

BEFORE THE HEARING PANEL

UNDER the Resource Management Act
1991

IN THE MATTER of submissions and further
submissions on Upper Hutt
District Council Plan Change
49- Variation 1 to the Operative
District Plan Silverstream Spur.

Submitter **GUILDFORD TIMBER
COMPANY LTD
(Submitter 82, Further
Submitter 12).**

**LEGAL SUBMISSIONS ON BEHALF OF GUILDFORD TIMBER
COMPANY LTD**

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MAY IT PLEASE THE PANEL

1. Introduction

- 1.1 These legal submissions are made of behalf of Guildford Timber Company (GTC). GTC lodged a submission on Plan Change 49 – Variation 1 relating to the rezoning of the Silverstream Spur. (**Variation 1**) and is Submitter No. 82 and Further Submitter No. 12.
- 1.2 GTC own the land known as the Southern Growth Area (**SGA**) that is immediately adjacent to the Silverstream Spur (to which Variation 1 relates) and 44 Kiln Street, which is at the foot of the Spur.
- 1.3 The GTC is a family owned company that was established in 1926. It has an over 90-year history and association with Upper Hutt, owning approximately 330ha of the land in the Silverstream/ Pinehaven Area. Since 1928 the land has been primarily used in commercial pine plantation, running a forestry operation called Silverstream Forest. Large areas of mature production forest are due to be harvested in the short-medium term.

2. Southern Growth Area

- 2.1 As explained in Mr Hall's evidence, GTC has been working cooperatively with Upper Hutt City Council (**UHCC**) since 2007 to plan for growth and transition the land from forestry to residential and mixed use purposes. This area has long been planned for future housing and GTC and UHCC have taken significant steps towards that. It is estimated that if developed, the Southern Growth area and could accommodate up to 1600 homes.
- 2.2 GTC has recently (with UHCC support) sought inclusion as a prioritised growth area in the recent consultation on the Draft Wellington Horowhenua Future Development Strategy.¹
- 2.3 GTC is seeking rezoning of land within the Southern Growth Area to General Residential and the introduction of a new Special Purpose

¹ Hearings are scheduled for the week of 11 December and a decision on the final form of the Future Development Strategy is expected early 2024. There is no requirement to consider a *draft* FDS under the NPS-UD.

Precinct as part of proposed Plan Change 50 – Rural Review, which will be heard toward the later part of 2024. GTC economist expert Mr Foy, has confirms the continued and ongoing need for the SGA for housing in the district in his evidence.

3. Strategic importance of the Silverstream Spur

3.1 The Spur land provides a vital future access point to allow roading and infrastructure to the SGA, and link the SGA to existing infrastructure connections and communities in Pinehaven and Silverstream.

3.2 At a high-level, Variation 1 balances the need to protect indigenous biodiversity and the community's desire for the Spur to be used for passive recreation/Natural Open Space, while at the same time recognising the need for a connector road and other infrastructure needed to develop the SGA. Including provisions that provide for/enable the development of infrastructure in Variation 1 means the future ability to develop that infrastructure is not foreclosed (or impeded) by the proposed rezone.

4. The 2018 Memorandum of Understanding

4.1 In 2018 UHCC and GTC entered into a MoU exchange of more valuable areas of land with indigenous vegetation and areas suitable to recreation on the GTC site for the Spur land owned by the Council. This would have given GTC ownership over the Spur, and allowed it to develop residential there, in conjunction with development of roading and infrastructure to service the SGA.

4.2 The Council opted not to progress with that option in 2021, and instead GTC and UHCC made a joint application to the Infrastructure Accelerator Fund for funds to develop the public infrastructure needed for the site (which was unsuccessful.) However, that process did confirm the feasibility of the necessary roading and infrastructure needed to develop the SGA.

5. **Plan Change 49-Variation 1**

- 5.1 UHCC seek to rezone the Spur to a Natural Open Space Zone and introduce site-specific provisions to enable infrastructure, including a transport corridor, to enable the access for potential development of the Southern Growth Area, as well as to enable the passive recreation use of the Spur.²

6. **GTC written submission**

- 6.1 GTC filed a submission on Variation 1 that opposed the rezoning of the land from residential to Natural Open Space. While it still disagrees with the rezoning, GTC has sought to take a constructive approach to its evidence before the Panel, focusing on ensuring that there is a viable pathway to preserve future access to the SGA.

