Scheduled sites**") where appropriate infrastructure is provided in advance of that trigger point (for example through on-site servicing or alternative service connections being available). Some of the policy changes proposed in the s 42A report raise issues for this pathway.

Lawfulness of PC 79 framework

9. PC 79 was notified after Tasman District Council determined that the operative framework "was not legally robust as it uses a process that is not provided for in the RMA".[5] PC 79 proposes to introduce a new deferred zone framework to replace the operative framework in the TRMP. Mr and Mrs Talley's submission asserts that the PC 79 framework is unlawful.

Operative Framework

10. The operative plan provides for the underlying zone (e.g. Rural 1) to be changed to its notated future zone (e.g. Residential) by a resolution of Council when the required infrastructure and services (e.g. wastewater; roading; utilities) have been or can be provided to the satisfaction of the Council. The TRMP is amended in accordance with the Council resolution to show only the new zone (e.g. Residential) after the resolution is passed.[6] We agree that the operative framework is legally uncertain because it purports to provide for changes to the TRMP without using the Schedule 1 process.[7]

PC 79 Framework

11. We submit that the Talley's submission point is wrong and that, at the conceptual level, the PC 79 framework is lawful. This is because it does not provide for changes to the TRMP without using a process in Schedule 1 of the RMA. Instead, it uses plan provisions within the TRMP to enable a different approach to urban activities depending on whether infrastructure and servicing is available. In summary, we agree with the following comment in the s 42A report:[8]

> Staff note that the new trigger method for deferred zones proposed in Chapter 17.14 enables the development of deferred land to proceed once trigger conditions are met without a change in zoning. Consequently,

[5] Strategy and Policy Committee advice paper, 3 October 2024 para 4.4.
[6] Operative 17.14.2(a)-(d). This approach is also reflected throughout the existing urban development plan
[7] Contrary to ss 64(4), 65(5), 73(1A) RMA
[8] 3.2.1 Plan Topic: General

staff do not consider that the notified PC 79 provisions relating to the deferred zone framework are ultra vires.

12. The concept of deferred zoning has been in the TRMP since its inception.[9] Its purpose is to streamline the process for urban development of land by enabling development-supportive zoning to be adopted but not relied on until the land can be serviced.[10] There is therefore nothing unlawful about deferred zoning *per se*. The concept has been considered by the Environment Court on a number of occasions with the focus being on how deferred zoning is utilised; there has been no suggestion it cannot be used at all.[11]

13. The PC 79 framework does not provide for changes to the TRMP without the Schedule 1 process, and so avoids the issue with the operative framework.

14. Instead, the PC 79 framework (as proposed to be amended in the s 42A report):

    a. For all deferred zone sites, applies the rural zone rules framework (through new rule 17.14.2.1) and associated rural zone policies, along with other policies that apply regardless of zone (e.g. Objective 6.3.2.4, an Urban Environment Effects objective that relates to development within deferred zones).[12] We note because it is relevant to issues discussed later in these submissions that while the rural zone rules apply, the policy framework treats deferred rural zone sites differently to non-deferred rural zone sites, effectively anticipating development of deferred sites provided appropriate infrastructure is in place.

    b. For Scheduled sites, applies the above framework *until specified infrastructure and services are delivered*, at which point it applies the end use framework through new rule 17.14.2.2 (generally residential (or mixed business) rules) and applicable policies. The zone does not change, only the applicable provisions.

15. That approach is consistent with findings of the Environment and High Court that land should only be zoned for urban use when the infrastructure necessary to allow that use is available.[13]

16. PC 79's approach to non-Scheduled sites is orthodox. One set of provisions applies and applications for consent are assessed against those provisions.

---

[9] Strategy and Policy Committee advice paper, 3 October 2024 para 4.5

[10] Ibid fn9 para 4.1-4.3

[11] See for example insert *Foreworld Developments Ltd v Napier City Council* [2005] ELHNZ 39; *Akora Orchards Ltd v Selwyn District Council* C085/06, 28 June 2006; *Marist Holdings (Greenmeadows) Ltd v Napier City Council* [2007] ELHNZ 58.

[12] Although some aspects of PC 79 are inconsistent on how other policies that apply regardless of zone apply as addressed in paragraph 44 below.

[13] *Foreworld Developments* at [15] relying on *McIntrye v Tasman District Council* (W 83/94); Prospectus Nominees v WLDC (C74/97); Bell v Central Otago DC (C 4 /97); Coleman v TDC [1999] NZRMA 39.

17. The approach to Scheduled sites, in providing for different rules to apply in different circumstances, is reasonably unusual. However, this approach, and specifically new rule 17.14.2.2 which enables it, is consistent with High Court findings on the use of rules that provide for an 'interim' approach, and on the lawful scope of district plan rules under s 76 RMA. In *Western Bay of Plenty District Council v Muir*[14] the High Court was tasked with considering the lawfulness of a rule that provided for rural subdivision applications to be considered as a non-complying activity on an interim basis until a proposed plan change inserting development contribution requirements into the district plan became operative, after which it would be a controlled activity. The PC 79 framework for deferred land listed in Schedule 17-14A is similar to that in *Muir* in the sense that it provides for activities to be managed according to one set of TRMP rules on an interim basis until the necessary infrastructure and servicing is available, and for activities to be managed according to a different set of TRMP rules once that "trigger" is reached. This is consistent with s 76(4)(c) which allows for district rules that apply "all the time or for stated periods".

18. In *Muir* the High Court ultimately rejected the proposed rule because the shift from the first status (non-complying) to the secondary status (controlled) was triggered by completion of an entirely separate, statutory public process to insert development contribution requirements into the district plan, which meant the secondary status was *incapable* of having legal effect when the proposed rule was made operative. The Court found that this fell outside the scope of the ability for rules to apply for a "stated period"[15]. It also found that the rule did not make provisions for different classes of effects arising from an activity[16], rather it sought to postpone controlled activity decision-making until the council was able to claim development contributions.[17] That is not a proper purpose for a rule.

