

Prepared for the Minister of Conservation  
by the Department of Conservation

# Review of the effect of the NZCPS 2010 on RMA decision-making

## Background information



Department of  
Conservation  
*Te Papa Atawhai*

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**Review of the effect of the NZCPS 2010 on RMA decision-making.**

**Part 2 – Background information.**

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## Part 2A: Review methodology

The NZCPS 2010 includes specific policy to review the effectiveness of the NZCPS within 6 years of gazettal<sup>1</sup>. The effectiveness review (the Review) does this by:

- Identifying the progress made on implementing the NZCPS 2010 in regional and district plans, and relevant policy documents.
- Assessing the impact of the NZCPS 2010 on resource consent decisions.
- Assessing the effect of the 2014 Supreme Court *Environmental Defence Society Inc v New Zealand King Salmon Ltd (King Salmon)* decision on coastal management decision-making.
- Identifying any issues that have arisen in giving effect to the NZCPS 2010.
- Assessing the impact of the NZCPS 2010 on the involvement of tangata whenua in coastal management.
- Identifying common or emerging issues in managing the coastal environment.
- Gathering sufficient information to undertake and complete an effectiveness evaluation of the NZCPS 2010.

The Review was completed between August 2016 and April 2017. It focused on implementation of the NZCPS 2010 through policy statements and plans, and consent decision-making. Some of the consultation undertaken through the Review was disrupted by the November 2016 Kaikoura earthquake.

In the time available, the Review was not able to assess the effectiveness of the NZCPS 2010 in achieving the purpose of the RMA on the ground, and nor did it collect data or establish a nationally consistent monitoring and reporting programme (both of which are anticipated by Policy 28). However, the Review has identified that on the ground information as well as improved monitoring and reporting would be useful, and identified these as priority areas for further work.

The scope and methodology of the Review are summarised in Figure 1: *Effectiveness Review of the NZCPS 2010* in Part 1 of this report.

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<sup>1</sup> The NZCPS came into effect on 3 December 2010.

The following key components informed the Review:

### 1. A survey of local government to identify progress and local government views

In late 2016, a survey was sent out to all regional councils, unitary authorities and territorial councils with a coastal boundary. The survey included questions about the extent to which plans and resource consents have implemented the NZCPS 2010, as well as the major coastal issues facing their region. It also investigated actions that have been taken and are planned to give effect to each individual policy in the NZCPS 2010.

- Number of councils surveyed: 64
- Number of surveys answered: 44
- Types of councils surveyed: city/district, 48; regional/unitary, 16

See Part 2J for a copy of the survey and Part 2K for a list of the local councils surveyed.

### 2. Workshops to gather the views of key industry groups and non-governmental organisations (NGOs) on coastal issues, the impact of the NZCPS 2010 and potential gaps

Ten Sector Group Workshops were held in November 2016 in Auckland, Wellington and Blenheim. These workshops sought to explore the views of national interest groups on the effectiveness of the NZCPS 2010. They were held with a wide range of sector groups (industry groups, user groups, environmental groups and professional bodies), and aimed to understand the issues and challenges they faced as well as their opinions in relation to the NZCPS 2010. Particular attention was given to the implications of the Supreme Court *King Salmon* decision in relation to implementation of the NZCPS 2010.

Greg Hill, acted as the independent facilitator for the workshops. Mr Hill is an accredited independent hearings chair and commissioner, with technical expertise in air, land, water and coastal policy issues.

Mr Hill prepared Part 2C, which presents the key issues and discussions from the Sector Group Workshops. See Appendix 1, Part 2C for a list of the organisations and iwi that were contacted and met with.

### 3. Engagement with tangata whenua

Iwi were contacted as part of the case studies and invited to participate in the Review. Those who participated not only provided comment in relation to the case study but also on their experiences of the Act and the NZCPS 2010 in particular. In addition to the case study participants, the discussions were held with staff from Te Rūnanga o Ngāi Tahu.

Most interviewees were, or had been, the resource management representative for their respective iwi and/or hapū.

The review findings are not necessarily representative of iwi views due to the limited number of iwi representatives interviewed. The timeframe for the Review required that representative

information was gathered rather than all stakeholders and iwi being consulted. This limitation is acknowledged.

#### **4. A desktop review of resource consents and court cases to assess the impact of the NZCPS 2010**

Court and Board of Inquiry cases that mentioned the NZCPS 2010 were reviewed and categorised according to the extent of discussion on it. This invariably involved some judgement calls; however, consistency was a priority throughout. These cases have been analysed according to a variety of factors, including region, court, year and council type, to demonstrate trends in the way case law has developed.

The cases in each category and a variety of statistics can be found in Part 2F.

##### ***Summary of case categories***

*Category A:* (35 cases) These cases substantially discuss the NZCPS. This category includes cases where the NZCPS 2010 was analysed in terms of its application or meaning.

*Category B:* (45 cases) These cases consider the NZCPS but do not substantively discuss its contents or application. This category includes all cases that mention individual NZCPS 2010 policies that were not included in Category A above.

*Category C* (122 cases) This includes all cases that were not included in Category A or B and mention 'NZCPS' or 'New Zealand Coastal Policy Statement'. It must be noted that this category includes all cases that quote section 104 of the RMA even if they were not 'coastal' cases. Costs and procedural decisions are for the most part grouped in Category C.

#### **5. Undertaking case studies to explore particular issues in depth, including iwi involvement**

The case studies involved identifying areas where similar resource consents had been sought before and after the NZCPS 2010 was gazetted. They comprised some desktop research that was supported by discussions and interviews with local councils and iwi on the coastal issues facing their region, and how specific policies in the NZCPS 2010 have been, or plan to be, implemented.

Seven case studies are presented in this report:

- Integrated management – Bay of Plenty Regional Council
- Integrated management – Tauranga Harbour
- Iwi values – Auckland's Unitary Plan process
- Port dredging – Otago
- Giving effect to Policies 13 and 15 – Auckland Unitary Plan and Northland Regional Policy Statement
- Managing coastal hazard risks – Mapua and Ruby Bay

- Managed retreat in an urban environment – Auckland Council

See Part 2G for the case studies.

## **6. *King Salmon* think piece: a review of its implications for planning practice**

The effects of the 2014 decision of the Supreme Court in *Environmental Defence Society v New Zealand King Salmon (King Salmon)* were investigated and tracked through recent case law.

Helen Atkins, a partner in Atkins Holm Majurey Ltd, who has extensive experience in New Zealand environmental, public and local government law, prepared this think piece. See Part 2B for this think piece.

## Part 2B: Review of implications for planning practice of the Supreme Court *King Salmon* decision and its impact on the interpretation of the New Zealand Coastal Policy Statement

Helen Atkins, Partner, Atkins Holm Majurey

February 2017

### Introduction

1. This review has been commissioned by the Department of Conservation (**DOC**) to assist it in its review of the New Zealand Coastal Policy Statement (**NZCPS**).
2. The purpose of this review is a think piece on the implications of the Supreme Court *King Salmon* decision on the resource management planning framework and practice which identifies implications for the NZCPS. The think piece will be used to ‘set the scene’ for the current effectiveness review of the NZCPS.
3. The resources used for this review are:
  - The *King Salmon* Decision – a think piece for planners, 19 August 2010, Helen Atkins and Sarah Dawson<sup>2</sup> for the New Zealand Planning Institute;
  - *King Salmon* or Prince Fry – has the Supreme Court decision been the sea-change that was anticipated, Presentation to AusIMM September 2016 by Helen Atkins;
  - Relevant case law including the list of cases identified by the DOC legal team entitled ‘Cases which mention the NZCPS 2010 up to October 2016’.
4. The review starts with a brief overview of the Supreme Court’s decision (more detail can be found in **Appendix 1**) and an analysis of relevant case law since the decision. The review then traverses the decision’s possible application to the following:
  - Directly to the NZCPS;
  - Policy and plan making matters involving the application of the NZCPS;
  - Resource consents involving the application of the NZCPS.

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<sup>2</sup> Acknowledgment is given to Sarah Dawson who co-authored the Think Piece and was lead author for the practice section – Application of the Findings.

## Summary

5. The key findings of the Supreme Court in the *King Salmon* case that has resulted in a call for change from some quarters is that Part 2 of the Resource Management Act 1991 ('**RMA**' or '**the Act**') can no longer be resorted to, to 'soften' those policies in the NZCPS which are 'directive'.
6. In addition the Court found that words mean what they say. For example, when using words like 'avoid' this means what it says, that is, do not do something.
7. As many lower order policies and plans were developed at a time when resort to Part 2 was understood to be acceptable, these provisions may not have been crafted with the precision that the Supreme Court is saying is needed to properly give effect to the direction of provisions higher up in the policy hierarchy. As Part 2 is not able to be resorted to in order to soften the effect of directive protective provisions some proposals in the coastal marine area will not meet the statutory requirements.
8. The Supreme Court decision has been applied and followed in a number of other cases including those considering:
  - (a) the NZCPS;
  - (b) other national policy statements such as the National Policy Statement on Freshwater Management ('**NPSFM**');
  - (c) lower order provisions in policy statements and plans; and
  - (d) resource consents and designations.
9. What this mean in practice is that if policies and plans are not saying what the communities they were developed in wish them to say then they need to be reviewed to ensure they properly reflect community wishes and in light of relevant national direction.
10. In the context of the review of the NZCPS there is a call to do a number or some of the following:
  - (a) to soften the protective policies; and/or
  - (b) strength the development enabling provisions; and/or
  - (c) make the NZCPS specifically subject to Part 2.
11. However, in the absence of any amendment to the RMA such changes may not be in accordance with the purpose of the Act<sup>3</sup>. To make such changes could, in effect, render the NZCPS nugatory, providing no clear guidance or direction to those who are charged with giving effect to it.
12. There is guidance material on implementing the NZCPS but this needs updating to take into account the findings in *King Salmon* and subsequent case law.

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<sup>3</sup> Section 56 RMA essentially provides that the NZCPS is to be code for the coastal environment.

## Context

13. When the RMA was enacted in 1991 there was judicial debate over the meaning of section 5.
14. Over the years (and as early as 1994<sup>4</sup>) the Courts determined that this purpose is met by taking an overall judgment approach to the overall positive and adverse effects of a plan or consent proposal by having regard to Part 2.
15. In the *King Salmon* decision the Supreme Court disagrees with the appropriateness of an overall judgment approach, in relation to plan and policy making where there is clear direction in higher order policy documents. The Court held that such directive policies represent environmental bottom lines and are an appropriate aspect of sustainable management. Case law subsequent to *King Salmon* have commented on the application of this finding in relation to resource consents.

## Overview of EDS v King Salmon

16. This is a summary of the key findings from the decision. For a more detailed analysis of *King Salmon* see **Appendix 1**.

## Facts

17. On 17 April 2014 the Supreme Court released its decisions on two appeals in relation to New Zealand King Salmon's proposals to establish salmon farms in the Marlborough Sounds.
18. The basis of the proceedings began when King Salmon proposed to establish and operate nine additional salmon farms to the six it already operated in the Marlborough Sounds. King Salmon applied via the national consenting route to be heard by a Ministerial appointed Board of Inquiry ('**Board**').
19. In relation to the proposed salmon farm location that was the subject of the key aspect of the Supreme Court's decision, the Board found that this site (the Papatua salmon farm) would have high to very high adverse effects on the natural character and landscape of that location and as a consequence policies 13(1)(a) and 15(a) of the NZCPS would not be given effect to. Despite that finding the Board approved the Papatua plan change application because, applying an overall broad judgment pursuant to Part 2 of the RMA, the Board considered that (overall) the proposal would be appropriate and achieved the RMA's purpose.
20. EDS was opposed to the Papatua location because it was in an outstanding landscape and natural landscape area. EDS argued that the Board had misapplied the NZCPS and had not considered alternatives in relation to two of the sites.

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<sup>4</sup> *New Zealand Rail Limited v Marlborough District Council* [1994] NZRMA 70 (HC).

21. The Supreme Court considered the following matters in reaching its findings on the appeal:
  - (a) The meaning of section 5;
  - (b) What giving effect to policies 13 and 15 of the NZCPS means;
  - (c) Whether it is necessary to resort to Part 2 in deciding on lower order policies and plan provisions;
  - (d) The meaning of ‘avoid’ and ‘inappropriate’;
  - (e) What ‘giving effect to’ means; and
  - (f) The application of the ‘overall judgment’.
22. An overview of each finding follows. The detailed analysis is in **Appendix 1**.

### ***Overview of findings***

#### **Section 5**

23. The meaning of section 5 it is to be read as an integrated whole. The wellbeing of people and communities is to be enabled at the same time as the matters in section 5(2) are achieved.

#### **Giving effect to policies 13 and 15 of the NZCPS**

24. In preparing regional coastal plans giving effect to policies 13 and 15 means a regional council must:
  - (a) Assess the natural character/natural features/natural landscapes of the region;
  - (b) Identify areas where natural character, natural features and landscape require preservation or protection; and
  - (c) Ensure RPSs and plans include objectives, policies and rules which preserve the natural character and protect natural features and landscapes in particular areas.

#### **Resorting to Part 2**

25. In the context of giving effect to the NZCPS resort to Part 2 is not appropriate because Part 2 has been integrated into the NZCPS. This would also apply to lower order policies and plans. In other words policies and plans are deemed to be made in accordance with and to give effect to Part 2 except in three areas, namely:
  - (a) where there is a claim of invalidity;
  - (b) if the planning document does not cover the field; or
  - (c) the provisions are uncertain.

### ***Meaning of ‘avoid’ and ‘inappropriate’***

26. ‘Avoid’ means ‘not allow’ or ‘prevent the occurrence of’.
27. What adverse effects are to be avoided and what is ‘inappropriate’ should be assessed by reference to what is being ‘protected’. The higher the value being protected the more likely a development will be inappropriate.
28. It may be acceptable to allow activities that have minor or transitory adverse effects in outstanding areas and still give effect to policies 13 and 15 of the NZCPS where their avoidance is not necessary (or relevant) to preserve the natural character of the coastal environment, or protect natural features and natural landscapes.

### ***Giving effect to***

29. To ‘give effect to’ simply means ‘implement’. It is a strong directive creating a firm obligation on those subject to it.
30. The Supreme Court noted that the implementation of such a strong directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

### ***Policies 13 and 15 are bottom lines – application of the overall judgment***

31. Policies 13(1)(a) and 15(a) of the NZCPS are essentially bottom lines and to apply the overall judgment to their implementation would:
  - (a) be inconsistent with the process of issuing the NZCPS;
  - (b) create uncertainty; and
  - (c) undermine the strategic region wide approach required under the NZCPS.

### ***Case law since King Salmon***

32. There have been a number of cases since *King Salmon* that have commented on its effect. The review does not cover every case but rather deals with those of particular relevance.
33. This case law overview starts with a summary which sets out which case/s applies which finding in the *King Salmon* decision. A more detailed summary of the cases then follows. After each case law summary there is reference to the key finding/s in *King Salmon* and the case these findings link to.

## Summary of case law

34. The following higher order general findings of the Supreme Court have been applied by the lower courts:

### Value of the matter being protected (avoid/appropriate)

- (a) Where features are considered outstanding then they need to be treated with a higher level of protection (*Clearwater Mussels Limited v Marlborough District Council*).
- (b) Care needs to be taken in determining whether something is outstanding given the protection that *King Salmon* says should be provided in such cases (*Opoutere Ratepayers and Residents Assn v Waikato Regional Council*).
- (c) *King Salmon* has not changed the way in which outstandingness is to be determined. This assessment should still be done based on objective criteria and on expert input (*Man O'War Station v Auckland Council*)

### Are provisions unclear or in conflict?

- (d) It is important not to conclude too readily that provisions are in conflict where reconciliation can be achieved (*Gladding v Queenstown Lakes District Council; SaddlevIEWS Estate Ltd v Dunedin City Council*).

### Use of directive language

- (e) Where directive language is used then this should be followed. If there is any doubt about adverse effects when directive language is used then a decision to ensure no adverse effects must be made (*Gallagher v Tasman District Council*);

### Resort to Part 2

- (f) If the provisions are sufficiently certain, and neither incomplete nor invalid there is no need to refer to Part 2 and no need to refer back to higher order documents as there is a (rebuttable) presumption that Part 2 and higher order documents have been given effect to (*Appealing Wanaka Inc v Queenstown Lakes District Council; Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council*).

### Overall judgment

- (g) In relation to resource consents the 'overall broad judgment' is not generally to be applied except in the limited cases of:
  - i. where there is a claim of invalidity;
  - ii. if the higher order provision do not cover the field; or
  - iii. the provisions are uncertain.

See (*R J Davidson v Marlborough District Council*).

- (h) Note this High Court case is to be contrasted with the earlier case of *KPF Investments Limited v Marlborough District Council* where the Environment Court held that held that post *King Salmon* the overall judgment still applied to resource consents.
- (i) Likewise in the case of *New Zealand Transport Agency v Architectural Centre Incorporated* where the High Court held resort to Part 2 (and in that case by implication the overall judgment) applies to notices of requirement.
- (j) As can be seen the issue is not entirely settled by the case law and undoubtedly it will be addressed again by the Courts in due course.

### ***Clearwater Mussels Limited v Marlborough District Council [2016] NZEnvC 21***

- 35. This case concerned the extension of an existing mussel farm in the Tennyson Inlet in Pelorus Sound. The status of the activity was non-complying. The Court agreed with the Commissioner at first instance that the effects of the activity were more than minor and the activity was contrary to the objectives and policies of the relevant plan.
- 36. In terms of *King Salmon* the only relevant point made is that if something has an outstanding notation that this means it warrants a greater level of protection. On the facts in this case there was a lack of precision around the identification of outstanding landscapes which meant the Court needed to consider the landscape qualities in some detail in making its findings.

#### Key findings

- 37. This was a resource consent so does not related directly to plan and policy making. In the key findings section this case is further authority for the point made about the care that needs to be taken in identifying what is an outstanding landscape at the point of preparing planning documents.

### ***Opoutere Ratepayers and Residents Assn v Waikato Regional Council [2015] NZEnvC 105***

- 38. The Ratepayers and Residents appealed a decision of the Council not to include Opoutere as an area of ecological significance and an outstanding natural feature and landscape ('ONFL') in the RPS. The Council accepted Opoutere was an area of ecological significance but contended it did not need specific identification and mapping in the RPS. The Council did not agree Opoutere was an ONFL. The Court agreed with the Ratepayers on the ecological significance of part of the ONFL.
- 39. In looking at the application of *King Salmon* to the Court's findings the Court considered what was meant by the words 'must give effect' in the RPS to the NZCPS. The Court paraphrased the Supreme Court findings and concluded that give effect simply means implement and what is required will depend on what is being giving effect to. The Court noted that the Supreme Court has said that a requirement to give effect to a policy that is framed in a specific and unqualified way (that is which creates 'an environmental bottom line') may in a practical sense be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

40. The case includes an analysis of the meaning of NZCPS policy 11 (indigenous biological diversity) and its relationship with policy 7 (strategic planning). There is implied criticism of policy 11 that it does not provide any guidance on how the avoidance of adverse effects or significant adverse effects on indigenous biodiversity is to be achieved (in contrast to policies 13 and 15) [paragraph 60].

Key findings

41. This is a case involving policy and plan making, identification, and mapping. It is authority for the importance of clear mapping and identification (as well as, in this case, considering the merits of what is or is not outstanding).
42. The Court also considered the practical effect of the meaning of ‘giving effect to’ and concluded that the more specific and unqualified the matter to be given effect to the more likely an environmental bottom line is required.

***Gladding v Queenstown Lakes District Council [2015] NZEnvC 151***

43. The Gladding appeal was against resource consents that had been granted for a camping ground in Glenorchy. The Court noted that it is not appropriate to determine too readily that plan provisions are confusing:

*While I agree with the sentiment because the provisions are confusing, I consider with respect that the Hearing Commissioners may have gone too far. The district plan needs to be read as a coherent whole if at all possible: J Rattray & Sons Ltd v Christchurch City Council. This was recently reinforced by the Supreme Court in Environmental Defence Society Inc v New Zealand King Salmon Company where Arnold J, delivering the Court's Judgment, wrote that one must not ‘... conclude too readily that there is a conflict between particular policies and prefer one over another, rather than making a thorough ... attempt to find a way to reconcile them.’<sup>5</sup>*

44. Essentially, although the language was deemed to be confusing in this case there was a solution to this problem that did not involve legal conflict. Therefore the Court did not agree that certain policies should not apply to the proposal.

Key findings

45. The key finding in this case which was not directly applying *King Salmon* was that it is important not to be too ready to find that plan provisions are confusing or in conflict.

***Saddleviews Estate Ltd v Dunedin City Council [2014] NZEnvC 243***

46. This appeal was against a refusal to grant resource consents to subdivide and build and use dwellings.
47. Similar to the *Gladding* decision the Court cautioned that conflicts in provisions should not be assumed.

Key findings

48. The same key finding as for *Gladding* was found in this case.

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<sup>5</sup> At paragraph [27].

***Man O' War Station Limited v Auckland Council [2017] NZCA 24***

49. This is a long running case that involves the identification, via a plan change promulgated by Auckland Council, of significant portions of the farm properties on Waiheke and Ponui Islands owned by Man O'War Station as outstanding natural landscapes. The *King Salmon* decision was issued after the appeal in the Environment Court was heard but before it was decided. The Environment Court considered further submissions from the parties on the application of the *King Salmon* decision. The key issue for the Environment Court was what areas ought to be mapped as outstanding natural landscapes ('ONLs'). The Court made minor amendment and its decision was appealed to the High Court.
50. In relation to the application of the *King Salmon* decision the primary concern of Man O'War farms was that the policies had been developed pre-*King Salmon* when the overall judgment was considered in the application of policy and to apply the policies post-*King Salmon* would have a serious adverse effect on farming operations. The argument made by Man O'War was that the mapping of ONLs therefore needed to be reconsidered post-*King Salmon* to ensure the areas subject to ONLs did warrant the level of protection that the ONL afforded. The High Court disagreed as follows:

*[58] I do not accept the submission for MWS that as a consequence of the King Salmon judgment, the identification of ONLs must necessarily be changed, and made more restrictive. There is no justification for such a submission in the King Salmon judgment, and it is not justified by reference to the RMA.*

*[59] It is clear from the fact that "the protection of outstanding natural features and landscapes" is made, by s 6(b), a "matter of national importance" that those outstanding natural landscapes and outstanding natural features must first be identified. The lower level documents in the hierarchy (regional and district policy statements) must then be formulated to protect them. Thus, the identification of ONLs drives the policies. It is not the case that policies drive the identification of ONLs, as MWS submits.*

*[60] As identified by the Council, the RMA clearly delineates the task of identifying ONLs and the task of protecting them. These tasks are conducted at different stages and by different bodies. As a result it cannot be said that the RMA expects the identification of ONLs to depend on the protections those areas will receive. Rather, Councils are expected to identify ONLs with respect to objective criteria of outstandingness and these landscapes will receive the protection directed by the Minister in the applicable policy statement.*

51. Man O'War appealed the High Court decision to the Court of Appeal and that Court upheld the decision of the lower courts in relation to the application of ONLs post *King Salmon*.

Key findings

52. The key finding in this case is that defining and mapping ONLs is to be done not by reference to the protection the area defined and mapped will receive (and therefore the limitation placed on development within the ONL) but by reference to the objective values the area concerned has. In short, *King Salmon* has not changed the way in which defining and mapping should occur for ONL and other outstanding areas.

***New Zealand Transport Agency v Architectural Centre Incorporated [2015]***  
***NZHC 1991***

53. This case was an appeal to the High Court from a Board of Inquiry decision not to approve a notice of requirement that would have allowed a bridge over the Basin Reserve in Wellington. The *King Salmon* decision was released part way through the hearing. The High Court noted that while the decision did not concern notices of requirement, the discussion of Part 2 and the overall judgment were relevant. The key consideration for the High Court was whether the *King Salmon* findings had any relevance to notices of requirement.
54. One of the issues for the Court was what the phrase ‘having particular regard to’ means. The High Court was guided by the Supreme Court discussion of this matter in the context of ‘giving effect to’ in that the phrase ‘have regard to’ is a lesser requirement than giving effect to.
55. The remaining issue was considering what the words ‘subject to Part 2’ meant and what the relevance of ‘overall judgment’ is in the context of notices of requirement. Again guided by *King Salmon* the High Court held that the Basin Reserve Board clearly understood the difference between the matters under consideration before it and the matters under consideration before the Supreme Court. In short, as this was a notice of requirement expressly subject to Part 2, then consideration of Part 2 matters was completely appropriate.

Key findings

56. The Basin Reserve case found (without saying so in so many words) that decisions on notices of requirement are subject to Part 2.

***Gallagher v Tasman District Council [2014] NZEnvC 245***

57. Mr and Mrs Gallagher appealed a decision of the Tasman District Council in respect of Plan Change 22 to the Tasman Resource Management Plan. This plan change sought to impose controls on subdivision and development of land situated in the Mapua/Ruby Bay area.
58. In deciding on whether the plan change gives effect to the NZCPS the Court noted that if there is a requirement to ‘give effect’ to something, as long as it is ‘specific’, then it gives more direction than a requirement to give effect to a policy even if it is considered a higher level document when the two things are looked at separately.
59. As noted by *King Salmon* the more specific and directive the clearer the obligation to give effect of implement the provisions.

Key findings

60. This case was a policy development case and is authority for the point in *King Salmon* that the more specific and directive a provision then the clearer the obligation to give effect to it is.

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

61. The appeal concerned a private plan change that was proposing residential development between Wanaka and Clutha.
62. The Court considered the position post *King Salmon* in relation to looking at the hierarchy of documents and the application of Part 2 as follows:

*The recent decision of the Supreme Court in EDS v NZ King Salmon sets out an amended - and simpler - approach to assessing plan changes under the second set of obligations in sections 74 and 75. The principle in EDS v NZ King Salmon is that if higher order documents in the statutory hierarchy existed when the plan was prepared then each of those statutory documents is particularised in the lower document. It appears that there is, in effect, a rebuttable presumption that each higher document has been given effect to or had regard to (or whatever the relevant requirement is). Thus there is no necessity to refer back to any higher document when determining a plan change provided that the plan is sufficiently certain, and neither incomplete nor invalid.<sup>6</sup>*

63. The Court went onto to say:

*The Supreme Court makes it clear that, absent invalidity, incomplete coverage or uncertainty of meaning in the intervening statutory documents, there is usually no need to look at Part 2 of the RMA, at least on a plan change.<sup>7</sup>*

64. The Court is therefore endorsing and applying the Supreme Court's approach to assessing plans and policies in the context of plans and changes to plans at the local authority level.

Key findings

65. The key finding in this case, which related to policy and plan development is that resort to Part 2 is not necessary except where one of the exceptions set out in *King Salmon* apply.

***Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council [2015] NZEnvC 50***

66. This appeal concerned a change to the Hawke's Bay Regional Plan to give effect to the National Policy Statement Freshwater Management ('**NPSFM**'). The Court cited *King Salmon* in relation to the hierarchy of documents as follows:

*[16] Since the Supreme Court judgment in EDS v NZ King Salmon Co Ltd [2014] NZRMA 195 there has been an increased awareness of the need to consider the hierarchy of planning documents, and the degree of control those documents have over the required or permissible contents of the documents ranking below them. Plainly, the senior document is the RMA, and immediately below that are the National Policy Statements (NPS). In this case, this is the NPSFM which came into force on 1 August 2014 and, with some transitional provisions, revoked the 2011 version from that date. In its own terms the NPSFM speaks of being applicable to Regional Plans, and makes no mention of Regional Policy Statements. Why that is so, we do not know, because s62(3) RMA makes it perfectly clear that a Regional Policy Statement must give effect to an NPS.*

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<sup>6</sup> At paragraph [43].

<sup>7</sup> At paragraph [45].

*[17] Also, going up the chain rather than down, a Regional Plan must give effect to both an NPS and to a Regional Policy Statement, so it would make no sense to have a Regional Policy Statement that did not give effect to an NPS.*

### Key findings

67. The case involved the application of King Salmon in the context of another national policy statement (the NPSFM). The case confirmed the hierarchy of documents as set out in the *King Salmon* case and the importance of the document down the chain giving effect to a document further up the chain.

### ***R J Davidson v Marlborough District Council [2016] NZEnvC 81***

68. This appeal concerned a mussel farm in Beatrix Bay in the Pelorus Sound so was a resource consent matter. The majority of the Environment Court held:

*[263] Whether that process can still be called an "overall broad judgment" is open to some doubt. The breadth of the judgment depends on the following matters in the district or regional plan:*

- *the status of the activity for which consent is applied;*
- *the particularity (or lack of it) in the relevant objectives and policies about*
- *the effects of the activity; and*
- *the existence of any uncertainty, incompleteness or illegality (in those plans or in any higher order instruments).*

69. What the Court held was that applying discretionary judgment in the context of this application for a resource consent depends on the policy framework that the activity sits within.

70. This aspect and others were the subject of an unsuccessful appeal to the High Court ([2017] NZHC 52). In relation to the application of Part 2 to resource consents. The High Court found:

*[76] I find that the reasoning in King Salmon does apply to s 104(1) because the relevant provisions of the planning documents, which include the NZCPS, have already given substance to the principles in Part 2. Where, however, as the Supreme Court held, there has been invalidity, incomplete coverage or uncertainty of meaning within the planning documents, resort to Part 2 should then occur.*

*[77] I also consider that the Environment Court's decision was consistent with King Salmon and the majority correctly applied it to the different context of s 104. I accept Council's submission that it would be inconsistent with the scheme of the RMA and King Salmon to allow Regional or District Plans to be rendered ineffective by general recourse to Part 2 in deciding resource consent applications. It could result in decision-makers being more restrained when making district plans, applying the King Salmon approach, than they would when determining resource consent applications.*

71. In terms of the inconsistency with the Basin Reserve case the High Court simply noted:

[67] *The Environment Court did not apply Basin Bridge as it was inconsistent with King Salmon. To consider the appellant's argument, it is appropriate to consider the Supreme Court's judgment in King Salmon and its applicability to this proceeding.*

#### Key findings

72. The application of the overall judgment and resort to Part 2 in the context of resource consents is becoming clearer but there are still conflicting cases regarding whether it applies or not. It is of note that leave to appeal the High Court decision to the Court of Appeal in *Davidson* has been sought but not granted. Therefore, it is likely that the Courts will address this again in the near future.

### **Application of the findings in practice**

73. As noted in the case law that has been developing since the Supreme Court decision the context to the *King Salmon* decision is an important consideration in terms of how the decision applies to other situations.
74. While the Supreme Court made determinations about the meaning of some words (avoid and appropriate) and determined that policies 13 and 15 of the NZCPS operate like bottom lines, the decision is still very much based on the factual situation it was dealing with. This factual situation included the finding of the Board that the Papatua salmon farm would have high to very high adverse effects on natural character and outstanding natural landscapes.
75. While some commentators consider that the *King Salmon* decision has resulted in a fundamental shift in the way in which the NZCPS ought to be applied this is not the case as a matter of law. It has always been the case that plans and policies should be interpreted in the way the Supreme Court has ruled. The difficulty is that with the early introduction of the concept of the overall judgment the drafting of provisions has not been done with the level of precision and clarity that the Supreme Court has considered in the context of the NZCPS. For this reason the *King Salmon* case will have implications in cases where the wording of provisions while clear on their face do not actually say what they are meant to say.

### ***Policy and plan making matters involving the application of the NZCPS***

76. Clearly the findings of the Supreme Court are directly relevant to policy and plan making involving the application of the NZCPS and this has been confirmed in subsequent case law. For policy and plan making involving the application of the NZCPS the following matters are considered:
- (a) The importance of identification of the extent of the coastal environment;
  - (b) Taking care when identifying areas of high/outstanding values; and
  - (c) Drafting RPS and plan provisions with precision and clarity.

### ***Identification of the extent of the coastal environment***

77. RPSs and/or plans must identify areas of natural character, and natural features and natural landscapes, in the coastal environment.
78. The first step in identifying these areas is to define the extent and characteristics of the coastal environment, particularly the inland extent of the coastal environment, as this (including the coastal marine area) is where policies 13 and 15 of the NZCPS apply.
79. Identifying too extensive an area may have unintended consequences for the implementation of NZCPS objectives and policies, although the strong direction of these NZCPS policies should not be used to justify an unreasonably restrictive extent.
80. Policy 1 of the NZCPS addresses this, however, it may be helpful for further guidance to assist in relation to the varying nature of coastal environments and the need to not only preserve naturalness but also allow for development in appropriate cases.

