



Te Tai o Poutini PLAN

A combined district plan for the West Coast

Prepared for: Hearing Commissioners - Te Tai o Poutini Plan
Prepared by: Lois Easton, Principal Planner
Date: 9 November 2023
Subject: **s42A Author Right of Reply – Introduction and General Provisions**

Purpose of Report

1. The purpose of this report is to respond to the questions raised by the Hearings Panel during Hearing 1: Introduction and General Provisions, and for the Officer to propose any further amendments to the notified version of the Proposed District Plan above those recommended in the Officers s42a evidence report.

Hearing Panel’s Questions to the s42a Reporting Officer and their Response

2. The following questions were received from the Hearing Panel for the Introduction and General Provisions topic which sat from 30 October 2023 to 2 November 2023.

[1] How have post National Planning Standards Plans dealt with Functional Need and Operational Need? Has anyone else provided a definition of Technical Need?

3. I have reviewed the following post national planning standards plans: Selwyn District Plan (Decisions version), Waimakiriri District Plan (Proposed Plan), Timaru District Plan (Proposed Plan), Nelson Plan (Draft Plan), Far North District Plan (Proposed Plan), Porirua District Plan (Decision Plan), New Plymouth District Plan (Decision Plan) and Central Hawkes Bay (Proposed Plan). Without exception all of these plans refer to both Functional Need and Operational Need. None of these plans use or define technical need.
4. In light of this, and the verbal evidence presented by a range of submitters, I revert to my original position that Functional Need and Operational Need definitions are sufficient, and that these terms cover all the matters sought within the “Locational Need and Technical Need” definition proposal.

[2] How have other Plans dealt with infrastructure – regionally and nationally significant? Is there a difference with Transpower and Nationally significant infrastructure? How does this relate to the NPSIB definition of Specified Infrastructure?

5. I have reviewed the following post national planning standards plans: Selwyn District Plan (Decisions version), Waimakiriri District Plan (Proposed Plan), Timaru District Plan (Proposed Plan), Far North District Plan (Proposed Plan), Porirua District Plan (Decision Plan), New Plymouth District Plan (Decision Plan) and Central Hawkes Bay (Proposed Plan). The references to nationally significant infrastructure and regionally significant infrastructure in these plans are outlined below. I have also looked at whether there is specific reference to the National Grid in any strategic direction in these Plans.

Nationally significant infrastructure

- Proposed Central Hawkes Bay District Plan – one policy in the ECO chapter refers to Nationally Significant Infrastructure, is an assessment criterion in 2 rules – one in NFL and one in CE.

- Proposed Waimakariri District Plan, Proposed Far North District Plan – no specific policy or rules. Nationally significant infrastructure is referenced among a list of things in one policy in ECO chapter
- Proposed New Plymouth District Plan – one specific policy in the Network Utilities strategic direction.
- Proposed Timaru District Plan, Proposed Porirua District Plan, Proposed Selwyn District Plan – term not used

Regionally significant infrastructure

- Proposed Central Hawkes Bay District Plan – One policy in SUB references regionally significant infrastructure.
- Proposed New Plymouth District Plan –structure plan guidance uses the term Regionally Significant Infrastructure once, uses the term Critical infrastructure once in an overview section
- Proposed Waimakariri District Plan – uses the terms Regionally significant infrastructure and Critical Infrastructure in multiple locations across the Plan.
- Proposed Far North District Plan, Proposed Timaru District Plan, Proposed Porirua District Plan – uses the term Regionally significant infrastructure widely across the Plan

National Grid

- Proposed Porirua District Plan – specific strategic objective in relation to the Functional City Strategic Direction
6. In summary, many plans use the term Regionally Significant Infrastructure, and on a widespread basis. No plans use the term Nationally Significant Infrastructure to any substantial degree and most plans do not use it at all. The National Grid is referenced at a strategic level in only one of the Plans looked at – the Proposed Porirua District Plan.
 7. On the basis of this analysis I confirm my view that the appropriate term to use in Te Tai o Poutini Plan is Regionally Significant Infrastructure. I also confirm my view, based on this analysis, and the evidence presented at the hearing that there is no need to have a specific strategic objective(s) which relates to the National Grid.

[3] How does time stamping work for the e-plan.? Are we required to have a hard copy plan?

8. Legal Advice from Wynn Williams is that under s35 of the RMA we are required to have a hard copy of the Plan. To produce this hard copy a pdf version will also be required. This means that any changes (either through Minor Error correction under s20A of the RMA or as a result of Plan Change) will require physical amendment of the Plan copies as well as amendment of the pdf as well as changes on the e-plan platform. This is how the minor error corrections undertaken to date have been carried out.
9. On the e-plan platform itself the front page of the Plan states the version as is shown in the snip below of the top left hand corner of the webpage:

Full Te Tai o Poutini Plan

Proposed: 14 Jul 2022

Revision: 05 Sep 2022

↻ Change

Te Tai o Poutini Plan ^

10. If the Change text is selected a drop down menu pops up as follows:

Change Version



Which version do you want to switch to?

