Annexure 2: Scope Challenges

[1] This is the first occasion where a plan change has been referred directly to the Environment Court for determination. Given the large number of parties[1] both represented and unrepresented, the court asked the Regional Council to bring to its attention submissions that it considered may be beyond scope.

[2] All submissions must be on or about PC7, including any relief proposed. If the submission is not on or about PC7, the court does not have jurisdiction ('scope') to grant the relief sought.

Principles relevant to decision-making and the court's jurisdiction

[3] The Minister for the Environment called-in PC7 from Otago Regional Council and referred the proceeding to the Environment Court for decision.[2] Before PC7 was called-in, the Regional Council had already notified the plan change[3] and submissions on the plan change had been received. Even so, there was a second opportunity to make submissions,[4] the Act treating the first tranche of submissions to the Regional Council as if they were submissions made to the EPA.[5]

[4] The Environment Court, when considering the plan change, must apply cl 10(1) to (3) of Schedule 1 to the Act as if it were a local authority.[6] Schedule 1 provides that the local authority must give a decision on the provisions and matters

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[1] Note: the court must consider all submissions filed whether or not the submitter is a party to the proceeding.

[2] RMA, s 142(2).

[3] Note: RMA, s 149E uses the term "proposed plan" and not "plan change". Section 43AAC RMA defines "proposed plan" as including a "change to a plan" proposed by a local authority and notified under cl 5 Schedule 1 RMA. To assist readers, we use the term "plan change" where "proposed plan" appears in the Act.

[4] RMA, s 149E(1).

[5] RMA, s 149E(10).

[6] RMA, s 149U(1).

raised in submissions.[7] The decision:

> (a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to –
>
> (i) the provisions of the proposed statement or plan to which they relate; or
>
> (ii) the matters to which they relate.

[5] The court is not required, however, to give a decision that addresses each submission individually.[8]

"On" or "about" the plan change

[6] To date, case law establishing principles relevant to jurisdiction have been concerned with whether a person has made a submission that is "on" the plan change because that is the language used in Schedule 1.[9]

[7] However, sections of the Act empowering the Minister to call-in plans do not use the same language. Instead of the public making a submission that is "on" the plan change,[10] they are now to make a submission "about" the [called-in] plan change.[11]

[8] The difference, if any, in the meaning of "on" or "about" may be of moment when considering whether the principles established by case law continue to apply. Section 5 of the Interpretation Act provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose.

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[7] RMA, Schedule 1, cl 10(1).
[8] RMA, Schedule 1, cl 10(3).
[9] RMA, Schedule 1, cl 6(1).
[10] RMA, Schedule 1, cl 6(1).
[11] RMA, s 149E(1).

[9] The Oxford and Cambridge Dictionaries[12] define "about" as meaning "on the subject of" concerning or connected with. In their statutory context, the terms "on" or "about" are prepositions, both of which concern the same subject matter and are for the same purpose – namely enabling persons to make a submission on a publicly notified plan change. A cross-check against the wider statutory context reveals that the propositions "on" and "about" are used interchangeably when dealing with the same subject matter.[13]

[10] Therefore, we accept the Regional Council's submission that the principles established by the senior courts when establishing jurisdiction to grant relief apply.[14]

Is the submission "on" or "about" the plan change?

[11] The following two-part test helps identify whether a submission is on (or about) the plan change. A submission is on the plan change if:

(a) the submission addresses the extent to which the plan change would alter the status quo; and
(b) the submission does not cause the plan change to be appreciably amended without real opportunity for participation by those potentially affected.[15]

First limb

[12] The first limb of the test acts like a *filter;* it ensures there is direct connection between the submission made and the degree of alteration proposed to the notified

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[12] Online Dictionaries.
[13] See RMA, ss 149E and 149F and see also the section heading.
[14] Legal submissions on behalf of the Otago Regional Council, '(ORC, supplementary submissions (April))' at [9]–[12].
[15] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP 34/02, 14 March 2003 at [66].

version of the plan change.[16] The enquiry under this limb is to identify the breadth of alterations proposed under the plan change to the planning status quo and, second, to ascertain whether the submission seeks to address those alterations.