19. In that respect, the PC 79 framework and new rule 17.14.2.2 are fundamentally different to the framework and rule in *Muir*:

    a. New rule 17.14.2.2 applies "all the time" and immediately on PC 79 becoming operative. It is capable of having legal effect at that point. There is no reliance on completion of an entirely separate planning process to trigger a shift from one set of planning controls to another as there was in *Muir.* Which rules apply depends on the state of the environment i.e. whether infrastructure and servicing is delivered. There is nothing unusual in the application of a rule changing depending on the state of the environment. For example, if a wetland is present on a property, earthworks within 100m of that wetland on

[14] *Western Bay of Plenty District Council v Muir* [2000] 6 ELRNZ 170
[15] Section 76(4)(c) RMA
[16] RMA, s 76(4)(b)(ii)
[17] See [27]-[29] for the Court's findings

a neighbouring property would require resource consent, however if the feature was determined not to be a wetland or if the wetland was removed, those earthworks would not require resource consent.[18]

b. The purpose of the PC 79 framework is clearly distinguishable from the rule in *Muir* which was focused on preserving the council's ability to require development contributions not on environmental effects.

20. This approach is also conceptually similar (as the Court in *Foreworld Developments* observed)[19] to situations where a protective overlay, like an outstanding natural landscape, applies to an area. In that case, a different set of plan provisions often applies to a proposed activity than those that apply to the underlying zone.

21. Importantly, although the PC 79 framework, and new rule 17.14.2.2 are lawful at a conceptual level for the reasons just outlined, there are some aspects of the framework as notified that add unnecessary complexity. In particular, Columns H and J in Schedule 17-14A appear unnecessary. There is no need to record the date from which the provisions that apply after services are delivered take effect. This is a matter of fact that can be determined when an activity is to be undertaken. Requiring this to be included in the TRMP would require a plan change which would undo the outcome PC 79 is trying to achieve. 17.14.20 (Principal Reasons for Rules) states that *confirmation of the activation of the trigger for any given parcel of land is provided on the Council's website and will be added to Column H of Schedule 17.14A via the plan change process*. However, if that plan change happens after "activation of the trigger" then that plan change could simply change the zoning of the land and take it out of Schedule 17.14A.

22. Other aspects of the PC 79 framework risk leading to an incorrect understanding of the way the provisions operate, do not have the intended effect of preserving development rights, or are inappropriate for other reasons. These changes are addressed later in these submissions.

<u>Planning evidence on behalf of Mr and Mrs Talley</u>

23. Mr Percy's planning evidence on behalf of the Talleys raises issues in relation to the certainty of the PC 79 approach:[20]

> … the specific elements of the proposed approach relies on a set of processes that require evaluations and decision-making by individuals or organisations, and where there remains inherent uncertainty and there is no specified methodology for doing those things, minimal

[18] Resource Management (National Environmental Standards for Freshwater) Regulations 2020, reg 52
[19] See paras [3], [4], [8]-[10], [27]-[30]
[20] Evidence of Phillip Percy, paragraphs 21 and 25

> requirements for transparency and no specified process for dispute resolution if there is disagreement with a decision.
>
> …
>
> In my view, there is a potentially valid plan construct that could be used to cause different provisions of a plan to apply to the same piece of land in different circumstances. However, such a construct would need to be drafted so that a reasonable person using the plan could readily determine which provisions apply without relying on a determination by the Council (or third party). The mechanism that causes the change of applicable provisions would need to meet the same drafting standards that are expected of a rule standard. It would need to be certain, clear, enforceable, and capable of objective interpretation.

24. While plan provisions must be certain in the sense that a person using the plan must be able to determine which provisions apply without a third party "determination", we disagree with the inference that the effect of rules must be apparent on the face of the Plan with no external input or evaluation. It is normal for the effect of some plan provisions not to be immediately apparent, and for factual circumstances to need ascertaining first. Coming back to the wetlands example above, it is common for a plan or national environmental standard to state that earthworks within 100m of a wetland require resource consent. If a feature was assessed as a wetland, that rule would apply. If the feature was not assessed as a wetland, or if that wetland was removed, those earthworks would not require resource consent. Determining whether listed infrastructure has been delivered is more straightforward than determining whether a feature meets the definition of a wetland. Rules in planning instruments do not need to be linked only to items or information shown on planning maps, and they do not require a dispute resolution provision beyond those available in the RMA.[21] Any application for resource consent will need to identify which rules apply to the application. If Council disagrees with the applicant's assessment, this is a matter that can be addressed as part of the consent process. We therefore respectfully submit that Mr Percy overstates the impact of the uncertainties he identifies.[22].

25. Mr Percy goes on to set out options for resolving the issues, one of which is to add sufficient detail, specificity and precision to the current set of provisions to address the issues.[23] As such Mr Percy appears to accept that there is not a fundamental issue with the validity of the PC 79 approach.

Re-insertion of Mt Hope land into Schedule 17.14A

26. The factual circumstances applying to 166 Māpua Drive were set out in the submitter's original submission and further submission. In summary, the land benefits from a suite of resource consents that enable development of the

[21] Such as declaration proceedings and enforcement provisions.
[22] Evidence of Phillip Percy at paragraph 22.
[23] Evidence of Phillip Percy at paragraph 26(b).

site for residential purposes, including earthworks, subdivision and stormwater discharge. As part of granting these consents, Council also uplifted the zoning deferment that applied to most of the site (refer to Figure 1 below). As a result, the majority of the site is currently zoned Residential. The deferred zoning is still in effect for a small area of land in the north-western corner of the site (Stage 2 development area). Servicing of Stage 2 was not detailed at subdivision stage, in particular due to plans for stormwater drainage still being in development.

