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By Email

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Dear Nathan

Proposed district plan advice – hearing panel advice on natural hazards

1. On 8 May 2026 I provided advice to the panel on a number of issues arising from the first day of hearing on the Strategic Direction chapter of the proposed district plan (**PDP**). That advice addressed the approach to take to National Policy Statements and the Regional Policy Statement for the Welington Region (**RPS**) and Change 1 to the RPS. As this advice overlaps with that earlier analysis, I attach my 8 May advice to this letter for context.

2. This advice addresses two matters raised in the 11 August 2026 Minute issued by the Deputy Chair on behalf of the hearing panel. That Minute sought legal advice on the following two matters:

    a. The section 42A report proposes that the climate change scenario used for flood modelling in the notified PDP be replaced with a less conservative scenario, with the model to be re-run after evidence is heard. Relevant to that recommendation, some submitters have sought relief seeking a less stringent assumption for climate change effects to be applied. The panel requests more detailed analysis on those relevant submissions from Mr Davis, and for those matters to also be considered from a legal perspective (paragraph 5 i).

    b. Consideration of the recent consent order issued by the Environment Court on natural hazard provisions in Change 1 to the RPS. The Minute made parties aware of this consent order and invited submissions on that topic. It also sought legal advice on '…the extent to which the PDP can or should implement higher order direction taking effect after the PDP was notified' (paragraph 11).

3. I address each of these questions below. While this advice provides further analysis on these matters, I acknowledge that the panel may elect to seek further more specific legal advice on these matters after it has heard submissions and formed views on potential PDP changes to the natural hazards chapter that it is considering.

Scope of submissions on taking a less stringent approach to climate change effects

4. This matter is addressed in the rebuttal evidence of Stephen Davis dated 12 August 2026 at paragraphs 4.4 to 4.11. In summary, the analysis of Mr Davis is:

    a. The effect of increasing the hazard classifications to new areas would require a future plan change. This comment was made in response to the missing stream corridors addressed by Mr Osborne, as the addition of those corridors would likely increase the extent of the overlay to affect additional properties.

    b. By contrast, the proposed review of the modelling recommended by Mr Davis that will have the effect of reducing the area of the overlays is within the scope of various submissions that Mr Davis identifies. Each of the identified submissions challenges aspects of the modelling or the outcomes notified in the PDP.

5. As a result of the significant cost and time involved in completing new modelling, Mr Davis recommends that any revised modelling is completed after the panel hears submissions on this issue. This legal advice does not address the scope and timing of any potential revised modelling. It instead addresses the panel's question as to whether the potential for revised modelling is within the scope of submissions made, which would enable the panel to progress with that recommendation.

6. My advice on 8 May 2026 addressed a number of cases relevant to consideration of the scope of submissions on a plan or plan change. Looking more specifically at the proposition by Mr Davis that a more lenient/permissive outcome can be achieved if that reflects submissions made (but not a more restrictive outcome that would affect people who are not submitters), I have not located a case that expressly addresses that situation. However, in my view that conclusion on the law is consistent with the principles established in caselaw, including:

    a. *Motor Machinists Ltd v Palmerston North City Council* [2014] NZRMA 519 still remains the primary guidance case. It involves a submission by Motor Machinists regarding a rezoning proposal under Plan Change 1 to the Palmerston North City District Plan. The case examined the jurisdictional question of whether the submission was "on" the proposed plan change, as required by clause 6 of Schedule 1 of the RMA. The appeal argued that Residential Zone land owned by the company should be rezoned as Outer Business Zone, in line with other changes in the vicinity. The High Court reiterated and clarified the test from *Clearwater Resort Ltd v Christchurch City Council*, focusing on two key aspects: first, whether a submission is addressed to the scope of changes notified in the plan change; and second, whether allowing the submission would undermine public participation by permitting amendments outside the plan's foreseeable scope. I particularly note paragraph 77 of the decision:

        > *A core purpose of the statutory plan change process is to ensure that persons potentially affected, and in particular those "directly affected", by the proposed plan change are adequately informed of what is proposed. And that*

> *they may then elect to make a submission, under cls 6 and 8, thereby entitling them to participate in the hearing process. It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under cl 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the Clearwater test.*

b. An example of a reduction to the geographical area affected by a plan change arises in *Oyster Bay Developments Ltd v Marlborough District Council, unreported judgment, C081/2009.* In that case the amendments to the proposed plan change included reducing the area to be rezoned from 26 hectares to 19.7 hectares to address concerns raised in submissions about potential overdevelopment. The court found that this reduction did not broaden the scope of the notified plan change but instead lessened it to accommodate concerns raised in submissions. Such an amendment, aimed at reducing the area affected as a response to submissions, was deemed permissible and within jurisdiction.