7. **Officer's Report and remaining issues**

- 7.1 The recommended wording annexed to the Officer's Report, (**Variation 1 – Officer's Version**) has made a number of important amendments that GTC sought in its initial submission. The balance of these submissions will focus on matters that are still "in dispute." The core matters that remain "in dispute" following the s42A Report are:

- (a) The Officer's recommendation to remove specific reference to "support the development of the Southern Growth Area" from NOSZ-P6(2).
- (b) Mapping of the Silverstream Natural Areas are incorrect and do not accurately represent the significant values of the site. Amendments are sought to the reduce the extent of the Silverstream Natural Area mapped in "light green" and now being identified on the Maps as the Silverstream Spur Natural Overlay.

² Officer's Report Plan Change 49 Variation 1 paragraphs 22-24.

- (c) Further minor amendments to the Officer's recommended version are sought to improve workability, clarity and functioning of the provisions.

8. GTC's revised position

8.1 GTC strongly supports Council's proposed introduction of site-specific provisions to enable infrastructure, including a transport and infrastructure corridor to allow for access for future development of the SGA. However, in GTC's view it is critical that Variation 1:

8.1.1 Identifies the need for vital transport and infrastructure link from the SGA, recognising that access to the site is constrained and there are few reasonable access points to the site available. The Spur provides a much needed connection route to the Hutt and to existing infrastructure networks, allows good transport planning and encouragement of biking and use of Park and Ride at the railway station. Enabling that via the plan is best practice and is "good planning".

8.1.2 Provides clarity as to the type of infrastructure needed and provides reasonable parameters for that to occur, for example the controlled and RDA rules NOSR15(1) and (2) which enable the development of a road, associated network utility infrastructure and water storage tanks.

8.2 GTC supported the initial enabling intent of NOSZ-P6 that sought to enable infrastructure, including a transport corridor within the Spur, and the Officer's suggested reference to "future development" and addition of "at an appropriate, scale, location and design". However, the Officer's recommended change to the NOSZ-P6(2), from the notified version of the text is opposed. Deletion of this removes important Policy recognition for the SGA.

8.3 GTC requests that the words in (2) "to support the development of the Southern Growth Area" are retained. Explicit reference to the SGA is consistent with the stated intent and purpose of Variation 1 and provides a clear and important signal that development of

infrastructure for this purpose is “enabled” and as such provides an indication as to the appropriate scale and design anticipated by the plan change. It also provides guidance as to what is appropriate in terms of location, size and scale of infrastructure anticipated by Variation 1; that is lost without the reference.

- 8.4 There is no justified reason for UHCC to shy away from specifically providing for the SGA in Variation 1. UHCC has acted responsibly in seeking to make provision and planning for both the SGA itself to accommodate the districts future housing growth and for the future development of infrastructure necessary to service the rezoning and development of the SGA. It is consistent with UHCC’s steps to plan for this, via its growth strategies, Plan Change 43 and in the Council’s Long Term Plan 2021-2031 (adopted last year).
- 8.5 This “co-ordinated progress approach” to the provision of infrastructure was confirmed by the Environment Court in *Foreworld Developments Ltd v Napier City Council*.³
- 8.6 As noted by Mr Hall, removal of the reference to the SGA in response to the Forest & Bird submission (seeking greater clarity as to what the SGA was), has the potential to cause greater confusion. This issue could be resolved via a consequential amendment adding a definition of the “Southern Growth Area” or via explanatory note if the Panel thought it necessary.

9. Mapping and identification of the Silverstream Natural Areas

- 9.1 GTC’s main issue is with the extent of the Silverstream Spur Natural Area included in the overlay in Variation 1. It extends over much of the site providing a potential future constraint to development of infrastructure in that area. GTC disagrees that the area mapped in “light green” as Silverstream Natural Area has ecological values present that should be protected.
- 9.2 GTC’s expert ecologist, Dr Keesing, disagrees with the ecological assessment undertaken to support the s32 Report. Based on Dr

³ *Foreworld Developments Limited v Napier City Council* Decision No. W008/2004 and *McIntyre v Tasman District Council* (W 83/94)

Keesing's assessment, GTC seeks that the ecological areas are significantly reduced.

