

Before the Tasman District Council Hearings Panel

In the matter of the Resource Management Act 1991

And

In the matter of Plan Change 74 to the
Tasman Resource Management Plan,
Tasman District Council.

("Rezoning of Special Housing Areas - Pohara".)

**STATEMENT OF RICHARD ENGLISH –
(SUBMITTER ID: PC74- 4153)**

DATED: 12TH AUGUST, 2021.

INTRODUCTION.

1. My name is Richard English. I live at 26 Richmond Road, Pohara.
2. My Statement relates solely to the Pohara section of Plan Change 74
3. Although appearing as a submitter in my own right, I am primarily involved as a provider of technical support to Mr. Graham Rogers (Submitter #4199)
4. My qualifications are BSc.(Hons) Civ.Eng. I am a Member of the Institution of Civil Engineers (London). I have fifty years of civil engineering experience across a wide range of disciplines. Although not appearing at this Hearing as an Expert Witness, I have sufficient experience of land drainage and stormwater matters to comment on those topics on a professional basis, where pertinent to this Hearing.

SUMMARY.

5. Plan Change 74 ("PC74") is not merely a matter of a "tidy up". Rather it is a clearly defined process under the Resource Management Act. The fact that resource consents have been issued for residential activity on the land that is the subject of PC 74 is of little to no relevance. To treat the matter otherwise is to risk the integrity of the Tasman Resource Management Plan ("TRMP").
6. Submissions from myself and Mr. Rogers address issues relating to potential stormwater impacts consequent on a change of land use from rural to residential. To reiterate, our submissions are not about the issued subdivision resource consents, although I have used those as an example of the potential impacts of the proposed land use change, but rather the land use change itself. Our submissions are accordingly clearly 'in scope'
7. Richmond Pohara Holdings Ltd's ("RPHL") submission seeks to considerably extend the notified area. (i.e. more than a mere incidental extension) Any person considering the public notice and the PC74 documents would not have anticipated that the proposed, significant additional areas might be added through the plan change process. The submission is therefore 'out of scope' and should be disregarded.

8. An assessment of a proposed plan change requires that a comparison be made between the changes proposed, and other alternative options, including maintaining the status quo, to determine which will result in effects that better meet the objectives and policies of the Plan, directions in higher order documents, and the purposes of the Resource Management Act.
9. The Tasman District Council's ("the Council"'s) s42A⁽¹⁾ and associated s32⁽¹⁾ reports sought to address these matters however they did so solely in the context of the consented sub-division. (i.e. The reports did not consider the effects of alternative outcomes should the zoning change eventuate.) This is a failure to follow correct process, and in itself might be seen as a pre-determination of the outcome.
10. There has been a long history of drainage problems on the land below that encompassed by PC74.⁽²⁾ The potential impacts of any change of land use of the land upstream of the lower properties has previously therefore been the major determinant of whether upstream development should occur or not.
11. Hydraulic modelling,⁽²⁾ jointly funded by the Council and RPHL, has been undertaken to study the downstream impacts from the area covered by PC74 should it be developed in line with the current sub-division proposals. (i.e. Just one of the many possibilities that the Plan Change would enable should it proceed.)
12. Whilst this modelling purports to show that a change of land use, such as that by the proposed sub-division, will not have a detrimental effect on downstream properties, the models veracity is open to question in a number of critical areas. In particular, the version of the model used in an attempt to justify PC 74:
 - Takes no account of future sea level rise,⁽³⁾
 - Uses an outdated version of climate change prediction models,⁽³⁾
 - Assumes the presence of currently non-existent lower catchment mitigation works.

(1) TRMP, Plan Change 74 – Rezoning of Special Housing Areas: Sections 32 & 42A Evaluation Reports.

(2) Flood Modelling for Proposed Special Housing Area - Richmond Road – Tonkin & Taylor, Dec. 2017

(3) This is in contravention of Council's own requirements as stipulated in "*Nelson Tasman Land Development Manual – July 2019 - Chapter 5 – Stormwater*"

13. There may be other errors and / or omissions within the model which significantly impact the outcome of the various scenarios. Accordingly the model and its inputs and outputs should be independently peer reviewed, amended and re-run as required before a decision is made on PC74.
14. A land use change from Rural 2 to Residential has the potential to exacerbate existing downstream stormwater disposal problems. Given the central role the hydrological model plays in the decision to accept or reject PC74, in relation to the Pohara site, my predominant concern is, as demonstrated, the questionable veracity of the model.
15. In summary, I accordingly seek that PC74, with respect to Pohara, be placed on hold until:
 - The model has been independently, reviewed, modified and re-run.
 - Once this process has been completed the outputs of the model shall be evaluated in terms of PC74's potential to exacerbate existing downstream stormwater issues.
 - The currently proposed upstream stormwater mitigation works shall be modified as necessary to ensure that there are no negative downstream effects. (If this is not feasible PC74, in relation to Pohara, shall be withdrawn.)
 - Downstream works shall be completed before the relevant section of PC74 is implemented and, potentially, any construction work on the proposed sub-division commences.

