PROPOSED NEW ZEALAND COASTAL POLICY STATEMENT (2008)

BOARD OF INQUIRY
REPORT AND RECOMMENDATIONS

VOLUME 2: WORKING PAPERS

JULY 2009

VOLUME 2: WORKING PAPERS

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BOI REPORT ON THE NZCPS (2008)

Background

Volume 1 contains the findings and recommendations of the Board of Inquiry on the Proposed New Zealand Coastal Policy Statement (2008), including wording for, the recommended NZCPS (2009).

Volume 2 brings together material that informed and contributed to the decision making of the Board on the individual policies. The Board considers these working papers may be of assistance to understanding and facilitating the implementation of the recommended NZCPS (2009) if our recommendations are approved by the Minister of Conservation.

Volume 2 looks at each of the policies in the PNZCPS (2008), either individually or grouped, using the policy number from that document. It starts with the old policy and ends, where relevant, with the amendments we have recommended to the policy and its number in the recommended NZCPS (2009). A working paper on a new policy on active coastal dunes completes Volume 2.

No conclusion, recommendation or other material in the working papers in Volume 2 overrides or derogates from the findings and recommendations of the Board, including the recommended NZCPS (2009), in Volume 1.

Policy 1 The coastal environment

In promoting the sustainable management of the coastal environment, policy statements and plans shall recognise that the coastal environment includes, at least:

(a) the coastal marine area;

(b) land and waters where coastal qualities or influences are a significant part or element;

(c) land and waters affected by active coastal processes;

(d) areas at risk from coastal hazards;

(e) coastal vegetation and habitat; and

(f) landscapes and features that contribute to the natural character, visual qualities or amenity values of that environment.

The s32 Report[1]

The s32 report states:

> To effectively implement the objectives of the NZCPS and promote sustainable management, policy guidance on the extent of the coastal environment is required. Widespread support for such guidance has been encompassed. It is recognised that the coastal environment cannot be defined by one set of criteria that would be able to be applied nationally.
>
> Rather it is more logical for local authorities to define the extent of the coastal environment at the regional and district level in a manner that takes into account the local settings.
>
> In considering these settings there are however a range of nationally consistent matters that should be considered and on which guidance can be provided.
>
> Without recognition of the extent of the coastal environment the appropriate use, development, and protection of the natural and physical resources in the area encompassed by the NZCPS cannot be achieved.

Submissions

- **General support for the policy**

The majority of submitters generally support the inclusion of a policy in the NZCPS to define the coastal environment. Almost all individuals, community groups and conservation interests do so and say it is positive that the coastal environment has been defined. Nearly 60 individuals and groups quote the Ngunguru Sandspit Protection Society (NSaPS) submission

[1] *Proposed New Zealand Coastal Policy Statement 2008. Evaluation under section 32 of the Resource Management Act, 1991.* Department of Conservation, Wellington.

that the policy strengthens the proposal. About 10 individuals quote the Environmental Defence Society's (EDS) support for the policy as providing more specificity on what the coastal environment includes and note that it generally accords with case law. Some individuals and groups also recommend additional categories that could usefully be included in the definition.

- **Some concerns**

Most councils support the policy although also some raise issues in relation to specific clauses. A few councils oppose the policy because they consider it is too broad and needs greater clarity. Two councils (and one individual) submit that it reads more like a definition than a policy and should be moved to the glossary. The Taranaki Regional Council supports the use of the term 'at least' because it acknowledges that there are regional and local variations in what is included in the coastal environment.

Infrastructure companies generally accept the policy but consider that it should explicitly include physical resources, particularly infrastructure.

Scientific and professional organisations generally support the policy and raise various specific issues, which are referred to below.

Federated Farmers and Horticulture New Zealand submit that the definition is too vague and generic and its provisions will result in too much land that has only a minor influence on the coast being included as part of the coastal environment. They seek an amendment to remove the qualification of the sub clauses by the term 'at least'. The New Zealand Seafood Industry Council (SeaFIC) is also concerned by the open ended nature of the definition and also seeks removal of the phrase 'at least'. The New Zealand Law Society recommends clarifying the policy by adding after 'at least' the phrase 'one or more of the following matters' and deleting 'and' at the end of clause (e).

- **Policy implementation**

LGNZ and several councils recommend the use of s55(2A)(b) of the RMA for direct insertion of the policy into plans, although most councils do not comment on this matter.

Horizons and Greater Wellington Regional Councils seek removal of the requirement for the policy to be implemented through policy statements. They submit that it should be implemented through district plans.

- **Active coastal processes**

The Kapiti Coast District Council, National Institute of Water and Atmospheric Research (NIWA) and the Institute of Professional Engineers New Zealand (IPENZ) consider that the term 'active coastal processes' in clause (c) needs defining to include timescales and wind processes. The council recommends that, alternatively the definition could be reworded to read, 'land and waters likely to be affected by coastal variability and change', which would take the focus off processes (whether wind or sea) and add in a future time dimension.

- **Coastal hazards**

The Kapiti Coast District Council and NIWA also note that it is not clear if clause (d) includes tsunamis in coastal hazards, or whether they are excluded as in policy 51. The council

recommends that, if they are included, then guidance should be provided to regional councils as to the magnitude of event that should be used in modelling and the relevant risk weightings. NIWA strongly supports the inclusion of tsunami hazards in all coastal planning.

- **Clause (f) is too broad**

Clause (f) refers to 'landscapes and features that contribute to the natural character, visual qualities or amenity values of the environment'. Several councils have concerns about this clause and believe that it could be subject to a wide variety of interpretation and open to litigation. They seek further clarification of this clause. The Auckland Regional Council (ARC) considers that clause (f) is unclear because it fails to include any reference to the coast.

Many infrastructure and property companies also submit that this clause is too broad, with some saying specifically that the phrase 'contribute to' is too wide. One recommends that it be amended to 'contribute significantly', another that 'features' be replaced with 'forms' that 'contribute to the natural character….'.

- **Additional categories recommended to be included**

Submitters recommend the following additional categories for inclusion in the definition of coastal environment:

> 'physical resources': infrastructure and property companies seek an amendment to explicitly acknowledge the physical as well as natural resources of the coast, in particular, physical resources that are of national strategic importance, including built development and infrastructure;
>
> 'historic heritage and cultural values': the New Zealand Archaeological Association (NZAS) and the Christchurch City Council seek an amendment to include historic heritage; the New Zealand Historic Places Trust (NZHPT) also submits that coastal historic heritage is an important aspect of the coastal environment; it notes, for example, that lighthouses are often constructed outside the CMA and submits that the cultural values associated with such structures need to be explicitly recognised in the policy; Ngati Awa also seeks the inclusion of a specific reference to cultural wellbeing;
>
> 'nearest ridgeline' criteria: several individuals and councils say it would be helpful to include the 'nearest ridgeline' criteria in the policy;
>
> 'coastal fauna': two conservation groups and one council are concerned that the policy omits indigenous species and their habitat; they submit that it should include coastal fauna and habitat;
>
> 'ecological processes': the New Zealand Marine Society considers that the definition should be expanded to include coastal ecological processes; two conservation groups seek the addition of a clause to recognise coastal marine and terrestrial ecosystems;
>
> 'renewable energy': The Energy, Efficiency and Conservation Authority (EECA) submits that renewable energy developments may face some uncertainty because of the amount of land that could potentially be included in the draft definition of coastal environment; it seeks an amendment to ensure that only features and aspects that contribute in a significant way are included; Mighty River Power also comments that there is considerable wind potential in coastal locations and

> recommends adding the following clause 'the resources present in the New Zealand coastal environment such as energy from wind, wave and tides'.

Issues Arising

- **Introduction**

Several submitters identified that the New Zealand coastline is arguably unparalleled in the world for its coastal beauty, coastal features and coastal values[2]. It has a very rich diversity of spectacular landscapes resulting from the country's dramatic geomorphological history including volcanic activity, flooded valleys, erosional processes and great dune systems. But while attracting increasing international visitors and substantial support and enthusiasm from New Zealanders themselves, many of the country's coastal features and landscapes (including seascapes) are seriously under threat from inappropriately designed and located development.

In assessing the submissions to this policy overall, we considered that many suggestions could be accommodated without query or analysis because they gave added value to the policy. What follows here therefore is the identification of some issues which require further discussion or explanation.

- **The extent of the coastal environment**

Professor Thom, an Australian coastal expert, who gave evidence for EDS on coastal protection issues on the NSW coast, identified that in planning for the coastal environment, decision makers should have a dedicated defined coastal zone to start with[3].

This approach was supported by Manukau City Council: the NZCPS needs to clearly define the extent of the coastal areas to which the NZCPS refers given the unique geography of New Zealand[4].

Many submitters wanted a definition of the coastal environment to identify the inland boundary of the coastal environment as the summit of the first ridge. Much Environment Court case law and professional practice support this approach. Ms D Lucas, landscape architect for the Future Ocean Beach Trust (and EDS) had this to say:-

> A first main ridgeline allows for a visual catchment approach. Frequently this would involve the lands forming the backdrop to the coast as observed from inshore waters. That backdrop often forms a containment or buffer for coastal experience, visually and acoustically.
>
> A first main ridgeline also typically allows for inclusion of a dominance of coastal processes.
>
> It would assist in certainty if there could be a general guide and that environmental TLAs were required to map the coastal environment and that that would occur with some consistency. For consideration for most activities, delineation of the 'first ridgeline' as the inland extent of the coastal environment would be appropriate[5].

[2] #147 Environmental Defence Society (EDS), Peart.
[3] #147 EDS, Thom.
[4] #123 Manukau City Council, McCredie.
[5] #63 Future Ocean Beach Trust, Lucas.

But we note if the first ridge of a landform was required to be considered, as one example, because it places Canterbury in a difficult position because of the large outwash plain that then merges into the flat Canterbury Plains with any hills or mountains well in the inland distance.

Ms Lucas herself identifies too that application of the first ridge concept is challenging in many landscapes where there is not a simple first ridge that might contain both the experiential and the dynamics of the coast. In addition different scales of activity require different scales of consideration – some activities undertaken inland of the first ridgeline can potentially affect the natural character of the coastal environment thus the associated experiential and physical catchments need also to be addressed. Experiential catchments, such as visual and cultural landscapes, and other perceptual landscapes such as pastoral or arable coastal farming landscapes, and headland coastal pa sites, along with middens scattered along a foreshore, all provide meanings of coastal associations.

River mouths are also a challenge to the first ridge concept - with tidal waters perhaps reaching several kilometres inland. Ms Lucas queries where then does the coastal environment extend? In many plans the delineated coastal marine area boundary across waterways does not address the tidal influence. Federated Farmers told us it reads some of the new policies as extending the coastal environment well inland[6].

The landward extent of the coastal environment in one area (Mason Bay) was inadvertently referred to by Dr Michael Hilton when discussing coastal dunes as a distinctive element of the New Zealand coast[7]. In that bay, the central dunes, an area of about 280 hectares of the dune systems extend from high water to 3.5 kilometres inland (the site is only one of three roosting places for the threatened southern subspecies of the New Zealand dotterel; the dotterel feed on the open coast, but roost in the stone fields deflation areas within the dune system itself). At Makara the subject of an Environment Court case on wind farms, it was found the coastal environment went inland into several catchments because of the coastal vegetation that grew there[8].

Ms Lucas identified that activities affecting coastal processes also require that their physical effects need to be considered on a catchment basis, such as mud slides from earthworks, erosion, and sediment from mining, all of which can clog estuaries, coastal waters and the sea floor. And a graphic slide from the NIWA witness discussing climate change shows just how far inland coastal processes may extend[9]. (See Appendix F to Volume 2). From the examples given we concluded that the landward boundary of the coastal environment may vary from place to place but preferably it should be mapped on a catchment basis.

We conclude that it is preferable for each region and district, working together, to decide where their landward coastal boundaries extend. Some councils have already done this. We recommend that approach be adopted.

[6] #347 Nicholson. Mr Nicholson told us of his farming property growing coastal species at 8 kilometres inland from the coast.
[7] #68 Hilton.
[8] *Meridian Energy and others* v *Wellington City Council and Wellington Regional Council* (W31/2007).
[9] #32 NIWA, Bell. NIWA Written Submission: Background Slides *The future of the coast … not just about sea level rise?*

We consider the seaward boundary of the coastal environment includes all islands up to the outer limits of the territorial sea as defined under s2 RMA in the coastal marine area (CMA) and we recommend the policy be worded to reflect this.

- **The intertidal zone**

The Wellington Recreational Marine Fisheries Association[10] provided an extensive submission and presentation through its Secretary, Mr J Mikoz, identifying that, in the Association's opinion, a number of objectives and policies to do with natural character, water quality (including sewage discharge), coastal hazards, and Maui dolphins, fail to describe or resolve any of the issues around the value of the intertidal zone in the CMA. One of these relates to the importance of native wetland plants to marine species that spawn upwards from the CMA to rivers and streams. Another issue relates to the failure of any of these provisions to place any value on submarine fresh water springs (such as found in the Wellington harbour) to ensure an artesian water (aquifer) resource is protected or the marine life they support. Nor has beach-coast seaweed been recognised as an important food source for the yellow eyed mullet providing essential protein for their spawning. Further, the water quality provisions fail to describe the importance of the near shore environment such as estuaries as areas where a large number of marine species spawn; this is because algae forms on the mud and sand banks to provide food for shellfish and paddle crabs. In addition, in estuaries just above high tide, natural wetland intertidal raupö species, which have protected rivers and stream banks in the past, are being pulled out by councils and replaced with exotic plant species which are not resilient to flooding, causing banks to collapse; in other places natural eelgrass is being replaced with inedible sea lettuce which provides no nutrients to intertidal species which have to rely on them. Further, the sedimentation which is accruing from bank collapse, the downstream effects of earthworks and other sources such as run off in estuaries, and intertidal areas where rivers meet the sea, smother the intertidal marine species[11].

Also of concern to the fishermen are effects on coastal waters of leachate from poorly managed non-sealed rubbish tips on the coastal edge which create an adverse impact on coastal ecosystems. On the North Otago coast we witnessed a graphic example of the toxic leachate from a coastal rubbish tip leaking onto the top of forming Moeraki boulders – boulders made famous by literally being spawned from coastal processes on the tidal edge, and still at the developmental stage where their outer grey muddy 'shells' seemed made of viscose when trod upon.

The importance of seaweed to intertidal species was also addressed. As to its natural values, the Ministry of Fisheries commissioned Kingett Mitchell in 2003 to review the *Environmental Impacts of harvesting Beach-Coast Seaweeds* which emerged as *Beach-Coast seaweed: a review*[12]. The Board was provided with access to the latter where it is identified that kelp forests are very productive communities turning over their life cycles many times a year; much of this produced biomass breaks off as seaweed; and ends up on the shore in response to storm events, seasonal mortality or senescence. Up to 25% of the annual production of kelp forests may end up in the surf zone and on the beach.

The review identifies that beach cast seaweeds form an important part of complex coastal food chains because the lack of significant in-site primary productivity in beach

[10] #211 Mikoz.
[11] See definition of intertidal zone in the Glossary to the recommended NZCPS (2009).
[12] N.L. Zenke White, S.R. Speed, D.J. McLavery, New Zealand Fisheries Assessment Report 2005/44, August 2005.

environments, means that organisms living there must rely on organic inputs including beach coast seaweeds that arrive via the surf zone and then decompose. Intertidal animals including midge larvae, mussels and crustaceans may colonise beach coast seaweeds and become re-suspended. The evidence provided by the Wellington Marine Fisheries Association demonstrated that yellow-eyed mullet feed off kelp fly larvae at Makara, Wellington. The yellow eyed mullet in turn is identified as a major source of diet for Hector and Maui dolphins in New Zealand. Meanwhile the mullet use the clear waters of the Makara estuary for spawning. As a result, the submission from the Wellington Recreational Fishermen concluded that beach grooming of seaweed should not take place in the Wellington region or any other. (We note from other evidence that beach grooming is not allowed by many councils and permits are required to remove seaweed from beaches).

Other submissions identified that river mouths should be protected from receiving dredge wastes, as the interface of fresh water/sea water produces algae which marine life cannot access due to the mud percolating into the sea. Further, submarine fresh water springs should be protected from receiving dredge waste, and sand mining should not be allowed close to estuary stream and river outlets so that marine species and native freshwater species are not denied free access to traditional spawning grounds upstream.

We concluded that, in general, the evidence produced on the value of estuaries and the retention of natural intertidal processes raised the profile of the significance of the intertidal zone to the extent that we recommend that it be included in the specific definition of the coastal environment.

- **Tangata values in the coastal environment**

Throughout the submissions from the various iwi and hapu groups we were impressed by how many of Maori values and so much of their heritage emanate from their relationships with the coastal environment. So many tangata whenua still live in the coastal areas where their ancestors lived. And their traditions, particularly in relation to their coastal fisheries and waters, are as important to tangata whenua today – as historical and cultural accounts disclose. We recommend that policy 1 be amended to include the tangata whenua relationship with the coast.

- **Renewable energy**

Submitters like the energy companies, the New Zealand Wind Energy Association (NZWEA), the EECA all made strong presentations based on the New Zealand Energy Strategy and s7(j) RMA[13] submitting that the NZCPS have regard to the benefits of renewable energy that will contribute towards the creation of a sustainable low emissions energy future for New Zealand. The Resource Management (Energy and Climate Change) Amendment Act 2004, introduced three new matters into s7 of Part 2 of the RMA (Other Matters), requiring all persons exercising functions and powers under the Act to have particular regard to:

(ba) the efficiency of the end use of energy

(i) the effects of climate change

[13] Section 7(j): In achieving the purpose of this Act, all persons expressing functions and powers under it, in relation to managing the use, development and protection of natural and physical resources shall have particular regard to: the benefits to be derived from the use and development of renewable energy.

(j) the benefits to be derived from the use and development of renewable energy.

To support the s7(j) amendment, s2 RMA was also amended to define 'renewable energy' as **'energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources'.**

Thus the Minister of Conservation in implementing any NZCPS is required to have particular regard to such matters.

In *Genesis Power Ltd* v *The Energy Efficiency* and *Conservation Authority* v *Franklin District Council* the Environment Court held in respect of a wind farm application on the Awhitu Peninsula, south of Auckland, that there were considerable benefits to be derived from renewable energy and included:

- security of supply (which in the face of climate change issues will become increasingly urgent);
- reduction in greenhouse gas emissions;
- reduction in dependence on the national grid;
- reduction in transmission losses;
- reliability;
- development benefits;
- contribution to the renewable energy target emanating from New Zealand's obligations under the Kyoto Protocol[14].

Since then the Proposed National Policy Statement for Renewable Electricity Generation ('Renewables NPS') has been confirmed for a Board of Inquiry and which, if recommended, will require weighting in future decision making on renewable energy projects in the coastal environment. Meridian realistically had this to say to underline the importance of renewable energy projects in the coastal environment:

> There is no denying that renewable energy development proposals can involve large structures and can involve large scale earthworks and material change to the landscape. They can generate significant localised adverse effects as well as wider energy benefits. They are not easy projects to secure sites or resource consents for. They can also be differentiated from the generality of other use and development by:
>
> the national public benefits they derive in contributing to the country's energy supply and security of energy supply;
>
> - the national (and potentially global) environmental benefits associated with use of renewable resources as opposed to use and development of non-renewable (carbon-based) energy resources;
> - the site-specific nature of the energy (wind, tidal or wave) they rely on for generation[15].

[14] [2005] NZRMA, 541 at 558.
[15] #445 Foster.

We had a considerable number of presentations as to where renewable energy projects might go in the future and a number of these were in the coastal environment, particularly on the west coast of the North Island.

And then there is the potential of tidal, wave, ocean and ocean power in the CMA so projects are not limited either simply to those in the wider coastal environment. Contact Energy Ltd presented a publication entitled *'Development of Marine Energy in New Zealand'*, which addresses the potential for this renewable energy source and which was referred to in the evidence of Mr Pollock, Contact's planning consultant[16].

- **Utilities**

As to utilities, Counties Power, a company which has been delivering power into southern Auckland and Northern Waikato since 1925 (currently to 85,000 people stretching from Firth of Thames across the Tasman Sea) provided a substantial submission on its concerns. Its case was that consideration should be given in the NZCPS to the place of utilities in the coastal environment and not just a reference to the national importance of infrastructure generally as the proposed NPS for Renewable Electricity Generation identifies that infrastructure at all scales can assist in achieving national objectives for renewable energy sources. The company identified:

- the significance of power delivery generally;
- the work encompasses a variety of tidal inlets, beaches, large cliffs, small coastal settlements;
- the benefits in having lines overhead as they are quicker to repair or to modify as any underground and are more flexible for new connections (such as film cables being strung over existing lines); although we recognise potential effects on natural character, features and landscapes.
- the strong preference in the industry to be on routes carrying existing lines and transport connections now owned by those who are served by the lines;
- radio masts as necessary also to provide a social and economic service to communities;
- the NZCPS needs to recognise that resource users operate and make decisions on their resources across jurisdictional boundaries;
- the NZCPS needs to recognise that for efficiency of use and continuity of supply, Counties Power ensures it has multiple routes for supply in that if one line fails the other picks it up;
- councils should be considering the place of utilities to service developments in the coastal environment at the same time as the developments themselves.

Telecom New Zealand Ltd also drew attention to its needs to protect New Zealand's international cable structures laid within Cable Protection Areas (CPAs) off Auckland's coast. While it has effective legislative protection via the Submarine Cables, Pipelines Act 1996, and Order, recognition needs to be given to the fact that any future construction within CPAs may limit the ability to lay, operate and repair these cables in the future[17].

[16] #374. Summary, 79. Prepared for Electricity Commission, Energy Efficiency Conservation Authority and Greater Wellington Regional Council, 30 June 2008.
[17] #370 McGrath.

Given that renewable energy sources and infrastructure and transmission facilities often have a functional necessity to locate in the coastal environment which includes the CMA, and given the importance of these resources to the future of New Zealand, we conclude the NZCPS should include specific references as follows: policy 1(b)(ix) physical resources and built facilities, including strategic infrastructure, that have already modified the coastal environment; and policy 1(d) take into account the potential of renewable resources present in the coastal environment such as energy from wind, waves and tides to meet the reasonably foreseeable needs of future generations.

- **Conclusion**

We recommend policy 1 be amended as follows:

> **Policy 1 Providing for the sustainable management of the coastal environment**
>
> **All persons exercising functions and powers (all decision makers) must:**
>
> **(a) recognise that the extent and characteristics of the coastal environment may vary from region to region and locality to locality; and the issues that arise may have different effects in different localities;**
>
> **(b) recognise and provide for a coastal environment that includes:**
>
> **(i) the coastal marine area;**
>
> **(ii) islands within the coastal marine area;**
>
> **(iii) land, waters and air where coastal processes, influences or qualities are significant including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;**
>
> **(iv) areas at risk from coastal hazards such as coastal erosion, including wind erosion, coastal inundation and climate change;**
>
> **(v) coastal vegetation and the habitat of indigenous coastal species including migratory birds;**
>
> **(vi) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;**
>
> **(vii) items of cultural and historic heritage on or relating to the coast;**
>
> **(viii) inter-related coastal marine and terrestrial systems, including the intertidal zone; and**
>
> **(ix) physical resources and built facilities, including strategic infrastructure, that have already modified the coastal environment;**
>
> **(c) recognise that tangata whenua have traditionally lived and fished in areas of the coastal environment for generations; and**
>
> **(d) take into account the potential of renewable resources present in the coastal environment such as energy from wind, waves and tides to meet the reasonably foreseeable needs of future generations;**

and must reflect (a) to (d) above in regional policy statements, regional plans and district plans (plans).

Policy 2 The Treaty of Waitangi and tangata whenua

All persons exercising functions and powers under the Resource Management Act 1991 in relation to the coastal environment shall:

(a) **take into account the principles of the Treaty of Waitangi;**

(b) **undertake consultation with tangata whenua in accordance with the Act that is early, meaningful and ongoing and is appropriate with regard to tikanga Maori;**

(c) **involve iwi authorities on behalf of tangata whenua in the preparation of policy statements and plans, by consulting with iwi authorities in accordance with Schedule 1 to the Act. This consultation could reasonably include:**

- **(i)** **considering ways in which to foster the development of iwi authorities' capacity to respond to invitations to consult;**
- **(ii)** **establishing and maintaining processes to provide opportunities for those iwi authorities to be consulted;**
- **(iii)** **enabling those iwi authorities to identify resource management issues of concern to them; and**
- **(iv)** **indicating how the resource management issues of concern to iwi have been or are to be addressed.**

(d) **take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority;**

(e) **recognise and provide for any relevant management plan for a foreshore and seabed reserve;**

(f) **where practicable, with the consent of tangata whenua and in accordance with tikanga Maori, incorporate matauranga Maori in policy statements and plans and in the consideration of applications for resource consents; and**

(g) **provide appropriate opportunities for tangata whenua involvement in decision making on resource consents.**

Policy 3 Characteristics of special value to tangata whenua

Local authorities shall work with tangata whenua, in accordance with tikanga Maori, to identify characteristics of the coastal environment that are of special value to tangata whenua, including wāhi tapu, tauranga waka, mahinga mataitai and taonga raranga. In doing so, local authorities shall recognise that tangata whenua have the right to choose not to identify these characteristics. Provision shall be made in accordance with tikanga Maori for:

(a) **the maintenance or enhancement of access for tangata whenua, as far as practicable, to these characteristics; and**

(b) **the appropriate use, development, and protection of these characteristics.**

Policy 4 Transfer, delegation or sharing of local authority functions, powers and duties regarding characteristics of special value to tangata whenua

Where characteristics of the coastal environment have been identified as being of special value to tangata whenua, local authorities shall consider, with tangata whenua in accordance with tikanga Maori:

(a) the transfer of its functions, powers and duties to an iwi authority or board of a foreshore and seabed reserve in relation to the management of those characteristics of the coastal environment, in terms of s33 of the RMA 1991; and/or

(b) the delegation of its functions, powers and duties to a committee of the local authority representing and comprising representatives of the relevant tangata whenua, in relation to the management of those characteristics of the coastal environment, in terms of s34 of the Act; and/or

(c) a joint management agreement, regarding those characteristics of the coastal environment, with an iwi authority or group that represents hapu, in terms of s36B of the Act.

Policy 56 Historic heritage of significance to Maori

Identification, assessment, and management of historic heritage of significance to Maori shall be undertaken in consultation with tangata whenua and in accordance with tikanga Maori.

The s32 Report

The s32 report states:

> **Policies 2 – 4**
>
> In order to achieve objectives … the need for those exercising functions and powers under the RMA to take into account the principles of the Treaty of Waitangi should also be reflected in policy. Policy is also required to give general guidance on how these principles are to be taken into account and on the approaches on policy and decision making that are necessary to enable tangata whenua to function as kaitiaki.
>
> This guidance should refer to:
>
> - the need to undertake meaningful consultation in accordance with tikanga Maori;
> - recognition of matauranga Maori (customary knowledge) which does not seem to be well incorporated into plan provisions;
> - the consideration of ways in which the capacity of iwi to respond to consultation can be enhanced and how processes can be established and maintained to promote consultation;

- the account to be taken of any relevant iwi planning documents;
- the involvement of tangata whenua in decision making;
- the involvement of tangata whenua in the preparation of policy statements and plans including the identification of issues, characteristics and resources that are of special value to them;
- the subsequent need to provide for access to and the use, development and protection of these characteristics and resources;
- the appropriate transfer or delegation of powers, functions and duties to tangata whenua (which does not appear to have been realised to date).

Policy 56 is included under the general heritage provisions of the NZCPS. Policy 56 'historic heritage' includes sites of significance to Maori, including wāhi tapu. The s32 report identifies that the achievement of objectives requires that relevant iwi and hapu should also be involved in the identification, assessment and management of historic heritage of significance to Maori, and that tikanga Maori be followed in this process. To provide for certainty, the report considers that the NZCPS should explicitly state the need for councils to involve Maori and to collaborate with other heritage protection agencies.

Further, because Maori heritage is so much part of the Treaty of Waitangi 1840 and the processes that should flow from that, the Board considers it should be included in the Treaty component of the NZCPS. Thus we consider it here.

Policy 2 Submissions

- **Iwi and hapu groups**

Fifteen iwi and hapu groups comment on policy 2. Six of these support it, with two saying that they strongly support it. One particularly supports policy 2(d), saying that the requirement to take into account relevant iwi management plans will enable more effective tangata whenua input into the management of the coastal environment. Another explicitly supports and seeks retention of policy 2(c).

Four iwi groups submit that policy 2 should be redrafted and simplified, or deleted because it contains only a number of sections of the RMA bundled together and in any event is not entirely aligned with it. One says the policy 'adds little or nothing to the RMA' and should be deleted and replaced with clear direction about how these duties under the RMA are to be carried out.

Other iwi groups do not expressly say that they either support or oppose the policy. Iwi groups overall do not appear to share a collective view on the policy but individually make the following more specific comments:

- adequate resourcing needs to be provided to local authorities and iwi authorities to implement the policy;
- a provision should be added to recognise and provide for any settlements between the Crown and Maori, including the Maori Commercial Aquaculture Settlement Act, foreshore and seabed agreements and any generic settlements;

- the policy should link iwi plans to s35A RMA that sets out duties in relation to keeping records about iwi and hapu;
- the requirement to have consultation that is 'appropriate with regard to tikanga' would be better restated as 'consistent with tikanga';
- the term 'tangata whenua' should be replaced with 'mana whenua' because tangata whenua can mean any Maori in New Zealand;
- the policy should state that consultation requirements should be 'in accordance with the Act';
- policy 2 (and policies 3 and 4) require further thought in relation to how they will be applied because local government does not have the authority to implement the Crown's Treaty obligations, although it is an agent of the Crown. It says that the capacity of the local government to include iwi in decision making is therefore thwarted at the outset.

- **Community and conservation groups**

Approximately 40 individuals and community groups quote the NSaPS submission which supports more attention being given to matters of interest to tangata whenua and meaningful council-tangata whenua relationship building, transfer of powers and delegation. They call for policy 2 (as well as policies 3 and 4) to be backed up with resources for councils and tangata whenua. These submitters wish to see a more explicit commitment from central government to supporting implementation of this policy.

Many other submitters from conservation groups appear to support the intent of the policies to give effect to the Treaty of Waitangi, but do not believe that the proposed policy adds anything to existing provisions under the RMA. They call for a much simpler policy that picks up on the principles of the Treaty of Waitangi and reflects existing obligations under the RMA. Three individual submitters oppose the policy, saying too much weight is given to consulting with tangata whenua.

Some submitters suggest policy 2 should be integrated with policies 3 and 4. Another submitter considers the sections in the policy are too prescriptive and wide ranging and that there is no necessity for additional provisions to processes in the RMA to be afforded to specific groups. With a request for re-editing, however, it was suggested that only clauses (a) and (b) remain.

- **Councils, legal groups and infrastructure companies**

Regional councils, legal organisations and some infrastructure companies point out that policy 2(c) through to (g) repeat clear provisions and duties under the RMA and should be removed to avoid any conflicts in legal interpretation. Specifically, clause (c) repeats requirements for comprehensive consultation with iwi authorities under the First Schedule, clauses 3 and 3B, of the RMA. Section 66(2)A and 74(2)A duties, to take account of iwi planning documents, are also repeated. These submitters request that the Board identify those provisions in policy 2 that simply repeat or paraphrase RMA clauses and remove them from the NZCPS.
A number of councils say that the relationship between the words of this policy and the responsibilities of councils under the RMA needs clarification.

There is also criticism from several councils, some infrastructure companies and two legal organisations that the requirements under policy 2 are potentially more onerous than those under the RMA. The New Zealand Law Society notes that arguably they could be ultra vires.

The Auckland Law Society notes that clause (f) appears to contradict the statement in s36A that an applicant for resource consent has no duty under the RMA to consult any person about the application. It recommends that clause (f) be omitted and says that, in any event, policy 3 duplicates policy 2(f). This approach is supported by one council, which submits that the policy is seeking to provide opportunities that are outside the scope of the RMA, as s36A applies only to the development of policies and plans, not implementation of those plans (i.e. resource consents).

- **Fishing and aquaculture interests**

Fishing and aquaculture interests support the intent of this policy. However, they say that both it and the other relevant policies need to recognise and provide for any settlements between the Crown and Maori, including the Maori Commercial Aquaculture Settlement Act, as well as recent Foreshore and Seabed agreements. The Auckland District Law Society recommends the inclusion of a sub-policy to address the relationship of a customary rights order; a finding by the High Court of a territorial customary right; and any foreshore and seabed reserve approved under ss40-45 of the Foreshore and Seabed Act 2004.

Fishing interests also say that the NZCPS should promote the integrated consideration of the various tangata whenua rights and interests in the CMA, and take all reasonable measures to minimise any adverse effects on other resource users from implementation of the Crown's obligations to tangata whenua. Fishing interests also urge consideration by councils, together with iwi, of all aspects of sustainable commercial development and conservation as an integrated system.

Several companies query the clarity of policy 2(e), and ask whether the policy is intended to include iwi resource management plans prepared for marine reserves, mataitai reserves and taiapure. They are uncertain, too, whether customary and territorial rights orders, which are not reserves, would be included. They and others seek to reword policy 2(e) and (g) as follows:

> (e) recognise and provide for any relevant iwi resource management plan for a foreshore and seabed reserve; and provide opportunities in appropriate circumstances for tangata whenua involvement in decision making on resource consents.

Several submitters consider that consultation (early collaboration) should apply to all stakeholders, while another considers consultation should apply across the ethnic spectrum.

Issues Arising

- **Provisions with no added value**

As drafted, policy 2 is essentially a process provision and does not give added value to Maori issues because essentially it reflects existing provisions of the RMA.

The point is made that even the s32 analysis states that policies 2, 3 and 4 constitute good practice, do not add any additional costs but that 'they should be carried out under the existing

provisions of the RMA'[18]. The point is also made that councils already have the power, for example, to delegate functions under s34 RMA. Meanwhile policy 2(a) reflects s8 RMA (Treaty of Waitangi Principles); policy 2(c) reflects the First Schedule RMA (clause 3B); policy 2(d) reflects s61(2A)(a) regional policy statements; s66(2A)(a) regional plans; and s74(2A)(a) district plans; while policy 2(e) reflects s61(2A)(b) regional policy statements, s66(2A)(b) regional plans, and s74A(2)(b) district plans. Further, s61(2A)(a) and s66(2A)(a) and s74(2A)(a) require that those relevant planning documents be taken into account when developing policy statements and plans.

We therefore agree that deletion of part of policy 2 is required because it contains 'process' provisions that are already in the RMA and in the First Schedule (clause 3B) relating to policy statements or plans[19].

We also relevantly note at this point, that also under the First Schedule RMA, clause 3C, a council is not required to comply with such procedures as set out in the legislation if the same matter has been the subject of consultation with the same person/people under another Act in the 12-month period before public notification of the proposed policy statement or plan[20].

We recommend deletion of part of policy 2 in the above terms.

- **Who holds authority?**

Tauranga City Council considers policy 2 and clause 3A of the First Schedule are difficult to implement because of levels of authority and consultation, as some policies relate to iwi authorities, others to tangata whenua groups; some again represent hapu. We note however that under s2 RMA:

- **'iwi authority' – means the authority which represents an iwi which is recognised by that iwi as having the authority to do so**
- **'tangata whenua' - in relation to a particular area means the iwi or hapu that holds mana whenua over the area.**

We consider, therefore, that whichever tangata whenua group (iwi or hapu) holds the mana whenua over a particular area is the one that should be recognised by local authorities. 'Mana whenua' is also defined in s2 as: **means customary authority exercised by an iwi or hapu in an area.**

If there are currently difficulties under the RMA with identifying who holds authority, the policy does not change that situation.

- **Is policy 2 ultra vires?**

The New Zealand Law Society notes the mandatory requirements set out in policy 2 for those exercising powers and functions under the RMA, and considers they are more onerous than the provisions in the Act itself. Thus, the issues arising from these policies should be

[18] #74 Marlborough District Council citing the *Proposed New Zealand Coastal Policy Statement Evaluation under section 32 of the Resource Management Act 1991*, Policy Group Department of Conservation, Wellington.
[19] Added as a requirement in a 2005 amendment to the RMA.
[20] In this case, however, the tangata whenua *must* have been advised that the information obtained under the previous consultation exercise could apply to matters under the RMA.

carefully reassessed. It also requests that policy 2 cross-references to sections and First Schedule obligations in the RMA[21]. In response, we note that:

- the policy 2(a) undertaking sought is mandatory under s8 RMA;
- policy 2(c) contains a mandatory requirement to prepare proposed statements or plans under clauses (1)-(2) First Schedule RMA, where 'must' is substituted for 'shall';
- under clause 3(1)(d)-(e) First Schedule RMA, consultation with tangata whenua, iwi authorities and with the board of any foreshore and seabed reserve is also mandatory;
- it is also mandatory to take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority under s61(2A), and to recognise and provide for any relevant plan for a foreshore and seabed reserve; again, 'must' is substituted for 'shall': see s66(2A) and s74(2A) RMA.

We do not accept the submission that these provisions are ultra vires therefore. But the Board's main issue with the policy 2(c) provisions is that they are already provided for in the RMA. We therefore recommend they be deleted. Policy 2(d) is the exception because, as we suggest below, iwi management plans should have a significant part to play in future coastal planning for Maori.

- **When is consultation meaningful?**

The size of the Ngai Tahu takiwa (area or region) means the tribe seek to engage with 25 local authorities comprising 5 regional and 20 district councils. Some of its members explained that insight gained through this experience has revealed a significant disparity and inconsistency between each authority and the way it engages with iwi. While some authorities go out of their way to establish genuine relationships, and seek to show responsibility in developing policy statements, others either lack capacity to meaningfully foster iwi input, or are entirely resistant to doing so. Notwithstanding those councils' statutory obligations under the RMA, we were told that tools Ngai Tahu could provide by way of sharing information and encouraging direction for councils, were ignored in some instances.

Ngai Tahu considers consultation is starting too late, and that sufficient assessment of cultural implications and effects of proposals, and related requests by council officers for consent applicants to undertake cultural assessments, are the exception rather than the rule. Iwi management plans are overlooked, or not taken into account in a meaningful way. Ngai Tahu considers effective partnerships should be robust enough to be sustained in the long term, and not reliant only on individual champions within councils that they should be much more durable. All parties must respect the knowledge, experience and skills of the elders if effective partnerships are to develop. Ngai Tahu kaumatua, Mr Ellison, said this:

> So we have had enough of the tick Maori box mentality, and we seek more proactive ways to establish meaningful partnerships between tangata whenua and local authorities. One way of helping to bring this about for the New Zealand Coastal Policy Statement, is to explicitly state that a key outcome that is expected,

[21] #155.

> and will result from taking into account the principles of the Treaty of Waitangi, is the establishment of partnerships with tangata whenua, the formation of relationships that are characterised by open trust, openness, reasonableness, neutral co-operation and active protection of our values[22].

We heard of similar concerns elsewhere. But we also heard of Maori Committees being established by councils to assist, and we heard of some developers, who on some particular projects have gone to considerable lengths to:

- involve tangata whenua when identifying archaeological sites, as well as employing archaeologists to assist and consider the results; this has resulted in the expansion of known archaeological sites rather than a retraction;
- providing tangata whenua with access to the coast and to the heritage sites across private development;
- providing extensive vegetative restoration and the retention of open space so that cultural landscapes are not ruined[23].

- **Principles of consultation**

On the question of consultation between Maori and local authorities, Ngai Tahu suggest that to give added value to the existing policy the Board look at aspects of the issue in the leading Court of Appeal decision on consultation *Wellington International Airport* v *Air New Zealand.* We took this opportunity and from the judgement distilled the following principles:

- consultation is not mere notification;
- consultation must be allowed sufficient time and genuine effort must be made;
- consultation is not merely to 'tell' or 'present';
- consultation requires the statement of a proposal not yet finally decided upon; listening to what others have to say, considering their responses and finally deciding;
- consultation is not negotiation, for that involves two persons, which has as its object arriving at an agreement (although consultation may well lead to negotiation and agreement)[24].

From the Bay of Plenty Conservation Board (BOPCB) we heard, further, that consultation is an agreed framework of consultation which involves:

- having the consultation;
- wrapping the consultation up within the parties;
- feeding that information back to both parties, for them to actually understand that information was what they said; and for them to affirm that is what they understood had been said, and in terms of what they agreed to, that is what the parties understood to have been agreed.

The BOPCB also notes that in technical matters there is a need for the involvement of technical advisers in consultation[25].

[22] #429 Ngai Tahu, Ellison.
[23] #398 Williams Land Ltd.
[24] [1993] NZLR 671 citing in part *Port Louis Corporation v Attorney-General of Mauritius* [1965] GC 1111.
[25] #126 Bay of Plenty Conservation Board, Olsen.

Section 36A RMA, however, identifies that neither an applicant nor a consent authority has 'a duty' to consult any person in respect of applications for resource consents and notices of requirement. It is considered tangata whenua may be a party to resource consent proceedings, in which case it would not be appropriate for them to be involved in the final decision making for consents. But both an applicant and a local authority must comply with a duty under 'any other enactment' to consult any person about the application[26]. Under the LGA, s81 **Contributions to decision making processes by Maori** and s52, **Principles of Consultation** set out various provisions to assist Maori, including individuals, iwi or hapu, have involvement with the decision making of local authorities.

There is power, too, under the RMA, in the First Schedule, clauses 2(2)(b)-(c), to consult the tangata whenua of the area, who may be so affected, through the iwi authorities of the region, and to consult the board of any foreshore and seabed reserve in the region. Similarly, under clause 3(1)(d), the tangata whenua of the area, who may be so affected, are to be consulted through iwi authorities, and under clause 3(1)(e), the board of any foreshore and seabed reserve in the area.

Thus, it appears the intention of the RMA amending legislation is to clarify that consultation is not required in relation to applications for resource consents or notices of requirement (matters of party and party interest). Rather, the intention is to improve processes for consultation with tangata whenua through iwi authorities and the development of plans and policy statements.

Section 36A(1) is, however, a somewhat equivocal provision:

> **36A No duty under this Act to consult about resource consent applications and notices of requirement**
>
> (1) The following apply to an applicant for a resource consent and the local authority:
>
> (a) neither has a duty under this Act to consult any person about the application; and
>
> (b) each must comply with a duty under any other enactment to consult any person about the application; and
>
> (c) each may consult any person about the application.

Thus, on the one hand s36A(1)(a) states that an applicant and a local authority for a resource consent[27] have no *duty* to consult any person about the application. On the other hand, s36A(1)(c) states that both an applicant and a local authority *may* consult *any person* about the application. The distinction between the two clauses in s36A(1) is that unlike (a), clause (c) at least provides a discretion to consult, although it imposes no duty to do so.

The '*Scoping paper for Maori interests in the coastal marine environment*' comments that:

> An applicant or the council can still choose to consult 'any person' about an application or notice of requirement. The amendment does not preclude consultation with iwi authorities or groups representing hapu. In some cases, iwi

[26] 'Local authority' means 'a regional council or territorial authority': S2 RMA.
[27] As well as for a notice of requirement under s36A(2).

> authorities or groups representing hapu may be affected parties and local authorities may need to contact them to identify any effects of the application on tangata whenua[28]. …

'Any person' in s2 RMA is defined as: **includes the Crown, a corporation sole, and also a body of persons whether corporate or unincorporated**

Thus, while there is no duty to consult an iwi authority or hapu, as a body of persons, about either resource consents or notices of requirement (as a matter of law), because of the definition of 'person' in s2 they may still be consulted. Further, because the definition is inclusive in its nature, it does not exclude individual Maori who may be affected.

We note that consultation of iwi or hapu or Maori generally, as an affected party or parties at the early stage of the consent process, may be considered good planning practice and may facilitate or advance the progress of an application, and/or avoid appeals to the Environment Court. Mediation and negotiation are also available to an iwi authority, hapu or individual Maori, as a way forward.

When consulting iwi authorities during the preparation of a proposed policy statement or plan, councils will be treated as having consulted if they have followed the procedure outlined in the RMA, First Schedule clause 3A, while clause 3B provides that:

> … a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority
>
> (a) considers the ways they may foster the development of the capacity of iwi authorities to respond to an invitation to consult; and
>
> (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
>
> (c) consults with those iwi authorities; and
>
> (d) enables those iwi authorities to identify resource management issues of concern to them, and
>
> (e) indicates how those issues have been or are to be addressed.

Turning to policy 2(g) in the NZCPS, numerous submitters object to the provision of appropriate opportunities for those Maori knowledgeable in tikanga Maori to be involved in decision making on resource consents, because it appears to contradict s36A RMA. Amongst several who suggest that policy (2)(g) be amended, the Hastings District Council said this:

> With regard to part (g) of this policy below, tangata whenua would be likely to be involved in the consent process as an affected party, as submitters, or potentially as authors of a cultural impact assessment. 'Conflict of interest' issues could therefore arise if members of the same tangata whenua were also involved in the resource consent decision making process. If the intent is for direction to be provided that tangata whenua should be involved in the decision making process as affected parties with regards to consultation, rather than as decision-makers, then this needs to be clarified. If the intent is to have people with knowledge of tikanga Maori as decision-makers then it may be more appropriate to replace the words,

[28] *NZCPS Review*, March 2006. 8-10.

> 'tangata whenua' with 'Maori' to resolve the potential conflict of interest issue. This would provide the opportunity for suitable accredited Maori knowledgeable in tikanga Maori to be co-opted onto hearings committees for hearing resource consent applications involving the coastal environment[29].

We have reworded policy 2(g) appears to give it a broader dimension. Where tangata whenua/Maori issues are involved in consents, we consider it could be helpful for local authorities to have pukenga input on issues that are important to Maori in the region, particularly in the absence of an IMP.

- **Definitions**

A number of submitters question the meaning of several Maori terms, including 'matauranga'. In translation we are informed it means 'customary'. Under s2 RMA, 'tikanga Maori' refers to 'Maori customary values and practices'. The NZCPS would therefore be adding the specific Maori name 'matauranga' for the word 'customary'. We do not accept the argument that because a term is not in the RMA, it cannot be used in a policy as long as it is understood. We also note s58(b) RMA adopts an inclusive approach providing an avenue for other Maori names/values to be added to the NZCPS at some later date. That provision states:

> (b) the protection of the characteristics of the coastal environment of special value to the tangata whenua including wahi tapu, tauranga waka, mahinga mataitai, and taonga raranga:

Other expressions were also considered ultra vires, such as 'kaitiakitanga, 'kaitiahi' 'tikanga Maori'. These however are already defined under s2 RMA.

We recommend no amendment is necessary.

- **Tangata (Mana) whenua involvement**

Nga Tangata Ahi Kaa Road o Maketu suggests that 'mana whenua' is a more appropriate phrase than tangata whenua. Maketu say that 'tangata whenua' can mean 'any Maori in Aoteoroa' and it seeks to replace it with the words 'tangata mana whenua'.

Section 2 RMA provides as follows:

> Tangata whenua, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area.

Thus the relevant tangata whenua in a given area or region is that group which holds the mana whenua.

We recommend no amendment is necessary.

- **Recognition of recent Maori and Crown initiatives**

There were calls from a range of different submitters for policies to acknowledge recent recognition of iwi/Maori interests, particularly through the Maori Commercial Aquaculture Claims Settlement Act 2004; recent Foreshore and Seabed agreements approved under ss40-45 Foreshore and Seabed Act 2004; Treaty claim settlements; and Iwi Fishery and

[29] #158.

Management Plans. The point was well made that all objectives and policies in the NZCPS need to be consistent in recognising these developments, not just draft policies 1-4[30].

We agree, and recommend that reference be made to all these matters.

- **Iwi Management Plans**

We return now to policy 2(d) and note first, that Iwi Management Plans (IMPs) have been identified in the RMA as one method of recognising the significant environmental concerns of Maori and a means of delivering that information to local authorities. They are amongst the documents regional and territorial authorities must take into account when preparing or changing regional policy statements and regional and district plans. The provisos are that they have been recognised by an iwi authority, are relevant to the resource management issues of the region/district, and have been lodged with the relevant council (see ss61(2A)(a), 66(2A)(a), 74(2A)(a) RMA). A guidance note for councils and resource management practitioners regarding such plans advises that they can also assist implementation of the RMA's provisions for Maori interests in resource management, particularly ss6(e), 6(g), 7(a), and 8, and inform the assessment of applications for resource consent. Local authorities may also provide funding, expertise or resources to help iwi or hapu prepare IMPs. There are therefore a range of ways in which local authorities can take an interest in what such plans contain.

Secondly, many Maori communities live on the coast where, in the future, climate change may cause coastal inundation. To lose such communities from their locations through coastal inundation, sea level rise or storm surge will cause severe social and economic upheaval. A significant part of Maori heritage lands and possessions could also be lost forever. We support Maori being given the opportunity through their own IMPs to build their own capacity to address such issues. We also consider IMPs have an important contribution to make in RMA planning document preparation, and consent processes.

We note however that an LGNZ survey of council engagement with Maori published in 2004 found that only half of the 86 councils surveyed at that time held IMPs[31]. Only 8 councils had supplied funding or other support for IMP development. Subsequent investigation disclosed that 5 of the 10 iwi organisations LGNZ spoke to felt that the IMPs were not being utilised as they should be by councils and consultants, and that it was all too easy for iwi concerns to be ignored[32].

It was one iwi's experience that if local authorities make no effort to listen or do not wish to listen, then they miss understanding the cultural basis from whence the iwi comes. It is Ngai Tahu's opinion that IMPs are likely to provide notable insight into the cultural values and policies associated with site or resource, and it will be helpful for councils to refer to them under all RMA processes[33].

Another Maori submitter (Te Arawa Lakes Trust) seeks an NZCPS that requires further engagement, and recognition and implementation of traditional practices, through an IMP that

[30] See #34 Tasman District Council; #238 Whangarei District Council among many others, some of the infrastructure and fishing companies as well as iwi.
[31] *Local Authority Engagement with Maori: Survey of Current Council Practices,* Local Government New Zealand, July 2004.
[32] *Review of the Effectiveness of Iwi Management Plans: An Iwi Perspective,* Ministry for the Environment 2004.
[33] #429 Ngai Tahu, Ellison.

recognises its Trust's 'Guiding Principles'. This, it is hoped, will assist, guide and provide regional and district councils with greater insight into katiakitanga and the tino rangatira principle, and thereby enhance co-operative input and planning for sustainable management of taonga in the Te Arawa rohe.

We consider that some of the reasons that IMPs do not appear to be on the radar of many local authorities is because:

- where the IMP is a more general iwi planning document it is difficult to extract the specifics to address a particular planning issue;
- existing IMPs tend not to target specific plan changes, yet the statutory weight of an IMP is at the time of plan preparation;
- the parties speak past each other;
- some local authorities do not wish to listen, and/or some local authority officers are too busy, change duties etc, so that there is a lack of consistency in those who handle iwi issues.

On the other hand, we note the anxiety expressed by one development company that persons do not have statutory rights to either make submissions on iwi management plans or be heard, and nor can IMPs be appealed. It argues, therefore, that policy 2(d) allows IMPs into legislation without the rights of public or legal scrutiny and this is contrary to the principles of law[34]. On this issue we consider to the contrary, that there is no principle of law involved. IMPs are provided for in the legislation for local authorities to have regard to as a mandatory requirement: see ss61(2A), 66(2A) and 74(2A) RMA, with the caveats that their contents must have a bearing on resource management issues of the district and that the IMP must have been lodged with the council. There is no mandatory requirement to put those contents in the plans or statements of the local authorities. But if they do so, then they are opened up for public submissions, hearings and appeals to the Environment Court when plans and statements are notified.

We asked Environment Bay of Plenty (EBOP) about the effectiveness of IMPs in the RMA processes; this being from a 2008 perspective of a regional council that has recently had a number of Crown Treaty of Waitangi Settlements in the region. In a formal response prepared by the council[35] it was identified that EBOP is in receipt of 19 IMPs. The complexity of these range from solely RMA matters through to issues concerning education, housing and other matters. The council provides funding for the development of the plans, and works with Maori in tandem with application criteria.

EBOP staff note the following positive aspects of the IMPs, in that they:

- identified matters of significance to iwi;
- identified respective rohe;
- identified significant sites;
- contained objectives, policies and methods;
- identified engagement expectations;
- identified consultation requirements e.g. Ngati Pikiao fees.

[34] #376 Heybridge Corporation.
[35] #160 Bayfield, Robson.

In addition, IMPs are expressly considered in the operative Regional Policy Statement (RPS). Any new plans will refer to IMPs in their development. A consent can be refused on the basis of omissions in the application relating to s6(e). Further, EBOP considers IMPs are useful triggers during the resource consent process, particularly in identifying significant sites. A list of resource consents is sent to all iwi of the region twice a week to see if they wish to be involved in an application.

EBOP considers that the negative aspects of IMPs are:

- staff consider that the 'taking into account' threshold in the RMA legislation is a relatively weak one for ensuring IMPs are considered in decision making;
- some of the formats used by IMPs make it difficult to relate to the policy development structure required by the RMA;
- the linkage to the resource consent process can be weak; this can be because of format difficulties or the broad, aspirational nature of the plan (we also heard this from other submitters);
- there are insufficient resources within iwi to monitor implementation of IMPs, thus the opportunity to feed back on how to improve subsequent versions is poor; a related issue is that there is no formal capacity for the regional council or other users to feed back opinions or information on what would improve the plans' usability; unless such advice is actively sought by iwi, councils are hesitant to provide feedback that may appear critical;
- confusion about the role of the regional council by iwi, meaning that the expectations of what the regional council could do with an iwi management plan were unrealistic;
- minimal use by consents staff; the expectation being that the applicant uses them. In fact 95% of consents are non-notified.

EBOP is employing various strategies to make IMPs more effective within the council's information systems and is using more directive policy in the RPS regarding their use. Its CEO, Mr B Bayfield, considers the overall quality of IMPs is beginning to improve.
We were told by Kaipara District Council that it is accommodating some of the concerns of Maori in the Far North through considering reference to one IMP in the district plan; providing a Maori purposes zone on multi-owned land as a whole chapter in the plan; and addressing the concerns of another iwi within the district plan itself.

The Whangarei District Council told us it has two IMPs lodged with it currently, Patuharakeke Tapu IMP and Ngatiwai. It has a Maori liaison committee as a subcommittee of council.

We note these encouraging signs from local authorities and around the country.

As to what could be termed a 'successful' IMP, the Board was shown *Te Paha O Taku Raumati*, an IMP prepared by Te Runanga O Kaikoura, which is the administrative council of Ngati Kuri Te Runanga O Ngai Tahu. This is a recognised iwi authority, which in turn recognises the document as an iwi-planning document. The plan is a statement of Ngati Kuri values and policies in regard to natural resource and environmental management in the Te Runanga O Kaikoura takiwa. The plan is thus a means for tangata whenua to carry out their role as kaitiaki and rangatira over their ancestral lands and taonga in that region.

This IMP is an impressive document with detailed information about resources, significant sites, cultural names, settlement issues and statutory acknowledgements, intended to improve the effectiveness of Ngai Tahu participation in RMA processes. It is a model of its kind and could be a valuable resource for local authorities and other iwi and hapu within the Ngai Tahu boundaries. Cultural impact assessments (CIAs) are seen also as an increasingly valuable tool as they reach down to another level of detail from IMPs on any particular issue[36].

We recommend strengthened recognition of the value of IMPs in policy 2 such as incorporating references to, or material from, IMPs in plans and regional policy statements, to underline the potential contribution of IMPs to the sustainable management of an area's physical and natural resources.

- **Implementation packages**

For many tribes, and local authorities with a very slender ratepayer base, we were told the costs of council and tribal involvement in the production of IMPs and the consultation and technical information necessary to take part, was out of reach of most, if not all. As the issue is one outside our terms of reference however, we only note the issue here.

Policy 3 Submissions

It is difficult to gauge the level of support for policy 3 because many submitters make little or no specific comment on this policy, or simply repeat comments previously made in relation to policy 2. However, it appears that those individuals, community groups and conservation interests that support policy 2, generally support policy 3 as well.

Likewise, although fewer iwi and hapu groups comment specifically on policy 3 those that do appear to support it, and individually make the following comments:

- the term 'Maori cultural landscape' should be added to the list of characteristics that are important to tangata whenua;
- there is no recognition of Maori land ownership on the coast; the policy should be redrafted to recognise Maori land ownership and the ability to create Maori Reservations under the Te Ture Whenua Maori Act 1993;
- the first paragraph should say that the list of characteristics of special value to tangata whenua should read, 'including but not limited to wāhi tapu' etc.;
- the policy should be extended to include a requirement to monitor these sites;
- the term 'Maori cultural landscape' should be incorporated in the policy.

Approximately 40 individuals and community groups repeat their support for more attention to be given to matters of interest to tangata whenua, *and* call for the policies to be backed up with resources for councils and tangata whenua.

Some local authorities and infrastructure companies partially support the policy but wish to see it amended to better reflect the RMA. Some councils say that the success of the policy will depend to a large extent on the willingness of tangata whenua to engage with local authorities. Several district councils suggest it might be appropriate to require tangata

[36] #429 Solomon, Hogan.

whenua to initiate the process. A number of district councils believe that the policy imposes significant costs. Two regional councils support the policy but call for it to be exempt from the five-year implementation deadline. Two councils say the use of the term tangata whenua in favour of iwi and/or Maori should be reviewed, as it is inconsistent with other relevant legislation.

Submitters from all sectors call for a glossary of definitions for words and phrases used in the policies and particularly in policy 3. Terms for which definitions are sought include 'taonga raranga', 'mahinga mataitai', 'wahi tapu', and 'tauranga waka'.

Issues Arising

- **The objective of policy 3**

This reflects a number of principles from policy 52 on heritage and which otherwise have been caught up into new objective 3 of the proposed statement.

- **Definitions**

All definitions required are already included under s2 RMA.

- **Cultural landscapes**

These may be incorporated throughout other policies in the statement (such as policy 17).

We **recommend** that policy 3 matters which are not already in objective 3 may appropriately be incorporated into amended policy 2 below.

Policy 4 Submissions

- **Iwi and hapu groups**

Four iwi groups support policy 4, and three other iwi groups say it is essentially a restatement of s33 RMA (and should therefore include the tests required under this legislation). Two iwi groups applaud the intent of the policy, but think it unlikely to be any more effective than s33 has been to date. One group says that the policy should require councils to amend relevant plans to include conditions and processes for implementation of the relevant sections of the RMA as needed, because only a strong requirement is likely to be effective. The other group suggests a series of pilot projects could be useful, whereby assistance is provided to councils to identify suitable transfer or joint management agreement situations, and to devise an effective structure to address resourcing, capacity and accountability issues. One iwi group says that historic heritage needs to be specifically mentioned, as it will often be part of the reason why parts of the coastal environment are of special value to tangata whenua. This submitter also wants the words 'with tangata whenua in hui-a-hapu or other similar hapu or iwi forum' added to the first sentence of policy 4.

- **Community and conservation groups**

Two community groups support the policy, as do two environmental NGOs and two conservation boards. Other individuals, communities and conservation groups tend to restate comments previously made in relation to policy 2. Approximately 40 individuals and

community groups repeat their support for more attention to be given to matters of interest to tangata whenua, but call for the policies to be backed up with resources for councils and tangata whenua.

- **Councils, legal groups and infrastructure companies**

Almost all local authorities, infrastructure companies and some professional associations and aquaculture interests submit that policy 4 restates and adds little value to existing provisions in s33 RMA. These submitters seek the removal of the policy. Two regional councils say that, alternatively, the words 'shall consider' should be replaced with 'may consider'.

A number of councils and other submitters comment that the policy is unlikely to be effective with one submitting that, 'if government is concerned that specific sections of the RMA are not being implemented by local authorities, then there needs to be an examination of any impediments and difficulties, rather than restating the requirement'.

One regional council asks what would happen if tangata whenua do not have the necessary resources or capacity to manage this situation effectively or are not willing to agree to this transfer of power. Four councils say they support the policy in principle, with one noting there is no discussion of resourcing and another saying 'it is already in the RMA anyway'.

Property interests generally support the policy but note that, (at the time of hearing), powers have never been transferred to iwi under s33 and this remains unlikely to happen without significant guidance and resourcing from central government.

The Auckland District Law Society says that the policy should have an additional paragraph referring to the statutory coastal-marine-area operation required when a territorial customary right has been determined by the High Court or by agreement with the Crown through negotiations (cf. Ngati Porou Agreement on Principles 2008). It also notes that a new clause (d) could acknowledge the possible consultation duty under the RMA (Foreshore and Seabed) Amendment Act 2004.

Issues Arising

- **How effective would policy 4 be?**

We sought guidance on this issue from LGNZ, which provided extra information in December 2008 after we had heard its submission during the Dunedin hearings. In its December response, LGNZ understood that there had been no s33 Transfer of Powers to iwi authorities, though it was aware that Taupo District Council was proposing to enter into a Joint Management Agreement, under s36(c) RMA, with local iwi. This agreement relates to a joint hearing process for specific consents and private plan changes which apply to Maori multiple – owned freehold land, the first time local government has transferred powers to iwi[37]. LGNZ also noted that a number of other co-management arrangements are now being separately legislated under the Treaty Claims Settlements Acts. For example, the co-management of the Waikato River in part of the Waikato-Tainui settlement. The Kaipara District Council told us that it has instituted a co-management regime with iwi over the Tauhoa Domain, a nationally known reserve where there is no conflict between iwi and council as to how reserves are managed.

[37] This has since occurred, January 2009.

We suggest that the implementation of s33, transfer of powers, duties and functions is yet in its infancy, but as more Treaty Settlements are completed, implementation may become more common.

- **What constitutes an Iwi Authority?**

Another issue, apparently, is uncertainty about the legal definition of what constitutes an iwi authority, which is defined in s2 RMA as:

> Iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

While s2 also states under the definition of **'joint management agreement'** that it:

> means an agreement that –
>
> (a) is made by a local authority with 3 or more –
>
> (i) public authorities, as defined in paragraph (b) of the definition of public authority;
>
> (ii) iwi authorities or groups that represent hapu;

We consider that policy 4 overall merely repeats s36B RMA. The delegation of functions, powers and duties to a local committee representing tangata whenua is also clearly provided for in s34 RMA.

We recommend policy 4 be deleted because all issues are provided for in ss33, 34 and 36B RMA, and their inclusion in policy 3 provide no added value.

Policy 56

The s32 Report

The s32 report assesses policies 56 and 57 together. It discusses historic heritage in New Zealand is managed within a relatively complex legal and policy framework, involving some 20 statutes (Parliamentary Commissioner for the Environment 1996) and an array of government and non-government policy documents, some of them international.

The report identifies the law and policy framework is administered by a range of agencies, again both governmental and non-governmental. Because of this, integrated management and collaboration between agencies the report identifies, is particularly important for the protection of historic heritage and the achievement of an objective.

But because historic heritage includes sites of significance to Maori, including wāhi tapu, the authors state that relevant iwi and hapu should also be involved in the identification, assessment and management of historic heritage of significance to Maori, and that tikanga Maori be followed in this process. The authors of the report consider that to provide this

certainty, the need for councils to involve Maori and to collaborate with other heritage protection agencies should be explicitly stated in the NZCPS.

The report also states that collaboration between agencies requires particular consideration when historic resources cross mean high water springs as the management, responsibilities, instruments and mechanisms for the protection of historic heritage protection differ on either side of that boundary. The proposed NZCPS therefore needs to ensure that policy statements provide for integrated management of historic heritage across MHWS and that this implemented in Plans.

Submissions

- **Individual submitters, conservation groups and the NZHPT**

As is the case with all policies under 'heritage' many individual submitters request clearer direction to councils on how historic heritage of significance to Maori might be protected. For instance, one submitter considers that approved activities do not give due credence to historical and spiritual sites of value to Maori. Another submitter is concerned that any consultation with tangata whenua should be inclusive, not exclusive, so that all points of view may be considered.

Future Ocean Beach Trust queries how the Department of Conservation and its Minister are to know whether local authorities are actually doing this work of assessing, recording, and protecting historical heritage unless they have the staff and the budget to do so. It submits that unless budget decisions are addressed, the revised policy will otherwise be treated as a token gesture and have little practical use in protecting areas of historical heritage.

The NZHPT submission notes that while it is supportive of the policy's intent its language does not adequately reflect a commitment to engage Maori in the identification, assessment and management of Maori historic heritage. Consultation alone does not constitute active participation, and territorial authorities will need to carry out a formal evaluation of their current consultation practices to determine whether they are consistent with standard practices. The phrase 'in accordance with tikanga Maori' is an inadequate term to describe the relationship that is necessary between a local authority and iwi or hapu to achieve identification, including assessment, recognition and management of places and areas of significance to Maori. The Trust suggests policy 56 be reformulated to encourage identification and protection measures to be developed in partnership with tangata whenua.

- **Iwi and hapu groups**

Ngati Mutunga O Wharekauri Iwi Trust and Ngai Tahu and others again raise the need for adequate resourcing to implement policy 56 in order to achieve active collaborative management of historic heritage within the coastal environment, and between the territorial authorities and those of iwi or iwi organisations.

Matakoto Marae and Te Mahoe Pa and others note that considerable Maori heritage identity and mana is intimately connected to natural coastal landscapes and that this is not adequately recognised in either policies 32 or 56. Te Mahoe point out that it is the tangata whenua who have the reciprocal obligation to ensure that culturally significant resources will survive unhindered. Kawhia Harbour Protection Society supports this approach noting that Kawhia

Harbour is one of New Zealand's major heritage landscapes (as the landing place of the Tainui canoe) and as the coastal dwelling place of major coastal tribes. Ngai Tahu considers that in the policy, the term 'Maori' in the policy should be replaced with 'Tangata Whenua' to provide a more meaningful relationship with a particular area or site. The Waimarama Maori Committee seeks that where appropriate, links between sites should be established to provide a coherent picture of the historic and cultural use of a coastal area.

- **Councils**

A number of the councils consider this policy should be deleted as it duplicates policy 3 or may be incorporated within it. EBOP considers the policy should be deleted but combined with the intent of policy 6. The Christchurch City Council supports an amendment to policy 56 which would highlight that consultation is only possible to achieve when tangata whenua are willing to participate. The Tasman District Council identifies that much Maori heritage, identity and mana in its region is intimately connected with coastal landscapes, but this is not recognised in the statement and therefore concerns are not adequately protected. Horizons Regional Council considers that because of the complex management framework for historic heritage, it should not take a lead role in this area. Nevertheless, it seeks clarification on how this policy and other heritage policies are to be actioned. The ARC and others consider that it is not clear what the implications are of managing historic heritage 'in accordance with tikanga Maori'. They seek simplification of the policy by deleting the phrase and substituting different wording.

- **Companies**

Some of the infrastructure companies and other companies submit that the policy should be changed so it does not always require that 'identification' should be 'in accordance with tikanga Maori'. They consider this can be achieved by other means such as by historic research, archaeological survey, and GPS data collection. The port companies also consider that the policy places a considerable resourcing and financial burden on local authorities and its implications have not been thought through.

Issues Arising

- **What constitutes Maori heritage?**

The following are known examples of heritage.

- NZHPT identifies that areas of reefs, rock formation, fishing grounds, and places associated with early Maori explorers (such as caves, tauranga waka, landing sites, landscape boundary markers, significant view shafts) and cultural and spiritual sites (such as the Otakau Peninsula, Te Rerenga Wairua (Cape Reinga), Wairoa, Te Kuri O Paoa (Young Nick's Head), and Kapiti Island) are only part of nationally significant Maori heritage features and areas[38].
- In the Wellington region, for instance, there are a number of places associated with early Maori explorers and canoe migration traditions. Those associated with Kupe include Te Tangikanga o Kupe, Te Turanganui o Kupe and Te Mana o Kupe Kite Moana nui o Kaia. Auckland sites include pa sites, fishing villages, urupa, mahinga kai areas, and sites where 'traditional dye pools' and rare

[38] #385 McLean.

weaving materials found in the coastal environment (such as pingao, toitoi, harakeke, raupo and paru) are located[39].

- In Otago, we were told of a significant Waitaha village at the mouth of the Papanui Inlet, that is ancient, large, significant, and marked by coloured stones in the tidal area, which were brought from as far north as Kaikoura and inland Otago to be used as tools. This site may be under water in the future[40].
- Historic cultural heritage in the coastal environment also includes places where early documented encounters between Maori and Pakeha occurred. These are iconic sites of major importance to national identity, which should be recognised and protected. Such examples include the Abel Tasman anchorage near Separation Point in Golden Bay; the Captain Cook anchorages around Cook's Cove in Queen Charlotte Sound; the Captain Cook anchorages in Dusky Sound, Fiordland; the Cook Landing Site and associated sites, Gisborne; the Burning of the Boyd, Whangaroa Harbour 1810; Rangihoua Bay, Bay of Islands, an early formal permanent European settlement from 1814[41].

There are others (which leads us to a discussion of the term 'tikanga Maori', and its retention in the policy, below). Our attention was drawn to the fact that customary practices such as coastal occupation, food gathering, and collection of traditional resources are implicit to understanding what constitutes Maori historic heritage within the coastal marine area. Fundamental to this understanding is the theory of 'holism', which in the context of a Maori world view is commensurate to the notion of inherent connections between people and the surrounding natural environment. Through personification of natural landscape features iwi, hapu and whanau consider that all things, tangible and intangible, have a mauri/life force. Through whakapapa/genealogy people are connected to natural features; this philosophy therefore binds people to strict protocols that regulate the use, development, and exploitation of natural and physical resources.

- **Collaborative management**

Environment Southland drew our attention to a Heritage Identification Project, which is being undertaken especially around the Southland coast. It is funded by Environment Southland, the Southland District Council and the Department of Conservation. The study identified two Maori heritage sites that badly needed restoration or protection before they eroded. The participants in the exercise include iwi from Murihiku and archaeologists from Otago University, the New Zealand Archaeological Association and South Pacific Research. Koiwi were discovered in the process, and subsequently there has been funding from both councils to support returning the koiwi to Ngai Tahu and the employment of the archaeologists. It has been a collaborative effort[42].

- **How should Maori cultural heritage be identified?**

Cultural Impact Assessments (CIAs) with preservation of Maori heritage as one of their objectives for plan reviews, plan changes and variations were identified by Ngai Tahu and Ngatiwai as becoming more common in their regions. The requirement for a 'cultural heritage assessment' has been introduced into at least one district plan and is called 'Historic Heritage Assessment'.

[39] #385.
[40] #429 Ngai Tahu, Ellison.
[41] #385.
[42] #483 Environment Southland, Bradley.

Mr K Volkering for Ngatiwai provided a helpful document, which Ngatiwai suggests may be used as a guide to how Maori heritage issues might be identified and assessed[43]. Mr Volkering stressed the need for:

- a NZHPT register data base;
- a bibliographic database;
- a heritage agency and consultants' database;
- a Maori heritage inventory which lists known, but not necessarily registered sites (in terms of the NZHPTA) or those listed in a district or regional plan; and known sites such as those cited by the New Zealand Archaeological Association – as indicators of possible heritage sites;
- 'alert layers' constructed from all of the above;
- predictive modelling, which involves putting a percentage on whether a given area is a Maori heritage site by looking for markers such as beach and coastal remains such as mahinga kai (middens) and tauranga waka (mooring sites); these can raise the likelihood of, and assist in constructing, a heritage landscape.

The use of GPS and GIS can assist with location and spatial identification. Mr Volkering adds that use of such mechanisms indicate there might be a problem with progressing a development and the ARC in particular has developed similar mechanisms as those indicated above to be able to predict likely Maori heritage areas.

It is Mr Volkering's experience that use of these tools to determine a raised likelihood of some potential impact means that the planning regime can provide for it better.

- **The significance of the phrase 'tikanga Maori'**

Mr A Kamo, Maori Heritage Policy Manager of NZHPT identifies that from a Moari philosophical standpoint, Maori heritage sites are places and locations of traditional association between people and place and can include tangible natural resources and intangible landscape features.

'Tikanga Maori' is defined in s2 RMA as: '**means Maori customary values and practices'**.

As Te Mahoe Pa submits, it is the tangata whenua that have a reciprocal obligation to ensure in the coastal landscape that those culturally significant resources (Maori heritage/mana/resulting responsibilities) will survive unhindered. The cultural evidence clearly establishes 'tikanga Maori' is an integral part of a Maori system of identification, for example around wāhi tapu issues. These are places or sites that are sacred in the traditional, spiritual, religious, ritual or mythological sense. Wāhi tapu for instance, may not be just burial sites but:

- sites associated with birth or death;
- sites associated with ritual, ceremonial or healing practices;
- a place imbued with the mana of chiefs or tupuna;

[43] #105 Ngatiwai, Volkering. *Effects Based Planning for Cultural Heritage*, 13-15.

- cattle sites where blood has been spilled[44] …

'Tikanga Maori' allows, therefore, for spiritual sites to be identified. Ngai Tahu spoke of an island in the Otakau Harbour called now in European terms 'Goat Island'. Its proper name is Rangaiwi, and in the Maori traditions, it is the abode of Takaroa who lives on the island in a cave below sea level. He is of importance to the people because of the way the Ngai Tahu ancestors are seen to have utilised the harbour out into the oceans[45].