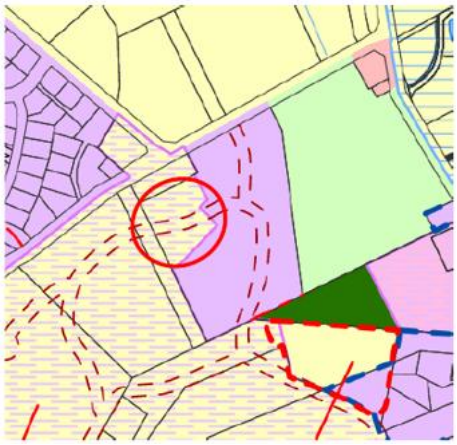

Figure 1: Operative TRMP zone map 87 showing 166 Māpua Drive as having residual deferred zoning circled red in north-west corner

27. The current zoning of this stage 2 land is Rural 1 Deferred Residential. The reason for deferment is 'Reticulated Water Supply'. The servicing requirements of the deferment have now been satisfied and reticulated water supply with sufficient capacity is available.

28. 166 Māpua Drive is in Schedule 17.14A in the operative TRMP, but is proposed to be excluded by PC 79:

~~166 Mapua Drive~~	~~Rural 1 (in part)~~	~~Reticulated water supply~~	~~30/9/21~~	~~Lot 2 DP 479544~~		~~Residential~~

29. Existing deferred zones in Māpua and Motueka including 166 Māpua Drive are proposed to be excluded from new Schedule 17.14A on the basis that they are being considered strategically in relation to other processes (in the case of Māpua, this is the Māpua Masterplan process and the plan change that will follow this). No reasons have been given for removing 166 Māpua Drive from Schedule 17.14A beyond this general intention to exclude Māpua from the current change to the deferred zone framework. While that rationale may be valid in relation to sites that are not currently in Schedule 17.14A, it is not a valid basis for deleting a currently Scheduled site out of Schedule 17.14A. There is no suggestion that 166 Māpua Drive should not be a deferred zone. On that basis alone, there is no adequate rationale, in terms of s 32 RMA, for removing this site from Schedule 17.14A and it should be reinstated.

30. To make matters worse, the Stage 2 land is not shown as an area for rezoning in Māpua Masterplan maps.[24] So, as matters currently stand, Stage 2 is:

    a. Not identified in PC 79 as live zoned Residential.

    b. Not included in Schedule 17.14A.

    c. Not identified as Future Standard Density Housing, Future Medium Density Housing or Future Mixed Standard and Medium Density Housing in the Māpua Masterplan.

31. As a result, there is currently no planning document (statutory or pre-statutory) that provides for residential zone rules to apply to Stage 2, despite all infrastructure being in place. The fact that the Mt Hope land is not currently covered in the Masterplan distinguishes it from other land in and around Māpua that is intentionally excluded from PC 79. And despite the apparent rationale for excluding 166 Māpua Drive from PC 79, the Council has not provided any certainty that the (yet to come) Māpua plan change will address Mt Hope's zoning.[25]

32. Given the uncertainty as to whether the submitter's land will be addressed in the Māpua Masterplan and the fact that the ability of Mt Hope to uplift the zoning deferment is being removed by PC 79, it is reasonable for Mt Hope to seek an alternative means of addressing the current zoning deferment through inclusion in the Schedule.

<u>Scope to seek re-insertion into Schedule 17.14A</u>

33. Mt Hope Holdings' submission sought the re-inclusion of Stage 2 into Schedule 17.14A. The s 42A report recommends against including Mt Hope's land in the Schedule.[26] No specific reason has been given so we assume that the reason is still that other planning processes are intended for Māpua[27] and that there is no scope to "deal with" Māpua sites in PC 79.

34. There are no scope issues with including Mt Hope's land in Schedule 17.14A. A submission is "on" a plan change if the submission addresses the change to the status quo advanced by the plan change.[28] Under the operative plan, 166 Māpua Drive was included in Schedule 17.14A and the deferral uplift

---

[24] It is included in the overall Masterplan extent.

[25] We wrote to Council in relation to these issues (by letter dated 14 April 2025) in which we stated "…Mt Hope Holdings requests that the Stage 2 site is live zoned Residential (Medium Density) in the post-Masterplan plan change. Jeremy: please could you pass this on to your colleagues who are managing the Masterplan process, and ask them to confirm that this is the direction that Council staff will recommend for the notified plan change." No response has been received from Council and therefore the situation remains entirely uncertain.

[26] Section 42A report, page 13.

[27] There is no separate discussion in the s 42A report on the reasons for disallowing this change but this relief is included in the section on why it is out of scope to upzone Māpua sites.

[28] *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290.

mechanism was available to it. This was the "status quo". This is proposed to be deleted by PC 79.[29] A submission seeking to retain the status quo is clearly "on" PC 79.

35. The s 42A report comments that "the legal uncertainty surrounding the existing deferred mechanism means that these sites are effectively down zoned anyway" as the deferral cannot currently be uplifted therefore there is no prejudice.[30] Council's view as to the legality of the previous mechanism for uplift that is being removed is just its view, and is not relevant when determining what constitutes the "status quo" when considering scope. Status quo is determined by what the plan says, not what the Council now thinks its effect was. Whether Mt Hope Holdings is prejudiced or not is irrelevant, but in any event Mt Hope Holdings *is* prejudiced by this change: it might, for example, have sought to challenge Council's view of the operative framework and to advance the proposition that there is a legal option for uplifting the deferral. PC 79 removes that option.

36. Various statements are made in PC 79 materials to the effect that Māpua is excluded from the scope of PC 79. Those statements (i.e saying that an area is out of scope) cannot override the fact that the plan change purports to make changes affecting that area.