PROCEDURES AND PROCESS.

16. The Council have portrayed Plan Change 74 in their public notifications, and items in their newsletter 'Newline', as a simple "tidy up".⁽⁴⁾ This portrayal is a misrepresentation of the actual situation.

(4) e.g. Extract from Council website:

<https://www.tasman.govt.nz/my-council/key-documents/tasman-resource-management-plan/plan-changes/proposed-changes/change-74-rezoning-of-special-housing-areas/>

(The change) "*proposes to rezone the land so that it is appropriately zoned to reflect the approved land uses - essentially it is a 'tidy up' so that the zoning of the land reflects the approved land use.*"

17. The plan change process is clearly defined in the Resource Management Act (the "RMA"). This stand alone process is not a mere formality. Any suggestion that the outcome is a foregone conclusion not only makes a mockery of the legally defined process and procedures enshrined in the RMA, it also leaves any decision in favour of the plan change open to being successfully challenged in either the Environment and/or High Courts.
18. My involvement in the Plan Change is made on a reliance that due, legal process will be followed as required by the RMA, rather than being simply a 'tick box exercise' as suggested by the Council.
19. The Council's portrayal, and a lack of direct notification of PC74 to those in the immediate vicinity of the land possibly impacted by the proposed Plan Change, may have led to potential submitters not becoming party to the process. I merely note this matter at this juncture without further comment.
20. That the Council has issued resource consents for development of the land in question is not a matter of debate. Those consents, enabled under the auspices of the now repealed Special Housing Areas Act 2013, are however of no direct relevance to this Hearing. To provide any weight to those consents in respect to this Plan Change process is to risk the overall integrity of the Tasman Resource Management Plan ("TRMP") and would set an unwelcome precedent.⁽⁵⁾

STATUS OF SUBMISSIONS.

21. Both the Further Submission by Richmond Pohara Holdings Ltd ("RPHL") and the Council's s42A report seek to have my submission, and that of Mr. Graham Rogers (Submitter #4199), disregarded on the premise that they are "out of scope". On the other hand both Mr Rogers and I have submitted that the RPHL's submissions (Submitter #4194) are "out of scope". (The s42A report also considers RPHL's submission to be "out of scope".)

(5) E.G. Due process could be subverted by an applicant initially gaining a resource consent then using that consent to leverage a plan change. (i.e. rather than the normal process under the RMA and TRMP to obtain a plan change prior to the relevant resource consent process being undertaken.)

22. Whilst I discuss these matters in more detail in later paragraphs, I have initially set down my understanding of the general tests that should be used and considerations undertaken to determine a submission's status with respect to "scope".
23. Firstly the submission must address the proposed plan change itself, that is, it must address the extent of the alteration to the status quo which the change entails.
24. Secondly the submission must not pose a risk that any person, who may be directly affected by the decision sought in the submission, is denied an effective opportunity to respond to what the submission seeks. (For example, a plan change could be so altered by additional requests contained within submissions that people who were not affected by the plan change, as notified, became affected through a submission which had not been directly notified to them.) It is therefore important that the process guard against the reasonable interests of others being overridden.
25. Submissions seeking relief beyond those two ambits are unlikely to be 'on' the plan change. (i.e. the submissions would be "out of scope")

Richmond Pohara Holdings Ltd – Submitter # 4194

26. PC74 closely prescribes the area under consideration. RPHL's submission, in parts, seeks to considerably extend the notified area⁽⁶⁾ The extensions sought involve more than an incidental or consequential extension of the rezoning proposed in PC74. Any decision to rezone as proposed by the submission raises matters that would need to be addressed, at a minimum in an s32 report and an associated hearing, rather than by an opportunistic insertion into PC74 by means of a submission.
27. The changes sought in RPHL's submission would alter PC74 to an extent that people who were not affected by the plan change as notified could become affected through the submission. Any person considering the public notice and the PC74 documents would not have anticipated that the proposed, extensive additional areas could be added through the plan change process.