7. In my view, the second test in *Motor Machinists* is the key to the proposition from Mr Davis regarding the extent of changes that may be acceptable following further hazard modelling being completed. On the basis that the modelling reduces the area of overlay, and therefore the properties affected, this would not undermine public participation based on the notified PDP. It would not result in an additional property constraint that someone had no opportunity to submit on (which would create an issue for the proposed outcome of now introducing missing stream corridors that would increase the extent of the overlay). By contrast, a reduction to the extent of the overlay would instead not undermine public participation, similar to the *Oyster Bay* example.

8. I agree with Mr Davis on the ability of the panel to decide that a re-modelling should occur to reduce the extent of the hazard areas. That outcome is within the scope of submissions on this issue. The substantive decision as to whether this is necessary and appropriate, and the criteria to be applied to that re-modelling, is a matter for the panel's determination.

Effect of recent Court consent order

9. Before addressing the detail of this matter, I acknowledge the difficult position that the panel faces when considering these relevant higher order documents. The PDP was notified in February 2025 based on the relevant national and regional documents at that time. Since that time, national and regional documents have changed. In particular, the new or changing national documents create significant challenges for district councils, who are then also subject to consequential regional changes. The Schedule 1 RMA process to change a district plan is not a quick process (and is now subject to plan stop

provisions in the RMA). In this case, for similar Schedule 1 process and timing reasons, even the relevant RPS does not fully give effect to the most recent relevant NPS. These circumstances conspire to create an undesirable conundrum to the panel when trying to achieve the desirable trickle-down consistency between national, regional and district instruments. In effect, this will create an outcome where the PDP will not be able to fully give effect to all aspects of the higher order documents due to the scope and process constraints that the panel is subject to. While potentially frustrating for the panel, this reflects the RMA process that all participants are subject to.

10. The relevant context to this question is usefully summarised by Mr Brown at paragraphs 4.1 and 4.2 of his evidence on behalf of the Fuel Companies and paragraphs 25-36 of the section 42A officers report for this topic. In summary, the key matters are:

    a. The PDP was notified prior to the issue of the NPS-Natural Hazards 2025 (**NPS-NH**). The PDP therefore addressed the RPS natural hazard provisions that then existed (which pre-dated the NPS-NH).

    b. Since that time, the Environment Court has issued a consent order on 31 July 2026 that resolved appeals on the natural hazard provisions of Change 1 to the RPS and amending natural hazard objective and policies of the RPS. The effect of this is that the RPS has been partially resolved to give effect to the NPS-NH (noting that Change 1 to the RPS was itself notified before the NPS-NH, so the consent order only partially implements it). While the RPS is not yet operative (as there are some consent orders outstanding, and Wellington Regional Council are yet to pass a resolution), the policy amendments settled by the 31 July consent order provide more certainty as to directives on how district plans must manage risks from natural hazards.

    c. Mr Brown expresses the view that elements of the natural hazard provisions of the PDP are not consistent with the RPS, and seeks an opportunity to review these provisions to appropriately respond to the RPS provisions, However, given the timing of these changes occurring after notification of the PDP, the panel seeks direction on the extent to which the panel 'can or should' amend the PDP to respond to these matters.

    d. It is noted that the rebuttal evidence of Mr Davis dated 12 August expresses the opinion at paragraph 4.2 that the PDP does give effect to Objective 19 and Policies 29 and 51 of the RPS (those policies were subject to change through the consent order). That substantive conclusion is a matter for the panel's review. It directly relates to whether the panel *should* make any changes to the PDP. I do not comment further on that topic at this stage, and focus on guidance on the legal position on whether the panel *can* make such changes. That is, if the panel decides that some form of substantive amendments to the PDP are required to partially give effect to higher order documents, whether that can occur within the framework of their powers.

11. Without repeating all of the analysis in my 8 May 2026 advice attached, I note the key points by way of summary:

   a. Section 55 of the RMA requires the Council to give effect to a NPS as soon as practicable, following the process in Schedule 1 of the RMA. That will require careful analysis and may involve consideration of changes to many parts of the district plan (paragraph 6).

   b. Council has some discretion as to how to amend the district plan to give effect to a NPS. That process of Council completing a fulsome and objective review can be somewhat compromised by submitters proposing their own changes before the Council has itself drafted and notified proposed provisions, which gives everyone with an interest a chance to submit (paragraphs 7 and 8).