Version: Minor Amendment Plan - currently selected
Effective Date: 14 Jul 2022

Proposed

Version: Final Draft -10 June 2022
Effective Date: 10 Jun 2022

Agenda

Version: Draft Te Tai o Poutini Plan
Effective Date: 26 Jan 2022

Draft

11. This allows the Plan user to view previous versions of the Plan. The default is the current legal version, however previous versions are able to be viewed in this way. Each version is time dated with the date it came into effect.
12. In terms of the maps, there are two types of layers on the maps – Statutory (TTPP) layers and non-statutory (information) layers. Non statutory layers are shown in the legend as “Non district plan layers” and “Base maps”. The “Non district plan layers” in the current e-plan maps are:
 - Property boundaries
 - Statutory acknowledgement areas
 - West Coast region boundary
 - Other local authorities
13. The “base maps” layers are:
 - Aerials
 - Light canvas
 - Streets
14. Some submitters have sought amendments to these non – statutory layers, and where I consider this useful – or possible within the constraints of the e-plan mapping software, I have recommended accepting these submissions.
15. A first example is the submission seeking the addition of a topographic base map to the e-plan maps. This would be located in the “base maps” tab alongside the existing aerials, light canvas and streets.
16. A second example relates to showing the legal boundaries as well as the property boundaries. This would be located in the “Non district plan layers” tab. It is a non-district plan layer in that the data is legal data provided and regularly updated by LINZ.
17. The pdf/hard copy maps are developed in a different way to the e-plan maps. That is because it is impossible to have one set of maps with all the overlays on – there is too much information and the overlays overlap. Instead the pdf/hard copy maps are produced as 3 map books for each district. The map books are set at a standard grid and size, with the main centres also printed at a larger scale. This follows the standard approach that has been used for past district plan maps. The three map book types are:
 - Zones – District Plan Zones, Designations, Airport Noise Contours, Airport Approach Paths, the National Grid, Significant Electricity Lines, Precincts and the Rifle Range Protection Area. Property boundaries and legal roads (shown as white) are also included on these maps.
 - Environmental and Cultural Values – Sites and Areas of Significance to Māori, Outstanding and High Natural Character, Coastal Environment, Outstanding Natural Landscapes and Significant Natural Areas. The underlying basemap is aerial photo with the property boundaries, West Coast region boundary and other local authorities

- Natural hazards – this mapbook has all the natural hazard overlays. The underlying basemap is aerial photo with the property boundaries, West Coast region boundary and other local authorities

18. While the e-plan maps base maps (i.e. non -district plan layer) are able to be updated with each LINZ update, this would not occur with the pdf/hard copy maps. These would only be updated when a Plan Change or other reason for map updating was undertaken and follows the current approach of updating the operative Plans maps over time.

[4] Which definitions are dealt with in this chapter vs others (missing from tables).

19. All of the definitions referred to are dealt with in other reports as outlined in the table below.

Definition	Report
<u>Hazardous Substances</u> (Fire & Emergency NZ) Major Hazard Facility (Fuel Companies, Manawa Energy, Silver Fern Farms, Whyte Gold Ltd)	Contaminated Land and Hazardous Substances
<u>Agricultural Aviation Activities</u> (NZ Agricultural Aviation Association) <u>Artificial Crop Protection Structures</u> (Horticulture NZ) <u>Greenhouse</u> (Horticulture NZ) <u>Rural Contractor Depot</u> (Rural Contractors NZ Ltd) <u>Rural Production</u> (NZ Agricultural Aviation Assoc, Federated Farmers, Horticulture NZ)	Rural Zones
<u>Land Transport Infrastructure</u> (Kiwirail) <u>Network Utility</u> (Buller District Council, Radio NZ) <u>Non-renewable Electricity Generation Activities</u> (Manawa Energy) <u>Regionally Significant Infrastructure</u> <u>Small Cell Utility</u> (Buller District Council) -not addressed <u>Transport Corridor</u> (Buller District Council)	Energy Infrastructure and Transport
<u>Ancestral Land</u> (Te Tumu Paeroa) <u>Cultural Uses</u> (Te Tumu Paeroa) <u>Māori Land Owners</u> (Te Tumu Paeroa)	Special Zones – Māori Purpose Zone
<u>Record of Title</u> (Davis Ogilvie)	Subdivision and Financial Contributions
<u>Large Format Retail</u> (Buller District Council)	Industrial and Commercial Zones
<u>Community Facility</u> (Buller District Council)	Natural Hazards
<u>Household</u> (Ara Poutama)	Residential Zones

[5] Does the Introduction to the Plan need a broader background and history – the story of the West Coast?

20. In preparing the Plan, the technical team took the approach that TPPP should primarily hold statutory information, and that the explanations and other general material should be minimised, as in practice this is not referred to during plan implementation.