### ***Identification of Areas with High/Outstanding Values***

81. The Supreme Court found that the 2010 NZCPS has a plain and strong policy direction relating to areas of natural character, features and landscapes in the coastal environment:
  - Policies 13(1)(a) and 15(a) – avoid adverse effects of activities on natural character in areas with outstanding natural character; and on outstanding natural features and landscapes;
  - Policy 13(1)(b) and 15(b) – avoid significant adverse effects of activities on natural character in all other areas; and all other natural features and landscapes.
82. With the policies using the word avoid, the Court has held this to mean prevent the occurrence of – i.e. no adverse effects can occur. This means that areas of outstanding natural character, features and landscapes in the coastal environment may need to be treated differently in RPSs and plans, compared with those away from the coastal environment.
83. When identifying these areas, a careful and clear approach and a strong methodology for identification and mapping is required. Within the coastal environment, policy makers need to be aware of the implications of the NZCPS policies for areas identified as outstanding, and the level of protection that must be afforded to them to give effect to the NZCPS. The Supreme Court observed that the classification of such areas as outstanding will not be the norm.<sup>8</sup> However, where an area does justify this identification, the strong direction of the NZCPS policies should not be used to adopt an even higher threshold in the coastal environment than would normally apply, such as ‘unique’.

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<sup>8</sup> At [131].

84. In giving effect to policies 13 and 15, when identifying areas of natural character, features and landscapes, it is important to address and document the following:
- What are the characteristics, attributes, elements that contribute to an area being identified as having outstanding natural character or being an outstanding natural feature or landscape – what are their key/outstanding values?
  - What changes to these characteristics, attributes, elements would (or would not) adversely affect their key values, and why?
  - Where already modified environments are identified as having outstanding values, do the existing modifications / activities contribute to, or adversely affect, these values; and:
    - (a) can they continue to be accommodated, maintained, upgraded, be further modified,
    - (b) can consenting of existing activities with finite consent terms be provided for (such as in the coastal marine area), whilst avoiding adverse effects on the identified outstanding values?

#### ***Formulation of RPS/Plan Provisions***

85. Clearly and systematically addressing and defining the above matters can provide the context for the RPS and/or plan policies, zoning and rules. As the Supreme Court noted, the adverse effects to be avoided relate to this context – what characteristics of an area contribute to its outstanding natural character or to its being identified as an outstanding natural feature or landscape, and which therefore require protection from adverse effects (and conversely which do not)? Similarly, what subdivision, use and development is inappropriate will also relate to this context.
86. Giving effect to the ‘avoid adverse effects’ requirements of policies 13 and 15 will be assisted where:
- This context is clearly stated in formulating RPSs and/or plans;
  - Policies are formulated that are specific to the characteristics / values of each area that need to be protected, the relevant adverse effects that need to be avoided, and what activities are inappropriate; and
  - The zoning and rules reflect these policies.
87. The Supreme Court noted that developments with minor or transitory adverse effects may be considered appropriate – those with minor effects or those which enhance values may be able to be provided for. Another way of looking at this can be derived from this contextual evaluation – what effects are of concern for the outstanding values identified for each area – and what effects will not be adverse to, or even enhancing of, those values.

### ***What does this mean in practice***

88. In practical terms what the decision does mean is that there is a very tough threshold to meet for any policies and rules which would enable activities to be located in areas with high/outstanding value.
89. As described above, each natural character area and landscape has its own set of characteristics/values that may result in it being identified as outstanding.
90. The decision highlights the need to be very careful with mapping and terminology. Councils should have a clear and strong methodology for their identification and mapping. This should lead to well-defined statements of the characteristics/values of each area that needs to be protected, the relevant adverse effects to be avoided, and what activities are inappropriate. The policies, zoning and rules in RPSs and plans should clearly reflect this context.
91. Determining that an area has outstanding natural character or landscape values will mean that the protection of those values will trump other policies in the NZCPS, e.g. policies 6, 8 and 9.

### ***Policy and plan making matters involving the application of other NPSs***

92. The specific findings of the Supreme Court may be relevant to policy and plan making involving the application of other NPSs depending on the nature of the wording of those NPSs. This has been confirmed in case law<sup>9</sup>.
93. The NPSFM has one provision that uses the word ‘avoid’ in any absolute sense and this is in Objective B2 that states ‘*To avoid any further over-allocation of fresh water and phase out existing over-allocation.*’<sup>10</sup> It is clear from the context of this objective that avoiding further over-allocation of fresh water in over-allocated catchments is to be prevented and regional policies that do not achieve this objective would not be giving effect to the NPS. The NPSFM contains a National Objectives Framework that sets out the national values for freshwater and requires regional councils to follow certain processes in applying these values at the regional level. The framework also provides a series of attributes which are intended to operate as national bottom lines allowing for flexibility to go below the bottom lines in certain circumstances<sup>11</sup>.
94. The NPSs on **Electricity Transmission** and **Renewable Energy Generation** are enabling of the matters they relate to. The primary provisions in those NPS’s do not focus on avoiding adverse effects on the environment per se but rather on providing a more positive national development framework for nationally significant infrastructure. However, both these NPSs include provisions with directive wording, giving strong directions to councils to provide for renewable electricity generation and the National Grid. They both also require decision-makers, to the extent reasonably possible, to avoid reverse sensitivity effects on these national resources. The Supreme Court’s decision will mean that these directives cannot be trumped lightly.

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<sup>9</sup> *Ngati Kahungunu Iwi Inc v Hawke’s Bay Regional Council* [2015] NZEnvC 50.

<sup>10</sup> Note this objective is unchanged from the 2011 NPS.

<sup>11</sup> See Policy CA4.

95. The implications of the application of the *King Salmon* decision on these other NPSs very much depends on the wording of the objectives and policies adopted by councils in the lower order RPSs, regional and district plans

### ***Policy and plan making generally***

96. For planning practice, there is much that is positive about the approach taken by the Supreme Court. The Court's decision (albeit based on the factual situation it was dealing with) reinforces:
- The hierarchy of planning documents required under the RMA and the importance of the higher level documents in directing those that must follow them;
  - That the planning documents are intentional documents and mean what they say;
  - That language is important, and wording (and differences in wording) does matter;
  - The need to be precise and careful with words, to create certainty of meaning;
  - That policies, even in higher level documents, can be strong and directive, and then need to be implemented as such;
  - That reconciling the potential for conflicts between different provisions of a planning document is important.
97. In relation to Part 2 of the RMA, the Court's decision means that where planning documents are established (have gone through their formulation process), they are assumed to be in accordance with Part 2.<sup>12</sup> There would appear to be less need (or no need) to go back to consider Part 2 in RPS/plan preparation (or for resource consents) where the document(s) higher in the hierarchy are established and address the relevant issues. The focus can then be on the wording of the relevant documents in the hierarchy and on giving effect to them. Similarly, lower level planning documents can generally be assumed to have given effect to those higher in the hierarchy (e.g. an RPS can be assumed to have given effect to the relevant NPS in the formulation of a plan). The planning documents can then concentrate on giving substance to the provisions of the next level up in the hierarchy. Case law since *King Salmon* has confirmed this approach.
98. The Supreme Court noted that although sections 6(a) and (b) of the RMA do not give primacy to preservation or protection within the concept of sustainable management, this does not mean that a particular planning document may not give primacy to preservation or protection in particular circumstances<sup>13</sup>. The provisions of an RPS or plan cannot, therefore, be challenged just because they go beyond the 'inappropriate' qualifier in ss6(a) and (b), and give full priority to protection or preservation, as the NZCPS does not provide for adverse effects in areas of outstanding natural character, features or landscapes.

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<sup>12</sup> This could also extend to provisions (objectives) in established planning documents being assumed to be the most appropriate way to achieve the purpose of the Act (s 32(1)(a)).

<sup>13</sup> At [149].

99. The specific findings of the Supreme Court are likely to be relevant to policy and plan making generally, where the wording of higher order policies (such as may be found in other NPSs or RPSs) is directive, triggering a similar interpretation to that in *King Salmon*. See below for a discussion on case law interpretations of this matter.
100. The Court has said the higher the value given to something, the higher the level of protection it ought to benefit from. So if the Minister (in an NPS) or a council (in an RPS) has identified certain areas as having certain values and directs that adverse effects on those values are to be avoided in those areas, then the lower order documents that follow must give effect to this policy direction and essentially prevent (i.e. prohibit) activities that would have adverse effects on those values.

### ***RPS and Plan making matters***

101. The direct outcome from the Supreme Court decision is a move away from an overall judgment approach to the implementation of provisions in higher order planning documents, when giving effect to them. These documents now need to be written in the knowledge that there will be no reverting to the uncertainty (or flexibility) of the previous overall judgment approach when they come to be implemented. Subsequent case law has confirmed this approach.
102. The Court's decision supports the importance of certainty in planning documents, or at least clarity. A disciplined focus is required to create clear policy direction, to define what outcomes are sought and what adverse effects or inappropriate activities are to be avoided, where, and under what circumstances. This does not mean that there can be no flexibility in RPS and plan provisions, however, the flexibility itself needs to be specifically determined and clearly applied – what provisions (and therefore outcomes) can be flexible in their implementation (with resulting in uncertainty) and what is to be directive?
103. The inability to deal with specific circumstances flexibly, as and when they arise, may result in a reluctance to use directive terms in higher level planning documents. There is potential for wider use of qualifiers to such policies, for example, '*as far as practicable*', '*where appropriate*'. However, for any such qualifiers, good policy writing demands that the context for application of the qualifier is clear, directing the policy maker to define what flexibility is available and under what circumstances it should be applied.
104. The Supreme Court undertook a detailed analysis of the relevant NZCPS objectives and policies, in order to reconcile apparent conflict. The Court emphasised the importance of undertaking such a reconciliation for any differences in policy/planning provisions. It stated that there should be infrequent occurrences of policies pulling in different directions, and effort should be made to avoid this. Apparent conflict between particular policies should dissolve if close attention is paid to the way in which the policies are expressed. This would apply to both the preparation and the interpretation of policies.
105. One implication relates to the tendency to prepare 'Chapter-based' RPSs and plans, where each topic is covered in a separate chapter, with any conflicts between the policies in different chapters being worked through in an overall judgment, potentially referring back to Part 2. An example could be potentially conflicting provisions in RPS chapters on natural character and landscapes, and on infrastructure, when considering how to give

effect to the RPS in the utilities provisions of a district plan. Without reverting to an overall judgment approach, an enabling policy in relation to infrastructure may well not be able to be implemented in a way that over-rides a more specific avoidance policy regarding adverse effects on high/outstanding natural character or landscape values. This may lead to RPSs and plans being more complex in structure, with exceptions stated or allowable adverse effects (or activities) defined throughout the chapters, qualifying any avoidance policies.

106. However, none of this is really new, and in relation to RPS and plan making, the Court's decision acts to strengthen the focus on good policy and plan making practice.

### ***Resource Consents (and notices of requirement)***

107. High Court case law is not consistent on the applicability of *King Salmon* to resource consents (and notices of requirement). In *R J Davidson* the High Court held that *King Salmon* is applicable to resource consents. However in *New Zealand Transport Agency v Architectural Centre Incorporated* the High Court held that *King Salmon* is not applicable to the consideration of notices of requirement (and by implication resource consents) due to the differing statutory test 'subject to Part 2'. Further case law is likely to develop that hopefully addresses this inconsistency. Whether the High Court in *R J Davidson* is correct or not the point to take from the case is that resource consents are affected by *King Salmon* due to the way in which the Court's findings affect the policy and plan making functions of councils. This in turn will filter down into the activity status for developments and have a direct impact on what can and cannot occur in certain locations (as noted in the *R J Davidson* case).
108. In addition many of the broader principles applied by the Court in *King Salmon* will also apply to consideration of resource consents:
- Words mean what they plainly say – language is important, as are differences in wording;
  - Prescriptive policies should be awarded more weight than flexible ones;
  - A thorough attempt should be made to reconcile apparent conflicts between policies, so as to minimise interpretation of policies as pulling in different directions;
  - Careful consideration should be given to any remaining conflicts between policies and appropriate weighting determined for differing policies.
109. Where a plan's provisions are settled, clear and direct in relation to the relevant matters, and have been prepared in a way that specifically gives effect to the relevant provisions of the higher order planning documents, there would appear to be no need (or less need) to consider Part 2 for resource consents. Irrespective of the requirement in s104 for consideration to be subject to Part 2, where plan provisions are settled and relevant, and have been tested in relation to the higher order planning documents (including Part 2), the focus should be on consideration of the particular plan provisions and the reconciliation or weighting of the direction provided by those provisions. This is the case unless the exceptions of invalidity, uncertainty or not covering the field apply.

## Conclusion

110. The Supreme Court decision in *King Salmon* has been noted and followed in a number of cases involving both policies and plans and resource consents and notices of requirement. While this case law is still developing there is no hint so far that the courts are likely to find that the *King Salmon* decision can be distinguished in any substantive way due to the clear findings it made on the myriad of issues it traversed relevant to resource management decision-making.
111. In terms of the review of the NZCPS there are two overall issues to take into account:
  - (a) Does the NZCPS say what it means, protect what it intends to protect, and enable what it intends to enable?
  - (b) Does the guidance material need amending to assist those developing policies and plans to apply the *King Salmon* finding during the development of these.

## Appendix 1: The Supreme Court decision

112. On 17 April 2014 the Supreme Court released its decisions on two appeals in relation to New Zealand King Salmon's proposals to establish salmon farms in the Marlborough Sounds. The decision of the Supreme Court was by majority, but reference is made in this review to the dissenting judgment of William Young J.

### *The application by King Salmon*

113. The basis of the proceedings began when King Salmon proposed to establish and operate nine additional salmon farms to the six it already operated in the Marlborough Sounds.
114. At eight of the proposed sites King Salmon sought to change the current activity status of marine farming from prohibited to discretionary and lodged concurrent resource consent applications. The ninth site was not within an existing prohibited activity status area and resource consent only was sought for this site as a discretionary activity.
115. Ultimately, after exploring other decision-making avenues, King Salmon applied via the national consenting route to be heard by a Ministerial appointed Board of Inquiry ('**Board**').

### *An overview of the Board's findings*

116. In relation to the proposed salmon farm location that was the subject of the key aspect of the Supreme Court's decision, the Board<sup>14</sup> found that this site (the Papatua salmon farm) would have high to very high adverse effects on the natural character and landscape of that location and as a consequence policies 13(1)(a) and 15(a) of the NZCPS would not be given effect to. Despite that finding the Board approved the Papatua plan change application because, applying an overall broad judgment pursuant to Part 2 of the RMA, the Board considered that the proposal would be appropriate and achieved the RMA's purpose.
117. Ultimately the Board approved four of the eight plan changes and granted resource consent for those sites. The Board declined the remaining ninth resource consent application.
118. The Board's decision was appealed to the High Court by Sustain Our Sounds and the Environmental Defence Society ('**EDS**'). This review is concerned with the EDS appeal.

### *The nature of the EDS appeal*

119. EDS was opposed to the Papatua location because it was in an outstanding landscape and natural landscape area. In addition, EDS argued that the Board had misapplied the NZCPS and had not considered alternatives in relation to two of the sites.
120. The High Court dismissed the appeal agreeing with the Board.<sup>15</sup>

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<sup>14</sup> Board of Inquiry, *New Zealand King Salmon Requests for Plan Changes and Applications for Resource Consents*, 22 February 2013 [King Salmon (Board)].

<sup>15</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2013] NZHC 1992.

121. EDS sought, and received, leave to appeal directly to the Supreme Court. The questions in front of the Supreme Court were:

- Whether the NZCPS has standards or policies which must be complied with in relation to outstanding coastal landscape and natural character areas and, if so, did the Papatua Plan Change comply with s67(3)(b) RMA even though it did not give effect to NZCPS Policies 13 and 15;
- Whether the Board gave effect to the NZCPS in coming to a balanced judgment; and
- Whether the Board was obliged to consider alternative sites because the plan change was located in an outstanding natural landscape or outstanding natural character area.<sup>16</sup>

***The Supreme Court's overview of the operation of the RMA in policy and plan making***

122. Prior to considering the specific questions posed by EDS the Supreme Court provides a 'very brief' overview of the RMA. This overview provides a useful insight into the analysis behind the Court's key findings. The key points made in this overview are:

- (a) There is a three tiered management system – national, regional and district;
- (b) A hierarchy of planning documents is established at the national, regional and district levels;
- (c) The scheme of the RMA moves from the general to the specific. As one goes down the hierarchy of documents greater specificity is provided both as to substantive content and to locality, in the following manner:
  - i. Part 2 sets out and amplifies the core principle, sustainable management of natural and physical resources;
  - ii. National policy statements (including the NZCPS) set out objectives and identify policies to achieve those objectives from a national perspective;
  - iii. Regional policy statements identify objectives, policies and (perhaps) methods in relation to particular regions;
  - iv. Rules are by definition found in regional and district plans, which must also identify objectives and policies and may identify methods;
- (d) The RMA requires the various planning documents be prepared through structured processes, and that these provide considerable opportunities for public consultation.

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<sup>16</sup> This matter is not covered in this think piece.

## **Key findings**

### *The meaning of 'sustainable management' in section 5*

123. The Supreme Court made four points about the definition of sustainable management:

- It is broadly framed – s5 is a guiding principle which is intended to be followed by those performing functions under the RMA rather than a prescriptive provision subject to literal interpretation;
- In the sequence of 'avoiding, remedying or mitigating':
  - (a) 'avoiding' means 'not allowing' or 'preventing the occurrence of'.
  - (b) 'Remedying' and 'mitigating' indicate that developments which might have adverse effects on particular sites can nonetheless be permitted if those effects are mitigated and/or remedied.
- The word 'while' does not mean that the definition of section 5 has two distinct parts. The definition must be read as an integrated whole meaning that the matters listed in subparagraphs (a), (b) and (c) must be observed in the course of the management referred to in the opening part of the definition. The 'while' means 'at the same time as'.
- The word 'protection' in the phrase 'use, development and protection of natural and physical resources' and the use of the word 'avoiding' in sub-para (c) indicate that s5(2) contemplates that particular environments may need to be protected from the adverse effects of activities in order to implement the policy of sustainable management – sustainable management involves protection as well as use and development.
- Sections 6, 7 and 8 supplement s5 by stating the particular obligations of those administering the RMA in relation to the various matters identified.

### *The interrelationship between the various objectives and policies in the NZCPS*

124. Of the seven objectives and 29 policies in the NZCPS the Supreme Court focused on two objectives (2 (preservation and protection) and 6 (enabling wellbeing)) and four policies (7 (strategic planning); 8 (aquaculture); 13 (preservation of natural character) and 15 (natural features and landscapes)).

125. In relation to Objective 2, first, it is concerned with preservation and protection of natural character, features and landscapes. Secondly, it contemplates that this will be achieved by articulating the elements of natural character, features and landscapes, and identifying areas (in the next order of planning documents) which possess such character, features or landscapes. Thirdly, the objective contemplates that some of the areas identified may require protection from 'inappropriate' subdivision, use and development.

126. Objective 6 recognises that some developments which are important to people’s social, economic and cultural well-being can only occur in coastal environments. Secondly, the objective refers to use and development not being precluded ‘in appropriate places and forms’ and ‘within appropriate limits’. In other words there will be places that are ‘appropriate for development and others that are not. Thirdly, the objective reinforces the point that one of the components of sustainable management is the protection and/or preservation of deserving areas.
127. In relation to Policy 7 this requires a regional council to look at its region as a whole in formulating a regional policy statement (‘RPS’) or plan. What is ‘inappropriate’ is to be assessed against the nature of the particular area under consideration in the context of the region as a whole.
128. Policy 8 requires regional councils to recognise aquaculture’s potential by including in RPSs and plans provision for aquaculture ‘in appropriate places’ in the coastal environment.
129. Policies 13 and 15 are policies of avoiding adverse effects of activities on natural character in areas of outstanding natural character and on outstanding features and outstanding natural landscapes in the coastal environment. The obligations imposed by these policies vary depending on the nature of the area at issue. Areas which are ‘outstanding’ receive the greatest protection – the requirement to ‘avoid adverse effects’. Areas that are not ‘outstanding’ receive less protection – to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects.

***Relationship between Part 2 and requirement to ‘give effect to’ the NZCPS***

130. The Supreme Court (referring to the Environment Court in *Clevedon Cares v Manukau City Council*<sup>17</sup>) states that ‘give effect to’ simply means ‘implement’. It is a strong directive creating a firm obligation on those subject to it.
131. The Court noted that the implementation of such a strong directive will be affected by what it relates to, that is, what must be given effect to:

*A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.*<sup>18</sup>

132. The Board’s approach in determining whether the NZCPS had been given effect to in determining a regional plan change application was dependent on an overall judgment reached after consideration of all relevant circumstances. The Supreme Court held that the effect of the Board’s view is that:

*... the NZCPS is essentially a listing of potentially relevant considerations, which will have varying weight in different fact situations.*<sup>19</sup>

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<sup>17</sup> *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211.

<sup>18</sup> See n 2 at [80].

<sup>19</sup> *Ibid* at [83].

133. The Supreme Court also noted that the Board ultimately determined the applications by King Salmon not by reference to the NZCPS but by reference to Part 2 due to the language in s66(1) (namely that plans must be in accordance with Part 2). The Supreme Court held that the Board was incorrect in its interpretation of the RMA because:

*... the NZCPS gives substance to pt 2's provisions in relation to the coastal environment. In principle, by giving effect to the NZCPS, a regional council is necessarily acting "in accordance with" pt 2 and there is no need to refer back to the part when determining a plan change. ...*

*... we think it implausible that Parliament intended that the ultimate determinant of an application such as the present would be pt 2 and not the NZCPS. The more plausible view is that Parliament considered that pt 2 would be implemented if effect was given to the NZCPS.*

*National policy statements such as the NZCPS allow Ministers a measure of control over decisions by regional and district councils. Accordingly, it is difficult to see why the RMA would require regional councils, as a matter of course, to go beyond the NZCPS, and back to pt 2, when formulating or changing a regional coastal plan which must give effect to the NZCPS. The danger of such an approach is that pt 2 may be seen as "trumping" the NZCPS rather than the NZCPS being the mechanism by which pt 2 is given effect in relation to the coastal environment.<sup>20</sup>*

134. The Court acknowledged that there may be circumstances when resorting to Part 2 may be necessary:

- If any part or the whole of the NZCPS was asserted to be invalid that issue would need to be resolved before it could be determined whether there was a requirement to give effect to it.
- If the NZCPS did not provide complete coverage of the matter concerned, a decision maker may have to consider whether Part 2 provides assistance in dealing with the matters not covered.
- If there is uncertainty of meaning of provisions, reference to Part 2 may be justified to assist in a 'purposive interpretation'.

135. In the case before it the Supreme Court concluded:

*... it is difficult to see that resort to pt 2 is either necessary or helpful in order to interpret the policies, or the NZCPS more generally, absent any allegation of invalidity, incomplete coverage or uncertainty of meaning. The notion that decision-makers are entitled to decline to implement aspects of the NZCPS if they consider that appropriate in the circumstances does not fit readily into the hierarchical scheme of the RMA.<sup>21</sup>*

136. In short:

*...The requirement to "give effect to" the NZCPS is intended to constrain decision makers.<sup>22</sup>*

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<sup>20</sup> Ibid at [85]-[86].

<sup>21</sup> Ibid at [90].

<sup>22</sup> Ibid at [91].

### ***Meaning of ‘avoid’***

137. The Supreme Court was considering the meaning of the word ‘avoid’ as it is used in s5(2)(c) and in the relevant provisions of the NZCPS and held that ‘avoid’ has its ordinary meaning of ‘not allow’ or ‘prevent the occurrence of’. The Court notes that ‘avoid’ must be considered against the background of the particular goals that the avoidance is the means to achieve; in this case the goals stated in policies 13 and 15<sup>23</sup>.
138. Whether ‘avoid’ (in the sense of ‘not allow’ or ‘prevent the occurrence of’) bites depends upon whether the overall judgment approach or the environmental bottom line approach is adopted as follows:
- Under the overall judgment approach a policy direction to avoid adverse effects is simply one of a number of relevant factors to be considered by the decision maker, albeit that it may be entitled to great weight;
  - Under the environmental bottom line approach it has greater force.

### ***Meaning of ‘inappropriate’***

139. The Court noted that the scope of the words ‘appropriate’ and ‘inappropriate’ is heavily affected by context:

*When the term “inappropriate” is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that “inappropriateness” should be assessed by reference to what it is that is sought to be protected.*<sup>24</sup>

140. The Court concluded that a planning instrument which provides that any subdivision, use or development that adversely effects an area of outstanding natural attributes is inappropriate would be consistent with the requirement in s6(b) of the Act.<sup>25</sup>

### ***What does ‘avoid adverse effects’ mean?***

141. In response to the criticism (in the minority decision<sup>26</sup>) that the majority’s interpretation of policies 13 and 15 will have an over-broad reach the Court stated:

*The definition of “effect” in s 3 is broad. It applies “unless the context otherwise requires”. So the question becomes, what is meant by the words “avoid adverse effects” in policies 13(1)(a) and 15(a)? This must be assessed against the opening words of each policy. Taking policy 13 by way of example, its opening words are: “To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development”. Policy 13(1)(a) (“avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character”) relates back to the overall*

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<sup>23</sup> At [93].

<sup>24</sup> Ibid at [101].

<sup>25</sup> Ibid and also at [149] ‘We see this language as underscoring the point that preservation and protection of the environment is an element of sustainable management of natural and physical resources. Sections 6(a) and (b) are intended to make it clear that those implementing the RMA must take steps to implement that protective element of sustainable management.’

<sup>26</sup> Dissenting judgment of William Young J at [175]-[205].

*policy stated in the opening words. It is improbable that it would be necessary to prohibit an activity that has a minor or transitory effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding. Moreover, some uses or developments may enhance the natural character of an area.*<sup>27</sup>

142. Therefore, the Court appears to be suggesting that some activities with minor or transitory effects would not fall foul of the absolute requirement to avoid adverse effects in areas of outstanding natural value, where their avoidance is not necessary (or relevant) to preserve the natural character of the coastal environment, or protect natural features and natural landscapes.

### **Overall judgment**

143. The Supreme Court briefly describes the history of the overall judgment and environmental bottom line approaches before noting the High Court upheld the overall judgment approach as the approach to be adopted.

144. The Court considered the following as being the steps a decision maker must go through when dealing with a plan change application:

- Identify those policies that are relevant, pay careful attention to the way that they are expressed and to the resolution of any apparent conflicts.
- Policies expressed in directive terms carry greater weight than those expressed in less directive terms – i.e. ‘avoid’ is stronger than ‘take account of’;
- Only if a conflict remains, after close attention to the way they are expressed, is there justification for determining that one policy prevails over another.

145. The Supreme Court sounded a note of caution in relation to the overall judgment approach:

*A danger of the “overall judgment” approach is that decision-makers may conclude too readily that there is a conflict between particular policies and prefer one over another, rather than making a thoroughgoing attempt to find a way to reconcile them.*<sup>28</sup>

146. In the context of the matter before them the Court held that there is no insurmountable conflict between policy 8 and policies 13(1)(a) and 15(a). The latter policies provide protections against adverse effects of development in particularly limited areas of the coastal region. The former recognises the need for sufficient provision of salmon farming in areas suitable for salmon farming – against a background that salmon farming cannot occur in the outstanding areas if it will have an adverse effect on the outstanding qualities of the area. In short, the policies do not conflict.

147. The Court held that policies 13(1)(a) and (b) and 15(a) and (b) of the NZCPS do provide something in the nature of a bottom line and that this is consistent with the definition of sustainable management in s5(2) which contemplates protection as well as use and development.

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<sup>27</sup> At [145].

<sup>28</sup> At [131].

148. In summary, the Court found that it was inappropriate to adopt the overall judgment approach in relation to the implementation of the NZCPS because:

- It is inconsistent with the elaborate process that is required to be undertaken before a NZCPS can be issued;
- It creates uncertainty – if there is no bottom line and development is possible in any coastal areas no matter how outstanding there is no certainty of outcome<sup>29</sup>. The findings summarised above in respect of the relationship between Part 2 generally and the NZCPS is one area in which the application of the overall broad judgment approach is narrowed by the Supreme Court;
- It has the potential to undermine the strategic, region wide approach that the NZCPS requires regional councils to take to planning. It would allow the possibility of development having adverse effects on outstanding landscapes being permitted without a full assessment of the overall effect of the various developments on the outstanding areas within the region as a whole.

149. As noted above but repeated here due to its importance in practical terms, in answer to criticisms that the approach the Court was adopting will have implications for any development in outstanding areas the Court dismissed these saying:

*So the question becomes, what is meant by the words “avoid adverse effects” in policies 13(1)(a) and 15(a)? ... It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding. Moreover, some uses of developments may enhance the natural character of an area.<sup>30</sup>*

### ***Conclusion on the overall judgment matter***

150. In conclusion the Supreme Court found:

- (a) That the Board accepted that the proposed plan change in relation to Papatua would have high adverse effects on an area of outstanding natural character and landscape, so that the direction in policies 13(1)(a) and 15(a) of the NZCPS would not be given effect to if the plan change were to be granted.
- (b) That the Board was obliged to deal with the application in terms of the NZCPS and given the Board’s findings in relation to policies 13(1)(a) and 15(a) the plan change should not have been granted.
- (c) The NZCPS requires a whole of region approach and recognises that because the proportion of the coastal marine area under formal protection is small management under the RMA is an important means by which the natural resource of the coastal marine area can be protected.

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<sup>29</sup> In this regard the Court refers to the EC case of *Port Gore Marine Farms v Marlborough District Council* [2012] NZEnvC 72 where an application to renew consents for mussel farms in the same part of the Sounds was declined.

<sup>30</sup> At [145].

## Part 2C: Effectiveness review of the NZCPS – Sector Group Workshops<sup>31</sup>

16<sup>th</sup> Dec 2016

Ten Sector Group Workshops were held in November 2016 in Auckland, Wellington and Blenheim. Participants included a wide range of industry groups (e.g. Federated Farmers, aquaculture, fishing), infrastructure organisations (e.g. Watercare, Port companies, airport companies, telecommunication companies, Infrastructure New Zealand, New Zealand Transport Agency), environmental groups (e.g. Environmental Defense Society, Forest and Bird), professional bodies (e.g. Resource Management Law Association, New Zealand Institute of Landscape Architects). Council staff also attended one of the Blenheim workshops. A list of Workshop invitees and participants is provided in Appendix 1.

### Summary of key views

The key views from the workshops held with sector groups (industry groups, user groups, environmental groups and professional bodies) can be summarised as follows:

- Workshop participants were of the view that because a number of regional policy statements (RPSs) and regional and district plans (Plans) are yet to be reviewed to 'give effect' to the New Zealand Coastal Policy Statement (NZCPS) 2010 or were currently going through the Schedule 1 process, it was somewhat difficult to determine the effectiveness of the NZCPS at this stage.
- The Supreme Court's 2014 decision on King Salmon (*King Salmon*) is seen as fundamentally changing the understanding of the NZCPS (and the Resource Management Act 1991(RMA)) and how its provisions are to be implemented. Participants described it as a change from applying a 'broad overall judgment' to one of establishing 'environmental bottom lines', particularly in relation to Policies 11—*Indigenous biological diversity*, 13—*Preservation of natural character* and 15—*Natural features and natural landscapes*, which include the directive to 'avoid' adverse effects.
- Participants noted that most of those RPSs and Plans that have been reviewed since the gazettal of the NZCPS 2010 were prepared and notified prior to the King Salmon decision in 2014. The outcome of RPS and Plan processes to consider (and amend) them through submissions/hearing/appeals processes in light of the *King Salmon* decision will better inform understanding of the effectiveness the NZCPS provisions.
- Participants also felt that until there is a common or agreed understanding of the NZCPS provisions it will be difficult to consistently implement them and determine how effective they are.

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<sup>31</sup> Prepared by Greg Hill, the independent facilitator of the Sector Group Workshops.

