STEPHEN QUINN
BARRISTER

Nathan Geard
Policy Planning Manager
Hutt City Council
LOWER HUTT
By Email

10 November 2026

Dear Nathan

**Proposed district plan advice – scope for Tiaki Wai proposed amendments**

1. On 16 October 2026 I provided advice to the Panel addressing a number of legal issues as directed in Minute 18. One of those issues related to a proposed new objective to the PDP sought by the submitter Tiaki Wai. The proposed objective was to protect the Waiwhetū aquifer. Legal advice was sought on the lack of any specific policies or rules/standards expressly sought by the submission to achieve the proposed objective. The conclusion in that legal advice was that an orphan objective, without supporting policies and rules/standards, is not sound resource management practice.

2. In Minute 18, the Panel directed the planner on behalf of Tiaki Wai, Mr Blackman, to undertake a planning assessment to set out which existing policies and methods within the PDP would connect to the proposed new objective to protect the Waiwhetū aquifer, as requested by Tiaki Wai in their submission.

3. Mr Blackman completed that assessment requested by the Panel in a supplementary statement of evidence dated 9 October 2026. The conclusion of that planning analysis in paragraph 32 is that the proposed objective is not an orphan objective, as there are existing provisions in the PDP that give effect to it. That is a substantive matter for assessment by the Panel.

4. As part of the 9 October 2026 supplementary planning assessment, Mr Blackman took the opportunity to recommend under the heading 'Further consequential amendments':

    a. A new policy for the Three Waters chapter (as outlined in paragraph 21) to state:

> *Ensure land use, subdivision and development are designed having regard to the values, operational requirements of and any risks to the Waiwhetū Aquifer (activities above the Groundwater Supply Protection Area - Map 41 of*

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*Greater Wellington Regional Councils Natural Resources Plan) and associated groundwater infrastructure*.

b. An amendment to existing policy HS-P1(3) of the Hazardous Substances chapter (as outlined in paragraph 25).

5. Tiaki Wai also filed a further memorandum dated 9 October 2026 alongside Mr Blackman's planning statement. That memorandum provides analysis in paragraphs 8-11 on the merits of the proposed consequential amendments as sought by Mr Blackman. It particularly addresses section 104G of the RMA, which outlines the need to consider activities affecting drinking water supply source water when considering an application for resource consent.

6. In addition to the merits assessment in support of the proposed changes sought by Mr Blackman, the memorandum also addresses whether Tiaki Wai has legal scope to seek amendments to policy HS-P1(3) and to introduce a new additional policy to the PDP. These matters are briefly addressed in paragraphs 6 and 7, where the memorandum submits that scope for those PDP amendments arises from paragraph 15 of the original submission of Wellington Water Limited dated 2 May 2025. Paragraph 15 was part of an introduction section in the submission that provides a background description of the three water assets in the Hutt Valley (as outlined in paragraphs 11-15). It is contained in the part of the submission that precedes the table on pages 7-16 that sets out the 'decisions requested' by the submission. Paragraph 15 of the submission states:

> *The Hutt Valley is also home to the Waitwhetū aquifer, an important water source for the Wellington region. Water from Waiwhetū aquifer is abstracted from bores in Lower Hutt, which Wellington Water treats and distributes. The water for public supply is treated at the Waterloo Water Treatment plant and is pumped to reservoirs around Hutt Valley and Wellington. The aquifer is of significant importance to Wellington's drinking water supply and therefore needs to be protected from third party actions that could have an adverse effect on it.*

7. You have advised that, to the Council's knowledge, Tiaki Wai has not previously raised the proposed new policy or an amendment to HS-P1(3) of the PDP, until this latest 9 October evidence and memorandum.

8. Against this background, you seek legal advice on whether there is scope for the Panel to consider the new policy/amendment to HS-P1(3) that has been sought by Tiaki Wai on 9 October 2026. In preparing this advice, I have reviewed Mr Blackman's planning statement and Tiaki Wai's memorandum dated 9 October 2026, and the original Wellington Water/Tiaki Wai submission on the PDP dated 2 May 2025.

9. This legal advice does not address the substantive merits of the proposed PDP amendments sought by Tiaki Wai. The importance of protection of the Waiwhetū aquifer is acknowledged. The substantive merits of the PDP changes sought on 9 October are

matters for the Panel to assess on the basis on the evidence presented. You have asked me to address the legal basis for the changes sought, particularly whether the changes are within the scope of the Tiaki Wai submission.

10. The legal tests relevant to the scope of submissions are well established. The starting point is to determine whether a submission is 'on' a plan change. In *Palmerston North City Council v Motor Machinists Ltd*[1] the High Court referred to its earlier decision of *Clearwater Resort Ltd v Christchurch City Council*[2] and confirmed that a two-limbed test must be satisfied:

    a. The submission must address the proposed plan change itself, that is it must address the extent of alteration to the status quo brought about by that change; and

    b. It must also be considered whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.

