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By Email

8 May 2026

Dear Nathan

Proposed district plan advice – committee advice on Strategic Direction Chapter

1. Further to my advice of 9 March 2026 that addresses a number of issues arising from the exemption process, the panel of commissioners hearing the Strategic Directions chapter of the Proposed District Plan (**PDP**) on Wednesday 29 April sought further legal advice on three matters. The legal advice sought was subsequently clarified in Minute 4 dated 6 May 2026, at paragraphs 5-8. My response to these three matters is addressed in this letter:
 - a. Clarity on the approach to take with National Policy Statements (**NPS**) provisions that were not addressed in the PDP and/or introduced after submissions were filed. In particular, how far can the panel go to give effect to a NPS, including flexibility the panel may have where no submissions were made on the matter?
 - b. Any lessons for the panel when considering the national documents? In particular, reference was made to the High Court decision in *Southern Cross Healthcare v Eden Epsom Residential Protection Society*, which considered the National Policy Statement – Urban Development (**NPS-UD**).
 - c. Consider the approach by the panel regarding the Regional Policy Statement (**RPS**) and Plan Change 1 (**PC1**), and whether this is the same as the approach to the national documents. It was noted that many mediations on the RPS have now resolved appeals, giving greater weight to the RPS (as addressed in section 5 of the 42A report).
2. I address each of these questions below.

NPS provisions not addressed in the PDP

3. My advice on 9 March 2026 contained the following conclusion on this matter:

Council is required to give effect to the new/altered higher order documents to the extent practicable within the scope provided by the exemption and submissions. There would be a

risk preparing and imposing new provisions to give effect to higher order documents when Council has not consulted on and notified those provisions (therefore provided an opportunity for people to submit on them). Any new PDP provisions required to give effect to the new/alterd higher order documents should be addressed in a future plan review process, rather than attempting to change the scope of this PDP process.

4. Further expansion on this conclusion requires reference to the relevant statutory provisions and caselaw guidance. Before addressing those matters, I note that this question raises considerations into first whether amendments to PDP provisions designed to give effect to higher order documents can be made by the panel (when proposed amendments are within scope of a submission on the PDP). In that regard, some generic submissions may refer to the need for amendments to the PDP to give effect to higher order documents, but do not state what those proposed amendments are. By contrast, other types of submissions state exactly what proposed amendments to the PDP are sought. The second consideration is then whether the panel should exercise discretion to make amendments to the PDP in the circumstances. I consider the relevant provisions and caselaw on these matters further below.
5. Section 55 of the Resource Management Act 1991 (**RMA**) sets out the approach to be taken by Councils in response to a national policy statement. It requires a two step process:
 - a. There is no need to progress through the normal Schedule 1 process for amendments required to a district plan where the NPS directs that specific objectives and policies are required, or if amendment is necessary to make the district plan consistent with any constraint or limit set by the NPS.
 - b. All other amendments to the district plan to give effect to the NPS must follow the Schedule 1 process.
6. In terms of timing, the Council must make these district plan amendments under section 55(2D) of the RMA 'as soon as practicable', or within the timeframe set by the NPS. It is evident from this section that the Council must carefully consider the NPS content and propose district plan amendments on a holistic basis. This is to ensure relevant changes to the district plan address all matters across the district plan as a whole in response to a NPS, and are well considered and appropriate. This exercise by the Council may require changes to multiple parts and provisions within the district plan.
7. There is inevitably some discretion to be exercised when assessing *how* the Council proposes to amend its district plan to give effect to a NPS. Such amendments are a policy exercise, requiring the Council to draft and notify proposed PDP provisions. A considered and proper Schedule 1 process then provides the opportunity for submissions and further submissions on those proposed PDP changes. That normal statutory process is compromised to some extent if changes to the PDP are drafted by submitters requesting changes by the panel in response to a NPS. In essence, such requests provide an advantage to those submitters who request and draft their own PDP changes, without other submitters who may be interested in those changes given an opportunity to consider and comment on proposed amendments as drafted and notified by the Council.