- The environmental groups in particular consider that it would be premature to change the NZCPS in light of the three bullet points above.
- The industry groups were 'generally comfortable' with the NZCPS provisions prior to the King Salmon decision, but consider that the implications of that decision place undue constraints on what they consider to be appropriate subdivision, use and development, especially in the coastal marine area.
- The industry groups consider that the NZCPS should be amended to make it clear that it needs to be read 'subject to Part 2' of the RMA, and that the directive language in Policies 11, 13 and 15 should be amended to include 'remedy' and 'mitigate' rather than only 'avoid'.
- There is a lack of clarity or agreement about what is an outstanding feature or landscape and area of outstanding natural character (Policies 11, 13 and 15). As part of this issue, participants noted a lack of nationally consistent and agreed criteria/factors and methodology for identifying and evaluating these areas.
- Participants were of the view that when outstanding features or landscapes and areas of outstanding natural character are identified in RPSs and Plans, their characteristics and qualities are not being sufficiently identified to make it clear what the values of these areas are and what effects are to be avoided. Consequently, it can be difficult to determine what is appropriate and inappropriate subdivision, use and development.
- Participants noted a lack of consistency of interpretation and implementation of the NZCPS by regional and district councils. To address this issue, greater national guidance and/or direction was requested to be better able to give effect to the NZCPS, particularly Policies 1—*Extent and characteristics of the coastal environment*, 11, 13 and 15.
- Participants considered that greater alignment and consistency should be provided across all national policy statements, and that this should be explicitly considered when developing new national policy statements.

## The King Salmon 'effect'

### *Overview of the issues*

Most participants at all of the workshops made it clear that the Supreme Court's 2014<sup>32</sup> decision on New Zealand King Salmon's marine farm applications in the Marlborough Sounds and subsequent case law have affected the interpretation and implementation of the New Zealand Coastal Policy Statement (NZCPS) 2010. This was in terms of both plan making and resource consents under the Resource Management Act 1991 (RMA).

The majority of industry groups said that prior to the *King Salmon* decision, they were generally satisfied with the provisions and their interpretation in the NZCPS. The reasons for this are set out below.

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<sup>32</sup>*Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38.

The industry groups acknowledged that the NZCPS has objectives and policies which recognise that the coastal environment can be used and developed. This includes, for example, Objective 6 and Policies 8, 9 and 10. Before *King Salmon*, they understood that these provisions would be read 'alongside' the other objectives and policies that sought to preserve and protect the coastal environment. Particular reference was made to Policies 11, 13 and 15, which have the 'avoid' or 'avoid significant' adverse effects wording.

Prior to *King Salmon*, the industry groups also understood that during plan-making and resource consent applications, the NZCPS provisions would be read 'subject to Part 2' of the RMA. This was interpreted to mean 'taking an overall broad judgment' approach as opposed to a 'bottom line approach', as now interpreted post *King Salmon*. In the industry groups' view, the NZCPS provided for a balanced consideration of development that had a functional need to be located in the coastal environment, and of the need to provide appropriate protection of natural character, features and landscapes, and biodiversity.

Overall, the industry groups considered that the NZCPS post *King Salmon* posed major hurdles to enabling or providing for appropriate subdivision, use and development in the coastal environment, particularly in the coastal marine area. This is addressed in more detail below.

Other groups, particularly the non-governmental organisation (NGO)/environmental groups, generally supported the *King Salmon* decision in terms of how the NZCPS should be interpreted. In summary, the general view held by these groups was that in implementing the NZCPS, an 'overall broad judgement' should not (and could not) be taken, and the more directive provisions such as Policies 11, 13 and 15 were effectively 'environmental bottom lines'. These groups did not consider that this meant no development could occur, but rather that councils, in giving effect to the NZCPS, would need to identify areas where it was or could be appropriate to enable development (due to their effects) and where this was inappropriate. In this respect, references were made to the NZCPS report from the Board of Inquiry to the Minister of Conservation in 2009, which is made reference to below.

The professional bodies, including the Resource Management Law Association (RMLA) and the New Zealand Institute of Landscape Architects (NZILA), set out their views on the implications of the *King Salmon* decision, including the implications in terms of their professions. They also addressed the likely implications for plan making post *King Salmon*. In summary, this group, as well as the other groups, said that RMA plans needed to be more explicit and clear about what features and areas were to be identified and protected vis-à-vis where development could be more enabled. This is also addressed in more detail below.

The NZILA raised a number of matters, particularly in relation to Policies 13—*Natural character* and 15—*Natural features and natural landscapes*. This was in relation to the implications of the *King Salmon* decision as they understood it, i.e. the directive language of those policies, how areas of outstanding natural character and landscapes were to be identified, evaluated and mapped, and whether there needed to be greater consistency across New Zealand in doing this. The issue of consistency is addressed in more detail in a separate section below ('Consistency').

### ***Some plans have not yet given effect to the NZCPS 2010***

In addressing the issues raised by the sector groups, most participants were of the view that a number of councils had not yet 'given effect' to the NZCPS since it was gazetted in 2010 by way of reviewing their regional policy statements (RPSs) or regional and district plans (Plans) in relation to the NZCPS 2010. Moreover, the *King Salmon* decision was issued on 17 April 2014, after some plans, such as the Auckland Unitary Plan, had been notified. Those RPSs and Plans that were being prepared or had been notified were done on the pre-*King Salmon* understanding of giving effect to the NZCPS, i.e. in terms of the overall broad judgement approach.

As discussed in the workshops, the participants understood that the majority of the Supreme Court rejected an approach based on an overall broad judgment of all policies. The Court held that the requirement to give effect to the NZCPS had to be considered in terms of each relevant policy. Where a particular policy is directive, such as by using the imperative 'avoid', that direction must be followed.

### ***Objectives and policies in RPSs and Plans***

Most workshop participants were of the view that the approach to considering the appropriateness of objectives and policies needs to be better addressed and set out in councils' section 32 reports. They raised matters such as:

- What is the relevant environment for the purposes of the particular objective or policy?
- What particular use or activity ought to be enabled in that environment?
- What particular value or values of that environment ought to be protected?
- What kinds of effects of the activities are relevant to such protection of values and which of those effects are adverse in the context of the relevant environment?
- Are the adverse effects to be avoided absolutely or are they to be managed in terms of matters of degree?
- If the adverse effects are to be managed, what are the thresholds or other parameters for appropriate management?

The concern raised by a number of groups was that the objectives and policies should clearly identify what is to be enabled in particular locations and what is to be avoided. In this respect, some groups considered that some types of development may be enabled in sensitive locations while other types of development may not.

The questions raised in the workshops highlighted an issue around fully understanding the provisions of the NZCPS and how they are to be implemented so that they may be effective in sustainably managing the coastal environment. To a degree this is an implementation matter and not a measure of the effectiveness of the NZCPS. However, in reality, the two cannot be divorced from each other. Until there is a common or agreed understanding of the provisions in the NZCPS, it will not be possible to determine how effective it is. Consistency of implementation across the country is addressed in more detail in a separate section below ('Consistency of implementation'). It is noted that this was a common theme across all of the groups who attended the workshops.

### ***Directive vs. enabling provisions***

One of the major issues to come out of the workshops, and one which participants considered goes to the heart of the implementation of the NZCPS in RPSs and Plans post King Salmon, is the issue of the 'relative weight' that should be applied to the NZCPS provisions, i.e. the overall broad judgement vs. bottom line issues.

All groups acknowledged that the NZCPS includes a range of provisions that seek to allow for appropriate subdivision, use and development within the coastal environment (which obviously includes the coastal marine area). The groups particularly identified Objective 6, which seeks to enable appropriate subdivision, use and development. They also noted that Policy 6—*Activities in the coastal environment* recognises and provides for development to be located in the coastal environment, with a focus on those developments that have a 'functional need' to be in the coastal marine area and ensuring that they occur in 'appropriate places' (see Policy 6(2)(c)). Policies 7—*Strategic planning*, 8—*Aquaculture*, 9—*Ports*, and 10—*Reclamation and de-reclamation* all recognise the need to provide for appropriate subdivision, use and development.

All of the groups acknowledged that Policies 11—*Indigenous biological diversity (biodiversity)*, 13—*Preservation of natural character* and 15—*Natural features and natural landscapes* were drafted in a directive manner. It is these three policies that were the main focus of most of the discussions in terms of the 'bottom line' approach as interpreted in the King Salmon decision.

The industry groups' response to the 'avoid' focus of Policies 11, 13 and 15 was that they 'trumped' those policies seeking to enable or encourage economic activity and the productive use of resources. While the industry groups acknowledged the 'subdivision, use and development' provisions, they considered that since they were drafted with the terms 'recognise', 'consider' 'promote' and 'take into account', they are to be read as 'subservient' to Policies 11, 13 and 15.

The industry groups explained that, in their view, council officers were being much more 'conservative' in interpreting the 'avoid' provisions and in some cases were almost considering them as a prohibition since the King Salmon decision. The aquaculture industry said that the post King Salmon interpretation of the NZCPS was making it very difficult to enable new marine farming opportunities and, more importantly, was threatening a significant number of existing farms that may be challenged upon consent expiry.

The industry groups' view expressed in the above paragraph was in part due to the somewhat 'generic' provisions that have been made in the plans referred to above (avoid adverse effects on the environment). Industry groups, as well as most others, did not think that many councils had properly addressed Objective 2 of the NZCPS in the identification of outstanding natural character, landscapes and features. That objective is worded as follows:

#### *Objective 2*

*To preserve the natural character of the coastal environment and protect natural features and landscape values through:*

- *recognising the **characteristics and qualities that contribute** to natural character, natural features and landscape values and their location and distribution;*

- *identifying those **areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and***
- *encouraging restoration of the coastal environment.*

(Bold added for emphasis.)

The industry groups in particular advised that RPSs and Plans did not specify the ‘characteristics and qualities’ that contribute to natural character, natural features and landscape values in many of the areas that have been identified as outstanding. Moreover, coastal marine area coastal plans had not identified those areas where various forms of subdivision, use and development would be inappropriate and, by implication, those areas where development may be appropriate. This is set out in more detail in a separate section below (‘Certainty’).

The industry groups considered it vital that areas of significant indigenous biodiversity, natural character, features and landscapes be identified and mapped carefully, so that their qualities and characteristics could be identified, their values could be established, and what effects were sought to be avoided could be noted. This was equally stated by the other groups, including the NGO/environmental groups. All of the groups acknowledged that this would be a significant task, and raised issues about the capacity of some councils to undertake this work and the need/desire for a consistent approach. This matter is addressed in a later section (‘Consistency of implementation’).

Notwithstanding the commentary in the above section titled ‘Directive vs enabling provisions’, in light of King Salmon, the industry groups did not think that the NZCPS could be effective in enabling the sustainable management of the natural and physical environment if it remained unchanged. While these groups understood that this stock-take review was not about specific wording changes, they offered the following suggestions:

- The enabling provisions (e.g. Policy 6) should be written in a more directive way, e.g. ‘to provide for’ or ‘to enable’. This was to ‘balance’ the directive language of Policies 11, 13 and 15.
- The words ‘remedy or mitigate’ should be included after the word ‘avoid’ in Policy 11(a) and (b), Policy 13(1)(a) and (b), and Policy 15(a) and (b).
- It should be added in that the NZCPS provisions are subject to Part 2 of the RMA.
- It should be specifically stated that the NZCPS needs to be read as a whole.

The environmental groups considered that it was too early to make any changes to the NZCPS and that some specific effectiveness monitoring was required before any changes were contemplated. Their view was that it would be premature to make changes now or to consider any major or significant changes while all parties (councils included) were grappling with the implications of the King Salmon decision. The reasons set out above under the heading ‘Most plans have not yet given effect to the NZCPS 2010’ are also relevant to why the NZCPS should not be changed at the present time.

The Environmental Defence Society (EDS) and Royal Forest and Bird Protection Society (RFBS) suggested that when determining effectiveness, consideration should be given to whether there had been:

- An increase in marine biota in areas with Policy 11 compliant provisions.
- A decrease in successful applications for activities in areas with outstanding natural landscapes (ONLs) or outstanding natural character (ONCs), or significant ecological areas (SEAs) where there are Policy 11, 13 and 15 compliant provisions.
- A decrease in degradation of ONLs, ONCs and SEAs according to the 'values and characteristics' approach, probably using case studies comparing similar areas pre and post compliant provisions.
- An improvement in coastal water quality, particularly in areas with stock exclusion requirements or aquaculture.
- An increase in the use of prohibited activity status in areas where the avoidance of adverse effects is required.
- An increase in the stringency of permitted standards to ensure that avoidance is achieved, e.g. reduced vegetation clearance or earthwork amounts, and extended setbacks.
- A decrease in ribbon development and sporadic development, and a corresponding increase in the consolidation of existing areas in areas with coastal development pressures and NZCPS compliant planning provisions (i.e. second-generation policy statements and/or plans).
- An increase in the use of marine spatial planning tools.

In addition to the comments about it being premature to change the NZCPS, most of the environmental groups did not consider that the NZCPS needed to be amended in terms of the directive language of Policies 11, 13 and 15. They generally supported these policies and felt that they established 'environmental bottom lines', but did not preclude appropriate subdivision, use and development in appropriate locations or at an appropriate scale. They stated that it was largely the responsibility of the councils to focus on the wording of the NZCPS policies (particularly 11, 13 and 15) and to identify areas that have particular values that need to be preserved and/or protected in their plan making. It was acknowledged that this would not be an easy or simple task. This has been addressed above and was a consistent theme across all of the workshops.

The environmental groups also considered that their approach was consistent with the Board of Inquiry's report to the Minister of Conservation in 2009, citing passages from the 'Proposed New Zealand Coastal Policy Statement (2008) Board of Inquiry Report and Recommendations Volume 1: Findings, Recommendations and Recommended NZCPS (2009) July 2009', such as:

*The Policies [page 6]*

*Many submissions called for balance in the policies, though interpretation of 'balance' obviously varied greatly. In our recommendations we have tried to ensure that the balancing of factors and interests has a better environmental result, for example by reflecting the Act's*

*emphasis on the need to safeguard the life supporting capacity of natural resources and in retaining the precautionary principle to underpin decision making. **Many submissions also asked for a greater focus on 'avoiding' adverse effects as the starting point of decision making. The evidence we received supports the view that there is a growing tendency for applicants and decision makers to concentrate on 'mitigating' adverse effects rather than considering how to 'avoid' them in the first instance.***

(Bold added for emphasis.)

and

*Natural Character, Features and Landscape (Policies 15-17) [page 8]*

*The preservation of natural character and the protection of outstanding natural features and landscape are all matters of national importance identified in s6 and many submissions supported the inclusion of policies directed at them. **We agree that it is essential that areas with high natural character and outstanding natural features and landscapes are identified and that more weight is given to their protection than is occurring currently** especially at district level. Protection of our coastal character is more than a matter of amenity value, being important to both domestic and international tourism.*

(Bold added for emphasis.)

### Consistency of implementation

A common theme across all of the groups was the issue of consistency in the implementation of the NZCPS. It was stated that this impacts on the effectiveness of the NZCPS, as each regional and district council potentially interprets and applies it differently.

Workshop groups, particularly those who deal with multiple council plans (linear infrastructure providers, national environment groups, national user groups (e.g. the Surf Break Society, Heritage NZ) and other national groups (e.g. aquaculture industry and Federated Farmers)), identified the very different and inconsistent approaches that are taken by councils (officers in the first instance in drafting plans and then decision makers/councillors when hearing submissions on plans as well as resource consents).

It was also noted by many of the groups that some councils are much better resourced than others, and that those who are better resourced generally do a more thorough and comprehensive job in 'giving effect to' the NZCPS (and other higher-order documents).

It was clear that in unitary plan situations, plan consistency and integration was considered a better approach by participants. Groups also saw it as better where regional and district councils had collaborated in the development of the RPS, and where this had identified the coastal environment and outstanding areas of natural character, landscapes and features. In these situations, these areas could be adopted in the regional coastal and district plans, thereby ensuring consistency. The Northland RPS was cited as an example where this had occurred.

Options to address the issue of consistency emerged from the workshops, generally in terms of providing greater national direction/identification or more national guidance. These are briefly discussed below.

In light of the King Salmon decision and its implications (i.e. environmental bottom lines and avoiding meaning ‘do not allow’), a number of parties suggested that consideration needs be given to a national direction and/or guidance on how to give effect to or implement:

- Policy 1—*Extent and characteristics of the coastal environment*, as the NZCPS only applies to the coastal environment;
- Policy 11—*Indigenous biological diversity (biodiversity)*, especially 11(a)(i–vi) given that much of the offshore coastal marine environment has been little researched by regional councils (most subdivision, use and development occurs on land, and at the interface of land and water, or in the near shore area);
- Policy 13—*Preservation of natural character*, particularly in having a nationally agreed understanding of what natural character is and its relationship to the landscape; and
- Policy 15—Natural features and natural landscapes.

The majority of the discussion in many of the workshop sessions regarding consistency was about the above policies. This was mainly due to the ‘avoid’ language in Policies 11, 13 and 15, and the fact that those policies only applied to the coastal environment (Policy 1).

### ***Policies 13 and 15***

There was considerable discussion from the representatives of the New Zealand Institute of Landscape Architects (NZILA) and RMLA (and others) about the importance of how Policies 13 and 15 are implemented, particularly given the implications arising from the King Salmon decision.

All of the landscape architects accepted the imperative for valid, reliable and technically robust and, importantly, ‘agreed’ methods of landscape and natural character assessment methods and techniques. They also generally all agreed that despite natural landscapes and natural features being part of the RMA for 25 years, there was no accepted approach to defining a landscape or natural feature.

This group also accepted that different professionals and decision makers have taken different approaches, which has led to different outcomes. As was pointed out, the assessment of landscapes and natural character has been problematic due, in part, to professional differences of opinion regarding the definition of natural character (see below), and not being able to collectively advance methods of landscape and natural character assessments in terms of the NZCPS 2010. This is in part due to differing professional interpretations of Policies 13 and 15, particularly with regard to the definition of natural character, landscape and features, and how ‘outstanding’ is understood in the context of outstanding natural features and landscapes, and outstanding natural character. In essence, the ‘debate’ appeared to focus on ‘What is natural character?’.

Policy 13(2) sets out:

*Recognise that natural character **is not** the same as natural features and landscapes or amenity values and **may** include matters such as:*

- (a) *natural elements, processes and patterns;*

- (b) *biophysical, ecological, geological and geomorphological aspects;*
- (c) *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
- (d) *the natural movement of water and sediment;*
- (e) *the natural darkness of the night sky;*
- (f) *places or areas that are wild or scenic;*
- (g) *a range of natural character from pristine to modified; and*
- (h) *experiential attributes, including the sounds and smell of the sea; and their context or setting.*

(Bold added for emphasis.)

The concern expressed was that this policy says what natural character is not, but does not state what it is in clear terms. Also, subclauses (a) to (h) are a combination of coastal process matters, physical features, and experiential and perceptive issues. According to some participants, particularly the landscape architects, this has made it difficult to determine a set of factors or criteria to consistently apply to areas of ‘outstanding’ and ‘high’ natural character as characterised in Policy 13.

Some of the landscape architects also raised the concern that given the construct of Policies 13 and 15, it is difficult to determine the ‘cross-over’ between landscape and natural character. The application of ‘experiential’ attributes to the assessment of natural character appears to have ‘compromised’ the concept of natural character such that it is almost indistinguishable from landscape assessments. This has significant consequences for both natural character and landscape assessments, and for the application of the two policies in RPSs and Plans, as well as in resource consenting.

In discussing the application of Policies 13 and 15, there was general support for a greater level of national consistency. Ways in which such greater consistency could be achieved were discussed amongst all of the groups and included the following suggestions:

- Agree on a set of factors/criteria to identify those matters in Policies 13 and 15, and either:
  - include them in the NZCPS as a codified set of factors/criteria, but without a prescribed methodology;
  - include them in the NZCPS as a codified set of factors/criteria with a prescribed methodology;
  - provide as national guidance from the appropriate central government agency (Department of Conservation);
  - provide as national guidance from the appropriate professional bodies (e.g. NZILA and the New Zealand Planning institute).

The above options would enable each council to apply a set of nationally-agreed factors/criteria to the identification of the areas as expressed in Policies 13 and 15 when giving effect to the NZCPS.

Others suggested that areas of outstanding natural character and/or outstanding natural landscapes or features should be identified nationally and included in the NZCPS as nationally significant. This would be similar to the existing Schedule 1—Surf Breaks of National Significance.

Some parties stated that this matter was addressed in the Board of Inquiry's report and recommendations (Volume 1: findings, recommendations and recommended NZCPS (2009) July 2009) for the Proposed New Zealand Coastal Policy Statement (2008), which set out the following in the section titled 'Natural character, features and landscape (Policies 15-17)' (page 8):

*Identifying areas of high natural character and outstanding natural features and landscapes could be done most efficiently and effectively by a **collaborative effort between all levels of local government either on a regional scale or, even more efficiently, nationally**. A robust and consistent methodology would assist in informing this work and reducing challenges to it. We understand that a considerable body of work has already been done around the country and that the task may not therefore be as expensive and difficult as some submitters suggested. We recognise that making recommendations on the funding of such work is outside our remit and requires a commitment by local government, but observe that without such assessment it is difficult for decision making under the Act to accord relativity between, and priority to the protection of, areas of high natural character and outstanding natural features and landscapes.*

And,

*The Environmental Defence Society (EDS) wanted a national exercise to identify areas with high natural character and outstanding natural features and landscapes and for those to be subject to national objectives, policies and rules. We concluded that their request was outside our terms of reference.*

(Bold added for emphasis.)

It is noted that this matter was reiterated by EDS at the workshop they attended.

### ***Policy 11—Indigenous biological diversity (biodiversity)***

Policy 11 was considered particularly 'problematic' for many of the industry groups, especially those who have 'developments' in the coastal marine area (such as aquaculture and extraction/mining proposals). In their view, this policy, which mentions 'avoiding adverse effects' on the matters listed in (a)(i) to (vi), is written more 'absolutely' than Policies 13 and 15, which are prefaced with the terms 'inappropriate subdivision, use and development'.

EDS and RFBPS were particularly concerned that Policy 11 was often poorly addressed. It was their view that many councils had 'invested' heavily in identifying outstanding landscapes and features and areas of natural character, but much less in identifying areas of biodiversity (Policy 11). In their view, this was particularly the case in the 'offshore' coastal marine area (i.e. not the land-sea interface). EDS and RFBPS were concerned about the differing capability of councils and the lack of nationally recognised and coordinated methodology/tools to address this issue.

They were also concerned that there appeared to be little understanding of the need to protect 'areas/habitats' for species that move (e.g. whales and dolphins), as well as activities that have significant adverse effects on the sea floor (e.g. fish trawling and scallop dredging).

The industry groups considered that it was unlikely that the Board of Inquiry, when recommending the NZCPS to the Minister, understood that Policy 11 was providing for something approaching absolute protection for indigenous biodiversity in certain areas.

However, this view was not supported by other groups, notably the environmental groups, who referenced the Board of Inquiry's comments in their Recommendations report:

*Balance: [page 5]*

*Many submissions commented on the need for balance in the NZCPS. However, that balance was generally perceived and portrayed differently according to the interests of the submitter. We conclude that there are major problems with the current balance applied by decision makers, reflected for example, in the extent of and growth in residential and rural residential development in the coastal environment. As a result, the coastal environment does not reflect the 'sustainable management of natural and physical resources' which is the purpose of the Act. The NZCPS needs to send a stronger message, a national direction sought by many submissions including a number from district and regional councils.*

and

*Biodiversity (Policies 13-14) [page 8]*

*We agreed with the widespread support for policies directed at protecting New Zealand's indigenous biodiversity but, as many submitters pointed out, Maui dolphin does not require a specific policy of its own. We recommend listing it with some other highly endangered taxa in a footnote and adding the protection of areas set aside for full or partial protection of indigenous biological diversity under other legislation, such as marine reserves. The policy on biosecurity should help with that protection.*

The industry groups' suggested approach to this policy is set out above in the section titled 'Directive vs. enabling provisions: Discussion—Should changes be made to the NZCPS?'

The issue of biodiversity was significant for EDS and RFBPS, as outlined above. They were concerned that most councils had focussed on the near-shore environments (where most subdivision, use and development occurs), with little research of and protection for many of the 'offshore' coastal marine environments.

EDS and RFBPS, and others, acknowledged that undertaking the needed work would be 'challenging', and considered that the use of technology and techniques such as spatial planning would assist. However, they again raised the point that some form of national consistency and/or a national approach to 'giving effect' to Policy 11 was needed, as it is unrealistic for each regional council to have to fund and undertake this work independently.

### **Integration and consistency of policy setting**

In terms of the effectiveness of the NZCPS, a number of parties raised the issue of consistency across NPSs. It was highlighted that the way in which each is written and interpreted will impact on the others, and even though they have different purposes, inconsistency between them will not address the need for certainty and consistency to enable better integrated management of natural and physical resources.

Participants, at a 'broad level' identified how the NPSs have different approaches to sustainable management reflecting their differing purposes, but nonetheless raises issues around consistency/inconsistency. Their views have been consolidated as set out below.

As already discussed, the NZCPS has a strong focus on avoiding adverse effects on areas of particular significance (natural character, natural features, natural landscape and areas of important biological diversity). However, the 2014 NPS on Freshwater Management (NPS-FM) includes only one provision that uses the word 'avoid' in any absolute sense. This is Objective B2, which states 'To avoid any further over-allocation of fresh water and phase out existing over-allocation'. It is clear from the context of this objective that avoiding further over-allocation of fresh water in over-allocated catchments is to be prevented and that regional policies that do not achieve this objective would not be giving effect to the NPSFM.

The NPSFM contains a National Objectives Framework that sets out the national values for freshwater and requires regional councils to follow certain processes in applying these values at the regional level. The framework also provides a series of attributes that are intended to operate as national bottom lines, allowing for flexibility to go below the bottom lines in certain circumstances. In this respect, some national direction and guidance is given.

It was also highlighted that the NPS on Electricity Transmission 2008 provides the following wording in the preamble:

*However, the national policy statement is not meant to be a substitute for, or prevail over, the Act's statutory purpose or the statutory tests already in existence. **Further, the national policy statement is subject to Part 2 of the Act. For decision-makers under the Act, the national policy statement is intended to be a relevant consideration to be weighed a long with other considerations in achieving the sustainable management purpose of the Act.** This preamble may assist the interpretation of the national policy statement, where this is needed to resolve uncertainty.*

(Bold added for emphasis.)

The primary purpose of the NPSs on Electricity Transmission and Renewable Energy Generation are to set enabling provisions for the matters they relate to. These NPSs do not focus on avoiding adverse effects on the environment per se, but rather on providing a more positive national development framework.

The NPS on Urban Development Capacity 2016 has recently been gazetted. Its preamble states:

*This national policy statement provides direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban environments. It recognises the national significance of well-functioning urban environments.*

The purpose of raising the suite of NPSs was not to undertake a detailed assessment of each in terms of their consistency with each other, but rather to highlight the fact that a number of participants raised the issue that a consistent approach should ideally be taken in the development and implementation of 'national policies'.

## Certainty

Certainty was raised as an issue by all groups in the context of the consistent interpretation and implementation of the NZCPS, as outlined above. It was also raised by a number of participants in terms of the word and policy intent of 'avoid', particularly in relation to Policies 11, 13 and 15. In this respect, the Auckland Unitary Plan (decisions version and now partially operative) was raised as an example of how greater certainty could be achieved around what may be appropriate use and development within identified areas of outstanding natural character or landscape.

## Functional and operational needs

Infrastructure providers, particularly linear infrastructure providers (pipes, cables, lines, roads and bridges) stated that while Policy 6(1)(a)—*Activities in the coastal environment* recognised that infrastructure is important to the social, economic and cultural wellbeing of people and communities, it did not 'technically' have a functional need to locate in the coastal marine area.

This group considered that this lack of a 'functional need' was an impediment to enabling appropriate and sustainable infrastructure in the coastal marine area. The NZCPS approach was contrasted with the NPS on Electricity Transmission (Policy 3), which refers to 'the technical and operational requirements of the network'.

The infrastructure providers considered that the concept of 'operational need' could be introduced into the NZCPS for the provision of infrastructure.

Workshop participants identified that the NZCPS 2010 acknowledges the 'appropriateness' of activities in the coastal marine area that have a functional need to be there. Examples include ports, some aquaculture, wharves and jetties. This 'concept' is well established and included in regional coastal plans. In summary, the NZCPS 2010 includes the following objective and policies around this:

- Objective 6, bullet point three: 'functionally some uses and developments can only be located on the coast or in the coastal marine area';
- Policy 6(2)(c): 'recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate locations'; and
- Policy 6(2)(d): 'recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there'.

Infrastructure providers highlighted the approach taken in the Auckland Unitary Plan, where 'operational need' has been recognised at a policy level. The question that the Independent Hearings Panel grappled with was:

*Whether the terms functional need and operation need should have the same policy support in the Regional Policy Statement, or whether there needed to be a different approach to both.*

Again, workshop participants identified that during the Unitary Plan hearings, there was substantial discussion about the scope of the term 'functional need' and what activities might be contemplated by that phrase. The legal submissions for the New Zealand Transport Agency described functional need as activities that require 'wet feet'.

As outlined above, the NZCPS 2010 places a clear emphasis on providing for activities in the coastal marine area that have a 'functional need' to locate there and generally does not provide for activities that do not.

Transpower had sought to amend the Unitary Plan to provide for all infrastructure that had a technical, operational or functional need to be located in the coastal marine area. The Auckland Council considered that this unduly conflated the 'functional need' test in the NZCPS with the 'technical and operational' test in the NPS on Electricity Transmission. However, to give effect to the NPS on Electricity Transmission, the Panel included a new policy to recognise and provide for the effective operation, maintenance, upgrading and development of the components of the electricity transmission network that have a technical, operational or functional need to be located in the coastal marine area in appropriate areas.

The Panel expressed concern at any implication that some infrastructure, including roads, cables and pipelines, might have to be routed for considerable extra distances to go around inlets or harbours when they could more efficiently cross the coastal marine area. While these activities did not have a functional need to be in the coastal marine area, there may be very good operational and/or efficiency reasons why it would be appropriate to enable these activities to be there.

It was the Panel's view that a clear distinction needed to be made between providing for activities that have a functional need to locate in the coastal marine area and providing for other activities (including those which may have an operational need to do so). The Panel included a policy to support those activities that have an operational need to locate in the coastal marine area where that activity cannot be practicably located elsewhere.

The infrastructure providers suggested that this 'policy concept' could be included in any review of the NZCPS.

### **Emerging major issues**

Other than the issues already addressed above, two emerging major issues were raised by workshop participants:

- excess sedimentation; and
- restoration of natural character.

Sedimentation was an issue that was identified particularly by the aquaculture industry and the environmental groups. Most groups raised the issue of the restoration of natural character.

It was noted in the workshop that the Ministry for the Environment (MfE) and the Government Statistician have recently released a report titled 'Our marine environment 2016' under the Environmental Reporting Act 2015.

This report finds that multiple, cumulative human pressures are causing changes to New Zealand's oceans, coastal marine habitats and wildlife, and that these changes represent serious threats to the benefits that current and future generations will receive from our marine environment.

The environmental groups, particularly EDS and RFBPS, drew attention to the contents and findings of this report. It was their view that the issues raised in this report, to the extent possible,

need to be addressed in the NZCPS, and that the effectiveness of the NZCPS needs to be measured in terms of these matters, as well as those effectiveness measures that they set out and addressed earlier in this report. The top three issues identified were:

1. Global greenhouse gas emissions are causing ocean acidification and warming

The report states:

*Ocean acidification may cause widespread harm to New Zealand's marine ecosystems, particularly to marine organisms with carbonate shells like pāua, mussels, and oysters. Ocean warming may affect ocean currents, modify habitats, and expand or reduce the areas where marine species are found, and is a primary cause of rising sea levels. Ocean acidification and warming will continue for generations.*

The environmental groups acknowledged that this was an international/global issue and that the entire policy framework (not just the NZCPS) needs to address this matter.