(6) RPHL Submission paragraphs 2.10, 2.15 and 3.1(i) & (ii)

28. RPHL's submission is clearly therefore not 'on' the plan change and is consequently "out of scope". (i.e. The submission fails both the tests I have outlined above and therefore falls outside the ambit of the Plan Change.) Accordingly RPHL's submissions should not be considered further by the Hearing.

Richard English. - Submitter # 4153

29. In proposing a plan change, Councils, or the relevant delegated decision maker, must be mindful of the requirements of Section 32 of the RMA. The cumulative and specific effects of a land re-zoning proposal in particular must take into account the impact of the proposal on the existing environment and activities. Indeed the Council's s32 and associated s42A reports seek to address these issues.
30. It is the two latter matters on which the main body of my submission is based. (i.e. the potential impacts of PC74 on the existing environment and activities.) My submission is clearly "on" PC74 and is therefore "in scope". To argue otherwise is to misunderstand both the basis of my submission and the RMA.
31. The s42A (and s32) report appears to be fixated on the matter of the resource consents that have been granted rather than addressing the plan change as a standalone process. Simply stating that "[T]here are a number of resource consents that relate to the development of the site that have been granted and are beyond challenge"⁽⁷⁾ does not in any way amount to the requisite evaluation of the potential effects of PC 74 nor does it provide justification for the rejection of my submission by virtue of it being out of scope.

Graham Rogers – Submitter # 4199

32. Likewise Mr Rogers' submission addresses a potential impact of the land use change that may be brought about by PC74 by use of the example of the proposed development. That is, Mr Rogers' submission (and mine likewise) is not about the proposed sub-division but rather the potential impact of the proposed re-zoning of the land from Rural 2 to Residential. Accordingly it is clear that Mr Rogers' submission is also "on" the Plan Change and therefore equally clearly is within "scope".

(7) s42A report para 2.3.2

Robert & Patricia McTaggart (Submitter # 4198) & Jennifer Treloar (Submitter #4202)

33. The s42A report also considers these submissions to be “out of scope”. This is incorrect as the submitters are merely illustrating a negative impact on their properties that may eventuate from a change of zoning. This matter should have been covered by the s32 report but is an error of omission.
34. As with my submission, the s42A report seeks to similarly incorrectly reject these submissions on the grounds that “the consents *“have been approved and, as such, the request relating to stormwater management is beyond the scope of PC74.”*⁽⁷⁾ Accordingly the s42A recommendation should be rejected.

PLAN CHANGE ASSESSMENT.

35. The assessment of any plan change proposal should not simply be an analysis of the level of impact in a particular effect, as is the case with resource consent applications. Rather the assessment needs to be a comparison between the changes proposed, and other alternative options, to determine which will result in effects that better meet the objectives and policies of the Plan, directions in higher order documents, and the purposes of the RMA.
36. A plan change cannot be justified based solely on its own objectives.⁽⁸⁾ An assessment therefore needs to be undertaken to compare options and the potential of all effects that would be permitted by the requested change with those that could occur under the existing Plan. These analyses need to be conducted individually and cumulatively for each effect.
37. In rejecting submissions by myself and submitter no’s 4198, 4199 & 4202 the s42A report failed to conduct any further evaluation and is hence silent on the matter of assessment. The Council’s s32 report⁽¹⁾ did however seek to address these matters but only in the context of the proposed sub-division rather than other possible outcomes, which should be the case for a plan change (i.e. rather than for a specific resource consent.) This is a failure to follow correct process, and in itself could be seen as a pre-determination of the outcome.

(8) “A guide to section 32 of the Resource Management Act 1991”; MfE, April 2017 - page 16

38. The s32 report should, for example, have considered a situation where the currently proposed sub-division does not proceed and is superseded by another sub-division where all allotments are of a minimum permitted size. (i.e. rather than the presently proposed mixture of sizes on which the actual assessment has been made.)⁽⁹⁾ The impacts of the former scenario, for example on traffic volumes and / or stormwater, in comparison to the latter could be significantly greater thereby invalidating the report's current assessment of the impacts of the proposed land use change.
39. While the s32 report notes that the plan change is inconsistent with the TRMP with regards to the conversion of rural land, it provides no justification for ignoring this inconsistency other than to note that the change is in line with the resource consents granted.
40. There are further elements of pre-determination in both the s32 and s42A reports in that they frequently refer to the Plan Change's purpose, and the like, being "*to reflect the residential use that is consented for the site.*"⁽¹⁰⁾
41. It would not be unreasonable to view the report's conclusion as an attempt to retrospectively regularise a situation where a consent has been issued outside the existing zoning requirements.
42. Should the report's pre-determination tone be accepted without adverse comment, a dangerous precedent will have been set, which will in turn undermine the integrity of the TRMP.⁽⁴⁾

STORMWATER IMPACTS RESULTANT ON PLAN CHANGE 74.

