

**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 28 – Advice on Panel’s Ability to
Give Effect to Higher Order
Documents**

INTRODUCTION

1. The Hearings Panel is deliberating on Topics within the Te Tai O Poutini Plan (TTPP) already heard.

ADVICE

2. We require advice on the following:
 - Where there is no submission providing scope where we consider the TTPP does not give effect to a Higher Order Document can we recommend amendments to the TTPP utilizing sections 74 and or 75 of the RMA.
 - If not, do we have other options to ensure the TTPP gives effect to Higher Order Documents and what are they?
 - If the operative date of a NPS proceeds the date of notification of the TTPP does that affect the legal position in any way, including utilizing sections 74 & 75 of the RMA?

BACKGROUND

3. Section 74 of the RMA provides that:

A territorial authority must prepare and change its district plan in accordance with—

...

(ea) a national policy statement, a New Zealand coastal policy statement, and a national planning standard;

4. Section 75(3) requires that:

A district plan must give effect to—

(a) any national policy statement; and

(b) any New Zealand coastal policy statement; and

(ba) a national planning standard; and

(c) any regional policy statement.

5. The Hearings Panel acknowledges that the above are directive sections of the RMA. The question arises where the Hearings Panel finds that the TTPP is not in accordance with, or does not give effect to the above documents, but there is no submission seeking that relief, is any amendment therefore out of scope?
6. If so, is another mechanism such as a variation or plan change required for reasons of natural justice? Alternatively, are we able to amend the TTPP relying on sections 74 & 75 so that the TTPP meets the requirements of the RMA.
7. An example might be Objective AG – O1 of the Strategic Directions chapter which states:

*To maintain the productive value of versatile soils and agricultural **land** for current and future agricultural and horticultural uses.*

8. The National Policy Statement (NPS) on Highly Productive Land uses the term “protected” (the Objective and Policy 8) which is a stronger direction than the word “maintain” used in the TTPP. There is no specific submission seeking “protection” of highly productive land.
9. The Panel is aware of the High Court's decision in *Horticulture NZ v Manawatu-Wanganui Regional Council* [2013] NZHC 2492. However, that case concerned the circumstance where the NPS-FM came into effect after notification of the Plan under consideration.
10. As we understand that case the Court determined neither the Environment Court nor the Regional Council via Commissioners had the legal ability to make any changes to plan provisions beyond those sought in submissions.
11. In other words, neither the Environment Court nor the Regional Council could amend plan provisions to give effect to the NPS-FM notwithstanding the pragmatism of doing so. Both were limited to making changes within scope of submissions made on the Plan.
12. The Court determined the proper approach was to use, sometime later, a Schedule 1 RMA process for the plan to give effect to the NPS-FM.
13. We are unclear if an NPS were in effect before notification of the TTPP whether that circumstance would have altered the Courts conclusions and, we are not clear on whether the Court considered the application of sections 74 & 75.
14. The Hearings Panel therefore seeks legal advice by 31 May 2024 on the questions in paragraph 2 above.



Dean Chrystal

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

12 May 2024