- 9.3 Dr Keesing has undertaken a robust ecological assessment of the indigenous vegetation and indigenous biodiversity values of the Silverstream Spur. He has assessed those values under the significance policy of GWRC's Regional Policy Statement (RPS), Policy 23, Policy 24 and Policy 47 and against Appendix 1 of the NPS - Indigenous Biodiversity (NPS-IB). It is important any overlays imposed have sufficient evidential foundation to support them.
- 9.4 Dr Keesing considers that most of the area that Council had mapped as the Silverstream Spur Natural Area, does not meet the significance criteria – the majority of this area has low ecological value. Dr Keesing's fieldwork and assessment has confirmed two small areas on-site that, in his expert opinion, are ecologically significant natural areas and should be properly identified and protected. GTC seeks that the mapped areas are amended to reflect this.
- 9.5 GTC submit that this is appropriate in terms of s 6(c) RMA, which does not require protection of all indigenous vegetation or habitat and only requires "the protection of areas of *significant* indigenous vegetation and *significant habitats* of indigenous fauna". This is also consistent with Policies 6 and 7 of the NPS-IB that require:

Policy 6 'significant habitats of indigenous vegetation and significant habitats of indigenous fauna are identified as SNA's using a consistent approach.'

Policy 7 'SNA's are protected by avoiding and managing adverse effects from new subdivision, use and development.'

- 9.6 Doing so ensures the Officer's version of Variation 1 wording (and the Panel's decision) are also better aligned with the NPS-IB and improves the functionality of NOSZ-Policy 7. This also appears to be more consistent with the relief sought by Greater Wellington in its submission that UHCC give effect to these policies in its district plan.

10. Conditional support – if maps are amended.

10.1 Most of GTC’s residual concerns about Variation 1 (in terms of its workability and extent of the Spur that is protected) are resolved by the correct identification/mapping of these Natural Areas in the manner proposed by Dr Keesing. If this is adopted, then GTC can (conditionally) support Variation 1 including the following changes recommended by the Officer in the s42A Report:

10.1.1 Inclusion of a new definition – Biodiversity Offset - noting this definition is consistent with the NPS-IB. It would be appropriate to apply this to the areas properly identified by Dr Keesing as SNAs (but not to the mapped areas that do not qualify as such).⁴

10.1.2 Inclusion of the Accidental Discovery Protocol for Earthworks on the Silverstream Spur.

10.1.3 GTC supports the change in language used in Variation 1 from the Silverstream Spur Significant Natural Area to the “Silverstream Spur Natural Area” and associated changes proposed to make the overlay on the map easier to interpret for the reasons explained by Mr Hall.

10.1.4 GTC supports new the rules in S0SZ-R15 making road and associated network utility infrastructure, including storage tanks or reservoirs, on the Silver Stream Spur a controlled activity where compliance with NOSZ-S4(a)(i) is achieved and otherwise a restricted discretionary activity.

10.1.5 GTC supports the proposed deletion of the reference to landscaping and protection of any special amenity area in S0SZ-R15 for the reason provided in the Officer’s Report.

10.1.6 GTC queries the inclusion of *(f) Financial Contributions*. it is unclear whether there is a lawful basis for UHCC to charge

⁴ This should only be applied qualifying SNA’s.

financial contributions on infrastructure developed on the Silverstream Spur in this way under s108 RMA (where, due to the new Natural Open Space Zoning, no housing will be developed). There does not appear to be a clear pathway to levy financial contributions in Chapter 10 of the UHCC ODP for infrastructure, or in the Development and Financial Contributions Policy (adopted July 2023).⁵

- 10.1.7 GTC considers the matters of discretion (c) – (h) should also be provided for in NOSZ-R15(2). It is currently not clear what discretion is Reserve for or which is the restricted discretionary rule. Council should have the ability to reserve its discretion to impose conditions on the standards not met in respect of those matters. This would better align with the law on restricted discretionary activities under s104C(1)(b) RMA, which provides that where a consent authority, when considering an application, *must only* consider those matters which it has restricted the exercise of its discretion in its plan or proposed plan, and must only impose conditions under s108 RMA on matters that it has restricted its discretion in its plan. It is appropriate for Council to retain the discretion here, because this activity applies where the standards in NOSZ-S4 are not met.
- 10.1.8 GTC supports the new standards included at NOSZ-S4 and is confident that infrastructure can be properly designed to meet these standards. These are discussed in detail by Mr Read in his evidence.
- 10.1.9 New Policy NOSZ-P7 seeks to protect identified areas of significant indigenous vegetation from the adverse effects of development and includes effects management hierarchy where the effects should be avoided where practicable. This is supported only if Dr Keesing's mapping is accepted; this should only apply to areas that meet the significance criteria.

