

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2024] NZEnvC 265

IN THE MATTER OF

an appeal under clause 14 of Schedule 1
to the Resource Management Act 1991
(**RMA**)

BETWEEN

TRANSPower NEW ZEALAND
LIMITED

(ENV-2022-AKL-074)

Appellant

AND

WAIKATO DISTRICT COUNCIL

Respondent

AND

KĀINGA ORA – HOMES AND
COMMUNITIES

FEDERATED FARMERS OF NEW
ZEALAND

Section 274 Interested Parties

Court: Environment Judge S M Tepania sitting alone under s 279(1)(b)
of the RMA

Last case event: 10 September 2024

Date of Order: 29 October 2024

Date of Issue: 29 October 2024

CONSENT ORDER



A: Under s279(1)(b) of the Resource Management Act 1991, the Environment
Court, by consent, orders that:

- (1) Objective NATC-O1 in the Natural Character (**NATC**) chapter of the PDP decisions version is amended as set out within **Appendix 1** to this order (additions marked as underlined and deletions as ~~striketrough~~); and
- (2) the part of the appeal allocated to Topic 20 is otherwise dismissed.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to part of an appeal by Transpower New Zealand Limited (**Transpower**) against the decisions of Waikato District Council (**Council**) on the Proposed Waikato District Plan (**PDP**) in relation to the wording of objective NATC-O1 of the PDP decisions version.

Background

[2] Transpower is a state-owned enterprise that plans, builds, maintains and operates New Zealand's National Grid, the high voltage transmission network for the country. Transpower's submission supported the original wording of NATC-O1 which provided: ¹

Natural Character

3.5.1 Objectives – Natural Character

- a) The high and Outstanding Natural Character of the coastal environment is protected from inappropriate subdivision, use and development.

...

[3] On 17 January 2022, an Independent Hearing Panel (**IHP**) decided to delete the

¹ Objective 3.5.1 in the PDP as notified.

reference to “high and outstanding” from NATC-O1. The IHP considered that the words were not necessary in order to give effect to higher ranking policy documents such as the Waikato Regional Policy Statement (**WRPS**) and the New Zealand Coastal Policy Statement (**NZCPS**).²

[4] Transpower filed an appeal on 1 March 2022 seeking, amongst other amendments, that NATC-O1 in the NATC chapter of the PDP decisions version be amended in order to give effect to the NZCPS and WRPS.

[5] This part of the appeal has been assigned to Topic 20: Miscellaneous and this consent order resolves Transpower’s interest in Topic 20.

[6] Kāinga Ora Homes and Communities and Federated Farmers have given notice of an intention to become a party to this appeal under s 274 of the RMA.

Agreement reached between the parties

[7] Following the filing of the appeal, Transpower and the Council have entered into direct discussions and have reached an agreement which will partially resolve Transpower’s interest in Topic 20:

- (a) amend NATC-O1 in the NATC chapter of the PDP decisions version as follows:

NATC-O1 Natural character

- (1) The High and Outstanding Natural Character Areas ~~natural character~~ of the coastal environment ~~are~~ ~~is~~ protected from inappropriate subdivision, use and development.
- (2) The natural character of wetlands, and lakes and rivers and their margins are protected from inappropriate subdivision, use and development.

² Decision Report 8: Landscapes at [11.5] – [11.6].

Section 32AA evaluation

[8] It is agreed by the parties that the above amendment to NATC-O1 of the PDP decisions version listed above, satisfies the concerns raised in the appeal. In particular, the amendments:

- (a) Reinstate the words “High and Outstanding” into NATC-O1 which would be consistent with, and give effect to, the following higher ranking policies which refer to High and Outstanding Natural Character Areas:
 - (i) Section 6(a) of the RMA which emphasises the preservation of the natural character of the coastal environment as a matter of national importance.
 - (ii) Policy 8 of the National Policy Statement on Electricity Transmission 2008 which states that adverse effects on outstanding natural landscapes and areas of high natural character should seek to be avoided.
 - (iii) Policy 13(1)(a) of the NZCPS which states that the natural character of the coastal environment should be preserved by avoiding adverse effects on areas of the coastal environment with outstanding natural character. Policy 13(1)(b) states further that significant adverse effects should be avoided and other adverse effects of activities on natural character in all other areas of the coastal environment should also be avoided, remedied or mitigated. Lastly, policy 13(1)(c) and (d) state that natural character of the coastal environment should be assessed by mapping or otherwise identifying areas of high natural character and to ensure that these areas are included in relevant plans and their provisions.
 - (iv) Policy CE-P1(3) and (4) of the WRPS which requires that development of the built environment in the coastal environment occurs in a way that:

- (1) avoids the adverse effects of activities on areas with outstanding natural character, and outstanding natural features and landscapes; and
- (2) ensures that, in areas other than those identified in (3) above, activities are appropriate in relation to the level of natural character.

By reinstating the original wording, differences of interpretation will be avoided as much as possible which could otherwise be a risk to the consenting process for developments in coastal areas including the provision of essential infrastructure;

- (b) align with Policy AINF-P18 of the PDP decision version which refers to high and outstanding character areas as well as the Council's PDP planning maps that also distinguish between high and outstanding natural character areas; and
- (c) reintroduce the distinction between high and outstanding natural character areas and the rest of the coastal environment in NATC-O1 which will clarify the application of this objective, focus the protection on those areas most sensitive to development and thereby reduce unnecessary controls that could slow down the consenting process.

Extent to which the objective achieves the purpose of the RMA

[9] The amended objective better achieves the purpose of the RMA. By protecting High and Outstanding Natural Character Areas of the coastal environment from inappropriate subdivision, use and development; the objective better enables the balancing of use, development and protection of High and Outstanding Natural Character Areas of the coastal environment as a natural resource in accordance with s 5(2) of the RMA. In addition, the amended wording of NATC-O1 closely reflects that of s 6(a) which seeks to preserve the natural character of the coastal environment, and protect it from inappropriate subdivision, use, and development as a matter of

national importance. The identification of the High and Outstanding Natural Character in the objective elevates the preservation of those most special areas of natural character in the coastal environment.

[10] The reinstatement of “High and Outstanding” in NATC-O1 would remove ambiguity with regards to the interpretation of the provision and give effect to higher ranking policies that also make the distinction between high, outstanding and other natural character areas.

Consideration

[11] In making this order the Court has read and considered the notice of appeal dated 1 March 2022 and the joint memorandum of the parties dated 10 September 2024.

[12] I am satisfied that the agreement reached is one that represents the various interests of the parties. I conclude the parties have agreed amendments which reflect the most appropriate way to achieve the purpose of the RMA and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the RMA are broadly met.

[13] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.

[14] The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court’s endorsement fall within the Court’s jurisdiction and conform to the relevant requirements and objectives of the RMA, including in particular Part 2.

Order

[15] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (a) Objective NATC-O1 in the NATC chapter of the PDP decisions version be amended as set out within **Appendix 1** to this order (additions marked as underlined and deletions as ~~striketrough~~);
- (b) the part of the appeal allocated to Topic 20 is otherwise dismissed;

[16] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



S M Tepania

Environment Judge | Kaiwhakawā o te Kōti Taiao



**Appendix 1: Tracked change version of the agreed amendments to NATC-O1
in the NATC chapter of the PDP decisions version**

NATC-O1 Natural character

- (1) The High and Outstanding Natural Character Areas ~~natural character~~ of the coastal environment ~~are~~ is protected from inappropriate subdivision, use and development.

- (2) The natural character of wetlands, and lakes and rivers and their margins are protected from inappropriate subdivision, use and development.