[13] When thinking about scope, the s 32 Report can be a useful guide. If the submission raises matters that should have been addressed in the s 32 Report, but were not, the matters are unlikely to fall within the ambit of the plan change. Incidental or consequential changes are permissible provided that no substantial s 32 analysis was required to inform affected persons of the comparative merits of that change.[17]

[14] The content of a s 32 Report is not the test, but a means of analysing the status quo at issue. The report should not be understood to fix the final frame of the plan change nor any individual position. Rather, its relevance, in this context, is as an indicator of the scope of the plan change where this is unclear or ambiguous.[18]

Second limb

[15] The second limb of the test focuses on the fairness of process, "…ensuring those potentially affected are both notified and have the opportunity to have their say".[19] If the plan change can be amended without the public having a real opportunity to participate, this will be a powerful consideration against finding the submission was on the plan change.[20]

Is the amended relief sought within the scope of the submission made?

[16] It is not unusual for relief to be amended in response to evidence called by

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[16] *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [80].
[17] *Palmerston North City Council v Motor Machinists Ltd* at [81].
[18] *Hawke's Bay Fish and Game Council v Hawke's Bay Regional Council* [2017] NZEnvC 187 at [44].
[19] *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [105].
[20] *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [105].

other parties and its testing during a hearing. Even so, any proposed amendments must remain within the general scope of the notified plan change or the original submissions on the plan change or somewhere in between.[21]

[17] This need stems from the requirements of procedural fairness. One of the purposes in notifying the plan change, receiving submissions and further submission process, is to ensure that all are informed about what is proposed, "otherwise the plan could end up in a form which could not reasonably have been anticipated resulting in potential unfairness".[22]

[18] The amendments pursued must, therefore, remain within what was fairly and reasonably raised in the original submission lodged on the plan change.[23]

[19] Adding complexity is the fact that local authorities usually face multiple submissions, often conflicting and often prepared by persons without professional help. Councils need to be able to deal with the reality of the situation.[24] That being the case, the assessment about whether any amendment was reasonably and fairly raised in the course of submissions is to be approached in a realistic workable fashion.[25] This approach requires:[26]

> …that the whole relief package detailed in submissions be considered when determining whether or not the relief sought is reasonably and fairly raised in the submissions...

[20] The fact that a submission does not identify the relevant provision to be amended is not determinative. The High Court in *Albany North Landowners v*

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[21] *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].
[22] *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 (HC) at [55].
[23] *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 166.
[24] *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 165-166.
[25] *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at 410.
[26] *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 (HC) at [60].

Auckland Council[27] observed:

> [149] First, as noted at [114] and [135], there can be nothing wrong with approaching the resolution of issues raised by submissions in a holistic way — that is the essence of integrated management demanded by ss 30(1)(a) and 31(1)(b) and the requirement to give effect to higher order objectives and policies pursuant to ss 67 and 75 of the RMA. It is entirely consistent with this scheme to draw on specific submissions to resolve issues raised by generic submissions on the higher order objectives and policies and/or the other way around in terms of framing the solutions (in the form of methods) to accord with the resolution of issues raised by generic submissions.

[21] Approached this way, the question about whether the submission is on or about the plan change will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.[28] It is important to keep in mind that the court cannot permit the plan change to be appreciably changed without a real opportunity for participation by those who are potentially affected.[29]

[22] That said, we turn next to the scope challenges.

Otago Fish and Game Council & Central South Island Fish and Game Council ('Fish and Game')

[23] Fish and Game seeks the following amendments to PC7:[30]

(a) amend policy, Policy 10A.2.2 and insert a new non-complying activity rule, Rule 10A.3.2.2, to apply to applications for new water permits;

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[27] *Albany North Landowners v Auckland Council* [2017] NZHC 138.

[28] *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 166.

[29] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP 34/02, 14 March 2003 at [66].

[30] Closing legal submissions on behalf of the Otago Fish and Game Council and the Central South Island Fish and Game Council, 5 July 2021 ('Fish and Game, closing submissions') at [23]-[48].

and

(b) insert a new policy, Policy 10A.2.4, and a new table, Table 10A.2.4, to replace the "no more than minor" test.

[24] The Regional Council submits relief relating to 'new' water permits[31] is not "on" the plan change and secondly, the amended relief to replace the plan change's "no more than minor" test with a table, is not within scope of Fish and Game's submission.[32] Fish and Game disputes the Regional Council's submission on scope.[33]

Consideration

[25] In its original submission, Fish and Game gave partial support for Policy 10A.2.2 including the proposed six-year duration for new consents.