2. Native marine birds and mammals are threatened with extinction

The report states:

*Most of our marine bird species are threatened with or at risk of extinction, including species of albatrosses, penguins, and herons. More than one-quarter of our marine mammal species are threatened with extinction, including the New Zealand sea lion and species of dolphins and whales. These animals have important roles in marine ecosystems and are tāonga (treasures) to Māori. Their fragile state is due to multiple historic and present day pressures, although accidental deaths of seabirds and marine mammals from fishing (bycatch) have decreased.*

The environmental groups stated that if Policy 11 (in particular) as well as 13 were 'given effect to', this would go some way to addressing this issue. EDS and RFBPS were concerned that very little research and study work has been carried out in 'offshore' environments, and so our understanding of these complex ecosystems is poor, which is likely to lead to poor management. Therefore, more spatial planning is required to ensure a better understanding and a better management response to this issue.

While it was acknowledged that Policy 7—*Strategic planning* existed and potentially addressed this issue, it has an emphasis on land use planning rather than a marine environment (offshore) focus. Therefore, a stronger policy direction requiring 'spatial planning' was suggested.

3. Coastal marine habitats and ecosystems are degraded

The report states:

*Of all marine environments, our coastal ecosystems are under the most pressure from human activities. Pressures interact in complex ways to degrade coastal habitats and ecosystems, and impacts can accumulate over decades. The degradation of coastal habitats undermines their functions in the wider ocean ecosystem and compromises Māori values, commercial activities, and New Zealanders' recreational*

*enjoyment of coastlines and beaches. The most important coastal pressures, alongside ocean acidification and climate change impacts, are:*

- *excess sedimentation*
- *seabed trawling and dredging for fish and shellfish*
- *marine pests*
- *excess nutrients carried down waterways.*

*Other coastal pressures identified include other fishing methods, dumping of dredge spoils, reclamation (infilling of harbours and estuaries for coastal development), and pollution from waste water and plastic debris.*

### ***Excess sedimentation***

Excess sedimentation was specifically raised as a significant issue by EDS and the aquaculture industry. It was acknowledged that Policy 22—*Sedimentation* in the NZCPS addresses this issue.

In its 2009 recommendation to the Minister, the Board of Inquiry (page 9) set out:

*We included a new policy on sedimentation that requires local authorities not just to monitor sedimentation levels but also to take action to minimise sedimentation from activities such as subdivision, development and stock movement in the coastal environment. Sediment and other discharges from aquaculture can also be a cause of adverse effects on the intertidal zone, seabed and marine resources.*

The Board of Inquiry also set out the following under the heading 'The issues' (page 4):

*Subdivision, use and development: a major issue is the extent and scale of subdivision and development on the coast, particularly for residential and rural residential use, and the resulting loss of the coastal character. The natural character and recreational values of New Zealand's coast are an important resource, not just available to New Zealanders but also to visitors from overseas. The intensity of built development along the coastline also has consequences for biodiversity and other direct and indirect effects such as limiting opportunities for future development of necessary infrastructure and other resource uses both on land and in the coastal marine area.*

*Degradation: in many parts of the coastline water quality has been significantly degraded by both point source and non-point source discharges. **Sedimentation is a particular problem, stemming from urban as well as rural land use. This degradation has widespread adverse effects on economic, social, cultural and environmental wellbeing.***

(Bold added for emphasis.)

It was EDS's view that this issue is a significant one and so the effectiveness of the current NZCPS policies (including Policy 22) needs to be measured in light of the report 'Our marine environment 2016' (MfE). Also there is a clear need to ensure integrated management across the coastal and freshwater NPSs as sediment-laden freshwater flows into the coastal marine area.

***Policy 14—Restoration of natural character***

Policy 14 promotes the restoration or rehabilitation of the natural character of the coastal environment. While this policy was supported by the groups, it again highlighted the issue of what ‘natural character’ is (as addressed in some detail earlier), and whether it is outstanding and/or high natural character that should be restored or rehabilitated as a priority.

In terms of the effectiveness of the NZCPS 2010, it was also asked how restoration or rehabilitation of the natural character can be undertaken in a meaningful way. It appeared that this is likely to occur on a consent-by-consent basis, which may be appropriate, but is unlikely to make a significant contribution to restoration or rehabilitation. It was also identified that any identified restoration or rehabilitation needs may not be in the control of an applicant, e.g. planting or restoring native vegetation or species on land not owned by the applicant, or the need to obtain other licences or permits in terms of fisheries-related matters.

While resource consent applications may be able to assist in the restoration or rehabilitation of the natural character of the coastal environment, a number of groups suggested that it would be better for there to be a national or regional approach to this issue. The imposition of coastal occupation charges (enabled by the RMA), and the use of that revenue for restoration or rehabilitation by a council may be a more effective tool.

Notwithstanding all of the above, the groups considered that some research needed to be carried out to determine whether, on the granting of resource consents in the coastal environment, the consent or any conditions actually required restoration or rehabilitation of the natural character to be carried out.

**Other specific policies*****Policy 21—Enhancement of water quality***

Some of the environmental groups identified what they considered could be a clarification or an improvement to Policy 21. The concern was that this policy does not specifically or clearly refer to ‘depletion effects’; for example, phytoplankton and other lower-order components of the food chain caused by (cumulative) large-scale aquaculture. The groups considered that such effects were likely to be considered under this policy, but suggested that it could be clarified.

They also considered that the threshold for ‘significant adverse effects’ was too low and that a more appropriate threshold would be ‘a more than minor adverse effect’. They considered that this would bring this policy more into line with the NPS on Freshwater Management (Policies A4(i)(b) and (2)(b), and B7(2)).

### ***Policy 23—Discharge of contaminants***

Policy 23 of the NZCPS 2010 is concerned with the discharge of contaminants, including human sewage. The water group, including Watercare Limited, raised significant concern about the wording of Policy 23(2), which states:

*In managing discharge of human sewage, **do not allow:***

- a. discharge of human sewage directly to water in the coastal environment without treatment; and*
- b. the discharge of treated human sewage to water in the coastal environment, unless:
  - i. there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and*
  - ii. informed by an understanding of tangata whenua values and the effects on them.**

(Bold added for emphasis.)

The concern was that this policy appeared to be written as a rule, i.e. ‘do not allow’, which, post King Salmon, could effectively be interpreted as prohibiting the discharge of human sewage. This group acknowledged that national guidance had been written on this, which stated:

*... However, it is not a rule, and does not mean that resource consent applications that involve discharges of untreated human sewage cannot be approved. Nor does it mean that such discharges must be classified as prohibited activities in regional coastal plans and regional plans.*

However, notwithstanding this guidance, the water group said that the guidance was just that and has no statutory weight. Their concern was that while the policy had not had a direct effect yet, it could still pose a problem. The example given was the Auckland Unitary Plan, where most of the near-shore areas and harbours and embayments were mapped as ‘degraded areas’. Consent renewals were coming up, and with an increasing population and growth there was likely to be conflict around being able to accommodate that growth and the discharge of human sewage.

The water group accepted that any amended policy should ‘set a high or significant bar’, but argued that it should not use language such as ‘do not allow’. This group would prefer to be in discussion with any ultimate re-wording of this, or other, policies.

### **Corrections/updates**

Heritage New Zealand Pouhere Taonga advised that the Historic Places Act 1993 was superseded in 2014 by the Heritage New Zealand Pouhere Taonga Act. This new Act modifies the obligations relating to archaeology, making Policy 14(viii) regarding the removal of structures and materials no longer correct. There is no longer a requirement for an archaeological authority to remove a pre-1900 structure if it is removed intact—only to modify or destroy it.

When the NZCPS is reviewed, this matter should be corrected.

## Appendix 1: Workshop invitees and participants

The following groups were invited to attend the workshops:

- Airports
- Aquaculture New Zealand
- Board of Airline Representatives New Zealand (BARNZ)
- Coastal Society
- Cruise ships
- Dunes Restoration Trust
- Environmental Defence Society (EDS)
- Federated Farmers of New Zealand
- Heritage New Zealand
- Infrastructure New Zealand
- Inshore commercial fishers (quota holders)
- Institute of Architecture
- Institution of Professional Engineers New Zealand (IPENZ)
- Insurance Council New Zealand
- LGNZ—local government as a developer for waste water
- Local Government New Zealand (LGNZ)
- Marina Users Association
- Marine Sciences
- New Zealand Institute of Landscape Architects (NZILA)
- New Zealand Society of Local Government Managers (SOLGM) – local government as a developer for waste water
- New Zealand Transport Agency (NZTA)
- NZ Fish and Game Council
- New Zealand Institute of Surveyors
- New Zealand Planning Institute
- Petroleum Exploration and Production Association of New Zealand
- Ports
- Property Council New Zealand
- Recreational fishers
- Regional aquaculture groups
- Resource Management Law Association (RMLA)

- Royal Forest and Bird Protection Society (RFBS)
- Straterra
- Surfers
- Te Ohu Kaimoana
- The New Zealand Walking Access Commission
- The New Zealand Water and Wastes Association (Water New Zealand)
- Tourism Industry Aotearoa
- Transpower
- Utilities—electricity generation, gas, electricity transmission, telecommunications
- Watercare
- World Wildlife Fund (WWF)
- Yachting New Zealand

## Appendix 2: Auckland Unitary Plan—Regional Policy Statement (RPS)

### Note

The Panel determined as one of its principles that in drafting RPS objectives and policies that had an ‘avoid’ or ‘protect’ focus, the particular qualities or characteristics of those areas needed to have been:

- identified;
- evaluated (against criteria or factors); and
- mapped/included in a schedule.

An example is the following RPS provisions addressing outstanding natural features and landscapes<sup>33</sup>:

### ***B4. Te tiaki taonga tuku iho—Natural heritage*** (which includes ONLs)

#### ***B4.2. Outstanding natural features and landscapes***

##### ***B4.2.1. Objectives***

(1) *Outstanding natural features and landscapes are **identified and protected** from inappropriate subdivision, use and development.*

##### ***B4.2.2. Policies***

*Identify, evaluate and protect outstanding natural landscape*

(1) ***Identify and evaluate*** a place as an outstanding natural landscape considering the following factors:

- (a) *natural science factors: geology, topography, hydrology, vegetation cover, ecology and natural processes;*
- (b) *expressiveness/legibility: including the degree to which the landscape reveals its formative processes;*
- (c) *aesthetic values and memorability: including landmarks and significant views;*
- (d) *perceptions of naturalness: related to human influences, the presence of buildings and structures or landform modification;*
- (e) *transient landscape values: including those related to natural processes, such as seasonal change and the presence of wildlife;*
- (f) *shared and recognised values: including the public profile and recognition of particular landscapes;*
- (g) *Mana Whenua: the value of the landscape to Mana Whenua;*
- (h) *historical: the landscape’s known historical associations.*

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<sup>33</sup> It is noted that the same ‘format’ is used for natural character.

- (2) *Include a place identified as an outstanding natural landscape in Schedule 7 Outstanding Natural Landscapes Overlay Schedule.*

*Chapter D—Overlays (objectives, policies for ONL and O/HNCs)*

*D10.3. Policies [rcp/dp]*

- (1) *Protect the physical and visual integrity of outstanding natural landscapes by:*
- (a) *avoiding the adverse effects of inappropriate subdivision, use and development on the natural **characteristics and qualities** that contribute to the values of the outstanding natural landscape;*
  - (b) *maintaining the visual coherence and integrity of the outstanding natural landscape;*
  - (c) *maintaining natural landforms, natural processes and vegetation areas and patterns;*
  - (d) *maintaining the visual or physical qualities that make the landscape iconic or rare; and*
  - (e) *maintaining high levels of naturalness in outstanding natural landscapes that are also identified as outstanding natural character or high natural character areas.*
- (2) *Protect the physical and visual integrity of outstanding natural landscapes while taking into account the following matters:*
- (a) *the extent of anthropogenic changes to the natural elements, patterns, processes or characteristics and qualities;*
  - (b) *the presence or absence of structures, buildings or infrastructure;*
  - (c) *the temporary or permanent nature of any adverse effects;*
  - (d) *the physical and visual integrity and the natural processes of the location;*
  - (e) *the physical, visual and experiential values that contribute significantly to the natural landscape's values;*
  - (f) *the location, scale and design of any proposed development; and*
  - (g) *the functional or operational need of any proposed infrastructure to be located in the outstanding natural landscape area.*

(Bold added for emphasis.)

## Part 2D: Progress of regional policy statements

- 1. Operative regional policy statements changed since 2010 to give effect to the NZCPS 2010**
  - Bay of Plenty Regional Council – Bay of Plenty Regional Policy Statement: operative June 2014, changed to give effect to the NZCPS 2010 by way of Plan Change 1 (Coastal Policy), which became operative June 2015.
- 2. Regional policy statements notified prior to and made operative since the NZCPS 2010**
  - Greater Wellington Regional Council – Greater Wellington Regional Policy Statement: non-statutory draft released March 2008, notified March 2009, operative April 2013.
  - Horizons Regional Council (Manawatu-Wanganui) – Horizons One Plan (incorporating the regional policy statement): notified May 2007, operative December 2014.
  - Waikato Regional Council – Waikato Regional Policy Statement, Te Tauaki Kaupapahere a Rohe: notified 2010, amended by way of council submission to give effect to Policies 11, 13 and 15 of the NZCPS 2010, operative May 2016.
- 3. Regional policy statements notified since the NZCPS 2010**
  - Northland Regional Council – Northland Regional Policy Statement: notified October 2012, operative May 2016 (except for provisions relating to genetic engineering and the release of genetically modified organisms).
  - Environment Canterbury – Canterbury Regional Policy Statement: notified June 2011, operative January 2013, amended May 2015 (management of coastal hazards), November 2015 (Lyttelton port recovery) and April 2016 (Coastal Marine Area boundary at Avon River mouth) under the Canterbury Earthquake Recovery Act 2011.
  - Southland Regional Council – Proposed Southland Regional Policy Statement: notified May 2012, decisions on submissions released June 2015. Four appeals remain to be resolved.
  - Otago Regional Council – Proposed Otago Regional Policy Statement: notified May 2013, decisions released October 2016. Mediation on the 26 appeals is underway.
  - Auckland Council – Proposed Auckland Unitary Plan (incorporating the regional policy statement): notified September 2013, operative in part September 2016.

- Chatham Islands Council – Proposed Chatham Island Resource Management Document (incorporating the regional policy statement): notified August 2014, hearings held February 2015, decisions on submissions released July 2015.
  - West Coast Regional Council – Proposed West Coast Regional Policy Statement: notified March 2015, hearings scheduled for late 2017.
  - Marlborough District Council – Proposed Marlborough Environment Plan (incorporating the regional policy statement): notified September 2016, further submission period closes June 2017.
- 4. Pre-statutory draft regional policy statements released for public comment since 2010**
- Nelson City Council – Draft Nelson Regional Policy Statement: released for public feedback May 2016. The Council’s stated intention is to incorporate the regional policy statement into the Proposed Wahamahere Whakatu Nelson Plan for notification in 2018.
- 5. Regional policy statements made operative prior to the NZCPS 2010 with no proposed or draft regional policy statements notified or released since**
- Taranaki Regional Council – Taranaki Regional Policy Statement: notified 2006, operative January 2010. The Taranaki Regional Council undertook an effectiveness review of the regional policy statement and published a report in January 2017 indicating that a full review would be undertaken commencing in 2019/20.
  - Hawke’s Bay Regional Council – Hawke’s Bay Regional Resource Management Plan (incorporating the regional policy statement): notified April 2000, operative August 2006.
  - Gisborne District Council – Gisborne Regional Policy Statement: operative August 2002.
  - Tasman District Council – Tasman Regional Policy Statement: operative July 2001. The Council is undertaking a pre-commencement scoping exercise prior to initiating a review.

## Part 2E: Progress of regional coastal plans

### 1. Regional coastal plans notified since 2010

- Auckland Council – Proposed Auckland Unitary Plan (a combined regional policy statement, regional plan, regional coastal plan and district plan): notified September 2013. Several appeals on the coastal plan provisions are yet to be resolved.
- Bay of Plenty Regional Council – Proposed Bay of Plenty Regional Coastal Environment Plan (Toi Moana): notified June 2014. Several appeals remain to be resolved. The plan is likely to be referred to the Minister of Conservation for approval in part by late 2017.
- Greater Wellington Regional Council – Proposed Greater Wellington Natural Resources Plan (including the regional coastal plan): notified July 2016. Hearings on the coastal provisions are scheduled for early 2018.
- Marlborough District Council – Proposed Marlborough Environment Plan (a combined regional policy statement, regional plan, regional coastal plan (excluding the aquaculture provisions) and district plan): notified September 2016, further submission period closes June 2017. The aquaculture provisions are likely to be notified mid-2018.
- West Coast Regional Council – Proposed West Coast Regional Coastal Plan: notified January 2016, further submission period closed December 2016.
- Chatham Island Council – Proposed Chatham Island Resource Management Document (incorporating the proposed regional coastal plan): notified August 2014, hearings held February 2015.
- Minister of Conservation – Proposed Regional Coastal Plan for the Kermadec and Subantarctic Islands: notified January 2011. All appeals have been resolved by consent order and the proposed plan is about to be submitted by the Department of Conservation to the Minister of Conservation for approval under Clause 19 Schedule 1 RMA. Section 31A RMA provides that in respect of the coastal marine area of the Kermadec and Subantarctic Islands (Snares, Bounty, Antipodes, Auckland, and Campbell Islands, and adjacent islands), the Minister of Conservation has the responsibilities, duties and powers of a regional council.

### 2. Regional coastal plans notified before 2010 and approved by the Minister of Conservation after 2010

- Horizons Regional Council – Horizons One Plan (consolidated regional policy statement, regional plan and regional coastal plan for the Manawatu-Wanganui Region): notified May 2007, regional coastal plan provisions adopted by the Council April 2014, remainder became operative December 2014.

**3. Regional coastal plans under review with published intended dates for notification**

- Northland Regional Council – non-statutory Draft Regional Plan for Northland (including the regional coastal plan): made available for public comment August 2016. The intention is to notify the proposed regional plan in September 2017.
- Taranaki Regional Council – non-statutory Draft Coastal Plan for Taranaki: made available for public comment September 2016. It is expected that the Proposed Coastal Plan for Taranaki will be notified late 2017.
- Nelson City Council – non-statutory draft of the Whakamahere Whakatu Nelson Plan (a combined regional policy statement, regional plan, regional coastal plan and district plan): intended to be released for public comment before the end of 2017. The stated intention on the council website is to notify the proposed plan in 2018.

**4. Long-term plan or annual plan commitment to undertake a review of the regional coastal plan**

- Hawke's Bay Regional Council – Hawke's Bay Regional Coastal Environment Plan: notified August 2006, operative November 2014. A joint regional and district council Coastal Hazard Management Strategy is being developed. The Hawke's Bay Regional Council Long Term Plan 2015–25 states that a full review of the Hawke's Bay Regional Coastal Environment Plan is scheduled to commence in 2020–21.
- Environment Southland – Regional Coastal Plan for Southland (except marine farming): operative April 2007. The marine farming chapter became operative March 2013. In April 2017, the Council approved the start of a project to set the strategic direction for how the coast is to be managed, which is the first phase of the plan review. The 2017/18 Environment Southland Annual Plan provides that the initial notification of the coastal plan review is scheduled for 2019.

**5. Proposed and operative regional coastal plans pre-dating the NZCPS 2010 where no date for notification of a review has been stated in a long-term plan or annual plan (in most cases preliminary work on a review has commenced)**

- Waikato Regional Council – Waikato Regional Coastal Plan: adopted by the Council in July 2004 excluding the proposed marine farming and marina provisions, which were adopted in December 2005 (marine farming) and June 2007 (marinas). A minor plan change was adopted by the Council in May 2011. A non-statutory marine spatial plan for the Hauraki Gulf Marine Park 'Sea Change – Tai Timu Tai Pari' was officially launched in December 2014. This marine spatial plan, which is the outcome of 4 years of collaboration by mana whenua and local and central government agencies, will inform a subsequent review of the Waikato Regional Coastal Plan.
- Gisborne District Council – Proposed Regional Coastal Environment Plan: notified 1997, not yet operative. There have been 17 variations. One appeal remains outstanding.

- Tasman District Council – Tasman Resource Management Plan coastal marine provisions: became operative in parts with the final part made operative in October 2011 (Minister of Conservation approval was prior to the NZCPS 2010). One change to the regional coastal plan provisions is under appeal (spat catching sites) while another is pending notification (coastal occupation charges). The Council is intending to undertake a series of plan changes and rolling reviews to give effect to the NZCPS 2010.
- Environment Canterbury – Regional Coastal Environment Plan for the Canterbury Region: adopted by the Council in November 2005. There have been various amendments under the Canterbury Earthquake Recovery Act 2011. Preliminary work on a review has commenced.
- Otago Regional Council – Regional Plan: Coast: notified July 1994, operative September 2001. There has been one plan change, which became operative in December 2009. The first stages of a review, completion of a coastal strategy, initial consultation and completion of a coastal resource inventory are provided for in the Council's 2017/18 Annual Plan.

## Part 2F: New Zealand Coastal Policy Statement 2010 – A snapshot of court decisions by the numbers

Department of Conservation

### Introduction

1. The New Zealand Coastal Policy Statement 2010 (NZCPS) has been referred to in numerous decisions of Boards of Inquiry, the Environment Court and superior courts since coming into effect on 3 December 2010. These references range from a passing mention through to substantive consideration of both the document and its place in resource management decision-making. This ‘by the numbers’ assessment provides a snapshot overview of the decisions up until 28 February 2017.
2. For this analysis, we have grouped cases referring to the NZCPS as follows:
  - **Category A** (35 decisions) – comprises decisions that substantially discussed the NZCPS. This category includes decisions where the NZCPS was analysed in terms of its application or interpretation.
  - **Category B** (45 cases) – comprises cases that considered the NZCPS but did not substantively discuss its contents or application. This category includes all cases that mentioned individual NZCPS policies that are not included in Category A above.
  - **Category C** (122 cases) – comprises any case not included in Category A or B. This category includes all cases that mentioned ‘NZCPS’ or ‘New Zealand Coastal Policy Statement’, and all cases that quoted section 104 of the RMA even if those cases were not ‘coastal’ cases. Costs and procedural decisions are for the most part included in Category C.
3. Grouping decisions in this way inevitably requires some judgement calls; it is not precise. It is particularly difficult where a decision appeared to devote some space to the NZCPS (often by reference to the provisions that were considered relevant to a case) but little further discussion. The focus of the classification is on judicial consideration of the NZCPS itself, not on decisions that discussed the Supreme Court’s decision in *Environmental Defence Society v New Zealand King Salmon*<sup>34</sup> more generally unless there was also direct consideration of the NZCPS itself.

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<sup>34</sup>*Environment Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 41.

4. With respect to the decisions considered and their categorisation, we have:
  - Not considered council decisions (but have included Board of Inquiry decisions).
  - Included decisions dated between 3 December 2010 and 28 February 2017.
  - Considered decisions, not matters (applications or proposals). For example, New Zealand King Salmon's application for a private plan change to rezone parts of the Marlborough coastal marine zone for salmon farming resulted in four Category A decisions (Board of Inquiry, High Court, Supreme Court (×2)) and two Category C decisions (relating to applications for leave to appeal).
  - The 35 Category A decisions relate to 28 different matters.
5. The decisions included in each category are set out in Appendix 1.

## Summary of findings

6. The review of decisions showed that:
  - 35 cases have considered the NZCPS 2010 substantively, while a further 45 have considered it to a lesser degree and a further 122 mentioned it.
  - 25 of the 35 substantive cases were Environment Court decisions. The NZCPS 2010 has been considered substantively seven times by the higher courts in proceedings relating to four different matters: the *King Salmon* decisions (one in the High Court and two in the Supreme Court), the *Man O'War* decisions (one in the High Court and one in the Court of Appeal), the *Transpower* decision (High Court), and the *R J Davidson Family Trust* decision (High Court).
  - A majority (22 of the 35) of the substantive decisions involved 'consent matters' (including designations because of the common requirement to have regard to the NZCPS). However, 'plan matters' account for 5 of the 7 substantive decisions from the higher courts.
  - Most of the decisions (32 of the 35) were concerned with regional rather than district matters.
  - The substantive decisions have disproportionately involved unitary councils. Auckland Council and Marlborough District Council have been involved in 19 of the 35 substantive decisions, and Tasman District Council has been involved in a further 2.
  - The decisions involving regional councils are also geographically concentrated (eight decisions involving four regional councils).
  - The most commonly mentioned NZCPS policies in the substantive decisions were Policy 13 (Preservation of natural character), Policy 15 (Natural features and natural landscapes) and Policy 6 (Activities of the coastal environment). The least commonly mentioned NZCPS policies in the substantive decisions were Policy 26 (Natural defences against coastal hazards), Policy 10 (Reclamation and de-reclamation) and Policy 28 (Monitoring and reviewing the effectiveness of the NZCPS).

## Which court?

7. The majority of Category A decisions have been made by the Environment Court.

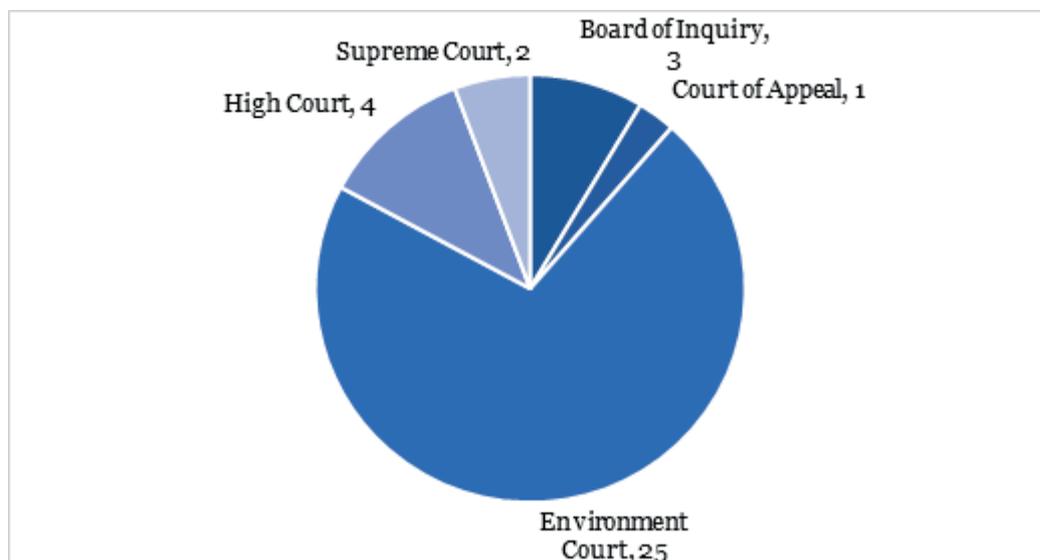


Figure 1: Which Court – Category A

8. The NZCPS 2010 has been considered substantively seven times by the higher courts in proceedings relating to four different matters: the *King Salmon*<sup>35</sup> decisions (one in the High Court and two in the Supreme Court), the *Man O'War*<sup>36</sup> decisions (one in the High Court and one in the Court of Appeal), the *Transpower*<sup>37</sup> decision (High Court), and the *R J Davidson Family Trust*<sup>38</sup> decision (High Court).
9. See Appendix 1 for the decisions in each category.

<sup>35</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2013] NZHC 1; *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38; *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40.

<sup>36</sup> *Man O'War Station Ltd v Auckland Council* [2015] NZHC 767; *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24.

<sup>37</sup> *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281.

<sup>38</sup> *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

## When?

10. There was a spike in Category A decisions in 2014 (3 years after gazettal of the NZCPS).
11. Three Category A decisions have been released in 2017 (up until 28 February).

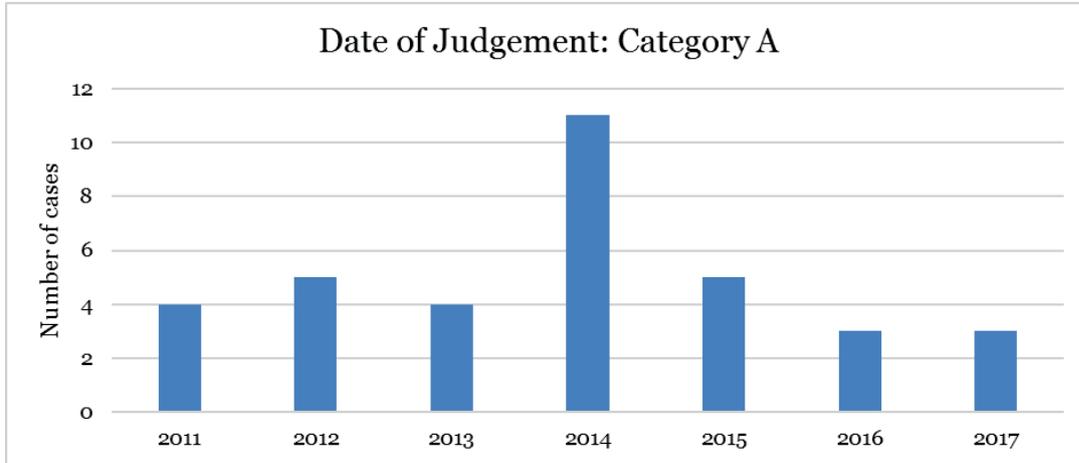


Figure 2: Date of Judgment – Category A

## Consent matters or plan matters?

12. We have grouped the Category A decisions depending on whether they concerned resource consent applications and designations (consent matters) or ‘plan matters’ (being all plan content matters except designations).
13. The majority of Category A decisions (22 out of 35) have been concerned with resource consent applications.

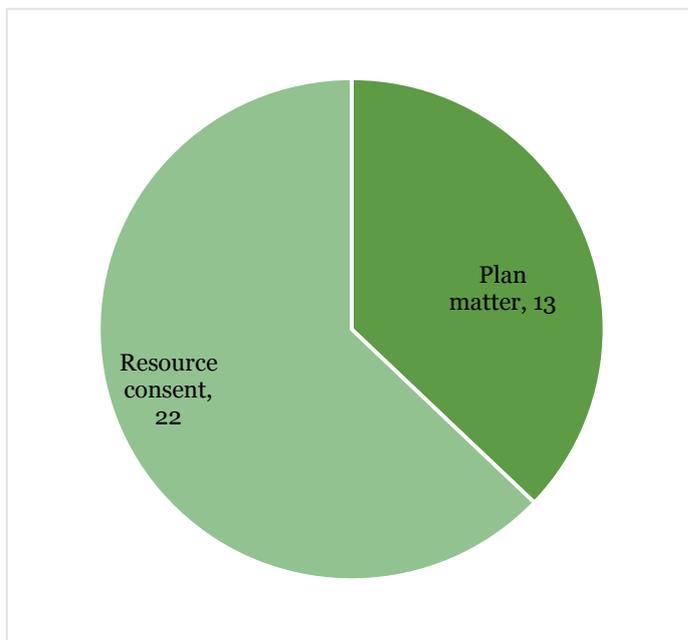


Figure 3: Type of case – Category A

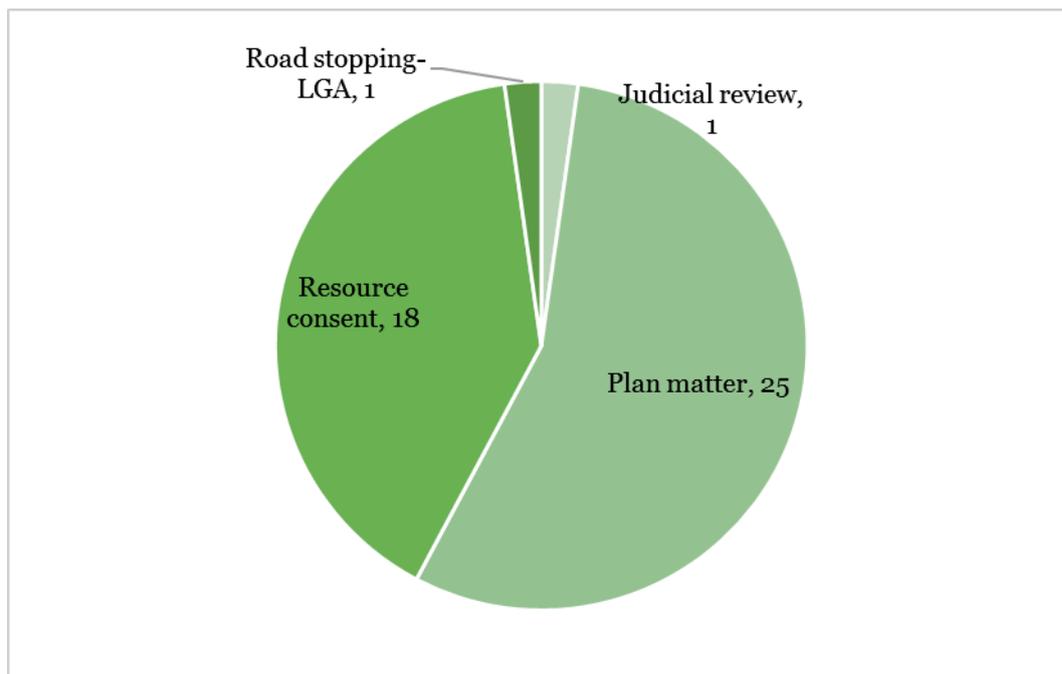


Figure 4: Type of case – Category B<sup>39</sup>

14. As illustrated in Figure 5, the Environment Court cases were reasonably evenly split between resource consent and plan matters. The *King Salmon* cases were not heard by the Court of Appeal, which is why the number of cases was higher in the Supreme Court.