We consider the phrase 'tikanga Maori' is therefore essential to retain in a document like the NZCPS. But there is no reason either, why other methods of analysis (such as history) cannot be used in addition to support 'tikanga Maori' as it is in Waitangi Tribunal hearings.

We therefore recommend that Maori heritage should be incorporated within the one policy aligned with the principles of the Treaty of Waitangi 1840 and kaitiakitanga and that its provisions be amended to account for some of the issues raised above.

- **Conclusion**

We recommend the deletion of policies 3, 4, 56 and 57; and the adoption of an amended policy (new policy 3) on the Treaty of Waitangi, tangata whenua and Maori heritage as follows:

> **Policy 3 The Treaty of Waitangi, tangata whenua and Maori heritage**
>
> **In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) and the principle of kaitiakitanga all decision makers must, in relation to the coastal environment:**
>
> **(a) recognise and provide for any relevant matters arising from settlements between the Crown and Maori, including individual iwi settlements, foreshore and seabed agreements, and generic settlements;**
>
> **(b) involve iwi authorities or hapü groups on behalf of tangata whenua in the preparation of regional policy statements and plans by undertaking effective consultation with tangata mana whenua including any board of a seabed and foreshore reserve; with such consultation to be early, meaningful and ongoing, and consistent with tikanga Maori;**
>
> **(c) where practicable, with the consent of tangata whenua and consistent with tikanga Maori, incorporate matauranga Maori[46] in regional policy statements and plans and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;**
>
> **(d) provide opportunities in appropriate circumstances for Maori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Maori experts,**

[44] *Identifying Our Heritage*, a review of registration procedures under the Historic Places Act 1993, Peter Skelton, New Zealand Historic Places Trust 2004. Cited in the submission of #385 NZHPT, McLean.
[45] #429 Ngai Tahu, Ellison.
[46] Matauranga Maori: as defined in the Glossary to the recommended NZCPS (2009).

including pukenga[47], may have knowledge not otherwise available;

(e) take into account any relevant iwi resource management plan lodged with the council and any other relevant planning document recognised by the appropriate iwi authority or hapu group, to the extent their content has a bearing on resource management issues in the region or district; and

(i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and plans; and

(ii) provide practical assistance to iwi or hapü groups who have indicated a wish to develop iwi resource management plans; and

(f) provide for opportunities for tangata whenua to exercise kaitiakitanga over seas, forests, lands, and fisheries in the coastal environment through providing them with a voice and authority through such measures as:

bringing cultural understanding to monitoring of natural resources;

providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;

incorporating Maori place names which reflect their history and significance and provide a bicultural 'window' on the region or district; and

having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiapure, mahinga mataitai or other non commercial Maori customary fisheries; and

(g) recognise and provide for, in consultation and collaboration with tangata whenua in accordance with tikanga Maori:

the importance of Maori cultural and heritage planning through such methods as historic heritage, landscape and cultural impact assessments;

(ii) any identification, assessment, protection and management of areas or sites of significance or special value to Maori;

(iii) historic analysis and archaeological survey;

(iv) the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Maori heritage, for example coastal pa or fishing villages; and

(v) in doing so, local authorities must recognise that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance.

[47] Pukenga: as defined in the Glossary to the recommended NZCPS (2009).

Policy 5 Precautionary Approach

> **A precautionary approach shall be adopted towards proposed activities whose effects on the coastal environment are uncertain, unknown or little understood, but whose effects are potentially significantly adverse to that environment.**

The s32 Report

The s32 report states:

> It is considered that policy 5 (in conjunction with the other policies of this NZCPS) is the most appropriate means of achieving the objectives of the NZCPS because the policy is:
>
> - effective in recognising that there are knowledge gaps in relation to coastal information;
> - effective in enabling activities to proceed in a carefully managed manner;
> - efficient in providing guidance on when a precautionary approach should be adopted;
> - efficient as it generates medium to high benefits and low to medium costs.

Submissions

Submitters hold very different views on the usefulness of draft policy 5 – some think that is among the most important of the policies, while others consider it adds no further value to the RMA and should be deleted.

- **General support for the policy**

Many individuals and community groups strongly support the policy. They consider that precautionary approach is very important and warrants a separate NZCPS policy to guide council decision making.

Most conservation boards and groups also strongly support the policy; with some saying it should be the norm for all developments.

Iwi groups support the policy, though one recommends that is be combined with the policy on cumulative effects. While Ngati Kahu recommends that the precautionary approach should apply when 'effects may not be able to be avoided, remedied or mitigated'.

About half the councils that comment on this policy support it, with most suggesting minor amendments, which are noted below.

Most scientific and professional organisations support the policy. IPENZ considers that the policy should be made a top priority. The NZHPT and the National Council of Women support the policy. Some fishing interests also support the policy.

Some individuals and conservation groups support the inclusion of such a policy but make suggestions for improving it. The NSaPS, along with a many other individuals, consider that the policy does 'not add much' to what is in the current NZCPS. It submits that, a precautionary approach needs to be linked to guidance about integrating state of the environment monitoring and resource consent monitoring, so that the precautionary principle will contribute to a knowledge base that can actually be applied in practice.

The New Zealand Conservation Authority is concerned that the proposed approach 'may get overwhelmed in the process already established to assess the effects of development'. It suggests here that there may need to be legislative backing for support.

ECO recommends that the following words be added to the end of the policy, 'so that the absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures'.

The Auckland District Law Society considers that policy 5 adopts a conventional and desirable statement but requires some clarification to avoid any inconsistency with the statutory obligation. It suggests that addition of a sentence to the effect that 'the precautionary approach is supplemental to the obligations under s32(4)(b) of the Act, and should be read consistently with the statute obligation'.

- **Policy is unnecessary because the RMA is inherently precautionary**

Most infrastructure interests, marinas and property companies, together with some individuals and councils, consider that the policy is unnecessary because the precautionary approach is implicit in the RMA.

The Taranaki Regional Council submits that this policy creates more uncertainty for both decision makers and resource users and should be removed, as local authorities are already very rigorous in applying adaptive management approaches to resource management. The Otago Regional Council and Christchurch City Council also submit that the policy does not add value to the precautionary principle already implicit in the RMA.

Most infrastructure, property and marina companies submit that is questionable whether the policy is needed because the existing language of the RMA is sufficient to require consideration of potential risks and effects. They consider that it would be more appropriate to rely on the inherently precautionary nature of the RMA, rather than imposing the precautionary approach through policy 5.

Meridian Energy comments that there are already sufficient mechanisms to ensure that a precautionary approach is taken in appropriate circumstances in responses to uncertainty or limited knowledge, including the definition of 'effects' under the Act, the ability to impose conditions on resource consents, implement adaptive management frameworks and monitor effects and review consent conditions. Meridian considers that the policy introduces a new hierarchy of considerations under the RMA without defining the 'precautionary approach' and should therefore be deleted.

Federated Farmers considers that proposed activities whose effects are uncertain, unknown of little understood should be subject to the normal RMA processes.

Several property companies submit that the policy should not apply where the effects can be avoided, remedied or mitigated, as provided for in the RMA.

- **Consistency with case law**

Transit and New Zealand Aluminium Smelters consider that the policy is inconsistent with the precautionary approach that has been adopted by the Courts. They recommend that, to be consistent with case law, the policy could be amended to read, 'a precautionary approach shall be adopted where there is scientific uncertainty or lack of knowledge about the effects of proposed activities on the coastal environment and there is a threat of serious or irreversible harm to that environment'.

Environment Southland also considers that the policy needs to be amended to take account of case law on the precautionary approach.

- **Provision for adaptive management**

Some submitters recommend that the policy be amended to provide for adaptive management. The Marlborough District Council considers that the recommendations of the independent reviewer should be more closely considered, with greater guidance being given about the principles of the precautionary approach, especially in terms of adaptive management. Kiwis Against Seabed Mining also recommend that clear guidance is given on how the precautionary approach is to be interpreted where adaptive management regimes are proposed.

Aquaculture interests are concerned that the precautionary approach is not used to prohibit activities without adequate justification and recommend that the policy be reviewed to provide a better balance between extreme caution and fostering proposed activities that may contribute to the economic and social well being of the population, including allowing for staged development to enable environmental effects to be investigated and better understood.

Winstone Aggregates considers that the policy should provide for adaptive management because the Environment Court has accepted that this approach is an appropriate manner in which to apply the precautionary approach.

- **Need to balance caution with sustainable development**

NIWA is concerned that the policy is so vague it would allow process to be slowed or blocked by concerns with no basis in fact. It considers that it is important that the policy not be interpreted in a way that hinders new developments. It suggests that the potential effects must be realistic and based in some certain fact of at least a similar or well documented and recorded potential effect.

NIWA supports the policy noting that it is important that it is not interpreted in a way that hinders new developments such as large marine farms or new aquaculture activities which potentially could adversely affect the environment and when effects are little known or understood. That organisation gave as an example the case when large marine farms were proposed for the Firth of Thames. It said that the Limits of Acceptable Change (LAC) framework proposed by NIWA has subsequently allowed large scale aquaculture to proceed in a managed way that is sustainable[48].

[48] #32.

Sealord also considers that the policy could be applied in an extremely broad way and unnecessarily limit the development of activities.

The Manukau City Council suggests that a risk management approach will be more appropriate in many situations to determine what will be an acceptable level of risk. It submits that, 'there are areas where a cautious rather than a precautionary approach is appropriate'. The Northland Regional Councils also recommends that a 'cautious approach' may be more appropriate.

- **Submarine cables**

Telecom New Zealand submit that the precautionary approach should not apply to the laying, operating and repairing of international submarine cables, because it is a well known, well documented low impact activity covered by international standards and specifically exempted by UNESCO as being of no threat to underwater cultural heritage.

- **Reference to specific activity categories may be useful**

The Canterbury/Aoraki Conservation Board notes that provision could be made for the policy to be implemented through non-complying or prohibited status for plan activities about which the consent authority has little information.

The Auckland Regional Council also recommends inclusion of reference to specific activity categories, particularly non-complying and prohibited activity status.

- **Wording of policy is contradictory**

Several submitters consider the wording of the policy is contradictory. They submit that, if the effects are unknown or little understood, 'one could reasonably infer that it is not possible to calculate the probability for those effects'.

Several councils suggest that the policy could end after the word 'understood' to avoid this problem.

Issues Arising

- **What is the Precautionary Approach?**

The NZCPS (2004) contains the following approach to the relative lack of understanding about coastal processes and their interaction with activities.

> **3.3 Adoption of a Precautionary Approach to Activities with Unknown but Potentially Significant Adverse Effects**
>
> **Policy 3.3.1**
> Because there is a relative lack of understanding about coastal processes and the effects of activities, particularly those whose effects are as yet unknown or little understood. The provisions of the Act which authorise the classification of activities into those that are permitted, controlled, discretionary, non-complying or prohibited allow for that approach[49].

[49] New Zealand Coastal Policy Statement 1994, Department of Conservation, Wellington, 9.

The Environment and Resource Management Committee of the Auckland Law Society (the Auckland Law Society) suggest an amendment to the policy which relates to the precautionary approach expressed in s32(4)(b) RMA – namely the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods[50]. We do not see it as necessary.

The precautionary principle is not relevant when the science while complex, is known and understood[51]. Nor does it mean as one submitter suggested citing *Jackson Bay Mussels Ltd* v *West Coast Regional Council,* that 'precautionary' means to take measures in advance to prevent something happening, 'cautious' means being careful to avoid potential problems or dangers[52]. But prevention of an activity from happening, and caution to avoid it from happening altogether, is not what the precautionary principle is about either. We therefore do not consider that applying the precautionary principle in the coastal environment of itself requires consent authorities to refuse consent for proposals involving new technology or innovation. Quite the contrary. For Principle 15 of the Rio Declaration on Environment and Development states as follows:-

> In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to protect environmental degradation[53].

The precautionary principle also therefore is not the same as risk avoidance or zero growth which is what a number of submitters imply. It is a precautionary technique to be applied in the face of two circumstances:

- where there are threats of serious or irreversible damage;
- where there is a lack of full scientific certainty.

In fact the precautionary principle appears in a number of international treaties and a number of New Zealand statutes where risk is a factor, namely the Civil Defence Emergency Act 2002, the Fisheries Act 1996 and the Hazardous Substances and New Organisms Act 1996 and various submitters mentioned this legislation.

- **Adding climate change**

Climate change and its effect on the future coastal environment of New Zealand is a very relevant example where a precautionary approach should apply. What is required are effective regulatory responses such as this to implement risk-based precaution[54]. That may allow the application of techniques such as adaptive management which is essentially a risk management method

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[50] #163.
[51] See *Wratten v Tasman District Council.* W8/98, 16-22. [Environment Court].
[52] #403. C77/04 [Environment Court].
[53] Report of the United Nations Conference on Environment and Development. (Rio de Janiero, 3-14 June 1992) A/Conf.151/26 (Vol.I)
[54] 'Adaptive Management' was first applied in a series of mitigatory techniques to conditions on large marine farms at the top of South Island where the effects were little understood: see *Golden Marine Farmers v Tasman District Council.* W 19/2003, 76 ff. The method incorporates precautionary management methods including staging, review, bonds, monitoring, applying the best practicable option, and financial contributions. See also T O'Riordan 'The Precautionary Principle and Contemporary Environmental Politics' (1995) 4 Environmental Values, 191. See also Pollack, *Uncertain Science, Uncertain World, The Precautionary Principle. Better Safe Than Sorry. 211-214.*

As pointed out by the scientific authors of *Coastal Hazards and Climate Change*[55], a high proportion of New Zealand's urban development has occurred in coastal areas. Some of this development has been located in areas that are vulnerable to coastal hazards such as coastal erosion and inundation. In recent years, coastal development and associated infrastructure have intensified, and property values have increased greatly. As development and property values in coastal margins increase, the potential impacts and consequences of coastal hazards also increase by changing some of the hazard drivers. Managing this escalating risk over the coming decades now presents a significant challenge for all authorities which have functions and powers over the coastal environment.

The authors of *Coastal Hazards and Climate Change* suggest taking a precautionary approach to planning new development, infrastructure and services to avoid coastal hazards over their intended lifetime because it is the most effective and sustainable long-term approach. Such an approach would be relevant to all coastal development situations, from completely undeveloped coastal margins to high-density urban areas. It would assist in building effective adaptive capacity in permitting the human and built environment, as well as natural coastal systems, to adjust or respond to climate change – thereby limiting the potential for damage, and providing opportunity for the natural coastal system itself to absorb much of the potential consequences.

Professor M Manning, Director of the Climate Change Institute, Victoria University of Wellington, and a convenor of the International Panel on Climate Change (IPCC) and who gave evidence to the Board, considers that:

> The sense in which a precautionary approach (policy 5) is used in the statement seems too limited. Use and management of coastal resources should also be precautionary with respect to avoiding economic losses and other damages as a result of the physical changes that will occur due to climate change, some of which are now inevitable[56].

We recommend adding specific reference to circumstances where a precautionary approach to physical and other changes from climate change should apply. A further amendment proposed is: 'avoiding social and economic loss and community damage', recognising the broader dimension of community damage. We recommend too that adjustments to be made for coastal marine processes, habitats and natural defences and ecosystems, as well as other values associated with the coastal environment, be brought within the focus of the policy

- **Conclusion**

We recommend that draft policy 5 be retained as amended policy 4, that the wording identified encapsulates that of Principle 15 of the Rio Declaration, and an additional clause be added as follows:

Policy 4 Precautionary approach

[55] A Guidance Manual for Local Government in New Zealand 2nd Edition July 2008, Revised by Ramsay D, and Bell, R (NIWA) Ministry for the Environment, Executive Summary at vii. This document follows the updated assessment of the science of climate change by the Intergovernmental Panel on Climate Change (IPCC) 2007.
[56] #539 Letter to the Board. 28 November 2008, third bullet point, 2.

All decision makers must adopt:

(a) a precautionary approach towards proposed activities the effects of which on the coastal environment are uncertain, unknown or little understood but the effects of which may be potentially significantly adverse to this environment; and

(b) a precautionary approach to use and management of coastal resources as a result of physical and other changes that will occur due to potential effects from climate change in the coastal environment to:

avoid social and economic loss and community damage;

allow natural adjustments for coastal processes, natural defences, ecosystems, habitat and species; and

recognise and provide for the natural character, public access, amenity and other values of the coastal environment for the needs of future generations.

Policy 6 Integration

Policy statements and plans shall provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. This includes coordinated management or control of activities within the coastal environment, and which could cross administrative boundaries, particularly:

(a) where use or development in the coastal marine area will require, or is likely to result in, associated use or development above mean high water springs;

(b) where use or development above mean high water springs will require, or is likely to result in, associated use or development in the coastal marine area;

(c) where public use and enjoyment of public space is affected, or is likely to be affected;

(d) where land management practices affect, or are likely to affect water quality in the coastal environment; and

(e) where significant adverse cumulative effects are occurring, or can be anticipated.

The s32 Report

Achieving integrated management of resources in the coastal environment is seen as fundamental to implementing the objectives of the NZCPS and promoting sustainable management by the authors of the s32 report. It was strongly supported by submitters to the Review of the NZCPS: Issues and Options paper (Enfocus 2006).

The report also states land use activities can give rise to adverse effects on the coastal environment, and in some instances, activities in the coastal marine area can have impacts on adjacent land. Some activities on the coastal margin span administrative boundaries. Co-ordinated management or control of activities within the coastal environment, including those activities that cross administrative boundaries, is seen as required for effective and efficient management of resources. Unless this is clearly identified and addressed, sustainable management of subdivision, use and development of the coastal environment cannot be achieved.

Submissions

- **General support for policy**

Submitters from all sectors support policy 6 and mostly raise points of clarification, or recommend further matters for inclusion in the policy.

Individuals and community groups support the policy, many strongly. Approximately 50 individuals agree with NSaPS, which supports the policy but suggests that the policy needs to articulate the requirement for central government departments to actively meet their responsibilities. They say that it is not equitable to require more of local government without central government acknowledging its own responsibilities.

Conservation Boards and groups, including EDS and ECO, also support the policy, with some groups saying that it is 'vital' that management plans take a holistic approach to the whole catchment. Two conservation groups recommend that the Department of Conservation is included in integrated management, saying 'it needs to be clear the Department is guided by the NZCPS in the same way as other administering bodies'.

Iwi groups that comment on the policy support it. The Waimarama Maori Committee recommends the addition of the following clause, 'where hapu or iwi boundaries or rohe cross regional and/or district council boundaries'.

LGNZ and almost all regional and district councils that comment on this policy support it. Manukau District Council would like to see integrated management included as an objective.

Infrastructure companies and marina operators support the policy. Auckland International Airport and Port Companies note that integration is potentially achievable through a transfer of powers under s33 of the RMA, which could result in activities that span MHWS having only one council dealing with these areas, rather than a regional council and a territorial authority both doing so.

Aquaculture interests strongly support the policy, particularly clause (d). They note that aquaculture relies on high quality water quality and that land management practices have the potential to have significant effects on aquaculture.

IPENZ and NIWA support the policy, although both raise issues relating to its scope. The NZHPT and the New Zealand Archaeological Association also affirm the policy.

- **Format and some terms require clarification**

The ARC, the Auckland City Council, the Auckland International Airport, port companies and EDS submit that the policy should be broadened to apply to local authorities, not just the content of policy statements and plans. They recommend that the policy start by referring to the authorities. The Auckland City Council points out that, it will often be a local authority's processes and procedures that will provide for integrated management.

EDS, LGNZ, the Auckland District Law Society and several individuals all submit that, for clarity 'or' should be included at the end of each criterion. The Auckland District Law Society notes that the present drafting does not follow the 'interpretation' on page 6 of the draft NZCPS (2008).

Several other submitters, including the Auckland District Law Society, are concerned that the phrase 'which cross administrative boundaries' may be uncertain.

The Greater Wellington Regional Council notes that policy 6 wording is 'shall' and policy 57 is 'should'. It seeks clarification that this difference in wording is intended. Both the Greater Wellington Regional Council and the Otago Regional Council suggest that policy 6 should link to policy 57 (collaborative management of historic heritage).

- **Issues relating to the scope of the policy**

Several submitters raise issues in relation to the scope and extent of the policy. The ARC consider that clauses (a) and (b) should be expanded to apply where the 'effects' of use or

development cross mean the line of MHWS, as well as where activities cross this line. It also recommends inclusion of a new point to recognise that there is a particular need for integrated management where administrative boundaries pass through significant natural, physical or historic resources, as well as where such significant resources cross MHWS. IPENZ notes that in the current draft it appears that only clauses (a) and (b) cover developments that are linked with associated development outside of the CMA and land jurisdictional boundary.

EDS recommends that the policy include situations where marine areas such as an estuary or harbour are split between more than one regional council. It also seeks an additional clause, 'where use or development affects or is likely to affect a portion of the CMA administered by more than one regional council'.

The Wellington Conservation Board considers that it is unclear whether the policy applies solely to the coastal environment. It asks if its scope extends to, for example, gravel extraction in an upper river catchment.

The NZHPT comments that many heritage places and areas with maritime associations lie on the landward side of the CMA, as well as others that are below MHWS. It considers provision for an integrated management approach to components that lie above the CMA should be made. Two conservation groups recommend adding a clause to address use or development above MHWS where it affects natural character.

ECO suggests that the policy should more clearly focus on the integrated management of activities.

- **Inundation**

IPENZ consider that the policy should take into account the effects of coastal change and inundation on coastal development on the land above the CMA. It notes that climate change (in relation to rising sea levels) is not mentioned in this policy (despite being recognised elsewhere in the document) and recommends adding a clause to recognise the effects of climate change.

NIWA also considers that the policy needs to acknowledge an integrated approach to the effects of coastal change and inundation on coastal developments above the CMA in an integrated way. It suggests an additional clause to the effect that, 'where development or land management practices may be affected by physical changes to the coastal environment or potential inundation'. The Yellow Eyed Penguin Trust also seeks recognition of potential inundation.

- **Reference to public space**

The Hawke's Bay Regional Council considers the reference to 'public space' needs clarification as to whether it refers to space in the CMA, or the wider coastal environment.

SeaFIC and other fishing interests recommend deleting clause (c) because, unlike the other clauses, it does not require cross council coordination as a matter of necessity.

- **Sedimentation and management practices**

IPENZ suggests that clause (d) explicitly recognises that land use generates a significant problem with sediment and erosion control and much of this sediment makes its way to the CMA. EDS also recommends that the policy be extended to cases where land management practices can affect marine ecosystems through increasing sedimentation.

The Hawke's Bay Regional Council recommends replacing the term 'land management practices', which it says is vague, with 'land use activities'.

A number of individuals seek the addition of 'and marine ecosystems' to this clause.

The Taranaki Regional Council seeks greater clarity on how policy statements and plans are to provide for the integrated management of land practices that are likely to affect water quality in the coastal environment. It also believes that the clause could represent an inappropriate 'neighbouring' involvement in catchment management.

Issues Arising

- **An over-arching need for integrated management**

The issue of integration of sustainable decision making over New Zealand's natural and physical resources is one of the most important in the whole statement. Just about every issue that arose from a consideration of Part 2 RMA matters (from natural character, outstanding landscapes and features through to the effects of climate change and benefits to be devised from the use and development of renewable energy) uncovered difficulties created by the differing functions and powers of regional and territorial authorities as well as those created by the fictional boundary created by the line of MHWS.

To include a strong policy which requires all decision-makers under the NZCPS to have a role in solving cross boundary activities and effects, therefore became a fundamental issue to resolve at the outset. The fact that all submitters who made submissions on policy 6 supported it made our task very much easier. And to give that consideration an even firmer foundation we recommend amending the policy to incorporate nearly all submitters' suggestions which add clarity to the policy, or legitimately expand its scope.

- **Need for policy's application to all decision makers not just to policy statements and plans**

Ms Peart for EDS identifies that integration of coastal management may be sought across a range of dimensions:

- institutional integration – integrating the activities of all agencies v stakeholders at any particular level of coastal management;
- ecological integration – planning for and managing the catchment, coast and marine area as an interlinked and interdependent system;
- interdisciplinary integration – such as the natural and social sciences, economics, katiakitanga, and politics that study specific aspects for the coastal environment.

Ms Peart identified that a literature review discloses a range of actions which potentially support inter-agency collaboration to achieve effective coastal management[57].

Undertaking combined regional and district strategic planning for a catchment and coastal marine area is one method of achieving integration, for it can bridge the divide of the line of MHWS. Effective collaboration too is required to identify methods to deal with significant issues such as monitoring, risk assessment while still providing for the ability to innovate in order to develop effective and 'doable' solutions.

As we moved around the country we heard of a number of encouraging signs that managers of councils were having some success in planning together for coastal issues. But while district councils may have to rely on regional councils for their technical expertise, a hurdle both face is lack of an effective charging regime for private occupation of coastal open space. There is urgency for such a regime to be rationalised, so that all councils may have a revenue stream to assist in the many varied, and at times extraordinarily difficult, challenges the coastal environment presents. New Zealand's coastline is one of the most varied in the world. Currently its management appears seriously under-resourced and we observe that this issue might be reviewed to provide for integrated initiatives to achieve restoration of the intertidal zone, control of sedimentation into the coastal marine area, maintenance of water quality, preservation of natural character and so on.

- **Cross boundary issues**

Examples of the cross boundary issues that arose from submissions and subsequent discussions follow here.

Human induced sedimentation is probably the biggest threat to the ecological health of the CMA on a national basis[58]; currently the issue is poorly managed; some upstream/downstream authorities have jurisdictional problems as to which authority should manage what resources; estuaries, wetlands and saltwater lagoons have become sediment traps; holes in stormwater pipes cause sediment and silt to bypass structural sediment traps; as a result silt and mud from construction sites are destroying spawning fish life in the intertidal zones; reef systems are particularly vulnerable and coastal harbours are under threat; a holistic approach to the management of the land/sea interface is ultimately required for the health of in-shore fisheries at risk and for the well-being of communities.

The extent to which natural character, landscapes/seascapes, significant vegetation do not cease at regional or district council boundaries is another obvious issue. Such features need protective management on an integrated basis; one regional council told us it is looking at a consolidated framework to incorporate regional and coastal plans issues within the regional policy statement (RPS); but logically, the district plan issues of three district councils (which deal with coastal subdivision) should be there as well; but there are planning and administrative difficulties in such a process; nevertheless with regional councils able to change an RPS relatively easily, the slow process of amending each plan consecutively (and as a result, losing the ability to protect areas of significance) might be resolved;

[57] *Beyond the Tide. Integrating the management of New Zealand's coastal*. Raewyn Peart. Environmental Defence Society Publications. 2007, 33-34.
[58] #147 EDS, Peart.

The fact that several district councils have resisted including some Part 2 issues in their plans because of the costs of identifying landscapes, indigenous vegetation, heritage etc, or there is no political will to do so because of development pressures, was of major concern. It explains some of the development excesses we heard of north of Auckland. The costs of setting up information systems, assessments, methodologies to address Part 2 matters is seen as a significant issue for many councils with a slender ratepayer base. Hence identification of many of the important factors in s6 RMA lend themselves to collaborative effort on just such matters, and we encourage that in several policies that follow.

The factual need to address issues around climate change and coastal hazards such as tsunami on a collaborative basis is also a major reason for better integration of councils' responsibilities. These we explore further under amended policies 27-30.

Water quality issues require integrated management; as one example, the aquaculture industry stressed the significance to its members of high standards of water quality in the CMA for the development of the aquaculture industry and the potential effects of on-shore developments, such as hotels, sewage systems, etc. which are under the control of district councils only.

Biosecurity, is another issue which requires all decision makers to collaborate with each other because of the silo effects of not doing so, and because the legislative linking mechanisms may be weak.

The Civil Defence Emergency Act (CDEMA) has the primary role in land use planning (to avoid or mitigate natural hazards) and emphasises a range of approaches to emergency events – reduction, readiness, response and recovery; there are strong similarities in the wording and intent of the RMA and the CDEMA, particularly in relation to managing land; the key difference is that the RMA is primarily about managing physical and natural resources, while the CDEMA is primarily concerned with the safety of people and property; both Acts have a role in providing for public infrastructure and essential utilities; likewise the focus on reducing vulnerability and increasing resilience are common factors and are critical to ensuring sustainable communities. The CDEMA (s6) clearly states that it does not affect the functions, duties, or powers of any other legislation while s17(3) also specifically refers to the RMA and the need for coordination with this legislation. Better integration of the management of these two pieces of legislation to better address reduction in risk (ideally across all natural hazards) will be required; the RMA thus has a critical and complementary management role for reducing the potential of adverse effects from coastal hazards, through proactive land use planning on an integrated basis between all authorities;

We were given a number of examples of cross boundary collaboration with Maori on heritage issues on heritage that straddled the line of MHWS which we addressed earlier. Mr R McLean, Senior Heritage Advisor for the NZHPT also spoke of the Motueka Saltwater Baths built in 1938 which faced demolition despite being highly valued by visitors and locals. The intervention of the local community, NZHPT and the Tasman District Council on a collaborative basis saved it. Other examples of historic heritage straddling the line of MHWS include ancient sea walls, wharfs, harbour fronts, landing sites and archaeological sites.

Iwi boundaries also require accommodation in regional and district plans to address cross boundary effects particularly due to the Maori holistic approach to the management of their environments. Many Treaty Settlements have clearly delineated rohe boundaries which cut across different regional and district council ones and need integration mechanisms.

Intertidal matters also require integrated management by both regional and territorial authorities.

- **Extending council boundaries**

Southland Regional Council suggested that we consider recommending territorial authorities extend their boundaries from mean high water to mean low water mark. Especially for activities like litter, dog control, vehicles on beaches – it might be a simple thing but it enhances an authority's ability to manage those areas on a more integrated basis[59].

Both Southland District Council and Invercargill City Council have already extended their boundaries to mean low water mark. We were also aware of a number of other councils that have adopted this approach[60].

So obviously for some councils extending boundaries to mean low water mark is a possible way forward to achieve better integration of a range of issues to better manage the coastal environment and particularly the land/water interface.

- **Combined plans**

The purposes of s80 RMA provide the discretion to territorial authorities, regional councils and local authorities to prepare, implement or administer:-

- a combined regional and district plan for the whole or any part of its region or district;
- combined plans wherever significant cross-boundary issues relating to the use, development or protection of natural and physical resources as are likely to arise.

This provision it seems, provides another mechanism for integrated management of natural and physical resources in the coastal environment and the CMA.

- **Conclusion**

We recommend that policy 6 be amended and become policy 5 as follows:

> **Policy 5 Integration**
>
> **All decision makers must provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. This requires:**
>
> **(a) co-ordinated management or control of activities within the coastal environment, and which could cross administrative boundaries, particularly:**
>
> **(i) the local authority boundary between the coastal marine area and land;**
>
> **(ii) local authority boundaries within the coastal environment, both within the coastal marine area and on land; and**

[59] #483 Bradley.
[60] Bream Bay Coastal Care Trust, Woods.

(iii) where hapu or iwi boundaries or rohe cross local authority boundaries;

(b) working collaboratively with other bodies and agencies with responsibilities and functions relevant to resource management, such as where land or waters are held or managed for conservation purposes; and

(c) particular consideration of situations where:

(i) subdivision, use or development and its effects above or below the line of MHWS will require, or is likely to result in, associated use or development that crosses the line of MHWS; or

(ii) public use and enjoyment of public space in the coastal environment is affected, or is likely to be affected; or

(iii) development or land management practices may be affected by physical changes to the coastal environment or potential inundation from coastal hazards, including as a result of climate change; or

(iv) land use activities affect, or are likely to affect, water quality in the coastal environment and marine ecosystems through increasing sedimentation; or

(v) significant adverse cumulative effects are occurring, or can be anticipated.

Policy 7 Conservation land

Where land in the coastal environment is held or managed under the Conservation Act 1987, or an Act listed in the 1st Schedule to that Act, its status and purpose shall be taken into account when determining the status of activities in plans. Further, where such land could be affected by an application for a resource consent, its status and purpose and the effects of the proposed activity on it shall be given due regard in the determination of the application.

Policy 8 Areas proposed for statutory protection

If an application for a resource consent affects an area of the coastal environment for which a proposal for statutory protection has been publicly notified, the purpose of the proposal and the effects of the proposed activity on it shall be given due regard in the determination of the application.

Schedule 1 to the Conservation Act 1987 contains:

Schedule 1
Other enactments administered by department

The Canterbury Provincial Buildings Vesting Act 1928
The Fisheries Act 1983: Part 5
The Harbour Boards Dry Land Endowment Revesting Act 1991
The Kapiti Island Public Reserve Act 1897
The Lake Wanaka Preservation Act 1973
The Marine Mammals Protection Act 1978
The Marine Reserves Act 1971
The Mount Egmont Vesting Act 1978
The National Parks Act 1980
The Native Plants Protection Act 1934
The Ngai Tahu (Tutaepatu Lagoon Vesting) Act 1998
The Queen Elizabeth the Second National Trust Act 1977
The Queenstown Reserves Vesting and Empowering Act 1971
The Reserves Act 1977
The Stewart Island Reserves Empowering Act 1976
The Sugar Loaf Islands Marine Protected Area Act 1991
The Trade in Endangered Species Act 1989
The Tutae-Ka-Wetoweto Forest Act 2001
The Waitangi Endowment Act 1932–33
The Waitangi National Trust Board Act 1932
The Waitutu Block Settlement Act 1997
The Wild Animal Control Act 1977
The Wildlife Act 1953

The s32 Report

The s32 report deals with these two policies together and states:

> People and communities derive part of their social economic and cultural well being from the protection of natural and physical resources in the coastal environment. In order to assist in achieving [several] objectives … it is appropriate for areas in the coastal environment that are protected or proposed for protection under statute to be recognised.
>
> It is therefore considered appropriate to state that areas that are protected under statute should be recognised when determining the status of activities in plans and when determining resource consent applications. Furthermore, areas that are proposed for statutory protection should also be considered when determining resource consent applications. These policies provide the benefit of certainty that these matters will be recognised. It is not considered that these policies impose additional costs on any party as these matters should already be recognised by local authorities.

Submissions

Individuals, community groups and conservation interests generally support both policies, but provide little reason for this support. Some do say that it is imperative that the conservation estate assumes a significant place in any relevant application.

The NSaPS supports protection of conservation land but submits that greater protection is needed for outstanding natural landscapes and areas of high natural character, which is in private ownership (such as the Ngunguru Sandspit/Whakairiora). The society believes that there should be no development in such areas and considers and that the most pressing need is to provide a more directive approach to protect iconic land and seascapes from development. A large number of individuals and groups endorse the NSaPS submission.

Ngati Awa supports policy 7, as does the Council of Outdoor Recreation Associations and the New Zealand Marine Sciences Society.

Policies 7 and 8 are unnecessary and inappropriately focus on conservation land

Many local authorities consider that these policies are unnecessary because they cover matters that are already considered as part of general resource consent determination and consideration. Infrastructure companies and some professional associations also consider that the policies are not necessary, for similar reasons.

Councils generally consider that policy 7 does not offer any useful guidance over what already happens during RMA processes. As regards policy 8, councils note that areas with publicly notified proposals for statutory protection can already be taken into account in the resource consent process (under section 104) and given appropriate weighting. The majority of councils recommend that both policies be deleted.

IPENZ is similarly not convinced that the policy adds any guidance to RMA processes. Nga Tai o Kawhai also considers that policies 7 and 8 ‘go nowhere’ and questions their usefulness in the NZCPS.

The Hawke's Bay Regional Council comments that ownership of land should not be the basis for rules – effects on the environment must be. Other submitters make similar points. Environment Southland considers that it is neither reasonable nor appropriate to expect that neighbouring land managers must manage their land as a buffer zone for the conservation estate. Rather, any buffer zones must be within land managed by the Department of Conservation.

Meridian Energy submits that policy 7 is inappropriate in the context of a National Policy Statement (NPS) under the RMA because the status of conservation land is dealt with under other legislation. It considers that the NZCPS needs to take a more balanced approach consistent with its sustainable management purpose and recommends the policy be deleted. Other infrastructure companies also consider that policy 7 is out of place in a NPS under the RMA, which seeks to balance protection, use and development.

The Marine Farming Association considers that conservation land should have the same status as all coastal land in respect of adjacent offshore activities where such use and development would meet the purpose of the RMA. SeaFIC considers that the focus on conservation land in policy 7 and statutory protection in policy 8 is too narrow as areas of land in the coastal environment can be managed under other statutes than the Conservation Act and by agencies other than the Department.

The vires of proposed policy 7 should be checked

The New Zealand Law Society notes that policy 7 requires conservation land to be taken into account when determining the status of activities in plans. It says that, 'the implication seems to be that such land should have a 'higher' status than non-conservation land, or conversely that activities affecting such land (even if not located on conservation land) should have a more onerous status than would otherwise be the case, in order to 'protect' such land'. The Society recommends that the *vires* of the policy be carefully assessed and that the Board look carefully at how policies 7 and 8 will work in practice, particularly in the context of Part 2 of the RMA.

Federated Farmers also note that policy 7 is liable to result in excessive weight being given to the effects of activities on conservation land in the coastal environment. It believes that policy also implies that more weighting should be given to the effects of activities for which resource consent is sought on conservation land than on other affected persons or land.

If retained policy 7 should be extended

The ARC and some individuals comment that the policy is not really necessary but suggest that, if it is retained, it should also specify regional parks and land held under the Reserves Act 1977. The West Coast Plan Liaison Group and the Auckland Conservation Board support the policy but would also like to see it extended to cover regional parks and reserves land.

The Canterbury/Aoraki Conservation Board strongly supports the policy saying that it recognises the wide and deep public value of public conservation land. It asks that the first sentence be amended to read:

> Further, where such land or experiential values of that land.

One branch of the RFBPS also seeks better recognition of the landscape context (the experience of land) in policy 7.

Policy is unclear because key terms are not defined

Councils, infrastructure companies, property interests and several professional associations are concerned that policy 8 is unclear because the terms 'statutory protection' and 'publicly notified' are not defined. They note that 'statutory protection' is not defined in the RMA and that it is unclear what type of 'statutory protection' is being referred to.

IPENZ, Federated Farmers and the New Zealand Wind Energy Association are also unsure what policy 8 actually means, including what is meant by 'statutory protection'.

Councils and infrastructure companies also seek clarification of the term 'publicly notified' and ask if it applies when the policy comes into effect by being notified in the Gazette or during initial discussions. For example, Genesis Power notes that it is unclear at which point a proposal is publicly notified and whether it would include informal consultation on the formative stages of a new marine reserve.

Issues Arising

Should there be policies about conservation land?

The new objective 6 recognises that 'the proportion of the coastal marine area under any formal protection is small', as did the general principles in the 1994 NZCPS. Objective 3 also recognises that 'the coastal marine area is an extensive area of open space for the public to use and enjoy'. Other new objectives for safeguarding life-supporting capacity, preserving natural character and kaitiakitanga are also relevant.

The thrust of many submissions was that the status of conservation land is dealt with under other legislation. Mighty River Power considered status of land under the Conservation Act or the schedule to that Act is not in itself a reason for protecting resources. Meridian was concerned the NZCPS is being used as vehicle by Department of Conservation to advocate status of the conservation estate. Meridian wanted what it described as a more balanced approach. Contact Energy similarly considered the NZCPS is not a 'conservation' document and the status of this land can be considered under s104(1)(c) RMA.

We conclude that the policies involve managing the 'protection of natural and physical resources', an important part of sustainable management under s5 RMA. That protection requires consideration of the purposes for which conservation land is being managed. It recognises the wide and deep public value of public conservation land, and one of the Crown interests in protecting such land.

Such policies should help promote more complementary planning and greater liaison between the Department of Conservation and local authorities when the latter prepare regional policy statement and plans. It should lead to such plans complementing Conservation Management Strategies.

Some submitters put forward the view that the status of land ownership should not determine rules and effects on the environment must be the deciding matter. That is to miss the point

that the status and purpose of the areas in the conservation estate and other protected areas determines the activities that can occur on or in them. Submitters also said that it was not reasonable or appropriate to expect neighbouring land managers must manage their land as a buffer zone for 'wilderness' or 'remoteness' management zones on Department of Conservation managed land. In their view any 'buffer' zones or areas should be within the land managed by the Department itself. That approach overlooks that the coastal marine area can be a buffer area.

We do not agree with submissions asserting that the policies are liable to result in excessive weight being given to effects of activities in conservation land in the coastal environment. It does not imply that more weighting should be given to effects of activities for which resource consent is sought on conservation land than on other affected persons or other land.

Some council submitters said that such policies could lead to overly complex plans and further create resistance. We do not see why that situation need be the case.

What should the policies cover?

We agree with those submissions, particularly local authorities, the ARC and the Auckland Conservation Board, that considered the policy should extend to conservation land and regional parks whether owned, or managed on behalf of DOC, by local authorities. The Auckland Conservation Board pointed out that the Auckland Regional Parks include significant coastal areas and significant indigenous plant and animal species and provide the public with access to areas with invaluable natural character and intrinsic value. There is a need to buffer activities around conservation and park lands to avoid adverse effects of development hard on their boundaries.

SeaFIC[61] considered the focus on conservation land and statutory protection to be too narrow and the latter unclear. Areas of land in the coastal marine area are and can be managed under statutes other than the Conservation Act and by agencies other than the Department of Conservation for purposes broadly compatible with purpose of RMA. The inclusion of a broader set of areas would help facilitate integrated management and reflects the full range of interests of the Crown in the coastal environment. SeaFIC recommended a rewrite of policy 7 or the adding of an additional policy to recognise the status of land managed for purposes consistent with sustainable management.

Kahungunu ki Uta, Kahungunu ki Tai (Kahungunu)[62] submitted that the coastal marine area is managed under a number of acts and by agencies generally for purposes broadly compatible with RMA purpose. Areas can be proposed to be managed for sustainable management purposes that may not fit the definition of statutory protection. Inclusion of a broader set of areas would help facilitate integrated management. It sought an amendment to each policy to include non-statutory areas based on sustainable management regimes.

Challenger FinFisheries Management[63] was also of the view that the policies do not make it clear as to how any other policies, legislation or regulations could or should be considered even though they achieve the same objectives.

[61] #324.
[62] #497.
[63] #387.

> We are greatly concerned that if there are advancements to achieve biodiversity protection through the Marine Protected Area Strategy these could be undermined through councils failing to give due recognition to this process.

Other submitters considered some Acts should not be adjudicated on within RMA processes.

Submissions considered the policies may be ambiguous and would be likely to include consideration of Hauraki Gulf Marine Park Act 2000 and Marine Reserves Act 1971 and any notified proposals for new conservation areas or reserves even if at an early or formative stage. We conclude that the real issue is weight that should be given to any such protections or proposed protections in any individual case.

We accept that a broader approach is needed than only to include the Conservation Act and those in its First Schedule. These Acts do not include many of the Acts raised in submissions and which have as their purpose conservation or recreation. That would be consistent with integrated management and also with the Marine Protected Areas policy.

Another submission suggested that the policies should refer to 'waters' as well as land. Leigh marine reserves and some other areas such as lagoons are held for conservation purposes under one of the Acts in 1st schedule to Conservation Act. Adding 'waters', as in Policy 1, would clearly cover water areas.

To ensure that no specific Acts are excluded we adopt an inclusive approach to extending the coverage.

A further submission suggested 'or used' should be added. We consider 'managed' sufficient to cover use.

Do the policies add any useful guidance or protection to conservation land?

We do not agree with the submissions that express a view that the policies are unnecessary and do not add useful guidance, or protection to conservation land, over what already happens during RMA processes (in preparing regional policy statements, regional and district plans and considering consent applications).

The RMA requires a council to have regard to management plans and strategies under other enactments when preparing regional policy statements and plans. Section 104(1)(c) allows a decision maker to consider other matters and these may include other Acts.

The RMA does not define management plans and strategies under other enactments. A narrow interpretation, only considering where legislation specifically provide for statutory 'management plans and strategies' could exclude consideration of the status and purpose of protection and management purposes of other Acts that apply to the coastal environment.

We also had submissions from some councils in particular that suggested a lack of understanding about the purpose and need for conservation and protection, particularly for the values of the foreshore and seabed, esplanade reserves and strips, marginal strips and other protective mechanisms. Similarly on the implications of conservation and protection mechanisms in the coastal marine area, for example marine reserves and taiapure for integrated management.

Our recommendation to remove RCAs means that the Minister of Conservation will not have the last word on major proposals in the coastal marine areas. That makes it all the more important that decision-makers consider the effects of activities on land or waters held or managed for 'conservation or protection purposes' under various Acts when making decisions on policy statement and plan provisions and resource consents and their notification. We conclude that decision makers should avoid adverse effects that are significant in relation to those purposes.

Should a reference to context and experiential values be included?
Submitters wanted 'and its context' or 'or experiential values of that land' added in for better recognition of landscape context including the experience of that land. We do not consider that is necessary.

Should there be a policy 8 recognising areas proposed for statutory protection?
For policy 8 there were additional concerns, echoed by some councils, that:

- it is unclear what statutory protection means (including the level of protection) and the range of Acts that land or coastal marine area may derive protection; it is not defined in RMA, Reserves Act or other related legislation so unclear; for example, does it include areas afforded Fisheries Act restrictions?;
- unclear what 'publicly notified' involves. Does it mean statutory notification? Does publicly notified mean when an area notified for public consultation or when the notice is published in NZ Gazette? There was a concern that the term is too broad with 'proposed' adding further uncertainty, through the ambiguity of whether a proposal informal or part of a predetermined statutory process. Whangarei District Council pointed out that the purchase of land or development of new statutory protection over an area can take significant time e.g. marine reserve proposals. It sought clarification on when the policy would come into effect e.g. notified in NZ Gazette or during initial discussions;
- proposals for statutory protection are just that – proposals under non-RMA legislation; councils should not have to take up the mandate especially if opposed to the proposed status; too much weight should not be given to notified statutory protection proposals which may subsequently be withdrawn depending on the nature/quality of public response.

Dr Liz Slooten considered that policy 8, as written, encourages large application for resource consents to 'hold' areas that may become economically viable for development in the future. She said that this is already happening in aquaculture and marine mining, giving as an example the entire habitat of Maui's dolphin as subject to consent for mining and tidal energy generation that could prevent protection of this area as dolphin habitat. If making applications to 'hold' areas is a problem the policies in the NZCPS are unlikely to change the situation.

Some submitters wanted it made clear that policy 8 applies only to specific legislation, such as for proposed marine reserves and other areas proposed to be protected under relevant, specified, legislation. There was also the suggestion that the policy should refer to recognised statutory processes to clarify what 'a proposal for statutory protection has been publicly notified' means, but these of course differ markedly between the different pieces of legislation.

We consider the difficulties somewhat overstated. It would not be an easy task to analyse all the possible statutes and regulations that may come into this category and the list and provisions may change with time. We conclude that it is better dealt with on a case by case basis. We see that is similar to the case by case assessment of the relative weight to be given to operative and proposed plans that consent authorities (and the Environment Court) are accustomed to dealing with on a daily basis.

Telecom raised the importance of international communications cables in connection with policy 8 but did not suggest any change to the policy (it wanted it included in policy 17).

We accept that it is more difficult to recognise and give weight to areas proposed for statutory protection. That is because of the many and different processes involved in such statutory protection and also the possibility that the outcome is not assured. However, for the same reasons as in policy 7 we consider the NZCPS should recognise the interrelationship of the RMA with other Acts and processes. We do not consider this approach to be counterproductive, as decision-makers should already be doing this under the RMA.

What weight should be given?

Many submitters pointed out that 'given due regard' differs from words used in RMA and does not have the guidance of case law. A suggestion was to replace 'due regard' with 'taken into account'. We agree that the different tests for planning documents and resource consents, in the way described, present a problem.

As stated earlier, we consider that the policy needs to make it clear that decision makers must avoid adverse effects that are significant in relation to those purposes for which the land or waters are held or managed.

For publicly notified proposals (policy 8 equivalent) we recognise that the position is as yet not finalised and the policy requires decision makers to have regard to the adverse effects of activities on the purposes of that proposed statutory protection.

Conclusion

We recommend policies 7 and 8 be redrafted into one policy (and become policy 7) as follows:

> **Policy 7 Land or waters managed or held under other Acts**
>
> **(1) All decision makers must consider the effects of activities on land or waters in the coastal environment held or managed under:**
>
> **(a) the Conservation Act 1987 and any Act listed in the 1st Schedule to that Act; or**
>
> **(b) other Acts for conservation or protection purposes;**
>
> **and, having regard to the purposes for which the land or waters are held or managed must:**
>
> **(c) avoid adverse effects that are significant in relation to those purposes; and**
>
> **(d) otherwise avoid, remedy or mitigate adverse effects of activities in relation to those purposes.**

(2) All decision makers must have regard to publicly notified proposals for statutory protection of land or waters in the coastal environment and the adverse effects of activities on the purposes of that proposed statutory protection.

Policy 9 Biosecurity

Regional coastal plans shall control activities in the coastal marine area that could, because of associated biosecurity risks, have adverse effects on the coastal environment. Relevant activities include, but are not limited to:

(a) the movement of structures likely to be contaminated with harmful organisms;

(b) the disposal of organic material from vessel maintenance;

(c) the provision of moorings, marina berths, jetties and wharves; and

(d) the establishment and movement of equipment and stock required for or associated with aquaculture activities.

Coastal permits, where relevant, shall include conditions requiring monitoring for biosecurity risks.

The s32 Report

The s32 report states:

> Biosecurity risks have the potential for significant adverse effects on the coastal environment. In particular biosecurity risks could prevent the achievement of objectives…. It is therefore appropriate to include policy in relation to biosecurity risks, in order to complement the biosecurity functions agencies have under the Biosecurity Act 1993. It is considered that this policy provides certainty in ensuring that biosecurity matters are considered in regional coastal plans and coastal permits. It is considered that any costs imposed on parties are low and as these matters should already be considered by regional councils.

Submissions

- **Individuals and community groups**

Individuals, community groups and conservation interests generally support the policy. They believe that biosecurity risks are important and need to be managed. Some say they would like the policy strengthened to manage such potentially significant risks.

- **Iwi**

Two iwi groups also support the policy. One iwi submits that, as councils are only able to control effects of activities within the scope of the RMA, the Board considers that they need to liaise and collaborate with MAF Biosecurity New Zealand and the Ministry of Fisheries in relation to the issue. It recommends that the policy should promote this collaborative approach.

There were a number of submitters who considered the RMA is not the appropriate legislation to assist in controlling such issues, particularly as the Biosecurity Act 1993 has mechanisms

in place to do so. Some have taken this theme further by suggesting that the policy should initiate and focus national and regional pest management strategies and provide for an integrated management approach. They too also suggest the policy should also identify the need to co-ordinate the activities of agencies, interview sectors, and stakeholders. Another submitter considers any policy direction for marine biodiversity developed under the RMA must be for the purposes of sustainable management of natural resources and not for a purpose covered by other legislation.

- **Councils**

Most councils say that the policy needs to be rewritten to provide more context. One council is concerned that there is potential for confusion where MAF Biosecurity New Zealand has declared a species an unwanted organism and is dealing with it on a national scale. The council recommends that National Environmental Standards (NES) or regulations prepared under the Biosecurity Act be investigated, as they potentially provide a better tool to manage these risks. Some councils submit that the policy introduces new responsibilities (e.g. a significantly increased level of surveillance) and plan changes, which will have significant funding implications for regional councils. They do not believe that the s32 report properly assesses these costs. Some submitters comment that the effective management of biosecurity risks often depends on a rapid response to incursions and say that any confusion between roles and responsibilities may delay management responses. A number of councils also ask whether the policy is likely to be effective, given the timeframe of consented plan provisions to become operative.

Nelson City Council identified a collaborative pest strategy funded by MAF Biosecurity New Zealand which retains the primary function of biosecurity management. The group is to include Nelson City Council, Tasman District Council, Marlborough District Council, the Department of Conservation, the aquaculture industry and the science providers, NIWA and Cawthron and is considered by the council as an adequate model for managing the risks. The draft strategy has three objectives to provide improved surveillance, provide improved information dissemination and communication, and provide a coordinated response. This type of non-regulatory initiative is considered by the council as more effective than creating another level of policies and rules embedded with the inflexibility of regional planning documents.

EBOP considers that as the Biosecurity legislation has no duties and functions, it is merely enabling, so councils have a choice whether or not they participate. And now that the ownership of the seabed and foreshore is unequivocally in Crown ownership under the Seabed and Foreshore legislation, regional councils are looking very closely whether they have a role in biosecurity given that they 'own nothing' in the CMA, and cannot bind or charge any player within it.

- **Legal comment**

The Resource Law Management Association also submits that the policy deals with matters more appropriately regulated under the Biosecurity Act.

- **Aquaculture interests**

Aquaculture interests say marine biosecurity is a significant issue for the aquaculture industry. But they submit that the proposed overlap between the Biosecurity Act and coastal plans may

cause indecision. These interests consider that marine biosecurity control requires a consistent national approach, and submit that regional biosecurity provisions must link to national biosecurity controls. They do not believe that regional plans provide the necessary flexibility or ability to move quickly to respond to biosecurity risks.

Issues Arising

- **Limitations of the Biosecurity Act**

The Ministry of Agriculture and Forestry Biosecurity New Zealand (Pest Management Group) (MAFBNZ)[64] appeared before the Board. The submission from MAFBNZ identified a number of shortcomings in the biosecurity legislation which could be addressed in the RMA:-

- while the legislation provides MAFBNZ with powers to manage risks from goods and vessels entering New Zealand, (i.e. preventing the introduction of harmful organisms) these powers have no application in domestic activities that pose risks such as accidental release from land-based aquaculture and aquarian activities;
- while the provisions under the Biosecurity Act for national and regional pest management provide regional authorities with powers to develop regional pest management strategies to eradicate or control such organisms once introduced, these tools can only be used to manage effects once the activity has been established and then only in respect of specific pest species;
- by way of contrast activities that can be controlled under the RMA are:
  - ship maintenance and maintenance facilities – discharges into the coastal marine area of viable organisms removed from ship hulls during cleaning, either on land or in water; these discharges may be from vessels recently arrived from other countries or from other parts of New Zealand;
  - permanent and semi-permanent structures and ships – the movement of structures and ships that are contaminated with fouling, from one region to another; vessels such as barges that are moored in one location for a length of time are likely to be heavily fouled;
  - aquaculture – the introduction of new marine species into regions for either marine farming or land-based aquaculture and the movement of marine farming stock and equipment that are contaminated with pests or pathogens, from one region to another;
  - coastal shipping – the movement of commercial vessels to regions with high natural character, where the hulls of such vessels are contaminated with fouling;
  - ports and marinas – moorings, marina berths, jetties and wharves (coupled with vessel cleaning activities) provide an environment for organisms released from vessels to become established and transferred to other vessels;

[64] #512.

- dredging and marine construction – the movement of spoil from dredging that contains organisms, or material for building breakwaters or artificial reefs that are contaminated with fouling, from one region to another.

Thus in MAFBNZ's opinion, the inclusion of a policy on biosecurity in the proposed NZCPS would introduce a preventative approach to managing the biosecurity risks of these types of activities. It would allow consent applicants to work with councils, and those parties affected by proposed activities requiring resource consent, to develop solutions to mitigate risks. This approach places the risk mitigation responsibility on those undertaking the activities that present a risk (at relatively low cost), rather than placing potentially high long term costs on the Crown, regional councils and industry to manage the effects after a pest is established.

The purpose of draft policy 9 therefore is to provide councils with direction on how they can incorporate marine biosecurity and risk management into the existing responsibilities under the RMA, and to provide an explicit mandate to consider marine biosecurity risks when assessing the effects of activities in the CMA. Its outcome will mean that biosecurity risks of activities in the CMA are more likely to be avoided, remedied and mitigated. The principal risk to be managed is the introduction of harmful marine organisms to New Zealand and their subsequent spread to other areas within New Zealand.

MAFBNZ explained that what it requires from the NZCPS process, is a high level policy statement from which guidelines could be developed to create some national consistency – through MAF, LGNZ and the local authorities. MAFBNZ itself, through its surveillance activities, would seek to provide baseline data to councils with the key points of entry of potential new pests in each of 10 regions which a major port facility. The organisation considers that by putting some onus on applicants to consider the biosecurity risks of their activity ahead of time, so that when they present their assessment of environmental effects, they can address potential risks.

We also heard from Environment Southland that it has already put some strict guidelines in place to protect the biosecurity of Fiordland and on request the council forwarded its extensive provisions for vessels in those sensitive waters. We note among other considerations, it prevents activities like vessel cleaning within the Fiordland marine area.

EBOP also identified (in spite of its doubts about the jurisdictional boundaries between the biosecurity legislation and the RMA), that when it issues consents under the RMA it may have a significant role to play. It was the EBOP Harbour Master, for example, who successfully stopped a barge containing sea squirts on the hull coming down the coast. This he did under a combination of the RMA and Navigation and Safety rules – so it was outside the biosecurity legislation[65].

- **The legislative significance of the RMA for biosecurity**

The submission on behalf of the Petroleum Exploration and Production Association had this to say:-

> This policy appears to extend the brief of a regional council beyond that covered by the Resource Management Act (s30). Biosecurity issues are dealt with by Biosecurity NZ. Disposal of organic matter at sea is covered by Maritime NZ Rule

[65] #160 Bayfield.

> Part 200. It would be unhelpful if policies in this area created confusion as to the responsible agency. Perhaps some thought needs to be given to ensuring coordination and alignment of policies with other agencies if this policy is to remain in place… there is a danger of inconsistency between MAF which administers the Biosecurity Act and the RMA[66].

The Resource Management Amendment Act 1994 however highlights the fact that:

- the RMA is the mechanism for controlling environmental effects in the CMA;
- the convention standards are set for New Zealand through regulations (Resource Management (Marine Pollution Regulations) 1998);
- the amendments implement New Zealand's delegations under international maritime conventions.

In relation to the dumping of waste in the CMA, the regulations achieve this by deeming certain discretionary and prohibited activity rules to be incorporated in all regional coastal plans[67].

Fundamentally, the place to deal with biosecurity is not only under its related legislation but the RMA as well. The ARC in its submission considers the current policy 9 to be achievable because it reflects its current practice to consider biosecurity risks in coastal permit processes – which is obviously what EBOP achieves also. ARC suggests some amendments to the policy to reflect better practice around such risks and these are reflected in our amendments to the policy below.

And in a background report made available to the Board, Beca Carta Hollings Ferner[68] identifies that:

> Part III of the RMA sets out the framework for managing effects on the coastal environment. Section 12 states that:
>
> > No person may …
> >
> > (f) introduce or plant any exotic or introduced plant in, on, or under the foreshore or seabed…
> >
> > unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or a resource consent.
>
> None of the regional coastal plans rely solely on this provision, and all contain some reference to biosecurity management. Twelve of the 18 regional coastal plans make reference to pest management and associated strategies, while the remainder of plans contain objectives and policies that refer to the management of biosecurity risk.

The fact that 6 regional coastal plans refer to the management of biosecurity risk is an indicator of the legitimacy of biosecurity concerns being identified within the NZCPS under

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[66] #27 Phalert.

[67] Regulation 15, Schedule 4 *Dumping of waste or other matter*. The Regulations are administered by the Minister of Agriculture and Fisheries.

[68] *Stocktake and Analysis of Regional Plans, District Plans & Regional Policy Statements for the New Zealand Coastal Policy Statement Review.* Beca Carta Hollings Ferner 2007, 24, para 4.4.

the RMA, and we consider there are other provisions which provide for legitimate controls – all contained within or linked to the RMA.

- **Specific requirements of the RMA**

The dumping of marine organisms (*perna perna*) brown mussels or invasive non-indigenous mussels from an offshore installation has recently been explored in a recent prosecution under s15A(1)(A) RMA which states:-

> **15A Restrictions on dumping and incineration of waste or other matter in coastal marine area**
>
> (1) No person may, in the coastal marine area –
>
> (a) dump any waste or other matter from any ship, aircraft, or offshore installation; or
>
> (b) not relevant
>
> unless the dumping … is expressly allowed by a resource consent[69].

The judgment is very timely in the context of this inquiry because it refers to the various relevant definitions in s2 RMA including 'the CMA', 'dumping', 'off-shore installation' (which adapts the meaning of offshore installation contained in s222 Maritime Transport Act 1994), and 'waste or 'other matter', which means 'materials and substances of any kind, form, or description'. In addition, it then applies the Resource Management (Marine Pollution Regulations) 1998, (Regulations 4 and 15 and Schedule 4 (normal operations)) to demonstrate how the legislation works.

Importantly Regulation 4(2)(f) deems the dumping of organic materials of natural origin such as brown mussels (i.e. biofouling) to be a discretionary activity in any regional or proposed regional coastal plan and the activity therefore requires a resource consent. In our view there should be a linking policy to address the deeming provisions.

Then there are the requirements of s15B *Discharge of harmful substances from ships or offshore installations*. In s15B(5) there is cross referencing to the Biosecurity Act 1993, s7, which provides that that Act can override the RMA despite the ability to make regulations, and rules, or grant resource consents under the RMA. Meanwhile any offences against the resulting rules in the latter plan are provided for under s338 RMA.

The Board considers it is essential that biosecurity risks are accounted for under the NZCPS and subsequent plans. The potential risk to New Zealand's indigenous biodiversity, the aquaculture, salmon and fishing industries, and consequently any economic and social wellbeing, is far too real to ignore consequences with such a high potential impact.

We consider too that at the resource consent stage it will be appropriate for the relevant consent authorities to place conditions on coastal permits which require self monitoring by applicants, with results sent to certified laboratories at various intervals, with the laboratories then issuing the certified results both to councils and applicants[70]. In this way the costs to councils will be reduced.

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[69] *Nelson City Council* v *Diamond Offshore Netherlands BV*. CRN 08042500436. Dwyer J. The prosecution failed on a technicality.

[70] #74 Marlborough District Council.

Nelson City Council advises that Biosecurity NZ funds NIWA to carry out a national baseline survey programme for the eight most significant invasive marine species. Extending this programme to a wider range of species, for instance undaria and sea squirt, would be relevant to both local and national interests, would help fill in the national picture of distribution, which will provide valuable information for both the economic development of the country and industry such as aquaculture, and information for biosecurity management. We conclude that knowing where invasive organisms are likely to spread, based on habitat sustainability would be extremely valuable to all councils.

- **Conclusion**

We recommend that policy 9 be amended and become policy 14 accordingly.

Policy 14 Biosecurity risks

(1) All decision makers must control activities in or near the coastal marine area that could, because of associated biosecurity risks, have adverse effects on the coastal environment. Relevant activities include:

(a) the movement of vessels and structures (such as oil rigs and towing of marine farming structures and salmon cages) likely to be contaminated with unwanted organisms;

(b) the discharge or disposal of organic material from vessels and structures, whether during maintenance, cleaning or otherwise; and whether in the coastal marine area or on land;

(c) the provision and ongoing maintenance of moorings, marina berths, jetties and wharves; and

(d) the establishment and movement of equipment and stock required for or associated with aquaculture or other activities.

(2) Consents and permits must include conditions on activities listed in 1(a) to (d) above as well as requiring monitoring for biosecurity risks.

Policy 10 Review of the NZCPS

The Minister of Conservation shall begin a review of this New Zealand Coastal Policy Statement no later than 10 years after its gazettal.

Policy 11 Monitoring of the NZCPS

In monitoring the effectiveness of the New Zealand Coastal Policy Statement in achieving the purpose of the Act, the Minister of Conservation shall:

(a) assess the effect of the New Zealand Coastal Policy Statement on regional policy statements, plans and resource consent decision making;

(b) work with local authorities to incorporate district and regional monitoring information into a nationally consistent coastal environment monitoring and reporting programme; and

(c) undertake other information gathering or monitoring that assists in providing a national perspective on coastal resource management trends, emerging issues and outcomes.

Policy 12 Local authority monitoring

When identifying the procedures and methods to be used to monitor the coastal environment of the region or district, local authorities shall recognise the need to collect data in a manner that facilitates comparison and collation to provide a national perspective on the state of the coastal environment.

The s32 Report

The s32 report states:

> The Minister of Conservation has the function of monitoring the effect and implementation of the NZCPS to assess its effectiveness. Section 58(g) of the RMA provides for an NZCPS to contain the procedures and methods to be used to monitor and review methods. One method which would provide consistency with the 10 year review period required for policy statements and plans by s79 RMA, is to specify that the next review of the NZCPS will also commence 10 years from the date the NZCPS is gazetted.
>
> Monitoring the effectiveness of the NZCPS will require assessment of its effect on regional policy statements, plans and resource consent applications. In order to prepare for the next review of the NZCPS it is also necessary for coastal resource management trends and issues to be monitored at a national level.
>
> Monitoring of these effects, trends and issues will be greatly assisted by nationally consistent monitoring methodologies. It is therefore appropriate

to ensure that central government works with local authorities to incorporate local monitoring into a national consistent framework and that local authorities have regard to national consistency when identifying monitoring procedures.

Policy 10 Review of the NZCPS Submissions

There are relatively few comments on draft Policy 10. Those that comment generally support the provision for a review, including individuals, conservation groups and councils.

IPENZ and several councils suggest switching the order of policies 10 and 11 (monitoring of the NZCPS) to reflect current best practice of monitoring before review.

EDS, supported by a number of individuals, recommends that the policy specify that the review should focus on the effectiveness of the NZCPS in achieving its objectives and the purpose of the RMA.

Timeframe of review

Some submitters question the proposed 10-year timeframe. Several individuals and one community group believe that in order to be effective, the review period should be shortened to 5 years. One submitter considered a 5 year review period was appropriate because there may be unexpected effects from climate change that might require attention due to the exceptional nature of the issue.

Horizons Regional Council submits that the review of the NZCPS should begin well in advance of local authority plan review periods. This would avoid the current situation where the council has had to complete its reviews within the 10-year requirement in the absence of the 2008 NZCPS being drafted or indeed finalised. Horizons recommends that the policy should specify that the review of the NZCPS be 'completed not later than 10 years' after its gazettal.

Environment Canterbury and the Chatham Islands Council are also concerned that by just referring to beginning a process to review the NZCPS the policy gives no certainty as to how long the review process might take. They also suggest amending the policy to specify that the review be completed no later than 10 years after its gazettal.

A few councils consider that the opposed 10-year timeframe aligns well with timeframes for the review of regional and district plans.

Provisions for independent review

The New Zealand Law Society notes that the draft policy does not specify an independent review, as in policy 7.1.1 of the 1994 NZCPS; and, that the s32 report provides no explanation as to why this provision has been deleted from the 2008 policy. The society recommends that the Board of Inquiry consider whether an independent review is required.

EDS also considers that the policy should make it clear that an independent party must undertake the review and supports the retention of the current wording in policy 7.1.1 of the 1994 NZCPS.

Issues Arising

- **Mandatory Review?**

It is not mandatory for you the Minister of Conservation, to begin a review of the NZCPS no later than 10 years after its gazettal. For the RMA provides in s53 (inter alia):

> **53 Changes to or review or revocation of national policy statements**
>
> The Minister may review, change, or revoke a national policy statement after using one of the processes referred to in s46A(1) in relation to the preparation of a national policy statement.

The use of the word 'may' in the section points to the fact that the functions of the Minister are discretionary, not mandatory. Further, those processes in s46A(1) do not include one that directs the Minister to begin a review of the NZCPS no later than 10 years after its gazettal.

- **Interim Reviews?**

There was an independent review of the NZCPS in 2004[71]. There were also many other substantial background reports and scoping papers, all of which informed the review. For example, *Review of the New Zealand Coastal Policy Statement 1994 – Coastal Hazards - a review of the effectiveness of the NZCPS in promoting sustainable coastal hazard management in New Zealand*[72].

There was also *Stocktake and Analysis of Regional Plans, District Plans, and Associated Policy Statements for the New Zealand Coastal Policy Review*[73].

These documents provided significant background information on all aspects of the NZCPS to the Board before hearings began on the formal review and inquiry.

We recommend that independent reviews be continued – but at the Minister of Conservation's discretion.

- **Forthcoming Reviews**

We are in little doubt that the Minister of Conservation has a very significant role in overseeing the sustainable management of New Zealand's coastal environment. While we consider the RCA's function of previous years may now be properly absorbed by the regional councils, (see policy 24), the Minister of Conservation with the conservation powers, functions, and duties provided for in the RMA, retains an overview of what is happening in this most significant area of New Zealand's natural and physical resources which appears not to be held by any other authority over the coastal environment.

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[71] *Independent Review of the New Zealand Coastal Policy Statement,* Dr Johanna Rosier, School of People, Environment and Planning, Massey University, May 2004.

[72] Review of the *New Zealand Coastal Policy Statement 1994* – Coastal Hazards, M Jacobsen (2004), Volume 1 – Report, Appendices Volume 2.

[73] Beca Carter Hollings and Ferner 2003.

The timing of a review of the NZCPS appears to be reliant in part on the monitoring the Department of Conservation puts in place and what that may indicate (discussed below in policy 11). Once results emerge (and that may take time) then the Minister of Conservation has the power to change, review or revoke the NZCPS at any time. This provides significant flexibility to begin a review which, in times of uncertainty (such as the present), may be necessary. We do not consider the Minister's discretion should be fettered in the way outlined in draft policy 10 and recommend accordingly.

We recommend therefore that policy 10 be deleted.

Policy 11 Monitoring of the NZCPS

The Rosier review indicates that the area of poorest implementation has been in monitoring environmental outcomes and assessing the degree to which plans and policy statements have influenced environmental results. It was observed that at the council level there is often a reluctance to implement national requirements because of funding implications or data collection and methods are so uneven as to be meaningless. It is difficult to judge how significant that problem is. Dr Rosier considers action is needed at a national level of planning to clarify responsibilities for environmental monitoring. Her review identifies that:

- the current NZCPS provides inadequately for monitoring and improvement is vital;
- its lack is seen as stemming from failure to clarify the roles and responsibilities of the Minister and the councils;
- local government and some environmental groups see monitoring as a central government function – some saying through the Minister of Conservation and others through Ministry for the Environment (MfE);
- there is a general call from submitters for central government to provide for the means to monitor in the form of guidance and training, methodologies, national indicators, funding etc[74].

Submissions

- **Individuals**

A considerable number of individuals are not convinced the provision gives sufficient national leadership to address the current gaps in monitoring. They suggest policy 11(c) needs to make reference to integrating State of Environment monitoring with that of resource consents so that information for effective environmental management is developed.

- **Iwi concerns**

Ngati Matunga Wharekauia Iwi Trust requires that results of relevance to tangata whenua be annually reported to iwi authorities. Ngati Kahu observes that the lack of consistent, comparable and comprehensive data is a major constraint on the effective management of all environments. This submission supports reporting and monitoring to meet national guidelines. Ngati Awa seeks amendment of policy 11(c) to require other information

[74] See note 71, 66-67.

gathering or monitoring from iwi authorities that assists in providing a national perspective on coastal resources, management trends, emerging issues and outcomes. The East Otago Taiapure Management Committee seeks to have cultural monitoring included in the policy.

The Te Tuma Trusts and Landowners Group requires that the NZCPS be redrafted to include an implementation plan that addresses how the NZCPS is to be implemented including its monitoring review.

SeaFIC considers policy 11 is not specific enough. It recommends it be rewritten to specify the data that will be collected and when this will be done.

- **Conservation groups**

Royal Forest and Bird Nelson Tasman Branch suggest an independent auditor working with the Department, ensuring appropriate funding for both. EDS considers that the Department of Conservation and councils have been very reluctant to allocate resources to monitoring activities and the current requirement for the outcomes in the coastal environment to be monitored or reported on. Therefore it will be very difficult to assess the effectiveness of the NZCPS in achieving its objectives and the effectiveness of coastal management overall. It suggests a requirement that the Minister of Conservation identify within 12 months a set of national indicators for the coastal environment and a time frame for councils to report within thereafter.

- **The councils**

The councils vary markedly in their suggestions:

- to prepare and make available a public report on the key national indicators for the coastal environment every 3 years;
- to prepare and publish a State of Coastal Environment every 5 years in which an assessment has been made on the extent to which the objective set out in the NZCPS have been achieved;
- numerous councils support the policy but suggest an amendment to specify the time frames for the Minister to have delivered the work streams to promote certainty around the process say within 5 years of being gazetted;
- The Kaipara District Council aligns itself with the LGA submission and suggests a wording change 'in monitoring and reporting on the effectiveness … the Minister of Conservation shall … within a 10 year period';
- provide an implementation package which gives clear guidance on a range of matters should accompany the NZCPS;
- swap the order of policies 10 and 11 to make it clear that monitoring precedes the review as is general good practice; Hurunui District Council meanwhile considers the policies duplicate each other and should be combined in one;
- allowing for regional variations, some councils consider there is a need nationally for consistent and appropriate water and environmental quality guidelines to be devised from such monitoring; Environment Canterbury observes that nationally agreed standards, and following the structure of regional plans, are essential elements of such a system;

- Gisborne District Council observes regional councils already have s35 requirements to meet (i.e. the duty to gather information, monitor and keep records);
- Selwyn District Council supports the policy with more emphasis to be placed on the production of a monitoring and reporting programme and considers it would be now appropriate if an appendix was provided with the NZCPS with regards to the programme so that monitoring may be possible within a shorter time frame of the statement being gazetted;
- the Manukau City Council suggests monitoring linking to national, regional and local 'State of the Environment' reports;
- Christchurch City Council considers it would be appropriate for objectives and policies to be monitored as well.