37. The changes that PC 79 makes to Māpua sites are not limited to the struck out parts of Schedule 17.14A addressed above. PC 79 also changes policies and rules applicable to both Scheduled and non-Scheduled sites. Those changes also affect Māpua deferred sites, bringing them within the scope of PC 79. Those provisions are addressed below.

Plan Provisions relating to non-Scheduled deferred sites

38. If Mt Hope's land is not included in Schedule 17.14A, then the way in which PC 79 addresses non-Scheduled deferred sites becomes critically important.

39. The lack of distinction made in the policies and rules between Scheduled and non-Scheduled sites has made these provisions difficult to navigate and to seek relief on, as the appropriate relief for any particular provision depends on how Council chooses to address this distinction throughout the TRMP. We wrote to Council staff on this issue in a letter dated 17 April 2025 which pointed out that by deleting Stage 2 from Schedule 17.14A and at the same time amending or adding a range of TRMP provisions which reference Schedule 17.14A, PC 79 significantly changes the planning context for subdivision and development of Stage 2. We noted that while an application for subdivision consent could be made at this stage, assessing consistency with the TRMP provisions applicable to a non-Scheduled site is difficult, because most of the provisions are written as if all Deferred Residential zone

[29] Page 94, PC 79 Schedule of Amendments Hearing Version.
[30] Section 42A report, Page 15

sites are listed in Schedule 17.14A.[31] We specifically identified Policy 6.3.3.4A, Policy 6.3.3.4D, 6.3.30 Principal Reasons and Explanation, Rule 16.3.2.5, 17.14.1 Scope of Section, 17.14.2 All Deferred Zones including Rules 17.14.2.1 and 17.14.2.2, 17.14.20 Principal Reasons for Rules as provisions needing consideration and amendment to address this issue.

40. This issue has been (partly) addressed in the s 42A report and schedule of amendments. In terms of the policy intent, the s 42A report clarified that:[32]

> PC 79 does not and does not intend to 'extinguish' all RMA or TRMP development pathways for locations covered with a deferred zone in Māpua or Motueka (as shown on the operative planning maps). *The resource consent and private plan change pathways remain available to these deferred locations* as evidenced by the recent grant of consent for a 33 lot residential subdivision on land zoned "Rural 1 deferred Residential" in Seaton Valley Road Māpua (Resource Consent: 240148).
>
> (our emphasis)

41. The s 42A report also made a number of amendments to make it clear which provisions apply to all deferred zone sites and which apply only to Scheduled sites. Those changes assist with providing some clarity over which provisions apply to which deferred sites, but further changes are necessary for clarity, to ensure that non-Scheduled sites are treated fairly and consistently, and to ensure that the intention to preserve development rights is realised.

42. Policy 6.3.3.4D[33] is an important policy which governs when urban development of deferred zone sites must be avoided (and consequently, when it may proceed). The s 42A report recommends a change to Policy 6.3.3.4D which would make clear that it applies only to land listed in Schedule 17.14A. This is supported, however if policy direction for development of non-Scheduled sites is considered necessary it should similarly allow for their development once appropriate infrastructure is provided. (Policy 6.3.3.4D is addressed again below, with respect to changes recommended by Mr Percy (paragraphs 52 - 57), and in relation to its effect on Scheduled sites (paragraphs 62 - 68)).

43. Rule 16.3.2.5 applies to subdivision in any zone subject to deferred zone rules. Under (b), subdivision defaults to a discretionary activity where services do not meet Schedule 17.14A requirements. The section 42A report version of Rule 16.3.2.5 remains very uncertain. It could be read as applying to both Scheduled and non-Scheduled deferred zone sites, but clause (b) refers only to Scheduled sites, so the standard to be met by non-Scheduled sites is

[31] Referring to the TRMP as amended by the notified version of PC 79.
[32] Section 42A Report, page 16.
[33] Page 5, PC 79 Schedule of Amendments Hearing Version.

unclear. It should be amended to clarify that it applies only to Scheduled sites.[34]

44. Rule 17.14.2.1 (Deferred land not listed in Schedule 17.14A) states that "*for any deferred site that is not listed in Schedule 17.14A, the plan provisions that applied to the original zone continue to apply regardless of provision 17.14.2.2*." However the zoning of those sites is not simply the original zone, it is a deferred zone. Given the proposal to define "original zone" as "the zone that applied to the land before the land was rezoned to a deferred zone", this would exclude application of other provisions that apply to deferred zones, such as Policy 6.3.2.3 (which provides that development within deferred zones must be appropriately sequenced). By excluding those provisions, Rule 17.14.2.1 effectively down-zones non-Scheduled sites. This provision should be altered so that it is clear that the provisions relating to deferred zones also apply, not just the "original zone" provisions.

45. In order for Rule 17.14.2.1 to apply in a way that is fair and which accords with the intention of PC 79, it is important that plan provisions that already applied to the original zone continue to cater for deferred sites and are not changed to remove development rights as sought by the Talleys' submission and as discussed further below).

46. 17.14.20 Principal Reasons for Rules states that:

> Some deferred zone locations shown on the planning maps (located in Motueka and Māpua) are not included in Schedule 17.14A because they require further assessment for zoning and servicing. No trigger provision is available for these sites as *a further plan change is necessary prior to servicing or development".*
>
> (our emphasis)

47. This is wrong: some sites had already been assessed and were already in the plan as deferred sites. The last sentence is particularly problematic as a further plan change is not necessary prior to development (a plan change is only necessary prior to re-zoning). It is always open to an applicant to seek resource consents for development without waiting for a plan change, and the s 42A report is clear there is no intention to remove the resource consent pathway. This extract should be deleted.

48. 17.14.20 also states that:

> Comprehensive planning, including a full Schedule 1 (RMA) assessment and plan change process is undertaken, including an assessment of the

[34] Because Rule 16.3.2.5 applies in addition to subdivision rules applicable to a specific zone, this rule will have most impact where subdivision would otherwise be controlled or restricted discretionary. At least for Mt Hope Holdings, this rule is unlikely to have any practical effect because subdivision is likely to be a non-complying activity.

necessary infrastructure, to rezone undeveloped land to a deferred zone listed in Schedule 17.14A.

