BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE TIMARU DISTRICT COUNCIL

UNDER:	the Resource Management Act 1991
IN THE MATTER OF:	Submissions and further submissions in relation to the Timaru Proposed District Plan

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BUNDLE OF AUTHORITIES REFERRED TO IN THE LEGAL SUBMISSIONS ON BEHALF OF WESTGARTH, CHAPMAN, BLACKLER ET AL. (SUBMITTER NO. 200; FURTHER SUBMITTER NO. 269)

HEARING STREAM E2: CULTURAL VALUES

Dated: 30 January 2025

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Bundle of Authorities

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1.	*Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC).	1
2.	*Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51.	32
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4.	*Rayonier New Zealand Ltd v Canterbury Regional Council* [2024] NZHC 1478.	185
5.	Dunedin City Council 2nd Generation District Plan, Part C. City Wide Provisions, Chapter 14. Manawhenua.	250
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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2011-485-002259

UNDER	the Resource Management Act 1991 and its amendments
IN THE MATTER OF	an appeal under s 149V of the Act to the High Court on questions of law
BETWEEN	RATIONAL TRANSPORT SOCIETY INCORPORATED Appellant
AND	A BOARD OF INQUIRY APPOINTED UNDER S 149J OF THE RESOURCE MANAGEMENT ACT Decision-maker
AND	NEW ZEALAND TRANSPORT AGENCY Respondent

Hearing: 7 December 2011

Counsel: T H Bennion for Appellant
J J M Hassan and M J R Conway for Respondent

Judgment: 15 December 2011

In accordance with r 11.5 I direct the Registrar to endorse this judgment with the delivery time of 2.30pm on the 15th day of December 2011.

RESERVED JUDGMENT OF GENDALL J

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[1] The New Zealand Transport Agency (NZTA) is contemplating realigning State Highway 1 through what is known as "Transmission Gully", north of Wellington, between Linden and Paekakariki, via Pauatahanui. In order to do so it will require certain resource consents. Some of these relate to roading developments

that would affect waterways through that area. That is governed by the Regional Freshwater Plan for the Wellington region.

[2] The NZTA requested changes to be made to that Freshwater Plan because, as it presently stands, some of the activities for which resource consents may be required (if the project proceeds) are "non-complying activities", including reclamation activities. As such, they are only eligible for consent if either:[1]

- the environmental effects are "no more than minor"; or
- the activity would not be contrary to the Objectives and Policy of the Freshwater Plan.

[3] For such major construction works of State Highway 1 it is going to be difficult, if not impossible for the NZTA, to meet the test that any adverse effects were no more than minor. Further, the present policy framework of the Freshwater Plan potentially closes the door on the ability to obtain necessary consents unless the plan could be changed.

[4] As a consequence NZTA requested that certain changes be made to the Freshwater Plan for the Wellington region (Request). The Resource Management Act 1991 (Act) allows for any person to seek a change to a Regional, or District, Plan.

[5] Upon the Minister for the Environment determining the Request was part of a proposal of national significance, a Board of Inquiry (the Board) was set up pursuant to Part 6AA of the Act, with the conduct of the Inquiry taking place under ss 149L - 149P. The Board was directed to hear the Request, and determine it as if it were a regional authority. The Board of six members had particular expertise, knowledge and skill, being selected in part for their experience relating to the local community. The chair was a widely experienced Judge of the Environment Court. The process encouraged public submissions. The Board conducted a hearing over seven days

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[1] Resource Management Act 1991, s 104D.

between 6 – 13 July 2011; received extensive evidence, expert and lay, multiple submissions, and representations by "submitters" which although perhaps not formal evidence, were statements of their views. The Board delivered a final decision and report encompassing 337 paragraphs and 86 pages (together with five appendices). The outcome was that the Request to change the Regional Freshwater Plan was approved by the Board.

[6] Applications by NZTA for resource consents have been referred to the Board, constituting the same members of those who heard the Request. Those applications have been publicly notified and submissions closed, and a public hearing is scheduled to commence on 12 February 2012. Consequently, the Court has had to deliver its decision under severe time restraints given that the Court vacation is between 16 December 2011 and 1 February 2012.[2]

[7] In the time available to deliver this decision it is not possible to do more than summarise the essential features of the Board's decision.

[8] Unsurprisingly, the Board found that Transmission Gully was a project of regional and national significance. It found that the project was likely to have adverse effects which are more than minor on certain water bodies in its construction. The policy of the Freshwater Plan required that those adverse effects be avoided. The Board accepted however that avoidance was not the only appropriate method of achieving sustainable management of those water bodies. It was appropriate to include a wider range of management methods (i.e. remedy or mitigate) in the plan in relation to Transmission Gully. In terms of offsetting the effect on the water bodies, the Board rejected the argument that offsetting was an inappropriate management method. Rather, it was a possible form of remedy or mitigation, which could be considered on a case by case basis in relation to the actual water bodies concerned, when resource consent applications were made. The Board determined that the changes which it accepted were not inconsistent with the relevant national and regional policies and objectives, and that they did not preclude

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[2] See [83].

the Freshwater Plan from giving effect to such policies. The changes also met the purposes of the Act.

[9] The appellant does not want the Transmission Gully highway to be constructed. If it had been successful the NZTA would have probably failed to obtain necessary resource consents. It opposed the Request before the Board. It now appeals the Board's decision. If it fails in the appeal it may continue to oppose the application for resource consents.

Jurisdiction to appeal

[10] A right of appeal is provided in s 149V of the Act but only on a question of law. No appeal exists to the Court of Appeal from the determination of the High Court. A party may apply to the Supreme Court for leave to bring an appeal to that Court.

[11] The principles to be applied are well known and dealt with by the Supreme Court in *Bryson v Three Foot Six Ltd*:[3]

> An appeal cannot, however, be said to be on a question of law where the fact-finding Court has merely applied law which it has correctly understood to the facts of an individual case. It is for the Court to weigh the relevant facts in the light of the applicable law. Provided that the Court has not overlooked any relevant matter or taken account of some matter which is irrelevant to the proper application of the law, the conclusion is a matter for the fact-finding Court, unless it is clearly insupportable.
>
> An ultimate conclusion of a fact-finding body can sometimes be so insupportable – so clearly untenable – as to amount to an error of law: proper application of the law requires a different answer. That will be the position only in the rare case in which there has been, in the well-known words of Lord Radcliffe in *Edwards v Bairstow*, a state of affairs "in which there is no evidence to support the determination" or "one in which the evidence is inconsistent with and contradictory of the determination" or "one in which the true and only reasonable conclusion contradicts the determination". Lord Radcliffe preferred the last of these three phrases but he said that each propounded the same test. ...

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[3] *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [25] – [26].

Background

[12] As mentioned, the Transmission Gully Project (TGP) involves the proposed construction of a 27 kilometre highway from Linden via Pauatahanui to Paekakariki. Its construction will require works affecting streams which will be subject to diversions, culverts and dams. The highway will have impact upon the waterways along its length. The NZTA lodged the Request for changes to the Regional Freshwater Plan because of its concern about policies 4.2.10 and 4.2.33 of the Freshwater Plan.

[13] Policy 4.2.10 provides that:

> To *avoid* adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B), when considering the protection of their natural character from the adverse effects of subdivision, use, and development. (Emphasis added)

[14] By way of contrast, policy 4.1.12 provides that:

> The adverse effects of the use and development of freshwater resources are *avoided, remedied, or mitigated*. (Emphasis added)

[15] In the "Explanation" to policy 4.2.10 the distinction is explained:

> Wetlands, and lakes and rivers and their margins, are identified in Appendix 2 as having a high degree of natural character ... The preservation of natural character in this policy is achieved by avoiding adverse effects. In this policy "to avoid adverse effects" means that when "avoiding, remedying or mitigating adverse effects", as identified in subsection 5(2)(c) of the Act, the emphasis is to be placed on avoiding adverse effects. "To avoid adverse effects" means that only activities with effects that are no more than minor will be allowed in the water bodies identified. Further elaboration on the meaning of "minor" is contained in Policy 4.2.33.

[16] Policy 4.2.33 provides that adverse effects are likely to be no more than minor if certain criteria are met. Amongst those criteria are that:

> ...
>
> (2) any adverse effects of plants, animals or their habitats are confined to a small area or are temporary, and the area will naturally re-establish [comparable] habitat values ... ; and
>
> (3) there are no significant or prolonged decreases in water quality; and

...

(7) there are no adverse effects on the natural character of wetlands, and lakes and rivers and their margins.

[17] As the TGP would inevitably affect waterways, and in particular three streams (Horokiri, Ration, and lower Pauatahanui) that fall within policy 4.2.10, the NZTA was concerned that the TGP, when seeking consents, would be unable to meet, or would require uneconomic engineering to meet, the absolute requirement for avoidance of more than minor adverse effects in policies 4.2.10 and 4.2.33. Consequently, applications by NZTA for resource consent for non-complying activities would fail because that consent could only be granted for a non-complying activity where the effects of it were likely to be no more than minor, or the activity would not be contrary to the objectives or policies of the relevant plan. Obviously, effects will be more than minor.

[18] It was for that reason that the NZTA sought an exception to the policies 4.2.10 and 4.2.33. It sought a change in the policy for an avoidance of adverse effects, to allow for remedy, mitigation and offsetting such effects where avoidance was impracticable or where it would impose uneconomic costs on the TGP.

The Board's decision

(a) Preliminary findings

[19] The Board made four preliminary findings that "inform[ed] and underpin[ned]" its consideration of the merits of NZTA's Request. Three are relevant and provide that:

- the Freshwater Plan, in its present form, potentially precludes consideration of the merits of any resource consent applications for TGP (particularly non-complying reclamation activities) because the project is likely to have adverse effects which are more than minor on relevant water bodies and because the Freshwater Plan policies lack flexibility in that situation;

- the condition of Horokiri, Ration and Pauatahanui Streams is such that avoidance of adverse effects is not the only way of ensuring their sustainable management (as a general rule). They have each experienced catchment forest clearance, farming, riparian degradation, water quality changes, sedimentation and large changes in species composition; and

- TGP is a roading project of national and regional significance, and accordingly it is appropriate to consider the changes to the Freshwater Plan as sought by the NZTA.

(b) Final conclusions

[20] First, the Board considered a range of alternatives for the purpose of s 32, one being the status quo and the other four being changes of some sort, and the benefits and costs of each. It concluded that a limited amendment of policy 4.2.10 (with consequential amendments) was the most appropriate way of achieving the overarching objectives of the Freshwater Plan. Relevantly, the Board concluded that:

- retaining the status quo is not the most appropriate way of achieving the plan's objectives:

    - policy 4.2.10 is more limited than the relevant objectives: the objectives require that important values are preserved and protected, and that adverse effects are avoided, remedied or mitigated (objectives 4.1.4 – 4.1.6 and 7.1.1); and

    - the qualities of the water bodies potentially affected by the TGP are not such that avoidance of adverse effects is the only way of sustainably managing those streams: remedy or mitigation would also be appropriate;

- limited amendment of policy 4.2.10 to remove avoidance as a mandatory requirement, but retaining it as the preferred requirement, for the water

> bodies affected by the TGP, is the most appropriate means for achieving the objectives of the Freshwater Plan. In particular, the Board held that the objectives of protection and preservation of freshwater values require that avoidance be the preferred outcome in any situation, followed by remediation and mitigation.

[21] Second, the Board concluded that the changes to the Freshwater Plan would not preclude that plan from giving effect to the National Policy Statement for Freshwater Management (NPSFM), as required by ss 66 and 67 of the Act. The key aspects of the NPSFM related to water quality (Part A). In particular, objective A2 provides that:

> The overall quality of fresh water within a region is maintained or improved while:
>
> (a) protecting the quality of outstanding freshwater bodies;
>
> (b) protecting the significant values of wetlands; and
>
> (c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

[22] Policy A2 provides that:

> Where water bodies do not meet the freshwater objectives made pursuant to Policy A1, every regional council is to specify targets and implement methods (either or both regulatory and non-regulatory) to assist the improvement of water quality in the water bodies, to meet those targets, and within a defined timeframe.

[23] The objectives and policies are set out in full:[4]

> A. Water quality
>
> Objective A1
>
> To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants.

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[4] National Policy Statement Freshwater Management 2011.

Objection A2

The overall quality of fresh water within a region is maintained or improved while:

a) protecting the quality of outstanding freshwater bodies

b) protecting the significant values of wetlands and

c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

Policy A1

By every regional council making or changing regional plans to the extent needed to ensure the plans:

a) establish freshwater objectives and set freshwater quality limits for all bodies of fresh water in their regions to give effect to the objectives in this national policy statement, having regard to at least the following:

    i) the reasonably foreseeable impacts of climate change

    ii) the connection between water bodies

b) establish methods (including rules) to avoid over-allocation.

Policy A2

[quoted at [22]].

Policy A3

By regional councils:

a) imposing conditions on discharge permits to ensure the limits and targets specified pursuant to Policy A1 and Policy A2 can be met and

b) where permissible, making rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.

Policy A4 and direction (under section 55) to regional councils

By every regional council amending regional plans (without using the process in Schedule 1) to the extent needed to ensure the plans include the following policy to apply until any changes under Schedule 1 to give effect to Policy A1 and Policy A2 (freshwater quality limits and targets) have become operative:

> *"1. When considering any application for a discharge the consent authority must have regard to the following matters:*
>
> *a) the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh water including on any ecosystem associated with fresh water and*
>
> *b) the extent to which it is feasible and dependable that any more than minor adverse effect on fresh water, and on any ecosystem associated with fresh water, resulting from the discharge would be avoided.*
>
> *2. This policy applies to the following discharges (including a diffuse discharge by any person or animal):*
>
> *a) a new discharge or*
>
> *b) a change or increase in any discharge–*
>
> *of any contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.*
>
> *3. ...."*

[24] The Board was of the opinion that the changes to the Freshwater Plan were not inconsistent with those objectives because:

- avoidance of adverse effects remained the first preference;

- the specific terms of new policy 4.2.33A and its explanation would ensure the safeguarding or life supporting capacity, ecosystem processes and indigenous species will be adequately achieved; and

- the consent authority retains an overall discretion to determine whether adverse effects have been adequately addressed by the NZTA. The proposed changes did not preclude a consent authority from determining that the concepts of safeguarding or protecting require the avoidance of adverse effects in any given case.

[25] Finally, the Board concluded that the changes to the Freshwater Plan were in accordance with Part 2 of the Act. This followed from earlier conclusions of the Board, and from its specific conclusions that:

- the TGP may potentially have downstream effects on the coastal environment by way of sediment discharge into Pauatahanui Inlet, however the consent authority will be in a position to assess whether such adverse effects are required to be avoided;

- the values of the relevant water bodies are not such that avoidance of adverse consequences is the only appropriate means of achieving sustainable management of those water bodies; and

- the water bodies in question are small, confined to a distinct geographic area, and have already been subject to considerable degradation. The management of those water bodies by means of remedial and mitigation measures may lead to better outcomes than current management of those water bodies.

[26] A full summary of the determinative findings and reasons of the Board follows:[5]

- TGP is a roading project which has been identified as nationally and regionally significant;[6]

- TGP is likely to have adverse effects which are more than minor on water bodies on its route;[7]

- The relevant policies of the Freshwater Plan require the avoidance of adverse effects on those water bodies, notwithstanding that avoidance of adverse effects is not the only appropriate method of achieving their sustainable management provided for by the Act;[8]

- The Freshwater Plan in its present form potentially precludes consideration of the merits of any resource consent applications for TGP in accordance with s 104 as a consequence of the operation of s 104D due [to] the lack of flexibility in the relevant policies;[9]

- Changing the Freshwater Plan to include provision for a wider range of management methods than just avoidance of adverse effects is the appropriate option to achieve sustainable management of the water

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5 At [332].
6 At [178] – [190].
7 At [98].
8 At [237].
9 At [162] – [166].

> bodies and allow consideration of resource consent applications for TGP *on their merits*;[10]
>
> - The appropriate form of the Request having regard to alternatives and to its efficiency and effectiveness in enabling the Freshwater Plan to achieve its Objectives, is that set out in Appendices 1 and 2 [accompanying the decision];[11]
>
> - The changes to the Freshwater Plan contained in Appendices 1 and 2 do not of themselves give effect to any national or regional policy statements as they are limited in scope. The changes are not inconsistent with the relevant national and regional policy instruments and will not preclude the Freshwater Plan from giving effect to such instruments if they are incorporated into the Freshwater Plan;[12]
>
> - The changes to the Freshwater Plan contained in Appendices 1 and 2 will enable Greater Wellington to carry out its functions;[13] and
>
> - The changes to the Freshwater Plan contained in Appendices 1 and 2 are in accordance with Part 2[14] and meet the purposes of the Act.

and further:[15]

> Having regard to all of our findings above, we are satisfied that it is appropriate to approve the Request subject to the plan changes requested being in the form contained in Appendices 1 and 2. Changes should be made to the Freshwater Plan accordingly.

[27] Broadly, the effect of the Board's decision was to grant the exception sought by NZTA by amending policy 4.2.10 to exclude the TGP and by inserting policy 4.2.33A, which provides that:

> To manage adverse effects of the development of the Transmission Gully Project, in accordance with the following management regime: (1) Adverse effects are all avoided to the extent practicable; (2) Adverse effects which cannot be avoided are remedied or mitigated.

Consequential changes were also made to policies 7.2.1 and 7.2.2.[16]

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10 At [233] – [241].
11 At [242] – [252].
12 At [253] – [304].
13 At [316] – [317].
14 At [318] – [331].
15 At [333].
16 At [332].

Appellant's points of appeal

[28] Mr Bennion, on behalf of the appellant, provided extensive submissions which ran to 43 pages and 129 paragraphs. I mean no disservice to counsel by not referring in detail with every point advanced, because it is necessary for the Court to keep squarely in mind that an appeal such as this can only be on a point of law.

[29] The appellant's submissions focus on three aspects of the Board's decision, namely s 32 and Part 2 of the Act and the NPSFM.

Section 32

[30] First, the appellant contended that the Board erred in law in its application of s 32 of the Act, and consequently incorrectly concluded that the plan change was the "most appropriate" way to achieve the relevant objectives of the Regional Freshwater Plan. In particular, counsel argued that the Board:

(a) erred in law, by applying a wrong legal test, by considering that mitigation (to be contrasted with avoidance and remediation) could amount to protection in accordance with the objectives of the Freshwater Plan. Protection would not be satisfied where a residual unremediated impact remains (in the case of mitigation). The plan changes were not the optimum or superior method of achieving stream protection;

(b) failed to take into account detailed criteria in the Freshwater Plan (including policy 4.2.33) requiring adverse effects to be limited in time and space, and therefore failed to consider why those shorter and smaller temporal and spatial limits are not the most appropriate approach to protection, all being relevant factors. Instead, the Board simply preferred the longer and larger temporal and spatial requirements of the TGP, which were irrelevant factors;

(c) failed to take into account the adverse effects of stormwater discharges from the operation of the TGP, that being a relevant factor. Dr Keesing (an expert ecological witness called by the NZTA), whose evidence was accepted by the Board, stated that the proposal would have long-term high adverse impacts due to stormwater; and

(d) took into account irrelevant matters, namely the timing and spatial extent of TGP.

National Policy Statement for Freshwater Management

[31] Second, the appellant contended that, in concluding the plan change would not preclude the Regional Freshwater Plan giving effect to the NPSFM, the Board erred by failing to take into account the definition of "over-allocation" as it applies to streams to be affected by the plan change, and the implications in terms of policy A2 of the NPSFM. Counsel said that as the Board accepted that the condition of the Ration, Horokiri and the lower Pauatahanui Streams was not high and that substantial degradation had taken place, this led plainly to a situation of "over-allocation" as to water quality, the streams are being used to a point where a freshwater objective (i.e. protection) is no longer met. Counsel argued that in such a situation, the NPSFM requires, under policy A2, that methods be implemented to assist the improvement of water quality to specified targets within a defined timeframe. Counsel submitted that the Board accordingly needed to consider whether the plan change – including the adverse effects of the TGP (including stormwater discharges), with its greater temporal and spatial limits – would frustrate that requirement and erred in law in that respect.

Part 2 Resource Management Act

[32] Third, the appellant argued that the Board applied the wrong legal test in determining whether to grant the application under Part 2. He argued that it erred in its consideration of the benefits and costs of the changes for the purpose of s 5(2), and the significance of TGP, by failing to take into account relevant factors, taking into account irrelevant factors, and by making findings that were not reasonably

open on the evidence. Counsel said the Board erred by failing to assess the plan changes for their potential adverse and positive effects; took an overly passive approach by deferring specific assessments of adverse effects to the resource consent authority (demonstrated by the approach to the issue of sediment discharge in the Pauatahanui Inlet).

[33] The extensive adverse effects in this case were, counsel submitted, significant according to the evidence of Dr Keesing, which was accepted by the Board. Because the Board did not discuss the stormwater issues, it failed to take this into account as a relevant factor. Counsel submitted that whilst the Board accepted that the TGP was one of national and regional significance, the significance of that could not alone outweigh the significant potential adverse effects of the plan change and thus, counsel said, this consideration was irrelevant.

[34] Lastly, counsel submitted that the Board had a statement from a witness, Dr Nicholson, which it accepted for the purpose of s 5 on the basis that it was "not challenged", whereas counsel contends that that was an incorrect conclusion – in fact it was not "unchallenged evidence". In any event, the appellant submits that the Board had correctly earlier concluded that it did not have sufficient evidence of the proposal's benefits to justify a statement to that effect in the explanation to policy 4.2.33A. So, counsel argued the Board's finding about the benefits of the proposal – and the overall balance in favour of the plan changes – for the purpose of s 5 were not reasonably open to it.

Respondent's contrary arguments

Section 32

[35] Counsel contended that s 32(3) of the Act requires examinations of what objective would be "the most appropriate" to achieve the purpose of the Act, or whether other methods are the most appropriate. It does not require determination of what is the "superior method". Neither the Act nor the Freshwater Plan objectives required the Board to focus only on "stream protection". Counsel says the Board was entitled to consider the significance of the TGP but did not give it undue weight.

[36] "Protection" was neither an absolute nor sole objective, whether under the Freshwater Plan or the Act and "protection" does not equate with "avoidance".

[37] Counsel submitted the Board in any event did not confine its consideration to mitigation nor preclude protection or constrain other future decision-makers. Counsel submitted the appellant's interpretation of policy 4.2.33 is misleading and, in any event, did not apply because more than minor adverse effects were likely and the Board gave proper regard to the relevant Freshwater Plan policies.

National Policy Statement for Freshwater Management

[38] On this issue counsel submitted that the Freshwater Plan does not set "Freshwater Objectives" within the meaning of the NPSFM. That requires them to be set by Regional Councils through a process directed by the NPSFM which have not yet occurred. On the issue of "over-allocation", counsel submitted that the decision was not relevant to any risk of over-allocation because it:

- did not alter the Freshwater Plan's objectives, nor constrain resource consent decision-makers from giving effect to them, and to the intentions of the NPSFM, in their decision; and

- the Regional Council is not in any sense impeded or restrained in its capacity to further change its Regional Plans and/or make new Regional Plans in accordance with its functions and responsibility.

[39] Counsel submitted that the Freshwater Plan did not require the Board to specifically address stormwater discharges in its decision, yet in any event it did so, and it was entitled to reach the view that further consideration was a matter for the resource consent stage (when detailed proposal to deal with that would be presented). Counsel submitted that the Board properly weighed the options presented to it against the objectives in accordance with its discretion.

Part 2 issues

[40] The respondent contended that the Board was not making a decision about the Transmission Gully proposal and did not have obligations imposed upon it to undertake a detailed analysis of the potential effects. The Board could not make a decision about the proposal, nor remove any discretion that rested with decision-makers at the resource consent stage. Counsel submitted the Board was properly entitled to leave detailed consideration of the effects of the proposal to the decision-makers and the scheme of Part 2 enabled the Board to exercise informed and expert judgment about competing values and priorities. So the scheme of the Act is deliberately compartmentalised.

Discussion

Appellate approach of the Courts

[41] The law is well understood. It is discussed in *Contact Energy Ltd v Waikato Regional Council*:[17]

> The question of whether the Tribunal's conclusion is one to which it could not reasonably have come is not determined by asking whether it is a reasonable outcome. "Reasonable" refers to the quality of the reasoning, not the quality of the result. The task of this Court is to decide whether the decision "was one that could be arrived at by rational process": *Stark v Auckland Regional Council* [1994] 3 NZLR 614 at 617 per Blanchard J.
>
> The careful scrutiny required of points of law of this nature was discussed by Fisher J in *NZ Suncern Construction Ltd v Auckland City Council* [1997] NZRMA 419 at 426 as follows:
>
> > *"[T]he Court should resist attempts by litigants disappointed before the ... Environment Court to use appeals to this Court as an occasion for revisiting resource management merits under the guise of questions of law: Sean Investments v MacKellar* (1981) 38 ALR 363; *Parkinson v Waimairi District Council* (1988) 13 NZTPA 244 at 245. *This includes attempts to re-examine the mere weight which the Tribunal gave to various conflicting considerations before it: Manukau City Council v Trustees of Mangere Lawn Cemetery* (1991) 15 NZTPA 58, 60.

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[17] *Contact Energy Ltd v Waikato Regional Council* [2007] 14 ELRNZ 128 (HC) at [58] – [59].

> If an error of law is detected it will not warrant relief on appeal unless this Court is satisfied that the error materially affected the decision of the Environment Court: *Royal Forest and Bird Protection Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76, 81-82; *Countdown Properties* at 153.

and further:[18]

> In *Green and McCahill Properties Ltd v Auckland Regional Council* [1997] NZRMA 519, Salmon J said at 528:
>
> > *No question of law arises from the expression by the Environment Court of its view on a matter of opinion within its specialist expertise: J Rattray & Son Ltd v Christchurch City Council* (1983) 9 NZTPA 385. *The Environment Court's special expertise and experience enable it to reach conclusions based on the sound judgment of its members, without needing or being able to relate them to specific findings of fact. This is particularly so in cases of planning discretion: Lynley Buildings Ltd v Auckland City Council* (1984) 10 NZTPA 145 and *EDS v Mangonui County Council* (1987) 12 NZTPA 349.
> >
> > *Mr Bartlett for the appellants warned against the danger of accepting an Environment Court decision just because it was an expert Tribunal. It would, of course, be inappropriate to do so. Its expertise cannot save decisions which do not meet the principles set out above. However, it is important to bear in mind that the Court is required constantly to make decisions relating to planning practice, it is constantly required to assess and make decisions relating to conflicting expert opinion. Members of the Court are able to contribute to the formation of a judgment as a result of experience gained in other professional disciplines. These considerations and the fact that the Court is constantly exposed to litigation arising from the application of the Resource Management Act, justifies the respect which this Court and the Court of Appeal has customarily accorded its decisions.*

[42] The Board was required to consider the Request in terms of Part 2 of the Act, being "Purpose and Principles" (ss 5 – 8). The purpose of the Act is to promote the sustainable management of natural and physical resources.[19] Sustainable management means managing the use and protection of natural and physical resources in a way which enables people and communities to provide for their social and economic well being while safeguarding the life-supporting capacity of air, water, soil, and ecosystems and avoiding, remedying, or mitigating any adverse effects of activities on the environment.[20]

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18 At [63].
19 Section 5(1).
20 Section 5(2).

[43] Sections 6 and 7 provide certain principles relating to that balance. They are to be read as subject to s 5.

Section 32

[44] Section 32 requires that, before adopting any proposed changes to policies, the Board must evaluate and examine whether, having regard to the efficiency and effectiveness, the changes are the most appropriate way of achieving the objectives of the Freshwater Plan.[21] In making that evaluation the Board had to take into account the benefits and costs of the proposed policies (i.e. "benefits and costs of any kind, whether monetary or non-monetary");[22] and the "risk of acting or not acting, if there is uncertain, or insufficient information" about the subject matter of the proposed policies.[23]

"Most appropriate" test

[45] I do not accept the submission by the appellant's counsel that the policy "most appropriate" must be the superior method in terms of stream protection. Section 32 requires a value judgment as to what on balance, is the most appropriate, when measured against the relevant objectives. "Appropriate" means suitable, and there is no need to place any gloss upon that word by incorporating that it be superior. Further, the Freshwater Plan does not only have stream protection as a sole object; its objectives relate to preserving, safeguarding, and protecting identified values (objectives 4.1.4-6) and to avoid, remedying, or mitigating adverse effects (7.1.1).

[46] As to Mr Bennion's argument that s 32(3)(b) mandated that "each objective" had to be the "most appropriate way" to achieve the Act's purpose; i.e. it was an error to look at the combined objectives; I do not agree that the Board is to be constrained in that way. It is required to *examine* each, and every, objective in its process of evaluation – that may, depending on the circumstances result in more than

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21 Section 2(1).
22 Section 2(1).
23 Section 32(4).

one objective having different, and overlapping, ways of achieving sustainable management of natural and physical resources (the purpose of the Act). But objectives cannot be looked at in isolation, because "the extent" of each may depend upon inter relationships. Provided the Board examined, in its evaluation the *extent* of each objective's relationship to achieving the purpose of the Act, it complied with s 5(3).

[47] Mr Bennion relies for support upon *Orewa Land Ltd v Auckland Council*.[24] There the High Court found that the Environment Court had, wrongly, only considered one of three factors required under s 32(3)(b).

[48] The decision *Orewa Land Ltd* turned upon the Court finding that the Environment Court erred by only deciding on the actual or potential effects of a proposal, without analysing whether the proposal would avoid, or remedy, or mitigate the effects of any particular development. On the facts, there was no indication that the Environment Court gave consideration to the efficacy of the rules and their ability to achieve the objectives and Faire J said:[25]

> I am left in some doubt as to whether the Court, in fact, evaluated the complete package provided by [a set of district plan provisions that would overlay an existing high intensity residential zone] when it considered whether [it] was an appropriate method of achieving the objectives of the District Plan. ...

[49] That decision was entirely dependent upon the particular surrounding circumstances, which include a detailed set of rules for integrated residential development. It is clearly distinguishable, and I note that the Auckland Council one of the respondents, in fact, supported the appeal. The decision does not assist the present appellant.

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[24] *Orewa Land Ltd v Auckland Council* HC Auckland CIV-2010-404-6912, 21 April 2011.
[25] At [37] – [38].

Significance of the TGP

[50] Beyond doubt, s 32(3)(b) envisages a matter of judgment.[26] The Board carefully discussed the s 32 assessment in the course of 20 paragraphs,[27] and made it clear it was assessing whether the policies were the most appropriate for achieving objectives – when compared with other options.

[51] Read in its entirety the Board's decision balanced a range of matters. I do not accept that in placing the TGP on the scales, as it should, it elevated that beyond what was permissible. It was one factor, properly considered, but not to the exclusion of others. The TGP was relevant as the essential reason for the plan change Request to enable:[28]

> ... what NZTA contends to be a *more balanced* consideration of the management of the effects of TGP at the time resource consents are applied for.

Mitigation vs protection

[52] The appellant further says the Board erred in law by approving the plan change that allows for mitigation but not protection. That provides:

> 4.2.33A To manage adverse effects of the development of the Transmission Gully Project, in accordance with the following management regime:
>
> (1) Adverse effects are avoided to the extent practicable;
>
> (2) Adverse effects which cannot be avoided are remedied *or mitigated*.

[53] This submission revolves around an intricate, linguistic or semantic argument contrasting "protect" with "mitigate". Yet protection is not the sole objective of the Freshwater Plan. The Board as an expert body was aware of that. It summarised the relevant objectives as including:[29]

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[26] *Contact Energy Ltd v Waikato Regional Council* (2007) 14 ELRNZ 128 (HC) and *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 (HC).
[27] At [222 – [241].
[28] At [22].
[29] At [232].

> ... preserving, safeguarding and protecting identified values ... or avoiding, remedying or mitigating adverse effects.

[54] To mitigate is to alleviate. It may lessen, or it may reduce the severity of an impact – and it may as a consequence result in protection, or even removal of an unwanted effect, depending on its degree. The appellant submits that mitigation and protection are different and the Board misunderstood the difference. I do not agree. The term "protection" is used in Part 2 of the Act are, in ss 6 and 7, but is not expressed as an absolute, and those sections are subject to s 5, which refers to "avoiding, remedying, or mitigating any adverse effects on the environment".

[55] The Board is approving a policy framework which requires later decision makers to endeavour to avoid adverse effects to the extent practicable and to remedy or mitigate effects which cannot practicably be avoided. It balanced the Freshwater Plan's objectives, evaluated different options, and decided what was most appropriate to achieve those objectives. It had ample expert and other evidence, including its own specialist expertise.

[56] I am satisfied that the Board made no error of law in making its determination as to what was "most appropriate" and it did not apply a wrong legal test as the appellant contends in paragraph 5.1(a) of the submissions.

Stormwater discharges

[57] The evidence of an expert witness, Dr Keesing, accepted by the Board, included his opinion that the TGP would have long term high negative impacts in terms of stormwater in some parts of some catchments. He indicated a likelihood that they might be managed to a reasonable level in the long term. He considered that, after mitigation, the stormwater effects on "High Value Habitat" due to "Contamination from road runoff into stormwater into streams already highly modified by land use" would be "High negative long term" even with "Target treatment levels achieved through proprietary devices and wetland treatment prior to discharge".

[58] Counsel contended that the Board failed to directly address stormwater discharge, except by generally alluding to such matters being for consideration subsequently, when consents are applied for, and the possibility exists that such effects might not occur. Counsel says this was a failure by the Board to take into account a relevant factor and thus, was an error of law. I do not accept that argument.

[59] The Board accepted expert evidence which included that given as to potential stormwater effects. The Freshwater Plan's objectives do not specifically refer to stormwater discharges. Nothing in s 32(3)(b) required the Board to evaluate the policies by reference to that and reach any conclusions on the point. Nevertheless, the evidence of the possible effect of stormwater discharge was before the Board and of which it was aware when it made its decision. It not only must have had it, but it would unquestionably have known from its own expertise that management of stormwater runoff is always a feature when highways are constructed. As an expert Board, it was entitled to regard it as more relevant to later determination in the resource consent process when detailed proposals as to how stormwater discharges were to be arranged were before the consent authority.

[60] This challenge is not a sustainable point of law.

Temporal and spatial considerations

[61] The appellant then argued that the Board erred in law by failing to take into account:

> Detailed criteria in the freshwater plan as to the timing and spatial extent of adverse effects consistent with the Objectives of the Plan (in particular policy 4.2.33).

[62] The appellant also contended that by taking into account "the timing and spatial requirements for the Transmission Gully Project" (instead), the Board relied on an irrelevant matter, and thus erred in law.

[63] The submissions proceeded that the Board adopted the timing and site requirements preferred for the TGP and, consequently it failed to consider whether

they "better met the objective of protection" (i.e. as opposed to other options such as a shorter period and smaller geographical area); so that the required analysis under s 32 did not occur.

[64] The Freshwater Plan does not rest upon one "protection" objective. Section 32 does not prevent consideration of TGP as a relevant matter. I agree with the respondent's submission that simply by reference to timing and site requirements for TGP the Board was not constraining its decision-making. The five options identified as available to the Board, and its evaluation of those, are clearly recorded in [233] – [241] of the decision. It explicitly explains its approach and the reasons why it preferred a particular option. Timing and site requirements of the TGP did not fall outside relevant considerations, being several of many, to be factored into the evaluation under s 32(3)(b). And while the Board did not expressly refer to - and compare - the temporal and spatial requirements in policy 4.2.33, that is a policy (not an objective), that does not strictly apply in this case as adverse effects were always going to be more than minor.

[65] Accordingly, no error of law arises.

National Policy Statement for Freshwater Management

[66] The Board considered, having first determined that it was not necessary for the Request to give strict effect to the NPSFM, whether the Request was consistent with or precludes the Freshwater Plan from giving effect to the NPSFM. As discussed above, the Board concluded that the (revised) Request did not run counter to the objectives or the policies of the NPSFM and gave its reasons:[30]

> - Our suggested refinements to Policy 4.2.33A (and its attendant Explanation) would ensure that the safeguarding of life supporting capacity, ecosystem processes and indigenous species will be adequately achieved;
>
> - Avoidance of adverse effects is the first preference under the proposed (revised) policy framework;

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[30] At [282].

- When considering resource consent applications for TGP, the consent authority retains an overall discretion to determine whether adverse effects have been adequately addressed by NZTA. Nothing in the proposed policies precludes a consent authority from determining that the concepts of safeguarding or protecting provided for in Objectives A1 and A2, require the avoidance of adverse effects in any given case.

[67] That finding followed upon its "review of the evidence on the relevant objectives and policies".[31]

[68] The argument by Mr Bennion that the Board erred because it did not mention certain policies under, or the definition of "over-allocation" in, the NPSFM, and he sets out parts relating to "over-allocation" of water quantity and quality. He argued that the Board in its analysis failed to consider that there are existing Freshwater objectives required under the plan and on the evidence provided and recorded by the Board those objectives were not being met currently in relation to waterways and in particular the three main streams. Counsel deferred to the evidence of Dr Keesing and the Board's agreement with the view of the experts and argued that this was namely a situation of "over-allocation" as to water quality in that the streams are "being used to appoint where a freshwater objective is no longer being met". Counsel submitted that in such a situation the Board needed to consider whether the plan change would frustrate the requirements under policy A2 that targets must be specified, and that "methods implemented to assist the improvement of water quality in the water bodies, to meet those targets" within a defined timeframe. He argued that had the Board undertaken that assessment it would have concluded that the plan change did interfere with the ability of the Regional Council to give effect to the NPSFM and at the very least make adjustments to it to ensure that it did not conflict with the requirements of NPSFM; and because it did not consider that assessment and adjustment it made an error of law.

[69] This complex, and in parts convoluted, argument must fail. Essentially, that is because:

- there is no over-allocation unless a 'limit" is set to meet a "freshwater objective" which has been exceeded or a "freshwater objective" is not

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[31] At [291].

met. It is for the responsible Regional Council for the making and changing of plans which may be given effect progressively which establish freshwater objectives and set limits;

- the objectives identified in the Freshwater Plan could not be said to be "freshwater objectives" within the meaning of the NPSFM and none of the objectives in the Freshwater Plan can be treated as a basis for the argument that waterways impacted by the Request are "over-allocated" within the meaning of the NPSFM;

- the Regional Council's statutory responsibility to give effect to the NPSFM is not in any sense frustrated or interfered with by the decision; and

- the Board says its findings were from all the evidence and challenge to these in truth is a challenge to merits. As a specialist Board it was entitled to come to its conclusion.

[70] If it should be that the Regional Freshwater Plan objectives could as a matter of law be "freshwater objectives" for the purposes of the NPSFM, nothing in the Board's decision would alter that in any event. It does not alter the Freshwater Plan's objectives. Resource consent decision-makers may give effect to the objectives and to the intentions of the NPSFM when decisions come to be made by them.

[71] Apart from those points, the evidence of Dr Keesing and comments were not made referring to an allocation regime required to be implemented by the NPSFM, but in the context of describing the quality of waterways, which might more generally be impacted by TGP.

[72] No error of law existed.

Part 2

[73] The appellant's case was that the Board should have considered the many potential adverse effects and benefits of the TGP and weighed those up before deciding to change the policy framework in the Freshwater Plan and it was not sufficient to leave these issues to be considered by decision-makers at the resource consent (and notice of requirement) stage. Counsel contended the Board applied the wrong test in its consideration of the benefits and costs, and the significance of the TGP. But he was not able to articulate the precise test that it said was wrongly adopted. His complaint boiled down to that:[32]

> on the balancing of all ... matters that is required under Part 2:
>
> (a) The Board ... did not have necessary evidence to consider that balance;
>
> (b) The Board ... did not ... consider the benefits against potential effects, it only considered the "significance" of the TGP in a general sense;
>
> (c) In as far the TGP has "significance" arising from the Transmission Gully route being mentioned in the Regional Land Transport Plan and similar documents, the Board never weighed those against the evidence of disbenefits.

[74] Counsel argued that those are matters of law. I do not agree. They are complaints about outcome and the Board's conclusion that those factual matters were for ultimate determination on any resource consent application. They represent challenges to the factual approach the Board took in the exercise of its expert assessment, and within its discretion. I do not accept that the Board did not have sufficient evidence to undertake the task of assessing whether a plan change was required. There was ample evidence, reports and other material to enable the Board to balance what was required of it. It was not exercising the functions that a consent authority would have in hearing an application for resource consent.

[75] The Freshwater Plan change did not necessarily enable the TGP to proceed but simply allows consideration of a subsequent resource consent application to be

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[32] Applicant's submissions at paragraph 7.31.

made on its merit. Consideration of the TGP under Part 2 of the Act is a matter for the decision-maker at the resource consent stage. Part 2 provides ample scope for the decision-makers to weigh competing expert opinions and facts in the light of the values expressed in Part 2 and associated policies. This is obvious from the leading authority, namely *NZ Rail Ltd v Marlborough District Council*.[33]

[76] It would be wrong to require the Board to duplicate the resource consent stage, especially when it is unlikely to have all the relevant information. The respondent has satisfied the Court that in balancing competing factors and values the Board considered and applied the relevant Part 2 provisions in accordance with the discretion conferred upon it. The matter before it was not applications for consent for the TGP, but whether the Request to change some of the policies in the Freshwater Plan could be accepted. If the Board had applied the approach now advocated by the appellant there may have been error of law because its order would have been enlarged beyond what was proper or necessary. I am satisfied that under this head there is no error of law which would vitiate the Board's decision.

Evidence issue

[77] Finally, the appellant says that the Board was wrong to say that the evidence of a witness, Mr Nicholson, as to the benefits of the TGP "was unchallenged" in cross-examination or evidence, and consequently the Board erred in law because it could not reasonably have come to that conclusion.

[78] That part of Mr Nicholson's evidence related to his opinions as to a number of benefits he thought would follow from construction of TGP. They included, improved route security, reduction in journey times, lessening safety risks and reduction of adverse impact on communities through which State Highway 1 presently passes.

[79] Mr Bennion argued that this evidence was not unchallenged because Ms Warren, an ecological expert and submitter in her own right, had refuted in detail

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[33] *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC) at [86].

each of the assertions of Mr Nicholson. Counsel said the Board was wrong not to say why it preferred the views of Mr Nicholson. He then went on to argue that the Board erred because it said it could reach its conclusions without issues raised in evidence of the wider benefits of TGP being finally determined.

[80] What the Board said was that it had no hesitation in finding that TGP was an important roading project at both a national and regional level.[34] It had regard to the Minister's assessment (that is why the Board was set up) as well as references to the proposed TGP development project as a long term solution in a statutory document prepared by the Regional Council;[35] and that State Highway 1 (and TGP as part of that road) was identified as a road of national significance in a document issued by the Minister of Transport pursuant to the Land Transport Management Act 2003. It also was entitled to take into account its own knowledge and expertise – in part common sense – in accepting what the benefits might be from rerouting State Highway 1.

[81] It may have been an overstatement to say that Mr Nicholson's benefits of TGP was "unchallenged" but the Board was *not* making findings on that specific issue, but rather on whether TGP was an important roading project – the evidence of which was extensive.

[82] No error of law arises from that statement in the Board. Nor does it arise from the Board not being drawn into considering, or deciding the benefits of TGP as a whole as against adverse effects on freshwater or otherwise. To do so it would have proceeded outside its mandated boundaries. I recognise that the appellant and others had the general aim of preventing TGP proceeding for various reasons, and the Board heard evidence and submissions aimed at the benefits – or not – of the proposal. But it was not required to determine those on their merits. It did not err in law in concluding that all those matters, as well as adverse effects, were to be determined by "the relevant consent authority or when resource consent applications are made to carry out TGP works in the water bodies concerned.[36]

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34 At [187].
35 Wellington Regional Land Transport Strategy 2010- 2040.
36 At [191].

And:[37]

> It will be apparent from our earlier summary of the submissions made to us that a number of parties to these proceedings challenged the concept that it was appropriate to make provision for roading projects such as TGP at all. We have made no determination on those issues which do not seem relevant to our considerations in this case. We are deciding the comparatively restricted issue of whether or not TGP is of such significance (whatever the views on its merits might be) that the policies of the Freshwater Plan ought to be changed in the manner requested by NZTA.

Conclusion

[83] As I commented to counsel, because of time constraints and the necessity of a decision on the outcome of this appeal being quickly delivered (there were seven working days before the Court closed for the vacation, and on reopening I am required to sit on a nine day civil case), I have had very limited time within which to write this reserved decision. As a consequence I have had to rely very much upon the submissions of counsel in my acceptance, or rejection, of them, as the case may be. It will be apparent that in many respects I have accepted as persuasive and valid the submissions made by counsel for the respondent. And have recorded these. That is because I agree with them. I am satisfied that there are no errors on points on questions of law, as required by s 149V, upon which the appellant can succeed.

[84] The reality is that the TGP for realigning State Highway 1 is a matter of national, and regional significance. The expert Board was set up by the Minister and conducted a six day hearing of evidence and submissions from many individuals and groups (33 in opposition, 22 in support). Its report of 86 pages was delivered on 5 October 2011, a consideration period of almost three months.

[85] Those who oppose the TGP for all manner of reasons (not just related to waterways) will disagree with the conclusions. The appellant is one of those. Its challenge to the outcome of the Board's inquiry in this Court, is however rejected. It should pursue its multiple challenges to the merits of any grant of resource consents for work proposed at the very extensive hearing to commence early February. There is no presumption that consent, with or without conditions, would be forthcoming or

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[37] At [192].

for that matter withheld. This decision and the dismissal of the appeal simply means that the process under which the Board conducted its inquiry and its findings and the reasons given by it do not comprise any errors of law, which entitles the appellant to a remedy from this Court.

[86] Although dressed up in the guise of points of law a substantial number of the appellant's submissions, when analysed, are challenges to factual findings, or the merits by the Board in the exercise of its expert judgment and discretion. Courts have repeatedly warned against this.

[87] I have a clear view that the appeal must fail, and the Board's decision to approve the Request for plan changes in the form contained in the decision and its determinative finds as summarised in [332] are unassailable on questions of law. Whether or not the Court agrees with conclusions of fact is immaterial. The respondent may proceed with its resource consent applications and objectors can be heard to oppose so that the outcome on the merits will be decided by the consent authority.

[88] The appeal is dismissed. The respondent is entitled to costs. The parties may submit memoranda on that issue.

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J W Gendall J

Solicitors:
Bennion Law, Wellington for Appellant
Chapman Tripp, Wellington for Respondent

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC051

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14 of Schedule 1 to the Act
BETWEEN	ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED
	(ENV-2016-AKL-000014)
	Appellant
AND	WHAKATĀNE DISTRICT COUNCIL
	Respondent

Court:	Environment Judge DA Kirkpatrick Environment Commissioner RM Dunlop Environment Commissioner WR Howie
Hearing:	At Whakatāne on 9 March 2017 Respondent's submissions in reply filed on 24 March 2017
Appearances:	S Gepp for Royal Forest & Bird Protection Society Inc D Riley for Whakatāne District Council
Date of Decision:	6 April 2017
Date of Issue:	6 April 2017

DECISION OF THE ENVIRONMENT COURT

A: The appeal is refused.

B: The provisions of the proposed Whakatāne District Plan are amended in the terms set out in **Attachments A and B** to this decision.

C: There is no order as to costs.

REASONS

Introduction

[1] The review of the Whakatāne District Plan, notified on 28 June 2013, has now progressed to the point where the only remaining issue to be resolved is the status or classification of the activity of harvesting of mānuka and kānuka in Significant Indigenous Biodiversity Sites (**SIBS**) listed in the schedules to Chapter 15 – Indigenous Biodiversity.

[2] The relevant decisions of the Whakatāne District Council (**the Council**) on submissions were that such harvesting should be a restricted discretionary activity in SIBS listed in Rule 15.7.1 Schedule A (Coastal and Wetland Sites) and a permitted activity in SIBS listed in Rule 15.7.3 Schedule C (Te Urewera-Whirinaki Sites).

[3] The appellant, Royal Forest & Bird Protection Society Inc (**the Society**) seeks in its appeal that such harvesting be a non-complying activity in SIBS in Schedule A and a restricted discretionary activity in SIBS in Schedule C.

[4] The parties agree that such harvesting should be a restricted discretionary activity in SIBS listed in Rule 15.7.2 Schedule B (Foothills).

Background

[5] As notified, the proposed Whakatāne District Plan included Rule 15.2.1.1(9) stating the activity status for the following activity:

	Activity Status	**Schedule A**	**Schedule B**	**Schedule C**
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal Zone, for commercial use provided that; a. an area equal to that harvested annually is replanted in the same year in the same or similar indigenous species or allowed to naturally regenerate; b. that no more that 10% of the **Significant Indigenous Biodiversity Site** is harvested in any one year; and c. that a sustainable management plan verifying the above is submitted to **Council**.	RD	C	P

[6] The Society, in its submissions on the proposed District Plan in relation to this

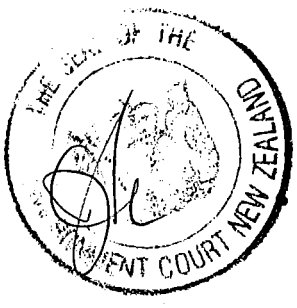
activity, submitted that there should be no permitted or controlled harvesting of mānuka and kānuka within scheduled SIBS, that the replanting conditions were not enforceable and that the ten per cent per year threshold was unsustainable. It sought to change the activity status or classifications in this part of the activity table to non-complying for SIBS in Schedule A and to discretionary for SIBS in Schedules B and C.

[7] The Council's decisions on submissions and further submissions on the plan in relation to Chapter 15 – Indigenous Biodiversity said this at paragraph 13.2.9 in relation to activity 9 in Rule 15.2.1:

> The committee heard evidence from several submitters including Mr Brosnahan about the status and threshold level for sustainable harvesting of mānuka and kānuka. Forest & Bird and P Fergusson asked for a more restrictive status for commercial harvesting of kānuka and mānuka within SIBS, while DoC requested clarification that the reference to ten per cent in the Rule applied to mānuka and kānuka rather than all indigenous vegetation. Federated Farmers and John Fairbrother for Nikau Farms sought provisions that allow the harvesting in a sustainable way as either a permitted or controlled activity in all SIBS.
>
> The committee notes that the rule is intended to provide for sustainable harvesting of mānuka and kānuka, recognising that in some SIB regenerating mānuka and kānuka can be managed sustainably to enable the economic benefits to be gained from the activity. However, the committee takes particular note that the rule does not apply to vulnerable coastal mānuka and kānuka in the Rural Coastal zone.
>
> The committee notes that commercial extraction of mānuka and kānuka have been managed sustainably for many years as mānuka and kānuka grows relatively fast and can be sustainably harvested while retaining significant values.
>
> The committee agrees with the submission by DoC that clearance of ten per cent of the total area of a SIB could amount to a large amount of clearance in any one year, particularly in the SIB extended over multiple titles and included other vegetation types. To address this issue the amended wording is accepted to clarify that the clearance relates to ten per cent of the total area of mānuka and kānuka as follows:
>
> > *"Harvesting of mānuka and kānuka excluding any kānuka in the rural coastal zone, for commercial use provided that:*
> >
> > *(a) an area equal to that harvested annually is replanted in the same year in the same or similar indigenous species or allowed to naturally regenerate;*
> >
> > *(b) that no more than ten per cent of the <u>total area of kānuka and mānuka in a scheduled feature</u> **~~Significant Indigenous Biodiversity Site~~** <u>on any site</u> is harvested in any one year; and*
> >
> > *(c) that a sustainable management plan verifying the above is submitted to **Council**."*

[8] The decision made no change to the activity status in any of the Schedules.

[9] The Society's appeal against this decision is on the grounds that allowing commercial harvesting of mānuka and kānuka on a concessionary basis does not protect the habitat values of this vegetation type which may contain threatened species, and does not recognise the successional aspect of forest ecology, and that the



conditions are unenforceable. The relief sought in the appeal on this matter was the same as the submission, namely that the activity should be non-complying in Schedule A sites and discretionary in Schedules B and C sites.

[10] The Council and the Society, with other interested parties, participated in mediation of this and many other matters in the Indigenous Biodiversity chapter. The relevant outcomes for the purposes of this appeal were that the description of Activity 9 in (now) Rule 15.2.1.2 (including its requirements, conditions, and permissions) was reworded but the activity status for areas listed in Schedules A and C was not agreed, as follows:

	Activity Status	**Schedule A** <u>**Coastal and Wetlands**</u>	**Schedule B** <u>**Foothills**</u>	**Schedule C** <u>**Te Urewera - Whirinaki**</u>
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal zone, for commercial use provided that: a. an area equal to that harvested annually is replanted in the same year in the same or similar indigenous species or allowed to naturally regenerate; <u>b. the replanted or regenerating area is not subject to any further harvesting operation until at least twenty years has elapsed from the commencement of replanting or regeneration</u>; and ~~b~~<u>c.</u> no more than 10% of the total area of kānuka and mānuka in a scheduled feature on any **site** is harvested in any one year; ~~and~~ <u>d. kānuka and mānuka is harvested only from identified areas where kānuka and mānuka represent at least 80% of the vegetation canopy cover; and</u> ~~c. a sustainable management plan verifying the above is submitted to **Council.**~~	~~RD~~ D <u>**or**</u> NC	~~C~~ RD	P <u>**or**</u> RD

[11] The deletion of condition (c) (as notified) was addressed through mediation by the insertion of a new rule 15.2.6 – *Harvesting of kānuka and mānuka (Rule 15.2.1.2(9))*, which provides:

> *An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements (in (c) and (d) of 15.2.1.2(9) is submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.*

[12] Also agreed through this mediation process was that the activity status for classification of such harvesting in SIBS listed in Schedule B should be restricted

discretionary.

[13] The remaining issues for the Society and the focus of the hearing of this appeal are the appropriate activity statuses or classifications for such harvesting as described in Activity 9 in SIBS listed in Schedules A and C.

Relevant planning provisions

[14] It was common ground between the Society and the Council that the following provisions of the operative Bay of Plenty Regional Policy Statement (**RPS**) concerning matters of national importance are relevant to this appeal:

> **Policy MN 1B: Recognise and provide for matters of national importance**
>
> *(a) Identify which natural and physical resources warrant recognition and provision for as matters of national importance under section 6 of the Act using criteria consistent with those contained in Appendix F of this Statement;*
>
> *...*
>
> *(c) Recognise and provide for the protection of areas of significant indigenous vegetation and habitats of indigenous fauna identified in accordance with (a); ...*
>
> **Policy MN 2B: Giving particular consideration to protecting significant indigenous habitats and ecosystems**
>
> *Based on the identification of significant indigenous habitats and ecosystems in accordance with Policy MN 1B:*
>
> *(a) Recognise and promote awareness of the life-supporting capacity and the intrinsic values of ecosystems and the importance of protecting significant indigenous biodiversity;*
>
> *(b) Ensure that intrinsic values of ecosystems are given particular regards to in resource management decisions and operations;*
>
> *(c) Protect the diversity of the region's significant indigenous ecosystems, habitats and species including both representative and unique elements;*
>
> *(d) Manage resources in a manner that will ensure recognition of, and provision for, significant indigenous habitats and ecosystems; and*
>
> *(e) Recognise indigenous marine, lowland forest, freshwater, wetland and geothermal habitats and ecosystems, in particular, as being underrepresented in the reserves network of the Bay of Plenty.*
>
> **Policy MN 3B: Using criteria to assess values and relationships in regard to section 6 of the Act**
>
> *Include in any assessment required under Policy MN 1B, an assessment of: ...*
>
> *(c) Whether areas of indigenous vegetation and habitats of indigenous fauna are significant, in relation to section 6(c) of the Act, on the extent to which criteria consistent with those in Appendix F set 3: Indigenous vegetation and habitats of indigenous fauna are met;*
>
> **Policy MN 7B: Using criteria to assist in assessing inappropriate development**
>
> *Assess, whether subdivision, use and development is inappropriate using criteria consistent with those in Appendix G, for areas considered to warrant protection under section 6 of the Act due to:*
>
> *(a) Natural character;*

(b) *Outstanding natural features and landscapes;*

(c) *Significant indigenous vegetation and habitats of indigenous fauna;*

(d) *Public access;*

(e) *Māori culture and traditions; and*

(f) *Historic heritage.*

Appendix G – Criteria applicable to Policy MN 7B

Policy MN 7B

Methods 1, 2, 3 and 11

1 *Character and degree of modification, damage, loss or destruction;*

2 *Duration and frequency of effect (for example long-term or recurring effects);*

3 *Magnitude or scale of effect (for example number of sites affected, spatial distribution, landscape context);*

4 *Irreversibility of effect (for example loss of unique or rare features, limited opportunity for remediation, the costs and technical feasibility of remediation or mitigation);*

5 *Resilience of heritage value or place to change (for example ability of feature to assimilate change, vulnerability of feature to external effects);*

6 *Opportunities to remedy or mitigate pre-existing or potential adverse effects (for example restoration, enhancement), where avoidance is not practicable;*

7 *Probability of effect (for example likelihood of unforeseen effects, ability to take precautionary approach);*

8 *Cumulative effects (for example loss of multiple locally significant features).*

Policy MN 8B: Managing effects of subdivision, use and development

Avoid and, where avoidance is not practicable, remedy or mitigate any adverse effects of subdivision, use and development on matters of national importance assessed in accordance with Policy MN 1B as warranting protection under section 6 of the Act.

[15] The proposed District Plan, as amended by decisions on submissions, is now past the point where any of its provisions (other than those which are the subject of this appeal) can be changed. We therefore treat the proposed provisions as having greater weight than any provisions in the operative District Plan.

[16] The following strategic provisions of the proposed District Plan were agreed to be relevant:

Strategic objective 7 (Our special places – Māori and iwi):

Subdivision, use and development are managed so that tāngata whenua, including kaitiaki maintain and enhance their culture, traditions, economy and society.

Strategic objective 8 (Our special places):

The natural, cultural and heritage resources that contribute to the character of the district are identified, retained and protected from inappropriate subdivision, use and development.

Policy 2 *To recognise the contribution that natural character, landscapes, biodiversity and heritage resources make to the social, cultural and economic wellbeing of people; and to provide for the* ***maintenance***

and enhancement of those resources in resource management decisions.

[17] The following objectives and policies of chapter 15 of the proposed District Plan on Indigenous Biodiversity[1] were agreed to be relevant:

Objective IB1: *Maintenance of the full range of the district's indigenous habitats and ecosystems, including through restoration and enhancement.*

Policy 2 *To recognise sustainable land management practices and cooperative industry arrangements that reflect the principles of stewardship and kaitiākitanga, and to take into account the range of alternative methods in the maintenance and protection of indigenous biodiversity, including Tasman Forest Accord, NZFOA Forest Accord, Iwi Management Plans, Bay of Plenty Regional Council biodiversity management plans and protective covenants with the QEII Trust and Nga Whenua Rāhui.*

Objective IB2: *Areas of indigenous vegetation and habitats of indigenous fauna identified as significant in Schedules 15.7.1, 15.7.2 and 15.7.3 are protected.*

Policy 1(b): *To ensure that subdivision, use and development, is undertaken in a manner that protects scheduled* ***significant indigenous biodiversity sites*** *by: …*

(b) outside the coastal environment, avoiding and where avoidance is not practicable, remedying or mitigating adverse effects including the loss, fragmentation or degradation of those sites and the cumulative effects on ecosystems.

Policy 5: *To provide for the sustainable use of indigenous vegetation including scheduled significant indigenous biodiversity sites where the adverse effects of this use are minor.*

[18] Section 15.4 of the proposed District Plan sets out the assessment criteria for restricted discretionary activities and Rule 15.4.4 provides:

15.4.4 ***Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))***

15.4.4.1 *Council shall restrict its discretion to:*

a. *Timing to enhance the regeneration or establishment of mānuka and kānuka;*
b. *Stock type;*
c. *Grazing intensity;*
d. *Stock containment methods; and*
e. *Potential adverse effects on water bodies within the property.*

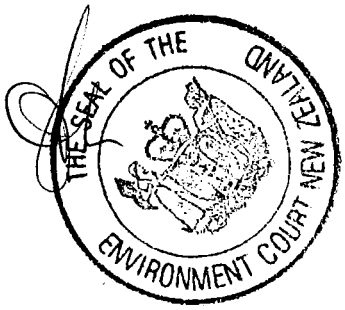
[19] In relation to activities which are classified as discretionary or non-complying, the relevant assessment criteria are set out in section 3.7 in Chapter 3 of the proposed District Plan. The introductory paragraph of this section states that the criteria are a guide to the matters that the Council can have regard to when assessing an application, but that they do not restrict the Council's discretionary powers under s 104(1)(a) of the Act to consider any actual or potential effects on the environment of allowing the

[1] As amended by a consent order dated 5 October 2016 in this proceeding and other related appeals.

activity.

[20] Section 3.7.13 sets out the criteria in respect of indigenous biodiversity effects as follows:

> *3.7.13.1* ***Council*** *shall have regard to;*
>
> *a.* *any adverse effect on* ***ecosystems*** *including;*
>
> *i.* *coastal* ***ecosystems****;*
>
> *ii.* *estuarine margins;*
>
> *iii.* *rivers and streams, wetlands and their margins;*
>
> *iv.* *habitats of* ***indigenous fauna*** *or flora;*
>
> *v.* *the cumulative effects of the activity on habitat of* ***indigenous vegetation*** *and fauna;*
>
> *vi.* *the degree to which the activity will result in the fragmentation of indigenous habitat and adversely impact on the sustainability of remaining vegetation;*
>
> *vii.* *the impact on ecological linkages and connectivity between significant natural areas;*
>
> *viii.* *the degree to which the effects are reversible and the resilience of the feature to change;*
>
> *ix.* *the long-term sustainability of an affected coastal* ***ecosystem****, waterway, estuarine margin, wetlands and their margins, indigenous vegetation or habitat;*
>
> *x.* *the indigenous vegetation to be retained and the degree to which the proposal will protect, restore or enhance indigenous vegetation and the net ecological gain as a consequence of the activity; and*
>
> *xi.* *the means to protect fish habitats by maintaining riparian vegetation;*
>
> *b.* *the effect on Significant Biodiversity areas identified in Appendix 15.7.1, 15.7.2 and 15.7.3, or other sites considered significant according to criteria in the Bay of Plenty Regional Policy Statement;*
>
> *c.* *the location of* ***buildings****, structures and services (such as* ***accessways****) in relation to how that may adversely affect ecological features;*
>
> *d.* *specifically, the management of existing kānuka stands in the Rural Coastal Zone, and means of restoring or rehabilitating this regionally significant feature;*
>
> *e.* *whether there is a reasonable alternative siting for the proposed activity or any alternative subdivision layout that will avoid, remedy or mitigate a significant adverse effect on the environment;*
>
> *f.* *location of the activity relative to any indigenous area and its vulnerability to the pest species; method of containing the pest plant or animal; other barriers to the spread of the plant or animal pest; method of identifying animals (for example, branding); method of dealing with escapes;*
>
> *g.* *plant and animal pest management;*
>
> *h.* *the means to manage the adverse effects of pets, for example, cats, dogs, ferrets and rabbits on wildlife and vegetation;*
>
> *i.* *whether there will be adverse effects on* ***ecosystems****, including effects that;*



i. may deplete the abundance, diversity or distribution of native species; or

ii. disrupt natural successional processes; or

iii. disrupt the long term ecological sustainability of Significant Biodiversity sites, including through increased fragmentation and vulnerability to pests; or

iv. obstruct the recovery of native species and the reversal of extinction trends, or the restoration of representative native biodiversity within an ecological district, ecological region, or nationally, or

v. reduce representative biological values within an ecological district, ecological region, or nationally, or

vi. reduce the area, or degrade the habitat value of an area set aside by statute or covenant for the protection and preservation of native species and their habitat, or

vii. degrade landscape values provided by native vegetation, or

viii. degrade soil or water values protected by native vegetation, or

ix. degrade a freshwater fishery, or

x. degrade aquatic ***ecosystems****.*

j. the degree of clearance in relation to the area retained or protected property.

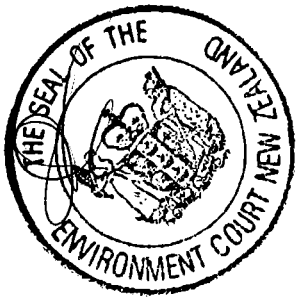
The evidence

[21] Mr Shaw, an expert ecologist called by the Council, has extensive knowledge of the natural environment in the district. He gave essentially unchallenged evidence of primary facts about the circumstances in which mānuka and kānuka are present in the district as follows:

(a) The three types of scheduled SIBS in Chapter 15 of the proposed Plan and the table in Rule 15.2.1.2 have been identified based on Land Environment New Zealand Classifications.