Issues Arising

- **The legal structure of monitoring**

The authors of the 1994 *Report and Recommendation of the Board of Inquiry Into the New Zealand Coastal Policy Statement*[75] set out very clearly the legal requirements for monitoring under the RMA. Section 28(d) confers on the Minister of Conservation the function of monitoring the effect and implementation of a NZCPS and any coastal permits granted. Under s28A a regional council has a duty to supply to the Minister of Conservation information on permits, customary activities and regional plans as reasonably practicable. There is no such duty for local councils.

Section 53 empowers the Minister of Conservation to review, change or revoke a New Zealand coastal policy statement but the legislation does not mandatorily require that review – as we noted in discussing policy 10. Section 58(g) allows (but does not require) the Minister of Conservation to state the procedures and methods to be used to monitor the policies and review their effectiveness as follows:-

> **58 Contents of New Zealand coastal policy statement**
>
> A New Zealand coastal policy statement may state objectives and policies about any one more of the following matters:-
>
> ……
>
> (g) the procedures and methods to be used to review the policies and monitor their effectiveness.

LGNZ considers it is not acceptable for the Department of Conservation not to report on the effectiveness of the NZCPS when councils have a statutory requirement to report on the efficiency of their own policies, rules and other methods in policy statements and plans every 5 years. While we endorse the reporting function of the Minister and the Department if that has to occur within 5 years as some submitters request, that does not give officials time to collate the relevant information which may only be available at the end of 5 years. We consider the Minister may wish to report on the effectiveness of the NZCPS within 6 years of its being gazetted.

[75] Department of Conservation, February 1994, 86-89.

- **Non statutory guidelines and funding**

As to other aspects of policy 11 we recommend that the Department may consider:

- developing non-statutory strategies for nationally guided monitoring programmes;
- assisting smaller councils in developing suitable methodologies for organising data collection; and
- collaborating with councils over monitoring and reporting on the effectiveness of the NZCPS.

- **Amended policy**

We recommend accordingly that policy 11 become new policy 31 as follows.

> **Policy 31 Monitoring of the NZCPS and state of the coastal environment**
>
> **In monitoring and reporting on the effectiveness of the NZCPS in achieving the purpose of the Act, the Minister of Conservation should within a six year period:**
>
> **(a) assess the effect of the NZCPS on regional policy statements, plans and resource consents and other decision making;**
>
> **(b) in collaboration with local authorities collect data for, and incorporate district and regional monitoring information into, a nationally consistent coastal environment monitoring and reporting programme;**
>
> **(c) undertake other information gathering or monitoring that assists in providing a national perspective on coastal resource management trends, emerging issues and outcomes; and**
>
> **(d) publish a report and conclusions on matters (a) to (c) above.**

Policy 12 Local Authority Monitoring Submissions

- **Individuals submitters and conservation groups**

There is widespread agreement that the provision of 'a national perspective on the state of the coastal environment' is the responsibility of central rather than local government. Almost all submitters suggest that central government should develop, coordinate and fund such a monitoring programme. There is also wide agreement that national guidance is needed on what is to be monitored and how it should be monitored. Many submitters call for national guidelines and/or standards in relation to monitoring the state of the coastal environment. A number of individuals, community groups and conservation interests also consider that this policy pursues national rather than regional good, and that costs should therefore be shared on a national basis.

ECO considers that local authorities should be required to monitor the coastal environment in a manner that is 'consistent with national guidelines'. The Guardians of Puku Bay also recommend that the policy is changed to require local authorities to collect and record data 'in accordance with guidelines supplied by the Minister'.

- **Iwi groups**

Iwi groups submit that the policy should be redrafted to include cultural monitoring. Iwi are concerned that the lack of consistent and comparable data is a major constraint on effective management.

Several iwi also consider that monitoring and reporting should meet national guidelines, which they say, 'will have to be developed in many cases'. They also submit that iwi and hapu should be involved in the process of identifying the procedures and methods used to monitor the coastal environment.

- **Councils**

Regional and district councils consider that central government should lead the development of (and meet any costs associated with) monitoring schemes to provide nationally consistent monitoring of the coastal environment. Environment Waikato submits that if nationally consistent monitoring is desirable (as proposed by the policy), the Department should do it. It recommends that the policy be deleted or amended to state that it is the Department's role to coordinate and resource this requirement.

District councils also consider that the central government should coordinate and resource (or subsidise) a programme of monitoring to provide national information on the state of the coastal environment. The Far North District Council opposes the policy because it considers that communities within the district should be the prime beneficiaries of council led monitoring; and, that national monitoring is likely to require different information to be collected. This view is shared by many district and city councils.

Regional and district councils consider that the policy is uncertain as to how monitoring should be coordinated and what data is to be collected. They say that guidance is needed on the data to be collected to provide a national perspective on the state of the coastal environment.

Environment Bay of Plenty considers that central government should take the lead in providing a methods and standards framework that is suitable from a national perspective. The Hawke's Bay Regional Council says that national guidelines and protocols for monitoring should be developed by central government, with input from local government. The North Shore City Council suggests that the Ministers of Environment and Conservation should work together to develop national guidelines for data collection so that the data collected is of greater utility.

The Horizons Regional Council considers that the draft policy is weak and unnecessary because the matter is already covered by policy 11 and existing monitoring requirements under the RMA. A number of other councils are also of this view.

The West Coast Regional Council and Environment Southland consider that the draft policy does not add any further value to reporting already undertaken under section 35 RMA requirements. The Far North, Tasman and Waimakariri District Councils also recommend deleting the policy as they consider that adequate provision for national monitoring is provided in draft policy 11(b).

Most local authorities express concerns that the policy, as it is written would impose additional costs on councils. LGNZ submits that the draft policy should be removed as it has associated resourcing implications on councils.

IPENZ submits that this policy requires national coordination and specifications. It recommends that the policy be amended to provide guidance on how monitoring is to be coordinated, what is to be monitored and what action will be taken following data collection. NIWA also considers that the policy requires further clarification and development of national monitoring guidelines to outline collection methodologies and procedures that will 'facilitate comparison and collation' of data and information.

Few infrastructure companies comment on the policy. TrustPower accepts it. Meridian endorses the proposition that there should be consistent, good quality monitoring based on robust data but 'would like to think that there would be dialogue with stakeholders who have an interest in the coastal environment about the need for and scope of monitoring, and the level of detail required'.

Aquaculture New Zealand, which supports the policy, also submits that central government support is needed to develop consistent monitoring frameworks.

Issues Arising

- **Scope of s35(2) RMA**

Section 35(2) RMA imposes duties on every local authority to monitor (a) the state of the whole or any part of the environment of its region or district to the extent that is appropriate to effectively carry out its functions under the Act and (b) the efficiency and effectiveness of any policy statement or plan for its region or district.

We accept that local authority monitoring extends only to the whole or any part of its region or district. The duty implicit in the policy however, appears to require the data to fit within a national framework. LGNZ suggests that the issue of data collection and comparison is more appropriately considered through non-statutory guidelines and a central government programme of funding. We have addressed this under amended policy 11 and otherwise consider that s35 provides enough guidance on the responsibilities to monitor and report on the state of its district or region.

We recommend that policy 12 be deleted as this is already provided for in the legislation.

Policy 13 Amendment of policy statements and plans

Local authorities shall amend documents as necessary to give effect to this New Zealand Coastal Policy Statement as soon as practicable and no later than five years after the date of gazettal of this New Zealand Coastal Policy Statement, using the process set out in Schedule 1 to the Resource Management Act 1991, except where this New Zealand Coastal Policy Statement specifies otherwise.

The s32 Report

The s32 report states:

> Section 55(2A) requires national policy statements to state whether a local authority is required to use the RMA Schedule 1 process to amend its policy statements and/or plans to give effect to that national policy statement. This section also provides for national policy statements to direct that specific provisions be included in policy statements and plans without the notification and hearing processes of Schedule 1.
>
> The proposed NZCPS provides for restricted coastal activities and maps of Maui dolphin habitat to be included in regional coastal plans without notification or hearing. The remaining policies are to be given effect to in policy statements and plans through the schedule 1 process. In accordance with section 55 the NZCPS should specifically state this. It is also appropriate for the NZCPS to require that it be given effect to within a specified timeframe. If possible the NZCPS should be given effect to at the next full review of a policy statement or plan. However where a full review is not due within the next 5 years it is appropriate for the NZCPS to state that local authorities shall amend their policy statements and plans to give effect to the NZCPS through a separate policy or plan change process. Given the 10 year timeframe of the NZCPS it is considered that 5 years is the latest date that can be provided for a separate policy or plan change and that any later timeframe would fail to see the NZCPS implemented in a timely manner.
>
> Implementing the NZCPS will impose costs on local authorities. These costs will be reduced when implementation of the NZCPS can be carried out as part of a full review and approximately 55% of the policy statements and plans that may need to be amended to effect to the NZCPS are due for a full review within 5 years. This includes 14 of 16 regional policy statements. In addition, as the NZCPS provisions give effect to the RMA many of the actions required of local authorities by the NZCPS should already be undertaken. This includes the preparation of natural character, biodiversity and landscape studies. It also includes the preparation of growth strategies and structure plans. Many of these studies and strategies will be undertaken as part of the imminent regional policy statement reviews referred to above.
>
> Consequently the additional costs to local authorities of implementing the NZCPS within 5 years are not considered to be excessive. However,

implementing the NZCPS within 5 years has the considerable benefit of ensuring that the NZCPS is given effect to in a timely manner and the sustainable management issues arising from growth pressures in the coastal environment addressed.

Submissions

Views are split as to the length of time required by local authorities to amend these documents – individuals, community groups and conservation interests think it should be much less than the proposed five years, while local authorities consider that five years is unrealistic and that it may take even longer to implement policy and plan changes.

Relatively few individuals and community groups comment on this policy, but all those that do consider that five years is far too long for local authorities to amend policies and plans. They generally consider two years or less to be the maximum acceptable timeframe to protect the coastal environment from being degraded at the current pace. For example, the Waipu Residents Association considers that, given the rapid rate of development, 12 months should be the maximum time to give effect to the NZCPS, and that central government should provide funding to ensure that this happens.

Conservation groups also believe that five years is much too long because it will unduly delay the implementation of the NZCPS. The NZCA notes that five years is half the life of the NZCPS and recommends that policies and plans should be amended much sooner than five years.

ECO considers that it should be possible to align planning documents much more quickly than five years and suggests that two years (without appeals) would be more appropriate. EDS suggests that it is desirable for regional policy statements to be amended prior to plans. It recommends that the timeframe be reduced to 12 months for regional policy statements, and three years for regional and district plans. The RFBPS suggests that the policy be amended to require councils to update policies and plans 'as soon as practicable, and no later than two years' after gazettal of the NZCPS.

NPsSP is 'extremely concerned about the protection of highly valued areas like Ngunguru Sandspit/Waikairora until the provisions of the NZCPS are put into effect'. It seeks a moratorium on outstanding natural landscapes and areas or high natural character until the NZCPS is gazetted. The NPaSP submission is endorsed and quoted by a large number of individuals and groups.

Regional and district councils generally consider the five year timeframe is too short. They point out that regional policy statements and plans are extremely difficult to amend quickly. Many are saying that some policies may take up to 10 years to implement, especially where the full RMA Schedule 1 process has to be followed, or where policies require considerable research prior to notification of plan change (e.g. the natural character and hazard policies), or the Environment Court or litigation is involved. They say that such policies may require 10 years to implement and make various suggestions for staging implementation.

The ARC suggests that greater use be made of section 55(2A)(b) RMA, which requires that provisions be included in policy statements and plans without RMA Schedule 1 notification

and hearing processes. It also recommends that NZCPS policies should clearly state how they should be implemented and that longer than five years is allowed to implement the natural character and hazard policies, and three years for the coastal occupation charging policy.

The Hawke's Bay Regional Council notes that numerous policies are likely to require RPSs and/or regional plans to be amended and that councils cannot do everything at once. It suggests the NZCPS should prioritise matters that should be addressed within say, two to three years, five to six years and so on.

The Otago Regional Council suggests that further consideration be given to the hierarchy the RMA sets between regional policy statements and plan. It recommends that regional policy statements be amended within three years and regional district plans as soon as practicable after that, or no later than three years after the RPS has become operative.

Horizons Regional Council urges the Board to require that the Department prepare an implementation plan and guidelines on its expectations regarding the implementation of NZCPS policies. It considers that the proposed timeframe does not recognise the reality of current work programmes being undertaken by councils or the role of the LTCCP.

LGNZ recommends extending the timeframe for amending policies and plans to 10 years.

Many district councils are also very concerned that five years is unrealistic given the extensive changes that will be required to give effect to the NZCPS. They suggest that specifying timeframes consistent with the RMA plan review process would provide a better outcome.

The Waimakariri District Council considers that policy 13 is not required because the RMA specifies the hierarchy of documents and provides that superior documents take precedence so that, even if a plan has not been bought into alignment, a consenting authority will be required to give effect to the NZCPS once it is operative when making decisions on consent applications affecting the coastal environment.

Some councils note that there are costs in updating policies and recommend that the timeframe be amended so that the NZCPS can be incorporated in normal policy and plans review cycle.

Of the other submitters, the NZHPT supports the policy but considers that local authorities will require central government assistance to achieve the proposed timeline. A number of councils also say that financial assistance will be required to implement the draft NZCPS policies in a timely manner.

Few iwi groups comment on this policy, but those that do support and make no comment on the timeframe.

A few infrastructure companies and professional associations comment that they support the policy without providing any reasons. Contact Energy considers that it might be more appropriate to set a timeframe within which local authorities are required to commence a review of policy statements and plans. The New Zealand Wind Energy Association holds a similar view.

Many local authorities are concerned that it is not clear what the phrase 'give effect to' means in terms of process and seek clarification that it means notification of any necessary policy or plan change. Most councils strongly recommend that the policy be amended to clarify that the requirement is to notify a change to policies and plans. Two councils seek a glossary definition of the phrase 'to give effect to'.

Several councils also note that the policy should refer to 'regional policy statements and plans' rather than 'documents' to be in keeping with the wording used throughout the rest of the NZCPS

Issues Arising

- **Is a specified time frame necessary?**

We do not consider that a specified time frame is necessary or even helpful in giving some urgency to promoting the necessary changes to planning documents. Accordingly, we recommend a new policy (in new policy 2) providing that:

> Local authorities must amend regional policy statements and plans as necessary to give effect to this NZCPS as soon as practicable.

Neither do we consider there is any need to differentiate between regional policy statements and plans. There are approaches to changing planning documents that improve integration and minimise time delay.

- **Immediate effect**

Because of the lengthy process of research and consultation that goes into preparing and finalising regional policy statements and plans they will take several years to complete and become operative. However, in considering resource consents, private plan changes and notices of requirement, decision makers must have regard to the New Zealand Coastal Policy Statement. To ensure that a new NZCPS has immediate effect and is given the necessary weighting in decision making before it is reflected in regional policy statements and plans, we have recommended the following in a new policy 2(2):

> **(2) Where amendments have not been proposed, notified or made operative to a regional policy statement or plan to give effect to this NZCPS all decision makers must when considering resource consent applications, notices of requirement for designation, and private plan changes:**
>
> **(a) consider the objectives and polices in this NZCPS when deciding whether to notify an application or notice of requirement;**
>
> **(b) consider the objectives and policies in this NZCPS when exercising discretion on whether to apply the permitted baseline under s104(2); and**
>
> **(c) give additional weight to the objectives and policies in this NZCPS when considering applications, notices of requirement and private plan changes.**

This will ensure that the objectives and policies of the NZCPS will be implemented immediately irrespective of progress on incorporating them in regional policy statements and regional district plans.

As a result therefore we consider policy 13, as written, is not necessary in this document and recommend that it be deleted.

Policy 14 Location of subdivision and development

Policy statements and plans shall identify where, in the coastal environment (outside the coastal marine area):

(a) **subdivision, and the development of subdivided land, to provide dwellings or commercial premises, will be appropriate; and**

(b) **subdivision and development, of specified types, will not be appropriate.**

In identifying these areas, while giving effect to this policy statement as a whole, local authorities shall:

(c) **encourage a mixture of land uses along the coast, particularly along and near the coastal marine area, and discourage continuous urban development of the coast where it has not already occurred;**

(d) **generally set back subdivision, use, or development from the coastal marine area and other water bodies, to protect the open space character of the coast, its natural character, and its amenity values, and to provide for public access and avoid or reduce natural hazard risks;**

(e) **avoid urban sprawl, by encouraging development within existing urban areas and discouraging the agglomeration of separate urban areas;**

(f) **avoid ribbon development along transport corridors;**

(g) **make provision for papakainga and marae developments; and**

(h) **buffer or otherwise protect sites of significant indigenous biological diversity value.**

Policy 15 Form of subdivision and development

Within areas identified under Policy 14(a) local authorities shall promote appropriate forms of subdivision and development, including by:

(a) **encouraging a mixture of densities of development;**

(b) **encouraging mixed commercial and residential development and a variety of housing types and densities;**

(c) **promoting forms of development that enable public transport, walking and cycling as transport choices;**

(d) **providing for and protecting public open space, particularly where new urban development occurs; and**

(e) **identifying where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable.**

Policy 16 Use and development of the coastal marine area

Policy statements and regional coastal plans shall identify where, in the coastal marine area, specified forms of use or development will and will not be appropriate. In identifying these areas, while giving effect to this policy statement as a whole, local authorities shall:

(a) recognise the public utility of the coastal marine area as public open space and protect the cultural and amenity values of the coastal marine area as open space;

(b) recognise and make appropriate provision for activities important to the social, economic, and cultural wellbeing of people and communities that can, by nature, only be located in the coastal marine area;

(c) recognise that activities that do not, by nature, require location in the coastal marine area, generally should not be located there;

(d) avoid sprawling development, by encouraging efficient use of occupied space and discouraging the agglomeration of separate occupied areas; and

(e) buffer or otherwise protect sites of significant indigenous biological diversity value.

The s32 Report

The report identifies that the issues its authors found on subdivision use and development fell under two headings – location of subdivision and development – and form of subdivision and development.

The analysis refers to a proposed objective – subdivision, use, and development in the coastal environment should occur in places, in forms and within limits consistent with sustainable management. This is stated in part to give effect to s6(a) RMA and protect natural character from inappropriate subdivision, use, and development. In addition, giving effect to the other proposed objectives of the NZCPS requires that all subdivision, use, and development in the coastal environment be consistent with sustainable management.

The authors of the report identify that subdivision, use and development pressures, and the rapid expansion of coastal development and subdivision are the most significant issues for the sustainable management of the coastal environment around the country. They also identify that the provisions of the 1994 NZCPS fail to provide sufficient guidance on the use of the term 'appropriate' in the context of sustainable management. As a result they consider the NZCPS should contain further policy guidance on the types of subdivision, use, and development that is appropriate or consistent with the purpose of the RMA.

Because this is key guidance which gives effect to a number of objectives and other policies in the proposed NZCPS the authors consider that the policy should refer to the implementation of the NZCPS as a whole. Because the subdivision, use, and development pressures above MHWS and in the coastal marine area differ, they also consider it desirable to state separate policies in relation to these areas and to give guidance on subdivision and urban

development in the coastal environment outside the CMA, including the requirement to specify where development is and is not appropriate, and the need to:

- generally set back subdivision, use, and development from the coast and other water bodies;
- avoid urban sprawl and ribbon development; and
- buffer sites of significant indigenous biological diversity.

In providing for areas where subdivision and development are appropriate, the report's authors consider that policy guidance also be provided on the forms of development that are consistent with sustainable management and that development should include:

- a range of densities and development types;
- provision for sustainable forms of transport; and
- public open spaces.

In respect of the CMA, the authors report that it is appropriate for a policy to give guidance on use and development in this location. This should include the requirement to specify where use and development is, and is not appropriate, and the need to:

- recognise the value of the coastal marine areas as public open space;
- recognise that some activities can only locate in the coastal marine area (in order to give these activities priority);
- encourage efficient use of space and avoid sprawling development; and
- buffer or protect sites of significant indigenous biological diversity.

The s32 report states that these policies provide medium to high benefits with low to medium costs and does not consider that there is a risk arising from uncertainty or insufficient information concerning the subject matter of such policies.

Submissions

Policies 14 and 15: Most of the submitters assess policies 14 and 15 together with some additional comment specific to the policy or sub-policy. Some also address policy 16 with them.

- **Individuals, community and recreational groups**

Approximately 20 individuals, most community groups and a number of conservation groups express general support for policies 14 and 15 or at least for the intent behind them. These submitters are generally concerned to limit urban sprawl along the coast and believe there is increasing pressure on local authorities to provide land for coastal development. They say these policies will help address this problem, although many of them think aspects of the policies could be improved or strengthened. Many individual submitters, most community groups and conservation interests generally are concerned that there is an inadequate focus on protection. They believe that the proposed policies appropriately seek to limit urban sprawl but need rewriting to place the emphasis on protection, rather than encouraging appropriate forms of further coastal development.

- **Conservation and environmental interests**

EDS submits that the policies 14 and 15 'are (in large part) unworkable, confused and will likely result in inappropriate coastal development. Significant resources will be needed by local government to identify appropriate areas for subdivision, use and development'. The EDS submission is supported and quoted by the nearly 40 individuals, community and conservation groups identified above. The following comments should therefore be read as reflecting the views of these many submitters.

EDS believes that the NZCPS needs to set a clear policy framework for identifying those areas where development is inappropriate and that guidance should be given on what may be appropriate only if and when subdivision, use and development is proposed (either by the local authority or private parties). It calls for an interim position to be established whereby coastal rural areas are protected from bad subdivision while councils prepare more detailed and protective plan provisions, possibly by requiring a minimum lot size of 100ha for all subdivision within the coastal environment outside existing settlements. EDS also seeks new policies to control land-banking and provide permanent protection of land from subdivision and development through covenants placed on land titles at time of subdivision to restrict any further subdivision.

Conservation boards and groups generally express strong support for buffer zones and would like to see these requirements strengthened to buffer the effects of use and development on natural character. They especially want unmodified areas of the coast retained.

- **Local authorities**

LGNZ submits that, 'policies 14 and 15 fail to focus on environmental effects and instead focus on urban planning principles of which the NZCPS is a completely inappropriate mechanism to offer guidance on'. The majority of councils explicitly support LGNZ's submission. LGNZ considers policies 14(c) to (h) to be beyond the scope of the NZCPS and in conflict with the effects based approach of the RMA. It seeks the removal of these, as do most of the councils.

A number of councils consider that the policies should apply only where there are issues relating to subdivision use and development, rather than as a blanket application. One regional council comments, 'for a reasonable number of regional and district councils, the amount of work required to give effect to these policies will be out of proportion to any issues of development that exist'. Another regional council says that policies 14 and 15 (and to some extent 16) 'appear to follow the government's work on good urban form without due consideration as to whether it is appropriate in the coastal environment'. Environment Canterbury seeks replacement of the policies with the existing NZCPS policies 3.2.1 and 1.1.1 or modify the wording to only require the implementation where there are identifiable issues relating to subdivision, use and development.

Almost all councils strongly oppose the concept of zoning appropriate and inappropriate areas for subdivision, use and development. Many of them particularly oppose the apparent requirements of policy 15 to zone on the basis of 'form'. Most councils believe these policies will effectively require a mapping exercise, which is likely to be controversial, contested and costly.

Regional councils submit that the requirement to update policy statements is unnecessary and costly. They say it fails to recognise that district plans already manage location of subdivision and development so regional policy statements are being required to fulfil a gap that doesn't exist and should, in any event, lie at plan level.

LGNZ says that, 'Policy development and direction on subdivision, use and development needs to be decided at the local level with consideration of local needs and preferences. Decision making at the local level is a fundamental aspect of the RMA 1991'. Many local authorities support this view.

Councils (and submitters from all sectors) question too the meaning and value of the requirements for mixed land use and mixed densities in clause (c). They ask what is meant by 'mixture' and why is it required when mixed use may not always be appropriate.

- **Infrastructure companies**

Most infrastructure companies say that the policies are too prescriptive and contain a level of detail that is totally inappropriate for a NPS. Like councils, they also submit that some parts of the policies are beyond the scope of the RMA and should be removed or completely redrafted because they cut across the RMA effects-based approach to land use planning. Meridian comments that there is an assumption that councils are equipped to and ready to credibly zone areas, when they are unlikely to be. Meridian is concerned that there may be an, 'if in doubt zone it not appropriate' approach, which may unnecessarily prohibit development. This view is widely supported by other infrastructure companies, which also say that the approach may prevent use and development that complies with the sustainable management purpose of the Act.

Infrastructure companies point out too that, in some instances, one form (rather than a mixture) of land uses may be appropriate to a particular section of the coast and more consistent with sustainable management under the RMA. Some companies generally prefer policy 3.2.1 in the NZCPS 1994 which states:

> Policy statements and plans should define what form of subdivision, use and development would be appropriate in the coastal environment, and where it would be appropriate.

Energy companies say that the identification of sites suitable for electricity generators or renewable energy should be left to the generators themselves, not the councils. They also say policy 14 should be amended to provide for activities such as renewable energy that contribute benefits to the coastal environment.

The majority of infrastructure companies are concerned that policies 14 and 15 inappropriately separate location and form of subdivision, use and development. They say ports and other activities have a functional need to be located on the coast, particularly near the CMA; and, in many cases the form of subdivision, use and development will determine the appropriate location for such activities, (one regional council shares this concern.) Several infrastructure companies and marina interests drew attention to the need for some uses to span the MHWS boundary of the CMA.

- **Property interests**

Property interests have similar issues to the infrastructure companies. They generally oppose the proposed zoning approach and submit that the policies are overly prescriptive and rigid in terms of what activities can be undertaken. These submitters also believe the policies inappropriately separate the location and form of subdivision and development. And they strongly oppose the narrow focus in policy 14 on dwellings and commercial premises. They submit that the policy should either be widened to recognise that other activities might be appropriate (e.g. infrastructure, transport-related activities and public recreation areas), or stay silent on the type of activities that are considered appropriate. This view is shared by a number of councils and infrastructure companies. LandCo Land Developments Ltd says that the s32 report grossly underestimates the cost to local authorities and landowners of identifying where subdivision can and cannot occur.

- **Scientific, professional and industry organisations**

NIWA say that the policies should recognise surf life savings buildings and structures, as well as existing activities such as tourism and aquaculture. IPENZ has concerns about the content of policy 15 and is not convinced that it should be considered by NZCPS. It also recommends adding provision for surf life saving facilities.

The New Zealand Marine Sciences Society say that the effects of climate change and sea level rise should be taken into account in the location of subdivision, use and development, a view shared by one conservation group and one regional council.

The New Zealand Tourism Industry Association comments that it would be concerned if there were moves to limit responsible vehicle use that provide excursions along some of the coast, and that new coastal developments should respect the character of existing settlements, especially typical bach settlements because 'the typical historic Kiwi bach is at risk'.

Policy 16:

- **Individuals, community groups and conservation boards**

EDS supports identification of areas where use and development will be inappropriate in the CMA but opposes identifying where it will be appropriate. It says councils find identifying appropriate areas problematic, largely because of the very high cost of gathering information (and that this is why many councils have found it easier to identify areas where aquaculture will be excluded, rather than where AMAs can be located).

One conservation board considers zoning activities in the CMA can help prevent conflicts between incompatible uses, localise adverse effects of use and development and avoid sporadic and sprawling development. A number of individuals and community groups say they do not support 16(d) 'if encouraging efficient use of occupied space means a greater density'. One or two do support it. A number of conservation groups strongly support 16(e). The NZHPT say that it should be expanded to provide protection for places of importance to Maori, including wāhi tapu. One iwi group says this policy should give stronger recognition to customary fishing rights and another that it should provide stronger encouragement for aquaculture.

- **Councils**

Two regional councils and one district council support policy 16. All other councils reiterate their concerns that the proposed zoning approach cuts across the effects based approach of the RMA. Some note that some uses, which are subject to different performance standards, will be appropriate throughout the CMA.

One regional council comments that it is not clear whether the term 'identify' in policy 16 requires zoning of the whole coastal marine area for various sets of activities similar to zoning on land saying, 'multi-use is the predominant use in the CMA, while it is a useful tool, is only required in some areas where there is a single predominant use; e.g. ports and marine farms'.

- **Infrastructure companies**

Infrastructure companies point out that commercial ports and marinas cannot be set back from the CMA and must span the land and water interface, as do other forms of infrastructure such as roads and rail bridges, transmission lines, cables, boat ramps and some navigational facilities.

Most infrastructure companies and property interests oppose policy 16 because they consider that open space values need to be balanced against use values and that many of these uses are in the public interest; e.g. renewable energy, wharves, transport, infrastructure, etc. These submitters (along with LGNZ and some councils) seek the removal of the term 'public utility' or ask that is defined or replaced. Terms suggested include 'use and benefit' or 'public use'.

Fishing interests are also concerned that the proposed approach is inconsistent with effects based management and recommend that the beginning of policy 16 should be reworded as: 'Policy statements and regional coastal plans shall identify where, in the coastal marine area, use or development with specified effects will and will not be appropriate'. Aquaculture NZ submits that the policy needs to give consideration to existing uses in the CMA.

The Auckland District Law Society submits that consideration should be given in policy 16 to stating a sub-policy regarding the dredging and removal of sand from sensitive areas, saying this is a controversial matter that the NZCPS could appropriately give direction on.

NIWA says this policy should also recognise coastal monitoring activities (temporary or permanent) as an appropriate use of the CMA, particularly in light of policies 11 and 12.

The NZHPT seeks a new section (f) to explicitly provide for heritage and historic heritage values.

Issues Arising

- **Importance of the coastal environment**

The submissions and evidence we reviewed and heard illustrated graphically the very strong relationship New Zealanders have built up with the coast, its landscapes and recreational activities, 'the bach', and the beach over many generations. Dr Hugh Barr of the Council of

Outdoor Recreational Associations gave figures which indicated that while about 1 million New Zealanders recreate outdoors, 60% of these recreate on the coast[76].

Other submitters, referring to New Zealanders' historical use of the coast for recreation and leisure, point to the need to protect a range of values including - in addition to landscape values - sounds (and quietness), smells, darkness (freedom from light spill) along with natural features and coastal processes. Protecting these values from inappropriate subdivision and development is seen as a critical function of the NZCPS, as the current relevant polices do not recognise the particular features and character of the coastal area that distinguish it from metropolitan ones[77].

- **Growth of conflict between coastal values and coastal development**

In evidence for EDS Raewyn Peart illustrated with a photographic presentation[78] the history of small beach settlements which began to appear around the coastline before and after World War 2, and the exponential increase in their number, scale and prominence in the last two decades. This trend is evident in many localities in both North and South Islands but the greatest pressure can be seen on the east coast of the northern North Island. Instead of being subservient to the natural coastal environment many new developments have become statements of their own, eclipsing the scenic and coastal values that have so enriched New Zealand coastal enjoyment in the past.

Evidence was also presented of large scale coastal developments and plan changes proposed or pending at Ocean Beach in Hawke's Bay[79] which is currently characterised only by a historic beach settlement and small lot subdivision; along the Maunganui Ocean Beach Drive[80]; in Taranaki[81] and on Waiheke Island[82].

The Board also heard evidence of a small number of developments which have successfully and sensitively combined development in the coastal environment for residential and holiday purposes with protection of coastal values, a wetland open space, wildlife, outstanding natural features, historic heritage, substantive tree planting and sites of importance to mana whenua[83].

The Board found the evidence compelling however that rapidly increasing conflict between quasi-urban development in the coastal environment is resulting in destruction of coastal values in many significant or outstanding areas, despite the provisions of the NZCPS 1994 and contrary to s6 RMA. Our conclusion is that the relevant policies must give a clearer direction to all decision makers in the coastal environment as to how the relevant RMA provisions must be given effect to than the proposed NZCPS does.

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[76] #397 Barr.
[77] #532 Protect Piha Heritage Society, Coney.
[78] #147 EDS. Peart. Photographs were taken by Craig Potton, the renowned New Zealand photographer from a helicopter on a very clear day. Ms Peart has worked extensively on issues to do with New Zealand's coasts including being the author of several important texts including: *Beyond the Tide; Integrating the Management of New Zealand's Coast:* EDS Publication 2007; *The Community Guide to Coastal Development under the Resource Management Act 1991* EDS Publication 2005; *The Community Guide to Landscape Protection under the Resource Management Act 1991* EDS Publication 2005. Ms Peart's presentation is included as Appendix C.
[79] #63 Future Ocean Beach Trust Inc.
[80] #365 Sandy Beach Walkers Group, Tauranga.
[81] #479 The Bell Block and District Residents Society Inc.
[82] #301 Waiheke Island Community Planning Group.
[83] #398 Williams Land Company, #147 EDS (Matauri Bay).

The Board also agrees with those submitters (EDS, Meridian and many others) who feel that, as currently drafted, policy 14(a) may increase the pressure on the coastal environment by requiring councils (and encouraging private developers) to actively identify land appropriate for development. As drafted the policy threatens a gold rush of developers for the appropriate land.

- **The requirements of s6 RMA**

In his evidence Mr Greg Hill (Planning Adviser to EDS) said that as the policies in the NZCPS must be 'given effect to' (s63(2) RMA) in regional and district planning documents, it is important that they are directive and clear. In his opinion the proposed NZCPS provisions are neither and will result in continued sporadic, ad hoc, and incremental development leading to degradation of further areas of the coastal environment with high natural character, high landscape and/or high indigenous biodiversity values.

Mr Hill further gives his professional opinion that policy 14 (by requiring policy statements and plans to identify where development of the coastal environment is appropriate) will demand significant resources of local governments which will end up using different methodologies, approaches and criteria. Processes are likely to be lengthy, expensive and contentious, particularly at the local level, ending up with little improvement to the current situation where the coast is open to subdivision and development with little effective protection.

He suggests that the Board should recommend to the Minister of Conservation that:

- a national assessment of the New Zealand coast to identify areas of high natural character and outstanding national landscapes and that these areas should be incorporated into the NZCPS as a schedule; and
- design guidelines for coastal development should be prepared and incorporated into the NZCPS by reference[84].

A similar point was raised by Mr Walbran, Chair of the Regional Strategy and Planning Committee of the ARC, who pointed out (as did a number of submitters) that no methodology or assessment techniques have been developed to reduce the costs of identifying nationally significant areas as set out in s6 RMA.

While we agree that a national assessment of areas of high natural character and outstanding national landscapes and features would be quicker, more efficient, more cost-effective and result in a better and more uniform outcome than requiring each authority to develop its own methodology, the Board is aware that such a recommendation may be outside its terms of reference. Nevertheless, at this stage we draw attention to the practical (and logistical) difficulties in requiring each of the 86 planning authorities to determine what is nationally significant in its area and return to the issue under policies 32 and 36.

- **Does policy 14 of the draft NZCPS adequately reflect RMA provisions?**

Policy 14(a) is concerned with identifying 'appropriate' areas in the coastal environment for subdivision and the development of subdivided land, to provide dwellings or commercial premises. Policy 14(b) is concerned with identifying areas where subdivision and

[84] #147.

development, of specified types, will 'not be appropriate'. Policies 14(c)(d)(e) and 15 provide for various urban forms of subdivision.

Like a number of submitters we have considerable difficulties with policies 14 and 15 which:

- focus on urban development and do not deal with the sprawling 'lifestyle' development which has compromised some areas of the coastal environment;
- are driven by urban design considerations (particularly policies 14 (c)-(e) and 15) providing strong support for new development of a particular type and design in the coastal environment; and
- do not address the rapid expansion of existing coastal settlements, some of which have been overwhelmed by inappropriate subdivision, use and development resulting in development no longer being subservient to natural character and coastal values.

- **Form, location or form and location?**

Some submitters (such as Meridian Energy[85]) question whether the NZCPS should be concerned with identifying appropriate locations for development when the focus of s6 of the RMA is on 'forms' of use, development, subdivision, rather than appropriate and inappropriate 'locations'.

Counties Power however considers:

> … policies 14 and 15 artificially separate form and location. The two aspects of development as the company sees it are intrinsically linked when assessing the environmental effects of a development. The majority of activities to be assessed under the RMA instruments will combine form and location in variable ways. For every location has a differing ability to absorb change and/or development of different forms. Decision-makers will need to determine whether a proposal incorporates an outcome which involves design sympathetic to the location. As such, the NZCPS should encourage these two design factors to be dealt with in an integrated manner as an integral part of the design process.
>
> The independent review of the operative NZCPS recommended that there was a need to consider the degree to which the NZCPS provides guidance on what is appropriate and what is inappropriate development. Achieving sympathetic outcomes is the desired outcome and this is not best served by policies which seek to artificially separate design factors. As such, policies 14 and 15 should be amended to recognise that form and location must be considered in an integrated manner[86].

Williams Land also considers policies 14 and 15 should be put together, as location and form inform each other[87]. What may be appropriate in one place may be totally inappropriate in another, and whether or not anything should be there at all is a question that rocks backwards between form, location and scale and, at the end of the day, overall appropriateness. The real question to be asked is where does the balance lie? Mr Williams considers limiting scale, form, and density, is a more desirable means of achieving preservation of natural character

[85] #445 Foster.
[86] #358 Coste. See also #378 Auckland International Airport.
[87] #398 Williams.

and the protection of outstanding landscapes and features than 400 metre setbacks (as an example) i.e. by ensuring the scale of a development does not overwhelm or dominate a bay or ensuring that the character of a landscape is affected only to a minor or moderate degree[88].

One council expresses support for the planning outcomes of the policy but notes that it omits to address 'scale' and 'design', although these concepts have been included in policy 33. Another council says that policy 15 should focus on determining the appropriate capacity and character of development in the coastal environment.

The Board however found these arguments somewhat academic. Many submitters are discussing design issues whereas policy 14 should contain fundamental matters as to inappropriate subdivision, use and development in the coastal environment. 'Form' as such is not recognised in the legislation, specifically and neither is location. Auckland International Airport Inc agrees with other submitters that form and location should be integrated and that the form of subdivision, use and development will determine in part where they should be located. But such matters only come into play when RMA issues have been addressed and where they take place (location) unfolds from the value judgements around inappropriate subdivision use and development.

The provisions of ss6 and 58 RMA and the objectives of the NZCPS should form the statutory basis for the policy. Section 6(a) seeks to protect the natural character of the coastal environment from 'inappropriate subdivision use and development' as a matter of national importance. Section 6(b) requires the protection of outstanding natural values and landscapes from inappropriate subdivision, use and development, and s6(f) the protection of historic heritage – also from inappropriate subdivision, use and development. Section 58(a) requires as a national priority the preservation of the natural character of the coastal environment including protection from inappropriate subdivision, use and development; s58(b) the protection of characteristics of special value to tangata whenua, and s58(c) activities involving the subdivision, use or development of areas of the coastal environment.

- **Appropriate' subdivision, use and development?**

Infrastructure company interests and some councils ask why policy 14(a) focuses on 'dwellings' or 'commercial premises' as appropriate for location in appropriate areas of the coastal environment. They see no compelling reason why these two particular activities should be singled out and point out that to do so denies other uses appropriate to a coastal environment including (for example) airports, ports, scientific research stations, pipelines, marine facilities, and transmission networks[89]. We agree there is a broader dimension for 'appropriate' (and inappropriate) activities, particularly built development.

- **The 'appropriate locations' of 'appropriate development'**

Some submitters (for example Meridian Energy[90]) considers that policies 14(a)(b), 16 and 33 are particularly problematic as they require a sophisticated and expensive evaluation of a whole region or district in order to identify areas within the coastal marine area where specified types of development will be 'appropriate' and 'not appropriate'.

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[88] Ibid.
[89] See *National Policy Statement on Electricity Transmission*, Ministry for the Environment, March 2008. Cited in submission # 392 Allan and #416 EECA.
[90] #445 Foster.

This raises questions of expense (a concern of many councils, particularly those with a small rating base) and delay. It may take more than a decade for the evaluations to be completed and the results incorporated in plans and policy statements by the statutory process. If the protections required by ss6 and 58 of the RMA are delayed for that long the horse will have well and truly bolted in many sensitive areas of our coast.

Evidence was also given of some 'collaborative' initiatives - documents which span regional and district responsibilities in addition to those identified in policy 6 (Integrated Management):

- the Wairarapa Coastal Strategy - a collaborative initiative between the regional council, three district councils, and tangata whenua, supported by a series of technical reports on landscape, ecology, hazards, heritage, access, recreation, land use and development pressures, built environment and infrastructure needs;
- the Natural Character Management Areas of the Sounds in Marlborough Sounds Resource Management Plan with a description of core ecological and biophysical elements of each and a description also of the sensitivity of each management area to different types of use and development (not strictly a 'collaboration' as the Marlborough District Council is a unitary council with both regional and district responsibilities); and
- the collaboration of Christchurch City Council and Canterbury Regional Council on the question of coastal hazards.

None of these documents meets all the requirements of policies 14 and 16, but they do go some way to doing so in those areas, and also illustrate a means of minimizing cost to individual councils and to some extent reducing delays in implementation.

It is a concern that, at best, the process of research and consultation, policy statement and plan change will take several years. For that reason we recommend that these (and other) policies be amended to accord more closely with the RMA by requiring 'all decision-makers' to achieve its purposes by implementing the policies irrespective of progress on incorporating them in regional policy statements and regional and district plans. The evidence we received on the current state of some parts of the coastline suggest that it has been too often overlooked that 'all persons exercising functions and powers under' the RMA are bound by the provisions of Part 2 RMA irrespective of the contents of regional and district planning documents.

- **Consolidation of subdivision, urban use and development in the coastal environment**

Both ARC[91] and Wellington City Council[92] referred to the need for urban containment policies in the metropolitan context and provided evidence of the steps each has taken to achieve a compact urban form and to avoid peri-urban sprawl in the coastal environment, and to intensification of waterfront development in the urban coastal environment (and CMA) as one means to achieve this. The ARC supports the principle of identifying areas where

[91] #364 Coombes.
[92] #64 McKay.

development is appropriate and inappropriate which it has applied in its Regional Growth Strategy 1999 and the Metropolitan Urban Limit in the Regional Policy Statement (RPS).

Auckland International Airport and others identify that in policy 14(e) however there seems to be no recognition of enabling a suitable rate of development for the larger cities and the need to take into account growth. They make the point that allowing new areas of intensive development may be desirable if that retains other areas as open space. We concluded that that issue should be given consideration.

- **Sprawling and sporadic subdivision, use and development**

A number of councils, infrastructure companies and property interests submitted that avoiding ribbon development (which we take to mean either sprawling or sporadic development) as covered in policy 14(f) is simply good planning.

The evidence is compelling[93] however that, in the coastal environment at least, good planning principles have not been sufficient to curb ribbon development along or the coast and that such development is still contemplated.

Clutha District Council is concerned that policies 14 and 15 are remarkably specific and will cause a number of restrictions on decision making at a local level. As an example Mr Brass identified that for 5-10 kilometres in the district's Coastal Resource Area from Taieri Mouth (which is a settlement essentially developed) onwards down the coast, policy 14(f) would require ribbon development along transport corridors to be avoided. And yet by allowing rural subdivision in that area where relatively low natural values exist (rather than at Papatowai, and Jacks Bay which have higher landscape and natural values) such a development would have less adverse effects on s6 values[94].

But rather than have a classic sprawling coastal development which does not retain views and access to the coast, a better option may be to look at a new well designed settlement inland, or clusters that can then better be provided within open rural space.

We agree with those submitters therefore who argue that continued and accelerating residential development along a narrow (and sometimes fragile) coastal strip calls for a specific policy direction.

- **An urban design focus**

Several submitters criticised policies 14 and 15 for containing a number of criteria that relate to urban design principles and liveable urban settlements in the coastal environment but which may not be applicable in every district or locality. We agree with Ms K Coombes[95] of the ARC who said:

> These urban design issues would be more appropriately addressed in the national policy statement on urban design which the Ministry for the Environment is currently developing.

[93] #147 EDS particularly Peart and the photographs of C. Patton.
[94] #145.
[95] #464.

Manukau City Council and EDS meanwhile both tabled the published *Coastal Design Guidelines for NSW*[96]. We consider that such a document for New Zealand's coastal environment could most usefully sit alongside the NZCPS and have included it as Appendix D for those interested to access in the interim. It discusses issues like forms of settlements, the type of developments in each location (coastal cities, towns, villages and individual dwellings), the desired settlement patterns, and the boundaries of urban settlement. Manukau City would like in the future to see 'subdivision, use and development' replaced by settlement patterns.

We recommend addition of a provision in an amended policy which incorporates a coastal design guidelines document by reference.

- **Separate policies on the coastal marine area and other parts of the coastal environment**

We conclude that there is a need for separate policies on the coastal marine area and other parts of the coastal environment. We find the approach in policy 14 a good start, but propose to go back to some of the wording in the 1994 NZCPS and to bring in policies 25 and 26 on the occupation of space.

We also conclude that is a need to have a higher hurdle for subdivision and development on land given its potential effects. Those effects are not just on land but also on the CMA. Accordingly, we reverse the order of the policies for the use and development of the CMA and the coastal environment generally. In enabling land use in the coastal environment, new policy 9 requires 'ensuring that built development does not compromise activities that have a functional need to locate and operate in the coastal environment' and also accord with the policies in the NZCPS.

- **The EDS approach and other proposals**

We found the approach in the EDS provisions, and the evidence of the planning and other witnesses in support of them, of considerable assistance and a good starting point. So too were submissions and evidence from many other sources, including Franklin District Council, Manukau City Council, the Ocean Beach Trust and Piha Heritage Society.

EDS and others supporting them initially wanted a moratorium on coastal rural area subdivision (possibly involving a 100 ha minimum lot size) until better plan provisions are in place. Their position then changed to seeking policies for land outside the coastal marine area:

- to protect areas of high natural character and outstanding natural features and landscapes from residential, rural residential development and related development - 'no go' areas; and
- to require other areas to adopt spatial planning (location) and design approaches.

In support of its approach EDS said that environmental compensation and biodiversity offsets are acceptable provided the subdivision and development proposals are in the right place, designed well and with the right lasting protections e.g. planting for houses, covenants.

[96] #123 Coastal Council of NSW.

We agree that strategic and spatial planning is needed, including in the CMA, to ensure that areas remain free from certain types of development to protect natural and other values. We also see that there is a difference between residential, rural residential and other built development, including its supporting infrastructure, and possible uses such as for recreation, farming, vineyards, arable land and commercial forests.

- **Our approach in new policies 8-10**

In outline, our approach in new policies 8-10 comprises the following national priorities:

- matters decision makers are to recognise, avoid, ensure or otherwise act on when considering protection, subdivision, use and development activities in the CMA (new policy 8);
- the avoiding of activities that will have adverse effects on particular values, reflecting the values identified elsewhere in the NZCPS (new policy 9); and
- outside those areas avoiding inappropriate subdivision, use and development, with the policy approaches to achieving that set out (new policy 10).

New policy 11 then contains policies to ensure the giving of effect to the above. We also have a new policy 2 that deals with the position where amendments have not been proposed, notified or made operative to planning documents to give effect to the NZCPS. Policy 2 then requires decision makers to consider the objectives and policies of the NZCPS when deciding whether to notify an application or a notice of requirement where there is a discretion not to do so, and exercising discretion on whether to apply the permitted baseline under s104(2). A further policy 2 requirement is to give additional weight to the objectives and policies of the NZCPS when considering applications, notices of requirement and private plan changes.

We recognise that there are many possible policy approaches or paths to achieving the above, such as the work currently being undertaken on coastal strategies. However, such policy approaches need to start from the viewpoint of sustainable management and the requirements of the RMA. Policy 10 recognises that.

We recommend that policies 14, 15 and 16 be substantially redrafted and become rewritten new policies 8, 9, 10 and 11 as follows:

> **Policy 8 Activities in the coastal marine area**
>
> **In considering protection, subdivision, use and development activities in the coastal marine area it is a national priority for all decision makers to:**
>
> **(a) recognise the need to maintain and enhance the natural character and public open space and recreation qualities and values of the coastal marine area;**
>
> **(b) recognise that the proportion of the coastal marine area under formal protection is small;**
>
> **(c) recognise that there are activities that have a functional need to be located in the coastal marine area;**
>
> **(d) recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there;**

(e) **avoid the adverse effects of extractive activities on areas in the coastal marine area that are ecologically or geologically sensitive;**

(f) **ensure the efficient use of occupied space, including by requiring:**

that structures be made available for public or multiple use wherever reasonable and practicable; and

the removal of any abandoned or redundant structure that has no heritage, amenity or reuse value; and

(g) **buffer or otherwise protect areas and sites of significant indigenous biological diversity or historic heritage.**

Policy 9 Avoiding adverse effects on areas

In the coastal environment it is a national priority for all decision makers to avoid activities that will have an adverse effect on:

(a) **areas of high natural character;**

(b) **outstanding natural features and natural landscapes;**

(c) **nationally significant biodiversity;**

(d) **nationally significant surf breaks and active dunes;**

(e) **known nationally significant geomorphological areas;**

(f) **significant historic heritage;**

(g) **land or waters held or managed for recreation or amenity purposes, including public access; and**

(h) **land or waters protected by statute such as protected open space, reserves, marine reserves, national parks, and wildlife refuges.**

Policy 10 Avoiding inappropriate subdivision, use and development

(1) **In addition to the matters identified in Policy 9, it is a national priority for all decision makers to avoid inappropriate subdivision, use and development in the coastal environment, including by:**

(a) **encouraging new built development, and subdivision that enables such development, to locate outside of the coastal environment where this would better achieve the purposes of the NZCPS;**

(b) **ensuring that built development, and subdivision that enables such development, is in a location and of a form that:**

(i) **does not extend along the length of the coastal environment outside of urban areas;**

(ii) **is not of a sprawling or sporadic nature;**

(iii) **provides for public access adjacent to, to and along the coastal marine area;**

(iv) where possible, is set back from the coastal marine area and other water bodies to protect the natural character, open space, public access and amenity values of the coastal environment;

(v) buffers or otherwise protects sites of significant indigenous biological diversity value or historic heritage;

(vi) avoids areas which are sensitive to the visual impacts of development including headlands and prominent ridgelines; and

(vii) accords with the policies in this NZCPS;

(c) ensuring that built development does not compromise activities that have a functional need to locate and operate in the coastal environment; and

(d) recognising the needs and values of tangata whenua for papakainga[97], marae and associated developments.

(2) Decision makers must also consider possible approaches and options for enabling subdivision, use and development that achieves (1) by addressing relevant matters, including:

(a) consolidating built development within and close to existing coastal settlements and urban areas subject to the maintenance and enhancement of the existing intrinsic coastal qualities of those settlements and urban areas;

(b) identifying where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

(c) establishing the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;

(d) ensuring new subdivision, use and development is integrated with the surrounding uses of land and the coastal marine area; and

(e) future proofing subdivision, use and development from coastal hazards and climate change as required in the objectives and policies of this NZCPS.

(3) In addition to (1) and (2), where new coastal settlements or extensions to, or more intensive development of existing coastal settlements, are proposed, all decision makers must:

(a) ensure that the development maintains the visual and environmental dominance of landscape and its ecological systems;

(b) encourage developments which integrate with existing settlement;

[97] Papakainga : as defined in the Glossary to the recommended NZCPS (2009).

(c) promote forms of development that enable walking and cycling as transport choices, and where appropriate public transport;

(d) provide for the creation and protection of public open space, ecological linkages between the coast and the hinterland, and public views of the coast;

(e) ensure forms of development which contribute to climate change mitigation and adaptation; and

(f) apply the provisions of any national coastal design guidelines.

Policy 11 Giving effect to Policies 8 – 10

(1) When considering resource consent applications, notices of requirement for designation and private plan changes to enable subdivision, use and development in the coastal environment, all decision makers must apply the above policies 8 to 10.

(2) In preparing regional policy statements and plans all decision makers must:

(a) consider whether, where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment at a regional and district level, to give effect to:

(i) the national priorities in policies 8 to 10;

(ii) the objectives and policies in this NZCPS as a whole; and

(iii) any national coastal design guidelines; and

(b) identify areas of the coastal environment where particular activities and forms of subdivision, use and development:

(i) are inappropriate;

(ii) may be inappropriate without the consideration of effects through a resource consent application, notice of requirement for designation or Schedule 1 of the RMA process; and

(iii) provide the certainty of protection from inappropriate subdivision, use and development in these areas through objectives, policies and rules restricting or prohibiting activities in defined areas for the life of a plan.

(3) All decision makers must ensure complementary approaches and techniques that are the basis of any decision making under the RMA, such as urban growth strategies, coastal strategies, structure plans, standards and guidelines, are consistent with the RMA and this NZCPS.

Policy 17 Crown interest in particular activities on land of the Crown in the coastal marine area

Policy statements and regional coastal plans shall have regard to the Crown's interest in making land of the Crown in the coastal marine area available for:

(a) infrastructure of national importance; and

(b) renewable energy generation;

where such use and development would meet the purpose of the Act.

Policy 18 Crown interest in aquaculture activities

Policy statements and regional coastal plans shall have regard to the Crown's interest in making opportunities available for aquaculture activities in the coastal marine area, where such use and development would meet the purpose of the Act.

Policy 23 Defence

Regional coastal plans should make provision for use of land of the Crown in the coastal marine area for defence purposes.

NZCPS (1994)

The current provisions in the NZCPS (1994) address a series of policies around Crown interests as then defined which relate to policy statements and regional coastal plans:

- land and areas administered by the Department of Conservation so that their status will be taken into account in deciding resource consents;
- public notification of an application for resource consents when land and areas under the Conservation Act 1987 may be affected;
- removal of abandoned or redundant structures;
- reclamations in the CMA not to include contaminants or adversely affect the CMA;
- provisions for use of the CMA for Defence purposes under the Defence Act 1990;
- alternatives to what the applicants seek to do and their reasons for making the specific choice should be required for applications for coastal permits relating to:-
  - reclamations
  - removal of sand, shingle, shells or other materials
  - rights to occupy.

- taking into account the Principles of the Treaty of Waitangi (Te Turiti o Waitangi) in lands of the Crown in the CMA.

- **Scoping Paper**

In addition to the s42A report, we also had regard to the scoping paper for the *Crown's Interest in Lands of the Crown* (2006)[98]. That identifies that in the years since the NZCPS was first published, two issues in particular have arisen which relate to and impact on the Crown's interest in lands of the Crown in the CMA namely:

- the equitable and efficient allocation of coastal space, for both current and future generations; and
- issues around the provision of key national infrastructure in the CMA to support New Zealand's transport, energy, water and telecommunications networks.

The recommendation was made that changes to the NZCPS include:

Objectives

- equitable and efficient allocation of space;
- providing for appropriate use, development and protection in the CMA while recognising the preference is for the public to have free access to the coast;
- benefits of key national infrastructure networks in the CMA;
- better integration across the MHWS boundary.

Policies

- benefits of the provision of key national infrastructure networks;
- provision of guidance to regional councils about the factors to take into account when allocating coastal space; this would include retaining the concepts of not allocating space to activities which can more appropriately be located on land, the removal of unwanted and abandoned structures and ensuring that the public's preference for the coast to be predominantly open space is recognised;
- integration across the Mean High Water Spring line, especially in relation to land-sea infrastructure.

The s32 Report

The s32 report preceding the release of the PNZCPS (2008) records that in order to achieve the objective of enabling people and communities to provide for their well being, it is appropriate to provide for use and development in the coastal marine area where is consistent the purpose of the RMA. It states some infrastructure of national importance and some forms of renewable energy generation, such as tidal power, can only locate in the coastal marine area - aquaculture activities also. It is therefore appropriate to recognise the Crown's interest

[98] *NZCPS Review. Scoping paper for Crown's interest* [sic], *in lands of the Crown,* March 2006, 9-11.

in the location of these activities in the land of the Crown in the coastal marine area when it is consistent with the purpose of the RMA. The report concludes the policies are:

- effective in providing guidance on the Crown's interest in particular activities on land of the Crown in the coastal marine area;
- efficient as they generate greater benefits than costs.

The s42A Report

The authors of this report identify that the RMA provides in s58(d) for the NZCPS to state:

> objectives and policies about … The Crown's interests in land of the Crown in the coastal marine area.

'Interests' are not defined but the authors of the report consider that given that they are interests 'in land of the Crown', they were understood in the preparation of the NZCPS to be the interests the Crown has 'as a landowner'. This is because where the RMA refers to an interest or interests in land it consistently refers to a property relationship. They identify references to an interest in land are frequently in conjunction with other terms relating to property. These include references to 'an estate or interest' in ss2, 185 and 198; references to 'right, interest or title' in s354 and 'right, title or interest' in ss355, 355AA, 355AB, and 417, while specific forms of interest in land referred to in the Act are a leasehold interest (ss185, 186, 198, 355AA) and a chattel interest (ss413, 415).

The report distinguishes between the Crown's interests in land of the Crown as being distinct from the functions, duties and powers of the Crown and its ministers under the RMA, for:

- functions, duties and powers are expressly conferred by the Act;
- interests are recognised rather than conferred as their origins lie elsewhere.

The report goes on to identify that the statutory basis of the Crown's interests in land of the Crown in the CMA is set out in the FSA, which now vests the public foreshore and seabed in the Crown. The nature of the Crown's interest in land of the Crown in the CMA, identified in s13(1) FSA, is **'full legal and beneficial ownership'**. This is not encumbered by **'any fiduciary obligation, or any obligation of a similar nature, to any person'** (s13(4)). It is subject to other constraints, however. No part of the public foreshore and seabed may be alienated or otherwise disposed of, except subject to an Act of Parliament, or the vesting provisions for reclaimed lands of the RMA (s14 FSA). General rights of access and navigation across the Crown's land are also provided for by the FSA, along with various existing use rights including those customary rights provided for in s13(3).

Crown ownership of public foreshore and seabed is seen to be vested to give effect to the object of the FSA, set out in s3:

> …to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders in a way that enables the protection by the Crown of the public foreshore and seabed on behalf of all the people of New Zealand, including the protection of the association of whanau, hapu, and iwi with areas of the public foreshore and seabed.

The report considers the Crown's objectives or policies about its interest in land of the Crown in the CMA should therefore give effect to this object. This is understood to mean that the NZCPS could state the Crown's objectives as landowner and provide policies on how the Crown intends to exercise its ownership interests. The same consistency is expressly required by the FSA when the Minister of Conservation exercises 'functions, duties, and powers of the Crown as owner of the public foreshore and seabed'. In doing so, the Minister must have particular regard to the object identified in s3 above of the FSA (s28).

The s42A report considers that the opportunity for the NZCPS to state objectives or policies about the Crown's interests in land of the Crown is one to state preferences as landowner on these matters including the approach that should be taken to particular activities or kinds of activity. Its value therefore lies in communicating those preferences to the regional councils to which most decision making on use, development, and protection of the CMA is delegated.

Thus infrastructure of national importance and renewable energy generation are singled out as the Crown's interest in making land available for these activities which policy statements and regional coastal places must have regard to. Policy 18 differs slightly, in that instead of the Crown's interest in making land available through policy statements and regional plans, they shall now make 'opportunities' available for aquaculture activities. As for Defence matters, the s32 report points out that certain defence activities (i.e. naval exercises) can only take place in the CMA; it is therefore appropriate for regional coastal plans to make provision for lands of the Crown to be used in this way.

Submissions

Policy 17 Infrastructure and renewable energy generation

- **Individual concerns**

A considerable number of individual submitters provided submissions which had the implications of a mantra about them and did not give any guidance to our assessment. One submitter considered that the approved activities give no credence to the importance of historical and spiritual values. Another opposed the exemptions (infrastructure and aquaculture) implicit in the policies for specific activities which have the potential for major adverse effects. Yet another sought an amendment which required regional statements and plans to have due regard to the natural character, features, processes and indigenous biological diversity of the coastal environment. Several submitters required the removal of the policies because the people they represented did not see what is achieved that was not already provided for in the RMA. Mr M Jacobson who had authored the *Review of the NZ Coastal Policy Statement – Coastal Hazards 2004*, tabled a substantial paper entitled '*Crown Ownership Interest'*, including a number of amendments reflecting those Crown interests[99]. We return to the issue of 'Crown ownership interest' below.

- **Iwi interests**

Maori interests provided a mixed reaction to the policies. Te Atiawa proposed a specific recognition of its interest in aquaculture. Ngati Kahu wishes to amend the policy by requiring the words should be 'taken into account' and not 'have regard for' be added. Mr Parata, from Otago, however, considered that in commercial matters the ownership of other Crown

[99] #319, #321.

interests in the land should not influence decision making under the RMA. The Waimarama Maori Committee considered that since the Treaty of Waitangi delegations are a Crown responsibility, the policy should be amended to include a clause (c) to read 'meeting its obligations under the Treaty of Waitangi'. Kahungunu identifies that tangata whenua interests in marine resources will always exist and the tribes need to ensure that these are not traded away to the Crown. Accordingly the Crown/Maori partnership should be recognised by giving full recognition to local values that might be impacted upon by Crown interests in the policy. The Hauraki Maori Trust Board however, considers the policy should be deleted. It considers that the Crown's interests, as owner of the land in the CMA, has derived only from the FSA 2004. That Board asserts that the Crown is in breach of Hauraki rights under the Treaty of Waitangi 1840, common law, and human rights law. Further, policies 17 and 18 espousing the Crown's interest provide no added value to the NZCPS and should be deleted.

- **Conservation interests**

The NZFBS and some of its branches sought to restructure policy 17 to specify the caveat that such Crown interests must still be subject to the integrity and functioning of coastal processes and to indigenous biological diversity, i.e. the Crown must be subject (like all developers) to the other policies in the NZCPS. ECO however was supportive of a clearer indication of Crown interests in the CMA; as an environmental organisation it sees the Crown as the overall manager of the CMA, while acknowledging implementation of international obligations is principally shared between the Minister of Conservation and the regional councils. ECO considers that through the NZCPS, private interests needs to recognise the various interests of the Crown and be aware that it is simply not an allocated space which can be developed for other uses.

The Whangarei Harbour Watchdog sought deletion of the policy, while the Bay of Plenty Conservation Board supported the policies in part because there was not enough guidance as to how the activities mentioned were to be addressed at the local and regional level. The Wellington Conservation Board raised the question of whether the Crown is bound by the NZCPS, e.g. in the case of harnessing more energy. The Friends of Nelson Haven sought to modify the thrust of policy 17 and to qualify each clause with 'where appropriate'.

- **Council interests**

LGNZ as representative of all councils, considered the policies should be deleted because it is not clear what they achieve beyond that which is already provided for in the RMA. Nor do the policies give any guidance as to what council plans should provide for. The authority also questions the utility of providing for Crown interests over others.

The regional and local councils too were generally very negative about the provisions. Environment Canterbury considers both policies illustrate the worst features of imprecision – they are incapable of reasonable interpretation as to the actions necessary to give effect to them and consequently are incapable of implementation and monitoring. And further, what do the words 'shall have regard to' mean? Environment Southland considers the Crown has the opportunity to seek a plan change or introduce new legislation as it did for AMAs for aquaculture and these policies are unnecessary.

Nelson City Council considers the policy is uncertain and therefore of doubtful value. Several councils query what constitutes 'infrastructure of national importance' and who makes the decision that it is? The Hurunui District Council opposes the policies because they have the

potential to undermine planning instruments and they create an uneven playing field. Manukau City Council acknowledges that there is currently no ability to designate coastal marine areas in order to permit necessary public works. This can legitimately apply to infrastructure of both regional and even local significance. Occupation of the CMA is currently identified on a 'first come first served' basis and in this council's opinion there is no simple mechanism for displacing privately owned structures where this is required to accommodate publicly owned infrastructure. Manukau suggests that infrastructure projects of national significance should be subject to the same regulatory requirements as other resource management activities. It does not want Crown interests to automatically take precedence over the public interest.

The Waikato District Council also opposes the policy because it appears to give preference to infrastructure projects on Crown land. Land ownership should not be considered in RMA documents and planning should be effects based. The Clutha District Council considers the policy should be removed entirely or amended so that the issues raised are matters to be considered when setting policy and making decisions at a local level.

Only the Far North District council gave its full support to the notion of identifying the use of Crown land in the coastal environment, not just the CMA, particularly in relation to renewable energy generation. And it considers that the NZCPS should require that areas within the coastal environment which are the most appropriate for renewable energy generation be demarcated.

- **Infrastructure interests**

The infrastructure interests strongly support policy 17. The companies named ports, ferry terminals, airports, road/railway systems as infrastructure of national importance and included facilities of regional importance such as city waterfronts in the policy. Specifically, the companies variously sought that:

- policy 17 be expanded to encompass the coastal environment and that additional policy provisions are included to ensure the development, maintenance and protection of a nationally significant transport infrastructure be appropriately provided for; the same applies to renewable energy generation and infrastructure associated with it such as transmission connections and the location of nationally important facilities such as ports and refineries;
- the narrow scope of the policy is not sufficient to redress the imbalance in the NZCPS overall which does not enable use and development but favours protection of natural values; Meridian states it is not asking that renewable energy generation and transmission be granted some sort of 'fast track', but it does expect that the statement should recognise the true nature of the issues facing New Zealand's energy generation and should specifically enable that activity in the coastal environment in a manner consistent with sustainable management, it suggests amendments both to infrastructure and renewable energy (in the coastal environment) not the coastal marine area as sanctioned in s58(d).
- the NZCPS should also acknowledge the country's current ports as of national importance, namely Northport at Whangarei, the Ports of Auckland, the Ports of Tauranga, Eastland Port at Gisborne, the Port of Napier,

CentrePort at Wellington, Port Taranaki, Port Nelson, Port Marlborough, the Port of Lyttelton, PrimePort at Timaru, Port Otago at Dunedin, South Port at Invercargill, the Port of Greymouth and Buller Port at Westport, all being of national significance for port activities and that they shall be protected from inappropriate subdivision, use and development around or adjacent to them, including by:

(a) ensuring that activities in the coastal environment do not adversely affect these ports; and

(b) avoiding, remedying or mitigating adverse effects of other activities on the access to and use of the ports.

These companies consider there also is a need for national standards to be put in place to provide guidance to authorities.

Policy 18 Aquaculture

- **Individual and community concerns**

Most of the individual submitters repeated what they had stated in their submissions to policy 17. Their consensus were echoed by further submitters. One opposed any additional aquaculture in the Bay of Islands - with so much growth settlement and recreational use of the Bay it would be obtrusive. One submitter suggests there should be no more space allocated for aquaculture management areas (AMAs) until the seabed beneath the farms is cleared up. Another submitter considers that it is not appropriate for the Crown to promote individual economic activities in the marine environment and it is not clear why aquaculture was chosen. Two other submitters (husband and wife) indicate they opposed any special treatment for aquaculture which should stand on the same grounds as any other intensive industry which required the use and occupation of a scarce and valued resource with competing values and needs. They spend a lot of time visiting the nation's remote spots and are appalled at the quiet, rich ecosystems throughout New Zealand that are now visually and physically dominated by marine farms.

The Whangarei Harbour Watchdog Society seeks that the policy be deleted because while aquaculture has general national benefit, the more specific benefit is incurred by those private enterprise concerns actually involved in the activity. A range of other activities in the CMA, in particular activities associated with tourism and leisure, have significant economic benefits while not involving allocation of large areas of space and the adverse effects that aquaculture involves. Adverse effects include interference with natural water flows producing siltation; loss of natural habitat and associated loss or reduction of benthic communities; displacement of or disturbance to wildlife; displacement of or impediment to recreational activities; and unacceptable visual intrusion. Any expectation by the industry, and by regional councils, that there is substantial scope for easy large-scale expansion of the industry in 'populated' inshore and harbour areas is, in the Society's opinion, fundamentally misguided.

- **Council interests**

The regional and district councils that submitted were generally unhappy too with policy 18. As noted above Environment Southland considers that the Crown wishes for opportunities to be made available for aquaculture it has the same ability as anyone else to request a plan

change for any particular area to go through the process of creating an AMA. The Hawke's Bay Regional Council however supports policy 18 as proposed, but if amended as a consequence of any other submissions, suggests that the message should not become one meaning councils actually become the 'agencies' responsible for creating these opportunities for aquaculture.

The Clutha District Council considers the proposed provisions generally go well beyond what a coastal policy statement should cover. They have more prescriptive detail than is appropriate in a national level document. It would be unacceptable for such important decisions about the future of communities to be imposed arbitrarily from a national level, and such an approach would make a mockery of this council's LGA and RMA consultation processes. In terms of aquaculture, the territorial authority most experienced in managing aquaculture, Marlborough District Council identifies that the Aquaculture Reform Act 2004 introduced a new strict prescriptive management regime for the activity. Regional and district councils have clearer roles and responsibilities for managing the environmental effects of marine farms including fisheries and other marine resources. Instead of ad hoc decisions, AMAs are now identified early in the process and involve all affected parties, including people and communities. Both the Departments of Fisheries and Conservation have roles in implementing aquaculture reforms and the latter has quite specific duties relating to allocation of the resource. Marlborough queries therefore, (as does Environment Waikato), the Crown's interest in making certain areas available for only certain activities.

- **Fishing and aquaculture interests**

As to fishing and aquaculture interests, SeaFIC opposes inclusion of activity based policies. It considers the RMA should be focused on managing effects rather than managing activities. The RMA should not be about local communities determining how best to provide for their own wellbeing or councils picking winners SeaFIC, like others, considers that policy 17 is already adequately reflected in the RMA itself: It suggests policies 17 and 18 should be deleted and one policy should be added to provide guidance on the Crown's expectations with regard to the balancing of local and national benefits and costs, particularly as they relate to infrastructure of national importance. Sanford Ltd considers allocating resources according to activity categories is unnecessarily restrictive. And while New Zealand King Salmon supports the policy and is pleasantly surprised that at long last there appears to be some legitimacy applied to aquaculture; it considers that as worded this policy is weak and directionless. Further, by including 'where such use and development would meet the purpose of the Act' further reduces the weighting of this policy as read and appears to be an unnecessary inclusion to state what is an obligatory consideration that all local authorities will be aware of. It suggests that the policy be expanded to consider provision for creation of new AMAs, new species, marae-based aquaculture and experimental aquaculture. Aquaculture New Zealand strongly supports the policy and identifies the Crown's interest in aquaculture is defined in 'Our Blue Horizons' document which sets out the government's response to the New Zealand aquaculture strategy and reference to it should be included here.

Greenshell New Zealand Limited considers that the policy should be strengthened so that it has the same effect as policy 23 regarding land for defence purposes, so that regional coastal plans 'shall make provision for the Crown's interest in making opportunities available for aquaculture activities', rather than the current wording which offers the lesser standard of simply 'having regard to'. Greenshell also recommends that the Crown's interest in aquaculture be footnoted (and/or included in the glossary) as being defined in the Government's 'Our Blue Horizons' document, which sets out the government's response to

the New Zealand Aquaculture Strategy. This sets out clearly for the regions where to find and interpret the Crown's interest in aquaculture activities.

Federated Farmers provided support for the policy.

Policy 23 Defence

We had no submissions on Defence or from the Ministry of Defence. We note that the Minister of Defence has an exemption from the RMA relating to either works or activities when the Minister is able to certify that they are necessary for reasons of national security.

Given the potential for significant adverse effects from some Defence activities however, we consider policy 23 is too open ended and does not assure the sustainable management of natural and physical resources. We also note that some plans already provide extensive provisions for the activities of the Ministry of Defence Department[100].

Issues Arising

- **Crown ownership interest**

The submitter, Mr M Jacobson, in an extensive submission and presentation, focused entirely on what he termed the 'Crown's ownership interest' concerning those publicly owned parts of the CMA as well as adjacent Crown land along the coast. Noting that these places hold high conservation values for both conservation and public recreation, he emphasises the fact that because the FSA formalised public ownership and aimed to preserve this public land as the common heritage of all New Zealanders it requires the Crown protect it on behalf of all the people of New Zealand. When put together with the RMA it enables the NZCPS where appropriate:

- to protect natural character (including habitats and species), maintaining public access, maintaining public open space and recreation opportunities, and restoring and rehabilitating degraded habitats; and
- to allocate suitable areas to particular activities/developments that will benefit the wider community,

in a way that cannot be done under the RMA and the NZCPS in relation to private land.

After providing a number of revised objectives, Mr Jacobson seeks a separate chapter for Crown interest policies to give transparency and emphasis to:

- policies that are primarily ownership allocation policies, in contrast to policies that regulate to avoid or minimise environmental effects; and
- to the fact that there would be two different types of policies (but with desirable overlaps).

[100] Such as the *Auckland Regional Policy Statement* of the Auckland Regional Council. See Chapter 6 *Heritage,* Chapter 7 – *Coastal Environment.*

The submitter considered that in the merging of allocation and regulatory functions under the RMA it has proved very difficult for the Minister of Conservation to exercise his/her tendering functions, and for the regional councils to exercise their coastal occupation charges functions. And he also identifies the Minister of Conservation's consent role for restricted coastal activities has proved to be very constrained by the RMA consent process[101], and there is no guidance on how, if at all, the Minister can exercise his/her consent role in a meaningful way.

In Mr Jacobsen's opinion it has become apparent that Crown landowner rights and functions generally have become submerged and largely invisible in place of legislation that focuses primarily on regulating environmental effects, and that gives the regional councils the upfront role in managing both those environmental effects and the Crown land, with no explicit guidance on how to exercise the delegated ownership role.