43. Setting these general matters aside, I wish to turn to the specific issue of stormwater management and its effects on downstream properties should PC74 proceed.
44. As I do not have the resources available to conduct an in depth analysis of the effects for all the scenarios that would be permitted under PC 74, I have used the current sub-division proposals as an example of the matter at hand which, as I noted above, inherently has a lesser potential impact than some other, realistically feasible scenarios.

(9) Another entirely feasible scenario is a later sub-division of the larger individual lots.

(10) E. G. s42A report Clause 2.2.6.

45. There has been a long history of drainage problems on the land below that encompassed by PC74⁽¹¹⁾. The potential impacts of any change of land use of the land upstream of the lower properties has therefore, rightly, been a very major, if not the single determinant of whether upstream development should occur or not.
46. Council and RPHL have jointly funded hydrological modelling of the area. The latest version of the modelling, undertaken by Tonkin and Taylor Ltd (“T&T”) in December 2017⁽¹¹⁾, which was submitted as part of RPHL’s resource consent application and has been utilised as justification for PC 74, studied the downstream impacts from the area covered by PC74 should it be developed as per the current sub-division proposals.
47. The overall conclusion from this modelling was that *“the development results in a small but measurable decrease in flood levels (i.e. a net benefit) to property in the downstream floodplain during extreme events.”*⁽¹¹⁾ On the strength of that conclusion, but without considering other scenarios, the s32 report, and subsequently the s42A report, concluded that there were no negative, downstream stormwater impacts resultant on PC 74.
48. Needless to say, this all pre-supposes that the modelling is correct and that the consented sub-division is constructed as currently configured. As I do not have access to the model I cannot directly comment on its veracity, however no matter how well a model is constructed the accuracy of the inputs will ultimately determine the validity of the outputs.
49. Accordingly I have looked at those model inputs which are relatively easy to identify and verify. I readily found three errors which have the potential to nullify both the s32 and s42A reports’ PC74 decision critical conclusions that there would be no increase in flooding of downstream properties.

Sea Level Rise.

50. The T&T report states that the modelled flooding is predicated on present day sea levels⁽¹²⁾. This statement immediately invalidates the model outputs as far

(11) Flood Modelling for Proposed Special Housing Area - T&T, Dec. 2017 – Executive Summary

(12) *“The modelling assumes that the peak catchment flow coincides with present day mean high water springs (MHWS) high tide level”* – T&T report⁽²⁾ – Section 4

as PC74 is concerned as the model takes no account of future sea level rise. This omission is of particular significance given the already very small total fall (or difference in levels) between the properties downstream of the PC74 land and current sea levels.

51. Such a stance is in contravention of the Council's own documented requirements⁽³⁾, indirectly Policy 25 of the New Zealand Coastal Policy Statement and potentially unlawful under the proposed Climate Change Adaptation Act, all of which are intended to ensure that future sea level rise is accounted for in matters relating to infrastructure.
52. Accordingly the model should be re-run utilising a range of sea level rise scenarios as set out, for example, in the Council's Coastal Management Project Report.⁽¹³⁾ It is entirely feasible that the consequent outputs will show that the land use change proposed by PC74 will lead to an increased risk of flooding in the downstream areas.

Rainfall Data.

53. Rainfall data used for modelling purposes in New Zealand is frequently derived from NIWA's "High Intensity Rainfall Design System", commonly referred to as HIRDS.⁽¹⁴⁾ This model has had a number of updates both as to the accuracy and quantum of the data available and as knowledge of potential climate change impacts increases.
54. The last iteration of the T&T model, which dates from late 2017, uses the then current HIRDS Version 3. However the latest version of HIRDS, Version 4, which was released in August 2018⁽¹⁵⁾ is now required by the Council to be used in the design of stormwater systems (Council's current stormwater design requirements.⁽³⁾ were published in July 2019, pre-dating the notification of PC 74 in December 2020.) Consequently the modelled rainfall inputs that generate the outputs that are being used to validate PC74 are outdated and do not comply with the Council's own requirements.