(b) There are six sites listed in Schedule A containing kānuka forest (that is, where more than 80 per cent of the cover consists of kānuka) and one further site of mixed kānuka-kamahi forest that could potentially contain more than 80 per cent cover in kānuka. They are located in the Te Teko, Taneātua and Ōtānewainuku Ecological Districts. They are smaller in size than the sites in Schedules B and C and are located in much modified environments.

(c) The sites listed in Schedule C are much larger and fall largely within the Whirinaki, Ikawhenua and Waimana Ecological Districts with some also present in the Taneātua and Waioeka Ecological Districts. Large



proportions of these districts, other than Taneātua, have a cover of indigenous vegetation: from Waimana at 98 per cent to Whirinaki at 78 per cent. Most of these districts also have very high levels of formal protection as reserves under the Reserves Act or by way of covenants, of the order of 76-89 per cent.

(d) Commercial harvesting of kānuka for firewood is a longstanding (over many decades) activity in various parts of Whakatāne district. Typically, trees are harvested and the areas are left to regenerate naturally, often in the presence of grazing. Currently, most of this activity occurs on sites listed in Schedule B, with little or none presently occurring on sites listed in Schedules A and C.

(e) The areas in Schedule C with significant extensive kānuka dominant forest which are unprotected either as reserves or by way of covenants are all physically inaccessible and therefore are not subject to harvesting.

(f) The value of mānuka as firewood appears to be diminishing, with much higher values being placed on it for the harvesting of foliage for use in skin and hair care products and as a resource for bee keeping and honey production.

[22] Against this factual background, Mr Shaw expressed the following principal opinions:

(a) The small size and limited number of the sites listed in Schedule A means that assessment of the effects of harvesting in these areas can be done effectively.

(b) An activity status of discretionary is sufficient in the Schedule A areas, given the clear requirements in the objectives, policies and assessment criteria for promoting sustainable management in terms of the conditions on the activity for regeneration and the scope of the general discretion to decline consent.

(c) While the sites listed in Schedule C are substantially larger, other methods of protection and limited accessibility means that including rules in the plan to require resource consents to be obtained for harvesting in these areas would be of little benefit.

[23] The Council also called Mr McGhie, its principal planner, to outline the Council's planning approach. Mr McGhie relied on the evidence of Mr Shaw as the basis for his planning assessment. Mr McGhie also outlined the views that had been expressed to the Council by Māori, who own much of the land in the areas where the Schedule C sites are located, during consultation and the submission process.

[24] Mr McGhie characterized the issue before the Court as one of balancing the protection of indigenous biodiversity with management responses that would be appropriate to each type of SIBS. In that regard, he observed that the Council had originally proposed only two types of SIBS, but had created Schedule C for two main reasons:

(i) Māori had objected to large tracts of land being controlled in ways that would unnecessarily restrict their development opportunities; and

(ii) the list in Schedule B would otherwise have consisted of sites varying significantly in size.

[25] Mr McGhie set out in his statement of evidence numerous amendments that had been made to Rule 15.2.1.2(9) and in other plan provisions through the process of mediation as summarised above. As well as the Rules referred to earlier in this decision, he also explained that a new definition of "naturally regenerate" had been inserted in chapter 21 of the proposed Plan and that the definition of "indigenous vegetation" had been amended to ensure that regenerated kānuka or mānuka was not covered by the exclusion for vegetation established for commercial purposes. These amendments were not in issue before us.

[26] Mr McGhie also set out his analysis of the activity rule in terms of s 32 of the Act and in the context of the relevant objectives and policies of the Regional Policy Statement and the proposed District Plan. In his opinion, a non-complying activity status for harvesting in Schedule A sites would be out of proportion with those objectives and policies given the degree of protection that the rule has been drafted to provide and the extent to which the process of considering an application for resource consent should include an assessment of sustainable practice to address the relevant assessment criteria in section 3.7.13 of the proposed District Plan. Given those considerations, he opined that a discretionary status was more appropriate.

[27] In relation to a permitted activity status for the Schedule C sites, he also expressed the opinion that this would be consistent with the relevant objectives and

policies and would better address landowner concerns, subject to a restricted discretionary activity status applying where grazing is proposed during the natural regeneration phase.

[28] The Society called Ms Myers as an expert ecologist. In her evidence, Ms Myers set out the ecological context for the harvesting of mānuka and kānuka. She noted the extent of ongoing loss of indigenous biodiversity nationally and emphasised the ecological values of kānuka and mānuka forest in Whakatāne District and, especially, the national importance of Te Urewera for its range of ecological diversity. She stressed the successional role of kānuka and mānuka and the benefits that these species provide in the form of buffers for other forest species and corridor functions between stands of bush and forest. She noted that there was a lack of specific survey information to enable the extent of harvesting and regeneration to be quantified.

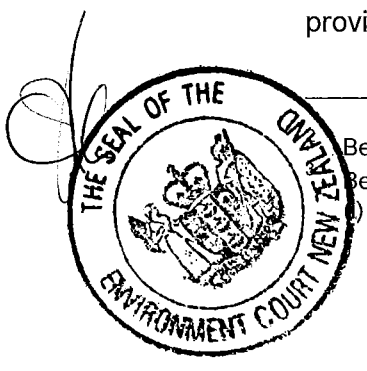
[29] In her opinion, rules for vegetation clearance should be based on the ecological values of that vegetation, as the degree of threat to an ecosystem may be unknown or can change over time. On that basis, she expressed the opinion that harvesting in areas listed in Schedule A should be non-complying because those areas are small and vulnerable and that resource consent as a restricted discretionary activity should be required for harvesting in sites in Schedule C in order to provide a basis for understanding the extent of that activity and its effects.

[30] Ms Myers agreed with the changes to these plan provisions that had been achieved through mediation.

Relevant considerations for a district plan

[31] Under s 290 of the Act, the Court has the same power, duty, and discretion in respect of a decision appealed against as the person against whose decision the appeal is brought. We must accordingly proceed to consider the issues on appeal on the same statutory basis as they were considered by the Council.

[32] The Council was required to prepare its the proposed District Plan in accordance with ss 74 and 75 of the Act,[2] and the Court must now consider the provisions still in issue in this appeal under those sections.[3] Those sections now



[2] Being s 74 in the form it was when the proposed District Plan was notified on 28 June 2013.
[3] Being s 74 in the form inserted by s 78 Resource Management Amendment Act 2013, given:
(a) the commencement of those sections under s 2(2)(b) of the Amendment Act on 3 December 2013; and

relevantly provide:

> ***74 Matters to be considered by territorial authority***
>
> *(1) A territorial authority must prepare and change its district plan in accordance with—*
>
> *(a) its functions under section 31; and*
>
> *(b) the provisions of Part 2; and ...*
>
> *(d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and*
>
> *(e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; ...*
>
> *(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to— ...*
>
> *(b) any—*
>
> *(i) management plans and strategies prepared under other Acts; ...*
>
> *(2A)A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. ...*
>
> ***75 Contents of district plans***
>
> *(3) A district plan must give effect to— ...*
>
> *(c) any regional policy statement.*

[33] The Council plainly has a function of the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity under s 31(1)(b)(iii).

[34] In relation to the consideration of Part 2 of the Act, counsel for the Council referred us to the Court's decision in *Appealing Wanaka Inc v Queenstown-Lakes District Council*[4] and submitted that because the relevant objectives and policies of the proposed Plan for indigenous biodiversity are beyond challenge, there is no need to look past them to Part 2 of the Act.

[35] That decision is based on the reasoning of the Supreme Court in *Environmental Defence Society v NZ King Salmon*.[5] The Supreme Court held that there is a hierarchy of statutory planning instruments under the Act in order to achieve the purpose of the Act. The purpose of these instruments is to give substance to the principles in Part 2 of the Act. Where an instrument has been prepared to give effect to a higher instrument,

(ii) there appears to be no transitional provision in the Amendment Act which would require the application of s 74 of the Act as it stood when the proposed District Plan was notified.

4 *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139.

5 *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.

there is no need to refer back to that higher instrument, or to Part 2 of the Act, to interpret and apply the lower instrument unless there was a challenge based on invalidity, incompleteness or uncertainty in relation to the lower instrument.[6]

[36] In the present case, there is no issue before us of invalidity, incompleteness or uncertainty in the relevant objectives and policies of the proposed District Plan. Accordingly, our consideration of the most appropriate activity status for the harvesting or mānuka and kānuka in SIBS listed in Schedules A and C to the District Plan should be in terms of those relevant objectives and policies.

[37] We address matters concerning the obligation to prepare and have particular regard to an evaluation report in accordance with s 32 of the Act under a separate heading below.

[38] In relation to management plans and strategies prepared under other Acts, Counsel for the Council referred us to Te Urewera Act 2014. The purpose of that Act is:[7]

> *... to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance, and in particular to—*
>
> *(a) strengthen and maintain the connection between Tūhoe and Te Urewera; and*
>
> *(b) preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; and*
>
> *(c) provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.*

[39] The principles for achieving that purpose are:[8]

> *(1) In achieving the purpose of this Act, all persons performing functions and exercising powers under this Act must act so that, as far as possible,—*
>
> *(a) Te Urewera is preserved in its natural state:*
>
> *(b) the indigenous ecological systems and biodiversity of Te Urewera are preserved, and introduced plants and animals are exterminated:*
>
> *(c) Tūhoetanga, which gives expression to Te Urewera, is valued and respected:*
>
> *(d) the relationship of other iwi and hapū with parts of Te Urewera is recognised, valued, and respected:*
>
> *(e) the historical and cultural heritage of Te Urewera is preserved:*
>
> *(f) the value of Te Urewera for soil, water, and forest conservation is*

6 Ibid at [85] and [88].
7 Te Urewera Act 2014, s 4.
8 Te Urewera Act 2014, s 5.

maintained:

(g) the contribution that Te Urewera can make to conservation nationally is recognised.

(2) In achieving the purpose of this Act, all persons performing functions and exercising powers under this Act must act so that the public has freedom of entry and access to Te Urewera, subject to any conditions and restrictions that may be necessary to achieve the purpose of this Act or for public safety.

[40] This Act declares Te Urewera to be a legal entity and establishes a board for its governance and management. That board is under an obligation to prepare a management plan to identify how the purpose of the Act is to be achieved and to set objectives and policies for Te Urewera, but we understand that such a plan has not yet been prepared.

[41] We were also referred to an integrated planning protocol between Tuhoe Te Uru Taumatua, the Council and other local authorities in which Te Urewera is situated, but that is not a statutory document and did not appear to contain any objectives or policies.

[42] We have set out above the policies of the RPS of most relevance to this appeal.

Evaluation under section 32 of the Act

[43] The necessary evaluation of a proposed rule under s 32 of the Act[9] involves an examination, to a level of detail that corresponds to the scale and significance of any anticipated effects, of whether the rule is the most appropriate way to achieve the objectives of the Plan by:

(a) identifying other reasonably practicable options for achieving those objectives;

(b) assessing the efficiency and effectiveness of the rule in achieving those objectives, including:

i) identifying, assessing and, if practicable, quantifying the benefits and

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[9] Being s 32 in the form inserted by s 70 Resource Management Amendment Act 2013, given:
(i) the commencement of those sections under s 2(2)(b) of the Amendment Act on 3 December 2013;
(ii) the transitional provision in cl 2 of Schedule 2 to the Amendment Act (inserting a new Schedule 12 in the principal Act) which requires the further evaluation under s 32 to be undertaken as if s 70 of the Amendment Act had not come into force only if it came into force on or after the last day for making further submissions on the proposed District Plan; and
(iii) the last day for making further submissions on the proposed District Plan being 19 December 2013.

costs of all the effects that are anticipated to be provided or reduced from the implementation of the rule; and

ii) assessing the risk of acting or not acting if there is uncertain or insufficient information; and

(c) summarising the reasons for deciding on that rule.

[44] Section 32 of the Act has been through several amendments since the Act first came into force. It is not necessary to rehearse the whole evolution of the section for the purposes of this case, but in light of the focus of this appeal and the wording of the relevant objectives and policies of the proposed District Plan it is appropriate to address one particular aspect of s 32 which has recently been inserted.

[45] The requirement to identify other means or options for achieving the purpose of the Act and the objectives of the plan which is being evaluated has been a central element of s 32 of the Act in all its versions. The current version appears to be the first time that the options have been qualified by the words *reasonably practicable*. The potential importance of this qualification is emphasised in this case given the centrality of Policy MN 8B in the RPS and Policy IB2(1)(b) in the proposed District Plan in argument before us and their wording which calls for consideration of whether avoiding adverse effects on significant indigenous vegetation and SIBS is or is not "practicable."

[46] Neither the word "practicable" nor the phrase "reasonably practicable" is defined in the Act. There is a definition of "best practicable option" in s 2 where it is defined to mean, unless the context otherwise requires:

> *in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—*
>
> *(a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and*
>
> *(b) the financial implications, and the effects on the environment, of that option when compared with other options; and*
>
> *(c) the current state of technical knowledge and the likelihood that the option can be successfully applied.*

[47] While acknowledging that this case is not concerned with the discharge of a contaminant or the emission of noise, we consider that this definition is helpful in understanding what the word "practicable" may mean in the context of the Act and how the practicability of an option should be analysed.

[48] The word "reasonably" is often used to qualify other words both in legislation and in case law. It has been held in relation to the predecessor provision to s 6(a) of the Act that it may be an implied qualification of the word "necessary."[10] Similarly in relation to s 341(2)(a) of the Act, the same qualification has been implied on the basis that it is unlikely that the legislature envisaged the unreasonable.[11] In the context of an earlier version of s 171(1)(c) of the Act, it has been held to allow some tolerance to the meaning of "necessary" as falling between expedient or desirable on the one hand and essential on the other.[12] There does not appear to be any reason why it should be interpreted differently when used (whether expressly or by implication) in the phrase "reasonably practicable."

[49] Examining other legislation which may be of assistance in this context, we also note that there is a definition of "reasonably practicable" in the Health and Safety at Work Act 2015, as follows:

> *In this Act, unless the context otherwise requires,* reasonably practicable, *in relation to a duty of a PCBU set out in subpart 2 of Part 2, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including—*
>
> *(a) the likelihood of the hazard or the risk concerned occurring; and*
>
> *(b) the degree of harm that might result from the hazard or risk; and*
>
> *(c) what the person concerned knows, or ought reasonably to know, about—*
>
> *(i) the hazard or risk; and*
>
> *(ii) ways of eliminating or minimising the risk; and*
>
> *(d) the availability and suitability of ways to eliminate or minimise the risk; and*
>
> *(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.*

[50] Similar definitions are to be found in other legislation concerned with matters of health and safety and the protection of property, including in s 2 Electricity Act 1992, s 2 Gas Act 1992, s 69H Health Act 1956 and s 5 Railways Act 2005. The phrase is also used in many statutes without definition.

[51] These legislative examples are, perhaps unsurprisingly, consistent with well-established case law interpreting the meaning of "reasonably practicable." It has been

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[10] *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 at 260; (1989) 13 NZTPA 197 at 203 (CA) per Cooke P in relation to s 3(c) of the Town and Country Planning Act 1977, citing *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423, 430; and *Commissioner of Stamp Duties v International Packers Ltd and Delsintco Ltd* [1954] NZLR 25, 54.

[11] *Hugle v Cowie* [1998] 1 NZLR 104 at 109-110; [1997] NZRMA 395 at 400-401; (1997) 3 ELRNZ 261 at 268 (HC).

[12] *Bungalo Holdings Ltd v North Shore City Council* A137/2002 at [94].

held that the phrase is a narrower term than "physically possible" and implies a computation of the quantum of risk against the measures involved in averting the risk (in money, time or trouble), so that if there is a gross disproportion between them, then extensive measures are not required to meet an insignificant risk.[13] Where lives may be at stake, a practicable precaution should not lightly be considered unreasonable, but if the risk is a very rare one and the trouble and expense involved in precautions against it would be considerable but would not afford anything like complete protection, then adoption of such precautions could have the disadvantage of giving a false sense of security.[14] "Practicable" has been held to mean "possible to be accomplished with known means or resources" and synonymous with "feasible," being more than merely a possibility and including consideration of the context of the proceeding, the costs involved and other matters of practical convenience.[15] Conversely, "not reasonably practicable" should not be equated with "virtually impossible" as the obligation to do something which is "reasonably practicable" is not absolute, but is an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances; where human safety is involved, factors impinging on that must be given appropriate weight.[16]

[52] While acknowledging that this case is not governed by any of those other Acts referred to and that the case law summarised above was decided under other legislation, nonetheless we consider the approach consistently taken in other legislation and by other Courts to the assessment of the correct approach to or the boundaries of what is "practicable" in relation to a duty to ensure the health and safety of people and the protection of property could be analogous to the approach which may be taken to protecting, or otherwise dealing with adverse effects on, the environment under the Resource Management Act 1991.

[53] We consider that these statutory provisions and cases together illustrate a consistent approach to the meaning of "reasonably practicable" which we respectfully adopt in this case in considering the options before us. We accordingly proceed to consider RPS Policy MN 8B and District Plan Policy IB2(1)(b) and identify reasonably practicable options for achieving the objectives of the proposed District Plan by examining the options having regard to, among other things:

[13] *Edwards v National Coal Board* [1949] 1 KB 704; [1949] 1 All ER 743 (EWCA).
[14] *Marshall v Gotham Co Ltd* [1954] AC 360; [1954] 1 All ER 937 (UKHL).
[15] *Union Steam Ship Co of NZ Ltd v Wenlock* [1959] 1 NZLR 173 (CA).
[16] *Auckland City Council v NZ Fire Service & anor* [1996] 1 NZLR 330 (HC).

i) The nature of the activity and its effects;

ii) The sensitivity of the environment to adverse effects generally and to the identified effects of the activity in particular;

iii) The likelihood of adverse effects occurring;

iv) The financial implications and other effects on the environment of the option compared to other options;

v) The current state of knowledge of the activity, its effects, the likelihood of adverse effects and the availability of suitable ways to avoid or mitigate those effects;

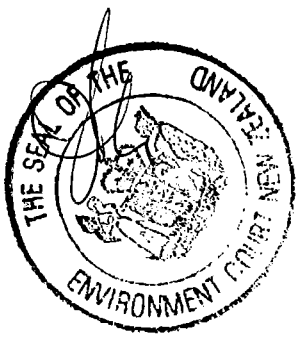
vi) The likelihood of success of the option; and

vii) An allowance of some tolerance in such considerations.

The extent to which adverse effects must be avoided

[54] A further consideration arising from the centrality of RPS Policy MN 8B and District Plan Policy IB2(1)(b) in the argument is the need expressed in those policies to avoid adverse effects on significant indigenous vegetation and scheduled SIBS or, where avoidance is not practicable, to remedy or mitigate adverse effects.

[55] The most obvious meaning of "avoid" in the context of the Act and in policy statements under it, as held by the Supreme Court in *Environmental Defence Society v NZ King Salmon*,[17] is "not allow" or "prevent the occurrence of." The Supreme Court then goes on to explore the contexts in which the word is used and, in particular, the importance of its meaning when used with the word "inappropriate" in relation to subdivision, use and development. That exploration is principally in the context of s 6(a) and (b) of the Act and against the framework of the New Zealand Coastal Policy Statement. It is clear, however, that the approach of the Supreme Court is equally applicable in other contexts where the extent of avoidance called for by a policy is to be considered.[18]



[17] *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442 at [92]-[97].

[18] See for example *R J Davidson Family Trust v Marlborough DC* [2017] NZHC 52 at [61]-[93] where the Supreme Court's approach in relation to a proposed plan change was held to be a lawful consideration in relation to an application for resource consents.

[56] Certainly, in relation to this case which involves a plan review and proposed provisions intended to recognise and provide for the protection of areas of significant indigenous vegetation as required by s 6(c) of that Act, it was common ground that the approach of the Supreme Court was applicable.

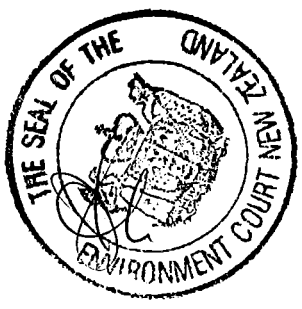
[57] The consideration of context is, as it usually is,[19] an essential part of the interpretation and application of policy provisions. It is generally insufficient to refer to the presence of the word "avoid" as a conclusion in itself: a policy to avoid adverse effects of activities on the environment, without any greater particularity, could be said to be a basis for not allowing any activity at all. As the Court of Appeal recently observed in *Man o'War Station Ltd v Auckland Council,*[20] much turns on what is sought to be protected.

[58] We bear this guidance respectfully in mind in considering not just whether the SIBS listed in Schedules A and C to Chapter 15 of the proposed District Plan should be protected, but the extent of such protection and the manner in which such protection is intended to be achieved.

[59] In considering what rule may be the *most appropriate* in the context of the evaluation under s 32 of the Act, we consider that notwithstanding the amendments that have been made to that section in the meantime, the presumptively correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*:[21] that where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling people to provide for their well-being while addressing the effects of their activities.

Classes, categories or status of activities

[60] The power to categorise activities into one of six classes and to make rules and specify conditions for each class is conferred by s 77A of the Act. The six classes of



[19] *R (Daly) v Secretary of State for the Home Department* [2001] 2 WLR 1622 (UKHL), 1636 per Lord Steyn; referred to in *McGuire v Hastings DC* [2001] NZRMA 557 (PC) at [9] per Lord Cooke.

[20] *Man o'War Station Ltd v Auckland Council* [2017] NZCA 24 at [65] as part of discussion in [59]-[66] and [70]-[73].

[21] *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

activities are listed in s 77A(2) and described in s 87A. The class of an activity is often referred to as its "activity status."[22]

[61] The six classes may be seen as a spectrum of control from *permitted* through to *prohibited* in a progression of increasing levels of constraint:

(i) a permitted activity requires no resource consent and may be undertaken as of right if it complies with the requirements, conditions and permissions, if any, specified in the Act, regulations or relevant plan;

(ii) a controlled activity requires a resource consent but that consent must (with limited exceptions) be granted and may be subject to conditions within the scope of control specified in the relevant plan or national environmental standard;

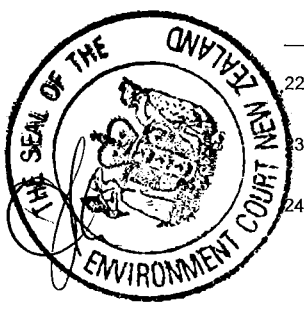
(iii) a restricted discretionary activity requires a resource consent but the consent authority's power to decline an application for such an activity or to grant consent and impose conditions is restricted to the matters specified for that purpose in the plan or national environmental standard;

(iv) a discretionary activity requires a resource consent and the consent authority's discretion to decline consent or to grant consent with or without conditions is, within the scope of the Act itself, unlimited;

(v) a non-complying activity must be assessed against the threshold tests in s 104D of the Act and may be granted only if it passes one of those threshold tests; and

(vi) a prohibited activity is one for which no application for resource consent may be made.

[62] Counsel for the Council referred us to well-known decisions in *New Zealand Mineral Industry Association v Thames-Coromandel District Council*[23] and *Mighty River Power Limited v Porirua District Council*[24] in support of her argument that the harvesting of trees from sites listed in Schedule A should be discretionary rather than non-



[22] The phrase "activity status" appears only in s 149G of the Act, inserted on 1 October 2009, but the usage among practitioners is considerably older than that.

[23] *New Zealand Mineral Industry Association v Thames-Coromandel District Council* (2005) 11 ELRNZ 105.

[24] *Mighty River Power Limited v Porirua District Council* [2012] NZEnvC 213.

complying. She did acknowledge, however, in response to a question from the Court that the statements in those decisions on which she relied were conditioned by the factual circumstances before the Court in those two cases. We consider that acknowledgement to be properly made and, with respect to those decisions and others of a similar nature,[25] we think that caution must be exercised in applying the reasoning in those decisions to other cases. Without doubting the correctness of the statements in the context of the cases in which they were made, the complexity of plan making means that the classification of activities in other circumstances is likely to require specific analysis of the effects of the activity against the particular objectives and policies which relate to the activity being assessed.

[63] It is important to note that the statutory framework for the classification of activities contains no provisions which address the application of these categories or classes to any particular activities or in terms of the nature of the effects of any activity. Instead, the scheme of the Act is that the categorization or classification of an activity is to be done by rules under s 77A. Such rules, like all others in a district plan, must be examined and assessed in accordance with the requirements of s 32 of the Act and consistent with the requirement under s 76(3) of the Act to have regard to the actual or potential effect on the environment of the activity under consideration including, in particular, any adverse effect.

Evaluating the most appropriate activity status

[64] In terms of achieving the objectives of the proposed District Plan, both parties pointed to Objective IB2 as being the most relevant:

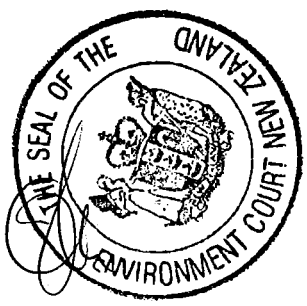
> ***Objective IB2:*** *Areas of indigenous vegetation and habitats of indigenous fauna identified as significant in Schedules 15.7.1, 15.7.2 and 15.7.3 are protected.*

The focus of the argument was then on the issue of the most relevant policy, with the focus of the case being on policies IB2(1)(b) and IB2(5).

[65] Counsel for the Council, in addressing the extent of protection that is appropriate in the circumstances, placed the most weight on Policy IB2(5):

> ***Policy 5:*** *To provide for the sustainable use of indigenous vegetation including scheduled significant indigenous biodiversity sites where the adverse effects of this use are minor.*

[66] She submitted, based on Mr Shaw's evidence, that classifying harvesting in



[25] In relation to permitted activities, see *Twisted World Limited v Wellington City Council* W024/2002 at [62]-[64]; in relation to restricted discretionary activities see *Auckland City Council v John Woolley Trust* (2007) 14 ELRNZ 106 at [49] (HC); and in relation to discretionary activities, see *Lakes District Rural Landowners Society Inc v Wakatipu Environmental Society Inc* C75/2001 at [43]-[44].

Schedule A sites as non-complying would go too far, given the extent to which the plan provided for the assessment of effects in terms of specific criteria and the status of discretionary left open the ability of the Council to decline an application.

[67] In relation to classifying harvesting in Schedule C sites as permitted, she submitted, on the basis of Mr Shaw's evidence that the effects would be no more than minor, that it was unnecessary to impose the costs of the consenting process on landowners except where grazing was proposed during the regeneration phase.

[68] It was common ground that grazing generally slows the regeneration of indigenous species, but that as kānuka and mānuka are relatively unpalatable to stock they are able to regenerate in the presence of managed grazing. On that basis, the parties were agreed that the activity status in Schedule C sites should be restricted discretionary where grazing is proposed during the regeneration phase, which amounts to a partial allowance of the Society's appeal.

[69] The Council proposed that, should the Court confirm the status of Activity 9 in Schedule C sites as otherwise permitted, this outcome could be provided for in the rules by inserting a footnote to that activity status stating that restricted discretionary status applies where grazing is proposed during the natural regeneration phase. The assessment of an application for consent for that activity would not be against the assessment criteria for clearance of indigenous vegetation and so the heading of Rule 15.4.1 would explicitly exclude Activity 9. Instead, such assessment was proposed to be dealt with by a new rule 15.4.4 setting out the restrictions on the Council's discretion, as follows:

> ***15.4.4*** ***Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))***
>
> *15.4.4.1* *Council shall restrict its discretion to:*
>
> *a. Timing to enhance the regeneration or establishment of mānuka and kānuka;*
> *b. Stock type;*
> *c. Grazing intensity;*
> *d. Stock containment methods; and*
> *e. Potential adverse effects on water bodies within the property.*

[70] Counsel for the Council also addressed the relocation and expansion of condition (c) in Activity 15.2.1.2(9) (as notified) to become a new rule 15.2.6, in the following terms:

> ***15.2.6*** ***Harvesting of kānuka and mānuka in Schedule C sites (Rule 15.2.1.2(9))***
>
> *15.2.6.1* *An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements in (c) and (d) of 15.2.1.2(9) is*

> *submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.*

[71] Counsel submitted that this rule would apply to Activity 15.2.1.2(9) regardless of its activity status because it forms part of the rules for indigenous biodiversity generally. We note the statement at the beginning of section 15.2 of the District Plan:

> The following standards and terms apply to Permitted, Controlled, and Restricted Discretionary activities and will be used as a guide for Discretionary and Non-Complying activities.

[72] Should any harvesting of kānuka and mānuka not meet the standards and terms[26] of Rule 15.2.1.2(9) or Rule 15.2.6, counsel noted that then it would be subject to Rule 15.2.1.2(14), the catch-all activity rule which makes activities involving indigenous vegetation clearance or modification or habitat disturbance not otherwise provided for in the activity table a non-complying activity in sites listed in Schedule A and a discretionary activity in sites listed in Schedules B and C.

[73] The Court expressed a doubt about the likelihood of compliance with Rule 15.2.6.1, particularly at years five and 15 and especially where the subject property may have been transferred. In reply, counsel for the Council submitted that much of the land listed in Schedule C is Māori land and unlikely to be transferred to third parties. She said that monitoring of sites that had been subject to harvesting would occur whether the activity was the subject of a consent or not and whether the costs of monitoring were the subject of an administrative charge under s 36(1)(c) or not.

[74] In response, counsel for the Society placed the most weight on Policy IB2(1)(b):

> ***Policy 1(b):*** *To ensure that subdivision, use and development, is undertaken in a manner that protects scheduled* ***significant indigenous biodiversity sites*** *by: …*
>
> *(b) outside the coastal environment, avoiding and where avoidance is not practicable, remedying or mitigating adverse effects including the loss, fragmentation or degradation of those sites and the cumulative effects on ecosystems.*

[75] Counsel for the Society approached the issue of the appropriate activity status for harvesting kānuka and mānuka by referring us to the decision in *Royal Forest and Bird Protection Society of NZ Inc v New Plymouth District Council*.[27] There the Court was concerned with the level of protection of significant natural areas required in terms

[26] Being the "requirements, conditions, and permissions" referred to in s 87A of the Act.

[27] *Royal Forest and Bird Protection Society of NZ Inc v New Plymouth District Council* [2015] NZEnvC 219.

of s 6(c) of the Act. By analogy with the consideration of the requirements of s 6(a) and (b) of the Act taken by the Supreme Court in *Environmental Defence Society v NZ King Salmon*,[28] the Environment Court held that there was a requirement to implement the protective element of sustainable management in those circumstances.

[76] While recognising that counsel for the Society referred to the *New Plymouth* case for its clarification of the meaning of the word "protection" which is not defined in the Act, we note that the case concerned an application for declarations and enforcement orders based on claims that the Council had not appropriately recognised and provided for protection of areas of significant indigenous vegetation, among other things. Those circumstances clearly come within the exception of incompleteness to the hierarchical approach as explained by the Supreme Court.

[77] In the present case there is a clear relationship between Policy IB2(1)(b) in the District Plan and Policy MN 8B in the RPS where the former gives effect to the latter, providing local and regional substance in terms of the principles in s 6(c) of the Act. On that basis, and consistent with the approach described in the *Appealing Wanaka* decision[29] discussed above, we should not go back to Part 2 of the Act in a more general assessment of what is appropriate.

[78] Counsel for the Society stressed the character of the adverse effects of the harvesting activity and relied on the evidence of Ms Myers in relation to the disruption of forest succession, loss of habitat, hedge effects and the particular threat to Schedule A sites given their small size. She also submitted that the evidence that little or no harvesting was presently occurring in the Schedule A and C sites meant that there was no economic incentive to undertake harvesting and therefore it would be unnecessary to provide for that activity so as to enable reasonable use of the land. With respect, we think that latter submission is not supported by the scheme of the Act or other authority. In our view, the Act is not drafted on the basis that activities are only allowed where they are justified: rather, the Act proceeds on the basis that land use activities are only restricted where that is necessary.

[79] Another point raised in the argument before us was the notion that the classification of an activity as non-complying tended to indicate that it ought not to occur, while the classification as discretionary usually means that the activity will be

[28] *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442 at [24]-[28].

[29] *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139.

acceptable if it is made subject to appropriate conditions.

[80] With respect, cognisant of the degree to which some earlier decisions of the Court noted above[30] may give that impression, we consider it better to approach these two classifications in their statutory context. In particular, they share the same consenting provision in s 104B of the Act, which is expressed simply as a general discretion. While a non-complying activity must first pass one of the thresholds set out in s 104D, if it does so then in terms of s 104B it is to be considered on the same statutory basis as a discretionary activity. At that stage, both types of activities must be considered in terms of the matters set out in s 104 of the Act, including having regard to any effects on the environment of allowing that activity and any relevant provisions of any of the planning documents listed in s 104(1)(b). Typically, the most relevant provisions will be the objectives and policies which bear most directly on the activity or others of like nature and on the environmental context in which the activity is proposed to be established.

[81] In relation to the Schedule A sites, we conclude that a discretionary activity classification is the most appropriate for the activity of harvesting of mānuka and kānuka. We consider that this activity status responds to the policy framework in the District Plan by providing suitable protection of SIBS through an assessment and consenting process for sustainable use of the resource. The detailed assessment criteria for this activity should ensure a thorough analysis of all likely effects, including effects on wider ecosystems. Given those provisions in the District Plan, we do not see any reason to require a prior threshold assessment under s 104D of the Act: that would amount to a further restriction which would add little if anything to the assessment under s 104.

[82] In relation to the Schedule C sites, we conclude that a permitted activity classification is the most appropriate for the activity of harvesting of mānuka and kānuka where grazing will not occur during the regeneration phase. We consider that the requirements, conditions, and permissions for this activity appropriately delimit the extent to which it could occur without a resource consent being required and provide a reasonably clear boundary to the activity for the purposes of monitoring and enforcement. We also have regard to the fact that harvesting of mānuka and kānuka has been occurring in the district for a long time without evidence of more than minor adverse effects on the environment. We also note the fact that currently little or no such

[30] At fn 23 and fn 24.

harvesting activity is occurring in the Schedule C sites and see no evidence that a requirement to obtain resource consent should be imposed on any sort of pre-emptive basis. We acknowledge the relationship of the Māori owners with much of the land listed in Schedule C and take into account the principles of the Treaty of Waitangi / Te Tiriti o Waitangi and the purpose and principles of Te Urewera Act 2014 in reaching our conclusion.

[83] We are grateful to the parties for the constructive way in which they have worked together to improve the related provisions of the District Plan, including since mediation. In particular:

(a) We endorse the suggested amendment of the activity description to replace the words "in the same year" with "within one year." This amendment effectively addresses the potential problem of treating the activity as occurring within a calendar year when it is much more likely to be seasonal.

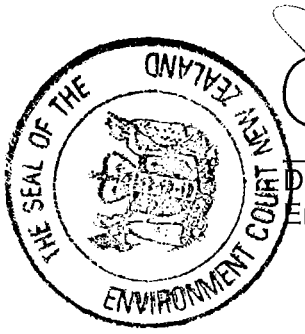
(b) We endorse the agreed position that if harvesting in the Schedule C sites is to be generally a permitted activity, nonetheless it should be a restricted discretionary activity if grazing is proposed in the harvested area during the regeneration phase, given the effect of grazing to delay such regeneration.

(c) As a consequence of that adjustment to the activity status in the Schedule C sites, we also confirm the appropriateness of the amendments to the headings of Rules 15.2.6, 15.4.1 and 15.4.4 to make that distinction clear.

[84] We attach to this decision as **Attachment A** the relevant provisions of the District Plan, amended in accordance with our decision. We attach as **Attachment B** the same provisions with those amendments shown with deletions struck through and additions underlined.

[85] In accordance with the Court's usual practice on appeals under clause 14 of Schedule 1 to the Act, there is no order as to costs.

For the Court:



D A Kirkpatrick
Environment Judge

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Attachment A

Relevant provisions of the Whakatāne District Plan, amended in accordance with this decision

1. In Rule 15.2.1 Activity Status Table:

	Activity Status	Schedule A	Schedule B	Schedule C
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal zone, for commercial use provided that: a. an area equal to that harvested annually is replanted within one year in the same or similar indigenous species or allowed to naturally regenerate; b. the replanted or regenerating area is not subject to any further harvesting operation until at least twenty years has elapsed from the commencement of replanting or regeneration; c. no more than 10% of the total area of kānuka and mānuka in a scheduled feature on any **site** is harvested in any one year; and d. kānuka and mānuka is harvested only from identified areas where kānuka and mānuka represent at least 80% of the vegetation canopy cover.	D	RD	P[1]

[1] RD activity status applies where grazing is proposed during the natural regeneration phase

2. New rule 15.2.6.1

15.2.6 Harvesting of kānuka and mānuka in Schedule C sites (Rule 15.2.1.2(9))

15.2.6.1 An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements in (c) and (d) of 15.2.1.2(9) is submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.

Amended heading of Rule 15.4.1

15.4.1 Clearance of Indigenous Vegetation (Activity Status 15.2.1), including placement or construction of a building (excluding 15.2.1.2(9) in Schedule C sites where restricted discretionary activity status is due to grazing during regeneration)

4. New Rule 15.4.4

15.4.4 Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))

15.4.4.1 Council shall restrict its discretion to:

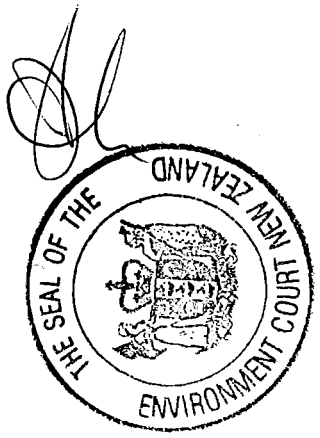
a. Timing to enhance the regeneration or establishment of mānuka and kānuka;
b. Stock type;
c. Grazing intensity;
d. Stock containment methods; and
e. Potential adverse effects on water bodies within the property.

5. New and Amended Definitions

Indigenous Vegetation means any native naturally occurring plant community containing a complement of habitats and native species normally associated with that vegetation type or having the potential to develop these characteristics. It includes vegetation with these characteristics that has regenerated following disturbance or has been restored or planted. It excludes plantations and vegetation that have been established for commercial purposes.

Where indigenous vegetation naturally regenerates or is replanted within a SIB in accordance with Rule 15.2.1.2(9), it is not a "plantation or vegetation established for commercial purposes" as described in the definition of indigenous vegetation.

Naturally regenerate means the harvested area is retired from other active land uses (including grazing) and indigenous vegetation is allowed to regenerate through natural processes. For kānuka and mānuka dominant stands this will typically take ten to twenty years.



Attachment B

Relevant provisions of the Whakatāne District Plan, amended in accordance with this decision

Amendments are shown with deletions ~~struck through~~ and additions underlined

1. In Rule 15.2.1 Activity Status Table:

	Activity Status	Schedule A	Schedule B	Schedule C
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal zone, for commercial use provided that: a. an area equal to that harvested annually is replanted ~~in the same~~ within one year in the same or similar indigenous species or allowed to naturally regenerate; b. the replanted or regenerating area is not subject to any further harvesting operation until at least twenty years has elapsed from the commencement of replanting or regeneration; ~~b~~c. no more than 10% of the total area of kānuka and mānuka in a scheduled feature on any **site** is harvested in any one year; and d. kānuka and mānuka is harvested only from identified areas where kānuka and mānuka represent at least 80% of the vegetation canopy cover. ~~c.~~ ~~a sustainable management plan verifying the above is submitted to **Council**.~~	~~RD~~ D	~~C~~ RD	P[1]

[1] RD activity status applies where grazing is proposed during the natural regeneration phase

2. New rule 15.2.6.1

15.2.6 Harvesting of kānuka and mānuka in Schedule C sites (Rule 15.2.1.2(9))

15.2.6.1 An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements in (c) and (d) of 15.2.1.2(9)) is submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.

3. Amended heading of Rule 15.4.1

15.4.1 Clearance of Indigenous Vegetation (Activity Status 15.2.1), including placement or construction of a building (excluding 15.2.1.2(9) in Schedule C sites where restricted discretionary activity status is due to grazing during regeneration)

4. New Rule 15.4.4

15.4.4 Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))

15.4.4.1 Council shall restrict its discretion to:

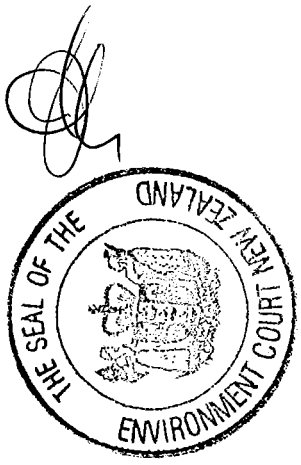
a. Timing to enhance the regeneration or establishment of mānuka and kānuka;
b. Stock type;
c. Grazing intensity;
d. Stock containment methods; and
e. Potential adverse effects on water bodies within the property.

5. New and Amended Definitions

Indigenous Vegetation means any native naturally occurring plant community containing a complement of habitats and native species normally associated with that vegetation type or having the potential to develop these characteristics. It includes vegetation with these characteristics that has regenerated following disturbance or has been restored or planted. It excludes plantations and vegetation that have been established for commercial purposes.

Where indigenous vegetation naturally regenerates or is replanted within a SIB in accordance with Rule 15.2.1.2(9), it is not a "plantation or vegetation established for commercial purposes" as described in the definition of indigenous vegetation.

Naturally regenerate means the harvested area is retired from other active land uses (including grazing) and indigenous vegetation is allowed to regenerate through natural processes. For kānuka and mānuka dominant stands this will typically take ten to twenty years.



BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 080

IN THE MATTER	of the Resource Management Act 1991 (**the Act**)
AND	of appeals under clause 14 of Schedule 1 of the Act on the Proposed West Coast Regional Policy Statement
BETWEEN	HERITAGE NEW ZEALAND POUHERE TAONGA (ENV-2018-CHC-199) First Appellant
AND	DIRECTOR-GENERAL OF CONSERVATION (ENV-2018-CHC-200) Second Appellant
AND	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED (ENV-2018-CHC-201) Third Appellant
AND	WEST COAST REGIONAL COUNCIL Respondent

Court: Environment Judge J A Smith (sitting alone under s 279 of the Act)

Hearing: in Chambers in Auckland

Date of Decision: 17 JUN 2020

Date of Issue: 17 JUN 2020

DETERMINATION OF THE ENVIRONMENT COURT

A: The deletions marked through by a cross lining within the text and the additions marked by underlining and bolding of text are to be incorporated into the West

Coast Regional Policy Statement (**WCRPS**) forthwith for reasons set out in detail in this Determination. These are set out as **Appendix A**.

B: The parties do not make application for and nor does the Court make any order as to costs.

REASONS

Introduction

[1] This Determination results from a consent memorandum filed by the parties intended to resolve in full the Appeals of Heritage New Zealand Pouhere Taonga, Director-General of Conservation and Royal Forest and Bird Protection Society of New Zealand Incorporated.

Background

[2] The West Coast Regional Council (**the Council**) notified the WCRPS on 16 March 2015. 72 original submissions and 23 further submissions were made on the WCRPS. Hearings on submissions were held in May 2018. The Council issued its decisions on submissions on 17 August 2018. Three Appeals were lodged in the Environment Court.

[3] The Appeals are:

(a) ENV-2018-CHC-199: Heritage New Zealand Pouhere Taonga (**HNZ**);

(b) ENV-2018-CHC-200: Director-General of Conservation (**DOC**); and

(c) ENV-2018-CHC-201: Royal Forest and Bird Protection Society of New Zealand Incorporated (**F&B**).

Other parties

[4] The following persons joined the HNZ Appeal under s 274 of the Act:

(a) Federated Farmers of New Zealand Incorporated;

(b) Buller District Council;

(c) Ngai Tahu (Te Runanga o Makaawhio, Te Runanga o Ngati Waewae and

Te Runanga o Ngai Tahu);

(d) Westpower Limited; and

(e) Trustpower Limited.

[5] The following persons joined the DOC Appeal under s 274 of the Act:

(i) Stevenson Mining Limited;

(ii) Buller District Council;

(iii) Grey District Council;

(iv) Westpower Limited;

(v) Trustpower Limited;

(vi) Transpower New Zealand Limited;

(vii) Bathurst Resources Limited;

(viii) Ngai Tahu (Te Runanga o Makaawhio, Te Runanga o Ngati Waewae and Te Runanga o Ngai Tahu);

(ix) Frida Inta;

(x) Federated Farmers of New Zealand Incorporated; and

(xi) Royal Forest and Bird Protection Society of New Zealand Incorporated.

[6] The following persons joined the F&B Appeal under s 274 of the Act:

(a) Stevenson Mining Limited;

(b) Buller District Council;

(c) Westpower Limited;

(d) Trustpower Limited;

(e) Transpower New Zealand Limited;

(f) Bathurst Resources Limited;

(g) Ngai Tahu (Te Runanga o Makaawhio, Te Runanga o Ngati Waewae and Te Runanga o Ngai Tahu);

(h) Frida Inta;

(i) Federated Farmers of New Zealand Incorporated;

(j) Grey District Council;

(k) Ballance Agri-Nutrients Limited;

(l) West Coast Fish and Game Council; and

(m) Director-General of Conservation.

[7] All appellants and s 274 parties are signatories to this joint memorandum. As a general observation the various parties represent a broad cross-section of the various interests in the Region.

Mediation

[8] The parties attended mediation in Greymouth on 11 to 14 March, 27 to 30 May, 29 July to 2 August and 1 to 2 October 2019. The resulting consent memorandum is endorsed by all parties.

Summary of Appeals

Heritage New Zealand Pouhere Taonga

[9] HNZ's Appeal seeks the inclusion of additional methods relating to "*significant heritage*" in Chapter 4, Resilient and Sustainable Communities.

Director-General of Conservation

[10] DOC's Appeal sought changes relating to indigenous biological diversity together with "*any other relief to like effect, including consequential amendments that the Court thinks fit*".

Royal Forest and Bird Protection Society of New Zealand Incorporated

[11] F&B's Appeal sought specific and extensive changes to text of the WCRPS. In addition, F&B's Appeal contended that the provisions appealed against:

(a) do not give effect to the National Policy Statement for Freshwater Management and the New Zealand Coastal Policy Statement;

(b) do not give effect to the NPSET;[1]

(c) are not consistent with Part 2 of the Resource Management Act ('the Act";

(d) do not implement the Council's functions under s 30 of the Act; and/or

(e) do not represent best resource management practice.

[12] Its notice of Appeal continues:

> Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal. Forest & Bird also seeks any consequential changes made necessary by the relief sought below.[2]

The Consent Memorandum

[13] The parties have filed a detailed consent memorandum, some 122 pages. This includes the proposed alterations to the text of the WCRPS. The alteration to the text is now **annexed as Appendix A** to this Determination. This Determination addresses the reasons for the change in brief and an examination under the Act (especially s 32AA) to the extent required.

[14] It is important to note, that this Court in assessing this proposal is only able to see these amendments in the context of the Policy Statement presented to it.

[15] Given the diverse range of parties involved in this proceeding, we have assumed that various aspects of the public interest are represented by one or more of these parties.

[16] I also recognise that in considering this memorandum, the changes are seen as a package. It is clear that the parties have made concessions in some areas for gains in other areas. That is to be expected with a document as complex as a Policy Statement and the purpose for this Court is not to assess every wording or variance but to be satisfied that overall this advances the purpose of the Act and represents better provisions than those in the Plan currently.

[17] To that extent, our assessment under s 32 (and s 32AA) takes into account the

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[1] National Policy Statement on Electricity Transmission.

[2] Notice of Appeal by the Royal Forest and Bird Protection Society of New Zealand Inc dated 28 September 2018, paragraphs 6 to 8 inclusive

parties' assessments of the situation, unless this Court is not satisfied with that analysis and checks the changes are consistent with superior documents and the Act itself.

[18] We have included only the track changed copy in **Appendix A** and anticipate that the Council will adopt a clean copy with those amendments incorporated. Although this was provided to the Court, I did not consider it is necessary to attach it for the purposes of finalising this Determination. Accordingly, the version that is intended to be adopted by the Council, is the *RPS (MV) clean version* with tracking removed, but incorporating the changes agreed by the parties

[19] Further, we note that every chapter has been changed, although the extent of change varies depending on the area. We intend to briefly deal with each of these changes in accessing whether this achieves the purpose of the Act and s 32 and s 32AA.

[20] Overall, we are satisfied that the approach of the parties is consistent with the Act and s 32 (and s 32AA) in particular and that this approach is as a result of a cohesive and integrated approach to amendments which should aide understanding the application of the Policy Statement.

[21] We now intend to deal with each of the Chapters in turn, briefly explaining the reasoning of the parties for the changes. Reference should be made to **Appendix A** for context.

Chapter 1: Introduction

[22] There are a small number of consequential changes to s1.3. In particular, a new bullet point has been added to s1.3.2 and the wording of another bullet point has been altered slightly.

[23] There is no issue as to the change in form raised by any party and the result is clear. Also, a general standardisation of changes would be permitted under Clause 16 of Schedule 1 of the Act in any event.

[24] In s1.4, there has been a change, largely to add more explanation under the User Guide. This was not a change that was explicitly part of an appeal but was consequential upon changes to chapter 4 Objectives.

[25] I have examined the change in wording, particularly the cross-reference to Objective 2. Again, the matter is one largely of form, but I am unable to see anything that would offend against the provisions of the Act and the greater clarity is to be welcomed. Accordingly, I approve of the change to s1.4.

Chapter 2: Summary of Significant Resource Management Issues for the Region

[26] F&B sought to change three paragraphs in Chapter 2, mostly, minor wording changes. In particular, F&B were concerned that the Statement of Issue should not be a summary and it is acknowledged that it is not in fact a summary.

[27] Accordingly, changes were made to delete the words "Summary of" and also consequential changes to achieve a clearer intent for the Policy Statement.

[28] Again, I have looked at this wording, and I am satisfied, as are the parties, that these changes are both within the scope and achieve a better outcome (in the sense of clarity) than the existing provision.

[29] There is an issue also in relation to other matters in Chapter 2 and these are shown in the text now agreed. Again, essentially this is to clarify the intent of s 6 and s 7 of the Act for the purposes of clarity and certainty. Although not a great deal turns on these provisions, I accept they are better in the sense of s 32 and achieve the purpose of the Act.

Chapter 3: Resource Management Issues of Significance to Poutini Ngai Tahu

[30] There were no Appeals on Chapter 3, but the parties have agreed that there be some consequential changes to clarify the relationship between Chapter 3 and the other Chapters in the WCRPS, including Chapter 6.

[31] Again, I see nothing offensive in the wording "adopted" and the parties clearly consider this establishes the relationship more clearly. In my view, this is a matter of judgement. As they are prepared and accepted by all the parties, I accept that this is within scope as a consequential amendment. These do not substantively change the meaning of Chapter 3.

Chapter 4: Resilient and Sustainable Communities

[32] F&B sought to change Objective 2 and the agreement now is similar to, but a less extensive variation of that sought.

[33] I accept that these are within the jurisdiction of the Court and the Objective is expressed more precisely and therefore gives a better effect to the Act. I also agree with the parties, that the essence of the Objective is retained.

[34] However, the deletion of the words "including those specified in the Anticipated Environmental Results in this RPS", does remove an important link to other chapters. I therefore accept that some consequential changes follow. The first being the consequential changes that I have addressed in relation to the "User Guide" in Chapter 1.4, and secondly those in Chapter 3.

[35] I agree that these changes follow logically and are generally appropriate.

Chapter 4: Methods

[36] HNZ sought two new methods for historic heritage be added to Chapter 4. In the end, the parties have agreed that there should be two additional methods involving both assessing and identifying historic heritage and using regional and district plans. This is recorded in Method 3 and 4.

[37] In terms of the Appeals filed, I accept that these changes are within the jurisdiction of the Court. They probably clarify rather than introduce any substantive change but link the provisions more directly to s 6(f) of the Act itself. They also align with Objective 4 and Policy 5 of Chapter 4.

[38] There are consequential changes to Method 5 (formerly 3) which is shown in the re-wording. This again, is a matter of clarification rather than the substantive change to the wording. Accordingly, I also generally approve the variations to Chapter 4 and I believe they better achieve the purpose of the Act.

Chapter 5: Use and Development of Resources

Chapter 5: Background to the Issues

[39] F&B sought some changes to various paragraphs of the background to the issues including to paragraphs 6, 7 and 8. Parties have agreed on wording changes, similar to those sought by F&B, but again appear to introduce clarifications. Some of these would be permitted under Clause 16 of the First Schedule to the Act, but there is no change in substance or effect.

[40] Accordingly, these changes better achieve the purpose of the Act and are approved.

Chapter 5: Objective 2

[41] There has been a relatively significant change to Chapter 5 Objective 2. Originally, it read:

> To recognize that the use and development of natural resources may be incompatible with other land users, in some situations and locations.

The now proposed wording is:

> Incompatible use and development of nature and physical resources are managed to avoid or minimize conflict

[42] I accept that the amendment is within the jurisdiction of the Court. Particularly, the F&B Appeal.

[43] Initially the complete change of wording approach might give concern as to whether or not this is an improvement. However, closer examination suggests that the original Objective was unclear as to the purpose of the Policy Statement in relation to use and development of natural resources.

I conclude, the words "managed to avoid or minimize conflict" introduces a clear purpose for the Policy and for the Objective itself. Accordingly, I conclude it not only clarifies the provisions, but introduces better articulation of the resource management outcome

sought.

Chapter 5: Policy 1

[44] Again, F&B sought relatively extensive changes to Policy 1. Those now agreed are somewhat less extensive, but nevertheless clearer.

[45] I agree, words such as "enabling" are better than the broader and more difficult to understand proposition "recognition will be given in resource management processes".

[46] Accordingly, I agree that the new wording is clear in its intent and therefore better achieves the purpose of the Act.

Chapter 5: Policy 2

[47] Again F&B sought changes. Some of these were for clarification purposes and particularly authorised minerals extractions or sites.

[48] I conclude that the agreed wording, represents a clearer exposition of the natural and physical resources relevant to the regional economy. While some of the changes sought by F&B may have been clearer, i.e., authorised minerals, the agreement to leave the wording at "mineral extraction" would in its terms be appropriate, permitted or otherwise authorised mineral extraction.

[49] On balance, I agree that this better sets out the purpose of the Policy and although the matter is largely one of style, the change is clearly within jurisdiction.

Chapter 5: Method 1

[50] There was no Appeal on Method 1, but the parties have agreed anyway that the use of the word "rules" is misleading. The parties have agreed to substitute this with the word "provisions". I see this as a minor change for clarity.

Chapter 6: Regionally Significant Infrastructure (RSI)

[51] Regionally Significant Infrastructure (**RSI**) is defined in the Policy Statement. F&B

have sought a change to the final paragraph in the background to the issues and sought a direct reference to the New Zealand Coastal Policy Statement (**NZCPS**). This recognizes the importance of the NZCPS in its application to infrastructure.

[52] The parties have also recognized the importance of the New Zealand Policy Statement on Electricity Transmission (**NPSET**) for the National Grid, and Electricity Generation and the National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**). Accordingly, the parties have agreed to add a new paragraph which is a further explanation of these factors. The parties consider that the new paragraph is within jurisdiction because it clarifies the relationship between the relevant provisions in the WCRPS and helps to ensure that property recognition is given to national policy instruments.

[53] Given the consent of all the parties to its inclusion, I accept it does not prejudice any other party and makes explicit provisions which take effect in considering applications for consent and other matters under the Act in any event.

[54] Given that the final paragraph of the Introduction has already been changed, I am prepared, in the circumstances, to allow the addition of the new paragraph, which in my view, better achieves the purpose of the Act. In particular, clarifying the relationship of regional documents to national policy statements which are applicable.

Chapter 6: Issue 1

[55] F&B again sought an amendment to this Policy and sought also to add a new issue. The parties have agreed to include a new statement of the resource management issue which now reads:

> Resilient RSI is essential for the social, economic and cultural wellbeing of the West Coast.

[56] I agree with the parties, that this issue is within jurisdiction and better states the resource management issue to be dealt with, within that Chapter. Accordingly, I generally approve of this amendment.

Chapter 6: Policy 6 (now Policy 5)

[57] F&B again sought a variation of this provision. The amendment is not as sought originally by F&B but does include some elements of that proposed change. They have agreed to retain off-setting of effects other than adverse effects on indigenous biodiversity.

[58] A reference to compensation is added to align with the resource management practice and s 104(1)(ab) of the Act as well as Policy C2 of the NPSREG. In all the circumstances, I consider that the changes are within jurisdiction and re-worded policy now better achieves the purpose of the Act.

Chapter 6: New Policy 6

[59] This related to renewable electricity generation. It appears F&B originally wished to better achieve the purpose of s 6 of the Act and strengthen provisions giving effect to the protective objectives and policies of the NZCPS and the National Policy Statement for Freshwater Management (**NPSFM**).

[60] The end result is that the parties agreed to do this, provided that renewable electricity generation is provided for as well.

[61] The parties agree to a new Policy 6 which captures both of these aspects.

[62] I conclude that it is within jurisdiction, given the nature of the Appeal. It also gives better effect to the relevant provisions of the NZCPS and NPSFM and to some extent the National Policy Statement for Renewable Electricity Generation (**NPSREG**) (as it relates to renewable energy).

[63] Overall, I am also satisfied that it also helps to achieve the chapters objective:

> Enable the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure

Chapter 6: New Policy 7

[64] F&B sought to strengthen the protection in the WCRPS for natural character for

s 6 matters, natural features, indigenous vegetation and fauna.

[65] The parties have agreed that Policy 2 does not adequately give effect to the NPSET and should be replaced by a new Policy 7 which consists of two sub-paragraphs 1 and 2. This means that Policy 2 is to be deleted and the new Policy directly relates matters to the National Grid and in particular, how matters relating to the National Grid might seek to achieve s 6.

[66] I agree, this Policy is within the scope of the Appeals and this provision gives better effect to the Act and to the NPSET.

Consequential Changes to Chapter 6 – Policies 1, 3 and 4

[67] There have been a few changes to Policy 1 to make the provision clearer and Policy 2 to include renewable energy and National Grid and Policy 3 to include references to the parts of s 6 of the Act. These appear to be within the frame of the Appeals and the parties have agreed upon them. Accordingly, these appear to better achieve the purpose of the Act in being clearer than the original provisions. Accordingly, I generally approve of these changes.

Chapter 6: Consequential Amendments to Policy Explanations

[68] Consequent upon the change to the Policy wording, explanations must also be amended. The explanations largely follow the logic of the changes already discussed. In the end, these are matters of form rather than substance and I agree that these consequential changes are appropriate to incorporate the new Policies. I generally approve of those changes.

Chapter 7: Biodiversity and Landscape Values

[69] F&B sought that Chapter 7 be divided into different chapters or sub-chapters.

[70] The parties have now agreed to:

(a) Limit Chapter 7 to indigenous Biodiversity in accordance with s 6(c), s 30 and s 31 of the Act, outside the coastal environment.

(b) Create a new Chapter 7A for the natural character of wetlands, and lakes and rivers and their margins in accordance with s 6(a) of the Act, outside the coastal environment.

(c) Deal with natural character in the coastal environment, in accordance with s 6(a) of the Act and the relevant provisions of the NZCPS, in Chapter 9, Coastal Environment.

(d) Deal with the protection of the significant values of wetlands and of outstanding freshwater bodies in Chapter 8, Land and water.

(e) Create a new Chapter 7B dealing with outstanding natural features and landscapes in accordance with s 6(b) of the Act, outside the coastal environment.

(f) Deal with indigenous biological diversity and outstanding natural features and landscapes in the coastal environment in accordance with s 6(b) and s 6(c) of the Act and the relevant provisions of the NZCPS in Chapter 9, Coastal Environment.

[71] In broad terms, I agree this fits within the scope of the Appeals filed and is a reasonable comprise to achieve the objectives of all parties. It does need necessary consequential changes to other provisions.

[72] I make no particular comment on whether this better achieves the purpose of the Act or how. However, I am satisfied these matters of wording and policy do not make any substantive change to the provisions of the plan itself.

[73] Overall, the more direct linkage better achieves the purpose by achieving clarity.

Chapter 7: Background Issues

[74] Because other topics other than indigenous biodiversity have been removed from Chapter 7, there is a necessity to change the background provisions. There is an extensive change to Chapter 7 wording. These appear to have been argued relatively in detail and many of them are consequential on the division of Chapter 7

[75] I am satisfied that they are within the jurisdiction of the Court and the

consequential changes are a matter of form, rather than substance and accordingly, I generally approve of them as better achieving the purpose of the Act, through clarity.

Chapter 7: Statement of Local Authority Responsibilities

[76] Again, F&B have sought a fairly extensive variation of this provision and the parties have agreed that the statement of responsibilities is now clearer and that with some refinement, it can replace the Decision's version. The wording now adopted is agreed and is clearly within the jurisdiction of the Court.

[77] In the end, the question of whether this is better, is a matter of form, rather than substance and I am prepared to accept the position of the parties that this is largely consequential upon other changes and provides better clarity.

Chapter 7: The Significant Issues in relation to the Management of Indigenous Biological Diversity values on the West Coast

[78] There were 3 Issues identified in Chapter 7 and F&B sought to amend Issue 2. It also requested the deletion of Issue 3.

[79] In the end, the parties seem to have agreed on amendments to all Issues 1-3 and again appear to be directed towards the parties' views as to clarity.

[80] Although, not as convinced as the parties on those changes, it cannot be said that the provisions have any greater effect. I am satisfied that, overall, they are better if they lead to clarity by key parties as to the provisions involved.

Chapter 7: Objectives

[81] F&B sought that Objective 1 be deleted and that Objective 2 be amended. They as sought new Objectives. Because of the focus now on Indigenous Biological Diversity, it is clear that Chapter 7 requires amendment anyway.

[82] Objective 1 is to be deleted. The parties have agreed on alternative provisions. It is clear that the provisions are within scope. Although there is extensive evidence, it is difficult to see clear purpose beyond the clarification of Chapter 7 to Indigenous

Biodiversity.

[83] In the end, again, it seems to me a matter of Policy and Form, rather than substance and accordingly, I see no basis on which to alter the wording agreed by the parties.

[84] Therefore, I approve the Provisions on the basis of clarity. I reach no conclusion on whether it gives better effect to ss 6(c), 30(1) (ga) of the Act.

[85] Nevertheless, it does clarify the relationship with indigenous vegetation for Chapter 7.

Chapter 7: Policies

[86] F&B sought the deletion of Policy 1A, with replacement which might be considered the assessment criteria:

(a) Representativeness
(b) Rarity
(c) Diversity
(d) Ecological context

They sought relatively extensive changes and the parties have agreed to changes.

[87] Again, it is difficult within the context of this hearing to understand exactly the full purpose and effect of these changes. Nevertheless, they appear to have been discussed at considerable detail between the parties.

[88] Overall, I am satisfied that they have provided more clarity and give better effect to the Act. I do not consider I need to particularly reach a conclusion on the wording and its effect. It seems to me where matters of policy and form apply, these are matters on which parties can reasonably have different issues and the provisions in this case, represent a reasonable compromise.

Other Policies managing effects on Biodiversity

[89] F&B have sought the deletion of Policy 1, Policy 2 and Policy 3A. They essentially

sought a re-wording and new provisions and were promoting the concept of no net loss for indigenous biological diversity. DOC also had some concerns with the provisions and both complained that the WCRPS did not properly recognize or provide for national importance in s 6(c) of the Act. They also contended that the Regional Council had failed to discharge its duty under s 30(1) (ga) of the Act to maintain indigenous biodiversity.

[90] In the end, the parties have agreed on a new suite of Policies to maintain indigenous biodiversity. This requires future actions and mapping Significant Natural Areas (**SNA**) and wetlands using the criteria of attached Appendices.

[91] It also uses represents the issues of:

(a) no net loss; and
(b) minimization of adverse effects.

[92] The parties in their memorandum note that:

(a) Policy 2 sets bottom lines which focus on protecting threatened examples of biodiversity and develops elements in the proposed Policies made by F&B for polices 1, 3 and 4;

(b) Policy 3 deals with the management approach;

(c) Policy 4 deals with the criteria for Offsetting;

(d) Policy 5 deals with the criteria for Biodiversity compensation;

(e) Policy 6 adapts Policy 3A of the RPS(DV) to the new framework of objectives and policies;

(f) Renew Policies 6, 7 and 8.

[93] There is no doubt that these changes are particularly extensive and appear to follow an agenda of F&B throughout New Zealand. In this case they are supported to some extent by the DOC.

[94] It is not really possible from the wording given to the Environment Court to assess whether they better achieve the purpose of the Act or not. There have been a series of decisions by various divisions assessing similar provisions in contested cases. If it was necessary on every occasion to revisit these arguments, in a consent situation, I conclude it would defeat the purpose of these parties to achieve policies that are appropriate for

their region.