49. By including the reference to "undeveloped land" and "listed in Schedule 17.14A" this could be read as requiring "comprehensive planning, including a full Schedule 1 (RMA) assessment" prior to land that is already deferred being added to the Schedule (such as the submitter's site in Māpua). While we accept that a Schedule 1 process is needed to add a site to Schedule 17.14A, any future plan change may well be making a minor/technical change, not requiring a "comprehensive planning" assessment (as previous plan changes have already determined that land to be suitable as a deferred zone). This implies that there is a difference between the level of assessment that has previously been given to deferred land that is in Schedule 17.14A compared to land that is not – when that is not the case. These words should be amended.

Planning evidence for Talleys

50. Mr Percy's evidence addresses PC 79's effect on resource consent decision making in Māpua and Motueka. Many of his recommended changes are aimed at excluding Māpua from the application of deferred zone objectives and policies, thereby removing development rights in Māpua. This is a substantive change not intended by PC 79.

51. Mr Percy seeks amendments to Objective 6.3.2.3 and Policy 6.3.3.4A so that these only apply to Scheduled sites.[35] This recommendation should not be accepted, as these provisions should apply to all deferred sites. This is because:

    a. Relief that seeks to effectively "down-zone" non-Scheduled sites by excluding those sites from the application of development-focussed provisions is not "on" PC 79.

    b. The TRMP needs to retain a framework for all deferred land so that direction is given to decision makers when consents for development are sought in those areas.

52. In relation to Policy 6.3.3.4D Mr Percy states that either the policy should be amended so that the reference to Schedule 17.14A is removed so that it applies to all deferred sites, or a new policy should be introduced "specifically for managing development within deferred zones in Māpua and Motueka until such time as those zones are reviewed and updated via a plan change." He goes on to state:

35 Although it is noted that Mr Phillips evidence is not consistent with respect to Policy 6.3.3.4A as at paragraph 44 he states 'As a result, I do not recommend changing
the policy to only apply to deferred zones in Schedule 17.14A.' but then goes on to state in the following paragraph that his recommended changes include 'Limiting the application of the policy to deferred zones identified in Schedule 17.14A.'

> In my view, such a policy would need to be directive regarding the prevention of urban development in deferred zones in Māpua and Motueka until they have undergone a plan review process.

53. This should not be accepted. The s 42A report clarifies that this policy applies to Scheduled sites only. PC 79 did not purport to change the status quo by discouraging or barring resource consent applications for development on deferred sites in Māpua in circumstances where the necessary servicing is available. It was not the intention of the plan change to remove such development rights, and there are no soundly based resource management reasons to distinguish between the non-Scheduled and Scheduled sites.

54. Mr Percy's recommended changes to Policy 6.3.3.4D include addition of the following underlined test:

> The urban development anticipated by a deferred zoning <u>including</u> that referred to in Rule 17.14.2.2 and identified in Schedule 17.14A is avoided unless …
>
> …
>
> (c) <u>the land is listed in Schedule 17.14A.</u>

55. Those changes broaden the policy to include non-Scheduled sites, and then prevent urban development of such sites through the addition of clause (c). Not only is this out of scope and highly prejudicial to landowners in Māpua, it also makes no sense from an effects perspective to always require avoidance of development in those areas with no consideration being given to the level of infrastructure provided.

56. Mr Percy states that PC 79 should achieve an equivalent regulatory and policy incentive to that in the operative plan, which directs development via a zone change rather than a resource consent path.[36] The operative plan does not contain such a direction. The TRMP already contemplates resource consent applications for development of deferred sites: e.g. through "avoid" or "protect" policies that apply except if a site is in a deferred zone.[37] Such policies provide a pathway for subdivision and development in deferred zones regardless of whether those sites are within Schedule 17.14A. A resource consent pathway is available under the operative plan, and is not intended to be removed by PC 79.

57. If Mr Percy's recommended changes are accepted then there would be a significant prejudice to Māpua deferred zone sites that could not have been

36 Evidence of Phillip Percy, paragraph 32(b).

[37] For example Objective 7.1.2 "Except where rural land is deferred for urban use, avoid the loss of potential for all rural land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value".

anticipated in a plan change that purportedly did not apply to Māpua. These changes are outside the scope of PC 79.

Scope and merits of request by Talleys to 'down-zone' sites as part of PC 79

58. The Talleys' submission also requests that the Operative planning maps that show deferred land within or adjacent to Māpua and Motueka are amended and replaced with the original zone.[38] We agree with the position taken in the s 42A report that this submission is out of scope.

59. PC 79 does not propose any rezoning back to the original zone, and there have been no s 32 assessments of such an outcome. This submission does not address the change to the status quo advanced by the proposed plan change and therefore, applying the test set out in *Motor Machinists*, the submission is not "on" the plan change.

60. The deferred zone locations as shown on the operative planning maps are the result of previous Schedule 1 plan changes and were assessed as suitable for urban development by those plan changes, subject to servicing.[39] Down-zoning these sites would cut across the provision for housing and development required to give effect to the NPSUD.

61. We note that Mr Percy's evidence favours a solution that involves preserving the current zoning of deferred land in Māpua and Motueka (rather than down-zoning those deferred zone sites to their original zoning).[40]

Other relief sought by Appleby 88

<u>Changes to transportation trigger and other edits to Policy 6.3.3.4D</u>

62. As set out in Appleby 88's submission, Appleby 88 has been surprised by TDC's late change to the roading requirements for RW5. RW5 has had Rural 1 deferred Mixed Business zoning since before Appleby 88 purchased the Property, and the RW5 landowners, including Appleby 88, have been progressing their plans in reliance on the layout of the proposed Chesterfield Avenue as providing their legal roading access. RW5 properties, particularly the southern end, could feasibly 'come online' with their own NZTA-approved access and their own on-site services, or following installation of the intended reticulated services.