⁵ <https://www.upperhuttcity.com/files/assets/public/v/1/yourcouncil/development-and-financial-contributions-policy-2023-2024.pdf>

If the mapping is not amended, then this Policy is inappropriate as effects to the management hierarchy should not apply to areas of low value.

10.1.10 New Rule NOSZ-R22 makes removal of indigenous vegetation on the Silverstream Spur Natural Area a restricted discretionary activity. GTC considers this is acceptable if these mapped areas are restricted to the SNAs recommended by Dr Keesing. That would mean that NOSZ-R22 would apply only to parts of the site that actually had significant value. Restricted discretionary activity status for removal provides sufficient protection to allow close consideration and assessment on a case-by-case basis at resource consent stage. It also gives Council the option of whether to grant consent or not (s 104C(2) RMA).

11. Scope of Plan Change 49 - Variation 1

11.1 The scope of Variation 1 is clearly limited to the Silverstream Spur area as mapped in Variation 1 and the notified provisions (as modified by relief sought by submissions and any consequential amendments arising from that). The Panel's consideration of Variation 1 is restricted by that scope and the Panel will be familiar with the legal tests on scope.⁶

11.2 As noted by the Officer, many of the submissions raise matters or seek relief that are not "on" Variation 1. Those out of scope should not be considered as they, in some cases, seek outcomes that are not achievable under the RMA.⁷ GTC agrees with the Officer's assessment here.⁸

12. The legal framework for a decision on Variation 1

12.1 The Panel's decision-making on Plan Change 49-Variation 1 sits within a comprehensive framework established under the RMA.

⁶ *Motor Machinists and Clearwater*.

⁷ For example, seeking protection of a reserve under the Reserves Act 1977, signage from Kiln Street, details as a planting, removal of pine trees from the spur, identifying areas beyond the spur, provision of cycle and walkways, stopping roads and rezoning adjacent land.

⁸ Officers Report Part 5.2.

While these provisions are no doubt well known to the Panel, they are included for reference at **Appendix 1**.

13. Distinguishing Plan Changes and resource consents

- 13.1 It is important to acknowledge that this is a hearing for a plan change and not a resource consent application. Variation 1 contains provisions which create the parameters for a resource consent to be made at some point in the future. The Supreme Court made the following observation in *Sustain our Sounds Inc. v The New Zealand King Salmon Co. Ltd*⁹

“[146] It is nevertheless important for the plan change process and the consents to be considered separately, with the different statutory provisions and the different roles of the decision maker firmly in mind: as a planning authority (for plan changes) and as a hearing authority with a quasi-judicial role (for consents)”.

- 13.2 Counsel appreciates that this can be confusing where the provisions of a plan change concern a proposal, such as a project or road. But the differences between the two are important.¹⁰ The Planning Tribunal in *Hodge v Christchurch City Council*¹¹ described these in the following way:

*“Those with a converse view would have it that this plan change is in effect a project to establish an agribusiness complex and that its very establishment will affect other people's abilities to provide for their social economic and cultural wellbeing. They would have it that provision for such a project needs to be justified in terms of alternative sites, benefits and costs. To have such a view, I believe, shows a lack of recognition of **the essential difference between a resource consent and the plan change. While in a project, essentially it does this only as a consequence of providing a set of constraints on the effects of activities in order to achieve the purpose of the Act: it provides for a project by not putting in place controls which would prevent it. If development***

⁹ *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 673 at para 146.

¹⁰ An application for resource consent under s88 RMA has different tests and considerations that a plan change under schedule 1b plan change process.

¹¹ [1996] RMA 127.

occurs then its effects will be so contained that the purpose of the Act is achieved.”

