
BEFORE THE HEARINGS PANEL

In the Matter of: The Resource Management Act 1991

And Proposed Plan Change 38:
Strategic Directions

Application By: Taupō District Council

**RIGHT OF REPLY - ROWAN SAPSFORD
ON BEHALF OF TAUPŌ DISTRICT COUNCIL**

Date: 21 September 2023



Taupō District Plan

CHANGES - BUNDLE ONE

INTRODUCTION

1. My name is Michael Rowan Sapsford, I am the Director of ROAM Consulting in Taupō. My qualifications, experience and involvement with resource management associated with the Taupō District is set out in Section 1 of my Section 42A Report.
2. Further to the lodgement of the s42A Report, I have read and considered all the evidence received from Plan Change (PC38) submitters that has been provided to Taupō District Council (TDC), to date.
3. The purpose of this report is primarily to consider the evidence of submitters and provide my right of reply to the commissioners.

RESPONSE TO PANEL QUESTIONS

4. In addition to my right of reply I have also developed a report in response to specific questions of the panel that were raised during the hearing. I have referred to this 'response to panel' throughout my reply as it, in some cases, provides context around some of my recommended amendments to PC38.

CONSIDERATION OF EVIDENCE RECEIVED

5. I have only addressed those sections and evidence where I consider additional comment is required. For everything else I am comfortable that the matters raised by submitters are suitably addressed in my Section 42A report. This right of reply covers the following matters:
 - a. Application of the Strategic Directions
 - b. Energy Sector Submissions
 - c. Regionally Significant Infrastructure
 - d. Māori Land Tenure
 - e. National Policy Statement for Indigenous Biodiversity
 - f. Freshwater including Te Mana o Te Wai
 - g. Recognition of the Rural Environment
6. All recommended changes to PC38 by my right of reply are set out within my reply and on the running text version of PC38 contained in Appendix 2 of this report.
7. In order to distinguish between the recommendations made in the s42A report and my revised recommendations contained in Appendix 1 of this report:
 - a) s42A recommendations are shown in coloured text (with green underline for new text and ~~red strikethrough~~ for deleted text); and
 - b) Recommendations from this report are shown in the same manner but highlighted (with green underline for new text and ~~red strikethrough~~ for deleted text)

ISSUE A: APPLICATION OF THE STRATEGIC DIRECTIONS

8. In paragraphs 11 to 21 of my response to panel, I have considered the scope and application of the strategic directions. That has been informed by the direction provided by the 2019 National Planning Standards and case law provided at the hearing by submitters OS58 and OS95. These submitters raised the question of a hierarchy both within the directions and the wider plan as well as the application of the strategic directions in the consideration of resource consents.
9. My assessment of the role of the strategic directions in the TDP is set out in my response to panel document. On the basis of that assessment, it is my recommendation that the introductory text of PC38 to be revised as follows:

The strategic directions will be particularly relevant for any future changes to the Plan and any significant resource consent applications where there is a requirement to consider District Plan policy.

This chapter should be read as a whole and applied across the district and all zonings unless the provisions relate to a specific zoning or part of the District.

This chapter does not include rules. Relevant rules can instead be found in the chapters under the District Wide and Area Specific headings of the Plan. For the purposes of preparing, changing, interpreting and implementing the District Plan all other objectives and policies in all other parts of this Plan are to be read and achieved in a manner consistent with these strategic directions.

The policies contained within this chapter are able to be applied directly in the consideration of resource consent applications where there is a requirement to consider District Plan policy.

ISSUE B: ENERGY SECTOR SUBMISSIONS

10. In response to direction from the panel at the hearing, the energy sector has provided an agreed set of provisions. These have been provided in table format and represent the agreed position of the energy sector submitters on PC38. The provisions where the Energy Sector agree with my s42A report are not included in this table. The table sets out any new provisions sought by the energy sector or where a further change is sought to the recommended amendments in my s42A report. I have provided responses to those proposed changes in the final column in the table.
11. My responses listed in the energy sector table still stand after review of the final version of that table. I will not repeat these responses in my reply, instead direct the panel to the

panel for my reasoning behind my view on the matters raised. I do however have additional comments on specific matters raised that are not covered in the energy sectors table:

- a. **Urban Fence** – The inclusion of reference to an urban fence is introducing a level of specificity into the strategic directions which is not consistent with their role. It is introducing a mechanism into the plan which is replicating more high level direction around urban form that has been introduced into the plan via Plan Change 42 and reference to TD2050.
- b. **Offsetting** – Other submitters have also requested the specific recognition of offsets into PC38. My response to the energy sector submission applies to those wider submission points as well. Like the matter of the proposed ‘urban fence’, reference to offsetting introduces a level of specificity relating to a method of implementation that is not consistent with the role of the strategic directions.