Mr Jacobsen said that it is not surprising therefore that, when plans and consents are considered (which have to deal with ownership functions mixed up with regulatory functions) that there is not a good understanding and appreciation by decision-makers, or in the community, of the allocation role that the Minister and councils need to play as the landowner representative on behalf of all New Zealanders, and how that role should or can be exercised.

In considering what Mr Jacobsen had to say, we returned to what are the Minister's functions, powers and duties under the RMA for the submitter's suggestions impinged on matters which are outside our terms of reference. For we are required to assess whether what is proposed lies within the requirements of the legislation. The authors of the s42A Report considered that:

> The constraint imposed by the RMA is that the Crown's ownership objectives and policies must, like the rest of the NZCPS, serve the purpose of promoting sustainable management.

We accept the nature of the constraint, but consider the emphasis on 'ownership' as the issue around Crown's interests is not what we should give emphasis to here.

We learnt that when considering the 1991 Bill to amend the RMA, the Review team at that time considered that the general procedure for Crown land and resources under the Bill, and for Crown land under other legislation, is that a Minister acting on behalf of the Crown exercises a decision making power as owner, and then submits to the normal regulatory procedures without having any special powers in respect of them. The general situation was described as a separation of the ownership function from the regulatory one. The latter is concerned with protecting the community's interest in control of externalities and sustainable management of resources, while the ownership function involves primarily questions of allocation (in the Minister of Conservation's case through the control of restricted coastal activities (RCAs) and the power of veto of those activities)[102].

In our view under the RMA the Crown is guided by what legislative powers, functions and interests it has been accorded, with the intent that it is through the exercise of these it will achieve the sustainable management of New Zealand's natural and physical resources. Any

[101] As determined by the High Court in its analysis of the RCA provisions for the *Whangamata Marina* case in 2006 (CIV 2006-485-000709).
[102] *Discussion on the Resource Management Bill*: Prepared by the Review Group. December 1990, paras 8.3 – 8.4, 34.

Crown allocation is therefore part of sustainable management, from the authority given in s28(c) RMA. It does not raise questions of a Crown 'ownership' function unprescribed.

Part 4 RMA, sets out the functions powers and duties of two Ministers of the Crown in particular. They include the functions of the Minister for the Environment (s24), powers and residual powers (ss24A, 25) power to direct preparation of plans, changes or variations (s25A), power to make grants and loans (s26) and discretion to require local authorities to supply information (s27). The functions of the Minister of Conservation under the RMA are set out in s28. They include:

(a) the preparation and recommendation of New Zealand coastal policy statements under 57;
(b) the approval of regional coastal plans in accordance with Schedule 1;
(c) the making of decisions on applications for coastal permits in relation to RCAs;
(d) monitoring the effect and implementation of New Zealand coastal policy statements and coastal permits granted by the Minister;
(e) carrying out functions under Schedule 12 relating to a recognised customary activity;
(f) processing information supplied to the Minister relating to various aspects of his/her functions (s28A).

Both Ministers of Conservation and the Environment have the power of delegation of functions, power and duties subject to exemptions in s29(1)(a) - (ga).

It is particularly worth noting at this point that RCAs, of which aquaculture may be one, are listed under functions, powers and duties and do not present as 'Crown's interests' linked to 'ownership'.

In relation to RCAs identified in policy 37 to the NZCPS 2008, the Auckland District Law Society had this to say:

> The main justification for the RCA appears to be the Crown ownership or stewardship of the coastal marine area. The retention of the final decision making power, appears to be premised primarily on ownership concerns. It is submitted that ownership should be a distinct issue, and not connected in with approval of consents under the RMA. The RMA does not deal with ownership as an indicia of decision making. Section 122(1) states a resource consent is neither 'real or personal property' and supports the approach that ownership should not be a determining factor (acknowledging non-derogation issues). The Crown Minerals Act 1991 does not conflate the two processes of consents and ownership. A consent under the RMA is treated as separate from any right or conditions on taking Crown minerals. Use of the conservation estate on dry land under the Conservation Act 1987 is specifically addressed in s4(3) RMA and otherwise under the management of the Conservation Act[103].

And under decision on proposals of national significance under s141(1)(a) under a Minister's 'Call In Powers' on matters deemed to be of national significance, if a matter relates to the

[103] #163 Palmer.

CMA, references to 'the Minister' must be read as 'Minister of Conservation' and in s141(2)(b) 'the Minister for the Environment and the Minister of Conservation'. This particular part of the RMA relates to the decisions of the Minister in question and include (inter alia) a consideration of various matters of significance, widespread concern, New Zealand's international obligations, significant or irreversible changes to the environment. Again, there is no reference to questions of the 'Crown 'ownership' interest'.

We conclude on the issue of 'Crown interest' (as it is termed in policy 17), that it does not stem from ownership of the foreshore and seabed under the FSA which suggests an all encompassing 'ownership' interest. That, as the 'Crown's interests in the lands of the Crown in the CMA' (which is the correct wording of s58(d)), that the Crown's 'interests' are wider than that of a single interest (i.e. ownership).

Crown's interests

Thus the RMA nowhere indicates what 'Crown's Interests' might be. 'Ownership' arises under the Foreshore and Seabed 2004 legislation, which has only one direct link to the RMA (customary orders)[104]. 'Interest' has been defined as:

- the fact or relation of having a share or concern in,
- a right to something, especially by law,
- a right or title, especially to a share in a use or benefit relating to property – a share in something[105].

We consider that the s42 Report in part may be correct where it identifies 'Crown interests (that) are recognised rather than conferred as their origins lie elsewhere'; thus the customary rights issue may be seen to be recognised in the RMA but not conferred as an ownership issue under it.

We consider under the NZCPS that the Crown's Ministers, through the legislation they administer, may have a concern related to the CMA on issues that relate to the RMA. Representatives of various Crown departments (CDEM, MAF Biosecurity) (as examples), and NZHPT as a Crown agent under s38 Crown Entities Act 2004 brought to our attention their interests in:-

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[104] The NZCPS may include under RMA s58(gb) 'the protection of recognised customary activities'. The objectives and policies in the proposed NZCPS fail to include any provision to implement this matter (other than in Schedule II, clause 2(b) as to rental exemption). A recognised customary activity is defined in RMA s2 as **'an activity, use, or practice carried on, exercised, or followed under a customary rights order'.**

The Auckland District Law Society (#163) submitted under the FSA, a finding or confirmation by the High Court of a territorial customary right (ss32-39), and the establishment of a foreshore and seabed reserve (ss40-45) should also be the subject of appropriate recognition under objectives and policies of the proposed NZCPS (e.g. in policies 2 or 3 or new policies). It said that policy 17 could be qualified by a reference to Crown obligations to comply with any territorial customary right determination or customary rights order made under the FSA, and implemented through the amendments under the Resource Management (Foreshore and Seabed) Amendment Act 2004. [Schedule II clause 2(b) of the proposed NZCPS recognizes one aspect of finding a territorial customary right in respect of exemption from rental liability.]

[105] The New Shorter Oxford English Dictionary, Third Edition.

- historic and cultural heritage in the CMA, how the NZCPS might both identify such interests, and how they might be linked to the mechanisms for protection under the Historic Places Act;
- tsunami and coastal hazards with CDEM giving good reason from its functions under the CDEMA why tsunami arising in the CMA should be included in the relevant policy on coastal hazards;
- biosecurity issues in order to complement the biosecurity functions agencies have under the Biosecurity Act 1993; the Biosecurity legislation and the RMA are complementary and are able to work in combination towards the common goal of sustainable management and use of natural resources; this view is particularly relevant to the CMA.

Infrastructure interests and renewable energy: policy 17(a)(b)

The s42A report identifies that the Crown is not necessarily neutral regarding the relative merits of different activities involving use and development of the CMA and it singles out infrastructure and renewable energy for particular mention. Infrastructure issues are already identified under s30 RMA as follows:

> **30 Functions of regional councils under this Act**
>
> (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
>
> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
>
> . . .
>
> (gb) the strategic integration of infrastructure with land use through objectives, policies, and methods[106]:

As to renewable energy, provision is also already made under the RMA, and through various Crown Strategies and documents identified throughout the inquiry. In addition, under s30(1) RMA, a regional council has the following function:

> (fb) if appropriate, and in conjunction with the Minister of Conservation,
>
> (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
>
> . . .

Further, in terms of the NZCPS we endorse throughout the proposed statement the recognition of and provision for a coastal environment that includes the strategic infrastructure: policy 1(b)(ix) and recommend its inclusion in the NZCPS accordingly. We also recommend the policy for integrated management of natural and physical resources encompassing the line of MHWS (which includes infrastructure): policy 6. Further, in policy 1 (d) we recommend a policy to require all decision-makers to take into account the potential of renewable resources (such as various forms of energy) in the coastal environment (which includes the CMA) to meet the reasonably foreseeable needs of future generations. And finally we recommend a

[106] 'Land' includes water and the air space above it: s2 RMA.

policy which recognises that certain activities (such as some forms of renewable energy and infrastructure) have a functional need to be located in the coastal marine area: policy 8(c).

We consider this is a more appropriate way to approach infrastructure and renewable energy interests rather than endorsing an open ended policy which provides no guidance to users of the CMA. We consider that the policies provided ensure that infrastructure and renewable energy interests are an integral part of the future functioning of the CMA.

We also note that the policy as worded with its reference to the purpose of the RMA is circular and would not advance matters.

Aquaculture: policy 18

The 2004 Amendment to the RMA introduced a new Part 7A that provides for aquaculture management areas (AMAs) and the occupation of the CMA. The Marlborough District Council notes this is a very specific regime applicable only to aquaculture and no other activities have quite the level of prescription in the RMA. These provisions empower regional councils through regional coastal plans to manage the effects of occupation of the CMA and to manage competition for space in the CMA. Section 30(2) requires:

> (2) A regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate -
>
> (a) the effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities:
>
> (b) the effects on fishing and fisheries resources of aquaculture activities.

These functions are allocated not just to the regional councils but also to the Minister of Conservation. And as identified by the Marlborough District Council, the Ministries for the Environment, Fisheries and Conservation all have roles in implementing the aquaculture reforms and have developed an implementation plan with projects that will help councils pick up their role and responsibilities. The Department of Conservation's role in the development of AMA's has been identified on its website as follows:

- provide information to councils on coastal management and marine conservation matters before an AMA plan is notified;
- participate in the statutory process for AMA/coastal plan development provided in the RMA;
- recommend to the Minister of Conservation the approval of an AMA plan in accordance with the RMA;
- receive requests for an area to have the status of an interim aquaculture management area and makes recommendations to the Minister of Conservation, for further recommendation to the Governor General;
- recommend to the Minister of Conservation, for further recommendation to the Governor General, the issuing on directions to regional councils on the allocation of space by way of tender or other forms of allocation.

Again, there is nothing about ownership.

With its emphasis on 'making provision for opportunities available for aquaculture activities in the CMA as one of the Crown's interests, policy 18 has the hallmark of the Crown picking winners over other activities which may have a similar potential (e.g. tourism) in the CMA. Given the policy refers back to the purpose of the Act that of itself demonstrates there is no justification for it.

We conclude on policy 18 that it is more appropriate that it be deleted from the NZCPS. We conclude that government's support for the aquaculture industry is already potentially provided for in:

- the various amendments to the RMA since 2005 which cement aquaculture as a significant activity in the CMA with its own opportunities, constraints and needs;
- the 'Blue Horizons' document which sets out Government's commitment to supporting the future of aquaculture in this country; and
- the implementation package provided for by government and detailed to us by the Northland Regional Council[107].

The Preamble and the Crown's Interests

We conclude in assessing whether to include a preamble as a useful guide to the NZCPS, that it was the more appropriate position in which to set out what we perceived to be the Crown's interests in land of the Crown in the CMA. For these interests provide over-arching guidance on Crown issues of concern under the NZCPS.

Throughout the inquiry, there emerged constant national environmental themes, many of which were reflected in New Zealand's international obligations on the environment. When we drew all of these together, these themes and obligations reinforce each other with the ever-present reminder that New Zealanders need to protect natural and physical resources in a sustainable manner.

On the subject of the Crown's interests in the land of the Crown in the CMA we recommend the inclusion in the Preamble of the following:

> **The Crown's Interests**
>
> The Crown's interests stem from a variety of sources that involve obligations or requirements in the coastal marine area and which the NZCPS relates to. They include recognition of the Treaty of Waitangi (Te Tiriti o Waitangi). Other obligations include those reflected in international treaties to which New Zealand is a party[108], many of which have their own legislation or Crown strategies.
>
> Included in these are:
>
> - environmental protection of indigenous biodiversity;

[107] #403 Mortimer.
[108] See Schedule 1 of the recommended NZCPS (2009) for New Zealand's international obligations of particular relevance to sustainable management.

- protection against biosecurity risk;
- issues around climate change, including recognition that some forms of renewable energy generation (including wind, wave and tidal power) may only locate in the coastal marine area;
- issues around historic heritage and Maori heritage;
- public access to and recreation on the foreshore and seabed;
- navigation rights;
- defence of New Zealand;
- civil defence and emergency management;
- mineral exploration and extraction regulation; and
- prevention of marine pollution.

These have been variously implemented through provisions such as:

- the biodiversity requirements (s62(1)(i)(iii)RMA)[109];
- the effects of climate change (s7(i) RMA)[110];
- the benefits to be derived from the use and development of renewable energy (s7(j) RMA)[111]
- the application of the precautionary approach to proposed activities in the coastal environment, the effects of which are uncertain or little understood[112];
- the protection of historic heritage (s6(e) RMA)[113];
- the relationship of Maori and their culture and traditions with their ancestral lands, sites, waahi tapu, and other taonga – (s6(f) RMA)[114]; and
- the Marine Pollution Regulations of the Resource Management Act 1991[115].

[109] Convention on Biological Diversity 1992: the New Zealand Biodiversity Strategy.
[110] Kyoto Protocol to the United Nations Framework Convention on Climate Change 1998.
[111] Ibid.
[112] Rio Declaration on Environment and Development, 1992.
[113] International Charter for the Conservation and Restoration of Monuments and sites (the Venice Charter) 1964.
[114] UNESCO, Declaration Concerning the International Destruction of Cultural Heritage, October 2003.
[115] Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention).

Policy 19 Amenity values

The amenity values of the coastal environment shall be maintained and enhanced, including by:

(a) maintaining or enhancing natural sites or areas of particular value for outdoor recreation in the coastal environment;

(b) having particular regard to the contribution that open space makes to amenity values, and giving appropriate protection to areas of open space;

(c) recognising that some areas derive their particular character and amenity value from a predominance of structures, modifications or activities, and providing for their appropriate management.

The s32 Report

The s32 report states:

> The amenity of the coastal environment contributes specifically to the ability of communities to provide for their social, economic and cultural well being. Amenity can arise from appropriate subdivision, use, and development and also from the value of the coastal marine area as public open space. Natural character, public access and water quality also arise from and contribute to amenity values.
>
> It is therefore appropriate for particular policy guidance to be provided on maintaining and enhancing amenity values. This includes maintaining and enhancing areas of particular outdoor recreation values, having regard to the contribution open space makes to amenity values and recognising that physical resources and activities can contribute to the amenity of some areas.

Submissions

Individuals and community groups largely support the policy.

There is some support for the policy from conservation groups, although they are concerned that there is too much emphasis on recreational use, potentially at the expense of ecological values.

Some local authorities express general support for the policy, but most are very concerned that the introduction of new and unclear terms will create problems. Most other submitters share this concern.

One regional council recommends that additional guidance is provided on the balance between policies 19 and 31, saying that the NZCPS needs to recognize that there may be a requirement for active management of indigenous vegetation where its spread is impacting on amenity values.

Two regional councils question the need for this policy. They submit that it is covered by s7 RMA and that there is clear guidance in case law on interpreting amenity values.

Most infrastructure companies are concerned that the policy is too absolute and the terminology unclear.

- **Introduction of new terms is problematic**

Nearly all submitters are concerned that the term 'natural sites' is problematic and say it should be removed, or at the very least defined. They submit that case law has been built about around existing terms and that it would be better to use a term that is already recognized and understood such as 'natural character'.

Some submitters also note that the term 'natural sites' is likely to cause confusion in relation to the natural character policies.

A number of infrastructure companies say that the term 'particular' is unclear and should be replaced either by 'significant' or 'recognized,' as these terms are more commonly used and understood within the context of the RMA.

- **Focus on recreational use**

The New Zealand Conservation comments that part (a) is ambiguous and could be interpreted as encouraging jet skis and four wheel drive vehicles. Other conservation groups also point to the need to look at the wording carefully, 'because of the 'new' sports that are commandeering the waterways'. These groups are concerned about the impacts of these activities on dunes and other of high ecological value.

One conservation group submits that natural sites should be maintained for their intrinsic values and the provision for recreation in the coastal environment should be limited to activities that only take place there.

One district council comments that the RMA definition of amenity is broader than recognizing recreational needs.

Meridian opposes the policy saying that it elevates to national importance all natural sites or areas that have any value for outdoor recreation, regardless of their actual quality, abundance or community value; and, that this is not consistent with sustainable management under the RMA. It seeks an amendment to require policies and plans to describe the factors that contribute to amenity values of the coastal environment and include provisions to ensure those values are maintained or enhanced.

- **Open space**

A number of individuals, conservation groups and councils support the explicit recognition in the policy that open space makes a contribution to amenity values, saying the value of open space as an amenity for local communities has often been undervalued.

EDS submits that open space, often in the form of pastoral farms, makes a significant contribution to the amenity of the coastal environment and should be specifically referred to in the policy.

Two energy companies and one property company question the reference to open space and seek its deletion.

- **Recognition of rural activities**

Federated Farmers and Horticulture New Zealand say that the policy fails to recognize that rural activities contribute to amenity values. They submit that, in areas where farming takes place, it is important to recognize the contribution of those rural working environments to amenity values.

- **Some concern that the policy is too absolute**

Most infrastructure companies are concerned that the policy is too absolute. They submit that the policy should include a qualifier to recognize that the maintenance of amenity values should not be an absolute requirement and suggest adding the phrase 'as far as practicable' to the first sentence.

One district council notes the need for the policy to recognize that there may be occasions when maintenance and enhancement of amenity values is not appropriate, e.g. when there is potential to damage or destroy sites or characteristics of importance to tangata whenua. It recommends adding the phrase, 'where such activity does not have the potential to adversely affect other matters of national importance'.

Two property companies and one infrastructure company submit that the policy is contrary to s7c RMA, which only requires persons exercising functions and powers under the RMA to 'have particular regard' to the maintenance and enhancement of amenity values.

- **Removal of sand**

The Auckland District Law Society notes that the removal of sand may have an adverse effect on amenity values. It recommends that this could be specifically mentioned under policy 19 as a relevant consideration to the protection of amenity values.

Issues Arising

- **Does this policy add value?**

The stand-alone nature of this policy reflects s7(c) RMA. However, there are aspects or elements of amenity that closely relate to, or are integral with, other policies. For example, the need to provide for open space close to the coastal marine area (policy 40) and for subdivision, use and development (policies 14-16). The s32 report recognises the connection. We conclude that including elements of policy 19 in other relevant policies will result in their receiving better emphasis than as a stand-alone policy.

We recommend the deletion of this policy.

Policy 20 Surf breaks of national significance

The surf breaks at Ahipara, Northland; Raglan, Waikato; Stent Road, Taranaki; White Rock, Wairarapa; Mangamaunu, Kaikoura; and Papatowai, Southland, which are of national significance for surfing, shall be protected from inappropriate use and development, including by:

(a) ensuring that activities in the coastal marine area do not adversely affect the surf breaks; and

(b) avoiding, remedying or mitigating adverse effects of other activities on access to, and use and enjoyment of the surf breaks.

The s32 Report

The reasons given in the s32 report for requiring guidance for protection of those surf breaks that are nationally significant, taking account of their national and international reputations, their use for international competition and their particular contribution to the variety of surfing opportunities available in New Zealand are:

- surf breaks generate significant benefits to people and communities, including social and economic benefits;
- surf breaks are a finite resource which can be adversely affected by inappropriate use and development in the coastal marine area;
- the enjoyment of surf breaks by surfers can be adversely affected by discharges of sewage or other waste to the coastal marine area;
- access to surf breaks can be compromised by activities inshore of the break;
- protection of surf breaks has not generally been provided for in planning documents.

The s42A Report

The s42A report states that this policy reflects the input from the public during the consultation process.

The Submissions

- **Views of surfing interests**

There were many submissions (and passionate submitters appearing in person) from around the country supporting the inclusion of policy on surf breaks and in particular the submissions of the Surfbreak Protection Society, Surfers Environmental Advocacy Society and Lost Waves.

Surfing interests support the intention of the policy but are concerned that the proposed list of surf breaks of national significance is inconsistent and incomplete. They make a number of suggestions for improving the policy.

The Surfbreak Protection Society provides a detailed submission on the proposed policy, which is supported and quoted by approximately 90 individuals and surfing clubs/individuals. The society notes that the policy inconsistently names specific breaks, as well as places where breaks are located. It recommends naming places where surf breaks of national significance are located (i.e. Ahipara, Piha, Raglan, Taranaki surf highway 45, Gisborne, Whangamata, White Rock, Kaikoura, Dunedin and Papatowai). The society also recommends replacing the words 'coastal marine area' in clause (a) with the 'coastal environment', as activities in the wider coastal environment have the potential to affect surf breaks in the coastal marine area.

The New Plymouth Surfrider's Club recommends amending policy 20 by:

(1) setting out how surf breaks of national importance are to be defined;
(2) providing a methodology and criteria that allows regional councils to identify and protect surf breaks of regional significance within one calendar year; and
(3) including all surf breaks of national importance, including nursery breaks, their swell corridors and low impact public access.

The club also recommends developing criteria in consultation with local surf clubs and commercial surfing interests.

Surfing interests recommend that the policy should cover 'nursery breaks' where young people learn to surf before progressing to 'advanced' breaks. The Surfbreak Protection Society recommends adding a new policy that requires regional councils to identify and protect surf breaks of regional significance, including 'nursery' breaks. The New Plymouth Surfrider's Club submits that 'nursery breaks' should be regarded as surf breaks of national importance and given protection from inappropriate development, including the preservation of swell corridors. The club suggests including the following breaks: Mount Maunganui, Wainui, Fitzroy, Lyall Bay, Sumner, Castlecliff, Mangawhai Heads, Takou Bay etc.

A number of other groups and individuals also support the policy; with most noting that that breaks other than those listed may require protection. The Gisborne Board Riders Club and many individuals say the policy should include surf breaks in the Gisborne region, including Wainui and Makorori Beach, while a number of others propose breaks in the Otago region.

- **The NZCPS should not single out a specific activity or feature**

Some submitters expressed a concern as to why surf breaks are 'elevated' and provided for over other features of national significance such as airports and ports. There was a legal challenge to the ability to do this without an amendment to the Act. A range of interests questioned the singling out of surf breaks and surfing above other recreational activities like fishing or boating. Submitters suggested that other policies, e.g. policy 32 might be expected to protect significant surf breaks.

Most regional and district councils are concerned that surf breaks have been elevated above other features of national significance and recreational value. For example, the Taranaki

Regional Council questions why the NZCPS has taken such a stance on surf breaks as a feature of national significance, when other features of national significance (e.g. areas of significant biodiversity, key landscapes, dive spots, etc) have not been explicitly recognized. Other councils ask similar questions.

Councils are also concerned that this policy has not been given the depth of analysis that it should have and that the s32 report provides no evidence or criteria for selecting some sites but not others.

Several councils suggest that a more appropriate approach would be to delete proposed policy 20 and incorporate the matter into other existing policies. Two councils suggest amending policy 32 to encompass natural features that are important for recreation. Two others suggest that the issue of surf breaks can appropriately be provided for by policy 19(a), which states that natural sites or 'areas of particular value for outdoor recreation in the coastal environment' shall be maintained and enhanced. The Auckland Conservation Board also suggests that it may be better to incorporate the matter with other policies.

Nga Tangata Ahi kaa Road o Maketu feels that these places have been arbitrarily assessed and submits that the policy should be deleted, as other policies address the issue in a more generic manner. The Hauraki Maori Trust Board also considers that there is no rational reason why surf breaks are elevated above other features.

The Auckland District Law Society notes that questions may be asked as to why the listed surf breaks have an undisputed special status. The society suggests that many other surf breaks may be important and a better approach may be to state a policy recommending that regional councils identify outstanding surf breaks for protection.

Port companies, marina operators, and OnTrack accept the policy but note that it is difficult to see why surf breaks have been specifically recognized when other locations of key recreational and tourism value have not. Some infrastructure companies request that the policy be deleted because it inappropriately focuses on one recreational activity. Meridian Energy comments on the apparent unequal attention given to matters that are not recognized in the RMA (surf breaks) compared to those that are (renewable energy). Contact Energy also notes surf breaks are not identified in the RMA and requests that policy 20(a) be deleted.

SeaFIC recommends that if particular recreational activities and the coastal resources that support them (such as surf breaks) are to be protected in the NZCPS, then consideration should also be given to including policies to protect other coastal resources of significant recreational value (such as fishing spots).

- **Other comments**

ECO supports the policy but considers the list is not exhaustive and provision should be made for the Minister to identify other surf breaks for inclusion in regional coastal plans. The Wellington Conservation Board suggests the policy should be broadened to include offshore sites of outstanding recreational significance. Three councils support the policy but note that there needs to be scope to add additional breaks.

Kahungunu suggests amending the policy to include surf breaks of regional significance. The East Otago Taiapure Management Committee notes that Huriawa Peninsula is also considered a surf break of national significance and is within the Taiapure area.

TIANZ recommends that the Board consult with Surfing New Zealand to make sure the appropriate surf breaks areas have been included in the policy and whether others should be added.

Several submitters from Otago point out that the break at Papatowai is in the Otago region, not Southland as stated in the policy.

Issues Arising

- **Why a specific policy on surf breaks?**

We accept the many reasons given in the s32 report and reinforced by submitters for including a specific policy on surf breaks. The arguments for the surfing community for the inclusion of this policy (with amendments) were:

- natural surf breaks are a finite resource and naturally occurring breaks help constitute the natural character of the coastal environment under s6(a); the preservation of the natural character of the coastal environment implies that sufficiently representative breaks in their natural context should be protected; those breaks that are rare should be given a greater level of importance than those that are common;
- natural surf breaks are outstanding natural features in their own right, and can be an element of outstanding natural landscapes (including seascapes), under s6(b); the protection of outstanding natural features requires the identification of outstanding natural surf breaks;
- natural surf breaks are of social, cultural and economic value to coastal communities;
- Maori made use of natural surf breaks historically;
- activities in the coastal marine area and landward can have adverse effects on surf breaks; activities like placement of artificial nourishment (sand) on a beach, building a seawall, development of coastal property, nearshore sand-mining, breakwater ports and marines, changes to land catchment around a break have potential to adversely affect a surf break;
- increasing pressures will lead to damage and destruction of surf breaks and there is a need for protection; surf breaks are scarce and vulnerable to development and the technology does not exist at present to restore a natural break disturbed or damaged by human intervention;
- at an individual level the policy gives surfers confidence in the protection of their playgrounds;
- there are no other means for protecting surf breaks unlike in parts of Australia. Comparisons were drawn with marine reserves, national parks and other legislation protecting particular values.

- **Scheduling or listing of surf breaks of national significance**

There were challenges to identifying and protecting surf breaks as being of national significance on the basis that there was no specific mention of surf breaks in Part 2, unlike other matters such as renewable energy specifically referred to in s7(j). Naturally occurring surf breaks are part of the natural character of the coastal environment under s6(a) and may be outstanding natural features under s6(b), historic heritage under s6(f), amenity values under s6(c), contribute to the quality of the environment under s6(f) and have finite characteristics under s6(g). In addition surf breaks contribute to the economic, social, cultural and environmental wellbeing of people and communities and their health and safety and therefore the sustainable management of natural resources.

The Auckland District Law Society submitted[116]:

> The innovation of including six identified surf breaks is noted, as giving some certainty to their protection. However a question can be asked whether these particular surf breaks have an undisputed special status, as the protection required will be the equivalent of a water conservation order. A WCO must first be approved under a rigorous procedure (ss199-217) with public participation to reflect all viewpoints. Many other surf breaks may be important. A better approach could be to not identify any of the six surf breaks expressly, but to state a policy recommending that regional councils identify outstanding surf breaks for protection.

There is a major difference between a water conservation order and identifying a surf break as of national significance in an NZCPS. A water conservation order may impose rules prohibiting activities.

We agree with the Surfbreak Protection Society that the failure to identify them more specifically in the NZCPS will result in a less efficient, more *ad hoc* and arbitrary identification of nationally significant surf breaks through individual resource consent cases. We also accept the potential delay in a process to identify and provide for these in plans.

We agree with Dr Rennie, a well-qualified and experienced coastal and marine planner, that policy 20 should be retained because it[117].

> … marks a significant step towards improving policy guidance to decision-makers on the sustainable management of rare, finite and threatened geographical features.
>
> …
>
> From a planning perspective there is an issue, the finite nature and vulnerability of surf breaks that is of nationally significant importance. Addressing this through the NZCPS is appropriate to achieve the purpose of the RMA. Policy 20 is a necessary and useful step and addresses the objectives intended to provide for the preservation of the natural character of the coastal environment, the protection of outstanding features and landscapes, and the protection of our heritage while enabling the maintenance and improvement of amenity values.

However, we accept the need to ensure the selection of surf breaks of national significance is sound and therefore now address the criteria for selection at a general, including the need for criteria in the policy, and then at a specific level.

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[116] #163 Auckland District Law Society.
[117] #133 Surfbreak Protection Society, Dr Rennie.

- **Criteria for selecting surf breaks of national significance**

The s32 report, in a footnote, states:

> The breaks at Ahipara (Shipwreck Bay), Raglan, and Stent Road, for example, are listed in the top 80 breaks worldwide in *Surfing the World*, Chris Nelson and Demi Taylor, Footprint, July 2006.

However it does not contain any criteria used for the selection of the other surf breaks.

Some submitters wanted selection criteria or other guidance for identifying surf breaks of national significance. Other concerns were about the surf breaks included on the list, with even the Surfbreak Protection Society criticising the process for selecting those in the list and suggesting criteria and a revised list. Many submitters pointed out that some surf breaks on the list were mentioned by name and others by location.

There was also a question about the limitations of the listing approach, given that over time there are likely to be other surf breaks of national significance. A strong thrust of submissions, reflected in the Auckland District Law Society submission, was that a better and more robust alternative process for identifying and protecting surf breaks of national significance was through the plans. Other submitters considered national significance could be determined on a case by case basis through the resource consent process.

Many submitters sought the addition of specific surf breaks to the list, including councils such as Waitakere City Council with the Piha surf breaks. There were a few submissions concerned about the addition of surf breaks, for example Gasbridge with the Belt Road Surf Break one of Taranaki Surf Highway 45 surf breaks to the east of the site of a possible Liquified Natural Gas import and regasification facility at Port Taranaki.

The Surfbreak Protection Society witnesses gave evidence on criteria for the selection of surf breaks of national significance:

> the most authoritative guide to New Zealand Surf breaks is 'The New Zealand Surfing Guide', which is published by Wavetrack. This lists 470 known and frequented breaks. It also indicates that there are potentially many more breaks that are not frequented on a regular basis due to remote access. The guide identifies 16 of the 470 listed breaks, as having a 10 out of 10 'stoke' or surf quality rating. This rating signifies that these surf breaks are of international importance[118]. …

The Society recognised that there were some limitations in using the Wavetrack rating as a proxy for national significance. However, a key witness gave evidence that[119]:

> In my opinion it is highly probable that the 10 'stoke' rating would provide a useful proxy for identifying outstanding natural surf break features. It is probable that it also covers breaks of significance for Maori and breaks of high heritage value. It may not include them all, especially as the 10 rating is reserved for those breaks of international importance rather than the lower level of national importance. …

[118] Dr Rennie drawing on the evidence of Dr Mead, environmental scientist with a background in coastal oceanography, marine ecology and aquaculture, and Dr Scarfe, coastal environmental scientist and surveyor.
[119] Dr Rennie.

> The … method of using the Wavetrack stoke rating, in my view, probably overstates the importance of these reefs. The number of visitors coming to New Zealand for surfing and the range of international events held at each are not of sufficient importance to rate all these breaks as internationally significant. The method of assessing its breaks is also not entirely transparent. … [T]he identification of the 16 surf breaks given a 10 stoke rating could provide a consistent and robust means of identifying nationally significant breaks and reflect the minimum precautionary approach necessary for ensuring the identification and preservation of nationally significant surf breaks until such time as a more considered mechanism existed.

An exception is Papotowai. We accept the evidence that Papatowai's 'omission from the list derived from the 10 stoke rating of Wavetrack appears to reflect the relatively recent emergence of Papatowai as big wave surfing, its limited accessibility and the relatively elite level of skills required to ride. Given the sheer magnitude of the break and the level of recognition it has gained in a relatively brief period, … it has high existence value and would meet the criteria of being an outstanding feature. It should be retained in policy 20[120]. …'

We conclude that there should be no criteria in the policy for selecting further surf breaks of national significance given that there could be developments in the methodology in identifying and rating natural surf breaks. For example, we note the strong plea by many submitters for ensuring diversity of surf breaks so that all surfing skill levels are provided for.

The Wavetrack approach deals with the inconsistency between the naming of specific breaks and the naming of places where the breaks are located. While superficially it appears to significantly increase the number of breaks that are covered by policy 20, part of that increase is due to the greater level of specificity. We were told that it also removes any doubt as to which of the breaks at Raglan are rated of national significance.

We accept the potential need to add to the list over time. To make it clear that the current list is not exhaustive and that there are likely to be other surf breaks that are of national significance we propose an inclusive approach, adding the words 'including' to the reference to the schedule.

We had evidence of a concern about the potential for adverse effects on the surfing quality of the Whangamata Bar to be caused by the marina currently under construction. There was no evidence that the Whangamata Bar should not be included in the list. We also note that the list will not have retrospective effect.

- **Protecting nationally significant surf breaks**

Some submissions expressed concern about the protection accorded the recognised surf breaks. The Surfbreak Protection Society considered the protection inadequate without the inclusion of the processes and features that contribute to the existence and quality of the surf break, on land as well as in the coastal marine area. The Surfbreak Protection Society also proposed activities affecting surf breaks of national significance should be Restricted Coastal Activities.

What is required to protect nationally significant surf breaks? We accept that the swell corridors also require protection. Without protection of marine and coastal geomorphology in

[120] Dr Rennie.

an off shore and long shore way there can be no certainty of long term protection of surf breaks themselves. We therefore accept the definitions of 'surf break', 'surfable wave' and 'swell corridor' provided by the Surf Protection Society[121].

The policy refers to protection from 'inappropriate use and development', which seems unnecessary and even limited in its scope given the rest of the policy, and then attempts to identify two situations that might be defined as such without excluding others. The first situation refers to avoiding adverse physical effects on the surf break. We accept that there is a need to ensure activities outside the coastal marine area, such as from actions in rivers/estuaries and from nearby industries and other land uses, are included, justifying a reference to the 'coastal environment'. There was also a suggestion that the policy should be rewritten so that the authorisation of activities outside the 12 mile limit would also be caught by the policy. There is no jurisdiction under the RMA to require that.

The second situation unhelpfully refers to avoiding, remedying or mitigating adverse effects of other activities, those outside the coastal marine area, on access to and use and enjoyment of the surf breaks. There can be a major difference between avoiding and mitigating adverse effects. We consider the test should be the same for both. We also retain 'enjoyment', despite its connotations of perception, because it underpins the recreational experience. We had considerable evidence for example on the unpleasant effects of discharges, particularly of odour from wastewater discharges, on the surfing experience.

We note the concern of Gasbridge and others that such a policy may inhibit the development of coastal environment for infrastructure of national importance. We contemplated leaving the policy at identifying the nationally significant surf breaks and leaving what protection might be required to a more general statement. As we concluded earlier we do not agree with those submitters who considered that effects could be adequately (and more appropriately) addressed in the normal way. We have therefore decided on avoidance of adverse effects without any qualifier such as significant, acknowledging (as we do throughout) that there are objectives and other policies that would need to be weighed in specific situations.

We do not accept that activities that affect nationally significant surf breaks should be RCA for the reasons given elsewhere. We consider the approach adopted will provide adequate recognition and protection of nationally significant surf breaks.

- **Other surf breaks**

The Surfbreak Protection Society put forward a new policy proposal requiring the identification and protection of 'regionally significant surf breaks' by local authorities. The Surf Protection Society and other submitters wanted a new policy requiring regional councils to identify and protect surf breaks of regional significance that reflect the diversity of types of breaks and range of surfing skill level and surfing enjoyment. That policy was to include greater direction and guidance on how to liaise with local clubs to identify them.

The New Plymouth Surf Riders Club suggested criteria for identifying and protecting surf breaks of regional significance:

[121] #133 Letter from North South Environmental Law, 10 November 2008.

- the natural geophysical features of the seascape, geological, topographical, ecological and dynamic including the swell corridors up to 12 nautical miles off-shore;
- the aesthetic values including memorable and naturalness;
- its expressiveness of how obviously the seascape demonstrates the formative process leading to it and how the surfer expresses their joy in utilising their skills to become part of the seascape;
- transient values – the passage of orcas, whales, seals and small fish bring great joy to surfers who are able to interact with the seasonal transition of these species to and from their feeding/breeding grounds;
- the importance of the surf break for international, national and local competitions;
- the importance of surf breaks as a nursery for learners and consequently those suitable for the development of growing skills;
- the importance of surf breaks which 'work' on differing wind and swell conditions as these abilities have major influences not only on where national competitions are held but also where the 'free' surfer will congregate.

Several submitters drew initiatives by the Taranaki Regional Council in recognising surf breaks in the regional coastal plan to our attention.

We agree that the matters of national importance – particularly preserving the natural character of the coastal environment and outstanding natural features from inappropriate subdivision, use and development - involves more than protecting surf breaks of national significance. Surf breaks not identified and protected as nationally significant under policy 20 are also likely to require consideration under other policies, such as natural character, outstanding natural features and landscapes, public open space and public access.

- **Conclusion**

We recommend that there be an amended policy on surf breaks of national significance, policy 18 with particular surf breaks listed in Schedule 2 and additions to the Glossary to define terms, as follows:

> **Policy 18 Surf breaks of national significance**
>
> **All decision makers must recognise and protect surf breaks[122] of national significance for surfing, including those listed in Schedule 2, by:**
>
> **(a) ensuring that activities in the coastal environment do not adversely affect the surf breaks; and**
>
> **(b) avoiding adverse effects of other activities on access to, and use and enjoyment of the surf breaks.**

[122] Surf break: as defined in the Glossary to the recommended NZCPS (2009).

In Schedule 2 under the heading Surf Breaks of National Significance are:

Northland
Peaks – Shipwreck Bay
Peaks – Super tubes – Mukie 2 – Mukie 1

Waikato
Manu Bay – Raglan
Whale Bay – Raglan
Indicators – Raglan

Taranaki
Waiwhakaiho
Stent Road – Backdoor Stent – Farmhouse Stent

Gisborne
Makorori Point – Centres
Wainui – Stock Route – Pines – Whales
The Island

Coromandel
Whangamata Bar

Kaikoura
Mangamaunu
Meatworks

Otago
The Spit
Karitane
Murdering Bay
Papatowai

Additions to the Glossary:

'Surf break' means a natural feature that is comprised of swell, currents, water levels, seabed morphology, and wind. The hydrodynamic character of the ocean (swell, currents and water levels) combines with seabed morphology and winds to give rise to a 'surfable wave'. A surf break includes the 'swell corridor' through which the swell travels, and the morphology of the seabed of that wave corridor, through to the point where waves created by the swell dissipate and become non-surfable.

'Surfable wave' means a wave that can be caught and ridden by a surfer. Surfable waves have a wave breaking point that peels along the unbroken wave crest so that the surfer is propelled laterally along the wave crest.

'Swell corridor' means the region offshore a surf break where ocean swell travels and transforms.

Policy 21 Cumulative effects

> **Coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects shall be identified, and plans shall include provisions to manage these effects. Where practicable, plans shall set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects should be avoided.**

The s32 Report

The s32 report identifies the main reason for including a policy on cumulative effects as:

> The cumulative effects of activities can give rise to significant adverse impacts on the coastal environment. Cumulative effects can arise as a result of the combined impacts of a range of dissimilar activities, or the collective impact of a number of similar activities. Examples include impacts on water quality and ecology from a combination of point and non-point discharges from land, the effects of sprawling and sporadic subdivision on the natural character of a coastline, and phytoplankton depletion from aquaculture development. These combined or incremental effects generally occur over time, and may be significantly adverse even where the impacts of individual activities are not. Because of this cumulative effects can be more pervasive and difficult to manage than the effects of individual activities.

The report states that the 1994 NZCPS policies about cumulative effects (policy 1.1.1 and policy 3.2.4) are very broad and provide little direction or assistance to councils. It recognises that the identification of the risks of cumulative effects and the setting of thresholds may limit or modify some development aspirations but also provides greater certainty to resource users. The report also states there is some uncertainty associated with cumulative effects, but by not addressing these there is the risk of significant adverse effects on the environment.

Submissions

Many individuals and community groups support the intention of this policy to provide a greater focus on managing cumulative effects, but a number of these believe that the policy will be difficult to implement and two consider cumulative effects are already adequately addressed in the RMA.

A large number of individuals and community groups simply reiterate that they support NSaPS's view that, 'some provisions provide more protection than the current NZCPS, through attention to cumulative and precedent effects', but require strengthening to reduce the pressure of coastal development and subdivision.

Most conservation interests also support the intent of the policy, but many of these believe that greater guidance is required for the policy to be effective. RFBPS groups are particularly supportive of the policy. A number of individuals endorse EDS's support for the policy.

Two iwi groups support the policy in its entirety, while three further iwi say that it needs to include characteristics of special value to tangata whenua.

Most local authorities support the intent of the policy but all have concerns regarding its implementation. These are set out below. One regional council and three district councils consider that the policy should be deleted because it covers matters that can only be addressed on a case by case basis.

Aquaculture interests support the policy and the intention to set thresholds or specify acceptable limits to change. Tourism groups also support the policy, as does the New Zealand Archaeological Association and the NZHPT.

Infrastructure and property interests do not support the policy. Few professional and national organisations support the policy. Again, the reasons for this opposition are set out below.

- **Information intensive approach will be difficult to implement**

The majority of submitters consider that establishing appropriate thresholds or limits to change will be very difficult for local authorities and require expensive data and information. They believe that the policy will therefore be difficult to implement.

Environment Waikato supports the policy but comments that 'it is a particularly information intensive approach that places a significant burden on local authorities'. One individual says that, 'it would be impossible for even the best resourced council to include all necessary considerations in a plan'.

The Auckland District Law Society considers that the policy 'appears to be highly onerous and could place an unreasonable cost on local authorities, and ultimately clutter up the coastal plans with unnecessary detail'.

The Hawke's Bay Regional Council comments that the onus is on councils to obtain and record high quality data and information. It says that 'this simply cannot be done overnight'. Nelson City Council recommends that policy be exempt application from the timeframe for implementation.

Almost all the district councils are concerned that the information requirements for this policy are too high and will be too costly to implement. The Tasman District Council accepts the concept of dealing with cumulative effects but points out that the policy, 'requires an understanding of the resilience of many coastal system features and values that is beyond the capacity of most regions to establish and apply with confidence in plans'. It says that the policy would require a significant investment in modelling and monitoring of both unmodified and modified coastal systems. Other councils also point to the difficulty and expense of establishing baselines for setting thresholds and limits.

Several councils suggest that this difficulty be acknowledged by the policy providing for the precautionary approach to be taken where it is not possible to set thresholds for cumulative effects.

Port companies and property interests also consider that the policy may place unreasonable costs and work on local authorities. They say that it does not recognise that limits can only be imposed after thorough investigation and assessment of all effects and that setting targets and

thresholds/limits will therefore be difficult and costly. They submit that the draft policy requires further scrutiny. Some infrastructure companies also note that there are likely to be implementation and cost issues.

IPENZ considers it would be difficult to give effect to this policy as currently written.

- **National guidance and resourcing is required to establish thresholds and limits for cumulative effects**

Many submitters consider that the policy needs to provide more guidance about how to assess cumulative effects and establish thresholds or acceptable limits for change.

Conservation Boards in particular consider that the policy needs to provide local authorities with much greater guidance. The NZCA supports the intent of the policy but urges 'more robust direction' to specify where cumulative effects are particularly important. Other conservation boards believe that local authorities will not understand this policy in the absence of strong, consistent guidelines. The Bay of Plenty Conservation Board says that the policy does not provide enough guidance as to how as infrastructure, energy and aquaculture are to be addressed in the coastal environment. It considers that it should be clarified to provide clear direction to local authorities. The West Coast Plan Liaison Group also considers that the policy is unlikely to be understood without clear guidance.

Almost all local authorities suggest that national guidance and resourcing is needed on how to identify 'coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects', and how to set thresholds or limits. Some councils say that national assistance is needed to define a baseline (which is currently lacking) against which adverse cumulative effects could be considered.

- **Cumulative effects are already dealt with in the RMA**

Some submitters question whether this policy adds further value to the RMA, which they say already covers cumulative effects. For example, the Christchurch City Council points out that s3 of the Act addresses this issue. It is therefore uncertain how much this policy will add to the existing obligation to take cumulative effects into account. Similarly, the Tasman District Council says that the concept of dealing with cumulative effects should be something to have regard to in s104 and not necessarily require changes to policy statements.

IPENZ and some individuals also comment that cumulative effects are already provided for under the RMA and as such do not require addressing in the NZCPS. One individual considers that the policy is 'fundamentally restating section 3(d) of the RMA and is therefore largely redundant' and should be deleted.

- **Policy is at odds with the RMA because it specifies a particular method**

Some submitters are concerned that the policy is overly prescriptive as it prescribes the tools that councils are to use (i.e. thresholds or limits to change). Environment Waikato recommends that it be amended to provide greater flexibility.

Metrowater submits that the policy enforces a particular method of managing effects that may pre-empt the outcome of plan development processes and preclude planning techniques that provide better outcomes. It too says the policy should be more flexible.

Others suggest that the policy be deleted because it conflicts with the RMA approach. These include Meridian Energy, which considers that the policy requires a certain amount of 'crystal ball gazing'. Meridian submits that there is an implication that activities likely to cause adverse cumulative effects should be avoided outright, when the real position is that it is not until activities reach a certain level that their effects become adverse. Meridian submits that this does not mean that they should be avoided at the outset. It suggests that, if the Board wishes to retain a separate policy on cumulative effects that it states that policy statements and plans shall ensure cumulative effects are addressed and managed.

Genesis Power also recommends deleting the policy because it jars with the RMA approach. It submits that the, 'effective replacement of a bespoke statutory scheme via policy is inappropriate'.

Yachting New Zealand considers that the policy should be deleted because 'it is inappropriate for a NPS to include policies that attempt to define or control the manner in which and the methods by which consent authorities might address cumulative effects'.

- **Policy should provide for adverse cumulative effects to be 'avoided, remedied or mitigated'**

A number of submitters believe that the policy should provide for adverse cumulative effects to be 'avoided, remedied or mitigated,' not just avoided. These include Manukau City Council, the New Zealand Wind Energy Association, Mighty River Power and Contact Energy.

- **Questions and other issues**

NIWA considers that there is some ambiguity as to whether the policy applies to all aspects of impacts on the coastal environment, including hazards and cumulative effects that will arise from climate change.

The New Zealand Law Society seeks confirmation as to whether the policy is intended to apply only to plans, and not regional policy statements.

LINZ asks whether the policy would apply to the cumulative effects of chemicals used for pest and weed management.

The New Zealand Marine Sciences Society seeks an amendment to include reference to ecosystem services.

Wellington Waterfront Limited consider that the policy does not recognise that in some areas where development is appropriate, the values of those areas are going to change as development occurs. It recommends that the policy be reworded to reflect that cumulative effects should be managed while appropriately recognising and providing for areas in the coastal environment where some change to existing coastal processes, resources and/or values may be appropriate.

Issues Arising

- **Is the policy ultra vires?**

There has been some discussion about whether the RMA allows the consideration of cumulative effects fuelled by the case law. The *Introduction to Environmental Impact Assessment* 3rd edition John Glasson, Riki Therivel and Andrew Chadwick[123], under the heading of 'cumulative impacts', states:

> Many projects are individually minor, but collectively may impose a significant impact on the environment. …. The ecological response to the collective impact of … activities may be delayed until a threshold is crossed, when the impact may come to light in sudden and dramatic form e.g. flooding). Odum (1982) refers to the 'tyranny of small decisions' and the consequences arising from the continual growth of small developments. While there is no particular consensus on what constitutes cumulative impacts, the categorization by the Canadian Environmental Assessment Research Council (CEARC) (Peterson et al. 1987) is widely quoted, and includes:
>
> - time-crowded perturbations – which occur because perturbations are so close in time that the effects of one are not dissipated before the next one occurs;
> - space-crowded perturbations – when perturbations are so close in space that their effects overlap;
> - synergisms – where different types of perturbation occurring in the same area may interact to produce qualitatively and quantitatively different responses by the receiving ecological communities;
> - indirect effects – those produced at some time or distance from the initial perturbation, or by a complex pathway; and
> - nibbling – which can include the incremental erosion of a resource until there is a significant change/it is all used up.

Those effects are not just ecological.

We note the helpful analysis in the 'think piece' by Phillip Milne titled *When is Enough, Enough? Dealing with Cumulative Effects under the Resource Management Act*[124]. We agree that plans are able to deal with cumulative effects, and that the barriers to their doing so are more of a practical, policy and political nature. However, these barriers are not insurmountable.

- **Can cumulative effects be dealt with adequately on a case by case basis?**

There are problems with leaving the consideration of cumulative effects to be dealt with on a case by case basis, as suggested by Meridian and some submitters. The 'first cut is the deepest', modifying the existing environment, and often beginning the basis for further cuts and ultimately to 'death by a thousand cuts'. Plans provide the only real opportunity to consider thresholds or acceptable limits to change.

We conclude that the evidence is clear that cumulative effects cannot be dealt with adequately on a case by case basis. The nature and extent of residential subdivision and development in

[123] Routledge 2005.
[124] Published on the Quality Planning Website.

the northern part of New Zealand is testament to the problem of demonstrating that each individual resource consent application is not going to result in a loss of values or resources. Many people who appeared before us expressed their frustration and concerns with the failure of the resource consent process to prevent 'death by a thousand cuts' or situations where 'the horse has bolted'.

What is required are plan provisions that clearly signal the limits. Those limits require the placing of activities (that meet clear and enforceable standards and conditions) in the right activity category and strong objectives, policies and assessment criteria to direct the decision making. Sometimes those limits will be absolute and require the use of the prohibited activity category.

- **Should the policy include a precautionary approach?**

We consider that is unnecessary. Policy 5 contains the precautionary principle that must inform decision making on plan provisions. There is no inconsistency between the cumulative effects policy and the precautionary principle.

- **Does the policy add any value?**

Given the experience to date, there is clearly a need to emphasise to decision-makers the importance of considering cumulative effects. Another potential benefit is that such a policy could broaden the understanding of cumulative effects in line with evolving international practice.

- **Are there any changes required to the policy?**

There is no need to add 'remedy or mitigate' to the second limb of the policy as the first limb with its reference to 'manage' would cover those situations. The emphasis in the second limb reflects the need for there to be more attention to avoiding adverse cumulative effects. As the evidence shows, there is a real need for that if we are not to compromise or lose resources and values.

The policy would be better placed earlier in the NZCPS given it relates to plan provisions directed at the more specific policies that follow. There is also a need for minor changes to bring it into line with our general approach.

- **Implementation and resourcing questions**

Local authorities are already required to address the issues in their plans, with objectives, policies and rules providing the tools to ensure sustainable management. The policy itself refers to matters that are under threat or at significant risk from adverse cumulative effects and this recognises that there are priority areas for councils to address.

Coastal plans already contain 'zones', although they may not labelled as such, and therefore the policy is not considered onerous or to involve unnecessary detail. There needs to be more attention to determining limits in district plans, as identified by the spread of subdivision and development along the coastline.

We agree that there is a need for central government to work with local authorities to provide much greater guidance on implementing this policy. We have suggested issues and areas where that is a priority, such as for development and subdivision.

- **Conclusion**

We recommend policy 21 be slightly amended and placed earlier in the NZCPS as policy 6 as follows:

> **Policy 6 Cumulative effects**
>
> **Regional policy statements and plans must identify coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects and plans must include provisions to manage these effects. Where practicable, plans must set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects are to be avoided.**

Policy 22 Precedent effects

In managing subdivision, use, and development in the coastal environment, regard shall be had to the potential for an activity, if approved, to set a precedent for approval of further, similar activities. Where the effects of the activity or such further activities would undermine the relevant plan or regional policy statement, or a national policy statement, the precedent should be avoided.

The s32 Report

The s32 report states:

> To implement the objectives of the NZCPS and achieve sustainable management, decision makers need to be careful to ensure that they have regard to the precedent effect that decisions may have. Precedent effects can arise where an activity is allowed that in a decision making context would result in similar activities being likely to be approved in the future.

The s42A Report

The s42A report identifies that precedent is commonly referred to as 'planning creep' describing situations where approval of a particular activity (modest residential subdivision in a rural area) opens the gate for more of the same. The authors consider that the risk is that the intentions of policy and planning documents (e.g. to direct urban growth in particular directions) may be undermined by the patterns of use and development that follow upon the initial approval to an application. The proposed NZCPS is intended to support the development of policy statements and plans that are more effective in achieving sustainable management of the coastal environment. It considered therefore that the issue of precedent effects was a matter relating to the purpose of the NZCPS, which s58(h) (the 'Other Matters' provision of the RMA) allows the NZCPS to address.

In support the authors identify that the Court of Appeal in *Dye v Auckland Regional Council*[125] found that the precedent effect of granting resource consent is a relevant factor for a consent authority to take into account when considering a resource consent application. Specifically the Court held that the issue falls for consideration under sections 105(2A)(b) and 104(1)(d) RMA (now s104(1)(b) and 104D). The Court observed that the granting of a resource consent has no precedent in the strict sense, in that a consent authority is not formally bound by a previous decision of another authority, and that the most that can be said is that the granting of one consent may well have an influence on how another should be dealt with. The extent of that influence will obviously depend on the extent of the similarities. It is this influence state the authors with which policy 22 is concerned. In the same decision the Court held that precedent effects are not cumulative effects, and this is why precedent effects are therefore addressed as a distinct policy in the draft NZCPS.

[125] [2002] I NZLR. 337.

Submissions

- **Individuals and community groups**

Most individuals and community groups strongly support the policy. A large number of them simply reiterate that they support NSaPS's view that, 'some provisions provide more protection than the current NZCPS, through attention to cumulative and precedent effects', but require strengthening to reduce the pressure of coastal development and subdivision. Many individual submitters concerned about the coastal environment as well as conservation organisations supported proposed policy 22, in the process identifying the notion that 'the first cut' for development is the unkindest cut of all in the coastal environment, because it allows similar developments to follow once a precedent is set. The end of such a process these submitters maintain is that it could result in a gradual undermining of the integrity of the plan.

The Guardians of Puku Bay Association submits that the policy needs to take account of existing precedent effects, as well as future effects (i.e. that developments and structures in place are not to be regarded as precedent for further or similar developments).

Most conservation boards and groups also express strong support for the policy. However, the New Zealand Conservation Authority questions whether this policy is necessary, saying 'that activities should be considered on their merits in the particular location, irrespective of whether the same may have been done elsewhere. If an activity would undermine a plan or a policy it should not be approved'. One RFBPS branch believes that policy 22 is among the most important of the proposed policies and should not be compromised in any way in the final gazetted statement.

- **Iwi**

Almost all iwi groups that comment on this policy support it. Te Runanga-a-iwi-o-Ngati Kahu comments that the effect of precedent setting decisions has been almost impossible to control and 'a single inappropriate decision can have long term and irreversible effects'. Only one iwi group also considers that the policy is too intrusive and that each application should be considered on a case-by-case basis.

- **Councils**

A number of regional and district councils support the policy while some oppose it.

Environment Waikato and the Manukau and Franklin District Councils, (and also EDS) recommend that the policy be amended to include 'related' activities as well as 'similar' ones. The Christchurch City Council also considers that it is up to a consent authority or Court to decide whether precedent effects should override other issues at stake. The Waimakariri District Council considers that the policy is unnecessary because it covers planning practice that should be specific to circumstances.

The ARC suggests that 'effects' be qualified by the term 'adverse'. It recommends that the policy include situations where adverse effects may undermine national policy statements, as well as plans and policy statements. Environment Waikato says that the effect on the environment should be included as well as the effect on statutory documents. The Hawke's Bay Regional Council seeks clarification as to whether precedents can also be set by declining consents, as well as approving them.

- **Companies**

Almost all infrastructure, power, ports and marina companies submit that applications should be considered on their merits. They are concerned that the policy has no regard to the merits of a proposal, even where there may be minimal adverse effects on the environment, or significant positive effects or public benefits. They submit that, in effect, the policy will operate as an amendment to the RMA and could have widespread implications in that many activities are of a 'similar' type; e.g. ports, wharves, jetties, marinas, marine farms, etc. For example, if no regard is had to the merits and purpose of each development, it could be contrary to the purpose of the policy because it could be a precedent for another jetty or wharf.

Meridian Energy and Contact Energy consider that there is no need for the NZCPS to address precedent effects as they are a matter that can be considered under s104(1)(c) of the RMA and case law is well established on this issue. Some submitters consider that any uncertainties surrounding case law in relation to precedent effect would be better addressed through an appropriate statutory review. Gasbridge acknowledges that the law in respect of precedent effects is somewhat uncertain but submits that 'this uncertainty should be addressed through the introduction of appropriate statutory amendment to the RMA, rather than 'through the back door' via policies in a subsidiary document'.

Westpark Marina and the New Zealand Refining Company consider that the policy is inappropriate within the context of the RMA. They note case law is in an unsatisfactory state in respect of precedent effects, 'notwithstanding previous Court of Appeal decisions indicating that such effects are not relevant under the RMA'. They submit that, if central government wishes to remedy this uncertainty, then it should do so through the introduction of appropriate statutory amendment to the RMA.

New Zealand Aluminium Smelters and Wellington Waterfront Ltd observe that the Court of Appeal has held that the granting of a resource consent does not have a precedent effect because a consent authority is not formally bound by its previous decisions. New Zealand Aluminium recommends that the policy be replaced with a policy that directs authorities to have regard to whether granting a consent would have an adverse effect on the integrity of an RMA plan.

- **Fishing interests**

Aquaculture interests submit that each application for an activity should be treated on its individual merits; and, that, if these merits cannot be substantiated then development will not proceed. SeaFIC suggests that the policy may be unnecessary; as if a proposed activity has effects that would undermine the relevant plan or policy then 'surely any application for that activity would be declined'. It also suggests that, if an activity is acceptable when it is the only example of the activity in an area but unacceptable when its effects are considered cumulatively with other examples of the same activity in the area, 'then that is an issue of managing cumulative effects, rather than an issue of precedent'. It is also concerned that the draft policy may be counter productive, in that it could enable applications that would otherwise meet all legislative and planning requirements to be declined on the basis of speculation that other similar activities may follow it.

Issues Arising

Ms Clare Sinnott for the Wellington Waterfront Company submitted that people can take precedent to mean a sort of binding principle under the RMA which it is not – 'it is just a phrase 'precedent effect' – that is used' but it creates expectations in some people who do not understand the subtleties of it.

- **Precedent a matter for policy?**

The Port Companies of New Zealand and many others point out however, that the policy attempts to incorporate into the NZCPS a provision that is not in the RMA. While precedent effects may be a factor that consent authorities may have regard to from time (based on the case law) it is not a suitable matter for policy. For the High Court has held in *Gould* v *Rodney District Council*:

> 10.1.43 Sections 104, 104C (restricted discretionary activities) and 104D (non-complying activities) set out the matters that consent authorities must have regard to in considering applications for resource consent. Consideration of precedent effects is not currently explicitly included as one of the matters, but is commonly given regard under the auspices of Section 104 (1) (c) where appropriate in the circumstances of a particular proposal[126]

The statement in the s32 report indicating that there is a need for decision makers to *ensure* that they have regard to the precedent effect of decisions is one that many of the Courts' decisions do not make. Another stated benefit is that direction and guidance is provided on considering the precedent effect of decision. A number of Environment Court decisions have questioned the utility of an automatic reference to precedent or district plan integrity. *Gould* is authority for the fact that precedent is not explicitly included in the RMA.

We also accept points made by submitters questioning that approach in the policy. Precedent and plan integrity are matters that decision makers can and should deal with on a case by case basis under the RMA. We therefore do not consider on this basis, that a policy on precedent has a place in the NZCPS.

We recommend that policy 22 be deleted.

[126] [2006] NZRMA 217.

Policy 24 Coastal occupation charging

To promote the sustainable management of the coastal marine area and have particular regard to the Crown's interest in obtaining public benefits from any occupation of public land, regional councils should, where appropriate, establish a coastal occupation charging regime. When considering a charging regime, regional councils shall take account of the criteria in Schedule II.

Regional councils shall amend regional coastal plans and proposed regional coastal plans, as necessary, to give effect to this policy no later than 12 months after the gazettal of this New Zealand Coastal Policy Statement, using the process set out in Schedule 1 to the Resource Management Act 1991.

The s32 Report [127]

The s32 report states that:

> An important aspect of promoting sustainable management and implementing [as] an objective … in relation to Crown ownership interests is to charge a fair price for private occupation of public land in the coastal marine area, unless there is a good reason not to do so. The Crown, as owner, has two main reasons for wanting a fair price to be charged:
>
> - to obtain the benefits from the charges acting as an economic instrument to complement regulation and avoid unnecessary private occupation of the coastal marine area and promote sustainable management; and
> - to generate a return to the owner (i.e. the public) for private benefits gained and public rights lost through the occupation of public land.
>
> One effect of charges would be to reinforce that occupation of public space in the coastal marine area is a privilege and not a right. This apparently was a common request in submissions both to the *Independent Review of the NZCPS* (Rosier 2004) and the *Review of the NZCPS Issues and Options* (Enfocus 2006). Another benefit (optimised if the charge is set at a fair market rental level) is that coastal occupation charges (COCs) are seen as an economic instrument which assists in minimising the occupation of public open space in the coastal marine area by:
>
> - providing an incentive for developers to develop new and innovative approaches to delivering services on private land outside the coastal marine area;
> - delivering fair competition for those developers who have already undertaken innovative developments on private land that are competing with developments/services located within the coastal marine area;

[127] *Proposed New Zealand Coastal Policy Statement 2008. Evaluation under section 32 of the Resource Management Act 1991*, Department of Conservation, Wellington. 50-55.

- providing an incentive for developers to be efficient in their use of space and share space with other occupiers.

History of COCs

The RMA, from 1991 to 1997, set out an obligation to pay rent as a deemed condition of consent for any occupation of Crown land in the CMA (s112). The amount of rent, and the circumstances when it was to be paid were to be set out in regulations prepared by the Minister for the Environment and made by the Governor-General (s360). The rent was to be collected by the regional council and paid into the Crown Bank Account (s359). Consequently there was no need for an NZCPS policy in those years on coastal occupation rentals. The rentals were however, not collected by regional councils and in recognition of issues with the system, a review of the rental regime was undertaken.

This led to an amendment to the RMA in 1997 which introduced s64A. This sets out and provides a statutory framework for the implementation of COCs devolving the decision from the Crown to regional councils over when charges should be levied, and what they should be. The councils are required to include a coastal occupation charging regime (or a decision not to have one) in a regional coastal plan. Section 64A also provides for the money received from charges to be used by the regional council for the purpose of promoting sustainable management of the coastal marine area. If a regional plan did not address the subject of charging regimes, councils were required to address it in the first plan change after 30 June 1999. This date was later amended to 30 June 2007.

The s42A Report[128]

Difficulties with the provision for COCs in the policy statement became apparent from submissions because some submitters considered they were comprehensively provided for in s64A RMA, but most of the submissions had difficulties with content of the policy and schedule. Only one council, Environment Southland, has introduced a COC regime 'rolled over' from the previous Harbours Act legislation prior to the implementation of the RMA.

The Board requested that the authors of the s32 report address the matter under s42A RMA (advice to the Board). But that document does not take the issue much further than to re-iterate that:-

- regional councils have identified issues with COCs and requested greater guidance and legislative change;
- the NZCPS provides greater guidance on coastal occupation charging through draft policy 24 and Schedule II;
- such provisions are consistent with s64A RMA;
- draft policy 24 also requires that regional councils amend plans to give effect to the policy within 12 months of the gazettal of the new NZCPS. This is consistent and integrated with the amendment proposed to s401A RMA by the Aquaculture Legislation Amendment Bill (No 2) a Government Bill introduced on 24 July 2008;

[128] *A Report to the Board of Inquiry on the Proposed New Zealand Policy Statement 2008.* August 2008.

- coastal occupation charges cannot be imposed on those carrying out recognised customary activities.

Submissions

- **Regional and district councils**

Some regional councils appeared to give tacit support to the draft policy and schedule seeking additional information in the schedule on the range of appropriate charging methodologies available to them to set up a charging regime. They also sought deletion of the requirement for them to amend regional coastal plans to give effect to the policy no later than 12 months after gazettal of the statement as it is inconsistent with s64A RMA which requires coastal occupation charges to be considered when preparing or changing a regional coastal plan[129].

Most councils however opposed COCs while giving their support in principle. They consider the legislation in the RMA (s64A) is flawed and any plan change that might take place would attract Environment Court appeals.

One council noted the limited guidance as to what may be considered coastal occupation charging, (there is no clear definition), while also observing that the policy process does not require any territorial authority to undertake public consultation which is necessary where a territorial authority owns the land and/or has public assets in the CMA. This party submits the s32 analysis is lacking in detail in that it does not address this issue which was apparently put to the review team in 2006. The charging process set out in Schedule II should therefore be amended to require that territorial authority consultation is undertaken prior to setting the charge where the authority owns the land or has assets on or in the land which is classified as CMA. Territorial authorities have a wider interest in coastal areas and need to be fully involved in the process. It is also unclear whether the coastal charging regime would apply to freehold seabed titles. Further guidance is requested in relation to this issue.

Greater Wellington Regional Council, among others, while seeing COCs as a rental, considers a schedule of charges could be set by central government if it is determined COCs should occur. Environment Southland supported draft policy 24 in part because it was well qualified with the words 'where appropriate' and 'as necessary' but the council then sought deletion of the schedule because it is too detailed and proscriptive. The council considers the last sentence of clause 1 of Schedule II is more forceful than policy 24 itself.

The Waikato District Council identifies that views on coastal charging are polarised and contradictory, providing little scope for compromise, especially as all other fees and charges levied under the RMA are determined through the Annual Plan and LGA processes suggesting this should happen with COCs.

The ARC indicated its support in principle for COCs. But it notified a change to its coastal plan in July 2007 that stated the ARC has resolved, at this time, not to introduce a coastal occupation charging regime. This was required to overcome the roadblock to other important plan changes that would otherwise have been imposed by s401A(4). Other councils have acted similarly. The ARC's preference is for the legislation and process matters it has identified to have already been addressed, enabling it to implement a suitable charging regime

[129] #491 Otago Regional Council.

instead. While the NZCPS alone cannot address all these matters this submitter considers that further attempts should be made to improve the guidance the NZCPS can provide. For example, at a minimum it should provide a national policy stating that there is a presumption to pay some form of recompense for private occupation of public space in the CMA.
In the absence of legislation change to comprehensively address the identified implementation difficulties, and assuming that the Board of Inquiry may choose to recommend retaining COC provisions in some form, the ARC requested that the timeframe to amend regional coastal plans in policy 24 be extended to at least three years. This is to allow sufficient time for development of a charging methodology and adequate pre-notification consultation on this contentious issue. Other councils indicated similarly.

- **Infrastructure companies**

Most infrastructure companies agreed that policy 24 is generally acceptable although the provision should have a closer focus on when occupation charging would be appropriate. Submissions focused too on the criteria for charging in Schedule II. Most of these companies stress however that the use or development that occupies the CMA may itself provide significant public benefits from occupation by projects of national or regional significance. In such circumstances there is no need for COCs. The port companies identified themselves as being in this category as did others involved in infrastructure projects of national importance. The policy basis for COCs therefore should be about obtaining public benefits from activities that are themselves not inherently in the public interest, or which inherently do not have public benefits with infrastructure of national or regional significance (including that relating to renewable energy generation) excluded from the COC process as it provides so many public benefits.

Counsel for the port companies also identified that when they were established, they acquired for valuable consideration the assets of the Harbour Boards. This included the freehold ownership of structures in the CMA. Accordingly, the companies point out they cannot be charged COCs in respect of these assets as they are owned outright. Such rights also give them the ability to access and use reclamations. Most specifically, these were regularised by s384A RMA and the Minister's grant of occupation rights around those facilities are considered to have been paid for at the time of acquisition. On this account it was submitted that it would be unreasonable if the port companies were required to pay for this twice. In the absence of any other broad qualification applying to ports generally, the port companies considered schedule II should be amended to specifically say that the occupation charging regime should not be applied to any s384A areas or the renewal of such consents.

Meridian however had no issue with policy 24 or with the criteria listed in Schedule II.

- **Engineering interest**

IPENZ for the engineers considers that policy 24 is overly prescriptive altogether and seeks its deletion.

- **Marina operators**

The Board heard from several marina operators, which are largely based in the Auckland region because that is where significant boating activity takes place. Those who appeared

pointed out some significant anomalies as to the imposition of COCs in their areas of occupation[130].

Of the 18 marinas in the region, only those 3 are charged significant fees. The Half Moon Bay Marina is required to pay $190,000 per annum to the ARC for seabed licence fees under the transitional provisions of the RMA stemming from the former Harbours Act, $73,000 per annum to the Manukau City Council for a perpetual lease of the same area of seabed, with $4,000 per annum to the ARC for resource consent fees.

The West Park Marina at Hobsonville, is charged a seabed licence fee of $127,500 (originally identified in a review as $279,000), up from $1,000 per annum (1985) to $32,560 (1990) and then back-dated for 5 years in 2005 resulting in a one-off additional cost to berth holders of $475,000. As a result of that increase, 18% of the marina berth holders did not renew their berth licences. The berth holders remaining received $300,000 in legal and other expenses contesting the review. This seabed licence fee is again up for renewal in 2010.

In addition, the berth holders in the West Park Marina contribute $850,000 per annum to the cost of maintenance dredging to the seabed around the marina due to the high level of suspended silt in the waterways. Berth holders pay land rates of $28,477 for the car-park and $22,000 per annum for the seawall surrounding the marina complex. West Park consider that offset against such charges should be the public benefits of its facility, namely a boat ramp available to the public at no charge, a new pier also to be available to the public at no charge, and dredging.

At the time of hearing there was a petition to the ARC protesting about the inequity in the level of seabed fees charged to the boat users at Half Moon Bay, Bucklands Beach Yacht Club and West Park Marina, identifying:

- the many other marinas in the Auckland region that pay no seabed fees,
- other marinas across New Zealand pay no seabed fees,
- some 5800 ARC mooring holders who pay no seabed fees,
- the minimal fees applying to other sports and recreational groups occupying public open space.

- **Fishing interests**

SeaFIC in a major submission contends the legislation surrounding COCs is confused and therefore flawed and the policy should be deleted. If COCs are to be applied in a region, councils should have a clear (and common) understanding of the purpose and principles behind its provisions in the RMA. In the light of the legal advice and research that SeaFIC commissioned, it concluded that such charges:

- are not a resource rental as regional councils do not own the coastal space, the Crown does, the concept of resource rentals for coastal occupation being deliberately rejected during the Bill introducing s64A RMA in 1997;
- are not a form of public compensation for exclusive occupation;

[130] #355 Half Moon Bay Marina; #277/#157 West Park Marina Association Trust; #169 Bayswater Marina Management Ltd; #391 Whitianga Marina Society; #408 Bayswater Marina Developments Limited; #409 New Zealand Marina Operators Associations; #446 Westhaven Marina Users Association Inc.

- the RMA processes focus on the avoidance, remedying or mitigation of the adverse effects of occupation; there is nothing in the RMA to suggest that occupation results in effects that need to be compensated for.

Aquaculture New Zealand (ANZ) supports the SeaFIC submission pointing out that for the aquaculture industry in particular there is a high level of anxiety regarding the imposition of COCs and this will continue to be a further barrier to investment and development until the issues have been resolved. ANZ also identified the imposition of COCs also has the potential to significantly impact the value of any aquaculture space provided to Maori through the Maori Commercial Aquaculture Claims Settlement Act 2004, as well as other potential rights provided through the Treaty settlement process. These need to be carefully considered in any decisions regarding such charging and lends further weight to the need for any potential charges to be applied consistently across the country to ensure all iwi receiving assets are treated equitably.

New Zealand King Salmon Company Limited considers that if COCs are to be implemented they must be fair, not a tax or rate and must be targeted to managing the effect and not the particular activities causing the exclusion.

