

Before the Independent Hearings Panel
At Department of Conservation

Under the Resource Management Act 1991 (**RMA** or **Act**)

In the matter of Proposed Plan Change 1 to the Regional Coastal Plan:
Kermadec and Subantarctic

Legal submissions on behalf of Heritage Expeditions Limited

10 June 2026

Submitter's solicitor:

Maree Baker-Galloway / Conor Meredith

Anderson Lloyd

Level 2, 13 Camp Street, Queenstown 9300

PO Box 201, Queenstown 9348

DX Box ZP95010, Queenstown

p + 64 3 450 0700 | f + 64 3 450 0799

maree.baker-galloway@al.nz / conor.meredith@al.nz

**anderson
lloyd.**

May it please the Panel

Introduction

- 1 These legal submissions are presented on behalf of Heritage Expeditions (2018) Limited (**HEL**) in relation to Plan Change 1 (**PC1**) to the Regional Coastal Plan: Kermadec and Subantarctic Islands (**RCP**).

Summary of HEL's position

- 2 HEL seeks that considering the RMA's impending reform that the Commissioners recommend PC1 not proceed.
- 3 Any changes that are considered appropriate, should be undertaken when there is certainty as to the overall statutory framework that will apply.

Suggested improvements to PC1

- 4 In the event the Panel determines to continue to progress with considering PC1, HEL recommends the following:
 - (a) that the new restrictions as to ancillary craft, specifically the proposed amendments to Policy 13, Rule 40 and Rule 56, be deleted.
 - (b) If the proposed changes are to remain in some form, then existing operators such as HEL, with a proven safety record as to their use, should be exempted from the new consenting requirements, on the condition that they also:
 - (i) operate at all times with at least two ancillary crafts in the water, crewed by suitably trained staff; and
 - (ii) have immediate access to a fast rescue boat.
 - (c) that the proposed amendments to Rule 47 and the associated introduction of new Rule 47A, which propose to amend the current prohibition on vessels >125m accessing and anchoring within Perseverance Harbour, Campbell Island be deleted;
 - (d) as to the proposed amendments to the biofouling provisions:
 - (i) HEL prefers that the biofouling inspection and standards in the RCP be replaced with a requirement that vessels comply with MPI's requirements for long-stay vessels in the Craft Risk Management Standard for Vessels 2023 (**CRMS**) for long stay vessels; or alternatively that an additional permitted pathway be provided for, for vessels that have antifouling less than 12

months old and that MPI have certified comply with MPI's requirements for long-stay vessels in the CRMS-Vessels.

Reasons for PC1

- 5 DOC summarises the reasons for PC1 as being to address matters of health and safety, and for the protection of the environment. However HEL does not see that the changes proposed address those issues, in fact they are likely to make them worse.
 - (a) Allowing vessels larger than 125m into Perseverance Harbour is likely to increase health and safety risks, and risks to the natural environment. And according to the s32 report at p33 the only reason for proposing a change to rule 47 is that it is a blunt rule (p33). The s 32 report also cites the initial assessment from Ecan following the grounding of the *L'Austral*, that there is '*no indication that Rule 47...is not appropriate*' (p34);
 - (b) The provisions in respect of Ancillary Vessels are not likely to, in practical terms, improve health and safety, and the requirement to keep the mothership within 1000m is more likely to increase risks, by having the mothership leave safe anchorage. It is also more likely to act as an incentive for those larger vessels to seek a coastal permit under proposed rule 47A;
 - (c) The changes to the biofouling provisions are neutral as to any improvement for the protection of the environment, but introduce additional complexity in terms of bureaucracy and remove the oversight of inspectors approved by the DOC.

