



Te Tai o Poutini PLAN

A combined district plan for the West Coast

Memo

To: Rex Williams, Chair Te Tai o Poutini Plan

From: Lois Easton, Principal Planner Te Tai o Poutini Plan

Date: 25 August 2022

Subject: Minor Amendment to Sites of Significance to Māori Rules

I recommend the attached wording changes to rules SASM - R15, SASM - R16, SASM - R17 and SASM - R18 in the Sites of Significance to Māori (SASM) chapter of Te Tai o Poutini Plan as a Minor Amendment to the Proposed Plan. These changes specify the zones where the rules apply – and do not include the Residential Zones and Commercial and Mixed Use Zones. The advice note makes this exclusion clear.

The legal advice I sought on this minor amendment is also attached.

In essence, because the activities regulated in the SASM Non-complying Activity rules are also Non-complying Activities in the Residential Zones and Commercial and Mixed Use Zones, the effect of the proposed minor amendment is neutral to the affected landowners.

An email confirming that the wording is acceptable to Poutini Ngāi Tahu is also attached to this email.

Thank you

Lois Easton
Principal Planner
Te Tai o Poutini Plan

Proposed Minor Amendment (Additions underlined)

SASM - R15		Mineral Extraction by other than by Poutini Ngāi Tahu in Sites and Areas of Significance to Māori	
Activity Status Non-complying		Activity status where compliance not achieved: N/A	
<u>Where:</u>			
1. <u>This occurs in any RURZ – Rural Zone, OSRZ – Open Space and Recreation Zone, SPZ – Special Zone or INZ – Industrial Zone</u>			
Notification: Applications for activities on sites and areas of significance to Māori will always be limited notified to the relevant Poutini Ngāi Tahu rūnanga.			
Advice Note: Mineral Extraction in RESZ – Residential Zones and COMZ – Commercial and Mixed Use Zones are not regulated by this rule. Refer relevant zone rules for the status of industrial activities in these areas.			
SASM - R16		Plantation forestry or planting of shelterbelts or woodlots on land in Schedule Three - Sites and Areas of Significance to Māori	
Activity Status Non-complying		Activity status where compliance not achieved: N/A	
<u>Where:</u>			
1. <u>This occurs in any RURZ – Rural Zone, OSRZ – Open Space and Recreation Zone, SPZ – Special Zone or INZ – Industrial Zone</u>			
Notification: Applications for activities on sites and areas of significance to Māori will always be limited notified to the relevant Poutini Ngāi Tahu rūnanga.			
Advice Note: Plantation Forestry, shelterbelts and woodlots in RESZ – Residential Zones and COMZ – Commercial and Mixed Use Zones are not regulated by this rule. Refer relevant zone rules, and the NES – Plantation Forestry for the status of these activities in these areas.			
SASM - R17		Landfills, waste disposal facilities, new crematoria, hazardous facilities, intensive indoor primary production, wastewater treatment plants and wastewater disposal facilities, on or within 50m of sites and areas in Schedule Three - Sites and Areas of Significance to Māori	
Activity Status Non-complying		Activity status where compliance not achieved: N/A	
<u>Where:</u>			
1. <u>This occurs in any RURZ – Rural Zone, OSRZ – Open Space and Recreation Zone, SPZ – Special Zone or INZ – Industrial Zone</u>			

<p>Notification: Applications for activities on sites and areas of significance to Māori will always be limited notified to the relevant Poutini Ngāi Tahu rūnanga.</p> <p>Advice Note: Where these activities are proposed in RESZ – Residential Zones and COMZ – Commercial and Mixed Use Zones they are not regulated by this rule. Refer relevant zone rules for the status of these activities in these areas.</p>	
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SASM - R18	Earthworks, Buildings or Structures on the Upper Slopes, Ridgelines or Peaks of Ancestral Maunga in Schedule Three - Sites and Areas of Significance to Māori not meeting Permitted, Controlled, Restricted Discretionary or Discretionary Activity Standards
<p>Activity Status Non-complying</p> <p><u>Where:</u></p> <ol style="list-style-type: none"> <u>This occurs in any RURZ – Rural Zone, OSRZ – Open Space and Recreation Zone, SPZ – Special Zone or INZ – Industrial Zone</u> <p>Notification: Applications for activities on sites and areas of significance to Māori will always be limited notified to the relevant Poutini Ngāi Tahu rūnanga.</p> <p>Advice Note: Where these activities are proposed in RESZ – Residential Zones and COMZ – Commercial and Mixed Use Zones they are not regulated by this rule. Refer to the Earthworks Rules and the relevant zone rules for the status of these activities in these areas.</p>	<p>Activity status where compliance not achieved: N/A</p>

Legal Advice

Hi Lois,

We are pleased to hear the previous advice has been helpful and you've managed to find a way through. We've had a think about your most recent question below.

We agree that it is arguable that the change could be made under clause 16 if the Committee is satisfied that the change is of minor effect.

As you know, a change can be made to a proposed plan without using Schedule 1 where the change is of minor effect, or may correct any minor errors. In this case, it is the "minor effect" part of the test that would be relied on. As we have previously advised, the test for whether an amendment has "minor effect" is whether the amendment affects the rights of some members of the public (prejudicially or beneficially), or whether it is merely neutral. Only neutral amendments can be made under clause 16. Whether it affects the rights of the public is necessary to be considered in the wider context of the plan (*Mawhinney v Auckland Council* [2011] NZEnvC 33).

We understand that the rules in the TTPP make certain activities non-complying within a SASM, and the Committee is seeking to amend the TTPP so that these rules would not apply in a Residential or Commercial zone. Those zones already have rules that make the wider category of activities (i.e. industrial) non-complying. On this reasoning, we consider it is arguable that the change neutral as it does not change the activity status of the activity. In both cases, the consent authority would need to be satisfied that a proposal passes either of the 104D gateway tests (i.e. effects are minor or proposal is not contrary to the objectives and policies of the Plan). The objectives and policies assessment would include the SASM provisions.

However, there is a risk that the activity status of the Residential and Commercial zone rules could change through the hearings process, which could then lead to activities of concern being afforded a lesser activity status than if they were still specifically identified through the SASM rules.

We suggest that you consider the following before proceeding with this change:

- 1 Ensure that all activities referred to within the SASM rules are captured within the definition of the wider activity (i.e. industrial) managed under the residential / commercial zone rules, so that no activity would inadvertently change activity status as a result.
- 2 Consult with Poutini Ngāi Tahu before making such a change to understand whether the change is truly neutral (and therefore the level of legal risk in making the change). Although the discretion is solely the Committee's to exercise, if Poutini Ngāi Tahu is strongly opposed then this would suggest that the effect of the amendment is more than neutral, and there would be a level of legal risk in making the change through clause 16.
- 3 Consider the risk associated with changes to the activity status through the hearing process and whether SASM will have adequate protection.

If the Committee is not prepared to make the change under clause 16, then one of the Councils may be able to include the proposed change in their individual submissions on the TTPP, for this to then be considered through the hearing process.

We trust that this assists – please do let us know if you'd like to discuss?

Kind regards,
Alice

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