[26] Fish and Game also submitted on Policy 10A.2.3 and Rule 10A.3.2.1 which between them create a pathway for non-complying activities.

[27] Much of Fish and Game's criticism of the proposed pathway has been borne out and – as we have found elsewhere – the relevant provisions are proposed to be substantially amended.

[28] The public notice given by the local authority may be relevant when considering the issue of procedural fairness.[34] On this occasion the Regional Council's public notice records that the plan change was about an objective, policies and rules for the replacement of deemed and expiring permits; there is no mention of new water permits. The public notice given by the EPA mentions deemed and expiring permits adding that the plan change has a policy concerning the duration of new water permits. The Regional Council submits persons

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[31] The amendments proposed to Policy 10A.2.2 and an associated rule.
[32] ORC, supplementary submissions (April) at [31]-[43].
[33] Fish and Game, closing submissions at [41]-[48].
[34] *Hawke's Bay Fish and Game Council v Hawke's Bay Regional Council* [2017] NZEnvC 187 at [46].

potentially affected by the plan change would not, on reading the notices, have foreseen the plan change introducing rules for new water permits.[35] However, we think this a too rigid application of the legal tests, which, if adopted, could stifle public participation in plan processes.[36]

[29] A key purpose of the notified plan change is to establish an interim framework to manage 'new water permits',[37] which it does by regulating the duration of resource consents. The s 32 Report states the plan change is to provide "direction on the consent duration".

[30] In its submission on the plan change, Fish and Game supported Policy 10A.2.2 but appears to have understood this policy as applying to both new permits and specified permits expiring by 31 December 2025. On that basis, Fish and Game proposed that applications seeking consent duration more than six years be assessed as non-complying activities. The relief sought is for a new rule to implement the proposed policy. We find this to be within scope of the plan change and assess its merits elsewhere.

[31] Secondly, in its submission on the plan change Fish and Game sought additional guidance be given to the "no more than minor" test in Policy 10A.2.3. In evidence, Fish and Game proposed the plan change be amended by setting thresholds above which adverse effects on ecological health are likely experienced. They propose MALF be used to benchmark the "no more than minor effect" of cumulative abstraction from a waterbody. The table and accompanying policy are said to fall within Fish and Game's original submission on Policy 10A.2.3 and Rule 10A.3.2.1 that "additional guidance should be given to the 'no more than minor' test".

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[35] ORC, supplementary submissions (April) at [31]–[38].

[36] A similar note of caution can be sounded when considering s 32 reports; per *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [100].

[37] Objective 10A.1.1 of the notified plan change.

[32] The problem being addressed by Fish and Game lies with the architecture of the Policy 10A.2.3 which effectively shuts the door to all non-complying activities. Many submitters made submissions on the policy's "no more than minor" test.

[33] While the original submission is on the plan change, at issue is whether the amended relief – thresholds by which to screen "no more than minor effects" – remains within the scope of its submission. Merits aside, we find the relief could not have been reasonably foreseen from Fish and Game's submission and consequently persons potentially affected by the threshold have not had an opportunity to take an active part in this hearing. The court does not have jurisdiction to grant this relief (now proposed Policy 10A.2.4 and Table 10A.2.4).

Territorial Authorities

[34] Five Territorial Authorities made submissions on the plan change. At the close of the hearing the Territorial Authorities sought, amongst other amended relief:

(i) the inclusion of a new restricted discretionary activity rule, Rule 10A.3.1A.2 (the 'May 2021' relief);[38] or
(ii) the inclusion of two new restricted discretionary activity rules, Rule 10A.3.1A.2 and Rule 10A.3.1A.3 (the 'July 2021' relief).[39]

[35] The May and July 2021 relief introduce policy and rules for new and replacement consents expiring in 2035. The amended relief would see either all new and replacement community water schemes assessed under PC7 only (May 2021 relief) or alternatively, new community water schemes would be assessed under the operative Regional Water Plan (only) or under both the operative

[38] See Twose, supplementary evidence dated 12 May 2021.
[39] Territorial Authorities, memorandum of counsel filed 5 July 2021.

Regional Water Plan and PC7 (July 2021 relief).