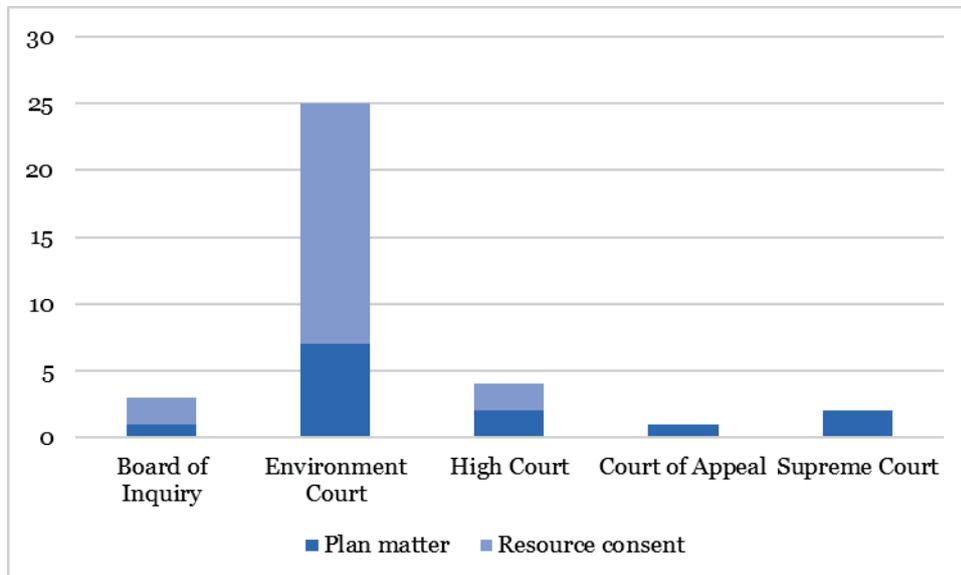
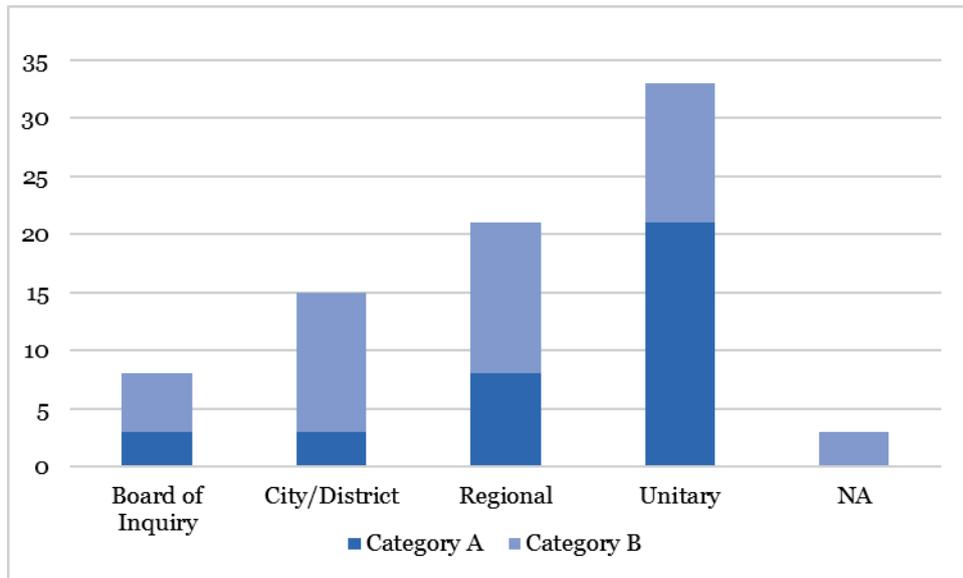


Figure 5: Category A cases – Plan matters and resource consents in each Court

<sup>39</sup> There were two Category B judicial review cases – *Urban Auckland v Auckland Council* [2015] NZHC 1382, which related to notification and has been included in the resource consent category, and *Weir v Kapiti Coast District Council* [2013] NZHC 3522, which was an application for judicial review of a district council’s decision to include information on Land Information Memoranda (LIMs).

### Which local authority?



**Figure 6: Type of local authority**

(Note: The NA cases relate to Motiti Island and a case involving the Minister of Education.<sup>40</sup>)

15. A clear majority of the Category A decisions (21 of 35) involved unitary authorities. These were split almost evenly between Auckland and Marlborough, with two cases involving Tasman District Council.
16. Looking at the Category A decisions involving unitary councils, 13 involved consent matters and 8 plan matters. All of the Category A decisions from the higher courts involved unitary councils.
17. Very few Category A decisions involved territorial authorities.
18. The eight Category A decisions involving regional councils concerned four councils (out of 11).

**Table 1**

Unitary authority	Category A	Category B
Auckland Council	10	10
Marlborough District Council	9	1
Tasman District Council	2	1
<b>Total</b>	<b>21</b>	<b>12</b>

<sup>40</sup> *Hoete v Minister of Local Government* [2014] NZEnvC 228; *Hoete v Minister of Local Government* [2012] NZEnvC 282; *Ellis v Minister of Education* [2014] NZEnvC 109.

**Table 2**

<b>Regional council</b>	<b>Category A</b>	<b>Category B</b>
Bay of Plenty Regional Council	2	7
Hawke's Bay Regional Council	2	
Manawatu-Wanganui Regional Council		1
Northland Regional Council	3	4
Otago Regional Council		1
Waikato Regional Council	1	
<b>Total</b>	<b>8</b>	<b>13</b>

**Table 3**

<b>City/District councils</b>	<b>Category A</b>	<b>Category B</b>
Far North District Council		2
New Plymouth District Council		1
Buller District Council		1
Clutha District Council	1	
Hurunui District Council		1
Kapiti Coast District Council		1
Mackenzie District Council		1
Queenstown Lakes District Council		1
Tauranga City Council		1
Wellington City Council	1	1
Western Bay of Plenty District Council		1
Whangarei District Council	1	
Christchurch City Council		1
<b>Total</b>	<b>3</b>	<b>12</b>

### Which activities?

19. An assessment of the activities for which consent has been sought was made for the Category A decisions. The subdivision/development grouping included activities such as marinas and coastal subdivision; the infrastructure grouping included activities such as roads and discharge facilities; and aquaculture was the largest grouping of decisions involving a single activity.

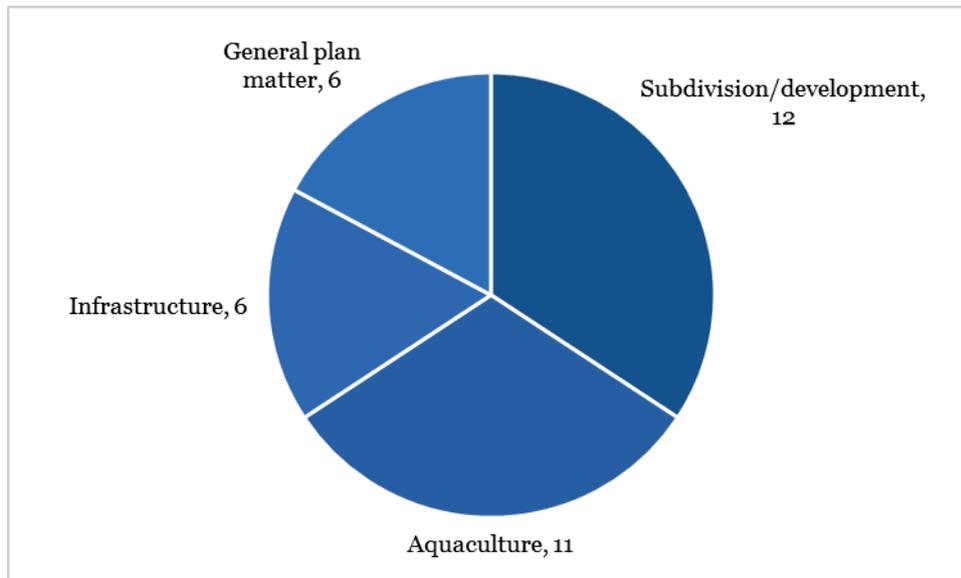


Figure 7: Category A activities

### Which parts of the NZCPS have received the most attention?

20. The number of cases that mentioned specific NZCPS policies and objectives were tallied and are shown in Figure 8. Note that most cases mentioned multiple policies and many decisions identified a large number of NZCPS policies as relevant in respect of a single proceeding.<sup>41</sup> Where a case mentioned the same policy multiple times, it was counted as one mention.

<sup>41</sup> For example, *East Otago Taiapure Management Committee v Otago Regional Council* [2013] NZEnvC 001 – Category B.

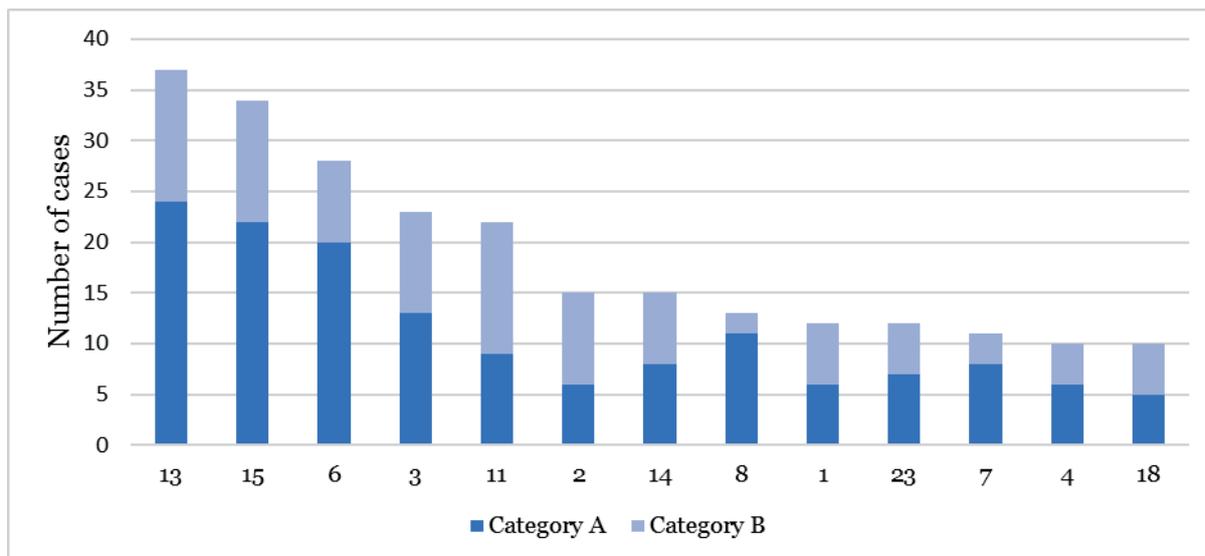


Figure 8: Policies mentioned 10 or more times

21. While a decision might have mentioned a policy, this does not mean that the policy was substantively discussed. A number of decisions (for example *Mangawhai Harbour Restoration Society Inc v Northland Regional Council* [2012] NZEnvC 232) identified significant numbers of NZCPS objectives and policies.
22. See Appendix B for information on the number of times each policy was mentioned.

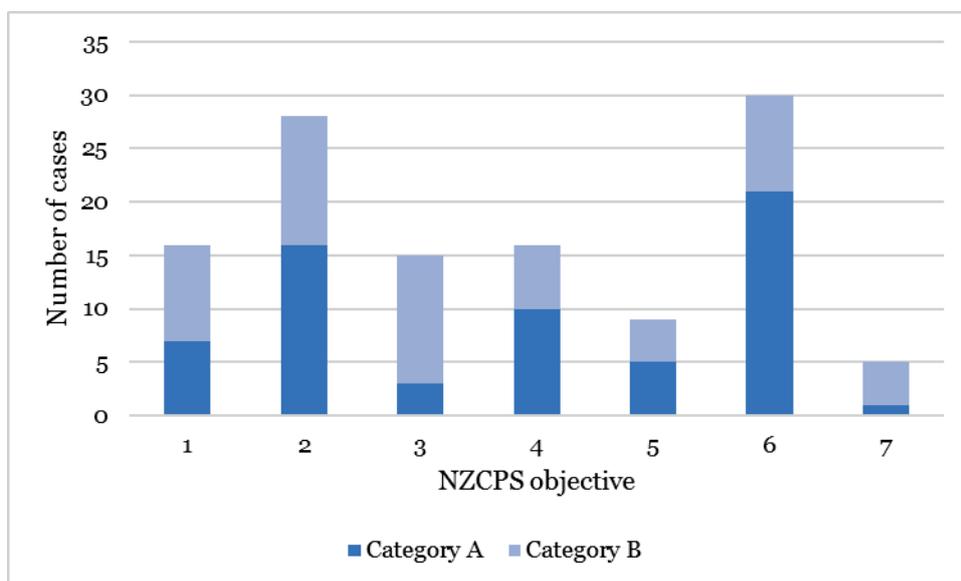


Figure 9: Number of cases that mention NZCPS objectives

## Appendix 1: Cases in each category

Where cases are grouped together, they relate to the same proceeding

Category A	Date
Board of Inquiry: New Zealand King Salmon requests for plan changes and applications for resource consents	22 Feb 2013
<i>Environmental Defence Society Inc v New Zealand King Salmon Company Ltd</i>	8 Aug 2013
<i>Environmental Defence Society Inc v New Zealand King Salmon Company Ltd</i>	17 Apr 2014
<i>Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd</i>	17 Apr 2014
<i>Man O'War Station Ltd v Auckland Council</i>	19 Dec 2014
<i>Man O'War Station Ltd v Auckland Council</i>	30 Sept 2013
<i>Man O'War Station Ltd v Auckland Council</i>	21 Apr 2015
<i>Man O'War Station Ltd v Auckland Council</i>	29 July 2014
<i>Man O'War Station Ltd v Auckland Council</i>	24 Feb 2017
<i>R J Davidson Family Trust v Marlborough District Council</i>	31 Jan 2017
<i>R J Davidson Family Trust v Marlborough District Council</i>	9 May 2016
<i>Carter Holt Harvey HBU Limited v Tasman District Council</i> [2013] NZEnvC 25	27 Feb 2013
<i>Crawford v Northland Regional Council</i>	22 Oct 2015
<i>Crest Energy Kaipara Limited v Northland Regional Council</i> [2011] NZEnvC 26	3 Feb 2011
<i>Federated Farmers of New Zealand Inc v Auckland Council</i> [2012] NZEnvC 174	17 Aug 2012
Final Report and Decision of the Board of Inquiry into the Hauāuru mā Raki Wind Farm and Infrastructure Connection to Grid	1 May 2011
<i>Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council</i>	9 Aug 2016
<i>Gallagher v Tasman District Council</i>	3 Dec 2014
<i>Hudson Bay Holdings Ltd v Auckland Council</i>	30 May 2011
<i>Hurley v Clutha District Council</i>	28 Feb 2014
<i>Knight Somerville Partnership v Marlborough District Council</i>	13 June 2014
<i>KPF Investments Ltd v Marlborough District Council</i>	2 July 2014
<i>Longview Estuary Estate Ltd v Whangarei District Council</i>	16 Aug 2012
<i>Mahanga E Tu Inc v Hawke's Bay Regional Council</i>	11 Apr 2014
<i>Maungaharuru-Tangitu Trust v Hawke's Bay Regional Council</i>	25 Nov 2016

<b>Category A</b>	<b>Date</b>
<i>Opoutere Ratepayers and Residents' Association v Waikato Regional Council</i>	9 June 2015
<i>Port Gore Marine Farms v Marlborough District Council</i>	23 Apr 2012
<i>Re. Waiheke Marinas Ltd ("WML")</i>	17 Dec 2015
<i>Sandspit Yacht Club Marina Soc Inc v Auckland Council</i> [2012] NZEnvC 52	9 Mar 2012
<i>Sustainable Matatā v Bay of Plenty Regional Council</i>	12 May 2015
<i>Te Runanga O Ngai Te Rangī Iwi Trust v Bay of Plenty Regional Council</i> [2011] NZEnvC 402	21 Dec 2011
<i>Transpower New Zealand Ltd v Auckland Council</i>	28 Feb 2017
<i>Waterfront Watch Inc v Wellington City Council</i> [2012] NZEnvC 74	24 Apr 2012
<i>Whangaroa Maritime Recreational Park Steering Group v Northland Regional Council</i>	24 Apr 2014
Board of Inquiry: Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth section	1 Sept 2014

<b>Category B</b>	<b>Date</b>
<i>Equus Trust v Christchurch City Council</i>	21 Feb 2017
<i>Man O'War Farm Ltd v Auckland Council</i>	17 Feb 2017
<i>Albany North Landowners v Auckland Council</i>	13 Feb 2017
<i>Envirofume Ltd v Bay of Plenty Regional Council</i>	3 Feb 2017
<i>Mangrove Protection Society v Bay of Plenty Regional Council</i>	5 Dec 2016
<i>Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council</i>	5 Dec 2016
<i>Motiti Rohe Moana Trust v Bay of Plenty Regional Council</i>	30 Sept 2016
<i>Clearwater Mussels Ltd v Marlborough District Council</i>	16 Feb 2016
<i>Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council</i>	17 Dec 2015
<i>Re. Site 10 Redevelopment Ltd Partnership</i>	9 Oct 2015
<i>Trustees of the Glencally Trust v Northland Regional Council</i>	5 Sept 2015
<i>Appealing Wanaka Inc v Queenstown Lakes District Council</i>	21 Aug 2015
<i>Re. Buller District Council</i>	10 Aug 2015
<i>Director-General of Conservation v Northland Regional Council</i>	9 July 2015

<b>Category B</b>	<b>Date</b>
<i>Urban Auckland v Auckland Council</i>	19 June 2015
<i>Hamilton v Far North District Council</i>	27 Jan 2015
<i>Motiti Rohe Moana Trust v Bay of Plenty Regional Council</i>	14 Nov 2014
<i>Hoete v Minister of Local Government</i>	31 Oct 2014
<i>Thumb Point Station Ltd v Auckland Council</i>	13 Aug 2014
Board of Inquiry: Final Report and Decision of the Board of Inquiry into the Basin Bridge Proposal	1 Aug 2014
<i>Re. Waiheke Marinas Ltd</i>	25 July 2014
<i>Guyco Holdings Ltd v Far North District Council</i>	13 June 2014
<i>Motiti Rohe Moana Trust v Bay of Plenty Regional Council</i>	9 June 2014
<i>Ellis v Minister of Education</i>	19 May 2014
<i>Kiwi Property Holdings Ltd v Auckland Council</i>	24 Dec 2013
<i>Weir v Kapiti Coast District Council</i>	19 Dec 2013
<i>Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council (No 7)</i>	5 Nov 2013
<i>Moturoa Island Ltd v Northland Regional Council</i>	24 Sept 2013
<i>Graeme v Bay of Plenty Regional Council</i>	2 Aug 2013
Final Report and Decision of the Board of Inquiry in respect of the MacKays to Peka Peka Expressway Project	22 Jan 2013
<i>East Otago Taiapure Management Committee v Otago Regional Council</i>	10 Jan 2013
<i>Hoete v Minister of Local Government</i>	20 Dec 2012
<i>Keystone Trust Ltd v Auckland Council</i>	4 Dec 2012
<i>Mangawhai Harbour Restoration Society Inc v Northland Regional Council</i>	28 Oct 2012
<i>Day v Manawatu-Wanganui Regional Council</i>	30 Aug 2012
<i>Gavin H Wallace Ltd v Auckland Council</i>	15 June 2012
<i>Reiher v Tauranga City Council</i>	15 June 2012
Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal	1 June 2012
<i>Schofield v Auckland Council</i>	12 Apr 2012
<i>Mainpower NZ Ltd v Hurunui District Council</i>	9 Dec 2011
<i>Newbury Holdings Ltd v Auckland Council</i>	16 Nov 2011
<i>Blakeley Pacific Ltd v Western Bay of Plenty District Council</i>	4 Nov 2011

<b>Category B</b>	<b>Date</b>
Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri	26 Sept 2011
Final Report and Decision of the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal	1 June 2011
<i>Re. Tasman District Council</i>	28 Feb 2011

<b>Category C</b>	<b>Date</b>
<i>Re Tipene</i>	22 Dec 2016
<i>P &amp; E Ltd v Canterbury Regional Council</i>	19 Dec 2016
<i>Millar v Ashburton District Council</i>	13 Dec 2016
<i>Federated Farmers of New Zealand Inc v Royal Forest and Bird Protection Society of New Zealand Inc</i>	8 Dec 2016
<i>Benson v Kapiti Coast District Council</i>	31 Aug 2016
<i>Ngai Te Hapu Inc v Bay of Plenty Regional Council</i>	30 Aug 2016
<i>Koha Trust Holdings Ltd v Marlborough District Council</i>	15 Aug 2016
<i>South Epsom Planning Group Inc v Auckland Council</i>	29 July 2016
<i>Ngāti Pikiao Ki Maketū v Bay of Plenty Regional Council</i>	18 May 2016
<i>Puwera Māori Ancestral Land Unincorporated Group v Whangarei District Council</i>	13 May 2016
<i>Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council</i>	10 May 2016
<i>North Eastern Investments Ltd v Auckland Transport</i>	29 Apr 2016
<i>Trustees of the Opihi Whanaungakore v Whakatane District Council</i>	26 Feb 2016
<i>Amuri Irrigation Company Ltd v Canterbury Regional Council</i>	18 Sept 2015
<i>Rangitata Diversion Race Management Ltd v Genesis Energy Ltd</i>	9 Sept 2015
<i>Creswick Valley Residents' Association Inc v Wellington City Council</i>	28 Aug 2015
<i>Environmental Defence Society Inc v Northland Regional Council</i>	26 Aug 2015
<i>New Zealand Transport Agency v Architectural Centre Inc</i>	21 Aug 2015
<i>Tram Lease Ltd v Auckland Council</i>	7 Aug 2015
<i>Wanganui District Council v MWH New Zealand Ltd</i>	2 June 2015
<i>TKC Holdings Ltd v Western Bay of Plenty District Council</i>	27 May 2015

Category C	Date
<i>Nash v Queenstown Lakes District Council</i>	18 May 2015
<i>Thumb Point Station Ltd v Auckland Council</i>	18 May 2015
<i>Sustainable Matatā v Bay of Plenty Regional Council</i>	14 May 2015
<i>Federated Farmers of New Zealand v Northland Regional Council</i>	12 May 2015
<i>Teasdale v Wellington Regional Council</i>	5 May 2015
<i>Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council</i>	27 Mar 2015
<i>Fountain Blue Ltd v Mackenzie District Council</i>	20 Mar 2015
<i>Sutton v Canterbury Regional Council</i>	27 Feb 2015
<i>TW Reed Estate v Far North District Council</i>	18 Dec 2014
<i>Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Council</i>	12 Dec 2014
<i>Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council</i>	4 Dec 2014
<i>Taranaki Regional Council v Tri-View Shipping Private Ltd</i>	25 Nov 2014
<i>Re Eldamos Investments Ltd</i>	20 Nov 2014
<i>Ngati Makino Heritage Trust v Bay of Plenty Regional Council</i>	14 Nov 2014
<i>Black v Waimakariri District Council</i>	31 Oct 2014
<i>Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council</i>	23 Oct 2014
<i>Puke Coal Ltd v Waikato Regional Council</i>	23 Oct 2014
Board of Inquiry: Proposed Ruakura Development Plan Change	1 Sept 2014
<i>Calveley v Kaipara District Council</i>	27 Aug 2014
<i>Cook Adam Trustees Ltd v Queenstown Lakes District Council</i>	27 May 2014
<i>Environmental Defence Society Inc v New Zealand King Salmon Company Ltd</i>	17 Apr 2014
<i>Mitchell v New Plymouth District Council</i>	24 Mar 2014
<i>Colonial Vineyard Ltd v Marlborough District Council</i>	14 Mar 2014
<i>St Heliers Capital Ltd v Kapiti Coast District Council</i>	13 Mar 2014
<i>Te Tumu Landowners Group v Tauranga City Council</i>	27 Feb 2014
<i>Ngati Makino Heritage Trust v Bay of Plenty Regional Council</i>	13 Feb 2014
Board of Inquiry: Peka Peka to North Ōtaki Expressway Proposal	1 Feb 2014
<i>Van Dyke v Tasman District Council</i>	9 Jan 2014

<b>Category C</b>	<b>Date</b>
<i>Royal Forest and Bird Protection Society of New Zealand Incorporated v Canterbury Regional Council</i>	20 Dec 2013
<i>Trustees of Tuhua Trust Board v Minister of Local Government</i>	22 Nov 2013
<i>Karmarker v Auckland Council</i>	15 Nov 2013
Final Report and Decision of the Board of Inquiry into the Christchurch Southern Motorway Proposal	8 Nov 2013
<i>Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council (No 6)</i>	1 Nov 2013
<i>Nga Hapu O Poutama v Taranaki Regional Council</i>	25 Oct 2013
<i>Environmental Defence Society Inc v New Zealand King Salmon Company Ltd</i>	18 Oct 2013
<i>Fonterra Co-operative Group Ltd v Manawatu-Wanganui Regional Council</i>	18 Oct 2013
<i>Verseput v Tauranga City Council</i>	18 Oct 2013
<i>Warburton v Porirua City Council</i>	16 Oct 2013
<i>Lambton Quay Properties Nominee Ltd v Wellington City Council</i>	7 Oct 2013
<i>Macpherson v Napier City Council</i>	26 Sept 2013
<i>Trotman v Tasman District Council</i>	26 Sept 2013
<i>West Coast Ent Inc v Buller Coal Ltd</i>	19 Sept 2013
<i>Queenstown Airport Corporation Ltd v Queenstown Lakes District Council</i>	12 Sept 2013
<i>Green v Auckland Council</i>	11 Sept 2013
<i>Man O'War Station Ltd v Auckland Council</i>	31 Aug 2013
<i>Save Kapiti Inc v New Zealand Transport Agency</i>	19 Aug 2013
<i>Shotover Park Ltd v Queenstown Lakes District</i>	5 July 2013
<i>Far North District Council v Te Runanga-A-Iwi O Ngati Kahu</i>	11 June 2013
Re. Whitewater New Zealand Inc	10 June 2013
<i>Royal Forest and Bird Protection Society of New Zealand Inc v Buller District</i>	7 June 2013
<i>Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council</i>	6 June 2013
<i>East Otago Taiapure Management Committee v Otago Regional Council</i>	4 June 2013
<i>Madsen Lawrie Consultants v Auckland Council</i>	16 May 2013
<i>Verstraete v Far North District Council</i>	16 May 2013
<i>Longview Estuary Estate Ltd v Whangarei District Council</i>	7 May 2013
<i>East Otago Taiapure Management Committee v Otago Regional Council</i>	6 May 2013

<b>Category C</b>	<b>Date</b>
<i>Carter Holt Harvey HBU Ltd v Tasman District Council</i>	26 Apr 2013
<i>Re. Hawke's Bay Regional Council</i>	26 Apr 2013
<i>Rawlings v Timaru District Council</i>	22 Apr 2013
<i>Re. Application by Meridian Energy Ltd</i>	15 Apr 2013
<i>Williams v Mahanga E Tu Inc</i>	23 Nov 2012
<i>Royal Forest and Bird Protection Soc of New Zealand v Waitaki District Council</i>	21 Nov 2012
<i>Eades Land Partnership v Ruapehu District Council</i>	15 Nov 2012
<i>Jackson Street Retail Ltd v Hutt City Council</i>	5 Nov 2012
<i>Karaka Harbourside Estate Ltd v Auckland Council</i>	31 Oct 2012
<i>Sustainable Ventures Ltd v Tasman District Council</i>	28 Oct 2012
<i>JT Marine Farms Ltd t/a Port Gore Marine Farms v Marlborough District Council</i>	12 Oct 2012
<i>Mighty River Power Ltd v Porirua City Council</i>	8 Oct 2012
<i>Re. Queenstown Airport Corp Ltd</i>	25 Sept 2012
<i>Trustees of Tuhua Trust Board v Minister of Local Government</i>	19 Sept 2012
<i>Ngati Ruahine v Bay of Plenty Regional Council</i>	18 Sept 2012
<i>Brooklands TMT Partnership v Auckland Council</i>	7 Sept 2012
<i>Karaka Harbourside Estate Ltd v Auckland Council</i>	16 Aug 2012
<i>Stewart v Western Bay of Plenty</i>	2 Aug 2012
<i>Brookby Quarries Ltd v Auckland Council</i>	31 July 2012
<i>Mahanga E Tu Inc v Hawke's Bay Regional Council</i>	11 July 2012
<i>Oman Holdings Ltd v Whangarei District Council</i>	11 July 2012
<i>Foodstuffs (South Island) Ltd v Queenstown Lakes District Council</i>	6 July 2012
<i>Faloon v Palmerston North Airport Ltd</i>	6 June 2012
<i>Royal Forest and Bird Protection Society Inc v Whakatane District Council</i>	27 Feb 2012
<i>Carter Holt Harvey Ltd v Waikato Regional Council</i>	30 Nov 2011
<i>Bunnings Ltd v Hastings District Council</i>	6 Oct 2011
<i>Te Rūnanga-Ā-Iwi O Ngāti Kahu v Far North District Council</i>	29 Sept 2011
<i>Stirling v Christchurch City Council</i>	19 Sept 2011

<b>Category C</b>	<b>Date</b>
Final Report and Decision of the Board of Inquiry into the Turitea Wind Farm Project	1 Sept 2011
<i>Heybridge Developments Ltd v Bay of Plenty Regional Council</i>	19 Aug 2011
<i>Orewa Land Ltd v Auckland Council</i>	19 Aug 2011
<i>Meridian Energy Ltd v Wellington City Council</i>	12 Aug 2011
<i>Te Rakato Marae Trustees v Hawke's Bay Regional Council</i>	11 Aug 2011
<i>Re. Auckland Council</i>	5 Aug 2011
<i>Guardians of Paku Bay Association Inc v Waikato Regional Council</i>	25 July 2011
<i>Hay v Waitaki District Council</i>	15 June 2011
<i>Adcock v Marlborough District Council</i>	24 May 2011
<i>Man O'War Station Ltd v Auckland Regional Council</i>	11 May 2011
<i>Hemi v Waikato District Council</i>	20 Apr 2011
<i>Fan v Auckland Council</i>	16 Feb 2011
<i>Wairoa District Council v Hawke's Bay Regional Council</i>	13 Dec 2010
<i>Contact Energy Ltd v Manawatu-Wanganui Regional Council</i>	26 Nov 2010
<i>OB Holdings Ltd v Whangarei District Council</i>	12 Nov 2010
<i>Orewa Ratepayers and Residents Association Inc v Rodney District Council</i>	26 Sept 2010
<i>Fullers Bay of Islands Ltd v Otehei Bay Holdings Ltd</i>	24 Sept 2010

## Appendix 2: Further statistics

Table A2.1: Number of cases that mentioned the NZCPS policies.

Policy	Category A	Category B
1	6	6
2	6	9
3	13	10
4	6	4
5	4	4
6	20	8
7	8	3
8	11	2
9	1	4
10	0	2
11	9	13
12	2	1
13	24	13
14	8	7
15	22	12
16	1	1
17	4	5
18	5	5
19	4	4
20	2	1
21	3	4
22	2	5
23	7	5
24	3	6
25	3	3
26	0	1
27	1	2
28	0	0
29	2	0

**Table A2.2: Number of cases that mentioned the NZCPS policies by court type.**

Type of court	Category A	Category B
BOI	3	5
Court of Appeal	1	0
Environment Court	25	35
High Court	4	5
Supreme Court	2	0
<b>Total</b>	<b>35</b>	<b>45</b>

## Part 2G: Case studies

### Case Study 1: Integrated management – Bay of Plenty Regional Council

1. This case study looks at the role of Policy 4 (Integration) of the NZCPS 2010 in promoting integrated management of the coastal environment.