21. It was noted that this is the approach that other Councils have taken in preparing e-Plans, but this is the opposite to the approach in the operative plans which have very substantial introductory and contextual information, a lot of which has become very dated.

22. In terms of my recommendations, I tend to take a largely neutral view on this matter. TTPP is a Plan for the West Coast and if it would assist readers to understand and interpret the Plan, then include a broader background and historical information about the West Coast could be appropriate.

[6] What is the meaning and use of the term hazardscape? Does it need to be defined? Or should an alternative term be used?

23. The term hazardscape comes from the Civil Defence framework used nationally and the term is used widely within the Civil Defence system. Hazardscape describes the physical nature, distribution, frequency of occurrence, impacts and consequences of the range of natural hazards in the area.
24. The term hazardscape is used once in the Plan – in objective CR – O3.
25. There is not a term that I consider easily replaces it in meaning.
26. I note there is no submission on the use of the term, so it may not be in scope for the Panel to either define or replace it.

[7] Tiny homes built on trailers – is there a need for this definition in relation to providing for relocatable buildings re natural hazards or for worker accommodation? If so what would a definition be?

27. I have discussed this matter with the technical team from the District Councils and considered what case law there is on this matter. The main case law lies around the Building Act – tiny homes built on trailers are deemed to be a building in terms of that Act and require building consent.
28. The technical team from the District Councils do not support the addition of a definition, or any exemptions from the definition of building. They note that there have been problems with people locating caravans, on a long term basis, close to the boundaries of residential properties and that has created amenity effects. They do not consider that Tiny Homes Built on Trailers should be treated any differently to any other minor residential unit.
29. In terms of TTPP there is substantial provision in most residential zones for a Minor Residential Unit – which I consider “Tiny Homes Built on Trailers” is a subset of. The definition of Minor Residential Unit, like the definition of Building, is a National Planning Standards definition and follows:

Minor Residential Unit means a self contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the principal residential unit on the same site.

30. If a tiny home built on a trailer was the only dwelling on a property it would be able to establish as a Permitted Activity in all residential and rural zones.
31. It would also be able to be established as a minor residential unit in the General Residential Zone (1 unit/site) and Rural Lifestyle Zones, with one unit per 1000m² in the Larger Lot Residential Zone and three units/10ha in the General Rural Zone.
32. Tiny homes on trailers would however be caught by the definition of Relocated Buildings which the same submitters oppose and to which a range of rules apply. The definition of Relocated Building is:

Relocated Building includes any building that is removed from one site and relocated to another site, in whole or in parts. It excludes any new building which is designed for, or intended to be used on a site but which is constructed or prefabricated off-site, in whole or in parts and transported to the site.

33. If the tiny home built on a trailer was designed or intended to be used on a site and prefabricated off site then moved there, it would not be caught by this definition. However if the tiny home built on a trailer was subsequently moved to another site, the rules in relation to relocated buildings would apply. It would also need a building consent.
34. Regardless of the zone, the Permitted Activity Rule for relocated buildings has the following performance standards:

- a. Any relocated building intended for use as a dwelling must have been designed and built to be used as a dwelling;
 - b. A building pre-inspection report shall accompany the application for a building consent for the destination site. That report is to identify all reinstatement works that are to be completed to the exterior of the building. The report shall include a certification by the property owner that the reinstatement works shall be completed within a 12 month period;
 - c. The building shall be located on permanent foundations approved by building consent no later than 2 months of the building being moved to the site; and
 - d. All other reinstatement work required by the building inspection report and the building consent to reinstate the exterior of any relocated dwelling shall be completed within 12 months of the building being delivered to the site. This reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.
35. In light of this analysis I consider that if the Panel wishes to better provide for Tiny Homes Built on Trailers, that the place to do this is in the Relocated Buildings rules in the zone chapters – as this is where the performance standards will probably trigger a resource consent. I note that the same submitters seeking a definition have also opposed the inclusion of any rules around relocated buildings in the Plan. It may be that, rather than providing a definition of Tiny Homes Built on Trailers, the Panel should consider this substantive issue, and whether all the performance standards in the relocated buildings rule are necessary. The substantive issue will be dealt with in relation to the submissions on the rules in the Zone Chapter topic s42A reports.

[8] Can you provide more analysis of the implications of the deletion of the definition of “activity”?

36. The definition of “activity” currently in the Plan is:

means land use activities, building activities, subdivision, and/or development.

37. I have supported the submission of Forest and Bird and recommended the deletion of this definition. For background, the definition was added to the definitions chapter as a “roll over” from one of the operative plans. In developing the plan provisions, there was no specific analysis or assessment of the definition and how the word is used in the Plan. When I undertook this analysis in response to the submission I agree that the definition is “unhelpful”.
38. Many rules use the word “activity” when referring to a very specific activity. The definition effectively widens what that potentially could mean. For example Rule ENG – R11 - Substations not meeting Permitted Activity standards. This Restricted Discretionary Activity Rule has a performance standard which states

g. the degree to which the proposed activity will cause significant adverse effects on Overlay Chapter matters.