63. Appleby 88's submission sought amendments to Policy 6.3.3.4D:[41]

[38] (Submission Nos. 2915.3 and 2915.22).
[39] Section 42A report, page 12.
[40] Evidence of Phillip Percy at paragraph 32.
[41] Submission point 4227.3

Amend Policy 6.3.3.4D as follows:

6.3.3.4D The urban development anticipated by a deferred zoning is avoided unless:

a) *any necessary intersections, connections and upgrades of roads (as identified in Schedule 17.14A) to an appropriate standard have been delivered, or the site otherwise has road access approved by NZTA / Waka Kotahi; and*

b) ~~*the necessary*~~ *servicing infrastructure (including wastewater, water supply and stormwater) to an appropriate standard has been delivered; and*

c) *where relevant, development is sequenced with Council strategic planning, infrastructure delivery and land release programmes.*

64. This relief is not addressed in the s 42A report.

65. The reasons for this change were outlined in the submission:

> RW5 is in mixed ownership and is already in mixed rural and mixed business use. The proposed moving of the indicative road access from the existing legal road Chesterfield Avenue to the proposed new road layout, cuts through existing land uses and businesses, particularly at the north end (McShanes Road end). PC 79 as notified indicates that the intersection and new road will be developer-lead, with some Council funding per the Long Term Plan. Appleby 88 can foresee the issue of either some landowners not being prepared to contribute towards the costs of the new intersection, and/or not willing to agree to the proposed new indicative road layout given how it intersects and compromises already established mixed business land uses on some of the RW5 properties, without public works compensation.
> If some sites within RW5 can secure NZTA-approved access direct on SH6 for the time being, and are otherwise adequately serviced, then provided their own on-site use / development anticipates or is otherwise in keeping with the indicative road layout, there should be no reason why some sites can progress with the end-use zoning, and better enable landowners and/or developers to follow suit as funds and timings allow.

66. The deletion of the reference to "the necessary" servicing infrastructure is appropriate so that there is policy support where an appropriate alterative method of servicing is in place. For example, Appleby 88 has two on site bores to provide water and therefore a certain level of development could take place without waiting for the water infrastructure referred to in Schedule 17.14A.

67. The s 42A report proposes an addition to Policy 6.3.3.4D to cross-reference the definition of "delivered" in Rule 17.14.2.2. The policy effect is to "avoid" development unless infrastructure *listed in Schedule 17.14A* is physically constructed, or planned and funded to be constructed. This change is opposed for the same reason as set out above – it is unduly inflexible, without an effects-based rationale. If an application is made before infrastructure has been "delivered" (as defined) there should still be a pathway for development

as long as servicing infrastructure to an appropriate standard is provided. Thus 'delivered' should be changed to 'provided' in Policy 6.3.3.4D.

68. This is a critical change that is required to ensure that the TRMP continues to provide for a scenario whereby appropriate infrastructure is provided (either on a temporary or permanent basis) but it is not the same infrastructure as that listed in Schedule 17.14A. In PC 79 as notified, the only link in Policy 6.3.3.4D to the infrastructure specified in Schedule 17.14A was with respect to roading infrastructure (clause (a)). For that reason, Appleby 88 only sought flexibility in respect of roading infrastructure. The changes in the s 42A report are significant as Policy 6.3.3.4D now links all infrastructure requirements to those in Schedule 17.14A.

69. This issue relating to the transportation requirements also arises under submission point 4227.10 which relates to Schedule 17.14A itself. The submission states:

> Equally, Appleby 88 wishes to ensure that PC 79 anticipates and provides for the ability for part of RW5 to be upzoned to its end use, once any relevant part(s) of the indicative road is delivered, rather than the trigger point being upon the whole of the indicative road being delivered. In other words, if the properties in the southern portion of RW5 have delivered the southern part of the indicative road and are serviced by the new intersection, then those properties should not have to wait for the northern properties to also form the road and an intersection on McShanes road, in order to be upzoned to the end use.

Transportation:

Provision for either:

a) a single mid-block intersection with SH60 to be approved by NZTA.as part of the central access roadway through mixed business area as per indicative road layout on planning maps. To be provided by developer, plus some Council funding available. See AMP ID 46094 in LTP 2024. or

~~a)~~*b) individual sites have:*

i. designs that anticipate the indicative road layout on the planning maps; and

~~i.~~*ii. NZTA-approved accessways to Appleby Highway (SH6), to be rescinded upon the mid-block intersection and relevant parts of the indicative road in (a) being delivered.*

70. Appleby 88 maintain that this addition is appropriate as it will address any potential effects on the roading network while at the same time ensuring that developers who are ready to move forward are not held up by other landowners.

15 years for transportation requirements

71. Appleby 88 also sought a change to 'Scope of Section 17.14.1' and Rule 17.14.2 to allow 15 years in respect of transportation requirements for RW5, rather than the 10 years as currently provided for. The s 42A report recommends disallowing this[42] with the evaluation on this stating that "for the new, notified deferred zone framework to be legally robust, land can only be 'zoned deferred' when it is certain that the infrastructure required is to be delivered" and that "funding for infrastructure beyond 10 years of the LTP is generally considered uncertain". This rationale is unsound: infrastructure may be provided by Council or by a developer (as expressly recognised by Policy 6.3.3.4B), and the length of a LTP is not relevant for developer-led infrastructure. The change sought by Appleby 88 does not increase uncertainty as this is limited to only the transportation requirements for RW5. The only effect of this change is to allow sufficient flexibility given the issues that may arise as outlined above.