[95] Whilst it is clear that F&B and to a lesser extent DOC are pursuing agendas on a national level, there is of course the need to settle provisions appropriately for this region. In this case, the parties have reached an accommodation between them.

[96] It represents a policy decision reached with a range of interest groups. This Court is reluctant to involve itself in revisiting a policy decision, unless there is a contest of evidence or a disagreement.

[97] I am unable to assess whether these provisions better achieve the purpose of the Act, but I am satisfied that:

(i) They are within jurisdiction;
(ii) They are relatively clear; and
(iii) They are at least as effective as the current provisions.

[98] In my view, any balance in this respect is swung by the fact that other change to the Chapter necessitated changes in any event.

[99] Accordingly, overall, I conclude that these provisions are better, simply because they deal with the Chapter 7 issue (now Indigenous Biodiversity) rather than the wider range of issues previously covered.

Chapter 7: Explanation to the Policies

[100] Again, the explanation seems to be largely consequential upon the significant changes to Chapter 7. There does appear to have been an approach to attempt to be clear in the explanation as to why the various approaches have been taken. I do not comment on the content of them given that they appear to reflect the policy approach that has already been discussed.

[101] I agree that they are consequential and therefore better achieved the outcome of the now changed Chapter to those original provisions.

Chapter 7: Methods

[102] Again F&B sought the removal of the original Methods in Plan 2, 3 and 5.

The parties have agreed to delete Methods 1 and 3 and amend Method 5. They have agreed on two new Methods. The first is to retain part of Method 1 to use the Regional and District Plans to protect significant Biodiversity and maintain the Regions biodiversity. It also gives effect to methods promoted by F&B to use regional and district plans to protect significant biodiversity and maintain indigenous biodiversity.

[103] The new Methods set out in Chapter 7 **annexed in Appendix A** and essentially constitute a re-wording at a reasonably extensive level. Again, it is difficult in the absence of evidence to assess this in any detail.

[104] For the same reasons that I discussed, the earlier adoption of extensive changes to wording in Chapter 7, I conclude that the changes are:

(a) Within jurisdiction;
(b) Clear; and
(c) Agreed by all parties.

and therefore, better than the original Chapter 7 (which were not as explicit).

Principal Reasons for Adopting Objectives, Policies and Methods

[105] It cannot be said that there is any different reason to approach the wording "in the Principal Reasons" than previously. Accordingly, for the same reasons I have given, these are consequential changes which are appropriate for the reasons already given.

Chapter 7: Anticipated Environmental Results

[106] These are largely consequential changes within the jurisdiction of the Appeals and therefore the Court. Again, it is difficult to assess these in the absence of evidence and given the agreement of the parties, I adopt these for the same reasons as previously given in other Chapter 7 matters.

Chapter 7A: Natural Character

[107] This is a new provision and accordingly the wording within it is essentially related to natural character outside the coastal environment.

[108] These consequential changes follow from what I have discussed earlier, and it is difficult to assess these in the absence of detailed evidence.

[109] Overall, however in reading them, they appear to follow a formula which is clear and enables parties to understand the intent. Furthermore, they were originally intended to be covered by Chapter 7 as a whole and are within the scope of the Appeals.

[110] For this reason, the other provisions of Chapter 7A:

(i) Objectives;
(ii) Policies;
(iii) Policy Explanation;
(iv) Methods;
(v) Reasons for adopting Objectors;
(vi) Policies and Methods; and
(vii) Anticipated Environmental Results;

all tend to flow as consequential changes.

[111] Given the agreement of the parties, and for the same reasons I have explained in respect of Chapter 7, I consider these provisions are better because of the greater clarity in relation to the particular aspects of s 6 of the Act addressed.

Chapter 7B: Natural Features and Landscapes

[112] It must follow that Chapter 7B, dealing with natural features and landscapes separately, follows the same logic of that relating to Chapter 7A and Chapter 7 itself.

[113] For the same reasons, I have given, it is not really possible to assess these provisions in the absence of evidence. I am satisfied that the parties represented a wide range of relevant interests.

[114] I am further satisfied, that this matter was the subject of Appeal by various parties including DOC and F&B and that the division of these is going to have the consequence that the various aspects of Chapter 7 are now included in Chapter 7B including:

(a) Background to Issues;
(b) Issues;
(c) Objectives;
(d) Policies;
(e) Policy explanations;
(f) Methods;
(g) Principal reasons for adopting Objectives, Policies and Methods; and
(h) Anticipated Environmental Results

[115] I have made it reasonably clear that approval of these provisions by the Court represents an acceptance of the policy agreements reached between the parties. It does not represent an adoption of this approach for all future cases by this Court. It is essentially a determination based upon the agreement of the parties as to an approach.

[116] Given the clarity to the provisions and that there has been a policy decision to change the approach, it must follow that they are better in achieving that purpose.

Chapter 8: Land and Water

[117] It is probably opportune at this point in this Determination to note that we move now to consider questions of land and water and the coastal environment in Chapters 8 and 9. Both of these have extensive changes, many of which are relatively minor but are important from the perspective of the parties.

[118] In considering this matter, the parties have had in mind the National Policy Instruments in particular the NZCPS, the NZSFM and the National Policy Statement for Electricity Transmission (**NZSET**).

[119] There was concern that the Chapter omits reference to the NPSREG and there are particular concerns by F&B that the Chapter failed to safeguard the life supporting capacity of water both in terms of quality and quantity. The changes sought are comprehensive and start with the Background, with various changes being sought to this.

F&B proposed that the Chapter address the natural character of wetlands, lakes, rivers and their margins.

[120] The parties have agreed to changes which are set out in the Background explanation and deleted the last paragraph of the Decisions version and inserted three new paragraphs. Some of these are minor changes which would take effect under Clause 16 of the First Schedule of the Act. Others are a consequence of further changes made later in the Chapter. There is also clarification on the relationship of this Chapter and other Chapters in the WCRPS.

[121] Parties agree that these changes are within jurisdiction and give effect to national directions in the NPSFM, the NPSET, the NPSREG and the NZCPS.

[122] Given the changes form part of the comprehensive network, we will leave our evaluation to the end of this Chapter.

Chapter 8: The Significant Issues in relation to the Management of Land and Water for the West Coast Region

[123] There are no direct Appeals on the Issues, but the parties sought an additional objective. However, given that the F&B sought an additional objective, the parties have agreed, that the following issue should be added:

> 3. Activities may adversely affect the significant values of wetlands and outstanding freshwater bodies.

This then gives grounds for the Objectives agreed to be inserted.

Chapter 8: Objectives

[124] There are a number of changes sought to improve and clarify the wording and three new objectives. These are:

(a) The life supporting capacity of freshwater is maintained and improved for future generations.

(b) Coastal water quality does not deteriorate due to land use, development

or activities in the CMA.

(c) Protect the significant values of outstanding freshwater bodies

[125] Policy C2 of the NPSFM requires Regional Policy Statements to provide for integrated management of the effects of the use and development of land and freshwater and coastal water. F&B were also concerned that Objectives A2 and B4 of the NPSFM requiring the protection of significant values of wetlands and outstanding freshwater bodies from both water quality and water quantity perspectives were not being reached.

[126] A new Objective 1 has been inserted which corresponds to the first Objective sought by F&B.

[127] Objective 2 is the previous Objective 1 and remains unchanged.

[128] Objective 3 has been modified and broadens the scope of the Objective to require the allocation of water to be within environmental controls.

[129] Objective 4 largely adopts the objective proposed by F&B for the protection of the significant values of outstanding freshwater bodies. The objective is now amended to provide for the identification of those values, as this is a pre-requisite to their protection. While wetlands are not expressly mentioned, the parties are clear that this covered by the NPSFM and in particular Objectives A2 and B4. The parties consider that all the proposed Objectives are within the Courts jurisdiction and give effect to the relevant provisions of the Act and the NPSFM

[130] I am clear that, these matters would arise in terms of the relevant Policy Statements and will leave an overall evaluation of the Objectives to the end of the Chapter, given the integrated nature of the provisions.

Chapter 8: Policies

[131] Again, F&B contended that the Chapter 8 Policies did not give effect to the NPSFM and sought changes to the various Objectives and a number of new Policies. It also sought the amendment of Policy 3.

[132] As noted, the changes to the Objectives also requires consideration of the

Policies that stand beneath them and the Policies have been amended to respond to both the Appeals and to give effect to the revised Objectives of Chapter 8.

[133] However, a number of changes have been made that were not specifically sought in the Appeals, but in the view of the parties, are consequential on the various changes that have been agreed. For the most part, these appear to be matters of clarification and integration with the changed Objectives. The substance and effect of these Policies, to the extent that they are changed in this way, is minor. Where new Policies are added, these are to achieve other Objectives or provisions within he Plan.

[134] All parties agree that the changes therefore to Policy 1 are within the Appeals or to give better effect to the NPSFM or for clarification under Clause 16 of the First Schedule to the Act.

[135] F&B sought a new Policy and the New Policy 3 is a response to this. The existing Policy 3 is to be amended. The parties have agreed on these amendments. Together these amendments:

(a) Make it clear that the Policy applies pending establishment of any allocation framework which may be developed under the National objectives;

(b) Make the Policy of general application, not only where there is competition for water;

(c) A requirement to give consideration to environment effects by talking of "environmental limits";

(d) That it applies to all activities regulated by s14 of the Act;

(e) To give effect to the NPSFM, i.e., efficient use of water;

(f) Minor drafting changes without altering the substance or effect of the Policy.

[136] The parties have also agreed to delete Policy 4 because the purpose of that Policy

is now subsumed within the other Policies in Chapter 8, including Policies 1,2,3,5,7 and 8. There is also a concern that original Policy 4 was similar to a method and duplicates Method 7. This is considered to a consequential change within the jurisdiction of the Court.

[137] F&B also sought a new Policy and the parties considered that it had two parts:

1. Maintaining or improving water quality;
2. Protecting significant values of outstanding freshwater bodies and wetlands.

[138] Accordingly, it is now proposed that there be two new Policies:

5. Maintaining or improve water quality within freshwater management units.

6. Identify significant values of wetlands and outstanding freshwater bodies in regional plans and protect those values.

[139] It is considered that this is within jurisdiction and adopted in part F&B's Appeal but also give better effect to the NPSFM and in particular Objectives A2 and B4. It also implements the new Chapter 8 – Objective 4.

[140] There is also a concern that the WRRPS failed to implement the NPSFM and in particular, Policy C2. The parties propose a new Policy 7:

7. Encourage the coordination of urban growth, land use and development, including the provision of infrastructure to achieve integrated management of effects on fresh and coastal water.

[141] The parties have agreed, that this would give effect to Objective 5 (as amended) and also respond to the Appeals.

[142] All parties consider it is within jurisdiction and gives better effect to the NPSFM.

[143] The parties also propose a new Policy 8:

8. Provide for the social economic and cultural wellbeing derived from the use and development of land and water resources, while maintaining or improving water quality and aquatic

ecosystems.

[144] It is acknowledged Policy 8 was not expressly sought in the Appeals. However, the use and development of natural resources is considered by the parties to be part sustainable management as well as their protection. Also, F&B sought that the WCRPS give effect to the NPSFM and this includes objectives for social and economic wellbeing of people through the use of water within limits.

[145] Overall, the parties consider the matter is within the jurisdiction and gives better effect to the NPSFM.

[146] The parties also sought a new Policy 9:

> 9. Implement the National Policy Statement for Freshwater Management including the National Objectives Framework.

[147] This again was not sought expressly in the Appeals but arises from the F&B Appeal which contends that the WCRPS failed to give effect to the NPSFM.

[148] The parties consider that the new Policy is within jurisdiction and gives better effect to the NPSFM.

Chapter 8: Policy Explanations

[149] There are a number of consequential changes to the explanations which are shown in the crossed version and these are as a result from the amendments to the Policies that have been discussed earlier and are consequential on the other changes. The parties consider them therefore, to be within the jurisdiction of the Court.

Chapter 8: Methods

[150] There have been a number of changes to the Methods in Chapter 8. Some of which are wording changes to existing Methods, i.e., Method 1.

[151] Two new Methods are introduced to implement Policy 6 and to achieve new Objective 4. The new Methods are:

4. Develop with stakeholders regionally consistent criteria to identify the significant values of wetlands and outstanding freshwater bodies.

5. Identify the significant values of wetlands and outstanding freshwater bodies in a regional plan.

[152] Method 5, which is now renumbered to 6, has been changed to include the question of managing effects of urban growth, development and infrastructure on fresh and coastal water.

[153] Consequential changes relating to identification of significant values and old Method 6 is now renumbered as 7.

[154] The parties consider all of this, is within the scope of the NPSFM issues and also the jurisdiction of the Court in terms of the Appeals.

Chapter 8: Principal Reasons for adopting Objectives, Policies and Methods

[155] There has been a significant change to the Principal Reasons and it was not subject to any direct Appeals.

[156] However, the parties consider that these changes are consequential and within the jurisdiction of the Court, given the more substantive changes made through the Chapter.

Chapter 8: Anticipated Environmental Results

[157] There are no Appeals directly on this, but because of the changes to Objectives, Policies and Methods in Chapter 8, consequential changes are proposed by the parties.

[158] Again, these are considered to be consequential and within the jurisdiction of the Court.

Evaluation of Chapter 8

[159] It is difficult for the Court to make an overall evaluation of the precise wording used in Chapter 8. Clearly, with the introduction of new Objectives and Policies, consequential changes need to be made throughout the Chapter and in some cases

elsewhere to achieve an integrated management approach.

[160] All parties consider the matters are within jurisdiction. To the extent that the Court can evaluate this from the information provided, I am satisfied that the changes are generally within the scope of the various Policy documents and/or Appeals.

[161] It is important to keep in mind that there are a number of National Policy Statements affecting land and water, particularly in the coastal environment.

[162] I am also satisfied that the key stakeholders in these Appeals represent broad aspects of the public interest and participation in these types of issues.

[163] The end result appears to be, to the extent that I am able to examine it from the documents, a relatively clear and integrated approach to the management of land and water in this area. Many of the changes are matters of style or preference and may achieve more clarification.

[164] I am satisfied, to the extent that I can be, that the provisions now proposed are better than those originally in the plan, given that they have been subject to far more detailed examination and an attempt to integrate them across the entire plan.

[165] Accordingly, I am satisfied that these provisions can properly be made subject to an overall evaluation of the changes at the conclusion of this Determination.

Chapter 9: Coastal Environment

Again, the Coastal Environment deals with similar issues but specifically in the context of the NZCPS, although affected by other National Policy documents as well.

[166] F&B sought a number of changes to the Background statement and more generally was concerned that Chapter 9 did not give effect to the NZCPS.

[167] The parties have subsequently agreed on amendments to the Background. There are a number of changes to this which appear to balance the relevant National Policy Statement requirements and also provide some clarification.

[168] It is difficult to assess from reading the papers at this stage, the extent to which this makes a significant difference. However, it is important to note that this is a Background document to help inform the formation of the Objectives and Policies which follow.

[169] The parties also explain the inaccuracies and omissions have been remedied as minor corrections under Clause 16 of the First Schedule to the Act and this has helped clarify the document.

[170] The parties are satisfied that the changes generally are within the Background to better recognise the relevant provisions of the Act and superior national planning instruments.

[171] I will leave an overall evaluation to the end of this Chapter.

Chapter 9: Statement of Local Authority Responsibilities

[172] There was no Local Authority Responsibilities in Chapter 9 and F&B sought a statement as to their responsibilities which they consider mandatory.

[173] The parties have agreed that a statement should be included, and the proposed statement is included **Appendix A**.

[174] They consider it accords with s62(1)(i)(iii) of the Act and is within the jurisdiction of the Court.

[175] Again, I do not consider I can address the specific wording, but the intent of the provision appears to be quite clear as it ties back directly to s62(1)(i)(iii) of the Act.

Chapter 9: The Significant Issues in relation to the Management of the Coastal Environment of the West Coast Region

[176] F&B sought changes to Issue 1. The parties agree that the tension between development and protection in the coastal environment is a key issue.

[177] They have therefore agreed to replace Issue 1 with the following:

1. Protecting the values of the coastal environment whilst enabling sustainable use and development to provide for the region's social and cultural wellbeing.

[178] The parties consider that the restatement of the Issue is within the jurisdiction of the Court. Given there was an Appeal to Issue 1, I am in no doubt that there is jurisdiction. I also consider that the wording is commendably concise and although it may still have room for improvement, it is a significant improvement on the more generic wording in the original Issue. Particularly, Chapter 9 Objectives.

[179] F&B sought changes to both Objectives 1 and 2 of the Decision's version and it is now proposed that there be two new Objectives 1 and 2 in Chapter 9. Objectives 1 and 2 are **annexed in Appendix A**.

[180] The parties consider these Objectives better reflect the requirements of Part 2 of the Act, and in particular, ss 6(a), (b) and (c) of the Act and the relevant Objectives and Policies in the NZCPS. They consider they are within the jurisdiction of the Court.

[181] So far as jurisdiction is concerned, it is clear that this issue has been raised and the response adopted is both to clarify and enhance those provisions. Again, the brevity and conciseness would tend to suggest that the provisions will be better understood by all people and functionaries utilising the provisions.

Chapter 9: Policies

F&B sought changes to Policy 1 and contended that Chapter 9 as a whole did not give effect to the NZCPS.

[182] The parties essentially now intend to replace Policy 1 with a new Policy 1 which is **annexed in Appendix A**. It follows on from earlier provisions requiring identification of significant biodiversity, character, natural features and avoiding adverse effects on significant indigenous and avoiding significant adverse effects on indigenous etc.

[183] This follows much more closely with the Act and the decisions of the Court in respect of this provision and also benefits from being a more concise statement that sources are more directly shown, for example Policies 11, 13 and 15 of the NZCPS.

[184] I accept that it is within jurisdiction and to that extent, must be better than the original wording.

[185] In relation to Chapter 9 Policy 2, F&B sought relatively major changes to this provision. F&B also proposed a new Policy to provide a framework to avoid or mitigate adverse effects on the coastal environment from the use and development of natural and physical resources of the coastal marine area and commercial activities on the water and foreshore and seabed.

[186] The parties agree, provisions must be made for subdivision use and development of the coastal environment. In particular, consideration needs to be given to activities which have a functional need to locate in the coastal environment. In particular, national grid and renewable electricity generation which are recognised as a national significance by the NPSET and NPSREG.

[187] The parties have reached agreement that three policies could replace Policy 2 of the Decisions version. Again, this is a substantive change, but one can see that it follows in a consistent pattern from the other provisions we have discussed. It deals with the national grid infrastructure and then moves on to subdivision use or development and then finally for renewable electricity generation.

[188] The provisions appear to be within the scope of the Appeals and certainly within the jurisdiction of the Court to give effect to the Act and the relevant national instruments.

[189] F&B also sought a new Policy 9 and the parties have agreed to include one reading: "Consider opportunities for the restoration or rehabilitation of natural character". Again, this gives effect to the NZCPS and the parties consider the Policy is within the jurisdiction of the Court. In broader terms, it also finds a basis on which one can look for new improvement to the natural character of the coastal area. Especially in areas where such character has been depleted.

[190] Overall, this appears to follow on from a number of provisions within the NZCPS and within the broader Objectives of this Plan. The Policy explanation has been changed. Although there are fairly extensive changes, the parties agree that these are consequential upon the other changes made and seem to give a reasoning as why they

have been adopted.

[191] Accordingly, these appear to be within jurisdiction or may even be considered to be a minor amendment under Clause 16 of the First Schedule to the Act given the other amendments if the other amendments are made.

Chapter 9: Methods

[192] Again, the parties agree that further consequential changes are needed. However, F&B also sought a new Method relating to the identification of significant, diversity, character, features and landscapes. The parties consider that this Method is appropriate and have adopted a new Method 1, which reads:

> 1. Regional and District Councils to identify areas of significant indigenous biological diversity, outstanding and high natural character areas and outstanding natural features and landscapes of the coastal environment, set out the characteristics and qualities of each area in a plan schedule, and show areas on maps where practicable.

[193] The parties agree that the Method is within the jurisdiction of the Court and it appears to me that it follows from the Appeals. Moreover, it follows from a number of decisions of the Court and strengthens the earlier provisions about the importance of identifying significant values and characteristics and qualities.

[194] It is now proposed that an amended version of Method 1 become Method 2 and moves from allowing appropriate use and development to managing adverse effects of subdivision use and development of the coastal environment.

[195] Again, this seems to follow from the Objectives and Policies and more properly relates to the role of the various authorities under the Act.

Chapter 9: Principal Reasons for Adopting Objectives, Policies and Methods

[196] There were no Appeals on this. However, due to the changes to the Objectives, Policies and Methods, the parties agree that there should be some consequential changes. The parties agree these are within jurisdiction as they seem to effectively clarify the content of the relationship between the various National Policy Statements.

Chapter 9: Anticipated Environmental Results

[197] Again, there has been consequential changes proposed and these are matters to some extent of style and correction, but also explicitly identify inappropriate subdivision, use and development and the protection of indigenous biological diversity in the coastal environment.

[198] This must therefore, been seen as consequential from the changes already agreed, if those are appropriate.

Evaluation of Chapter 9

[199] Again, as with Chapter 8, Chapter 9 can be seen as an integrated approach to these matters. From a practical point of view, there is greater clarification around the Policy Statement intentions and requirements. The tension between development and protection is explicitly addressed and tools are provided within the WCRPS for consequential plans to address this in more detail.

[200] Looking at the matter in a jurisdictional sense, I am satisfied that these changes are ones that could have been generally sought as a result of the Appeal filed by F&B and that the approach adopted in a practical sense is clearer and therefore better than that earlier.

[201] Without evidence, it is difficult to evaluate whether the provisions are best or most appropriate. In practical terms, many of the concepts now encapsulated reflect provisions in Regional documents elsewhere in New Zealand and in Court Decisions.

[202] I am satisfied that the various aspects of the public interest and the participatory nature of the Act have been recognised by the various parties involved in these matters. Where it comes to matters of style or drafting, these are matters that the parties are best placed to address. Overall, I am satisfied that these changes are within jurisdiction and represent a better outcome in terms of the various National Policy Statements and the Act.

Chapter 12: Glossary

[203] The words "or biodiversity" have been deleted as that is not defined in the Act.

[204] A definition of "significant indigenous biological diversity" has now been included as well as "significant natural area" and "values". These are consequential on the various changes that have been made in Chapter 7 and 7B. More particularly, they provide more certainty to parties reading the document.

Appendix 1

[205] This is the "Ecological Criteria for identifying Significant Terrestrial and Freshwater Indigenous Biological Diversity". It is part of the agreed amendments to Chapter 7 and is in fact a common approach throughout New Zealand.

[206] I am therefore satisfied it is within jurisdiction and appropriate.

Appendix 2

[207] "Ecological Criteria for Identifying Significant Wetlands". Again, this is a consequential change to Chapter 7 and also reflects an approach to having stated criteria to provide for transparency and evaluation.

Overall Conclusion under s 32 and s 32AA

[208] Under s 32AA of the Act, the Court is required to undertake an evaluation to the extent that is necessary having regard to the changes made. For this reason, I have gone into some detail through the various provisions that were proposed by the parties.

[209] The evaluation must be undertaken at a level that is appropriate to the level of change. In practical terms, it is difficult where the parties have agreed on the outcomes to achieve this in a forensic way by examination of evidence. Nevertheless, the Court is able to evaluate the proposals to see if they fit within the general framework and therefore the level of intervention required by the Court is minimal.

[210] In doing so, in examining the most appropriate way in which the Objectives could be achieved, the Court can rely of course, on the significant number of decisions on this

point and the other plans that have been adopted throughout New Zealand.[3] I also consider that it can have regard to the fact that parties represent wide aspects of the public interest and that these are parties that have been involved in the process over a number of plans, i.e., F&B.

[211] In the end, I do not consider that the words "most appropriate" can require some form of general investigation by the Court into the best method of achieving an outcome where it is not either part of the proposed policy statement or within the scope of an appeal.[4]

[212] Furthermore, it is difficult for the Court to become involved in the details of word drafting, when it is being asked to endorse a consent agreement. Even in contested hearings, the Court generally relies on the parties to finalise the wording and resolves in areas of dispute.

[213] This Determination, under s 32(1)(a)(b) of the Act, has examined the various provisions, objectives and policies and evaluated them in relation to provisions the Decisions version. It has dealt with them at some level of detail given the significance of these matters. On the other hand, it is also important that the Court has regard to the provisions of the Act and the various national policy statements in evaluating these provisions.[5]

[214] Under s 32(2) of the Act, the Court is required to identify and assess the benefits and costs of the various economic, social and cultural effects anticipated. This is particularly difficult to do at any level of detail given that the parties have reached an agreement. I consider this provision can properly be met on a determination, where the Court is satisfied that the questions of benefits and costs have been taken into account and evaluated by the parties.

[215] In this case, I have a great deal of confidence on costs and benefits given the

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[3] See for example *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298, where Gendall J found that "most appropriate" means most "suitable" and not the most "superior".

[4] The Court seeks to obtain the optimum planning solution within the scope of the appeal before it. See *Briggs v Christchurch City Council* C 45/08, 24 April 2008.

[5] The evaluation of a policy, rule, or other method should be done by considering all the applicable provisions of the Act: See *Gunbie v Rodney District Council* A143/06, 14 November 2006.

recognition in various provisions of the tension between the need to protect s 6 matters, while at the same time provide for appropriate development. These tensions are implicit within the Act and the Court must rely, to some extent, on the authority and the other parties to identify this in the appropriate method.

[216] Overall, it is my view that the greater clarity of these provisions is likely to have a beneficial effect in terms of overall impact, given that it enables greater certainty and therefore all parties to proceed without the uncertainty and costs that would follow from a more generalized plan wording.

[217] In relation to s 32(2)(c) of the Act, I consider that the risk of not adopting these provisions is that the WRCPS would then lack clarity and certainty. Overall, I consider that the parties are agreed that the changes would be beneficial and lead to greater certainty in terms of the plan. Therefore, I consider that one of the risks I must assess if refusing to issue a determination in circumstances where that delay in itself, may constituted a risk to the environment and to the sustainable management that the Act is seeking to achieve.

[218] Overall, the question of the relevance of this, must be seen in the context of s 32AA. The evaluation is one that this Court must undertake in the context of this application for Determination of the matter by consent. I conclude that this Determination would therefore constitute the evaluation report under s 32AA(v) of the Act. I keep in mind that the Court must adopt a pragmatic approach to these matters, given that it has over the years issued consent orders in respect of policy statement resolution. I do not consider it was the intention of the statute to prevent this occurring in the future.

[219] Furthermore, I am satisfied that the parties appear to have approached this matter in a responsible and practical manner and it appears to me that the balance achieved is one that represents the various interests of the parties.

Outcome

[220] I have therefore concluded that in terms of my duty under the Act, that the Court has a discretion to make a Determination granting these provisions. The provisions of the Act and policy statements have been largely met. To the extent that there may be differences of drafting or interpretation and those are matters on which I cannot reach a

conclusion on the evidence, I am not required to do so for the purposes of this decision.

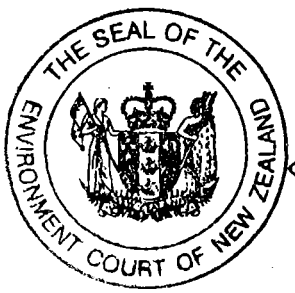
[221] Accordingly, I am satisfied that the provisions **attached** in **Appendix A** are the most appropriate provisions in all the circumstances and are endorsed by the Court.

[222] I therefore, direct that the Council is to make the changes as soon as practicable to the WRCPS for finalisation.

[223] No party has sought costs and I make no order as to costs.

[224] I commend the parties on their practical approach to this matter and on the clarity of the provisions that have been achieved.

For the Court:



J A Smith
Environment Judge

Appendix A

THE WEST COAST
REGIONAL COUNCIL

Proposed
West Coast
Regional Policy Statement

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Part A
Introduction and background

1. Introduction

1.1 Role of the Regional Policy Statement – Its Scope and Effect

The role of the Regional Policy Statement (RPS) is to promote the sustainable management of the natural and physical resources of the West Coast. It does this by:

- Providing an overview of the resource management issues of the region; and
- Identifying policies and methods to achieve integrated management of the West Coast's natural and physical resources.

The RPS is the vehicle for identifying and dealing with the significant resource management issues on the West Coast. It takes account of all those issues relating to resources such as land, water, infrastructure, and the coastal environment that are of importance to the region, and puts in place policies and methods to achieve the integrated management of those resources.

The RPS has an important role in setting the overall direction for the management of natural and physical resources and the environment of the West Coast. Although the RPS does not contain rules to regulate activities, the West Coast Regional Council (WCRC) and the District Councils of the region are required to give effect to this document when preparing or changing regional or district plans (which may contain such rules). In addition, the WCRC and the Territorial Authorities are required to "...have regard to" relevant objectives and policies in the RPS when considering an application for a resource consent (section 104(1) of the Resource Management Act (RMA).

The Regional Council must have a RPS in place at all times – this will be the West Coast's second one. The RMA prescribes what the RPS must cover (section 62) and the responsibilities of regional and district councils (sections 30 and 31).

1.2 Regional Policy Statement Guiding Principles

The WCRC has developed this RPS using the following principles. They provide strategic direction on what is important to the communities of the West Coast.

PEOPLE

People are at the heart of this Regional Policy Statement. All district and regional plans should have regard to people and communities and their need for a healthy environment, well managed infrastructure, employment, business opportunities and education for their wellbeing and long-term economic success.

ECONOMY AND ENVIRONMENT

The RPS seeks to give due consideration to economic and environmental factors in resource management decision-making. It recognises that a healthy West Coast economy needs a healthy environment. This RPS is enabling, balancing improving the economy and using our resources wisely, with managing and investing in the environment to achieve our future aspirations for improvement throughout the West Coast.

EFFECTIVENESS

The Regional Council believes that environmental regulation needs to be clear and simple with quick processes. It recognises that solutions must be affordable, fit for purpose and achieve the objectives. The policy instruments used should match the resource

management issues and opportunities identified. In line with affordability this avoids unnecessary compliance costs.

ADAPTIVE MANAGEMENT

The management of the natural and physical resources of the West Coast is a complex task as the environment, resources and systems are dynamic. Understanding of these also changes over time. The management regime is therefore adaptive and able to respond to change as required in order to achieve sustainable resource management.

AFFORDABILITY

There may be circumstances where current resource management practices may have to change over time in order for these resources to be managed sustainably. Where these changes may impose a significant financial burden, or a practical solution is not currently available, a reasonable time is to be allowed for desired environmental outcomes to be achieved. This is to take into account the need for change and the costs and effects of not acting, or not acting quickly.

1.3 Statutory and Planning Framework

1.3.1 POLICIES, PLANS AND OTHER INSTRUMENTS

The RPS is the key document for identifying issues related to the development, use and protection of natural and physical resources on the West Coast and establishing a management framework for dealing with them. It is, however, only part of a broader policy and planning framework under the RMA. The RMA provides for a hierarchy of resource management policy statements and plans related to the three levels of government – central, regional and district.

At the national level, the main statutory instruments include:

National environmental standards – Regulations made by Order in Council on the recommendation of the Minister for the Environment, to prescribe technical standards relating to the use, development and protection of natural and physical resources. National standards override existing provisions in plans that require a lesser standard.

National policy statements – Issued on recommendation by the Minister for the Environment, they state policy on matters of national significance relevant to achieving the purpose of the RMA. Regional and district-level planning documents prepared under the RMA must give effect to these.

New Zealand Coastal Policy Statement – Prepared and issued by the Minister of Conservation, it states policies for achieving the purpose of the RMA in relation to the coastal environment of New Zealand. Regional and district-level planning documents prepared under the RMA must give effect to the NZCPS.

Water conservation orders – Issued on the recommendation of the Minister for the Environment and made by Order in Council to recognise and sustain outstanding amenity or intrinsic values associated with a waterbody that warrants protection. The RPS must not be inconsistent with these.

At the regional or district level, the main statutory instruments include:

Regional policy statements – Prepared by regional councils to achieve the purpose of the RMA by providing an overview of the significant resource management issues for the region, and the policies and methods to achieve integrated management.

Regional coastal plan – Prepared by regional councils these are intended to assist the regional council, in conjunction with the Minister of Conservation, to manage the coastal

marine area where each has specific functional responsibilities. The coastal marine area generally encompasses the foreshore, coastal water, and the air space above the water, between mean high water springs and the outer limits of the territorial sea. Regional coastal plans may contain rules to control activities and effects.

Regional plans – Prepared by regional councils to assist them in carrying out their functions under the RMA, they must give effect to the RPS. Regional plans are optional and may contain rules to control activities and effects.

District plans – Prepared by district councils these plans assist them in carrying out their specific functional responsibilities under the RMA, particularly those relating to controlling the effects of land use and subdivision, and the provision of associated public works and utilities. District plans may contain rules to control activities and effects. The RMA requires that district plans must "give effect" to the Regional Policy Statement of a region and must "not be inconsistent with" regional plans.

Resource consents – Required either from a regional or district council (or both) to carry out activities that would otherwise contravene the restrictions in the RMA on the use and development of natural and physical resources. Under section 104(1) of the RMA, a consent authority considering a resource consent must have regard to any relevant regional policy statement.

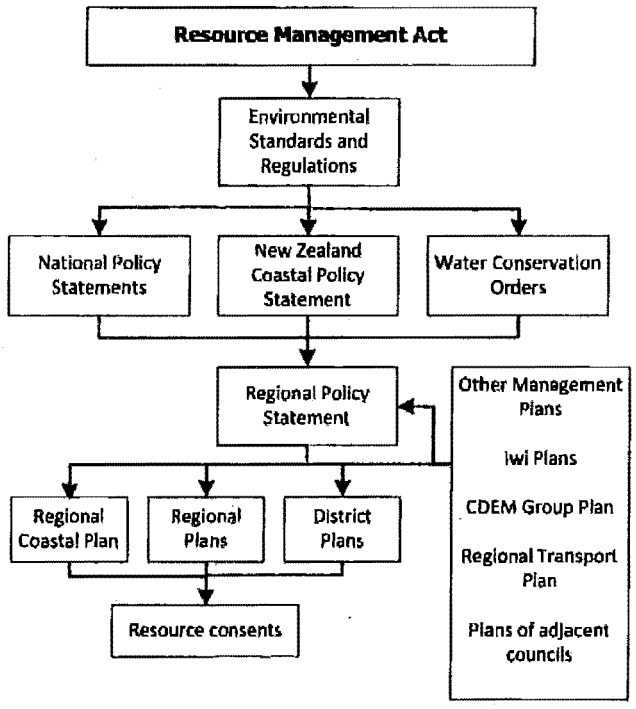


Figure 1: Regulatory Framework

Duties in relation to Māori

The RMA recognises that the Principles of the Treaty of Waitangi are an integral part of promoting the sustainable management of natural and physical resources. Section 61 of the RMA requires that regional policy statements must be prepared in accordance with Part 2 matters, including the Treaty of Waitangi principles, and recognising and providing for the culture and traditions of Māori in the region, and their relationship with their ancestral lands, water, sites wāhi tapu and other taonga. Section 62 of the RMA requires a RPS to state the resource management issues of significance to iwi authorities in the region. Te Rūnanga o Ngāi Tahu is the iwi authority for the entire West Coast region. Poutini Ngāi Tahu are the tangata whenua of Te Tai o Poutini (the West Coast). Under section 9 of the Te Rūnanga o Ngāi Tahu Act 1996 the two papatipu rūnanga who

represent the tangata whenua interests of Poutini Ngāi Tahu on the West Coast are Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio.

Section 220 of the Ngāi Tahu Claims Settlement Act 1998 recognises the mana held by Ngāi Tahu in relation to specific sites and resources, known as Statutory Acknowledgement Areas. These are acknowledgements by the Crown of the special relationships that Ngāi Tahu have with the Areas for cultural, spiritual, historical, and traditional reasons. On the West Coast the Statutory Acknowledgement Areas are: Ōkari Lagoon, Taramakau River, Kōtukuwhakaoka (Lake Brunner/Moana), Lake Kaniere, Pouerua-hāpua (Saltwater Lagoon), Ōkārito Lagoon, Makaawhio (Jacob's River), Karangarua Lagoon, and Lake Paringa. The West Coast Councils will consider Te Rūnanga o Ngāi Tahu and the respective papatipu rūnanga to be affected parties where resource use may adversely affect Statutory Acknowledgement Areas.

1.3.2 FUNCTIONS AND POWERS

To give effect to the purpose and principles of the RMA, central government, regional and district councils have specific functions, powers and duties.

Regional and district councils have been given primary responsibilities for the management of natural and physical resources within their areas, subject to the requirements of central government as exercised through the instruments available under the RMA or through other legislation (such as the Local Government Act 2002 or Civil Defence Emergency Management Act 2002).

Under section 30 of the RMA, the WCRC is responsible for the control of:

- Water, air, and land (for the purpose of soil conservation, water management, natural hazards avoidance and mitigation and hazardous substances management); ~~and~~
- The maintenance and enhancement of ecosystems in waterbodies and coastal water;
- The investigation of land for the purposes of identifying and monitoring contaminated land;
- The coastal marine area (in conjunction with the Minister of Conservation);
- The discharge of contaminants into the environment;
- River and lake beds; ~~and~~
- The establishment, ~~and~~ implementation and review of objectives, policies and methods for maintaining indigenous ~~biodiversity~~ biological diversity; and~~,~~
- The strategic integration of infrastructure with land use through objectives, policies and methods.

Under section 31 of the RMA, the three district councils are responsible, in relation to their district, for the preparation of objectives and policies for the:

- Integrated management of the effects of land use;
- Control of the effects of land use, including responsibility for the:
  - avoidance and mitigation of natural hazards;
  - use, disposal or transportation of hazardous substances;
  - prevention and mitigation of the adverse effects of the use of contaminated land; ~~and~~
  - ~~the~~ maintenance of indigenous ~~biodiversity~~ biological diversity;
- Control of the emission of noise; and~~,~~
- Control of activities on the surface of water in rivers and lakes.

Under section 30(1)(a) of the RMA, the WCRC is further responsible for preparing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region and for preparing objectives and policies in relation to any actual or potential effects of the use, development, and protection of any land which is of significance. The RPS has been developed to give effect to this responsibility.

1.3.3 STATEMENT OF REGIONAL AND DISTRICT COUNCIL RESPONSIBILITIES

The RPS must state the local authority responsible for specifying the objectives, policies and methods for the control of the use of land –

- To avoid or mitigate natural hazards or any group of natural hazards; and
- To maintain indigenous biological diversity

This RPS has identified the management of indigenous biological diversity and natural hazards ~~and indigenous biological diversity~~ as significant resource management issues for the West Coast and consequently addresses the roles and responsibilities within Chapters 7, 8, 9, and 11, ~~and 7~~ respectively.

1.4 User Guide to the RPS

Part A (this part) contains the introduction. This includes the purpose and the key principles of the RPS and an overview of the RMA which provides the statutory framework relevant to the implementation of objectives, policies and methods in the RPS.

Part B contains the significant resource management issues for the West Coast, including the issues of significance to Poutini Ngāi Tahu. It ~~provides a summary~~ lists ~~of~~ these issues in Chapters 3-11 and ~~sets out~~ explains how the objectives, policies, methods and anticipated environmental results relate~~ing~~ to them. This includes the objectives, policies and methods to take into account the principles of the Treaty of Waitangi and for recognising and providing for the relationship of Māori with ancestral lands, water, sites, wāhi tapu and other taonga. Chapter 3 provisions must be read together with all other relevant chapters.

~~To assist the reader in locating all relevant policies, related policies (for example where policies in several chapters are relevant to a proposed activity) are cross referenced in Chapters 3-11.~~

The RPS must be read as a whole. If a matter relates to more than one chapter, then the relevant objectives and policies in those chapters must be read together. For example, municipal sewage effluent discharges into coastal water will involve the consideration of Chapter 3: Resource Management issues of Significance to Poutini Ngāi Tahu, and Chapter 9: Coastal Environment. Flood protection walls along rivers will involve the consideration of Chapter 3: Resource Management issues of Significance to Poutini Ngāi Tahu, Chapter 6: Regionally Significant Infrastructure (for Rating District stopbanks), Chapter 8: Land and Water, and Chapter 10: Natural Hazards.

Part C sets out the administrative procedures relating to the implementation of the RPS. They include the processes that the WCRC will use to promote integrated management and deal with issues that cross local authority boundaries, and the procedures to monitor the effectiveness of the RPS and for its review.

Glossary - To assist readers in using the RPS, a glossary has been prepared and is located at the back of this document.

Part B
Significant resource management issues for the West Coast

2. ~~Summary of s~~Significant Resource Management Issues for the West Coast

This Chapter ~~summarises~~ brings together all the significant resource management issues for the West Coast region, including resource management issues of significance to Poutini Ngāi Tahu, and explains the RMA planning framework of objectives, policies and methods of implementation. These issues ~~are summarised~~ listed in Table ~~2~~ 1, ~~and~~ are taken directly from Chapters 3-11 of this RPS.

Table ~~2~~ 1: ~~List Summary of the~~ sSignificant resource management issues for the West Coast

Issues	
Significant issues for Poutini Ngāi Tahu	1. Expression of rangitiratanga through active involvement in resource management decision-making. 2. The need for integrated environmental management of and between all resources, reflecting ki uta ki tai. 3. It is important to Poutini Ngāi Tahu that the life-supporting capacity of the environment is safeguarded, and this capacity is restored where it has been impaired by use and development of resources. 4. The need to use resources, including mahinga kai resources, to sustain the community. 5. The obligation to protect wāhi tapu and other taonga for future generations. 6. The wise and efficient allocation and use of non-mineral resources within their capacity to regenerate themselves, and having regard to the effects of the use.
Resilient and Sustainable Communities	1. The West Coast is at risk of experiencing population decline. It is critical that our planning documents address this risk by enabling the appropriate use and development of natural and physical resources whilst promoting their sustainable management. 2. West Coast industries are traditionally susceptible to fluctuating cycles and global commodity prices which can affect the social and economic wellbeing of our communities. Councils' management of natural and physical resources needs to contribute, where possible, to making our communities more resilient and sustainable in the long term. This includes ensuring that communities retain their sense of place, identity, heritage and amenity values. 3. The implementation of the RMA by local authorities can, support economic growth and creation of employment in the region; whilst also avoiding, remedying or mitigating any associated adverse effects.
Use and Development	1. Recognising the central role of resource use and development on the West Coast. 2. Managing the conflicts arising from the use, ~~and~~ development and protection of natural and physical resources.
Regionally Significant Infrastructure	~~1. Recognising the benefits of, and providing for, the establishment and continued operation of regionally and nationally significant infrastructure particularly where it crosses district and/or regional boundaries.~~ 1. Resilient RSI is essential for the social, economic and cultural wellbeing of the West Coast. 2. Strategically integrating infrastructure and land use.
~~Biodiversity and Landscapes~~	~~1. The RMA requires councils to provide protection to significant indigenous vegetation and significant habitats of indigenous fauna. Where those areas are located on private land, that can be of concern to affected land owners.~~

Ecosystems and indigenous biological diversity	1. Activities which contribute to people's wellbeing may adversely affect indigenous biological diversity. ~~2. In the context of the current abundance of indigenous vegetation, much of which is on land managed by the Department of Conservation, a cross-agency approach to management, including both regulatory and non-regulatory measures, is required.~~ 2. In the context of extensive indigenous vegetation and habitats, much of which is on land managed by the Department of Conservation, an integrated management approach is required. ~~3.The relatively unmodified environment of the West Coast provides a wealth of significant indigenous vegetation, significant habitats of indigenous fauna, outstanding natural features and natural landscapes, and areas with outstanding natural character. While these areas must be protected, it is possible to carefully manage them in a way that enables appropriate future employment, regional growth and development.~~ 3. Councils, and Poutini Ngāi Tahu need to work together to identify opportunities to recognise and provide for Poutini Ngāi Tahu culture and traditions in relation to the use and protection of indigenous ~~biodiversity~~ biological diversity under the RMA, to the extent practicably possible.
Natural Character	1. Activities which contribute to people's wellbeing may adversely affect the natural character of the region's wetlands, and lakes and rivers and their margins.
Natural Landscapes and Features	1. Activities which contribute to people's wellbeing may adversely affect outstanding natural features and outstanding natural landscapes.
Land and Water	1. Managing adverse effects on water quality arising from point source and diffuse source discharges to waterbodies from activities on land. 2. Potential overuse of water resources can occur in certain areas during drier seasons. 3. Activities may adversely affect the significant values of wetlands and outstanding freshwater bodies. 4. ~~3.~~ Integrating the management of subdivision, use and development activities on land with the potential effects on water quality.
Coastal Environment	~~1. The NZCPS requires the avoidance of adverse effects on certain indigenous coastal biodiversity, and outstanding natural character and landscapes in the coastal environment. These areas are widespread on the West Coast as it has a relatively large proportion of unmodified coastal environment. However, there is also a need to enable appropriate future employment, growth and development, to provide for the Region's economic, social and cultural wellbeing.~~ 1. Protecting the values of the coastal environment whilst enabling sustainable use and development, to provide for the region's economic, social and cultural wellbeing. 2. Enabling appropriate subdivision, use, and development of the coastal environment while reducing the risk of harm to people, property, and infrastructure from natural hazards in the coastal environment.
Air Quality	1. In urban areas during winter time, emissions of particulate matter can potentially affect people's health. It is critical that people are able to keep warm in their homes while winter time particulate matter emissions are reduced to meet the NESAQ. 2. Allowing point source discharges to air while managing adverse effects of those discharges on air quality and other values.

Natural Hazards	1. Natural hazards, particularly flooding and earthquake, have the potential to create significant risk to human life, property, community and economic wellbeing on the West Coast. 2. Increasing public awareness of, and planning for, natural hazards is required for communities to become more resilient. 3. Subdivision, use and development can contribute to natural hazard risk.

~~For e~~Each of ~~these~~ the resource management topic chapters (3-11) ~~issues, the RPS~~ sets out:

- The background to the issues;
- The objectives to be achieved in response to the issues;
- The policies ~~that will meet those~~ to achieve each objectives (and an explanation of those policies);
- The principal reasons for adopting the objectives, policies and methods of implementation; and
- The environmental results anticipated from the implementation of those policies and objectives.

In formulating the objectives, policies and methods of this RPS the WCRC has recognised the fundamental purpose of the RMA, to promote the sustainable management of the natural and physical resources of the region. In preparing this RPS, Council recognises the role of resource use and development, as well as protection, in the West Coast region and their contribution to enabling people and communities to provide for their economic, social and cultural wellbeing, while at the same time ensuring that any adverse effects on the environment are avoided, remedied or mitigated.

For each of the Regionally Significant Issues identified, the objectives, policies and methods have been developed as a generally high level principles approach. Much of the specific detail relating to their implementation is included within the regional and district plans.

The significant resource management issues may address the use, development or protection of resources depending on the focus or relevance to the West Coast of the issue in question. The objectives, policies and methods which follow the issues then establish the framework for its sustainable management.

The objectives have been formulated to focus on the long-term outcomes for the region ~~sought in relation to the issues identified~~. These are high level goals to be aimed for. The WCRC recognises that some of these objectives may not be fully achieved over the life of this RPS. However, the objectives do establish an overall outcome that is to be worked towards.

Policies are statements of a general course of action in working towards the achievement of the objectives. They may deal with resource use, development or protection, or all of these. Some policies in the RPS are broad in their application, reflecting the high level principles approach adopted, while others are more specific. All policies (and related objectives and methods) when read as a whole are designed to promote the sustainable management of resources.

The methods of implementation listed in the RPS are the specific actions to implement the policies.

Issues, objectives, policies or methods in this RPS may refer to avoiding, remedying or mitigating adverse effects on the environment. The Council considers that in carrying out its functions under the RMA, it must consider any adverse effects of activities on the environment, including minor effects, in line with the requirements of section 5(2)(a), (b)

and (c). However, adverse effects will be addressed by the Council in different ways to reflect the different nature and scale of effects. It may not always be possible or necessary to completely avoid, remedy or mitigate all adverse effects. Some effects will be so small as to be insignificant or inconsequential and can be ignored. Other effects may be more than minor but may not be able to be avoided, remedied or mitigated fully, and positive effects and benefits may outweigh any adverse effects. In some instances, it may be acceptable to allow residual effects to be addressed by biodiversity offset or environmental compensation proposals which provide an environmental benefit outside the application site. The degree and significance of effects, including the potential for cumulative effects, will need to be considered in the circumstances of each case, and assessed against the relevant RPS and plan provisions.

Other matters

The RMA, through sections 6 and 7, sets out a number of matters of national importance (section 6) that must be recognised and provided for, as well as having particular regard to other provisions (section 7). Not all of these are considered to be regionally significant issues for the West Coast, ~~and therefore do not warrant having specific objectives and policies within this RPS. H~~however, where relevant they are recognised, provided for and given regard to as necessary to achieve the RMA and ensure integrated management of natural and physical resources in the region. ~~generally throughout this document, r~~Regional and district plans provide more specific provisions to address these matters where required. ~~and in the resource consenting process.~~

3. Resource Management Issues of Significance to Poutini Ngāi Tahu

POUTINI NGĀI TAHU AND THE MANAGEMENT OF NATURAL RESOURCES

There is a distinctive cultural context to the way that Poutini Ngāi Tahu think about and respond to resource management issues in their takiwā. This cultural context is a reflection of:

- The connection between the natural world and Poutini Ngāi Tahu through whakapapa, where people are descended from Papatūānuku, the ancestral earth mother and Ranginui the ancestral sky father.
- A body of knowledge about the land, water and resources that was developed over generations of collective Poutini Ngāi Tahu experience in Te Waipounamu;
- The relationship between tangata whenua and the environment, and a worldview that sees people as part of the world around them and not masters of it;
- An understanding that the care of natural resources is an act of whanaungatanga (caring for the family) which recognises that people are dependent on resources and have reciprocal obligations to care for, conserve and protect them.; and
- The desire to protect key cultural values such as mauri and mahinga kai that are critical to identity, sense of place and cultural well-being.

A brief overview of key values, principles and practices is provided here:

1. Kaitiakitanga

Traditionally, kaitiaki were the non-human guardians of the environment (e.g. birds, animals, fish and reptiles) which, in effect, communicated the relative health and vitality of their respective environments to local tohunga and rangatira who were responsible for interpreting the 'signs' and making decisions accordingly. Poutini Ngāi Tahu consider kaitiakitanga as a much wider cultural concept than pure guardianship. To Poutini Ngāi Tahu, kaitiakitanga entails an active exercise of responsibility in a manner beneficial to the resource. Kaitiaki, the people who practice kaitiakitanga, do so because they hold the authority and responsibility to do so. To Poutini Ngāi Tahu, kaitiakitanga is not a passive custodianship and they are required to play an active kaitiaki role in the day to day management of natural resources.

Section 7(a) of the RMA requires the Council to have particular regard to kaitiakitanga. The outcomes of kaitiakitanga are likely to include the management of natural resources in a way that ensures that all taonga (which includes all natural resources) are available for future generations.

2. Rangatiratanga

Rangatiratanga involves having the mana or authority to exercise the relationship of Poutini Ngāi Tahu and their culture and traditions with the natural world. Article II of the Treaty of Waitangi and sections 6(e) and 8 of the RMA are concerned with this same relationship.

Traditionally, rangatiratanga incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom. Today, it is similar to the functions of the WCRC and is expressed through the relationship between Poutini Ngāi Tahu and the Council. A practical expression of rangatiratanga is the active involvement of Poutini Ngāi Tahu in resource management decision-making processes. The Regional Council has long recognised the need to consult with Poutini Ngāi Tahu - and to provide opportunities for their active involvement in resource management

processes. The two rūnanga have been invited to appoint members to the Council's Resource Management Committee and this arrangement has worked well for many years. Poutini Ngāi Tahu will continue to have a voice in all resource management decision making.

3. Mauri

For Poutini Ngāi Tahu, mauri is the life force that comes from wairua – the spirit, or source of existence and all life. Mauri is the life force in the physical world. As a life principle, mauri implies health and spirit. In the environment, mauri can be used to describe the intrinsic values of all resources and of the total ecosystem. In the natural environment, mauri is of paramount importance to the wellbeing of the people. Mauri can be harmed by the actions of humans but is unaffected by natural processes such as natural disasters.

The preservation of the mauri of all natural resources is paramount to Poutini Ngāi Tahu to ensure that natural and physical resources may be used sustainably by present and future generations. The overall purpose of resource management for Poutini Ngāi Tahu is the maintenance of the mauri of natural and physical resources, and to enhance mauri where it has been degraded.

There are indicators within the environment, both physical and spiritual, that Poutini Ngāi Tahu use to measure mauri. These include the presence of healthy mahinga kai and healthy flora and fauna, the presence of resources fit for cultural use, and the aesthetic qualities of resources such as the visibility of important landmarks. Spiritual indicators are those from the atua (gods), which can take many forms and are recalled in the kōrero pūrūkau (stories) of whānau and hapū.

4. Mahinga kai

Mahinga kai refers to Poutini Ngāi Tahu cultural values in association with food and other natural resources and includes such resources as those used for weaving, carving, and rongoā Māori or Māori medicine. It also includes the places where such resources are gathered such as rivers and coastal waters. The term mahinga kai encompasses social and educational elements as well as the process of gathering cultural materials/natural resources. It includes the way such resources are gathered, the place where they are gathered from, and the actual resource itself.

5. Ki Uta Ki Tai

The principle of Ki Uta Ki Tai ("the mountains to the sea") reflects the holistic nature of traditional resource management, particularly the interdependent nature and function of the various elements of the environment within a catchment. This principle requires an integrated management approach across the land and water boundary.

6. Wāhi tapu

Wāhi tapu are places of particular significance that have been imbued with an element of sacredness or restriction (tapu) following a certain event or circumstance. Wāhi tapu sites are treated according to tikanga and kawa that seek to ensure that the tapu nature of those sites is respected. Wāhi tapu include kōiwi (human remains), urupā (burial sites), waiwhakaheke tūpāpaku (water burial sites), historic pa, buried whakairo (carvings) tuhituhi o neherā (archaeological and rock art sites), tohu ("markers" such as landmarks, mountains, mountain ranges, and some trees), ana (caves), and tauranga waka (canoe landing sites).

7. Taonga

All natural resources – air, land, water and indigenous ~~biodiversity~~ biological diversity are taonga. Taonga are treasures, things highly prized and important to Poutini Ngāi Tahu,

derived from the Atua (Gods) and left by the tīpuna (ancestors) to provide and sustain life. Taonga include sites and resources such as wāhi tapu, tauranga waka, and mahinga mātaitai, other sites for gathering food and cultural resources, tribally significant landforms, and features. The term cultural landscapes is an inclusive expression for taonga sites and areas.

Pounamu is a taonga of utmost importance to Poutini Ngāi Tahu/Ngāi Tahu culture and tradition, and the two papatipu rūnanga have each prepared a pounamu management plan to manage appropriate use and protection of pounamu. Councils must have regard to these management plans when preparing regional and district plans, and when considering resource use activities that might affect pounamu resources.

The significant resource management issues for Poutini Ngāi Tahu on the West Coast are:

1. Expression of rangitiratanga through active involvement in resource management decision-making.
2. The need for integrated environmental management of and between all resources, reflecting ki uta ki tai.
3. It is important to Poutini Ngāi Tahu that the life-supporting capacity of the environment is safeguarded, and this capacity is restored where it has been impaired by use and development of resources.
4. The need to use resources, including mahinga kai resources, to sustain the community.
5. The obligation to protect wāhi tapu and other taonga for future generations.
6. The wise and efficient allocation and use of non-mineral resources within their capacity to regenerate, having regard to the effects of the use.

Note: Some of these issues are dealt with in other chapters of this RPS.

OBJECTIVES

1. To take into account the principles of the Treaty of Waitangi in the exercise of functions and powers under the RMA.

2. Recognise and provide for the relationship of Poutini Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga within the West Coast Region.

POLICIES

1. Acting cooperatively and in good faith, the Regional and District Councils will continue to provide opportunities for active involvement of tangata whenua in resource management processes under the RMA.

2. In consultation with Poutini Ngāi Tahu, provide for the protection of ancestral land, wāhi tapu, water, sites, and other taonga from the adverse effects of activities, in a manner which is consistent with the purpose of the RMA.

3. The special relationship that Poutini Ngāi Tahu have with te taiao (the environment), and their economic, cultural, and spiritual values, including their role as kaitiaki, will be given particular consideration in resource management decisions and practices.

4. The aspirations of Poutini Ngāi Tahu concerning the development of papakāinga housing on Poutini Ngāi Tahu land will be recognised and supported.

EXPLANATION TO THE POLICIES

Policy 1 is intended to reflect Treaty principles and gives effect to section 8 of the RMA. The term "principles of the Treaty of Waitangi" originates from the Treaty of Waitangi Act 1975. The Court of Appeal has emphasised that it is the principles of the Treaty which are to be applied, not the literal words. The Privy Council characterised the Treaty principles as a dynamic force in that they reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty. In this context the Regional and District Councils' responsibilities are to take into account the principles of the Treaty as defined by the Act and clarified by the courts.

The ways in which active involvement should be provided will need to be determined in consultation between the Councils and Poutini Ngāi Tahu. As well as consultation on specific matters, active involvement could be implemented by methods including, but not limited to, information sharing, development of Mana Whakahono a Rohe iwi participation arrangements or other relationship agreements, support for Poutini Ngāi Tahu environmental initiatives, and representation on hearing panels.

The Regional and District Councils will endeavour to:

a) Ensure that their understanding of the interpretation of the principles of the Treaty is consistent with the current interpretation of the Courts;

b) Take into account the following principles:

- act reasonably and in good faith;
- make informed decisions;
- consider whether active steps are needed to protect Māori interests;
- not take actions which would prevent the redress of claims; and
- recognise that the government must be able to govern.

Policy 2 gives effect to section 6(e) of the RMA by recognising that some resources, places or things are of special significance to Māori. These include wāhi tapu sites, archaeological sites, other historic sites or places and natural landscapes or features of cultural or traditional importance to Māori. Natural landscapes may have cultural values such as pā, kāinga, ara tawhito (traditional trails), pounamu, mahinga kai, and wāhi ingoa (place names). The traditions of Ngāi Tahu tūpuna (ancestors) are embedded in the landscape. The policies aim to protect such sites and values from the adverse effects of resource use and development as far as is practicable.

Policy 3: Policy 3 gives effect to section 6(e) of the RMA, and also to Section 7(a), which requires that particular regard be given to kaitiakitanga. The role of Poutini Ngāi Tahu as kaitiaki is an integral part of the special relationship Poutini Ngāi Tahu have with their land, and all living things. Poutini Ngāi Tahu already have input into identifying and assessing adverse effects on their economic, cultural, and spiritual values through RMA planning and consent processes. Further consultation may be undertaken in the future between the Regional and District Councils and Poutini Ngāi Tahu, about how their kaitiakitanga role can be enabled.

Policy 4 also gives effect to section 6(e) of the RMA by seeking to ensure that tangata whenua face no unnecessary barriers in the development of ~~their~~ Poutini Ngāi Tahu lands.

~~**RELATED POLICIES**~~

~~Chapter 4 Policy 5~~

~~All other policies in this RPS.~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. Provide for consultation with Poutini Ngāi Tahu in a way which is timely, practicable, meaningful and continuous as provided by the Te Rūnanga o Ngāi Tahu Act 1996, and in accordance with Poutini Ngāi Tahu tikanga.

2. Councils must consult with Poutini Ngāi Tahu about the appropriate form of their involvement in:

   a) Plan development, and resource consent processes;

   b) Other council RMA decision-making processes; and

   c) Enabling the kaitiakitanga role of Poutini Ngāi Tahu.

3. Recognise Poutini Ngāi Tahu initiatives to articulate their resource management values and methods through iwi management plans.

4. Inform affected Poutini Ngāi Tahu Rūnanga of resource consent applications as they are received.

5. Add conditions to resource consents incorporating iwi protocols to protect ancestral lands, water, sites, wāhi tapu and other taonga where appropriate to avoid, remedy or mitigate adverse effects on iwi values.

6. In preparing regional and district policies and plans, and when making decisions relating to resource consents, have regard to Statutory Acknowledgements Areas, and mataitai reserves, and take into account iwi management plans.

7. District councils must consult with Poutini Ngāi Tahu to determine how papakāinga housing can be provided for in the District Plans.

PRINCIPAL REASONS FOR ADOPTING THE OBJECTIVES, POLICIES AND METHODS

All those exercising functions and powers under the RMA are required by section 8 to take into account the principles of the Treaty of Waitangi. These provisions reflect current practice which is working well, and will enable the Regional Council to continue to carry out its obligation under the RMA to provide for tangata whenua active involvement in the management of the region's natural and physical resources and to recognise and provide for the relationship of Poutini Ngāi Tahu, their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. This is important to sustaining Poutini Ngāi Tahu identity and wellbeing.

ANTICIPATED ENVIRONMENTAL RESULTS

1. Wāhi tapu and other taonga are recognised and provided for when managing the adverse effects of the use and development of natural and physical resources.

2. Helping to maintain the relationship of Poutini Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga within the West Coast Region.

3. Recognition of the principles of the Treaty of Waitangi, and making resource management decisions which take these principles into account.

4. Resilient and Sustainable Communities

BACKGROUND TO THE ISSUES

To plan for the future we must first examine and learn from our past. Prior to European settlement and the discovery of gold circa 1864, the West Coast was home to Poutini Ngāi Tahu. Reciprocity or balanced exchange encompassed all areas of general trade - timber, pounamu, mahinga kai, art and weaponry, and land access agreements, internally and inter-tribally. Post 1864 the West Coast had its economic roots in the mining industry – both gold and coal. Timber, fisheries and agriculture also played a big role.

Due to a historical reliance on the export of commodities from the region, our towns and communities' populations have fluctuated - dramatically in some cases. When employment declines people often move away, and communities can lose their sense of identity. Less money is available and towns and settlements can become run down, losing their amenity values.

To be resilient and sustainable, our communities require a skilled workforce in more consistent and reliable employment, a decent household income and local access to modern health, education and recreation services. Our regional community cannot grow and prosper without new economic development that is driven by infrastructure, innovation, capital, international connections and a skilled workforce. Without this, there is a very real risk that this region will start to experience population decline and the loss of core services.

The emergence of the dairy and tourism sectors have provided income sources additional to the mineral extraction industries. But the future of the region cannot rely on these three sectors alone. Further diversification of the West Coast economy is crucial - to counteract fluctuations caused by external influences such as the commodities market, exchange rates and the needs and wants of our export and tourism markets. The dispersed nature of the West Coast means that even small to medium-sized investment can have significant positive impacts. The West Coast needs to present itself as an attractive place to live, learn, innovate and do business, inviting diversification of the key industries and providing alternatives from, and added value to, the cornerstones of the traditional earners. Achieving diversification can be assisted by enabling reliable access to the natural and physical resources of the region, promoting an availability of quality living environments, and ensuring sound, consistent and reliable regulatory processes.

The high quality living environment on the West Coast is made up of many things that our communities value. The long proud history of the West Coast remains visible in the numerous historic buildings, places, monuments and landscapes, including our rivers, lakes and coastal environments. It is from these resources that a sense of place and identity are derived. To ensure our communities prosper, we must protect the significant values of these resources as far as practicably possible whilst encouraging opportunities for growth and development that do not undermine those values.

Poor quality regulation and high compliance costs can act as a brake on business growth, investment and job creation. Councils need to be mindful of the impact of regulation on the economy – good quality regulation can be used to stimulate economic growth. Consistency in interpreting and implementing the law has been identified as a desirable yet problematic feature of any regulatory environment. Businesses require a reasonable degree of certainty to operate with confidence, especially when it comes to larger investments. Consistency between Councils with approaches that are timely and effects based, and provide both certainty as well as flexibility where it is required, is critically important for business confidence.

Each of the Councils recognise the importance of economic growth and development for their districts and have taken steps, individually and collectively, to raise the profile of this through the development of district and regional economic strategies. While this RPS does not seek to drive economic development of itself, it can establish the importance of developing an enabling RMA framework in our region, within which growth is welcomed, by ensuring that the regional and district plans enable development whilst also achieving environmental outcomes.

The significant issues in relation to resilient and sustainable communities on the West Coast are:

1. The West Coast is at risk of experiencing population decline. It is critical that our planning documents address this risk by enabling the appropriate use and development of natural and physical resources whilst promoting their sustainable management.

2. West Coast industries are traditionally susceptible to fluctuating cycles and global commodity prices which can affect the social and economic wellbeing of our communities. Councils' management of natural and physical resources needs to contribute, where possible, to making our communities more resilient and sustainable in the long term. This includes ensuring that communities retain their sense of place, identity, heritage and amenity values.