[36] The Regional Council challenges the inclusion of any rule for activities other than replacement permits. The Regional Council says the proposed rule would preclude the consent authority from assessing the effect of the proposed activity on the environment, including the effects on other water users. The Regional Council submits the amended relief could not have been reasonably foreseen by potentially affected persons who, not having an opportunity to respond, are precluded from being heard in relation to the same.[40]

[37] The Territorial Authorities defend their amended relief submitting that it is on the plan change because it responds to policy in Policy 10A.2.2 on the duration of new water permits. If PC7 is approved by the court without amendment, they say they could not meet their statutory obligations to provide drinking water to their communities.

[38] Referring to the relevant tests (above), counsel for the Territorial Authorities submits that the issue of scope is to be determined by first enquiring into the "functional effect of the plan change on the status quo" and secondly, considering "procedural fairness implications".[41] However, we find counsel's "functional effect" enquiry conflates the merits of the amended relief with the court's jurisdiction to approve the same.[42]

[39] We have read each of the TAs' submissions to ascertain whether the court has jurisdiction to consider the amended relief. In summary:

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[40] ORC memorandum 'In relation to Scope for Relief Sought by Territorial Authorities' dated 9 June 2021 at [7]. We note ORC did not make submissions in relation to the July 2021 amended relief but, we assume, the same concerns arise in relation to both the May and July 2021 amended relief. ORC, closing submissions as to scope at [136]-[145] and implications as to natural justice at [146]-[151].

[41] TAs, 'Closing, Scope and Court Questions', dated 1 July 2021 ('TAs, closing submissions') at [8].

[42] TAs, closing submissions at [9]-[23].

- Central Otago District Council – it is difficult to ascertain from the District Council's submission the relief sought. There appears to be no relevant submission on the duration of new or replacement water permits for community water supplies specifically. There is a general submission on short-term permits, which contemplates new rules being introduced to tie the duration of the permit to the date that a future regional water plan becomes operative;
- joint submission of Clutha District Council and Waitaki District Council – in recognition of the importance of community water supplies the District Councils seek PC7 be rejected or to make an exception for community water schemes listed in Schedules 1B and 3B of the operative Regional Water Plan;
- Dunedin City Council – wishes replacement consents for existing community water schemes be assessed as controlled activities under the operative regional plan. The City Council submits that having the certainty of a replacement consent is critical if communities are to have a safe and secure long-term supply to enable social, economic and cultural well-being and also to enable forward planning and long-term financial investment that is required; and
- Queenstown Lakes District Council – emphasising the importance of community water supply, would amend Policy 10A.2.2 and Policy 10A.2.3 to exempt 'community drinking water supplies'[43] and make ancillary changes to the rules so that these activities are subject to the rules in Chapter 12.

Consideration

[40] No submission on the plan change was made by a Territorial Authority seeking to manage all community water supply activities under PC7 exclusively

[43] Queenstown Lakes District Council proposed amendment to Policy 10A.2.3 talks about 'community water supplies' – it is not clear if the proposed difference in wording is material.

(the May 2021 relief). A cursory inspection of the s 32 Report confirms this outcome was not within the contemplation of the report writer. The guide contained in the plan change refers applicants for new water permits back to chapters within the operative regional plan, noting PC7's policy direction on duration.[44]

[41] One consequence of the May 2021 relief is that permits for new activities would be granted without an assessment of the effects of those activities on the environment or, if an assessment of effects is provided by the applicant, then with no outcomes for the environment stated in the plan change. People and communities[45] located in catchments that may, under a future regional plan, be determined to be over-allocated both in terms of water quantity and quality, and who may be adversely impacted by the taking and use of water by these supply schemes, have not had an opportunity to respond and be heard in relation to the Territorial Authorities' amended relief. We accept the Regional Council's challenge.[46] Insofar as new water permits are to be managed under PC7 alone, we find that the Territorial Authorities did not make a submission on PC7 providing scope for this relief and that the court does not have jurisdiction to grant the same. We find that there is scope under the QLDC submissions (at least) to consider the July 2021 relief supporting longer duration for new and replacement permits,[47] albeit that the original submission proposed that the rules in the operative regional plan apply to these activities.

[44] The merits of this relief are discussed elsewhere.

