

## **Assessment of Section 86B and 86F of the Resource Management Act in relation to the Proposed Thames-Coromandel District Plan**

### **1. Legal Effect**

Sections 86A to 86G of the Resource Management Act (RMA) specify when a rule in a proposed plan has legal effect. Generally, a rule in a proposed plan has legal effect only after decisions on submission have been made. Section 86 provides some exceptions.

On 13 December 2013, when the Proposed District Plan was publicly notified, the following rules had immediate legal effect in accordance with RMA Section 86B (3):

Section 29	Biodiversity rules 1-4
Section 31	Historic Heritage: Archaeology, Maori Cultural Sites, Heritage Items and Heritage Overlay Rules 1-18
Section 38	Subdivision Rule 8 and Rule 10

An Environment Court decision also determined that the following rules had immediate legal effect in accordance with RMA Section 86D:

Section 34	Natural Hazards: River Flooding, Coastal Erosion, Tsunami and Flood Defences Overlay Rule 4, Table 2 - Restricted Discretionary Activity Matters and the associated flood hazard maps
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Regardless of the submissions received on these Sections of the Proposed Plan these rules continue to have legal effect until they become operative.

### **2. Assessment of rules to be treated as operative**

Following the closure of the submission period RMA Section 86F provides for a rule in a proposed plan to be treated as operative if no submissions in opposition have been made to it.

An assessment has been undertaken of all the submissions received on the Proposed Plan and how they affect the status of rules.

The assessment process undertaken was as follows:

- Submissions against the entire plan were assessed to determine the specificity of the relief sought. As a result it was found that they either didn't request any relief, the relief wasn't specific or the extent of the relief was confined to particular parts of the Plan. All of these submissions were ruled as being against the entire plan.
- Where objectives and policies were opposed, the associated rules cannot be treated as operative. This assessment resulted in most of the Plan being ruled out as entire policy sections have been submitted against. It would be nonsensical for rules to be treated as operative without a supporting policy framework. It would also make assessment of discretionary and non-complying activities in the Proposed Plan ineffective.
- 'Form submissions' against specific activities across the Plan e.g. mining activities and visitor accommodation were assessed. The relief sought in these submissions is extensive and means that the activities, their associated assessments matters, standards and definitions cannot be treated as operative. The relief sought also affects rules in the overlay section of the Plan.

- Where definitions were opposed the rules that rely on those definitions also cannot be treated as operative. In some cases, such as the definition of site and building, the application of these terms is so wide, that they affect interpretation of much of the Plan.
- Permitted, controlled and restricted discretionary activities are all subject to assessment matters, criteria and standards. In some cases assessment of these matters is linked to other plan sections. Where a rule was opposed which relied on these matters it was considered to leave other rules which rely on the same matters unable to be treated as operative. Similarly, where assessment matters, criteria or standards were challenged outside of a specific rule this affects the ability of a rule reliant upon these to be treated as operative.
- Submissions to layers on the planning maps challenged zones, overlays and flood hazard. While many of these were against individual sites the relief sought often questioned the methodology of the layer or sought deletion of overlays in their entirety. These submissions affect the policy framework and indirectly related rules having a cascading effect resulting in a range of rules being unable to be treated as operative.

### **3. Conclusion**

As a result of the above analysis the entire Plan, excluding some designations and statutory acknowledgements, has been submitted on either directly or indirectly.

This means that no part of the Plan can be treated as operative until the Council makes decisions on submissions next year.

The only exception to this is those designations that were 'rolled over' from the Operative District Plan and are not subject to submission/s.

All other designations have 'interim effect' under RMA Section 178. This section does not enable a requiring authority to undertake the public work or project, but restrains land uses or subdivision of the land that would prevent or hinder the project or work.

The rules relating to heritage, biodiversity and flood earthworks, which had immediate legal effect at the time of notification continue to have effect, but cannot be treated as operative until the Council issues decisions on submissions.