39. The rule is actually only referring to substation construction, but the definition may make the reader think that the rule applies to subdivisions associated with substation construction – when in fact the subdivision rules that apply are in the SUB – Subdivision chapter in the Plan.
40. This type of reference to “activity” is widespread in the assessment criteria across the Plan, and does create a slightly confused reading. I do not consider the the definition is necessary or appropriate as a result of this. If it is retained in the Plan, then some redrafting of a wide range of rules may be required, and therefore the deletion of the definition would seem to be a more efficient and appropriate response.

[9] In light of Fish and Game’s evidence, what is your view around the definition of Conservation Activities?

41. The term Conservation Activities is used in rules that relate to Permitted Activities for indigenous vegetation clearance, activities within Natural Features and Landscapes as well as within the Open Space and Recreation Zones, Settlement Zone and Scenic Visitor Zone.
42. The proposed TTPP definition of Conservation Activities is:

means the use of land or buildings for any activity undertaken for the purposes of protecting and/or enhancing the natural, historic and/or ecological values of a natural or historic resource. It includes ancillary activities which assist to enhance the public's appreciation and recreational enjoyment of the resource.

43. In the s42A report, I recommend that this be amended to add the words.

including weed and pest control and the intermittent use of aircraft for conservation purposes and excludes commercial activities.

44. In their evidence the West Coast Fish and Game Council outlines their credentials as a Conservation Agency. They argue that Fish and Game related activities to manage species such as paradise shelduck, Canada Geese and Black Swan should be explicitly provided for in the definition.
45. While the submission outlined that there is game bird hunting that is undertaken for population management reasons – and gives examples, I remain unconvinced that this is the majority of the activity undertaken by Fish and Game licence holders. Despite the evidence presented, I consider that the activities that they refer to are in fact Recreation Activities not Conservation Activities.
46. Recreation Activities is also defined in the Plan as follows:

means the use of land, water bodies and/or buildings for the active or passive enjoyment of organised sports, recreation or leisure, whether competitive or non-competitive, and whether a charge is made for admission or not, including sporting and recreational events, but excludes gambling machines and motor sport facilities.

47. Recreation Activities are provided for as Permitted Activities within the three Open Space Zones, the General Rural Zone, the Buller Coalfield Zone, Future Urban Zone, Mineral Extraction Zone and Māori Purpose Zone, so I consider that in terms of the Zone provisions Fish and Game's activities are already specifically provided for.
48. The substance of the reason why Fish and Game want their member's activities to be included in Conservation Activities definition therefore appears to be a desire for Permitted Activity status for indigenous vegetation clearance, to enable hunters and anglers to cut access tracks to rivers, lakes and wetlands.
49. However vegetation clearance for Conservation Activities is not provided for as a Permitted Activity within the Riparian Margins of Waterbodies in TTPP (NC Chapter – Rule NC – R1), or within 10m of a naturally occurring inland wetland within the NES – Freshwater.
50. In order to provide for vegetation clearance to support hunters and anglers the rules would also need to be amended to allow for this vegetation clearance, noting that the NES – Freshwater Part 3 is a regional provision and therefore consent to cut tracks to natural inland wetlands would still be required by the West Coast Regional Council.
51. In light of this analysis I have not altered my view that the submission point of Fish and Game (s302.002) should be rejected.

[10] Does there need to be a definition of stakeholders, or would amendment of Policy HH – P2 be sufficient?

52. As stakeholders is only used once in the Plan, an amendment to Policy HH – P2 would be sufficient. I suggest the following amendment:

Identify, assess and map heritage buildings, features, places and sites and archaeological sites, in partnership with the Poutini Ngāi Tahu and Te Rūnanga o Ngāi Tahu and in consultation with the community and key stakeholders, including landowners.

[11] Can you confirm that the wording proposed at point 221 around Aotea Stone is acceptable to Ngāti Mahaki?

53. I have checked with Paul Madgwick, Kaiwhakahaere of Ngāti Mahaki. He has advised that Ngāti Mahaki do not support the wording proposed around Aotea Stone. In light of this I would reverse my support of this submission and seek that the Plan not be amended in this area.

[12] Re the Morirori Tuwhenu Moriori Tau imi Ihi submission (S555.001) – can you consider whether or not it is appropriate to recognise the 3 waves of migration of Ngāi Tahu whānui –just add the words “the earliest inhabitants of the West Coast were Waitaha”.

54. I note that the Tangata whenua chapter does already identify the Waitaha ancestors as follows and have not altered my views on this matter.