3. The implementation of the RMA by local authorities can support economic growth and creation of employment in the region; whilst also avoiding, remedying or mitigating any associated adverse effects.

OBJECTIVES

1. To enable sustainable and resilient communities on the West Coast.

2. This ~~To ensure the~~ region's planning framework enables ~~appropriate~~ existing and new economic use, development and employment opportunities while ensuring sustainable environmental outcomes are achieved.~~, including those specified in the Anticipated Environmental Results in this RPS.~~

3. To ensure that the West Coast has physical environments that effectively integrate subdivision, use and development with the natural environment, and which have a sense of place, identity and a range of lifestyle and employment options.

4. The significant values of historic heritage are appropriately managed to contribute to the economic, social and cultural wellbeing of the West Coast.

5. To recognise and provide for the relationships of Poutini Ngāi Tahu with cultural landscapes.

POLICIES

1. To sustainably manage the West Coast's natural and physical resources in a way that enables a range of existing and new economic activities to occur, including activities likely to provide substantial employment that benefits the long term sustainability of the region's communities.

2. Regional and district plans must:

   a) Contain regulation that is the most effective and efficient way of achieving resource management objective(s), taking into account the costs, benefits and risks;

   b) Be as consistent as possible;

c) Be as simple as possible;

d) Use or support good management practices;

e) Minimise compliance costs where possible;

f) Enable subdivision, use and development that gives effect to relevant national and regional policy direction; and

g) Focus on effects and, where suitable, use performance standards.

3. To consider the transfer and delegation of regional and district council functions (as provided by sections 33 and 34 of the RMA) where it would result in increased efficiencies and/or effectiveness in achieving resource management objectives, using shared services principles.

4. To promote:

   a) The sustainable management of urban areas and small settlements, along with the maintenance and enhancement of amenity values in these places; and

   b) The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers where it contributes to the economic, social and cultural wellbeing of people and communities.

5. Promote the sustainable management of historic heritage, through:

   a) Identification of significant values associated with historic heritage;

   b) Ensuring that subdivision, use and development does not detract from the significant values of historic heritage; and

   c) Encouraging the adaptive reuse of historic heritage where appropriate and practicable.

6. Cultural landscapes are appropriately identified, and effects of activities are managed in a way that provides for the cultural relationships of Poutini Ngāi Tahu.

EXPLANATION TO THE POLICIES

The implementation of Policy 1 supports diversification of the economy in order to create communities that are both more resilient and sustainable. The importance of managing natural and physical resources in a sustainable way is acknowledged, recognising that it is through the protection, use or development of those resources that our communities' economic and social wellbeing will be provided for in the future. Enabling opportunities for a wide range of industries to establish in the region will provide a variety of employment options assisting with reducing the potential market fluctuations on individual industry sectors. Enabling growth will also provide incentives for businesses to develop in the region, as well as encouraging people to reside on the West Coast.

Policy 2 aims to provide a regulatory framework that promotes diversity, innovation, and encourages businesses to invest in the region and grow. The policy seeks to make the regional and district plans as 'business friendly' as possible (while still maintaining environmental standards). Consistency over like matters is efficient for Councils, businesses, developers, communities and individuals. It can lead to smarter shared services, and ensuring that regulation is effective and not excessively costly.

Adopting or supporting good/best practice through other tools such as performance standards or codes of practice should avoid regulation from becoming out of date as well as promoting ownership of environmental performance and reduce compliance costs.

Enabling subdivision, use and development in regional and district plans can be achieved in a number of ways. Most obviously this is through activity status (for example permitted

or controlled activities), but there are other tools such as limited notification of resource consent applications and setting out resource consent application information requirements.

Effects of activities should be the focus of plans. This encourages innovation and avoids unnecessarily restricting uses and developments that are able to meet environmental outcomes. There will be circumstances whereby specific constraints are justified. However, plans should provide the ability to innovate and adapt where possible.

Policy 3 seeks to achieve efficiency and consistency in the management of Council functions particularly where one Council may have expertise.

The implementation of Policy 4(a) incorporates concepts of aesthetically pleasing, stimulating and vibrant urban areas and smaller settlements. It also seeks to promote a range of amenity values to present choices to meet the diverse needs of residents throughout the region. It is important to not only apply this in the recognised urban towns but the smaller settlements with which people feel a strong connection to, and identity with. In reference to Policy 4(b), it is important that public access to these natural environments is maintained where possible (except, for example, where it is unsafe) so that people and communities can provide for their wellbeing.

Policy 5 promotes the sustainable management of historic heritage. This requires regional and district plans to include schedules of significant historic heritage; and that the effects of any subdivision, use and development on those identified values are appropriately recognised and managed. This approach also encourages consideration to be given to the economic viability of proposals involving historic heritage.

Policy 6 recognises that the traditions of Poutini Ngāi Tahu tūpuna (ancestors) are embedded in the landscape. Indicators of these intergenerational landscapes include pā and kainga, ara tawhito (traditional trails), pounamu, mahinga kai, wāhi tapu and wāhi ingoa (place names). Protection of Poutini Ngāi Tahu cultural landscapes from inappropriate use, development and subdivision is important to Poutini Ngāi Tahu culture, identity and wellbeing, and consultation with Poutini Ngāi Tahu is required to determine appropriate means of addressing this in particular locations.

~~**RELATED POLICIES**~~

~~All other policies in this RPS.~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. The Regional and District Councils, when reviewing their plans, considering options for plan changes, or replacement of an entire plan, must:
    a) Consider:
        i) Removing unnecessary regulation;
        ii) Opportunities for streamlined, efficient processes;
        iii) Increasing flexibility of approach, certainty of provisions, and consistency of process; and
        iv) Taking a risk based approach;

b) Consider the benefits, costs and risks of combining planning documents and joint plan changes, in part or in total, including on specific resources or geographical areas; and

c) Consider the use of good management practices (including environmental best practice guidelines, and codes of practice).

2. Undertake joint consent processes where appropriate.

3. Assess and identify in regional and district plans significant historic heritage according to criteria based on the following matters: (a) Historic (b) Cultural (c) Architectural (d) Archaeological (e) Technological (f) Scientific (g) Social (h) Spiritual (i) Traditional (j) Contextual (k) Aesthetic.

4. Use regional and district plans, and the resource consent process, to recognise and protect significant historic heritage from inappropriate subdivision, use and development.

5. ~~3.~~ Use regional and district plans, and the resource consent process, ~~to identify significant heritage values and~~ to recognise the contribution of public access ~~and significant heritage values~~ to the economic, social and cultural wellbeing of people and communities, and to manage adverse effects on ~~these~~ this and other amenity values.

6. ~~4.~~ Regional and district councils will consult with Poutini Ngāi Tahu about appropriate provision for cultural landscapes in regional and district plans.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

The objectives, polices and methods of implementation have been adopted to enhance the quality of life for the residents of the West Coast by creating sustainable and resilient communities that have vibrant, safe and cohesive town centres with a range of residential and business opportunities. Providing a region that is welcoming to business and that will enable growth, diversification and innovation within a framework of sustainable management is one step towards achieving this leading to greater community wellbeing. Promoting the ongoing viability of existing town centres by creating a sense of place and identity with sufficient levels of service is vital to retaining and growing our population into the future. The intent is for development that is compatible with surrounding uses and values, is served by the appropriate level of social infrastructure and is appropriate within the context of the surrounding environment. Good planning (and urban design) can improve West Coasters' social and cultural wellbeing, strengthen our sense of place, enhance our ability to access services and connect with our wider community. This includes, for example, provision for protecting significant heritage values, and maintaining public access to natural resources.

ANTICIPATED ENVIRONMENTAL RESULTS

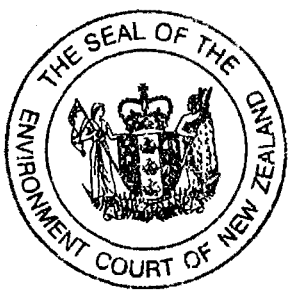
1. Improved coordination and collaboration with resource management and related functions between the Regional and District Councils, using shared services principles.

2. Simplified application of regulation.

3. The amenity values of urban areas and small settlements, as well as public access to the coastal marine area, lakes and rivers, are maintained and enhanced, where possible.

4. The significant values of historic heritage are protected as much as practicably possible, and contribute to the economic, social and cultural wellbeing of the West Coast.

5. The traditional and ongoing relationships of Poutini Ngāi Tahu with cultural landscapes are sustained for the benefit of future generations.



5. Use and Development of Resources

BACKGROUND TO THE ISSUES

The sustainable management of natural and physical resources means managing the use, development and protection of natural resources in a way or at a rate that enables people and communities to provide for their economic, social and cultural wellbeing while meeting the requirements of section 5(2)(a), (b) and (c) of the RMA.

The state and availability of natural resources is relatively more important for the West Coast's economy than for many other regions in New Zealand. The unique geological and climatic conditions of the region have resulted in creating a landscape unlike any other in New Zealand. This environment not only provides opportunity for economic growth, but is also treasured by its many visitors as well as those who live here. Hence, the West Coast is extremely reliant on the natural and physical resources of the region for its economic, social and cultural wellbeing.

Traditionally mining (coal and gold) has been the primary employer in the region. Farming ~~is~~ also a significant contributor, particularly through the dairy industry. In addition to direct farm income from milk production, the added value by the processing of the product is a significant contributor to regional employment and income. Many engineering and other support businesses exist because the mining and farming activity, and related value-added activities, creates the demand for their products and services. Tourism has also had a long history on the West Coast, starting in the mid-1800's with local guiding of early European explorers by Poutini Ngāi Tahu. The tourism sector continues to play an increasingly important role in the West Coast economy. The region is rich in natural landscapes, coastal environments, rivers and lakes, and with world renowned attractions such as World Heritage Parks, the region is gaining traction in international markets. The West Coast has a high rate of tourism growth.

Aside from these three mainstays of the economy, other industries based on natural resources include forestry, fishing (including for whitebait), extraction of other minerals such as ironsands and garnets, horticulture, sphagnum moss harvesting, and food production as well as a thriving arts industry using pounamu, gold, wood, stone and copper. Aggregate extraction and production is important for the construction, operation, and maintenance and upgrading of infrastructure and for broader economic activity across the West Coast within the building and construction sectors. The manufacturing and construction sectors, through heavy and light engineering industries, have developed to service these primary sectors and now play an important role in the regional economy itself. Future growth in the region is likely to continue to be based around the use and development of natural resources in the first instance, with supporting industries developing alongside these, followed by other sectors as demand determines or sectors diversify.

The West Coast has a significant proportion of public land administered by the Department of Conservation. The use and protection of public conservation land~~, for example through national parks or world heritage areas, is a form of resource use that~~ is central to the long term sustainability of West Coast communities. ~~New d~~Development of new tourism related infrastructure within public conservation land ~~the conservation estate~~ will provide incentives for growth and investment in the wider region. There are also a number of other activities that occur on land administered by the Department including grazing licences, mining and sphagnum moss harvesting.

The Department issues concessions under the Conservation Act, or access arrangements under the Crown Minerals Act in the case of mining, for ~~these~~ activities to occur. While this includes consideration of environmental effects under the Conservation Act, regional and district council functions under the RMA still apply on public conservation land. ~~and the environmental effects are considered through this process. This indicates that~~ wWhile

large portions of land are not freehold in the region, appropriate use and development can occur, generating growth opportunities while still protecting the values of natural resources and the wider environment. ~~Recognition of the Department of Conservation as a major landowner, and contributor to economic development, is extremely important for the future of the West Coast.~~

Some land and resource use activities may be incompatible with others, for example mining near residential areas. Planning for and managing ~~for these~~ potentially conflicting activities ~~is~~ are essential to ensure that the cultural, economic and social wellbeing of communities is looked after. There are also instances where mutually beneficial outcomes can be achieved, for example, where ecological values are protected whilst development occurs. Where these situations arise on public conservation land, they will not only be managed by regional and district plans, but also through the Department's Conservation Management Strategy.

The reliance on the natural resources of the region requires that the environment remain in a healthy functioning state to provide for this. People choose to invest, do business, live and recreate on the West Coast due to the unique and special nature of the region and its natural resources. On the West Coast, most conflicts arise from the desire of some parties to use resources and the desire of others to protect them. Use, development and protection of the region's natural and physical resources ~~is~~ are therefore a significant resource management issues for the West Coast.

The significant issues in relation to the use and development of resources on the West Coast are:

1. Recognising the central role of resource use and development on the West Coast.

2. Managing the conflicts arising from the use, development and protection of natural and physical resources.

OBJECTIVES

1. To recognise the role of resource use and development on the West Coast and its contribution to enabling people and communities to provide for their social, economic and cultural wellbeing.

~~2. To recognise that the use and development of natural resources may be incompatible with other land uses, in some situations and locations.~~

2. Incompatible use and development of natural and physical resources are managed to avoid or minimise conflict.

POLICIES

1. ~~Recognition will be given in resource management processes to the role of~~ Enabling sustainable resource use and development on the West Coast ~~and its contribution~~ to contribute to ~~enabling people and communities to provide for their~~ the economic, social and cultural wellbeing of the region's people and communities.

2. To recognise that natural and physical resources important for the West Coast's economy need to be protected from significant negative impacts of new subdivision, use and development ~~with particular emphasis on both~~ by:

   a) Avoiding, remedying or mitigating reverse sensitivity effects arising from new activities ~~being inappropriately~~ located near existing:

      i) Primary production activities;

      ii) Industrial and commercial activities;

iii) Minerals extraction*;

iv) Significant tourism infrastructure; ~~and~~

v) ~~current and planned~~ Regionally significant infrastructure;~~**~~ and

b) ~~Generally avoiding~~ Managing new activities ~~precluding~~ to retain the potential future use of:

i) Land with significant mineral resources; or

ii) Land which is likely to be needed for regionally significant infrastructure.

*Minerals extraction includes aggregates and other mining activities.

~~**The term "planned regionally significant infrastructure" in Policy 2(a)(v) refers to infrastructure and/or sites identified by designations, Asset Management Plans, or included in other plans or strategies adopted by the West Coast Councils.~~

EXPLANATION TO THE POLICIES

The implementation of Policy 1 recognises the importance of the role of resource use and development on the West Coast and its contribution to the social, economic and cultural wellbeing of people and communities. Use and development of resources may be of regional and national importance providing benefits to people and communities on the West Coast and to New Zealand as a whole. The use and development of resources must be undertaken in a way which promotes the sustainable management purpose of the RMA. This will mean enabling people and communities to provide for their economic, social and cultural wellbeing and for their health and safety while meeting the requirements of section 5(2)(a), (b) and (c) of the RMA to meet the reasonably foreseeable needs of future generations, safeguard life-supporting capacity of resources, and avoiding, remedying or mitigating adverse effects on the environment.

Policy 2 aims to create a framework for getting the right development in the right place at the right time. It is a strategic and proactive policy, designed to give effect to section 30(1)(g)(b) of the RMA which gives regional councils the function of strategically integrating infrastructure with land use. The policy seeks to ensure that there is a planned and coordinated approach to developing the built environment. Well-designed development also provides for the wellbeing of people and communities now and into the future. It also recognises that some types of development are incompatible when in close proximity to each other and that some activities can only occur in certain places because of the functional needs of that activity. Should other development occur there, then this can lead to a lost opportunity for a higher value use of that land.

~~**RELATED POLICIES**~~

~~All other policies in this RPS.~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. Provide for the sustainable use and development of natural resources through regional and district plan ~~rules~~ provisions and resource consents.

2. Encourage discussion and co-operation between existing resource users (including land used for primary production) and those proposing new use and development

of natural and physical resources (including the provision of infrastructure), to resolve conflicts and achieve integration of these activities.

Note: Method 2 relates to Policy ~~5~~ 4 in Chapter 6 Regionally Significant Infrastructure.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

The objectives, policies and methods of implementation have been adopted to ensure that the role of sustainable resource use and development in enabling people and communities to provide for their economic, social and cultural wellbeing is recognised in resource management decision making processes. Such recognition is a core part of the sustainable management of resources and our communities.

Land, and the natural resources that can be derived from this land, is one of the most important assets that the West Coast has. Recognition of this, and the conflicts that can arise through poor decision making, need to be taken into account through both regional and district plans and resource consenting processes.

ANTICIPATED ENVIRONMENTAL RESULTS

1. Resource use and development is able to occur in accordance with the sustainable management purpose of the RMA.

2. The ability to access or use significant natural resources is not compromised by inappropriate subdivision, use or development.

6. Regionally Significant Infrastructure (RSI)

BACKGROUND TO THE ISSUES

There is a need to recognise the social, economic, and environmental benefits that accrue locally, regionally and nationally from the establishment and continued operation of RSI. Energy enables people to provide for their wellbeing, and is a key facet of the regional (and national) economy. Transport services provide vital access and freight links to and within the region. Tele and radio communication networks provide an important everyday and emergency facility to people and businesses. Municipal water, sewage and stormwater systems enable communities to maintain a healthy standard of living. The region's flood protection schemes protect individual and community assets, productive capability, community safety, and other infrastructure networks.

The ambition of West Coast communities is to develop world class infrastructure, including high speed broadband and enhanced cellular coverage, and to use this infrastructure to enable new diversified economic development and employment opportunities on the West Coast. The RMA processes that are required for this infrastructure therefore need to be simple, quick and low cost.

Section 30(1)(gb) of the RMA gives regional councils the functions of:

"...the strategic integration of infrastructure with land use through objectives, policies, and methods:..."

The government has also acknowledged that renewable electricity generation and the National Grid are matters of national importance, and developed the following policies and regulations:

- National Policy Statement on Electricity Transmission 2008 (NPSET);
- National Environmental Standard for Electricity Transmission Activities 2009 (NESETA); and
- National Policy Statement for Renewable Electricity Generation 2011 (NPSREG).

For the purposes of Chapter 6 of the RPS, electricity generation, transmission and distribution infrastructure that is recognised as nationally significant is also identified as regionally significant in the Glossary. Relevant provisions of the national electricity policies are incorporated into regional plans, particularly the Regional Land and Water Plan, which also provides for other significant infrastructure.

The NPSREG and NPSET requires that some matters be addressed in RPS's. The potential for certain activities to disrupt, or risk disrupting, the safe and efficient operation of RSI needs to be managed. Additionally, practical constraints associated with RSI can limit their ability to avoid, remedy or mitigate adverse effects. For instance, infrastructure facilities are often located on public conservation land, as hydro electricity generation structures need to locate where the water resources are. The positive and negative impacts, and limitations of suitable sites, are some of the matters that need to be weighed up during the consenting process.

~~In respect of negative impacts, it is recognised that RSI can have adverse environmental effects depending on its scale and location, amongst other factors. Except for offsetting, this Chapter does not have objectives or policies to generally avoid, remedy or mitigate adverse environmental effects of RSI as these are addressed in regional and district plans, and elsewhere in this RPS.~~

RSI can have adverse environmental effects depending on its scale and location, amongst other factors. This Chapter generally does not contain provisions for managing the adverse effects of RSI on the environment. There are two exceptions. One is a policy for

the National Grid. The other is a policy recognising the scope for offsets and compensation for non-biodiversity adverse effects that cannot be avoided, remedied or mitigated. All relevant provisions in this RPS must be considered in managing the adverse effects of RSI activities.

For RSI activities in the coastal environment, Chapters 6 and 9 must be considered.

The significant issues in relation to RSI for the West Coast are:

~~1. Recognising the benefits of, and providing for, the establishment and continued operation of regionally and nationally significant infrastructure particularly where it crosses district and/or regional boundaries.~~

1. Resilient RSI is essential for the social, economic and cultural wellbeing of the West Coast.

2. Strategically integrating infrastructure and land use.

OBJECTIVE

1. Enable the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure.

POLICIES

1. ~~Recognise the importance of~~ Provide for a secure supply of energy to meet the needs of people and communities on the West Coast, and to meet the foreseeable future needs of economic growth in the region.

~~2. Provide for the development, operation, maintenance, and upgrading of new and existing renewable electricity generation activities and National Grid infrastructure.~~

2. Provide for the development, operation, maintenance and upgrading of ~~any other~~ new and existing RSI including renewable electricity generation activities and National Grid infrastructure.

3. When considering regional and district plan development and resource consent applications for regionally and nationally significant electricity transmission, distribution and renewable electricity generation infrastructure, have particular regard to the constraints imposed by the locational, technical and operational requirements of the infrastructure, including within areas of natural character (including outstanding natural character), outstanding natural features or landscapes, or areas of significant indigenous vegetation and significant habitats of indigenous fauna.

4. Recognise that RSI important to the West Coast's wellbeing needs to be protected from the reverse sensitivity effects arising from incompatible new subdivision, use and development, and the adverse effects of other activities, which would compromise the effective operation, maintenance, upgrading, or development of the infrastructure.

5. When considering any ~~residual~~ adverse environmental effects of RSI that cannot be avoided, remedied or mitigated, other than effects on indigenous biological diversity, decision-makers must have regard to any offsets and compensation proposed which benefit the natural environment ~~and~~ or the community affected.~~, including biodiversity offsets within the same catchment or habitat that are located, where practicable, close to where the residual adverse effects occur.~~

6. Provide for the operation, maintenance and upgrading of existing renewable electricity generation activities and electricity distribution and transmission

networks in areas of natural character of wetlands, and lakes and rivers and their margins (including outstanding natural character), outstanding natural features or natural landscapes, or areas of significant indigenous vegetation and significant habitats of indigenous fauna including within the coastal environment.

7. (1) In the case of the National Grid, operation, maintenance or minor upgrading of existing National Grid infrastructure shall be enabled.

(2) In the case of the National Grid, following a route, site and method selection process and having regard to the technical and operational constraints of the network, new development or major upgrades of the National Grid shall seek to avoid adverse effects, and otherwise remedy or mitigate adverse effects, on areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and natural landscapes, and the natural character of wetlands, and lakes and rivers and their margins outside the Coastal Environment.

8. Land use and infrastructure should be integrated to avoid as much as practicably possible:

a) Constraints through the lack of supporting infrastructure;

b) Unsustainable demands being placed on infrastructure to meet new growth;

c) Significant adverse effects on existing land uses.

Note: Policy ~~5~~ 4 relates to Method 2 in Chapter 5 ~~Resource~~ Use and Development of Resources.

EXPLANATION TO THE POLICIES

Policy 1 seeks to ensure that the West Coast has a secure supply of energy to meet the needs of people and communities from either non-renewable or renewable sources. The Policy applies to infrastructure which supplies energy rather than energy supplies per se.

~~Policy 2 gives effect to Policies E1-E4 of the NPSREG which seek to enable renewable electricity generation. Policy E2 for hydro-electricity generation is the most relevant for the West Coast. Policy 2 also gives effect to Policy 2 of the NPSET which requires recognition of the National Grid. Renewable electricity generation, and the National Grid, are important contributors to the wellbeing of the Region.~~

~~Additionally,~~ Policy ~~3~~ 2 seeks to ensure that ~~other~~ RSI are provided for to meet the needs of the people and communities of the West Coast. RSI is defined in the Glossary. Policy 2 also gives effect to Policies E1-E4 of the NPSREG which requires provision for renewable electricity generation, and Policy 2 of the NPSET which requires recognition of the National Grid.

Policy ~~4~~ 3 gives effect to Policy C1 of the NPSREG, and Policy 3 of the NPSET. Electricity generation infrastructure needs to be located ~~at source~~ where the resource is and the electricity needs to be conveyed to users. The location of the necessary infrastructure can sometimes be physically, technically or operationally constrained. Those constraints can also apply to other forms of RSI. ~~infrastructure not covered by the NPSREG and NPSET, but which is listed in the Glossary definition of RSI.~~ Such infrastructure may need to be located within areas containing high, outstanding or significant natural values.

Policy ~~5~~ 4: The operation, maintenance and future development of RSI can be significantly constrained by the adverse environmental impact of encroaching activities and development, also known as reverse sensitivity, or by the effects of existing resource use. Policy ~~5~~ 4 gives effect to Policies 10 and 11 of the NPSET for managing reverse sensitivity effects on RSI including the National Grid.

Policy ~~6~~ 5: The linear nature of many infrastructure networks determines its form, shape and location. Technical and operational requirements associated with infrastructure networks can limit the extent to which it is feasible to avoid or mitigate all adverse environmental effects. Consequently in some cases it may be appropriate for new infrastructure to be located in, or traverse parts of, a sensitive environment to achieve a net benefit, or lower overall adverse effects. These situations and the appropriateness of ~~imposing~~ offsets and compensation need to be determined on a case by case basis having regard to relevant case law, national policy and good practice guidelines on offsets and compensation, and expert advice. Chapter 7 applies to offsetting and compensating adverse effects on indigenous biological diversity. Policy 5 applies to other adverse effects.

Policy 6 gives effect to the NPSREG and provides for existing renewable electricity generation activities and electricity distribution and transmission networks in areas of natural character or containing significant or outstanding values throughout the region.

Policy 7 provides a specific management approach for the National Grid. 'Seek to avoid' means that the operator must make every possible effort to avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes, and natural character. Policy 7 sets the policy framework for the effects of the National Grid to be assessed in a considered manner, taking into account the technical and operational constraints of the network and the route, site and method selection process. It enables a case-by-case merits assessment of specific National Grid projects, taking into account the nature of the adverse effects and the values adversely affected.

Policy ~~7~~8 recognises the need for planning for growth and development and the provision of local, regional and national infrastructure to proceed side-by-side in a coordinated and integrated way.

~~RELATED POLICIES~~

~~Policy 2 of Chapter 3 [Resource Management Issues of Significance to Poutini Ngāi Tahu]; Policy 1, 4 and 5 of Chapter 4 [Resilient and Sustainable Communities]; Policy 1 and 2 of Chapter 5 [Use and Development of Resources]; Policy 1, 2 and 3 of Chapter 7 [Biodiversity and Landscape Values]; Policy 1, 2, 3 and 4 of Chapter 8 [Land and Water]; Policy 1, 2, 3, 4 and 5 (in relation to roading) in Chapter 9 [Coastal Environment]; Policy 2 in Chapter 10 [Air Quality]; Policy 2 and 4 in Chapter 11 [Natural Hazards].~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. Provide for the development, operation, maintenance and upgrading of micro and small-scale hydro electricity generation activities, subject to appropriate conditions, in regional plans as permitted or controlled activities, and in district plans, where appropriate.

2. Through regional and district plan rules, or conditions of resource consents:

   a) Recognise the positive benefits of RSI;

   b) Recognise the constraints imposed by the locational, technical and operational requirements of RSI, including electricity transmission, distribution and renewable electricity generation infrastructure; and

c) Manage adverse environmental effects on the safe and efficient operation of RSI.

3. As part of regional and district plan development or review processes, regional and district councils must consult with the National Grid operator about identifying appropriate buffer corridors to manage the adverse effects of subdivision, use and development on the National Grid.

4. Maintain river control and flood protection works and services.

Notes:

Method 1: Policy F of the NPSREG requires that RPSs include methods to provide for the development, operation, maintenance and upgrading of small and community-scale distributed renewable electricity generation from any renewable energy source to the extent applicable to the region or district. Many of the region's rivers and creeks have potential for hydroelectric development for individual domestic and small-scale business use, with no more than minor effects. Appropriate hydro schemes can be developed and the adverse effects reduced by careful design and location of structures. Increased generation in the region would improve security of supply.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

RSI is important for the economic and social wellbeing of people and communities on the West Coast, and plays a vital role in daily life. Provision for the safe, reliable, and efficient functioning of such facilities and their maintenance and upgrading is provided for in this document in recognition of their importance, and to ensure that they are effectively integrated with land use.

The provisions in this Chapter also give effect to national legislation, policies and standards which direct Councils to address matters of national importance. These are incorporated where they are considered relevant to the resource management of infrastructure activities on the West Coast.

ANTICIPATED ENVIRONMENTAL RESULTS

1. A perpetually secure supply of energy to meet the needs of people, communities and industry on the West Coast.

2. Increased use and development of renewable electricity resources.

3. Continued development, operation, maintenance and upgrading of RSI.

4. Effective management of resource management conflicts arising from reverse sensitivity effects on existing RSI, or between the provision of RSI and existing resource use.

5. New land use generated by growth and development strategically integrated with local, regional and national infrastructure, particularly transport, so as to avoid an unsustainable approach to infrastructure provision and funding.

7. ~~Biodiversity and Landscape Values~~ Ecosystems and Indigenous Biological Diversity

BACKGROUND TO THE ISSUES

Under section 6(c) of the RMA councils have responsibilities to recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna, also referred to as Significant Natural Areas (SNAs). ~~and outstanding natural landscapes and features, and the preservation of natural character.~~ Sections 30 and 31 of the Act also give regional and district councils the functions to ~~role of~~ develop~~ing~~ objectives, policies, and methods for maintaining indigenous biological diversity. It is important to recognise the roles ~~and functions~~ of ~~the various~~ other organisations and groups on the West Coast involved in the sustainable management of indigenous biological diversity ~~and landscape values~~ and ecosystems. While the Department of Conservation has a key role in this, regional and district council functions under the RMA still apply across the region.

Indigenous biological diversity in the coastal environment is addressed in the Coastal Environment Chapter, as the New Zealand Coastal Policy Statement (NZCPS) provides specific direction on these matters. This Chapter covers the rest of the Region inland from the landward coastal environment boundary.

This Chapter applies to sustainably managing terrestrial and freshwater indigenous biological diversity. Additionally, the National Policy Statement for Freshwater Management (NPSFM) provides direction to, amongst other things, safeguard the life-supporting capacity of fresh water ecosystem processes and indigenous species, and protect the significant values of wetlands and outstanding freshwater bodies. Both this Chapter and Chapter 8 Land and Water may need to be considered for any proposed activities affecting fresh water ecosystems and habitats.

The West Coast region has a land area of 2,300,000 ha with the Department of Conservation managing 1,912,000 ha or 84% of this land[1] leaving approximately 388,000 ha (16%) of land on the West Coast not under their control. In addition, there is roughly 40,647 km of streams and rivers in the region, of which 33,094 km (81%) are in Department of Conservation managed lands. In a national context, one quarter of New Zealand's protected land, and 10% of the total length of rivers in New Zealand, is located on the West Coast. Compared to other regions, the West Coast is rich in its level of remaining indigenous ~~biodiversity~~ biological diversity. The extent of indigenous vegetation provides other benefits and positive effects including, for example, well-vegetated upper catchments that reduce flooding, erosion and sedimentation downstream.

Poutini Ngāi Tahu as kaitiaki have a responsibility to manage and protect indigenous biological diversity. The ability of mana whenua to engage with indigenous species is important to enable Poutini Ngāi Tahu to maintain their identity and cultural traditions into the future. This is further detailed in ~~Section~~ Chapter 3.

~~Where there is a threat to biodiversity, it is most often on the farmed productive lowland environments.~~ This Chapter sets the objectives and policies to be given effect to in ~~Through~~ district and regional plans, including through the use of rules, to achieve the protection of ~~the significant fauna,~~ SNAs, ~~and habitats in these areas are afforded recognition and protection~~ and to maintain indigenous biological diversity. The Chapter also states the responsibilities of the region's local authorities to maintain indigenous

[1] West Coast Conservation Management Strategy 2010 – 2020 Volume I.

biological diversity. ~~giving effect to the relevant sections of the RMA referred to above. The regional plans manage the potential effects on wetlands and the district plans manage significant natural areas. In some instances there is an overlap in these areas and in that situation the rules in both plans apply.~~

~~Biodiversity protection under the RMA is not necessarily absolute,~~ The region's terrestrial and fresh water indigenous biological diversity must be maintained. In some circumstances, adverse effects are unacceptable and must be avoided. In other circumstances, adverse effects may be able to be managed through the mitigation hierarchy. ~~as resource consents can be granted for appropriate development within some significant areas, as well as where biodiversity values are not regionally significant.~~ The West Coast councils and Department of Conservation are committed to using both regulatory and non-regulatory measures to ensure that significant indigenous vegetation and significant habitats of indigenous fauna are sustainably managed and protected ~~appropriately~~.

~~The West Coast is internationally recognised for its landscape features and natural character. The glaciers, Pancake Rocks, Heaphy Track and many other attractions are managed by the Crown for the purpose of visitor appreciation. The most frequented sites are regionally significant for the West Coast given that tourism is currently one of the top three economic drivers for the region. Ensuring that we retain a region that is attractive to visitors and our own communities requires management of potential adverse effects on these landscapes, biodiversity and natural character values. Other parts of the region also contribute to local landscapes but it is difficult to quantify that contribution other than on a case by case assessment. For the coastal marine area, the Regional Coastal Plan identifies specific areas with outstanding natural features and landscapes, and outstanding natural character.~~

Statement of Local Authority Responsibilities

Section 62(1)(i)(iii) of the Act requires a regional policy statement to state the local authority responsible, in the whole or any part of the region, for specifying the objectives, policies and methods for the control of the use of land to maintain indigenous biological diversity.

The West Coast Regional Council will be responsible for specifying the objectives, policies and methods to maintain indigenous biological biodiversity by controlling activities:

1. in the CMA;
2. affecting water bodies, including significant wetlands;
3. affecting the beds of lakes and rivers;

Control of the use of land to maintain indigenous biological biodiversity in lake and river margins, and for earthworks and vegetation clearance activities, is a shared responsibility between Regional and District Councils.

Territorial authorities will be responsible for specifying the objectives, policies and methods for the control of the use of land for the maintenance of indigenous biological biodiversity for all other activities.

The significant issues in relation to the management of ~~biodiversity~~ indigenous biological diversity ~~and landscape~~ values on the West Coast are:

~~1. The RMA requires councils to provide protection to significant indigenous vegetation and significant habitats of indigenous fauna. Where those areas are located on private land, that can be of concern to affected land owners.~~

1. Activities which contribute to people's wellbeing may adversely affect indigenous biological diversity.

2. In the context of ~~the current abundance~~ extensive ~~of~~ indigenous vegetation and habitats, much of which is on land managed by the Department of Conservation, ~~a cross agency approach to management, including both regulatory and non regulatory measures,~~ an integrated management approach is required.

~~3. The relatively unmodified environment of the West Coast provides a wealth of significant indigenous vegetation, significant habitats of indigenous fauna, outstanding natural features and natural landscapes, and areas with outstanding natural character. While these areas must be protected, it is possible to carefully manage them in a way that enables appropriate future employment, regional growth and development.~~

3. Councils, and Poutini Ngāi Tahu need to work together to identify opportunities to recognise and provide for Poutini Ngāi Tahu culture and traditions in relation to the use and protection of indigenous ~~biodiversity~~ biological diversity under the RMA, to the extent practicably possible.

OBJECTIVES

~~1. A regulatory framework that reflects the abundance of the West Coast's indigenous biodiversity, natural character, natural features and natural landscapes whilst enabling West Coast communities to provide for their economic, social and cultural wellbeing.~~

1. ~~2. Protecting~~ Identify in regional and district plans, and through the resource consent process, areas of significant indigenous vegetation and significant habitats of indigenous fauna in a regionally consistent manner.~~, using both regulatory and non regulatory measures.~~

2. Protect significant indigenous vegetation and significant habitats of indigenous fauna.

~~2. Protecting outstanding natural features and natural landscapes and preserving outstanding natural character in a regionally consistent manner.~~

3. Provide for sustainable subdivision, use and development to enable people and communities to maintain or enhance their economic, social, and cultural wellbeing in areas of significant indigenous vegetation and significant habitats of indigenous fauna.

4. Maintain the region's terrestrial and freshwater indigenous biological diversity.

POLICIES

~~1A. Areas of significant indigenous vegetation and significant habitats of indigenous fauna; and outstanding natural features, outstanding natural landscapes and areas of outstanding natural character; will be identified through the use of regionally consistent criteria.~~

~~1. Adverse effects on significant indigenous vegetation, significant habitat of indigenous fauna, outstanding natural features, outstanding natural landscapes, and outstanding natural character arising from inappropriate subdivision, use and development will be avoided.~~

~~2. When having regard to Policy 1, the appropriateness of any subdivision, use or development must be assessed against the following criteria:~~

~~a) The value, importance or significance of the habitat, fauna, feature or landscape at the local, regional, or national level;~~

~~b) The degree and significance of actual or potential adverse effects on the habitat, fauna, feature or landscapes, including cumulative effects, and the efficacy of measures proposed to avoid, remedy or mitigate such effects;~~

~~c) The benefits to be derived from the proposed subdivision, use or development at the local, regional and national scale and any technical or operational constraints on its proposed location;~~

~~d) The degree of existing modification of the habitat, fauna, feature or landscape from its natural character; and~~

~~e) The vulnerability of the habitat, fauna, feature or landscape to change, and its capacity to accommodate change, without compromising its values~~

~~3A. Appropriate subdivision, use and development in the areas listed in Policy 1 can be enabled provided the adverse effects of the activity are avoided, remedied, mitigated or offset.~~

1A. a) Areas of significant indigenous vegetation and significant habitats of indigenous fauna~~; and outstanding natural features, outstanding natural landscapes and areas of outstanding natural character~~; will be identified using the criteria in Appendix 1; they will be known as Significant Natural Areas (SNAs), and will be mapped in the relevant regional plan and the district plans. ~~through the use of regionally consistent criteria.~~

b) Significant wetlands will be identified using the criteria in Appendix 2; they will be known as Significant Natural Areas (SNAs), and will be mapped in the relevant regional plan.

2. Activities shall be designed and undertaken in a way that does not cause:

a) The prevention of an indigenous species' or a community's ability to persist in their habitats within their natural range in the Ecological District, or

b) A change of the Threatened Environment Classification to category two or below at the Ecological District Level;[2] or

c) Further measurable reduction in the proportion of indigenous cover on those land environments in category one or two of the Threatened Environment Classification at the Ecological District Level;[3] or

d) A reasonably measurable reduction in the local population of threatened taxa in the Department of Conservation Threat Classification Categories 1 – nationally critical, 2 – nationally endangered, and 3a – nationally vulnerable[4].

3. Provided that Policy 2 is met, when managing the adverse effects of activities on indigenous biological diversity within SNAs:

a) Adverse effects shall be avoided where possible; and

b) Adverse effects that cannot be avoided shall be remedied where possible; and

c) Adverse effects that cannot be remedied shall be mitigated.

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2 The Threatened Environment Classification system is managed by Landcare Research. (Walker S. et al 2007. Guide for users of the Threatened Environment Classification. [Lincoln, Canterbury], Landcare Research New Zealand. 1 – 35 p.)

3 ibid

4 Department of Conservation threat classification: Townsend, A, de Lange, P; Clinton, A; Duffy, A; Miskelly, C; Molly, J; Norton, D. 2008. New Zealand Threat Classification System Manual

d) In relation to adverse effects that cannot be avoided, remedied or mitigated, biodiversity offsetting in accordance with Policy 4 is considered; and

e) If biodiversity offsetting in accordance with Policy 4 is not achievable for any indigenous biological diversity attribute on which there are residual adverse effects, biodiversity compensation in accordance with Policy 5 is considered.

4. Provided that Policy 2 is met, and the adverse effects on a SNA cannot be avoided, remedied or mitigated, in accordance with Policy 3, then consider biodiversity offsetting if the following criteria are met:

a) Irreplaceable or significant indigenous biological diversity is maintained; and

b) There must be a high degree of certainty that the offset can be successfully delivered; and

c) The offset must be shown to be in accordance with the six key principles of:

i. Additionality: the offset will achieve indigenous biological diversity outcomes beyond results that would have occurred if the offset was not proposed;

ii. Permanence: the positive ecological outcomes of the offset last at least as long as the impact of the activity, preferably in perpetuity;

iii. No-net-loss: the offset achieves no net loss and preferably a net gain in indigenous biological diversity;

iv. Equivalence: the offset is applied so that the ecological values being achieved are the same or similar to those being lost;

v. Landscape context: the offset is close to the location of the development[5]; and

vi. The delay between the loss of indigenous biological diversity through the proposal and the gain or maturation of the offset's indigenous biological diversity outcomes is minimised.

a. The offset maintains the values of the SNA.

5. Provided that Policy 2 is met, in the absence of being able to satisfy Policies 3 and 4, consider the use of biodiversity compensation provided that it meets the following:

a) Irreplaceable or significant indigenous biological diversity is maintained; and

b) The compensation is at least proportionate to the adverse effect; and

c) The compensation is undertaken where it will result in the best practicable ecological outcome, and is preferably:

i. Close to the location of development; or

ii. Within the same Ecological District; and

d) The compensation will achieve positive indigenous biological diversity outcomes that would not have occurred without that compensation; and

e) The positive ecological outcomes of the compensation last for at least as long as the adverse effects of the activity; and

f) The delay between the loss of indigenous biological diversity through the proposal and the gain or maturation of the compensation's indigenous biological diversity outcomes is minimised.

6. Allow for subdivision, use or development within SNAs, including by:

[5] Maseyk, F., Ussher, G., Kessels, G., Christensen, M., Brown, M., for the Biodiversity Working Group on behalf of the BioManagers Group, September 2018. Biodiversity Offsetting under the Resource Management Act: A guidance document. Pages 4, 5, 25.

a) Allowing existing lawfully established activities to continue provided the adverse effects are the same or similar in scale, character or intensity;

b) Allowing activities with no more than minor adverse effects provided that the values of the SNA are maintained.

7. Provide for subdivision, use or development within land areas or water bodies containing indigenous biological diversity that does not meet any of the significance criteria in Appendix 1 or 2, by:

a) Allowing activities with no more than minor adverse effects;

b) Avoiding, remedying or mitigating more than minor adverse effects;

c) Where there are significant residual adverse effects, considering any proposal for indigenous biological diversity offsetting or compensation.

8. Maintain indigenous biological diversity, ecosystems and habitats in the region by:

a) Recognising that it is more efficient to maintain rather than to restore indigenous biological diversity;

b) Encouraging restoration or enhancement of indigenous biological diversity and/or habitats, where practicable; and

c) Advocating for a co-ordinated and integrated approach to reducing the threat status of indigenous biological diversity.

9 ~~3.~~ Give effect to Objective 2 of Chapter 3 by:

a) Providing for the kaitiakitanga role of Poutini Ngāi Tahu in the management of indigenous biological diversity; ~~and~~

b) Provided that Policy 2 is met, recognising and providing for subdivision, use and development in a SNA where it is for the purpose of papakainga, cultural harvest or mahinga kai gathering by papatipu rūnanga in a manner that accords with tikanga and kaitiakitanga;

c) Where practicable, provide for Poutini Ngāi Tahu customary use of indigenous species in a manner that accords with tikanga and kaitiakitanga, within the framework of the regional and district council's RMA functions.

EXPLANATION TO THE POLICIES

Policies 1-6 and 9 give effect to sections 5, 6(c), and 6(e) of the RMA by providing a framework to protect significant indigenous vegetation and significant habitats of indigenous fauna from the adverse effects of activities, and enable activities, including cultural activities, in or near areas with these values to be undertaken where the significant values can be maintained. All of the Chapter 7 Policies also contribute to maintaining indigenous biological diversity in the region, to give effect to sections 30 and 31 of the RMA.

The ecological criteria referred to in Appendices 1 and 2 of Policy 1 will be used to determine whether terrestrial or aquatic areas of indigenous vegetation, as well as habitats of indigenous fauna, are ecologically significant or not. Significant terrestrial indigenous biological diversity will be mapped in district plans once identified.

It is intended that SNAs will be identified and mapped in the preparation of district and regional plans. They may also be identified during resource consent processes, for example in the preparation of an Assessment of Environmental Effects (AEE). If an area is identified as meeting the criteria in Appendix 1 or 2 it is to be managed as an SNA, whether or not it has been mapped in the relevant plan at that time. Additional SNAs identified through the resource consent process will be identified and mapped in regional and district plans when proposed plan, or plan change, processes are undertaken.

Policy 1~~A~~ recognises that using regionally consistent criteria for determining and identifying ~~significant and outstanding areas~~ Significant Natural Areas (SNAs) ~~helps to~~ assists with achievinge ~~integrated~~ sustainable management. It ~~needs to be evident where significant areas are located~~ is best practice to map SNAs in plans, so that when a subdivision, use or development proposal is put forward, robust decisions can be made regarding its appropriateness.

~~Policy 1 requires adverse environmental effects to be managed in a way that gives effect to Part 2 of the RMA.~~ Policy 2 does not preclude activities from being undertaken provided that they meet the 'bottom lines" identified. In making this assessment, decision-makers need to take into account any measure, (except indigenous biological diversity offsetting or biodiversity compensation) proposed to prevent the effects in Policy 2 from occurring.

~~To assist decision makers deciding whether a proposed subdivision, use or development would be inappropriate in the areas listed in Policy 1, Policy 2 requires consideration of the nature and scale of effects, the significance of the values affected as well as the impact on the economic and social wellbeing of the community, and how these contribute to the overall purpose of sustainable management. Decision-makers need to apply this in context of the West Coast and the abundance of biodiversity, natural character, and natural features and landscapes remaining throughout the region. Schedule 1 wetlands in the Land and Water Plan contains significant indigenous vegetation and significant habitats of indigenous fauna, and are protected by provisions in that Plan.~~

Policies 3-5 provide a cascading framework to give direction to regional or district plan development and consideration of consent applications for activities in a SNA. The cascade follows the mitigation hierarchy recognised in resource management practice.

~~Policy 3A recognises that following the application of the criteria listed in Policy 2, if a proposed subdivision, use and development is found to be appropriate, it can be enabled provided adverse effects arising from it are avoided, remedied, mitigated or offset.~~

Policy 6 recognises that there are existing activities in SNAs, and there are circumstances when new activities can occur within SNAs which will maintain the values of the SNA.

Policy 7 sets out the management approach to adverse effects in locations which do not contain significant indigenous vegetation or significant habitats of indigenous fauna.

Policy 8 gives effect to sections 30 and 31 of the Act requiring councils to develop, implement and review objectives, policies and methods to maintain indigenous biological diversity. It recognises that West Coast councils cannot single-handedly maintain indigenous biological diversity in the region. Work undertaken by the Department of Conservation, community groups, landowners and through the Biosecurity Act to control vertebrate and plant pests, for example, will contribute substantially to maintaining indigenous biological diversity, by taking an integrated and co-ordinated approach.

Policy ~~3~~ 9 links to Objective 2, and Policies 2 and 3 of ~~Section~~ Chapter 3 Resource Management Issues of Significance to Poutini Ngāi Tahu. To give effect to kaitiakitanga it is important that regional and district councils engage meaningfully with Poutini Ngāi Tahu. Regional and district councils should recognise that the exercise of kaitiakitanga, and the continuing ability to carry out cultural practices in accordance with tikanga, including within SNAs, by papatipu rūnanga are important to sustaining Poutini Ngāi Tahu identity and wellbeing. In developing regional and district plan provisions for management of indigenous ~~biodiversity~~ biological diversity, regional and district councils need to ~~consult~~ work with Poutini Ngāi Tahu and have regard to how the kaitiakitanga role of mana whenua can be enabled and how customary use can be provided for within the framework of the RMA.

~~**RELATED POLICIES**~~

~~Policy 2 and 3 of Chapter 3 [Resource Management Issues of Significance to Poutini Ngāi Tahu]; Policy 2 and 6 of Chapter 4 [Resilient and Sustainable Communities]; Policy 1 of Chapter 5 [Use and Development of Resources]; Policy 2, 3, 4, 5 and 6 of Chapter 6 [Regionally Significant Infrastructure]; Policy 1, 2 and 3 of Chapter 8 [Land and Water]; Policy 1 and 2 of Chapter 9 [Coastal Environment].~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

~~1. Maintain the regional and district plans with objectives, policies, rules and methods of implementation addressing potential impacts on significant indigenous biodiversity.~~

1. ~~5.~~ ~~Regional and district councils will work together to agree on a consistent set of criteria~~ Use the ecological criteria in Appendices 1 and 2 for identifying significant indigenous vegetation and significant habitats of indigenous fauna, and significant wetlands respectively, and the areas identified using the criteria will be mapped in district and regional plans. ~~to be given effect to in regional and district plans.~~

~~2. Encourage the use of non regulatory measures to provide for the sustainable management of areas of significant indigenous fauna or indigenous vegetation.~~

2. Use regional and district plans and nationally recognised guidance to protect SNAs and maintain the region's indigenous biological diversity.

~~3. Use regional and district plan rules and/or resource consent processes to manage the adverse effects of subdivision, use and development on outstanding natural character and outstanding natural features and landscapes.~~

3. Maintain indigenous biological diversity by using non-regulatory means, including liaising/working with the Department of Conservation, Poutini Ngāi Tahu, affected landowners and other organisations and community groups.

4. Regional and district councils will work together with Poutini Ngāi Tahu to identify opportunities to enable their kaitiakitanga role in relation to the use and protection of indigenous ~~biodiversity~~ biological diversity under the RMA, including managing adverse effects of subdivision, use and development on the customary use of indigenous ~~biodiversity~~ biological diversity.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

Part 2 of the RMA requires councils, when exercising their functions under the RMA, to recognise and provide for the protection of areas of significant indigenous vegetation~~,~~ and significant habitats of indigenous fauna, as a matter of national importance. ~~and outstanding natural character, natural features and natural landscapes, from inappropriate development.~~ The Objectives, Policies and Methods in this Chapter ~~aim to~~ implement these statutory requirements in a pragmatic, efficient and effective way to ensure that both the protection of ~~the natural environment~~ SNAs, and provision for the economic, social and cultural wellbeing of the West Coast, are achieved.

Regard must also be had to the role given to councils by Sections 30 and 31 of the Act in maintaining indigenous ~~biodiversity~~ biological diversity, and how this can be woven in with the regional and district council's regulatory functions and non-regulatory obligations to work together with Poutini Ngāi Tahu and given their kaitiakitanga role, as well as the

Department of Conservation and other organisations, ~~and~~ community groups and landowners.

A range of methods are proposed to implement the policies and achieve the objectives. Where regulatory tools are to be applied these are to be targeted to significant values.~~, not preventing appropriate use and development. Method 2 3 recognises that n~~Non-regulatory measures also have an important role to play in the ~~sustainable management~~ maintenance of ~~significant~~ indigenous ~~biodiversity~~ biological diversity ~~fauna and vegetation~~ on the West Coast. These measures could include, but are not limited to, covenants, land swaps or exchanges in ownership between private land owners and the Department of Conservation, and vertebrate and plant pest control. ~~This Method lends support to those approaches, and~~ Using non-regulatory tools also encourages cross sector collaboration. This overall approach is more likely to result in community acceptance and support for indigenous ~~biodiversity~~ biological diversity ~~and landscape~~ protection.

~~In accordance with section 62(1)(i)(iii) of the RMA, the three district councils of the region will be responsible for specifying the objectives, policies and methods for the control of the use of land to maintain indigenous biological diversity except where the control of the use of land relates to the WCRC's functions under the RMA regarding:~~

- ~~the coastal marine area;~~
- ~~the beds of rivers, lakes and scheduled wetlands; and~~
- ~~land use activities managed in the Regional Land and Water Plan.~~

ANTICIPATED ENVIRONMENTAL RESULTS

1. Maintenance and enhancement of areas with significant indigenous ~~biodiversity~~ biological diversity values in the West Coast region.

~~3. Appropriate protection of outstanding natural features and landscapes, in particular the iconic tourist vistas that attract visitors to the region.~~

2.~~4.~~ Appropriate subdivision, use and development is able to occur, and regulatory processes do not unduly delay appropriate resource use and development taking place.

3. Non-regulatory work to maintain indigenous biological diversity is undertaken in an integrated, collaborative and co-ordinated way.

2. 4. Opportunities are provided for Poutini Ngāi Tahu to exercise their kaitiakitanga role in relation to the use and protection of indigenous ~~biodiversity~~ biological diversity where this is consistent with the West Coast Councils' RMA roles.

7A. Natural Character

BACKGROUND TO THE ISSUES

Under section 6(a) of the RMA, councils must recognise and provide for the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and protect them from inappropriate subdivision, use and development as a matter of national importance. Natural character preservation in the coastal environment is addressed in the Coastal Environment chapter, as the New Zealand Coastal Policy Statement provides specific direction on these matters. This Chapter covers the rest of the region inland from the landward coastal environment boundary.

Natural character is the expression of natural elements, patterns and processes. The level of naturalness is affected by the degree of human modification.

~~The West Coast is i~~Internationally recognised for its ~~landscape features and~~ natural character, ~~The glaciers, Pancake Rocks, Heaphy Track and many other attractions are managed by the Crown for the purpose of visitor appreciation. The most frequented sites are regionally significant for the West Coast given that~~ the West Coast is attracting large numbers of tourists seeking natural experiences. As a result, tourism is currently one of the top ~~three~~ economic ~~drivers~~ contributors to ~~for~~ the region. The natural character of the region's wetlands, and lakes and rivers and their margins and their associated amenity values are enjoyed by both residents and visitors.

Ensuring that ~~we~~ the region retains those aspects that are ~~a region that is~~ attractive to visitors and our own communities requires management of potential adverse effects on these ~~landscapes, biodiversity and~~ natural character values. For example, activities such as flood and erosion control are recognised as important for people's wellbeing, however they can affect the natural character of wetlands, and lakes and rivers and their margins. ~~For the coastal marine area, the Regional Coastal Plan identifies specific areas with outstanding natural character.~~

The significant issues in relation to the natural character for the West Coast are:

~~3. The relatively unmodified environment of the West Coast provides a wealth of significant indigenous vegetation, significant habitats of indigenous fauna, outstanding natural features and natural landscapes, and areas with outstanding natural character. While these areas must be protected, it is possible to carefully manage them in a way that enables appropriate future employment, regional growth and development.~~

1. Activities which contribute to people's wellbeing may adversely affect the natural character of the region's wetlands, and lakes and rivers and their margins.

OBJECTIVES

~~1. A regulatory framework that reflects the abundance of the West Coast's indigenous biological diversity, natural character, natural features and natural landscape whilst enabling West Coast communities to provide for their economic, social and cultural wellbeing.~~

~~3 Protecting outstanding natural features and natural landscapes, and preserving outstanding natural character in a regionally consistent manner.~~

1. Protect the natural character of the region's wetlands, and lakes and rivers and their margins, from inappropriate subdivision, use and development.

2. Provide for appropriate subdivision, use and development to enable people and communities to maintain or enhance their economic, social and cultural wellbeing.

POLICIES

~~1A Areas of significant indigenous vegetation and significant habitats of indigenous fauna; and outstanding natural features, outstanding natural landscapes and areas of outstanding natural character; will be identified through the use of regionally consistent criteria.~~

~~1. Adverse effects on significant indigenous vegetation, significant habitat of indigenous fauna, outstanding natural features, outstanding natural landscapes, and outstanding natural character arising from inappropriate subdivision, use and development will be avoided.~~

~~2. When having regard to Policy 1, the appropriateness of any subdivision, use or development must be assessed against the following criteria:~~

~~a) The value, importance or significance of the habitat, fauna, feature or landscape at the local, regional, or national level;~~

~~b) The degree and significance of actual or potential adverse effects on the habitat, fauna, feature or landscape, including cumulative effects, and the efficacy of measures proposed to avoid, remedy or mitigate such effects;~~

~~c) The benefits to be derived from the proposed subdivision, use and or development at the local, regional and national scale and any technical or operational constraints on its proposed location;~~

~~d) The degree of existing modification of the habitat, fauna, feature or landscape from its natural character; and~~

~~e) The vulnerability of the habitat, fauna, feature or landscape to change, and its capacity to accommodate change, without compromising its value.~~

~~3A. Appropriate subdivision, use and development in the areas listed in Policy 1 can be enabled provided the adverse effects of the activity are avoided, remedied, mitigated or offset.~~

~~3. Give effect to Objective 2 of Chapter 3 by providing for the kaitiakitanga role of Poutini Ngāi Tahu in the management of indigenous biological diversity and, where practicable, provide for Poutini Ngāi Tahu customary use of indigenous species in a manner that accords with tikanga and kaitiakitanga, within the framework of the Regional and District Council's RMA functions.~~

1. Use regionally consistent criteria to identify the elements, patterns, processes and qualities of the natural character of wetlands, and lakes and rivers and their margins.

2. Protect the elements, patterns, processes and qualities that together contribute to the natural character of wetlands, and lakes and rivers and their margins from inappropriate subdivision, use and development.

3. When determining if an activity is appropriate, the following matters must be considered:

   a) The degree and significance of actual or potential adverse effects on the elements, patterns, processes and qualities that contribute to natural character;

   b) The value, importance or significance of the natural character at the local, or regional level;

   c) The degree of naturalness;

d) The potential for cumulative effects to diminish natural character, and the efficacy of measures proposed to avoid, remedy or mitigate such effects; and

e) The vulnerability of the natural character to change, and its capacity to accommodate change, without compromising its values.

4. Allow activities which have no more than minor adverse effects on natural character.

POLICY EXPLANATION

Policy ~~1A~~ 1 recognises that using regionally consistent criteria to identify the natural character of wetlands, and lakes and rivers and their margins ~~for determining and identifying significant and outstanding areas helps to~~ assists with achievinge ~~integrated~~ sustainable management. ~~It needs to be evident where significant areas are located, so when a subdivision, use or development proposal is put forward,~~ These criteria will be used in both planning and consent processes to determine the characteristics, and their significance, of the natural character present. ~~robust decisions can be made regarding its appropriateness.~~

~~Policy 1 requires adverse environmental effects to be managed in a way that gives effect to Part 2 of the RMA.~~

Policy 2 seeks to protect the elements, patterns, processes and qualities of the natural character of wetlands, and lakes and rivers and their margins from adverse effects arising from inappropriate subdivision, use and development. What is "inappropriate" is assessed by reference to what is to be "protected".

Policy 3 is to ~~To~~ assist decision-makers to determine ~~deciding~~ whether a proposed subdivision, use or development ~~would be~~ is ~~in~~appropriate~~., in the areas listed in Policy 1, Policy 2 requires consideration of the nature and scale of effects, the significance of the values affected as well as the impact on the economic and social wellbeing of the community, and how these contribute to the overall purpose of sustainable management. Decision-makers need to apply this in the context of the West Coast and the abundance of biodiversity, natural character and natural features and landscapes remaining throughout the region. Schedule 1 wetlands in the Land and Water Plan contains significant indigenous vegetation and significant habitats of indigenous fauna, and are protected by provisions in that Plan.~~

~~Policy 3A recognises that following the application of the criteria listed in Policy 2, if a proposed subdivision, use and development is found to be appropriate, it can be enabled provided adverse effects arising from it are avoided, remedied, mitigated or offset.~~

Policy 4 recognises that some activities will result in effects that are no more than minor and provides for these to take place as a permitted activity, or in accordance with a resource consent.

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

~~3. Use regional and district plan rules and/or resource consent processes to manage the adverse effects of subdivision, use and development on outstanding natural character and outstanding natural features and landscapes.~~

~~5. Regional and district councils will work together to agree on a consistent set of criteria for identifying significant indigenous vegetation and significant habitats of indigenous fauna to be given effect to in regional and district plans.~~

1. Include a regionally consistent set of criteria for the identification of the natural character of wetlands, and lakes and rivers and their margins in the regional and district plans.

2. Identify the natural character of wetlands, and lakes and rivers and their margins through the resource consent process.

3. Use provisions in the regional and district plans, and the resource consent process to protect the natural character of wetlands, and lakes and rivers and their margins from inappropriate subdivision, use and development.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

Part 2 of the RMA requires councils, when exercising their functions under the RMA, to recognise and provide for the preservation of ~~areas of significant indigenous vegetation, significant habitat of indigenous fauna, and outstanding~~ the natural character~~,~~ of wetlands, and lakes and rivers and their margins, ~~natural features and natural landscapes,~~ and the protection of them from inappropriate development as a matter of national importance. The Objectives, Policies and Methods in this Chapter ~~aim to~~ implement these statutory requirements in a pragmatic, efficient and effective way to ensure that ~~both~~ the protection and preservation of the natural character, ~~environment~~ and provision for the economic, social and cultural wellbeing of the West Coast, are achieved.

ANTICIPATED ENVIRONMENTAL RESULTS

1.~~3.~~ ~~Appropriate protection~~ Preservation of ~~outstanding~~ the natural character of wetlands, and lakes and rivers and their margins. ~~natural features and landscapes, in particular the iconic tourist vistas that attract visitors to the region.~~

2.~~4.~~ Appropriate subdivision, use and development is able to occur.~~, and regulatory processes do not unduly delay appropriate resource use and development taking place.~~

7B. Natural features and landscapes

BACKGROUND TO THE ISSUES

Under section 6(b) of the RMA councils must recognise and provide for the protection of outstanding natural landscapes and outstanding natural features from inappropriate subdivision, use and development as a matter of national importance. Protection of these areas in the coastal environment is addressed in the Coastal Environment chapter, as the New Zealand Coastal Policy Statement (NZCPS) provides specific direction on these matters. This Chapter covers the area inland from the landward coastal environment boundary. The landscape provisions in this Chapter may apply to both terrestrial and fresh water areas, as terrestrial and aquatic landscape values are often closely interlinked.

Chapter 8 Land and Water has provisions for identifying and protecting the significant values of wetlands and outstanding freshwater bodies under the National Policy Statement for Freshwater Management (NPSFM), which can include landscape values. Any proposed activities potentially adversely affecting fresh water landscapes should consider both this Chapter and Chapter 8.

~~The West Coast is i~~Internationally recognised for its outstanding natural landscapes and outstanding natural features, ~~and natural character. The glaciers, Pancake Rocks, Heaphy Track and many other attractions are managed by the Crown for the purpose of visitor appreciation. The most frequented sites are regionally significant for the West Coast given that~~ the West Coast is attracting large numbers of tourists seeking natural experiences. As a result, tourism is currently one of the top ~~three~~ economic ~~drivers~~ contributors to ~~for~~ the region. The amenity value of these outstanding natural features and outstanding natural landscapes, such as the Franz Josef and Fox Glaciers, make an important contribution to the wellbeing of West Coast communities and visitors.

Ensuring that ~~we~~ the region retains those aspects that are ~~a region that is~~ attractive to visitors and our own communities requires management of potential adverse effects on these outstanding natural feature and landscape values. For example, activities such as roads are recognised as important for people's wellbeing, however they can affect outstanding natural features and landscapes. ~~landscapes, biodiversity and natural character values. Other parts of the region also contribute to local landscapes but it is difficult to quantify that contribution other than on a case by case basis assessment. For the coastal marine area, the Regional Coastal Plan identifies specific areas with outstanding natural features and landscapes, and outstanding natural character.~~

The significant issues in relation to the natural ~~character~~ features and landscapes for the West Coast are:

~~3. The relatively unmodified environment of the West Coast provides a wealth of significant indigenous vegetation, significant habitats of indigenous fauna, outstanding natural features and natural landscapes, and areas with outstanding natural character. While these areas must be protected, it is possible to carefully manage them in a way that enables appropriate future employment, regional growth and development.~~

1. Activities which contribute to people's wellbeing may adversely affect outstanding natural features and outstanding natural landscapes.

OBJECTIVES

~~1. A regulatory framework that reflects the abundance of the West Coast's indigenous biological diversity, natural character, natural features and natural landscape whilst~~

~~enabling West Coast communities to provide for their economic, social and cultural wellbeing.~~

~~3 Protecting outstanding natural features and natural landscapes, and preserving outstanding natural character in a regionally consistent manner.~~

1. Protect the region's outstanding natural features and outstanding natural landscapes from inappropriate subdivision, use and development.

2. Provide for appropriate subdivision, use and development on, in or adjacent to outstanding natural features and outstanding natural landscapes to enable people and communities to maintain or enhance their economic, social and cultural wellbeing.

POLICIES

~~1A Areas of significant indigenous vegetation and significant habitats of indigenous fauna; and outstanding natural features, outstanding natural landscapes and areas of outstanding natural character; will be identified through the use of regionally consistent criteria.~~

~~1. Adverse effects on significant indigenous vegetation, significant habitat of indigenous fauna, outstanding natural features, outstanding natural landscapes, and outstanding natural character arising from inappropriate subdivision, use and development will be avoided.~~

~~2. When having regard to Policy 1, the appropriateness of any subdivision, use or development must be assessed against the following criteria:~~

~~a) The value, importance or significance of the habitat, fauna, feature or landscape at the local, regional, or national level;~~

~~b) The degree and significance of actual or potential adverse effects on the habitat, fauna, feature or landscape, including cumulative effects, and the efficacy of measures proposed to avoid, remedy or mitigate such effects;~~

~~c) The benefits to be derived from the proposed subdivision, use or development at the local, regional and national scale and any technical or operational constraints on its proposed location;~~

~~d) The degree of existing modification of the habitat, fauna, feature or landscape from its natural character; and~~

~~e) The vulnerability of the habitat, fauna, feature or landscape to change, and its capacity to accommodate change, without compromising its value.~~

~~3A Appropriate subdivision, use and development in the areas listed in Policy 1 can be enabled provided the adverse effects of the activity are avoided, remedied, mitigated or offset.~~

1. Use regionally consistent criteria to identify outstanding natural features and outstanding natural landscapes.

2. Protect the values which together contribute to a natural feature or landscape being outstanding, from inappropriate subdivision, use and development.

