

## MEMORANDUM

**Date:** 20 June 2024  
**To:** Te Tai o Poutini Plan Committee  
**From:** Alice Balme

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### The Scope of Further Submissions on a Proposed District Plan under the Resource Management Act 1991

#### Introduction

1. You have asked us to provide advice in relation to the Royal Forest and Bird's further submission (FS 34) on the Te Tai o Poutini Plan Committee (**Committee**) submission. FS 34 seeks to amend the boundaries of the Outstanding Natural Landscape (**ONL**) areas originally notified in the draft proposed district plan (**TTPP**) by increasing them to cover land that was not identified as ONL in the notified version.
2. You have asked whether FS 34 provides scope for the hearings panel to make changes to the TTPP to increase the mapped ONL areas.
3. You have also asked what the implications of having ONL areas in the TTPP that are unsupported by landscape evidence will be.

#### Executive Summary

4. Further submissions are limited in scope by the original submission that they relate to. A further submission can only seek allowance or disallowance in whole or part of the original submission. On this basis, our view is that the relief sought by Forest and Bird is outside of the scope of the Committee's original submission. Therefore, the further submission is not valid, and the hearings panel cannot rely on FS 34 to increase areas that are identified as ONL in the TTPP from the notified version.
5. The Committee is required to identify and protect ONL's through the TTPP. Failure to do so accurately will result in a district plan that does not comply with the relevant higher order directions. It is likely that through the appeals process, the Committee will be directed to address this issue and the Court may use the process set out in section 293 of the RMA to require changes to the TTPP.
6. At this stage in the process, we consider that the best option available to the Committee to ensure that all ONL's are protected in the TTPP will be to notify a variation to the TTPP based on the updated landscape advice.
7. Our detailed advice follows.

#### Relevant statutory background

8. Schedule 1 clause 8 of the RMA provides:
  - (1) The following persons may make a further submission, in the prescribed form, on a proposed policy statement or plan to the relevant local authority:
    - (a) any person representing a relevant aspect of the public interest; and
    - (b) any person that has an interest in the proposed policy statement or plan greater than the interest that the general public has; and
    - (c) the local authority itself.

...
  - (2) A further submission given under subclause (1) or (1A) must be limited to a matter in support of or in opposition to the relevant submission made under clause 6 or 6A.

## Case Law

9. There are two main cases that consider the scope of further submissions. They are *Offenberger v Masterton District Council* PT Decision No W53/96, 16 May 1996 and *Telecom New Zealand Ltd v Waikato District Council* EnvC A074/97, 4 July 1997

*Offenberger v Masterton District Council* PT Decision No W53/96, 16 May 1996

10. *Offenberger v Masterton District Council* concerned two interlocutory applications made by the Council. The first sought to limit evidence arising out of their original submissions on the proposed plan review and the second sought to strike out referrals due to non-compliance with the First Schedule of the RMA.
11. In *Offenberger* the Court held that further submissions cannot extend the scope of the original submission and can only seek allowance or disallowance in whole or part of the original submission.<sup>1</sup>

*Telecom New Zealand Ltd v Waikato District Council* EnvC A074/97, 4 July 1997

12. *Telecom* was also concerned with an interlocutory decision on the scope of an appeal.
13. An original submission was lodged by Telecom in opposition to the proposed district plan. The proposed plan specified telecommunications as a permitted activity in certain areas, Telecom submitted the categorisation should be expanded to include Landscape, Coastal and Ridgeline Policy Areas.<sup>2</sup>
14. Ms Webster, a member of the public, made a further submission in opposition of Telecom's submission and sought that the telecommunications activities be non-complying.
15. The Court held the further submission of Ms Webster was invalid as it went beyond the scope of any original submission. Ms Webster would have been entitled to seek relief if she had made an original submission.<sup>3</sup>
16. The Court in *Telecom* upheld the findings in *Offenberger*, noting that:<sup>4</sup>

... a further submission cannot extend the scope of the original submission which it supports or opposes. It can only seek allowance or disallowance (wholly or in part) of the original submission which it supports or opposes.

17. Subsequent cases have relied on these well-established principles.

## Application

18. It is not possible to extend the scope of an original submission through a further submission.
19. Given the Committee's submission explicitly sought to update the ONL boundaries to cover a lesser area, Royal Forest and Bird's further submission on the extension of the ONL's is not a valid submission and cannot be relied on by the hearings panel to extend ONL overlays.

## Submissions that may give Royal Forest and Bird the scope they require

20. For completeness we have reviewed the original submissions on the TTPP to consider whether any other submission might provide scope for the hearings panel to expand the ONL areas from the notified version of the TTPP.
21. The submissions of Brian Anderson - Submission 576 which seeks that ONL's must be accurately and completely documented and Grey District Council – Submission 608 that seeks the ONL's be removed, reviewed, and reassessed with new overlays created might arguably provide scope for the panel. However, we consider that there are serious issues of natural justice that could arise if new areas are identified as ONL's through the hearing

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<sup>1</sup> At page 4 and 5.

<sup>2</sup> *Telecom New Zealand Ltd v Waikato District Council* [1997] EnvC A074/97 at page 2.

<sup>3</sup> At page 4.

<sup>4</sup> At page 3 and 4.

process. In particular, if new land is identified as an ONL and that landowner is not involved in the TTPP process, they will have no standing to appeal the Committee's ultimate decision and seek that the ONL be removed.

22. Accordingly, we would caution against seeking out submissions that might provide limited scope to make changes to increase the ONL areas.

**Implications of having a “hearings panel” layer that is not able to be supported by any technical landscape evidence in relation to the boundaries**

23. Failure to identify ONLs in a district plan risks non-compliance with the requirements of the RMA, New Zealand Coastal Policy Statement (**NZCPS**) and the West Coast Regional Policy Statement (**WCRPS**). Section 6(b) of the RMA requires that all persons exercising functions under the RMA (including the promulgation of planning documents) must recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.
24. In the coastal environment, both the NZCPS and the WCRPS require district plans to:
- (a) Identify outstanding natural features (**ONFs**) and ONLs; and
  - (b) Avoid adverse effects on ONFs and ONLs.
25. For all other areas outside the coastal environment, the WCRPS policy direction states that district plans must:
- (a) Protect the region's ONFs and ONLs from inappropriate subdivision, use and development.
  - (b) Provide for appropriate subdivision, use and development on, in or adjacent to ONFs and ONLs to enable people and communities to maintain or enhance their economic, social and cultural wellbeing.
26. Case law in the Court of Appeal is clear that when it comes to identifying ONLs, the planning authority must make an assessment based on the qualities of the landscape itself and not on what restrictions classifying land as an ONL might have on the ability to use that land in the future.<sup>5</sup>
27. Given the obligations to “protect” the ONLs (both under section 6(b) of the RMA, the NZCPS and the WCRPS), it is important that the provisions of the TTPP seek to “keep safe from harm, injury or damage”, or essentially “safeguard” the ONLs from inappropriate subdivision, use and development.<sup>6</sup> This was the requirement in terms of “protection” in the context of section 6(c) of the RMA, which is framed in a similar way.
28. If the TTPP does not include ONLs identified in an accurate way, with reliance on the relevant technical supporting information, then there is a risk that these provisions will be appealed and subsequently the Environment Court will embark on the process of seeking to identify and protect the relevant ONLS. Where that is not possible within the scope of the provisions / appeals, the Environment Court may seek to use section 293 of the RMA to make a change to this effect.

**Wynn Williams**

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<sup>5</sup> *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24 at [61] - [62].

<sup>6</sup> *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41, at [71].