*“Te Tai o Poutini (the West Coast) lies within the traditional boundaries of Ngāi Tahu. Ngāi Tahu is the largest iwi in Te Waipounamu (the South Island) and comprises people who descend from the tribe’s five primary hapū (Ngāti Kuri, Ngāti Irakehu, Ngāti Huirapa, Ngāti Tūāhuriri and Ngāti Te Ruahikihiki) **as well as earlier Rapuwai, Hawea, Waitaha and Kāti Mamoe ancestors**. The collective of all of these genealogies is known today as Ngāi Tahu whānui.”*

[13] What mapping changes are possible from the list sought by submitters given the constraints of the current software?

55. I have consulted with the GIS team who developed the e-plan maps who have reviewed the list of changes sought to the maps. They have identified that the following changes are easily undertaken:
- the better distinguishing of precincts and special purpose zones – this could be achieved through the better use of coloured cross hatching
 - improvements to the search tool to include parcel ID, legal description and rating reference
 - identifying road reserve boundaries and having this as a separate selectable layer
 - some improvement in terms of the underlying property boundaries (this will need some detailed work so I cannot be more definitive).
 - Adding a topographic base map
 - Adding the public conservation estate as a separate layer
56. The GIS team have identified that due to limitations in the Isovist e-plan software, currently the following changes are unable to be undertaken.
- selection of individual properties and layers and individual special purpose zones – this is because the e-plan is not a full GIS tool but rather enables the selection of an individual property to link to the text and written content in the plan.
 - Selection of precincts and special zones separately
 - Selection of the Conservation Estate (if added) separately
 - Saving and printing maps at a defined scale
 - Differentiating zones for colour blind people – the colours are set by the planning standards however if a parcel is selected the information on the left hand side will come up with all the relevant zone and overlay information.

[14] Can you consider your response to the DOC submission 602.012 in light of the 4th Schedule of the RMA. If you continue to recommend the submission be supported provide a s32AA assessment of the changes proposed

57. The recommendations from the DOC submission S602.012 is the addition of a matter of discretion "Consideration of an assessment of alternatives" be added to the rules are detailed in the table below:

Identifier	Rule
SUB – R9	Subdivision of Land to create allotment(s) Containing an Area of Significant Indigenous Biodiversity not meeting Rule SUB – R7
SUB – R10	Subdivision of Land to create allotment(s) in Areas of Historic Heritage identified in Schedule One or within Sites or Areas of Significance to Māori identified in Schedule Three not meeting Rule SUB - R5
SUB – R11	Subdivision to create allotment(s) of Land within the Outstanding Natural Landscape identified in Schedule Five or Outstanding Natural Feature identified in Schedule Six
ECO – R5	Indigenous vegetation clearance not meeting Permitted or Controlled Activity Standards
NFL – R11	Māori Purpose Activities within an Outstanding Natural Landscape described in Schedule Five or Outstanding Natural Feature described in Schedule Six not meeting Rule NFL - R7
NFL – R12	Buildings or Structures and associated Earthworks within an Outstanding Natural Landscape described in Schedule Five or Outstanding Natural Feature described in Schedule Six not meeting Permitted Activity rules.
HH – R6,	Repairs and Maintenance, Earthquake Strengthening, Fire Protection and Accessibility Upgrades where Permitted Activity standards are not met, or Additions and Alterations to Historic Heritage Items identified in Schedule One
HH – R7	Relocation or Repositioning of a Historic Heritage item identified in Schedule One and associated earthworks where compliance with HH - R4 is not achieved
HH -R8	New Buildings or Structures and associated earthworks within a Historic Area identified in Schedule One
TREE – R5	Building Activities Within the Root Protection Area of a Notable Tree identified in Schedule Two
TREE – R6	New Underground Network Utilities and Infrastructure Within the Root Protection Area of a Notable Tree identified in Schedule Two
TREE – R7	Gardening, Mowing, Trimming, Maintenance and Root Pruning of a Notable Tree identified in Schedule Two not meeting Permitted Activity Standards
CE -R13	Māori Purpose Activities and Buildings in the Coastal Environment not meeting Permitted Activity Standards
CE -R14	Buildings and Structures not meeting Rule CE - R4 outside of the Outstanding Coastal Environment and High Coastal Natural Character Overlay identified in Schedule Seven
CE -R15	Buildings, Structures and Earthworks within the High Coastal Natural Character Overlay not meeting Permitted Activity Standards
CE -R16	Additions to Existing Buildings and New Buildings and Structures and associated Earthworks within the Outstanding Coastal Environment Area not meeting Permitted Activity Standards
CE -R17	Natural Hazard Mitigation Structures and Activities in the High Coastal Natural Character Overlay not meeting Controlled Activity Standards

CE -R18	Earthworks within the Outstanding Coastal Environment Area not provided for as a Permitted Activity
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58. Under Schedule 4, if it is likely that the activity will result in any significant adverse effect on the environment then the AEE must include a description of any possible alternative locations or methods in undertaking the activity.
59. When I consider the list of rules in the Plan that are Restricted Discretionary Activities there are a wide range of activities that might trigger these – from one which is relatively small and contained to one that could have very significant adverse effects.
60. I have consulted with the three district councils and they all indicate that when significant adverse effects are identified in relation to a s6 matter, then in all instances an assessment of alternatives is required. Given that information I consider it unnecessary to include this as a specific matter of discretion
61. However given the range of activities that might trigger this requirement I suggest an Advice Note might be a useful addition to these rules instead as follows:

Advice Note: Where the activity could result in significant adverse effects on RMA s6 Matters of National Importance, then any resource consent application will require an assessment of alternative locations and/or methods for the activity should be undertaken as required by Schedule 4 of the RMA.