3. When determining if an activity is appropriate, the following matters must be considered:

   a) Whether the activity will cause the loss of those values that contribute to making the natural feature or landscape outstanding;

b) The extent to which the outstanding natural feature or landscape will be modified or damaged including the duration, frequency, magnitude or scale of any effect;

c) The irreversibility of any adverse effects on the values that contribute to making the natural feature or landscape outstanding;

d) The resilience of the outstanding natural feature or landscape to change;

e) Whether the activity will lead to cumulative adverse effects on the outstanding natural feature or landscape;

4. Allow activities in outstanding natural features and outstanding natural landscapes which have no more than minor adverse effects.

POLICY EXPLANATION

Policy ~~1A~~ 1 recognises that it is best practice to use~~ing~~ regionally consistent criteria for ~~determining and~~ identifying ~~significant and~~ outstanding ~~areas helps to achieve integrated management.~~ natural features and landscapes, to contribute to an integrated management framework across the region. Outstanding natural landscapes and features may cross district boundaries. It needs to be evident where ~~significant~~ outstanding areas are located, so that when a subdivision, use or development proposal is put forward, robust decisions can be made regarding its appropriateness.

~~Policy 1 requires adverse environmental effects to be managed in a way that gives effect to Part 2 of the RMA.~~

Policy 2 seeks to protect the values of outstanding natural features and landscapes from inappropriate subdivision, use and development. What is "inappropriate" is assessed by reference to what is to be "protected".

Policy 3 is to ~~To~~ assist decision-makers to determine ~~deciding~~ whether a proposed subdivision, use or development ~~would be~~ is ~~in~~appropriate.~~, in the areas listed in Policy 1, Policy 2 requires consideration of the nature and scale of effects, the significance of the values affected as well as the impact on the economic and social wellbeing of the community, and how these contribute to the overall purpose of sustainable management. Decision-makers need to apply this in context of the West Coast and the abundance of biodiversity, natural character and natural features and landscapes remaining throughout the region. Schedule 1 wetlands in the Land and Water Plan contains significant indigenous vegetation and significant habitats of indigenous fauna, and are protected by provisions in that Plan.~~

~~Policy 3A recognises that following the application of the criteria listed in Policy 2, if a proposed subdivision, use and development is found to be appropriate, it can be enabled provided adverse effects arising from it are avoided, remedied, mitigated or offset.~~

Policy 4 recognises that some activities will result in effects that are no more than minor and provides for these to take place as a permitted activity, or in accordance with a resource consent.

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

~~3. Use regional and district plan rules and/or resource consent processes to manage the adverse effects of subdivision, use and development on outstanding natural character and outstanding natural features and landscapes.~~

~~5. Regional and district councils will work together to agree on a consistent set of criteria for identifying significant indigenous vegetation and significant habitats of indigenous fauna to be given effect to in regional and district plans.~~

1. Develop a regionally consistent set of criteria for the identification of outstanding natural features and outstanding natural landscapes and their values, and include the criteria in the regional and district plans.

2. Identify outstanding natural features and outstanding natural landscapes in regional and district plans, and through the resource consent process.

3. Use provisions including maps in the regional and district plans, and the resource consent process to protect outstanding natural features and outstanding natural landscapes from inappropriate subdivision, use and development.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

Part 2 of the RMA requires councils, when exercising their functions under the RMA, to recognise and provide for the protection of ~~areas of significant indigenous vegetation, significant habitat of indigenous fauna, and~~ outstanding ~~natural character,~~ natural features and outstanding natural landscapes, from inappropriate development as a matter of national importance. The Objectives, Policies and Methods in this Chapter ~~aim to~~ implement these statutory requirements in a pragmatic, efficient and effective way to ensure that both the protection of outstanding natural features and outstanding natural landscapes, ~~the natural environment~~ and provision for the economic, social and cultural wellbeing of the West Coast, are achieved.

ANTICIPATED ENVIRONMENTAL RESULTS

1.~~3.~~ ~~Appropriate~~ Pprotection of outstanding natural features and landscapes.~~, in particular the iconic tourist vistas that attract visitors to the region.~~

2.~~4.~~ Appropriate subdivision, use and development is able to occur.~~, and regulatory processes do not unduly delay appropriate resource use and development taking place~~.

8. Land and Water

BACKGROUND TO THE ISSUES

The West Coast has high rainfall and water is generally abundant in most areas. Given the development pressures facing other regions, West Coast experiences of the natural environment are being keenly sought, with many of these experiences centred around coastal and freshwater environments. The region's natural beauty and resulting popularity with tourists is, in no small measure, due to the pristine nature of most water bodies. Management of these resources needs to take into account the high recreational and habitat values these water bodies provide.

To Poutini Ngāi Tahu, wai māori (freshwater) and moana (coastal waters) are taonga. The life-giving and life-sustaining properties of water are intrinsically linked to the spiritual, cultural, economic, environmental and social wellbeing, survival and identity of Poutini Ngāi Tahu whānui. Poor water quality and activities such as abstraction, damming or diversion of water can have adverse effects on the relationship of Poutini Ngāi Tahu to fresh and coastal waters, including on their culture and traditions. This is because the life-supporting capacity and/or mauri of the resource can be affected, including its ability to support healthy habitat for mahinga kai and to provide for the harvest of kaimoana and other customary uses. The life supporting capacity of water is not just of importance for cultural values, but also has relevance for trout, salmon and other species.

State of Environment reporting has shown that freshwater quality is improving on the West Coast. Council's Long Term Plan now includes five water quality parameters and Council measures progress with these parameters and reports on this annually.

Water quality management has been mainly focused on addressing point source (direct) discharges of contaminants. Continued work on the way land is used and managed to reduce diffuse run-off and leaching will enable further improvements in water quality. Council has been working closely within specific catchments to improve water quality through both regulatory and non-regulatory approaches, with some success.

Compared with other regions, there are relatively few significant water use pressures on water bodies on the West Coast. However, water availability is coming under increased seasonal pressure due to extraction for irrigation in the upper Grey Valley. This may require further work to prioritise water allocation between water uses such as drinking water and in-stream uses (for example fish habitat/aquatic ecology and other in-stream needs).

~~The NPSFM was gazetted in 2014. The RPS must give effect to the NPSFM. The objectives, policies, rules and methods in the Regional Land and Water Plan are meeting the requirements of the NPSFM through managing the effects of land use and their potential impact on waterbodies. Further emphasis on the requirement for integrated management, particularly on the effects of the use of land on fresh water for both the Regional and district councils, will give further effect to the NPSFM. An integrated approach also considers the effects of land and freshwater use on coastal water.~~

The National Policy Statement for Freshwater Management (NPSFM) was gazetted in 2017, and recognises the importance of freshwater resources. It gives councils direction for both providing for water use and protecting the values of freshwater, including aquatic ecosystems and wetlands. Protection of freshwater indigenous biological diversity is addressed in Chapter 7 Ecosystems and Indigenous biological diversity as section 6(c) of the RMA also gives direction on these matters.

To give effect to the NPSFM, the Regional Council has a Progressive Implementation Plan (PIP) identifying Freshwater Management Units (FMU's) in the region, and outlining when it will set up FMU community groups to identify values, objectives and limits for each

FMU. This work will result in changes to the Regional Land and Water Plan under Schedule 1 of the RMA.

This Chapter of the RPS provides overarching and high level policy direction to give effect to the NPSFM throughout the region. It also provides for integrated management with the water-related provisions of the New Zealand Coastal Policy Statement 2010 (NZCPS), by managing effects of land and fresh water use that originate from outside the coastal environment, on inshore coastal water. It also gives effect to the relevant provisions of the National Policy Statement for Renewable Electricity Generation (NPSREG).

The significant issues in relation to the management of land and water for the West Coast region are:

1. Managing adverse effects on water quality, arising from point source and diffuse source discharges to waterbodies from activities on land.

2. Potential overuse of water resources can occur in certain areas during drier seasons.

3. Activities may adversely affect the significant values of wetlands and outstanding freshwater bodies.

4. Integrating the management of subdivision, use and development activities on land with the potential effects on water quality.

OBJECTIVES

1. The life-supporting capacity of freshwater is maintained or improved.

2.~~1~~. Provide for a range of land and water uses to enable the economic, social and cultural wellbeing of West Coast communities while maintaining or improving water quality and aquatic ecosystems[6].

3.~~2~~. Determine allocation of water within environmental controls. ~~priorities for water in catchments where there are competing or conflicting demands.~~

4. Identify and protect the significant values of wetlands and outstanding freshwater bodies.

5.~~3~~. Achieve the integrated management of water and the subdivision, use and development of land within catchments, recognising the interconnections between land, fresh water, and coastal water, including by managing adverse effects of land and water use on coastal water quality.

POLICIES

1. Adverse effects on ~~the significant values of~~ fresh and coastal water quality and aquatic ecosystems arising from:

   a) Subdivision, use or development of land;

   b) Discharges of contaminants to water and to land in circumstances which may result in contaminants entering water;

   c) Water use and take ~~abstractions~~; and

   d) Activities in, or on, water including damming and diversion,

   will be avoided, remedied or mitigated, to ~~thereby~~ ensure~~ing~~ that water quality and aquatic ecosystems are maintained or improved.

[6] Including the habitat of trout and salmon.

2. To give effect to Objective 2 of Chapter 3, the adverse effects of subdivision, use and development on Poutini Ngāi Tahu cultural values will be avoided, remedied or mitigated taking into account the following matters:

   a) A preference by Poutini Ngāi Tahu for discharges to land over water where practicable;

   b) The value of riparian margin vegetation for water quality and aquatic ecosystems; and

   c) Effects on the sustainability of mahinga kai, and protection of taonga areas.

3. To give effect to Objective 2 of Chapter 3, manage land and water use in a way that avoids significant adverse effects (other than those arising from the development, operation, maintenance, or upgrading of RSI and local roads) and avoids, remedies or mitigates other adverse water quality effects on sites that are significant to Poutini Ngāi Tahu, including the following:

   a) Estuaries, hāpua lagoons, and other coastal wetlands; and

   b) Shellfish beds and fishing areas.

~~3) Subject to the requirements of Part 2 of the Resource Management Act (RMA) the allocation of water will generally be dealt with on a "first-come, first-served" basis but will take into account the reasonable needs of water users. In catchments where there is likely to competition for the use of water, allocation decisions will be made having particular regard to the following:~~

3.4. Until priority frameworks for water take and use are developed through the FMU processes and added to a regional plan, consent applications will be processed on a "first-come, first served" basis, and in making decisions, the following matters must be considered:

   a) The ~~R~~reasonably foreseeable future requirements for domestic and community water supply needs, stock drinking, and firefighting;

   b) The degree of community, regional or national benefit from the ~~taking and use~~ take, use, damming or diversion of water;

   c) ~~That a~~Any adverse environmental effects from the ~~allocation~~ take, use, damming or diversion of water will be avoided, remedied or mitigated including where applicable by applying provisions of the regional plan; ~~in accordance with other policies of this RPS or regional plans, and the requirements of the RMA; and~~

   d) Applying rates of take, volume limits and residual flows at the point of take to ensure that there is enough water for the purpose of the take, and to maintain or improve water quality and aquatic ecosystems;

   e) The extent to which the proposal maximises the efficient allocation and efficient use of water; and

   f) The reasonable needs of other water users.

~~4. Regional and district plans are integrated to manage the effects of the use and development of land on water, including coastal water.~~

5. Maintain or improve water quality within freshwater management units.

6. Identify the significant values of wetlands and outstanding freshwater bodies in regional plans and protect those values.

7. Encourage the coordination of urban growth, land use and development including the provision of infrastructure to achieve integrated management of effects on fresh and coastal water.

8. Provide for the social, economic and cultural wellbeing derived from the use and development of land and water resources, while maintaining or improving water quality and aquatic ecosystems.

9. Implement the National Policy Statement for Freshwater Management including the National Objectives Framework.

EXPLANATION TO THE POLICIES

Policy 1 gives effect to the NPSFM and Objective 1 above by requiring that subdivision, use and development activities on land, discharges of contaminants, water ~~abstractions~~ takes and uses, and activities in, or on, water are managed in a way that reduces the adverse effects of those activities. Explicit detail on how this will be achieved ~~is~~ will be set out in the Regional Land and Water Plan, as well as provisions in the district plans and through conditions on individual resource consents. This includes providing for discharges to land where this is more appropriate than discharging contaminants to water, for example dairy shed effluent, and requiring treatment of certain contaminants prior to discharging into water, such as sewage effluent. ~~Giving effect to Policy 1 will also ensure that the significant values of water including, but not limited to, aquatic ecosystems and recreational uses will be provided for. Significant values can include the national and local values referred to in the NPSFM.~~

Regarding Policies~~y~~ 2 and 3, the discharge of contaminants to water is a significant environmental and cultural concern to Poutini Ngāi Tahu because of its impact on the health and mauri of water bodies, including adverse effects on coastal shellfish beds and fishing areas. To achieve the sustainability of mahinga kai, the health of these taonga must be maintained to provide for the needs of future generations. Discharge of sewage effluent to water is particularly offensive to Poutini Ngāi Tahu. Discharges to land are preferred where practicable, and where the effects are less than for discharges to water. Where possible, Poutini Ngāi Tahu encourage land-based treatment of stormwater, acknowledging that this may not be feasible in all situations on the West Coast given the high rainfall and soil types. Poutini Ngāi Tahu also promote the maintenance and enhancement of riparian vegetation to protect water quality and aquatic ecosystems. ~~Adverse effects on cultural values can be assessed and managed in consultation with tangata whenua through the resource consent and plan development processes. Mahinga kai and other taonga areas of significance to Poutini Ngāi Tahu are, or will be, identified in the regional and district plans.~~

The regional and district councils need to have regard to the downstream effects of land and water use on coastal mahinga kai areas. Adverse effects on cultural values can be assessed and managed in consultation with tangata whenua through the resource consent and plan development processes. Mahinga kai and other taonga areas of significance to Poutini Ngāi Tahu are, or will be, identified in the regional and district plans.

Policy ~~3~~4 ~~sets out the approach to be taken to determine allocation~~ applies to the taking, use, damming and diversion of water. ~~priorities for the use of water. Subject to Part 2 of the RMA,~~ Until Freshwater Management Unit (FMU) provisions are established in regional plans, the Council will ~~generally~~ allocate water on a 'first-come, first-served basis'. ~~However where there is likely to be competition for the use of water, the Council will need to 'prioritise' water allocation among competing users.~~ Policy ~~3~~4 establishes that allocations are made ~~subject to~~ after considering the matters listed, and ~~Part 2 of the Act including the need to safeguard the life-supporting capacity of water and protect instream uses and values. This will be done~~ in accordance with any relevant provisions in ~~other policies in the RPS as well as~~ the operative regional plans to safeguard the life-supporting capacity of water. ~~and the requirements of the RMA. In making decisions on~~

~~the allocation of water under this policy, some water users will need to be given priority because they provide important economic, social, or health and safety benefits to the community, the region, New Zealand, or because of the strategic nature of their business or operations. Water will be managed and prioritised where allocation pressures exist. The intent is to avoid, remedy or mitigate the adverse effects that the use and development within these catchments may have on these water resources whilst still enabling communities to meet their social, cultural and economic wellbeing. While this issue is fairly limited at this time, future development, and use of freshwater, in the region may put other catchments under pressure.~~

Policy 5 is to implement the NPSFM by establishing FMUs and, subsequently through plan changes, developing a framework with freshwater objectives and environmental limits for each FMU.

Policy 6 reflects the NPSFM Objectives A2 and B4 which require the protection of the significant values of wetlands and outstanding freshwater bodies. While indigenous biological diversity, natural character and landscape values of wetlands are addressed in Chapters 7, 7A and 7B, wetlands can have other values, for example, cultural, recreational and hydrological values, and the provisions of this Chapter apply to all significant wetland values.

The NPSFM requires the RPS to provide for the integrated management of the effects of the use and development of land and water on fresh and coastal water. This ~~is to~~ includes encouraging the co-ordination and sequencing of regional and/or urban growth, land use and development and the provision of infrastructure. Policy 4~~-7~~ recognises the connectivity between activities on land and ~~its~~ their effects on water~~., and that t~~These must be managed through both the regional and district plans. Activities upstream can also affect coastal water quality. An example of where integrated management is necessary ~~is~~ includes ensuring sufficient infrastructure capacity is provided for stormwater disposal and discharge from new subdivision and land development, in order to avoid stormwater overflows flooding adjoining land, ~~or~~ eroding riverbanks, or causing sedimentation of water bodies.

Policy 4~~-7~~ also gives effect to the NZCPS policies for integrated management of activities that affect the coastal environment, including effects on coastal water from upstream land uses.

Policy 8 The NPSFM recognises the importance to people of using water within environmental limits to ensure water quality and aquatic ecosystem outcomes are achieved. The use of water is necessary for a variety of activities that contribute to people's economic, social and cultural wellbeing.

Policy 9 gives effect to the Regional Council's obligation to fully implement the NPSFM.

~~RELATED POLICIES~~

~~Policy 2 of Chapter 3 [Resource Management Issues of Significance to Poutini Ngāi Tahu]; Policy 1, 2, 4 and 5 of Chapter 4 [Resilient and Sustainable Communities]; Policy 1 and 2 of Chapter 5 [Use and Development of Resources]; Policy 1, 2, 3, 4, 5, and 6 of Chapter 6 [Regionally Significant Infrastructure]; Policy 1 and 3 [DR 7.126] of Chapter 7 [Biodiversity and Landscape Values]; Policy 2 of Chapter 9 [Coastal Environment].~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. ~~Maintain a~~ Include in regional plans ~~with~~ objectives, policies, rules and methods ~~of implementation~~ to ensure that any adverse effects of point and diffuse source discharges to land and water are avoided, remedied or mitigated, and that water quality is maintained or improved in accordance with relevant national policy statements.

2. Include in district plans, policies, rules, guidelines or other information to avoid, remedy or mitigate the adverse effects of land use activities and management practices on water quality.

3. Regional and district councils, in their plan development and resource consent processes, will consult with Poutini Ngāi Tahu about avoiding, remedying or mitigating adverse effects originating from land and freshwater use on their cultural values associated with fresh and coastal water, including by identifying significant mahinga kai and other taonga areas.

~~4. Maintain a regional plan with objectives, policies, rules and methods of implementation to ensure the prioritisation of freshwater in catchments where conflict may arise during dry periods.~~

4. Develop with stakeholders regionally consistent criteria to identify the significant values of wetlands and outstanding freshwater bodies.

5. Identify the significant values of wetlands and outstanding freshwater bodies in a regional plan.

~~6.~~5. Regional plans are integrated across land and water resources (including coastal water), and regional and district plans are integrated across statutory functions to manage the effects of urban growth, development, and infrastructure on fresh and coastal water.

~~7.~~6. In accordance with the WCRC's Progressive Implementation Programme, establish Freshwater Management Units (FMUs), and set freshwater objectives and limits through provisions in regional plans. ~~undertake water quality monitoring, further investigative work, plan changes to the Land and Water Plan, and any subsequent implementation actions necessary to enable implementation of the NPSFM, including identification of the significant values referred to in Objective 1 and Policy 1.~~

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

~~It is the activities that occur on land that have the greatest influence over the quality of our fresh and coastal water. The Regional Land and Water Plan provides a comprehensive tool for the integrated management of land and fresh water. The RPS objectives, policies and methods do, at their broadest level, establish a policy framework for maintaining and improving freshwater on the West Coast. Their aim is to maintain the West Coast's generally high to excellent water quality and to enhance that water quality by addressing the effects of water contamination from diffuse and point sources. Further detail and the specific approaches to the management of these issues is provided in the Regional Land and Water Plan. Regulation, through the inclusion of rules in the regional and district plans, as well as conditions on resource consents, provide a simple, efficient and effective method of controlling adverse effects associated with the use of land and water.~~

Maintaining or improving fresh water quality on the West Coast will be achieved principally through the implementation of the NPSFM. This will require the establishment of the FMU's, and their own fresh water objectives and environmental limits in a regional plans. ~~Until that time, tThere is a framework to provide for water use and allocation on an interim basis.~~

Water takes and uses will also be managed in accordance with the NPSFM. The aim is to provide for the many uses of land and water ~~and to balance these competing demands~~ while also ~~maintaining, and where appropriate, enhancing water quality.~~ giving effect to Objective B1 for water quantity in the NPSFM. Through ~~the statutory framework in place, and in particular the use of regional rules,~~ the ~~R~~regional and district plans, ~~C~~councils can provide for the use of these resources for the economic, social and cultural wellbeing of our communities while managing any adverse effects. There is a framework to provide for water take and use on an interim basis until FMUs are established in a regional plan.

Integrated management of the effects of land and fresh water use on coastal water is important for maintaining coastal water quality in areas with significant cultural values. These values include shellfish beds, fishing areas, and other mahinga kai and taonga areas, that are sensitive to water contamination.

~~Council will continue to monitor water quality through State of Environment Reporting and as part of the Council's Long Term Plan. Further work will be undertaken to determine what more needs to be done to implement the NPSFM, including considering whether additional objectives are required for specific water bodies within the Region (freshwater management units). Consideration will also be given to the approach to monitoring progress toward achieving any identified objectives of the NPSFM and whether the information available in respect of freshwater takes and contaminants needs improving in order to achieve these objectives. Where necessary, detailed direction will be provided through provisions in regional plans.~~

ANTICIPATED ENVIRONMENTAL RESULTS

1. Water quality is maintained or improved on the West Coast.

2. West Coast communities can use and develop land and water resources to provide for their economic, cultural and social wellbeing.

3.~~2~~ Water allocations are ~~prioritised and~~ managed within limits to maintain or improve water quality and water quantity.

4. Significant values of wetlands and outstanding fresh water bodies are protected from the adverse effects of activities that compromise these values.

5.~~3~~ Regional and district plans are integrated to effectively manage land and water effects on fresh and coastal water.

6. Life supporting capacity and ecosystem processes of freshwater are safeguarded.

9. Coastal Environment

BACKGROUND TO THE ISSUES

This Chapter identifies resource management issues of regional significance affecting the West Coast's coastal environment. Resource management of the coastal environment is shared between regional and district councils, as follows:

a) The coastal environment from ~~marine area (CMA) covers from the line of~~ mean high water springs (MHWS) out to the 12 nautical mile limit at sea~~,~~ is the coastal marine area (CMA), wherein the Regional Council has the primary function to manages the effects of occupation and other activities through the Regional Coastal Plan;

b) The coastal environment also extends inland from ~~the~~ MHWS ~~line inland~~ to the extent of "where coastal processes, influences, or qualities are significant" (Policy 1(2)(c), NZCPS). The three district councils manage effects of land use, development and subdivision in this part of the coastal environment ~~of~~ in their respective districts via ~~their~~ the district plans. The Regional Council manages the effects of activities such as earthworks and discharges in this part of the coastal environment through its regional ~~Land and Water~~ plan.

Section 62(3) of the RMA requires that this RPS must, among other things, give effect to the NZCPS. The Minister of Conservation prepared and approved a revised NZCPS in 2010 covering a range of coastal matters. The NZCPS policies of particular relevance to this chapter of the RPS are:

- Policy 6 which has clauses recognising the contribution of activities in the coastal environment to the social, economic and cultural wellbeing of people and communities;
- Policy 7 which requires consideration of where, how and when to provide for activities in the coastal environment, and where protection from inappropriate activities is needed;
- Policies 11, 13 and 15 which ~~require~~ set out requirements for the protection of ~~significant~~ indigenous biological diversity, ~~areas of outstanding~~ natural character, and ~~outstanding~~ natural features and landscapes ~~from adverse effects of activities~~; and
- Policies 24, 25, 26 and 27 which provide direction on managing coastal hazard risk.

The RPS must give effect to the National Policy Statements for Electricity Transmission (NPSET for the National Grid) and Renewable Electricity Generation (NPSREG), where activities covered by these NPS's occur in the coastal environment. This Chapter provides policy direction when considering the specific requirements of the electricity NPSs and the NZCPS. The provisions of Chapter 6 Regionally Significant Infrastructure (RSI) also need to be considered for electricity and other RSI in the coastal environment.

Some provisions in other chapters of this RPS ~~may~~ also apply in the coastal environment~~;~~. ~~f~~For example, Poutini Ngāi Tahu provisions in Chapter 3, heritage provisions in Chapter 4 ~~in the Resilient and Sustainable Communities, and Land and Water chapters.~~ and the ~~Downstream~~ effects of land and freshwater use above Mean High Water Spring on coastal water ~~are addressed under the integrated management provisions in the Land and Water~~ in ~~c~~Chapter 8. ~~These provisions are referred to in the Related Policies section of this chapter, and generally give effect to other NZCPS policies. Further details of policies in the NZCPS 2010 which are relevant to the West Coast CMA are given effect to in the Regional Coastal Plan and district plans~~.

~~As referred to in Chapter 7 on Biodiversity and Landscape Values,~~ Tthe West Coast has a dramatic coastline with extensive areas of high scenic and natural values in a largely unmodified state. Tourists are attracted to the West Coast to view iconic coastal scenic

areas such as the Pancake Rocks at Punakaiki. ~~an abundance of natural habitat, natural character, and landscapes, including within the coastal environment. Protection of these values in accordance with the NZCPS does not necessarily prohibit appropriate subdivision, use and development. While there is currently a relatively low level of development particularly in the coastal marine area, there is the potential for further resource use and development in the coastal environment in appropriate locations and forms, and within appropriate limits. Tourists are attracted to the West Coast to view iconic coastal scenic areas such as the Pancake Rocks at Punakaiki. Natural materials such as sand, gravel, driftwood, and minerals such as ilmenite and garnets can be used to provide for people's social and economic wellbeing.~~

A large proportion of the development and land use activities including subdivision in the region is located in, or traverses through, the coastal environment. RSI may also need to be located within the coastal environment of the region. While there is currently a relatively low level of development pressure for new activities, particularly in the coastal marine area, there is the potential for further resource use and development in the coastal environment. ~~in appropriate locations and forms, and within appropriate limits. Tourists are attracted to the West Coast to view iconic coastal scenic areas such as the Pancake Rocks at Punakaiki.~~ Natural materials such as sand, gravel, driftwood, and minerals such as ilmenite and garnets can be used to provide for people's social and economic wellbeing.

~~This Chapter does not have objectives or policies to manage effects of all activities that are in the coastal environment. That level of detail is addressed in regional and district plans, including, for example, effects of activities in or near river mouths on fish migration and aquatic ecology, both upstream of the coastal environment and within it.~~

Climate change can potentially affect the coastal environment via sea level rise, and changes to the intensity and frequency of storm surges and waves. This can affect river mouth migration and lagoon flood levels. The coast is a highly dynamic environment because of a combination of marine, terrestrial and tectonic environments, and this, combined with climate change, means that more frequent or greater erosion and inundation can be expected in coming decades. Inappropriate subdivision, use and development can increase the exposure of people and communities to risks from coastal hazards. This Chapter proposes guidance on allowing appropriate development in the coastal environment while managing inappropriate development that increases the risk of hazards that affect people and communities. A risk-based approach to assessing coastal hazard risk includes taking a precautionary approach as required by the NZCPS 2010. Chapter 11 Natural Hazards also has provisions that are relevant to the coastal environment.

Statement of Local Authority Responsibilities

Section 62(1)(i)(iii) of the Act requires a regional policy statement to state the local authority responsible, in the whole or any part of the region, for specifying the objectives, policies and methods for the control of the use of land to maintain indigenous biological diversity.

The West Coast Regional Council will be responsible for specifying the objectives, policies and methods to maintain indigenous biological diversity by controlling activities:

1. in the CMA;
2. affecting water bodies, including significant wetlands;
3. affecting the beds of lakes and rivers.

Control of the use of land to maintain indigenous biological diversity in lake and river margins, and for earthworks and vegetation clearance activities, is a shared responsibility between Regional and District Councils.

Territorial authorities will be responsible for specifying the objectives, policies and methods for the control of the use of land for the maintenance of indigenous biological diversity for all other activities.

The significant issues in relation to the management of the coastal environment for the West Coast region are:

~~1. The NZCPS requires the avoidance of adverse effects on certain indigenous coastal biodiversity, and outstanding natural character and landscapes in the coastal environment. These areas are widespread on the West Coast as it has a relatively large proportion of unmodified coastal environment. However, there is also a need to enable appropriate future employment, growth and development, to provide for the Region's economic, social and cultural wellbeing.~~

1. Protecting the values of the coastal environment whilst enabling sustainable use and development, to provide for the region's economic, social and cultural wellbeing.

2. Enabling appropriate subdivision, use and development of the coastal environment while reducing the risk of harm to people, property, and infrastructure from natural hazards in the coastal environment.

OBJECTIVES

~~1. A regulatory framework that protects significant indigenous coastal biodiversity, outstanding natural character areas, and outstanding natural features and natural landscapes from adverse effects of inappropriate[8] activities.~~

~~2. Recognise appropriate and sustainable subdivision, use and development in the coastal environment and its contribution to enabling people and communities to provide for their economic, social and cultural wellbeing.~~

1. Within the coastal environment:

   a) Protect indigenous biological diversity;

   b) Preserve natural character, and protect it from inappropriate subdivision, use and development; and

   c) Protect natural features and natural landscapes from inappropriate subdivision, use and development.

2. Provide for appropriate subdivision, use and development in the coastal environment to enable people and communities to maintain or enhance their economic, social, and cultural wellbeing.

~~4.~~3 Ensure that any new subdivision, use or development in the coastal environment has appropriate regard to the level of coastal hazard risks.

~~5.~~4 Ensure that coastal hazard risks potentially affecting existing development are managed so as to enable the safety, and social and economic wellbeing of people and communities.

POLICIES

~~1. Where new subdivision, use or development is proposed in the coastal environment:~~

~~a) avoid adverse effects on the taxa, ecosystems, areas and habitats listed in NZCPS 2010 Policy 11(a);~~

~~b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the taxa, ecosystems, areas and habitats listed in NZCPS 2010 Policy 11(b);~~

~~c) avoid adverse effects of inappropriate[21] subdivision, use and development on areas of outstanding natural character, outstanding natural features and outstanding natural landscapes;~~

~~d) avoid significant adverse effects of inappropriate[8] subdivision, use and development and avoid, remedy or mitigate other adverse effects on natural character, natural features and natural landscapes.~~

1. Within the coastal environment protect indigenous biological diversity, and natural character, natural features and natural landscapes from inappropriate subdivision, use and development by:

   a) Identifying in regional and district plans areas of significant indigenous biological diversity, outstanding and high natural character and outstanding natural features and landscapes, recognising the matters set out in Policies 11, 13 and 15 of the NZCPS;

   b) Avoiding adverse effects on significant indigenous biological diversity, areas of outstanding natural character and outstanding natural landscapes and features; and

   c) Avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on indigenous biological diversity, natural character, natural features and natural landscapes;

~~2. In addition to the matters listed in Policy 2 of Chapter 7, when considering whether or not proposals for new subdivision, use, and development in the coastal environment are inappropriate, take into account the following contextual matters:~~

~~a) The protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;~~

~~b) Some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities; and~~

~~c) Functionally some uses and developments can only be located in the coastal marine area or inland coastal environment.~~

2.(1) In the case of the National Grid, operation, maintenance or minor upgrading of existing National Grid infrastructure shall be enabled.

(2) In the case of the National Grid, following a route, site and method selection process and having regard to the technical and operational constraints of the network, new development or major upgrades of the National Grid shall seek to avoid adverse effects, and otherwise remedy or mitigate adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes, and areas of high and outstanding natural character located within the coastal environment. In some circumstances, adverse effects on the values of those areas must be avoided.

3. Provide for subdivision, use or development in the coastal environment:

   a) Which maintains or enhances the social, economic and cultural well-being of people and communities;

   b) Which:

~~[21 & 8] For the purposes of Objective 1 and Policy1 of Chapter 9, whether an activity is "inappropriate" or not is to be determined in accordance with the criteria listed in Policy 2 of Chapter 9 and Policy 2 of Chapter 7.~~

i) Requires the use of the natural and physical resources in the coastal environment; or

ii) Has a technical, functional or operational requirement to be located within the coastal environment;

c) Recognising that minor or transitory effects associated with subdivision, use and development may not be an adverse effect within those areas described in Policy 1b).

d) By allowing subdivision, use and development where the adverse effects are no more than minor within those areas described in Policy 1c).

e) By allowing lawfully established activities to continue provided the adverse effects are the same or similar in scale, character or intensity.

4. Provide for new and existing renewable electricity generation activities in the coastal environment, including by having particular regard to:

a) The need to be located where the renewable energy resource is available;

b) The technical, functional or operational needs of renewable electricity generation activities.

5. ~~3.~~ To give effect to Objective 2 of Chapter 3 of this RPS, manage land and water use in the coastal environment in a way that avoids significant adverse effects (other than those arising from the development, operation, maintenance, or upgrading of RSI and local roads) and avoids, remedies or mitigates other adverse water quality effects on sites that are significant to Poutini Ngāi Tahu, including the following:

a) Estuaries, hāpua lagoons, and other coastal wetlands; and

b) Shellfish beds and fishing areas.

6. ~~4.~~ Where new subdivision, use or development in the coastal environment may be adversely affected by coastal hazards, adopt a risk management approach taking into account, where applicable:

a) Official, nationally recognised guidelines for sea level rise;

b) The type and life-cycle of the proposed development, including whether it is short-term, long term, or permanent;

c) Whether the predicted impacts are likely to have material or significant consequences;

d) The acceptability of those potential consequences, given their likelihood; and~~,~~

e) Whether there are suitable options to avoid increasing the risk of harm from coastal hazards, and whether future adaptation options are feasible.

7. ~~5.~~ Coastal hazard risks should be assessed over at least a 100 year timeframe.

8. ~~6.~~ In areas of significant existing development likely to be affected by coastal hazards, a range of options for reducing coastal hazard risk should be assessed.

9. Consider opportunities for the restoration or rehabilitation of natural character.

EXPLANATION TO THE POLICIES

Policy 1 gives effect to Policies 11, 13, and 15 of the NZCPS 2010 to protect ~~significant and outstanding~~ indigenous biological diversity, landscape and natural character values, for example, bush clad cliffs and ravines or marine reserves. These NZCPS policies set levels of protection from adverse effects of activities on significant and outstanding indigenous biological diversity, landscape and natural character values, and on natural

values that are not significant or outstanding, and are reflected in Policy 1. ~~In applying this Policy, case law indicates that it may be acceptable to allow activities that have minor or transitory adverse effects on significant biodiversity or outstanding natural character or landscape areas and still give effect to these NZCPS policies, where the avoidance of the effects of an activity is not necessary (or relevant) to protect the particular values. Policy 1 therefore focuses on 'new' use or development as it has a greater likelihood of having more than minor or transitory adverse effects. Existing infrastructure and other activities that have been in place for many years are likely to have adverse effects that are no more than minor. When having regard to Policy 1, consideration should be given to the nature and scale of effects, what adverse effects are to be avoided, and what values are to be protected. Decision-makers need to apply this in context of the West Coast and the quantity and quality of biodiversity and natural values remaining throughout the region's coastal environment.~~

Policy 2 provides a specific management approach for the National Grid. 'Seek to avoid' means that the operator must make every possible effort to avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes, and high or outstanding natural character. The circumstances in which adverse effects must be avoided will be dependent on the nature of the adverse effects and values adversely affected, taking into account the technical and operational constraints of the network and the route, site and method selection process.

~~Policy 2 gives effect to Policy 6(2) of the NZCPS 2010 reflecting that the RMA does not preclude appropriate use and development in the coastal environment. "Use" not only means resource use, it also includes, for example, recreational use and public access as uses of the coastal environment. Policy 2(a) also links to Policy 7 of the NZCPS which requires consideration in RPS's and plans of where, how and when to provide for future development. These matters are implemented for the coastal marine area in the Regional Coastal Plan by identifying areas with important values where adverse effects of proposed new development may need to be assessed. Plan rules indicate when consideration of effects is required through the consent process. District plans will have similar provisions for the coastal environment to be consistent with the RPS and Regional Coastal Plan.~~

Policy 3 gives effect to Policies 6, 7, 8 and 9 of the NZCPS to recognise that the provision of certain activities in the coastal environment is important to the social, economic and cultural wellbeing of West Coast people. The NZCPS does not preclude appropriate use and development in the coastal environment, including in areas with significant, high or outstanding indigenous biological diversity, natural character and natural features and landscapes provided that potential adverse effects are appropriately managed. Policy 3 recognises the constraints in the NZCPS on activities in the coastal environment.

In applying Policy 3, case law indicates that it may be acceptable to allow activities that have minor or transitory adverse effects on significant indigenous biological diversity or outstanding natural character or landscape areas and still give effect to these NZCPS policies, where the avoidance of the effects of an activity is not necessary (or relevant) to protect the particular values. 'New' use or development may be more likely to have more than minor or transitory adverse effects. Existing infrastructure and other activities that have been in place for many years are likely to have adverse effects that are no more than minor.

Policy 4 gives effect to the National Policy Statement for Renewable Electricity Generation (NPSREG) for activities within the coastal environment.

Policy 3 *5* recognises that some coastal environments important to Poutini Ngāi Tahu are particularly sensitive to elevated levels of contaminants in coastal water. Regional and district councils need to have regard to the effects of coastal development on coastal mahinga kai areas such as estuaries, lagoons, coastal wetlands, shellfish beds, and fishing areas including mataitai reserves. Significant coastal mahinga kai areas for Poutini

Ngāi Tahu are, or will be, identified in the regional and district plans. Policy ~~3~~ 5 includes an exception for the development, operation, maintenance, or upgrading of RSI and local roads in recognition of the fact that there are several places in the coastal environment where important lifeline infrastructure exists in or near to the areas listed in clauses a) and b).

Policy ~~4~~ 6: The potential impacts of climate change on coastal processes (and thus natural hazards) are complex, and a risk management approach to coastal hazard management is necessary when considering if coastal subdivision, use and development is suitable in the coastal environment. A number of national level guidance manuals are available which have a range of factors to consider when assessing the risk of coastal hazard effects on proposed development, including adaptive management. Policy 25 of the NZCPS 2010 requires that in areas potentially affected by coastal hazards over at least the next 100 years, increased risk of harm from such hazards must be avoided. There are a range of preventive tools that may be considered in terms of their effectiveness for avoiding increasing the risk of harm. Determining their effectiveness will depend on factors such as the level of risk, whether the risk may change over time and by how much.

Policy ~~5~~ 7: Policy 24 of the NZCPS 2010 requires that a minimum 100 year timeframe is used for assessing coastal hazard risks, particularly for proposed development in or adjoining areas identified as being high risk for hazards. This will provide consistency for development in the coastal environment of the three districts.

The provisions in this Chapter are specific to resource management-related hazard issues in the coastal environment. The Natural Hazards Chapter has provisions which may also apply in the coastal environment.

Policy ~~6~~ 8: Policy 27 of the NZCPS 2010 lists several options to consider for managing coastal hazard effects on significant existing development, including relocation and removal of existing development, as well as hard protection structures. Where resource management action is needed to protect people and property, the RMA provides for councils to take the best practicable option. Decision-makers will need to consider the potential social and economic impacts, including costs, to land and infrastructure owners of options to best manage hazard effects.

Policy 9 gives effect to Policy 14 of the NZCPS which directs the promotion of restoration or rehabilitation of natural character in the coastal environment, including by provisions in the RPS and plans, and conditions in resource consents and designations.

~~**RELATED POLICIES**~~

~~Policy 1, 2 and 3 of Chapter 2 [Resource Management Issues of Significance to Poutini Ngāi Tahu]; Policy 1, 2, 4 and 5 of Chapter 4 [Resilient and Sustainable Communities]; Policy 1 of Chapter 5 [Use and Development of Resources]; Policy 1, 2, 3, 4, 5, and 6 in Chapter 6 [Regionally Significant Infrastructure]; Policy 1 and 3 in Chapter 7 [Biodiversity and Landscape Values]; Policy 1, 2, 3 and 4 in Chapter 8 [Land and Water]; Policy 2 (in the inland coastal environment) of Chapter 10 [Air Quality]; Policy 1, 2, 3, and 4 of Chapter 11 [Natural Hazards].~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. Regional and District Councils to identify areas of significant indigenous biological diversity, outstanding and high natural character areas and outstanding natural

features and landscapes of the coastal environment, set out the characteristics and qualities of each area in a plan schedule, and show areas on maps where practicable.

~~1.~~2. ~~Allow appropriate use and development in the coastal environment, and m~~Manage adverse effects of subdivision, use and development in the coastal environment ~~activities~~ through ~~by~~ provisions in the Regional Coastal Plan, the Land and Water Plan, and district plans, including identification of significant coastal mahinga kai areas.

~~2.~~3. Use the regional and district plans, resource consent, building consent, ~~and~~ rating district processes, and community consultation to assess and manage the risk of coastal hazards affecting development in the coastal environment.

~~3.~~4 Continue to review and include the Coastal Hazard Areas in the Regional Coastal Plan and in district plans and identify whether these Areas have a low, medium or high risk of being affected by a coastal hazard.

~~4.~~5 Consider using expert advice where there may be a medium or high risk of significant existing development being affected by a coastal hazard.

PRINCIPAL REASONS FOR ADOPTING THE OBJECTIVES, POLICIES, AND METHODS

The provisions in this Chapter ~~will enable Councils to carry out their obligations under the RMA to manage subdivision, use, and development in the coastal environment. This includes giving~~ give effect to ~~relevant parts of~~ the NZCPS, ~~2010~~ NPSET and NPSREG in the coastal environment. ~~which apply to the coastal environment of the West Coast.~~

The provisions for managing coastal hazard risk ~~also~~ implement Councils' functions under section 30 of the RMA for controlling the use of land, including land in the coastal environment, to avoid or mitigate natural hazards. The NZCPS also puts obligations on councils to manage coastal hazards.

Managing effects of activities in the coastal marine area which may potentially cause or exacerbate a coastal hazard risk is covered in the Regional Coastal Plan.

ANTICIPATED ENVIRONMENTAL RESULTS

1. ~~The particular~~ Natural character, and the values that make ~~biodiversity, natural character,~~ natural landscapes and natural features ~~significant or~~ outstanding, are protected from ~~adverse effects of activities~~ inappropriate subdivision, use and development in the coastal environment.

2. Indigenous biological diversity in the coastal environment is protected.

3. West Coast communities can continue to appropriately use and develop resources to provide for their economic, social, and cultural wellbeing.

4. Appropriate subdivision, use and development occurs in the coastal environment, with ways of reducing coastal hazard risk incorporated into their design and location.

5. Existing significant development is protected from coastal hazards, where practicable.

10. Air Quality

BACKGROUND TO THE ISSUES

Most of the West Coast region enjoys a generally high standard of air quality. This is because of the region's relatively windy and exposed nature, together with its small and dispersed population, and low numbers of heavy industry and vehicles.

Burning coal and wood for domestic heating in winter affects air quality in some urban areas on the West Coast. The main contaminant affecting wintertime air quality is particulate matter which are the very small particles measured in micrometres that can adversely affect human health.

The Regional Air Quality Plan does not have provisions to deal with individual discharges of smoke from domestic fires, except for in the Reefton Airshed. Region-wide control of domestic fires through rules in the Regional Air Quality Plan is not appropriate because of the number of individual sources of discharge.

The Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NESAQ) contain limits for certain contaminants, including particulate matter that councils must meet as part of their resource management functions. A balance needs to be achieved between fulfilling Council's obligations under the NESAQ to meet the particulate matter standards, and ensuring that people are able to keep warm in their homes during cold winter months.

Commercial, industrial, recreational and institutional discharges to air of odour, dust, smoke, and other contaminants are a by-product of resource use and development or other activities undertaken by people providing for their social, cultural and economic wellbeing, which the RPS and regional and district plans seek to enable. Such discharges can have the potential for more than minor adverse effects if not managed properly. This Chapter provides direction for the Regional Air Quality Plan to manage these air discharges.

The significant issues in relation to the management of air quality for the West Coast region are:

1. In urban areas during winter time, emissions of particulate matter can potentially affect people's health. It is critical that people are able to keep warm in their homes while winter time particulate matter emissions are reduced to meet the NESAQ.

2. Allowing point source discharges to air while managing adverse effects of those discharges on air quality and other values.

OBJECTIVES

1. To reduce winter time particulate matter emissions to meet the NESAQ, while ensuring people's and communities' health and wellbeing is not compromised.

2. To allow discharges to air which are part of activities contributing to the social, economic, and cultural wellbeing of people and communities on the West Coast, while managing adverse effects of those discharges.

Note: Objective 2 does not apply to domestic fire emissions.

POLICIES

1. Where appropriate and practicable, use a range of regulatory and non-regulatory tools to reduce winter time particulate matter emissions that also enable people to keep their homes warm during cold months.

2. Management of adverse effects of the discharge of contaminants to air must include consideration of the following:

   a) Reverse sensitivity, including the siting of new, incompatible development in proximity to activities that discharge contaminants to air;

   b) Use of technology, codes of practice, and industry standards; and,

   c) The best practicable option to minimise the adverse effects of the discharge.

EXPLANATION TO THE POLICIES

Policy 1: The Regional Council has worked with the Reefton community to identify a range of options for reducing particulate matter levels in the Reefton Airshed to improve public health and meet the NESAQ, while allowing the community to continue using solid fuel, particularly coal, to warm their homes during winter. Provisions will be added to the Regional Air Quality Plan to reduce particulate matter emissions in the Reefton Airshed.

As a general principle for the rest of the region, Council recognises the importance of residents being able to keep warm during winter. Council will balance this, along with the principles underpinning this RPS, including affordability, when considering what other regulatory and non-regulatory action will or may be taken, to meet the NESAQ for particulate matter.

The matters listed in Policy 2 are potential issues and tools commonly associated with managing discharges of contaminants to air (other than domestic fires outside the Reefton Airshed). Reverse sensitivity effects can occur when new sensitive activities are inappropriately located in close proximity to activities which discharge contaminants to air. In conjunction with Policy 2 of the Use and Development of Resources Chapter, this Policy 2 allows for the consideration of the siting and establishment of subdivision, use and development to avoid, remedy or mitigate reverse sensitivity effects. Due to the subjective element of managing air discharges, and odour in particular, national and industry guidelines are available to assist decision-makers, as well as considering the best practicable option under the RMA.

~~**RELATED POLICIES**~~

~~Policy 1 and 3 of Chapter 2 [Resource Management Issues of Significance to Poutini Ngāi Tahu]; Policy 1, 2, and 4 of Chapter 4 [Resilient and Sustainable Communities]; Policy 1 and 2 of Chapter 5 [Use and Development of Resources]; Policy 1 and 2 of Chapter 6 [Regionally Significant Infrastructure]; Policy 2 (in the inland coastal environment) of Chapter 10 [Air Quality].~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. Provide education and advice on how particulate matter emissions can be reduced from domestic solid fuel burners.

2. Allow discharges of contaminants to air and manage the effects through regional and district plan rules, and resource consents (apart from domestic fires outside the Reefton Airshed).

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES, METHODS

The provisions relating to the NESAQ for particulate matter reflect appropriate management approaches for the West Coast region. Councils are required under the NESAQ to reduce particulate matter levels in airsheds. It is uncertain if or what action may be needed or may be feasible in other urban places to meet the NESAQ for particulate matter once compliance is achieved in Reefton. An adaptive management approach is therefore required providing Council the flexibility to consider these matters in the future. This will ensure that the balance of good air quality and people's warmth and wellbeing is maintained.

Managing discharges to air (other than domestic fires outside the Reefton Airshed) through plan provisions reflects current practice which is working well. The Regional Air Quality Plan is an effective means of managing air discharges. Under section 67(3) of the RMA the Regional Air Quality Plan must give effect to the direction provided in the RPS on managing discharges to air.

No provisions are included for managing emissions of greenhouse gases because under section 70A of the RMA the WCRC must not have regard to the effects of discharges to air on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases.

ANTICIPATED ENVIRONMENTAL RESULTS

1. Reduced particulate matter levels in winter in some urban areas.

2. Odour, dust, smoke, and other contaminant emissions are discharged at acceptable levels in accordance with nationally recognised guidelines and standards for levels of contaminants discharged to air, enabling resource use and development to occur for people's social, cultural and economic wellbeing.

11. Natural Hazards

BACKGROUND TO THE ISSUES

A 'natural hazard' as defined under the RMA is "any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire or flooding) the action of which adversely affects or may adversely affect human life, property or other aspects of the environment." Natural hazards arise from natural events such as high rainfall, earthquakes and high winds. However, natural events only become natural hazards when they have the potential to affect people, property and other valued aspects of the environment.

The West Coast has a range of high risk environments that are susceptible to natural hazards. The potential impacts of natural hazard events range from general nuisance to creating significant damage and loss of property and, in extreme cases, loss of lives. These can lead to high economic and social costs on the West Coast with significant consequences for public health and safety, agriculture, housing and infrastructure. Managing natural hazards requires a collaborative effort from a range of organisations including central government, local government, crown agencies, infrastructure providers, businesses and local communities. Management of natural hazards should be undertaken in an integrated manner within catchments.

The effects of climate change are addressed in this Chapter. The West Coast is expected to have both more severe and frequent extreme weather events in future decades. This can exacerbate potential natural hazards and good planning is needed to avoid locating inappropriate land uses in high risk areas.

Depending on the nature of the natural hazard, the level of risk, and the advantages and cost of any action, there may be benefits in undertaking actions or activities to avoid or mitigate the effects of natural hazards on people, property and communities. However, inevitably there will be events where, despite a community's readiness and efforts to mitigate the effects of such events, coordinated relief actions and responses are necessary to assist individuals and communities affected. This activity is facilitated through the Civil Defence Emergency Management Act 2002 (CDEMA) and the plans and local arrangements developed under this framework by the West Coast Civil Defence Emergency Management Group.

Under the RMA people must be able to provide for their social and economic wellbeing; however, this needs to be balanced against the risk to people, property and infrastructure from natural hazard events. There is an increasing amount of information that shows which areas of the West Coast are prone to damage from natural hazards and this enables informed assessments about the risk to people and property. Where there is existing development within hazard-prone areas, enabling appropriate hazard mitigation measures to be created will help to minimise the risks and impacts on these vulnerable communities.

The management of significant risk from natural hazards has recently been elevated to a matter of national importance under section 6 of the RMA, and is likely to be supported by a National Policy Statement in future. Future planning for natural hazards will require an adaptive management approach and flexibility to allow for new information and/or changing legislation.

The significant issues in relation to the management of the natural hazards for the West Coast are:

1. Natural hazards, particularly flooding and earthquake, have the potential to create significant risk to human life, property, community and economic wellbeing on the West Coast.

2. Increasing public awareness of, and planning for, natural hazards is required for communities to become more resilient.

3. Subdivision, use and development can contribute to natural hazard risk.

OBJECTIVE

1. The risks and impacts of natural hazard events on people, communities, property, infrastructure and our regional economy are avoided or minimised.

POLICIES

1. Reduce the susceptibility of the West Coast community and environment to natural hazards by improving planning, responsibility and community awareness for the avoidance and mitigation of natural hazards.

2. New subdivision, use or development should be located and designed so that the need for hazard protection works is avoided or minimised. Where necessary and practicable, further development in hazard-prone areas will be restricted.

3. Avoid or mitigate adverse effects on the environment arising from climate change by recognising and providing for the development and protection of the built environment and infrastructure in a manner that takes into account the potential effects of rising sea levels and the potential for more variable and extreme weather patterns in coming decades.

4. The appropriateness of works and activities designed to modify natural hazard processes and events will be assessed by reference to:

   a) The levels of risk and the likely increase in disaster or risk potential;

   b) The costs and benefits to people and the community;

   c) The potential effects of the works on the environment; and

   d) The effectiveness of the works or activities and the practicality of alternative means, including the relocation of existing development or infrastructure away from areas of natural hazard risk.

EXPLANATION TO THE POLICIES

Hazards within the coastal environment are also addressed in Chapter 9: Coastal Environment, and these chapters should be read together when considering coastal hazards.

Policy 1 seeks to increase awareness of hazard risks and the adoption of appropriate building controls, including avoiding inappropriate development in hazard prone areas, to reduce the susceptibility of the West Coast community to the adverse effects of natural hazards. Civil defence planning and preparedness under the CDEMA provides further means of reducing the potential for loss or damage from natural hazard emergencies and disasters. Application of regional and district activity to applying the four R's (reduction, readiness, response and recovery) will continue to assist with preparing communities for emergencies as well as ensuring that Councils and partner agencies are ready to act should these events arise.

Policy 2 recognises that through appropriate planning, the need for protection works can be avoided by siting new subdivision, use and development away from existing or potential natural hazards. Research on natural hazards is ongoing. This information may

indicate that in places where development has already occurred these areas may be susceptible to natural hazards. In such cases, further permanent development may need to be restricted to reduce additional risk to people or property. However, avoiding development in hazard prone areas may not be practicable in all instances, as some types of development are limited in where they can be located to function effectively.

Subdivision, use and development that may cause or contribute to a natural hazard should be avoided. In some cases activities in an area may cause or contribute to a natural hazard affecting another area. For example, an upstream or inland land or river use can have downstream or downgradient hazard effects on other development. The risk of subdivision, use and development affecting or exacerbating a hazard risk elsewhere needs to be assessed in plan and consent processes.

Policy 3 recognises that adverse effects arising from climate change may be significant in certain areas. While there is some uncertainty over the possibility, extent and timing of climate change effects, when assessing natural hazard risk, councils should use the latest national guidance and the best available information on the impacts of climate change on natural hazard events. Local authorities, as managers of significant infrastructural assets and through their statutory resource management and emergency management responsibilities, will, as opportunities arise and as practicable, plan and prepare for the anticipated effects of climate change.

Policy 4 recognises that there will be situations where modifying the environment to reduce susceptibility to natural hazards will produce benefits to the community in excess of the costs involved in protection or prevention works or programmes. Consideration should be given to the relocation of existing development and infrastructure away from areas prone to natural hazards, however it is recognised that this cannot always occur. Consequently, those who benefit from the works or services should pay for them.

~~**RELATED POLICIES**~~

~~Policy 1 of Chapter 2 [Resource Management Issues of Significance to Poutini Ngāi Tahu]; Policy 2 and 4(a) of Chapter 4 [Resilient and Sustainable Communities]; Policy 3 and 4 of Chapter 6 [Regionally Significant Infrastructure]; Policy 3, 4 and 5 of Chapter 9 [Coastal Environment].~~

APPLICATION OF PROVISIONS ACROSS THE RPS

The objectives and policies in this chapter of the RPS must be read together with Chapter 3 and other relevant chapters, including Chapter 6, which set out the direction for the sustainable management of natural and physical resources in more specific contexts.

METHODS

1. Increase understanding and public awareness of natural hazards, including the potential influence of climate change on natural hazard events.

2. Further development of a natural hazards knowledge base and continued use of the most up to date and accurate information available in areas potentially affected by natural hazards.

3. The Regional Council and district councils will support an integrated and collaborative approach between relevant agencies, the community and local businesses to manage significant natural hazard risks and effects.

4. Where appropriate, include provisions in regional and district plans that address natural hazard issues including the control of the use of land to avoid or mitigate natural hazards. Particular methods may include:

   a) Special hazard zones and rules;

b) Identification of natural hazards on maps and registers;

c) General building and development controls or criteria;

d) Subdivision controls;

e) Information requirements to assist consent processing; and

f) Integrated catchment management.

5. Take into account the location, nature and potential extent of natural hazards when providing and planning for the provision of essential lifeline utilities.

6. The Regional Council will maintain detailed regional flood response strategies in priority catchments as well as initiating and maintaining flood protection works where communities are willing to fund such works.

7. The regional and district councils will maintain and implement the Civil Defence Emergency Management Group Plan for the West Coast, and Local Arrangements, setting out regional and district emergency responses and contingency provisions in the event of a natural hazard event as members of the Civil Defence Emergency Management Group.

8. The regional and district councils will maintain a civil defence emergency management response capability, which includes the ability to assist in the establishment and coordination of disaster relief and recovery assistance programmes.

PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

The objectives, policies and methods of implementation establish a policy framework for the management of natural hazards and, in particular, avoid or mitigate the adverse effects of natural hazards on human life, property and the environment.

In accordance with section 62(1)(i)(i) of the RMA the three territorial authorities of the West Coast will be responsible for specifying the objectives, policies and methods for the control of the use of land to avoid or mitigate natural hazards except where the control of the use of land relates to the WCRC's functions under the RMA regarding:

- The coastal marine area;
- The beds of rivers, lakes and other waterbodies; and
- Land use activities managed in the Regional Land and Water Plan.

Members of the Civil Defence and Emergency Management Group, and in particular the Lifelines Group and the Co-ordinating Executive Group, are expected to continue to research and investigate natural hazards in the region and make recommendations to the relevant council, should rules around land use be indicated as a hazard avoidance or mitigation method. This further promotes a collaborative approach between the regional and district councils to implement a region-wide approach to the management of natural hazards while allowing flexibility of application.

There is an increasing amount of information that is being produced that identifies areas at risk from natural hazards. This work will be ongoing and is integral to minimising the risks and impacts of natural hazard events. These objectives, policies and methods allow for the consideration of this and the application of an adaptive management approach as required, and will assist communities in building resilience to the effects of natural hazards.

ANTICIPATED ENVIRONMENTAL RESULTS

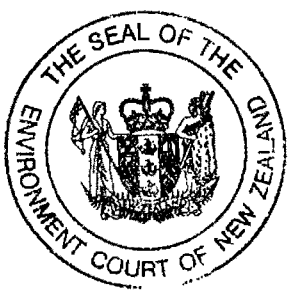
1. A reduction in actual or potential losses to people, property and the environment.

2. Use and development of resources consistent with levels of risk.

3. Increased community awareness of, and responsibility for, natural hazard avoidance and mitigation.

4. Appropriate development within areas subject to natural hazards provided for in regional and district plans.

Part C
Administrative procedures



12. Administrative Procedures

The RMA requires that a RPS states:

a) The processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between agencies (section 62(1)(h));

b) The procedures to be used to monitor the efficiency and effectiveness of the policies or the methods contained in the RPS (section 62(1)(j)); and

c) Any other information required for the purpose of the WCRC's functions, powers and duties under the RMA (section 62(1)(k)).

This Chapter of the RPS covers these matters and other related administrative procedures.

12.1 Integrated Management and Cross Boundary Processes

This RPS is about the integrated management of the West Coast's natural and physical resources. Integrated management involves a consideration of:

a) The effects of the use of one natural resource on other natural and physical resources or on other parts of the environment recognising that such effects may occur across space and time.

b) The functions of other agencies with roles and responsibilities that contribute towards or impact on resource management

c) The social and economic objectives and interests of the community, recognising that natural and physical resources cannot be managed without having regard to social, economic and cultural matters.

The need for integration between resource management authorities is required under the RMA in terms of dealing with cross-boundary issues (section 62). These issues can arise in a number of situations but generally fall into two categories: those related to the preparation and review of plans; and those related to the administration of plans and associated resource consents.

To achieve integrated management, it is essential that the policies, plans and actions of all those involved in resource management (government agencies including the Department of Conservation, regional and district councils, iwi and the community) are coordinated. The aim of integrated management is to promote the sustainable management of natural and physical resources in an efficient manner by implementing and promoting complementary, efficient and effective management of all natural and physical resources. In addition to the policies and methods identified in Part B and C of this RPS, the WCRC will use the following procedures to further promote integrated management and address cross-boundary issues:

- Liaise, as appropriate, with central government agencies in relation to resource management issues of regional significance.
- Make submissions, as appropriate, on documents prepared by central government agencies regarding issues of national significance that impact or impinge on the resource management functions under the RMA.
- Liaise, as appropriate, with other regional councils on resource management matters that are relevant to more than one region.
- Have regard to any policy statements and plans (including resource management plans and annual plans) prepared by the WCRC and the region's territorial authorities (including those under other legislation e.g. Biosecurity Act and the CDEMA), and the extent to which this RPS needs to be consistent with those documents.

- Consult adjoining local authorities in the preparation of regional and district plans to ensure a consistent approach between districts and between the regions and districts regarding issues which cross local authority boundaries and state in those plans the processes for dealing with them.
- Advocate to the Buller, Grey and Westland District Councils that where appropriate, provisions are included in district plans that avoid unnecessary duplication of resource management responsibilities.
- Consider the transfer of functions that other agencies could carry out more efficiently, effectively and appropriately. Transfers of functions will be considered on the requirements of section 33 of the RMA, including where both authorities agree that the authority to which the transfer is made represents the appropriate community of interest, and where the transfer is desirable on the grounds of efficiency and technical or special capability or expertise.
- Establish appropriate protocols for the efficient and effective operation of joint hearings.
- Give full consideration to the effects on all other aspects of the environment in the development of strategies and plans, in the consideration of resource consent applications, and in the provision of advice.
- When considering an application for resource consent, consider all issues in the balance with other policies set out in the RPS.

12.2 Monitoring

Monitoring is an important component of the decision-making process. It establishes a process to check on the progress being made towards the achievement of objectives and the efficiency and effectiveness of the options that have been chosen. The RMA recognises the value of monitoring and gives the regional and district councils responsibilities in this area. Section 35 of the RMA outlines the Regional Council's information gathering, monitoring and record keeping responsibilities.

The WCRC monitors:

- The state of the West Coast environment;
- The efficiency and effectiveness of our policies and plans;
- The exercise of any functions we delegate; and
- Compliance with resource consents.

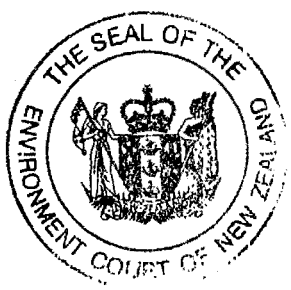
The Regional Council already has a number of policies and procedures in place to gather information, and to monitor and report on how well the West Coast's natural and physical resources are being managed. These include:

- The review process for regional plans which monitors their efficiency and effectiveness as a means of achieving the objectives and policies of the RPS;
- The State of the Environment Monitoring Reports for air and water on the West Coast. They are produced every three-five years and are a comprehensive analysis of the environmental monitoring results and trends;
- The Regional Council's Annual Report which reports against objectives and performance measures in the Council's Long Term Plan for the West Coast, developed under the Local Government Act 2002.

The content of future State of the Environment Reporting will be reviewed and updated to reflect the new environmental goals (objectives) and ensure the right information is being gathered to monitor the environmental results anticipated in the RPS.

12.3 Review of the Regional Policy Statement

The RMA requires that the WCRC commence a full review of this RPS no later than 10 years from the date upon which it becomes operative. The Council will also undertake an internal review no later than 5 years from the date that this RPS becomes operative. The internal review will determine whether the direction taken in it continues to be relevant. A review of the relevant parts or provisions of the RPS may be carried out if a new issue arises or regional monitoring shows that a review would be appropriate.



Glossary

Terms used in the RPS that are defined in the RMA, but not contained in this Glossary, have the same meaning as the RMA defined terms. This includes:

- Amenity values,
- Best practicable option,
- Biological diversity ~~(or biodiversity)~~,
- Coastal marine area,
- Discharge,
- Effect,
- Environment,
- Kaitiakitanga,
- Land,
- National policy statement,
- Natural and physical resources,
- Natural hazard, and
- Sustainable management.

Coastal environment encompasses the coastal marine area and the land areas adjacent to the coastal marine area that have a coastal character.

Community means a social group of any size, in a particular locality, who share common interests.

Cultural landscape means a geographical area that holds significant value to Poutini Ngāi Tahu due to the concentration of wāhi tapu or taonga values, or the importance of the area to Poutini Ngāi Tahu cultural traditions, history or identity. Cultural landscapes provide current and future generations of Poutini Ngāi Tahu the opportunity to experience and engage with the landscape as their tīpuna once did.

Cultural values are those values that relate to the culture of a society.

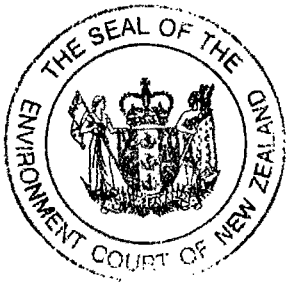
Environmental results anticipated means the expected or foreseen result or outcome on the environment as a consequence of implementing the policy or policies and methods of implementation. The environmental results anticipated provide a means of assessing the success of the objectives, policies and methods but may not always be measureable or achievable within the operative life of the RPS.

Indigenous means native to New Zealand.