Sufficiency of evidence in support for PC1

- 6 The evidence provided by DOC in support of PC1 does not justify the proposed changes.
- 7 Of particular concern:
 - (a) Given the high potential impact, including potentially very serious adverse environmental impacts and risk to human life, that may occur if a large vessel of over 125m in length were to have an incident in Perseverance Harbour;
 - (b) the new restrictions on Ancillary Craft, particularly as they apply to an operator such as HEL who has an outstanding safety record, and operates with industry best-practice safety measures; and

- (c) the need for the additional requirements associated with biofouling, specifically what improved environmental outcomes would arise, above and beyond, vessels such as HEL's complying with the conditions of the CRMS.
- 8 HEL is very concerned about the absence of an arms-length truly independent expert peer review of the proposed changes to the navigation and safety provisions, from an expert with no vested interests, that is experienced with both large vessels, and ancillary craft, in the Subantarctic Islands, given the significant health, safety and environmental consequences should there be an incident.
- 9 Despite best endeavours to bring expert evidence to this hearing for you to test and evaluate, from HEL Captains and Andy Smith, due to the absence of consultation as to dates and availability, this was not possible. HEL's northern hemisphere expeditions are scheduled years in advance, the relevant Captains were home in Poland and Russia, and then in transit, and communications challenges meant it was not possible.
- 10 Mr Dilley is engaged by DOC on an ongoing basis to provide maritime advice and navigation safety services for the Kermadec and Subantarctic Islands, including advice on navigation safety matters relevant to the RCP.¹
- 11 We understand that Mr Dilley has limited experience on larger vessels in Perseverance Harbour and, more generally, in the Subantarctic Islands.² That is significant given his view that the serious risks associated with access to, and anchoring in, Perseverance Harbour can be adequately managed through conditions - a position that HEL and its experts with years of experience operating with Perseverance Harbour strongly disagree with.³
- 12 Given the remoteness and extreme conditions of these areas, and the serious consequences of any accident, it would have been best practice for DOC to obtain a truly independent arms length peer review from someone with experience on large vessels in the unique and challenging Subantarctic environment, rather than relying on a single incumbent advisor. The consequences are too significant for this level of care not to have been taken.
- 13 There was an opportunity to test some of the factual foundations of Mr Dilley's expert opinion that are in dispute, with Mr Rodney Russ. Mr Russ

¹ Evidence of Mr Dilley at [3].

² Statement of Evidence of Nathan Russ at [49]

³ Statement of Evidence of Nathan Russ, [4, 5, 7, 16, 29,

has no vested interest in the outcome of this process, and has more experience in the Subantarctic Islands than anyone involved, having been expeditioning there since 1972⁴. There are numerous differences between the evidence of Mr Dilley and the evidence of Mr Russ. To critically evaluate those, there was the opportunity to test Mr Russ yesterday as to his experience and credibility, but that opportunity was not taken. Later in my submissions I will refer to these disputed matters.

Inefficient use of resources - upcoming reform to the RMA

- 14 While acknowledging the proposed Planning and Natural Environment Bills are not law and it is the RMA in its current form that is before the Panel, there is precedent of the Environment Court electing to, for example, adjourn proceedings pending the passing of legislation, specifically a Bill amending the RMA.⁵
- 15 Given that the Bills proposed to replace the RMA are currently before the select committee and are expected to be enacted later this year, this is a rare case in which the interests of justice favour discontinuing PC1 or, at the very least, adjourning it until the relevant Bills are enacted and there is greater certainty about the framework that will apply during any transitional period.
- 16 Additionally, in any event, as you are aware Section 79 of the RMA requires regional councils, in this instance DOC, to review provisions in its plans every 10 years. The RCP became operative in 2017 and depending on the culmination of the current reform and the application of any transitional provisions, may be required to be reviewed in the near future. We see no reason that the matters covered by PC1 could not have been incorporated into a future review of the RCP, if this were to be required, and query why the urgency or special case justification for PC1.
- 17 It is submitted a more efficient and appropriate use of resources than progressing PC1 currently is abandoning PC1 and reconsidering it:
 - (a) once the current reform process has been completed and there is a degree of certainty as to the planning framework that will be apply; or
 - (b) alternatively, in the unlikely event the current Bills do not pass into law, or if required by any transitional provisions associated with the

⁴ Response to section 42A Report. Rodney Russ. [7]

⁵See *Transpower New Zealand Ltd v Southland Regional Council* [2025] NZEnvC 77 at [81] where proceedings were adjourned to allow the Resource Management (Consenting and Other System Changes) Amendment Bill to pass into legislation.