12. As set out in the table I recommend the following additional changes be made to PC38 to address the matters raised by the energy sector submissions:

New climate change policy 2.4.3.5:

Recognise and provide for renewable electricity generation activities to facilitate decarbonisation of the economy and reduce greenhouse gas emissions.

Change to infrastructure policy 2.5.3.2:

Recognise *and provide for* the functional and operational needs associated with the ~~use and~~ development, *operation, maintenance and upgrading* of ~~N~~Nationally and ~~R~~Regionally ~~s~~Significant ~~I~~Infrastructure

ISSUE C: REGIONALLY SIGNIFICANT INFRASTRUCTURE

13. In response to submissions by Transpower New Zealand and Radio New Zealand I have recommended adding a new definition into the TDP for the term ‘Regionally Significant Infrastructure’. Within the hearing, the appropriateness of the proposed definition was queried by the panel. My response to this query is discussed further in paragraphs 23 - 25 in my response to panel. It is my view that an actual definition, rather than a referral is required.

14. On review of the two regional definitions of Regionally Significant Infrastructure currently in play I recommend the following definition to be added to the TDP. The proposed definition is generally consistent with the regional definitions but is more specific to the Taupō District context, i.e., there is no references to infrastructure or locations located outside of the district (i.e., Rotorua Hospital or Hamilton Airport) which are specific to one region only.

Regionally Significant Infrastructure - infrastructure of regional and/or national significance and includes:

- a) *pipelines for the distribution or transmission of natural or manufactured gas or petroleum;*
- b) *infrastructure required to permit telecommunication as defined in the Telecommunications Act 2001;*
- c) *radio apparatus as defined in section 2(1) of the Radio Communications Act 1989;*
- d) *the national electricity grid, as defined by the Electricity Industry Act 2010;*
- e) *a network (as defined in the Electricity Industry Act 2010);*
- f) *infrastructure for the generation and/or conveyance of electricity that is fed into the national grid or a network (as defined in the Electricity Industry Act 2010);*
- g) *the regional strategic transport network as defined in a Regional Land Transport Plan or State Highways as defined in the National State Highway Classification System;*
- h) *lifeline utilities, as defined in the Civil Defence and Emergency Management Act 2002, and their associated essential infrastructure and services;*
- i) *Local authority water supply network and water treatment plants;*
- j) *Local authority wastewater and stormwater networks, systems and wastewater treatment plants;*
- k) *Flood and drainage infrastructure managed by the Regional Council;*
- l) *Taupō Airport*
- m) *Taupō Public Hospital*

ISSUE D: MĀORI LAND TENURE

- 15. Question 6 in the response to panel document deals with queries raised by submitter OS115 Te Kotahitanga o Ngāti Tuwharetoa (TKNT) in respect to the use of the terms Māori land and freehold land.
- 16. I do not recommend changing the term 'Māori land' to 'Māori owned land' for the reasons stated in paragraphs 34 to 46 of my response to panel.
- 17. In relation to the use of the term 'free hold land versus 'general land', I recommend change to policy 2.1.3.4 be amended as follows for the reasons set out in paragraphs 43 and 44 of my response to panel.:
Recognise the wider existing and historical constraints on the utilisation and development of Māori land as different from general land in freehold title.

ISSUE E: NATIONAL POLICY STATEMENT INDIGENOUS BIODIVERSITY

- 18. In paragraphs 26 to 33 of my response to panel, I have considered the risk of acting versus not acting to the direction contained in the newly adopted National Policy Statement Indigenous Biodiversity (NPS-IB).

19. While I do not recommend revising PC38 to give effect to the NPS-IB, there is an opportunity to act in a manner that considers the NPS-IB and is within the scope of current TDP policy.
20. The TDP contains direction (3i.2.2 and 3i.2.3) for enhancement of natural values and recognising and encouraging the enhancement of areas of natural values etc. PC38 also contains statements (2.6.2.4) recognising and providing for activities that lead to the enhancement of indigenous biodiversity values. This policy is generally consistent with that signalled by Policies 13 and 14 of the NPS-IB and is not limited to activities within SNA's.
21. Submitter 114 Taupo Climate Action Group, in their presentation to the panel noted that section 3.22 of the NPS-IB is requiring targets to be set in respect to indigenous vegetation cover within urban and non-urban areas. While it is the role of Regional Councils to set these targets, the enhancement of indigenous biodiversity within urban areas, and outside, can be promoted through the TDP in response to NPS-IB policy.
22. Policy 2.6.2.3 can be revised to provide more specific direction that aligns with the NPS-IB as follows:

Support and facilitate those activities which will lead to the long term protection and or enhancement of indigenous biodiversity values in both urban and non-urban areas.
23. It is my view that this change does not represent a departure from current TDP policy and is also within the scope of submission OS114.5 by the Taupo Climate Action Group.