Instream values are those uses or values of rivers or streams that are derived from within the river system itself and include amenity values, cultural and spiritual values of tangata whenua, and values associated with freshwater ecology and recreational, scenic, aesthetic and educational uses.

Integrated management means managing (i.e. identifying, prioritising and acting on) the use, development and protection of natural and physical resources as a whole. Integrated management involves three inter-related parts:

a) A recognition by management agencies that natural and physical resources exist as parts of complex and inter-connected social and biophysical systems, where effects



on one part of a system may affect other parts of the system and that ~~there~~ effects may occur immediately, may be delayed or may be cumulative; and

b) The integration of management systems between agencies so that the various roles and responsibilities of those agencies are clearly identified and combined or coordinated to achieve consistency of purpose; and

c) The integration of management systems within agencies to ensure that other legislation or administrative actions are consistent with promoting sustainable management of natural or physical resources.

Issue means a matter of concern to the region's community regarding activities affecting some aspect of natural and physical resources and the environment of the region or their management. These matters are addressed in the RPS as either:

a) Significant resource management issues of the region; or

b) Resource management issues of significance to iwi; or

c) Issues which cross local authority boundaries; or

d) Matters where jurisdiction and delineation of responsibilities need to be made clear.

Policy means a specific statement that guides or directs decision-making. A policy indicates a commitment to a general course of action in working towards an action.

Regionally significant infrastructure means:

a) The National Grid (as defined by the Electricity Industry Act 2010);

b) Other electricity distribution and transmission networks defined as the system of transmission lines, sub transmission and distribution feeders and all associated substations and other works to convey electricity;

c) Facilities for the generation of more than 1 MW of electricity and its supporting infrastructure where the electricity generated is supplied to the electricity distribution and transmission networks;

d) Pipelines and gas facilities used for the transmission and distribution of natural and manufactured gas;

e) The State Highway network, and road ~~and~~ networks classified in the One Network Road Classification Sub-category as strategic;

f) The regional rail networks

g) The Westport, Greymouth, and Hokitika airports;

h) The Regional Council seawalls, stopbanks and erosion protection works;

i) Telecommunications and radio communications facilities;

j) Public or community sewage treatment plants and associated reticulation and disposal systems;

k) Public water supply intakes, treatment plants and distribution systems;

l) Public or community drainage systems, including stormwater systems;

m) The ports of Westport, Greymouth and Jackson Bay; and

n) Public or community solid waste storage and disposal facilities.

Significant indigenous biological diversity, when used in Chapter 9 Coastal Environment, means the biodiversity described in Policy 11 of the New Zealand Coastal Policy Statement 2010.

Significant mineral resource, for the purpose of Chapter 5 Use and Development of Resources Policy 2(b)(i), means the monetary value of the mineral resource is significant

to the local community, and employment is created in extracting the resource, based on the latest information available about the resource at the time.

Significant Natural Area, or SNA means an area of significant indigenous vegetation, and/or significant habitats of indigenous fauna which has been identified using the criteria listed in Appendix 1 or 2 and included on maps in a regional or district plan as a SNA, or an area which although not included as a SNA in a regional or district plan nevertheless meets one or more of those criteria listed in Appendix 1 or 2.

Significant tourism infrastructure refers to the major tracks, roads and facilities managed by the Department of Conservation and other public or community infrastructure providers which are regionally and nationally important in terms of their contribution to the regional economy such as the Glacier Roads, Heaphy Track, Punakaiki, the West Coast Wilderness Trail, and other visitor information and visitor access facilities.

Taonga means treasure, property; taonga are prized and protected as sacred possessions of the tribe. The term carries a deep spiritual meaning and taonga may be things that cannot be seen or touched, e.g. wāhi tapu, waterways and mountains.

Tapu means under spiritual protection or restriction.

Values in the context of landscape assessment includes characteristics, attributes and qualities.

Wāhi tapu means places or things which are sacred or spiritually endowed.

Appendix 1: Ecological criteria for identifying significant terrestrial and freshwater indigenous biological diversity

Indigenous vegetation or habitat(s) of indigenous fauna is significant if it meets any one or more of the following criteria:

Note: These criteria are intended to be applied by suitably qualified and experienced ecologists with a good understanding of the local and national context and its associated ecological tools.

1. Representativeness

a) Indigenous vegetation or habitat of indigenous fauna that is representative, typical or characteristic of the indigenous biological diversity of the relevant ecological district. This can include degraded examples where they are some of the best remaining examples of their type, or represent all that remains of indigenous biological diversity in some areas.

b) Indigenous vegetation or habitat of indigenous fauna that is a relatively large example of its type within the relevant ecological district.

2. Rarity/Distinctiveness

a) Indigenous vegetation or habitat of indigenous fauna that has been reduced to less than 20% of its former extent in the region, or relevant land environment, ecological district, or freshwater environment.

b) Indigenous vegetation or habitat of indigenous fauna that supports an indigenous species that is threatened, at risk, or uncommon, nationally or within the relevant ecological district.

c) The site contains indigenous vegetation or an indigenous species at its distribution limit within the West Coast region or nationally.

d) Indigenous vegetation or an association of indigenous species that is distinctive, of restricted occurrence, occurs within an originally rare ecosystem, or has developed as a result of an unusual environmental factor or combinations of factors.

3. Diversity and Pattern

a) Indigenous vegetation or habitat of indigenous fauna that contains a high diversity of indigenous ecosystem or habitat types, indigenous taxa, or has changes in species composition reflecting the existence of diverse biological and physical features or ecological gradients.

4. Ecological Context

a) Vegetation or habitat of indigenous fauna that provides or contributes to an important ecological linkage or network, or provides an important buffering function.

b) Indigenous vegetation or habitat of indigenous fauna that provides important habitat (including refuges from predation, or key habitat for feeding, breeding, or resting) for indigenous species, either seasonally or permanently.

Appendix 2: Ecological criteria for identifying significant wetlands

A wetland is ecologically significant if it meets one or more of the following criteria:

Ecological Context

1. The **ecological context** of the wetland has one or more of the following functions or attributes:

   (a) It plays an important role in protecting adjacent ecological values, including adjacent and downstream ecological and hydrological processes, indigenous vegetation, habitats or species populations; or

   (b) Is an important habitat for critical life history stages of indigenous fauna including breeding/spawning, roosting, nesting, resting, feeding, moulting, refugia, or migration staging points (as used seasonally, temporarily or permanently); or

   (c) It makes an important contribution to ecological networks (such as connectivity and corridors for movement of indigenous fauna); or

   (d) It makes an important contribution to the ecological functions and processes within the wetland.

Representative wetlands

2. A **representative wetland** is one that contains indigenous wetland vegetation types or indigenous fauna assemblages that were typical for, and has the attributes of, the relevant class of wetland as it would have existed circa 1840.

3. This criterion will be satisfied if the wetland (not including pakihi wetlands) contains either:

   (a) Indigenous wetland vegetation types that have the following attributes:

      (i) The **indigenous wetland vegetation types** that are typical in plant species composition and structure; and

      (ii) The condition of the wetland is typical of what would have existed circa 1840 in that:

         - Indigenous species dominate; and
         - Most of the expected species and tiers of the wetland vegetation type(s) are present for the relevant class of wetland; or

   (b)(i) The wetland contains **indigenous fauna assemblages** that:

         - Are typical of the wetland class; and
         - Indigenous species are present in most of the guilds expected for the wetland habitat type.

4. A pakihi wetland is a representative wetland where:

   (a) It is greater than 40 hectares in area; and

   (b) It is dominated by a mixture of sedges, ferns, restiads, rushes, mosses and manuka (Leptospermum scoparium) of which Baumea spp, Sphagnum spp, Gleichenia dicarpa, and Empodisma minus are the main species.

5. The representative wetland criterion applies to the whole or part of the wetland irrespective of land tenure;

6. Each wetland is to be assessed at the ecological district and freshwater bio-geographic unit scale.

Rarity

7. The wetland satisfies this criterion if:

(a) Nationally threatened species[7] are present[8]; or

(b) Nationally at risk species or uncommon communities or habitats are present and either:

- The population at this site provides an important contribution to the national population and its distribution;
- There are a number of at risk species present; or
- The wetland provides an important contribution to the national distribution and extent of uncommon communities or habitats;

(c) Regionally uncommon species are present; or

(d) Is a member of a wetland class that is now less than 30% of its original extent as assessed at the ecological district and the freshwater bio-geographic unit scales; or

(e) Excluding pakihi, it contains lake margins, cushion bogs, ephemeral wetlands, damp sand plains, dune slacks, string mires, tarns, seepages and flushes or snow banks which are wetland classes or forms identified as historically rare by Williams et al (2007).

Distinctiveness

8. The wetland satisfies the **distinctiveness criterion** if it has special ecological features of importance at the international, national, freshwater bio-geographic unit or ecological district scale including:

(a) Intact ecological sequences such as estuarine wetland systems adjoining tall forest; or

(b) An unusual characteristic (for example an unusual combination of species, wetland classes, wetland structural forms, or wetland landforms); or

(c) It contains species dependent on the presence of that wetland and at their distribution limit or beyond known limits.

Explanation

9. The **wetland classes** may be determined in a number of ways including the classification index of Johnson and Gerbeaux (2004).

10. **Wetland indigenous vegetation types** are identified with reference to the dominant plant species that are present, the structural class, wetland class and hydrosystem (see for example Johnson and Gerbeaux (2004) or similar method).

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[7] The Threatened and At Risk categories are defined in the current version of the New Zealand threat classification system (Townsend et al 2008). Species are reassessed according to these categories approximately every three years.

[8] For mobile species such as kotuku, this requires some assessment of the importance of the site for the species i.e. the intention is not to include areas such as wet pasture where these birds are foraging.

11. The three **freshwater bio-geographic** units in the West Coast region are the Northwest Nelson-Paparoa, Grey-Buller and Westland units (Leathwick et al 2000).

12. **Ecological districts** are described and mapped in McEwen (1987). The maps of the ecological districts on the West Coast region have been refined by David Norton and Fred Overmars for use at the 1:50,000 scale and are available from the Department of Conservation (West Coast Conservancy).

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2021-409-570
[2024] NZHC 1478

BETWEEN	RAYONIER NEW ZEALAND LIMITED and PORT BLAKELY LIMITED Appellants
AND	CANTERBURY REGIONAL COUNCIL Respondent
AND	TIMARU DISTRICT COUNCIL Interested Party

Hearing:	3-4 July 2023 and 25-26 September 2023
Appearances:	A F Pilditch KC and C S Fowler for the Appellants P A C Maw and I F Edwards for the Respondent G C Hamilton for the Interested Party
Judgment:	6 June 2024

INTERIM JUDGMENT OF HARLAND J

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Introduction

[1] The rules that apply to the impact of plantation forestry activities on the environment, especially in and around water bodies, are an important and current matter of interest. This appeal concerns two of the rules a panel, appointed by the Canterbury Regional Council (the Regional Council), recommended should apply to plantation forestry activities in the Canterbury region when it was considering proposed changes to the operative Canterbury Land Water Regional Plan, specifically in relation to sediment discharges and water yield for new planting in flow sensitive catchments.[1] The proposed changes to the plan were included in a document entitled "proposed plan change 7" or "PC7" as it became known and will be referred to in this judgment. The rules in issue are rr 5.189 and 5.190.

[2] The Regional Council accepted the panel's recommendations and the two rules referred to above are now poised to be included in the Canterbury Land Water Regional Plan. The appellants challenge aspects of these rules referred to in this judgment as the "sediment discharge rules" and the "water yield rules".

[3] In relation to the sediment discharge rules, the appellants submit that rr 5.189(3)–(7) should be deleted from PC7 or otherwise amended so that the comparable provisions contained in the Resource Management (National Environment Standard for Plantation Forestry) Regulations 2017 (NES-PF) prevail. In relation to the water yield rules, the appellants submit primarily that the rules that applied in the operative plan, being rr 5.72, 5.73 and 5.74, should be retained and rr 5.189(1) and (2) deleted or, alternatively, amended to be no more stringent than the operative rules. The appellants ask this Court to amend the provisions as it suggests or, in the alternative, to refer the matter back to the Regional Council for reconsideration.

[4] More will be said of the specific points on appeal and the grounds for them shortly but, in summary, the appellants submit various errors of law were made by the panel which materially affected its recommendations about the rules and therefore the

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[1] The panel, comprising three hearing Commissioners, was appointed by the Council under s 34A of the Resource Management Act 1991 [RMA] to hear, consider and make recommendations to it on the submissions on Proposed Plan Change 7 to the Canterbury Land Water Regional Plan and Proposed Plan Change 2 to the Waimakariri River Regional Plan. Plan Change 2 is not engaged in this appeal.

Regional Council's decision in respect of them. Although the decision was the Regional Council's to make, the panel effectively (although not legally) made the decision about the rules, because the Regional Council accepted the panel's recommendations about the rules in their entirety. I refer to the panel's "decisions" in this context.

[5] The Regional Council and the Timaru District Council (the District Council) oppose the appeal.

[6] I allow the appeal. This judgment sets out my reasons for doing so. It is an interim judgment because counsel requested to be further heard about the relief that should follow.

Context

[7] Overall, in the Canterbury region in 2019 there were 94,782 ha of exotic forest (comprising production forests and carbon forest).[2] The ownership of the forests ranges from large corporations to farm forests.

[8] Rayonier New Zealand Ltd (Rayonier) provides services growing, harvesting and managing the sale of trees in New Zealand. It manages approximately 116,000 ha of plantation forests for Rayonier Matariki Forests (Rayonier Matariki) and it is the major shareholder in Rayonier Matariki.

[9] Rayonier Matariki is New Zealand's third largest forest owner with its forest estate spanning both North and South Islands. It owns and/or manages forests within nine regions and 22 districts throughout New Zealand.

[10] Rayonier Matariki owns and/or manages approximately 33,000 ha of plantation forests located across the Canterbury region.

[11] Port Blakely Ltd (Port Blakely) provides services growing, harvesting and replanting trees for sale domestically in New Zealand and in log markets throughout

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[2] Forest Owners Association "Facts and Figures 2019/20" Forest Owners Association <www.nzfoa.org.nz> at 15.

Asia. It owns and/or manages approximately 14,600 ha of plantation forests across the Canterbury region.

[12] The activities undertaken by Rayonier and Port Blakely, or their contractors, can have actual and potentially adverse effects on the environment, including on water bodies.[3] The rules that apply in Canterbury to the assessment of these effects are therefore of importance to the appellants, but they are also important to the community. Water quality and the use and availability of it are matters of concern to all.

The appeal

[13] In this section, I outline the grounds for the appeal and the legal principles that apply to this appeal.

The notice of appeal

[14] With respect to rr 5.189(3)–(7) and 5.190, which regulate the effects of plantation forestry activities on water quality (the sediment discharge rules), the appellants submit that the Regional Council erred in law by:

(a) failing to have regard to the expert evidence and legal submissions presented by them at the PC7 hearings;

(b) failing to undertake a proper analysis under ss 32(4) of the Resource Management Act 1991 (RMA) regarding whether the plantation forestry rules that are more stringent than the equivalent regulations in the NES-PF can be justified in the circumstances of the Canterbury region; and

(d) failing to give reasons for its decision with regard to the sediment discharge rules.

[15] With respect to rr 5.189(1) and 5.190, which regulate the planting of new plantation forests within flow sensitive catchments (the water yield rules), the appellants submit that the Regional Council erred in law by:

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3 "Water body" and "water" are defined in the RMA at s 4.

(a) failing to consider advice from the s 42A reply report writer that the scope of PC7 does not extend to reconsidering the effects of forestry on water yield or a review of the conditions and activity status of existing flow sensitive catchment rules 5.72–5.74;

(b) failing to undertake a proper analysis under s 32AA of the RMA regarding whether the appropriate activity classification status for new plantings in flow sensitive catchments should attract a controlled or discretionary activity status; and

(c) declining to grant the appellants' request to be heard in relation to the panel's request for further evidence from the s 42A reply report writer regarding whether a controlled activity status would be appropriate for planting new areas of plantation forest within flow sensitive catchments which, in turn, gave rise to issues of natural justice.[4]

Legal principles

[16] The appeal is governed by the Environment Canterbury (Transitional Governance Arrangements) Act 2016 (ECan Act). An appeal against the decision of the panel to the High Court is available only on a question of law.[5]

[17] The High Court, on appeal, can only interfere with the panel's decision if it is satisfied that the panel committed one or more of the following errors of law:[6]

(a) applied a wrong legal test; or

(b) came to a conclusion without evidence or one to which, on evidence, it could not reasonably have come; or

(c) took into account matters which it should not have taken into account; or

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4 This ground of appeal was not advanced at the hearing but is included by way of completeness.

5 ECan Act 2016, s 25(3). Similar to s 299 of the RMA concerning appeals from the Environment Court to the High Court.

6 *Hutt City Council v Mico Wakefield Limited* [1995] NZRMA 169 (HC) at 173, citing *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150, [1994] NZRMA 145 at 153.

(d) failed to take into account matters which it should have taken into account.

[18] As well, the following principles apply:

(a) the weight to be afforded to relevant considerations is a question for the panel and is not a matter available for reconsideration on appeal as a question of law;[7]

(b) the High Court will not engage in a re-examination of the merits of the case under the guise of a question of law;[8] and

(c) the High Court will not grant relief where there has been an error of law, unless it has been established that the error materially affected the result of the decision.[9]

[19] The appellants bear the onus of establishing that the panel made an error or errors of law.[10]

[20] What comprises a question of law as opposed to a question of fact has been the subject of ongoing judicial attention. This is not surprising given that what comprises a question of law depends on the circumstances of the case, its context and, in some circumstances, the legislative framework that applies. There is a general body of law that deals with what a question of law is. Ultimately, I must determine whether the matters raised by the appellants in this case are truly questions of law. I mention this because, as this case reveals, the assessment of whether there is an error of law can be nuanced, particularly as it relates to the line between what is a question of law and what is an assessment of the merits.

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7 *Moriarty v North Shore City Council* [1994] NZRMA 433 (HC) at 437; *Canterbury Trustees Ltd v Christchurch City Council* [2017] NZHC 237 at [38], citing *Chorus v Commerce Commission* [2014] NZCA 440 at [111]–[112].

8 This principle has been noted in a number of cases. Examples include *Sean Investments Pty Ltd v Mackellar* (1981) 38 ALR 363 at 370–371; *Canterbury Trustees Ltd v Christchurch City Council,* above n 7, at [83]; *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492, (2013) 17 ELRNZ 652 at [30].

9 *Countdown Properties (Northlands) Ltd v Dunedin City Council*, above n 6, at 153 citing *Royal Forest and Bird Protection Society Inc v WA Habgood Ltd* (1987) 12 NZTPA 76 (HC) at 81–82. See also *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* [2012] NZHC 735 at [36].

10 *Glenpanel Development Ltd v Expert Consulting Panel under COVID-19 Recovery (Fast Track Consenting Act) 2020* [2023] NZHC 2069 at [45].

[21] I now refer to authorities which provide guidance about what comprises a question of law.

[22] The Supreme Court, in *Bryson v Three Foot Six Ltd*, is the most authoritative judgment on point.[11] Concerning a question of employment, the Supreme Court noted the following:

> [24] Appealable questions of law may nevertheless arise from the reasoning of the Court on the way to its ultimate conclusion. If the Court were, for example, to misinterpret the requirements of s 6 — to misdirect itself on the section, which incorporates the legal concept of contract of service — that would certainly be an error of law which could be corrected on appeal, either by the Court of Appeal or by this Court. Later in this judgment we consider whether Judge Shaw has fallen into error in the view she took of the legal requirements of s 6.
>
> [25] An appeal cannot however be said to be on a question of law where the factfinding court has merely applied law which it has correctly understood to the facts of an individual case. It is for the court to weigh the relevant facts in the light of the applicable law. Provided that the court has not overlooked any relevant matter or taken account of some matter which is irrelevant to the proper application of the law, the conclusion is a matter for the fact-finding court, unless it is clearly insupportable.
>
> [26] An ultimate conclusion of a fact-finding body can sometimes be so insupportable — so clearly untenable — as to amount to an error of law; proper application of the law requires a different answer. That will be the position only in the rare case in which there has been, in the well-known words of Lord Radcliffe in *Edwards v Bairstow*, a state of affairs "in which there is no evidence to support the determination" or "one in which the evidence is inconsistent with and contradictory of the determination" or "one in which the true and only reasonable conclusion contradicts the determination". Lord Radcliffe preferred the last of these three phrases but he said that each propounded the same test. In *Lee Ting Sang* itself the Privy Council concluded that reliance upon dicta of Denning LJ in two cases "of a wholly dissimilar character" may have misled the courts in Hong Kong in the assessment of the facts and amounted in the circumstances to an error of law justifying setting aside concurrent findings of fact. Their Lordships were of the opinion that the facts pointed so clearly to the existence of a contract of service that the finding that the applicant was working as an independent contractor was, quoting the words of Viscount Simonds in *Edwards v Bairstow*, "a view of the facts which could not reasonably be entertained", which was to be regarded as an error of law. In *Lee Ting Sang* the facts demonstrated so clearly that the applicant was an employee that it was the true and only reasonable conclusion.
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> (footnotes omitted)

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11 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 72.

[23] The Court of Appeal, in *Brown v R*, has also summarised what comprises a question of law as follows:[12]

> "Questions of law" … must raise one or more of the three standard errors classified by modern authorities as creating a question of law:
>
> (a) a misdirection of law apparent in the decision (what Fisher J called "a conventional legal question on unchallenged facts");[13] or
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> (b) oversight of a relevant matter, or consideration of an irrelevant matter;[14] or
>
> (c) a factual finding unsupported by any evidence, or an omission to draw an inference of fact which is the only one reasonably possible on the evidence.[15]

[24] In addition, the principles in *Bryson v Three Foot Six Ltd* were recently summarised by the High Court in *Tauranga Environmental Protection Society Inc v Tauranga City Council* as follows:[16]

> (a) Misinterpretation of a statutory provision obviously constitutes an error of law.[17]
>
> (b) Applying law that the decision-maker has correctly understood to the facts of an individual case is not a question of law. "Provided that the court has not overlooked any relevant matter or taken account of some matter which is irrelevant to the proper application of the law, the conclusion is a matter for the fact-finding court, unless it is clearly insupportable".[18]
>
> (c) But "[a]n ultimate conclusion of a fact-finding body can sometimes be so insupportable — so clearly untenable — as to amount to an error of law, because proper application of the law requires a different answer".[19] The three rare circumstances in which that "very high hurdle"[20] would be cleared are where "there is no evidence to support the determination" or "the evidence is inconsistent with and contradictory of the determination"

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12 *Brown v R* [2015] NZCA 325 at [16].
13 *Auckland City Council v Wotherspoon* [1990] 1 NZLR 76 (HC) at [86].
14 *Bryson v Three Foot Six Ltd,* above n 11, at [25]; *Vodafone New Zealand Ltd v Telecom New Zealand Ltd* [2011] NZSC 138, [2012] 3 NZLR 153 at [51].
15 *Bryson v Three Foot Six Ltd,* above n 11, at [26]; *Vodafone New Zealand Ltd v Telecom New Zealand Ltd,* above n 14, at [52].
16 *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201, [2021] NZRMA 492 at [60].
17 *Bryson v Three Foot Six Ltd,* above n 11, at [24].
18 At [25]
19 At [26]. The sentence quoted in *Bryson* contained a semi-colon rather than the word "because", which was inserted in the application of the principle in the subsequent Supreme Court judgment in *Vodafone New Zealand Ltd v Telecom New Zealand Ltd*, above n 14, at [52].
20 *Bryson v Three Foot Six Ltd*, above n 11, at [27].

> or "the true and only reasonable conclusion contradicts the determination".[21]

[25] Finally, in terms of the principles of the appellants review, I remind myself that some deference and latitude is due to the panel in reaching findings of fact within its areas of expertise.[22] The panel was comprised of experienced personnel and the scale and complexity of its task is acknowledged. This Court will not interfere absent necessary justification.

Factual background

[26] I now refer to "the factual background", though the term is wide, including reference to various statutory planning instruments and the processes adopted for plan changes such as this.

[27] The RMA creates a three-tiered management system with a hierarchy of planning documents at national, regional and district levels. [23] The effect of this was outlined succinctly in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* as follows:

> [10] … Those planning documents deal, variously, with objectives, policies, methods and rules. Broadly speaking, policies implement objectives and methods and rules implement policies. It is important to note that the word "rule" has a specialised meaning in the RMA, being defined to mean "a district rule or a regional rule".
>
> [11] The hierarchy of planning documents is as follows:
>
> (a) First, there are documents which are the responsibility of central government, specifically national environmental standards, national policy statements and New Zealand coastal policy statements. Although there is no obligation to prepare national environmental standards or national policy statements, there must be at least one New Zealand coastal policy statement. Policy statements of whatever type state objectives and policies, which must be given effect to in lower order planning documents. In light of the special definition of the term, policy statements do not contain "rules".

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21 *Edwards v Bairstow* [1956] AC 14 (HL) at 36; [1955] 3 All ER 48 at 57. These can also be seen as circumstances of unreasonableness: *Hu v Immigration and Protection Tribunal* [2017] NZHC 41, [2017] NZAR 508 at [28] and fn 27.

22 *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281 at [52]; *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [90].

23 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [10].

> (b) Second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans. There must be at least one regional policy statement for each region, which is to achieve the RMA's purpose "by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region". Besides identifying significant resource management issues for the region, and stating objectives and policies, a regional policy statement may identify methods to implement policies, although not rules. Although a regional council is not always required to prepare a regional plan, it must prepare at least one regional coastal plan, approved by the Minister of Conservation, for the marine coastal area in its region. Regional plans must state the objectives for the region, the policies to implement the objectives and the rules (if any) to implement the policies. They may also contain methods other than rules.
>
> (c) Third, there are documents which are the responsibility of territorial authorities, specifically district plans. There must be one district plan for each district. A district plan must state the objectives for the district, the policies to implement the objectives and the rules (if any) to implement the policies. It may also contain methods (not being rules) for implementing the policies.
>
> (footnotes omitted)

[28] The hierarchy of planning documents referred to above in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* is important in the context of this appeal even though the national policy statement and standards relevant to it are different. In this case, the panel was required to deal with the national policy statements for freshwater management 2014 (as amended in 2017 and updated in 2020) and the national environment standard for plantation forestry, which I have already referred to as the NES-PF.

[29] The timing of the NES-PF and the national policy statements for freshwater management in relation to PC7 are important, given that they are national planning instruments required to be given effect to in a regional plan.[24]

[30] I now move to the Canterbury Land Water Regional Plan. It was made operative on 1 September 2015 following the Regional Council approving the Canterbury Regional Policy Statement 2012. I refer to the Canterbury Land Water

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[24] RMA, s 67(3).

Regional Plan as "the operative plan" in this judgment to distinguish it from the proposed plan, referred to as PC7.

[31] The purpose of the operative plan is to assist the Regional Council in carrying out its functions to achieve the purpose of the RMA in the Canterbury region.[25] It states objectives and identifies policies and rules to achieve its purpose.[26] Two of the functions relevant to this appeal concern the control of the use of land for maintaining and enhancing water quality in water bodies and ecosystems within those water bodies, and controlling the discharge of contaminants into or onto land or water and discharges of water into water.[27] In certain circumstances, sediment can be considered a contaminant if it enters water bodies.

[32] Section 67 of the RMA outlines the contents required in a regional plan. Among other things, a regional plan must give effect to any national policy statement, a national planning standard and any regional policy statement.[28]

[33] Section 68(1) of the RMA authorises regional councils to make rules in a regional plan for carrying out certain functions and for achieving the objectives and policies of the plan. In making a rule, a regional council must have regard to the actual or potential effect (particularly an adverse effect) on the environment of an activity and the statute contains specific directions for rules relating to levels, flows or rates of use of water, and minimum standards of water quality. Section 69 applies to regional rules relating to water quality and s 70, among other things, applies to regional rules about the discharge of contaminants into water or onto land in circumstances where that contaminant may enter water.

[34] Section 77A of the RMA is also important. This allows local authorities like the Regional Council to categorise activities as either permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited, and to make rules specifying the applicable activity status as outlined. The rules can also specify conditions subject to certain restrictions. If a rule classifies an activity as a controlled

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25 Section 30.
26 Section 67(1).
27 RMA, s 30(1)(c) and (f).
28 Section 67(3).

or restricted discretionary activity, this means the matters able to be assessed are prescribed in the rule itself.

[35] The activity status of the rules in issue in this appeal are important because of the differences between the operative plan rules and those proposed in PC7. A change in activity status is important because the degree of assessment required (and therefore, amongst other things, the associated cost to an applicant) can depend on the activity status allocated. For example, it is generally the case that permitted activity and controlled activity consents are easier and less costly to obtain than, for example, a discretionary activity status consent. Discretionary activity consideration may open up a requirement for an applicant to avoid, remedy or mitigate a wider range of actual and potentially adverse effects.

[36] The operative plan rules relevant in this appeal are:

(a) Rules 5.170–5.171 which manage sediment discharge effects in high soil erosion risk areas, outside of any riparian margin. The rules permit sediment discharges for silviculture practices and makes specific allowances for the maximum discharge of total suspended solids. Non-compliance with r 5.170 is a *restricted discretionary activity* under r 5.171 with the exercise of discretion restricted to six discrete points. I refer to these rules as "the operative sediment discharge rules".

(b) Rules 5.72–5.74 which address replanting and afforestation in flow-sensitive catchments, with r 5.73(3) concerned with maintaining specific water flows in relevant catchments. Under these rules, planting new areas in flow sensitive catchments is a *controlled activity*. Non-compliance with these rules changes the classification of activity status from controlled to *restricted discretionary*, with the exercise of discretion restricted to four discrete points. "Afforestation" refers to the planting of new forest where none had existed before and to adopt the definition in the NES-PF where commercial forestry harvesting has not occurred within the last five years. I refer to these as "the operative water yield rules".

[37] I set out the specific rules later in this judgment when a comparison of them with the rules in PC7 is needed to better understand the specific issues on appeal.

The NES-PF

[38] The NES-PF came into force on 1 May 2018. The NES-PF applies to any plantation forest of at least one hectare that has been planted specifically for commercial purposes and will be harvested.[29]

[39] As the title suggests, the NES-PF applies nationally and was promulgated to provide a consistent set of regulations across New Zealand to eight identified core plantation forestry activities, including afforestation and harvesting.

[40] The NES-PF responded to concerns by forestry companies operating throughout New Zealand regarding the inconsistency of controls across the country when forestry operations were controlled exclusively by regional and district planning instruments. The NES-PF applies to all plantation forests whether they are owned and/or managed by a large corporate or a farm forester. From the appellants' perspective, the NES-PF provides certainty around how to manage the effects of their forestry operations on the environment.

[41] A major platform of the NES-PF is the mandatory obligation to produce forestry earthworks management plans and harvest plans.

[42] The Ministry of Primary Industries developed various guidance documents about the implementation of the NES-PF. Thus far, 28 specific Forest Practice Guidelines have been prepared in consultation with the New Zealand Forest Owners Association. The guidelines provide toolboxes of various measures that may be used to meet the regulations.

[43] The guidelines cover earthwork construction, erosion and sediment control measures, crossings, vegetation to manage erosion and harvest slash. Their focus has been on providing guidance about erosion and sediment control and the stabilisation

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[29] Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 [NES-PF], s 3.

of operational sites. As the name suggests, the guidelines are not statutory documents, but they can be referred to in management plans and, if they are, the expectation is that, for the purposes of enforcement, the guidelines will establish what is expected of an operator.

[44] In addition to the NES-PF, Rayonier Matariki has developed its own environmental management plans underpinned by its own environmental standards. These were reviewed in August 2018 to ensure alignment with the NES-PF. The standards employed by Rayonier Matariki include an auditing process (sometimes by drones), as many of Rayonier Matariki's activities are undertaken by contractors who are required to comply with the standards.

[45] It was common ground that the NES-PF requirements come at a cost over and above the practices that may have been employed by foresters previously. However, the appellants' evidence before the panel was that they completely support the NES-PF and the nationally consistent land use planning regime it has introduced.

[46] Regulation 6 of the NES-PF sets out when a rule in a plan may be more stringent than those contained in the NES-PF. Of relevance to PC7 is reg 6(1)(a) which provides:

> (1) A rule in a plan *may be more stringent* than these regulations if the rule gives effect to –
>
> (a) an objective developed to give effect to the National Policy Statement for Freshwater Management.
>
> …
>
> (emphasis added)

[47] The NES-PF regulates sediment discharges but does not regulate the effects of afforestation on water yield.

National Policy Statements Freshwater Management – 2014, 2017 and 2020

[48] A National Policy Statement for Freshwater Management was promulgated in 2014 and amended in 2017. This National Policy Statement was replaced by a new National Policy Statement for Freshwater Management in 2020. I will refer to the

National Policy Statements for Freshwater Management as NPS-FM 2017 and NPS-FM 2020 because, partway through the PC7 process, the NPS-FM 2020 came into force.

PC7

[49] Any change to a regional plan must be in accordance with the provisions of the RMA. These obligations are largely set out in ss 66 and 67 and, relevant to this appeal as outlined, require a Council to give effect to any national and regional policy statement and national environmental standards.

[50] The Regional Council promulgated PC7 and notified it on 20 July 2019. An evaluation report under s 32 of the RMA was also published on the same day.[30] This report was required to assess and evaluate whether the provisions of PC7 were the most appropriate to achieve the purposes of the plan change, as well as the relevant objectives stated in the operative plan.

[51] PC7 had three major parts: the first proposed amendments to certain region-wide sections of the operative plan and to certain sub-region sections. The remaining two parts are not relevant to this appeal. The rules which are subject to this appeal were a small part of PC7.

[52] The Regional Council contends the new rules were intended to improve the alignment between the rules in the operative plan regulating forestry activities and the NES-PF, given that the operative rules were made before the introduction of the NES-PF.

[53] The new plantation forestry rules, (rr 5.189 and 5.190) provide for:

(a) Quantitative limits for sediment discharges from plantation forestry activities (with certain exceptions). Discharges that cannot meet certain conditions as a permitted activity default to a *discretionary activity* requiring resource consent as opposed to a restricted discretionary activity as was the case under the operative sediment discharge rules.

[30] The version of s 32 that applies to this appeal was annexed to the s 32 evaluation report.

(b) The planting of new areas in a flow-sensitive catchment (the water yield rules) as a *discretionary activity* requiring resource consent as opposed to a controlled activity defaulting to a restricted discretionary activity as was the case under the operative water yield rules.

[54] The new rules for sediment discharges from plantation forestry activity went over and above the regulations provided for in the NES-PF, thus reg 6 of the NES-PF (referred to above at [46]) applied to them.

[55] The s 32 report stated that r 5.189 sought to "simply clarify that [the operative plan][31] provisions will continue to apply" and that r 5.189 "largely mirror[s]" existing operative plan rules. The report additionally stated that, while the cost of review in face of the new rules was unknown for plantation foresters, the costs were not likely to be significant.

[56] Section 32(4) of the RMA, in force at the time, provided:

> If the proposal will impose a greater or lesser prohibited or restriction on an activity to which a national environment standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

[57] Regarding the s 32(4) and NES-PF reg 6 requirements to justify a more stringent or greater restriction on sediment discharges than the NES-PF standards provided, the s 32 report notes the following:

> Imposing greater restrictions on plantation forestry activities is justified in these circumstances because managing the particular matters outlined in the conditions of Rule 5.189 *is necessary in order to achieve freshwater objectives in the [operative plan] developed in accordance with the NPSFM and continue to manage activities that are not managed under the NESPF.*
>
> (emphasis added).

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31 "CLWRP" is the acronym used by those in the resource management community to refer to the Canterbury Land Water Regional Plan — I prefer the terms "operative plan" and "PC7" to distinguish them in this case.

[58] PC7 was advanced in accordance with the process outlined in sch 1 to the RMA.

[59] Submissions on the plan were required to be lodged by 13 September 2019. Within that period, 560 submissions were received on PC7, one of which was the appellants' submission.

[60] The appellants opposed the inclusion of rr 5.189 and 5.190 in PC7. In relation to:

(a) Afforestation and replanting within flow sensitive catchments (the water yield rule), they requested the rules be amended so that they were no more stringent than the operative water yield rules.

(b) The discharge of suspended sediment (the sediment discharge rule), they requested that the rules be deleted or otherwise amended to address specified issues they raised. They highlighted that the PC7 rules were significantly more stringent than those in the operative plan because the latter (r 5.170) was limited to mapped erosion-prone areas within the region, whereas the forestry rule for the suspended sediment discharges in PC7 applied throughout the region.

(c) They highlighted the change in activity status proposed for both afforestation and planting within flow sensitive catchments and the discharge of suspended sediment.

[61] Additionally, the appellants submit both the operative plan rule and the PC7 rule for sediment discharge cannot be justified because the rule is uncertain and impractical, fails to recognise the spatial scale of plantation forestry, lacks clarity on how and when sediment discharge should be measured, fails to make adequate provision for elevated background levels of suspended sediment in the relevant waterbody and is overall unduly stringent, unable to be supported by any reasonable cost/benefit analysis.

[62] By minute, dated 3 March 2020, the panel gave notice of the dates and venues for the public hearings on PC7. These dates were adjourned because of the COVID-19 pandemic, again by minute dated 24 March 2020.

[63] Under s 42A of the RMA, the Regional Council was required to prepare a report prior to the hearings summarising and analysing the submissions that had been made on PC7 and to make recommendations to the panel about possible amendments to PC7 in response to those submissions.

[64] On 27 March 2020, the s 42A report was published with its recommendations contained in Appendix E. The report recommended that PC7 reinstate the water yield rules in the operative plan, which the appellants' submission had requested. For this reason, the appellants decided not to call evidence at the hearing to support their submission about the proposed water yield rules. I note that, at this stage, the District Council supported the proposed water yield restrictions, with a view to protecting community drinking water supplies.

[65] The s 42A report also addressed the appellants concerns regarding the sediment discharge rule in PC7, in particular the submission that r 5.189(3) is unduly stringent and unsupported by evidence and the additional issues listed above at [60]. After noting the negative effects of sediment discharges on aquatic ecosystems, the report author rejected the appellants' view. No other changes to the plantation forestry rules were recommended in the s 42A report.

[66] On 3 September 2020, just before the panel hearing on PC7 commenced, the NPS-FM 2020 came into force. The NPS-FM provided local authorities with direction about how they should manage freshwater under the RMA. Under it, a regional council was required to notify any freshwater planning instrument that had the purpose of giving effect to the NPS-FM by 31 December 2024.[32]

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[32] RMA, s 80A(4)(b). That date, accounting for the updated NPS-FM 2020, has now been changed to 31 December 2027.

[67] The s 42A report writers concluded that the NPS-FM 2017 was being given effect to by Pt A of PC7 in which the rules subject to this appeal were a part. This is not challenged on appeal.

[68] The panel hearings commenced on 28 September 2020. The appellants presented their case to the panel on 18 November 2020. At this hearing, they were represented by counsel. The appellants presented detailed expert evidence from Jerome Wyeth (a planner) and Darren Mann (a professional forester employed by Rayonier Matariki) as well as legal submissions in support.

[69] The District Council presented evidence from Kylie Galbraith (a planner) and made submissions supporting PC7.

[70] After the hearings, on 21 February 2021, a s 42A reply report was provided to the panel. The purpose of this report was to make recommendations to the panel about the matters that had been raised at the various hearings.

[71] The s 42A reply report addressed the appellants' submissions in relation to the NES-PF and the new proposed rule framework outlined in rr 5.189 and 5.190. There was one paragraph about the stringency assessment required under s 32(4) of the RMA and reg 6 of the NES-PF in relation to the sediment discharge rules, and the reply report addressed the appellants' submissions about these rules as well.

[72] The s 42A reply report recommended retaining all conditions of the new proposed r 5.189. The result was that the s 42A reply report did not recommend that the appellants submissions on the sediment discharge rule or the water yield rule should be adopted by the panel. The appellants submitted that it did not address why greater stringency is required in Canterbury.

[73] After it had received the s 42A reply report, the panel provided questions for the s 42A reply report authors to address. One of the questions concerned what the activity status for new areas of plantation forestry within flow-sensitive catchments (the water yield rule) should be. The panel asked:

> The authors have recommended a "controlled activity" status for planting new areas of plantation forestry within flow sensitive catchments. How appropriate is a controlled activity status given the potential adverse effects of plantation forestry (e.g., effects on flow) and given consent cannot be refused?

[74] The s 42A reply report authors responded to the panel's question as follows:

> The 'controlled' activity status of Rules 5.189B and 5.190A is considered appropriate, within the scope of PC7.
>
> Rules 5.189B and 5.190A replicate and replace existing Rule 5.73, which has a controlled activity status that provides certainty that resource consent will be granted.
>
> The scope of this PC7 topic was to simplify the planning framework for plantation foresters while ensuring the more stringent [operative plan] rules are retained (in accordance with Regulation 6 of the NESPF). *The scope did not extend to reconsidering the effects of forestry on water yield (including a review of the conditions and activity status of existing Rules 5.72 to 5.74 and the mapping of flow sensitive catchments).*
>
> (emphasis added)

[75] In response to this question, and no doubt concerned that the panel might be considering departing from the recommendation in the s 42A report that controlled activity status should be adopted for the water yield rule, counsel for the appellants filed a memorandum outlining the reasons why this activity status should be retained.[33] They submitted that the rules in the plan had been carefully crafted to include specific criteria outlining the threshold necessary to qualify as a controlled activity before defaulting to a restricted discretionary activity. They also referred to the detailed hydrological evidence they and other forest owners had presented at two earlier plan change hearings; being the hearings for the then proposed Canterbury Natural Resources Regional Plan and the then proposed but now operative plan.

[76] The appellants submitted that retaining a controlled activity status for the water yield rule would best meet the requirements of s 32 of the RMA as it would better achieve an appropriate level of management of environmental effects relative to the level of restriction on new plantation forestry/afforestation activities in flow sensitive catchments. Counsel for the appellants requested an opportunity to be heard further

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[33] Dated 24 February 2021.

on the topic if the panel was considering adopting a more stringent activity status than the controlled activity status recommended in the s 42A report.

[77] The panel declined the appellants' request to be further heard about the activity status for the proposed water yield rules in issue. Its decision (Decision 5) about this was direct. The panel determined that there were some "hinderances" to this, describing the appellants approach as "a late regret for what is now thought to be an incomplete presentation" of their case. The panel said the evidence on the topic had concluded and other submitters who might be affected by the appellants' proposal "may no longer have the issues in front of mind". The panel noted that it understood the argument being put forward by the appellants, but also that the appellants should not be assured that the panel would adopt it.

[78] Although the panel's concerns could have been remedied by the further submitters being notified of the appellants' stated position, this option was not adopted by it. Two members of the panel had also been panel members for the two planning processes referred to by counsel for the appellants. Nonetheless, the panel determined that this evidence was not admissible or relevant to the PC7 hearing, given more recent changes to the legislation and resource management practice. The panel noted that, in any event, they were not obliged to adopt or follow their previous findings.

[79] The panel issued its report and recommendations on 6 May 2021. It recommended declining the relief sought by the appellants in their submission in relation to both the water yield and sediment discharge rules.

[80] The Regional Council adopted the panel's report and recommendations and notified its decision to that effect on 20 November 2021. It does not appear to have undertaken any additional or further assessment or reconsideration of the rules that are subject of this appeal.

The operative and proposed rules and s 32 report

[81] Having given a general overview of the events, I now lay out in their entirety the operative rules, the proposed rules and the discussion about the s 32 report.

The operative plan sediment discharge rules

[82] Rule 5.170 provides:

> 5.170 Within the area shown as High Soil Erosion Risk on the Planning Maps [the discharge of sediment or sediment-laden water is *permitted* for]
>
> …
>
> (e) Silvicultural practices of release cutting, pruning or thinning to waste and harvesting in accordance with the Environmental Code of Practice for Plantation Forestry (ECOP) 2007; or
>
> (f) earthworks within a production forest undertaken in accordance with NZ Forest Road Engineering Manual (2012) … providing the following conditions are met:
>
> 4. the concentration of total suspended solids in the discharge shall not exceed:
>
> (a) *50 g/m3, where the discharge is to any Spring-fed River, Banks Peninsula river, or to a lake* except when the background total suspended solids in the waterbody is greater than 50 g/m3 in which case the Schedule 5 visual clarity standards shall apply; or
>
> (b) *100 g/m3 where the discharge is to any other river or to an artificial watercourse* except when the background total suspended solids in the waterbody is greater than 100 g/m3 in which case the Schedule 5 visual clarity standards shall apply.
>
> (emphasis added)

[83] If an applicant is not able to comply with r 5.170 (the permitted activity rule), the application must be assessed as a *restricted discretionary activity* under r 5.171. In this case, the exercise of discretion is restricted to six discrete matters which are specified in the rule as follows:[34]

> 5.171 …
>
> 1. The actual and potential adverse environmental effects on soil quality or slope stability; and
>
> 2. The actual and potential adverse environmental effects on the quality of water in rivers, lakes, artificial water courses or wetlands; and

---

[34] The operative plan rules 5.99–5.100 manage the discharge of contaminants (including sediment) that are not classified elsewhere in that plan.

3. The actual and potential adverse environmental effects on areas of natural character, outstanding natural features or landscapes, areas of significant indigenous vegetation, indigenous biodiversity and significant habitats of indigenous fauna, mahinga kai areas or sites of importance of to Tangata Whenua; and

4. The actual and potential adverse environmental effects on a wetland or the banks or bed of a water body or on its flood carrying capacity; and

5. The actual and potential adverse environmental effects on transport networks, neighbouring properties or structures; and

6. In addition, for forest harvesting, the harvesting method, location of haulage and log handling areas, access tracks, and sediment control.

The operative plan water yield rules

[84] Rule 5.73 provides:

> 5.73 The planting of new areas of plantation forest within any flow-sensitive catchment listed in Sections 6 to 15 is a *controlled activity*, provided the forest planting meets the following conditions:
>
> 1. …
>
> 2. In catchments less than or equal to 50 km2 in area the total area of land planted in plantation forest does not exceed 20% of the flow sensitive catchment or sub catchment listed in Sections 6 to 15; and
>
> 3. In any catchment greater than 50 km2 in area the new area of planting, together with all other new areas of planting in the same flow sensitive catchment since 1 November 2012, *will not cumulatively cause more than a five percent reduction in the seven day mean annual low flow, and/or more than a 10% reduction in the mean flow*."
>
> The [Regional Council] reserves control over the following matter:
>
> 1. The provision of information on the location, density and timing of planting.
>
> (emphasis added)

[85] If an applicant cannot comply with r 5.73, the application is assessed as a *restricted discretionary activity* under r 5.74, with the exercise of discretion restricted to the following four discrete matters:

5.74 …

1. The actual or potential adverse environmental effects of forestry planting in the surface water flows in the catchment, including water allocation status, minimum flow or flow regime, in-stream values and authorised takes and use of the water; and

2. The actual or potential adverse environmental effects of forestry planting on groundwater recharge; and

3. The benefits of the forestry for slope stability, erosion control, noxious plant control, water quality, carbon sequestration and biodiversity protection; and

4. The spacing and density, and species of the planting.

[86] Rules 5.73 and 5.74 implement Policy 4.75 of the operative plan which states:

4.75 Reduced effects arising from the interception of rainfall run-off on surface water flows in the flow sensitive catchments listed in Sections 6 to 15 is achieved by controlling the area, density and species of trees planted, except where tree-planting is required to control deep-seated soil erosion.

[87] I agree with counsel for the appellants that, in general terms, r 5.73(3) seeks to ensure that cumulatively new areas of plantation forest plantings within a flow sensitive catchment maintain at least 95% of the seven-day mean annual low flow and 90% of the mean flow within waterways in a catchment. An applicant for resource consent under rule 5.73(3) must demonstrate this outcome by providing an expert hydrological assessment confirming that the flow thresholds in the rule will not be breached by the new areas of planting.

[88] I also agree with counsel for the appellants that the rationale for the rule is to ensure that new areas of planting within a flow sensitive catchment that comply with the conditions of controlled activity rule 5.73 will have only a negligible or less than minor adverse effect on hydrological flows within that catchment.

The proposed PC7 rules

[89] Rules 5.189 and 5.190 are set out as follows:

5.189 Any plantation forestry activity regulated by the Resource Management (National Environment Standards for Plantation Forestry) Regulations including:

a. the use, excavation, deposition, or disturbance of land, including in the bed of a lake or river, or in a wetland; or

b. the planting, replanting, or clearance of vegetation, including in the bed of a lake or river, or in a wetland; or

c. the discharge of contaminants into water or onto or into land in circumstances where it may enter water;

is a *permitted activity*, provided the following conditions are met:

1. *Planting of new areas does not occur within any Flow Sensitive Catchment listed in Section 6 to 15 of this Plan; and*

2. …

3. *The concentration of total suspended solids in the discharge does not exceed:*

a. 50g/m3 where the discharge is to any Spring-fed river, Banks Peninsula River, or to a lake, except when the background total suspended solids in the waterbody is greater than 50g/m3 in which case the Schedule 5 visual clarity standards shall apply; or

b. 100g/m3 where the discharge is to any other river or to an artificial watercourse except when the background total suspended solids in the waterbody is greater than 100g/m3 in which case the Schedule 5 visual clarity standards shall apply; and (…)

5.190 Any Plantation forestry activity regulated by the Resource Management (National Environment Standards for Plantation Forestry) Regulations including:

a. the use, excavation, deposition, or disturbance of land, including in the bed of a lake or river, or in a wetland; or

b. the planting, replanting, or clearance of vegetation, including in the bed of a lake or river, or in a wetland; or

c. the discharge of contaminants into water or onto or into land in circumstances where it may enter water.

that does not meet one or more of the conditions in Rule 5.189 is *a discretionary activity*."

(emphasis added)

[90] Regarding the sediment discharge rule, the NES-PF's water quality standards are qualitative and there are no numeric standards to assist in their interpretation. Mr Wyeth noted the NES-PF s 32 report's reasons for this as:

(a) insufficient information at a national level to set evidence-based standards that could accurately apply to all streams and rivers in New Zealand;

(b) the risk of numeric standards being viewed as "permitted baselines";

(c) the presence of further clarity and definition to these standards in s 70 of the RMA through plans or internal guidelines; and

(d) the difficulty in defining a meaningful mixing zone for diffuse discharges, or one that would be applicable to all water bodies in New Zealand.

[91] This is in contrast with the proposed rule at 5.189(3) which does impose numeric limits. As noted, the combined effect of rr 5.189(1) and 5.190 is that plantation forestry activities in flow sensitive catchments are categorised as discretionary activities as opposed to controlled.

The s 32 report

[92] The version of s 32 that applied at the time was annexed to the s 32 report. I set out the version active as of 1 August 2019 (the s 32 report being dated 11 July 2019):

> **32 Requirements for preparing and publishing evaluation reports**
>
> (1) An evaluation report required under this Act must—
>
> (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
>
> (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
>
> (i) identifying other reasonably practicable options for achieving the objectives; and
>
> (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
>
> (iii) summarising the reasons for deciding on the provisions; and
>
> (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

(2) An assessment under subsection (1)(b)(ii) must—

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

(3) If the proposal (an amending proposal) will amend a standard, statement, national planning standard, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—

(a) the provisions and objectives of the amending proposal; and

(b) the objectives of the existing proposal to the extent that those objectives—

(i) are relevant to the objectives of the amending proposal; and

(ii) would remain if the amending proposal were to take effect.

(4) If the proposal will impose a greater or lesser prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

…

[93] The NPS-FM 2014 (amended in 2017) and the NES-PF were referred to in the introduction to the s 32 report. When discussing the NES-PF, the report writers specifically referred to it as a provision enabling plan rules to be more stringent than the regulations in certain circumstances, including if the rule gives effect to an objective developed to give effect to the NPS-FM. The writers then stated:[35]

> There are also some environmental effects that are currently managed under the [operative plan] that are not managed under the NES-PF. Some provisions in the [operative plan] are more stringent than regulations in the NES-PF,

[35] The difference between PC7 and PC7A was not highlighted as an important matter by counsel in this appeal. PC7A is likely to be a further iteration of some of the provisions in PC7.

> particularly in relation to the management of suspended sediment, inanga spawning habitats, wetland disturbance, afforestation in flow sensitive catchments and fuel storage. To address uncertainty around which provisions apply to plantation forestry activities and to ensure that the freshwater objectives contained in the [operative plan] continue to be met, PC7A proposes to introduce new provisions specifically addressing plantation forestry activities.

[94] Later in the report, dealing with the planning context for PC7, the report writers specifically refer to the NES-PF and, after referring to its objectives to maintain or improve environmental outcomes associated with plantation forestry activities nationally, the report notes:

> … Plan rules cannot be more lenient than the regulations and can only be more stringent where they relate to managing the unique and sensitive environments defined in the NES-PF.
>
> PC7 is consistent with the NES-PF.

[95] Part 5.2 provides the evaluation of the proposed PC7 provisions for plantation forestry. In relation to the two new rules proposed, the report writer said:

> PC7A proposes two new rules specifically addressing plantation forestry activities in order to address any potential uncertainty around which provisions apply to plantation forestry activities, and to ensure that rules which give effect to a freshwater objective *continue to apply*. These rules also mean that effects on water yield that are not managed under the NESPF *continue to be managed* under the [operative plan].
>
> (emphasis added)

[96] Further, when describing the statutory context, the report writers noted that both the NPS-FM and the Canterbury Regional Policy Statement (RPS) both seek to maintain or improve the overall quality of freshwater in Canterbury. An evaluation of the PC7 provisions against both the NPS-FM and RPS provisions appeared as appendix 4 to the s 32 report. However, with reference to the operative plan, the following appears at 5.2.2:

> … The [operative plan] contains freshwater objectives as defined in the NPS-FM and the NES-PF recognises that management of plantation forestry activities should provide for those objectives to be met by allowing for more stringent rules in certain circumstances. Part A of PC7 seeks to observe the NES-PF while also ensuring freshwater objectives under the NPS-FM can continue to be met…

[97] Then, in relation to the purpose of PC7 in relation to plantation forestry activities, the report writers say:

> … In this case, the purpose of the proposal is to observe the NES-PF by identifying circumstances where rules that apply to plantation forestry activities can and should be more stringent than the NES-PF, and where existing [operative plan] rules manage effects that are not managed by the NES-PF, in order to ensure that the objectives of the [operative plan] continue to be met…

[98] Objectives 3.8 and 3.18 in the operative plan, which the s 32 report writers considered relevant to the proposed rules, were:

> 3.8 The quality and quantity of water in freshwater bodies and their catchments is managed to safeguard the life-supporting capacity of ecosystems and ecosystem processes, including ensuring sufficient flow and quality of water to support the habitat and feeding, breeding, migratory and other behavioural requirements of indigenous species, nesting birds and, where appropriate, trout and salmon.
>
> 3.18 Wetlands that contribute to cultural and community values, biodiversity, water quality, mahinga kai, water cleansing and flood mitigation are maintained.

[99] The s 32 report writers then identified three reasonably practicable options they considered addressed "the interplay" between the operative plan and the NES-PF.[36] These options were included in the table set out below:

Option		**Description**
1	Status quo	The operative Region-wide rules that are more stringent than the NESPF would continue to apply.
2	PC7A changes	PC7A would introduce the following changes: • New Rules 5.189 and 5,190 specifically managing plantation forestry activities • Delete Rules 5.72, 5.73 and 5.74 relating to forestry in flow sensitive catchments (managed instead under new Rules 5.189 and 5.190) • Amend the definition of "plantation forest" to align it with the definition of "plantation forestry" in the NESPF
3	Amendments to existing rules	Existing CLWRP rules would be amended so that specific conditions regarding total suspended solids and visual clarity standards, and inanga spawning habitat restrictions would apply to plantation forestry activities in addition to the NESPF.

[36] RMA, s 32(1)(b)(i).

[100] The three identified options were then evaluated. With respect to option 2, the following appears:

> *The conditions included in Rule 5.189 largely mirror conditions in existing [operative plan] rules* which establish higher thresholds for plantation forestry activities than the NESPF provides for. The exception is the condition relating to indigenous freshwater species habitat. That term is defined, and its extent mapped, through additional changes proposed through PC7A and discussed in section 5.4 of this report. These conditions are included for two reasons: for giving effect to freshwater objectives in the [operative plan] and for managing effects that are not managed under the NESPF.
>
> (emphasis added)

[101] The s 32 report then goes on to consider and outline the freshwater objectives in s 3 of the operative plan and refers as well to policies 4.1–4.6, submitting that they "are considered to be freshwater objectives for the Canterbury region in accordance with NPS-FM". It then provides "the conditions relating to inanga spawning areas, indigenous freshwater species habitats, total suspended solids, wetland and hazardous substance storage are important for the achievement of these freshwater objectives". What follows is a specific reference to objectives 3.8, 3.16, 3.18, policy 4.1, 4.2 and 4.3(c).

[102] The report then includes a section entitled "Effects not managed under the NES-PF". It states, among other things:

> Particularly important to the [operative plan] is that the NES-PF does not manage effects on water yield, which can arise from afforestation. The [operative plan] currently contains provisions managing new planting and replanting after harvest in flow sensitive catchments where these activities can impact on total water yield and low flows. It is appropriate for these activities to continue to be managed under the [operative plan] and the conditions of new rule 5.189 relating to flow sensitive catchments seek to simply clarify that these provisions will continue to apply to plantation forestry activities as they are not otherwise managed under the NES-PF. As a consequence of these new rules, existing rules 5.72, 5.73 and 5.74 (which manage plantation forestry in Flow Sensitive Catchments) are deleted to avoid duplication.

[103] The s 32 report then provided an overall evaluation of "appropriateness as follows":

> The cost-benefit and effectiveness and efficiency assessments have shown that overall, the proposed amendments are generally more efficient than status quo and are more effective at managing the objectives of the [operative plan]. To recognise that plantation forestry activities should be managed so that they give effect to freshwater objectives under the NPS-FM, the NES-PF provides

> for plan rules to be more stringent than the NES-PF regulations where those rules give effect to freshwater objectives.

[104] In terms of the risk of acting or not acting (s 32(2)(c) RMA), the report writers considered that, under the status quo, there would be uncertainty about which additional restrictions would apply to plantation forestry activities in addition to the regulations in the NES-PF. They considered the risk of not acting was that the freshwater objectives would potentially not be achieved. The report writers concluded that the risk of not acting and retaining what was described as the "current lack of clarity" was considered greater than the risk of acting as proposed.

[105] The report writers also addressed s 32(4) in a paragraph entitled "Stringency justification". Under this paragraph, the following appears:

> …In this case, the conditions included in Rule 5.189 collectively represent the provisions currently in the [operative plan] *which are considered more stringent than the NESPF. Imposing greater restrictions* on plantation forestry activities is justified in these circumstances because managing the particular matters outlined in the conditions of Rule 5.189 *is necessary in order to achieve freshwater objectives in the [operative plan] developed in accordance with the NPSFM*…In turn this provides for the [operative plan] to give effect to the objectives of the NPSFM.
>
> (emphasis added)

The panel's decision

[106] The panel specifically addressed the provisions proposed in PC7 for plantation forests in four paragraphs. I set them out now:

> [436] As detailed at the start of this Chapter, PC7 as notified proposed a number of amendments to operative plan provisions to improve alignment with the NES-PF. Those changes included replacing operative rules for plantation forests within flow-sensitive catchments (Rule 5.72, 5.73 and 5.74) with a new suite of rules (Rules 5.189 and 5.190). A critical difference between the two frameworks is that the operative framework would classify new plantings within a flow-sensitive catchment as a controlled activity (subject to compliance with conditions relating to maximum area mean low flow), while the PC7 framework would classify a failure to comply with the conditions of the proposed permitted activity rule as a discretionary activity.
>
> [437] In the s32 Report the CRC Officers addressed the extent there is authority for the proposed rule framework to be more stringent that rules in the NES-PF. On this they advised that:

- Regulation 6(1)(a) of the NES-PF provides for a rule in a plan to be more stringent than the regulations if the rule gives effect to an objective developed to give effect to the National Policy Statement for Freshwater Management; and

- The Objectives in Section 3 of the [operative plan] as well as Policies 4.1 to 4.6 are considered freshwater objectives for the Canterbury region; and

- The proposed framework (and conditions of the proposed rules) would manage effects not regulated by the NES-PF and that this is appropriate given these rules implemented objectives and policies in the [operative plan].

Submissions and evidence, the CRC Officers response and our finding

[438] Submissions on the rule framework were lodged, including a joint submission by Rayonier New Zealand Limited and Port Blakeley Limited. In their submission they opposed proposed Rules 5.189 and 5.190, and sought, amongst other things, a change to the activity classification for Rule 5.190 from discretionary to restricted discretionary. As we noted earlier, Rule 5.189 provides for a permitted activity. It has a range of conditions that would result in production forestry activities in certain sensitive locations (including flow sensitive catchments, inanga spawning habitat, salmon spawning habitat, Critical Habitat, wetlands and rock art areas) not qualifying as permitted activities. Production forestry activities in those sensitive areas would default to Rule 5.190.

[439] We recognise that applications under Rule 5.190 may affect a wide range of such sensitive locations, and have a variety of adverse effects on them, and on ecosystems and other values they support. In those circumstances, we are not persuaded that the consent authority should be restricted in what it may consider. Furthermore, we consider the Council should have the opportunity to refuse applications for resource consent, where appropriate. For this reason, we also do not recommend a controlled activity classification, as recommended to us by the CRC Officers.

The sediment discharge rules

The arguments

[107] Mr Pilditch KC, for the appellants, submitted that the Council failed to comply with s 32(4) of the RMA which imposes additional requirements on local authorities when proposing new rules that are more stringent than equivalent regulations contained within a national environmental standard. Related to this, the appellants also submit that the panel failed to give adequate reasons for its decision as required by sch 1, cl 10(2)(a) of the RMA.

[108] Specifically, the alleged errors of law raised on appeal are that the decision failed to:

(a) address or deal with the expert evidence and legal submissions presented by the appellants at the hearing regarding the stringency argument;

(b) assess whether a sediment discharge rule that is more stringent than the equivalent regulation(s) in the NES-PF is justified in the circumstances of the Canterbury Region; and

(c) contain any or sufficient reasons for the panel's decision to decline the appellants' submission regarding the stringency argument.

[109] Following on from this, Mr Pilditch submitted that the following questions of law arise:

(a) whether the panel misdirected itself as to the application of s 32(4);

(b) whether the Regional Council failed to take into account matters which it should have taken into account when making the relevant parts of its decision; and

(c) whether the Regional Council came to a conclusion that is not available to it or which it could not reasonably have come to on the evidence and/or submissions provided.

[110] Mr Maw, for the Regional Council, submitted (in response) that:

(a) the panel did identify and apply the correct legal test in relation to s 32 and any remaining challenge to the adequacy of the s 32 evaluation is one which challenges the weight placed by the panel on the submissions before it, in other words an impermissible challenge to the decision's merits;[37]

(b) there was evidence available upon which the panel could properly come to its decision, including from the District Council's expert Ms Galbraith;

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[37] *Canterbury Trustees Ltd v Christchurch City Council*, above n 7, at [83].

(c) sufficient reasons were given by the panel for rejecting the appellants' submissions, noting chapter 16 and appendix A of the recommendation report; and

(d) should one of the claimed errors be made out, none are of sufficient magnitude to materially affect the decision.[38]

[111] Ms Hamilton, for the District Council, submitted that:

(a) the appellants' complaints about the panel's s 32(4) assessment constitutes a challenge to the adequacy of the s 32 evaluation;[39] and

(b) it is implicit from paras [438] and [439] of the panel's decision that it accepted the justification provided in the s 32 report regarding the need for greater stringency by way of a discretionary activity status under r 5.190 and thus, reasons were provided.

Did the panel address the stringency argument at all or to a sufficient degree as required by s 32(4)?

[112] The appellants' stringency argument can be addressed together and is better framed as a question asking whether the panel addressed s 32(4) at all or sufficiently. I address the issues raised under the following headings:

(a) Did the panel address the stringency argument at all, or to a sufficient degree as required by s 32(4), specifically whether reliance on the NES-PF rule was sufficient?

(b) Did the panel give sufficient reasons for its decision to impose a rule more stringent on the Canterbury region than the sediment discharge rules in the NES-PF?

(c) If the answer to either or both of these questions is no, does either failure amount to an error of law?

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38 *Transpower New Zealand Ltd v Auckland Council*, above n 22, at [52].
39 *Canterbury Trustees Ltd v Christchurch City Council*, above n 7, at [83].

[113] I first outline the evidence and submissions that were presented to the panel about this topic and the arguments presented to me by the parties. I next address what the panel decided in relation to it, before discussing whether the panel addressed the requirements in s 32(4) at all or to a sufficient degree.