72. The s 42A report recommends the addition of a statement to Section 17.14.1 (Scope of Section) that "deferred zones identified in Schedule 17.14A are used when the infrastructure requirements are able to be clearly defined and planned to be delivered within 10 years as shown in the Council Long Term Plan." This should be deleted as it is not consistent with the intention that infrastructure may be provided by Council or a developer.

Starting date of the sunset operation

73. The further submission by Appleby 88 included the following in relation to Schedule 17.14A:

> Appleby 88 agrees that the starting date of the sunset operation could be better identified in Schedule 17.14A relative to each deferred zone. Appleby 88 considers that the starting date for RW5 is necessarily the prospective operative date of PC 79, and this could be drafted into Schedule 17.14A.

74. This change is necessary so that there can be no confusion that the 10 years runs from the land being listed in Schedule 17.14A (not from when land which is already deferred was so zoned). We anticipate that the starting date would be in Column I, however Column I is now titled "number and operative date of plan change that rezones site location to a deferred zone". This should be

[42] Section 42A report Page 30.

changed to "number and operative date of plan change that adds site location to this schedule", otherwise already deferred zones are disadvantaged.

75. As stated in the Mr Percy's evidence, presumably the Council's intention is to add a date once the decision on PC 79 has been made, but it would be helpful to have a placeholder in the table stating that. We anticipate that the placeholder would say that the date to be inserted is the date that PC 79 becomes operative.

Meaning of "delivered"

76. Mr Percy's evidence raises a concern about the definition of "delivered", particularly where it refers to planned infrastructure (as opposed to infrastructure that is already built). Appleby 88 consider that it is necessary for the meaning of "delivered" to retain the reference to planned infrastructure. Development needs to be forward planned in conjunction with planned infrastructure.

77. Mr Percy also raises questions over what 'funded and constructed' entails and whether this can be funding from private entities. In his Schedule of amendments Mr Percy recommends deleting the statement that 'council or any person may provide the services or upgrades required to enable development' from Section 6.3.30 (Principal Reasons and Explanation). This is opposed. It is inconsistent with policy 6.3.3.4B, and PC 79 should provide for infrastructure that is privately or jointly funded.

Rule 16.3.2.5: Delivery of specified infrastructure to individual parcels

78. Mr Percy's evidence states that the deferred zone mechanism proposed by the Council only works when the specified infrastructure is provided for the whole deferred zone, not for individual parcels within it.[43] We disagree. It is important that this is able to be applied where infrastructure is delivered with respect to individual sites (as anticipated by Rule 17.14.2.2, which refers to "land…subject to a deferred zone", not to the entire zone). Appleby 88 therefore opposes the recommendation by Mr Percy to amend Rule 16.3.2.5(b). This rule should retain the reference to the requirements having been met for "the whole or any part of that land." The relief Mr Percy recommends to Column E of Schedule 17.14A (deletion) should not be adopted for the same reason.

Schedule 17.14A Column D for RW5

79. The hearing version of Schedule 17.14A includes two additions in purple to the list of infrastructure required for RW5 (Column D). These are:

    a. Construction of the bulk water supply network from the Richmond South Low Level Reservoir to the Richmond West Development Area; and

[43] Evidence of Phillip Percy, paragraph 75.

b. Construction of remaining portion of Bourk [sic] Creek bulk stormwater network within Richmond West Development Area adjacent to south east boundary of RW5 to State Highway 60.

80. These have been added through the s 42A report, however there is no discussion on these changes in the s 42A report. Council staff have advised that these changes were in response to the Talleys' submission, particularly submission points 2915.30 and 35.[44] A summary of those submission points and the s 42A report recommendations is below:

A&S Talley. 2915.30	Amend the Principal Reasons 17.14.20 table (paragraph 6) to clarify its purpose and consider whether the information should be provided in an alternative format.	Allow
A&S Talley. 2915.35	Amend the wording of Schedule 17.14A entry for RW5 (McShane Road) so that compliance with this provision is not at the discretion of a third party, i.e. NZTA.	Allow in part

81. These submission points do not provide scope to add infrastructure requirements to Schedule 17.14A. The first submission point relates only to 'Principal Reasons for Rules' and does not refer to Schedule 17.14A. The second submission point is unrelated in that it seeks changes to the transportation requirement within the Schedule. The s 42A report recommends a change to the transportation requirement in response to this point. To add additional infrastructure unrelated to transportation that was not sought in any submission is beyond scope and prejudices the landowner.

82. In addition to being out of scope these additions are not appropriate because that is not how infrastructure would necessarily be delivered. Had there been a proper (or any) assessment of these additions, that would have become apparent:

a. In relation to stormwater, the servicing report prepared for The Meadows subdivision shows that the land between Chesterfield Ave and the Highway (including 88 Appleby Highway) can be serviced for stormwater via the 1200mm pipe laid in Rosales Street. Therefore development does not need to wait for any remaining construction of Borck Creek. The reference to Borck Creek should be deleted.

b. In relation to water, PC 79 as notified already addressed water. In particular the Schedule 17.14A entry for RW5 included the following:

Provision of a new trunk watermain through the mixed business area along the indicative road layout, including connection to existing 200mm

[44] Email from Mary Honey, 12 June 2025.

watermain under Borck Creek at southern end of Summersfield Boulevard. See AMP ID 86204 in LTP 2024.

This reflects what the infrastructure report accompanying the s 32 report stated in relation to the required water infrastructure.[45] Despite that, the s 42A report seeks to add "Construction of the bulk water supply network from the Richmond South Low Level Reservoir to the Richmond West Development Area". It is unclear how this relates to the water infrastructure requirements already in the Schedule and there is no support for that in the Infrastructure Report. This should therefore be deleted from the Schedule.

Schedule 17.14A Column D for RW5

83. Column C of Schedule 17.14A lists "plan provisions that apply before services are provided". That should include Chapter 6 Urban Environmental Effects as that chapter contains policies relating to deferred zoned land.