Bills, during a full review of the Plan, as may be required in the near future.

Proposed changes to Rule 47 and Rule 47A – access and anchoring in Perseverance Harbour.

- 18 There is insufficient justification provided for the proposed changes, noting the serious safety and environmental concerns associated with the amendments.⁶
- 19 An incident in Perseverance Harbour could have catastrophic consequences for both the coastal environment and the safety of the hundreds of people on board a vessel longer than 125m. Those consequences are compounded by the distance any rescue vessel would likely need to travel and the limited capacity of any such vessel to assist hundreds of passengers. This addressed in detail in the evidence of Nathan Russ. The risk is unacceptable.
- 20 HEL's evidence does not support the view that these proposed amendments address navigation safety concerns or that as claimed by DOC that prohibiting access to Perseverance Harbour by vessels longer than 125m is blunt and unnecessarily restrictive.

Precautionary approach should be applied

- 21 The RMA does not expressly prescribe adoption of a precautionary approach. However the combination of the direction that consent authorities have regard to potential effects on the environment, and the inclusion in the meaning of the term 'effect' of any potential effect of low probability which has a high potential impact, is precautionary in substance⁷.
- 22 The primary feature of the application of the precautionary approach under the RMA is the potential for serious or irreversible harm if adequate steps are not pre-emptively taken,⁸ particularly where there is uncertainty in the mix. Of relevance to this is Policy 3(1) of the NZCPS, which is [to] *adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.*⁹ Policy 3(1) applies to the consideration of PC1.

⁶ Statement of Evidence of Nathan Russ from [43] onwards

⁷ Sea-Tow Ltd v Auckland Regional Council [2006] ELHNZ 202 at [457]

⁸ Pierau v Auckland Council [2017] NZEnvC 90 at [241]

⁹ Pierau v Auckland Council [2017] NZEnvC 90 at [241]

- 23 The courts have also found that a precautionary approach can be applied in relation to people and their health¹⁰, such as those of a passenger on a 125m-plus vessel within Perseverance Harbour.
- 24 *Golden Bay Marine Farmers v Tasman District Council (Golden Bay)* further noted that the true precautionary principle arises only in contexts where it is expressly incorporated (in this case, in the wording of the NZCPS). Where it applies, the principle can shift the decision-making framework more strongly towards preventing harm.
- 25 The relevant points from *Golden Bay* are set out below:¹¹
- (a) where activities take place in the coastal environment, the precautionary principle as the precautionary approach should be applied where potential effects are unknown or partially unknown (NZCPS and RPS); and
 - (b) a precautionary approach in reference to proceedings on a proposed plan or plan change may be applied in various ways:
 - (i) through the application of and analysis of the factual evidence under the provisions of s 3 RMA, particularly s 3(f), that regard be had “to potential effects of low probability but high potential impact”;
 - (ii) after findings of fact are made, a precautionary approach may be inbuilt into the various relative provisions of the plan — objectives, policies, rules, methods, etc; and
 - (iii) such a precautionary approach may define the classification of the activity — **prohibited**, discretionary, controlled — **depending on the nature of the activity**.
- 26 In our view, although all parties appear to accept that an incident would result in extensive adverse effects, the precise nature of those effects— should a vessel over 125m have an accident in Perseverance Harbour— and the extent to which they could be mitigated remain very uncertain, and in HEL's view likely not achievable.
- 27 A precautionary approach, as DOC acknowledged it adopted when initially formulating the prohibition on vessels of this nature entering Perseverance

¹⁰ See [McIntyre v Christchurch CC \(1996\) 2 ELRNZ 84, \[1996\] NZRMA 289](#), where the precautionary principle was applied in relation to the effect of radiation from cell phone towers on people.

¹¹ *Golden Bay Marine Farmers v Tasman District Council ENC Christchurch W42/2001*, 27 April 2001 at [420-421]

Harbour¹², is therefore still warranted, and supports the continued prohibition on vessels of 125m, given the serious potential for significant adverse effects, including risk to life, associated with activities of this nature.