The New Zealand Federation of Commercial Fishermen require the policy and schedule to be deleted as the policy is too vague to effectively manage a national charging regime that is efficient and fair; it maintains that councils will mix occupation charges with political manoeuvring and would, through the policy, be granted the capability to charge for any and all coastal uses; it considers inappropriate and unfair charging can quickly de-incentivise fishing activity and infrastructure.

Issues Arising

The issues arising and difficulties with COCs are effectively set out in the submissions at the ARC, and EBOP and Environment Waikato which highlight that:

- **there is no presumption to pay:** s64A does not clearly establish that private occupation of the CMA is a privilege rather than a right, or establish a default of levying an occupation charge unless there are grounds to reduce or remove it; this means councils are required to justify any charging regime from first principles; that is, the presumption should be there that the charges should be applied, i.e. it is the right of the 'owner' to extract the rental for occupation of coastal space but in some cases it is treated like a cost recovery; this justification is open to challenge in the Courts;
- **there is no definition of an occupation charge:** s64A does not provide a clear definition of exactly what a COC is (rent, cost recovery, or economic instrument), leaving it open to interpretation and challenge in the Courts;
- **COCs are administrative property management:** COCs are an administrative property management matter sitting uncomfortably in resource management legislation; they are not integrated with and do not meet the purpose of the RMA;
- **there is no definition of a methodology for setting COCs:** s64A does not define the nature of the charge or a charging method; there is no clear

methodology for setting COCs and they are in danger of being used in different regions for different purposes; this lack of clarity and definition of a nationally consistent method:

(i) reduces coordination between regions;

(ii) increases the risks of resource wastage during independent and uncoordinated development of methods; and

(iii) increases otherwise avoidable risks of legal challenge to methods developed within each region;

when there should be national consistency;

- **valuations:** for local authorities having to consider the public benefits gained and lost, and private benefit gained, questions may be asked what is a public gain or loss; and what is a private gain and how are valuations to be applied (as the submissions of the marina companies also point out);
- **section 384A equity issues:** the ability for councils to levy COCs against those holding transitional permits (s384A RMA, for port occupation) has been challenged and if not resolved before imposition of COCs for other occupiers, would perpetuate a significant charging inequity; currently such an inequity applies in Auckland over seabed licence fees that are only charged to some marinas (see above); this would be resolved once COCs are established to replace these transitional agreements, but s384A inequities would become an issue instead.[131] And in the Bay of Plenty there is a private marina on one side of Sulphur Point that would pay coastal charges under a transitional permit under s384A, and another marina on the other side of Sulphur Point that looks the same on the same water and is within s204 RMA and pays no charges;[132]
- **first schedule requirement:** the RMA requires the COCs be implemented through changes to a regional coastal plan using the full First Schedule RMA process. This imposes significant costs upon regional councils to implement what is arguably not an RMA matter. Councils argue that the fixing and charging of levies fits more comfortably under the LGA process, like other council charges. That process provides for community participation, is less prone to prolonged challenge through the courts, and is more nimble at responding to review and changing circumstances.
- **implementation timing:** s401A RMA establishes a date (30th June 2007) after which coastal plans must either include a statement declaring COCs will not be instigated, or a charging regime, in order for any other plan change to be lawful. It is understood that the Government is considering reviewing this date, but that it proposes to make it subject to the timeframe in the revised NZCPS. But many plans are already under review and it may well be years before COCS may be implemented.

There are a number of other issues concerning COCs raised with the Board:

[131] #364 ARC, McCarthy.
[132] #160 EBOP, Bayfield.

- as counsel for many of the infrastructure companies submitted there is often considerable public benefit provided by facilities that occupy the CMA. Ports, wharves, ferry terminals, railway and road bridges, energy infrastructure, and marinas are indicative of such benefits; there are public benefits also to be had even for small facilities - the Court of Appeal has found in *Hume* v *Auckland Regional Council* that the public have the right to use private jetties located in the CMA unless public use is excluded by a condition of consent[133].
- It is clear from any reading of s64A that COCs are imposed by regional councils, collected by them and the correct understanding of s64A(5) is that the regional council will determine the use of the money that is received and that is for the sustainable management of the CMA. But policy 24 and schedule II seem to have been included in the PNZCPS on the basis that the regime should be under the control or directions in some way of the Crown. In 1997 (admittedly prior to the Foreshore and Seabed enactment) when the Bill amending the RMA was introduced for its third and final reading, the Hon Nick Smith (the then Minister of Conservation) made this introductory remark:-

  > The Bill as introduced provided for the discontinuation of Crown rentals for the occupation of coastal space and their replacement with provisions that give Regional Councils the option of introducing occupation charging regimes through Regional Coastal Plans[134].

- the intent of the 1997 legislation discontinues any notion of Crown rentals for the occupation of Crown land which a number of submitters considered COCs should be; 'rents' normally accrue to an owner (in this case the Crown) not a third party, so a charging regime such as proposed may be considered something else other than a rental;
- occupation rights are however in some ways akin to a rate or other charge since they raise revenue for the council; some reconciliation with council rating powers and other types of charges is a consideration (not addressed in the PNZCPS and nor should it be);
- there is nothing in the RMA to suggest that 'occupation' results in effects that need to be addressed twice (once in the planning process and again through a subsequent charge) – the effects of other types of activities are only addressed once;
- s64A(5) directs the use to which any COCs may be put – promoting the sustainable management of the CMA – not to reflect the Crown's interest in obtaining public benefits from the occupation of 'public land';
- the way COCs are being promoted in the PNZCPS is as a 'stand alone revenue collection mechanism' rather than integrated planning tool;
- in the case of activities that must take place in the CMA (aquaculture, some port facilities) COCs cannot act as an economic instrument to incentivise the user to carry out the activity on land, i.e. when there is no realistic

[133] 3 NZLR. 363.
[134] See Hansard, *Resource Management Amendment Bill*, Third Reading, 9 December 2007, page 2, para 5.

opportunity to alter behaviour in response to that incentive, a COC is simply a tax on occupation;

- the introduction of COCs will not reduce or remove any other pre-existing planning and consenting requirements; how then queries SeaFIC, can it be claimed that COCs can further prevent unnecessary occupation or promote sustainable management;
- the s32 report suggests that charging for the occupation of public land generates a return to the public in compensation for the rights transferred; elsewhere it is stated that occupation is a privilege and not a right; it is not clear what rights are being transferred and what additional impacts the public is being compensated for by way of COCs – particularly in the light of resource consents granted to marinas.

In addition in seeking to better understand how such conflicting issues around marinas had arisen, the Board sought information from the ARC on its methodology for setting seabed marina licence fees and the statute under which it was carried out. The information was set out in a letter dated 23 January 2009 and was helpful[135].

What this information indicates is that some marinas in Auckland are paying occupation charges under differing legislation. Further, the arbitration agreement attached to the ARC letter also sets out in detail the application of the valuation process and the different methodologies used to arrive at the assessed fair rental. It also provides useful descriptions of the strengths and weaknesses of the different valuation approaches when applied in this particular case. The primary method is based on the seabed being valued at a reduced rate to the adjoining dry land. That award ARC indicates, is now used in Auckland as a basis guiding document for the assessment of a fair rent for marinas. We are also advised that in respect of the Gulf Harbour and Pine Harbour Marinas, for which seabed rentals are received by the Rodney District and Manukau City Councils respectively, the rents have been set at a percentage of operating expenses as part of concessionary establishment rents, but are also moving under licence reviews to a fair rent basis.

- **Coastal Occupation legislation**

Section 64A states as follows:-

> **64A Imposition of coastal occupation charges**
>
> (1) Unless a regional coastal plan or proposed regional coastal plan already addresses coastal occupation charges, in preparing or changing a regional coastal plan or proposed regional coastal plan, a regional council must consider, after having regard to –
>
> (a) the extent to which public benefits from the coastal marine area are lost or gained; and
>
> (b) the extent to which private benefit is obtained from the occupation of the coastal marine areas, -
>
> Whether or not a coastal occupation charging regime applying to persons who occupy any part of the coastal marine area or land in the coastal marine area vested in the regional council should be included.

[135] Letter ARC to Chair, NZCPS Board of Inquiry 23.1.09. Attached: *Half Moon Bay Marina Arbitration Award.*

(2) Where the regional council considers that a coastal occupation charging regime should not be included, a statement to that effect must be included in the regional coastal plan.

(3) Where the regional council considers that a coastal occupation charging regime should be included, the council must, after having regard to the matters set out in paragraphs (a) and (b) of subsection (1), specify in the regional coastal plan –

(a) the circumstances when a coastal occupation charge will be imposed, and

(b) the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and

(c) the level of charges to be paid or the manner in which the charge will be determined; and

(d) in accordance with subsection (5), the way the money received will be used.

(4) No coastal occupation charge may be imposed on any person occupying the coastal marine area unless the charge is provided for in the regional coastal plan.

(4A) A coastal occupation charge must not be imposed on any person occupying the coastal marine area if the person is carrying out a recognised customary activity in accordance with section 17A(2).

(5) Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area.

This legislation was submitted to be a 'code' for the imposition of COCs by counsel for Bayswater Marina. We were urged that as such, policy 24 and schedule II should be deleted from the NZCPS altogether[136].

- **Conclusion**

We do not address each of these issues but note that they highlight difficulties with the law and the draft policy as they stand. We accept that any policy should reflect the obligations on a regional council under s64A. But we accept too that schedule 2 is excessively detailed, has conflicting provisions and would impose a significant financial compliance cost on local authorities that could exceed any revenue recovered. The Board was therefore unable to redraft the policy to deal with these difficulties.

We conclude that the differing methods of valuation, and the differing legislation under which such transactions take place, further militate against providing for COCs in the NZCPS.

We recommend therefore that policy 24 and Schedule II be deleted.

[136] #169 Brabant.

Policy 25 Public or multiple use of structures in the coastal marine area

Regional coastal plans shall discourage unnecessary proliferation of structures in the coastal marine area by requiring that structures be made available for public or multiple use wherever reasonable and practicable.

Policy 26 Abandoned or redundant structures in the coastal marine area

Where practicable, resource consent conditions shall require the removal of any abandoned or redundant structure in the coastal marine area that the consent holder has erected or is responsible for.

The s32 Report

The s32 report states that it is important to avoid a proliferation of structures in the coastal marine area as it promotes the protection of the natural character of the coastal marine area and helps maintain its values as public open space. It also provides for those structures that must locate in the coastal marine area to do so within the limits of sustainable management. That involves requiring public or multiple use of structures where practicable to avoid a multiplicity of single use structures. The Report also recognises that it is appropriate to require the removal of abandoned or redundant structures by those responsible for the structure.

Submissions

Policy 25 Public or multiple use of structures in the CMA

- **Limited support for the policy**

Few individuals, community groups and conservation interests comment on this policy, although those that do generally support it. However, the New Zealand Conservation Authority says that, 'the language in the 1994 NZCPS was superior. This is a narrow policy that only discourages unnecessary proliferation [of structures] by one measure'.

Three iwi groups support the policy in principle. However, two of these ask how it can be implemented under a first come/first served regime; and, if it is envisaged that councils could refuse resource consents on the basis that future multiple use is required. Five councils also support the policy.

- **Matter is already addressed by s122(5) of the RMA (and other NZCPS policies)**

Most regional and district councils say that Policy 25 is already provided for in s122(5) of the RMA. They submit that it gives no more guidance than that which has already been

established in case law, where there is a presumption that structures in the CMA are available for public use, unless for exclusive use.

The Auckland District Law Society, together with a number of infrastructure companies, also say that the question of public access is appropriately dealt with under s122(5) of the RMA and that this provides a more even and fair approach to the issue, rather than the mandatory policy prescribed in Policy 25. They note that public access is already dealt with in the NZCPS proposed policies 14 to 16.

They also consider Policy 25 assumes a finite limit to the number of structures that are acceptable under the objective of sustainable management and creates a presumption against further development in the nature of marina or jetties and wharves. The Auckland District Law Society submits that this assumption should be challenged as not being justified on any stated or rational basis and notes that, in many respects, more local jetties and marinas could be in the public interest.

- **Policy fails to address issues of safety and security**

Infrastructure companies, property interests and some councils submit that that it may not be safe for the public to use structures or infrastructure facilities in the CMA; and, that public use could affect the security of activities reliant on those structures.

One council recommends that additional wording be included along the following lines, '*wherever reasonable and practicable and where security, health and safety reasons are not an issue'*. Other submitters make similar suggestions.

- **Policy is contrary to the concept of coastal occupation charges**

A number of infrastructure and property companies submit that the policy is contrary to the concept of coastal occupation charges, which represent in part a payment in recognition of the exclusion of public access.

- **Rural structures in the CMA**

Federated Farmers notes that the policy does not distinguish the types of structures to which it applies and might be applied to all kinds of structures to which it is not applicable. It requests that the policy is amended to provide that it does not apply to structures associated with drainage.

Policy 26 Abandoned or redundant structures in the CMA

- **Support for the intent of policy 26**

Most submitters support the inclusion in the NZCPS of a policy to address abandoned or redundant structures, but are concerned that the proposed policy will not address the historical problem of pre-RMA structures.

A number of individuals and conservation groups say that the consent holder should be required to remove the structure, except where the structure has heritage value. Some conservation groups point to the need to ensure that such decommissioning is done in a manner that has due regard to the natural environment.

Infrastructure companies and aquaculture interests have concerns about the costs and environmental impacts of removing structures.

- **Policy does not address 'orphan' structures**

Many councils, along with some other submitters, say the policy will not address historical or pre-RMA structures. They say that 'orphan structures' are the main problem and cannot be addressed through resource consents. Some consider that this issue would be better addressed through a central government funded programme to remove orphan structures. Others seek guidance for the removal of redundant or abandoned structures where no resource consent exists.

- **Abandoned or redundant structures may have heritage value**

A number of submitters comment that redundant or abandoned structures in the CMA may have heritage value. They consider that an implication could be drawn from the policy that a redundant structure should be removed; however, this approach may well overlook a heritage value of substantial merit. They submit that the policy should be qualified by reference to removal only where no heritage values exist.

- **Adverse effects of removal may outweigh benefits**

Infrastructure companies, property interests and some councils say that removal of structures is not always the best option. They note that, in some cases their removal may create more damage to the environment than leaving them where they are; for example, the removal of petroleum pipelines below the seabed.

Several infrastructure and property interests say that, as presently worded, the policy could apply to wharves or similar facilities in water front areas which may not be needed for their original purpose but have significant potential benefit for reuse.

Some port companies say that the policy is not suitable to deal with structures within ports that may be redundant for their prior purposes, but which would incur significant removal costs.

Some aquaculture interests say that removal of structures should be required only 'where practicable and the long term effects of such structures will create adverse environmental impacts'. One council also recommends that the policy provide for redundant structures to remain in situ where the adverse effects of their removal outweigh any benefits.

- **Other comment**

One regional council recommends that, for consistency, the term 'coastal permit' be substituted for 'resource consent'.

Another regional council notes that the policy will create a general requirement for the imposition of bonds on consents for structures as that is currently the only way to ensure removal of abandoned structures. One iwi group also comments on the need to levy bonds for removal.

Issues Arising

We deal with these policies under the heading of use and development of the coastal marine area (policy 14). We do not consider there is a need for two stand-alone policies.

We recommend deleting policies 25 and 26.

Policy 27 Reclamation

The adverse effects of reclamation of the coastal marine area shall be avoided unless land outside the coastal marine area is not available for the proposed activity and there are no practicable alternative methods of providing for the activity. In considering a resource consent application for a reclamation, particular regard shall be had to:

(a) whether the proposed activity can only, by nature, be located adjacent to the coastal marine area; and

(b) the expected effects on the site of climate change and sea level rise over no less than 100 years.

Where a reclamation is considered to be a suitable use of the coastal marine area, its form and design shall:

(c) ensure, as far as possible, that the shape of the reclamation, and the materials used, are visually and aesthetically compatible with the adjoining coast;

(d) avoid the use of materials in the reclamation containing contaminants that could adversely affect water quality in the coastal marine area;

(e) provide for public access, including walking access, to and along the coastal marine area at high tide, unless a restriction on public access is appropriate as provided for in Policy 43;

(f) remedy or mitigate adverse effects on the coastal environment;

(g) ensure that the reclamation is designed and located to anticipate climate change impacts; and

(h) avoid consequential erosion and accretion.

The s32 Report

The s32 report states:

> Reclamations can have a significant adverse effect on the environment and on public land in the coastal marine area. Therefore to implement the objectives of the NZCPS and achieve sustainable management, guidance on the location and design of reclamations is considered to be appropriate. Considering whether a reclamation is required and ensuring it is well located and designed is a component of assessing appropriate subdivision, use and development in the coastal marine area.
>
> The effective implementation of [an] objective … in particular requires that the 'appropriateness' of any reclamation is considered in any decision making process. Without this being undertaken, sustainable management of subdivision, use and development of the area encompassed by the NZCPS will not be achieved… .
>
> There is a variable level of guidance provided in regional and/or district plans. By omitting to provide further guidance, there is a risk in 'inappropriate' reclamations occurring in the coastal marine area.

Submissions

- **Individuals, community groups and conservation interests**

Individuals, community groups and conservation interests provide only limited comment on this policy, but those that do comment generally support it. Some wish to see the presumption against reclamation strengthened. Several conservation groups such as EDS say that reclamations should be avoided unless clear need is demonstrated and the activity is in the public interest. One also considers that any development should respect natural values and fit within and be visually subservient to the natural environment.

- **Iwi**

One iwi submits that cumulative effects need to be assessed prior to any reclamation; and, the waterway considered in its entirety before considering any reclamation. Two further iwi groups seek an additional clause to recognise the relationship tangata whenua have with the area and their management of the area.

- **Unclear wording**

Many submitters note that the first sentence of the draft policy is unclear, because it reads as if it is the adverse effects that are to be avoided, not the reclamation itself. They submit that it should be written along the following lines, 'Reclamation in the CMA shall be avoided unless…'. Chevron New Zealand considers that the 'avoid' test is too stringent. Several other submitters (including some councils) also comment on this and say it should be extended to 'avoid, remedy or mitigate' to be consistent with sustainable management under the Act; policy 27 (a) – Councils and infrastructure companies say that the clause should relate to 'the activity proposed to use the reclamation', rather than the current unclear reference to 'the proposed activity'.

- **Presumption against reclamation overlooks existing and desirable reclamation**

The Auckland City Council considers that, 'the policy articulates a general presumption against any reclamation, overlooking the need for desirable reclamation [and fails] to address situations where there has already been reclamation of the coastal area'. Most infrastructure and property companies share this view, along with some councils, professional and legal organisations. These submitters believe that the policy is overly focused on the adverse effects of reclamations and fails to recognise and provide for the various beneficial circumstances in which reclamations are usually undertaken in New Zealand; for example, reclamation for motorway, arterial road, harbour wharf, container storage, transmission pylons, and other public utility purposes. Hopper Developments Ltd which creates residential canal developments considers policy 27 is inconsistent with the RMA. Reclamation may be appropriate in certain areas of the coast and for particular developments. This should be a matter for individual regions and districts. The policy should be amended to reflect that where the effects of reclamation can be mitigated or remedied or it is part of a development contributing to public amenity, it may therefore be acceptable in the CMA.

The Auckland District Law Society submits that this could prevent the merits of a proposal being assessed objectively, consistent with the purpose of sustainable management under s5 RMA. These submitters also note that the draft policy ignores the fact that reclamation may be expanding on an existing piece of infrastructure of significant national value and that there may be benefits of expanded operation.

The Auckland International Airport seeks amendment to the draft policy to say that the 'adverse effects of reclamation shall be avoided, remedied or mitigated by ensuring that any reclamation is a suitable use for the CMA'. And that particular regard shall be added to 'the extent to which the reclamation and intended purpose would provide for efficient operation of ports or other infrastructure, or otherwise enable social and economic wellbeing'; and, 'whether it is practicable for the proposed activity to occur at alternative locations outside the CMA'. Most other infrastructure companies and a number of property interests also seek this amendment.

- **Climate change and coastal hazards**

There are a variety of views on how the policy should address the effects of climate change.

The New Zealand Marine Sciences Society supports the policy addressing the effects of sea level rise. Three individuals submit the policy needs to provide for recognition of the latest information on climate change, which suggests greater than anticipated retreat of dunes. One individual submits that the 100-year time frame for climate change is not consistent with timeframes for seismic hazards outlined in the Building Code 2004.

Environment Waikato seeks guidance on the appropriate sea level rise models to use in planning and consent processes. It says that without guidance councils will have to justify climate change models in every plan change. Two councils recommend the addition of a clause relating to the avoidance of hazards associated with reclamations. One suggests the policy could be worded so that it is made explicit that reclamation of land will be subject to the coastal hazard considerations outlined in policies 51-54.

Infrastructure companies accept the general intent of the policy to address the effects of climate change, but submit that it needs amending to ensure that the functionality of reclamations is not compromised by the need to have particular regard to the effects of climate change. The port companies point out that the draft policy may mean, for example, that new reclamations that adjoin existing reclamations will be required to be at a higher level than the existing reclamation, which could compromise functionality and access to the CMA.

Federated Farmers submit that the requirement regarding climate change and sea level rise is unreasonable and should be deleted and replaced with 'the reasonably predicted effects on the site of climate change and sea level rise'.

- **Heritage values**

Wellington Waterfront Limited notes that policy does not recognise that in some areas of the CMA there has been historic reclamation; and, that further reclamation might be appropriate to provide for development that is in keeping with the values of those areas, including heritage values. The Christchurch City Council also submits that heritage should be added as a factor that should be given particular regard.

- **De-reclamation**

The Auckland Law Society and one individual submitter recommend that consideration could also be given to de-reclamation of an equivalent area or the provision of new wetland or marine habitat where practicable to replace any lost marine area.

One council seeks a clarification to ensure that, as far as possible, the reclamation uses the minimum area of the CMA.

- **Comments on specific clauses**

Policy 27 (c): IPENZ submits that 'as far as possible' should be replaced by 'as far as practicable', otherwise cost is likely to become a major issue, along with possible compromise of design safety. Infrastructure companies are concerned that this clause has no regard to whether the adjoining coast is under redevelopment and is intended to convert to a new use; they say that 'where appropriate' should be substituted for 'as far as possible'. One infrastructure company says that the clause does not recognise that, in areas where there has been historic reclamation, it may not be appropriate for the shape of the reclamation to be compatible with the adjoining coast. Auckland International Airport (supported by other infrastructure companies) submits that there is a need to acknowledge that during the construction period, and possibly for a short period afterwards, there is likely to be some loss of sediments and materials into the CMA, which could adversely affect water quality.

Policy 27 (d): one regional council recommends amendment to provide for consideration of effects on aquatic ecosystems and biodiversity, not just water quality.

Policy 27 (e): one regional council recommends that this clause be amended to include its stand-alone circumstances, rather than cross referencing it to policy 43. Another notes that the clause does not recognise that there may have been lack of access prior to the reclamation. It suggests an amendment along the lines of preserving a level of access at least equal to that which existed prior to the reclamation.

Two regional councils say that there are some situations where it is not practical or reasonable to require that public access is provided as part of a reclamation consent.

Policy 27 (f): two councils submit that this clause is unnecessary because it repeats the RMA.

Policy 27 (h): one regional council recommends that the clause also provide for mitigation, as appropriate; infrastructure companies also recommend providing for mitigation, as well as for minimising any consequential erosion and accretion.

Issues arising

- **Suggested changes generally supported**

The Board's experience both through submissions and site visits left us sure of the need for a policy on reclamation. The activity is currently a restricted coastal activity (RCA) recognising the potential for adverse effects. We saw some historic reclamations that would not meet today's environmental standards.

We note:

- reclamations have in-filled valuable coastal areas for container and oil storage, fumigation and boating related activities;
- marinas are located and/or proposed in some sensitive areas;

- the advent of climate change for ports, marinas, road and rail infrastructure and waterfront developments requires planning for now, to the extent that coastal hazard areas need to be defined and accommodated in planning for these facilities;
- some additional reclamation may also be a necessity for nationally significant infrastructure such as airports, ports, road and railway routes;
- de-reclamation is a possible mitigating technique;
- wave generation devices for tidal power may have to occupy on-shore/off-shore locations;
- realignment of shorelines and some form of reclamation may be involved where there are existing sloping sea-walls (generally of rock construction) which prevent shipping from berthing and make access to the CMA generally inaccessible;
- major infrastructure has access and security issues around reclamations considered in policy 43.

- **Benefits of reclamations**

The port companies' submission and evidence identified a number of benefits providing value to the public from reclamations such as:

- construction of solid breakwaters to provide shelter for port areas, harbours, marinas;
- embankments needed for bridges, railway lines, and sometimes roads;
- coastal walkways and public viewing platforms;
- new vertical seawalls instead of the older sloping seawalls which do not provide public access;
- back up land for cargo handling and storage.

While provision for some of these facilities may need revisiting in the light of sea level rise, we recognise that it may not be appropriate to search for additional land outside the CMA on practical, efficiency, safety and other grounds. We therefore add new tests in clauses (a) – (d).

- **Planning horizons and climate change**

Because New Zealand is essentially a coastal nation with major infrastructure built on the coast, the Board's concerns for this NZCPS is to ensure that climate change and its potential for serious modification of the coast is carefully considered and wisely planned for. The 100 year planning horizon in clause (b) is appropriate as explained in the analysis of the coastal hazard policies.

Another submitter seeks to retain the objective of clause (b) but for it to reflect new knowledge regarding the effects of climate change. We see the NZCPS as providing for this approach and cover it in more detail in our decision on coastal hazards.

- **A high test**

We agree with Mr Pollock, for Contact Energy[137] that there should be a high test for reclamation – a 'strong justification' as he puts it. He supported separating the justification from reclamation design. The port companies also focused on the first part of the policy being directed to ensuring that any reclamation must be a 'suitable use' of the CMA, before considering reclamation design.

- **De-reclamation**

The Wellington Waterfront Company told us of de-reclamation work it had carried out on the Wellington Waterfront to expose the ancient Kumototo Stream and that it will carry out in part of the lagoon where the Whare Waka is to be situated to create more public and useful open space. It had also opened up an ancient stream in Waitangi Park to achieve the same result along with recognising some Maori cultural heritage values[138].

De-reclamation is obviously a serious mitigation technique. How far it may be feasible can only be determined on a case by case basis.

- **Conclusion**

We recommend policy 27 be amended and become policy 12 as follows:

Policy 12 Reclamation and de-reclamation

(1) All decision makers must avoid reclamation of land in the coastal marine area, unless:

(a) land outside the coastal marine area is not available for the proposed activity;

(b) the activity which requires reclamation can only occur in or adjacent to the coastal marine area;

(c) there are no practicable alternative methods of providing the activity; and

(d) the reclamation will provide significant regional or national benefit.

(2) Where a reclamation is considered to be a suitable use of the coastal marine area, in considering its form and design all decision makers must have particular regard to:

(a) the potential effects on the site of climate change, including sea level rise, over no less than 100 years;

(b) the shape of the reclamation, and where appropriate, whether the materials used are visually and aesthetically compatible with the adjoining coast;

(c) the use of materials in the reclamation, including avoiding the use of contaminated materials that could significantly adversely affect water quality, aquatic ecosystems and indigenous biodiversity in the coastal marine area;

[137] # 374, Oral Interpolation.
[138] #205 Hibma. In the early 1800s the Kumototo kainga was located above the mouth of the stream. It was the dwelling place of the Te Atiawa chief Wi Toko Ngatata.

(d) providing public access, including providing access to and along the coastal marine area at high tide where practicable, unless a restriction on public access is appropriate as provided for in policy 22;

(e) the ability to remedy or mitigate adverse effects on the coastal environment;

(f) whether the proposed activity will affect cultural landscapes and sites of significance to tangata whenua; and

(g) the ability to avoid consequential erosion and accretion, and other natural hazards.

(3) In considering proposed reclamations, all decision makers must have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, marinas, coastal roads, pipelines, renewable energy projects, railways and ferry terminals.

(4) De-reclamation of redundant reclaimed land, is encouraged in order to:

(a) restore the natural character and resources of the coastal marine area; and

(b) provide for more public open space.

Policy 28 Rights vested in reclaimed land

The Minister of Conservation when considering whether to vest rights in a reclamation of land of the Crown in the coastal marine area should:

(a) not vest an estate in fee simple in the relevant reclaimed land pursuant to s355(3) of the Act unless there are exceptional circumstances that warrant such a vesting;

(b) restrict the vesting of any leasehold or other right or interest sought (other than an estate in fee simple) to only those reasonably necessary for the activity sought;

(c) require that as a condition of any lease or other right or interest granted that a new or amended lease or other interest in the reclaimed land be sought for any new activity; and

(d) charge a market price for any estate in fee simple, or other interest or rights vested unless a waiver or reduction is appropriate considering the criteria in Schedule III.

The s32 Report

The s32 report states:

> Pursuant to s355 and 355AA RMA the Minister of Conservation may vest in any person or local authority a right, title or interest in any Crown land in the coastal marine area which has been reclaimed or is proposed to be reclaimed. The effect of s355AA is to prevent, subject to some exclusions, fee simple rights being vested for reclamations after the commencement of the Foreshore and Seabed Act 2004. Lesser rights, titles or interests may still be vested.
>
> Vesting is usually applied for to give the occupier of a reclamation some security of tenure. It is often appropriate to vest some interest in a reclamation. For example, there may be a substantial investment in the activities on a reclamation or the occupation may be a long standing one. However to give effect to objective 10 and recognise the public interests in the ownership of foreshore and seabed it is appropriate for any private rights to be minimised. This minimisation can be done by:
>
> - only vesting lesser than fee simple rights; and
> - only vesting the rights that are reasonably necessary to carry out a particular activity.
>
> The RMA does not give any detailed guidance to the Minister of Conservation either on the price to be charged, or the circumstances when a vesting price will be reduced or waived. To address Crown ownership interests comprehensively and consistently, and to contribute to integrated management across the Mean High Water Springs line, policy for coastal occupation charges should be accompanied by a policy for the closely related reclamation vesting charges.

> The Minister of Conservation does currently operate a regime for charging when rights are vested in reclamations, and has operated a regime since 1987, initially under the Harbours Act and then under the RMA. This has been guided by Department of Conservation guidelines, and there is now an established practice of charging a market price for whatever rights are vested (usually a fee simple sale or a leasehold term). Reductions or waivers have been granted where the activities are substantially or wholly public good activities….

Submissions

- **Individuals and community groups**

Very few individuals, community groups and conservation interests comment on this policy. Only two community groups and three conservation groups support it. One recreational group and one individual also submit that the policy should be removed because it goes beyond the statutory discretion given to the Minister under 355(3) of the RMA.

- **Councils**

Almost all regional and district councils that comment on this policy submit that it should be removed, because it is covered by the RMA and they submit that it is not an issue that should be addressed by the NZCPS.

- **Iwi**

Kahungunu also submits that the policy should be removed because it, 'does not sit well within the NZCPS as it displaces Crown obligations under the Treaty of Waitangi to act in good faith towards tangata whenua'.

- **Infrastructure companies**

Infrastructure companies submit that the draft policy should be removed because it places a substantial and potentially unjustifiable restriction on the powers of the Minister of Conservation provided under s355(3) RMA. They consider that the policy that the Minister should not vest an estate in fee simple unless there are exceptional circumstances is 'an extreme statement, is unreasonable and inappropriate and should be deleted'. They say it is also unnecessary and goes beyond the RMA by introducing an exceptional circumstances bar. Some also note that the appropriate exceptional circumstances where freehold vesting can occur were a huge area of debate at the time of the Foreshore and Seabed legislation. They believe that it is entirely inappropriate for that situation to be changed now through the auspices of the NZCPS. We were informed the port companies in particular had made significant commitments and financial decisions at the time of the debate based on the resolution of that legislation.

The companies suggest too, that policy 28(a)(b)(c) go beyond the scope of the Minister's discretion to vest an interest in a reclamation as provided for in s355(3) RMA. Further, policy 28(d) states that the Minister should 'charge a market price for any estate in fee simple or other interest or rights vested, unless a waiver or reduction is appropriate considering the criteria in Schedule III' is not valid. But the companies agree it is not competent for policy 28(d) to direct the Minister how to exercise the discretion in s355(3). The policy fails to

recognise that in many cases reclamations will have been undertaken wholly or primarily for public interest reasons and have public benefits. Port reclamations, reclamation for essential infrastructure, public utilities and the like, reclamations addressing seismic performance of existing land retention systems (seawall and revetments) or the straightening up seawalls to improve use and access, and many if not most of the examples set out in the discussion on policy 27 are all reclamations in the public interest and to refer to market rentals in such a context is entirely unreasonable and inappropriate. In addition, policy 28(d) omits to clarify that any value to be assessed should relate to the 'unimproved' value of the seabed, as the reclaiming party is the person who has met the cost of the reclamation and provided the 'improvements'.

The Mahoney Corporation considers that limitations of leases for reclaimed land to 50 years is unnecessarily restrictive. It will constrain the market value for reclaimed land and drive down returns to local authorities which might otherwise support activities in the coastal area.

- **Law societies**

The Auckland District Law Society considers that restricting any possible freehold vesting in reclaimed land to exceptional circumstances appears to be an extreme statement that could deter the provision of necessary infrastructure. It submits that the draft policy, 'goes beyond the statutory discretion given to the Minister under s355(3) by introducing an 'exceptional circumstances' justification where it does not appear in the statute' and should not be endorsed. The New Zealand Law Society also submits that the 'exceptional circumstances' test 'needs to be addressed to avoid the Minister's powers and duties under s355(3) being fettered by the policy'.

IPENZ submits that this issue is 'not in the domain of the NZCPS'.

Issues Arising

There are some fundamental difficulties with policy 28 as it is written. It is ultra vires s355 RMA and cannot stand. That provision states:

> **355 Vesting of reclaimed land**
>
> (1) Any person or local authority may apply to the Minister of Conservation for any right, title, or interest in any land in the coastal marine area which is land of the Crown and which has been reclaimed or is proposed to be reclaimed to be vested in that person.
>
> (2) Any person may apply to the Minister of Lands for any right, title, or interest in any land –
>
> (a) which forms part of a riverbed or lakebed which is land of the Crown; and
>
> (b) which has been reclaimed or is proposed to be reclaimed – to be vested in that person.
>
> (3) Without limiting s355AA, the relevant Minister may, if he or she thinks fit, by notice in the *Gazette*, vest in the applicant any right, title, or interest in any area of reclaimed land which is land of the Crown after –
>
> (a) determining an appropriate price (if any) to be paid by the applicant in respect thereof; and

(b) ensuring that the consent authority has issued a certificate under s245(5)(a)(ii) or (5)(b)(ii).

For the purpose of this analysis the relevant words to focus upon are found in s355(3), namely:-

> …the relevant Minister may if he or she thinks fit … vest in the applicant any right, title or interest in an area of reclaimed land which is land of the Crown ….

Section 355AA RMA states as follows:-

> **355AA Effect of Foreshore and Seabed Act 2004 on vesting of reclamations**
>
> (1) If an application is made under s355(1) that relates to land reclaimed from the public foreshore and seabed, the Minister of Conservation may vest in the applicant a right, title, or interest in the relevant land under s355(3).
>
> (2) However, subsection (1) applies only if, before the commencement of section 13(1) of the Foreshore and Seabed Act 2004:
>
> (a) a coastal permit has been granted to carry out the reclamation; or
>
> (b) the Minister of Conservation has entered into a written agreement with the applicant to vest a right, title, or interest in the relevant land; or
>
> (c) an enactment has provided for a right, title, or interest in the relevant land to be vested in the applicant.
>
> (3) If subsection (1) does not apply, the Minister of Conservation:
>
> (a) must not vest an estate in fee simple in the relevant land; but
>
> (b) may vest in the applicant a lesser right, title, or interest in the reclaimed land.
>
> (4) Subsection (3)(b) applies:
>
> (a) in the case of a port company or port operator referred to in s107B(2)(e):
>
> (i) for a leasehold interest granted to it, so long as that interest does not exceed 50 years (though it may include a perpetual right of renewal on the same terms as the original lease, to the extent that the land continues to be used for port facilities):…

Policy 28(a) thus goes beyond what is provided in the legislation by introducing a 'exceptional circumstances test'. It appears to stem from a fusing of s355AA with s355 RMA which now provides only an extremely limited set of circumstances where a freehold vesting is able to be obtained in any event, namely where a coastal permit had been granted to carry out a reclamation before the commencement of s13(1), or where before that date, the Minister of Conservation had entered into a written agreement with an applicant to vest a right, title or interest in the relevant land, or before that date another enactment has provided for such a right.

In these narrow situations, there can be no basis for now trying to restrict the Minister's discretion to vest such freehold title to 'exceptional circumstances'.

The issues the policy relate to are matters that are dealt with through the consenting processes but, in essence relate, to contractual negotiations between the Minister and the rights

holder[139]. As for policy 28(d) most infrastructure companies[140] consider there would be no benefit in charging for any estate in fee simple or other interests or rights vested for essential public infrastructure.

The Auckland District Law Society sums up much of what is set out above:

> The restriction on any possible freehold vesting in reclaimed land to exceptional circumstances appears to be an extreme statement which could deter the provision of necessary infrastructure. As stated, in the Auckland context, the construction of the proposed eastern arterial highway across Hobson Bay or a container wharf reclamation, is the very type of situation in which the fee simple should be readily available to the responsible authority, to ensure that the action can be progressed in an appropriate manner or assessed objectively in terms of sustainable management.
>
> Policy 28 goes beyond the statutory description of the discretion given to the Minister under s355(3) by introducing an 'exceptional circumstances' justification where it does not appear in the statute. It is submitted that this … goes beyond the proper scope of the NZCPS s58, and should not be endorsed otherwise than by formal amendment to the existing statutory provisions….
>
> The statement that a market price should be paid for any estate in fee simple unless a waiver or reduction is appropriate, as set out in Schedule III, again is subject to criticism. It is not competent for policy 28(d) to direct the Minister how to exercise the discretion under s355(3). For example, if the vesting was in favour of iwi, there is no reference in Schedule III to the price to be paid by Maori, and it is common knowledge and practice, that where a vesting follows a recommendation of the Waitangi Tribunal, that the price may be substantially different from that of a market price. Schedule III should be omitted[141].

The Board considers for all the reasons given that policy 28 on the issue of rights vested in reclaimed land is redundant as the issue is covered both in the RMA and the Foreshore and Seabed Act 2004[142]; and also ultra vires s355AA RMA.

The Board recommends that policy 28 be deleted.

[139] #374 Contact Energy Limited.
[140] #305 Watercare Services Ltd, Maskill.
[141] #163 Palmer.
[142] #123 Manukau City Council.

Policy 29 Financial contributions

Local authorities shall consider including in plans provisions for financial contributions:

(a) where development creates a demand for infrastructure or public services in the coastal environment; or

(b) to offset adverse effects that cannot be avoided, remedied or otherwise mitigated.

Financial contributions to offset adverse effects should be given particular consideration where:

(c) there is a loss of public access to or along the coastal marine area; or

(d) development creates a coastal hazard risk requiring the maintenance, enhancement or restoration of natural defences or hard protection structures; or

(e) there is a direct loss or modification of a natural feature, landscape, area of indigenous vegetation, habitat, heritage site or recreational setting that is important to the region or district.

Appropriate applications of financial contributions include:

(f) provision of infrastructure or public reserves in the coastal environment;

(g) the maintenance or enhancement of public access to and along the coastal marine area;

(h) acquisition of land that would provide a buffer against the adverse effects of climate change on the coastal environment; and

(i) enhancement of amenity, natural character, heritage, landscape, recreation or biological diversity values in the coastal environment.

The s32 Report

The s32 report states:

> Section 108 of the RMA provides for financial contributions to be made as a condition of a resource consent. Financial contributions may consist of money or land or a combination of both. Financial contributions must be imposed in accordance with the purposes specified in a plan and be determined in manner set out in a plan.
>
> Territorial Authorities have generally used the development contribution process set out in the Local Government Act 2002 as an alternative to the financial contribution process of the RMA. Regional councils however cannot impose development contributions. Therefore financial contributions are a relevant method to consider in achieving the objectives of the proposed NZCPS. Financial contributions should be considered in two situations:

- where development creates a demand for infrastructure or public services in the coastal environment; or
- to offset adverse effects that cannot be avoided, remedied or otherwise mitigated.

It is important that financial contributions are not used as a means to 'buy off' adverse effects. Financial contributions should only be considered in those circumstances where adverse effects arise that cannot be avoided, remedied or otherwise mitigated.

Submissions

- **Individual submitters**

There is widespread concern that the draft policy provides for financial contributions to offset adverse effects of development.

The NSaPS does not agree that financial contributions should be used to offset adverse effects. It submits that this approach has 'the potential to enable developers to use financial contributions as leverage for development'. More than 60 individual submitters explicitly support this submission. Other individuals are equally emphatic that financial contributions cannot offset adverse effects in any meaningful way.

Several individuals submit that public pedestrian access should be protected at all costs and not compromised with compensation payouts, while other individuals strongly support clause (g), (h) and (i).

Several submitters did not agree on financial contributions to offset adverse effects such as those named in (c), (d) and (e) because these clauses have the potential to enable financial contributions as leverage for development. Other submitters suggested that government could use s55(2A) to fix the charges or establish the relevant criteria and have them included in all plans forthwith.

One iwi group is concerned that there is no recognition of loss of flora and fauna due to past decisions, and says that financial contributions should be sought to rectify these and provide, for example, the ability to restore a degraded area. Nga tangata ahi kaa roa o Maketu suggests the addition of:-

> to ecologically restore a degraded coastal area/margin in a harbour/estuary situation (including wetlands).

Ngati Awa seeks the retention of the draft policy with the addition of 'cultural heritage' in policy 29(i) to provide opportunities for places of cultural heritage value in the coastal environment to also benefit from financial contributions. The Te Arawa Lakes Trust opposes any amendments that automatically establish esplanade strips over Maori land or general land held by Maori in the coastal environment[143].

[143] #520.

- **Councils**

Several councils also seek deletion or clarification of the policy in respect to offsetting the adverse effects of activities in the coastal environment. LGNZ considers that the policy is not well thought through and asks, 'is this a compensation type charge as opposed to a financial contribution?'

Councils themselves submit that the draft policy does not recognize that councils have the discretion under the LGA 2002 to require development levies rather than financial contributions under the RMA. They say the policy should either be deleted or amended to provide for raising contributions under the LGA as an option. One council notes that costs may be increased by the potential duplication of process under the LGA and the NZCPS.

The Taranaki Regional Council requests that guidance is provided on how to apply financial contributions in a schedule to the NZCPS. The Hawke's Bay Regional Council considers that policy (d) should refer to 'exacerbating' (rather than 'creating') coastal hazard risk. Christchurch City Council, while supporting the policy challenges its detail. It considers while policy (a) specifically relates to the coastal environment, it is unclear as to whether this is the case for policy (b), (d) and (e). And policy (a) also appears to confuse development contributions under the LGA 2002, which aim to recover the cost of providing growth-related reserves and network and community infrastructure, with financial contributions, which aim to avoid, remedy or mitigate adverse effects on the environment. Further clause (b) seems to be a reactive rather than a proactive approach. Although s108(10)(a) RMA allows for financial contributions to be used to offset adverse effects, the council is of the opinion that financial contributions should be used to avoid, remedy or mitigate adverse effects on the coastal environment, rather than used to offset adverse effects on the coastal environment which cannot be avoided, remedied or mitigated. The wording of policy (b), i.e. the emphasis on 'offset', also appears to confuse financial contributions with environmental compensation.

The Auckland District Law Society considers that the policy should be expressed as subject to any development contribution required under the provisions of LGA 2002 Part 8, sub par 5 (ss197 – 211). It submits that various clauses under policy 29 remove from both the local authority and jurisdiction of the Environment Court, the ability to tailor the contributions to local circumstances, or to adjust the contribution to a fair and reasonable amount.

- **Infrastructure and other companies**

Infrastructure companies, aquaculture interests and professional organizations consider that the policy is unnecessary because it is already provided for under the RMA. Infrastructure companies note that s108(2)(a), (9) and (10) provide that financial contributions may be imposed as a condition of a resource consent where the condition is imposed in accordance with the purposes specified in a plan or proposed plan.

Some companies are also concerned by the requirement to offset adverse effects that cannot be avoided, remedied or mitigated. They submit that this implies that in any given case the effects of the development must be zero, and note the RMA is not a 'no effects' statute. The Port Companies of New Zealand PDF, Sea & City Projects Limited and On Track and Auckland International Airport accept draft policy 29 in part, but consider policy 29(a) is too wide and overlaps with development contributions which may be levied by territorial authorities under the LGA 2002. Consequently double dipping may occur and therefore policy 29(a) should be deleted. Issue is also taken by the companies with policy 29(b)

requiring the word 'offset' to be replaced by the word 'mitigate' to comply more with s5(2)(c) RMA. As to policy 29(c)(d) and (e) these provisions are generally accepted but these submitters warn that financial contributions should not operate as a tax on all developments just because there is a loss of public access to the CMA. Security and safety in draft policy 43, (which provides for certain circumstances where public access is restricted), are legitimate examples of this. In addition, draft policy 29(d) must surely be limited to where there is some cost likely to be imposed on the council, not the applicant. These companies suggested amendments to the policy.

LandCo made other objections. It makes the point that in terms of the limitation on when financial contributions can be required in s108(10) RMA, the effects in policy 29(c)-(i) are not necessarily the consequences of any activity for which resource consents are sought. The policy does not make it clear that there must be a nexus for the 'offset' proposed between the consented activity and the listed effect. On that basis there is potential for the policy to be ultra vires the RMA. Further, policy 29(h) seeks land by way of financial contribution to provide a buffer against adverse effects of climate change on the coastal environment. This should be deleted because the contribution of individual landowners to global warming is infinitesimal (and may well be less than inland dwellers in many cases), and so it is inappropriate for the cost of defending the effects of climate change.

LandCo also considers that until there are national standards on climate change, the imposition of the requirement under policy 29(h) will result in further complication of resource consent processes, escalating costs (and consequential affordability of housing issues) associated with debate over open-ended scientific matters and inconsistent rulings (due to variability in the quality and quantity of evidence adduced). LandCo finally suggests that subsection (b) be reworded and that (h) and (i) be deleted in their entirety[144]. Watercare Services Ltd considers that there would be no benefit in applying a financial contribution to essential public infrastructure.[145] This raises the same argument as the public v private benefit of infrastructure projects implicit in COCs and is provided for in any event under the LGA 2002. For Watercare, a preferred approach is for agreement to be reached through the consent process with respect to innovative infrastructural design and other techniques for mitigating adverse effects and it gave photographic evidence of these. Section 108(2)(e) RMA provides for a condition that requires a coastal discharge permit holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect[146].

IPENZ submits that the policy is not appropriate for inclusion in the NZCPS, 'particularly as it suggests that financial contributions can overcome objections to inappropriate use'.

A number of submitters from all sector groups say a clear link is needed between this policy and coastal occupation charges to avoid double dipping or duplication of charges while most infrastructure and property companies say that the criteria should also address the public benefits of the particular development.

The Te Tumu Landowners Group and Te Tumu KaitUna and its associated companies believe that this policy should be an issue for local authorities only. They too identify that the policy does not recognise that many authorities now apply financial contributions under the LGA 2002.

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[144] #101.
[145] #305 Maskill.
[146] 'Best Practicable Option' is defined in s2 RMA.

Issues Arising

- **Is policy 29 necessary?**

We begin from the basic observation that a financial contributions policy is not mandatory; though the 1994 NZCPS contained policy 3.2.3 to achieve some form of environmental compensation where an activity would have unavoidable adverse effects in the coastal environment.

Many submissions raised concerns that policy 29 would inappropriately duplicate provisions outside the NZCPS. In the Board's view these concerns have some validity. In particular, we note:

(a) local authorities are already empowered to require financial contributions in their plans and to specify the purposes for such contributions and the manner in which the level will be determined (s108 RMA); resource consents may be granted on any condition the consent authority considers appropriate including financial contributions but only when their purposes are specified in a plan or proposed plan and the level of contribution is determined in the manner described in the plan or proposed plan (s108(10));

(b) territorial authorities are already empowered to require development contributions pursuant to the LGA 2002; and

(c) regional authorities are empowered to impose coastal occupation charges (s64A RMA).

That said, there are seemingly some impediments to 'effective cost-recovery' under the present statutory provisions – some of which may be due to the provisions themselves, and others due to the way they have (or have not) been implemented. Regional authorities do not share territorial authorities' powers to levy development contributions for infrastructural upgrades, despite the possibility of network infrastructure (such as pipelines) being located in the CMA. Nor have any regional councils bar one opted to introduce coastal occupation charges; and if they had done so, such charges would in any event seem to focus on compensation for the exclusion of public access – more than the funding of infrastructural upgrades to accommodate development-driven growth.

- **A legal issue?**

The policy raises the question of vires the RMA and fettering the discretion of local authorities. The tests for the validity of conditions on resource consents were laid down in *Newbury District Council* v *Secretary of State for the Environment* namely:-

- the condition must be for a resource management purpose, not for an ulterior one;
- the condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached;
- the condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it[147].

[147] [1981] AC 578, [1980] 1 All E R 431.

Subsequently, the Supreme Court in *Waitakere City Council* v *Estate Homes Ltd*[148] has affirmed the *Newbury* test by stating that conditions of consent must be logically connected to the development, or put another way, must not be unrelated to a development.

In addition, development contributions may be required under the LSA. These are distinct from financial contributions and are specifically defined under ss197 – 211 of that Act[149]. They relate (inter alia) to network infrastructure and community infrastructure and appear to provide already for infrastructure or public services in the coastal environment which is referred to in policy 29(d). The LGA specifically makes mention of 'community infrastructure' and 'network infrastructure' and would appear to be the more logical statute for councils to operate under. Further, s200 LGA directs a territorial authority not to require a development contribution for certain purposes to the extent that it has imposed a condition on a resource consent in relation to the same development, or the developer will fund or provide the facility or the territorial authority has received from a third party.

Professor Palmer for the Auckland District Law Society also identifies that policy 29 does not refer to Schedule II in the NZCPS if it is retained. There is a relationship between the level of COCs and the level of financial contributions to prevent a duplication of charges.

We note recent case law in the High Court establishes that financial contributions under the RMA and development contributions under the LGA 2002 are independent schemes and one may not be imposed where there has already been a requirement for the other in respect of the same development and for the same purpose[150]. The High Court also held that financial contributions are required to be imposed in clear and unambiguous funding policies to provide certainty to councils and developers alike. Policy 29 is not one of these.

We are not satisfied that there is the need or the justification for the matters in policy 29 which could affect councils' jurisdiction under the RMA for devising a regime for and imposing financial contributions. Our conclusion is that policy 29 is one of those process provisions which does not better inform the NZCPS because the necessary requirements are already in the RMA or the LGA.

- **Conclusion**

The Board recommends the deletion of draft policy 29 for the reasons given.

[148] [2007] NZRMA 137, 140.
[149] #163 Auckland District Law Society.
[150] See: *Domain Nominees* v *Auckland City Council* (High Court, Auckland CIV 2007-404024651, September 2008, Justice Winkleman) where the Court held that the Auckland Regional Council's practice of utilising both procedures for the same development was unlawful.

Policy 30 Integrity and functioning

To preserve the natural character of the coastal environment, it is a national priority to protect its integrity and functioning by maintaining:

(a) the resilience and productivity of indigenous ecosystems;

(b) natural landscape and landform;

(c) the dynamic processes and features that arise from the natural movement of sediments, water and air;

(d) natural biotic patterns and movements;

(e) water and air quality; and

(f) natural substrate composition.

The s32 Report

This is the first of a suite of policies under the heading of Natural Character.

The s32 report explains that the implementation of an objective requires the protection of the integrity and functioning of natural character by maintaining those values that collectively contribute to it. The policy further identifies those values and provides guidance on the components. A reason given is that there are varying definitions and perceptions of the matters that contribute to defining natural character, meaning there is a need for information without which there is a risk in a continuing debate and a failure to provide for its preservation.

This policy is similar to Policy 1.1.5 in the 1994 NZCPS that read:

> It is a national priority for the preservation of natural character of the coastal environment to protect the integrity, functioning, and resilience of the coastal environment in terms of:
>
> (a) the dynamic processes and features arising from the natural movement of sediments, water and air;
> (b) natural movement of biota;
> (c) natural substrate composition;
> (d) natural water and air quality;
> (e) natural bio diversity, productivity and biotic patterns;
> (f) intrinsic values of ecosystems.

Submissions

- **Support for the policy**

Most individuals and community groups support the policy. Conservation boards and groups also support the policy, with some suggesting additional matters for inclusion in the policy (see comments below).

The NSaPS, supported by many individuals and groups, reiterates its view that natural character in areas of national interest should be protected through nationally developed objectives, policies and rules, which exclude incompatible activities.

Four councils support the policy – the Auckland, Northland and Horizons Regional Councils and the Kapiti Coast District Council. The ARC particularly supports the inclusion of ecological 'resilience'. Environment Waikato generally supports the natural character policies but believes they confuse matters to be addressed under sections 6(b), (c), (e) and (f) of the RMA with the protection of natural character under section 6(a). It recommends retaining the policy but deleting the phrase 'to preserve the natural character of the coastal environment' from the front of the policy.

Iwi groups also support the policy, with two noting that the concept of resilience is critical in ecosystem-based management.

Aquaculture interests support the policy, although New Zealand King Salmon considers that natural character should include modified landscape values. The Royal Astronomical Society of New Zealand strongly supports the policy.

- **Policy is too absolute and is inconsistent with the RMA**

Infrastructure and property companies, together with port and marina operators consider that policy 30 as presently worded is too absolute in its terms and inconsistent with section 6(a) of the RMA. They argue that giving national priority to maintaining landscape and form is not consistent with the wording of section 6(a). Infrastructure companies say it is difficult to see how reclamation, harbour dredging, the installation of piles, and other activities can maintain existing natural substrate composition.

These companies seek an amendment to provide for appropriate subdivision, use and development, or alternatively to allow for minimising adverse effects where it is not practicable to avoid them.

Meridian Energy considers that policy 30 departs from the established scheme of the RMA by including a list of matters that the RMA itself does not seek to manage to this extent. Meridian says its experience in seeking resource consent for renewable energy generation facilities suggests that policy 30 would create an insurmountable obstacle to such development. The company also notes that the policy does not clarify whether air and water quality is to be maintained at current (possibly degraded) standards or at historical natural levels. Meridian notes that the RMA anticipates that a level of effects can be tolerated and requires these to be avoided, remedied or mitigated, but that policy 30 introduces a much higher threshold. It therefore requests that the policy be deleted.

Mighty River Power says the policy needs to recognise the terminology set out in section 6 of the RMA, such as 'significant' and 'outstanding'. It suggests amending the policy to provide protection for 'outstanding or exceptional natural character.' The New Zealand Wind Energy Association also opposes the policy because it seeks to protect all natural landscapes and landforms, not just the outstanding examples provided for in section 6(b) of the RMA.

- **Policy requires clarification and guidance**

Most regional and district councils seek clarification of the expected outcome of the policy. Councils also seek definition of a number of terms, including: 'natural ecosystems', 'natural biotic patterns and movements', 'natural substrate composition,' 'dynamic processes' and 'resilience and productivity of indigenous ecosystems.' Many other submitters also seek definition of these terms.

Environment Canterbury asks whether (e) means that air quality has to be maintained in the CMA.

The Manukau City Council notes that much of the CMA around Auckland is already heavily modified and seeks further clarification in relation to dredging which is required for some activities and appears to be prohibited under this policy.

The Auckland City Council seeks guidance on how to address mangrove encroachment and suggests that it be specifically referred to in the policy. Whakatane District Council notes that the policy appears to support the protection of mangroves, which are increasingly establishing themselves in some harbours but are of dubious benefit to the harbour and its users. It seeks recognition that indigenous ecosystems can include undesirable species that may need management.

The Whangarei District Council has some concerns as to how to measure 'resilience and productivity of indigenous ecosystems' and seeks guidance on an appropriate starting point.

The Kaikoura District Council notes that the policy is not entirely consistent with the national infrastructure priority outlined in policy 17 and seeks clarification on the relative priority of national infrastructure and natural character.

IPENZ is unsure how 'natural substrate and composition' should be maintained and considers that more guidance is required on this matter. NIWA considers that maintaining natural biotic patterns and/or natural substrate composition would be impossible directly under a marine farm site. NIWA suggests that the focus should be on mitigating the direct impacts under farm sites and reducing near impacts.

- **Additional matters for inclusion in the policy**

The Surfbreak Protection Society notes that the natural movement of sediment, water and air (which are important for surf breaks) needs to be provided for as part of the natural character of the coastal environment. It seeks an amendment to include 'hydrodynamic processes and features' under clause (c). About 70 individual submitters also make this point.

EDS recommends renaming the policy 'elements of natural character' and adding a section to recognise the intrinsic values of ecosystems, another to recognise the ability of people to experience the natural elements of the coastal environment without intrusion by human-made structures and a final clause that recognises the impact of climate change on natural character. EDS suggests this last requirement can be met by adding the words 'recognising the influence of future climatic conditions on these natural processes'.

EDS also suggests that the policy should recognise that modified coastal environments can still have high natural character that needs to be protected. Many individuals support the changes recommended by EDS, particularly the recognition of impact of climate change.

The Royal Astronomical Society of New Zealand recommends adding protection for natural light cycles.

Two branches of the RFBPS and some individuals suggest an additional point to provide for the protection of indigenous flora and fauna. The Sandy Walker Group suggests including 'natural skyscape with unbuilt skyline.'

- **Need to recognise working environments**

Federated Farmers is concerned that the policy fails to have regard to the fact that large areas of the coastal environment are working, dynamic landscapes. Federated Farmers suggests the following point be added to the policy, 'while recognising the role that dynamic, working rural landscapes play in defining the natural character of the coastal environment'. Horticulture New Zealand also considers that the policy needs to recognise productive working environments in the coastal environment.

Issues Arising

- **Should this policy be an objective?**

Some submissions suggested that this policy reads more like an objective in its current form and it is not clear what the expected outcome of this policy is, seeking clarification.

We consider safeguarding the integrity, form, functioning and resilience of the coastal environment and its ecosystems, should be included in the new objective 1. That objective is broader than protecting the natural character of the coastal environment, although we recognise there is a close relationship. We conclude that key elements of the policy should be included in objective 1 because of their importance to sustaining the coastal environment and its ecosystems.

- **What could this policy add to the objectives?**

We conclude that the policy as worded, or with the suggestions proposed by submitters, would not add to achieving the outcome sought by the objectives and particularly Objective 1. Many of the matters listed are contained in the Resource Management Act, such as the 'intrinsic values of ecosystems', and the policy contains no guidance on how to deal with these matters.

We agree with submissions that suggest a composite policy on natural character could be more helpful. A composite policy could explain what natural character might include and how decision makers should identify, assess and treat natural character. We also consider there is a need to separate identification of the characteristics and qualities that contribute to natural character from considering their preservation.

We note that the s32 report (and the NZCPS Scoping paper[151]) point out the need for guidance on matters to be considered when assessing natural character. We accept that there is no nationally recognised definition for natural character and that as a consequence case law in this area continues to evolve. As explained in the Scoping paper[152] the self-styled experts in this field continue to debate whether natural character as a concept should include not only consideration of naturalness but also physical, biological, cultural and perceptual components. In principle we consider that it would be helpful to identify that natural character has many possible components on an inclusive basis. There is always a risk with making a list that it does not cover all the relevant matters. We conclude that an inclusive policy is a better approach than to attempt to provide a definition of natural character.

We consider the submissions, and alternative wording suggestions, made on this policy when considering a new natural character policy.

We recommend deleting policy 30.

[151] NZCPS review Scoping paper for*: Natural Character and Landscape* March 2006.
[152] p14.

Policy 31 Indigenous biological diversity

To preserve the natural character of the coastal environment, it is a national priority to protect indigenous biological diversity in that environment, including by:

(a) avoiding adverse effects of activities on:

(i) areas containing indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

(ii) areas containing taxa that are listed as threatened by the International Union for Conservation of Nature and Natural Resources;

(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;

(iv) habitats of populations of indigenous species that are at the limit of their natural range, or are naturally rare; and

(v) areas containing regionally or nationally significant examples of indigenous community types; and

(b) avoiding significant adverse effects, and otherwise avoiding, remedying or mitigating adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;

(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;

(iii) indigenous ecosystems and habitats that are unique to the coastal environment and particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, rocky reef systems, eelgrass and saltmarsh;

(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

(v) habitats, including areas and routes, important to migratory species; and

(vi) ecological corridors and buffer zones that are important for linking or maintaining areas identified under this policy.

The s32 Report

The s32 report points out that guidance is needed on the constituents of indigenous biological diversity and the appropriate management approaches to them to effectively implement an objective. It explains that consideration has been given to the fact that the complete protection of all indigenous biological diversity would restrict use and development to an extent incompatible with the purpose of the RMA. Also that indigenous biological diversity is in continued decline and the degree of threat to indigenous ecosystems, habitats and species varies considerably in the coastal environment

The s32 report then goes on to explain the adoption of a two-tier approach in the Proposed NZCPS:

- The first tier provides the highest level of protection and is applied to indigenous biological diversity most at risk of irreversible loss, with the appropriate management response the avoidance of adverse effects. This approach aligns with the recently released Statement of National Priorities on Rare and Threatened Indigenous Biodiversity and the findings from the five yearly Review of the New Zealand Biodiversity Strategy.
- The second tier provides a lower level of protection for biodiversity more common or less at risk from imminent loss in the coastal environment.

It concludes, among other things, that the policy will provide councils with clear guidance on the protection of a wide range of indigenous biological diversity in the coastal environment and be effective in protecting indigenous biological diversity despite the variability in our understanding of these matters.

We also considered the *Scoping paper for Indigenous Biological Diversity* (March 2006) that explained the background to the policy.

Submissions

- **Support for the policy**

Individuals, community groups, conservation interests and iwi generally support the policy, although some call for it to be strengthened. Conservation Boards strongly support the policy. Iwi groups also support the policy.

The RFPS is concerned that the policy fails to include provisions for active protection of the coastal environment and recommends an amendment to provide for protection of the areas listed under part (a) of the policy. EDS supports the policy but considers that it needs to be strengthened in terms of the protection provided to the items listed in part (b). It recommends changing the first part of part (b) to read, 'ensuring that any adverse effects are no more than minor'. A number of individuals support the EDS submission. ECO supports the policy but considers that it should recognise that other ecotypes are present in the coastal marine area.

The NSaPS considers that natural character in areas of national interest should be protected through nationally developed objectives, policies and rules, which exclude incompatible activities. Many individuals and groups support the NSaPS submission.

A few individuals and community groups are concerned that the two tier approach implies that some ecosystems are less important than threatened taxa. The West Coast Blue Penguin Trust is concerned that the policy seems only to protect species that are rare or under threat at certain times, such as during breeding.

The Ngatiwai Trustboard notes that the concept of 'resilience' is critical in ecosystem management and should be included in policy 31. Ngati Awa supports the policy but seeks clarification as to whether the component parts are mutually inclusive or mutually exclusive.

- **Mixed response from councils**

Councils have mixed views on the merits of the policy, with some supporting it, a few opposing it and many seeking further clarification. Six regional councils support the policy: Northland Regional Council, ARC, Environment Waikato, Environment Bay of Plenty, Hawke's Bay Regional Council and Greater Wellington. The Wellington and Christchurch City Councils also support it, along with the Kapiti Coast District Council. Environment Southland, the West Coast Regional Council and several of the smaller district councils oppose the policy – mostly because they consider that the information requirements are excessive and that the requirements are broader than those required under the RMA.

The West Coast Regional Council submits that it is not appropriate to apply blanket protection on all indigenous vegetation, flora or fauna, as this could be overly restrictive on the West Coast. This council also believes that the policy is inconsistent with marine protected areas policy and recommends that it either be deleted, or that protection be required only for 'significant' indigenous biodiversity. The Papakura District Council opposes the policy because it fails to recognise that many of New Zealand's harbour environments are highly urbanised areas where indigenous biodiversity must be managed, not categorically protected.

The Taranaki Regional Council is concerned that this policy will be very difficult to give effect to when there is limited scientific information on where these areas, habitats and ecosystems are located. Along with a number of other councils, it seeks clarification of whose responsibility it is to research and identify these areas. Councils also note that additional resourcing will be required if they are to do this work. Some councils note that the policy implies a huge amount of work that would be best undertaken at the national level.

The Taranaki Regional Council is also concerned that the focus on areas, habitats and ecosystems is akin to a zoning based tool, which is not consistent with the effects based approach of the RMA. Meridian Energy and SeaFIC are also concerned that the indirect focus on areas (rather than species or ecosystems) is inappropriate under the RMA.

The ARC` notes that the policy has lost the 1994 NZCPS reference to intrinsic values. It recommends specific recognition be given to marine ecosystems, intrinsic values, climate change, common or characteristic ecosystems and exotic vegetation.

- **Views of infrastructure and property interests**

Infrastructure and property companies submit that the policy is too broad brush, inconsistent with section 6 of the RMA and needs qualifiers. They consider that it is unreasonable and inappropriate to require any adverse effects to be avoided on, for example, habitats or populations of indigenous species that are limited in their natural range or naturally rare, when section 6(c) of the RMA makes it only a matter of national importance for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Watercare notes that an adverse effect may be of no environmental consequence and the RMA contemplates granting a resource consent where the adverse effects of an activity will be minor. It seeks an amendment to qualify effects in part (a) as 'significant adverse effects' or, alternatively, 'more than minor'.

Meridian Energy is concerned that the policy does not contemplate, as the RMA does, that adverse effects might be remedied or mitigated. Meridian also points out the policy indirectly focuses on areas – not on the indigenous features themselves – leaving open the possibility that areas larger than necessary could be deemed affected by development.

Federated Farmers opposes the policy, which it says overstates the importance of biodiversity, over protects flora and fauna and fails to pay sufficient regard to the rights of private landowners. Federated Farmers considers that the natural character of the coastal environment is made up of many different factors, of which biological diversity is just one.

- **Biological diversity should not be subject to natural character**

Many councils, along with some individuals, infrastructure companies and professional organisation submit that biological diversity should be treated as a value in its own right, not just part of natural character. They recommend that the policy be given its own separate heading, rather than be treated as a subset of the natural character policies. Infrastructure companies suggest that properly recognising biological diversity in its own right should also involve aligning it with sustainable management.

Environment Waikato and some other councils reiterate their view that the natural character policies confuse aspects of section 6 of the RMA. For example, the Whangarei District Council notes concerns that the policy is mixing sections 6(a) and 6(c) of the RMA and suggests that consideration be given to reformatting the policy to better reflect sections 6(c) and 7(d), rather than 6(a). This council, along with several others, requests that the phrase 'to preserve the natural character of the coastal environment' be removed from the front of the policy.

- **Provision for management of mangroves**

Several councils comment on the policy in relation to mangroves. The ARC supports the expanded scope of the policy and the removal of specific mention to mangroves, which it believes provides for appropriate management of mangroves where such management avoids significant adverse effects and otherwise avoids, remedies or mitigates adverse effects. The Manukau City Council also supports no longer singling out mangroves as a species to be protected but seeks recognition that mangroves should be managed.

The Welcome Bay Catchment Group understands that the draft policy supports active mangrove management and seeks clarification that this is the intention. The Whakatane District Council also notes that the policy appears to support mangrove management and suggests that it should recognise that indigenous ecosystems can include undesirable species.

EBOP seeks an amendment to specifically allow for the active management of mangroves for ecological, recreational and cultural purposes, while the North Shore City Council seeks clarification as to the reasons for omitting reference to mangroves.

- **Application of the policy to the marine environment**

Environment Canterbury is concerned that, given that many New Zealand marine species are classified as threatened to some degree, the policy could potentially cover extensive areas of the CMA. A number of other submitters share this concern.

The Horizons Regional Council comments that it would not be possible to undertake the required level of detail for the whole CMA and seeks clarification as to whether the policy relates to land or water in the coastal environment.

Aquaculture and fishing interests note that the policy requires the avoidance of all adverse effects on a very substantial portion of the coastal environment. They are also concerned that the policy is not aligned with marine protected area policy. Some councils share this concern. Aquaculture interests suggest amending the policy to be more specific and to integrate more effectively with wider government policy for biodiversity protection, including marine protected areas policy.

Issues Arising

- **Background to policy 31**

The NZCPS review *Scoping paper for Indigenous Biological Diversity* (March 2006) stated that both the Rosier independent review and consultation with local government and DOC staff raised points about the effectiveness of the 1994 Policy. Points made were: too much emphasis on the bio-physical components of natural character and significant areas/values; estuarine environments should be included; consistency in identifying nationally vulnerable species; indigenous biodiversity not provided for; variability in plan treatment; some plans do not distinguish where adverse effects are to be avoided; closer link with marine protected areas needed; more emphasis on marine biodiversity needed; guidance on representativeness useful (when nationally rare but locally abundant); and the Biosecurity Act 1993 relationship.

The Scoping paper discussed the changes in biodiversity management over the last 10 years.

These included:

- 2003 RMA amendments that defined 'biological diversity' and regional and district councils now having functions to maintain indigenous biological diversity (with the regional policy statement stating the respective responsibilities);
- the relationship to other legislation that guides the management of marine resources and the components of marine biodiversity administered by a number of agencies e.g. Fisheries Act 1996, Marine Mammals Protection Act 1978 and Marine Reserves Act 1971;
- policy development, relevant to considering other methods than the NZCPS, including:
    - New Zealand Biodiversity Strategy (2000) which refers to protecting marine biodiversity in the review of the NZCPS (there has been a review of the Biodiversity Strategy since);
    - Strategy for Managing the Environment Effects of Fishing (2005);
    - Marine Protected Areas Policy (2006) to address objective 3 of the New Zealand Biodiversity Strategy;
    - a national policy statement on indigenous biodiversity (in process);
    - Sustainable Water Programme of Action (ongoing);

- other legislation – Hauraki Gulf Marine Park Act 2000, Review of the Marine Reserves Act 1971, the reform of aquaculture law;
- new terminology and assessment tools – included the Threatened species classification system system and database, Land cover frameworks (Land Environments of New Zealand, Land Cover Database), Marine Environment Classification (MEC), Nearshore Marine Classification and Inventory, Ocean Survey 20/20. It also referred to assessing changes in marine biodiversity as more problematic.

The Scoping paper wanted the retention of the intent and direction of Policies 1.1.2 and 1.1.4 (the latter refers to the functioning and integrity of the coastal environment and similar to policy 30 in PNZCPS). It wanted these policies to come out from under the heading of 'Natural Character', but there to be strengthened linkages between biodiversity and other parts of the NZCPS. It proposed a review of the status and biodiversity components referred to, to reflect current terminology and tools, and to consider referring to documents such as that describing a threat classification system. It also suggested using Principles 10 and 11 as a guide to drafting an objective which seeks to maintain biodiversity in terrestrial and marine ecosystems and Principles 3, 6 and 8 for the contribution of biodiversity for meeting the purpose of the RMA for another objective. A new policy on marine biodiversity (or to amend others to include marine or seabed habitats or communities or species assemblages) and most importantly to include guiding councils to protect the values within areas identified as marine protected areas from adverse effects of activities occurring outside of the area were other suggestions. A new policy on biosecurity issues was also proposed. The Scoping paper also referred to the precautionary principle.

Implementation and monitoring issues loomed large. All councils were to have ready access to any new tools, recognising that may result in capability and resourcing issues. DOC's role and the resourcing implications, particularly in assessing significance and identifying threat status of species, were recognised.

- **Is the policy within the scope of the RMA?**

The purpose of the RMA includes:

> **(a) sustaining the potential of natural ... resources ... to meet the reasonably foreseeable needs of future generations; and**
>
> **(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems.**

A matter of national importance to recognise and provide for is 'the protection of areas of significant indigenous vegetation' and 'significant habitats of indigenous fauna' (s6(c)), and other matters include (for protection of natural resources as well as managing the use and development) to have particular regard to 'intrinsic values of ecosystems'(s7(d)), 'any finite characteristics of natural ... resources' (s7(g)). There are also the kaitiakitanga and Treaty of Waitangi references. Also s6(a) the natural character of the coastal environment.

Section 58 (a) refers to national priorities for preserving the natural character of the coastal environment, (f) the implementation of New Zealand's international obligations affecting the coastal environment and (h) any other matter relating to the purpose of an NZCPS (and accordingly the purpose of the Act for the coastal environment). We advise that a policy

along the lines of 31 would come within the mandate for an NZCPS (as do the related objectives).

We conclude that there is scope for a broader policy than one that only refers to significant indigenous vegetation and significant habitats of indigenous fauna, contrary to the many submissions seeking a sole focus on those s6(c) matters.

The achievement of new objective 1 places a heavy reliance on policy 31 and therefore this policy should come out from under the heading 'Natural Character'.

- **What should the policy cover?**

We note that the one ecologist, Mr William Bruce Shaw, who gave evidence (for Mighty River Power), considered that the policy addresses key issues and is generally well presented. Mr Shaw gave evidence in effect that the policy provides a set of evaluation criteria for determining the significant elements of indigenous biological diversity in the coastal environment. He suggested some amendments to (b), particularly qualifying items (v) and (viii) with 'significant', although we note that the policy now refers to avoiding significant adverse effects as a first priority.