8. A process that is fair to everyone with an interest in the district plan is for changes proposed in response to a NPS to be introduced through a notified plan change. That process enables the Council to propose a comprehensive and considered set of changes, and for all parties with an interest to submit on those changes. By contrast, if the panel on the PDP hearings make changes to the PDP by drafting new provisions in response to particular submitter requests and/or adopting the drafting prepared by particular submitters, that is to the disadvantage of others who are not involved in that process, and therefore have not seen any notified changes. That approach could also result in a piecemeal response by the Council to NPS provisions, and may mean that the Council is vulnerable to a process challenge on appeal.
9. The section 42A report to the panel on the Strategic Direction hearing on the PDP outlines at paragraph 56 the 10 national documents that have been approved on 18 December 2025, and came into effect on 15 January 2026. This included 7 NPS documents. As the PDP was notified on 6 February 2025 (and that version had been approved by the Council in late 2024), the Council could not review and respond to these national documents in the notified PDP. That review and response to these national documents is a substantial exercise. It will necessarily be a matter for a future plan change. The notified PDP accordingly does not reflect the Council's considered response to each of these national documents, as that exercise has yet to occur.
10. It is acknowledged that this process creates some practical challenges for the panel now hearing PDP submissions when these national directions are now in existence. It is inevitable that some submitters will refer to the new national direction, and seek changes to the PDP when they consider that such changes are consistent with the outcome that they are seeking. This will occur irrespective of the absence of the Council's proposed PDP provisions to give effect to those national documents. The notified PDP on 6 February 2025 did not propose provisions to give effect to the national documents that some submitters are now seeking changes by reference to.
11. It is acknowledged that an example of this issue is raised in the Winstones submission and legal submissions. The Winstones submission seeks in a general way that the PDP is updated to 'accurately reflect the directions in National Policy Statements and National Environmental Standards.' The legal submissions presented to the panel dated 23 April at paragraph 29 discuss a general 'whole of plan' submission to give effect to various aspects of national policy statements and environmental standards considered to be beneficial to Winstones' activities, which paragraph 32 then acknowledges is a matter for later hearings. The general proposition of Winstones is that there is sufficient scope in their general submission to enable any of the changes to the PDP, with details presumably to be proposed later in subsequent hearings, that are considered by Winstones to be necessary to give effect to these national documents.
12. Caselaw confirms that while there is an obligation on the Council to give effect to the amended higher order direction, this obligation does not require the changes to be made immediately. The obligation to give effect to a NPS is also subject to whether there is

jurisdiction for amendments to be made to the PDP in terms of the scope of submissions, and then subject to the substantive discretion of the panel. This is consistent with the High Court's decision in *Horticulture NZ v Manawatu-Wanganui Regional Council* [2013] NZHC 2492 (refer paragraphs [99] – [101]).

13. It is generally only where amendments are within the scope of the PDP that they can be made by the Panel (unless the amended national direction provides for the amendments to be made without using a Schedule 1 RMA process). Each NPS has its own implementation requirements and transitional provisions which will need to be considered. This is one point made by the High Court in *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948 at [87] and [88].

14. On scope and arguments around limitations placed on it, while the *Motor Machinists* still reflects the established position, when implementing national direction, Judge Smith in *Beachlands South Limited Partnership v Auckland Council* [2024] NZEnvC 035 said at [48]:

"While generally a Council would have the power to adopt any plan changes it wishes and limit that in any way it wishes (within reason), the mandatory nature of the requirements in 4.1 NPS-UD indicates that it must always be open to a party to submit that the changes have not gone far enough."

15. As noted in my 9 March advice, although there is jurisdiction to make amendments to the PDP to give effect to higher order documents where the amendments sought are within scope of submissions, in my view some caution should be adopted by the panel as to whether to grant the relief sought. This is due to the lack of any comprehensive review of the district plan by the Council to give effect to these national documents, and notify the proposed amendments accordingly. This means that any changes sought to particular PDP provisions will be piecemeal, and will not enable all those potentially interested submitters to see the changes through a notified proposed plan and submit accordingly. The timing and circumstances of the PDP accordingly warrants some degree of caution by the panel in this regard. However, despite the caution noted above, if a decision is made by the panel to warrant some particular PDP changes to address specific matters then reliance can be placed on general submissions such as Winstones to provide jurisdiction to enable those changes to be made.

16. Irrespective of PDP provisions to give effect to national documents, and what changes to the PDP that the hearing panel proposes or accepts, these national documents remain relevant to the processing of all resource consents in the meantime. This is required by section 104(1)(b) of the RMA, irrespective of PDP and ODP provisions. It is accordingly not the case that national documents are irrelevant until changes have been made to the district plan.