(Emphasis added)

- 13.3 GTC agrees with Council (with the exception of the mapping) that the level of assessment of the effects of the plan change is adequate. Section 76(3) RMA requires that in making a rule Council must “have regard to the actual or potential effects of the environment on the activities, including any adverse effect.” The expert evidence filed by GTC provides further assurance to the Panel in this regard. There is no requirement at a plan change stage for the Panel to be satisfied that all the infrastructure has been designed, or to have a specific proposal in front of it. The Panel does have to be satisfied that where the infrastructure does not exist that it is feasible. This flexibility is important as the details of a specific design are not yet known.
- 13.4 Given that this is a plan change, if it were to be approved, it is also important that the plan provisions provide the Council with appropriate matters of discretion and assessment criteria to allow the Council to assess a developed proposal at resource consent stage.
- 13.5 No permitted activities are proposed as part of Variation 1. Infrastructure cannot be developed “as of right”. The effects of any specific future proposal, if and when developed (in any form or scale) would need resource consent.¹² That process requires detailed assessment of environmental effects to be provided.
- 13.6 Council has also reserved appropriate discretion to impose any conditions imposed to avoid, remedy or manage those effects. (s108 RMA) when considering these consents. With the amendments sought by GTC, Variation-1 provides a reasonable set of controls that are workable but will also provide the right level of constraints.

14. Submitter views on the SGA

- 14.1 It is important to note that Variation 1 is not a referendum on whether the SGA should be developed and how that should occur. That will

¹² Section 88 RMA.

be part of Proposed Plan Change 50 and people will be able to submit their views on that, as part of that process.

- 14.2 Importantly, the RMA is not a numbers game,¹³ and the Panel should not be overly concerned by the number of submitters opposing enabling an infrastructure corridor in Variation 1. In GTC's submission the Panel should take some comfort from the fact that this is a Council led Plan Change and the Council clearly considers provision for the SGA is necessary and focus its inquiry on the evidence and the merits.

15. Evaluation of witnesses

- 15.1 The Panel will hear from a number of lay witness submitters over the course of this hearing. The Panel should carefully consider the weight to attribute to those views, particularly where they differ from the technical evidence produced by the views of the Council and independent and experienced experts for GTC.¹⁴ Some submitters will express unfounded perceptions and fears, or claim inaccuracies about hazards, erosion and runoff and impacts on flora and fauna and biodiversity impacts, many of which appear to be unsubstantiated. As parties alleging adverse effects, they carry the burden of proof to establish that effect so the Panel will need to give careful determination as to whether they have done so.¹⁵
- 15.2 The Panel will also hear from Dr Keesing, an ecologist with significant experience in undertaking ecology assessments. Mr Keesing's view differs from the Council's ecological assessment provided as part of the s32 Report. There are compelling reasons why Dr Keesing's view should be preferred:
- 15.3 Dr Keesing has undertaken a very thorough and detailed assessment of the ecological and indigenous biodiversity values of the Spur (he has taken an evidence-based approach that has included multiple

¹³ For example as a control or restricted discretionary activity.

¹⁴ *Stokes v Christchurch City Council* [1999] NZRMA 409 (EnvC) at 426.

¹⁵ *New Zealand Magic Millions v Wrightson's Bloodstock* [1990] 1NZLR 731 (HC).

site visits and undertaken significant field work to inform his conclusions).

- 15.4 Dr Keesing has undertaken assessments of adjoining SNA UHO170 and has a high level of familiarity with the site and surrounds.
- 15.5 The Panel have the benefit of having before them Dr Keesing's full assessment of the ecological values of the Silverstream Spur against both GWRC RPS Policy 23 (significance policy) and importantly against the NPS-IB including well-articulated reasons for those views. The Panel can have a degree of comfort that the amended Silverstream Spur Natural Area suggested by Mr Keesing meets the necessary threshold for protection and reflects the values present on site; and
- 15.6 The Officer has also acknowledged the limitations of Wildlands' assessment and the very brief assessment included in the s32 Report.
- 15.7 It is important that the Panel is satisfied that the protection afforded by the Natural Area Overlay is necessary and that the onsite values that the overlay seeks to protect are present. A great deal of the area included in the Council's proposed Natural Area overlay is of low value, does not meet the threshold for protection in the plan and should not be included.