Dr Liz Slooten, an expert on marine mammals, suggested reinstating the reference in the 1994 NZCPS to 'actual or potential adverse effects', although the definition of 'effects' in the RMA would cover both.

- **Should there be a focus on areas?**

SeaFIC considered that the policy should be confined to effects on biodiversity and not have any focus on areas. We cannot see how there can be an understanding of effects on biodiversity without consideration of areas, such as those containing indigenous taxa for example.

SeaFIC submitted that policy 31(a) as drafted applies to the entire coastal environment and could potentially apply to 5819 species. (2788 species are 'threatened' in the most recent NZ Threat Classification System Lists (2005) and a further 3031 as data deficient i.e. likely to be threatened but with too little information to categorise into one of the threat categories). SeaFIC considered it unreasonable to expect councils to evaluate the distribution of species to identify the areas in their coastal environment that might fall under policy 32(a)(i). SeaFIC used the distribution of little blue penguins (southern and northern species) to show that little blue penguins breed around the entire coast of the North Island, Chatham Islands and Stewart Island, and around most of the South Island coast with the exception of a small area in mid Canterbury.

SeaFIC considered the focus on areas unnecessarily increases the potential for, and extent of, regulation to matters that have no bearing on the health or functioning of indigenous biodiversity. An adverse effect on an area in which a threatened species is found should not be considered equivalent to an adverse effect on the species itself or the attributes of the area that enable it to support the threatened species. It sought the deletion of reference to avoiding adverse effects on areas and replacing it with a focus on avoiding adverse effects on the species that are under threat and/or on the ecological functioning of the ecosystem in which they are found.

We consider that the policy as drafted with its focus on adverse effects means that decision makers are able to make the necessary distinctions.

- **Are any changes needed to the matters in (a)?**

SeaFIC considered some of the matters in (a) to be unnecessary or unclear.

SeaFIC considered that only the 'nationally critical' and 'nationally endangered' categories are at risk of irreversible loss, with the 'nationally vulnerable' and 'at risk' category not so. It also said that in view of this in (i) there is little point in applying a further threat classification system (IUCN) in (ii). The SeaFIC approach would not look to ensuring other taxa do not come into the 'nationally critical' and 'nationally endangered' status, a status it can be difficult to recover from. A more precautionary approach is required to indigenous biodiversity. Also (ii) is there because NZ is a signatory to an international convention.

We recommend adding a footnote listing some examples of threatened species, including Maui's dolphin.

We accept that there are reasons for including naturally rare ecosystems, vegetation types or species, or species at the end of their natural range in (iii) that justify specific mention. The degree of threat will obviously be a consideration in terms of avoiding adverse effects, to address the point made by SeaFIC. SeaFIC also submitted that the reference to threatened ecosystems and vegetation types in (iii) needs to provide councils with guidance on how to identify these, such as by reference to other legislation, classification systems or biodiversity protection policies. We agree that DOC should provide this guidance as a follow-up to the NZCPS.

- **Is avoiding adverse effects justified?**

Submissions considered that the avoidance test (in (a)) is a very high and unjustified standard of protection for several reasons. These included a view that most of the biodiversity categories are not at risk of irreversible loss and also that it is unreasonable to expect councils to evaluate ecological values and effects. A suggestion was that the precautionary approach should be emphasised instead.

We do not agree with those submissions on where to set the bar to prevent irreversible loss. While the precautionary approach will also be relevant, it is appropriate to identify specific national priorities that need a high standard of protection through the matters listed in policy 31(a).

- **Relationship to the Marine Protected Areas policy**

Some submissions considered the policy needs to be more specific and integrated more effectively with wider government policy for biodiversity protection including the marine protected areas policy. Linkages to wider biodiversity policies and protection mechanisms should be identified.

SeaFIC considered the approach is inappropriate with the purpose of sustainable management under the RMA with the 'highest level of protection' for indigenous biodiversity provided through the Marine Reserves Act 1971 and other high level protection mechanisms available in the terrestrial environment. In its view the policy is entirely divorced from the

Government's Marine Protected Areas Policy (MPA) and Implementation Plan (December 2005). Under the MPA Policy biodiversity should be protected through a comprehensive network of representative Marine Protected Areas, such as marine reserves. It said that this substantial level of protection must have a significant impact on the level of utilisation and the degree of adverse effects acceptable in areas outside the RMA. If adverse effects are to be avoided to the extent proposed, SeaFIC questioned the value of having an MPA network.

SeaFIC considered there is already a process set up to identify the areas included in (a)(v), the MPA Policy. It sought:

> Explicit acknowledgement in the NZCPS of the biodiversity values of areas identified through the MPA process would ensure integrated protection for these values could be provided, regardless of the actual protection mechanisms selected for the MPA in question. Indigenous biodiversity will not be adequately protected if, for example, an MPA is established under a Fisheries Act mechanism, but its biodiversity is then degraded as a result of activities managed under the RMA.

We do not agree that the policy cuts across the value of having an MPA network, particularly when the statutory protection mechanisms for marine reserves for example deal with matters like fishing that are outside the control of the RMA. We agree that there needs to be integration of management under the RMA and other statutory mechanisms. We therefore consider that there needs to be recognition of the MPA network and other statutory mechanisms that set aside areas for full or partial protection of indigenous biological diversity. We recommend an addition to part (a) of the policy so that adverse effects of activities on these areas are avoided. (SeaFIC itself proposed such a provision for areas protected under the MPA Policy and areas protected for their indigenous biological diversity values under other legislation as part of its alternative approach).

- **Hierarchy of treatment**

On (b) SeaFic considered it set a standard that is too high and cannot be implemented because it is uncertain with no definition of 'significant adverse effects' or the threshold between effects that have to be 'avoided' and those that can be 'avoided, remedied or mitigated'. It had a concern that this degree of uncertainty would lead to different approaches by local authorities. It considered remedy and mitigation should be considerations in addition to avoidance for all matters. Further, SeaFIC considered the formulation unnecessary to achieve the drafting aim, as it is more likely that 'significant' effects would not be able to be remedied or mitigated so avoidance is a likely management strategy in that situation in any case. We do not agree.

- **Should there be a focus on regionally significant examples of indigenous community types?**

LGNZ questioned why the focus is on regionally significant indigenous communities when the focus should be on matters of national priority. We agree that examples of regionally significant indigenous community types can be left to be addressed by regional and district councils and do not need specific national direction.

- **How should mangroves be treated?**

There were submitters wanting more protection for mangroves and others seeking their explicit exclusion from this policy. LGNZ supported no longer singling out mangroves as a

species to be protected (unlike the previous 1994 NZCPS). Dominic McCarthy, manager of the coastal policy team of ARC, gave evidence that the wording of Policy 31 allows some management flexibility for dealing with mangroves within its two-level protection hierarchy. We agree.

- **What is 'naturally rare'?**

There were questions about the origin and meaning of the term 'naturally rare' and a question about a species becoming rare through human induced activity. The Glossary makes it clear that it is 'originally rare' and this aligns with the Government's own statement of national priorities for protecting rare and threatened biodiversity on private land[153].

- **Areas of predominantly indigenous vegetation in the coastal environment**

For (vi) Mr Shaw said there are areas that contain elements of indigenous vegetation (e.g. small patches of young manuka, bracken regrowth, local kanuka trees) that are not ecologically significant. SeaFIC said it was not helpful as nearly the entire coastal marine area consists of 'predominantly indigenous vegetation'. Small patches also assist in the spread of indigenous vegetation along the coastal environment. The qualifier suggested by Mr Shaws narrows the policy down too much. For example, Mr Mikoz told us about the fish feeding on indigenous vegetation in the intertidal area and birds eat and distribute seeds from native plants and trees. These values are not about how it all looks but how it functions.

This part of the policy only requires avoiding significant adverse effects as a first priority, and will allow consideration of methods of remedying or mitigating adverse biodiversity effects.

- **Habitats that are important during the vulnerable life stages of indigenous species**

For (vii) Mr Shaw gave evidence that the policy recognises the importance of habitats such as breeding sites for coastal birds (e.g. NZ dotterel, fairy tern, red-billed gull colonies, white-fronted tern colonies) and whitebait spawning sites. Some of these species are common in particular environments and, in those places, may be relatively common and generally not vulnerable to development activities (e.g. red-billed gulls). He said it is important to recognise the places that are significant sites and where species or species assemblages (e.g. whitebait species) are potentially vulnerable at particular key stages of their life histories.

Submissions sought removing eelgrass and salt marsh as the focus on physical habitats (to (vi) as examples of indigenous vegetation if wanted). We conclude that is unnecessary.

Kahungunu supported this matter but considered protection of these habitats should be constant and not just during specific periods, for example during spawning. To meet their concerns this item should be amended to read: 'habitats in the coastal environment that are important for indigenous species'.

[153] *Protecting Our Places. Introducing the National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land,* April 2007.

- **Indigenous ecosystems and habitats that are only found in the coastal environment and particularly vulnerable to modification**

For (viii) Mr Shaw said the policy is very broad and includes all parts of all estuaries, even though some are now heavily modified for use as navigable channels, ports and industrial sites. The policy also seems to be a mixture of broad ecosystem types ('estuaries, lagoons, coastal wetlands, dunelands, rocky reef systems') and more specialised vegetation and habitat types ('eelgrass and saltmarsh'). The latter vegetation and habitat types are a subset of an estuary ecosystem but these also include intertidal flats with cockle beds, subtidal channels, mangroves, high tide roosts, and *Plagianthus divaricatus* shrubland, for example. Other vegetation and habitat types could also be listed for the other ecosystem types (lagoons, coastal wetlands, dunelands, rocky reef systems), but there is probably little merit in doing this at a policy level. He suggested that either the terms 'eelgrass' and 'saltmarsh' are removed or a more complete list of habitat types is provided, noting there is no doubt about the ecological significance of eelgrass and saltmarsh communities. Given the importance of 'eelgrass' and 'saltmarsh' we conclude both should remain in the policy.

A submission sought clarification of what makes some features unique, including a question about whether this meant all estuaries, lagoons, wetlands etc are unique. SeaFIC said that the coastal marine area in its entirety would be unique to the coastal environment. It also submitted that the listed ecosystem types provide useful, specific guidance that could be emulated in other parts of the policy. We recommend amending the policy to replace the word 'unique' with 'only found'.

- **Habitats of indigenous species important for recreational, commercial, traditional or cultural purposes**

For clause (ix) about the human use and values, Mr Shaw suggested a change of 'important' to 'valued'. We do not see the need for this change.

- **Habitats, including areas and routes, important to migratory species**

Mr Shaw supported clause (x) because of the significant habitats and pathways for migratory birds present in NZ. SeaFIC considered the protection of routes of migratory species results in no biodiversity benefits at all. We do not agree.

- **Ecological corridors and areas important for linking or maintaining areas identified under this policy**

Mr Shaw supported clause (xi) because ecological corridors and buffers are commonly used as criteria for the evaluation of ecological significance. A submission expressed concern that it could apply to much of West Coast coastal environment which is private land and therefore the policy had no balance. Submissions sought adding 'significant' and also a definition of ecological corridors and how far they extend, wanting these limited to the coastal marine area. Mrs Foster, a Meridian witness, suggested alternative wording.

We conclude that there are benefits in amending this policy to read: 'ecological corridors and areas important for linking or maintaining biological values identified under this policy'. A buffer zone as a concept is capable of being misinterpreted.

- **Other matters**

Submissions said that there was little regard to marine ecosystems, marine ecosystems, intrinsic values, climate change, common or characteristic ecosystems and exotic vegetation. The ARC expressed a concern about an apparent limited regard to marine ecosystems and a failure to acknowledge the potential importance of common or characteristic ecosystems or those comprised of exotic vegetation (although it did not suggest how to plug these gaps). We consider the NZCPS overall and Part 2 allow proper consideration of these matters. We also do not consider there is a need for a specific policy on common or characteristic ecosystems or those comprised of exotic vegetation at a national level.

We have a concern about submissions that biodiversity should be confined to dealing with significant examples with the onus for identifying those with DOC. That is not in line with sustainable management or the biodiversity provisions of the RMA.

- **The Mighty River Power addition**

Mighty River Power in its submission sought the addition of a (c), as follows:

> recognising the role of appropriate identification and restoration of indigenous habitats through coastal development projects.

It said that the policy focuses on avoiding adverse effects whereas many sensitive coastal habitats would benefit from restoration. Applications for consent could be a catalyst for the identification and enhancement of indigenous habitat in the coastal environment. Policy 31 should enable and encourage environmental compensation and 'offsets' as another option, consistent with policy 35. Mr Shaw said that this type of policy would signal an important opportunity for developers, where they have the potential to or are causing adverse effects, to provide or fund mitigation or off set measures to address those effects. He went on to explain that it is still important for developers to plan works to minimise potential adverse effects and to ensure no net loss of indigenous biodiversity (well-planned and implemented mitigation and environmental off-set measures can result in gains for indigenous biodiversity).

We do not consider the addition justified. The policy on restoration and rehabilitation adequately deals with these matters.

- **Implementation**

As a matter of urgency DOC needs to bring out information and guidance material, and to keep this material up to date, to assist councils deal with this biodiversity policy.

- **Conclusion**

We recommend policy 31 become policy 13 and be slightly redrafted as follows:

> **Policy 13 Indigenous biological diversity (biodiversity)**
>
> **To protect indigenous biological diversity in the coastal environment all decision makers must:**
>
> **(a) avoid adverse effects of activities on:**

(i) areas containing indigenous taxa[154] that are listed as threatened[155] or at risk in the New Zealand Threat Classification System lists;

(ii) areas containing taxa that are listed as threatened by the International Union for Conservation of Nature and Natural Resources;

(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare[156];

(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

(v) areas containing nationally significant examples of indigenous community types; and

(vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;

(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;

(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;

(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

(v) habitats, including areas and routes, important to migratory species; and

(vi) ecological corridors and areas important for linking or maintaining biological values identified under this policy.

[154] Taxa: as defined in the Glossary to the recommended NZCPS (2009).
[155] Examples of taxa listed as threatened are: Maui's dolphin, Hector's dolphin, New Zealand fairy tern, Southern New Zealand dotterel.
[156] Naturally rare: as defined in the Glossary to the recommended NZCPS (2009).

Policy 32 Outstanding natural features and landscapes

To preserve the natural character of the coastal environment, it is a national priority to protect outstanding natural features and landscapes, by ensuring that any adverse effects of subdivision, use, and development on them are no more than minor. Outstanding natural features and landscapes should be identified with regard to:

(a) the natural science factors, including geological, topographical, ecological and dynamic components;

(b) aesthetic values including memorability and naturalness;

(c) expressiveness – how obviously the landscape demonstrates its formative processes;

(d) transient values, including occasional presence of wildlife or values at certain times of the day or year;

(e) whether the values are shared and recognised;

(f) cultural and spiritual values for tangata whenua, identified in accordance with tikanga Maori; and

(g) historical associations.

The s32 Report

The report states that policy 32 (in conjunction with the other natural character policies) is the most appropriate means of achieving [an] objective … because the policy is:

- effective in requiring outstanding natural features and landscapes to be identified;
- effective in providing guidance on matters that need to be considered when identifying outstanding natural features and landscapes;
- effective in providing guidance on appropriate subdivision, use, and development;
- efficient in clarifying components that contribute to outstanding natural features and landscapes;
- efficient in clarifying the level of management that should be undertaken;
- efficient as it generates greater benefits than costs.

Submissions

- **Mixed support**

Some individuals and community groups support the proposed policy as written, along with a number of conservation groups and councils; IPENZ, the New Zealand Archaeological Association and the NZHPT also. Ngati Awa and the Waimarama Maori Committee too strongly support the policy. Other iwi groups that do comment on it are concerned that it fails to recognise that much Maori heritage is intimately connected to natural coastal landscapes, which they believe should be recognised and protected. Ngai Tahu submits that the policy

should be expanded to include a specific reference to significant places or areas of historic or cultural significance.

- **Insufficient protection?**

Most conservation groups and many community groups are concerned however that the draft policy provides insufficient protection for outstanding natural features and landscapes. The Guardians of Puku Bay considers that allowing 'no more than minor' adverse effects is an open door for developers and should not be allowed. The Protect Piha Heritage Society and several individuals hold similar views. EDS says that the negative impacts on nationally significant landscapes are usually the cumulative result of many individual developments the individual effects of which might be deemed to be 'no more than minor' but which effectively add up to a very significant effect, 'the death by a thousand cuts syndrome'.

EDS, together with a number of individuals and community groups, submits that this policy needs to give strengthened protection to nationally significant coastal landscapes. It suggests using the words 'avoiding adverse effects of activities on' [outstanding natural features and landscapes] to ensure sufficient protection. EDS also (as we noted under policies 14, 15, 16) considers that councils should undertake more detailed mapping of significant areas of coast to be protected from subdivision and development and that the maps should be directly incorporated into planning documents as an interim protective measure to provide immediate protection. Several individuals and community groups share this view.

- **Confusion between natural character and other provisions of s6**

A range of regional and district councils, along with some individuals, are concerned that that the draft policy is inconsistent with, and muddles, s6 RMA. They submit that the policy should not make protection of outstanding natural features and landscapes a subsidiary part of natural character. While many support the policy's intent they believe it confuses matters to be addressed under s6(b) with the protection of natural character under s6(a). They recommend retaining the policy but deleting the phrase 'to preserve the natural character of the coastal environment' from the policy's first line.

The Franklin District Council considers that biodiversity and landscape should be given their own significance as separate categories, with their own values, given their status as matters of national importance in s6. It recommends amending the policy to be consistent with the section, which gives protection to outstanding natural features and outstanding natural landscapes in their own right.

- **'No more than minor effects' inconsistent with s6**

Infrastructure companies, port companies, marinas and property interests are all concerned that the draft policy does not align with s6 RMA, which provides for protection from 'inappropriate subdivision, use and development'. Instead it proposes a higher threshold that any adverse effects should be 'no more than minor'. These companies recommend that the policy be amended to provide protection from 'inappropriate subdivision, use and development' consistent with s6. They also submit that any adverse effects of subdivision, use and development should be avoided where practicable and otherwise remedied or mitigated. Many of these companies however support the balance of the policy, which outlines how outstanding natural features and landscapes should be identified.

The ARC, the Manukau, Franklin and Christchurch City Councils, also recommend deleting the 'no more than minor' test, as it weakens s6.

- **Specific guidance required in identifying outstanding natural features and landscapes**

Many submitters believe the policy needs to provide clearer, more specific and more detailed guidance in relation to the identification of outstanding natural features and landscapes. Some call for the policy to specifically list criteria to look for. The Canterbury/Aoraki Conservation Board recommends that the policy recognises 'significant' landscapes and gives guidance on their definition. The Future Ocean Beach Trust suggest that the policy give some guidance as to what may be 'natural', and submits that it should not be interpreted in a very narrow manner as pristine or undeveloped.

Environment Canterbury considers that the policy is 'completely vague and does not offer any real guidance to councils'. It submits that it should provide assistance to help with weighing up national priorities and local considerations during planning and decision making under the RMA. The Taranaki Regional Council seeks guidance on who is to identify outstanding natural features and landscapes, and how this should be carried out. The ARC suggests that it would be helpful to have a more coastal specific policy that relates to landscapes and features such as headlands, peninsulas, sandspits and islands, etc., rather than the current generic criteria. It also seeks guidance on the relationship between outstanding natural features and outstanding natural landscapes, particularly given the dual imperatives of s6.

Fishing and aquaculture interests are also concerned that the policy fails to offer any real guidance. They seek more direct description of the features and landscapes to be protected, e.g. wetlands, significant peninsulas, pa sites, etc. Environment Waikato suggests that the policy should also include seascapes.

- **Unclear terms and criteria**

Many submitters seek clarification of terms used in the policy; e.g. 'natural character', 'dynamic', 'memorability,' 'expressiveness,' 'values that are shared and recognised,' 'tikanga Maori' and 'historical associations'. Environment Canterbury suggests such terms be given a glossary definition. The ARC and the Manukau City Council suggest that the list of identification criteria be rewritten with more flexibility. For example, by requiring decision makers to have regard to criteria including, but not limited to, rather than being a definitive list. The Hawke's Bay Regional Council suggests that the policy proactively state a prioritised framework for avoidance, remediation and mitigation. Environment Southland suggests that the draft policy is a two part one that should be split up – one part to deal with adverse effects and the second to either require the identification of outstanding natural features and landscapes, or to provide guidance on how to do so, or both.

The Canterbury/Aoraki Conservation Board asks that 'legibility' be included in clause (c).

Transit New Zealand is unclear what 'wildlife' means in clause (d) and suggests 'significant indigenous fauna' might be more appropriate. NZ Aluminium Smelters says that the occasional presence of wildlife at certain times of the day is not an appropriate criterion.

- **Tangata whenua values**

A number of infrastructure companies suggest replacing the term 'in accordance with tikanga Maori' in policy 32 (f) with reference to 'its value to tangata whenua'. The Auckland International Airport notes that the Environment Court in the decision of *Pigeon Bay Aquaculture Ltd* v *Canterbury Regional Council* referred to 'its value to tangata whenua'[157]. Ngai Tahu however considers that policy 32(f) does not go far enough as it merely repeats the landscape assessment criteria used in *Pigeon Bay*. That tribe believes the policy needs to direct councils to adopt measures to protect these outstanding places and features from inappropriate development. Three other iwi groups however support policy 32 (f). The Wellington Conservation Board recommends that the clause (f) be extended to include 'historical, cultural and spiritual associations generally.'

Issues Arising

- **Confusion between natural character and other provisions of s6**

'Natural character', as covered under s6(a), is not the same as outstanding natural features and landscapes, the subject of s6(b). We recommend an addition to policy 36 (new policy 15) on natural character to make this clear. We therefore accept the submissions of those who suggest retaining the policy, but deleting the phrase 'to preserve the natural character of the coastal environment' and recommend accordingly.

- **Avoiding adverse effects**

We do not accept the submissions of those seeking the addition of 'avoid, remedy or mitigate' to any reference to 'adverse effects'. There is a danger that 'avoid, remedy, or mitigate adverse' effects is simply used under s5(c) as a mantra and the phrase is reeled off in policies because of the way it is written in the RMA. We consider that where matters are identified as of national importance under s6 – i.e. where they require preservation (natural character) or protection (outstanding natural features and landscapes, areas of significant indigenous vegetation and indigenous fauna) as well as protection from inappropriate subdivision, use and development, there is a need to consider circumstances where adverse effects should be avoided as a national priority (s58) RMA. Only if there are good reasons under Part 2 RMA and particularly in arriving at an overall judgment under s5, should the approach be to move to 'remedy' or 'mitigate' adverse effects. We recommend this approach be applied in an amended policy.

- **Separate provision for identification and protection**

We note Environment Southland suggests that the draft policy is a two part one that is split up – one to deal with adverse effects - and the second to require the identification of outstanding natural features and landscapes and guidance on how to do so. We accept that submission too and recommend the policy be amended accordingly.

- **Specific guidance sought in identifying outstanding natural features and landscapes**

This issue was supported by a great many submitters and EDS provided two expert landscape architects to give evidence to address it – Ms D Lucas (EDS and Ocean Beach Trust) and Mr

[157] [1999] NZRMA 209.

Stephen Brown (ARC and EDS). From that evidence and from other submissions, two themes emerged:-

- the urgent need to identify outstanding natural landscapes and features on a national basis;
- with very few exceptions, the need to affirm a list of criteria or factors for evaluating outstanding natural features and landscapes; Meridian (and other infrastructure companies) consider that the list of criteria or factors in policy 32 as stated is appropriate, and that does not need to rely on a place under the heading 'natural character' given s6(b)RMA.

As to the first theme, (the urgent need to identify outstanding landscapes and natural features on a national basis) s6 requires, as a matter of national importance, 'the protection of outstanding natural features and landscapes …' including those in the coastal environment. It is clear that not all councils have or do not seek adequate information to implement policies designed to achieve this. We were told one council had deliberately rejected two landscape studies commissioned by the council officers to address the legislation and one council explained it was not identifying such landscapes and features but relying on resolving issues arising on a case by case basis.

The Board was fortunate to have the assistance of the two landscape architects who advised that there is already a great deal of information existing on outstanding landscapes, outstanding natural features, and indigenous vegetation available to councils but it was submitted by EDS that it needs to be co-ordinated and implemented by the Board through being included in this NZCPS[158].

A point that should be made here also that there is no need to identify national, regional and district levels of outstanding natural features and natural landscapes. All outstanding features and landscapes are deemed a matter of national importance under s6 RMA.

We consider it is outside our terms of reference to recommend that a programme to co-ordinate and compile a national coastal landscape methodology and assessment be instituted by central government. However, we note that the exercise could be quicker, more efficient and more cost-effective than requiring each authority to develop its own methodology and undertake its own assessment. But as an alternative, we suggest regional and local councils should collaborate (perhaps through LGNZ) to establish a common methodology and terminology for determining natural character, and outstanding natural features and landscapes in the coastal environment. If this does not happen, we consider New Zealand is in danger of losing many nationally important natural attributes which underpin the public's enjoyment of the coastal environment by New Zealanders as well as overseas tourists.

Because of the importance attached to the natural character of the coast and to outstanding natural features and landscapes in s6 we have attached as Appendix E to Volume 2 extracts from the evidence of Ms Lucas and Mr Brown which we consider may be relevant or helpful in establishing such a methodology and terminology for their protective descriptions together with mapping.

[158] Ms Lucas provided us with various documents from which the *Pigeon Bay* and the subsequent *Wakatipu* factors had been developed for landscape assessments. We are satisfied they were developed as described and they are now colloquially known as the amended *Pigeon Bay* factors.

- **The factors for assessment of natural features and landscapes in the coastal environment**

In 1993, Boffa Miskell and Lucas Associates, developed a suite of assessment criteria for interpretation of s6(b), and undertook a rapid assessment of the Canterbury Region to identify regionally outstanding and significant landscapes. These were then adopted as criteria for a district scale assessment.

These criteria or factors (as now referred to) were later noted in a landscape assessment for an Environment Court hearing. From that decision they were referred to by the Court as the '*Pigeon Bay* criteria' and received with slight modification in the Queenstown Lakes District Plan references. Historic associations were also added to the Pigeon Bay factors in the *Wakatipu* decision[159]. Also, ecological factors were added to the natural science criterion, as 'double counting' of values under s6(b) and (c) was not identified as an issue. The Court in that case also identified that 'this list is not frozen – it may be improved with further use and understanding'[160].

With minor modification, this is the list now quoted in policy 32. Policy 32 replicates the modified Pigeon Bay factors except for a refinement of the text of policy 32 (f), excluding the reference to legibility from policy 32 (c) and, being a finite rather than an open-ended list. We note there are now a considerable number of councils, power company, professional and NGO submissions supporting this list of landscape factors.

This evidence, along with that of Mr Brown was the only evidence relating to the identification of outstanding natural features and landscapes. Ms Lucas referred to the work currently being undertaken by the landscape profession to clarify the factors listed above, but we now understand this work to be in the development phase.

We conclude that as the factors have been well tested in the Courts for a considerable length of time that they be adopted for the policy and recommend they be included in the policy with a minor adjustment accordingly. They should also be inclusive which means they may be added to at a later time.

- **Pastoral and arable landscapes**

We heard from Federated Farmers that they were concerned, with so much coastal land held as farming property, that if this is identified as ONL or ONF, farmers in the future would be prevented from locating farm buildings or fencing to accommodate on-going farming operations. We heard too from a number of submitters that working landscapes could not be ONL.

Ms Lucas for Future Ocean Beach Trust however said this:

> I am very concerned at the regular belittling of stable, long-term pastoral coastal landscapes as 'working landscapes'. Natural and semi-natural grasslands, as well as low-input permanent exotic pasture, are a fundamental dimension of New Zealand's landscape image as a scenic and beautiful country. Grassland coastal environments can be perceived as highly natural landscapes. This is the 'cultured

[159] *Pigeon Bay Aquaculture Ltd* v *Canterbury Regional Council* [1999] NZRMA. 209.
Wakatipu Environmental Protection Society v *Queenstown Lakes District Council* [2000] NZRMA 209.
[160] See *Long Bay – Okura Great Park Soc Inc*. v *North Shore City Council* A07/08 [Environment Court].

> nature' concept as per Professor Swaffield's research, and as quoted in the *Long Bay*[161] decision as meaning 'natural'.
>
> With good vegetative cover on stable lands and adequately vegetated riparian zones, New Zealand's low intensity pastoral landscapes are essential to our primary production and a core of our identity. With biodiversity integrated and protected, with minimal erosion, with surface and groundwater quality not degraded, such pastoral landscapes can be managed sustainably.
>
> There are many pastoral areas that do not meet these sustainability thresholds through nutrient, sediment, compaction and contamination issues, particularly some intensive dairy production lands. However that does not, in my opinion, provide an excuse to belittle a stable pastoral system that has long been the envy of the world. Pastoral landscapes have been highly valued for centuries elsewhere as heritage landscapes and as natural landscapes. It is important that the NZCPS provide for the valuing of more sustainable pastoral landscapes. Thus assessments of natural character and natural landscapes must be crucially driven. The purpose of the assessment of naturalness will affect the scale of consideration which will relate not only to the immediate experiential catchment that might be directly affected, but the variability, significance and integrity of the wider coastal environment and landscape.

We agree with this assessment. Distinctive pastoral or arable landscapes, with farm buildings and fences, in a coastal environment may be an ONL or ONF. The Environment Court has had numerous examples where the presence of such buildings and fencing and presence of animals do not 'write off' potential ONLs or ONFs. Overseas visitors to New Zealand may well describe them as 'scenic', given their own experience of such landscapes as seen in Britain, France, Austria and Switzerland. And the curving slopes of serried rows of vines, with their load bearing structures, can be just as impressive in certain wine growing landscapes. Most important of all is the coastal context of such landscapes or features. Meanwhile Federated Farmers can take pride in such landscapes created by a farming nation. Such landscapes were greatly valued in the Cape Kidnapper's case[162]. And on a site visit we saw a memorable example of one such landscape in the Waitaki District when we were driving along the coastal road with sweeping green arable fields on one side of the road and strident coastal cliffs and pounding seas on the other.

- **Cultural landscapes**

The protection of cultural (Maori) landscapes may sit more comfortably under s6(e) and (f). But equally, if they are outstanding in natural and cultural terms they require protection under s6(b). Cultural impact assessments (CIAs) may provide the required knowledge to inform the identification and protection of cultural landscapes. We heard from Ngai Tahu in the south (and others in the north) of the value of cultural impact assessments for this purpose[163].

- **Conclusion**

We recommend that policy 32 be amended and become policy 17 as follows:

Policy 17 Natural features and natural landscapes

[161] See note 5.
[162] *Gannet Beach Adventures Limited*. v Hastings District Council W90/2004. [Environment Court]
[163] #429 see Ellison, Solomon, Hogan.

To protect the natural features and natural landscapes (including seascapes) of the coastal environment all decision makers must:

(a) avoid adverse effects of activities on the areas of the coastal environment with outstanding natural features or outstanding natural landscapes; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on the amenity values of other natural features or natural;

including by:

(c) identifying and assessing the natural features and natural landscapes of the region or district, using a robust and consistent methodology that spans the line of MHWS to include both the landward coastal environment and the coastal marine area;

(d) the methodology required under (c) covering at least land typing, soil characterisation and landscape characterisation and having regard to:

- **(i) natural science factors, including geological, topographical, ecological and dynamic components;**
- **(ii) the presence of water including seas, lakes, rivers and streams;**
- **(iii) legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;**
- **(iv) aesthetic values including memorability and naturalness;**
- **(v) vegetation (native and exotic);**
- **(vi) transient values, including presence of wildlife or other values at certain times of the day or year;**
- **(vii) whether the values are shared and recognised;**
- **(viii) cultural and spiritual values for tangata whenua, identified in accordance with tikanga Maori; including their expression as cultural landscapes and features;**
- **(ix) historical and heritage associations; and**
- **(x) wild or scenic values;**

(e) ensuring that regional policy statements and plans map, or otherwise identify, areas where natural features and natural landscapes require objectives, policies and rules to protect the coastal environment; and

(f) including the objectives, policies and rules required by (e) in plans.

Policy 33 Appropriate location, density and design of subdivision, use and development

To preserve the natural character of the coastal environment, it is a national priority to:

(a) promote, in appropriate locations, forms of subdivision, use, and development that avoid, remedy, or mitigate adverse effects on natural character through appropriate scale , density and design; and

(b) avoid subdivision, use and development in inappropriate locations.

The s32 Report

The s32 report states:

> The effective implementation of [an] objective … and the national priority status accorded to the preservation of natural character by s6(a) and s58(a) of the RMA requires that subdivision, use and development be avoided in inappropriate locations.
>
> In locations where subdivision, use and development are appropriate, the preservation of natural character requires that adverse effects be avoided, remedied or mitigated through appropriate scale, density and design.

Submissions

- **Limited support for the policy**

A few individuals and community groups support policy 33, although a number also suggest changes to the wording or ordering of the policy. Conservation boards and groups generally support the policy, with the exception of EDS. Ngati Awa support and seek retention of policy 33. Several infrastructure companies accept the policies but most see problems with it. The NZHPT accepts the policy.

- **Policy 33 repeats matters covered in policies 14 and 15**

Many submitters consider that policy 33 covers matters addressed by policies 14 and 15.

EDS submits that the policy covers the same ground as policies 14 and 15 and is therefore potentially confusing and contradictory. A number of individuals and community groups make similar points. Several regional councils and most district councils also consider that the policy repeats policies 14 and 15. These submitters recommend that these policies be reviewed and policy 33 deleted or incorporated with policy 14.

The Otago Regional Council and the Selwyn District Council note that this policy effectively summarizes policy 14 and suggest it should replace policy 14, as it is a better policy.

The Waimarama Maori Committee submits that policy 33 is very confusing and should either be deleted or become a second tier policy behind the other natural character policies.
Contact Energy questions whether the policy adds anything to the RMA framework, and notes that it appears to reinforce the zoning approach promoted in 14 and 15. Property companies suggest reviewing and rationalizing policies 14, 15 and 33.

IPENZ and TIANZ also point out that policy 33 repeats policy 14, as does New Zealand King Salmon.

- **The terms 'appropriate' and 'inappropriate' are unclear**

The Tasman District Council notes that the terms 'appropriate' and 'inappropriate' appear three times in this policy with no guidance about what is meant, or what is to be achieved or avoided. It is concerned that, 'the policy gives no more guidance than is available from section 6(a) [of the RMA]'. Several other councils also note that these terms need to be better defined, as do a number of individuals and community groups.

- **Other comments**

The ARC and the Franklin District Council suggest reversing the order of points (a) and (b) to emphasize that it is important to determine where development should be avoided, before determining where it should be encouraged. The Canterbury/Aoraki Conservation Board also suggests that part (b) should be listed first, as do several individuals and community groups.

The Guardians of Puku Bay oppose the use of the term 'promote' in part (a) and suggest it is changed to 'permit.' Others suggest the term 'provide' would be appropriate.

The ARC considers that policy 33(b) is in conflict with policy 32 because 'avoid' is a stronger test than the outstanding natural features test (i.e. 'no more than minor').

The Future Ocean Beach Trust is concerned that it is not sufficiently clear that the overriding requirement of the policy is the preservation of natural character.

Meridian Energy submits that policy 33 'entirely changes the scheme of the RMA' by seeking to avoid subdivision, use and development in 'inappropriate locations' regardless of whether the form of development is appropriate or not. It further considers that 'it is reasonable to expect the NZCPS will add value to the existing policy framework of the RMA by providing some additional guidance on what is inappropriate development'. It recommends that the policy be deleted.

Transpower (and other infrastructure interests) had a concern that the policy not unreasonably constrain the operational requirements and ability to undertake works on existing assets located in the coastal marine area.

Several submitters suggested that the existing 1994 policy 1.1.1, along with perhaps some criteria about form, scale, density and design, is preferable. Others considered that policy 1.1.1 had been ineffective.

- **Addition sought**

A further addition sought by the Port Companies and others was:

> Promote the use and development of coastal resources where such use and development is largely dependent upon coastal resources and location, and where that use helps achieve sustainable management of natural and physical resources.

The reason given, that this would help recognize the primary importance of providing for some uses within the coastal environment, where such uses are location-reliant, and reflects ss6(a) and (b) of the RMA.

Issues Arising

- **What value does the policy add?**

The main issue that emerges from the submissions is what value, if any, the policy adds to s6(a).

There were many comments about the use of the words 'inappropriate' and 'appropriate' that appeared three times in the policy, with no guidance about what is meant or what is to be achieved or avoided. Submitters considered that the policy resulted in ambiguity and the potential to be litigation prone, and sought a list of criteria to assure the general public the policy is being adhered to.

Submitters pointed out that to determine what is 'appropriate' or 'inappropriate' territorial authorities need stronger guidance to assist them to withstand development pressures. Submitters gave examples of what they considered to be 'inappropriate'. One submitter wanted a national coastal buffer zone of 200m in which no subdivision is permitted. Another wanted subdivision expanded to clearly include any type of individual ownership of a residence or bach. EDS and others suggested that a list of criteria on its own was not enough, with areas needing to be mapped for no development, limited development and free development for the whole of NZ. We cover their proposals in our discussion of policies 14 and 15.

Several submissions suggested the intent of the policy would be better dealt with in other policies, such as 14, 15 and 16 because these relate to the location and form of subdivision, use and development, or at least a cross-reference provided.

We agree that the policy, as written, does not add value. It effectively covers matters in policies 14, 15 and 16 and the natural character policies. We conclude that the amendments proposed in submissions would not overcome the basic deficiencies of policy 33. We look further at the points raised in submissions when considering other relevant policies.

We recommend the deletion of policy 33.

Policy 34 Natural areas and features

In preserving the natural character of the coastal environment, it is a national priority to protect natural areas and features that are:

(a) of historic importance;

(b) of special value to tangata whenua;

(c) of special scientific importance; and

(d) wild or scenic.

The s32 Report

The s32 report states:

> The effective implementation of [an] objective … requires the protection not only of outstanding natural features and landscapes (as identified in the previous policy) but also other natural areas and features which may be of special value or importance. This recognises that there are some natural areas and features, while not being outstanding, nevertheless contribute to the preservation of natural character. From a national perspective these matters should be identified.
>
> In recognition of the increasing subdivision, use and development pressures that are affecting natural character, it is also appropriate to reinforce the national importance of the protection of such natural areas and features, as being key contributors to the protection of natural character, from inappropriate subdivision, use, or development. (Refer to s6(a) and s58(a) of the RMA). The effects of subdivision, use, or development on these natural areas and features needs to be carefully managed.

Submissions

- **Support for the draft policy**

Individuals and community groups generally support draft policy 34, with most saying that it is vital to protect these areas from subdivision and development.

The NSaPS, supported by many individuals and groups, reiterates its view that natural character in areas of national interest should be protected through nationally developed objectives, policies and rules, which exclude incompatible activities.

Conservation boards and conservation groups, including the RFBPS, ECO and EDS support the policy. Some conservation groups suggest additional criteria for inclusion in the policy (see comments below).

Relatively few iwi groups comment on the policy, but those that do support it, particularly clause (b), which gives protection to natural areas and features that are 'of special value to tangata whenua'.

The NZHPT and the Council of Outdoor Recreation Associations of New Zealand support the policy. The New Zealand Archaeological Association supports the policy to protect areas and features that are of historical and cultural value.

- **Matters addressed in draft policy 34 are covered by other policies**

A number of regional and district councils say it is confusing how this policy relates to the other policies on natural areas. They consider that the matters addressed in the policy are already covered in other draft NZCPS policies and suggest that policy 34 either be deleted, or incorporated into policy 30 and/or policy 32. IPENZ, TIANZ and a number of infrastructure, property and aquaculture companies also submit that the matters appear to be addressed by other policies, particularly policy 32.

Contact Energy notes that there appear to be a range of concepts being imported into the natural character category, including tangata whenua values, scientific importance and 'wild or scenic' areas and features. It recommends combining the policy with policy 32.

Two regional councils and four district councils recommend that the policy be deleted, as it is unnecessary and does not add any value beyond other provisions in the draft NZCPS. The West Coast Regional Council is concerned that the policy has the potential to be overly restrictive and unsustainably restrict any resource use, rather than balancing the needs of people and communities with protecting important values as required by the RMA.

- **Protection should be from 'inappropriate subdivision, use and development'**

Meridian Energy considers that the policy seeks to extend the scope of the s6(a) and (f) imperative that certain nationally important features are to be protected from inappropriate subdivision, use and development; instead, 'the policy requires that four types of features are to be protected at all costs in all circumstances and from all forms of development'. Meridian requests that the policy be deleted or, if some specific provisions are required to address natural areas and features, that they provide for protection from inappropriate subdivision, use and development.

Most infrastructure companies, port and marina operators and property interests, submit that the policy needs to be consistent with objective 9 relating to historic heritage, which is protected from 'inappropriate subdivision, use and development'.

- **Comments on clause (d) 'wild or scenic'**

Views are split on the merits of clause (d), which gives protection to natural areas and features that are 'wild or scenic'. EDS and the Future Ocean Beach Trust strongly support the requirement to protect wild and scenic areas.

The ARC suggests that the point be expanded to giver greater emphasis to areas of significant wilderness value, which it says is different from 'wild and scenic' as it includes a sense of remoteness and dominance of natural coastal processes and features. One individual submitter endorses this suggestion.

Environment Canterbury and several other submitters submit that the term 'wild' should be deleted, as it does not appear elsewhere in the NZCPS. Meridian Energy submits that 'wild or

scenic' is not defined in the RMA, is open to broad and arguable interpretation and should be deleted.

Many other submitters (including councils, infrastructure companies, property and aquaculture interests) consider that 'wild and scenic' is undefined, too general, too broad and too subjective to be determined a national priority. They seek its deletion or refinement.

The Buller District Council says it would be a challenge to differentiate between 'wild or scenic' areas unless this clause is further refined. NZ Aluminium Smelters notes that most if not all natural features will be 'scenic'.

Federated Farmers considers that 'wild and scenic' is unduly subjective and will unduly restrict the use of private land. The organization submits that there are many 'wild' features in the coastal environment that are not worthy of protection and many scenic features that are in fact working environments. It also submits that productive land should not be the subject of this policy.

- **Other comments**

Environment Waikato believes the policy confuses matters to be addressed under ss6(b), (c), (e) and (f) RMA with the protection of natural character under s6(a). It recommends retaining the policy but deleting the phrase 'to preserve the natural character of the coastal environment' from the front of the policy.

Several councils disagree with the s32 cost benefit analysis, which they consider inaccurate because identifying these sites will time consuming and the potential for appeal high.

The RFBPS considers that the policy needs to recognize the intrinsic values of places in the coastal environment and proposes an amendment to provide protect for 'special places for their intrinsic values and wider cultural importance.' The Eastern Bay of Plenty branch of the RFBPS recommends adding protection for 'significant landscape value.' The Wellington Conservation Board recommends adding protection for natural areas and features that are of 'cultural and spiritual importance'. One individual says the policy should also include geological features.

Issues Arising

- **Is this policy needed?**

We agree with submissions identifying problems with a lack of clarity on the relationship between this policy and others. We conclude that the matters addressed in this policy are either dealt with in other policies, or are better covered by amendments to other policies, including policies under the headings of natural character, features and landscapes and historic heritage. In arriving at this outcome, we carefully considered the specific amendments sought to the policy. None of the proposed changes changed our view that elements of this policy are best dealt with elsewhere.

We recommend the deletion of policy 34.

Policy 35 Restoration of natural character

It is a national priority to restore the natural character of the coastal environment, in appropriate circumstances, including by:

(a) restoring indigenous habitats and ecosystems where these have been significantly adversely affected and life-supporting capacity is compromised;

(b) creating or enhancing habitat for threatened indigenous species;

(c) encouraging regeneration of indigenous species, and using local genetic stock, where practicable, when restoring habitat;

(d) reducing or eliminating discharges of contaminants that are causing significant adverse effects, particularly cumulative effects;

(e) requiring, where practicable, restoration conditions on resource consents for the continuation of activities that have compromised natural character;

(f) restoring dunes and other natural coastal features or processes;

(g) protecting and restoring riparian margins; and

(h) removing redundant structures and materials that lack heritage or amenity value.

The s32 Report

The s32 report states:

> Restoration is appropriate to address impacts from existing (and past) activities and restoration will assist in managing the effects on natural character of proposed activities. However complete restoration of the natural character of the coastal environment is not practicable. It is therefore appropriate to provide policy guidance on the particular circumstances in which restoration efforts are a priority. This includes circumstances where:
>
> - indigenous habitats, dunes, natural features, or water quality have been significantly affected;
> - habitat for threatened indigenous species and riparian margins could be created or restored;
> - regeneration can be promoted using local genetic stock;
> - structures have become redundant;
> - resource consent applications for existing activities provide an opportunity to consider restoration through consent conditions; and
> - the use of local genetic stock when undertaking restoration of indigenous vegetation is important for the protection and restoration of indigenous biological diversity.

This Policy built on policy 1.1.5 of the 1994 NZCPS which states:

> It is a national priority to restore and rehabilitate the natural character of the coastal environment where appropriate.

We note the NZCPS review *Scoping paper for Natural Character and Landscape* March 2006 suggested further consideration could be given to elevating policy 1.1.5 to the status of an objective, with policies providing better direction. That was a response to the key question: should the NZCPS provide more clarity on when it is likely to be appropriate to restore and rehabilitate the natural character of the coastal environment?

Submissions

Most individuals and community groups support the policy. Several individuals note that restoration of wetlands is particularly important.

Conservation boards strongly support the policy. The Canterbury/Aoraki Conservation Board suggests that the policy should specify that the preservation of existing habitat should be preferred in every case over the creation of new habitat.

ECO strongly supports the policy, while the RFBPS notes that it needs to be complemented with enhanced provision of protection in policy 31, as restoration of natural character will only be achieved once the existing areas of significance are actively protected. EDS supports the policy but also notes some concerns, which are documented below.

Four iwi groups support the policy. Kahungunu suggests that more specificity could be provided through reference to other policies that mention the issues raised in clauses (a) to (h).

Two regional councils and five district councils support the policy, although some of these seek minor changes.

The NZHPT supports the policy and suggests that it should recognise and encourage collaborative relationships with tangata whenua in relation to the restoration of important cultural plant resources for sustainable harvesting.

Submitters considered high priority needs be given to restoration of damaged dune areas, with re-vegetation programmes using suitable native plants to restore natural dune habitats as well as associated wetlands and estuaries. Some made the point that as early Crown agencies condoned (at least) the destruction of sand dunes, central government should be actively leading the restoration.

- **Policy favours restoration, rather than the broader elements of natural character**

EDS supports this policy but is concerned that the current wording focuses almost completely on the restoration of indigenous species and habitats, rather than on the broader elements of natural character, which can include rural working landscapes. It is concerned that the policy could result in restoration of indigenous species being seen as justifying the intrusion of houses and other infrastructure into the coastal environment. EDS recommends that the policy be redrafted to make it clear that it is not intended to justify more built structures in the coastal environment. A number of individuals support the EDS submission.

This concern is shared by the Auckland District Law Society, which notes that the policy appears to favour restoration of native bush or native plants; and, submits that, 'it is important that the broader view of natural character, namely the present natural character of any landscape, should not be overlooked by an enthusiasm and fashion for restorative planting, as an acceptable trade-off to allowing a degree of urbanization'.

- **Policy not consistent with the RMA**

A number of submitters raise issues in relation to the RMA. Both Environment Waikato and the Otago Regional Council note that the RMA does not empower local authorities to carry out restoration work, rather it provides for maintenance and enhancement of natural character. Environment Waikato notes that restoration may occur under a council's LGA function and seeks removal of references to non-RMA matters and those that cannot be addressed by RMA planning documents. The Otago Regional Council considers that the policy should be deleted. Environment Canterbury and the Chatham Islands District Council also question how policy statements and plans are seen as vehicles for restoration.

The Tasman District Council considers that it 'seems more appropriate for the policy to be dealt with under the council's LTCCP [under the LGA] rather than the NZCPS'.

Contact Energy also notes that the RMA refers to the preservation and protection of natural character, rather than its restoration. Contact Energy submits that the statutory basis for this policy is unclear and that it is also unclear what RMA mechanisms are to be used to achieve restoration. Contact Energy recommends deleting this policy and including restoration in other relevant policies.

Horticulture New Zealand submits that policy 35 sets a threshold higher than that set by the RMA (by requiring restoration) and should be amended to be consistent with s6 of the RMA.

Watercare notes that s6(c) RMA requires the protection of 'significant indigenous vegetation and habitats'. Watercare submits that the word 'significant' should therefore be inserted in paragraph (a), before the word 'indigenous'. The West Coast Regional Council, OnTrack, marina and property companies, and some individuals also seek this amendment.

Watercare also seeks an amendment to provide for protection from 'inappropriate subdivision, use and development', consistent with s6(a), as does Hopper Developments Ltd.

- **Other general comments**

A number of submitters seek clarification of the term 'appropriate circumstances'. Several councils ask who is responsible for implementing and funding the policy. IPENZ considers that more direction is required in relation to who is responsible for implementing this policy and how it will be monitored and enforced.

A number of infrastructure, port and property companies seek an amendment to provide for restoration, rehabilitation or enhancement of natural character. The Far North District Council suggests that the emphasis should be on enhancement, rather than restoration, as this will remove any uncertainty over what state a degraded area should be restored to.

Meridian Energy considers that the policy fails to confront the reality that some degree of adverse effect on habitat or natural character is almost inevitable to enable even appropriate

development in appropriate locations. It requests that the policy be deleted or, alternatively, amended to provide for the identification of natural features and ecosystems that are degraded and sensitive to further use and development and opportunities to restore or enhance those natural features and ecosystems.

- **Comments on specific clauses within the policy**

As noted above, a number of submitters consider policy 35 (a) should refer to 'significant indigenous habitats and ecosystems' to make it consistent with section 6 of the RMA.

Regarding policy 35 (c), Horticulture New Zealand considers that requiring the use of local genetic stock will provide unclear biodiversity benefits, as well as being likely to decrease the availability of stock and increase costs of regeneration projects. The Auckland Law Society also questions whether local genetic stock should be favoured, as in some circumstances it may not have the resilience of grafted stock or other better quality stock from elsewhere in the country.

Policy 35 (e) requires restoration conditions on resource consents 'where practicable'. The Auckland Law Society considers that this clause 'appears to be without clear meaning and should be deleted'. TrustPower and Meridian Energy also submit that clause (e) should be deleted. The Hawke's Bay Regional Council recommends that clause (e) be amended to specify the circumstances when conditions should be placed on consents. The Auckland Regional Council considers that the clause should not be limited to resource consents for the 'continuation' of activities. It seeks removal of the word 'continuation.'

A number of infrastructure, property and marina companies suggest that clause (g) should refer to 'restoring riparian margins', rather than 'protecting and restoring'. Ngati Awa supports an amendment to policy 35 (g) as follows: 'protecting and restoring riparian margins and cultural landscape features'. Greater Wellington suggests that the clause should include specific mention of estuarine vegetation.

Clause (h) provides for the removal of 'redundant structures and materials that lack heritage or amenity values'. Wellington Waterfront Ltd is unclear what would be included in the term 'redundant structures' and suggests that the term be defined in the glossary. TrustPower and Sea and City Projects Ltd consider that the clause should contemplate structures that may be redundant for their original purposes but may be worthwhile to retain for new purposes, beyond any amenity value. The Hawke's Bay Regional Council asks in whose opinion should there be a lack of such values and whether the clause requires total non-existence of such values. The NZHPT suggests that the clause be amended to ensure removal is subject to an assessment of heritage value and proper authorisation. The Otago Regional Council considers that the matter is already covered by policy 26.

Issues Arising

- **What is the statutory basis for a restoration policy?**

Mighty River Power wanted the policy deleted, questioning its statutory basis on the basis the RMA refers to the preservation and protection of natural character rather than its restoration.

'Restoration' would come in under the sustainable management purpose of the RMA including s5(2)(a)(b)(c), s6(a) as contributing to the preservation of natural character and s7(f) to the enhancement of the quality of the environment. 'Restoration' would also be relevant to many other matters in ss6 and 7 and also to 8. Section 108(1)(c) also refers to 'the protection, **restoration**, or enhancement of any natural or physical resource' (our emphasis) as the basis for conditions on consents and thresholds on activity classes.

Contact Energy submitted that there is no certainty for users with 'where appropriate'. Meridian Energy considered the policy failed to confront the reality that some degree of adverse effect on habitat or natural character is almost inevitably necessary for appropriate development. It was concerned that opponents could rely on the policy in an unreasonable way to require restoration in a manner that conflicts with lawfully established activities or thwarts the terms of a consent. There were concerns about the methods that may be used to implement the policy, such as through conditions on resource consents.

Mighty River Power and others also submitted that taken literally the policy would require restoration of the entire coastal environment and that surely cannot be intended when provision is to be made for appropriate use and development within the coastal environment. It wanted the policy qualified to that effect. Interestingly, this is one policy with 'appropriate circumstances' as a qualifier and the list of possibilities is not exclusive but is there to assist. We find the concern expressed by submitters on the implication that the policy would require such treatment everywhere overstated and do not consider further qualification necessary or desirable.

Contact Energy had a concern that there is potential for restoration activity to be required of users of the coastal environment even where there is no link to adverse effects and result in significant additional costs. The Supreme Court in *Estate Homes*[164] accepted that the RMA does not require a greater connection between the proposed development and conditions of consents than that they are logically connected to the development or subdivision. There is no requirement for a causal link. We also note that recognition of environmental compensation and biodiversity offsets are an emerging trend that would come within the restoration policy.

- **What should restoration cover? Should there be an emphasis on rehabilitation and enhancement?**

The Christchurch City Council considered the policy is concerned with the restoration of indigenous ecosystems and should be renamed accordingly. We disagree. It is broader than that, as evidenced by the list.

Mighty River Power submitted that the policy is unclear in terms of what is meant by 'restoration'. Several submitters considered this policy should not only refer to restoration but also rehabilitation and enhancement in its heading (and elsewhere). This is on the basis natural character may also be rehabilitated or enhanced and not just restored to its original condition. Submitters made the point that a benefit of putting the emphasis of this policy on rehabilitation and enhancement rather than restoration, is that it will remove the uncertainty over what state a degraded area should be restored to. Many submitters saw the use of 'restoration', which is not defined in the RMA, as a major problem.

[164] *Waitakere City Council v Estate Homes Ltd* [2007] 2 NZLR 149 (SC).

The RMA does not use rehabilitation and although it uses the term enhancement in several places, it does not define it. It does however distinguish between restoration and enhancement in section 108. We propose to rename the policy by adding the word 'rehabilitation'. 'Rehabilitation' is likely to be a better description of the state of the coastal environment that results from the necessary remedial work and management than 'restoration'. While the policy refers to 'enhancing habitat for indigenous species', we do not see the need to include 'enhancement' in the name of the policy.

Federated Farmers considered it is a contradiction in terms to 'restore' nature and the policy is better described as 'improving naturalness'. We consider the words 'restore' (and 'rehabilitate') convey the sense of returning an area or its natural character elements to health and ensuring future integrity, functioning and resilience. We do not find that a contradiction in terms.

Federated Farmers also had a concern that the policy focuses on the restoration of indigenous species and habitats rather than on the broader elements of natural character that can include working rural landscapes. We think that is to read the policy too narrowly.

- **What mechanisms could and should be used to achieve restoration?**

Councils in particular raised this question. This policy uses terms such as, 'restoring, creating, encouraging'. How is the RMA including policy statements and plans seen as vehicles for this type of activity? Who is responsible for implementing this policy? Who will fund restoration? How will it be monitored and/or enforced?

The West Coast Regional Council wanted the policy to specify who is responsible for funding the restoration. It said: 'Our ratepayers will not fund restoration projects just because the NZCPS thinks it is a nice idea.'

One submitter requested the addition of: 'with territorial authorities to conduct it, for regional councils to require it and to assist in it and for the Ministry for the Environment and the Department of Conservation to support this'.

Some councils, such as the Otago Regional Council, considered the restoration of natural character in the coastal environment to be outside the regulatory scope of the RMA and that the policy could only be implemented through non-regulatory methods. The view of LGNZ was that this policy should be dealt with under a council's Long Term Council Community Plan under the LGA 2002 rather than in this way in the NZCPS. Council submissions also suggested that the policy could only be achieved through the Department of Conservation submitting on their Annual Plans and Long Term Council Community Plans.

Many submissions, particularly councils, questioned the funding of restoration. The point made was that more direction is required and national resourcing, guidance or programmes may be necessary to take this from a token gesture into a successful nation-wide initiative. While clearly any national assistance that could be provided to supplement the existing programmes that exist is likely to have a benefit, there are opportunities available under the RMA to promote restoration.

The RMA provides for conditions to be imposed on resource consents and designations, and for conditions as thresholds on permitted, controlled, restricted discretionary and discretionary activity status. These conditions must be 'appropriate'. Section 108(2), which does not

derogate from the ability to impose other conditions, specifically lists some types of conditions that would involve restoration. For example services or works, including the protection, restoration, or enhancement of any natural resource (s108(2)(c)) and financial contributions of money or land including for the purpose of ensuring positive effects on the environment to offset any adverse effect (s108(2)(a)). In addition the Courts have entertained biodiversity offsets or environmental compensation. Mechanisms such as covenants can also be useful, as identified by some submitters.

EDS submissions and expert witnesses emphasised the importance of linking development with restoration. Raewyn Peart gave evidence:

> Our coast desperately needs restoration. It is very expensive to do and so really, practically, the only way we are going to achieve it is through harnessing some of the wealth that is created through development on the coast to invest into this kind of restoration work. There are some good examples where that is happening. It means designing our settlements, our developments, quite carefully.

A submission suggested the NZCPS should consider the U.S. requirements for compensatory 'mitigation' when a person seeks to take wetland or similar for any permanent purpose. The policy requires an equivalent – in some cases twice the equivalent - of historically reclaimed land or landfill to be included in the applicant's proposal as restoration to the sea or harbour. We are aware that there are questions about the effectiveness of the compensatory mitigation statutory regime in the US.

Mighty River Power submitted that it is unclear what RMA mechanisms are to be used to achieve this restoration. We conclude that there are many RMA methods available to achieve this policy and that these are no different from the position with many of the other policies in the NZCPS.

- **Should there be exceptions for redundant structures and materials?**

The NZHPT wanted an amendment to ensure the removal of redundant structures and materials is subject to an assessment of heritage value and proper authorisation:

> (h) removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993.

Many submitters agreed with that approach, as do we.

Other submitters, such as Wellington Waterfront and the ports, wanted the policy to add the qualifier of 'lack value for reuse'. That would contemplate that structures that may be redundant for the original purposes may be worthwhile and valuable to retain for new purposes. We consider that could be an undesirable invitation to leave unsightly structures and materials in a deteriorating condition in the coastal environment, notwithstanding policy 8(f)(ii).

Other submissions suggested the policy as it is written would allow for the removal but not necessarily the redesign of such structures and wanted the addition of 'or that interfere with ecosystem processes'. In their view this would for example allow for and result in

improvements to fish passage or the hydrological regime of wetlands by redesigning or replacing structures. We agree such a course of action may be beneficial and include it.

- **Is the reference to the one method desirable?**

The policy contained one method (e). Submitters had a concern about requiring restoration conditions on resource consents for the continuation of activities that have compromised natural character.

The West Coast Regional Council submitted that it is not clear how far back councils should look to identify accountable parties. It would mean reviewing consent conditions under s128 RMA to require restoration. It could be difficult to implement fairly if more than one consent activity has contributed to significant adverse impacts or there are a number of sites heavily impacted. Finally it may be challenged by the consent holder as negligence on council's part for not addressing adverse effects sufficiently at the time of processing the consent.

Meridian opposed the method because it would be likely to be 'practicable' but at considerable cost and may thwart or hinder the exercise of the consent. It wanted 'where appropriate'. Meridian also observed that many of the restoration measures are more properly operational DOC or local government functions and could be advanced by other means.

Several submissions wanted the following qualifier:

> where it is both practicable and appropriate to do so having regard to:
> (i) the value of the investment of the existing consent holder; and
> (ii) the particular values and character of the area in which the activity is located.

The value of the investment partly reflects s104(2A) which would require the existing investment to be had regard to. The particular values and character of the area would also be relevant under s104(1). We therefore do not support the inclusion proposed, particularly as existing activities may have been established in an era when there was less awareness of and focus on, or the technology had not yet developed, to deal with the adverse effects. We consider the West Coast Regional Council overstates the difficulties rather than looking to the opportunities.

Other submitters wanted new activities included as well as the continuation of existing activities. We do not see that the policy was intended only to apply to existing activities, but that these were specifically identified to make it clear that they were included.

- **Should there be other changes to the items listed?**

Several submissions wanted a reference to restoring only 'significant' indigenous habitats and ecosystems under (a) on the grounds of the qualification to the matters of national importance in s6(c). Similarly the West Coast Regional Council on the basis it is not practical to restore all habitats. We do not consider that desirable as there are many situations where restoration would be warranted that would not fall into the category of 'significant'. Also this policy is not just about s6(c) as we identified earlier.

The West Coast Regional Council was also unsure how it would be applied as it is worded in the past tense, making it a non-compliance or enforcement matter. It said that consents granted for activities with significant adverse effects would surely have conditions on to mitigate effects or financial contributions for compensation.

Some submissions considered a requirement to use local genetic stock was relevant to more than regeneration of indigenous species and should be included in (a). Other submissions questioned the value of favouring local genetic stock. We agree that there is value in a reference to the aim to use local genetic stock as the first preference.

Submissions sought the removal of the word 'threatened' to broaden it out to indigenous species under (b). For similar reasons to our conclusion on indigenous habitats and ecosystems we agree.

Northland Regional Council wanted (d) clarified by inserting 'adverse effects on natural water quality, substrate or ecosystems'. We see that provisions along those lines would amplify the bald reference to adverse effects.

An expanded (f) was proposed: 'restoring dunes saline wetlands intertidal salt marsh and other natural coastal features or processes'. Given the importance of saline wetlands and intertidal salt marsh, as demonstrated with the examples drawn to our attention of the need for and value of remedial work, we consider a reference to them would be worthwhile.

Under (g) some comments raised a concern about 'protecting' riparian margins because of the potential benefits of development in them. Others felt that specific mention of estuarine vegetation should be included, as follows: 'protecting and restoring riparian margins and estuarine vegetation'. We consider the need is to protect both the riparian margins and estuarine vegetation.

Ngati Awa wanted to add to (g) … 'and cultural landscape features' to help address s6(e) and include potential for the integrity and functioning of cultural landscape features to be afforded restoration alongside natural character values. We take on board their concerns.

Submitters also noted that encouraging regeneration of indigenous species will also require management of invasive indigenous species in order to restore the original ecosystem. That is the case, with regeneration and ongoing weed and pest management often being a better option than replanting. Accordingly we add these improvements to the policy.

Another suggestion was restoring natural or ambient noise and the policy as currently worded would not prevent this.

The NZHPT considered restoration of natural character could be managed without impinging on the values of the large number of Maori heritage sites but that would require care. However amended policy 16 would pick up any concerns.

We consider there may also be a need to explicitly recognise the need for restoration to anticipate and deal with the effects of natural hazards and consider this further in the natural hazard policies.

A further addition is to recognise the historic landfills around the coastline, leaching into the environment. We witnessed the significant adverse effects of one historic landfill in an area where there are geological formations located close to the area containing the tourist attraction of the Moeraki boulders.

- **Should this policy limit trade-offs?**

Many submissions felt that greater emphasis on protection and restoration is needed, rather than encouraging further development as a way of achieving restoration. One concern voiced by EDS and many others, particularly community groups and individuals, was that restoration not be pursued at the expense of the other values of the coastal environment. Submissions emphasised that it is better (and cheaper) for areas not to lose their natural character in the first place.

The Waiheke Island Community Planning Group wanted the policy expanded to specify the wider view of natural character to include the present natural character of a landscape, rather than an idealised restoring landscape approach allowing development as a trade off for extensive predominantly native planting. It provided Palm Beach headland and Arriagato as examples.

EDS (supported by many others) suggested the policy be reworded to make it clear it is not intended to justify more built structures in the coastal environment, by adding:

> (i) ensuring that any ecological restoration proposal is not used to justify a reduction in the natural character of the coastal environment though the placement of intrusive structures or earthworks.

In a similar vein, submissions sought that the policy explicitly recognise that created habitat is unlikely to contain the biodiversity of the original, natural habitat and state:

> The preservation of existing habitat should be preferred in every case over the creation of new habitat.

We had evidence from many land developers, infrastructure companies, as well as from EDS witnesses, showing the results that can be achieved with well designed proposals. We conclude that it is difficult to circumscribe the policy in the way suggested. We look at this further when considering 'appropriate' subdivision, use and development.

- **Should this policy be in the NZCPS?**

Several councils considered restoration a matter that should not be dealt with in the NZCPS due to its funding implications but through the Long Term Council Community Plan and the Local Government Act processes.

Submissions wanted removal of the references to non-RMA matters and those that cannot be addressed by RMA planning documents. We find that all the matters on the list could be addressed through the RMA.

We recognise that there are complementary mechanisms outside the RMA that support restoration. Submissions emphasised the advantages of encouraging community groups to

take an active role in restoration activities. We saw at first hand the benefits of that both with planting and restoration of the dunes and mangrove removal in Tauranga.

- **Should there be a separate policy?**

Submissions suggested there is no need for a separate policy on the basis that the elements are already covered in other policies (e.g. (h) is already covered by policy 26) or should be moved to and covered in other relevant policies, i.e. on indigenous biological diversity. Some of the concern, particularly from the infrastructure companies, was that the policy includes a wide range of matters that should not be dealt with under a natural character policy such as restoration of habitats (policy 35(a)) and reducing and eliminating contaminants (policy 35(d)). Other submissions proposed better links to those policies.

We note that the *Stocktake and Analysis of Regional Coastal Plans* found 10 included policies or methods related to restoration (of indigenous vegetation and habitat values).

We conclude that there is a need for the policy to highlight situations and mechanisms available.

- **The Meridian alternative**

Mrs Foster, planner, for Meridian considered it would be regrettable if policy 35 could be read as requiring reversal of resource consents that have previously been found to be consistent with sustainable management notwithstanding that they may cause some localised adverse effects. Requiring restoration conditions on consents on consents historically granted may be practicable but could impose punitive costs on consent holders. She considered should address the need to restore degraded parts of the coastal environment. She considered that particularly for applications for consent renewals, this should be balanced against the other relevant considerations that apply in terms of sustainable management.

Mrs Foster proposed a different approach, which means that provisions in plans would be the central driver for restoration. While plans are certainly important, we also see that there are opportunities for restoration and rehabilitation that can be taken advantage of immediately. We take elements of the approach suggested and include them in the rewritten policy.

- **Conclusion**

We recommend policy 35 become policy 16 and be amended as follows:

> **Policy 16 Restoration of natural character**
>
> **It is a national priority to restore or otherwise rehabilitate the natural character of the coastal environment including by:**
>
> **(a) identifying areas and opportunities for restoration or rehabilitation;**
>
> **(b) providing policies, rules and other methods directed at restoration or rehabilitation in regional policy statements and plans;**
>
> **(c) imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and**

(d) recognising that degraded areas of the coastal environment require restoration or rehabilitation, for example through:

(i) restoring indigenous habitats and ecosystems, using local genetic stock where practicable; or

(ii) encouraging natural regeneration of indigenous species, recognising the need for effective weed and animal pest management; or

(iii) creating or enhancing habitat for indigenous species; or

(iv) rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarsh; or

(v) restoring and protecting riparian and intertidal margins; or

(vi) reducing or eliminating discharges of contaminants; or

(vii) removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993; or

(viii) restoring cultural landscape features; or

(ix) redesign of structures that interfere with ecosystem processes; or

(x) decommissioning or restoring historic landfill and other contaminated sites which are, or have the potential to, leach material into the coastal marine area.

Policy 36 Assessment and protection of natural character

> **Local authorities shall assess the natural character of the coastal environment of the region or district and provide for its preservation, including by provisions in policy statements and plans that address the national priorities in policies 30 to 35.**

The s32 Report

The s32 report states:

> Without good information on the components of natural character in particular areas, appropriate management of activities cannot be undertaken. … [T]he particular matters that contribute to a region's or a district's natural character need to be identified. Once identified, they need to be assessed as to their respective levels of importance, in a regional or district context. This policy approach reinforces a proactive approach to managing natural character within a region or district ….
>
> Debate on what constitutes natural character and how best to protect it has been ongoing. By not improving on this level of knowledge and providing for its management, there is a risk of natural character being degraded further over time, from the cumulative effects of subdivision, use and development.

Submissions

Relatively few submitters support this policy without qualification. A number of individuals and community groups support the policy as it is written, as do several conservation boards and groups. A few councils also support the policy though most other submitters seek either amendment or deletion of the policy.

The NSaPS (supported by many individuals and community groups) reiterates its view that the natural character provisions need to be strengthened and made more directive.

EDS supports the policy but seeks an addition to the draft policy to require local authorities to 'identify and map areas of the coast with high natural character and ensure that any adverse effects on them are avoided'. This suggestion is endorsed by a number of individuals.

- **Places high burden and imposes and costs on local authorities**

Local authorities, infrastructure companies and some professional associations and individuals are concerned that the policy will impose very high costs on local authorities.

The Hawke's Bay Regional Council submits that the policy places requirements on local authorities to undertake research, assessments and other work that will require significant costs and time. The Rodney District Council is very concerned that it will impose significant costs beyond what the council can reasonably support. This view is endorsed by a number of councils, who are also concerned that the policy is likely to be contentious and litigated through the Environment Court and that this will further increase costs. Several regional and

district councils also submit the analysis of costs in the s32 report is inaccurate and should be reviewed.

Meridian Energy questions the practicality of the proposal and suggests that the practical reality for local authorities should be considered before burdening them with the task of assessing the natural character of the entire coastal environment within their respective areas. The company notes that the skills to undertake robust assessment of natural character are generally thin on the ground in New Zealand, even for assessments of site-specific individual development proposals. Meridian therefore questions whether it would not be better to require local authorities to develop useful criteria for the individual proposals. It submits that the policy should either be deleted or amended to enable local authorities to address their assessment of priority areas as resources allow.

Contact Energy also considers it is unrealistic to expect that this could be undertaken for a coastal environment of a whole region or district and suggest that the policy should require councils to identify only 'significant' areas of natural character. Environs Holdings Ltd believes the policy will result in a significant workload and costs for local authorities, tangata whenua and other stakeholders. It suggests a best practice guideline would be a more pragmatic approach.

- **Policy may be ultra vires**

The Auckland District Law Society comments that his policy appears to impose a substantial mandatory obligation on local authorities, which could be reflected in rates increases and increases in financials charges and development levies on new activities. The society then notes that policy 36 appears to be a throwback to the original s32 of the RMA, which required onerous studies of costs and benefits as a condition of including policy statements and rules in plans, which was mitigated by amendments to s32 in 2003. It states that the obligation under policy 36 should not exceed the existing statutory obligation and s32 and submits that, 'to the extent that policy 36 appears to place a greater burden on local authorities than s32, it could be submitted that policy 36 is ultra vires the power to impose reasonable supplementary policies under the NZCPS'.

The society also comments that, 'present practice under the RMA requires councils to survey the natural and physical resources of a region or district and this existing obligation must surely be sufficient'.

- **National guidance is needed on how to assess natural character**

Most regional councils seek greater guidance as to how the policy should be implemented. The ARC is concerned that the NZCPS has not addressed the need for clear methodology or assessment techniques in determining the values that need to be protected. Along with Horizons Regional Council, it seeks clearer guidance on how natural character should be assessed and protected. The Taranaki Regional Council is concerned that the policy will require a lot of work by local authorities and it is unclear how it is to occur. It recommends that the policy be deleted due to the uncertainty associated with how to give effect to it. Environment Canterbury considers that the policy should provide guidance to help with weighing up national priorities and local considerations during planning and decision making under the RMA.

Many district councils consider that national guidance on how to assess natural character would provide a better outcome than the proposed policy, as well as avoiding ad hoc approaches. The Franklin District Council suggests that central government could help develop standard methodologies for assessment of natural character and apply these at a national level to identify areas of national significance. The Council suggests that this approach would help prevent the ad-hoc decision making that the NZCPS seeks to address.

The Tauranga City Council recommends that the NZCPS provide an agreed methodology to assess natural character so that individual councils do not have to generate their own methodology, which may be inconsistent across boundaries. The Selwyn District Council suggests that central government should provide guidance and assessment of the coastal environment as a whole and then work with local authorities to achieve policies of national priority.

Ngati Kahu and the Ngati Wai Trust Board consider that assessment of natural character is critical and seek best practice guidelines that incorporate an effective methodology.

Several infrastructure companies and property interests note that there should be a greater national guidance on a methodology for assessing national character.

- **Inclusion of cultural landscapes and involvement of tangata whenua**

Ngai Tahu seeks an amendment to require local authorities to assess the 'natural character and cultural landscapes of the coastal environment'.

Kahungunu believes that tangata whenua should also be involved in the assessment and preservation process, which should as far as possible be done in accordance with tikanga Maori. The iwi submits that the policy should be amended to reflect this.

- **Infrastructure and property interests seek consistency with section 6 of the RMA**

Almost all infrastructure companies, property interests, port companies and marina companies submit that the draft policy should be made consistent with s6 of the RMA by the second line referring to preservation from 'inappropriate subdivision, use and development'.