Lessons from Southern Cross decision

17. The request has been made to consider any lessons for the panel from the High Court decision in *Southern Cross Healthcare v Eden Epsom Residential Protection Society*, which considered the National Policy Statement – Urban Development (**NPS-UD**). To some extent, this query is an extension to the matter considered above for the first question.
18. In broad terms, the *Southern Cross* case is a reflection of the caselaw and principles noted above. It is an example where the High Court on appeal from the Environment Court concluded that the decision had not gone far enough to give effect to the NPS-UD. It found that the Environment Court had erred in its interpretation of the NPS-UD, when considering it in the context of the private plan change under consideration. It found that the Court’s classification of parts of the NPS-UD as not relevant was too narrow and was incorrect, and that conclusion had a material effect on the Court’s decision to refuse the private plan change request.
19. While an important affirmation of the need to carefully consider the content of the higher order documents and to ensure that they are given effect to in a manner that does not limit their content and effect, the current focus of the panel on the PDP relates more to whether the higher order documents can be taken into account, rather than whether the content of the PDP as notified has correctly given effect to the higher order documents. The notified PDP has expressly not yet given effect to those documents. That is a reflection of the timing as summarised above. Giving effect to those national documents is a comprehensive exercise to be completed by the Council at a later time. The focus of this advice is therefore to assist the panel on how to consider and respond to submissions that seek changes to the PDP, regardless of the fact that the PDP has not yet addressed those documents. While the scope of submissions may provide the opportunity for the panel to amend the PDP to give effect to aspects of the higher order documents as sought by submissions, some caution needs to be exercised in how far the panel should progress in this regard when those changes have not been notified and accordingly enable all those with an interest to submit on them.

RPS and PC1

20. The request has been made to consider the approach by the panel regarding the Regional Policy Statement (**RPS**) and Plan Change 1 (**PC1**), and whether this is the same as the approach to the national documents as I have covered under questions 1 and 2 above. It was noted at the hearing on 29 April that many mediations on the RPS have now resolved appeals, giving greater weight to the RPS (as addressed in section 5 of the 42A report).
21. By way of background, in terms of PC1 it is understood that the GWRC decision was issued on 4 October 2024. Fourteen appeals were lodged with the Environment Court. Court assisted mediation was held from 20 May 2025 to 5 September 2025, with a range of direct discussions occurring after conclusion of mediations. This only relates to provisions that went through the Schedule 1 process. All Freshwater Planning Process provisions in PC1

are operative, some of which I understand will be relevant to the PDP eg. Policy FW.3 regarding what district plans must do to manage the effects of urban development on freshwater.

22. I am advised that there are consent order documents filed with the Environment Court that would resolve the PC1 appeals on the urban, transport, natural hazards and some climate change topics. There has been no response from the Court as yet to those consent orders. Only one consent order has been issued, on a minor matter around forestry. There is also a Court hearing on 11 May, which is limited to appeals related to Policy 39. The only topic not yet at a hearing stage or with consent order documents filed is the indigenous ecosystems topic.
23. There is an appeals version of the RPS available that shows the PC1 changes integrated into the operative RPS, with those subject to appeal showing in red text not black: [Microsoft Word - RPS Change 1 Appeals Version - Sep 2025.docx](#)
24. There are undoubtedly some similarities between this question and the first two questions addressed above. In particular, the notified PDP does not provide a comprehensive response to PC1. The relevant background and dates are provided in paragraphs 61-66 of the section 42A officers report. In particular, it is noted in that report that Environment Court appeals on PC1 are yet to be resolved, so there is not yet certainty as to the final form of that document. Despite that, the statutory obligations on the Council are that in due course:
 - a. under section 75(3) of the RMA, it must 'give effect to' any RPS.
 - b. At the moment there is both an operative RPS and a proposed change to that document through PC1 that has progressed through to appeal stage. In respect of PC1, the obligation under section 74(2)(a)(i) is to 'have regard to' PC1 as a proposed RPS.
25. The Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] NZSC 38, at [77] stated that to give effect to a policy simply means to implement it. In other words, direction in the RPS is to be implemented.
26. In terms of 'have regard to', this means that the Panel needs to give genuine attention and thought to PC1, but it is at the Panel's discretion what weight it can allocate to it. This means that material consideration is required, not just cursory consideration. The Supreme Court in *Royal Forest and Bird Protection Society Inc v NZTA* [2024] NZSC 26 has recently addressed the matter. While recorded in the minority Judgment of Glazebrook J, the following statement was made: "A relevant plan provision is not properly had regard to (the statutory obligation) if it is simply considered for the purpose of putting it on one side".
27. The detail of PC1 and how it should be considered in the PDP context is a matter to be addressed by the section 42A reporting officers, and for subsequent hearings. In broad terms, it is understood that PC1 sought to amend the RPS to give effect to new national

direction, including the NPS-UD and to partially give effect to the NPS-FM. There was also a variation to PC1.

28. In terms of engaging with the content of PC1, there is undoubtedly some discretion for the panel on the weight to be given to PC1. As decisions have been issued, but appeals not yet resolved, it is further through the process and warrants greater weight being attributed. The caselaw authority above would require that some substantive assessment of its provisions is required. The extent and nature of amendments in response to the RPS and PC1 are however matters of discretion (including consideration of other parties who are not participating in this PDP process or commenting on changes) and subject to the scope of submissions, as addressed further above.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S. Quinn', with a long horizontal flourish extending to the right.

Stephen Quinn

Barrister