Unacceptable safety risks

28 As set out in detail in Nathan Russ's evidence, this risk, and thus need to adopt a precautionary approach is compounded by:

- (a) the state of the identified anchorage in Perseverance Harbour, along with the absence of an assessment of anchoring feasibility;¹³
- (b) the unpredictable conditions in Perseverance Harbour, with conditions often not reflective of the forecast, often localised to the Harbour and routinely increased by its wind tunneling effect. Even with modern forecasting technology there is a high degree of uncertainty as to what conditions may be expected in the Harbour.¹⁴ It is not realistic to apply a condition that a vessel may only operate in certain conditions, when the conditions are known to be unpredictable.¹⁵
- (c) At page 76 of the s32 in the assessment of changes for ancillary craft, the report states:

*The weather at the Kermadec and Subantarctic Islands **can be extreme – fast changing, unforecast and localised – including strong winds and large swells.** At the Subantarctic Islands these weather conditions can occur both within and outside the harbours and inlets (there are no harbours or inlets at the Kermadec Islands). These factors therefore present **significant potential risks** for long-distance ancillary craft use.*

- (d) Those quoted factors also present significant potential risks for large vessels in Perseverance Harbour – yet those factors are not included in the corresponding table 5 assessing rule 47 at pages 61 – 65 assessing the costs, benefits and risks of not acting.

¹² Section 42A Report at [88]

¹³ Evidence of Nathan Russ at 48 and 49

¹⁴ Evidence of Nathan Russ at 50 - 54

¹⁵ Evidence of Nathan Russ at 68

- (e) Mr Rodney Russ notes that the NZ Meteorological Station was closed in 1995 meaning there is no way of ground truthing the data being transmitted back to NZ by the Automatic Weather Station.¹⁶
 - (f) the lack of any support, both in terms of ocean-going tugs and helicopters that would be available in the context of a large-scale incident.
- 29 We understand there is no tug in New Zealand waters that would be available to provide the required support, and even if they were, assuming reasonable sea conditions it would be days away from reaching Perseverance Harbour from the time of any incident.¹⁷ And in terms of the NZ Navy, **if** it was in NZ waters and ready to depart, it would take up to 6 days to get to the islands.¹⁸
- 30 In addition, we understand there is currently no helicopter fuel in the vicinity of the area as there has not been for approximately 6 years, and accordingly no helicopter could fly to Campbell Island to effect a timely rescue. This means currently no search and rescue or medical evacuation can be undertaken via the use of helicopters, let alone in relation to a mass casualty event or grounding of a vessel.¹⁹
- 31 In addition to these serious safety concerns, there are valid questions as to if:
- (a) DOC can appropriately assess applications under this proposed Rule 47A. This is a highly specialized area, of which it is not apparent that DOC has the capacity and expertise to assess. This is vital considering the reliance being placed on conditions associated with any related permit to mitigate these serious risks; and
 - (b) If consents were granted under the proposed amendments, DOC's ability to enforce the associated conditions - as acknowledged by all parties, Perseverance Harbour is a remote and challenging environment. Given that any coastal permit would likely require an extensive set of conditions to address the significant risks involved, it is unclear how DOC could effectively monitor compliance. Similar to the discussion had yesterday as to Rule 1.

¹⁶ Rodney Russ at pg 4 para 2

¹⁷ Statement of Evidence of Nathan Russ from [57] onwards

¹⁸ Resource Coordination Centre New Zealand (RCCNZ) Antarctic SAR Response Plan, October 2024 version 17, P55