- **Policy not required**

Several councils consider that this policy is not required. The West Coast Regional Council says it is unsure what this policy is trying to achieve and notes that the RMA does not require councils to assess the natural character of the coastal environment. It recommends deleting the policy.

The Otago Regional Council, the Hastings District Council and the Waimakariri District Council consider that this policy is unnecessary and overly directive. They consider that the NZCPS provides for natural character to be preserved through policies 30 – 35, regardless of policy 36.

- **Policy should cover surf breaks**

The Surfbreak Protection Society and a large number of individuals support the policy and request that it be extended to include policy 20 (surf breaks of national significance) as a matter of national priority in relation to the assessment of and protection of natural character.

These submitters recommend adding a reference to policy 20 in front of the existing reference to policy 30.

- **Sedimentation should be addressed by a separate policy**

EDS considers that sedimentation is 'probably the biggest threat to the ecological health of the coastal marine area on a national basis … and needs to be directly addressed'. It seeks the addition of a new policy 36A which requires local authorities to identify areas within the coastal marine area at high risk from sedimentation and provide for their protection through monitoring and assessing sedimentation impacts before releasing rural land for development, ensuring that stock are excluded from the coastal marine area in catchments draining into high risk areas (within a prescribed timeframe) and controlling the impacts of vegetation removal on sedimentation, including the impacts of plantation forestry. This view is supported by a number of individuals and community groups who quote the EDS submission.

- **Some development may be appropriate**

The Auckland City Council is concern over the use of the word 'preservation'. It says that the policy needs to acknowledge that some development can protect natural character. The New Zealand Wind Energy Association also suggests that reference should be made to the consideration of 'appropriate use and development', not just 'development'.

Issues Arising

- **What are the problems?**

We acknowledge the problems with much of the decision making to date with its apparent lack of emphasis on natural character and the cumulative effects of allowing subdivision, use and development in many parts of the coastal environment. We also accept the problems with the existing plans, particularly district plans. There is a need for consistency of, and an effective, approach. That must recognise that the natural character of the coastal environment crosses the MHWS line and an integrated approach is needed in coastal (regional) and district plans.

One problem is that there is a lack of appreciation that natural character (s6(a)) is not the same as natural features and landscape (s6(b)), although there can be aspects that contribute to both. We recommending making it clear that there is a distinction in the policy.

- **What is natural character?**

Is there a need for national guidance on the concept of natural character? We note that the s32 report (and the NZCPS review scoping paper[165]) point out the need for guidance on matters to be considered when assessing natural character. We accept that there is no nationally recognised definition for natural character and that as a consequence case law in this area continues to evolve. We agree that national guidance would assist in dealing with the problems identified above.

[165] NZCPS review *Scoping paper for Natural Character and Landscape*, March 2006. NZCPS review.

What should that guidance involve? Some submissions sought a definition. Mrs Christine Foster suggested that the scope of 'natural character' could be expanded upon in an explanation. Alternatively, that could be incorporated within the policy without the heading.

In principle we consider that it would be helpful to identify that natural character has many elements or factors that contribute to it on an inclusive basis. There is always a risk with making a list that it does not cover all the relevant matters. We also consider that there are advantages to using an explanation rather than including the elements in the policy more directly.

What elements of (or factors contributing to) natural character should be included? Submissions referred to the Boffa Miskell review, MfE's February 2002 workshop, other documents and approaches and case law as starting points for defining or describing natural character.

Mrs Foster, the planning witness called by Meridian, proposed:

> Natural character in the context of the coastal environment can include the following elements:
>
> (a) the resilience and productivity of notable indigenous ecosystems;
>
> (b) natural landscapes and landforms that are outstanding or have national or regional significance;
>
> (c) the dynamic processes that are essential to the continued functioning of ecosystems;
>
> (d) natural biotic patterns and movements associated with nationally-important indigenous species.

One problem with what Mrs Foster proposes is that it confuses natural character with outstanding natural landscapes, covered in policy 32. Natural character is not the same as natural landscape, a point that escapes many. Another (and to some degree associated) problem is that it attempts to bring in evaluation of the importance of the elements, with the use of terms like 'outstanding', 'national or regional significance' and 'nationally-important'. Section 6(a) refers to the preservation of natural character not to outstanding or nationally or regionally significant elements.

As explained in the NZCPS review Scoping paper, the self-styled experts in this field continue to debate whether natural character as a concept should include not only consideration of naturalness but also physical, biological, cultural and perceptual components. In submitting on policy 30, EDS and many others, also had a concern that natural character includes not only natural components and processes but also a person's experience of the natural elements of the coastal environment through all the senses (sound, feel, sight, smell). Also that it involves a lack of intrusion of human artefacts (buildings, roads, power lines, seawalls etc) into the coastal environment. EDS sought the addition of:

> the ability of people to experience the natural elements of the coastal environment without intrusion by human-made structures.

We consider there is merit in the suggestions by EDS, although we conclude different wording would better achieve the intention.

There were many other suggested additions to the matters or factors listed in policy 30, some of which are particularly relevant to natural character. These included:

- natural or ambient noise, not mentioned anywhere in the NZCPS, and natural coastal sounds (sounds of sea, wind and wildlife need to be protected);
- existing character where that character has been modified from its original state (to include modified natural character including a working rural productive environment);
- indigenous flora and fauna;
- habitat and species;
- large freshwater springs;
- the intertidal and estuarine zone;
- natural sky-scape with unbuilt skyline;
- hydrodynamic processes and features to ensure surf breaks are included.

There are also the items in policy 34, natural areas and features that are wild or scenic, of special scientific importance, of historic importance and of special value to tangata whenua. Some of these elements and suggestions have been included elsewhere, such as in objective 1 and in other places in the policies.

In conclusion we recommend an inclusive description of the elements or factors that contribute to 'natural character', picking up many of the points made in submissions.

- **Is there a need for assessment of natural character?**

We see that one of the major problems of the current coastal management regime is the lack of such an assessment of natural character. There is clearly a need for assessment of natural character not just at the individual consent level but when preparing policy statements and plans.

- **Are the techniques or tools available to inform this assessment?**

Many submissions considered the NZCPS has not addressed the critical need for an effective methodology or assessment techniques in determining the values that need to be protected (and also the means to implement them). Some were of the view that it would be unrealistic and inappropriate to require a single methodology, but it should be possible to determine best practice guidelines and require compliance with them. Others proposed that central government develop standard methodologies for assessment of natural character and apply these at a national level to identify areas of high natural character value or of national significance.

We conclude that an effective methodology or assessment techniques are essential to inform the assessment of natural character. Those could be produced as best guidance guidelines. Assessments of natural character would then be more difficult to challenge at an individual local authority level.

- **Who should do this assessment?**

Many councils expressed concern that the information-gathering, with the significant mapping and assessment, associated with the proposal will impose significant costs on individual councils beyond what could reasonably be supported. Many said that such work is not currently budgeted for or allowed for in future work programmes. They also had a concern about the directive policy because the definition of natural character has been contentious and hotly debated and a matter that is likely to be litigated through the Environment Court.

Submitters recognised that the exercise would result in a significant workload and costs for not just local authorities, but also tangata whenua and other stakeholders, and asked how this would be funded.

We note that Mrs Foster suggested local authorities identify what the elements of natural character are in the coastal environment and to attribute some relativity – some perspective – in terms of how they are to be managed. She recognised the investigation, analysis and description required to identify natural character, and the need for a certain level of rigour and resource input and therefore cost. However she considered these to be much more achievable for local authorities than the more extensive work that would be required to determine areas of the coastal environment within which development is 'appropriate' or 'inappropriate' (a matter we return to under the heading of subdivision, use and development).

- **Should regional or territorial authorities undertake such assessment?**

Councils and others wanted it to be made clear who is to do this work (and whether it is to be included in policy statements or plans to avoid duplication of effort). Some submissions suggested this is and should only be a requirement of regional councils and should be written this way. We do not agree. There are major advantages in a co-operative approach between regional and territorial authorities because natural character spans the Mean High Water Springs line.

- **Should there be a national assessment of areas of high natural value?**

Mr Stephen Brown, landscape architect and planner called by EDS, gave evidence that there is a high level of variability in relation to coastal management priorities, financial resourcing and assessment methods adopted across New Zealand's districts and regions. He therefore supported the EDS proposal for a national exercise to undertake a strategic level evaluation of natural character values and sensitivities.

Mr Brown proposed a combination of:

- workshops in two streams – the **perceived natural character stream** (to involve landscape architects) and the **biophysical natural character stream** (to involve marine, fresh water and terrestrial ecologists, hydrologists and specialists in hydrodynamics). These would identify key criteria/parameters and thresholds associated with areas displaying sufficiently high natural character values to warrant protection.
- field evaluation – with parallel teams to concurrently identify the extent of the New Zealand coastal environment and coastlines displaying high natural character values (through aerial photography, existing district and regional

data bases and site visits). He proposed the exclusion of all DOC and other reserve land.

- joint workshops for amalgamation of assessment streams to finalise delineation of the extent of the New Zealand coastal environment and those coastlines displaying high natural character values that should be protected.

In his opinion, this exercise would cost approximately $930,000, with the workshops about $40,000 (no fees for participants other than facilitators), field work $777,000, amalgamation of work streams $95,000 and GIS mapping $25,000.

Mr Brown was of the opinion that a study undertaken in this way would help to safeguard much of the coastline that will remain open to threat of loss of natural character in the foreseeable future. He accepted that it would focus on the very highly valued coastal areas that are often almost self-evident but would not address the more marginal areas of coastline where there is less clarity and more debate about such values.

While such a national exercise is certainly desirable, and is likely to be more efficient than individual local authorities commissioning or undertaking and defending their own assessments, it would need to be prefaced by the development of a common methodology or assessment techniques, as EDS recognised. The development of the methodology is therefore a key action that it is desirable be undertaken as a priority.

The EDS proposal for such a national exercise did not factor in the cultural dimension to natural character. By its nature that will need to be done at an individual hapu and iwi level.

- **Does this assessment need to be done everywhere?**

Alternatives suggested were to add 'to provide criteria for the assessment of', or particularly by councils to adopt a best practice guideline, rather than require the assessment nationally.

Another alternative put forward was to require local authorities to identify only 'significant' areas of natural character. The problem with this is that s6(a) is not just about 'significant' areas of natural character. It encompasses natural character values along a spectrum.

Mr Brown suggested that the conservation estate could be excluded. This would mean there is not a full picture.

Another suggestion is to only require such assessment where an area is under pressure, but this can be hard to establish until it is too late. Meridian and others questioned the practical reality of burdening local authorities with the task of assessing the natural character of the entire coastal environment within their respective areas. Concerns were the scarcity of the people and skills needed to undertake robust assessments on the ground in New Zealand and the possibility that local authorities would be bound up in an academic assessment task. Meridian suggested that the policy be deleted or amended to enable local authorities to address their assessment at priority areas of natural character as resources allow.

We conclude that the concerns are overstated. It could be that rapid assessment approaches could be developed to deal with those areas that are under less pressure, and reflected in more restrictive policies and rules that recognise the limitations of the assessment.

- **How can natural character be preserved and protected from inappropriate subdivision, use and development?**

We conclude that there is a need for natural character to be accorded a greater priority in decision making than it is currently receiving. We propose a new objective and policies (including policies for subdivision, use and development) which require not just more attention, but also immediate attention, to be paid to natural character and other values.

- **Should there be a difference for high natural character?**

Mrs Foster gave evidence that it is not reasonable for the proposed NZCPS to suggest or encourage the view that all natural elements (regardless of their representativeness or regional or national significance) should be accorded a 'preservation' or absolute protection status. In Ms Foster's view it is essential that there is an informed basis for developing policy statements and plans. That is, local authorities should endeavour to identify what the elements of natural character are in the coastal environment and to attribute some relativity – some perspective – in terms of how they are to be managed.

We conclude that the policy should attempt to avoid adverse effects on high natural character. Outside of circumstances where there is a high natural character, there should still be a focus on avoiding significant adverse effects (that would include potential adverse cumulative effects). This should improve the current practice, where applicants (and decision-makers) move to mitigation measures without fully considering the options that would allow avoidance of adverse effects on natural character.

- **Is there a need for national guidance on natural character plan provisions?**

Many submissions emphasised that national guidance on how to implement natural character plan provisions will be required for this policy. We agree.

- **Should objectives and policies be included in plans without the need for the First Schedule process?**

Many submitters wanted the policy made more directive with natural character in areas of national interest protected through nationally developed objectives, policies and rules which exclude incompatible activities. Our approach in policy 2 is to require immediate effect to be given to the objectives and policies in the NZCPS, including when considering whether to disregard the permitted baseline under s104(2) and making decisions on the notification of consent applications.

Rules are outside our jurisdiction, but there is a need to review rules and particularly the restricted discretionary, controlled and permitted activity status given to activities in the coastal environment to accord with the objectives and policies of the NZCPS. We recommend that councils undertake the necessary review of their regional policy statements, plans and documents incorporated by reference as soon as possible.

- **In summary**

There is need to drastically improve the consideration of natural character as a matter of national importance that can be lost and to recognise that the cumulative adverse effects of such loss do not achieve the purpose of the RMA. That must happen immediately. In our view giving priority to:

- avoiding adverse effects on areas of high natural character;
- avoiding significant adverse effects on natural character as a first step before moving to mitigating and remedying those effects;
- the identification of criteria and tools for identifying and assessing natural character;
- the undertaking of the assessments across the country, encouraging co-operation between regional and territorial authorities;
- carrying those assessments through into plan policy and rules, again encouraging a co-operative approach between authorities

will also help prevent the continuance of the ad hoc decision making the NZCPS seeks to address. Accordingly we consider this policy needs to be strengthened and moved further forward, and add in the factors contributing to natural character in an inclusive manner.

We accept that there is no agreed or tested methodology and that there is an urgent need for an effective (including cost effective) methodology and associated tools. However, we also agree with the many submitters who said that there is a need for guidance from a national level needed for this to be undertaken confidently across the country.

We also agree with EDS that there would be major advantages in identifying areas of high natural character nationally. Leaving that to individual councils is not as efficient and unlikely to be as effective. The EDS approach is one way but there are likely to be others. Concentrating on areas of high natural character at a national level does not mean that the natural character of other areas is not important and should not be factored into decision making. Our revision of the policy recognises this.

Similarly nationally consistent rules (the latter of which are outside our jurisdiction to consider) for activities in areas of high natural character would have major advantages. That would be more likely to achieve the new objective 2 than to expect and rely on individual councils to change their plans.

We look at the approach needed in plans further under the heading of Use, Development and Subdivision.

We recommend policy 36 become policy 15 and amended to read:

> **Policy 15 Preservation of natural character**
>
> **To preserve the natural character of the coastal environment all decision makers must:**
>
> **(a) avoid adverse effects of activities on areas of the coastal environment with high natural character; and**
>
> **(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on the natural character of all other areas of the coastal environment;**
>
> **including by:**
>
> **(c) assessing the natural character of the coastal environment of the region or district:**

(i) using a robust and consistent methodology that spans the line of MHWS to include both the landward coastal environment and the coastal marine area; and

(ii) mapping, or otherwise identifying, at least areas of high natural character;

(d) ensuring that regional policy statements and plans identify areas where preserving natural character requires objectives, policies and rules to protect the coastal environment;

(e) including the objectives, policies and rules required by (d) in plans; and

(f) recognizing that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:

(i) natural elements, processes and patterns;

(ii) biophysical, ecological, geological and geomorphological aspects;

(iii) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;

(iv) the natural movement of air, water and sediment;

(v) darkness;

(vi) places or areas that are wild or scenic;

(vii) a range of natural character from pristine to modified, including areas that derive their character from human activity, such as farmland, vineyards and plantation forest;

(viii) human experience of natural attributes and places and areas that exhibit them, including the sounds and smell of the sea; and

(ix) the context or setting in which those attributes may be experienced.

Policy 37 Restricted coastal activities

Resource consents for certain types of activities that have or are likely to have a significant or irreversible adverse effect on the coastal marine area shall be determined by the Minister of Conservation. The types of activities for which the Minister will decide resource consent applications are those defined in Schedule I. Regional coastal plans and proposed regional coastal plans shall identify these activities as Restricted Coastal Activities and shall include the necessary provisions, without notification or hearing, in accordance with section 55 of the Resource Management Act 1991 and as soon as practicable.

The inclusion in a regional coastal plan or proposed regional coastal plan of the Restricted Coastal Activities defined in Schedule I:

(a) shall not affect any application for a coastal permit for an activity which, at the time the application was made, was not a Restricted Coastal Activity, and for which the regional council has:

(i) notified its decision; or

(ii) fixed a commencement date for a hearing;

and

(b) shall not affect any application for a coastal permit for an activity which, at the time the application was made, was a Restricted Coastal Activity and for which the regional council has made its recommendation to the Minister of Conservation.

NZCPS (1994)

This statement refers to restricted coastal activities (RCAs) as follows:-

Defining the Specific Circumstances in which the Minister of Conservation will Decide on Resource Consent Applications

Policy 5.3.1

The type of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area and for which therefore the Minister of Conservation will decide resource consent applications are those defined in Schedule 1.

Schedule I of the 1994 NZCPS then lists 10 types of activities and identifies whether they are or are not RCAs. They range from reclamations of a certain size, structures in the CMA more or less parallel to the MHWS or oblique or perpendicular to it, structures used in the petroleum or chemical industry, disturbance to the foreshore and seabed including the removal of sand, shingle and shell, depositing substances in the CMA, and the discharge of human sewage to the CMA that has not passed through soil or wetland.

The s32 Report

The report identifies the RMA provisions which define RCAs (s2 and s58(c)(i)(ii), and the requirements necessary for their implementation in a regional coastal plan (s68(4)(a)(b)).

It then lists significant legislative amendments to the RMA since the approval of the 1994 NZCPS[166]. It goes on to list a summation of submissions on the role of RCAs from the Review of the NZCPS (Enfocus 2006). And it then goes on to identify the advantages of RCAs as:

- reflecting the Crown's role in coastal management as owner of most of the CMA on behalf of the public of New Zealand;
- communicating the types of activities and their thresholds to councils and resource users the Minister considers might have significant or irreversible effects so that the introduction of the policy and Schedule 1 will assist in the preservation of the natural character of the CMA;
- causing little delay and few costs in the consenting process;
- providing a nationally consistent approach to activities that have significant or irreversible effects on the environment;
- public notification of all RCAs.

The s42A Report

This report elaborates on the s32 report and includes the policy basis for inclusion of RCAs in the NZCPS:-

- the significance of the Crown's ownership role of the majority of the land in the CMA;
- preservation of the natural character of the CMA;
- national consistency in decision making on sensitive activities e.g. discharge of sewage in the CMA;
- availability of a pool of Ministerial appointees to the hearings panel;
- records of RCAs provide central government with information on a range of activities on significant scales;
- public notification of all RCAs.

Benefits of the policy are seen in this report as outweighing costs, while those are recognised to the resource users in particular to be medium to high. Two tables provided give a breakdown of the type of proposals identified as RCAs and the number processed from the time of their introduction (1991) to 2008. This list includes reclamations [119], protection works [53] marinas, ports [10] perpendicular structures [26] disturbance [114] discharges – sewage [129] petrochemical pipelines etc, mangrove removal, sand and gravel extraction, deposition etc. totalling 526 in all[167].

[166] The Aquaculture Law Reform Amendment Act 2004, The Resource Management (Marine Pollution Regulations 1998) and ss15A and 15B RMA.
[167] A Report to the Board of Inquiry on the Proposed New Zealand Coastal Policy Statement. Speden and Marshall. August 2008, 28-33, Appendix 1.

Submissions

- **Community and environmental groups**

The categories of submissions to the Board on RCAs generally follow those identified in the s32 report. Putting process issues to one side, environmental groups such as Conservation Boards, Royal Forest and Bird, as well as concerned individuals, seek the continuation of RCAs and the support of the Crown authority of the Minister of Conservation as final decision-maker on resource consent applications. The Canterbury/Aoraki Conservation Board considers the involvement of the Minister provides a very useful check and balance on regional councils and unitary authorities and safeguards the public interest. East Bay Conservation Society endorses the policy because it is of particular relevance to aquaculture. Many submitters, particularly those under the umbrella of the NSaPS, support the policy but request that it needs to be strengthened and made more directive. The NZHPT also supports RCAs and requests that the policy recognises the irreversible adverse effects of demolition and destruction of significant heritage places. In particular this submitter identifies the destruction or demolition of any historic place, historic area, waahi tapu or waahi tapu area should be treated as RCAs.

- **Iwi interests**

In terms of Maori interests, the Hauraki Maori Trust Board and Kahungunu do not believe that the obligation in the RMA 'to give effect' to the principles of the Treaty of Waitangi is being given sufficient priority in determination of RCAs, particularly where areas are being managed for conservation purposes. They had particular concerns too, about pipelines scouring the foreshore and seabed and required various amendments to Schedule 1.

- **Councils**

An overwhelming number of regional councils do not find the evidence for retaining RCAs as more effective than the resource consent process. They consider the justification given is inadequate or insufficient in any of the policy documents to retain the current regime, let alone make it more restrictive. They consider the Minister's approach overlooks the realities that:

  - regional councils collectively have now considerable experience in handling large and complex proposals, e.g. port and marina developments, requiring resource consents;
  - having a Minister-appointed representative on a hearing committee does not alter in any way the committee's required process for weighing facts and evidence in accordance with the provisions of the RMA, the regional coastal plan and good decision making practice;
  - processing RCAs brings delays and additional costs to applicants that could be avoided, including having to hold hearings even when matters have been resolved without the need for this;
  - with few exceptions, the recommendations of a regional council's hearing committee are approved by the Minister without change;
  - the Minister retains the right to participate in plan and policy making as well as having the right to appeal any decision to the Environment Court if he/she has concerns about the effects of an activity; and

- the aquaculture reform legislation provides particular provisions to ensure the Minister's involvement.

LGNZ, as the umbrella group for all councils, strongly opposes RCAs. It observes the regional councils have made a strong case that RCAs are unnecessary, costly, and add little to coastal management in New Zealand, particularly given that there is already a plethora of case law and a range of proven 'call in' or other intervention powers enhanced in the RMA Amendment Act 2005[168]. LGNZ identifies throughout the review of the NZCPS it has been repeating these messages. It and others have not seen any evidence that RCAs are effective, nor any monitoring information from the Department of Conservation that supports their adding value to coastal management. LGNZ makes the point too that current criteria/thresholds for defining an RCA are set unreasonably low and that it is of the view that proposed changes in the NZCPS to the RCA criteria will result in more small scale activities becoming RCAs than otherwise.

- **Infrastructure companies**

The power to include a RCA in a regional plan is conferred by s68(4) RMA. In this provision the Minister has the discretion as to whether or not to specify any RCAs. The Port Companies of New Zealand identified (as did other infrastructure companies) that RCAs were originally meant to be transitional provisions under the RMA. The original inclusion of RCAs in 1991 arose at least in part out of a lack of confidence on behalf of the government that regional councils, which had been newly established at that time, had the competence and ability to administer resource consent applications involving certain types of development or activity. In the opinion of the companies however, regional councils have since demonstrated that they have the competence and ability to adequately administer all kinds of developments. In addition, the Minister of Conservation, if not satisfied with the decision of regional councils, can appeal a proposal to the Environment Court.

Transit is concerned about the extent to which Transit's standard activities in the CMA would be classified as RCAs under proposed policy 37 and the amended criteria in Schedule I. For example, there are a number of instances across the country where Transit is required to use rock rip-rap to protect highways, and other public and private developments, adjacent to the coast. Rock rip-rap typically requires a resource consent. Under proposed Schedule 1.4 to policy 37, the use of 100m or more of rock rip-rap would be considered a RCA and require consent of the Minister of Conservation. Transit is not aware of any rationale to support or justify this level of intervention in state highway activities, especially on sensitive routes such as SH1 (Kaikoura), SH25 (West Coast) and SH1 (Pukerua Bay, Kapiti).

Transit submits that its (extensive) experience on highway developments confirms that the effects generated by standard highway activities and structures can be adequately managed through the resource consent process without recourse to Ministerial involvement. It would be very concerned about the potential inefficiencies, unnecessary costs and time delays generated by having to seek coastal permits from the Minister of Conservation for 'less than significant' activities or structures[169].

[168] See Decisions on proposals of national significance, ss140-150AA RMA.
[169] #92.

Issues Arising

- **Proposals of national significance**

An alternative process to regional councils dealing with RCAs in the first instance available now under the RMA is for the Minister of Conservation to consider calling in an application for a proposal of national significance, or one of the other options provided for under sections 140-150AA of the RMA. Section 141 makes specific provision for activities relating to the CMA. Grounds for calling in a matter under s141B(2), would be an alternative way of dealing with any major developments in the CMA. There is the option of referring the matter to a Board of Inquiry, or to the Environment Court directly under s150AA. However, those process options do not affect the underlying issues on the need for RCA status for particular activities.

- **The Minister of Conservation as judge and jury?**

The Auckland District Law Society strongly supported by the infrastructure companies drew attention to the fact that to the extent that under a RCA the Minister may also make the final decision it is contrary to the principle of common law that a participant in the consent process should not also be the judge of the outcome. The fiction of providing for the Director General of Conservation to make the submission rather than the Minister, is not a credible distinction to make either. The High Court decision in *Whangamata Marina Society Inc* v *Attorney General* case, provides an illustration of the risks and public perceptions of the present procedures where a RCA applies.[170] The presiding judge in *Whangamata Marina* noted the unusual nature of the proceedings, because the Environment Court's principal's function is surely to ensure that resource management issues will be resolved in difficult cases by a specialist court.

Given the scale of projects otherwise dealt with by regional councils, and by the Environment Court, we see no extra advantage in the process.

- **The significance of Crown ownership**

As to the significance of the Crown's role in RCAs and the emphasis placed on it in the s42A report, the Auckland District Law Society takes particular issue with the following statements.

> As noted in the s32 report on the Proposed NZCPS, the existence of RCAs reflects the Crown's role in coastal management as the owner of most of the coastal marine area, on behalf of the public of New Zealand, and provides for the recognition of national interests in the coastal environment.
>
> Continued provision for RCA's enables decision making on such activities at the appropriate level for the Crown to fulfil its ownership role.

The Society points out that the main justification for the RCA appears to be the Crown ownership or stewardship of the coastal marine area. The retention of the final decision making power thus appears to be premised primarily on ownership concerns. It submitted that ownership should be a distinct issue, not connected in with approval of consents under the RMA.

[170] #163 Palmer citing [2007] 1NZLR 252, para 5.

We have already considered that the Crown's role under the RMA is more one of management or stewardship rather than ownership and we have explored this further under previous policies 17, 18 and 19.

- **Consistency of decision making at a national level**

The s42A report stated the RCA process provides a level of national consistency and decision making on similar activities that would not otherwise be assured. Submitters suggested an example may be decisions on applications for discharges of sewage particularly around Maori issues[171]. However, no analysis in any report is provided to support the overall claim in practice. We had evidence from a number of councils who put in schedules which demonstrated there was little or no difference between recommendations of the Hearing Committee and those decisions from the Department of Conservation.

Conclusion

While the process for dealing with Restricted Coastal Activities (RCAs) is in Part 6 of the Act which deals with resource consents generally, the authority for the Minister of Conservation to direct regional councils to treat activities as RCAs is contained in Part 15, the 'Transitional Provisions' of the Act[172]. This raises the question (as did some submitters) of whether RCAs were intended by Parliament to be a permanent feature. The Board understands that the genesis of the RCA consent process involved a concern about the ability of regional councils to exercise powers formerly held by government departments in the absence of fully developed coastal plans.

Information provided by the s42A Report, submissions and evidence show that the RCA process has now served its purpose. While there may be room for improved decision making by some consent authorities, the answer does not lie in the inclusion of a Minister's representative on a hearing panel or in the (probably limited) ability of the Minister to veto an application.

There are several other opportunities for the Minister of Conservation to have a major influence on both the contents of coastal plans and on consents issued for activities under them. These include signing off regional coastal plans, the ability to call in an application in certain circumstances, and through participation in the Act's processes by the Department of Conservation.

We conclude:

- the continuing provision for a Minister to have the final decision making power in respect of RCAs, may be seen as anomalous and inconsistent with the principles of objective decision making elsewhere in the RMA;
- the pool of Ministerial appointees to Hearing Panels and the backup to support this system seems inefficient and uneconomic when the Minister and his or her advisers may appear at all level of hearings anyway if notification of such projects is assured and submissions lodged;
- the RCA process introduces an unnecessary additional level of decision making. Schedule 1 of the NZCPS does not provide any criteria in addition

[171] #158, Hastings District Council, McKay; #386 Bradley.
[172] Section 372 RMA.

to those that regional councils must already consider; this adds unnecessary costs to councils and applicants for consent – costs which the s32 Report already identifies as medium to high for applicants involved in the RCA process;

- the RCA process is effectively redundant because the Crown has many other opportunities to ensure its interests are reflected in decision making. The Minister of Conservation as an example has final decision making powers over the contents of the NZCPS and also has a role in approving the contents of regional plans; the Department of Conservation and other government agencies also have an opportunity to submit on regional policy statements, plans and resource consent applications and can appeal the decision of councils;
- the Minister of Conservation could use one of the 'call in' or other options now available under ss140-150AA RMA (introduced in the 2005 Amendment Act). The Minister can call in matters that relate to the coastal marine area and are, or are part of, proposals of national significance. Where the matter relates only partly to the coastal marine area the Minister of Conservation act jointly with the Minister for the Environment.
- the decision making on regional plans could provide consent activity categories and provisions that support public notification;
- the inability of the Department of Conservation to monitor the effectiveness or otherwise of RCAs is another shortcoming of the process.

The Board believes that the RCA process, with its exclusive power for the Minister of Conservation, is no longer warranted.

We recommend that policy 37 and Schedule I be deleted.

Policy 38 Maui dolphin

Adverse effects of activities on the habitat of Maui dolphin shall be avoided. Plans shall include provisions for avoiding threats to Maui dolphin arising from relevant activities, including land use, discharges, activities on the surface of water, and disturbance of foreshore or seabed. Regional coastal plans and proposed regional coastal plans shall include, in accordance with section 55 of the Resource Management Act 1991 and as soon as practicable, the maps of areas of Maui dolphin habitat in Schedule IV.

The s32 Report

The s32 report explains that Maui dolphin is an endangered endemic species with an estimated population of 111 animals. With fewer than 250 breeding adults, Maui dolphin is classified as 'nationally critical', the highest risk-ranking possible, based on DOC's *2002 Classifying species according to threat of extinction – a system of New Zealand.* Under the World Conservation union (IUCN) red list categories Maui dolphin is classified as 'critically endangered' i.e. that the best available evidence indicates that this subspecies is considered to be facing an extremely high risk of extinction in the wild. The report also states human-induced mortalities need to be zero to reduce the extinction risk for the population. It goes on to state that overseas evidence suggests that threats likely to reduce reproductive success, which include pollution, vessel operations, marine farming and sand mining, can be managed under the RMA.

The s42A Report

The s42A report explains why Maui dolphin (and other matters like surf breaks) have been singled out as a current issue of national priority.

Submissions

- **Support for the policy**

Individuals and community groups generally support the policy, although a number of them say it should also apply to Hector's dolphin.

Conservation boards and groups also support the policy, with ECO and two branches of the RFBPS submitting that it should also apply to Hector's dolphin. ECO suggests that activities that impact on Maui and Hector's dolphins be treated as Restricted Coastal Activities. EDS submits that the policy needs to direct that maps and plan provisions should be directly incorporated into plans under s55(2A)(b) of the RMA. The NZCA also recommends that s55(2A)(b) of the RMA be invoked.

The RFBPS supports the policy but notes that it needs to recognise that threats from poor water quality and soil erosion are managed through regional water and land plans, not coastal plans.

Ngai Tahu recommends that the policy be extended to Hector's dolphin, while Kahungunu considers that it should refer to measures to protect the habitat of all endangered species.

- **Policy too specific and other legislation more appropriately protects Maui dolphin**

Councils and professional organisations such as NIWA and IPENZ say that the NZCPS should not single out a single species for protection. They consider that the Marine Mammals Protection Act 1978 is a more appropriate mechanism to protect Maui dolphin than the NZCPS.

Aquaculture interests are concerned the NZCPS is not the place to address Maui dolphin management. Aquaculture New Zealand notes that there are already significant efforts being undertaken more appropriately under other statutory processes to protect these dolphins. Fishing interests also ask why Maui dolphins have been singled out in the NZCPS when other legislation provides protection for marine mammals.

The Auckland District Law Society points out that there may be other species equally deserving of recognition (e.g. whales). It suggests that the policy should refer to implementing obligations under the Fisheries Act and leave details of conservation and regulation to that Act.

The New Zealand Marine Sciences Society supports the protection of threatened marine species but questions why only Maui dolphin have been included when there are other threatened species. As noted above, a number of submitters consider that the policy should apply to Hector's dolphins, with some suggesting it should include all endangered species.

Few infrastructure companies comment on the policy but those that do are concerned that it singles out a specific species when it would be more appropriate to focus on managing adverse effects.

- **Issue is not relevant for many areas of the country**

The Auckland District Law Society notes that the mandatory obligation for all regional coastal plans to include provisions as specified and habitat maps appears to be excessive and onerous, as some regions may have no dolphins visiting or habitats of any permanence. Marina operators also note that the policy seems onerous and perhaps unnecessary for many areas.

Several regional and district councils note that the policy is not relevant to their area because they have no Maui dolphin or Maui dolphin habitat. They submit that the policy should be removed or apply only to the relevant regional coastal plans.

SeaFIC notes that the map in Schedule IV of the proposed NZCPS is only useful in those regions in which Maui dolphins live. Other fishing companies point out that the issue is not relevant to most of New Zealand.

- **Other comments**

The ARC supports giving a greater level of protection to Maui dolphins. However, it notes that the list of activities provided in the policy is too vague and broad to implement; and, that

more relevant activities such as seismic testing, sand mining and aquaculture or mining structures that may affect Maui dolphin are not mentioned. The council considers that more detailed information is needed on current distribution and use of habitat by Maui dolphins before a section 32 analysis could support implementing the proposed policy.

Environment Waikato supports the policy but notes that it provides no guidance on what effects are of concern and how to avoid them. Environment Waikato also notes that the map in Schedule IV contains errors, which need correcting.

Issues Arising

- **Why deal with Maui dolphin in the NZCPS?**

Many submissions considered the NZCPS the wrong place to address Maui dolphin management with reasons including it is better covered under other statutory processes, such as the Marine Mammals Protection Act 1978 and the Wildlife Act 1953, and through other domestic and international policies. The Auckland District Law Society suggested that the policy should refer to implementing obligations under the Fisheries Act and leave details of conservation and regulation to that legislation.

Another point made was that this animal is restricted in range and a large amount of attention is being focussed on it already, with significant conservation measures and management responses, including a management plan. Furthermore, submitters considered all threatened and endangered marine mammals should be catered for in Department of Conservation policies.

Submissions also questioned why Maui dolphin is singled out when there are many other threatened and undiscovered species in the coastal marine area.

We do not consider that Maui dolphin is better left solely to the Marine Mammals Protection Act, other legislation and to the Department of Conservation. Activities on both land and in the coastal marine area have the potential to adversely affect Maui dolphin, and therefore decision making, under the RMA needs to factor in the effects on Maui dolphin (and other endangered species) as a high priority.

- **What will the policy achieve?**

Submissions considered it an urgent issue that needs to be addressed without recourse to public submissions and that the NZCPS should make it clear that s55(2A)(b) applied, meaning the 1st schedule process would not apply to the inclusion of the maps of areas of Maui dolphin habitat in coastal plans. Other submissions wanted it clear how controls or rules would be included in the regional coastal plans, and whether the 1st schedule process should apply. Given the approach in new policy 2 we see no need to recommend the use of s55(2A)(b).

SeaFIC and the NZ Federation for Commercial Fishermen supported the general intent of the policy that plans should include provisions for ensuring that all potential threats to Maui's dolphin are managed. It concluded that while the maps are to be included in regional coastal plans as soon as practicable, there is no such urgency given to the inclusion of actual controls in plans. A map, without controls, will achieve nothing.

Several submissions considered there were problems with the maps in schedule IV. We agree. We do not consider a map is necessary and may even be unhelpful as more information comes available. Instead DOC needs to provide guidance to local authorities on the locations, effects and suitable rules to ensure a robust and consistent approach by different local authorities.

Many submissions had a concern about the requirement to avoid adverse effects on the habitat of Maui dolphin. We do not accept the many exceptions, qualifiers and special recognition (such as for oil and gas exploration, seismic and mining activities) that submitters sought as helpful or necessary. There is an immediate need for the resource consent and designation processes, as well as rules in plans, to adopt a cautious approach and avoid activities that may threaten the continued existence of Maui dolphin. That may involve discussion with hapuand marae to determine potential impacts, if any, on traditional activities in areas frequented by Maui dolphin.

LGNZ submitted that the policy is too species specific and should be removed. One reason was because councils do not have access to the information needed to give effect to this policy. Another reason was that it involved important ecological concepts local authorities do not have sufficient information to implement. Also that it covered a range of activities in the coastal marine area councils were unable to influence under the RMA, but we do not see that as a reason not to act under the RMA. Environment Waikato supported the policy provided DOC gave a commitment to provide guidance on what effects were of concern and how to avoid them. We see that as important.

- **Should other species be included?**

Other submissions suggested that the policy be broadened to include other endangered species and their habitat.

NIWA considered that if kept, this policy must at least have separate policies for NZ Dotterel and Fairy Tern. Many other submitters, including Ngai Tahu, wanted Hector's dolphin added because of its threatened species status. Ngai Tahu submitted:

> Hector's dolphins (pahu – also known as aihe) are revered by Ngai Tahu as a taonga. Ngai Tahu whanui have a special connection with Pahu, and this has as its basis in tradition. Pahu are kaitiaki (guardians) of the coastline of Te Waipounamu, and are regarded as tohu (sign) in certain spiritual practises, as well as being closely linked into whakapapa (genealogy).

Dr Liz Slooten, Associate Professor Department of Zoology University of Otago, submitted that[173]:

> This statement should be about the species as a whole, Hector's dolphin, rather than just the North Island subspecies. There is no reason to pick out the North Island population. There are several South Island populations that are as small or smaller and have similar conservation status and levels of threat.
>
> It would be worth considering including a similar statement on New Zealand sea lion. Then all three of the endemic marine mammal taxa would be included. None

[173] #498.

> of the non-endemic marine mammal taxa come anywhere near Hector's dolphin and NZ sea lion.

On the question of what about other species under threat and the consistency of approach, raised in many submissions, we recognise that policy 31 would cover Hector's dolphin and other species drawn to our attention as worthy of similar attention. Policy 31 requires avoiding adverse effects of activities, a point that seems to have escaped many of the submitters.

- **Is there a need for a separate policy?**

We conclude that there is no need for a separate policy, but that a footnote can be added to policy 31 to achieve the same outcome. That policy refers to 'avoiding adverse effects of activities on' and goes on to list taxa in a threat category that would include not just Maui's dolphin (nationally critical) but also Hector's dolphin (nationally endangered).

We recommend deleting this policy.

Policy 39 Walking access as a national priority

It is a national priority to maintain and enhance public walking access to and along the coastal marine area, including by:

(a) ensuring that public walking access to and along the coastal marine area is free of charge;

(b) avoiding significant loss of existing public walking access resulting from subdivision, use, and development;

(c) remedying or mitigating constraints on public walking access resulting from subdivision, use, or development;

(d) identifying where the public have walking access to the coastal marine area;

(f) identifying opportunities to enhance or restore public walking access; and

(g) having particular regard to pedestrian safety where public walking access is available.

The s32 Report

The s32 report states:

> [An] objective … requires the maintenance and enhancement of public access, and a critical element to achieving this includes the maintenance and enhancement of walking access as a matter of national priority. The majority of access issues reported through the review process relate to threats to walking access to and along the coastal marine area, and the risk of reduced walking access in some cases and missed opportunities for enhancement in others. Some review participants recommended that walking access needs be differentiated from other forms of access.
>
> It is desirable that those exercising functions and powers under the RMA recognise walking access as a national priority. Therefore policy guidance is required to ensure that walking access is maintained and enhanced. At the same time it is important to recognise that provision for walking access does not reduce the need to provide for other means of public access where appropriate.
>
> At present there is uncertainty around the provision of public walking access to and along the coastal marine area and decisions concerning its future management.
>
> This uncertainty is compounded by the lack of distinction from other forms of access, such as vehicles, and the potential for such uses to be in conflict. These uncertainties present a risk unless there is clear policy direction to assist priority setting and decision making to sustain walking access to and along the coastal marine area.

> … Policy 39 addresses the above matters and provide[s] for the identification and protection of walking access.
>
> Policy 39 identifies the need to accord priority to walking access and translates the objective into meaningful policy that assists and provides greater certainty to decision-makers and resource users.

A new objective for public access

The NZCPS review *Scoping Paper for Public Access* (March 2006) looked at the 1994 NZCPS and recognised the need to strengthen the priority given to public access decision making through new and amended objectives and policies. It saw a need to put this principle upfront, unlike the previous NZCPS that started the suite of public access policies by referring to restrictions on public access. We recommended that public access should be included in a new objective 4.

That objective has a broader focus than objective 6 in the PNZCPS 2008.

Submissions

- **Individuals, community groups, conservation interests and iwi support policy 39**

Approximately 25 individuals and community groups comment on this policy. Almost all of them support the policy, with about saying they 'strongly support' it. These submitters generally do not provide reasons for their support other than saying that they believe walking access to the CMA is important. Several note that walking access should not harm conservation values.

All conservation boards and environmental interests that comment on the policy also support it. Two of these groups want a clause added to ensure that other uses do not discourage public walking access to and along the CMA. Two want a clause added to recognise the Queen's Chain and two say that walking access needs to be balanced alongside the competing needs of biodiversity conservation.

Several iwi groups also support policy 39 but two note that public access can be along rough terrain and say the policy should be amended to 'provide effective public access,' otherwise access can become a benefit restricted to those with access to a subdivision or gated community. No iwi groups oppose the policy.

- **Walking access is beyond the scope of the RMA**

The majority of regional and district councils submit that walking access is beyond the scope of the RMA.

LGNZ and eight regional councils say that walking access *per se* is not an RMA issue and that the NZCPS is not the appropriate mechanism to provide for walking access. In particular, these councils seek deletion of clauses (a), (d), (e) and (f), submitting that they address issues that cannot be part of an RMA framework.

Eleven district councils also believe the policy should be deleted, either because they consider it is beyond the scope of the RMA, addressed elsewhere, or focuses too narrowly on walking access to the exclusion of other types of access such as cycling, horse riding, etc.

However, four district councils say they support policy 39, but do not provide any detailed reasons for this support.

One regional council says that the policy appears to overlap and double up on the Government's intention for walking access, which is addressed through the Walking Access Bill (now Act). Other councils also infer this.

Councils note say that most of them do have strategies in place to enhance walking access but this is done through the LGA 2002 and complements reserve acquisition and development under the RMA.

Several councils believe that access to and along the CMA 'free of charge' is beyond the scope of RMA, or may not achieve the best outcomes. Others submit that 'pedestrian safety' is not an RMA matter.

Several councils say is unclear how local authorities could implement the policy. Others comment that it provides and 'inappropriate level of detail' for a national policy statement and it does not allow for local decision making.

- **Relationship with other legislation**

The Auckland District Law Society say the policy is a suitable addition to the NZCPS, but could include a reference to implementation, where appropriate, through the provisions of the New Zealand Walkways Act 1990, and other statutes (including the Walking Access Bill) providing for access covenants.

- **Infrastructure companies and property interests generally support policy 39**

Most infrastructure companies and property interests support the policy but want the following clause added: 'unless a restriction on public access is appropriate as provided for in policy 43'.

Three submitters with property interests question whether policy 39 should be part of scope of NZCPS and seek reconsideration of its inclusion.

- **Federated Farmers**

Federated Farmers consider public access over public land very important but submits that it is also important that the policy does not jeopardise the rights of private landowners. It says the policy should focus on identifying opportunities to enhance and restore public walking access 'where there is a demand for such access'.

Two individual submitters support the Federated Farmers submission, with one saying it is contrary to the Walking Access Bill and should be deleted in so far as it relates to walking access over private land.

- **Views of national organisations and agencies**

The Tourism Industry Association and the National Council of Women both support the policy. The Council of Outdoor Recreation Associations '*strongly supports*' the policy, but says that public vehicular and boating access to the CMA is also a national priority by s6d.

The NZHPT and one DHB support the policy.

Issues Arising

- **Walking access is beyond the scope of the RMA**

Section 6(d) of the RMA has a matter of national importance decision makers are to recognise and provide for:

> (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

That provision is reflected in s58(ga) for the NZCPS to include '[n]ational priorities for maintaining and enhancing public access to and along the coastal marine area'. Public access also comes in under s7(c) 'the maintenance and enhancement of amenity values'. The RMA also has a regime catering for esplanade reserves and strips, a subject we return to under Policy 40. Under s5 walking access contributes to the enabling of the social wellbeing and health of people and communities and is a reasonably foreseeable need for future generations.

Walking access to and along the coastal marine area is valued and differentiates New Zealand from other countries where access is not available without charge. There are direct threats to walking access. Coastal erosion also means the wet beach moves up to, and even on to, private land preventing access. There are also indirect threats such as through neighbouring uses effectively commandeering adjoining areas. Another problem is the missed opportunities for enhancing walking access. Vehicles can also present a safety issue.

Walking and other non-statutory strategies prepared under the LGA can be useful but to be implemented there needs to be integration and carry-through under the RMA. Protection, use, development and subdivision proposals all provide an opportunity for planning and achievement of walking access along the coastline.

We had evidence giving good examples of where the mechanisms available under the RMA are working to achieve public access. We also had many examples of foregone opportunities.

- **The relationship to other legislation**

The Walking Access Act 2008 does not detract from the need for councils to recognise and provide for public access. The Walking Access Act does not remove, or in any way amend, the many mechanisms that there are in the RMA for walking provision. The walking access legislation creates a national body with a leadership role but it also recognises the desirability of the New Zealand Walking Access Commission working with councils. It provides an opportunity for councils to work with a national body and another potential mechanism for walking access. If the New Zealand Walking Access Commission wishes to establish a walkway over public land that a local authority owns, controls or administers, it will need the agreement of that body (s21).

Under s9 Walking Access Act:

> The objective of the Commission is to lead and support the negotiation, establishment, maintenance, and improvement of walking access and types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.

Under s10 functions of the Commission to meet its objective of particular note are:

> (a) providing national leadership on walking access by—
>
> (i) preparing and administering a national strategy; and
>
> (ii) co-ordinating walking access among relevant stakeholders and central and local government organisations, including Sport and Recreation New Zealand:
>
> (b) providing local and regional leadership on, and co-ordination of, walking access in collaboration with local authorities:

- **What is needed?**

New Zealanders have as a core value access to the foreshore and seabed, the coastal marine area. That is complemented by long standing provisions in legislation providing for esplanade reserves and strips and marginal strips etc along the land edge of the foreshore and seabed to be provided on subdivision and development. However, there is a common misconception that there is a 'Queen's Chain' all around the coast of New Zealand.

There has been growth in the use, development and value of coastal land and the coastal marine area and there is public concern about continuing access to the coast. Increased turnover in coastal land ownership brings concern about reductions in access as new owners impose new restrictions, or discontinue past informal access agreements. Resource users and occupiers may seek to further exclude the public by legal and/or physical means. Some regions are experiencing increased pressure for resource use within the coastal marine area e.g. sand mining, marinas, moorings, aquaculture. These activities can affect public access directly through physical exclusion and indirectly through reduced natural character.

Walking Access in the New Zealand Outdoors A Report by the Land Access Ministerial Reference Group[174] proposed a New Zealand access strategy with five underpinning objectives. One of those was:

> to affirm the validity and **embrace the ethos of the Queen's Chain** by providing mechanisms for its promotion and enhancement.

That report considered whether the arrangements for public access to water margins, access to public land and private rural land are sufficient, while providing for private land use, both now and in the future. The Queen's Chain was used to describe land under various mechanisms and legislation that have created areas of public land alongside rivers, lakes and the coast or foreshore (water margins).

The report described the ethos of the Queen's Chain as:

[174] *Walking Access in the New Zealand Outdoors A Report by the Land Access Ministerial Reference Group,* August 2003.

> Most people understand the Queen's Chain to be a 20 metre (or one chain, which was determined at the time of settlement to be the road width) strip along the edge of substantial rivers, lakes and the coastline, and owned by the Crown or a local authority. It is assumed that the public has a right of access along this strip. It is this notion of accessibility along the coast and waterways that New Zealand society has long held to be a sacrosanct right of the public.

The report went on to say that the legal reality is substantially different. Over time a number of different legislative solutions has established public ownership of land along water boundaries. The report recognises that the Queen's Chain comprises eight basic types of 'reservation'. The reservations include reserves and strips (marginal, esplanade) and a patchwork of public roads (formed and unformed) which effectively constitute the current mechanisms for providing the Queen's Chain. The report recognises that the advantage of the current institutional arrangements is that they are fixed in place by legislation, unlike other informal arrangements that are subject to change over time. It also recognises factors inhibiting public access to water margins, including mapping, physical changes and obstacles, signage, conduct issues and ad medium filum aquae rights.

The report recognises the role of the RMA in protecting existing and furthering public access to and along the coast. The Walking Access Act does not detract from the need for the RMA to play a significant role in ensuring public access. A problem is that in many places local government is not actively looking to deal with public access using the opportunities available under the RMA during the subdivision, use and development process. Instead it does not see safeguarding public access as a priority or it is choosing to deal with through preparing strategies and other non-statutory documents that provide no assurance of follow-up action.

- **Should it be broader than walking access?**

The various forms of public access can be in conflict. Some forms of access to the coastal marine area require infrastructure (such as marinas and boat ramps). Vehicles on beaches can have significant adverse environmental consequences and are opposed in many areas. Public walking access has fewer environmental effects, although there are some that justify careful management.

We do not consider that the policy should be broadened out to include other than walking access. We look further at vehicle access to beaches below in policy 42.

- **Are there any amendments required?**

We agree that the policy should be amended to 'provide effective public access' and also remove the qualifier 'significant' from 'loss' in (b) as any loss is significant. We had many examples where topography and the sea make access impossible some or all of the time. We do not accept the proposal from Federated Farmers to limit public access to where there is demand. There is a major question about how that demand would be assessed. Demand is likely to increase over time so it would not be right to deprive future generations of the opportunity. We also do not consider that there is a need to make an explicit link to policy 43 (particularly given the intention to merge the walking access policies). Many policies have such relationships.

There is also a need for it to be clear that public access is required to, along and adjacent to the CMA because of the provisions in the RMA and the lengthy history of such access being provided in law.

We add a reference to the role of the RMA in achieving public access to answer the problem of a lack of a recognition of the important policy and other mechanisms available (and which should be used) under that Act.

This policy also has links to subdivision, use and development and coastal squeeze under hazards. There is a need for guidance on how to manage threat of coastal squeeze on public access values. We consider this matter further elsewhere.

- **Including policy 41 (and 43) material**

We include the material on walking access from policy 41 (and when we come to it, policy 43 on restrictions on access) in policy 39 because of the close connection between the various parts.

We recommend an amended policy 39 to become policy 22 as follows:

Policy 22 Walking Access

(1) All decision makers must maintain and enhance public walking access to, along and adjacent to the coastal marine area, including by:

(a) ensuring that there is practical public walking access, that it is free of charge and safe for pedestrian use;

(b) identifying where the public have walking access and making that known;

(c) avoiding the loss of existing public walking access resulting from subdivision, use or development;

(d) remedying or mitigating constraints on public walking access resulting from past subdivision, use or development;

(e) identifying opportunities to enhance or restore public walking access, for example where:

(i) connections between existing public areas can be provided; or

(ii) improving access would promote outdoor recreation; or

(iii) physical access for people with disabilities is desirable; or

(iv) the long-term availability of public access is threatened by erosion or sea level rise; or

(v) access to areas or sites of historic or cultural significance is important; or

(vi) subdivision, use, or development of land adjacent to the coastal marine area has reduced public access, or has the potential to do so; and

(f) recognising the role of the RMA in providing for walking access.

(2) Decision makers may only impose a restriction on public walking access to, along or adjacent to the coastal marine area where such a restriction is necessary:

(a) to protect threatened indigenous species; or

(b) to protect dunes, estuaries and other sensitive natural areas or habitats; or

(c) to protect sites and activities of cultural value to Maori; or

(d) to protect historic heritage; or

(e) to protect public health or safety; or

(f) to avoid or reduce conflict between public uses of the coastal marine area and its margins; or

(g) for temporary activities or special events; or

(h) for defence purposes in accordance with the Defence Act 1990 or for security of strategic infrastructure; or

(i) in other exceptional circumstances sufficient to justify the restriction.

(3) Before imposing any restriction under (2) alternative routes that are available to the public free of charge at all times must be considered and, where practicable, provided for.

Policy 40 Esplanade reserves and strips

Policy statements and district plans shall promote the creation of esplanade reserves and esplanade strips, where they do not already exist, to provide public access to and along the coastal marine area. A requirement for an esplanade reserve or strip that would provide public access to or along the coastal marine area shall not be waived unless there are exceptional circumstances that mean provision of an esplanade reserve or strip would not be in the public interest.

The s32 Report

The s32 report states:

> By providing for public ownership of or access to the margins of the coast and other water bodies in the coastal environment esplanade reserves and strips are an important mechanism for the achieving the objectives of the NZCPS and promoting sustainable management. Councils have discretion to waive or vary the requirements under the RMA to require the creation of esplanade strips or reserves and may negotiate the provision of access strips. To implement the objectives of the NZCPS and promote sustainable management guidance is required on the exercise of these discretions. It is considered that esplanade reserves and strips should only be waived in exceptional circumstances, including those where … [such] cannot physically be provided or where it would not be in the public's interest to create an esplanade reserve or strip.
>
> There is variable application of esplanade reserves and access strips. By not improving on this practice, there is a risk in exacerbating the effects from coastal hazards and limiting public access for the future.

Submissions

- **Policy repeats (and waters down) existing RMA provisions**

Most regional and district councils say that esplanade reserves and strips are already adequately provided for under the RMA; and, that policy 40 adds no value to the NZCPS or to the already obligatory work under the RMA because the practicalities have not been thought through.

Infrastructure companies and property interests also oppose the policy because they believe it is inconsistent with the Act. They also note that sometimes conservation covenants will be the most appropriate way to provide access.

Some councils note that the policy does not recognise that esplanade reserves and strips can also have a conservation purpose (s229) or that, in some circumstances, public access is inappropriate due to the conflict with conservation values. These councils comment that, if anything, policy 40 'waters down' s229.

Several councils say the policy needs to clarify what is meant by 'exceptional circumstances'.

Several councils and infrastructure companies say they oppose the policy because it is overly prescriptive, unworkable and has significant funding implications for councils.

However, one regional council and three district councils support the policy.

- **Policy may be ultra vires**

Legal organisations submit that policy 40 may be ultra vires and is overly prescriptive. Auckland District Law Society submits that, 'the first part of the policy is commendable in principle, but inconsistent with the intent of the RMA distinguishing between allotments below and above 4ha' (ss229, 230, 237F); and, that, 'the vires of this policy must be doubtful'.

This submitter also says that the second part of the policy, which seeks to define the basis for a waiver … 'appears to go well beyond the present statutory discretion (s230, 235) and could be ultra vires', because it unduly narrows the scope of the qualifying circumstances. The society then says that the statement is also ambiguous in that it does not relate to any width, and the question must be asked whether a reduction from a 'standard' width is seen as a waiver.

The Resource Law Management Association (RLMA) says that the policy, as currently drafted, confuses:

(1) the amount or extent of land that should be set aside to provide access to and along the CMA; and

(2) the legal mechanism that should be used to provide such access.

The RMLA comments that s229 provides clear guidance as to the purpose of esplanade reserves and strips and that the adoption of an 'exceptional circumstances-public interest' test is not only unnecessary but could potentially create conflict and confusion about the meaning or interpretation of the policy. It submits that, 'the unduly prescriptive approach in policy 4' is not justified by s6(d) of the RMA and would preclude alternative mechanisms (e.g. conservation covenants) from being used where they are clearly more appropriate to secure access.

- **Concern that the width of reserves/strips is not reduced and that access does not compromise conservation values**

Almost all individuals, community groups and conservation interests that comment on this policy support it.

About 30 individuals simply say that they support policy 40 because, 'EDS supports the policy'. These individuals go on to say that, along with EDS, they are concerned that the width of reserves and strips is being reduced and the policy needs to address this issue in the way proposed. That is by requiring that reserves and strips shall not be reduced in width or length, or entirely waived unless there are exceptional circumstances that mean that the provision of a full esplanade reserve or strip would not be in the public interest. They also seek the addition of a third sentence specifying that, 'where possible esplanade reserves should be created in preference to other forms of public access.'

Conservation boards and groups also support the policy, with several commenting that access can impact on conservation values. These submitters note that s229 of the RMA recognises esplanade reserves and strips as contributing to conservation values and that the policy should recognise this.

- **Views of iwi and hapu groups**

Two iwi groups reiterate their view that because access can sometimes be across difficult terrain the policies should focus on providing 'effective public access.'

Two further iwi say that the policy needs to include reference to considering adverse impacts on critical ecological areas and Maori traditions, sacred places and rituals and allow for their protection.

Issues Arising

- **What does the RMA provide for?**

Esplanade reserves and strips may be required when land is subdivided (s230), when land is reclaimed (s108(2)(g)), when land is developed (s108(2)(a) and (9)), or when a road is stopped under the Local Government Act 1974 (s345(3)). The RMA also provides for access strips that may provide for public access.

S229 RMA provides:

> **An esplanade reserve or an esplanade strip has one or more of the following purposes:**
>
> (a) to contribute to the protection of conservation values by, in particular:
>
> (i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
>
> (ii) maintaining or enhancing water quality; or
>
> (iii) maintaining or enhancing aquatic habitats; or
>
> (iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or
>
> (v) mitigating natural hazards; or
>
> (b) to enable public access to or along any sea, river, or lake; or
>
> (c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.

- **Is there a need for a policy on esplanade reserves and strips?**

The 1994 NZCPS Policy 3.5.2 stated:

> In order to recognise and provide for the enhancement of public access to and along the coastal marine areas as a matter of national importance, policy statements and plans should make provision for the creation of esplanade reserves, esplanade or access strips where they do not already exist, except where there is a specific reason making public access undesirable.

The national priority given to the creation of esplanade reserves and strips, and even access strips, has clearly not being carried through in district plans and resource consents. The March 2006 *NZCPS review Scoping paper for Public Access* identified that the profile of public access has been relatively low in RMA implementation. That paper states that the RMA esplanade waiver provisions contain limited guidance and the NZCPS could provide some assistance, noting that this is the only RMA s6 matter for which a statutory waiver exists. (Under previous legislation central government approval was required to dispense with a requirement for an esplanade reserve on subdivision.). It also points out that the power to require an esplanade area as a condition on a resource consent (other than a subdivision consent) as a financial contribution under s108(9) is not frequently used.

Submitters appearing and giving evidence in front of the Board provided many examples of a short-sighted approach by territorial authorities in either not requiring esplanade areas at all, or not providing for esplanade areas that would allow physical public access along the coastline. At least one territorial authority admitted that where the area concerned is physically distance from other reserves or access provision, it was their practice to decline to take esplanade areas for subdivision. We also had evidence that when esplanade areas are taken they are often not physically suitable for walking access, including at certain stages of the tide. In many situations access would involve scrambling around rocks and along cliff edges and only allow safe passage for a short period around low tide.

Councils do not tend to take more land for these purposes than the minimum 20 metres for below four hectares lot subdivision because otherwise there is a cost involved to the council. Sub-dividers are very aware of this in devising subdivision lot sizes. There is also a practice of granting conservation covenants (instead of esplanade strips or reserves) with no provision for access.

- **Should there be a priority for esplanade reserves?**

We do not consider that the policy should contain a priority for esplanade reserves over esplanade strips. A problem with esplanade reserves can be that they are fixed in position and do not move with accretion or erosion of the coastline.

- **Should there be an exceptional circumstances/public interest test?**

We accept that the introduction of such a test is unnecessary and could present problems. The issue is more the lack of appreciation by councils and the community of the need for public space along the coastline and the opportunity that subdivision, land use and development provide to achieve that.

- **Should other public access instruments be recognised?**

Other public access instruments may have a place. We did have evidence of problems with access covenants, as a substitute for esplanade areas in the Auckland waterfront area. Some of these other instruments may not have the necessary permanence, or be subject to controls on access that cut across the principle of public access e.g. to be locked up outside the working hours of nearby businesses.

- **Should a policy be broader in scope?**

Our concern is a perception that to achieve sustainable management it is sufficient to set aside an esplanade reserve or strip or access strip along the coast. Sustainable management requires more than the minimum esplanade reserve or strip provided for in the legislation. We consider that the policy needs to be rewritten to emphasise that esplanade reserves and strips are only a part of the picture, albeit an important starting point.

We therefore propose a broader policy. Some of the elements in policy 19 on amenity are a suitable addition. A necessary addition is acknowledgement of the need for public open space in cities, towns and settlements, including in coastal areas with a predominantly built or modified character. We received evidence of this need from many groups, individuals, councils and council-controlled organisations involved with urban waterfront redevelopment. There is also a need to factor in the potential implications of coastal change, including as a consequence of climate change, to future proof public open space.

We recommend a largely rewritten policy 40 to become policy 21 as follows:

Policy 21 Public open space

All decision makers must recognise and provide for the need for public open space within and adjacent to the coastal marine area for public use and appreciation, including active and passive recreation, in coastal areas, by:

(a) ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;

(b) ensuring that a high priority is placed on the need for, and values of, future public open space within and adjacent to the coastal marine area in and close to cities, towns and other settlements as well as outside those locations;

(c) ensuring walking access linkages between public open space areas in the coastal environment;

(d) considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space; and

(e) recognising the important role that esplanade reserves and strips can have in contributing to meeting public open space needs.

Policy 41 Access enhancement

Policy statements and plans shall identify where it is desirable that public access to and along the coastal marine area is enhanced, giving priority where:

(a) connections between existing public areas can be provided;

(b) improving access would promote outdoor recreation ;

(c) physical access for people with disabilities is desirable;

(d) the long-term availability of public access is threatened by erosion or sea level rise;

(e) access to areas or sites of cultural significance is important; and

(f) subdivision, use, or development of land adjacent to the coastal marine area has reduced public access, or has the potential to do so.

The s32 Report

The s32 report states:

> Policy direction is required to provide direction for how and when to achieve enhanced access, with priority given to enhancing in particular circumstances. Priority setting to guide the establishment of new public access that is both legal and practical would significantly assist fulfilment of [an] objective …. Priority considerations include improving linkages with existing public areas, access for people with disabilities, sea level rise effects, recreational opportunities, sites of cultural significance, and the effects of land development. …
>
> At present there is uncertainty around the location of existing public access to and along the coastal marine area and decisions concerning its future management.
>
> There is also uncertainty about the potential for loss of public access as result of dynamic physical processes including sea level rise. This lack of information and uncertainty present a risk unless there is clear policy direction to assist priority setting and decision making to sustain walking access to and along the coastal marine area.

Submissions

There are relatively few specific comments on this policy because many submitters comment on policies 39 to 41 as a group, or simply repeat comments made in relation to 39 and 40 in relation to 41.

Individuals, community groups and conservation interests generally wish to see enhanced public access and to and along the CMA and repeat comments previously made.

Several councils are concerned that the policy would require considerable work to implement and note that it applies to areas where access is not an issue. Some regional councils say that policy statements and plans are not the appropriate documents to be specifying this level of detail with regard to access. Other councils repeat comments previously made.

NIWA notes that it is important to recognise that enhancing access can also increase exposure of communities to coastal inundation.

Issues Arising

- **Is the policy necessary?**

The 1994 NZCPS has Policy 3.5.2:

> In order to recognise the national importance of enhancing public access to and along the coastal marine area, provision should be made to identify, as far as practicable:
>
> (i) the location and extent of places where the public have the right of access to and along the coastal marine area;
>
> (ii) those places where it is desirable that physical access to and along the coastal marine area by the public should be enhanced; and
>
> (iii) those places where it is desirable that access to the coastal marine area useable by people with disabilities be provided.

The NZCPS review *Scoping Paper for Public Access* March 2006 noted a high level of non-compliance with policy 3.5.2.

One of the findings of the Land Access Ministerial Reference Group (2003) was that the lack of information on where access exists is a critical problem. This continues to be relevant for access to and along a 'Queen's Chain' and the foreshore and seabed. The actual right of public access to and along the coast can therefore be unclear to people on the ground.

There is significant practical merit in clearly identifying existing legal access. Some of that may not be practical on the ground and require other measures to ensure public access is available.

There is a need to improve recreational opportunities, create linkages with existing public areas, provide access for people with disabilities, anticipate and catering for sea level rise effects and provide access to sites of historic and cultural significance. There is also a need to overcome the effects of subdivision and land development that have directly or indirectly reduced public walking access and enjoyment. Part of the problem, as evidenced in the practice on esplanade reserves and strips, is the need to see public access within a wider and long-term context and take the opportunity to factor in and achieve access enhancement under the RMA. Identifying the opportunities and priority setting to guide the establishment of new legal and practical public access would assist.

There is also the need to see public access in an integrated and long term context. A positive development is the public access strategies being prepared by many councils. However, ultimately many of these depend on or are closely tied in to the RMA framework for their

achievement. The use of designations as well as other mechanisms is available under the RMA.

Such a policy should counteract the tendency of some councils to take a short term view of public access thereby losing opportunities to provide for it.

There are two options with this policy. One is to leave it as a stand-alone policy. A second option is to combine it with policy 39 (now policy 22). We prefer and take the second option.

We recommend an amended policy 41 relocated into new policy 22 as sub-policy (1).

Policy 42 Vehicle access

Plans shall identify where the use of vehicles on the foreshore and seabed and on adjacent public land is and is not appropriate, with particular regard to:

(a) public safety;

(b) the amenity values of the coastal environment for the public;

(c) the maintenance of opportunities for recreation; and

(d) the protection of dunes, estuaries and other sensitive natural areas or habitats;

and shall control vehicle access accordingly.

The s32 Report

The s32 report states:

> The appropriate use of vehicles on the foreshore and seabed and adjacent public land is a significant management issue within the coastal environment, and affects achievement of … NZCPS objectives and policies (in particular natural character and biodiversity).
>
> Public access onto the foreshore and seabed and/or adjacent public land is vulnerable to damage by inappropriate vehicle use in the coastal environment. Clarification of the risk of adverse effects of vehicles relative to non-vehicular access, particularly walking access, is desirable. At present a small proportion of district and regional plans and policies provide direction on the management of vehicle access issues.

Submissions

- **Individuals, community groups and conservation interests support restrictions on vehicle access**

Almost all individuals, community groups and conservation interests and boards support the policy and want vehicle access to the CMA restricted or, in some cases, prohibited because they are concerned that the widespread use of vehicles can discourage other recreational activities (e.g. walking), damage landscape and conservation values, and sometimes cause physical danger to people using the coast.

These submitters generally believe that vehicles are not appropriate on beaches other than for very restricted activities such as launching boats.

The Forest and Bird Protection Society says that the policy needs to recognise adjacent marine reserves, protected areas and beaches. ECO submits that the policy should focus on where it is appropriate to have vehicle access.

However, the Council for Outdoor Recreation Associations submits that there is good reason to provide vehicle access for recreational and amenity reasons and that s6 RMA supports vehicle access to and along the CMA.

- **Iwi and hapu groups**

Two iwi groups support restricting vehicle access to protect Maori and ecological values.

One asks that further consideration be given to specific ways in which vehicle access can be controlled and notes that, without specific right to control this access, local authorities cannot enforce this policy.

One iwi says vehicle access is an emotive issue that cannot reasonably be achieved through the plan process.

- **Vehicle access is addressed through bylaws and other legislation, not the NZCPS**

Regional and district councils submit that there is no value or purpose in RMA planning documents identifying appropriate areas for vehicle access and seek the deletion of this policy.

Councils consider that vehicle access can only be addressed via bylaws under the Local Government Act 2002, which are not subject to the NZCPS. They believe that vehicle access would be more appropriately dealt with through bylaws or other legislation (e.g. the government clarifying the status of beaches as roads under the relevant land transport legislation).

Councils point out that there are major (and complex) implementation and enforcement issues in dealing with vehicles on beaches, which are unable to be dealt with in the NZCPS. In their view, requiring plans to control vehicle access invites a whole consent and enforcement regime that is not practical under the RMA. They note that bylaws are a far more responsive mechanism and one that enables the police to assist with enforcement.

Some councils note the need to clarify how this policy is to be read in conjunction with the Land Transport Act, which includes beaches in its definition of roads.

Two regional and five district councils support the policy but note that it needs to recognise that RMA plans will not address this issue alone but must be integrated with other agencies. Selwyn DC, Far North DC, Kaikoura, CCC and Kapiti DC support the policy as a positive step in reducing impacts on the coastal environment.

- **Use of the term 'foreshore and seabed'**

Several councils, along with some submitters from other sector groups, comment that the use of the term foreshore and seabed is not consistent with the rest of the NZCPS, which either uses CMA or coastal environment. They say that the phrase needs to be defined, if it is to remain.

- **Recognition of infrastructure and fishing/aquaculture needs**

Infrastructure companies submit that the policy needs to recognise that sometimes the use of vehicles on foreshore and seabed is required to repair and maintain and transport goods to

facilities. They say it also needs to identify clearly that it is not aimed at preventing the use of vehicles on wharves and other similar structures.

Aquaculture interests also say that they rely on beach access to collect mussel spat and tend to farms. Fishing interests submit that small commercial fishing vessels depend on vehicle access to and along the CMA to launch their vessels. These groups would oppose any policy that limited this access.

Issues Arising

- **Is the policy necessary?**

We received considerable evidence around the country on the adverse effects of vehicle access to beaches. Vehicle access destroys dune systems, flattens and destroys sea life in the intertidal area, upsets beach users, has killed or injured people, is generally unhelpful to the protection of coastal ecology and breaks down natural defences against coastal hazards.

We were provided with material from NIWA on the effects on molluscs from vehicles on beaches at New Brighton Beach and southernmost Pegasus Bay[175]. This showed that, although the most of the tuatua populations are found subtidally, the intertidal part of their life history is crucial in recruitment in this species. Driving vehicles on beaches will affect juvenile survival greatly.

- **What exceptions are needed?**

There are some situations where vehicle access is needed, such as for the launching of boats, and recreational vehicles could be provided without (or with minimal) adverse effects. These situations should be recognised and provided for.

- **What can the policy achieve?**

While the plans and consent requirements of the RMA may be limited in effect there are other methods councils can use to complement the provisions in plans and consents such as bylaws. It should not be forgotten that activities that require consent (or permitted activity status) under the RMA can also potentially involve vehicle access. The policy would be a consideration in preparing plans and considering resource consents.

We note that there are large numbers of districts around the country that now have an outer boundary containing the area down to the line of mean low water springs under the Local Government Act. That provides the territorial authority with the opportunity to exercise better control of vehicle access to beaches.

We heard about the coastal management plans and other approaches underway by councils, working with communities, to deal with vehicle access issues. The compromises implicit in these approaches with their emphasis on continued vehicle access means some coastal values may be at risk. There is also the problem of enforcement.

We observe that there are several initiatives underway around the country, that are a step towards achieving the policy, provided they are enforced. We were provided with a copy of

[175] Letter from Mr John Cranford of NIWA to Mr Fred Murray dated 20 February 2003.

the Whangarei District Council Public Places Bylaw 2005 with its requirement for Council consent to use a vehicle (as defined by the Transport Act 1962) on beach or sand dune areas under Council control unless to access an authorised boat launching ramp.[176] Submitters also told of the prohibition of vehicle access to beaches by Christchurch City Council.

Examples were provided of the compromises made by councils, including backing off from proposals to regulate vehicles on beaches because of community reaction. Some submitters suggested that a national policy could assist councils deal with what is a contentious issue. We recognise the difficulties facing councils and consider that it is time for national leadership on the issue.

- **What lessons are there from other countries?**

We had evidence of initiatives in South Africa and Australia from Mr G Jenks. He referred to the Victoria and New South Wales State Governments as prohibiting vehicles driving on the beach. He said that the law is well respected and there is a multi-agency approach to keeping those vehicles off the beach. The equivalent agencies to the Department of Conservation, City Council Bylaws Officers and MAF Fisheries and other statutory groups that can provide people with an infringement notice. There are also beach wardens, trained to write out infringement

Mr Jenks also referred to the legal protection of the coastal zone in South Africa, producing a copy of their enforcement laws and regulations from their National Environment Management Act 1998[177]. The coastal zone includes beaches, dunes, estuaries, coastal lakes and wetlands, boat-launching sites and harbours. No person may use any vehicle in the coastal zone without a permit to do unless it is a permissible use (including within a licensed boat launching site), with fines and penalties, including imprisonment.

We have not investigated the law and practice of other countries in any detail. We are therefore only able to note that there is likely to be lessons available from other countries on approaches to achieving the protection of beaches and the wider vulnerable coastal areas from vehicle use.