16. Infrastructure and Development

- 16.1 GTC's land development and infrastructure expert Mr Read has given detailed consideration to the concerns expressed by submitters about stormwater, erosion, roading, construction, servicing, hazards, placement of infrastructure design and effects. Many of these matters are controlled by other chapters of the plan, i.e., hazards, earthworks, transport, stormwater etc. and would also require consent.
- 16.2 GTC has a vested interest in ensuring that quality, cost effective, efficient infrastructure that is capable of being consented and constructed on the Spur is possible. GTC is familiar with the

constraints of the Spur and is confident engineering and design solutions are available.

- 16.3 Mr Read has confirmed that infrastructure can be developed for the Spur within the confines of the provisions provided for via Variation 1 (with the amendments sought by GTC, including amendment to the maps and minor amendments sought by Mr Hall). There are various options and routes available that are feasible and could be achieved. Exact designs of any infrastructure would be developed as part of detailed design, allowing the effects to be assessed and well understood as part of the resource consent process.
- 16.4 A range of options exist to service the Spur, and are largely dependent upon the nature and form that future development of the SGA may take. In Mr Read's view these are realistically achievable, and measures are available to manage, avoid, remedy, and mitigate the effects of that infrastructure (as the case may be).
- 16.5 The effects on the spur and surrounding sites would be thoroughly assessed as part of a resource consent application. It is submitted that the Panel is entitled to rely upon Mr Read's evidence in this regard.
- 16.6 Overall, the Panel must make a value judgement on whose evidence is most preferred, based on a value judgement as to who is most correct.¹⁶ In doing that it should consider whether the expert is providing evidence within their area of expertise and whether there is a sound and reasonable basis for the reaching the conclusions they have expressed.

17. GWRC- RPS Plan Change 1 and Proposed Plan Change to the NRP

- 17.1 GTC agree with the Officer's approach to GWRC RPS-PC1, and NRNP Plan Change 1. The GWRC RPS - PC1 is currently being heard. The NRNP Plan Change 1 was recently notified with

¹⁶ *Stokes v Christchurch City Council* [1999] NZRMA 409 (EnvC) at 426.

submissions closing on 15 December 2023. The Panel will need to consider the weight it should afford RPS-PC1 and NRP PPC-1. The relevant considerations were recently summarised by the Environment Court in *Guthrie v Queenstown Lakes District Council*:

- “(a) *The extent to which the provisions of a proposed plan are relevant should be considered on a case by case basis, and might include:*
- (i) *The extent to which a provisions has been exposed to independent decision-making.*
 - (ii) *Circumstances of injustice.*
 - (iii) *The extent to which the new measure, or absence of one might implement a coherent pattern of objectives and policies in a plan.*
 - (iv) *In assessing weight, each case should be considered on its merits.*
 - (v) *Where there has been a significant change in Council Policy, and the new provisions are in accord with Part 2, the Court may give more weight to the proposed plans.*

17.2 Both plans are still in their very early stages, and very contentious, with the submission and hearing processes not yet completed. In GTC’s submission these should be afforded very little weight. The Panel is unable to rely upon these, there is no confidence that these are “set in stone” and subject to change throughout the hearing process.

18. Witnesses

18.1 GTC has filed and will be calling expert evidence from the following witnesses:

- (i) Mr Derek Foy (economics)
- (ii) Dr Vaughan Keesing (ecology).
- (iii) Mr Phillip Read (infrastructure and development effects); and
- (iv) Mr Michael Hall (planning)

19. Conclusion

19.1 It is requested that the Panel grant the relief sought by GTC by approving Variation 1 with the additional minor amendments to the

wording set out in the Mr Hall's evidence, and the changes of mapping to the extent of the Silverstream Spur Ecological Area, as delineated by Dr Keesing.

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a large loop and a long horizontal stroke extending to the right.

P D Tancock

Counsel for Guilford Timber Company Ltd

Dated 17 November 2023.

Appendix 1

The statutory framework for the Panel's decision on Plan Change 49 – Variation 1

1. These submissions now address the statutory framework for the Hearing Panel's recommendation and the Council's decision on Plan Change 49 – Variation 1.
2. Under section 74(1) of the RMA, the Council must change its district plan *in accordance with*:
 - (a) Its functions under section 31; and
 - (b) The provisions of Part 2; and
 - (c) A Ministerial direction (not applicable here); and
 - (d) Its obligations to prepare a section 32 assessment and have particular regard to it;
 - (e) A national policy statement, a New Zealand coastal policy statement, and a national planning standard; and
 - (f) Any regulations.
3. When changing a district plan, the Council *must have regard to*:¹⁷
 - (a) Greater Wellington Regional Policy Statement and the proposed RPS – PC1; and
 - (b) Any proposed regional plan, in this case the Natural Resources Plan and NRP - Plan Change 1; and
 - (c) Any management plans and strategies prepared under other Acts including the UHCC Long Term Plan and Housing Growth Policies; and

¹⁷ Section 74(2).