Trustpower

[45] In is original submission, Trustpower sought to enable replacement

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[44] See PC7, 'How to Use the Regional Plan: Water'. Consequential amendments to this guidance were not proposed by TAs or Trustpower when seeking rules in relation to new permits.
[45] People and communities are considered part of the 'environment'. See RMA, s 2 definitions.
[46] See ORC, closing submissions at [136]-145].
[47] See QLDC submission on Policy 10A.2.2 and Policy 10A.2.3 and Rule 10A.3.1.1.

consents for hydro-electricity generation activities and secondly, to restrict the application of policies pertaining to short-term consents to irrigation activities (only).

[46] Ms S Styles, giving planning evidence in support of Trustpower, proposed amendments to Trustpower's relief. This was with the effect that all hydro-electricity generation activities are excluded from PC7's policies on duration and consent applications seeking a duration in excess of six years are discretionary activities.[48] Trustpower supports the amended relief proposed by Ms Styles.[49]

[47] Further, and by way of alternative relief, in closing Trustpower proposed to exclude the Waipori and Deep Stream Hydro-Electric Power Schemes from the plan change policies on duration.[50] All new and replacement consents associated with the schemes would also be assessed under the operative regional plan's policy on duration (Policy 6.4.19) except that environmental effects for the first six years of the proposed activity would not be considered. Resource consent for replacement permits would be required under PC7 with permits exceeding six-year duration (but expiring 2038) to be assessed as a restricted discretionary activity.[51]

[48] The Regional Council supports the recognition of the above schemes in PC7 by making express provision for replacement consents with an expiry date of 2035, not 2038 as proposed. All other hydro-electricity generation activities for which new or replacement consents are sought, would be subject to the policies limiting duration to six years.[52]

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[48] Styles, summary of evidence dated 17 May 2021.

[49] Closing legal submissions on behalf of Trustpower Ltd, 2 July 2021 ('Trustpower, closing submissions').

[50] Trustpower, closing submissions, at [4.10].

[51] Trustpower, closing submissions at [Amended Appendix B handed up 2 July 2021]. 2038 is the date that the bundle of consents held by Trustpower in relation to Waipori and Deep Stream Hydro-Electric Power Schemes expire.

[52] ORC, closing submissions at [152]-[161], including [158] in particular.

Consideration

[49] Trustpower continues to support Ms Styles' amended relief in relation to replacement consents.[53]

[50] When proposing alternative relief in closing submissions, counsel for Trustpower did not address whether the relief fell within the court's jurisdiction. While the relief, presented in closing, respects the general scheme of the plan change in that new permits continue to require resource consent under the operative Regional Plan and replacement permits under PC7, Trustpower proposes environmental effects of its proposed new activities be discounted.[54]

[51] The amendment to Policy 10A.2.2[55] is not fairly and reasonably raised by Trustpower in its original submission. Troubling us, is the proposal that long-term consents for new activities may be approved without any assessment of the effects (including cumulative effects) of those activities during the first six years of those activities. While Ms Styles was consulted by Trustpower on its alternative relief, we did not have the benefit of hearing from her in person or to test the efficacy of what is now proposed or how it gives effect to the NPS-FM 2020 (in particular).

[52] We find that the court does not have jurisdiction to grant the alternative relief for new activities (Policy 10A.2.2) in Annexure B to counsel's closing submissions. Specifically, the court does not have jurisdiction to consider policy that would disregard the environmental effects of new permits for the first six years of the consent, as proposed.

[53] In its original submission on the plan change, Trustpower sought to limit the application of Policy 10A.2.2 to irrigation activities. We find, therefore, the amended relief to exclude hydro-electricity generation activities from this policy,

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[53] Trustpower, closing submissions at [4.4].
[54] Trustpower closing submissions at [4.13]-[4.17] and original Annexure B Policy 10A.2.2
[55] Trustpower closing submissions: original Annexure B Policy 10A.2.2

is a submission that is within scope of the plan change, the merits of which we consider elsewhere.