62. In light of this amended recommendation a s32AA is not required.

[15] Can we get confirmation about what the default position is for unlisted activities – is it Permitted under section 9 or is it a nominative activity under section 87B – Discretionary Activity. Can we also have some info on what the latest new plans are doing re catch all rules?

63. I have looked at this issue carefully and discussed it with Lucy de Latour, TTPP legal counsel. We both agree that the default position for Land Use Activities is permitted, under section 9 of the Act. This is because the section 9 presumption is that land use is allowed unless it contravenes a district rule. Section 87B only applies if the activity requires a resource consent, but the Plan does not classify the activity – then the activity will be treated as discretionary.
64. In terms of how recent plans have dealt with “catch all” rules I have reviewed the following post national planning standards plans: Selwyn District Plan (Decisions version), Waimakiriri District Plan (Proposed Plan), Timaru District Plan (Proposed Plan), Far North District Plan (Proposed Plan), Porirua District Plan (Decision Plan), New Plymouth District Plan (Decision Plan) and Central Hawkes Bay (Proposed Plan).
65. All of the Plans include catch all rules in Zone provisions. The catch-all rules are all Discretionary Activities.

[16] Consider whether there is alternative wording in response to Forest and Bird Submission (S560.409) that would improve the response to the submission

66. Paragraph 272 of the s42A report discusses this submission and I recommend that it is accepted. Forest and Bird propose some wording to include in the Relationships Between Spatial Layers – overlays table around Significant Natural Areas. My recommendation in paragraph 285 of the report was to amend the Plan to reflect the wording in the Forest and Bird submission as follows:

Insert the following text within the table alongside the Significant Natural Areas entry. Areas of significant indigenous vegetation and significant habitats of indigenous fauna. Only some of these areas have been identified on Schedule Four. The consenting process will be used to identify further SNAs.

67. On further reflection I consider that the process of identifying further areas of significant natural areas could be better worded as regards the consenting process to better reflect the policies in the Plan and propose a modification to this proposed amendment as follows. My

additional amendment is underlined and highlighted in yellow. The Forest and Bird wording I propose to alter is shown in strikethrough.

Insert the following text within the table alongside the Significant Natural Areas entry. Areas of significant indigenous vegetation and significant habitats of indigenous fauna. Only some of these areas have been identified on Schedule Four. The consenting process will be used on a case by case basis to identify significant indigenous vegetation and habitats of fauna outside Schedule 4 areas, using the criteria in the RPS. ~~to identify further SNAs.~~

[17] Can you consider the proposed additional wording providing in the evidence of Pauline Whitney in relation to Transpowers Further Submission. FS110.001 in relation to the General Duty to comply. Respond to the Transpower further sentence they wanted added. See Pauline Whitney Paragraph 8.8 additional sentence at the end.

68. Transpower's Further Submission (FS110.001) opposed that of Frida Inta (S553.188). I have recommended accepting Frida Inta's submission. In her technical evidence Ms Whitney proposed an additional sentence at the end of the proposed amendment, which would satisfy Transpower's concern. This wording is:

However, this duty is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.

69. Reviewing this within the context proposed, I am supportive of this additional amendment.

[18] Amendment on Page 14 of the Recommended Amendments should that refer to Iwi and Papatipu Runanga management plans ~~not-planning documents~~

70. Yes.

[19] In the TTPP Legal submission – does TTPP meet the requirements set out paragraph 21 in the drafting?

71. Paragraph 21 of the TTPP legal submission states:

The TTPP is a combined district plan which, under section 80 of the RMA, must be prepared in accordance with the relevant requirements for district plans under the RMA. A combined district plan must also clearly identify which local authority is responsible for observing, and enforcing the observance of, each provision of the TTPP.

72. The three District Councils are individually responsible for observing and enforcing the observance of the provisions of the TTPP in their districts. Where an individual rule only applies on one or two of the districts, this is made clear in the rule. For example:

Rule GRZ – R6 has a performance standard that states:

7. In the Buller District the accommodation is homestay accommodation with a permanent resident living on site.

73. In terms of the question from the Commissioners, I consider the Plan is clear where there are exceptions to all the rules applying in all three districts. The "How the Plan Works, General Approach" section talks about the Plan applying across all three districts. However there is no statement in the Plan that specifically states that Buller District Council is responsible for observing and enforcing the observance of the TTPP in Buller District, Grey District Council in Grey District and Westland District Council in Westland District. If the Commissioners consider that such a statement is necessary I recommend that the place to include this is within the "General Approach" section straight after the first line which states:

This Plan manages the activities in the Buller District, Grey District and Westland District under the District Council functions under Section 31 of the RMA.