- (d) Any relevant entry on the New Zealand Heritage List required by the Heritage New Zealand Pouhere Taonga Act 2014 (not relevant here); and
 - (e) Any fisheries regulations to the extent that their content has a bearing on resource management issues in the district (not relevant here); and
 - (f) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities (not relevant here);
 - (g) Any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2022.
 - (h) Any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.
4. The Council must also *take into account* any relevant planning document recognised by an Iwi authority.¹⁸
5. Finally, Council *must not* have *regard to* trade competition or the effects of trade competition when changing a district plan (not relevant here).

Content of a district plan

6. Under section 75(3), a district plan *must give effect to*:
- (a) Any national policy statement; and
 - (b) Any New Zealand coastal policy statements; and
 - (c) A national planning standard; and
 - (d) Any regional policy statement.

¹⁸ Section 74(2A).

7. The Supreme Court in *King Salmon*¹⁹ found the words “give effect to” mean “implement”. On the face of it, this is a strong directive, creating a firm obligation on planning authorities.
8. A district plan *must not be inconsistent with*:²⁰
 - (a) A water conservation order; or
 - (b) A regional plan for any matter specified in section 30(1).
9. Finally, under section 75(1), district plan policies *must* implement objectives while any rules *must* implement the policies. Section 76(1) requires rules to achieve the objectives and policies of the plan. In making a rule, Council *must have regard to* the actual or potential effect on the environment of activities, including any adverse effect.²¹

Section 32 Evaluation

10. Plan Change 1 – Variation 1 was notified with a s 32 assessment by Council.
11. Under section 32(1), an evaluation must:
 - (a) Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by:
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

¹⁹ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [77].

²⁰ RMA, s 75(4).

²¹ Section 76(3) RMA.

- (iii) summarising the reasons for deciding on the provisions; and
 - (c) Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- 12. Each objective must be examined during the evaluation, but it is not necessary that each objective individually be the most appropriate way of achieving the purpose of the Act. The High Court has held that it may be through their interrelationship and interaction that the purpose of the Act is able to be achieved.²²
- 13. Under Section 32(2) an assessment of the efficiency and effectiveness of the provisions (policies, rules or other methods) under subsection (1)(b)(ii) must:
 - (a) Identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) If practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Section 32AA further evaluation

²² *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 HC at [46].

14. Under section 32AA, a further evaluation is required only for changes made after the evaluation report was completed at notification. A further evaluation must be undertaken in accordance with section 32(1) to (4) and must be undertaken at a level of detail that corresponds to the scale and significance of the changes. This has been undertaken by Ms Thompson and Mr Hall.

Part 2

15. The role Part 2 plays in decision-making processes for plan changes was refined by the Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*²³ (“*King Salmon*”).
16. The Supreme Court held that in the absence of invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory planning documents, there is no need to refer back to Part 2 of the RMA when determining a plan change.²⁴ This is because the higher order planning document is assumed to already give effect to Part 2. However, if one or more of these three caveats apply, reference to Part 2 may be justified and it may be appropriate to apply the overall balancing exercise.²⁵
17. Simply because a higher order planning instrument is operative does not remove the possibility of any of the three caveats applying.
18. Ms Thompson as the author of the section 42A Report, and Mr Hall:
 - (a) Do not have concerns that any of the three caveats identified in *King Salmon* (i.e., invalidity, incomplete coverage, or uncertainty of meaning) apply to the higher order documents assessed; however
 - (b) The Officer’s Report assessed Variation 1 against Part 2 s 6(c) RMA (in any case, to assist the Panel) in the event it

²³ *King Salmon*, above note 3.

²⁴ At [85] and [88].

²⁵ At [88].

were to arrive at a different conclusion based on the fact that Council has not implemented the NPS-IB yet.