_____

Sally Gepp KC / Shoshona Galbreath
Counsel for Mt Hope Holdings Ltd and Appleby 88 Ltd

[45] Infrastructure report, 2.1.2.

Plan Change 79: Appleby 88 and Mt Hope Holdings Ltd Schedule of Amendments

Amendments are shown as strike out (deletions) or underline (additions) to provisions recommended in the Hearing Version (s 42A) Schedule of Amendments

Policy 6.3.3.4D

6.3.3.4D The urban development anticipated by a deferred zoning that is referred to in Rule 17.14.2.2 and identified in Schedule 17.14A is avoided unless:

(a) any necessary intersections, connections and upgrades of roads to an appropriate standard have been delivered, or the site otherwise has road access approved by NZTA/Waka Kotahi; and

(b) ~~the necessary~~ servicing infrastructure (including wastewater, water supply and stormwater) to an appropriate standard has been ~~delivered~~provided; and

(c) where relevant, development is sequenced with Council strategic planning, and infrastructure delivery as shown in the relevant Long Term Plan.

~~Note: For the purpose of Policy 6.3.34D, 'delivered' is defined in provision 17.14.2.2~~

Add a new Policy:

The urban development anticipated by a deferred zoning that is not referred to in Rule 17.14.2.2 is avoided unless:

(a) any necessary intersections, connections and upgrades of road to an appropriate standard have been delivered, or the site otherwise has road access approved by NZTA/Waka Kotahi ; and

(b) servicing infrastructure (including wastewater, water supply and stormwater) to an appropriate standard is provided; and

(c) where relevant, development is sequenced with Council strategic planning, and infrastructure delivery as shown in the relevant Long Term Plan.

Rule 16.3.2.5 (subdivision)

In all zones, where subdivision is a controlled, restricted discretionary, or discretionary activity, and in addition to the applicable requirements of Schedule 16.3C, where land is ~~subject to Deferred Zone Rules (as set out in Section 17.14)~~ listed in Schedule 17.14A, services are provided in accordance with:

EITHER

(a) Mandatory standards of the Nelson Tasman Land Development Manual 2020.

OR

(b) The services meet the requirements of the deferred zone rules as set out in Rule 17.14.2.2 and Schedule 17.14A for the whole or any part of that land.

Subdivision that does not comply with (a) or (b) is a discretionary activity.

Note: Other consents may be required besides subdivision consent where services are to be provided as part of the subdivision, for example, discharge permit, land disturbance consent

17.14.1 Scope of Section

…

Deferred zones are used to enable the efficient and streamlined transition of undeveloped land with insufficient servicing to developable land.

For the purposes of this section the "original zone" is the zone that applied to the land before the land was rezoned to a deferred zone. The "end use" is the provision or zone framework that applies to the anticipated future use of the land, once a specific requirement is satisfied. In the above example, the original zone is Rural 1 and the end use zone is Light Industrial.

Deferred zones identified in Schedule 17.14A are used when the infrastructure requirements are able to be clearly defined and planned to be delivered within 10 years ~~as shown in the relevant Council Long Term Plan~~ or 15 years in respect of transportation requirements for RW5.

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~~ied~~ 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

…

c) In the event that 10 years elapses from the operative date of the plan change that ~~originally established the deferred zone~~added a site to Schedule 17.14A to the delivery of the necessary infrastructure, or 15 years in respect of transportation requirements for RW5, then provision 17.14.2.2.(b) must not be applied and the provisions in Column C of Schedule 17.14A will continue to apply thereafter.

17.14.20 Principal Reasons for Rules

…

~~Comprehensive planning, including a full Schedule 1 (RMA) assessment and~~A plan change process is undertaken ~~, including an assessment of the necessary infrastructure, to rezone undeveloped land~~ to add a deferred zone ~~listed in~~to Schedule 17.14A.

...

Some deferred zone locations shown on the planning maps (located in Motueka and Māpua) are not included in Schedule 17.14A because they are being addressed through other planning processes. Therefore some provisions apply specifically to deferred sites listed in Schedule 17.14A and some provisions apply to all deferred sites. ~~require further assessment for zoning and servicing.~~ No trigger provision is available for these sites at this stage~~as **a further plan change is necessary prior to servicing or development**~~".

Schedule 17.14A

Delete Columns H and J.

Amend Column I title to:

Number and Operative Date of plan change that adds a site location to Schedule 17.14A ~~rezones site location to a deferred zone~~

Re-insert Schedule 17.14A entry for 166 Māpua Drive, Māpua.

Amend Schedule entry for RW5 as follows.

McShane Road	RW5	Chapter 5, Site Amenity Effects Chapter 6, Urban Environment Effects. Chapters 7, Rural Environment Effects. Section 16.3.2.5, Subdivision in any Zone Subject to Deferred 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.			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 -		[*add date that PC79 is made operative*]	

		Section 16.3.5, Subdivision-Rural 1 Zone. Chapter 17.5, Rural 1 Zone Rules.	**Water Supply:** ~~Construction of the bulk water supply network from the Richmond South Low Level Reservoir to the Richmond West Development Area.~~ 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:** a) Provision for a single mid-block intersection with SH60 that meets NZTA standards as part of the central access roadway through mixed business area as per indicative road layout on planning maps. To be provided by developer, plus some Council funding available. See AMP ID 46094 in LTP 2024. <u>or</u> b) <u>Individual sites have:</u> (i) <u>Designs that anticipate</u>			Business and Industrial Zones Chapter 17.3, Mixed Business Zone Rules.			

			the indicative road layout on the planning maps; and (ii) NZTA-approved accessways to Appleby Highway (SH6), to be rescinded upon the mid-block intersection and relevant parts of the indicative road in (a) being in place. ~~Stormwater Construction of remaining portion of Bourk Creek bulk stormwater network within Richmond West Development Area adjacent to south east boundary of RW5 to State Highway 60.~~						