ISSUE F: FRESHWATER INCLUDING REFERENCE TO TE MANA O TE WAI

24. The following matters were raised by the panel and submitters in relation to Strategic Direction 2:
 - a. Whether reference to 'te Mana o te Wai' in policy 2.2.3.5 needs to be reflected in an associated objective, and
 - b. Whether the inclusion of Objective 2.2.2.1 goes beyond the functions of District Councils.
25. Matter 'a' is discussed in paragraphs 44 to 48 of my response to panel under Question 7.
26. Fully articulating the key elements of Te Mana o te Wai within Objective 2.2.2.1 would provide more clear direction on the outcomes being sought and the reference to the concept within policy 2.2.3.5. Straight reference to Te Mana o te Wai in 2.2.2.1 would be of limited benefit and instead I recommended setting out the concepts in a manner relevant to the role of the TDP as follows:

Objective 2.2.2.1

Subdivision and land use is managed in a way that promotes the positive effects, while avoiding, remedying, or mitigating adverse effects (including cumulative effects) of that development, on the mauri, health and well-being of water bodies, to benefit freshwater ecosystems, and receiving the wider environments, and the community, within the Taupō District.

27. In respect to matter 'b' it is my view that the proposed objective is within the jurisdiction of the councils' functions under the Act. As noted in paragraph 87 of my S42A report the TDP has a responsibility to manage the adverse effects on the environment that may arise from subdivision and land use in the district. Managing the adverse effects on waterways resulting from subdivision and land use forms part of that responsibility. There is additional direction in the NPS-FM regarding this matter.
28. When considering the matters raised in the hearing by NZ Pork, specifically paragraphs 36 and 63 of the statement of Evidence of Lynda Murchison, my view on jurisdiction is not solely reliant on the direction in 3.5(4) of the NPS-FM. 3.5(4) provides additional direction in respect to urban land use. Section 3.1 of the NPS-FM states that nothing in Part 3 of the NPS-FM limits the general obligation under the Act to give effect to the objectives and policies in Part 2 of the NPS. This is important when we consider the councils role not just under the NPS-FM but other documents. These documents include Te Kaupapa Kaitiaki which TDC is required to recognise and provide for the use of land within the Lake Taupō catchment. Similarly, Te Ture Whaimana (Vision and Strategy for the Waikato River) is required to be given effect to by the TDP for the Waikato River catchment.
29. Sections 3.5(2) and 3.5(4) of the NPS-FM are things that regional councils and territorial authorities *must* do respectively. They are not constraints on what they choose to do in taking an integrated approach as per the direction in 3.5(1). I do acknowledge the matters raised in paragraphs 46 – 49 of Ms Murchison's statement, in that the Regional Councils will, at some stage, change their regional policy statements as required by the NPS-FM. Once these changes are adopted then there may be a requirement to revise the provisions in Strategic Direction 2 and the wider TDP. I do not agree that this is a reason to unnecessarily restrict the scope of Objective 2.2.2.1 and associated policies.

ISSUE G: RECOGNITION OF THE RURAL ENVIRONMENT

30. Federated Farmers of New Zealand, Angela Bell and New Zealand Pork have requested an additional strategic direction to be added that recognises the rural environment. The key

concerns are around protecting the functioning of the rural environment and also recognising its importance to the Taupō District.