The evidence and submissions before the panel

[114] The appellants submission on PC7 highlighted their view that:

(a) the proposed rules were more stringent than the comparable rules in the operative plan;

(b) the increase in stringency was unnecessary and unjustified;

(c) the requirements in s 32(4) had not been met because no comparison had been undertaken between the proposed rules and the NES-PF regulations relating to sediment discharges; and

(d) the s 42A report did not respond to the appellants' submission about stringency at all.

[115] The appellants' evidence and submissions presented to the panel at the hearing also addressed the stringency argument in s 32(4). Expert evidence was presented to the panel from Messrs Wyeth and Mann.

[116] Mr Wyeth's evidence outlined that he had worked closely with the Ministry for Primary Industries and the Ministry for the Environment to develop and support the implementation of the NES-PF. His evidence contained an overview of the NES-PF and its sediment management regulations, an overview of the forestry rules in PC7 and their relationship with the corresponding regulations in the NES-PF, and he provided an assessment as to whether there was sufficient justification for more stringent rules in PC7 than those provided in the NES-PF.

[117] Mr Wyeth's opinion was that nearly all the standards in r 5.189 are more stringent than the NES-PF. Regarding r 5.189(3), Mr Wyeth notes that the key difference is the numeric total suspended sediment limits of 50g/cubic metre and

100g/cubic metre impose an absolute region-wide approach, whereas the sediment management regulations in the NES-PF are based on a more pragmatic and fine-grained management approach, with additional controls applying where necessary.

[118] Mr Mann, who was at that time the general manager of operations for Rayonier Matariki, addressed the forestry sectors response to the introduction of the NES-PF, Rayonier Matariki's approach to the management of sediment discharges under the NES-PF within the Canterbury region and Rayonier Matariki's costs arising from compliance with the NES-PF sediment discharge regulations. He additionally provided his assessment of the additional costs and uncertainty arising from the proposed PC7 sediment discharge rules, both for forestry companies and related businesses within the Canterbury region.

[119] Mr Mann's evidence was that, overall, it would be difficult to put an exact figure on the additional costs that would arise if a discretionary activity status was the default position, but he was clear that the costs for applicants would increase. This likely responded to the s 32 report which had acknowledged that the scale or likelihood of the costs was unknown but, despite this, the opinion offered was that they would not be significant.

[120] The appellants' lawyers also presented legal submissions, comprising some 80 paragraphs, to the panel. The submissions:

(a) outlined that the s 32 evaluation was deficient because it failed to demonstrate that more stringent forestry rules were necessary and justified in the Canterbury region;

(b) highlighted the key points in Mr Wyeth's evidence regarding the sediment management regulations in the NES-PF and why he contended the regulations were the preferred approach to sediment management;

(c) provided a summary of Mr Wyeth's evidence comparing the PC7 rules and the NES-PF sediment discharge regulations;

(d) addressed the requirements in s 32(4) regarding stringency;

(e) highlighted Mr Wyeth's evidence that there was a fundamental gap in the s 32 report because it did not contain any clear evidence or analysis to demonstrate why the more stringent PC7 rules were necessary to achieve the objectives in the regional plan; and

(f) highlighted Mr Wyeth's evidence that the s 32 report failed to identify implementing the NES-PF, as it stands, as a reasonably practicable option (option 4) by removing all rules from the operative plan that overlap with the NES-PF;

(g) highlighted that the deficiencies identified by Mr Wyeth in the s 32 report had not been cured by the s 42A report; and

(h) concluded that there were sound practical reasons why the NPS-FM 2020 could not be given effect to via submissions on the PC7 forestry rules but should be addressed in a comprehensive future plan change designed to give effect to the NPS-FM 2020 but, in the interim, the NES-PF standards would be adequate to improve or maintain freshwater quality within the Canterbury region.

[121] These submissions were considered and addressed (albeit briefly) in the s 42A reply report.

[122] Section 2 of the reply report is entitled "Legal and Statutory Context". It includes a specific section (2.107-2.115) dealing with the s 32(4) argument the appellants presented at the hearing. It responded to this argument by quoting the rationale for greater stringency included in the s 32 report which provided:

> In this case, the conditions included in Rule 5.189 collectively represent the provisions currently in the [operative plan] which are considered to be more stringent than the NES-PF. Imposing greater restrictions on plantation forestry activities is justified in these circumstances because managing the particular matters outlined in the conditions of Rule 5.189 is necessary in order to achieve freshwater objectives in the [operative plan] developed in accordance with the NPS-FM and continue to manage activities that are not managed under the NES-PF. In turn, this provides for the [operative plan] to give effect to the objectives of the NPS-FM.

[123] The s 42A reply report concluded that the s 32 report satisfied the requirements of s 32(4) but it was noted that, in any event, a further evaluation pursuant to s 32AA of the RMA would be required for any changes proposed to PC7 since the s 32 report had been completed.

[124] Mr Pilditch referred to section 9 of the s 42A reply report:

> Officers have considered the evidence presented by Rayonier New Zealand Ltd and Port Blakely Ltd and retain the view that all conditions of proposed rule 5.189 should be retained for the reasons set out in the Section 42A Report …

[125] He submitted that this excerpt simply does not evaluate the stringency argument that the appellants had presented and is incorrect. As he noted, the stringency argument is not discussed at all in the s 42A report and, contrary to the statement in the s 42A reply report, no reasons are given in it to justify greater stringency under s 32(4). Mr Pilditch therefore submitted that any reliance placed on the s 42A report by the author of the s 42A reply report was misguided and incorrect.

[126] Mr Pilditch then referred to the discussion in the s 42A reply report about r 5.189(3) which specifies the numeric permitted activity threshold for total suspended solids, concentrations and visual clarity standards in discharges and the evidence of Messrs Mann and Wyeth about it as follows:

> 9.11 In the Section 42A Report, Officers recommended retaining condition (3) of Rule 5.189 as notified, with the reasoning that the diffuse discharge of fine sediment into waterways and its subsequent settlement onto the bed has a range of negative impacts on aquatic ecosystems. In particular, suspended fine sediment may have negative effects on fish migration, and the deposition of fine sediment may have negative effects on macro-invertebrates and promote cyanobacterial blooms.
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> …
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> 9.17 Officers have considered the evidence of Rayonier New Zealand Ltd and Port Blakeley Ltd and acknowledge there are challenges with monitoring diffuse discharges of sediment into waterways. However, the addition of fine sediment running off into waterways can have significant adverse effects on the receiving waterways that are unable to be, or highly onerous to [sic], remediated. Officers consider it is important to manage both total suspended solids concentrations and visual clarity standards in order to manage the risks of suspended and deposited sediment. For example, visual clarity is not always a good indicator of the risks to benthic ecology in a waterway.

> 9.18 Accordingly, Officers recommend that both the total suspended solids concentration and the visual clarity standards in condition (3) of Rule 5.189 is retained. A minor amendment is suggested to refer to the Schedule 5 visual clarity standards "outside the mixing zone" for improved clarity.

[127] Mr Pilditch submitted that these passages in the s 42A reply report do not address the appellants argument about s 32(4) because they did not mount a challenge to the potential adverse effects arising from diffuse discharges of fine sediment into waterways — these effects are well-known and understood by them. Rather, their argument was whether more restrictive rules than those provided in the NES-PF were justified *in the circumstances of Canterbury*.

[128] The District Council acknowledges that the aspects of the panel's recommendations that address PC7 and the appellants' submissions on PC7 do not address the appellants' evidence on s 32(4), but it submitted neither fact amounts to an error of law. Ms Hamilton also submitted the appellants' challenge to the s 32(4) analysis is a challenge to the adequacy of the panel's evaluation.

[129] Mr Maw's submissions for the Regional Council noted:

(a) the s 32 report comprised some 505 pages of analysis;

(b) the panel addressed at [437] the authority to impose more stringent rules than the NES-PF, noting reg 6(1)(a) of the NES-PF;

(c) the s 42A reply report addressed the appellants' submission regarding the s 32(4) assessment with reference to the s 32 report at 2.112–2.115. Those passages note that the increased stringency of rr 5.189 and 5.190 is justified in order to meet the objectives identified in the operative plan, developed in accordance with the NES-FM and continue to manage activities that are not managed under the NPS-FM;

(d) the panel made it clear that they had relied on the s 42A reply report and there is nothing to suggest they did not understand the legal requirements of s 32 of the RMA; and

(e) it is clear from the recommendation report that the panel understood its obligation to undertake a further evaluation in accordance with ss 32(1)–(4) for any proposed changes following a s 32 report.

What the panel decided

[130] The panel's recommendation in relation to the appellants' opposition to the s 32(4) evaluation was included in the following table:

Rayonier / Port Blakely Request	**Hearing Panel's recommendation**	**Reason for recommendation**
Opposes the section 32 evaluation undertaken by Council as it has failed to properly consider the costs and benefits of the proposed forestry rules and does not satisfy the requirement under section 32(4) of the RMA to justify reasons for the greater stringency of the rules in PC7 compared with the regulations in the NESPF, with no specific decision requested.	Accept	We note support the submitters opposition to the s32 Report. Refer to Chapter 17 of our Recommendations Report for further discussion on this matter.

[131] Chapter 17 of the panel's decision is entitled "Giving Effect to Superior and Other Instruments" but, as Mr Pilditch submitted, this chapter does not contain any discussion about the appellants' case regarding s 32(4) of the RMA and the NES-PF. I accept the reference to Chapter 17 was an error and was clearly intended to be a reference to Chapter 16.

[132] For completeness, I refer to the other sections of the panel's recommendations which refer to the s 32 evaluation:

(a) in chapter two, there are five paragraphs addressing the s 32 evaluation report but there is no reference to s 32(4); and

(b) in chapter three, there are four paragraphs addressing what the panel considers to be relevant national environmental standards relevant to its consideration. Only one, quoted below, could be relevant to these issues. It provides:

> The national environmental standards then current are described in paragraphs 10.1 to 10.1 of Appendix B of the s42A Report. No

> submitter asserted that PC7 or PC2 failed to recognise any such standard.

[133] However, the reference in chapter three is clearly incorrect because the appellants had argued that the proposed sediment discharge rules failed to recognise the regulations in the NES-PF dealing with the very topic.

Discussion

[134] First, this Court's analysis of the s 32(4) issue straddles a fine line, and I remind myself that a challenge to the merits of the panel's decision is not a legitimate appeal ground.

[135] A plain reading of s 32(4) (above at [92]) establishes that there are two parts to it. The first defines when it is engaged and the second outlines what must be included in the evaluation report when it is engaged.

[136] "Examine" is not defined in the RMA, but the Oxford English Dictionary defines it as:[40]

> Examine, v.
>
> Transitive. To seek understanding or knowledge of (a subject, situation, etc.) through careful consideration or critical discussion; to inquire into the truth or falsehood of (a proposition, statement, etc.); to investigate, analyse, study.

[137] "Justified" is not defined in the RMA either but is also defined in the Oxford English Dictionary as:[41]

> transitive. To make good (an argument, statement, or opinion); to confirm or support by attestation or evidence; to corroborate, prove, verify. With simple object, or (less commonly) clause as object, object and infinitive, or object and complement.

[138] Importantly, the examination of whether a proposed restriction is justified must be considered in the circumstances of the region in which it is to have effect. This means that local factors, rather than matters generally of concern at a national level or

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40 Oxford English Dictionary "Examine" (March 2024) OED <examine, v. meanings, etymology and more | Oxford English Dictionary (oed.com)>.

41 Oxford English Dictionary "Justified" (March 2024) OED <justified, v. meanings, etymology and more | Oxford English Dictionary (oed.com)>.

of concern in other regions or districts, must be examined. In my view, this required the panel to be satisfied that there was good reason arising from the circumstances of the Canterbury region to impose greater restrictions on plantation forest activities that have the potential to cause sediment discharges than those that appear in the NES-PF.

[139] I agree with Mr Pilditch that the sediment discharge effects mentioned in the s 42A reply report apply throughout New Zealand, but the key issue raised by the appellants, namely whether additional rules over and above the baseline provided by the NES-PF sediment discharge rules are necessary in the Canterbury region was not addressed. Further, there is no discussion in the reply report about the reasons why greater stringency is required in the "circumstances of the Canterbury region", as is required under s 32(4).

[140] This is not surprising because no evidence was provided to the panel setting out the circumstances of the Canterbury Region which would justify more stringent sediment discharge rules for plantation forestry activities than those provided for in the NES-PF. Neither was there any assessment about how the additional stringency would likely better achieve the freshwater objectives in the operative plan concerning this potentially adverse effect when compared to the NES-PF regulations.

[141] Mr Wyeth's evidence was that the NES-PF regulations already appropriately managed sediment discharges from plantation forestry activity and this was not challenged. Ms Galbraith's evidence does not address sediment discharge beyond her recommendation that r 5.190 be "amended to reflect any plantation forestry activity that does not meet one or more of the conditions in Rule 5.189…is a discretionary activity".

[142] The panel outlined its recommendations in relation to the sediment discharge rules at chapter 16. I have referred to its findings, as they are outlined in paras [437]–[439] (referred to above at [106]). Mr Pilditch submitted, and I agree, that the last bullet point in para [437] of the panel's decision is wrong as it applies to sediment, because the NES-PF unequivocally manages sediment. There is merit in Mr Pilditch's submission that the panel may have conflated what the s 32 report said about the water yield rule with the proposed sediment rules.

[143] The panel did not discuss the case the appellants had made regarding the stringency argument; s 32(4) was not referred to, neither was the evidence of Messrs Wyeth and Mann specifically addressed.

[144] I have referred to the panel's recommendation in the table above at [130]. The recommendation accepts the appellants' argument, but this does not accord with its conclusion at paras [437]–[439]. As I have outlined, there is no reference to s 32(4) in chapter two and there is the error in chapter three to which I have referred to above at [133]. There is nothing in chapter three which refers specifically to the NES-PF, neither is there any reference to it elsewhere in the report apart from in chapter 16, where it is referred to in passing.

[145] I agree that the panel addressed the consequences of its decision to recommend greater stringency by expressing its view that the Council should be able to address "all matters" on a discretionary basis. But the panel failed to address whether the stringency proposed was justified in respect of the sediment discharge rule as was required by s 32(4). There is no reference to any evidence justifying greater stringency in the Canterbury region and the absence of this is, in my view, fatal. The panel could not recommend that greater stringency was justified for sediment discharges from plantation forestry in Canterbury in the absence of such evidence.

[146] Given that *Canterbury Trustees v Christchurch City Council* case was cited as the primary justification for dismissing the appellants' s 32 arguments by both Councils, I give it specific attention here.[42]

[147] The issue for the panel in that case was whether the land's designation as Runway Protection Area was sufficient or whether further restrictions were necessary, and, if so, what the nature of those restrictions should be given that the land was being rezoned as industrial. The panel concluded that the designation was not in itself sufficient, and that buildings or activities should be classified as discretionary activities in the Replacement District Plan.

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[42] *Canterbury Trustees v Christchurch City Council*, above n 7.

[148] The appellants were concerned that subjecting the land to designation could deny the applicants compensation under s 185 of the RMA. Before this Court, the appellants claimed the panel erred in failing to consider the implications of ss 85 and 185 of the RMA and, as a secondary ground the panel erred in failing to undertake an evaluation under s 32 of the RMA as to the efficiency and effectiveness of the rules and as to the benefits and costs. The preservation of their rights under s 185 of the RMA was the "single motive" for the appeal.[43]

[149] The panel stated that s 185 considerations were not influential in its decision but also that the activity classification "would be essentially neutral" as far as the application of s 185 of the RMA.[44]

[150] It is necessary to discuss the findings regarding ss 85 and 185 of the RMA because the s 32 appeal ground is intertwined with it. The Judge noted that it was "abundantly clear that the Panel was seized of the issues" regarding s 85 and the Public Works Act.[45] The panel considered the submissions received regarding ss 85 and 185 but did not accord them significant weight because its task was to decide on the appropriate provisions for the Replacement District Plan. Furthermore, the panel provided a clear finding regarding the effect its decision would have on the application of s 185, as noted above at [149]. Accordingly, no error of law was found.

[151] The appellants claimed that the panel's s 32 report "did not go far enough", noting that there was overlap between this ground of appeal and the appeal under ss 85 and 185. The Judge found that much of the appellant's submissions in relation to the second question had been addressed in her discussion of the first. She further noted that, while the appellant claimed the panel had not set out the economic costs to the appellant as a result of the discretionary activity classification, the appellant "called no evidence on the costs likely to be incurred by [it]", with the absence of discussion therefore arising from the "vacuum" in evidence before the panel.[46] Subsequently, that ground of appeal was also dismissed.

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43 *Canterbury Trustees v Christchurch City Council*, above n 7, at [46].
44 At [51].
45 At [66].
46 At [82].

[152] Though noting I am not bound by that decision, a finding in this case that allows the grounds of appeal under s 32 would not be incongruent with it. *Canterbury Trustees* is not authority for the proposition, if indeed that is what the respondents submit, that challenges based on a deficient application of s 32 will always amount to a challenge to the merits of a decision or the weight (or lack of) placed by a decision maker on certain factors.

[153] Section 32 was clearly not the primary issue in *Canterbury Trustees.* That ground was tied in with the substantive appeal under ss 85 and 185, with her Honour finding that, while not overly relevant to the panel's task, the panel did consider the appellants' submissions on the matter and provided its conclusion on it. Furthermore, in relation to the s 32 ground, the appellants called no evidence regarding the financial prejudice claimed.

[154] Here, compelling evidence has been called by the appellants as to their claim, such as that of Messrs Wyeth and Mann and Mr Pilditch's analysis of the deficient reasoning regarding s 32(4) throughout the council's various reports and the panel's recommendation report. The issues regarding s 32(4) were clearly not appropriately considered by the panel. While, as recognised in *Canterbury Trustees v Christchurch City Council,* such errors will not always amount to an error of law, I have found that the lack of analysis under s 32(4) in this case is of sufficient magnitude to conclude that the panel, in terms of *Bryson v Three Foot Six*, failed to consider relevant matters in its decision.[47]

Conclusion

[155] I conclude that, although the panel addressed the stringency argument, it did not do so to a sufficient degree as was required by s 32(4) in respect of the sediment discharge rules it proposed. I also conclude that, for the reasons expressed above, *Canterbury Trustees* is not in conflict with my finding. I now turn to the second part of this ground of appeal, relating to the degree to which reasons were required to be given.

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47 *Bryson v Three Foot Six,* above n 11, at [25].

Did the panel give sufficient reasons for declining the appellants' submission about the sediment discharge rules?

[156] This ground of appeal, if found, reinforces the error of law claimed by the appellants under s 32(4) — a failure to give reasons demonstrates inadequate application of s 32(4).

Legal context

[157] The ECan Act contains provisions that deal with "RMA arrangements" during the transition period that apply to a proposed freshwater plan or regional policy statement.[48] Under s 22 of the ECan Act, the provisions of the RMA apply to the performance and exercise by the Regional Council of its functions and powers including, in so far as they are relevant, to any proposed fresh water plan or regional policy statement.[49] I agree with Mr Pilditch that the RMA requirement that a local authority decision "…must include the reasons for accepting or rejecting the submissions…" applies to recommendations of the panel and decisions made by the Regional Council in reliance on those recommendations.[50]

[158] As to the panel's reasons, the Court of Appeal decision in *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* is relevant and was referred to by the Regional Council and the appellants.[51] In that case, the Court of Appeal dealt with a challenge to the recommendations of the Unitary Plan Hearings Panel appointed by the Auckland Council on the basis that neither the Council nor the panel gave adequate reasons for their recommendation and decision to decline Mr Belgiorno-Nettis' submission.

[159] Mr Belgiorno-Nettis' submissions were in relation to the proposed zoning and building height controls on properties in Takapuna, in areas referred to as the "Promenade Block" and "Lake Road Block".[52] Following the release of the panel's decision, Mr Belgiorno-Nettis filed judicial review and point of law proceedings. The

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48 ECan Act, Part 3.
49 Section 22.
50 RMA, sch 1, clause 10(2)(a).
51 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] NZCA 175 at [125].
52 At [20].

High Court Judge found the panel's reasons were clearly expressed in its reports and conclusions, noting:[53]

> …While the Panel's reasons for zoning and height control recommendations are set out in a number of places in its Overview Report, topic reports and maps, the reports are clearly organised by subject matter as enables a reader to locate parts of particular relevance. Given the approach of grouping the submissions, it is inevitable that individual submitters must look to the Panel's reasons as expressed in general terms, and apply that reasoning to the zoning and height controls as appear in the Panel's version of the planning maps, in order to determine the Panel's reasons.

[160] The Court of Appeal considered it indisputable that the panel had a duty to give reasons. It then found that the "starting point" was to consider the ambit of the duty of the panel to give reasons, the reasons given and whether those reasons were adequate.[54] The panel noted that, as is the case here, when a body acts in a quasi-judicial role, the provision of reasons is important because:[55]

(a) doing so is an expression of the principle of open justice;[56]

(b) they provide a mechanism to examine whether an error or mistake has been made by the decision maker; and

(c) they provide a discipline which will require a judge to formally marshal reasons.

[161] The Court of Appeal noted that the requirement to give reasons was "similar to the scheme in the RMA" under cl 10(2) of sch 1, as referenced by the appellants in this case. It also noted that the limited appeal rights present in that case, and present here, meant that the provision of reasons was crucial so that justice be seen to be done by the public.[57] The Court stressed the duty on decision makers to ensure that unsuccessful submitters be aware of why their submission failed.

[162] The Court accepted that submissions could be grouped into topics and reasons given for each topic, but still maintained that reasons, even if of a summarised nature,

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53 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387.
54 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel*, above n 51, at [45].
55 At [46]–[50].
56 At [46].
57 At [58].

were needed — while a few paragraphs or even sentences could be necessary in some cases, ultimately, readers needed to understand the "why" of decisions.[58]

[163] In allowing Mr Belgiorno-Nettis' appeal, the Court found:

> [77] We do not see these general statements as providing any sort of a reason for the acceptance or rejection of a specific submission or group of submissions when they are competing. It is no more than a statement of principle or approach. We are unable to agree with the submission that this was a reason for the rejection of Mr Belgiorno-Nettis' submission. The competing evidential positions on the Promenade and Lake Road Blocks are not mentioned at all. There is not sufficient material to be able to say why the Panel made its recommendations concerning those Blocks. It is not self-evident.
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> [78] We cannot agree with the assumption of the Judge that by making various overview statements of policy, the Panel was providing reasons for the acceptance or rejection of submissions or groups of submissions. The Panel did explain in the Overview Report that site-specific topics were included in its re-zoning and precincts reports. There were reasons given for Precinct recommendations. They were reasons given directly relating to specific zoning areas or maximum heights or groups of or individual submissions. *But there were no reasons either grouped or otherwise, that could explain the Promenade Block and Lake Road Block decisions.*

[164] Ultimately, the Court found in *Belgiorno-Nettis* that, with regard to the appellants submission to the panel, *no reasons were provided by the panel for its decision*.[59]

Discussion

[165] In line with *Belgiorno-Nettis,* I have found that no reasons were provided here, despite the panel's duty to do so. While the lack of specific reference to the appellants' submissions were not quite as glaring here as they were in *Belgiorno-Nettis,* the reasons given by the panel in this case were essentially concluding remarks. On my view, which I expand on below, the "why" of the panel's decision with regard to sediment discharge was, and remains, unclear.

[166] The requirement to give reasons must, in my view, depend on the factual circumstances that present themselves to a panel such as this, because the degree of

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58 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel*, above n 51, at [65].
59 At [77]–[78].

reasoning required will depend on the facts and what is being assessed. In this case, it is important to recognise that the s 32(4) requirement for stringency creates an exception to the general hierarchy attached to statutory planning documents, namely that national standards take precedence over regional rules. It is also important to recognise the background to the NES-PF which was promulgated to avoid forestry companies, such as the appellants, having to deal with different rules about the same topics throughout New Zealand.

[167] I can well understand the rationale for national standards in relation to topics such as the appropriate parameters for permissible sediment discharges to water bodies from plantation forestry activities in high erosion risk areas. The important point is that the NES-PF had already considered these matters and had provided an approach which sought to resolve the potential problem of adverse sediment discharge effects from plantation forestry activities. A national approach was considered desirable to reduce costs and to provide certainty to forestry operators.

[168] The fact that the stringency assessment is a departure from the normal rules regarding the hierarchy of statutory planning documents means that, in my view, greater care is required to be taken by a decision-maker when assessing stringency and a more careful reasoning process is required than that which was undertaken by the panel in this case. To use the Court of Appeal's phrasing in *Belgiorno-Nettis,* the "ambit" of the panel's duty to give reasons was necessarily widened.[60]

[169] I was reminded that there is no obligation on a decisionmaker to record every finding on every piece of evidence.[61] This is correct but, given the matters I have referred to in this case, in my view, the panel failed to provide adequate reasons to explain why it rejected the appellants' submissions about the sediment discharge rule. Adequate reasons have not been provided because:

(a) chapter 16 of the recommendation report does not explain the *reasons* for stringency being justified in the Canterbury region, providing what I view more as concluding remarks as opposed to any real analysis;

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60 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel*, above n 51, at [45].
61 *Contact Energy Limited v Waikato Regional Council* (2007) 14 ELRNZ 128 (HC) at [65].

(b) the decision is internally inconsistent because the recommendation is to "accept" the appellants' submission regarding s 32(4), however, the substance of the decision is to decline the submission; and

(c) the decision does not explain why the panel has declined the appellants' submission regarding stringency.

[170] I have briefly considered what degree of reasoning and analysis would have been required in this case. In my view, at the very least, there should have been evidence directly relevant to the Canterbury situation, explaining why the nation-wide approach set out in the NES-PF was not sufficient to address the harm sought to be prevented by the proposed sediment discharge rules in PC7. There should have been evidence comparing the NES-PF provisions with the proposed rules. Then, if a departure from the NES-PF was in the panel's view justified, reasons as to why a different approach should be taken ought to have been set out.

[171] Accepting that the overall task of the panel in this case was complex and wide-ranging, and that the appellants' submissions about the sediment discharge rules were only a small part of it, nonetheless, more fulsome reasons were, in my view, required.

Do these failures amount to an error of law?

[172] I have determined that s 32(4) of the RMA was not adequately addressed by the panel in its recommendations about the sediment discharge rule. Further, adequate reasons were not given to understand the reasoning behind the panel's decision. Both errors have compounded to reinforce my view that the panel erred by failing to consider relevant matters in its decision and failed to comply with its duty to give reasons under the RMA. The panel's recommendations carried through to the Regional Council's decision. I conclude that these failures amount to an error of law.

[173] Materiality is a matter of judgment for this Court.[62] The Court may consider the evidence (or lack of evidence) before it in assessing whether an error was material.[63] The addition of rules that override rules imposed at a national level must

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62 *Redmond Retail Ltd v Ashburton District Council* [2021] NZHC 2887

63 *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892 at [180]–[200].

be tempered by the requirements of s 32(4) of the RMA. There was insufficient evidence before the panel to support the proposition that a more stringent rule was required for Canterbury. Indeed, there was evidence (such as that from Messrs Wyetgh and Mann) that the NES-PF rules were adequate. The analysis under s 32(4) was one of the most crucial components to ensure that all relevant matters were considered in terms of the panel's decision regarding the sediment discharge rule. Accordingly, the error is sufficiently material.

The water yield rules

[174] To recap, the operative and proposed water yield rules are designed to manage the effects of replanting and afforestation in flow sensitive catchments but, as the NES-PF does not contain regulations to manage these effects, the stringency argument that applies to the sediment discharge rules is not relevant to the arguments on appeal for the water yield rules.

[175] In the operative plan, rr 5.72–5.74 (above at [36]) provided for new areas of plantation forest to be assessed as a controlled activity if certain conditions were met, failing which they would be assessed as a restricted discretionary activity with the exercise of discretion restricted to four discrete matters.

[176] By virtue of r 5.189(1), the planting of new areas of plantation forestry in a flow sensitive catchment is precluded. So, such plantings must be assessed as a discretionary activity under r 5.190.

[177] The appellants requested that the panel retain the operative rules as the assessment pathway in PC7.

[178] The panel's reasons for its recommendations about the water yield rule were set out in paras [438] and [439] (above at [106]).

The submissions

[179] The appellants' submitted that, in accepting the PC7 water yield rules, the panel made the following errors of law:

(a) There was no evidence before the panel to support or justify its recommendation to change the activity status of the water yield rule to a discretionary activity.

(b) The panel's recommendation was not supported by a proper analysis under ss 32 or 32AA of the RMA because it failed to compare the costs and benefits of imposing a controlled or restricted discretionary activity status with the costs and benefits of a discretionary activity status.

(c) The panel's refusal to grant the appellants' request to be heard in Decision 5 regarding the water yield rule breached natural justice principles.[64]

[180] The Regional Council submitted that:

(a) the panel applied the correct legal test with respect to ss 32 and 32AA of the RMA;

(b) any challenge to the adequacy of the s 32 evaluation is one which challenges the weight placed by the panel on the submissions before it, including the evidence, and therefore represents a challenge to the merits, not a question of law;

(c) the panel had evidence before it which it could rely on when making its recommendations, including evidence from the District Council;

(d) the panel did not fail to take into account the evidence and submissions presented to it by the appellants;

(e) the panel gave reasons for its recommendations on rr 5.189 and 5.190, including those contained in chapter 16 of its report;

(f) if the Court determines that the panel has in fact erred, the alleged errors do not materially affect the Council's decision on PC7 such that relief should not be granted; and

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[64] This appeal ground appeared in the Notice of Appeal but was not developed in the appellants' submissions. It will be addressed for completeness.

(h) regarding Decision 5, the appellants were on notice that the relief they sought was opposed and they should have presented their case before the panel accordingly.

[181] The District Council supported the submissions by the Regional Council but further submitted:

(a) the appellants' claim, that obtaining resource consent under the new water yield rule is much more complex, expensive and uncertain, is "overstated";

(b) there was evidence before the panel to support or justify the recommendation to change the activity status from controlled/restricted discretionary to discretionary, including in the s 32 report (in particular in the efficiency and effectiveness evaluation) and from the District Council's planning expert, Ms Galbraith; and

(c) the s 32 analysis was adequate but, even if it was not, this does not amount to an error of law or was not material.

[182] Both points on appeal are intertwined so that it makes sense to deal with them together before reaching separate conclusions on each. I start by considering what evidence was in fact before the panel in relation to this topic.

The evidence

[183] As outlined above, the evidence before the panel comprised the s 32, s 42A and s 42A reply report as well as the statements of evidence provided by the appellants' two witnesses and the planning evidence of Ms Galbraith for the District Council.

Section 32 report

[184] Mr Pilditch submitted that there are three errors in the s 32 report which are important because they informed the advice given to the panel which, in turn, influenced the recommendations it made about the appellants submission on the water yield rule. I have found above that errors in these reports may lead to errors of law.

[185] Mr Pilditch first highlighted that the s 32 report writer assessed the PC7 plantation forestry rules to be a continuation of the operative rules because the conditions in proposed rule 5.189(1) would "largely mirror" the conditions in the operative rules. Mr Pilditch submitted that this assessment was incorrect as afforestation activities in flow sensitive catchments under r 5.190 attract a discretionary activity status whereas, under the operative plan, such activities are allowed as a controlled activity (subject to conditions) defaulting to a restricted discretionary activity if compliance cannot be achieved.

[186] Ms Hamilton noted that the operative water yield rule, r 5.73, does not provide a controlled activity consenting pathway for *all* new plantation forestry in flow sensitive catchments, as any new plantation forestry is required to meet the three conditions referred to in r 5.73 (above at [84]) and some may not. Ms Hamilton's submission is correct but that does not advance the live issues about the water yield rule on appeal, and it ignores the fact that non-compliance would revert to a restricted discretionary rather than a discretionary activity.

[187] Secondly, Mr Pilditch submitted the s 32 report fails to acknowledge that, as a discretionary activity, the Council would be required to consider *all* potential adverse effects of any new plantation forestry on the environment rather than only assessing the more limited environment effects listed in the conditions that apply if that activity is assessed as a controlled activity under r 5.73. Mr Pilditch submitted that, depending on the specific application for resource consent as a discretionary activity, effects such as wilding tree spread, the risk of disturbance of areas of significance, indigenous areas, removal of indigenous vegetation, landscape and visual amenity effects, erosion susceptibility of the land to be planted, water quality impacts and impacts on cultural and historic heritage values might all need to be assessed. This, he argued, would mean that, rather than being narrowly focused on the potential effects on hydrological flows, (i.e. water yield), an applicant could be required to address other potential effects at additional cost and with the potential for delay.

[188] Ms Hamilton submitted that Mr Pilditch's submission fails to recognise:

(a) permitted baseline considerations;

(b) that consenting requirements for new forestry activities under other rules in the operative plan control other effects in any event, e.g. rr 5.163 and 5.164 (concerning discharges of sediment or sediment-laden water associated with the introduction or planning of any plant, or the removal and disturbance of existing vegetation in, on or under the bed of a lake or river); rr 5.167 and 5.168 (in relation to earthworks and vegetation clearance in riparian areas) and rr 5.170 and 5.171 (in relation to vegetation clearance and earthworks in erosion-prone areas); and

(c) that many of the wider claimed effects would fall within the jurisdiction of territorial (District) authorities not the Regional Council.

[189] I accept Ms Hamilton's submission. However, Mr Pilditch is also correct that assessment as a discretionary activity will involve a wider consideration of effects by the Regional Council than those that would be considered when assessing new plantation forestry in flow sensitive catchments as a controlled or restricted discretionary activity.

[190] Thirdly, and most importantly, Mr Pilditch submitted the s 32 report failed to assess the change in activity status from controlled to discretionary at all, which it was required to do.

[191] Mr Maw highlighted that the panel expressly recorded its awareness of the earlier recommendation by Regional Council officers to retain controlled activity status in its recommendation report and clearly went against that recommendation at [439] of its decision (above at [106]).

[192] There is merit in the appellants' submission that the proposed rules go well beyond the water yield issue that r 5.73(3) was designed to manage. Equally clear however is that the freshwater objectives in the operative plan are required to be given effect to by the rules and the NES-PF does not include regulations to manage water yield in the context of new plantation forestry activities in flow sensitive catchments. As well, it is incontrovertible that the water yield effects of new plantation forestry in flow sensitive catchments require a considered and careful approach.

[193] But, I also agree with the appellants' submissions (and evidence) that obtaining a new plantation forestry resource consent in a flow sensitive catchment under the new water yield rule will be more complex, expensive and uncertain. Undoubtedly, assessment as a discretionary activity is a more onerous and unknown proposition for an applicant applying for a resource consent than it would be as a controlled activity subject to specified conditions or a restricted discretionary activity where the discretion is restricted to identified discrete matters.

[194] And Mr Pilditch is also correct that many of the potential adverse effects of afforestation required to be assessed under r 5.190 are already managed under the NES-PF, specifically reg 11 dealing with the risk of wilding tree spread, reg 9(2) dealing with the susceptibility of the land to be planted, reg 14(3) dealing with afforestation setback distances from water bodies, regs 12 and 14(1)(d) dealing with the management of the effects of afforestation on significant indigenous areas, regs 12 and 13 dealing with managing the effects of afforestation on outstanding landscapes and visual amenity landscapes. Therefore, it can properly be argued that such duplication is unwarranted. And, as Mr Pilditch submitted, district plans typically contain controls to protect historic heritage and cultural values and landscape and visual amenity values which advances the appellants' argument that duplication under PC7 in relation to the water yield rule is not required.

[195] The most important and compelling argument made by Mr Pilditch is that these matters were required to be addressed in the s 32 report, but they were not. Reading the s 32 report as a whole, I am not persuaded that there was an adequate assessment of the difference in activity status and how that might impact on the appellants or other foresters. And, more specifically, the s 32 evaluation did not include a cost benefit analysis in relation to the change of activity status.

[196] But that is not the end of the argument because, even if the s 32 report did not cover the change in activity status, a further s 32AA report assessment could have been completed once the Council's evidence from Ms Galbraith and the evidence of Messrs Wyeth and Mann for the appellants (and the s 42A reply report) became available, a matter I address in more detail shortly.

Witnesses evidence

[197] Ms Galbraith's evidence expressed the District Council's view that plantation forestry activity that does not meet one or more of the conditions in r 5.189 should be a discretionary activity, citing research that supports the proposition that new forestry blocks in flow sensitive catchments can affect water availability in the relevant catchment that may in turn affect community water supply. Ms Galbraith noted that the matters of control under the old rules are an "administrative aspect, not an environmental adverse effects assessment." She further states:

> No consideration is provided for the actual and potential adverse environmental effects of planting for carbon sink or new plantation forestry on the surface water flows in the catchment, including water allocation status, minimum flow or flow regime, in-stream values and authorised takes and use of water.

[198] As noted, no evidence was called at the hearing regarding this rule by the appellants.

The s 42A report and the s 42A reply report

[199] Because of the recommendation in the s 42A report, the appellants say they did not address the water yield rule further at the PC7 hearing.

[200] After the hearing, the panel asked the s 42A reply report writer to address a specific question about the activity status of new areas of forestry within flow sensitive catchments as follows:

> The authors have recommended a "controlled activity" status for planting new areas of plantation forestry within flow sensitive catchments. How appropriate is a controlled activity status given the potential adverse effects of plantation forestry (e.g. effects on flow) and given consent cannot be refused?

[201] As outlined, the s 42A reply report supported retaining the discretionary activity status but later outlined that this did not extend to the water yield rule as the scope of PC7 did not extend to reconsidering the effects of forestry on water yield.

[202] Mr Pilditch submitted that, although the text confirms the report writer's view about the appropriateness of the discretionary activity status, it also confirms that the

report writer did not reconsider the effects of forestry on water yield when proposing the PC7 forestry rules because the intention was simply to rollover the existing rules to PC7 to "…simplify the planning framework for plantation foresters…" Mr Pilditch submitted, and I agree, that this explains why the s 32 report did not evaluate the costs and benefits of the changed activity classification status, because it was assumed the activity status outlined in the water yield rule in the operative plan would not be changed.

[203] Mr Pilditch submitted that the appellants' memorandum that followed placed the panel on notice that there was an important issue to be resolved regarding the most appropriate activity classification for new plantings in flow sensitive catchments, and this was especially so considering the advice contained in the s 42A report which supported retaining the controlled activity status.

[204] However, as we know, the panel declined the appellants' request to be heard further on the topic in Decision 5.

Discussion

Decision 5

[205] I first deal with the appellants' challenge to the panel's decision not to give them a further opportunity to be heard about the activity status for the water yield rules (above at [77]). Despite this, the panel confirmed that it had read the evidence of Messrs Wyeth and Mann, and it confirmed that it understood the argument being advanced by the appellants.

[206] The panel's response denied the appellants an opportunity to produce hydrological evidence that may well have further supported its position. However, the District Council had also filed evidence which indicated that it did not support the retention of a controlled activity status for the water yield rule. In light of this, the appellants were on notice that an alternative view was being presented to the panel about the appropriate activity status for the water yield rule. In these circumstances, the panel was entitled to take the view it did to refuse to give the appellants the opportunity to present further evidence. But as well, the panel received a very full

memorandum from counsel for the appellants setting out its position and it said this would be taken into account in its deliberations.

[207] Although the appellants' memorandum was not referred to in the panel's decision, there is no reason to suggest that it was not considered. In my view, the panel's decision to refuse to allow the appellants the opportunity to present further evidence was open to it. However, this does not mean that it ought not to have referred to the issue and addressed it in a more fulsome way in its recommendations, a matter I return to shortly.

Was the panel's conclusion on the water yield available to it?

[208] Mr Pilditch submitted there was no evidence before the panel to support or justify its decision to change the activity status of the water yield rule from controlled to discretionary.

[209] The Regional Council's argument about the s 42A report view was simply that it was recommendatory only.

[210] The District Council opposed the controlled activity status recommended by the s 42A report writer and requested that a discretionary activity status be applied to new plantings of production forests, relying on the evidence of Ms Galbraith. The appellants challenged her evidence in two respects.

[211] First, Mr Pilditch submitted that Ms Galbraith was incorrect in her assessment evidence that the matters of control provided for under the controlled activity status were limited to the provision of information on the location, density and timing of planting and were therefore matters of administration and did not enable an environmental adverse effects assessment "to be undertaken".

[212] Secondly, although Mr Pilditch accepted that Ms Galbraith's evidence accurately identified that the key environmental impact of afforestation within flow sensitive catchments as the potential for adverse effects on surface water flow, he submitted that the need for a discretionary activity status classification was not discussed in her evidence, nor did it inevitably or logically follow that a discretionary

activity status was required to manage these effects. Mr Pilditch submitted that any adverse effects are already effectively managed by the controlled activity conditions in the operative water yield rule.

[213] Ms Galbraith's evidence about this topic largely focusses on the fact that new forestry blocks in flow sensitive catchments can affect water availability in that catchment. This was not disputed. The very purpose of the water yield rule is to manage effects. I do not accept Ms Galbraith's assertion that the matters of control in r 5.73 are purely an "administrative aspect". While not a full environmental effects assessment, it is, in my view, more substantive than Ms Galbraith suggests. Rule 5.73 was subject to various critiques and submissions when the operative plan was drafted, as noted in the appellants 24 February 2021 memorandum. The panel was well within its rights to recommend a departure from that rule, but the reasons for doing so needed to be provided.

[214] I accept that the panel identified the correct legal framework that applied, including referring to s 32 of the RMA. As well, it confirmed in chapter one of its report that it adopted the information, advice and reasoning in the s 42A report and it also recorded in chapter 18 that its evaluation adopted that report unless it stated otherwise. But no reasons are provided to explain why it decided to adopt a discretionary activity status contrary to the s 42A report apart from that which appears at [439] of the decision. Neither is there reference to any evidence supporting that outcome.

[215] On this matter, I have found in favour of Mr Pilditch's submission. The s 42A report, the generalised nature of Ms Galbraith's evidence on the matter and the implication from the evidence that the water yield rule was not fully considered or intended to be rolled over from the operative plan led me to conclude that the panel's recommendation on this matter was simply not available to it on the evidence before it.

Was the panel's recommendation supported by a proper s 32 or s 32AA analysis?

[216] For reasons that will be obvious by now, this appeal point is linked to the adequacy of evidence before the panel.

[217] Mr Pilditch submitted that the s 42 reply report indicates that the report writer belatedly realised that the appropriate activity status for afforestation in flow sensitive catchments was to classify it as a controlled/restricted discretionary activity because the report writer advised the panel that classifying it as a discretionary activity status would be beyond the scope of the effects assessment undertaken in the s 32 report in respect of the water yield rule. Mr Pilditch submitted it is therefore clear that the water yield rule, as notified, was not properly evaluated by the accompanying s 32 report. He submitted that this could have been cured by the panel completing a further evaluation under s 32AA of the merits of the competing rules, but this was not done. This means that the costs and the benefits of new plantings within flow sensitive catchments with either activity status in place were not compared or evaluated.

[218] The Court, on appeal, can consider deficiencies in a s 32 analysis.[65] In *Port Otago Ltd v Otago Regional Council*, the Court held:[66]

> Section 32AA makes explicit what is implicit in section 7(b) RMA, that not only does an analysis of the costs and benefits of a proposed policy have to be carried out but so does an analysis of the costs and benefits of any relevant alternative. Because all efficiency is relative, that has been the practice of some local authorities and the Environment Court since *Memon v Christchurch City Council*[67] as elaborated on in *Port Gore Marine Farms v Marlborough District Council*[68] and subsequent cases. A recent example is [*Self Family Trust v Auckland City*][69] cited earlier. The new section 32 and 32AA RMA in 2013 appear both to adopt what was developing in practice anyway and to apply conventional social cost benefit analysis as explained in the Treasury Guide to Social Cost Benefit Analysis applied in Self FT.[70]
>
> …
>
> Indeed, the whole point of section 32(2)(a) and (b) and of section 32AA is that costs and benefits should be quantified if practicable. That has the advantage that the community (and the region) can be clear-sighted about what the costs of environmental protection are.

[219] The s 32 report did not undertake a cost benefit analysis in relation to the change in activity status proposed and, further, there was no contradicting evidence provided to the panel to challenge the appellants evidence that a discretionary activity

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65 *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 1 A ELR NZ 454 at 18.
66 *Port Otago Ltd v Otago Regional Council* [2018] NZEnvC 183 at [54] and [100].
67 *Memon v Christchurch City Council* (EnvC) C11 6/2003 at [74].
68 *Port Gore Marine Farms v Marlborough District Council* [2012) NZEnvC 72 at [200].
69 *Self-Family Trust v Auckland City* [2018] NZEnvC 49 at [352].
70 At [313] and [352].

status for this rule would increase an applicant's costs. There was an opportunity for this to be remedied by a s 32AA evaluation being undertaken but that did not occur.

[220] However, the real question is whether the failure to evaluate the costs and benefits of both options under ss 32 and 32AA amounts to an error of law.

[221] Relying on *Christchurch Trustees & Ors v Christchurch City Council*, Mr Maw and Ms Hamilton submitted that no error of law arises because an inadequate s 32 evaluation is not an error of law.[71] Mr Maw submitted that a challenge to the s 32 assessment is in fact a challenge to the merits of the decision which is not able to be challenged on appeal.

[222] As I have already noted (above at [146]–[154]), I do not accept that challenges to s 32 reports can always be dismissed as challenges to the merits of a decision or the weight placed by the decision maker. The Councils' citation of *Canterbury Trustees* may be rejected here too. The panel in that case was clearly seized of the issues in ss 85 and 185 of the RMA and the implications under s 32 to the extent those were relevant in its consideration of those sections. The panel's recommendation (subsequently adopted by the Regional Council) cannot be said to show the same grasp of the cost/benefit issues raised here.

[223] Furthermore, the panel in *Canterbury Trustees v Christchurch City Council*, as noted by Cull J, had no evidence before it of the increased costs the appellant claimed it would incur.[72] That is not the case here. The panel in this case had the evidence of Mr Mann, that the activity classification change would result in increased costs for the appellant. While I accept that Mr Mann could not quantify those costs, his evidence, and the applicant's submissions on this point, was detailed enough for the panel to have been "on notice" that further analysis and explanation was required. It should have been clear by that point that the s 32 reports view that increased costs associated with PC7 would not be "significant" was incorrect or at least in issue.

[224] As the s 42A reply report indicates, an evaluation of the costs and benefits of the new activity classification was never adequately considered by the report authors or the decision makers. Mr Pilditch is therefore successful on this ground of appeal.

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71 *Canterbury Trustees v Christchurch City Council*, above n 7.
72 *Canterbury Trustees v Christchurch City Council*, above n 7, at [82].

Conclusion on water yield rule

[225] I conclude that there was insufficient evidence before the panel to support or justify its recommendation to change the activity status of the water yield rule to a discretionary activity. I also conclude that the panel's recommendation was not supported by a proper analysis under ss 32 or 32AA of the RMA because the s 32 report's cost/benefit analysis was deficient in this respect and the panel failed to undertake a s 32AA evaluation which could have compared the costs and benefits of the competing activity status options. It was "practicable" (to use the wording in *Port Otago Ltd v Otago Regional Council*)[73] to undertake such an analysis, particularly under s 32AA and the panel were clearly aware of the importance of the issue given the question it asked the s 42A report writer to address.

[226] While in some circumstances the absence of a s 32 or 32AA cost benefit analysis might be considered a challenge to the merits of the case, on the facts of this case, in my view, it amounts to an error of law. This is because, in terms of *Bryson*, the Regional Council's decision, based as it was on the panel's recommendations, failed to take into account a relevant matter. In other words, there was an insufficient evidential foundation for the conclusion about activity status to be made.

[227] Further, given that there was an evidential basis to conclude that there would be additional costs to foresters because of the change of activity status, this error was material as it related directly to the evidential lacuna (namely, the absence of a robust cost benefit analysis). Based on the evidence provided by the appellants, such as that of Messrs Wyeth and Mann, it is entirely conceivable that a different conclusion could have been arrived at had ss 32 and/or 32AA been properly complied with. I also note the emphasis placed on these issues by the appellants throughout the decision-making process. Accordingly, I find that the failure to consider these relevant matters was also a material error.[74]

Result and relief

[228] Regarding the sediment discharge rule, it follows that the panel has:

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73 *Port Otago Ltd v Otago Regional Council,* above n 66, at [93].
74 *Transpower New Zealand Ltd v Auckland Council,* above n 22, at [52].

(a) failed to consider expert evidence and legal submissions regarding the PC7 changes;

(b) failed to undertake a proper analysis under s 32(4) of the RMA; and

(c) failed to give adequate reasons for its decision.

[229] The panel's above failings meant it erred in law by failing to consider relevant matters and to give effect to the duty to give reasons under the RMA and as outlined by the Court of Appeal in *Belgiorno-Nettis*.

[230] Regarding the water yield rule, it follows the panel has:

(a) failed to consider the advice from the Regional Council officers that the scope of PC7 did not extend to reconsidering the effects of forestry on water yield; and

(b) failed to undertake a proper analysis under ss 32 and 32AA of the RMA.

[231] The panel's above failings here means it again failed to properly consider relevant matters in arriving at its decision.

[232] Quite properly, the parties requested that they consider my conclusion before addressing what options for relief might be available. I invite counsel to confer and file, if possible, a joint memorandum within 21 days (5 July 2024 being the deadline) advising the further steps they suggest are required to conclude this appeal.

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Harland J

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Wynn Williams, Christchurch
Gresson Dorman & Co., Timaru.

14. Manawhenua

14.1 Introduction

14.1.1 Kāi Tahu

The Kāi Tahu[1] tribal area occupies most of the South Island. The area ranges from Rakiura (Stewart Island) in the south to Te Parinuiowhiti (White Cliffs, Blenheim) in the north and Kahurangi Point on the West Coast/Te Tai o Poutini. Te Rūnanga o Ngāi Tahu, the tribal iwi authority, is made up of 18 papatipu rūnaka. Located predominantly in traditional coastal settlements, papatipu rūnaka are a focus for whānau and hapū (extended family groups) who have Manawhenua status within their area. Manawhenua hold traditional customary authority and maintain contemporary relationships within an area determined by whakapapa (genealogical ties), resource use and ahi-kā-roa (the long burning fires of occupation).

[1] In the south of the South Island, the local Māori dialect can use a 'k' in place of the 'ng' so southern Māori are known as Kāi Tahu, as well as Ngāi Tahu. The 'ng' and 'k' are used interchangeably. In this Plan, 'k' is generally used.

14.1.2 Relationship of Kāi Tahu Whānui with Dunedin

The first people of the South Island, Te Waipounamu, were the Waitaha people. The first place name applied to any site in the Dunedin area is believed to be Kaikarae, the Kaikorai estuary, where the Waitaha rakatira Rakaihautu and his people made camp and ate a meal of karae (seabird). Successive waves of iwi followed, first the Kāti Mamoe, and later Kāi Tahu, who both migrated from the North Island. Over time the three iwi merged through conquest, marriage and peace alliances. Kāi Tahu are therefore a fusion of Waitaha, Kāti Mamoe and Kāi Tahu whakapapa, referred to collectively as Kāi Tahu whānui.

At the time of first European contact the greatest concentration of Kāi Tahu population south of the Waitaki was settled within the East Otago bight from Karitāne to the Otago Peninsula. Sealer John Boultbee recorded in 1820 that Ōtākou was the "oldest and largest" Ngāi Tahu settlement south of the Waitaki. Seasonally, trips would be made to inland Otago to visit relations, harvest various species and gather plants and stone resources. Journeys were also made south to the Titi (Mutton Bird) Islands. Trails along the Otago coast and inland became well established. Waterways and the coastal waters also provided transport routes.

14.1.3 Manawhenua

The Dunedin City Council (DCC) has an established relationship with the two Kāi Tahu papatipu rūnaka within the Dunedin City boundary: Te Rūnanga o Ōtākou, based on the Otago Peninsula, and Kāti Huirapa Rūnaka ki Puketeraki, based at Puketeraki Marae near Karitāne. In this Plan Te Rūnanga o Ōtākou and Kāti Huirapa Rūnaka ki Puketeraki are recognised as having Manawhenua status within specific areas of the city.

The DCC acknowledges that Dunedin is also home to Māori from other iwi and hapū (mātāwaka). The Araiteuru marae in Shetland Street in Dunedin is an important pan-tribal cultural centre for mātāwaka and sits within the manaakitaka of Manawhenua.

14.1.4 Papatipu Rūnaka

14.1.4.1 Te Rūnanga o Ōtākou

The takiwā of Te Rūnanga o Ōtākou centres on Muaupoko/Otago Peninsula, and extends from Purehurehu (Heyward Point) to Mata-Au (Clutha River) and inland, sharing an interest in the lakes and mountains to the western coast with rūnaka to the north and south. The Otago Harbour has a pivotal role in the well-being of Ōtākou people. The harbour is a source of identity and a bountiful provider of kaimoana, and it is the pathway to the fishing grounds beyond. Traditionally it was the mode for other hapū to visit, and in today's world it is the lifeline to the international trade that benefits the region. The ebb and flow of the harbour tides is a valued certainty in a world of change, a taoka to be treasured and protected for the benefit of current and future generations.

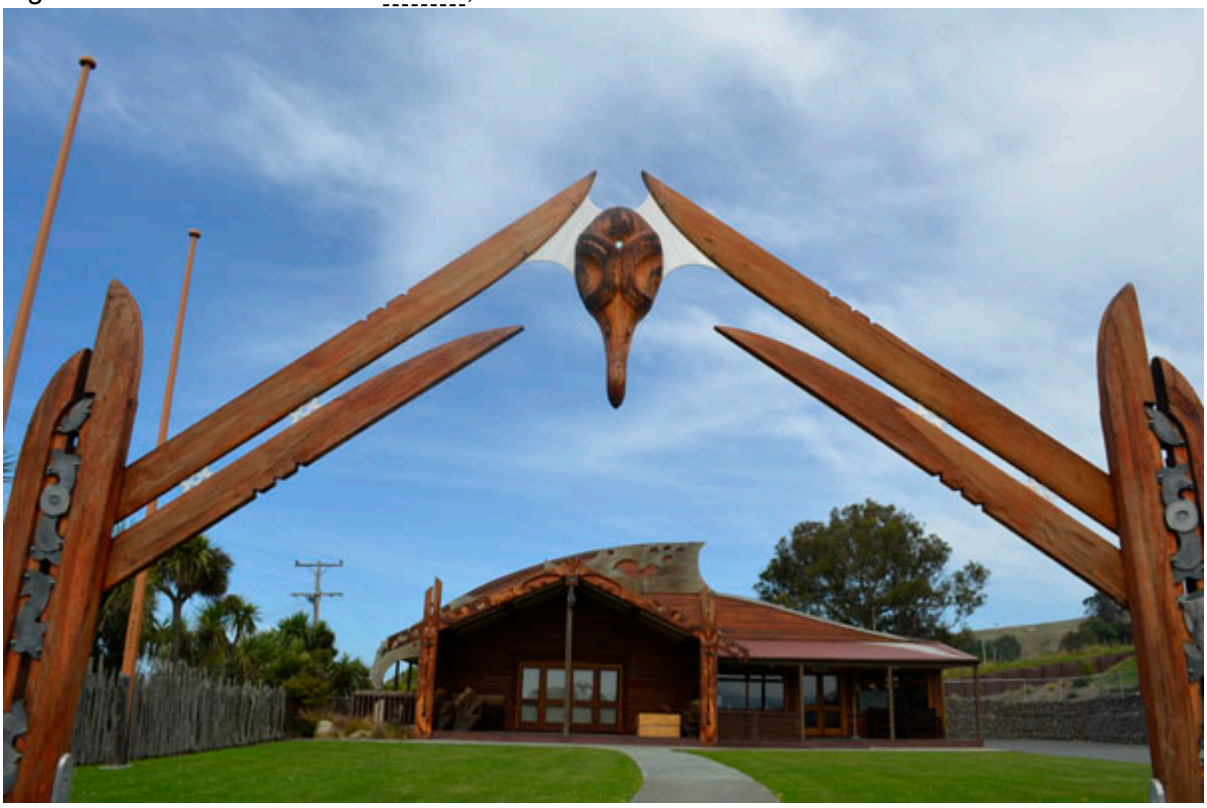
Figure 14.1.4.1A: Ōtākou Marae, Otago Peninsula

14.1.4.2 Kāti Huirapa Rūnaka ki Puketeraki

The takiwā of Kāti Huirapa Rūnaka ki Puketeraki centres on Karitāne and extends from the Waihemo (Shag) River to Purehurehu (Heyward Point) and includes an interest in Ōtepoti and the greater harbour of Ōtākou. The takiwā extends inland to the Main Divide sharing an interest in the lakes and

mountains to Wakatipu Waitai with rūnaka to the south. The kaimoana resources of the coast from Karitāne to Okahau/Blueskin Bay and Pūrākaunui, and the kai awa of the Waikouaiti River are treasured and well-utilised mahika kai to Kāti Huirapa Rūnaka ki Puketeraki. The people that lived in this area chose to do so because of the strategic position close to European traders and the abundance of kaimoana and mahika kai. In the early 1800s Whareakeake became a central focus of Kāi Tahu commerce with European traders, based on the manufacture of pounamu trade items. In the late 1830s the shore whaling stations at Karitāne and Pūrākaunui attracted whānau involvement and later in 1840 the Reverend James Watkin established the first Wesleyan Mission Station in the south. At Karitāne, then called Old Waikouaiti, the young chiefs of southern Kāi Tahu learnt to read and write and heard about the karakia bora, the new Christian religion.

Figure 14.1.4.2A: Puketeraki Marae, Puketeraki



14.1.5 Kāi Tahu Values

14.1.5.1 Introduction

Kāi Tahu do not see their existence as separate from Te Ao Tūroa (the natural world), but as an integral part of it. Through whakapapa (genealogy), all people and life forms descend from a common source. Whakapapa binds Kāi Tahu to the mountains, forests and waters and the life supported by them, and this is reflected in traditional attitudes towards the natural world and resource management.

Whakawhanaukataka (the process of establishing relationships) embraces whakapapa, through the relationship between people, and between people and the environment. The nature of these relationships determines people's rights and responsibilities in relation to the use and management of taoka of the natural world.

All things have the qualities of wairua (spiritual dimension) and mauri (essential life force, or life supporting capacity), are living and have a genealogical relationship with each other. Mauri provides the common centre between the natural resources (taoka), the people or guardians who care for the taoka (the kaitiaki), and the management framework (tikaka) of how taoka are to be managed by the kaitiaki. It is through kawa (protocol) that the relationship between taoka, tikaka and kaitiakitaka is realised. As noted above, each papatipu rūnaka has its own takiwā, determined by natural boundaries such as headlands, mountain ranges and rivers, with areas of shared interest, particularly inland. This political and operational authority over an area is undertaken by Manawhenua and encompasses kaitiakitaka and rakatirataka.

An integral element of the concepts of kaitiakitaka and rakatirataka is the recognition that Kāi Tahu have their own traditional means of managing and maintaining resources and the environment. This system of rights and responsibilities is inherited from previous generations and has evolved over time.

The resources in any given area are a point of prestige for the people who reside there and are a statement of identity. Traditionally, the abundance or lack of resources directly determines the welfare of every tribal group, and so affects their mana.

14.1.5.2 Tikaka

Tikaka Māori encompasses the beliefs, values, practices and procedures that guide appropriate codes of conduct, or ways of behaving. It seeks to unify the three planes of reality in a holistic way: te taha tinana (the physical plane), te taha hinengaro (the intellectual plane), and te taha wairua (the spiritual plane).

In the context of natural resource management, observing tikaka is part of the ethic and exercise of kaitiakitaka. It is underpinned by a body of Mātauraka Māori (Māori knowledge), and is based on a general understanding that people belong to the land and have a responsibility to care for and manage the land. It incorporates forms of social control to manage the relationship of people and the environment, including concepts such as tapu, noa and rāhui.

Tikaka is based on traditional practices, but is dynamic and continues to evolve in response to different situations. One example of tikaka is the concept of kanohi ki te kanohi, or meeting face-to-face. For consultation on natural resource management issues, kanohi ki te kanohi may be the

appropriate tikaka. Tikaka may also limit public access to wāhi tapu sites or require that certain protocols are observed before entering a site.

14.1.5.3 Ki Uta Ki Tai

Ki Uta ki Tai is a Kāi Tahu term that has become synonymous with the way Kāi Tahu think about natural resource management. Ki Uta ki Tai is the concept used to describe the overall approach to integrated natural resource management by Kāi Tahu - from the mountains to the sea.

Ki Uta ki Tai is a Kāi Tahu paradigm and ethic that has at its heart a holistic view of natural resource management - it is the Kāi Tahu way of understanding the natural environment, including how it functions, how people relate to it and how it can be looked after appropriately. It involves not only a planning and policy framework, but also the development of monitoring, reporting, geographical information system analysis, information databases, area management and succession tools for natural resource management.

14.1.5.4 Kaitiakitaka

Kaitiakitaka entails the active protection and responsibility for natural and physical resources by tākata whenua. To give effect to kaitiakitaka it is important to engage meaningfully with the appropriate papatipu rūnaka. Kaitiakitaka means "the exercise of guardianship by the tākata whenua of an area in accordance with tikaka Māori in relation to natural and physical resources; and includes the ethic of stewardship." This Resource Management Act 1991 (RMA) definition of kaitiakitaka is, however, only a starting point for Kāi Tahu, as kaitiakitaka is a much wider cultural concept than pure guardianship.

Kaitiakitaka is fundamental to the relationship between Kāi Tahu and the environment. The responsibility of kaitiakitaka is twofold: first, there is the ultimate aim of protecting life supporting capacity and, secondly, there is the duty to pass the environment to future generations in a state that is as good as, or better than, the current state. To Kāi Tahu, kaitiakitaka is not passive custodianship, nor is it simply the exercise of traditional property rights, but it entails an active exercise of rights and responsibilities in a manner beneficial to the resource. In managing the use, development, and protection of natural and physical resources, decision makers must have regard to kaitiakitaka.

14.1.5.5 Rakatirataka

Rakatirataka is about having the mana or authority to give effect to Kāi Tahu culture and traditions in the management of the natural world. Recognition of the relationship of Kāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka are embedded in the RMA and the Treaty of Waitangi.

Traditionally, rakatirataka incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom (in accordance with kawa (Māori customs) and tikaka). Kāi Tahu ki Otago Natural Resource Management Plan 2005 is an expression of rakatirataka. A practical expression of rakatirataka is the active involvement of Kāi Tahu in resource management decision-making processes.

14.1.5.6 Taoka

In the management of natural resources, it is important that the habitats and wider needs of taoka are protected and sustainably managed and enhanced.

All natural resources - air, land, water, and indigenous biodiversity - are taoka. Taoka are treasures, things highly prized and important to Kāi Tahu, derived from the atua (gods) and left by the tūpuna (ancestors) to provide and sustain life. Taoka include sites and resources such as wāhi tapu, tauraka waka and kai mātaitai, other sites for gathering food and cultural resources, tribally significant landforms, features and cultural landscapes (wāhi tūpuna). Taoka may also be intangible, such as tikaka and te reo (Māori language). All taoka are part of the cultural and tribal identity of an iwi.

The protection of the relationship of tākata whenua and their taoka is included in Article II of the Treaty of Waitangi, section 6(e) of the RMA, and more recently the Ngāi Tahu Claims Settlement Act 1998. To ensure taoka are available for future generations, resource management decision-making processes need to recognise tikaka (Māori protocol and customs) and have the conservation and sustainability of resources as their focus.

14.1.5.7 Mahika Kai

Mahika kai is one of the cornerstones of Kāi Tahu cultural identity. Mahika kai is a term that literally means "food workings" and refers to the customary gathering of food and natural materials and the places where those resources are gathered or produced. The term also embodies the traditions, customs and collection methods, and the gathering of natural resources for cultural use[2], including raraka (weaving) and rokoā (traditional medicines). Maintaining mahika kai sites, gathering resources, and continuing to practice the tikaka that governs each resource, is an important means of passing on cultural values and mātauraka Māori (traditional knowledge) to the next generation.

[2] Ngāi Tahu Claims Settlement Act 1998, s.167

14.1.5.8 Wāhi tapu or Wāhi taoka sites

Wāhi tapu or wāhi taoka sites hold special historical, spiritual, or cultural associations for Kāi Tahu. The term refers to places that hold the respect of the people in accordance with tikaka.

In addition to urupā, physical resources such as landforms, mountains and ranges, remaining areas of indigenous vegetation, springs, and waterways are examples of wāhi tapu or wāhi taoka sites.