Wise Response

[54] In closing submissions, counsel for the Regional Council raised the possibility that relief being pursued by Wise Response, specifically to introduce flow regimes into the plan change, may be out of scope.[56]

[55] Wise Response made submissions on the plan change seeking, amongst other matters, the inclusion of a flow regime for each of Otago's rivers. Wise Response supported its submission later proposing detailed amendments to the plan change.[57]

[56] The notified plan change introduced a new rule for controlled activities for replacement permits. The rule reserved control to the Regional Council in relation to minimum flow, residual flow or take cessation conditions (Rule 10A.3.1). This reservation attracted many submissions in opposition as it appeared to confer a discretion on the Regional Council to impose these types of condition without corresponding policy support. Accepting the criticism, the Regional Council subsequently proposed the matter of control be deleted.

Assessment

[57] Insofar as the ambit of the notified plan contemplates the introduction of methods supporting a flow regime, we find the Wise Response submission is on the plan change and its merits are considered elsewhere.

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[56] Transcript WKS 9/10 (Maw) at 733.
[57] Filed by Mr D MacTavish on behalf of Wise Response on or after March 2021.

Minister for the Environment

[58] During the hearing the Minister for the Environment proposed amendments to Policy 10A.2.3 exempting community water supplies and hydro-electricity generation from this policy.

[59] The Regional Council submitted that these amendments were not within the scope of the Minister's submission on the plan change.[58] The Minister disputes the scope challenge.[59]

[60] Matters have moved on and we do not understand that the Regional Council is disputing that there is scope to amend the plan change this way and so this is not a challenge that the court need decide.

OWRUG

[61] OWRUG filed evidence seeking the following relief:

(a) decline PC7;
(b) alternatively, decline PC7 and amend policies and methods in the operative Regional Plan;
(c) alternatively, decline PC7 and create a transitional pathway in the operative Regional Plan for activities formerly the subject matter of a permit, to be permitted.

[62] In respect of the two alternative options, the amendments were proposed to Chapters 6 and 12 of the operative regional plan. In the second week of the hearing the court asked counsel for OWRUG to clarify whether the alternatives were within the scope of the plan change. In response, OWRUG abandoned its

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[58] ORC supplementary submissions (April) at [50]-[51].
[59] Closing submissions of the Minister for the Environment, 5 July 2021 ('MfE closing submissions') at [14]-[15].

alternative relief,[60] confirming in closing that the decision sought from the court is to reject the plan change.[61]

[63] Given that, the court invited OWRUG to propose amended relief. However, to be granted, the amended relief must fairly and reasonably lie within scope of OWRUG's original submission.

[64] Ms S Dicey, on behalf of OWRUG, proposed new policy and a new discretionary activity rule for replacement water permits. She deposed the amended relief was within scope of the original submission because it is a lesser alternative than outright rejection of the plan change.[62]

[65] The Regional Council submits OWRUG's amended relief is not within the scope of OWRUG's submission on the plan change as it is not relief that could be reasonably foreseen, nor is it a logical consequence of other relief sought. This submission OWRUG dismissively characterises as a 'technical foot trip'.[63]

[66] OWRUG supports its position observing that other parties/submitters are also seeking discretionary activity pathways when replacing existing permits. OWRUG's standing to be heard in this proceeding is because it is a person who made a submission on the plan change. OWRUG does not explain the relevance of the relief sought by other submitters/parties to its position on scope and it is unclear what ruling OWRUG seeks from the court: *possibly* that it is permissible for OWRUG to rely on relief proposed by another. If this is what is being contended, OWRUG has not made further submissions in support of the relief sought by those submitters.

[67] It is a basic requirement of procedural fairness that all are "sufficiently

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[60] OWRUG, memorandum 'as to relief sought', dated 17 March 2021.
[61] Closing submissions of OWRUG, 5 July 2021 ('OWRUG, closing submissions') at [1].
[62] New Objective 10A.1.2, new Policy 10A.2.3, amendment to Rule 10.1A.1 and new Rule 10A.3.2.1, amendment to Rule 10A.3.2 and new Rule 103.2.1.
[63] OWRUG, closing submissions at [36].

informed" about what is proposed.[64] OWRUG amended relief seeking a discretionary pathway does not achieve this. However, given that the argument was not developed by OWRUG in closing submissions, we decline to make a finding on scope. Instead, we keep in mind its submission when deciding whether to reject the plan change and secondly, when considering the merits of relief proposed by other parties that there be provision for longer duration permits.

[64] *Vernon v Thames-Coromandel District Council* [2017] NZEnvC 002 at [15].