31. The assessment of higher order policies in the response to panel document also identify that the strategic directions do not specifically mention highly productive land.
32. Objectives 2.3.2.1 and 2.3.2.2 set out the approach to managing urban form and development within the District. The objectives do have a focus on managing urban form and development with a purpose of, amongst other things, protecting the rural environment. These provisions work to ensure that the district functions effectively however they do not provide explicit reference to the rural environment. The Town Centre Environment is the only zone to be specifically referenced in the notified provisions.
33. Objective 2.3.2.2 is recommended to be changed to include explicit recognition of the need to protect the functioning of the General Rural Environment. As noted by the submitters, it is done in the context of managing urban development which, including rural lifestyle development, has been consistently identified as a key threat to the rural environment.
34. An associated change is also recommended to Policy 2.3.3.4 with reference to the functioning of the General Rural Environment. On review I recommend that this reference be changed to the Rural Environment generally as fragmented development can adversely affect the functioning of the Rural Lifestyle Environment as well. This risk is reflected in proposed objectives 3b.3.1 and 3b.3.5 which form part of PC42-General Rural and Rural Lifestyle Environments .
35. I recommend that 2.3.3.4.c should be amended as follows:
 - c. ~~landuse~~ functioning of the General Rural Environment
36. I also recommend additional changes to be made to Objective 2.3.2.1 that recognises the importance of protecting the productive capacity of rural land. This change will provide explicit recognition of the importance of the rural environment and also refer to productive land as required by the NPS-HPL. I recommend a new matter 'f' be added to 2.3.2.1 as follows:
 - f. protects the productive capacity of rural land.
37. The growth management based approach inherent in Objectives 2.3.2.1 and 2.3.2.2 also support the development of a wider range of land uses and activities within the rural environment. Focussing urban development to specified parts of the district ensure that incompatible activities can occur with a greater degree of certainty of operation within the rural parts of the District. These activities include quarrying and landfills. Specifying such

activities is not required as they are indirectly provided for by the overall approach to managing land uses within the District.

Dated 18 September 2023

A handwritten signature in black ink, consisting of a large, stylized capital letter 'R' followed by a smaller capital letter 'S' and a period.

Rowan Sapsford

APPENDIX 1 SECTION 32AA EVALUATION TO ADDITIONAL CHANGES PROPOSED

Recommended Amendments	S32AA Evaluation
<p>Policy 2.1.3.4</p> <p>Recognise the wider <u>existing and historical</u> constraints on the utilisation and development of Māori land as different from <u>general</u> land <u>in freehold title</u>.</p>	<p>Whether the amended policy is the best way to achieve the purpose of the RMA.</p> <p>The change is a more correct use of terms that better represents what is intended by the wider policy.</p> <p>The environmental, social, economic, and cultural benefits and costs of the amended provisions.</p> <p>There are no costs associated with the change however there will be benefits to owners of Māori land through the application of the revised policy.</p> <p>The efficiency and effectiveness of the provisions for achieving the objectives.</p> <p>The change will improve the effectiveness of the policy by referring to the correct land tenure.</p> <p>The risk of acting or not acting where there is uncertain or insufficient information about the provisions.</p> <p>There is no uncertainty or insufficiency of information. There is a risk of not acting as there is certainty around the meaning of the terms used.</p>
<p>Objective 2.2.2.1</p> <p>Subdivision and land use is managed in a way that promotes the positive effects, while avoiding, remedying, or mitigating adverse effects (including cumulative effects) of that development, on the mauri, health and well-being of water bodies, <u>to benefit</u> freshwater ecosystems, <u>and receiving the wider</u></p>	<p>Whether the amended objectives are the best way to achieve the purpose of the RMA.</p> <p>The proposed amendment will mean that the objective is more consistent with the NPS-FM, specifically the key aspects that make up Te Mana o te Wai as set out in section 1.3 of the NPS-FM.</p> <p>The environmental, social, economic, and cultural benefits and costs of the amended provisions.</p>

Recommended Amendments	S32AA Evaluation
<p>environments, and the community, within the Taupō District.</p>	<p>The objective better captures the interrelated nature of land use and freshwater quality, including the benefits to the wider environment and the community. There are no identified costs associated with the proposed changes.</p> <p>The efficiency and effectiveness of the provisions for achieving the objectives.</p> <p>Incorporating reference to the principles of the mana o te Wai into the existing Objective 2.2.2.1 is more efficient and effective than adding in a new objective that specifically deals with the concept. Having it expressed in the one objective better reflects the desire to take an integrated approach managing freshwater.</p> <p>The risk of acting or not acting where there is uncertain or insufficient information about the provisions.</p> <p>There is no uncertainty or insufficiency of information. The risk of not acting is that there would be incomplete guidance on the plan relating to Te Mana o Te Wai</p>
<p>Objective 2.3.2.1.f protects the productive capacity of rural land.</p>	<p>Whether the amended objectives are the best way to achieve the purpose of the RMA.</p> <p>The amended objective reflects the important aspect of the rural environment which is to be protected through the management of urban form and development. it also reflects relevant direction in the NPS-HPL.</p> <p>The environmental, social, economic, and cultural benefits and costs of the amended provisions.</p> <p>Benefits to the efficient use of rural land and productive soils. Costs to those landowners who may wish to develop rural land for urban uses.</p> <p>The efficiency and effectiveness of the provisions for achieving the objectives.</p>

