

APPENDIX 6: LEGAL FRAMEWORK

1. As mentioned in our report we have applied the approach of the Environment Court in *Colonial Vineyard Ltd* considering the statutory framework (as modified for RMA amendments and the SPP process). Without derogating from that approach, a high-level summary of the relevant provisions is set out below.¹
2. The purpose of the preparation, implementation and administration of a district plan, including the TPLM Variation, is to assist the Council to carry out its functions to achieve the purpose of the RMA.²
3. The TPLM Variation must be prepared and changed in accordance with:³
 - (a) the Council's functions under s 31 which:
 - (i) provide a clear direction for addressing long term provision for urban growth and the provision of associated strategic infrastructure in a District Plan;⁴ and
 - (ii) also provide for integrated management and the control of the effects of land use, development or protection to prevent or mitigate adverse effects (this is addressed in detail in our Report);⁵
 - (b) the provisions of Part 2 which sets out the sustainable management purpose (section 5) and:
 - (i) matters of national importance for which we must "recognise and provide for";⁶
 - (ii) other matters for which we must have "particular regard to";⁷ and
 - (iii) we must "take into account" the principles of Te Tiriti o Waitangi.⁸
 - (c) the Minister for the Environment's direction to use the SPP for the TPLM variation;
 - (d) the Council's obligations to prepare a s32 Evaluation Report and to have particular regard to its s32 Evaluation Report:
 - (i) A s32 Evaluation Report in general terms requires consideration of whether the objectives of a proposal are the most appropriate way to achieve the purpose of the RMA, and whether the provisions in the proposal are the most appropriate way to achieve those objectives. This involves identifying other options, undertaking a cost/benefit analysis for assessing the efficiency and the effectiveness of the proposed provisions and a summary of the reasons for such provisions. Section 32 is set out in full in Appendix 2A of the s32 Evaluation Report.

¹ A more detailed description is provided in the opening submissions for the Council dated 24 November 2023 in Appendix B at [14]–[51].

² RMA, s 72.

³ RMA, s 74(1).

⁴ RMA, s 31(1)(aa).

⁵ RMA, s 31(1)(a) and (b).

⁶ RMA, s 6.

⁷ RMA, s 7.

⁸ RMA, s 8. Objective 5 of the NPS-UD also requires us to take into account the principles of the Treaty of Waitangi.

- (ii) If we decide to recommend changes to TPLM Variation as notified, we must carry out a further evaluation under s 32AA to support those changes.
 - (e) relevant national policy statements;
 - (f) the national planning standards; and
 - (g) relevant national environmental standards.⁹
4. As TPLM Variation is being processed under the SPP, we must also have regard to the statement of expectations set out in the Minister's Direction and provide the Minister with specific documents (appended to, or covered in sections 3-14, of the report).¹⁰
 5. Mr Brown's s42A Report has considered the Part 2 obligations, and remainder of the statutory framework in detail which is not repeated here.¹¹
 6. Of relevance to the content of the TPLM Variation, a district plan must:
 - (a) give effect to the NPS-UD, NPS-FM, NPS-HPL and NPS-IB,¹² the national planning standards and the PORPS19;¹³ and
 - (b) must also not be inconsistent with a regional plan for any matter specified in s 30(1).¹⁴
 7. When preparing the TPLM Variation, the Council must also:
 - (a) have regard to:
 - (i) a proposed regional policy statement (in this case the PRPS21);¹⁵
 - (ii) to the extent that their content has a bearing on the TPLM Variation: any relevant management plans and strategies under other Acts, any relevant entry in the New Zealand Heritage List/Rārangī Kōrero, and various fisheries regulations;¹⁶
 - (iii) any emissions reduction plan and any national adaption plan;¹⁷ and
 - (iv) the extent to which the TPLM Variation needs to be consistent with plans or proposed plans of adjacent territorial authorities.¹⁸ The adjacent territorial authorities are the Waitaki District Council, Central Otago District Council, Westland District Council and Southland District Council; and
 - (b) take into account any relevant planning document recognised by an iwi authority to the extent that its content has a bearing on the resource management issues of the district.¹⁹ The following iwi management plans are relevant to the TPLM Variation:

⁹ Section 42A Report at [7.56]. The National Environmental Standards relating to air quality, drinking water, contaminated soil and freshwater have also been identified as relevant to the TPLM Variation.

¹⁰ RMA, sch 1 cls 82 and 83(1).

¹¹ Section 42A Report at [14.9]–[14.16]. See section 14 more broadly in respect of the statutory framework.

¹² Section 42A Report at [7.25].

¹³ RMA, s 75(3).

¹⁴ RMA, s 75(4)(b).

¹⁵ RMA, s 74(2)(a)(i).

¹⁶ RMA, s 74(2)(b).

¹⁷ RMA, s 74(2)(d) and (e)

¹⁸ RMA, s 74(2)(c).

¹⁹ RMA, s 74(2A).

- (i) The Cry of the People, Te Tangi a Tauira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008; and
- (ii) Kāi Tahu ki Otago Natural Resource Management Plan 2005; and
- (c) not have regard to trade competition or the effects of trade competition.²⁰

8. Of more general relevance are:

- (a) s 76 – when making rules in TPLM Variation;
- (b) s 44A(7) – requiring every local authority (and us) to observe national environmental standards; and
- (c) s 58I – which require the Council to recognise the national planning standards (which do not direct amendments to plan changes, but consistency is to be encouraged).

²⁰ RMA, s 74(3).