[20] What are the impacts of the Regionally Significant Infrastructure definition in terms of knock on in the Plan?

8. The following table sets out the activities included in the definitions of Critical Infrastructure (TTPP definition) and Regionally Significant Infrastructure (WCRPS definition) respectively. The differences are highlighted in yellow.

Critical Infrastructure	Regionally Significant Infrastructure
Rail network	The regional rail networks
state highways	State highway network
special purpose roads	Strategic roads classified in the One Network Road Classification sub-category as strategic
Airports (this is not defined so it may also cover Karamea Airport – or it may only apply to legal airports – not aerodromes, so not include Greymouth)	Westport Greymouth and Hokitika Airports
wastewater, reticulated water and stormwater plants	Public or community sewage treatment plants including reticulation and disposal systems Public or community water treatment plants including intakes and distribution systems Public or community drainage systems, including stormwater systems
Telecommunications networks	Telecommunications facilities
Electricity generation assets [size is not defined so is a wider range of generation assets than the Regionally Significant Infrastructure)	Facilities for the generation of >1MW electricity and its supporting infrastructure where it is supplied to electricity transmission and distribution networks
Electricity transmission assets	The National Grid Other electricity transmission networks and associated substations and works
Electricity distribution assets	Electricity distribution networks and associated substations and works
defence facilities	
	The Regional Council seawalls, stopbanks and erosion protection works
	Radio communications facilities
	Pipelines and gas facilities for the transmission and distribution of natural and manufactured gas
	Public or community sewage reticulation and disposal systems
	Public water supply intakes and distribution systems
	The ports of Greymouth, Westport and Jackson Bay
	Public or community solid waste storage and disposal facilities.

9. As can be seen from the table above, the definition of Regionally Significant Infrastructure covers a much wider range of activities and facilities than Critical Infrastructure. In terms of the provisions that use this definition, these are outlined in the table below. I have put an asterix* where I consider there may be some issues with the direct substitution of Regionally Significant Infrastructure for Critical Infrastructure in the provision and discuss this further below.

Reference	Provision Type
CR – O2	Strategic objective
CR – O3	Strategic objective
CR – O4	Strategic objective
NH – O3	Natural Hazards objective
NH – P3	Natural Hazards policy
SASM – P13	Sites and Areas of Significance to Māori Policy
ECO – P7	Ecosystems and Biodiversity Policy
ECO -R1	Permitted Activity Rule – Indigenous Vegetation Clearance – allows for indigenous vegetation clearance to maintain critical infrastructure*
ECO – R5	Restricted Discretionary Rule – Indigenous Vegetation Clearance, matter of discretion
NFL – R1	Permitted Activity Rule – Maintenance operation and repair in an Outstanding Natural Landscape/Outstanding Natural Feature
NFL – R3	Permitted Activity Rule –Natural Hazard Mitigation Activities*
NFL – R9	Controlled Activity Rule - Natural Hazard Mitigation Activities*
NFL -R10	Controlled Activity Rule – Earthworks*
NC – R1	Permitted Activity Rule – Vegetation Clearance and Earthworks*
FC – P6	Financial Contributions Policy
SUB – O2	Subdivision Objective
SUB – P7	Subdivision Policy – Residential Zone (reverse sensitivity)
SUB – R2	Subdivision Rule – Permitted Activity All Zones Subdivision for a Network Utility or Critical Infrastructure
SUB – R4	Subdivision Rule – Controlled Activity All Zones Subdivision for a Network Utility or Critical Infrastructure
CE – R12	Coastal Environment Rule – Natural Hazard Mitigation Structures in the Coastal Environment/High Outstanding Natural Character Overlay*
EW – P4	Earthworks policy
EW – R2	Permitted Activity Rule Earthworks All Zones*
EW – R9	Restricted Activity Rule – Matter of Discretion
NOISE – P1	Noise Policy
AIRPZ – O1	Airport Zone Objective

10. The asterisked provisions are rules, and issues may arise because in general these rules give a wide exemption for activities within the Critical Infrastructure definition. Expanding this to include everything in the Regionally Significant Infrastructure definition could increase the

level of adverse effect of activities and may tip the threshold of the enabling provision into one that should actually require a resource consent. This will need to be considered on a case-by-case basis.

11. There is also an issue that the inclusion of Regional Council seawalls, stopbanks and erosion protection works may create a circular reference in some rules, which would need to be addressed through re-drafting.
12. I also note that there are submissions from a range of organisations seeking that critical infrastructure or regionally significant infrastructure be further included in a wide range of objectives, policies and rules.
13. I also note that there are submissions seeking to add to the definition of critical infrastructure.
14. These submissions on the definitions of Critical Infrastructure are dealt with in the Energy Infrastructure and Transport s42A report.