Recommended Amendments	S32AA Evaluation
	<p>This is an effective change as it works off the wider growth management approach which is inherent through this strategic direction. It responds to a key issue associated with the effects of urban development on the rural resource. A specific strategic directive was not considered to be effective as the matter is able to be dealt with within the context of managing urban development.</p> <p>The risk of acting or not acting where there is uncertain or insufficient information about the provisions.</p> <p>There is no uncertainty or insufficiency of information. The risk of not acting is that there would not be strong direction within the plan on the need to protect the productive capacity of rural land.</p>
<p>Policy 2.4.3.5</p> <p>Recognise and provide for renewable electricity generation activities to facilitate decarbonisation of the economy and reduce greenhouse gas emissions.</p>	<p><i>Whether the amended provisions are the best way to achieve the purpose of the RMA.</i></p> <p>The proposed policy provides clear and directive strategic guidance, in relation to the benefits that renewable electricity generation activities have on climate change. The policy gives effect to the NPS-REG</p> <p><i>The environmental, social, economic, and cultural benefits and costs of the amended provisions.</i></p> <p>The policy better recognises and provides for beneficial environmental effects of REG as they relate to climate change. There are no identified costs associated with the inclusion of the policy.</p> <p><i>The efficiency and effectiveness of the provisions for achieving the objectives.</i></p>

Recommended Amendments	S32AA Evaluation
	<p>The policy provides specific recognition of the benefits of REG in relation to climate change. Given the significance of REG to the District, it is important to recognise these activities. This policy directly responds to objective 2.4.2.1 through the promotion of an important activity in the district which will result in positive climate change outcomes.</p> <p><i>The risk of acting or not acting where there is uncertain or insufficient information about the provisions.</i></p> <p>There is no uncertainty or insufficiency of information. However, as noted above in relation to the issue of costs, the risk of not acting could result in reduced climate change outcomes.</p>
<p>Policy 2.5.3.2 Recognise and provide for the functional and operational needs associated with the use and development operation, maintenance and upgrading of Nationally and Regionally Significant Infrastucture.</p>	<p><i>Whether the amended provisions are the best way to achieve the purpose of the RMA.</i></p> <p>The change to the Policy seeks to better achieve the purpose of the objectives by moving the position from one of mere ‘recognition’ to take the next step and actually do something about that recognition, in this case, provide for the functional and operational needs associated with the use and development of nationally and regionally significant infrastructure (to give effect to Policy C1 and the policies in section E of the NPS-REG).</p> <p><i>The environmental, social, economic, and cultural benefits and costs of the amended provisions.</i></p>

Recommended Amendments	S32AA Evaluation
	<p>Any costs are outweighed by the direct benefits to environmental, cultural and social well-being, including economic growth and employment, by recognising and providing for the functional and operational needs associated with nationally and regionally significant infrastructure.</p> <p><i>The efficiency and effectiveness of the provisions for achieving the objectives.</i></p> <p>The amendment will be more efficient and effective as it seeks to achieve something rather than just recognise it.</p> <p><i>The risk of acting or not acting where there is uncertain or insufficient information about the provisions.</i></p> <p>There is no uncertainty or insufficiency of information. However, the risk of not acting is that less, is achieved.</p>
<p>2.6.3.2</p> <p>Support and facilitate those activities which will lead to the long term protection and or enhancement of indigenous biodiversity values in both urban and non-urban areas.</p>	<p>Whether the amended objectives are the best way to achieve the purpose of the RMA.</p> <p>The proposed amendment enables PC38 to give effect to aspects of the NPS-IB but in a manner that is consistent with existing policy. The revised policy now provides more clear direction on the enhancement of indigenous biodiversity and is now more explicit that this relates to urban environments as well.</p> <p>The environmental, social, economic, and cultural benefits and costs of the amended provisions.</p>

Recommended Amendments

S32AA Evaluation

The policy seeks to support and facilitate actions rather than compel. It provides better for positive environmental benefits to be enabled and supported by the TDP. Then policy is now more likely to support etc. positive biodiversity outcomes within urban areas.

The efficiency and effectiveness of the provisions for achieving the objectives.

More direct reference to indigenous biodiversity and also urban and non-urban areas means that the policy contains more effective direction on the activities to be supported etc.

The risk of acting or not acting where there is uncertain or insufficient information about the provisions.

There is no uncertainty or insufficiency of information. However, the risk of not acting is that there is less direction provided by the plan as it relates to enhancement of indigenous biodiversity.

APPENDIX 2: PLAN CHANGE 38 RUNNING TEXT POST HEARINGS