   c. It is generally only where proposed amendments are within scope of submissions on the PDP that they can be made by the panel. However, even if proposed amendments are within the scope of submissions, some caution should still be adopted by the panel before granting the relief sought in submissions when there is a lack of review of those provisions by Council, no notification of proposed provisions to the public generally, no opportunity for potentially interested other submitters to respond to proposed changes, and the potential piecemeal approach by submitters drafting proposed PDP provisions to align with their personal interests ie. a lack of objectivity (paragraphs 13 and 15).

   d. In terms of the Change 1 appeals, the status at that time of providing the earlier legal advice on 8 May was that consent order documents had been filed with the Court (paragraph 22). They were the same consent orders as now issued by the Court on 31 July 2026.

   e. While the notified PDP did not provide a comprehensive response to Change 1 to the RPS (as it did not exist at that time), the legal obligations on Council are set out in sections 75(3) and 74(2)(a)(i) of the RMA. In essence, they require a notified process under Schedule 1 of the RMA initiated by Council to give effect to these higher order provisions. This conventional statutory process is somewhat confused when the PDP process has already commenced, and higher order provisions arise post notification of the PDP.

   f. In practical terms, there is some discretion on the weight that the panel can now give to Change 1. The extent and nature of amendments to the PDP in response to the RPS and Change 1 should consider the lack of a comprehensive Council notified response that submitters can respond to, and the potential that all interested parties are not able to comment. A cautious exercise of discretion by the panel was accordingly recommended (paragraph 28).

12. The most material change between my 8 May 2026 advice and the current position is that the Court has now issued the consent order on 31 July 2026, which had only been applied for to the Court at that earlier stage. There is accordingly now greater certainty as to the likely final form of the relevant RPS provisions. The correct process, and my advice on the caution in the exercise of discretion by the panel, is fundamentally the same.

13. The assessment of the natural hazards provisions of the PDP provides an opportunity to consider the natural hazard provisions of the RPS in more detail, from both a planning perspective (addressed by Mr Davis) and a legal perspective. My understanding of the relevant differences or gaps in the PDP provisions is informed by the section 42A report, which confirms:

    a. The RPS provisions that the PDP relied on at the time of notification have been ‘substantially overhauled’, and the NPS-NH is a new directive since the PDP was notified (paragraph 25).

    b. The RPS direction contained in policies 29 and 51 (as amended by the consent order) contains a risk-based approach, the use of overlays to identify hazards, definitions of low, medium and high hazards, and avoiding hazardous sensitive activities where hazards or risks are high (paragraph 26).

    c. While the NPS-NH has some similarities, the notified RPS did not give effect to it. However, Change 1 (as now confirmed by the Court consent order) at least partially gives effect to the NPS-NH.

    d. Mr Davis has provided rebuttal evidence dated 12 August that provides his planning view on the degree of consistency between PDP and RPS. In particular, paragraph 4.2 expresses the view that the PDP broadly implements objective 19 and policy 29 of the RPS, and that the factors in policy 51 have been given particular regard to. This evidence (and any contrary evidence from other planners that may be presented by planners to the panel) goes to the substantive issue of whether the panel should make any changes to the PDP. By contrast, this advice focuses on whether the panel can make any changes should it be minded to.

14. It is important to acknowledge the practical effect of the ‘plan stop’ provisions in section 80P of the RMA. This effectively prevents any Schedule 1 plan process until 31 December 2027. This means that Council is constrained from following a Schedule 1 process to give effect to any higher order documents in the district plan for the immediate future. That is a legislative constraint. It should not provide rationale for the gap to be ‘plugged’ through the PDP process to introduce new amendments. It is notable that the NPS-NH came into force on 15 January 2026, some 5 months after section 80P of the RMA was introduced. The NPS-NH recognises this statutory constraint by providing that there is no timeframe for local authorities to initiate changes to plans to give effect to it. This has the practical effect that it is national document that

(at least in the short term) will have more impact through the resource consent process rather than being reflected in the content of a RPS and/or district plan.

15. The panel has competing views from the planners as to whether the PDP already effectively implements the substantive requirements of the RPS. At a high level I note that substantive changes that may impact the model or risk classification of properties are much more likely to be contrary to the principles above, as they are changes that are more likely that other property owners or potential submitters may wish to participate in. However, there may be some of the PDP natural hazard objectives or policies that the panel decide to update or change to align with the RPS, provided that the panel is satisfied they are within scope of submissions. That type of change is more likely to be acceptable. As noted at the outset of this advice, I am happy to review any particular changes that the panel is considering in order to express a legal opinion as to whether the panel can make such a proposed change within the scope of a submission relied on.

16. I am happy to expand on any of these matters further.

Yours sincerely

Stephen Quinn
Barrister