#### *Background*

2. Policy 4 requires integrated management of natural and physical resources in the coastal environment and any activities that affect that environment. An integrated approach is required due to the nature of activities and their effects in or adjacent to the coastal environment, and the multiple agencies that are involved in management of the coastal area and its resources.
3. Bay of Plenty Regional Council (BOPRC) is attempting to achieve integration through a variety of mechanisms, including statutory and non-statutory plans and strategies, implementation approaches, and co-governance arrangements.
4. In areas where particular attention is needed to balance development and recreational use pressures with the protection or enhancement of natural and cultural values, BOPRC has taken a more coordinated approach to work with stakeholders and develop management interventions.
5. BOPRC conducted a gap analysis against the NZCPS 2010 in 2011/12, whilst developing the second generation Regional Coastal Environment Plan (RCEP), and concluded that the Plan already gave effect to Policy 4 of the NZCPS 2010. The RCEP also identifies other agencies with statutory roles in the management of the coastal marine area, and requires the integration of water quality management with the management of land use and fresh water.

#### *Findings*

6. BOPRC considered that the strength of its approach is in the implementation. The Council is well resourced with a dedicated integration planning team that works with the local authorities in its region. BOPRC aims to influence land use planning by submitting on plans and commenting on certain resource consents<sup>42</sup>.
7. One of the biggest challenges is determining who picks up the costs. Many issues cross jurisdictional boundaries and many stakeholders have an interest or a role to play with varying capacity to engage.

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<sup>42</sup> Land use, coastal, subdivision and flood hazard.

### *Impact of the NZCPS 2010*

8. The NZCPS 2010 supports integrated management practices and steers councils towards an integrated approach, even when not acting as a main driver for them. Overall, Policy 4 reflects good practice to overcome jurisdictional boundaries, work effectively with stakeholders and balance competing pressures on the coast with environmental protection.

### **Case Study 2: Integrated management – Tauranga Harbour**

9. This case study looks at the integrated management of Te Awanui Tauranga Harbour, an area of competing use pressures and home to New Zealand’s largest port, the Port of Tauranga. It is one of New Zealand’s largest estuaries, with high ecological, cultural and recreational values. There are also significant urban growth pressures in Tauranga city.

### *Background*

10. A 2006 integrated management strategy for the harbour was largely driven by Local Government Act 2002 long-term planning requirements and the investment decisions that were needed to address a number of environmental issues that had been identified. The strategy’s vision was aspirational and paved the way for a collaborative response to managing the harbour. Te Awanui Tauranga Harbour Programme was established in 2013 to coordinate, prioritise and deliver on all work related to managing the harbour and its catchment. It is intended that this will involve all those making resource management decisions and will help to inform the community about what they are investing in.
11. Te Awanui Tauranga Harbour Advisory Group oversees the Harbour Programme. Current members of the Advisory Group include Tauranga Moana iwi and hapū as represented by Ngāti Ranginui, Ngāi Te Rangi and Ngāti Pūkenga, as well as local government councillors<sup>43</sup>.

### *Findings*

12. The Treaty settlement process (rather than the RMA) was one of the key drivers for setting up the governance forum for Tauranga Harbour. The intention is to move towards a co-governance arrangement when the settlement process for Tauranga Moana iwi is complete. Until then, councils retain their final decision-making authority.
13. The Harbour Programme provides an effective way of integrating and involving all those with an interest in the harbour. It goes beyond the coastal environment, looking at catchment management and taking a ‘mountains to the sea’ approach to address issues that the NZCPS with its coastal remit cannot address.
14. Funding provided by BOPRC has enabled iwi to draft iwi management plans and to engage in governance forums. This has been pivotal to enabling the Harbour Programme to progress in a collaborative manner. Prior to settlement, there are capacity issues that impact on the ability of some iwi and hapū to engage in resource management processes. While Treaty settlement negotiations are in progress, there is still a significant disparity in capacity between iwi.

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<sup>43</sup> From Tauranga City Council, Western Bay of Plenty District Council and Bay of Plenty Regional Council.

### *Impact of the NZCPS 2010*

15. The NZCPS 2010 supports the approach used in Tauranga, although it has not driven this integrated approach to harbour management. Non-statutory strategies such as this provide effective means for achieving integrated management in the coastal environment.

### **Case Study 3: Iwi values – Auckland’s Unitary Plan process**

16. This case study looks at the role that Policy 2 (The Treaty of Waitangi, tangata whenua and Māori heritage) of the NZCPS 2010 has played in driving outcomes for Ngāti Whātua Orākei in Auckland’s Unitary Plan process.

#### *Background*

17. Auckland’s Proposed Unitary Plan contained mooring zones, including one that incorporated Ōkahu Bay. Ōkahu Bay has special value and significance to Ngāti Whātua Orākei as Mana Whenua, including the mauri of the water, kaimoana, and a spiritual and cultural connection to the marae, whenua, and coastal lands. It is part of Whenua Rangatira, which has a co-management structure and reserves management plan established under the Orākei Act 1991. The Bay was an important source of rangatiratanga, manākitanga, kaitiakitanga and kaimoana gathering for Ngāti Whātua Orākei for generations.
18. Ngāti Whātua Orākei’s iwi management plan was lodged with Auckland Council in 2012. The moorings are referenced in the context of accessibility; however, the plan identified their removal as a specific action to control pollution in the Bay.
19. Removal of the moorings was not identified through the Proposed Auckland Unitary Plan process. Ngāti Whātua Orākei made submissions to the proposed Plan that the presence of the moorings in the Bay negatively impacted on cultural values. They sought to delete the part of the mooring zone that occurred in Ōkahu Bay and requested that within 12 months of the Plan becoming operative those moorings would be relocated.
20. The Panel agreed that the moorings should be removed from Ōkahu Bay, and determined that deletion of part of the zone and its replacement with a precinct with provisions that prohibited moorings there was the best method to achieve this. The owners of vessels affected by the decision will have 1 year to remove them.

#### *Findings*

21. Ngāti Whātua Orākei considered that the decision to remove the moorings was a result of the evidence they had collected, and their ability to engage with and seek support from the wider community, including recreational interests. They had also proposed an alternative place for boats to be moored.
22. Auckland Council had not accepted the earlier submission on the draft Auckland Unitary Plan. Through the hearing process, it became evident that the issue of removal of the moorings was a Policy 2 matter and would give effect to the NZCPS 2010.

23. Ngāti Whātua Orākei considered that other tools may be needed to better recognise their interests and strong association with Ōkahu Bay. Tools mentioned include rahui under the Fisheries Act 1996 and seeking customary title under the Marine and Coastal Area (Takutai Moana) Act 2011. They considered that being able to protect fisheries habitat under the RMA would be a useful way to ensure more holistic management.
24. Ngāti Whātua Orākei have participated in the Hauraki Gulf Marine Spatial Planning process and emphasised the importance of being around the table. They consider marine spatial planning to be a useful tool for addressing resource management issues in the coastal environment.

### ***Impact of the NZCPS***

25. Objective 3 and Policy 2 of the NZCPS played an important role in supporting the outcome that Ngāti Whātua Orākei sought, although they were not the only factors considered by the Panel. Whilst removal of the moorings had been identified in the iwi management plan, it had not been picked up through the plan development process.
26. The RMA is part of a suite of legislation for managing activities in the coastal environment. Multiple agencies have roles in coastal management. Participation and engagement are essential tools for influencing environmental outcomes.

### **Case Study 4: Port dredging – Otago**

27. This case study looks at the influence of Policy 16 (Surf breaks) of the NZCPS 2010 on Port Otago's application to dredge the port channel.

### ***Background***

28. Dredging of the identified port channel is a permitted activity in the Otago Coastal Plan but deposition of the dredge material requires consent. In 2010, Port Otago applied for consent to widen and deepen the Port Chalmers Channel beyond the permitted activity area. It proposed to do that by dredging the channel and then depositing the dredged material approximately 6.5 kilometres to the north of Taiaroa Head, as well as at an inshore site.
29. Much of the Otago coast is suffering from erosion, partly due to a significant reduction in the amount of sediment (and flow) that is travelling down the Clutha River/Mata-Au. This sediment is transported northwards along the coast, replenishing beaches and filling the port channel. The sand that is removed from the port channel is deposited into an already sandy environment. The deposition of dredge material assists with the replenishment of Shelley Beach, which is currently subject to erosion. Since dredging and dumping of the dredge material has been ongoing since the 1860s, the Council considered that if this had any adverse effects, they would be evident.

30. However, based on the lack of information of the impacts of depositing dredge material at the inshore site, the Port agreed to use an adaptive management approach for three years to build sufficient knowledge to support a longer-term consent application. In 2010, community concern resulted in numerous submissions in opposition. However, the recent application for long-term consent was generally supported (with conditions), representing a substantial turn around in community feelings towards the dredging activity.
31. Surfers were concerned about the impact that a substantial increase in dumping at the inshore site would have on surf breaks of national significance identified in the NZCPS 2010.
32. Much of the area is of high importance to tangata whenua, with the impact on traditional food gathering areas a significant concern.

### ***Findings***

33. The adaptive management approach was considered appropriate in this instance as the dynamic nature of the environment meant that any 'over dumping', particularly at the inshore site, would smooth out relatively quickly.
34. The community engagement process that was undertaken as a result of the first application built trust and support between the Port and key stakeholders. However, the level of engagement and the development of science to support the long-term consent added significant cost to the consent application. Indeed, the Port commented that the cost of the consent and future monitoring programme is almost equivalent to the cost of dredging.
35. Iwi were heavily involved in the consenting process. Opposition to the initial consent application was around the impact on food gathering areas, whereas with the second consent application the concern had shifted to ensure that the next generation did not have to clean up the mistakes of the current generation.

### ***Impact of the NZCPS 2010***

36. The NZCPS 2010 surf break policy had a significant impact on the outcome of the inshore dredging consent. Without these supporting policies, the impact of the deposition on the surf breaks would not have been given the consideration that it received.
37. The Port acknowledged that, on balance, the NZCPS 2010 helped its case in obtaining its next generation consent. The NZCPS 2010 had a significant impact on dealing with the consent in terms of providing for port activities and protection of the surf break. In addition, it drove much of the consultation around obtaining the longer-term consent.
38. The level of consultation was in part a result of the NZCPS 2010. The Port considered that consultation with iwi is ongoing and supported but not driven by the NZCPS 2010. However, consultation with the surfing community was entirely driven by the NZCPS 2010.

## Case Study 5: Giving effect to Policies 13 and 15 – Auckland Unitary Plan and Northland Regional Policy Statement

39. This case study sets out the planning response to 'give effect' to Policies 13 (Preservation of natural character) and 15 (Natural features and natural landscapes) of the NZCPS 2010 in the Auckland Unitary Plan (AUP) (now operative in part) and the Operative Northland Regional Policy Statement (RPS). It looks at the approach of the Independent Hearings Panel (the Panel) in making recommendations to Auckland Council, particularly with respect to drafting objectives and policies in light of the *King Salmon* decision<sup>44</sup>, and Policies 13 and 15 of the NZCPS 2010.

### *Auckland Unitary Plan*

40. The Auckland Unitary Plan (AUP) provisions relating to Outstanding Natural Landscapes (ONLs), Areas of Outstanding Natural Character (ONCs) and Outstanding Natural Features (ONFs) (as well as other significant values of resources with significant natural, social and cultural values) have been identified, evaluated and recorded so that the 'protective provisions' are very clear as to what is being protected. This is to avoid generic provisions that simply seek to 'avoid adverse effects'.
41. Objectives and policies that included the statement 'avoid the adverse effects of' were drafted to prevent absolute planning provisions from being created that would not promote the sustainable management of natural and physical resources.
42. The Panel assessed the appropriateness of objectives and policies by considering them against the following questions:
- i. *What is the relevant environment for the purpose of the particular objective or policy?*
  - ii. *What particular use or activity ought to be enabled in that environment?*
  - iii. *What particular value or values of that environment ought to be protected?*
  - iv. *What kinds of effects of the activities are relevant to such protection of values and which of those effects are adverse in the context of the relevant environment?*
  - v. *Are the adverse effects to be absolutely avoided or are they to be managed in terms of matters of degree?*
  - vi. *If the adverse effects are to be managed, what are the thresholds or other parameters for appropriate management?*<sup>45</sup>
43. In addressing 'the effect of the *King Salmon* decision on the drafting of objectives and policies', the Panel was clear that '*The related objectives and policies need to be considered together, as often the purpose of a policy is best understood by reference to a relevant objective. Just as for any other statutory instrument, the meaning of plan provisions must be understood from their text and in light of their purpose*' and '*In some cases (as in the New*

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<sup>44</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

<sup>45</sup> Auckland Unitary Plan Independent Hearings Panel, Report to Auckland Council, Overview of recommendations on the proposed Auckland Unitary Plan, 22 July 2016, p 39.

*Zealand Coastal Policy Statement) a policy may contain a statement of purpose, and in such cases it is essential to read the policy as a whole rather than by some piecemeal process’.*

44. The Panel found *‘In this way the objectives and policies should clearly identify what is to be enabled in which locations and what is to be avoided. In a number of situations, some types of development may be enabled in sensitive locations while other types of development should not be. For example, while a marine farm would be inappropriate in an outstanding natural landscape or seascape, a lighthouse may not be; or while the urbanisation of a significant ecological area should be avoided, it may be appropriate, as a reasonably practicable option, for a pipeline or transmission line to cross that area (in all cases subject to an assessment of relevant values and effects and the imposition of reasonable conditions)’.*<sup>46</sup>
45. The AUP identifies, evaluates and records the areas of ONCs, ONLs and ONFs in schedules and plan maps. The relevant schedules:
- Set out the natural characteristics and qualities that contribute to the values of the identified areas.
  - Include information on the quality and characteristics of the area and its values.
  - Acknowledge the existence of ‘modified and built form’, such as typical pastoral farming activities and existing marine farms.
  - Are expected to be used by applicants, those assessing proposals and decisions makers when assessing proposals against the relevant objectives, policies and assessment criteria.
46. The Panel determined as one of its principles (which was accepted by the Council) that, in drafting RPS objectives and policies that had an ‘avoid’ or ‘protect’ focus, the particular qualities or characteristics of those areas needed to have been:
- a) identified;
  - b) evaluated (against criteria or factors); and
  - c) mapped/included in a schedule.<sup>47</sup>
47. For decision makers, the assessment of effects on the characteristics and qualities that contribute to the identified values of ONCs and ONLs, as specified in the schedules, will be one of the key determinants of whether existing or new activities are having or will have an adverse effect, and if so, whether those effects need to be avoided.
48. In relation to plan (non-RPS) provisions for landscapes and natural features outside identified outstanding areas, the AUP addresses NZCPS Policy 15(b) by providing specific objectives and policies to manage the effects on landscapes and natural features that are not scheduled as ONLs or ONFs. This approach includes managing subdivision use and development in areas adjoining scheduled ONLs/ONFs to protect the visual and biophysical linkages between them, and avoiding cumulative adverse effects; and avoiding

<sup>46</sup> Auckland Unitary Plan Independent Hearings Panel, Report to Auckland Council, p. 40.

<sup>47</sup> That is, no unidentified ‘special’ areas or places were to be avoided or protected.

significant adverse effects, and avoiding, remedying or mitigating other adverse effects on the characteristics and qualities of natural landscapes and natural features that have particular values, provide a sense of place or identity, or have high amenity values.

### ***Northland Regional Policy Statement***

49. This section looks at the Northland RPS approach to identifying ONCs and ONLs.
50. In many respects, the approaches taken in the Northland RPS and the AUP regarding Policies 13 and 15, and ONCs, ONLs and ONFs are very similar. Appeals on this part of the Northland RPS provisions were settled through mediation in 2015. Most of the RPSs (including the ONC and ONL provisions) became operative in May 2016.
51. The processes and methodologies that were used for ONCs, ONLs and ONFs in the Northland RPS included identifying and evaluating areas against criteria or factors, and mapping (including schedules). The processes and methodologies that were used to identify outstanding areas are set out in the RPS Appendices (Appendix 1 – Mapping methods and Appendix 4 – Outstanding natural features).
52. The main difference between the Northland RPS and the AUP is that the schedules identifying the criteria, factors, attributes and values 'sit' outside the NRPS but inside the AUP.
53. Both documents have the mapped areas as part of the statutory document.

### ***Findings***

54. The AUP and Northland RPS provide useful examples of where there is good information detailing the values that make up ONCs and ONLs, and the effects of existing activities such as farming and marine farming on these values.
55. In both cases, important outcomes included:
  - Protection of outstanding areas from inappropriate uses
  - Clear identification that existing uses were not adversely affecting outstanding areas
  - Recognition of earlier planning decisions to consolidate uses in particular areas to avoid ribbon or sprawling coastal development
56. Both Auckland and Northland Councils took steps to provide for use and development, and to ensure that activities could still occur in areas identified as having outstanding landscape or natural character.
57. In particular, the AUP, with its approach of identifying aquaculture areas in outstanding landscapes, may provide a possible resolution for industry concerns about the relative weightings of the protective and use policies in the NZCPS 2010 post the *King Salmon* decision.

## Case Study 6: Managing coastal hazard risks – Mapua and Ruby Bay

58. This case study looks at a 2010 Court decision relating to relocatable buildings that examined the directive nature of Objective 5 (which requires that coastal hazard risks are managed) and Policy 25 (Subdivision, use and development in areas of coastal hazard risk) of the NZCPS 2010.

### *Background*

59. The coastal plain at Mapua and Ruby Bay is subject to coastal erosion and inundation. Multiple owners of properties that front the beach have erected (consented and unconsented) hard protection structures to limit the impact of storms and wave action. Tasman District Council has worked with the community on how to deal with the flooding issues since the mid-2000s with mixed results.
60. In 2009, the Council commissioned modelling of freshwater flooding in the area and undertook an assessment of coastal hazards. This modelling work showed that a number of properties were highly likely to be subject to inundation as a result of sea level rise and increased storm frequency. The Council engaged with the community over the next 2 years to work through the issues and options, resulting in a draft Plan Change (PC22) in 2011.
61. The policy position in the Plan Change assumed that climate change and sea level rise will continue, and that existing hard protection structures will not be maintained. Controls are imposed on subdivision and development in areas subject to seawater and stormwater flooding. Housing in the defined coastal hazard area must be relocatable and further development in these areas is restricted, although future expansion of the township was provided for on elevated sites away from the hazard areas.
62. Four appeals were received, three of which were resolved by negotiation. One of these related to land owned by the Gallaghers,<sup>48</sup> which sought to incorporate rules to allow 12 elevated building platforms on the property on which relocatable houses would be constructed. In defending the appeal, the Council undertook further detailed modelling work of the impact on the Gallagher property. Aside from the legal costs of defending the appeal, the additional technical work cost the Council over \$100k.

### *Findings*

63. There was no dispute that coastal erosion is occurring in Ruby Bay. The Court found that whilst the Gallagher property would be unlikely to be affected by coastal erosion within a 100-year timeframe, it would be affected by stormwater flooding and seawater inundation as a result of overtopping. The Court found that the seawater inundation created a high level of hazard for occupants of or visitors to dwellings on the site.

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<sup>48</sup> *Gallagher v Tasman District Council* [2014] NZEnvC 245.

64. The proposal was assessed against Objectives 5 and 6, and Policy 25. The Court found that Objective 5 was similarly directive as Policies 13 and 15, and sought to ensure that hazard risks are managed in defined ways. The Court concluded that ‘ensure’ is directive and means to secure, guarantee, make certain and protect. Policies 25(a) and (b) signal in very clear terms that increasing the risk of social, environmental and economic harm from coastal hazards is to be avoided. Given the modelled level of inundation, the Court considered that restricting the level of development on the site was not based solely on the precautionary approach but rather represented a very real possibility. As a result, the Court found that the appellant’s proposal for 12 dwellings did not give effect to the NZCPS 2010 and was contrary to Objective 5 and Policy 25. The appeal was dismissed.
65. In respect of Policy 3 (Precautionary approach), while there are clear uncertainties, the controls contained in the Plan Change are not only justified on a precautionary basis. In considering the extent of uncertainty, the Court considered the factors identified in *King Salmon* to determine whether or not the precautionary approach required the activity to be prohibited until further information was available and concluded that:

*In short, although we recognise that RMA is not a no risk statute, we consider in this case that the nature of the risk to the Gallagher property is such that the Council’s response is appropriate in the context of Objective 5 and Policy 25. (158)*

### ***Impact of the NZCPS 2010***

66. Whilst the policy development process had been started prior to the gazettal of the NZCPS 2010, its advent provided supporting policy direction for the Plan Change.
67. The Court found that the wording of the objectives and policies to address coastal hazards were equally as directive as Policies 11 and 13, which were considered by the Supreme Court in the *King Salmon* decision. Objective 5 and Policy 25 were found to be directive about avoiding increasing the risk of harm from hazards.
68. The case also demonstrated the difficulties in seeking to extrapolate the effect of future estimated sea level change undertaken at a broad scale onto individual properties where the science and modelling are imprecise and experts may present potentially conflicting views.

## Case Study 7: Managed retreat in an urban environment – Auckland Council

69. This case study considers how Auckland Council manages coastal retreat in an urban environment, as well as coastal hazards in a wider context. Particular attention is given to the effectiveness of the NZCPS 2010 in shaping Auckland’s policy and operational response to a changing climate.

### *Background*

70. The requirement for a risk-based approach to coastal hazard management and to manage for the effects of climate change is new to the NZCPS 2010.
71. Auckland Council is aware of the future coastal management challenges that sea level rise presents. There is a presumption from the community that developed areas will be protected because of the risk presented to public access, amenity values, natural and built assets (such as boat ramps, beaches and esplanade reserves), and essential infrastructure.
72. The natural processes of cliff and beach erosion will be exacerbated by the impacts of climate change and present local issues around the Auckland region due to the assets that are positioned behind these areas, and the strong social and cultural attachment to the coast. Coastal erosion tends to be an issue to residents in terms of protecting their property interests, but can also become a priority where public values such as open space are at risk (as was the case with Huia Domain).
73. The extent of coastal inundation from storm surge and sea level rise was mapped by the National Institute of Water and Atmospheric Research (NIWA), and included in the Proposed Auckland Unitary Plan to identify development controls and habitable floor levels. The maps were subject to considerable community interest. The main implementation issue was a lack of strong national direction on how this identification should be carried out.
74. The issues are most contentious at a local level. Increased awareness is slowly changing the public’s perception but there is a long history of expectation that land will be protected from the ocean. For residents, hard protection such as seawalls is often perceived as an effective and fixed form of defence.
75. The question of how much a council should invest in protection is often answered through resource consent management decisions. It is difficult to balance the short-term need against the long-term impacts of future climate change. A lot of infrastructure in Auckland is of regional and national significance and so, unless there is a clear policy for avoidance, hard protection is likely to be the option chosen.
76. In a heavily developed urban area, there are very few options for relocating dwellings and other buildings, making ‘managed retreat’ difficult. Relatively small lot sizes do not allow for buildings to be moved landward within a site. Furthermore, the cost of coastal land means that landowners are generally unwilling to build temporary or relocatable buildings, or to allow part of their land to erode, and they generally prefer hard protection structures over softer options such as sand dune replenishment and planting that require more space.

77. Auckland has an enormous amount of aged and expensive infrastructure, including lifelines (e.g. part of State Highway 1 is located on the coast, sewage pipelines run along North Shore beaches), with a lack of practicable alternative resilience options. Many coastal structures (both consented and unconsented) on both council and private land are coming to the end of their design life, with associated on-going costs to the Council. Quantifying and planning for the potential impacts of sea level rise on public assets is dependent on the availability of information about the location and condition of those assets, which is often incomplete. For example, a number of private pipes feeding into the wastewater or stormwater system were discovered during a council survey.

### ***Findings***

78. Staff spoken to at Auckland Council consider that the NZCPS 2010 coastal hazard policies (24-27) are good, including the focus on managed retreat and natural defences, and an improvement on the previous 1994 policy statement.
79. Clear, directive NZCPS 2010 objectives and policies have helped to manage pressures for inappropriate development (or development located in inappropriate locations), and to balance development with environmental, amenity and natural character values.
80. However, the Council staff spoken to commented that implementation remains a problem and that the coastal hazard policies need to be accompanied by national guidance, a lack of which to date has contributed to implementation issues.
81. The NZCPS 2010 discourages the provision of hard structures and promotes the provision of natural defences. In practice, Auckland Council commonly experiences pressure to implement hard protection responses in urban areas as opposed to 'do nothing' or 'relocation' options. There is an assumption by the community that developed areas will continue to be protected.
82. A lack of best practice examples of urban managed retreat in New Zealand has also proved difficult for Auckland Council.
83. Sea level rise and the need for managed retreat is an important issue that requires investment and information to plan for and manage. Planning at the regional and national level is likely to achieve a better outcome, particularly as this issue is likely to be most contentious at the local level. The strong push from communities to retain their existing hard protection structures and the expense of moving significant infrastructure has led to the status quo continuing in decision-making. It is difficult for councils to encourage alternatives despite limited future funds for the maintenance and renewal of such structures.
84. There are no straightforward options for areas of significant existing development that are under threat from climate change with ongoing sea level rise. Smarter, more adaptive strategies will need to be developed and councils will need assistance with this.
85. Working with communities is critical. The drawbacks of hard protection features need to be better conveyed to communities, including the effects of 'coastal squeeze' on natural coastal features, habitats and ecosystems, and public space. More positive, adaptive language such as 're-alignment' may assist, though implementation will remain contentious.

*Impact of the NZCPS 2010*

86. The staff spoken to at Auckland Council support the policy intent of the NZCPS 2010. However, the extent of existing infrastructure (and expense of more resilient alternatives), community pressure and the lack of clear implementation guidance has meant that it has not changed practices in Auckland to the extent that may be desired.
87. Planning for climate change is controversial and challenging, and it would have been useful for national guidance to have been issued earlier. The preparation of this guidance has been relatively slow (DOC's coastal hazards guidance and the Ministry for the Environment's Coastal Hazards and Climate Change guidance update are currently being prepared).
88. The Council expressed a preference for the term 're-alignment' to be used rather than 'managed retreat'. It also noted that better use of non-regulatory tools such as education and communicating the consequences of climate change would be useful.
89. The Council noted that the pressure for housing can conflict with hazard management best practice to set development back from the coast.
90. The Council considered that the intention of promoting long-term precautionary management of the coast is sound but inherently difficult to implement because it is challenging to encourage communities to think beyond their time in an area and even harder to implement in short-term political cycles. The UK approach to breaking down the 100-year timeframe into management epochs and taking a risk-based approach was cited as potentially useful. The Council also questioned whether the 100-year timeframe was sufficient for substantive new development.
91. The loss of public space is of concern to Aucklanders. Coastal erosion and sea level rise are resulting in the loss of public access. Existing tools such as esplanade reserves may need to be re-thought in the context of climate change. It was suggested that these should be greater than 20 m to future-proof against the loss of public access. However, although wider esplanade reserves are possible under the RMA, councils are required to pay developers for any width over 20 m, which can represent a significant cost. One function of esplanade reserves is as a sacrificial buffer to mitigate the impacts of coastal erosion. However, there is also a need for a stronger policy, particularly one that articulates council requirements to protect public land fronting private development.

## Part 2H: Coastal population and land uses

**Table 1: Length of coastline by region. (Source: Land Information New Zealand Topo50 coastline; regional council boundaries 2013, Land Information New Zealand.)**

<b>Region</b>	<b>Length (km) including all islands</b>
Southland (including Stewart I./Rakiura)	3823
Otago	544
Canterbury	878
Marlborough	1872
Nelson	129
Tasman	680
West Coast	662
Wellington	509
Manawatu-Wanganui	162
Taranaki	265
Hawke's Bay	379
Gisborne	322
Bay of Plenty	781
Waikato	1462
Auckland (including Great Barrier Island (Aotea Island) & Waiheke Island)	2660
Northland	3586
Chatham Island	561
Administered by the Minister of Conservation under s31A RMA:	
Auckland Islands	550
Antipodes Island Group	47
Bounty Islands	15
Campbell Island / Motu Ihupuku	160
Kermadec Islands	65
Manawatāwhi/Three Kings Islands	40
Snares Islands/Tini Heke	36
<b>Total</b>	<b>20 188</b>

**Table 2: Coastal population by distance from Mean High Water Springs (MHWS). (Source: Population by Meshblock, 2013 Census, Statistics New Zealand; NZ Street Address Points, Land Information New Zealand.)**

<b>No address points</b>	<b>500 m</b>	<b>1 km</b>	<b>5 km</b>
North Island	818 985	1 193 700	2 258 043
South Island	116 238	180 294	472 770
<b>Total</b>	<b>935 223</b>	<b>1 373 994</b>	<b>2 730 813</b>
	<b>(22%)</b>	<b>(32%)</b>	<b>(64%)</b>

<b>With address points</b>	<b>500 m</b>	<b>1 km</b>	<b>5 km</b>
North Island	597 465	1 032 180	2 214 924
South Island	76 193	145 411	451 228
<b>Total</b>	<b>673 658</b>	<b>1 177 591</b>	<b>2 666 152</b>
	<b>(16%)</b>	<b>(28%)</b>	<b>(63%)</b>

**Table 3: Coastal population by elevation from Mean High Water Springs (MHWS). (Source: Population by Meshblock, 2013 Census, Statistics New Zealand; NZ Street Address Points, Land Information New Zealand; NZ Digital Elevation Model 100 × 100 m, Land Information New Zealand.)**

	<b>10 m</b>	<b>2 m</b>	<b>1 m</b>
North Island	387 687	120 746	95 852
South Island	282 824	50 113	10 325
<b>Total</b>	<b>670 511</b>	<b>170 859</b>	<b>106 177</b>
	<b>(16%)</b>	<b>(4%)</b>	<b>(3%)</b>

**Table 4: Land classification analysis. (Source: New Zealand Land Cover Database v4.1 2013, New Zealand Government, Landcare Research New Zealand.)****5 km from Mean High Water Springs (MHWS)**

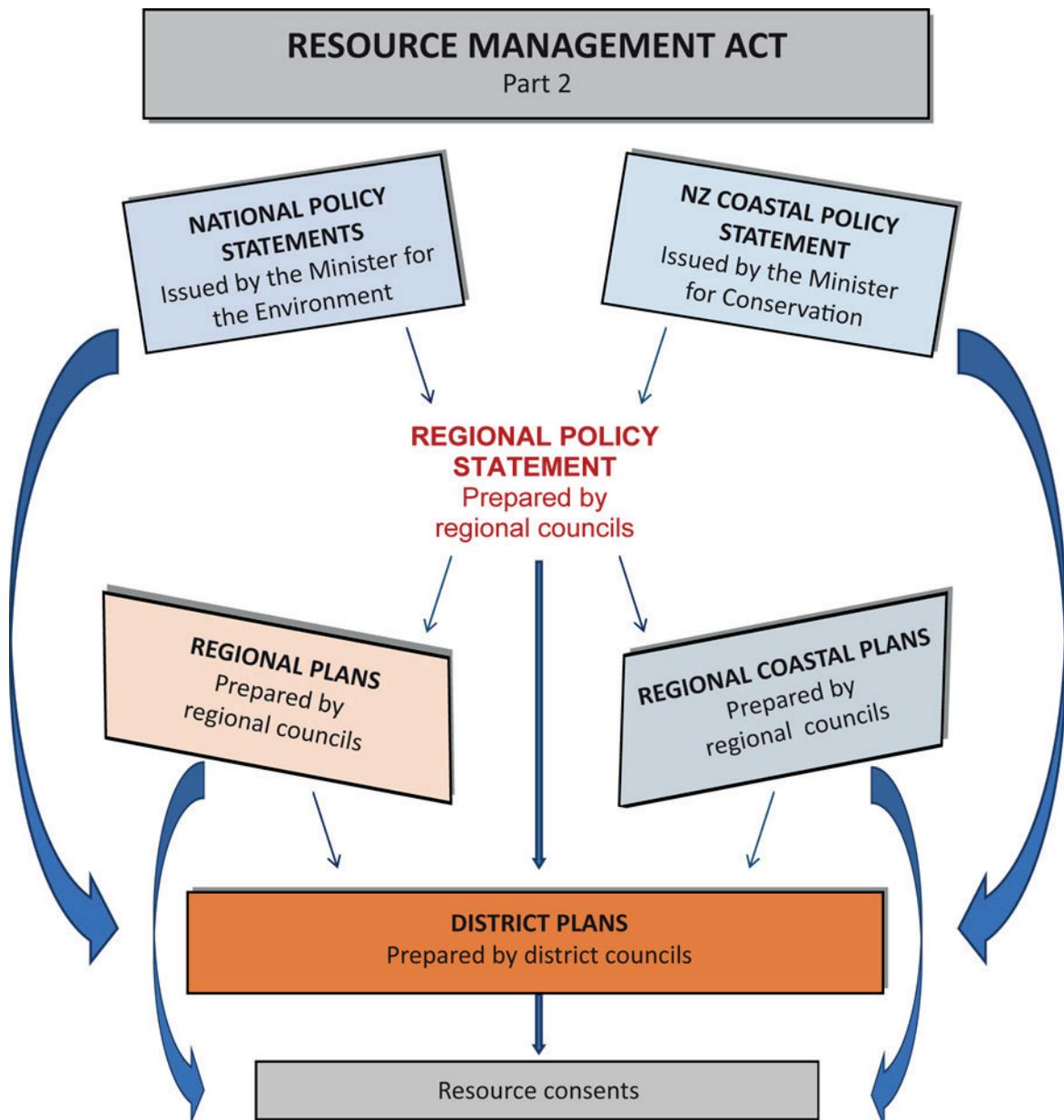
Land class	Land cover change (ha)			
	1996	2001	2008	2012
Urban Area	7365	8840	11 971	12 374
Transport Infrastructure	574	607	674	644
Exotic Forest	46 513	52 960	55 417	52 284
Exotic Forest - Harvested	1383	2302	2547	4258
High Producing Grassland	39 606	31 746	24 864	25 672
Low Producing Grassland	13 740	12 601	12 365	13 673
Short-rotation Cropland	4575	4640	4801	4748
Orchard, Vineyard or Other Perennial Crop	6369	6726	8888	8908
Herbaceous Saline Vegetation	4018	4005	4006	4003
Herbaceous Freshwater Vegetation	7230	7138	7016	6961
Mangrove	2183	2181	2184	2184
Estuarine	1881	1877	1917	1921
Tall Tussock Grassland	3663	3663	3652	3642
Broadleaved Indigenous Hardwoods	39 958	39 789	39 578	39 358
Indigenous Forest	36 999	36 669	35 840	35 623

**1 km from MHWS**

Land class	Land cover change (ha)			
	1996	2001	2008	2012
Urban Area	4844	5709	7251	7433
Transport Infrastructure	329	341	370	366
Exotic Forest	17 064	18 968	19 467	18 409
Exotic Forest - Harvested	445	731	982	1481
High Producing Grassland	16 811	14 247	11 554	11 718
Low Producing Grassland	7347	6853	6798	7323
Short-rotation Cropland	1402	1393	1499	1500
Orchard, Vineyard or Other Perennial Crop	2189	2284	2927	2933
Herbaceous Saline Vegetation	3750	3737	3739	3737
Herbaceous Freshwater Vegetation	2977	2956	2912	2886
Mangrove	2149	2147	2150	2150
Estuarine	1871	1867	1907	1911
Tall Tussock Grassland	774	774	762	762
Broadleaved Indigenous Hardwoods	18 001	17 998	17 958	17 880
Indigenous Forest	14 910	14 816	14 520	14 472

## Part 2I: *Environmental Defence Society v New Zealand King Salmon* – Further information

### 1. Brief RMA overview



## 2. NZCPS 2010

*‘The purpose of a New Zealand coastal policy statement is to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.’*

(Section 56 RMA)

- Mandatory (section 57 RMA).
- Sits alongside national policy statements.
- Policy statements and plans must ‘give effect to’ the NZCPS.
- Decisions on resource consents must ‘have regard to’ the NZCPS.
- Second NZCPS (replaced 1994 document).
- Preparation process involved independent review, public notification by a Board of Inquiry, submissions and hearings, and report to the Minister of Conservation.
- Minister made some amendments to version recommended by Board (new policy for aquaculture (Policy 8) and ports (Policy 9), inclusion of ‘areas of outstanding natural character’ (Policy 13) replacing ‘high natural character’ recommended by the Board, revised policy on activities in the coastal environment (Policy 6), and strategic planning (Policy 7)).