14.1.5.9 Wāhi Tūpuna

Kāi Tahu use the term 'wāhi tūpuna' to describe landscapes that embody the ancestral, spiritual and religious traditions of all the generations prior to European settlement. Waitaha, Kāti Mamoe and Kāi Tahu whakapapa is closely interwoven in Te Wai Pounamu. The use of the term wāhi tūpuna is intended to encompass and respect these separate strands of whakapapa and tradition. It is important to understand this concept in the context of the distinctive seasonal lifestyle that Kāi Tahu evolved in the south.

These sites used by Kāi Tahu are spread throughout the wider Dunedin area. These places did not function in isolation from one another but were part of a wider cultural setting and pattern of seasonal resource use. The values and potential threats to wāhi tūpuna are described in Appendix A4. The table below lists the types of wāhi tūpuna.

Type of wāhi tūpuna	Explanation
Ara tawhito	Ancient trails. A network of trails crossed the region linking the permanent villages with seasonal inland campsites and the coast, providing access to a range of mahika kai resources and inland stone resources, including pounamu and silcrete.
Kāika	Permanent settlements or occupation sites. These occurred throughout wider Dunedin, particularly in coastal areas.
Kāika Nohoaka	A network of seasonal settlements. Kāi Tahu were based largely on the coast in permanent settlements, and ranged inland on a seasonal basis. Iwi history shows, through place names and whakapapa, continuous occupation of a network of seasonal settlements, which were distributed along the main river systems from the source lakes to the sea.
Kai moana	Food obtained from the sea. Seafood occupies a key role in Kāi Tahu culture; it plays a part in many tribal histories and forms a part of cultural identity. The ability to provide kai moana as a part of manaakitaka (hospitality) responsibilities reflects on a tribe's mana.
Mahika kai	The customary gathering of food or natural materials and the places where those resources are gathered. Mahika kai remains one of the cornerstones of Kāi Tahu culture.
Mauka	Important mountains. Mountains are of great cultural importance to Kāi Tahu. Many are places of spiritual presence, and prominent peaks in the district are linked to Kāi Tahu creation stories, identity and mana.
Papatipu marae	The marae atea and the buildings around it, including the wharenui, wharekai, church and urupā. The sheltering havens of Kāi Tahu cultural expression, a place to gather, kōrero and to welcome visitors. Expressions of Kāi Tahu past and present.
Repo raupo	Wetlands or swamps. These provide valuable habitat for taoka species and mahika kai resources.
Tauraka waka	Canoe mooring site. These were important for transport and gathering kai, and included such places such as present day Wellers Rock and Koputai (Port Chalmers).
Tūāhu	Places of importance to Māori identity. These are generally sacred ground and marked by an object, or a place used for purposes of divination.
Taumanu	Fishing sites. These are traditional fishing easements which have been gazetted by the South Island Māori Land Court. There are taumanu at Hawksbury Lagoon and on the south bank of the Waikouaiti River at the confluence of the mainstem of the Waikouaiti with the south branch (Hakariki).

Type of wāhi tūpuna	Explanation
Umu, Umu-tī	Earth ovens. Used for cooking tī-kōuka (cabbage tree), these are found in a diversity of areas, including old stream banks and ancient river terraces, on low spurs or ridges, and in association with other features, such as kāika nohoaka.
Urupā	Human burial sites. These include historic burial sites associated with kāika, and contemporary sites, such as the urupā at Ōtākou and Puketeraki marae.
Wāhi kohātu	Rock outcrops. Rocky outcrops provided excellent shelters and were intensively occupied by Māori from the moa-hunter period into early European settlement during seasonal hikoi. Tuhituhi neherā (rock art) may be present due to the occupation of such places by the tūpuna.
Wāhi pakaka	Battle sites. Historic battle sites occur throughout Dunedin, such as that at Ohinepouwera (Waikouaiti sandspit) where Taoka's warriors camped for six months while they laid siege on Te Wera on the Huriawa Peninsula.
Wāhi paripari	Cliff areas.
Wāhi taoka	Resources, places and sites treasured by Manawhenua. These valued places reflect the long history and association of Kāi Tahu with the Dunedin district.
Wāhi tapu	Places sacred to the takata whenua. These occur throughout the Dunedin district and include urupā (human burial sites).
Wāhi tohu	Features used as location markers within the landscape. Prominent landforms formed part of the network of trails along the coast and inland. These acted as fixed point locators in the landscape for travellers and are imbued with history.
Wai māori	Freshwater areas important to Māori. These include wai puna (springs), roto (lakes) and awa (rivers).

14.2 Objectives and Policies

Objective 14.2.1	
The relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with: a. wāhi tūpuna; b. mahika kai; and c. occupation of original native reserve land through papakāika.	
Policy 14.2.1.1	Only allow activities in or adjacent to wetlands and coastal and riparian areas that are wāhi tūpuna and are identified as having mahika kai values in Appendix A4, where adverse effects on mahika kai are avoided or, if avoidance is not practicable, are no more than minor.
Policy 14.2.1.2	Require buildings, structures, earthworks and network utilities to be set back an adequate distance from the coast and water bodies that are wāhi tūpuna and are identified as having mahika kai values in Appendix A4, to maintain or enable access to the coast and riparian margins for the purpose of gathering mahika kai.
Policy 14.2.1.3	Only allow subdivision of land adjacent to water bodies and the coast that are wāhi tūpuna and are identified as having mahika kai values in Appendix A4, where the subdivision is designed to maintain or enable access to the coast and riparian margins for the purpose of gathering mahika kai.
Policy 14.2.1.4	Only allow activities that are identified as a threat to wāhi tūpuna in Appendix A4, where adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor.
Policy 14.2.1.5	Only allow cemeteries, crematoriums and landfills where any adverse effects on Manawhenua values, including the relationship between Manawhenua and sites of cultural importance to them, are avoided or, if avoidance is not practicable, are no more than minor.
Policy 14.2.1.6	Enable Manawhenua to live in original native reserve areas where any adverse effects will be adequately managed in line with the objectives and policies of the relevant zone.
Policy 14.2.1.7	Require residential buildings used for papakāika to be removed from a site when they are no longer used for that purpose.

Rules

Rule 14.3 Assessment of Restricted Discretionary Activities (Performance Standard Contraventions)

Rule 14.3.1 Introduction

1. Restricted discretionary activities will be assessed in accordance with section 104 and 104C of the RMA, meaning only those matters to which Council has restricted its discretion will be considered, and Council may grant or refuse the application, and, if granted, may impose conditions with respect to matters over which it has restricted its discretion.
2. Rule 14.3.2:
    a. lists the matters Council will restrict its discretion to, under the heading 'matters of discretion', these matters are not further restricted by any guidance provided; and
    b. provides guidance on how a consent application will be assessed, under the heading 'guidance on the assessment of resource consents', including:
        i. relevant objectives and policies, with respect to s104(1)(b)(vi);
        ii. potential circumstances that may support a consent application. These are examples of situations or mitigation measures that may support consent being granted, but are not requirements that must always be met in order for an activity to be granted consent;
        iii. general assessment guidance; and
        iv. conditions that may be imposed.

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
1.	All performance standard contraventions including performance standards listed below		*Potential circumstances that may support a consent application include:* a. The degree of non-compliance with the performance standard is minor. b. Topography or other site specific factors make the standard irrelevant as the adverse effects that the standard is trying to manage will not occur. c. Non-compliance with a development performance standard would improve the design of the development in a way that would result in positive effects and better achieve the identified objectives and policies of the Plan. *General assessment guidance:* d. Where more than one standard is contravened, the combined effects of the contraventions should be considered. e. Council will consider the findings of any cultural impact assessment provided with a resource consent application, where required (see Special Information Requirements - Rule 14.7). f. In assessing the effects on Manawhenua and their relationship with a **wāhi tūpuna mapped area**, Council will consider the values in Appendix A4.
2.	Density (papakāika - residential zones)	a. Effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. Manawhenua are able to live in original native reserve areas where any adverse effects will be adequately managed in line with the objectives and policies of the relevant zone (Policy 14.2.1.6). iii. Residential buildings used for papakāika are removed when no longer used for that purpose (Policy 14.2.1.7). *General assessment guidance:* iv. Council will consider the information required by Rule 15.14.1 provided with any resource consent application (see Special Information Requirements - Rule 15.14.1).

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
3.	Esplanade reserves and strips	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** identified as having mahika kai values in Appendix A4, the subdivision is designed to maintain or enable access to the coast and riparian margins for the purpose of gathering mahika kai (Policy 14.2.1.3).
4.	Maximum height	a. In the **Huriawa height restriction mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. Adverse effects on the relationship between Manawhenua and wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).
		b. In the Dunedin International Airport Zone, effects on cultural values of Manawhenua (in relation to Maukaatua **wāhi tūpuna mapped area**)	

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
5.	Vegetation clearance standards: • Maximum area of vegetation clearance (UBMA) • Protected areas (vegetation clearance) • Protected species (indigenous vegetation clearance)	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** identified as having mahika kai values in Appendix A4, vegetation clearance avoids adverse effects on mahika kai, or if avoidance is not practicable, effects are no more than minor (Policy 14.2.1.1). iii. In a **wāhi tūpuna mapped area** where indigenous vegetation clearance is identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4). *Potential circumstances that may support a consent application include:* iv. Where the **wāhi tūpuna mapped area** has mahika kai values: 1. the area of vegetation to be cleared is not a source of mahika kai, nor will its removal affect adjoining areas of mahika kai. 2. sufficient vegetation will remain to ensure mahika kai can continue to be gathered to the extent it is currently gathered.

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
6.	Setback from coast and water bodies	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where activities affecting access to a water body are identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4). iii. In a **wāhi tūpuna mapped area** identified as having mahika kai values in Appendix A4, buildings and structures, earthworks and network utilities are set back an adequate distance from the coast and water bodies to ensure access to the coast and riparian margins for the purpose of gathering mahika kai is maintained or enabled (Policy 14.2.1.2).
7.	Maximum height (rural and rural residential zones)	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where buildings, structures and network utility structures that affect the peaks, upper slopes or skyline are identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).
8.	Sediment control	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where impacts on water quality from earthworks or sediment discharge are identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
1.	All performance standard contraventions including performance standards listed below		*Potential circumstances that may support a consent application include:* a. The degree of non-compliance with the performance standard is minor. b. Topography or other site specific factors make the standard irrelevant as the adverse effects that the standard is trying to manage will not occur. c. Non-compliance with a development performance standard would improve the design of the development in a way that would result in positive effects and better achieve the identified objectives and policies of the Plan. *General assessment guidance:* d. Where more than one standard is contravened, the combined effects of the contraventions should be considered. e. Council will consider the findings of any cultural impact assessment provided with a resource consent application, where required (see Special Information Requirements - Rule 14.7). f. In assessing the effects on Manawhenua and their relationship with a **wāhi tūpuna mapped area**, Council will consider the values in Appendix A4.

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
2.	Density (papakāika - residential zones)	a. Effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. Manawhenua are able to live in original native reserve areas where any adverse effects will be adequately managed in line with the objectives and policies of the relevant zone (Policy 14.2.1.6). iii. Residential buildings used for papakāika are removed when no longer used for that purpose (Policy 14.2.1.7). *General assessment guidance:* iv. Council will consider the information required by Rule 15.14.1 provided with any resource consent application (see Special Information Requirements - Rule 15.14.1).
3.	Esplanade reserves and strips	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** identified as having mahika kai values in Appendix A4, the subdivision is designed to maintain or enable access to the coast and riparian margins for the purpose of gathering mahika kai (Policy 14.2.1.3).
4.	Maximum height	a. In the **Huriawa height restriction mapped area**, effects on cultural values of Manawhenua b. In the Dunedin International Airport Zone, effects on cultural values of Manawhenua (in relation to Maukaatua **wāhi tūpuna mapped area**)	*Relevant objectives and policies:* i. Objective 14.2.1 ii. Adverse effects on the relationship between Manawhenua and wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).

14.3.2 Assessment of performance standard contraventions			
Performance standard		***Matters of discretion***	***Guidance on the assessment of resource consents***
5.	Vegetation clearance standards: • Maximum area of vegetation clearance (UBMA) • Protected areas (vegetation clearance) • Protected species (indigenous vegetation clearance)	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** identified as having mahika kai values in Appendix A4, vegetation clearance avoids adverse effects on mahika kai, or if avoidance is not practicable, effects are no more than minor (Policy 14.2.1.1). iii. In a **wāhi tūpuna mapped area** where indigenous vegetation clearance is identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4). *Potential circumstances that may support a consent application include:* iv. Where the **wāhi tūpuna mapped area** has mahika kai values: 1. the area of vegetation to be cleared is not a source of mahika kai, nor will its removal affect adjoining areas of mahika kai. 2. sufficient vegetation will remain to ensure mahika kai can continue to be gathered to the extent it is currently gathered.

14.3.2 Assessment of performance standard contraventions

	Performance standard	***Matters of discretion***	***Guidance on the assessment of resource consents***
6.	Setback from coast and water bodies (rules 10.3.3.1 - 10.3.3.5) ***{Change Res13}***	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where activities affecting access to a water body are identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4). iii. In a **wāhi tūpuna mapped area** identified as having mahika kai values in Appendix A4, buildings and structures, earthworks and network utilities are set back an adequate distance from the coast and water bodies to ensure access to the coast and riparian margins for the purpose of gathering mahika kai is maintained or enabled (Policy 14.2.1.2).
7.	Maximum height (rural and rural residential zones)	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where buildings, structures and network utility structures that affect the peaks, upper slopes or skyline are identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).
8.	Sediment control	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where impacts on water quality from earthworks or sediment discharge are identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).

Rule 14.4 Assessment of Restricted Discretionary Activities

Rule 14.4.1 Introduction

1. Restricted discretionary activities will be assessed in accordance with section 104 and 104C of the RMA, meaning only those matters to which Council has restricted its discretion will be considered, and Council may grant or refuse the application, and, if granted, may impose conditions with respect to matters over which it has restricted its discretion.
2. Rule 14.4.2:
   a. lists the matters Council will restrict its discretion to, under the heading 'matters of discretion', these matters are not further restricted by any guidance provided; and
   b. provides guidance on how a consent application will be assessed, under the heading 'guidance on the assessment of resource consents', including:
      i. relevant objectives and policies, with respect to s104(1)(b)(vi);
      ii. potential circumstances that may support a consent application. These are examples of situations or mitigation measures that may support consent being granted, but are not requirements that must always be met in order for an activity to be granted consent;
      iii. general assessment guidance; and
      iv. conditions that may be imposed.
3. For all land use activities that require consent, all associated development activities will be considered as part of the resource consent even if the development otherwise meets the development performance standards in the Plan. Conditions on development activities may be used to minimise any adverse effects from the land use activity or create mitigating positive effects.

14.4.2 Assessment of restricted discretionary activities

	Activity	***Matters of discretion***	***Guidance on the assessment of resource consents***
1.	All restricted discretionary activities		*General assessment guidance:* a. Council will consider the findings of any cultural impact assessment provided with a resource consent application, where required (see Special Information Requirements - Rule 14.7). b. In assessing the effects on Manawhenua and their relationship with a **wāhi tūpuna mapped area**, Council will consider the values in Appendix A4. *Potential circumstances that may support a consent application:* c. The development incorporates conservation activity that will have significant positive effects on biodiversity or natural character values.

14.4.2 Assessment of restricted discretionary activities			
Activity		***Matters of discretion***	***Guidance on the assessment of resource consents***
2.	Activities where effects on cultural values of Manawhenua is a matter of discretion, including but not limited to: • Indigenous vegetation clearance - large scale • Earthworks - large scale • Network utility activities • Forestry • Shelterbelts and small woodlots • Public amenities • New buildings, structures, and additions and alterations	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where the activity is identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).

14.4.2 Assessment of restricted discretionary activities			
Activity		***Matters of discretion***	***Guidance on the assessment of resource consents***
3.	Crematoriums and Cemeteries	a. Effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. Adverse effects on cultural values, including the relationship between Manawhenua and sites of cultural importance to them, are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.5).
4.	All general subdivision activities where effects on cultural values of Manawhenua is a matter of discretion	a. Where in a **wāhi tūpuna mapped area**, effects on cultural values of Manawhenua	*Relevant objectives and policies:* i. Objective 14.2.1 ii. In a **wāhi tūpuna mapped area** where subdivision is identified as a threat in Appendix A4, the subdivision is designed to ensure any future land use or development will avoid or, if avoidance is not practicable, ensure adverse effects on values of significance to Manawhenua are no more than minor (Policy 14.2.1.4). iii. In a **wāhi tūpuna mapped area** identified as having mahika kai values, the subdivision is designed to maintain or enable access to the coast and riparian margins for the purpose of gathering mahika kai (Policy 14.2.1.3). *Potential circumstances that may support a consent application include:* iv. Subdivisions are designed to maximise the opportunities for protection or enhancement of important Manawhenua values on the site, for example through: 1. retaining indigenous vegetation on a single allotment, under single ownership; 2. fencing of indigenous vegetation; or 3. enabling access to, and protection of, sites of significance. *Conditions that may be imposed include:* v. A building platform registered against the Certificate of Title by way of consent notice.

Rule 14.5 Assessment of Discretionary Activities

Rule 14.5.1 Introduction

1. Discretionary activities will be assessed in accordance with section 104 and 104B of the RMA meaning Council may grant or refuse the application, and, if granted, may impose conditions.
2. Rules 14.5.2 - 14.5.3 provide guidance on how a consent application for the listed discretionary activities will be assessed, under the heading 'guidance on the assessment of resource consents', including:
   a. relevant objectives and policies that will be considered as a priority with respect to s104(1)(b)(vi);
   b. potential circumstances that may support a consent application. These are examples of situations or mitigation measures that may support consent being granted, but are not requirements that must always be met in order for an activity to be granted consent;
   c. general assessment guidance, including any effects that will be considered as a priority; and
   d. conditions that may be imposed.

14.5.2 Assessment of discretionary activities

	Activity	***Guidance on the assessment of resource consents***
1.	All discretionary activities that are linked to section 14.5, including but not limited to the activities listed below	*Relevant objectives and policies (priority considerations):* a. Objectives 2.5.1, 2.5.3, 2.5.4, 14.2.1 *General assessment guidance:* b. Council will consider the findings of any cultural impact assessment provided with a resource consent application, where required (see Special Information Requirements - Rule 14.7.1). c. In assessing the significance of effects, Council will consider: i. Maintaining the relationship between Manawhenua and the natural environment, including the cultural values and traditions associated with: 1. wāhi tūpuna; and 2. the customary use of mahika kai (Objective 14.2.1).
2.	• Crematoriums • Cemeteries • Landfills	*Relevant objectives and policies (priority considerations):* a. Adverse effects on cultural values, including the relationship between Manawhenua and sites of cultural importance to them, are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.5).

14.5.2 Assessment of discretionary activities		
Activity		***Guidance on the assessment of resource consents***
3.	• Mining • Network utility activities • New roads or additions or alterations to existing roads • Passenger transportation hubs • Heliports • Natural hazard mitigation earthworks • Natural hazard mitigation structures	*Relevant objectives and policies (priority considerations)*: a. In a **wāhi tūpuna mapped area** where the activity is identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4). *General assessment guidance:* b. Where effects on the cultural values of Manawhenua are assessed, the findings of a cultural impact assessment will be considered, where required (see Special Information Requirements - Rule 14.7).

14.5.3 Assessment of discretionary performance standard contraventions		
Activity		Guidance on the assessment of resource consents
1.	Density (papakāika - rural zones)	*Relevant objectives and policies (priority considerations)*: a. Objectives 2.5.2, 14.2.1 b. Manawhenua are able to live in original native reserve areas where any adverse effects will be adequately managed in line with the policies of the relevant zone (Policy 14.2.1.6). c. Residential buildings used for papakāika are removed from the site when they are no longer used for that purpose (Policy 14.2.1.7).

Rule 14.6 Assessment of Non-complying Activities

Rule 14.6.1 Introduction

1. Non-complying activities will be assessed in accordance with section 104, 104B and 104D of the RMA meaning Council may grant or refuse the application, and, if granted, may impose conditions.
2. Rule 14.6.2 provides guidance on how a consent application for the listed non-complying activities will be assessed, including:
   a. relevant objectives and policies that will be considered as a priority with respect to s104(1)(b)(vi); and
   b. general assessment guidance, including any effects that will be considered as a priority.
3. For all land use activities that require consent, all associated development activities will be considered as part of the resource consent even if the development otherwise meets the development performance standards in this Plan. Conditions on development activities may be used to minimise any adverse effects from the land use activity or create mitigating positive effects.

14.6.2 Assessment of non-complying activities		
Activity		***Guidance on the assessment of resource consents***
1.	All non-complying activities that are linked to section 14.6, including but not limited to the activities listed below	*Relevant objectives and policies (priority considerations):* a. Objectives 2.5.1, 2.5.3, 2.5.4 *General assessment guidance:* b. Council will consider the findings of a cultural impact assessment provided with the application for resource consent, where required (see Special Information Requirements - Rule 14.7.1). c. In assessing the significance of effects, Council will consider: i. Maintaining the relationship between Manawhenua and the natural environment, including the cultural values and traditions associated with: 1. wāhi tūpuna; and 2. the customary use of mahika kai (Objective 14.2.1).

14.6.2 Assessment of non-complying activities		
Activity		***Guidance on the assessment of resource consents***
2.	• Cemeteries • Crematoriums • Landfills	*Relevant objectives and policies (priority considerations):* a. Objective 14.2.1 b. Policy 14.2.1.5 *General assessment guidance:* c. The assessment of a resource consent application for crematoriums, cemeteries and landfills will consider the findings of a cultural impact assessment (see Special Information Requirements - Rule 14.7)

14.6.X Assessment of non-complying performance standard contraventions		
Performance standard		***Guidance on the assessment of resource consents***
1.	All non-complying performance standard contraventions that are linked to Section 14.6	*Relevant objectives and policies (priority considerations):* a. Objective 14.2.1. b. In a **wāhi tūpuna mapped area** where the activity is identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and wāhi tūpuna are avoided or, if avoidance is not practicable, are no more than minor (Policy 14.2.1.4). *Related strategic directions:* c. Objectives 2.5.1, 2.5.3, 2.5.4, policies 2.5.1.2, 2.5.3.1 and 2.5.4.1. *General assessment guidance:* d. Council will consider the findinqs of a cultural impact assessment provided with the application for resource consent, where required (see Special Information Requirements - Rule 14.7.1).

Rule 14.7 Special Information Requirements

14.7.1 Cultural Impact Assessment

1. Where Manawhenua are considered an affected person, a cultural impact assessment may be required.

Note: The notification rules within the relevant management zone, major facility or city-wide activities section provide advice on when Manawhenua will be considered an affected person.

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A4. Wāhi Tūpuna Values

Introduction

The first people of the South Island, Te Waipounamu, were the Waitaha people. The first place name applied to any site in the Dunedin area is believed to be Kaikarae - the Kaikorai estuary, where the chief Rakaihautu made camp and ate a meal of seabird (karae). Successive waves of iwi followed, firstly the Kāti Mamoe and finally Kāi Tahu, who migrated from the North Island. Over time the three iwi merged through conquest, marriage and peace alliances. Kāi Tahu are therefore an amalgam of Waitaha, Kāti Mamoe and Kāi Tahu whakapapa, generally referred to collectively as Kāi Tahu whānui. After the loss of inland moa as a significant food source, settlements were generally located around the coast, due to the reliance on the sea as a means of transport and for the availability of kai moana and fish. Locally, there were a number of settlements on the Taieri Plain, taking advantage of the rich food sources available from the wetlands and streams. Seasonally, trips would be made to inland Otago to collect food and stone resources, and south to the mutton bird islands. Trails along the coast and inland became well established; waterways and the coastal waters also provided transport routes. At the time of European settlement there were significant populations of takata whenua in the Puketeraki/Waikouaiti (now Karitāne) area, in the coastal bays and inlets, notably Pūrākaunui and Whareakeake, towards Aramoana, adjacent to the Otago Harbour, on Otago Peninsula and on the Taieri Plain/Taieri Mouth.

The strong connection Kāi Tahu whānui have with their ancestors make the many sites and areas that were formerly settlements, pā, battle and burial grounds, spiritual sites, food collecting areas or trail markers, significant wāhi tūpuna for present day Manawhenua. This significance remains even though some of these landscapes are modified or have been dramatically altered. Views from settlements and present day marae, and of significant landmarks, are also important, playing an important part in ceremonial speech making and the mana of the marae.

The history of takata whenua links back to the time of creation. Creation myths are particularly relevant to landscapes in the Dunedin area. One relates to the diligent efforts of Tuterakiwhānoa, an Atua, who laboured at making the broken wreck of Te Waka o Aoraki a more suitable environment for people to colonise and thrive in. He enlisted the help of Rokonui a tau and Kahukura who made Moeraki peninsula, Huriawa peninsula and Muaupoko (Otago Peninsula). Kahukura devoted further attention to the south coast and saw to it that the coast from Ka Tokata (the Nuggets) to Otara was covered in bush.

The Arai te Uru waka, its history and crew members, are immortalised into the landscape by name to remember their deeds. The waka originated from Taitewhenua, and its journey was an ancient event. The waka travelled along the east coast of the South Island. It carried many people, and food such

as kumara. The canoe was wrecked at Matakaea (Shag Point) and the food baskets it contained washed ashore and became the Moeraki Boulders. The giant waves that caused the waka to founder are represented by the mountain ranges in Central Otago, having turned to stone as they were washed inland.

Yet another tradition relates to Matamata, said to be the guardian spirit of the Kāti Mamoe chief Te Rakitauneke. The tradition relates the story of Matamata searching for his master. It roamed around the countryside trying to find him. It slithered down Whakaehu (Silverstream) and rested, creating a hollow near Mosgiel, known as Te Kokika o te Matamata. It then wriggled down the Taieri, creating the meanders in the lower river. The remains of Matamata are represented by the two peaks of Saddle Hill. This story is highly significant for Manawhenua and has helped shape their relationship with the landscape.

The entire Dunedin city area is a wāhi tūpuna, as it was used and valued by Manawhenua. The sites listed below have been identified by Te Rūnanga o Ōtākou and Kāti Huirapa Rūnaka ki Puketeraki as the most important sites to the rūnaka. They include settlements (kāika), battle sites, burial places (urupā), wāhi tapu and wāhi taoka sites, mahika kai, trails, significant landscape features such as peaks and ridgelines, and views.

The values and threats identified may not be an exhaustive list, but should be treated as a guideline for consultation for activities that may impact on these sites.

A4.1 Matainaka

A4.1.1 Description of area

The south face of Cornish Head, including the Waikouaiti golf course. This was the site of an ancient fortified Waitaha settlement and urupā.

The site has linkages to Matainaka lagoon.

A4.1.2 Values to be protected

1. Urupā
2. Kāika
3. Archaeological remains

A4.1.3 Principal threats to values

1. Earthworks

A4.2 Matainaka/Hawksbury Lagoon

A4.2.1 Description of area

A mahika kai associated with the settlement at Matainaka. The lagoon was originally considerably larger. It is now degraded when compared to its historical size and can be eutrophic at times. However, it is still an available and accessible mahika kai and remains a wāhi taoka because of its traditional importance.

This site has linkages to Matainaka, the south face of Cornish Head.

A4.2.2 Values to be protected

1. Mahika kai
2. Taumanu
3. Wāhi taoka

A4.2.3 Principal threats to values

1. Activities affecting water quality, including earthworks within or adjacent to site
2. Activities that affect access to the lagoon, including buildings, structures and public amenities close to the water body
3. Natural hazard mitigation activities

A4.3 Fishing Reserve in Matainaka

A4.3.1 Description of area

There is a fishing reserve adjacent to the lagoon which provides a legal access to the lagoon. Set aside as a Fenton reserve in 1868 by the Māori Land Court, this is a modern representation of the previous traditional use of the whole lagoon as a mahika kai.

A4.3.2 Values to be protected

1. Mahika kai
2. Taumanu

A4.3.3 Principal threats to values

1. Loss of legal road access

A4.4 Te Tauraka Poti (Merton Tidal Arm)

A4.4.1 Description of area

This site was an important mahika kai, providing food for those living in kāika and pā within the Waikouaiti (now Karitane) and Puketeraki areas. There is an ancient association between these sites. The river is still valued as a mahika kai today. The area has Statutory Acknowledgement status under the Ngāi Tahu Claims Settlement Act 1998.

The site has linkages to the Huriawa Peninsula.

A4.4.2 Values to be protected

1. Mahika kai
2. Wāhi taoka
3. Tauraka waka

A4.4.3 Principal threats to values

1. Activities affecting water quality, including earthworks within or adjacent to site
2. Activities that affect access to the water body, including buildings structures and public amenities close to it
3. Natural erosion
4. Upper catchment land development
5. Natural hazard mitigation activities

A4.5 Ohinepouwera

A4.5.1 Description of area

Toaka's warriors camped on the Ohinepouwera sandspit for six months while they laid siege to Te Wera on the Huriawa Peninsula.

This site has linkages to Te Tauraka Poti, Māpoutahi, Pukekura and the Huriawa Peninsula.

A4.5.2 Values to be protected

1. Wāhi tapu
2. Kāika
3. Wāhi taoka
4. Wāhi pakanga
5. Archaeological remains

A4.5.3 Principal threats to values

1. Earthworks
2. Forestry, including wilding pine spread from nearby forests

3. Erosion
4. Natural hazard mitigation activities

A4.6 Huriawa Peninsula

A4.6.1 Description of area

There are a series of pā sites on the peninsula, the most well-known of which is the pā of Te Wera, a Kāi Tahu chief. The pā was besieged by Taoka, Te Wera's cousin, for six months. Taoka's warriors camped on the sandspit across the mouth of the Waikouaiti River. The peninsula has a spring - Te Puna Wai a Te Wera, which sustained the occupants during the siege. Pā Katata Rock, the highest point on the peninsula, is the site of a Kāti Mamoe pā. There are numerous archaeological sites and evidence of occupation.

There is a high quality deposit of maukoroa (ochre) on Huriawa, which when mixed with other ingredients is known as kokowai, a paint. It had a wide reputation as to its quality and was a valuable trade item. It was sought after as far away as Taranaki.

In the late 1830s and 1840s there was a whaling station on the peninsula. Karitāne, a name historically associated with the pā, became more used in this locality when the name Waikouaiti became associated with the town now bearing that name. Karitāne was a thriving settlement at the time of European settlement. There is Māori reserve land at and close to Karitāne. The modern settlement of Karitāne overlays other cultural values, being in part (near the beach) built on top of a battle ground.

Part of the Huriawa peninsula was vested fee simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. The site is managed under a protected private land agreement between Te Rūnanga and the Minister of Conservation. This agreement includes an agreed management programme between the parties in order to protect cultural values, including wāhi tapu and mahika kai, conservation values, indigenous flora and fauna and landscape values.

This site has linkages to Te Tauraka Poti, Māpoutahi, Pukekura and Ohinepouwera.

A4.6.2 Values to be protected

1. Pā Tawhito
2. Kāika
3. Wāhi taoka
4. Archaeological features and remains
5. Wāhi tapu
6. Wāhi pakaka
7. Urupā

A4.6.3 Principal threats to values

1. Earthworks
2. Buildings, structures, network utility structures, mining, forestry, new roads or additions and alterations to existing roads
3. Further residential or commercial development

4. Subdivision
5. Public amenities

A4.7 Waikouaiti Māori Foreshore Reserve / Hau Te Kapakapa

A4.7.1 Description of area

This was an ancient gathering area for Kāi Tahu. An urupā was established at the time of European contact.

The area is administered by Trustees on behalf of the owners. Part of this area was recently re-gazetted in the Trust arising from an ancillary claim under the Ngāi Tahu Claims Settlement Act 1998. It is the site of a European contact period kāika, tauraka waka and the site of the first Christian service in Otago by the Reverend James Watkin, a Wesleyan missionary who established a mission on the same site.

A4.7.2 Values to be protected

1. Kāika
2. Tauraka waka
3. Wāhi tapu
4. Urupā
5. Wāhi taoka
6. Archaeological remains

A4.7.3 Principal threats to values

1. Earthworks
2. Storm induced erosion

A4.8 Views of Huriawa Peninsula from Karitāne township

A4.8.1 Description of area

The skyline of Huriawa and of Te Pā a Te Wera is significant, particularly when viewed from the township in the vicinity of Barra Street and Coast Road.

A4.8.2 Values to be protected

1. Wāhi taoka
2. Wāhi tapu
3. Wāhi tohu

A4.8.3 Principal threats to values

1. Activities that affect views of the peninsula**,** including buildings, structures, public amenities, forestry and network utility structures

A4.9 Puketeraki Marae Reserve

A4.9.1 Description of area

The marae complex, including the reserve, church, wharenui and urupā.

A4.9.2 Values to be protected

1. Wāhi tapu
2. Wāhi taoka
3. Urupā

A4.9.3 Principal threats to values

None identified

A4.10 View of Hikaroroa (Mt Watkin) from Puketeraki Marae

A4.10.1 Description of area

The view of Hikaroroa from the marae is significant. Hikaroroa is the dominant landscape feature and is referred to in mihi. Activities that alter this landscape would be of concern. Hikaroroa was one of the paramount tīpuna ariki from the waka Arai te Uru.

A4.10.2 Values to be protected

1. Mauka
2. Wāhi tohu

A4.10.3 Principal threats to values

1. Activities between Puketeraki marae and Hikaroroa that affect views of Hikaroroa, including buildings, structures, public amenities, network utilities, forestry and shelterbelts and small woodlots.
2. Activities on the upper slopes of Hikaroroa including buildings, structures, public amenities, network utilities, forestry, earthworks, new roads or additions and alterations to existing roads.

A4.11 Ka Whatu a Haere

A4.11.1 Description of area

These coastal rock stacks provide an important reminder of the linkage to the metaphysical world through the link to Haere (atua of rainbow fragments). Sea spray from the rocks often looks like rainbow fragments. There was a pā, Te pā Hawea, on top of the cliff above the rock stacks. There are said to be urupā in this vicinity.

A4.11.2 Values to be protected

1. Pā tawhito
2. Wāhi tapu
3. Wāhi taoka
4. Archaeological remains

A4.11.3 Principal threats to values

1. Earthworks

A4.12 Te Awa Koeo (Brinns Point) and Te Awa Kai Pawa (Green Point)[285]

A4.12.1 Description of area

An ancient fortified settlement site, kāika and urupā.

A4.12.2 Values to be protected

1. Pā tawhito
2. Kāika
3. Urupā
4. Archaeological remains

A4.12.3 Principal threats to values

1. Earthworks
2. Natural erosion
3. Subdivision

A4.13 Northern Slope of Ohineahi (Māori Peak)/Pukemaeroero

A4.13.1 Description of area

The north facing slope between Ohineahi and the coast was cloaked in coastal bush traditionally interspersed with Māori bush gardens. These have been lost and this landscape is degraded. Ongoing grazing prevents the regeneration of bush. The slopes provide a cultural backdrop to Karitāne. The name Pukemaeroero tells that this was the abode of giants. Ohineahi is a prominent southward looking geographical feature with ancient associations to Ira Atua or the spiritual world.

A4.13.2 Values to be protected

1. Wāhi tapu
2. Wāhi taoka

A4.13.3 Principal threats to values

1. Activities affecting the peak and skyline, including buildings, structures, public amenities, network utilities, mining, forestry, vehicle tracks and driveways, new roads or additions and alterations to existing roads.
2. Subdivision

A4.14 Pūrākaunui to Hikaroroa to Huriawa

A4.14.1 Description of area

The broader landscape encompassing all the above features between the Waikouaiti River, Hikaroroa and Whareakeake. Many of these sites date from a similar period and were a significant area of Māori settlement and activity up to the period of European settlement.

A4.14.2 Values to be protected

1. Pā Tawhito
2. Kāika
3. Urupā
4. Wāhi tohu
5. Mauka
6. Mahika kai
7. Wāhi taoka
8. Archaeological remains

A4.14.3 Principal threats to values

1. Activities that affect the visual integrity of the peaks and ridgelines, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.
2. Earthworks

A4.15 Okahau (Warrington)

A4.15.1 Description of area

The site of an ancient Waitaha settlement and later Māori occupation. Archaeological remains are still present. This site has linkages with Blueskin Bay.

A4.15.2 values to be protected

1. Kāika
2. Kai moana
3. Indigenous vegetation
4. Wāhi taoka
5. Mahika kai
6. Archaeological remains

A4.15.3 Principal threats to values

1. Earthworks
2. Subdivision
3. Natural hazard mitigation activities

A4.16 Blueskin Bay

A4.16.1 Description of area

Settlements were interspersed around Blueskin Bay. Mahika kai sites were heavily utilised and some are still important to this day. The railway line follows part of the old Māori coastal trail. Rock outcrops were utilised as quarry sites. The site has linkages with Okahau.

A4.16.2 values to be protected

1. Kāika
2. Mahika kai
3. Wāhi mahi kohātu
4. Ara tawhito
5. Archaeological remains

A4.16.3 Principal threats to values

1. Earthworks
2. Activities affecting water quality, including sediment discharge
3. Natural erosion
4. Activities that affect access to the water body, including buildings, structures and public amenities close to it
5. Natural hazard mitigation activities

A4.17 Māpoutahi and Mateawheawhe (Beach at Pūrākaunui Bay)

A4.17.1 Description of area

Māpoutahi is an ancient pā site and sacred area. It was the site of a massacre where the chief Taoka gained entry to the pā at night. Most of the occupants were killed in the pā or on the beach at Mateawheawhe. The battle site is now covered in forest. This area is managed by the Pūrākaunui Incorporation.

Māpoutahi peninsula was vested fee simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. The site is managed under a protected private land agreement between Te Rūnanga and the Minister of Conservation. This agreement includes an agreed management programme between the parties in order to protect cultural values, including wāhi tapu and mahika kai, conservation values, indigenous flora and fauna and landscape values.

A4.17.2 Values to be protected

1. Wāhi tapu
2. Pā tawhito
3. Urupā
4. Wāhi pakaka
5. Mahika kai
6. Archaeological features and remains

A4.17.3 Principal threats to values

1. Earthworks
2. Storm induced erosion

A4.18 Pūrākaunui

A4.18.1 Description of area

Within this area is the site of a Kāika and whaling station during the period of contact with Europeans (1840-1850s), and includes urupā. Some of the land from the original Māori Reserve is still Māori owned.

Pūrākaunui Inlet is a mahika kai, particularly for tuaki, pipi, tuna and inaka.

A4.18.2 Values to be protected

1. Kāika
2. Urupā
3. Mahika kai
4. Archaeological remains

A4.18.3 Principal threats to values

1. Earthworks
2. Activities affecting water quality
3. Activities affecting walking access to Pūrākaunui Bay, including buildings, structures and public amenities close to the water body
4. Subdivision
5. Natural hazard mitigation activities

A4.19 Wharauwerawera (Long Beach)

A4.19.1 Description of area

There was a settlement in the swampy area behind the beach. A Māori reserve was set aside for the benefit of local Kāi Tahu but was subsequently sold. There still exists a valuable wai repo and mahika kai.

A4.19.2 Values to be protected

1. Kāika
2. Mahika kai
3. Wai repo
4. Archaeological remains

A4.19.3 Principal threats to values

1. Earthworks
2. Activities affecting access to the wetland, including buildings, structures and public amenities close to it
3. Drainage or modification of the wetland area
4. Subdivision

A4.20 Whareakeake

A4.20.1 Description of area

An ancient settlement and pā were sited in the bush behind the beach. This was the site of an infamous fight between the brig Sophia and local Māori, in which a number of both Māori and Europeans were killed.

It was a pounamu manufacturing site for trade with European settlers. A large number of worked pounamu items have been found.

This site has linkages to Kāritane, Ōtākou and Pūrākaunui.

A4.20.2 Values to be protected

1. Pā tawhito
2. Kāika
3. Urupā
4. Archaeological remains

A4.20.3 Principal threats to values

1. Earthworks
2. Subdivision

A4.21 Hill faces near/at Aramoana

A4.21.1 Description of area

The site of a settlement against the hill, close to the site of present-day Aramoana. There were many burial sites in the area.

A4.21.2 Values to be protected

1. Ara tawhito
2. Kāika
3. Urupā
4. Wāhi taoka
5. Archaeological remains

A4.21.3 Principal threats to values

1. Earthworks
2. Mining

A4.22 Saltmarsh and spit at Aramoana

A4.22.1 Description of area

A mahika kai and kohanga. There was a settlement on the spit, which was once on an island at high tide.

A4.22.2 Values to be protected

1. Mahika kai
2. Kāika
3. Wāhi taoka
4. Archaeological remains

A4.22.3 Principal threats to values

1. Earthworks
2. Activities that affect the saltmarsh and associated kai moana
3. Activities that affect access to the saltmarsh and coastal area, including buildings, structures and public amenities close to them
4. Large structures affecting views from Ōtākou
5. Natural hazard mitigation activities

A4.23 Ōtākou Harbour

A4.23.1 Description of area

The harbour itself is significant as a mahika kai (particularly for tuaki), a means of transport and for the relationship between those living there and the water. The ability to provide highly valued food such as tuaki to visitors was, and remains, important for the mana for local Māori. The harbour is still a mahika kai resource today.

A4.23.2 Values to be protected

1. Mahika kai
2. Kāika
3. Wāhi taoka
4. Ara tawhito
5. Tauraka waka

A4.23.3 Principal threats to values

1. Reclamation, including by road widening or work on the rock walls
2. Activities affecting water quality
3. Sea-bed disturbance, including dredging
4. Sedimentation - impact on the sea bed fauna and flora
5. Changes to the harbour hydrology
6. Activities that affect access to the coastal marine area

A4.24 Otaheiti (Acheron Point)

A4.24.1 Description of area

Home of Taiaroa before he moved to Ōtākou. There is an urupā within this area.

A4.24.2 Values to be protected

1. Kāika
2. Urupā
3. Archaeological remains
4. Pā tawhito

A4.24.3 Principal threats to values

1. Earthworks

A4.25 Rakiriri (Goat Island)

A4.25.1 Description of area

A very significant site. According to tradition, the abode of Takaroa, the guardian of the sea. An important landmark.

A4.25.2 Values to be protected

1. Wāhi tapu

A4.25.3 Principal threats to values

1. Buildings and structures
2. Network utilities
3. Earthworks
4. Commercial development
5. Wilding tree spread
6. Public amenities

A4.26 Kamau Taurua (Quarantine Island)

A4.26.1 Description of area

The site of a settlement

A4.26.2 Values to be protected

1. Kāika
2. Mahika kai
3. Tauraka waka
4. Archaeological remains

A4.26.3 Principal threats to values

1. Earthworks

A4.27 Koputai (Port Chalmers)

A4.27.1 Description of area

The cliffs and caves together with certain rocks above Koputai were of cultural importance. A tauraka waka or canoe landing site was set aside for Kāi Tahu as a reserve.

A4.27.2 Values to be protected

1. Wāhi taoka
2. Wāhi kohātu
3. Tauraka waka
4. Archaeological remains

A4.27.3 Principal threats to values

1. Earthworks

A4.28 Peaks from Mihiwaka and Mt Kettle to Mt Cargill

A4.28.1 Description of area

These peaks are a dominant landscape feature and a cultural identity marker. The slopes were also a mahika kai for birds. The slopes of Mt Cargill are known as Kapukataumahaka, a place where weka were snared.

A4.28.2 Values to be protected

1. Wāhi tohu

A4.28.3 Principal threats to values

1. Activities that affect the peaks, upper slopes and ridgeline, including buildings, structures, public amenities, network utilities, mining, earthworks, new roads or additions and alterations to existing roads.
2. Removal of native bush
3. Wilding tree spread

A4.29 Pukekura (Taiaroa Head)

A4.29.1 Description of area

A pā site and kāika. Various Ngāi Tahu chiefs, including cousins Moki and Taoka, occupied Pukekura. There was a Ngāti Mamoe pā, Rangipipikao, nearby. The two tribes lived at times together peacefully, and at other times skirmishing with each other. This was an important pā in the context of the history of the southern part of the South Island. The site includes a water burial site.

There are linkages to Huriawa, Māpoutahi and Te Raka-hine-atea (Moeraki Peninsula).

A4.29.2 Values to be protected

1. Pā tawhito
2. Kāika

3. Wāhi taoka
4. Urupā
5. Archaeological remains

A4.29.3 Principal threats to values

1. Earthworks
2. Ongoing modification of the land surface
3. Buildings, structures, network utilities, new roads or additions and alterations to existing roads, mining
4. Subdivision
5. Public amenities

A4.30 Wellers Rock

A4.30.1 Description of area

A traditional landing site

A4.30.2 Values to be protected

1. Tauraka waka
2. Archaeological remains

A4.30.3 Principal threats to values

1. Earthworks
2. Road widening
3. Wharves
4. Further commercial development
5. Storm induced erosion
6. Natural hazard mitigation activities

A4.31 Ōtākou Marae Reserve

A4.31.1 Description of area

The marae reserve, wharenui, church and urupā

A4.31.2 Values to be protected

1. Wharenui Tamatea
2. Whare karakia
3. Urupā
4. Ceremonial centre of hapū

A4.31.3 Principal threats to values

None identified

A4.32 Views from Ōtākou Marae around Upper Harbour[294]

A4.32.1 Description of area

The peaks visible from the marae are significant landmarks that imbue ceremonial occasions and mihi. They are a reminder of the close link of people to the environment and are a cultural identity marker.

A4.32.2 Values to be protected

1. Wāhi taoka
2. Mauka

A4.32.3 Principal threats to values

1. Activities that affect views from the marae down to the foreshore, including buildings, structures, public amenities, network utilities, forestry and shelterbelts and small woodlots.
2. Activities that affect views of peaks and ridgelines across the harbour (including Keyhole rock), including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.
3. Activities affecting views of Taiehu (hill immediately east of marae), including buildings, structures, public amenities, network utilities, mining, earthworks and forestry.

A4.33 Okia Flats

A4.33.1 Description of area

A very old, large settlement site, dating from the earliest arrivals of the Waitaha. The area contains numerous burials, middens (including moa remains), stone tool and manufacturing materials, waka finds and associated tauraka waka, and traditions associated with this part of Otago Peninsula. People would have made significant use of the inlet, the ocean fishery and the kaimoana found in the bays, ocean beaches, and along the rocky shore. The name of the site is not known. The point is named Tarahipa.

A4.33.2 Values to be protected

1. Kāika
2. Urupā
3. Mahika kai
4. Wāhi taoka
5. Tauraka waka
6. Archaeological remains

A4.33.3 Principal threats to values

1. Earthworks
2. Wilding tree spread
3. Natural hazard mitigation activities

A4.34 Ōtākou Native Reserve

A4.34.1 Description of area

This land was reserved from the sale of the Ōtākou block in 1844 as it was the most significant land to local Māori at the time.

A4.34.2 Values to be protected

1. Pā tawhito
2. Tūāhu
3. Wāhi pakaka
4. Urupā
5. Kāika
6. Wāhi taoka
7. Ingoa tawhito
8. Mana
9. Archaeological remains

A4.34.3 Principal threats to values

1. Earthworks
2. Activities on upper slopes that affect the peaks and ridgelines, including buildings, structures, public amenities, network utilities, mining and forestry

A4.35 Tuhiraki and Takakitaka o Te Piro o Kapo

A4.35.1 Description of area

These islands in Papanui Inlet are of cultural significance due to their association with key events in Kāi Tahu history.

A4.35.2 Values to be protected

1. Wāhi tapu

A4.35.3 Principal threats to values

1. Earthworks

A4.36 Poatiri (Mt Charles)

A4.36.1 Description of area

A cultural marker for Otago. Its name can be interpreted as 'the fish hook' due to its appearance from the sea, or its proximity to the important fishing grounds off Papanui Beach. This site has a linkage with Papanui Beach.

A4.36.2 Values to be protected

1. Mauka
2. Kāika

A4.36.3 Principal threats to values

1. Activities that affect the peak and upper slopes, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.

A4.37 Papanui Beach

A4.37.1 Description of area

The site of an important Kāti Mamoe settlement.

This site has a linkage with Poatiri and the eastern side of the Otago Peninsula.

A4.37.2 Values to be protected

1. Kāika
2. Tauraka waka
3. Archaeological remains

A4.37.3 Principal threats to values

1. Earthworks
2. Storm induced erosion
3. Natural hazard mitigation activities

A4.38 Te Pahi

A4.38.1 Description of area

The site of a settlement located at the end of Allans Beach Road, close to the beach.

A4.38.2 Values to be protected

1. Kāika
2. Archaeological remains

A4.38.3 Principal threats to values

1. Earthworks

A4.39 Pukemata (Harbour Cone)

A4.39.1 Description of area

There are many stories related to this peak and surrounding area, including that Tarewai, a Kāi Tahu chief, hid here while he recovered from wounds inflicted when he was captured by Kāti Mamoe warriors. The slopes are known as Hereweka, a site where weka could be caught.

A4.39.2 Values to be protected

1. Mauka
2. Wāhi taoka
3. Archaeological remains

A4.39.3 Principal threats to values

1. Activities that affect the peak and upper slopes, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.

2. Earthworks

A4.40 Pikiwhara (Sandymount) and Sandfly Bay

A4.40.1 Description of area

This area is the site of a kāika and urupā, including the burial site of the chief Taikawa.

A4.40.2 Values to be protected

1. Kāika
2. Urupā
3. Mahika kai
4. Archaeological remains

A4.40.3 Principal threats to values

1. Activities that affect the upper slopes and ridgelines, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads
2. Earthworks
3. Natural hazard mitigation activities

A4.41 Upper Slopes and Peaks of Otago Peninsula

A4.41.1 Description of area

The Otago Peninsula is highly valued as it is the ancestral home of members of Te Rūnanga o Ōtākou. The peaks and ridgelines are a link to tribal identity and provide a sense of belonging.

A4.41.2 Values to be protected

1. Wāhi taoka

A4.41.3 Principal threats to values

1. Activities that affect the visual integrity of the upper slopes and ridgeline, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.

A4.42 Ocean Grove

A4.42.1 Description of area

Site of a Māori settlement. A nohoaka in former times.

A4.42.2 Values to be protected

1. Kāika
2. Mahika kai
3. Ara tawhito
4. Archaeological remains

A4.42.3 Principal threats to values

1. Earthworks
2. Mining

A4.43 Caves at Andersons Bay Inlet and Rongo memorial

A4.43.1 Description of area

These caves are very significant to Taranaki iwi as a site where Māori prisoners of 1869-1871 were occasionally held while working on the harbour wall. The site includes Rongo, the memorial to these events.

This site has linkages to many sites within Dunedin City where the prisoners worked.

A4.43.2 Values to be protected

1. Wāhi taoka
2. Wāhi tapu

A4.43.3 Principal threats to values

1. New roads or additions and alterations to existing roads
2. Cliff erosion

A4.44 Puketahi (Sunshine Hill)

A4.44.1 Description of area

An iconic hill, the start of a trail south along coastal beaches from the harbour.

A4.44.2 Values to be protected

1. Wāhi tohu
2. Archaeological remains

A4.44.3 Principal threats to values

1. Earthworks

A4.45 Rakiatea

A4.45.1 Description of area

Part of the trail along the coast. Going north, the trail ran along the south coast of the peninsula to Ōtākou. Alternatively, the narrow neck of land to the harbour could be crossed in the Bayfield area and travel continued from there by boat. The exact location of this part of the trail is not known - the mapped area shown from Bayfield to Tahuna is indicative. Numerous artefacts and taoka have been found in the dunes. An important moa hunting site is located along the St Clair esplanade.

A4.45.2 Values to be protected

1. Ara tawhito
2. Nohoaka
3. Tauraka waka
4. Archaeological remains

A4.45.3 Principal threats to values

1. Earthworks
2. Storm induced erosion
3. Natural hazard mitigation activities

A4.46 Te Uraka a Te Raki

A4.46.1 Description of area

The burial site of Te Rakiihia, a Kāti Mamoe chief. The site allowed him to look both up and down the coast.

A4.46.2 Values to be protected

1. Urupā

2. Wāhi taoka
3. Archaeological remains

A4.46.3 Principal threats to values

1. Earthworks

A4.47 Te Iri-o-Te-Wharawhara-Te-Raki

A4.47.1 Description of area

A site at the foot of Frederick Street where Te Wharawhara was placed after he died so that he could be seen by his people who came to mourn him. He was also buried there.

A4.47.2 Values to be protected

1. Urupā
2. Wāhi taoka
3. Archaeological remains

A4.47.3 Principal threats to values

1. Earthworks

A4.48 Toitū Stream

A4.48.1 Description of area

The main landing place for waka from the outer harbour to trade with early European settlers in Ōtepoti (Dunedin), at the mouth of the Toitū. It was also the start of a trail south to Owhiro on the Taieri Plain. The site has been reclaimed and developed and is located close to, or on, Water Street. There remains a spiritual connection and association with this site.

A4.48.2 Values to be protected

1. Tauraka waka
2. Nohoaka
3. Ara tawhito
4. Archaeological remains

A4.48.3 Principal threats to values

1. Earthworks

A4.49 Whanaupaki (Flagstaff) and Whawharaupo (Swampy Summit)

A4.49.1 Description of area

These are significant peaks, referred to in oratory. Part of the range is within the Silverstream catchment (see below). The range as a whole is known as Whākari. Trails ran across these peaks linking Blueskin Bay with the Taieri Plain.

This site has linkages with Whakaehu.

A4.49.2 Values to be protected

1. Mauka
2. Ara tawhito

A4.49.3 Principal threats to values

1. Activities that affect the peaks, upper slopes and ridgelines, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.
2. Wilding tree spread

A4.50 Whakaehu (Silverstream catchment)

A4.50.1 Description of area

Silverstream is related to the myths of the taniwha Matamata whose reposed remains are represented by Saddle Hill. Matamata slithered down Whakaehu and then the lower Taieri, searching for his master chief Te Rakitauneke, and in the process creating the winding form of the Taieri River.

A4.50.2 Values to be protected

1. Wāhi taoka
2. Wai māori
3. Mahika kai (Silverstream river)

A4.50.3 Principal threats to values

1. Activities affecting water quality, including earthworks, forestry harvesting
2. Native vegetation clearance
3. Activities that affect views of the peaks and ridgelines, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.
4. Activities that affect access to Silverstream, including buildings, structures and public amenities close to the river.

A4.51 Kaikarae (Kaikorai Estuary)

A4.51.1 Description of area

A mahika kai for adjacent coastal settlements, providing eels, waterfowl, birds and kai moana. The first known site to be named in Dunedin ('Kaikarae' - where a seabird was cooked and eaten) by Rakaihautu, a Waitaha chief who first explored the southern coast.

This site has linkages to the beach north of the Kaikorai estuary.

A4.51.2 Values to be protected

1. Historical mahika kai. Of less value now due to pollution.
2. Archaeological remains

A4.51.3 Principal threats to values

1. Earthworks
2. Mining

A4.52 Beach at Kaikarae (Kaikorai Estuary)

A4.52.1 Description of area

The site of a settlement at the river mouth.

This site has linkages to Kaikarae.

A4.52.2 Values to be protected

1. Kāika
2. Archaeological remains

A4.52.3 Principal threats to values

1. Earthworks
2. Storm induced erosion

A4.53 Islands off Southern Coast

A4.53.1 Description of area

Including Wharekakahu (near Cape Saunders), Pounuitehine (White Island) and Okaihae (Green Island). These are significant for their birdlife and their natural state.

A4.53.2 Values to be protected

1. Wāhi taoka
2. Mahika kai

A4.53.3 Principal threats to values

1. Visual effects resulting from activities including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, tracks and roads.

A4.54 Pukemakamaka/Turimakamaka (Saddle Hill/Jaffrays Hill)

A4.54.1 Description of area

Pukemakamaka and Turimakamaka represent the reposed remains of the taniwha Matamata, who created the Taieri River, including its meandering form.

This site has linkages to Maukaatua, Whakaehu (Silverstream) and Te Kokika o Te Matamata.

A4.54.2 Values to be protected

1. Mauka
2. Wāhi taoka
3. Wāhi tohu

A4.54.3 Principal threats to values

1. Activities that affect the peaks, upper slopes and ridgeline, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations

to existing roads.

2. Forestry harvesting

A4.55 Upper Slopes and Peaks of Scroggs Hill and Saddle Hill

A4.55.1 Description of area

Views of Saddle Hill and the hills immediately surrounding it are culturally important.

A4.55.2 Values to be protected

1. Wāhi tohu
2. Wāhi taoka

A4.55.3 Principal threats to values

1. Activities that affect the visual integrity of the peaks, upper slopes and ridgeline, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.

A4.56 Kokika o Te Matamata (Area Surrounding Mosgiel)

A4.56.1 Description of area

The hollow in Taieri Plain within which Mosgiel is located. This was created by the taniwha Matamata as it slithered down Whakehu and the lower Taieri River. The Taieri Plain was a significant source of food for coastal Māori from the Peninsula and further north. It was surrounded by pā, indicating its strategic importance. It was the most significant wetland south of the Waitaki River that contained both raupo and harakeke. It was also a main thoroughfare for Māori travelling north and south.

A4.56.2 Values to be protected

1. Repo raupo
2. Ara tawhito

A4.56.3 Principal threats to values

None identified

A4.57 Owhiro Stream

A4.57.1 Description of area

The remnant channel of the Owhiro at the confluence with the Taieri River.

A4.57.2 Values to be protected

1. Ara tawhito
2. Mahika kai

A4.57.3 Principal threats to values

1. Straightening or modification of the waterway.

2. Activities that affect access to the river, including buildings, structures and public amenities close to it.
3. Activities that affect water quality, including earthworks close to the river.

A4.58 Pā at Allanton

A4.58.1 Description of area

Pā of Te Paritutaniwha, a chief from Wairarapa. This pā was established to gain retribution against Tu Wiri Roa, the Kāti Mamoe chief of Moturata pā (Taieri Mouth).

A4.58.2 Values to be protected

1. Pā tawhito
2. Archaeological remains

A4.58.3 Principal threats to values

1. Earthworks

A4.59 Coast from Taieri Mouth to Brighton

A4.59.1 Description of area

The route of a trail from Taieri Mouth to Dunedin. Archaeological sites and umu have been found throughout this coastal area.

A4.59.2 Values to be protected

1. Aro tawhito
2. Umu
3. Mahika kai
4. Wāhi taoka
5. Archaeological remains

A4.59.3 Principal threats to values

1. Earthworks
2. Storm induced erosion
3. Natural hazard mitigation activities

A4.60 Taieri Māori Reserve

A4.60.1 Description of area

There is an ongoing significant connection with this land. At both northern and southern ends are the sites of pā and kāika. Much of this land is still Māori owned.

This site has linkages to Maitapapa and Motutara Island (Taieri Mouth).

A4.60.2 Values to be protected

1. Pā tawhito

2. Archaeological remains

A4.60.3 Principal threats to values

1. Earthworks

A4.61 Pā site and Kāika at Omoua and Maitapapa (Henley)

A4.61.1 Description of area

An ancient pā site, settlement, tauraka waka and urupā. A key link in the trail to the Taieri River.

This site has linkages to the Taieri Māori Reserve and Tatawai.

A4.61.2 Values to be protected

1. Pā tawhito
2. Kāika
3. Urupā
4. Mahika kai - associated with the river
5. Archaeological remains

A4.61.3 Principal threats to values

1. Earthworks
2. Subdivision and consequent development
3. Activities that affect access to the Taieri River, including buildings, structures and public amenities close to it
4. Activities that affect water quality, including earthworks
5. Forestry
6. Wilding tree spread

A4.62 Taieri River

A4.62.1 Description of area

The whole river is considered significant, as a means of transport (the river is navigable upstream to Outram), a trail to inland Otago and as a mahika kai. At the mouth of the Taieri on the south bank, is Te Rereka o Hakitekura (Māori Leap). This was the site where Haki te Kura, daughter of Tu Wiri Roa, a Kāti Mamoe chief, jumped from the cliff to join her lover in a waka below, but died in the fall.

This site has linkages to the Taieri Māori Reserve.

A4.62.2 Values to be protected

1. Wai māori
2. Wāhi paripari
3. Wāhi taoka
4. Tauraka waka
5. Ara tawhito

6. Mahika kai

A4.62.3 Principal threats to values

1. Activities affecting water quality, including earthworks
2. Damming
3. Activities affecting access to the river, including buildings, structures and public amenities close to it

A4.63 Tatawai

A4.63.1 Description of area

Tatawai was a lake which is now drained. It was a significant site for mahika kai and had tauraka waka.

This site has linkages to the pā site and kāik at Omoua and Maitapapa.

A4.63.2 Values to be protected

1. Archaeological remains
2. Historical values (no longer present):
   a. Wai māori
   b. Mahika kai
   c. Repo raupo
   d. Tauraka waka

A4.63.3 Principal threats to values

1. Earthworks

A4.64 Maukaatua (Maungatua)

A4.64.1 Description of area

Named after Maukaatua, a tūpuna on the waka Arai te Uru, this is an important mountain, linked to creation myths. It is a landmark for travellers inland, across the Taieri Plain and from the south. A trail up Kowhai Spur led to Maukaatua. It was also a mahika kai for forest birds, and there is a tōpuni over part of the area. Views of Maukaatua are significant from many places.

A4.64.2 Values to be protected

1. Wāhi tohu
2. Spiritual values
3. Wāhi taoka
4. Urupā
5. Ingoa Tawhito

A4.64.3 Principal threats to values

1. Buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.

2. Tall buildings, structures and network utilities at/near Dunedin International Airport affecting views from the Taieri River and Centre Road.

A4.65 Nohoaka site at Middlemarch

A4.65.1 Description of area

The nohoaka is on the Taieri River. It is reserved for takata whenua in order to camp and access natural resources.

A4.65.2 Values to be protected

1. Nohoaka
2. Mahika kai

A4.65.3 Principal threats to values

1. Activities affecting water quality, including earthworks
2. Activities that affect access to the river, including buildings, structures and public amenities close to it
3. Subdivision of adjacent land

A4.66 Patea (Mt Stoker)

A4.66.1 Description of area

Mt Stoker was a reference point in the landscape for those travelling inland. Māori artefacts have been found there.

A4.66.2 Values to be protected

1. Wāhi tohu
2. Mauka
3. Archaeological remains

A4.66.3 Principal threats to values

1. Activities that affect views of the peak and upper slopes, including buildings, structures, public amenities, network utilities, mining, forestry and earthworks
2. Subdivision

A4.67 Patearoa (Rock and Pillar Range)

A4.67.1 Description of area

A prominent landscape feature, which provided a location marker for those travelling inland. There are a number of Māori place names along the range. The site includes Paruparu a Te Kaunui (Stonehenge), a suite of basalt pillars used as a trail.

The slopes of Patearoa were bush covered and birds would have been readily available as food. Artefacts have been found on the lower slopes. Tikumu *(Celmisia)* grows on Patearoa. This was used to make a special type of korowai. Taramea (the oil of the speargrass) was gathered here. This was

valued for its distinctive perfume.

A4.67.2 Values to be protected

1. Wāhi tohu
2. Mahika kai
3. Indigenous fauna and flora
4. Ara tawhito
5. Archaeological remains

A4.67.3 Principal threats to values

1. Activities that affect the peaks, upper slopes and ridgeline, including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.
2. Earthworks
3. Subdivision

A4.68 Owheo

A4.68.1 Description of area

Owheo (Leith Stream) was historically important for mahika kai. The river has been significantly modified, but retains strong associations as a connection with tūpuna. The site has strong associations with Te Iri-o-Te-wharawhara-Te-Raki.

A4.68.2 Values to be protected

1. Historical mahika kai site
2. Wāhi taoka

A4.68.3 Principal threats to values

None identified

A4.69 Tau Muraki

A4.69.1 Description of area

Tau Muraki is an area of small settlements which would have been nestled in sheltered locations close to water sources and waka landing sites. Like the Okia flat site on the opposite side of Papanui Inlet, this area was a known source of stone material used to make adzes. People at both the Okia flat site and Tau Muraki would have made significant use of the inlet, the ocean fishery and the kaimoana found in the bays, ocean beaches, and along the rocky shore. The area near the mouth of the Papanui Inlet on the south side is called 'Te Anakake' (cave of the seal). Just to the west of Tau Muraki is a place called Te Pā o Ngāti Kuri.

A4.69.2 Values to be protected

1. Kāika
2. Mahika kai

3. Archaeological remains
4. Wāhi taoka

A4.69.3 Principal threats to values

1. Storm induced erosion
2. Earthworks

A4.70 Pipikaretu

A4.70.1 Description of area

Pipikaretu (the point) and Onepoto (the beach) are associated with a strong settlement history in this part of Otago Peninsula, and are a place of turangawaewae for many descendants of Kai Te Pahi.

A4.70.2 Values to be protected

1. Kāika
2. Mahika kai
3. Kai moana
4. Archaeological remains

A4.70.3 Principal threats to values

1. Earthworks
2. Natural hazard mitigation activities

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