¹⁹ Statement of Evidence of Nathan Russ from [63] onwards

- 32 Taking a precautionary approach and given the potentially significant impacts of an incident on both the environment and people on board or onshore, the risks associated with allowing vessels of this size into Perseverance Harbour cannot be adequately mitigated through consent conditions. Increasing the frequency of the risk of a large vessel having an accident in Perseverance Harbour increases the cumulative risk overall.
- 33 DOC are relying in part on the very recent changes to the Maritime Transport Act, enabling the Minister the powers, duties and responsibilities in respect of the Islands that a regional council would have under Part 3A of the MTA including the power to appoint a harbourmaster, and to make navigation bylaws.²⁰ And also on the fact there is now a Safety Management System in place – both of these measures arising out of the recommendations from the Transport Accident Investigation Commission following the grounding of the *L'Austral* in 2017.²¹ Mr Dilley does not attach the SMS to his evidence, nor advise the date on which it was completed. He refers to the fact it has been audited by independent experts but that audit has not been provided or even referenced.²² The section 32 report (September 2025) reads as though the SMS was still a work in progress at the time of writing (p 33). Both of these new measures are therefore very new, and have not been implemented or tested as to their efficacy at providing *additional mechanisms for management navigation safety risk at the islands, that would be complimentary to the framework provided by the Plan*.²³ In that context, this aspect of the plan change is premature.
- 34 Mr Rodney Russ provided evidence as to the risk profile of Perseverance Harbour, the absence of compulsory pilotage in contrast to other ports and anchorages under NZ jurisdiction, details in terms of the practicality of a Pilotage Exemption Certificate and the limitations of bridge simulators.²⁴ He raises multiple questions that were not addressed in the s 42A report at his page 9.
- 35 Mr Nathan Russ also sets out his concerns with bridge simulators.²⁵
- 36 DOC is also relying on technological advances in ship manoeuvrability in advancing this rule. The evidence of HEL and Mr Rodney Russ agree in principle that it is a combination of vessel design, including draft, windage,

²⁰ Opening Legal Submissions on Behalf of the Department of Conservation, 8 June 2026, [35]

²¹ Statement of Advice Jim Dilley, 8 May 2026, [48 – 50]

²² *ibid*

²³ Opening Legal Submissions on Behalf of the Department of Conservation, 8 June 2026, [36]

²⁴ Rodney Russ, pgs 6 - 9

²⁵ Evidence of Nathan Russ at 72

manoeuvrability and equipment that may contribute to accidents. But as observed by Mr Rodney Russ vessels with the most modern technology still have accidents – because of human error.²⁶ Indeed Mr Marineau explained to the Panel this morning that the 2017 *L'Austral* grounding was due to inadequate passage plans, bridge communication and monitoring and an upmapped navigation hazard. Mr R Russ also provided valuable insights into the pressures faced by Captains and Officers of cruise ships to deliver on promises to their clients, that could contribute also to bad judgement calls.²⁷

- 37 DOC is also relying on the suggested addition in the s42A report as to Information to be Submitted with a coastal permit application. However as drafted those matters are just listed as 'recommended', not required, and they are not drafted in a way that sets criteria or thresholds as to sufficiency. Both Mr Russ states that the draft information requirements are below the standard required for a Pilot Exception Certificate,²⁸ given the high risk profile, and lack of ground truthing.

Changes to provisions regarding Ancillary Craft

- 38 For the reasons set out in detail in the evidence of Nathan Russ, HEL remains opposed to the proposed amendments to Rule 40 and Rule 56.²⁹ HEL's concerns are two-fold. Firstly they do not believe based on their experience that the rule will create any improvement in safety for all operators, in fact it could make things more risky. And secondly there should be an exemption or permitted pathway for experienced operators following specific operational requirements.
- 39 In terms of safety and practicality Mr N Russ details concerns about the 1000m limit vis a vis the mothership, and specific concerns in respect of the Kermadecs.³⁰ He also addresses the point of disagreement with Mr Dilley about whether having the mothership required to be closer to provide aid is practical and realistic.³¹
- 40 In short, the proposed changes are not practical and should not apply to an existing operator such as HEL, who has decades of experience using Ancillary Craft, an outstanding safety record, and adopts industry best

²⁶ Rodney Russ, pg 6 para 1

²⁷ *ibid*

²⁸ Evidence of Nathan Russ at 72 (c), Rodney Russ at page 10,

²⁹ Statement of Evidence of Nathan Russ from [31] onwards

³⁰ *Ibid* at 34 and 35

³¹ *Ibid* at 41

practice, both as to the Ancillary Craft it elects to use, as well as how they are used (i.e., in pairs, with a fast rescue boat available to assist).