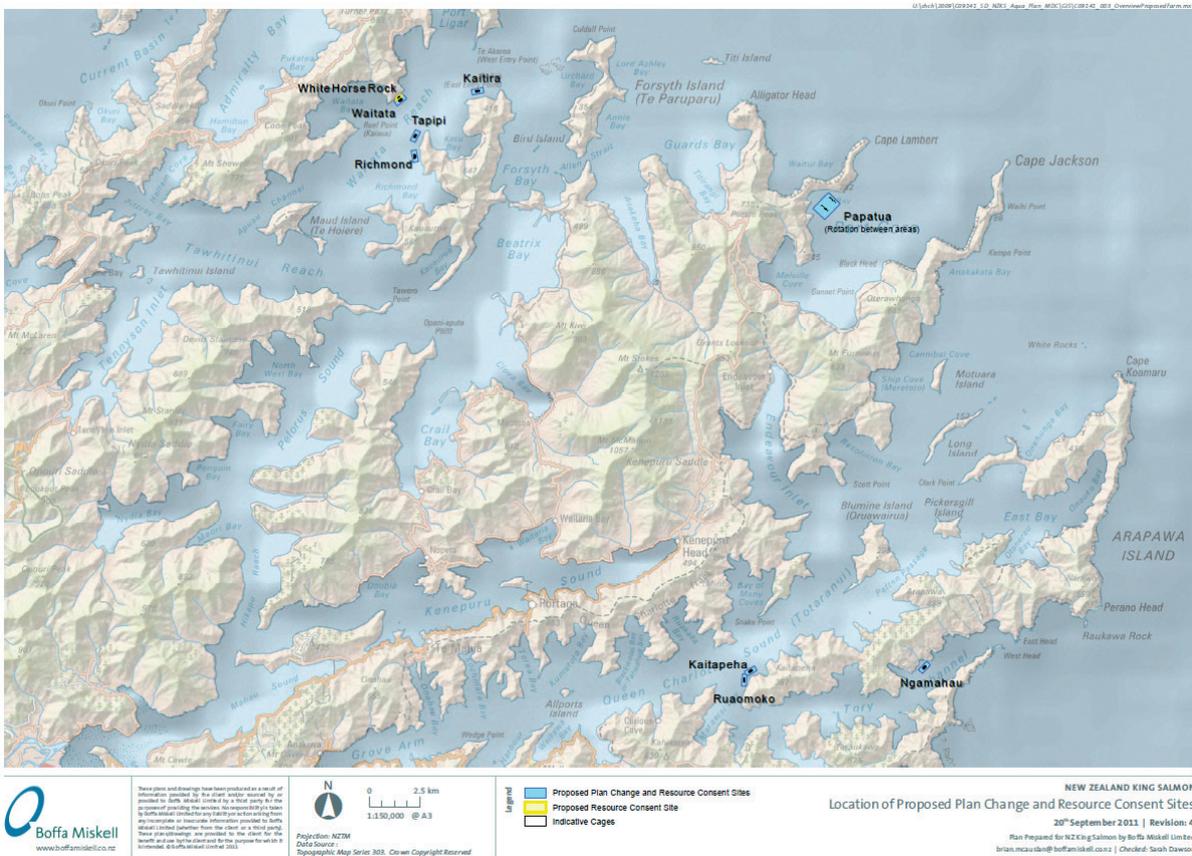
### *NZCPS 2010 – Key provisions for EDS v NZKS*

- Objective 2
- Objective 6
- Policy 7
- Policy 8
- Policy 13(1)
- Policy 15(1)
- Note Supreme Court’s discussion of these NZCPS provisions [45]-[63]

### 3. Application and decisions (focusing on the Board of Inquiry and Supreme Court decisions)

#### *The application*

- Private plan change to establish a new zone in the Marlborough Sounds Resource Management Plan (CMZ3) and rezone eight sites.
- Resource consent applications for those eight sites and one other where a plan change was not required.
- Application made to the Environmental Protection Agency.
- Decision by Minister of Conservation that the matters proposed by NZKS were a proposal of national significance and referred to a Board of Inquiry.



### *The Board of Inquiry decision*

- Approved rezoning of four of eight sites sought (Waitata, Richmond, Papatua and Ngamahau) and granted resource consent for those sites.
- Declined resource consent for the White Horse Rock site.
- Applied conditions to the granted consents.

### *Declined plan changes*

#### **Ruaomoko and Kaitepeha in Queen Charlotte Sound**

- Strong and long-standing policy direction in the Marlborough Regional Policy Statement and the Marlborough Sounds Resource Management Plan restricting aquaculture and promoting ‘dominance’ of recreation in the main stem of Queen Charlotte Sound.
- Adverse effects on navigation and navigation safety, recreational boating, the adjacent scenic reserve, natural character and landscape, and cultural traditions of Māori [1255-1256].



### Kaitira and Tapiri in Waitata Reach, Pelorus Sound

Considered both effects of individual sites and cumulative effects, particularly:

- ‘Ecological integrity’ (water quality and New Zealand king shag particularly).
- Cultural concerns.
- Natural character and landscape values.

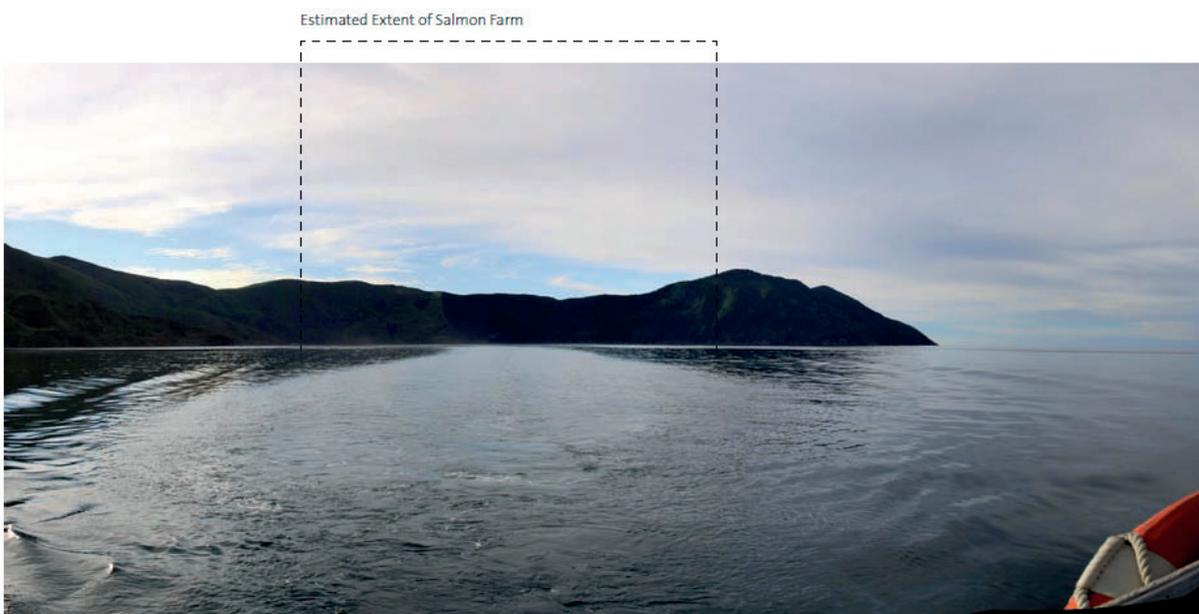


### Papatua at Port Gore

- Largest proposed site (91 ha).
- ‘Low flow’ location.
- Biosecurity benefits advanced by applicants.
- Undisputed evidence that area of outstanding natural character and outstanding natural landscape, and that the proposed farm would have adverse effects on those values.



Site of proposed Papatua salmon farm at approximately 700 m distance from the proposed cage boundary.



Site of proposed Papatua salmon farm at approximately 1410 m distance from the proposed cage boundary.

### ***Board of Inquiry decision – Papatua at Port Gore***

Found:

- Outstanding natural character and outstanding landscape.
- Adverse effects high to very high.
- Policy 13(1)(a) and Policy 15(1)(a) NZCPS would not be given effect to [1236].
- ‘The placement of any salmon farm into this dramatic landscape with its distinctive landforms, vegetation and seascape, would be an abrupt incursion. This together with the Policy directions of the Sounds Plan as indicated by its CMZ1 classification of Port Gore, weighs heavily against the Proposed Plan Change’ [1240].
- ‘We have, also, to balance the adverse effects against the benefits for economic and social well-being, and, importantly, the integrated management of the region’s natural and physical resources’ [1242].
- ‘While the outstanding natural character and landscape values of outer Port Gore count against the granting of this site the advantages for risk management and the ability to isolate this area from the rest of the Sounds is a compelling factor. In this sense the appropriateness for aquaculture, specifically for salmon farming, weighs heavily in favour. We find that the proposed Papatua Zone would be appropriate’ (emphasis added) [1244].

The Board’s reasoning:

- Give effect to:
  - Requirement to ‘give effect to’ is ‘a strong direction and requires positive implementation of the instrument’ [1180].
- NZCPS wording:
  - NZCPS contains policies that ‘pull in different directions’. The requirement to give effect to does not require every policy to be met [1180].
  - ‘A judgment is required as to whether the instrument as a whole is generally given effect to’ [1180].
  - No hierarchy of provisions in NZCPS. ‘It is a matter of judgement on the facts of a particular proposal and no one factor is afforded the right to veto all other considerations. It comes down to a matter of weight in the particular circumstances’ [1182].
- Relationship with Part 2 RMA:
  - Direction in NZCPS is ‘subserving to the Section 5 purpose of sustainable management ...’ [1183].
  - ‘Part II is a framework against which all the functions, powers, and duties under the RMA are to be exercised for the purposes of giving effect to the RMA. There are no qualifications or exceptions’ [76].

- ‘It is well accepted that applying Section 5 involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. The RMA has a single purpose. It also allows for the balancing of conflicting considerations in terms of their relative significance or proportion in the final outcome’ [80].

### ***EDS Supreme Court Appeal: The question***

Was the Board of Inquiry’s approval of the Papatua plan change one made contrary to ss66 and 67 of the RMA through misinterpretation and misapplication of Policies 8, 13 and 15 of the New Zealand Coastal Policy Statement?

Particularly:

- Does the NZCPS contain ‘standards’ that must be complied with?
- Did the Board err in coming to a ‘balanced judgment’ or ‘assessment in the round’ in considering conflicting policies?

### ***Crown submissions***

Board approach correct:

- NZCPS must be given effect to as a whole.
- No hierarchy of individual policies.
- Directions in NZCPS must be given effect to in a way that achieves the purpose of the RMA.
- Policies 13 and 15 are strong policy direction that development ought not to be allowed in an area of outstanding natural character and landscape where there will be adverse effects. It was open to the Board to consider whether Port Gore was nevertheless an appropriate place for aquaculture activities.

### ***EDS Supreme Court Appeal: The decision***

Appeal allowed – plan change at Port Gore quashed

Considered:

- NZCPS in RMA hierarchy
- Wording of relevant NZCPS provisions
- Role of Part 2
- Caveats

### *EDS Supreme Court Appeal: The reasoning*

NZCPS in the RMA hierarchy:

- Identified a hierarchy of documents (corresponding with the part of Government that is responsible for their preparation).
- NZCPS cannot contain ‘rules’ as defined by RMA but can (and does) contain policy ‘the effect of what in ordinary speech would be a rule’ [para. 116].

Wording of relevant NZCPS provisions:

- ‘Avoid’ in the context of section 5 RMA and policies 13 and 15 NZCPS ‘has its ordinary meaning of “not allow” or “prevent the occurrence of”’ [96].
- ‘Appropriate’ means different things in different parts of the NZCPS:
  - Policy 8 – ‘suitability for the needs of aquaculture (for example, water quality) rather than to some broader notion’ [100].
  - Objective 6 – ‘not concerned simply with technical suitability for the particular activity but with a broader concept that encompasses other considerations, including environmental ones’ [100].
- ‘Inappropriate’ – should be assessed by reference to what it is that is sought to be protected. Not an indication that an overall broad judgement should be applied.
- No tension between Policies 8, 13 and 15.

Role of Part 2:

- ‘... the NZCPS gives substance to pt 2’s provisions in relation to the coastal environment. That is, the NZCPS gives substance to pt 2’s provisions in relation to the coastal environment. In principle, by giving effect to the NZCPS, a regional council is necessarily acting “in accordance with” pt 2 and there is no need to refer back to the part when determining a plan change.’
- Not correct to apply an overall broad judgement to reconcile provisions of NZCPS in this case.

Caveats (where Part 2 may be of assistance) [88]:

- Where a matter is not covered by an NZCPS
- Where there is uncertainty in the interpretation of particular policies in an NZCPS
- If there is a question as to the lawfulness of an NZCPS

Plus the possible fourth caveat:

- ‘It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding’ [145].

Board of Inquiry	Supreme Court
<p>‘Give effect to’ is strong direction</p> <p>NZCPS Policies 8, 13, 15 in tension and difficult to reconcile</p> <p>NZCPS direction subservient to Part 2</p> <p>Part 2 requires overall broad judgment</p>	<p>Agreed</p> <p>NZCPS policies can be reconciled</p> <p>NZCPS embodies Part 2; no need to consider section 5 in this case</p> <p>Emphasised four points re. definition of sustainable management:</p> <ul style="list-style-type: none"> <li>- definition broadly framed – a guiding principle</li> <li>- avoiding = not allow, prevent the occurrence of protection</li> <li>- while = ‘at the same time as’</li> <li>- ‘environmental protection is a core element of sustainable management’</li> </ul>

#### 4. Conclusions

- Increased scrutiny of NZCPS (and NPSs) in decision-making (RPSs, plans and consents).
- Increased focus on the actual wording of RMA documents, drafting to mean what it says.
- Regional councils focus on 2nd generation RPSs, so debate often occurring at this level.
- People are finding it sometimes difficult and challenging.
- Greater focus on what constitutes an area of outstanding natural character or outstanding natural landscape, and what characteristics and qualities make an area outstanding.
- Greater scrutiny as to what constitutes an adverse effect.

## Part 2J: Local government survey

# New Zealand Coastal Policy Statement Effectiveness Review

## Local government survey

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The New Zealand Coastal Policy Statement 2010 (NZCPS) requires monitoring and a review of the effectiveness of the NZCPS within six years of its gazettal. The Department of Conservation (DOC) is undertaking this review now. As part of this work, please complete this survey on coastal issues and the work your council has undertaken to give effect to the NZCPS.

Part 1 of the survey covers the progress in implementing the NZCPS,

Part 2 covers coastal issues,

Part 3 asks for your views on the effectiveness of the NZCPS and

Part 4 provides opportunity for you to comment further on any aspect of the NZCPS.

DOC's goal for the survey is to understand how far through the planning and implementation process each council is in giving effect to the NZCPS. We also wish to understand the level of resources, competing priorities and issues you have encountered in doing so, plus gain your views on the effectiveness of the NZCPS in addressing key coastal issues in your region or district. Note that the survey relates to both policy development and resource consent processing. Please circulate the survey to the relevant teams within your council for their input.

Please return your completed survey to [nzcps@doc.govt.nz](mailto:nzcps@doc.govt.nz) by **5pm on Friday 4 November 2016**. If you have any issues or questions regarding the survey, please email to the same address in the first instance and we will get in touch.

The findings of this survey will be presented in a report to the Minister of Conservation. The report will cover implementation progress, with a short commentary on each region. Case studies exploring the impact on particular geographic areas will also be presented. Case studies will involve structured interviews either by phone or face to face with selected local authorities. We will contact you if a case study area has been selected in your region / district to identify suitable interviewees within the council, local iwi, community and non-governmental groups.

Please add your contact details in case we need to clarify your responses or discuss issues you have raised further:			
<b>Council:</b>			
<b>Your Name:</b>		<b>Your position:</b>	
<b>Your Email:</b>		<b>Phone number:</b>	

Please complete the survey on progress as at 1 October 2016 towards the implementation of the NZCPS

<b>PART 1: Giving effect to the NZCPS 2010</b>	
Please indicate	
<ul style="list-style-type: none"> <li>• whether your council has made changes to its policy statement and/or plan(s) to give effect to the NZCPS 2010</li> </ul>	
<ul style="list-style-type: none"> <li>• when these changes were initiated, and</li> </ul>	
<ul style="list-style-type: none"> <li>• how far through the planning process these changes are (e.g. plan review initiated, draft plan developed, plan change notified, hearings, appeals etc)</li> </ul>	
<ul style="list-style-type: none"> <li>• Please indicate</li> <li>• what has been your council’s strategy for reviewing its policies and plans and how the council has prioritised work to implement the NZCPS with respect to the implementation of other national policy requirements and/or Council led programmed reviews of RMA policies and plans.</li> </ul>	
<ul style="list-style-type: none"> <li>• what factors were taken into account when setting the relative priority given to implementing the NZCPS?</li> </ul>	
Please list any work (including components of a plan review) your council has undertaken as a direct result of the policies in the NZCPS that either	
<ul style="list-style-type: none"> <li>• would not have been completed,</li> <li>• would have been a lower priority, or</li> <li>• would have been difficult to complete</li> </ul>	

<b>PART 1: Giving effect to the NZCPS 2010</b>	
had it not been for the policies in the NZCPS. (for example, some councils have undertaken work to identify surf breaks which may not have been undertaken without the policy on surf breaks in the NZCPS).	
Please list any specific costs, barriers or challenges you encountered when giving effect to the NZCPS 2010 in <u>policies and plans</u> and explain why these were problematic and how you addressed them?	
Please list any specific costs, barriers or challenges you have experienced when making decisions on <u>applications for resource consent</u> where the NZCPS must be considered. Please explain why these were problematic.	

Please describe below the actions your council has taken or intends to undertake to give effect to each of the policies in the NZCPS. Where relevant, please indicate which provision(s) in your policy statement and / or plan(s) the actions relate to in the table below. Please also include actions your council has taken or intends to undertake that are outside the statutory documents.

Link to Policy	Policy direction	Describe what actions you have taken, or intend to take, to give effect to this policy	Actual or planned completion date to give effect to NZCPS
<i>Example answer provided to demonstrate the level of detail expected</i>			
<u>1</u>	<i>Recognise the extent and characteristics of the coastal environment</i>	<i>“Area of coastal influence” assessed and mapped across whole region. “Area of coastal influence” included in draft RPS maps</i>	<i>May 2013 June 2016</i>
<b>Your answers</b>			
<u>1</u>	Recognise the extent and characteristics of the coastal environment		
<u>2</u>	Involve tangata whenua in plan-making and decision-making		
<u>3</u>	Adopt a precautionary approach where uncertainty, particularly for climate		

Link to Policy	Policy direction	Describe what actions you have taken, or intend to take, to give effect to this policy	Actual or planned completion date to give effect to NZCPS
	change		
<a href="#">4 &amp; 5</a>	Provide for integrated management including where land or waters are managed under other Acts		
<a href="#">6 (1)</a>	Manage development in the coastal environment		
<a href="#">6 (2)</a>	Manage activities and uses in the Coastal Marine Area		
<a href="#">7 (1)</a>	Plan for future development at a regional and district level		
<a href="#">7 (2)</a>	Identify coastal processes, resources or values under threat from cumulative effects		
<a href="#">8</a>	Recognise the importance of and provide for aquaculture		
<a href="#">9</a>	Recognise and provide for ports as part of the national transport network		
<a href="#">10</a>	Avoid reclamation unless no practical alternative		
<a href="#">11</a>	Protect significant indigenous biodiversity		
<a href="#">12</a>	Control harmful aquatic organisms		
<a href="#">13 &amp; 14</a>	Preserve and restore the natural character of the coastal environment		
<a href="#">15</a>	Protect natural features and natural landscapes		
<a href="#">16</a>	Protect surf breaks of national significance		
<a href="#">17</a>	Identify and protect historic heritage		
<a href="#">18</a>	Provide for public open space		
<a href="#">19</a>	Maintain and enhance walking access, only restrict access in exceptional		

Link to Policy	Policy direction	Describe what actions you have taken, or intend to take, to give effect to this policy	Actual or planned completion date to give effect to NZCPS
	circumstances		
<a href="#">20</a>	Control vehicles on beaches		
<a href="#">21, 22 &amp; 23</a>	Improve water quality, including controls on sedimentation and other discharges		
<a href="#">24</a>	Identify areas at high risk of being affected by coastal hazards over 100 years		
<a href="#">25 &amp; 27</a>	Avoid increasing risk to development from natural hazards and assess options to reduce risk		
<a href="#">26</a>	Promote natural defences to coastal hazards		
<a href="#">29</a>	Remove all Restricted Coastal Activities from plans		

<b>PART 2: Coastal issues in your region / district</b>	
What are the key pressures on the coastal environment in your region or district? Do you consider these are appropriately addressed in the NZCPS? If not, please give reasons why.	
What are the emerging issues, if any, for coastal management in your region / district?	
Do you consider there are any gaps or issues that are not covered in the NZCPS 2010 which need to be addressed by RMA national direction?	
What are the respective roles of the regional and district councils in your region for identifying and managing coastal hazards?	
What impact, if any, has the Supreme Court's decision on the King Salmon case had in your region or district? In particular, how has the decision impacted on your council's plan preparation, decision-making or coastal management practices?	

<b>PART 3: Effectiveness of the NZCPS on coastal management</b>	
Do you have comments or reflections on the effectiveness of the NZCPS 2010 in achieving Part 2 of the Resource Management Act?	
Do you have any comments or reflections on how the effectiveness of the NZCPS could be increased?	
Do you have any comments on the NZCPS <a href="#">objectives</a> ?	
Do you have any comments or reflections on the <a href="#">implementation guidance</a> and other support provided by DOC?	
<b>PART 4: General</b>	
Do you have any other comments?	

Thank you for completing this survey. Please forward the completed survey to [nzcps@doc.govt.nz](mailto:nzcps@doc.govt.nz).

## Part 2K: Councils surveyed

Survey of councils with a coastal boundary	
Response to survey received?	
Yes	No
Ashburton District Council	Central Hawke's Bay District Council
Auckland Council	Chatham Islands Council
Bay of Plenty Regional Council	Clutha District Council
Buller District Council	Grey District Council
Carterton District Council	Invercargill City Council
Christchurch City Council	Kaipara District Council
Dunedin City Council	Kawerau District Council
Environment Canterbury	Manawatu District Council
Environment Southland	Masterton District Council
Far North District Council	Napier City Council
Gisborne District Council	Opotiki District Council
Greater Wellington Regional Council	Otorohanga District Council
Hastings District Council	Rangitikei District Council
Hauraki District Council	South Wairarapa District Council
Hawke's Bay Regional Council	Tararua District Council
Horizons Regional Council	Timaru District Council
Horowhenua District Council	Waikato District Council
Hurunui District Council	Waitaki District Council
Hutt City Council	Westland District Council
Kaikoura District Council	Whakatane District Council
Kapiti Coast District Council	
Marlborough District Council	
Nelson City Council	
New Plymouth District Council	
Northland Regional Council	
Otago Regional Council	
Porirua City Council	
Selwyn District Council	
South Taranaki District Council	
Southland District Council	
Taranaki Regional Council	
Tasman District Council	
Tauranga City Council	

Part 2K: Councils surveyed

Survey of councils with a coastal boundary	
Response to survey received?	
Yes	No
Thames-Coromandel District Council	
Waikato Regional Council	
Waimakariri District Council	
Waimate District Council	
Wairoa District Council	
Waitomo District Council	
Wellington City Council	
West Coast Regional Council	
Western Bay of Plenty District Council	
Whanganui District Council	
Whangarei District Council	

## Part 2L: NZCPS policy differences between the 1994 and 2010 Statements

October 2010

	<b>NZCPS 1994</b>	<b>Revised NZCPS 2010</b>
General	No preamble	Preamble summarising context and issues
	Purpose and principles of RMA reproduced	New section on how NZCPS is to be applied
	No objectives	Objectives are issue-focused, less repetitive of RMA
	14 general principles	Some 1994 principles incorporated in objectives & policies
	57 Policies	29 policies
Coastal environment	Coastal environment (landward extent) undefined	Minima for defining extent of coastal environment
Precautionary approach	Precautionary approach to apply	Precautionary approach to apply, particularly for climate change
Integrated management	No policy directly on integrated management	Coordinate management across administrative boundaries
Protected areas	Take account of effects on existing and proposed conservation areas	Take account of effects on existing and proposed protected areas (incl. eg fisheries areas)
Biosecurity	No policy on biosecurity	Control activities that pose biosecurity risks
Cumulative effects	Ensure cumulative effects not significantly adverse	Identify threats from cumulative effects and apply controls
Precedent effects	No policy on precedent effects of decisions	No policy on precedent effects of decisions

	<b>NZCPS 1994</b>	<b>Revised NZCPS 2010</b>
Transitional provisions	No set timeframe for plan changes to give effect to NZCPS	No set timeframe for plan changes to give effect to NZCPS
Subdivision, use, and development	Define what forms appropriate and where	Plan for development, applying specified principles for appropriate location and form, both on land and in CMA
	Avoid adverse effects of development as far as practicable	Identify in plans where particular activities and forms of development are or might be inappropriate
	No reference to infrastructure, energy, mineral extraction	Recognise infrastructure, energy supply/transport, and mineral extraction as important for economic/social wellbeing
	No reference to aquaculture	Recognise potential value of aquaculture; plan for it in appropriate places; take account of economic assessments; protect water quality at sites; ensure efficient use of space
	No specific policy on port development	Ensure other development does not adversely affect port operations and development, provide in plans for port operations and transport system integration
	Maintain amenity values	No policy on amenity values
	Make development conditional on infrastructure provision	Consider how provision for development and infrastructure relates to foreseeable population growth
	Consider available alternatives to reclamation	Avoid reclamation unless no practicable alternatives available, consider specified form and design principles if reclamation is needed, have regard to infrastructure needs
	Plans to specify uses of financial contributions	No policy on financial contributions
Crown owned foreshore/seabed	No policy on coastal occupation charging	No policy on coastal occupation charging

	<b>NZCPS 1994</b>	<b>Revised NZCPS 2010</b>
	No policy on vesting of rights in reclaimed land	No policy on vesting of rights in reclaimed land
Natural character/ features, and landscape	Encourage appropriate development where natural character already compromised	Avoid adverse effects on areas of outstanding natural character; assess natural character of region/district; recognise specified elements of natural character
	Protect indigenous biodiversity, particularly where threatened	Protect indigenous biodiversity, particularly where threatened
	Protect landscapes and significant features including historic and cultural sites	Protect outstanding natural features and landscapes, identified through given criteria
	Restore natural character where appropriate	Identify areas and opportunities for restoring natural character and provide for it in plans
	No policy on surf breaks	Protect nationally significant surf breaks
	No policy on nationally significant active coastal dunes	Policy on protection of nationally significant active coastal dunes excluded, but to be investigated further
	No policy on protection of particular threatened species	No policy on protection of particular threatened species (but threatened spp covered by biodiversity policy)
	Restricted Coastal Activities (RCAs) defined	No RCAs
Māori interests/ Treaty matters	Take account of Treaty principles through consulting and involving Māori and recognising customary knowledge	Take account of Treaty principles through consulting and involving Māori, referring to iwi management plans, and recognising customary knowledge
	Identify and protect sites and resources of particular importance to Māori	Identify and protect sites and resources of particular importance to Māori
	Consider transferring management of culturally important sites or resources to iwi	Provide for opportunities for exercise of kaitiakitanga

	<b>NZCPS 1994</b>	<b>Revised NZCPS 2010</b>
	Provide for papakainga housing and marae developments	Provide for papakainga housing and marae developments
Public access	Recognise value of open space	Provide for open space, considering specified needs
	No reference to public walking access	Maintain/enhance public walking access to and along coast, considering specified effects and needs
	No specific policy on vehicle access	Apply plan controls to vehicle access, considering specified effects and needs
	Restrict public access only where justified by specified criteria	Restrict public access only where justified by specified criteria
	Provide for esplanade reserves/strips	Recognise open space value of esplanade reserves/strips
Water quality	Direct discharge of human sewage to water should not generally be allowed, except where better than land disposal, and subject to tangata whenua and community consultation	Do not allow direct discharge of human sewage to coastal waters without treatment, or discharge of treated sewage without consultation and consideration of alternatives
	Enhance water quality, particularly where there is public or tangata whenua interest, special value, or sewage discharge	Give priority to enhancing degraded water quality where significant adverse effects on values/uses (incl. aquaculture)
	Mixing zones should not have significant adverse ecological effects outside them	Use smallest mixing zone necessary, minimise effects on life supporting capacity within zone, no significant effects outside
	No specific policy on stormwater discharges	Take steps to avoid adverse effects of stormwater discharges, catchment by catchment, following specified approaches
	No specific policy on sedimentation	Assess and monitor sedimentation, avoid significant increases from development activities

	<b>NZCPS 1994</b>	<b>Revised NZCPS 2010</b>
	New ports/marinas to provide sewage & rubbish collection facilities for vessels	Ports/marinas to take practicable steps to avoid 'more than minor' contamination, avoid significant effects from dumping dredge material, provide sewage collection for vessels
Hazards	Identify hazard areas, consider possible sea level rise	Identify hazard areas, assess risk over 100 years, consider specified factors incl. climate change effects
	Locate and design new subdivision and development to avoid need for protection works	Avoid increasing risk of harm/loss from hazards, including through redevelopment or change in land use
	Permit protection works for threatened development only where that is best practicable option	Discourage hard protection works & encourage alternatives, but recognise hard works may be needed for infrastructure
	Consider abandonment or relocation of threatened structures as options	Consider full range of strategies for protecting development at risk, including managed retreat, status quo and hard works
	Maintain or enhance natural defences	Protect/restore/enhance natural defences where appropriate
Historic heritage	Identify historic sites, incl. with tangata whenua, and protect them	Identify and assess historic sites, incl. with tangata whenua, and apply specified approaches to protection
International obligations	Guidelines to be issued 'from time to time'	Schedule of relevant international agreements
Monitoring and review	Independent review NZCPS within 9 years of gazettal	Ministerial review within 6 years of gazettal
	Minister to assess effectiveness and work with councils to establish national 'state of the coastal environment' monitoring	Minister to assess effectiveness in collaboration with councils and publish report within 6 years of gazettal

## Part 2M: NZCPS 2010 – Summary of evaluation under section 32 of the Resource Management Act 1991

October 2010

Note: The Proposed New Zealand Coastal Policy Statement (NZCPS) 2008 was notified in March 2008 together with an evaluation under section 32 of the Resource Management Act 1991. Following a public submission and Board of Inquiry process, and before issuing the NZCPS 2010, the Minister of Conservation was required by section 32 to undertake a second evaluation and consideration of alternatives, benefits and costs. This evaluation was released along with other [summary and evaluation documents](#) when the NZCPS was gazetted in 2010, and is copied below.

