

**IN THE MATTER of
the Resource Management Act 1991**

AND

**IN THE MATTER of
Hearing of submissions and further
submissions on the Proposed Te Tai O
Poutini Plan**

**MINUTE 26 – Sites of Significance to
Māori, Directions**

INTRODUCTION

1. Following the hearing on Sites of Significance to Māori (SASM) the Hearings Panel has decided to issue directions and/or seek advice on a number of matters. These are detailed below:

Permitted Activity – Written Approval/Certification/Delegation/Transfer of Power

2. The legality of a written approval or certification process to enable a permitted activity status for certain activities within SASM was the subject of both legal submissions and planning evidence. The issue of delegation and/or transfer of power also arose as a potential solution.
3. The Hearings Panel acknowledges the desire of parties to achieve a permitted activity status for certain activities within SASM with some form of ‘approval’ from Poutini Ngāi Tahu.
4. As acknowledged at the hearing the permitted activity rules require further consideration both in terms of the legality of such a provision(s) but also the contents of any permitted activity provision(s), including whether delegation and/or the transfer of power under the RMA is an available option.
5. We therefore direct that Ms de Latour, Ms Scott and Ms Rusher:
 - i. Confer and subsequently confirm whether or not they agree with the principles in paragraph 14 of Ms de Latour’s Memorandum of the 23rd of November 2023, which states:

It is well established that in order to be properly classified as a permitted activity a rule must:

- (a) Not reserve by subjective formulation a discretion to decide whether an activity is a permitted activity;*
- (b) Be comprehensible to a reasonably informed, but not necessarily expert, person; and*
- (c) Be sufficiently certain to be capable of objective ascertainment.*

- ii. Advise if they disagree, including why and what they consider are preferred alternatives with supporting reasons and identification of supporting Court decisions.
 - iii. Confer and subsequently confirm whether or not they agree that delegation and/or the transfer of power under the RMA is an available option to remedy issues arising from a permitted activity status.
6. We request that this advice be received by 7th of June 2024. Once this advice has been received and considered by the Hearing Panel it will issue further directions.

Victorian Title

7. The issue of “Victorian Title” arose during the hearing, with Ms Easton proposing amendments to recognise Victorian Title for clarity, including a definition. Ms Pull

considered the term Victorian Title was not a legislative term and that it was understood differently depending on the context in which it was used and that there was no need for a definition of Victorian Title in the TTPP.

8. The Hearing Panel needs to understand what a Victorian Title is and whether it is capable of being defined for the purposes of the TTPP. We seek a legal view on these matters from Ms de Latour.



Dean Chrystal

Independent Commissioner – Chair - on behalf of the Hearing Panel members

8 May 2024