11. In considering the first limb of the *Clearwater* test, the High Court in *Motor Machinists* found that the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is likely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be 'on' the plan change.

12. In relation to the second limb of the *Clearwater* test, the High Court identified the risk that to override the reasonable interests of people and communities by a 'submissional side-wind' would not be robust, sustainable management of resources. Given the other options available, which include submitting an application for a resource consent, seeking a further public plan change, or a private plan change under Part 2 of the First Schedule to the RMA, the High Court in *Motor Machinists* was of the view that a precautionary approach to jurisdiction imposes no real hardship.[3]

13. The decision of the High Court in *Albany North Landowners v Auckland Council* [2026] NZHC 128 indicates that in a whole of plan review, as opposed to a relatively discrete plan change or variation, the scope for a submission to be on the plan is likely to be very wide.

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[1] *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC) at [80] to [82] and [91] (d) and (e).

[2] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02.

[3] *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC) at [78] and [82].

14. The generic scope caselaw as summarised above relates to changes sought to a proposed plan through a submission as filed. Applying that to this situation, the original Wellington Water Limited/Tiaki Wai submission is dated 2 May 2025. It was made on the PDP as notified, which was a complete review of the ODP. It provides 2.5 pages of background information about the Wellington Water operations and interests, before providing a table on pages 7-16 that confirms the changes requested to particular provisions of the PDP.

15. Applying this scope caselaw, in my view the relief sought in the Wellington Water 2 May 2025 submission is 'on' the PDP as notified. There was then the opportunity for interested parties to make further submissions on the relief sought, as clearly outlined in that submission. The tests in the caselaw above are satisfied with respect to the submission as filed. The real issue arising in this situation is whether the additional changes now proposed by Mr Blackman in his 9 October supplementary planning statement are within the scope of the original submission. The submission as filed in May 2025 did not address or outline those proposed changes. I therefore consider below any caselaw of assistance on that unique issue

16. Submissions should outline specific changes sought. General or broad changes proposed, without sufficient detail, may fail to meet procedural requirements. In *Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166*,* the Environment Court was considering a dispute as to whether the proposed relief was covered in the appellant's submission or notice of appeal. In that case the Court accepted that while the filed submission did not raise the particular policy addressed on appeal, the submission on activity status for demolition of heritage buildings and related matters was sufficiently highlighted in the submission that the proposed amendment to the 'accompanying policies' in support could be reasonably contemplated. By contrast, in *Westmark Investments Ltd v Auckland City Council* [1995] NZRMA 570 the High Court concluded that wide and sweeping submissions to a plan were insufficient to imperil a specific provision in the plan dealing with height restrictions without any reference either to the specific height restriction or to height restrictions in general in the submission. These two contrasting outcomes illustrate that the analysis depends on the specific detail of what is addressed in the submission.

17. The scope of an original submission is critical, as only those who participate in the submission process generally have the right to submit further or appeal that specific matter. Further submissions must be in support of or opposition to existing submissions, and cannot introduce entirely new issues or provisions. This requirement safeguards the participatory rights of all stakeholders by limiting changes that would prevent affected parties from having a fair opportunity to participate.

18. Against these background principles, the original Wellington Water submission on 2 May 2025 provided a background to the three waters responsibilities of the organisation, and referred to the aquifer at paragraph 15. However, the specific relief sought in that submission does not address changes of the nature now requested in the 9 October 2026 planning statement. Introducing a new policy and making changes to existing

policy HS-P1(3) was not mentioned in the submission. This means that no one else would have contemplated such specific changes to the PDP based on the general background, and particularly a review of paragraph 15. Paragraph 15 is primarily a description of the aquifer and its importance to Wellington's drinking water supply. While the last sentence references the resulting need for it to be protected from third party actions that may have an adverse effect on it, a reader of the submission would have reasonably anticipated that the particular relief sought in the submission would outline how the PDP is requested to be amended to achieve that outcome.

19. In my view, if this scope issue was raised in Court, it would more likely interpret the background to the submission in paragraph 15 as a supporting statement to the specific PDP changes contemplated in pages 7-16 of the submission. It would be a stretch to use this generic paragraph as providing scope for a new policy and specific changes to an existing policy being introduced by Tiaki Wai over a year later, in a manner that is not specified or described in the submission. A member of the public would not be able to contemplate such changes based on paragraph 15, such that they could participate through further submissions. Based on my interpretation of the caselaw, the 'further consequential amendments' as now sought in Mr Blackman's 9 October 2026 statement exceed the scope of the submission.

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

Yours sincerely



**Stephen Quinn**
Barrister