### 1. INTRODUCTION

Section 32 of the Resource Management Act 1991 (RMA) requires the Minister of Conservation, before issuing a New Zealand Coastal Policy Statement (NZCPS), to undertake an evaluation of the statement. The evaluation must examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act, and whether, having regard to their efficiency and effectiveness, the policies are the most appropriate for achieving the objectives. The evaluation must take into account the benefits and costs of policies and the risk of acting or not acting if there is uncertain or insufficient information about their subject matter.

This report is a summary of the s32 evaluation of the NZCPS 2010. The Act does not require the Minister to prepare a report on this evaluation, in contrast to the statutory requirement for a summary report of the s32 evaluation undertaken before a proposed NZCPS is publicly notified. This summary has been prepared, however, as a convenient reference for interested parties.

A publicly available Regulatory Impact Statement (RIS) on the NZCPS 2010 also reflects the evaluation undertaken. Information contained in the RIS is not repeated here.

## 2. EVALUATION OF OBJECTIVES

The extent to which each NZCPS objective is the most appropriate way to achieve the purpose of the Act is assessed in terms of:

- relevance - the relationship of the objective to matters in Part 2 (purpose and principles) of the RMA, and to identified resource management issues
- achievability - the extent to which the desired outcome can be achieved with powers and resources available under the RMA
- reasonableness - the extent to which the desired outcome can be achieved with an appropriate balance of social, economic and environmental costs over time.
- usefulness - the extent to which the objective will assist decision-making and/or evaluation of effectiveness, or clearly communicate the intent of relevant policies

NZCPS 2010 objective	Relevance	Achievability	Reasonableness	Usefulness
Objective 1: safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems	Part 2 RMA: s5(2)(b) safeguard life-supporting capacity of air, water, soil, & ecosystems, s6(c) protect significant indigenous vegetation/habitats, s7(d) intrinsic values of ecosystems. Issues: development pressure, biodiversity & water quality loss, sedimentation.	Partial. Protecting representative or significant ecosystems & water quality also requires action under other Acts (e.g. marine reserves, biosecurity) and by others besides local authorities (e.g. DOC, MFish, property owners).	Environmental costs (loss of ecosystems, habitats and species, and deteriorating water quality) have predominated. More appropriate balance of costs dependent on effective implementation.	Objectives assist decision-making, particularly where multiple policies are relevant to decisions, by describing high-level outcomes sought. Description of outcomes in terms of specific coastal resource management issues will also assist development of monitoring and evaluation regime.
Objective 2: preserve the natural character of the coastal environment and protect natural features and landscape values	Part 2 RMA: s6(a) preserve natural character, s6(b) protect outstanding natural features/landscapes. Issues: loss of natural character and landscape values	Partial. Effective implementation of RMA plan provisions also requires local authority resources allocated under Local Government Act (LGA).	Environmental costs (loss of natural character) have predominated. More appropriate balance of costs dependent on effective implementation.	
Objective 3: take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for	Part 2 RMA: s8 Treaty principles, s6(e) Maori relationship with ancestral lands etc., s7(a) kaitiakitanga. Issues: limited recognition of	Partial. Effective partnership with tangata whenua in resource management also requires relationship and iwi/hapu capacity building,	Imbalance of 'costs' (incl loss of cultural values) falling on tangata whenua likely to reduce only slowly due to constraints on capacity and	

tangata whenua involvement in sustainable management	Maori interests & limited opportunities for exercise of kaitiakitanga	using resources allocated under LGA, and implementation of Treaty settlements.	resources for participation and exercise of kaitiakitanga.	
Objective 4: maintain and enhance the public open space qualities and recreation opportunities of the coastal environment	Part 2 RMA: s5(2)(a) needs of future generations, s6(d) public access, s7(c) amenity values. Issues: insufficient protection of open space & recreation values	Partial. Measures under RMA to maintain or enhance open space and recreation opportunities need to be complemented by funding and resources allocated under the LGA.	High & increasing economic value of private occupation of coastal space the principal risk to appropriate balance of costs being achieved. Value of public open space liable to discounting.	
Objective 5: ensure that coastal hazard risks taking account of climate change, are managed	Part 2 RMA: s5(2) social, economic, & cultural well-being, health and safety, s7(b) efficient use & development, s7(i) effects of climate change. Issues: development pressure v. increasing risk, need for strategic approach.	Partial. Effective management of coastal hazard risks also requires investment (e.g. in protection works) under LGA, and civil defence / emergency management measures (e.g. tsunami warning).	Balance of costs and benefits achievable only in long term given long life of assets at risk. Increasing economic and environmental costs in foreseeable future from hard protection works for existing development.	
Objective 6: enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development	Part 2 RMA: s5(2) social, economic, & cultural well-being, health and safety, s5(2)(a) needs of future generations, s6(f) protection of historic heritage Issues: Provision for growing resource & infrastructure needs	Partial. Effective provision for wellbeing, health & safety also requires action under other legislation (eg fisheries, biosecurity, conservation, defence, civil defence, minerals, historic heritage) & central/local government implementation.	Achieved to date only with heavy discounting of environmental costs. More appropriate balance of costs dependent on effective implementation.	
Objective 7: ensure that sustainable management of the coastal environment recognises and provides for New Zealand's international obligations	Relevant to international legal responsibilities fulfilled through RMA. Issue: Implementation by local authorities under devolved RMA regime.	Partial. Wide range of statutes and regulations give effect to international obligations and require central & local government implementation.	No additional costs to any already imposed by international agreements.	Signals relevance of policies to inter-national obligations, e.g. on biodiversity protection, adaptation to climate change.

### 3. EVALUATION OF POLICIES

#### 3.1 Benefits and costs – general

The extent to which policies are appropriate to objectives requires an assessment of their effectiveness and efficiency in contributing to the achievement of those objectives. Assessment of efficiency, in particular, requires consideration of costs and benefits.

The benefits of improved national policy guidance on coastal resource management under the RMA are primarily in:

- **supporting effective and efficient implementation of the law**, by providing direction on how it is to be applied and promoting national consistency and good practice in planning and consent decision-making
- **providing more certainty for resource users and communities** about opportunities for and constraints on development, including by promoting clear strategic and spatial planning, and guiding decision makers on how competing national benefits and local costs of proposed activities should be weighted
- **avoiding or reducing costs**, including environmental harm and costs to resource users and communities, caused by ineffective and inefficient resource management, where poor management is due in part to shortcomings in national policy guidance.

These benefits are secured in pursuit of those the Act is designed to deliver – the social, economic, and cultural wellbeing of people and communities, availability of natural and physical resources to meet the needs of future generations, continued life-supporting capacity of air, water, soil, and ecosystems, preservation of the natural character of the coastal environment, and other matters of national importance identified in the Act.

Costs generally arising from the introduction of a new NZCPS would include:

- **implementation support** costs for central government
- **implementation costs** for local authorities, including acquisition of data needed for planning, and time and effort to develop compliant plan provisions
- **transitional costs** for all parties – resource users, community groups, councils, government – including familiarisation with new policy, and time and effort associated with interpretive disputes (which can be minimised but not eliminated by careful policy drafting and provision of non-statutory guidance)

Potential implementation costs of a new NZCPS for central government can be quantified. Other costs are not quantifiable to any useful extent.

Potential local government implementation costs vary considerably depending on the extent and quality of councils' data holdings and the state of their planning documents. Marginal costs are indeterminable, as a national policy statement imposes no new functions or responsibilities but provides national guidance on how existing functions and responsibilities are to be carried out.

Potential costs for resource users and communities depend on how a new NZCPS is interpreted and applied by councils and other relevant decision makers (e.g. the Environment Court) in relation to local planning documents and individual consent applications. Quantification is not possible in these circumstances.

### 3.2 Effectiveness

Effectiveness is assessed in terms of the effect of policy on coastal resource management practice, which is primarily achieved through influence on plan provisions and consent decision-making, and the anticipated impact relative to the status quo. Objectives to which policies are primarily relevant are listed in bold.

Policy	Objective(s)	Effectiveness	
		<i>Effect</i>	<i>Impact</i>
1 Coastal Environment	All	Baseline for identification of coastal environment in plans and decision-making	More national consistency and certainty in identifying the extent of the coastal environment for RMA purposes.
2 Treaty	2, <b>3</b> , 4, <b>6</b> , 7	Requirements to take account of Treaty principles through consulting and involving Maori, referring to iwi management plans, recognising customary knowledge and identifying and protecting sites and resources of particular importance to Maori	Increased uptake of good practice in incorporation of Treaty principles and Maori values in coastal resource management
3 Precautionary approach	All	Requirement to apply precautionary approach in specified circumstances	Continued application of precautionary approach where relevant in coastal environment
4 Integration	All	Requirement for integrated planning and resource management	More consistent attention to cross-boundary issues for coastal resource management
5 Statutory land	<b>1</b> , <b>2</b> , 3, 4, 6, 7	Requirement to consider effects on coastal land/waters under or proposed for statutory protection	Supports existing and potential statutory protection measures for coastal sites
6 Activities	<b>1</b> , <b>2</b> , <b>3</b> , <b>4</b> , <b>5</b> , <b>6</b>	Checklist of principles for coastal planning and decision-making	More widespread and consistent application of basic principles for sustainable management of the coastal environment
7 Strategic planning	All	Requirement to identify in plans where particular activities and forms of development are inappropriate or will need consent, & manage cumulative effects	More strategic and spatial content in statutory planning for coastal resource use and development
8 Aquaculture	1, 2, 3, <b>4</b> , <b>6</b>	Requirement to recognise the potential value of	More clarity and certainty in plans regarding aquaculture

Policy	Objective(s)	Effectiveness	
		<i>Effect</i>	<i>Impact</i>
		aquaculture and plan for it in appropriate places	opportunities and limits
9 Ports	6	Requirement to recognise the importance of ports in the national transport system and plan for their development.	More effective long-term planning for development of ports and adjacent areas
10 Reclamation	1,2, 3, 4, 5, 6	Requirement for cautious approach to reclamation, emphasis on community needs	Approval for reclamation only where robust case is made for national or regional good
11 Biodiversity	1, 2, 3, 4, 6, 7	Requirements for managing adverse effects on indigenous threatened species and habitats	Continued or enhanced protection for coastal indigenous biodiversity through RMA mechanisms
12 Harmful organisms	1, 2, 6, 7	Requirement to control activities that pose biosecurity risks	More consistent use of RMA tools to contribute to biosecurity risk management
13 Natural character	1, 2, 3, 4	Requirement to avoid adverse effects on areas of outstanding natural character; assess natural character of region/district; recognise specified elements of natural character	More transparent and effective plan provisions for preservation (including through restoration) of coastal natural character; more consistent approach to assessing natural character
14 Natural character	1, 2, 3, 4	Requirement to identify areas and opportunities for restoring natural character and provide for this in plans	
15 Landscape	1, 2, 3, 4	Requirement to protect outstanding natural features and landscapes, identified through given criteria	More transparent and effective plan provisions for identification and protection of outstanding coastal landscapes and natural features; more consistent approach to assessing landscape values
16 Surf breaks	2, 4, 6	Requirement to protect nationally significant surf breaks identified in statement	More protection and consistency in plan provisions and through consent processes for surf breaks of national value for recreation
17 Historic Heritage	2, 3, 4, 6	Requirement to identify and assess coastal historic sites, incl. with tangata whenua, and apply specified approaches to protection	More comprehensive and effective protection for coastal historic heritage through plans and consent process
18 Public open	2, 3, 4, 6	Requirements to provide in plans for open space,	More strategic statutory planning for maintenance and

Policy	Objective(s)	Effectiveness	
		<i>Effect</i>	<i>Impact</i>
space		considering specified needs, and to recognise open space value of esplanade reserves and strips	enhancement of public open space in the coastal environment
19 Walking access	1, 2, 4, 6	Requirement to maintain/enhance public walking access to and along coast, considering specified effects and needs, and restrict public access only where justified by specified criteria	More substantial and consistent provision in plans and through the consent process for public walking access and a continued cautious approach to access restrictions
20 Vehicle access	1, 2, 4, 6	Requirement to apply plan controls to vehicle access, considering specified effects and social / economic needs	More widespread application of plan provisions as part of broader approach to managing effects of vehicle use on the coast, especially beaches
21 Water quality	1, 2, 3, 4, 6	Requirement to give priority to enhancing degraded water quality where significant adverse effects on values/uses (including aquaculture, recreation)	More identification in plans of key areas for improving coastal water quality and increased application of relevant controls and conditions
22 Sedimentation	1, 2, 6	Requirement to assess and monitor sedimentation, avoid significant increases from development activities	More consistent application of plan controls to address sediment release, and monitoring conditions on consents
23 Discharges	1, 2, 3, 4, 6	Requirements to: minimise mixing zones and their adverse effects; not allow direct discharge of human sewage to coastal waters without treatment, and consult on any discharge of treated sewage; manage adverse effects of stormwater discharges, and control discharges from ports and other marine facilities	More consistent minimisation of mixing zones; continued retreat from discharge of raw sewage; increased use of plan controls and consent conditions to manage stormwater discharges; continued control of discharges from port and marine service sites
24 Hazard identification	5, 6	Requirements to identify hazard areas, assess risk over 100 years, consider specified factors including climate change effects	Continued development of hazard zone identification in plans, with more consistent use of longer time horizon and regard to climate change impacts
25 Hazard risk areas	1, 2, 5, 6	Requirement to avoid increasing risk of harm/loss from hazards, including through redevelopment or change in land use	Continued shift from predominant focus on protection works to ‘portfolio’ of strategies for reducing hazard risk for both new development and existing assets at risk.
26 Natural	1, 2, 5, 6	Requirement to protect/restore/enhance natural defences	

Policy	Objective(s)	Effectiveness	
		<i>Effect</i>	<i>Impact</i>
defences		against hazards, where appropriate	
27 Hazard strategies	1, 2, 5, 6	Requirement to consider full range of strategies for protecting development at risk, including managed retreat, status quo and hard works where needed for infrastructure	
28 Monitor & review	All	Requirement for Minister to monitor and report effects of policy, review within 6 years of gazettal	Collation of data on policy impact to inform future policy development.
29 RCAs	6	Requirement to remove definitions of restricted coastal activities from regional coastal plans	Simplification of consent process for subset of coastal permit applications.

### 3.3 Efficiency

Efficiency is assessed by identifying the costs and benefits of policies. The assessment summarised here is qualitative. Policies are addressed in thematic groups.

Theme	Policies	Objectives	Costs	Benefits
Administration and implementation	1, 2, 3, 4, 5, 28, 29	All	Implementation and administration costs for central and local government. Engagement costs for iwi and hapu, depending on existing levels of consultation. Plan change costs for removal of restricted coastal activity definitions from plans.	More clarity and consistency on scope of coastal environment, good practice in engagement with Maori and requirements of integrated resource management. Simpler and cheaper process for coastal permit applications that will no longer be for restricted coastal activities). Support for development of information base for future policy development.
Strategic and spatial planning	3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27	All	Plan development costs for councils and participants in plan processes. Some activities and forms of development constrained in some places, including where adverse cumulative effects have become or are becoming critical. Monitoring costs for consent holders where relevant.	Less ‘backfilling’ of planning costs in consent processes. More certainty for consent applicants and communities about where resource use & development can occur or is likely to raise significant issues, and where certain activities unlikely to proceed. More effective management of cumulative effects.
Aquaculture and ports	8,9	1, 2, 4, 6	Costs for participants in plan process (including industry, interest groups, communities). Plan costs for councils (depending on extent of existing information) to assess and consider transport infrastructure needs relating to port use and development.	Promotes planning for aquaculture, incl. consideration of economic benefits & management of adverse effects on aquaculture areas. States national interest in port development & integration with other transport modes. Helps avoid reverse sensitivity problems for ports.

Natural character, features and landscapes	13, 14, 15, 16, 17, 18	1, 2, 3, 4, 6	Plan costs where councils have not done enough assessment of natural character, landscapes and significant natural features. Stronger plan constraints on development activities affecting outstanding landscapes and significant natural features, and in places with outstanding natural character.	More certainty for consent applicants and communities about where impacts on landscapes, significant natural features, and natural character will be a significant issue for development, and where that is less likely. More effective protection of outstanding coastal landscapes & features.
Ecological integrity	10, 11, 12, 13, 14, 15	All	Planning and administration costs for central and local government where there are gaps in base data on environmental quality. Constraints on use and development activities that would have unacceptable adverse effects on important ecological values.	More effective protection through RMA mechanisms for declining coastal indigenous biodiversity, including through increased attention to management of adverse effects on threatened and at risk species and habitats.
Water quality	21, 22, 23	1, 2, 3, 4, 6	Planning costs where water quality data is lacking and priorities not already identified. Monitoring costs for councils and some consent holders. Constraints on some forms of land use where causing sedimentation problems. Infrastructure costs to improve discharge quality over time.	More recognition and management of coastal water quality issues, including sedimentation and stormwater discharges. Increased assurance of water quality necessary for aquaculture, recreational and cultural uses, and preservation of natural character.
Coastal hazard risks	24, 25, 26, 27	1, 2, 5, 6	Risk assessment costs for councils, depending on work already done. Loss of value for properties within hazard zones. Reduction in development opportunities on land at risk. Environmental harm where new protection works proceed. Loss of assets at risk if managed retreat is best option.	Clearer, more thorough, more consistent identification of coastal hazard risks in plans. More use of 100 year risk horizon. Increased focus on risk management, more flexibility in range of possible responses. More use of less environmentally damaging protection options where practicable.

Part 2M: NZCPS 2010 – Summary of evaluation

Maori interests	2, 4, 6, 7, 11, 15, 17, 18, 19, 20, 21,23	All	Increase in planning, research and consultation costs for councils if and where engagement with tangata whenua is lacking. Costs highly dependent on the quality of existing information and relationships.	Promotes effective recognition of Treaty relationship in coastal resource management processes, supports council initiatives to deal with RMA responsibilities to Maori. Better recognition and protection of coastal places and resources important to Maori.
Public access	18, 19, 20	1, 2, 3, 4, 6	Planning costs where base data on access and open space (e.g. mapping) is lacking and public access issues including vehicle access not sufficiently assessed. Variable implementation & enforcement costs depending on approach.	Promotes effective planning to satisfy high public expectations of access and public open space on and near the coast, incl. priority setting for improvement of access. Support for planning as part of integrated management of vehicle use on beaches.

### 3.4 Key areas of change

The policy areas in which the NZCPS 2010 would make the most significant change relative to the NZCPS 1994 can be summarised as:

- Strategic & spatial planning for development
- Planning for aquaculture and ports
- Preserving natural character and protecting outstanding natural features and landscapes
- Enhancing degraded water quality and managing sedimentation
- Managing coastal hazard risks
- Identifying & protecting sites and resources of particular importance to Maori
- Maintaining public access and controlling vehicles on beaches

The policy changes and their likely costs and benefits are discussed in the following sections.

#### 3.4.1 *Strategic & spatial planning for development*

The NZCPS 2010 has more specific and directive policy than the NZCPS 1994 on strategic and spatial planning for development. Councils already have planning responsibilities, but approaches and plan quality are variable. The NZCPS 2010 includes explicit directions to councils to:

- identify threats from cumulative effects (e.g. areas where water quality is degraded or under threat from multiple discharges) and apply plan controls in response (e.g. thresholds, zones, targets)
- plan for development, applying specified principles (e.g. considering the relationship between development and population growth, consolidating settlement patterns to avoid sprawl, taking account of potential renewable energy sources)
- identify in plans where particular activities and forms of development are inappropriate or will need to be assessed through the consent process.

#### **Costs**

Plan development costs for councils, depending on extent of strategic planning already done, and in research and analysis costs for participants in plan processes. Some activities and forms of development constrained in some places, including where adverse cumulative effects have become or are becoming critical. Monitoring costs for consent holders where relevant.

#### **Benefits**

Clearer plans giving more certainty about scope for, and constraints on, use and development of coastal resources. Less ‘backfilling’ of planning costs in consent processes. More certainty for consent applicants and communities about where resource use & development can occur or is likely to raise significant issues, and where certain activities unlikely to proceed. More effective responses to problems arising from cumulative effects (e.g. water quality deterioration).

### 3.4.2 *Planning for aquaculture and ports*

The NZCPS 2010 includes policies specifically on management of aquaculture and ports. There are no such policies in the NZCPS 1994.

The aquaculture and ports policies direct councils and other decision makers to:

- recognise the potential value of aquaculture and plan for it in appropriate places
- take account of any available economic assessments of national and regional economic benefits
- ensuring that development does not make water quality unfit for aquaculture in areas approved for it, and ensure efficient use of aquaculture space
- recognise the importance of ports in the national transport system
- provide in plans for port operations and the integration of ports with other parts of the transport system
- ensure port operations and development are not adversely affected by other development.

#### **Costs**

Costs for participants in plan process (including industry, interest groups, communities). Could prompt some applicants to invest more in assessment of economic benefits. Plan costs for councils (depending on extent of existing information) to assess and consider transport infrastructure needs relating to port use and development.

#### **Benefits**

Promotes planning for development of aquaculture, consideration of economic benefits, management of activities with potential adverse effects on existing and new aquaculture areas, and efficient use of aquaculture space. States national interest in port development, long term viability and effective integration with other transport modes. Helps avoid reverse sensitivity problems for port operations.

### 3.4.3 *Preserving natural character, protecting outstanding natural features and landscapes*

The NZCPS 2010 is more directive than the NZCPS 1994 in requiring councils to assess the natural character of their region or district and identify outstanding landscapes. Policy includes guidance on key elements of natural character and criteria for assessing landscape, based on case law and established practice. Policies also provide direction on management of effects on natural character and outstanding landscapes, restoration of natural character where appropriate, management of effects on coastal biodiversity and protection of listed nationally significant surf breaks.

#### **Costs**

Plan costs where councils have not done enough assessment of natural character, landscapes and significant natural features. Stronger plan constraints on development activities affecting outstanding landscapes and significant natural features, and in places with outstanding natural character.

#### **Benefits**

More certainty for consent applicants and communities about where impacts on landscapes, significant natural features, and natural character will be a significant issue for development, and where that is less likely. More effective protection of outstanding coastal landscapes and significant natural features.

### 3.4.4 *Enhancing degraded water quality and managing sedimentation*

The NZCPS 2010 provides more explicit direction than the NZCPS 1994 to local authorities and decision makers to identify where coastal water quality is degraded and should be enhanced. This would require councils to identify degraded water quality and develop appropriate policies or rules to improve it, recognising that efforts will have to be spread over time and prioritised to make best use of available resources.

There is more explicit guidance on the management of mixing zones for discharges. Policy against discharge of untreated human sewage to sea is not changed in effect but terminology is updated. guidance is provided on management of stormwater, which was not addressed in the NZCPS 1994. The NZCPS 2010 also gives explicit direction on assessing, monitoring and managing sedimentation, which is not addressed in the NZCPS 1994. This would require more monitoring and assessment by councils of sedimentation, development of policies and probably rules in plans for managing it, and conditions on resource consents where relevant.

#### **Costs**

Planning costs where opportunities and priorities for enhancing water quality and managing sedimentation have not already been identified and/or information on values and uses is insufficient. Monitoring costs for councils, and for consent holders where relevant. Constraints on some forms of land use (e.g. vegetation clearance) where they would exacerbate sedimentation problems. Infrastructure investment to improve quality of discharges where relevant.

#### **Benefits**

Promotes better recognition and management of coastal water quality issues, including sedimentation and stormwater discharges. Increased assurance of water quality necessary for aquaculture, recreational and cultural uses, and preservation of natural character.

### 3.4.5 *Managing coastal hazard risks*

The NZCPS 2010 provides more specific direction than the NZCPS 1994 to local authorities and decision makers on managing coastal hazard risks. This includes:

- identifying hazard areas, assessing risk over 100 years
- avoiding increasing the risk of harm or loss from hazards, using a range of approaches including alternatives to hard protection works
- considering a full range of strategies for protecting existing development, including managed retreat, status quo and hard works where necessary.

Local authorities already have responsibility for identifying and managing hazard risks but the proposed policy would increase pressure on councils to acquire hazard risk data and develop relevant plan provisions.

### **Costs**

Risk assessment costs for councils in plan development, varying depending on extent of work already done. Loss of value for properties identified as being within hazard zones and reduction in development opportunities on land at risk. Adverse environmental effects and long term maintenance costs where new protection works proceed. Loss of some existing development where managed retreat is best option.

### **Benefits**

Clearer, more thorough, more consistent identification of coastal hazard risks in plans. More consistent use of 100 year time horizon, reducing inappropriate discounting of longer term risks. Increased focus on risk, more detailed guidance for local authorities and consent decision makers, more flexibility in range of possible approaches to risk reduction. More use of less environmentally damaging protection options where practicable. Avoided long term costs for unjustified hard protection works. Full range of options for protecting significant infrastructure, including for approaches such as managed retreat that reduce risk and long-term costs.

### **3.4.6 Identifying & protecting sites & resources of particular importance to Maori**

The NZCPS 2010 provides more specific direction than the NZCPS 1994 to local authorities and decision makers on the identification and protection of coastal sites & resources of particular importance to Maori. It requires them to consider specified range of possible approaches and methods to achieve this. Elements of the NZCPS 1994 that effectively repeated RMA provisions are not retained.

The new statement would maintain national policy pressure on councils to support Maori participation in plan and consent processes and engage with tangata whenua to identify culturally important places and resources and develop appropriate policies or rules to protect them. Maori interests in developing papakainga and marae are expressly recognised.

### **Costs**

Increase in planning, research and consultation costs for councils if and where their engagement with tangata whenua is insufficient. Costs will be highly dependent on the quality of existing information and relationships.

### **Benefits**

Promotes active and effective recognition of Treaty relationship in coastal resource management processes, supports council initiatives to deal with RMA s7 and s8 responsibilities. Better recognition and protection of coastal places and resources important to Maori. Recognition of Maori communal development needs in planning.

### 3.4.7 *Maintaining public access and controlling vehicles on beaches*

The NZCPS 2010 is more specific than the NZCPS 1994 in addressing public access to and along the coast, identifying walking access as a fundamental requirement and expressly addressing the management of vehicles on beaches. There is also more specific direction on planning for community needs for open space, considering specified needs and pressures including where climate change and erosion combine to ‘squeeze’ public space on the coastal margin.

RMA planning for the management of vehicles on beaches is only one element of addressing that issue, which is increasingly approached using a range of tools (e.g. including bylaws and non-regulatory measures) and collaboration (e.g. with Police on enforcement).

#### **Costs**

Plan development costs where base data on access and open space (e.g. mapping) is lacking and public access issues including vehicle access have not been sufficiently assessed. Variable implementation & enforcement costs depending on the approach taken.

#### **Benefits**

Promotes effective planning to satisfy high public expectations of access and public open space on and near the coast. Direction for local authorities on priority setting for improvement of public access, to assist planning. Promotes use of planning tools as part of integrated approach to managing vehicle use on beaches.

## 3.5 Implementation

### 3.5.1 *Timing*

The RMA requires local authorities to amend policy statements and plans to give effect to the NZCPS. This would be undertaken as part of the normal process of plan review and would occur over several years, according to when plan reviews are scheduled by relevant local authorities. Plan reviews are undertaken following a process set out in Schedule 1 of the RMA, involving public notification and consultation.

An exception to implementation in plans through the normal review process would be the removal of Restricted Coastal Activity (RCA) provisions from operative regional coastal plans. These provisions are in plans to give effect to the NZCPS 1994, but are not required by the NZCPS 2010. In accordance with Policy 29 (Restricted Coastal Activities) in the NZCPS 2010, RCA provisions would be removed from operative plans without the need for a Schedule 1 process, as enabled by section 55(2) of the RMA.

The NZCPS would be relevant to consideration of resource consents and other relevant approvals as soon as it was gazetted.

### **3.5.2 Support**

The effectiveness of the NZCPS 2010 will depend significantly on the level of support provided by central government for local government implementation. A basic implementation support programme could include guidance notes on coastal planning topics (delivered through the Quality Planning website) and a roadshow and/or workshops for council planning staff, councillors, consent commissioners on the new policy statement. A more substantial implementation package could include, additionally, development of standard methodologies for matters such as landscape and natural character assessment, and central government funding for - or collaboration with - local authorities to address baseline data gaps (e.g. water quality information, biodiversity data).

The Department of Conservation will be responsible for implementation support, collaborating with local authorities to set priorities for an implementation programme. The estimated cost of a basic NZCPS implementation programme is approximately \$1.1 million, spread over up to 5 years. A more substantial implementation package could cost at least a further \$1.5 million.

### **3.5.3 Transitional costs**

Questions of interpretation inevitably arise from new policy. Central government, local government, resource users and others engaged in coastal resource management issues (e.g. non-governmental organisations, community groups) incur costs for legal and resource management professional advice on such questions, including litigation costs in some cases. Costs diminish as key interpretive questions are settled through converging professional practice and case law.

### **3.5.4 Monitoring, evaluation and review**

Under Policy 28 of the NZCPS 2010 the Minister of Conservation would be responsible for monitoring and reviewing the NZCPS. This would include:

- assessing the effect of the NZCPS on regional policy statements, plans, resource consents, and other decision-making;
- in collaboration with local authorities, collecting data for a nationally consistent monitoring and reporting programme, incorporating district and regional monitoring information as far as practicable;
- undertaking other information gathering or monitoring that assists in providing a national perspective on coastal resource management trends, emerging issues and outcomes.

The policy also provides for the Minister to publish a report and conclusions on these matters within six years of the gazettal of the NZCPS 2010.