[21] Should the Road to Lake Brunner and the other road mentioned by the minerals people be included and the road to Blackball – be considered regionally significant roads?

15. I have consulted with Grey District Council policy staff on this matter. Grey District Council staff advise work is underway to classify “strategic” roads using the One Road system but this is not complete.
16. The Road to Lake Brunner is the Stillwater – Lake Brunner – Jacksons Road and is the only alternative route to SH73 and across Arthurs Pass to Canterbury. Issues with SH73 near Greymouth and land instability mean that at times this route is used as an alternative. The policy staff consider that this road, as the alternative route between the West Coast and Arthur’s Pass, is regionally significant. I note this road also goes to the Arnold Dam. This currently has a generating capacity of 3MW which is significant for the West Coast.
17. The road to Blackball branches off from the Taylorville – Ikamatua Road. I do not consider that the Blackball Main Road is regionally significant – it serves some of the Papanui Coalfield mines and the township of Blackball. However the Taylorville -Atarau – Ikamatua Road may be regionally significant as it is the main alternative route between Greymouth and Reefton and the Lewis Pass if SH7 is closed. However I have less certainty about the importance of that road – it may be that it is more locally, rather than regionally significant.

Amended Response to submission points

18. Based on the responses in this Right of Reply, I recommend the following amended response to submission points.

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Officer recommendation
S581.005	David Ellerm (S581)	Definitions	Amend	Add new definition Stakeholders: to include landowners	Accept in Part
S621.003	The Proprietors of Māwhera Tiamana Māwhera Incorporation (Māwhera Incorporation) (S621)	Description of the Districts	Amend	Amend to read: ... aotea stone, which is a taonga for Ngāti Māhaki ki Makaawhio and the ancestral descendants of the tipuna that were allocated land in Awarua (South Westland) by the 1879 Young Commission, ...	Reject
S602.013	Department of Conservation	Whole plan	Amend	Amend matters of control and matters of discretion to include the consideration of an assessment of alternatives, where the rules relate to managing activities within scheduled areas and SNAs.	Accept in part
FS222.073	Westpower Limited		Oppose	Disallow	Accept in part
FS35.2	Susan Hall		Support	Allow	Accept in part
S553.188	Frida Inta	Satutory Context	Amend	Amend: <u>General Duty to Comply No person may use any land in a manner which contravenes a rule in this Plan unless the activity is expressly allowed by a resource consent, or is an existing use allowed by Section 10 of the Act. Any activity which is not specifically referred to in the Plan or does not fall within the limits of permitted, controlled or discretionary activities is deemed to be a noncomplying activity and will require a resource consent.</u>	Accept in Part
FS110.001	Transpower NZ Ltd		Oppose	Disallow	Accept in part
FS222.0116	Westpower Limited		Oppose	Disallow	Accept in part

Recommended Amendments to the Plan

1. Amend the Relationships Between Spatial Layers – overlays table to include Significant Natural Areas as an overlay. Insert the following text within the table alongside the Significant Natural Areas entry. Areas of significant indigenous vegetation and significant habitats of indigenous fauna. Only some of these areas have been identified on Schedule Four. The consenting process will be used to identify further SNAs.
2. **Policy HH – P2** Identify, assess and map heritage buildings, features, places and sites and archaeological sites, in partnership with the Poutini Ngāi Tahu and Te Rūnanga o Ngāi Tahu and in consultation with the community and key stakeholders, including landowners.
3. That the following statement be added to the Plan – How the Plan Works Section.
General Duty to Comply: Compliance with Te Tai o Poutini Plan and the RMA does not remove the need to comply with all other relevant acts, regulations, bylaws and rules. It is the

applicant's responsibility to identify and understand all requirements they are required to comply with all applicable requirements.

Where compliance is required under any other legislation, including a bylaw, it is the responsibility of the applicant to comply with that legislation. Conversely, activities that may be allowed or permitted under other regulatory requirements, such as the Building Act 2004, may still require resource consent.

Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is carried on in accordance with existing use rights under the RMA (s. 10, 10A, 10B, and 20A) or a national environmental standard, a rule, a resource consent, or a designation. However, this duty is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.

4. Add the following advice note to Rules SUB – R9, SUB – R10, SUB – R11, ECO – R5, NFL – R11, NFL – R12, HH – R6, HH – R7, HH -R8, TREE – R5, TREE – R6, TREE – R7, CE -R13, CE -R14, CE -R15, CE -R16, CE -R17, CE -R18

Advice Note: Where the activity could result in significant adverse effects on RMA s6 Matters of National Importance, then any resource consent application will require an assessment of alternative locations and/or methods for the activity should be undertaken as required by Schedule 4 of the RMA.

5. Amend the following heading in the Tangata Whenua Chapter

Hapu and Iwi and Papatipu Rūnanga Planning Documents Management Plans