- 41 For completeness, despite its long-standing safety record in relation to its use of Ancillary Craft being acknowledged by Mr Jim Dilley on DOC's behalf, the effect of RMA's section 20A is that HEL would not be permitted to continue its currently lawful activities and would be required to obtain a coastal permit under the proposed amendments. This is an onerous and unjustified burden.
- 42 We understand the proposed limits on how far an ancillary craft may travel from the mothership are intended to be measured in a straight line. If the Commissioner is minded to adopt an amendment imposing distance restrictions, it would be helpful to clarify that those distances are to be measured in this way.³²

Proposed amendments to biofouling provisions

- 43 HEL remains firmly of the view, that the proposed changes are inefficient and unnecessary duplication of MPI's established and proven regime, and most will not improve outcomes from an environmental perspective.
- 44 HEL considers that biosecurity issues are more appropriately managed by the Ministry of Primary Industries (**MPI**), as MPI has the experience and expertise to effectively manage these matters. HEL does not consider the PC1 changes improve the regime, so if they are to be made, seek additional changes.
- 45 HEL considers biofouling inspection and standards in the RCP be replaced with a requirement that vessels comply with MPI's CRMS for long stay vessels, or alternatively that an **additional** permitted pathway be provided for, for vessels that have antifouling less than 12 months old and that MPI have certified comply with MPI's requirements for long-stay vessels in the CRMS-Vessels. Ideally from HEL's point of view, there would be a review of the entire system so that MPI could take that role both in respect of international and domestic vessels. Obviously that is beyond the scope of this hearing. For the purpose of this hearing, there is scope to recommend a limb to rule that permits vessels coming from international waters that have MPI certification for long-stay vessels, accessing the islands:
- (a) DOC itself has said in its section 32 report that the proposed changes are '*similar to that of the CRMS*'.³³ Dr Kluza says the *changes are*

³² Statement of Evidence of Nathan Russ at [33]

³³ Section 32 at page 27

*consistent with, and reinforce, the core biofouling risk management principles set out in the IMO Guidelines and the CRMS-Vessels.*³⁴

Accordingly, for international vessels such as HEL's, it is unclear what additional biosecurity risk reduction these proposed changes would achieve;

- (b) The CRMS long stay standard only allows slime layer and goose neck barnacles³⁵ - the same as the Table 1 biofouling thresholds of the RCP.
- (c) Ms Whiting confirms MPI works closely with DOC prior to every cruise season *to ensure all cruise vessels visiting the Subantarctic Islands undertake the correct biosecurity measures prior to arrival to New Zealand to ensure they will be safe to visit both mainland New Zealand and the Subantarctic Islands. This removes the risk of surprise issues at the transition between mainland and Subantarctic itineraries.*³⁶ What HEL is saying, is it would be more efficient to look for a way to remove this duplication that Ms Whiting describes.
- (d) In accordance with section 66(2) of the RMA, and what you are required to consider, given MPI's statutory role in managing biosecurity effects, it is appropriate for the RCP to reference MPI instruments and rely on its expertise, as opposed to DOC duplicating that function in a manner that is inefficient and ineffective; and
- (e) for clarity, Schedule 1, Part 3, clause 30 of the RMA expressly allows standards—such as the CRMS—prescribed in any country or jurisdiction to be incorporated by reference into a plan. This is a common practice, for example in relation to noise standards in various district plans.

46 Imposing additional inspection requirements is unnecessarily duplicative and burdensome, especially in the absence of clear evidence of further biosecurity benefits.

Conclusion

47 Given the anticipated replacement of the RMA, HEL considers it inefficient to proceed with this plan change and seeks withdrawal of PC1.

³⁴ Statement of advice Dr Daniel Kluza, 13 May 2026, [14]

³⁵ Statement of advice Greer Whiting, 13 May 2026, [16]

³⁶ *Ibid* at [20]

48 In any event, for the reasons set out above, Heritage consider that:

- (a) the proposed changes as to Ancillary Crafts should be deleted;
- (b) the biofouling inspection and standards in the RCP should be replaced with, or include and new permitted limb permitted vessels certified by MPI long-stay vessels; and
- (c) the proposed changes to provisions relating to access for vessels longer than 125m should be deleted.

Dated this 10th day of June 2026



Maree Baker-Galloway / Conor Meredith
Counsel for HEL