(13) <https://www.tasman.govt.nz/assets/Temporary-Documents/Coastal-Management-Project-Coastal-Risk-Assessment-Final-December-2020.pdf>

(14) <https://niwa.co.nz/information-services/hirds>

(15) https://niwa.co.nz/sites/niwa.co.nz/files/2018022CH_HIRDSv4_Final.pdf

55. The NIWA report that accompanied the release of version 4 of HIRDS noted that, in summary, *“the change from version 3 can be either positive or negative and is quite variable”* ⁽¹⁶⁾ Without re-running the T&T model it is therefore impossible to quantify the impact of the amended rainfall data and the consequential changes to the impact of PC74 on the downstream properties. This further brings the validity of both the s32 and s42A’s reports conclusions into doubt.

Downstream Flood Mitigation Works.

56. The T&T model ⁽²⁾ also assumes that the earlier proposed flood mitigation work on the lower catchment has been completed. This is not the case as this work has not been undertaken and although the requisite resource consents have recently been granted they are currently, potentially subject to appeal.⁽¹⁷⁾ The works also require outstanding landowner permissions to enable construction to commence. (I understand that, to date, the latter has proven to be difficult to obtain.)

57. It should be noted that the T&T witness at the recent consent hearing for these lower catchment flood mitigation works stated that ⁽¹⁸⁾ :

- The works are only designed to reduce flooding under current climatic conditions and sea levels.
- The proposals do not account for the RPHL sub-division impacts.
- If implemented, the infrastructure still provides a lower 'level of service' than that normally required by the Council.

58. Given that the mitigation works have not been constructed, the model is again therefore in error and should be re-run without the mitigation works in place. It is likely that the consequent output will show that the land use change proposed by PC74 will also potentially lead to an increased risk of flooding in the downstream areas.

(16) Page 31 - reference (15)

(17) Tasman District Council: Pōhara Flood Mitigation Works- Resource Consent RM190876 and ors - Hearing Commissioner Decision – 06/08/2021

(18) Statement of Evidence D. Velluppliai (T&T) -22/04/2021 – para's 3.2, 3.3, 6.3, 6.6, 6.7, 7.4, 7.7, & 9.2

Re-contouring.

59. The hydraulic model was built using a preliminary assessment of the proposed re-contouring of the sub-division land. This re-contouring will determine the flow paths of rainfall run-off and is accordingly an integral part of the model.
60. Accordingly the modelled land contours should be carefully compared with the latest re-contouring proposed by RPHL to ensure that the model assumptions are comparable with reality. If not the relevant model parameters need to be modified and the model re-run. (T&T likewise recommended that the model should be re-run “*once earthworks and stormwater servicing plans have been finalised.*”⁽¹⁹⁾)

Overall Model Validity.

61. There may be other errors and / or omissions within the model which significantly impact the outcome of the various scenarios. Accordingly, in order to provide confidence to;
- The Hearing Panel.
 - Those residents downstream of the area which is the subject of PC74 and
 - The Council, who will ultimately hold responsibility for future problems should they arise;

the model and its inputs and outputs should be independently peer reviewed by an appropriately qualified person, amended and re-run as required before a decision is made on PC74.

CONCLUSION AND REMEDIES SOUGHT.

62. There is a not insignificant flavour of pre-determination in the Council's approach to PC74. As a submitter I am reliant on the Hearing Panel to ensure that the Council's apparent position does not contaminate the outcome of the hearing.

(19) T&T report ⁽²⁾ – Executive Summary

63. A land use change from Rural 2 to Residential has the potential to exacerbate existing downstream stormwater disposal problems. Given the central role the T&T hydrological model plays in the decision to accept or reject PC74, in relation to the Pohara site, my predominant concern is the questionable veracity of the model. I accordingly seek the following relief:-
64. PC74, with respect to Pohara, shall be placed on hold until:
- An independent peer review of the model and its inputs has been undertaken.
 - The model is modified, if and as deemed necessary, to the specifications of the peer reviewer.
 - The (revised if necessary) model has been re-run using inputs agreed to by the peer reviewer.
65. Once this process has been completed the outputs of the model shall be evaluated in terms of PC74's potential to exacerbate existing downstream stormwater issues.
66. The currently proposed upstream stormwater mitigation works shall be modified as necessary to ensure that there are no negative downstream effects. (If this is not feasible PC74, in relation to Pohara, shall be withdrawn.⁽²⁰⁾)
67. Downstream works shall be completed before the relevant section of PC74 is implemented.

R. English

Richard English

12 / 08 / 2021

(20) If the re-evaluation of the modeling indicates that there will be negative downstream effects then the development currently enabled on the subject land by resource consent will be in contravention of TDC Resource Consent Number: SH180016, Clauses 2 & 5. Construction should therefore not proceed until compliance can be demonstrated.