- **Is the policy lawful?**

The NZLS Environmental Law Committee considered the issue of vehicles on beaches, in response to a request from the Board at the hearing of the Society's submission. It wrote[178]:

> … the Land Transport Act 1998 (the Act) is the governing legislation. The Committee appreciates that the Board does not have a mandate to suggest amendments to this or any other Act. However, the Act defines all beaches as roads and this provides a legal basis for the control of vehicles on beaches. That control is exercised by the 'Road Controlling Authority' as defined in s2 of the Act. Normally this is either by the Territorial Authority (TA) or the Crown.
>
> In the case of TAs, their jurisdictional boundaries under the Local Government Act 2002 (LGA) extend to mean high water springs, but in some regions the TAs have

[176] Clause 28c.
[177] See Authorised Officers Guide to Enforcement Control of Vehicles in the Coastal Zone Regulations in terms of s44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998): Control of Use of Vehicles in the Coastal Zone, as Amended (Government Notice No. 1426) Environmental Affairs and Tourism Republic of South Africa 2006.
[178] Letter of 11 December 2008, Mark von Dadelszen Convenor, Environmental Law Committee.

> extended their boundaries under the LGA to mean low water springs and are thus the Road Controlling Authority for beaches. In the Auckland region all the TAs have done so.
>
> The alternative mechanism, where the Crown is the Road Controlling Authority, is for the Crown to delegate its powers as the Road Controlling Authority to the regional council or TA.
>
> A Road Controlling Authority has the ability to pass bylaws under the Act for the control of vehicles on beaches that are roads (including where they can and cannot go), and to set speed limits under the Land Transport: Setting of Speed Limits Rule 2003.
>
> The boundary change or imposition of control mechanisms is therefore currently available to councils, should they wish to exercise them. Some councils have, while others have chosen not to do so.

It then concluded that the NZCPS should not address vehicles on beaches, stating:

> The mechanism set out above is already available to the TAs (and this is a specific mechanism which could be said to override the general concern in the Resource Management Act 1991 regarding safety and health or ecological issues). It is unclear how a regional coastal plan might give effect to such a policy. For example, the Committee does not consider a rule could easily set speed limits on beaches. Although a plan could, via its maps, authorise 'no go' areas, the authority of the rule would be unclear, given that beaches are by definition 'roads' under the LTA. The Committee is not aware of any coastal plan that contains methods of controlling vehicle access, and suggests that this is a good indicator that TAs themselves do not consider this method appropriate.

We do not agree that the mechanisms available to territorial authorities under other legislation override the need to consider vehicles on beaches under the RMA. The health and safety, ecological and other adverse effects of vehicles on beaches, and the need to provide for access to beaches for specific community needs, are all matters that a decision maker can consider under the RMA.

We prefer and adopt the reasoning in the submission by the Environment and Resource Management Committee of the Auckland District Law Society, supported at the hearing by Professor Kenneth Palmer, on the scope of policies compared to rules and other methods. We conclude that we have the power to include this policy.

We conclude that the policy, with the amendments we recommend, is lawful.

- **Conclusion**

We recommend a largely rewritten policy 42 to become policy 23 as follows:

Policy 23 Vehicle access

All decision makers must:

(a) prohibit vehicle traffic, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:

(i) damage to dune or other geological systems and processes; or

(ii) harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or

(iii) danger to other beach users; or

(iv) disturbance of the peaceful enjoyment of the beach environment; or

(v) damage to historic heritage; or

(vi) damage to the habitats of fisheries resources of significance to commercial or recreational users; or

(vii) damage to sites of significance to tangata whenua;

might result;

(b) identify the locations where vehicular access is required either for boat launching or as the only practicable means of access to private property or public facilities and restriction or prohibition of recreational vehicular use is required;

(c) identify the areas where vehicular access is required in the operation of existing commercial activities; and

(d) identify any areas where and times when recreational vehicular use of the coastal environment may be permitted, with or without restriction as to type of vehicle, without a likelihood of any of (a) (i) to (vii) occurring.

Policy 43 Restrictions on access

A restriction on public access to and along the coastal marine area shall only be imposed where such a restriction is necessary:

(a) to protect threatened indigenous species; or

(b) to protect dunes, estuaries and other sensitive natural areas or habitats; or

(c) to protect sites and activities of cultural value to Maori; or

(d) to protect historic heritage; or

(e) to protect the amenity values of the coastal environment for the public; or

(f) to protect public health or safety; or

(g) to avoid or reduce conflict between public uses of the coastal marine area and its margins; or

(h) for defence purposes; or

(i) to ensure a level of security consistent with the purpose of a resource consent.

The s32 Report

The s32 report stated:

> Restrictions on public access to and along the coastal marine area are justified in certain circumstances and in particular to assist in achieving objectives … Existing policy direction is based on relatively broad categories. It is intended that policy direction be provided with greater specificity in relation to matters where there is greater sensitivity to the effects of public access.
>
> Understanding of the situations where restrictions on public access may be justified has changed since the 1994 NZCPS. Sensitivities to the effects of public access can exist in places such as significant habitats, public amenity areas and in relation to national defence and biosecurity needs. These matters are relevant practical considerations in resource management decision making and provide a practical qualification with regard to [an] objective … and the other access policies.
>
> The policy clarification of occasions where public access might be restricted provides benefit with improved achievement of sustainable coastal management, particularly in relation to Maori cultural values, biodiversity, natural character, historic heritage and amenity. The cost of implementation is low across central and local government and resource users. These policy elements would not compromise the achievement of [an] objective … or the other public access policies.
>
> Provisions generally in favour of public access to and along the coastal marine area potentially risk adversely affecting some other significant place

> or value and therefore risk achieving sustainable coastal management. Recognition of these potential circumstances and the provision of appropriate policy guidance provide greater certainty of outcome for decision-makers and resource users.

The 1994 NZCPS had Policy 3.5.1, as follows:

> In order to recognise the national importance of maintaining public access to and along the coastal marine area, a restriction depriving the public of such access should only be imposed where such a restriction is necessary:
>
> (a) to protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;
>
> (b) to protect Maori cultural values;
>
> (c) to protect public health or safety;
>
> (d) to ensure a level of security consistent with the purpose of a resource consent; or
>
> (e) in other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.

Policy 3.5.4 also stated:

> Policy statements and plans should as far as practicable identify the access which Maori people have to sites of cultural value to them, according to tikanga Maori.

The NZCPS review *Scoping Paper for Public Access* March 2006 suggested this policy should be placed further into the public access policy section given the primary concern is availability of public access through its maintenance and enhancement (covered in policy 39) rather than its restriction. It suggested that further exceptions may be warranted for biosecurity, to protect wāhi tapu and sites of significance to Maori, significant heritage places or areas, amenity values, and foreshore and seabed instruments.

Submissions

There is relatively little specific comment on policy 43 with submitters from all sectors generally supporting it. Iwi groups support the policy and particularly clause (c). Some submitters sought the widening of the policy's scope and more flexibility for reasons we consider further.

Issues Arising

- **Does the scope need widening and more flexibility provided?**

Councils and other sectors say that the policy needs to be widened to include restrictions for biosecurity purposes.

Infrastructure companies say the policy needs to include a specific criterion to acknowledge the importance of uninterrupted and safe operation of facilities/infrastructure, as well as lawfully established energy generation facilities and energy transmission infrastructure.

Some infrastructure companies say that the test should probably be 'where reasonably necessary', because if it is overly strict there could be 'endless debates' and investigation of other means, regardless of cost. We do not agree.

Some councils say policy should be more flexible to allow for restrictions on similar activities to those listed in the policy. Several councils say that the policy should recognise the need to restrict public access for temporary activities and special events. We add these.

Some submissions suggested covenants may be a suitable approach to ensuring walking public access is assured. We had evidence illustrating that does not always provide the protection of continued public access.

We do not consider there is a need to add amenity values as proposed in (e), as this concept when used in connection with public access often seems to be the rationale for activities that commandeer public walking space. There can also be a similar problem with security.

Several submitters comment that clause 43(i) appears to overlook permitted activities and their need for security too. While several others that security is not a valid reason under the RMA to restrict access. We consider the general reference to a level of security consistent with the purpose of a resource consent (or permitted activity status) could cut across the intent of the public access policies. None of the other elements of the policy refer to consents and so this element is also out of step.

We recognise that there may be defence purposes that justify restricting public access under the RMA. International airports and ports gave evidence of their operational security requirements, including biosecurity requirements. Even then we had evidence from Auckland International Airport on their efforts to provide some public access to significant natural features around the perimeter of the airport. We accept that there are situations where access to airports, ports and other strategic infrastructure requires restrictions on public access and provide for this in a new (h).

We accept that there are exceptional circumstances where a restriction on walking public access to and along the coastline may be necessary. We prefer to go back to the 'exceptional circumstances' test in the 1994 NZCPS.

We also consider that alternative means to provide free public access along or close to the coastal marine area on a 24 hour basis is important. Requiring consideration and provision of alternative access means that continuous walking access can at least still be available, even if it requires going around the particular activity.

There were no submissions on (f), avoiding or reducing conflict between public uses of the coastal marine area and its margins. Public health and safety is likely to be involved in the need for such restrictions.

We recommend that policy 43 be amended to become part of policy 22 as clauses (2) and (3) as follows:

(2) Decision makers may only impose a restriction on public walking access to, along or adjacent to the coastal marine area where such a restriction is necessary:

- **(a) to protect threatened indigenous species; or**
- **(b) to protect dunes, estuaries and other sensitive natural areas or habitats; or**
- **(c) to protect sites and activities of cultural value to Maori; or**
- **(d) to protect historic heritage; or**
- **(e) to protect public health or safety; or**
- **(f) to avoid or reduce conflict between public uses of the coastal marine area and its margins; or**
- **(g) for temporary activities or special events; or**
- **(h) for defence purposes in accordance with the Defence Act 1990 or for security of strategic infrastructure; or**
- **(i) in other exceptional circumstances sufficient to justify the restriction.**

(3) Before imposing any restriction under (2) alternative routes that are available to the public free of charge at all times must be considered and, where practicable, provided for.

Policy 44 Maintaining water quality

Discharges of contaminants shall, after reasonable mixing, avoid adverse effects on high water quality in the coastal environment, and shall not cause deterioration in the quality of other water or substrate in the coastal environment.

The s32 Report

The s32 report states:

> [An] objective … requires that water quality in the coastal environment be maintained, or be improved over time where it has deteriorated from its natural state. Maintenance of water and substrate quality, and particularly high water quality, contributes to the preservation of natural character in terms of another objective. Discharges of contaminants from both point and non-point sources are the principle contributors to reduced water and substrate quality; they require effective management of existing water quality is to be maintained or enhanced. Direction also needs to be provided on how water quality is to be maintained while allowing for people and communities to provide for their social, economic, and cultural wellbeing … including through the discharge of contaminants.
>
> Maintenance of water quality is considered to mean that water quality is protected from the adverse effects of discharges after reasonable mixing. Further policy guidance on reasonable mixing is thus provided for in the statement.

Submissions

- **Individuals and community groups**

Many individual submitters supported the need for National Environmental Standards (NES) on water quality to be established and required that the policy encourages that need utilising s43 RMA. Many other individual submitters required councils to monitor sedimentation which is seen as a considerable health risk in high risk areas. Other individual submitters again seek the policy wording indicate no discharge of contaminants should occur into the CMA unless completely unavoidable such as in aquaculture, ship cleaning etc. Then conditions such as reducing containments should be applied.

The Waikato District Health Board commends the use of the fleet of policies under 'Water Quality' to maintain and enhance water quality given the potential negative impact poor water quality may have on population health.

The Royal Forest & Bird Society and its branches from quite another standpoint also support the policy and consider that if there are mechanisms to protect significant indigenous fauna and flora, and outstanding/notable landscapes that could not be interfered with, while integrated management took place in catchment systems, many development proposals would not be allowed.

The Christchurch Estuary Association is also strongly supportive while the Guardians of Paku Bay support the policy in part but require a definition of contaminants to be included and the issue of sediment to be addressed.

- **Fisheries interest**

The fisheries interests such as Aquaculture New Zealand, observe that high water quality is critical for marine farming, while New Zealand King Salmon Company does not agree with the policy as written as it is too prescriptive. In particular it objects to the directive 'and shall not cause deterioration'.

- **Councils**

The ARC considers that problems arise from the use of the undefined term 'high water quality' in policy 44 because what constitutes that quality is location specific, e.g. there is a gradient of reducing quality from open coastal waters into sheltered tidal creeks and estuaries. Further, the requirements of high water quality are specific to different management objectives. Schedule 3 RMA provides some numeric and narrative standards for various identified water quality classes. Waters may meet a high standard for one use (contact recreation) and may fail to meet the requirements of high for other uses (e.g. aquatic ecosystem). How then is high water quality determined? Also, the policy is required to avoid deterioration in areas of high quality water and essentially requires refusing new sources of degradation. By way of contrast, areas of already degraded water quality may require upgrading and improvement of existing and or new discharges for them not to cause deterioration.

Greater Wellington Regional Council requires definitions of 'reasonable mixing' and 'high water quality' but supports the inclusion of the word 'substrate'. Hawke's Bay Regional Council concludes similarly and seeks an amendment to establish a clear distinction between policies for point-source discharges and diffuse discharges to water. Environment Waikato supports the policy because it should encompass water entering the coastal environment. Some regional and district councils such as the West Coast Regional Council and Gisborne District Council point out that some regions (such as theirs) develop a high degree of sedimentation naturally. They consider that local authorities thus should focus on contaminants from human use and activity. Environment Southland opposes the policy because it introduces new terminology – what for example is meant by 'high water quality'? Wairoa District Council queries how a baseline of water quality is to be determined and measured. Horizons Regional Council considers this policy is a repeat (in different terms) of the policy intent of policy 47. Water quality is primarily managed through control on discharges. Policy 44 is already encapsulated under objective 7 and is therefore unnecessary.

LGNZ requests deletion of this policy, pointing out the RMA covers the issue and the policy adds only confusion, not clarity. It too queries what may be considered the baseline for high water quality?

Several of the district councils support the complex of water quality policies in their entirety but Kaipara District Council observes this policy would be a significant burden for small councils to implement with such a small community. It would cause serious compliance issues as resource consents are updated and renewed and it would increase the cost of upgrading infrastructure. Waikato District Council makes the point that water quality at any

given location can be highly variable due to the range of weather patterns and oceanic processes. This variability in its district will make the policy difficult to implement.

- **Infrastructure companies**

Of the infrastructure companies, Meridian, through its witness Mrs C Foster, identifies that policy 44 applies to both coastal water and other water (in streams and presumably ground water) in the terrestrial part of the coastal environment. It provides for 'reasonable mixing' and requires two approaches to managing water quality in the coastal environment:

- it requires that adverse effects on 'high water quality' be avoided;
- it requires that discharges of contaminants not cause deterioration in the quality of other water (presumably water that does not have 'high water quality').

Both approaches, in her view, appear to require absolute avoidance of effects. Therefore policy 44 adds a whole new, and much more stringent, set of standards. The fact that a discharge may, after reasonable mixing, create some localised effects or cause some limited deterioration in water quality, does not mean that the discharge is not consistent with sustainable management. Further, policy 44 relates to water in the coastal environment which includes both coastal water and water in lakes, wetlands, rivers and streams within the coastal environment landward of the coastal marine area. The witness identifies there is an established jurisdictional line between coastal water in the coastal marine area and freshwater in lakes and rivers. The company anticipates therefore, that introducing a new concept of water in the 'coastal environment' would create unnecessary and unworkable jurisdictional confusion. Further, the policy implies that water quality management is an end in itself, rather than a means to an end. That is, emphasis is placed on water chemistry, as opposed to the uses and values that the community attaches to coastal waters. It is possible to discharge contaminants into sea water without compromising those uses and values (e.g. shell fish gathering and contact recreation). Discharges into the coastal marine areas are inevitable given the proximity of the community to the coast. The policy needs to reflect this reality and provide guidance on how discharges should be managed. The current wording can be construed to mean that no discharge will be allowed to increase contaminant levels. This is clearly an unachievable situation. Strictly applied, therefore, Meridian considers that policy 44 is advocating a no-effects approach or no deteriorated standards to discharges which is at odds with the scheme of the RMA. The company recommends the policy be deleted.

Contact Energy submits that the water quality policies should not seek to alter the existing statutory tests in the RMA including ss107, 108 and Part 2; the policies are not weighted appropriately in that they require outcomes that may not be possible - resource consents in fact are granted providing for certain discharges to occur. Auckland International Airport has other objections:-

- the requirement that there should be no deterioration of the quality of 'other water' ignores the obligation to avoid, remedy or mitigate adverse effects in the RMA. The requirement in the RMA is not to have no adverse effects and no deterioration. There is no consideration of a degree of effect nor a different level of effects;
- it seems unreasonable and inappropriate not to contemplate any degree of adverse effects on water that may currently be of high water quality, no

matter whether, after reasonable mixing, the degree of adverse effect is minimal and no matter the public benefits or public interest in the use or development concerned. It also seems to take no account of construction activities when inevitably there may be in that situation some greater degree of adverse effects for a short period of time;

- that the policy is to apply to the whole of the coastal environment in New Zealand and envisages thousands of streams, rivers, lakes, tributaries makes it unworkable;
- while it may be appropriate to have a policy that seeks to avoid adverse effects on water quality which is 'pristine' or is recognised as having high water quality, it is not appropriate to make it an absolute requirement to avoid adverse effects on 'high' water quality. In addition, high water quality is not defined in the RMA and is ambiguous.

Accordingly, policy 44 should be deleted in its present form and replaced with wording which limits its application to more direct effects on the coastal marine area and which otherwise addresses these concerns.

Transit New Zealand and New Zealand Aluminium Smelters Limited and others are concerned to know what the difference is between avoiding adverse effects on high water quality and not causing deterioration of other water quality. Is it a different test? Transit submits the policy does not recognise there may be circumstances where some localised deterioration of water quality in the coastal environment is consistent with the sustainable management purpose of the RMA.

Other infrastructure companies, such as Mighty River Power Limited, note inadequacies in the wording and intent of the policy, observing that it is inconsistent with the RMA and too prescriptive with an inappropriately high standard and with an undefined scope. Mighty River considers the policy is unreasonable because it requires that adverse effects are 'avoided' which is contrary to s107 RMA. Further, fresh water quality is covered by regional plans. The policy will have significant impacts on existing and proposed discharges in the coastal environment and is likely to have significant unintended consequences. Companies like Watercare Services Limited, Williams Land, and Sea + City Projects Limited followed such sentiments closely behind the others with similar opinions.

- **Engineering interests**

IPENZ and individual submitter – Mr J Bradley – a professional engineer with 38 years experience in wastewater, waste and the water environment, are concerned with the use of the term 'high water quality' as in order to address water quality effectively, a clear standard must be set and maintained. Mr Bradley considers the phrase is not well related to the RMA in terms of assessing effects against the various values associated with aquatic ecology, natural character and so on. IPENZ suggest that a recognisable standard is used in the policy either in the form of a national environmental standard for water quality or the recreational water standards contained in the RMA. Metrowater, through Mr Mayhew its consultant, considers policy 44 is unrealistic in an urban environment and other environments subject to development. Urban storm-water entrains contaminants in runoffs resulting in some degradation of both water quality and sediments. Metrowater submits that the policy too is onerous because it does not take into account the factors that may contribute to deterioration in water quality, such as population growth, the time it takes to implement infrastructural

solutions, and the financial constraints within which these solutions must be implemented. The policy may be appropriate in an undeveloped, or largely undeveloped, environment, but it is not appropriate in environments that are already developed with an existing drainage system; particularly in areas that will need to cater for intensive growth. If considers the cost of preventing any adverse effects occurring may be far greater than the adverse effects generated by the discharge.

The Auckland District Law Society submits this provision appears to be a summary of provisions of s70 and s107 RMA and is inadequate as it stands. If it is to remain the policy should refer to the baselines in these provisions, and regulations should also be checked.

Issues Arising

- **The legislative framework**

The particular legislative provisions which promote the framework for water quality issues are as follows:

(a) s43 empowers the Minister for the Environment to make national environmental standards prescribing technical standards relating to (inter alia) water quality;

(b) the Third Schedule defines certain water quality classes, and s69 empowers regional councils to make rules requiring the observance of water quality standards based on those classes (or more stringent or specific standards);

(c) s104(3) requires that on an application for a coastal permit to discharge a contaminant, the consent authority has to have regard (inter alia) to any possible alternative methods of discharge, including discharge into any other receiving environment; and

(d) s70 and s107(1) require that certain specific effects shall not be created by discharges into water, but s107(2) allows exceptions from those requirements in certain circumstances.

(e) S70(2) requires that before a regional council provides a rule in a regional plan requiring the adoption of the best practicable option to prevent or minimise effects it is required to meet a number of stringent tests.

- **'High Water Quality'**

Many submitters consider the reference to 'high water quality' in the policy requires clarification, particularly with reference to 'other water'. 'High water quality' also differs from the terms in the RMA which does not create a hierarchy and the Marlborough District Council points out that case law has already built up around a number of the terms. Manukau City Council seeks to know how the baseline for improving water quality is to be determined which in turn requires a baseline for the 'other water'. This, it suggests, is not what the RMA requires.

Mr G Maskill who gave evidence for Watercare Services points out because it is an isthmus, the Auckland coastal environment covers a substantial part of the region, including streams.

Furthermore, many parts of Auckland are serviced by a combined wastewater and storm-water system, which includes network capacity constraints during periods of wet weather. Discharges from Watercare's facilities will have some impact on water quality and the avoidance of effects on high water quality in all environments is not always possible. Even with a Rolls Royce waste and storm-water system, effects are unavoidable.

We heard that many parts of urban New Zealand have similar systems with similar effects. There is, as the ARC submits, a gradient of reducing water quality from open coastal waters into sheltered creeks and estuaries. The discharge of contaminants do not go into deep coastal waters far from shore unless through long ocean outfalls and after reasonable mixing and even then water quality at any given locations in the coastal marine area can be highly variable due to a range of weather patterns and coastal processes - as we heard in Dunedin in relation to its outfall and storm-water issues.

We consider that the term 'high water quality' is almost impossible to define.

While we support the intent of the policy we conclude that implementing it presents many more difficulties than it answers. So then, what may be achieved for those who so strongly support the policy?

- **What is the added valued from policy 44?**

Meridian had this to say:

> Sections 15, 15A and 107 of the RMA prescribe the circumstances and standards for water quality resulting from discharges to water after reasonable mixing. Regional councils also have the ability to fix water quality classes in accordance with Schedule 3 of the RMA. It is not clear why policy 44 is required in addition to these existing mechanisms. Meridian is also concerned that the policy seeks only avoidance of adverse effects or 'no deterioration'. This seems to be at odds with s107 and fails to acknowledge that some level of effects may still occur, but that this could still be consistent with sustainable management.

On the examination of the provisions of ss15, 15A, 107(1), 108 and Schedule 3 RMA and placing those provisions in the context of s5 issues, the maintenance of water quality is already adequately addressed in the RMA. We consider that this policy creates more difficulties in application than it solves.

We recommend that policy 44 be deleted.

Policy 45 Enhancement of water quality

Where the quality of water in the coastal environment has deteriorated it shall be enhanced, where practicable, with priority given where:

(a) adverse effects on natural character, ecology or habitat are significant; and/or

(b) tangata whenua identify a particular interest in the affected waters; and/or

(c) water quality is unsuitable for, or constrains, existing uses.

The s32 Report

The s32 report refers to an objective requiring that water quality be improved over time where it has been degraded. It also comments that the quality of both fresh and saline waters has deteriorated in many locations in the coastal environment, although often levels of contamination are low, or at least are not giving rise to significant adverse effects. Further to that require the improvement of all degraded water in all locations however would impose considerable costs and it is therefore appropriate in achieving objectives to provide guidance on priorities for enhancement.

The report states:

> …. priority should be given to those locations in which 'existing uses', 'tangata whenua interest' or 'natural character' are particularly affected. Stating these priorities will provide benefits for these three areas and avoid the costs of enhancing all degraded water quality in an unreasonable time frame…. Enhancement should be undertaken where deterioration in water quality is clearly identified, the risks of acting are low, and enhancement is practicable.

Submissions

- **Individuals and community groups**

While many individual submitters and community groups support policy 45, many others again, as they did with policy 44, consider that the provisions on water quality do not address the problem of sedimentation which is considered a large threat to the health of the coastal environment.

The Nelson Marlborough Conservation Board and NZ Marine Sciences Society suggest this policy should be expanded to include all ecosystem services also. Assimilation and transformation of waste is a natural ecosystem service that needs to be sustainably managed. Where this service has been degraded, waste deposition should be particularly avoided unless the service is restored. But only 'water quality' is mentioned in the NZCPS.

- **Iwi**

Some iwi, such as Ngati Awa, along with the NZHPT, support the policy because high water quality standards are an important issue for places of significance to iwi, while the East Otago Taiapure Management Company considered its implementation will be essential for the health of that fishery. Ngati Mutunga consider for this policy to be effective, tangata whenua need to be informed of any reports or information that identify adverse effects on water quality and deteriorating water quality and requires an amendment to that effect. The Waimarama Maori Committee consider that policy 45 (b) should be amended to include specific reference to the 'mauri' or the essence of certain waters since this often arises as an issue, e.g., it would apply to an inappropriate mixing of the waters in certain circumstances.

- **Councils**

The regional councils had differing approaches. Some oppose the policy, observing that when talking about the deterioration of water quality there needs to be a benchmark in terms of deterioration from a given standard. EBOP, for example, queries what baseline should the water be returned to? Others note all water quality in the coastal environment has deteriorated, with the Otago Regional Council suggesting an amendment to read 'priority shall be given to enhancing water quality in the coastal environment where water quality is at risk of becoming unsuitable for existing uses, while Horizons Regional Council considers such uses may be termed 'peoples' recreation', 'enjoyment' and 'shell-fish gathering opportunities'. The ARC sought no amendment but notes that the policy appears to encompass water quality of only the seriously degraded areas. Thus currently written the policy weakens the case for remedial action in other areas. Supported by the Hawke's Bay Regional Council, the ARC also seeks clarification as to how the tangata whenua identify their interests, while existing uses should not necessarily drive the water quality objective because in some cases they may be driving the deterioration. Hawke's Bay also require an amendment to relate to deterioration due to human activities – not natural processes, such as natural erosion. This council was also one of those to seek clarification around the phrase 'natural state' but one of the few to proffer an amendment with wording such as: 'when water quality is poorer than the national guidelines (which should be referenced in the policy) we suggest then it shall be enhanced 'where practicable''. The Northland Regional Council supports the intent of the policy but queries the intent of what the terms 'natural character', 'ecology' and 'habitat' mean. The Taranaki Regional Council wants to know what is meant by the term 'constrains existing uses'. And the West Coast Regional Council wishes to retain the words 'where practicable', noting otherwise that it is not clear what the expected water standard may be and it is unsure how the policy would be applied in terms of identifying causes of deterioration.

LGNZ considers the wording of the policy is too broad to give effect to, and in some cases the priority areas identified in the policy would not be the most suitable for rehabilitation. It could be argued that water quality has deteriorated pretty much everywhere so how is a baseline to be defined? Greater Wellington Regional Council considers it is unclear how this policy is given effect and questions whether it is directed at plans, consent considerations or other non regulatory methods?

The district councils either supported the policy entirely, or sought clarification of thresholds of determination, and clarification and amendments on how to deal with ecological changes. The Manukau City Council seeks to add a provision to include the need to improve water quality. It too wishes for a baseline to be defined or established and wishes to add the words

'or have a stated position in a iwi management plan' added to policy 45(b). Gisborne and Kaikoura District Councils also support the policy but Southland District Council notes the significant cost implications of the proposal. In Southland's opinion, recent changes to the Ministry of Health's Sanitary Waste Subsidy scheme will further exacerbate affordability issues for a small council. It is concerned that the NZCPS could be utilised to seek water quality improvements in a time frame that is unsustainable cost use. The Whangarei District Council is concerned to know how the policy would deal with ecological changes in the local ecology. A major point of contention in its sphere of influence is mangroves where there is ongoing debate over increased areas of colonisation. The council asks would the enhancement of water quality allow for the removal of mangroves which are perceived by many as silt traps. The Grey District Council also has issues around establishing a baseline where the quality of the water has deteriorated. The Auckland City Council is concerned at the vagueness of the policy. It considers it is unrealistic to require enhancement of water quality in all circumstances where it has deteriorated especially in the coastal environment around highly urbanized areas. It suggests inserting the word 'significantly' before 'deteriorated' in the opening sentence of the policy.

- **Infrastructure companies**

The infrastructure companies had varied reactions. Mighty River Power oppose the policy in part, observing that fresh water quality issues are already covered by regional plans and the policy needs only to relate to water quality within the CMA. Contact Energy also considers the policy should be limited to the CMA and not the whole of the coastal environment. Further, 'enhancement' should be considered in circumstances where it is feasible to achieve that end state and should not interfere with lawfully established operations in the coastal environment. It provided a preferred amendment.

Auckland International Airport, the Port Companies, and Sea + City Life Projects generally accept the policy but consider it is questionable how deterioration in water quality constitutes an adverse effect on 'natural character'. They point out policy 35(d) already provides for the restoration of natural character by reducing or eliminating discharges of contaminants that are causing significant adverse effects, particularly cumulative ones. Inclusion of that characteristic in the policy will create confusion and ambiguity as to how the term fits within the context of water quality and they seek its deletion. The two marina companies which submitted on this policy agree with others that the words 'natural character' should be removed.

Meridian Energy interprets policy 45 to require a response wherever water quality in the coastal environment has deteriorated. It observes that deterioration in water quality is the inevitable consequence for most authorised discharge activities and is therefore permitted. In those circumstances, requiring 'enhancement' would simply defeat the purpose of a consent. Further, strict enforcement of the policy, would set an unreasonably high standard for such discharges. The NZCPS should not promote 'enhancement' as an end in itself, but should address situations where it is genuinely necessary to address significant deterioration. The company also provided a preferred amendment also restricting the policy's application to the CMA only.

Watercare Services Ltd emphasises the need for a pragmatic approach to be taken to improving water quality and supports the inclusion of the words 'when practicable' in the opening clause.

- **Engineering interests**

Mr Bradley, together with IPENZ, share concerns about the use of the word 'enhancement' and concur that such an approach could lead to excessive demands for unnecessarily high (and very expensive) levels of wastewater treatment. For wastewater treatment, such levels would, in turn, have significant adverse effects. Mr Bradley questions too, how the word 'enhancement' approach fits into a 'Best Practicable Option' (BPO) assessment in terms of its definition in the RMA. May it be assumed that the reference to the word 'practicable' in the opening statement to this policy, relates to BPO which is a process alternative under s70(2) RMA? Mr Bradley also has concerns about the narrow 'water quality' focus of the policy. Should not the focus relate also to the quality of the marine environment from a water quality, sediment quality and ecological viewpoint? IPENZ too considers that the focus should be extended to include sediment quality.

- **Farming and fishing interests**

Federated Farmers considers that the policy is insufficiently selective of the types of locations in the coastal environment in which it would be best to achieve enhancement of water quality. It considers that making improvements in water quality where it has deteriorated from its natural state should realistically only be undertaken in cases where there are clear benefits to the environment.

Aquaculture New Zealand supports the enhancement of water quality when practicable within the coastal environment and in particular considers priority should be given to addressing water quality unsuitable for or constraining existing use. Challenger FinFisheries considers that a main consideration should be returning water to a standard where people can swim and carry out recreational activities.

Issues Arising

- **Water quality a significant issue**

Water quality in the coastal environment is a very significant issue for all individuals, organisations, councils and companies that submitted on the NZCPS. We received evidence that in many coastal areas water quality has deteriorated so it is not of a standard to ensure the existence and on-going health of habitats and ecosystems. That is also the case for many individual and community needs.

In the NZCPS (1994), Clause 5.1 sets out under the heading 'Maintenance and Enhancement of Water Quality' the object of enhancing water quality in the coastal environment, including aquifers, where it is desirable to assist in achieving the purpose of the RMA. The Clause has similar categories of interest (more or less) as those identified in policy 44 – that is:

- where there is high public interest or use;
- particular tangata whenua interest;
- particular values to be maintained or enhanced; and
- there is direct discharge containing human sewage to water.

Policy 44 separates out the first three categories from the last but omits 'high public interest' with the discharge of human sewage provided as a separate policy.

- **Baseline**

A major difficulty with the wording of this policy, as with policy 44 appears to be the lack of a defined baseline. Most councils argue that water bodies adjacent to urban areas have deteriorated. Thus what is the baseline to bring the state of that water to one of acceptable quality?

We note Schedule 3 RMA 'Water quality classes' sets out standards for each class of use which apply after reasonable mixing of any contaminant or water with the receiving water and disregard the effect of any natural perturbations that may affect the water body. Class CR water sets a standard for water being managed for 'contact recreation' purposes, Class C water sets a standard for water being managed for 'cultural purposes', Class SG provides a standard for water being managed for 'the gathering or cultivating of shellfish for human consumption', with Class NS water being managed in its 'natural state' and Class A water being managed for 'aesthetic values'.

These standards, indirectly referred to by some councils as 'national guidelines', provide legislative guidance on what may be achievable in coastal waters which currently do not sustain the activities noted. They are already available to all consent authorities to apply in areas where the quality of coastal water has significantly deteriorated. We conclude they should be considered the relevant minimum baselines and applied to the areas of deterioration accordingly.

We see the need for some other improvements to make the policy effective. Among these improvements are identifying and including areas for attention in plans, and in coastal catchments draining into marine areas excluding stock from the coastal marine area and other locations within a prescribed a time frame.

- **Conclusion**

We recommend that policy 45 be retained but amended to become policy 24 as follows:

> **Policy 24 Enhancement of water quality**
>
> **Where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing lawful uses, such as aquaculture, shellfish gathering, and cultural activities, all decision makers must give priority to improving that quality by:**
>
> **(a) identifying such areas of coastal water and water bodies and including them in plans;**
>
> **(b) including provisions in plans to address improving water quality in the areas identified above;**
>
> **(c) restoring water quality to at least a standard that supports such activities and ecosystems and natural habitats;**
>
> **(d) ensuring that stock are excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in coastal catchments, within a prescribed time frame;**

(e) engaging with tangata whenua to identify areas of coastal waters where they have particular interest, for example in cultural sites, waahi tapu, other taonga, and spiritual values such as mauri, and remedying any adverse effects on these areas and values; and

(f) applying any national environmental standards and guidelines which reflect the current state of technical knowledge.

Sedimentation

Several submitters raised the issue of sedimentation and its adverse effects on water quality under this policy. Mr Mayhew for Metrowater had pointed out under policy 44 that some degradation of both water quality and benthic sediments are an inevitable consequence of urban development. Thus harbour and estuary areas accumulate contaminants and levels over time reach a new equilibrium with the surrounding land use. Accordingly it may not be possible to eliminate adverse effects entirely although it may be possible to minimise the level of degradation. Policy 45, Mr Mayhew considers, should be extended to include benthic sediments as elevated benthic sediment contaminant levels are potentially one of the most significant and persistent adverse effects of urban drain discharges.

- **Sedimentation : A new policy?**

Sedimentation is seen by a very large number of individual submitters as a considerable threat to intertidal waters, estuaries and wetlands. The NSaPS identified that the provisions on water quality in the NZCPS do not address the problem of sedimentation which is damaging the health of Ngunguru River and estuary. It supports the EDS submission which provides a particular focus on sedimentation in evidence and provided a draft policy to introduce into the Water Quality section of the NZCPS.

The Bay of Plenty Conservation Board observes that the effects of activities in the catchments, e.g. large scale subdivisions, earthworks, unsustainable farming practices, large scale changes in land use are manifested in the coastal environment. This includes contaminants such as from sedimentation, storm-water, industrial discharges, agricultural runoff of fertiliser and effluent entering into waterways and their discharge to the coastal environment as the ultimate receiving environment. These discharges are either point source or non-point source. There is thus no policy to address managing the effects in the coastal environment of these catchment activities. The Bay of Islands Coastal Watchdog has a similar view to the Bay of Plenty Conservation Board and observed that local councils are ill-equipped to monitor water quality continually.

We note that also IPENZ, Mr Bradley and numerous other conservation boards raise the issue of sedimentation in their submissions.

In her text, *Beyond the Tide Integrating the Management of New Zealand's Coasts* by Raewyn Peart, Ms Peart for EDS notes that:

> The New Zealand Policy Statement, [1994] somewhat surprisingly, does not directly address the issue of sedimentation, although it can be implied from provisions relating to the protection of significant habitats of indigenous fauna

> (policy 1.1.2) and the maintenance and enhancement of water quality (section 5.1)[179].

Peart in her evidence to the Board identifies the effects of accelerated sediment levels entering the marina environment can be serious and extensive:-

> These include smothering marine organisms living on the sea floor, stressing filter feeders such as shellfish, and reducing seawater clarity and the ability of light-dependent species such as seagrass to photosynthesize. Negative impacts are more pronounced in sheltered areas, such as estuaries, harbours and enclosed embayments where there is a reduction in wave action and off-shore currents to disperse the sediment[180].

We consider that this one issue, sedimentation, appears to cause a large number of problems in the coastal environment which are far-reaching. Ms Peart's research on the management of the Hauraki Gulf and Kaipara Harbour indicates that sedimentation is a significant problem in those locations, and she provides tables of accelerated sedimentation on the Coromandel Peninsula with the increase particularly marked in the Wharekawa and Whangamata estuaries where production forestry has been established. In discussing Kaipara Harbour Ms Peart quotes from her 2006/7 study:

> In some of the areas [in the northern Kaipara] we were just pulling up cockle beds that were probably quite extensive, but they were all dead now, and it's just basically the fine sediment that comes off the land ... Some areas aren't fenced off; in others the fences go right down to the water's edge, and I believe that some of the fences that go to the edge are not in existence because of the erosion ... If you're going to farm right down to the water's edge you're going to have a few problems. (Scientist respondent)

From the evidence put before us land intensification is affecting water quality, while in many areas stock are free to roam the intertidal areas causing pollution and crushing the embryonic shellfish in quantity on the intertidal areas of coastal lakes, lagoons, estuaries and wetlands. The run-off from land intensification, the removal of forest and vegetation cover, together with the resulting sediment causes the spread of mangroves of the North Island so the intertidal areas become unproductive land. In addition, many iwi are finding it difficult to source their traditional mahinga kai resources due to sedimentation, drainage and pollution affecting their wetlands, estuarine systems, harbours and coastal domain.

A case study brought to our attention, *Whangairoa Harbour Care:Community initiative to restore a harbour and a fishery* demonstrates what can be achieved by a small community group assisted by the Whangairoa Harbour Care Society led by Mr F Litchwark. He is a fisheries officer who set out to improve the quality of the water entering the harbour in order to improve its overall ecology. Assisted by grants from Environment Waikato and the Lottery Grants Board, and with the help of Community Taskforce Workers in collaboration with the relevant landowners, particularly the farming community, the results have been significant. Storm-water runoff has been improved, intertidal margins fenced and extensively planted, resulting in clear water, reduced bacterial contamination and sediment loading, together with the return of shellfish to the intertidal areas and harbour margins. This illustrates what may be achieved by councils and community groups working together to provide a better coastal

[179] *Reducing Sedimentation*, Environmental Defence Society Incorporated 2007, 136.
[180] #149 Peart.

environment. We saw a similar collaboration between the community and councils over dune restoration in the Bay of Plenty.

In assessing the evidence we agree with EDS and others that sedimentation is an issue that needs to be directly addressed if the NZCPS is to effectively address the ecological health of marine areas. The management of catchment-derived sedimentation, in Ms Peart's view, needs to be driven from the CMA back up the catchment rather than vice versa. The NZCPS thus needs to include a strategic and targeted approach to reducing sedimentation which requires local authorities to identify areas within the CMA at high risk from sedimentation such as harbours, estuaries, embayments and marine protected areas to provide for their protection and we recommend accordingly.

The draft sedimentation policy put before us by numerous submitters was stated as follows:

> All consent authorities shall:
>
> (a) monitor sedimentation levels in high risk areas;
>
> (b) assess sedimentation impacts before releasing rural land for urban development, and ensure development will not contribute to significant and lasting stress on the marine environment;
>
> (c) ensure that, in catchments draining into marine areas of high value and sensitivity to sedimentation, stock are excluded from the coastal marine area and water bodies within a prescribed time frame.

We recommend that a new policy be introduced in addition to amended policy 45 (new policy 24), headed Sedimentation and to state as follows:

> **Policy 25 Sedimentation**
>
> **All decision makers must:**
>
> **(a) assess and monitor sedimentation levels and impacts on the coastal environment before allowing land to be subdivided or developed;**
>
> **(b) ensure that subdivision, use or development will not result in a significant increase in sedimentation in the coastal marine area, or river systems subject to tidal influence;**
>
> **(c) control the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry; and**
>
> **(d) reduce sediment loadings in runoff and in stormwater systems through appropriate controls on land use activities.**

Policy 46 Mixing zones

The management of discharges to water in the coastal environment shall have particular regard to the sensitivity and resilience of the receiving environment, and to the nature of the contaminants to be discharged and their associated risks, and shall:

(a) avoid the use of large mixing zones to dilute discharges with high contaminant loadings;

(b) avoid adverse effects on the life-supporting capacity of the water within a mixing zone; and

(c) avoid adverse effects that are more than minor after reasonable mixing.

'End of pipe' water quality standards shall be considered where necessary to avoid significant adverse effects at the point of discharge.

The s32 Report

> [An] objective … requires that water quality in the coastal environment be maintained, or be improved over time where it has deteriorated from its natural state. However, some discharges or contaminants are necessary to allow people and communities to provide for their social, economic, and cultural wellbeing, and these can lower water quality, particularly in the 'mixing zone' around the point of discharge. Impacts can be reduced by avoiding the use of large mixing zones, protecting the life-supporting capacity of waterbodies and ensuring that discharges are of a standard that avoids adverse effects (other than minor effects) outside the mixing zone. Providing guidance on these matters assists in determining reasonable mixing zones in terms of both the area and the scale of effects. Alternatives to providing for mixing zones such as an end of pipe standards also need to be considered where there is the potential for significant adverse effects from the discharge. In achieving [an] objective … it is therefore appropriate to provide clear guidance in relation to these activities.

Submissions

- **Individuals and community groups**

Many individuals, Conservation Boards and Societies, Royal Forest and Bird Society branches, and community groups like Friends of Golden Bay, Bay Watch Hawke's Bay, as well Tourism Industry Association NZ, strongly support the policy, with several also seeking, again, a decision that national standards also be established for water quality requirements. The Council of Outdoor Recreation Associations of New Zealand (Coranz) supports mixing zones, commenting they should have been required at Moa Point, Wellington, to prevent the water recreationalists having to put up with pollution. ECO however, considers mixing zones should be limited and their effects on threatened species avoided. Only a few individuals opposed mixing zones altogether however, requiring all pollution to be remedied at source. Submitter, Mr Kohlis considers mixing zones do nothing to minimise adverse effects; that

they are very rarely monitored to measure true effects. He considers standards should be set on the receiving waters wishing to see mixing zones replaced with an 'end of pipeline' standard.

- **Iwi**

Maori organisations supported by NZHPT which submitted on this policy variously consider:-

- it is essential for the health of Taiapure (the East Otago Taiapure Management Committee);
- it provides for tangata whenua to contribute to the identification of particular interests in affected waters and/or water quality that is unsuitable or constrains existing traditional uses (Ngati Awa);
- the only way to accurately assess the concentration of contaminants from a discharge to the coastal environment is to compare it with where reasonable mixing has occurred through implementation of 'end of pipe' standards on resource consents and they suggest an amendment to the policy to signal this (Waikato Tainui, Hauraki Maori Trust Board, Kahungunu);
- Ngati Wai prefers the word 'resilience' to 'capacity' because it has a 'bounce back' factor which is a major component of ecosystem-based management;
- express support for the policy but seek consideration for water that is being managed for specific classification pursuant to the Third Schedule RMA (Kahungunu).

The Te Tuma Kaituna Trust Groups[181] consider that this policy will lead to a variety of interpretations and cause confusion. They query if policy 46 (a) 'large mixing zones' are to be avoided, is it appropriate to use small ones? They ask surely large mixing zones and maximum dilution is the best option? Further, policy 46 (b) defeats the purpose of mixing zones and is at odds with policy (c) (and also policy 4).

- **Councils**

The regional and local councils vary in their responses to the policy. EBOP considers under the RMA, mixing zones are given status of being 'sacrificial', hence while it agrees with policy 46 (a) (that mixing zones should be as small as possible), it does not support the current wording of policy 46(b), which would not even allow for the most trivial adverse effects on life supporting capacity. This, it considers, is at odds with the RMA. And if it were to be implemented it is likely to be open to legal challenge. The Hawke's Bay Regional Council considers the policy would benefit from splitting into two parts (point sources and diffuse discharges) and it requires an amendment to that end. It also suggests that councils should consider the use of 'end of pipe' standards when preparing policy statements and plans but not have to reconsider their use for each and every resource consent application. The council also challenges those who object to 'big' mixing zones so as to avoid their use because they may be appropriate and practical in some circumstances.

Other councils suggest:

[181] Te Tuma Kaituna 14 Trust ; Te Tuma Kaituna 11B2 Trust; and Ford Land Holdings Ltd.

- the term 'large mixing zones' needs a definition, and in policy 46 (a) it is subjective and does not provide useful guidance: for example the RMA talks about 'reasonable mixing zones';
- treatment at source should be promoted;
- the policy establishes higher threshold tests than the RMA;
- a baseline water quality standard needs to be established;
- the term 'where reasonably practicable' should be inserted at the end of the first sentence;
- there will be high implementation costs for small councils;
- what is meant by 'high contaminant' loadings in clause (a)?

- **Infrastructure companies**

The infrastructure companies and the development companies are more or less unified in their opposition to the policy in its present form and require amendments[182]. They consider the policy is inflexible and does not adequately reflect the language of the RMA: they support the use of mixing zones as a recognised way of reducing the adverse effects from the discharge of contaminants and are critical of the policy which suggests avoiding large ones. They also consider 'end of pipe' water quality standards are useful, where necessary, to avoid significant adverse effects at the point of discharge. Meridian however, observes that the policy adds an additional set of requirements to the existing regime provided by ss15, 15A and 107 RMA. It also questions whether policy 47 (b) is achievable because it encompasses the use of a 'mixing zone' which is not a phrase used in the RMA – although the Act does refer to 'reasonable mixing' in s107. Further clause (c) requires the management of discharge to water in the coastal environment to 'avoid' adverse effects that are 'more than minor'. This is not the test contained in s107 RMA. Therefore both clauses (b) and (c) should be deleted. Meridian also requests that a further explanation be included to clarify the situations in which 'end of pipe/ standards might be imposed.

- **Engineering interests**

IPENZ submitted on a number of issues:-

- details relating to mixing zones should be left to the RMA as they are site specific;
- the policy as set out could be interpreted so that water quality standards do not apply inside the mixing zones, thus the definition of mixing zones in the glossary should be qualified at the end by including the words 'apart from conditions within the mixing zones covered in policy 46';
- policy 46 (c) demands a higher test on adverse effects after reasonable mixing than does the RMA by removing the word 'significant' and moving the 'significant adverse effects' test to the point of discharge: there is also a higher test applied in the mixing zones in policy 46 (b); this shift in the level of testing of coastal environment water quality and ecosystem effects should be highlighted either in the policy or in guidelines;

[182] An exception is Contact Energy which challenges all requirements of policy (a), (b), (c) and seek its deletion.

- the inclusion of 'end of pipe' water quality standards reflects modern trends in setting resource consent conditions but needs to reflect the discharges reduced efforts on coastal receiving-water monitoring.

Mr Bradley gave evidence on his own account. He has been involved in advising a wide range of local authorities throughout New Zealand, in particular the consenting of major municipal wastewater discharges throughout the country, as well as a review of Auckland's Watercare Services Ltd (Mangere plant) discharge. In his submission Mr Bradley supports some of the matters raised by IPENZ. He challenges:-

- use of the word 'resilience' instead of 'assimilative capacity' in the second sentence;
- confirmation of the word 'eco-system re-entry' to reflect the use of eco-system services and the fact that with the appropriate degree of treatment and receiving water bodies can sustainably accept treated wastewater particularly when the concept of a mixing zone is taken into account (see Ministry for the Environment's *Sustainable Wastewater Management Handbook 2003)*;
- as to policy 46 (a) the submitter questions what a 'large' mixing zone is and the general rule is as small as reasonably practicable; the Ministry for the Environment has issued guideline notes (above) on how to approach the question of the size of mixing zones and how they should be assessed from an environmental effects point of view; Mr Bradley also notes that different mixing zones are nowadays frequently being defined for different contaminants; he advises this practice should be allowed and encourages as it provides an effective and BPO approach to sustainable management in terms of the RMA;
- with respect to policy 46 (b), Mr Bradley has considerable problems in terms of relating to the term 'within a mixing zone'; this appears to be in conflict with allowing the RMA concept of a mixing zone (as included in policy 46 (c)) ('reasonable mixing') outside of which significant potential and adverse effects shall be 'no more than minor'. As further drafted 'avoid adverse effects' appears to be an absolute statement and taken literally if applied within the mixing zone would mean that the treated discharge containing contaminants would need to be the same (baseline) quality as the receiving water quality and ecology;
- with respect to policy 46 (c) this is consistent with the RMA and Mr Bradley questions whether it needs to be stated at all;
- finally, Mr Bradley is unsure of the rationale for the 'end of pipe' statement; the normal procedure for consenting treated wastewater discharges is that the assessment of environmental effects works back from an appropriate water quality / sediment quality / ecological limits at the edge of the mixing zone(s) (taking into account background levels) and then determines the appropriate levels of contaminants in the treated wastewater discharges themselves (i.e. end of pipe discharge); these contaminant levels then become the discharge permit compliance limits and are placed on the 'end of pipe'; the important point is that they provide for a mixing zone and in that context he supports 'end of pipe' treated wastewater parameters; but as drafted this policy statement appears to conflict with the 'reasonable mixing' concept in the RMA.

The wastewater companies such as Metrowater and Watercare Services were critical of policy 46 also. Metrowater considers policy 46(b) and (c) are too absolute because they do not take into account factors which contribute to water quality deterioration such as population growth, the time it takes to implement infrastructural solutions and financial constraints. While this may be appropriate in an undeveloped area it is not appropriate in developed areas with existing drainage systems made up of pipes often 50-100 years old, such as in Auckland City. The policy needs amending too, to account for socio-economic factors when considering the appropriateness of controls on water quality deterioration. The costs of preventing any adverse effects may be greater than the adverse effects themselves. And the directive in the policy to use 'end of pipe' water quality standards prescribes a certain method for managing effects that may pre-empt the outcome of plan development processes and techniques that provide for better environmental outcomes. It is better to provide for flexibility of management methods, which may vary between councils, and which is achieved by application of the BPO in the factual circumstances which arise to minimise effects. Care needs to be taken too, that use of the 'end of the pipe' directive does not override s70(b) RMA as to efficiency and effectiveness. Finally, the company's queries whether 'methods' of treatment should be specified at all in a national policy document with solutions to be derived at the regional level in the context of the nature of the receiving environment.

Mr Mayhew, resource management consultant to Metrowater, in an expanded submission does not consider the term 'mixing zones' is an appropriate heading for policy 46 – it relates rather to the management of adverse effects by identifying matters to be taken into account in considering the discharge of contaminants of which mixing is one. He addresses the various clauses in policy 46:

- on policy 46 (a) he expresses agreement with the policy but not the wording because the reference to 'dilution' confuses the purpose of the mixing zone; while some dilution occurs with the process of mixing that is not the objective of a mixing zone;
- on policy 46 (b) he considers it is not realistic to avoid adverse effects within mixing zones; the guidelines the Ministry for the Environment provided on reasonable mixing recognises there is a non-compliance zone in which a process of physical mixing takes place without dilution; in that zone, relevant water quality may not be met, and it may be reasonable to allow some degradation and adverse effects provided the adverse effect is minor and it does not frustrate the management objectives in the waters;
- on policy 46 (c) he concludes this creates an expectation that all discharges will be no more than minor after mixing; this is not realistic in all circumstances, particularly in large urban environments such as Auckland;
- and as to the 'end of pipe' water quality, water quality standards are an option that should be considered for managing the adverse effects of discharges; but there are also other options under the RMA, such as BPO, and land use controls.

Watercare Services is critical that the policy does not fully realise the potential of mixing zones to reduce contaminants Mr G Maskill consultant planner to the company reflects that although modern wastewater treatment plants are effective in reducing adverse effects from effluent discharges it is not practicable to avoid all adverse effects as the policy suggests. Mr Maskill gave evidence that the purpose of mixing zones is to establish a limited area in which

adverse effects are allowed – adverse effects which are more than minor in that very discrete mixing zone. Even if effluent is pure water the reality is if freshwater is introduced into salt water it floats – a discrete layer of freshwater over saltwater exists until there is some exposure to the environment.

- **Professional organisations**

NIWA considers this policy goes some way to clarifying an area of much debate and frustration in consent hearings. As to the adjective 'large' before 'mixing zones', NIWA observes this appears to have been written with contaminants such as sewage in mind. It considers that large mixing zones may be beneficial for mitigating effects of deposits from aquaculture farms (if these are to be considered discharges under this policy). And it queries whether the policy statement needs to define what is meant by 'discharges'. Also stakeholders may need guidance on the definition of 'large' in policy 46 (a) in reference to the extent of mixing zones. NIWA also considers policy 46 (b) proposes a higher test to be applied inside the mixing zone. This shift in the level of testing coastal environment water quality and ecosystem effects, compared with the RMA (minimum standards), should be indicated here or in guidelines to alleviate confusion or perceived inconsistencies with the RMA (ss15B and 107(1)). NIWA notes too that policy 46 (c) demands a higher test on adverse effects after reasonable mixing than the RMA (by dropping 'significant'), and the 'significant adverse effects' test is moved to the point of discharge when using 'end of pipe' standards. What constitutes 'minor effects' may need to be defined here or in guidelines.

Like IPENZ, NIWA observes the inclusion of end of pipe water quality standards reflects modern trends in setting resource consent conditions but needs to be commensurate with the less effort required on often fruitless coastal 'receiving water monitoring' by the discharger, as distinct from the 'ecological monitoring' that should continue. The definition of 'mixing zones' in the Glossary at the end of the NZCPS should also be qualified by 'apart from conditions within the mixing zone covered in policy 46'. Otherwise the policy reads that water quality standards do not apply inside the mixing zone.

The NZ Marine Sciences Society requests that the policy be expanded to include 'all ecosystem services'. It observes that there are many aspects of the coastal ecosystem that are necessary to maintain ecological health and allow sustainable use, but it is only 'water quality' that is mentioned in the policies. Horticulture New Zealand requests a definition of 'reasonable mixing' in order to obtain better national guidance and direction.

Issues Arising

It is clear from submissions and the amendments suggested that there is much confusion around the management of discharges of contaminants to coastal waters, definitions, and understanding their spatial extent or the zone of non-compliance of 'mixing zones', and what the 'end of pipe' water quality standards achieve. The issues are thus largely technical. The fact that the expert submitters referred to technical guidelines too which appear to clear up such misconceptions but appear not to be necessarily universally known or applied, other than by those involved in the waste water industry and councils, confused matters further[183]. And so for individual submitters, waste discharge issues can be even more puzzling.

[183] *Australian and New Zealand Guidelines for Fresh & Marine Water Quality* 2000. *Microbiological Water Guidelines for Marine and Freshwater Recreational Areas* 2003.

- **Is the policy needed?**

In his introduction to his submissions on the water quality policies Mr Bradley states the Board should not underestimate the influence of the current NZCPS, which relate to water quality issues. It has resulted in better appreciation of Maori cultural and spiritual effects and driven extensive (and expensive) investigations and consultation with iwi. Problems have in the past arisen with the confusion around terminology and the lack of clarity on why there is a preference for land disposal other than for Maori spiritual and cultural reasons. These difficulties have arisen because some design solutions have resulted in measurable deterioration of treated wastewater discharged to the marine environment (causing significant adverse effects such as turbidity, algal growth, micro-biological contamination). In the past wastewater designers have looked at only 'end of pipe' approaches with mixed results. In Mr Bradley's opinion it is much more energy and cost efficient to adopt a holistic integrated approach to wastewater treatment with an assessment of all effects along the way[184].

Currently 80% of treated municipal wastewater (generally containing trade waste and human effluent sewage) is discharged to the coastal environment. There are 17 significant ocean outfalls and 5 new recently consented outfalls including Christchurch, Dunedin, and North Shore. There exist many short/shoreline outfalls and harbour discharges including Mangere, Nelson, Invercargill, and Whangarei.

Clearly waste discharge technology is rapidly changing. In the past such discharges often received minimal treatment but in the last 13 years the majority of large municipal sewage treatment plants discharging to coastal waters have had significant upgrades, resulting in reduced contaminant loadings and more appropriate discharge locations. Relevant resource consents also now require more vigorous assessments than they did 13 years ago and monitoring requirements are more comprehensive[185].

We conclude that there is still a need for a policy on discharge of contaminants.

- **The resilience of the receiving environment**

If this policy is to be retained, the evidence indicates that the term 'assimilative capacity' would more appropriately address what occurs with the discharge of wastewater after treatment to a mixing zone. The Nelson Marlborough Conservation Board echo Mr Bradley's concerns that the policy would be more effective if framed in terms of ecosystem services. It states:

> Assimilation and transformation of waste is a natural ecosystem service that needs to be sustainably managed. Where this service has been degraded, the deposition of waste should be particularly avoided unless the service is restored. Where the natural or enhanced ecosystem service is still functioning well the capacity should define the limit of acceptable discharge. Wherever possible unmodified healthy or enhanced natural ecosystem services should be used in preference to engineered solutions unless the engineered solutions (and the increased activity they support) are thoroughly assessed in terms of their wider long-term consequences[186].

Mr Bradley advises that in the Ministry for the Environment's *Sustainable Wastewater Management Handbook 2003*, the term 'eco-system re-entry' has been adopted as it is

[184] #386 Bradley.
[185] NZCPS review *Scoping paper for Coastal Water Quality*, March 2006, 12-25.
[186] #422.

consistent with the concept of eco-system services. He confirms that the adoption of this term was purposely chosen to reflect the use of assisting services and the fact that with the appropriate degree of treatment receiving water bodies can sustainably accept treated wastewaters particularly when the concept of a mixing zone in the handbook is taken into account.

We add a reference to the capacity of the environment to assimilate contaminants: (clause (1)(c)).

- **The treatment of mixing zones**

Previous reviews identified a need for policy guidance on mixing zones for discharges, and for standards or targets for receiving waters around the mixing zone. The term 'mixing zone' is not used in the RMA but is generally used to describe the area within which 'reasonable mixing' of contaminants from discharges occurs in receiving waters and within which the water quality provisions of the RMA do not apply. Excessive 'mixing zones' have been mentioned as undermining water standards set in plans, particularly if plans are silent on the extent of such zones. For example, the 'mixing zone' originally proposed for discharges to the Avon-Heathcote estuary at hearings on the Christchurch City sewage discharges was the whole of the estuary, notwithstanding that a water quality standard had been established for the estuary in the coastal plan.

Mr Bradley identified that different mixing zones are used for different contaminants and he notes the Ministry for the Environment has issued guideline notes on how to approach the question of size of mixing zones and how they should be assessed from an environmental effects standpoint.

We accept that policy 46(b) is inconsistent with policy 46(c) – the former seeking to 'avoid' adverse effects on the life supporting capacity of water 'within the mixing zone' and the latter allowing for 'reasonable mixing' (as well as setting a standard which allows only for minor adverse effects which may not be provided for at all as a result of reasonable mixing). The Board is concerned there is some misunderstanding around wastewater treatment issues. As Mr Bradley points out, taken literally, 'avoiding adverse effects within the mixing zone', would mean that the treated discharge containing contaminants would need to be the same 'baseline' quality as the receiving water quality and that effectively there would be no mixing zone.

We adopt Mr Mayhew's suggestion of using a mixing zone at the smallest zone necessary and link it to achieving the required water standard. We also see the justification for minimising (a lower threshold) adverse effects on the life supporting capacity of water within a mixing zone.

- **'End of Pipe' standard**

This statement as an addendum to the policy concerned some submitters as they considered it. It appears to conflict with the' reasonable mixing' concept in the RMA. Mr Bradley says this:

> The normal procedure for consenting treated wastewater discharges is that the assessment of environmental effects works back from an appropriate water quality / sediment quality / ecological limits at the edge of the mixing zone(s) (taking into account background levels) and then determines the appropriate levels of

> contaminants in the treated wastewater discharges themselves (i.e. end of pipe discharge). These contaminant levels then become the discharge permit compliance limits and are placed on the 'end of pipe'; but the important point is that they provide for a mixing zone [187].

Mr Bradley concluded by saying there are other methods for managing the adverse effects of discharges into the coastal environment as well as 'end of pipe' standards.

We conclude however, that regard should be had to the need to discharge contaminants at the concentration proposed. Adding that requirement is consistent with giving proper consideration to the matter to be addressed under s105(1) including possible alternative methods and other receiving environments. Where appropriate too end of pipe conditions may be required.

- **Conclusion**

We recommend that policy 46 be re-drafted as follows and be included in new policy 26 as clause (1):

> **Policy 26 Discharge of contaminants**
>
> **(1) In managing discharges to water in the coastal environment all decision makers must have particular regard to:**
>
> **(a) the sensitivity of the receiving environment;**
>
> **(b) the nature of the contaminants to be discharged, the need to discharge them at a particular concentration and the associated risks; and**
>
> **(c) the capacity of the receiving environment to assimilate the contaminants;**
>
> **and must:**
>
> **(d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;**
>
> **(e) use the smallest mixing zone necessary to achieve the required water standard; and**
>
> **(f) minimise adverse effects on the life-supporting capacity of water within a mixing zone… .**

[187] 'Reasonable mixing' may generally be determined by the nature of both the discharge and the receiving environment.

Policy 47 Ecological effects of discharges

Discharges of contaminants to water in the coastal environment, singly or in combination with other discharges, shall not have more than minor adverse effects, after reasonable mixing, on the indigenous species, habitats, or ecosystems of those waters.

The s32 Report

The s32 report states:

> Discharges of contaminants (either on their own, or in combination with other contaminants) can adversely affect aquatic ecosystems, particular in enclosed or semi-enclosed waters, or in situations where contaminant loadings are high or contain bio-toxins. The maintenance of water quality as required by [an] objective … should ensure that the adverse effects of discharges on indigenous species, habitats and ecosystems are no more than minor outside of the mixing zone. Ecosystems and their associated habitats and species are part of the natural character of the coastal environment, and safeguarding their life supporting capacity is consistent with the sustainable management purpose of the RMA and [an] objective … of the proposed NZCPS. It is therefore appropriate that policy direction concerning the impacts of discharges on indigenous ecosystems, habits and species be included in the proposed NZCPS.

Submissions

- **Individuals, iwi and conservation groups**

Some individual submitters, several Maori organisations and a number of Conservation Boards and Societies such as Royal Forest and Bird Bay of Plenty and Nelson Branches as well as ECO endorse the policy. The Nelson Marlborough Conservation Board believes it should also be framed in terms of ecosystems services. The Council of Outdoor Recreations Ltd considers there also can be adverse effects of contamination of fish or shellfish taken as wild food. This is thus an adverse human health effect which the policy does not address. The Waikato District Health Board commends the intent of these policies because they minimise the adverse effects of these discharges given the potential affect they can have on health. Save the Otago Peninsula (STOP) endorses the policy while acknowledging at the same time that the technology to removing contaminants is still evolving. Some individual submitters and Bay Watch Hawke's Bay identify that national standards be established for water quality issues identified in the policy.

- **Councils**

Those councils that did submit on this policy variously:

- express concern for the cost implications of the policy (Southland District Council, Wairoa District Council which also queries how the baseline water quality would be measured);

- express concern that the policy may be in conflict with policy 44 given different threshold tests (Whangarei District Council);
- consider the policy requires amendment to be consistent with s107 RMA (Christchurch City Council);
- express support for the policy (Chatham District Council, Northland Regional Council, Whakatane District Council);
- consider it may be ultra vires as is inconsistent with baselines in s70(1)(g) and s107(1) RMA.

- **Infrastructure and marina companies**

The infrastructure and marina development companies (and the Auckland District Law Society), either seek the deletion of the policy as it is, or because it 'may be' inconsistent with the baselines in s70(1)(g) and s107 that disallow only 'significant adverse effects' not 'more than minor effects'. Contact Energy Ltd considers too the policy introduces new legal standards applying to discharges outside of mixing ones, in that the discharge 'shall not have more than minor adverse effects, after reasonable mixing, on indigenous species, habitats, or ecosystems of those waters'. This is inconsistent with s107(1)(g) which contemplates there may be adverse effects on aquatic life which are acceptable as long as they are not 'significant'. This inconsistency is likely to be a significant impediment to current and future discharges into such areas.

- **Engineering interests**

Metrowater considers the policy is onerous for developed areas. As an example, unpainted galvanised roofing (or galvanised roofing with deteriorated paint) has given rise to the accumulation of zinc in the receiving environment. Replacing all of the roof structures will contribute to the problem, and preventing installation of future roofs that could generate the same problem may not be realistic, and could only be implemented over time.

IPENZ recommends that the terms 'minor adverse effects' and 'reasonable' be defined. Mr Bradley considers that this policy is already embedded in the provisions of the RMA.

- **Fisheries interests**

Of the fisheries organisations, SeaFIC notes that it is not only indigenous species that can be adversely affected by the discharge of contaminants – commercially imported species can be too, such as pacific oysters and Chinook salmon, and it introduces an amendment to the policy to reflect that fact. Sanford Ltd echoes this submission and seeks to include all economically valuable commercial species also. Aquaculture NZ submits similarly, endorsing that discharges of contaminants in the coastal environment shall have 'no more than minor effects after reasonable mixing' on indigenous and commercial species, habitats or ecosystems of those waters. The NZ Marine Sciences Society as it did in policy 46, seeks to include all ecosystem services within the amendment. Dr L Slooten from the Department of Zoology, Otago University, considers similarly.

Issues Arising

This policy is ultra vires the RMA because it is inconsistent with the baselines in s70(1)(g) and s107(1) RMA. The discharges in question are only to have no more than minor effects

outside the mixing zone when the test is **'significant adverse effects on aquatic life after reasonable mixing'**. Nor should discharges be limited to affect only the 'indigenous species, habitats or ecosystems' of coastal waters. Commercial species should be included too because they may be just as vulnerable as indigenous species and their deterioration will have adverse economic consequences also.

The Board recommends that policy 47 be deleted accordingly. It is not effective in providing a clear direction to local authorities and nor is it efficient because it generates greater costs than benefits.

Policy 48 Discharge of human sewage

Discharge of human sewage directly into water in the coastal environment, without passing through land, shall occur only where:

(a) it better meets the purpose of the Act than disposal onto land;

(b) there has been consultation with the tangata whenua in accordance with tikanga Maori and due weight has been given to Sections 6, 7 and 8 of the Act; and

(c) there has been consultation with the community generally.

The s32 Report

The s32 report states:

> Wastewater discharges can have adverse effects on waters in the coastal environment, and their associated amenity and cultural values. Maori cultural and spiritual values can be particularly affected if wastewater containing human sewage is discharged directly to water without passing through land. However, most cities in New Zealand discharge wastewater either directly or indirectly to the CMA, and it is often the most suitable physical site for new or upgraded sewage discharges. Notwithstanding, the potential adverse effects of proposed discharges of wastewater, and the reasons for a coastal discharge, need to be carefully evaluated and land based alternatives should be considered where these are suitable … guidance is required about the circumstances when discharges of wastewater containing human sewage are appropriate …
>
> This policy is based on existing Policy 5.1.2 in the NZCPS (1994). Additional costs associated with its retention are considered to be low as it should have been implemented through existing discharge consents in any event, and for new consents, evaluation of environmental effects and alternatives to a proposed discharge is required under the RMA (s105).

Submissions

- **Individuals and conservation groups**

Some individuals support the policy in its entirety, others raise the need for national environmental standards in this situation, and then there are others who re-state their concerns that the issue of sediment run off from land adjacent to waterways has not been identified as an issue and therefore not been dealt with. Others again are concerned that all human waste material should be treated before being discharged.

A number of the Forest and Bird Branches and Conservation Boards approve the policy or seek minor amendments. Action for the Environment wants a time limit on the ending of the discharge of raw or primary treated sewage into the marine environment. The Tourism Industry Association of New Zealand supports the policy in its entirety.

- **Iwi**

Some Maori submitters such as Te Atiawa strongly support it. Te Uni o Hau, a hapu of the Ngati Whatua iwi consider it is consistent with its tikanga. The East Otago Taiapure Society oppose it for discharge of sewage directly into water is never acceptable to its members. The Waimarama Maori Committee considers that the policy requires an amendment because cultural implications have a distinct importance for the quality of the discharge that may be achieved through screening and so on, for although sewage treatment may reach technical standards for health, its spiritual affront remains and requires substantive consideration.

- **Councils**

The councils which submitted consider variously that:

- policy 48(c) is too vague – it is unclear whether this means only the affected community or the local/district/regional community or all of these;
- the wording of 'without passing through land' should be deleted as what constitutes 'land' in this situation has been the subject of legal debate and case law;
- the policy should include a provision recording such discharge is acceptable if it is treated to a standard that endures the removal of pathogens and other significant pollutants;
- the policy is able to be interpreted in different ways; what is meant by phrases, 'human sewage' and 'passing through land'; the policy also requires clarity/definition as to whether it is treated or untreated sewage;
- amendments should be made to the policy to remove 'without passing through land' or state that it is to address tangata whenua concerns rather than water quality;
- 'passing through land' should be replaced by 'without treatment';
- the policy gives mixed messages – is it about human sewage discharge or wastewater; also pipes pass through land so are outfall pipes able to be considered?;
- the wording 'over time' should be included, as for small councils there are existing systems and a small ratepayer base to fund change; the issue of recent changes to the Ministry of Health's Sanitary Waste subsidy scheme which will further exacerbate funding issues is again raised;
- the whole issue is dealt with by the RMA and does not need to be repeated;
- a major district council considers the policy gave rise to difficulties in the past and as drafted, will do so again;
- the policy gives little guidance and should be replaced with 'it is best practicable option in accordance with the Act';
- the policy appears to be in conflict with the Resource Management (Marine Pollution) Regulations 1998[188];

[188]The Resource Management (Marine Pollution) Regulations 1998 however establish controls over certain discharges from ships and offshore installations and prohibit waste incineration in the CMA. It sets minimum separation standards for discharges of sewage from ships. Rules controlling this activity can only be included in plans in certain circumstances and if they are more stringent than the regulations.

- both policies 48 and 49 are overly prescriptive, they reduce options and increase costs for coastal discharges in the future without being justified environmentally;
- one district council is adamant that discharge of any contaminant should not be permitted under any circumstances without first being removed (contamination) and/or treated first (sewage);
- the ARC considers that the phrase 'without passing through land' should be amended to note that this requirement is to address tangata whenua cultural concerns. It is not meant to address water quality parameters, as in some cases 'passing through land' will decrease its quality.

- **Engineering interests**

NIWA suggests that the policy be altered to provide a better linkage with policy 9 'Biosecurity'.

Watercare Services observes that the opportunity for consent authorities and other parties to request investigation of land-based options is covered by s105(1)(c) RMA and does not need duplication in the NZCPS. And in effect clauses (b) and (c) are ultra vires as they are in direct conflict with s36A RMA in respect of resource consents. Metrowater requires a redraft of the policy to require consultation with the community only where significant adverse effects will occur. Mr Bradley, as a wastewater engineer, has a series of questions:-

- what is meant by passing 'through land' and 'onto land' in clause (a); if they are not the same then why is (a) included at all?;
- is it because of tangata whenua's abhorrence of the discharge of (treated) human sewage to the coastal marine environment; if so that reason needs to be stated explicitly;
- if (a) is included because of a general perception and wider community understanding that disposal through or onto land is better than appropriately treated wastewater into the marine environment, then why is the policy required at all?

- **Infrastructure interests**

The Port Companies, while accepting the policy, consider it may need clarification as it should enable human sewage that has been appropriately treated to be discharged into water in the coastal environment. Also in policy 48(b) the use of the phrase 'in accordance with tikanga Maori' is ambiguous and may be open to wide interpretation.

- **Fisheries interests**

New Zealand King Salmon Limited opposes any discharge of sewage directly into water, especially when water quality and other values are compromised – and suggests an amendment to that effect. It seeks also to require all boats to be equipped with holding tanks, and consents renewals for town or other schemes be only accepted for adequately treated discharge. Aquaculture New Zealand strongly supports the policy as written. But the Marine Farming Association equally strongly opposes any discharge of human sewage into water and has strong reservations in respect of the policy.

Issues Arising

- **What is the purpose of policy 48?**

Is the purpose of this policy to meet the concerns of Maori in particular and the community generally - or just Maori?

The Report and Recommendations of The Board of Inquiry Into the New Zealand Coastal Policy Statement[189] contains at 5.1 – 5.2.2 aspects of the forerunner of policy 48, – that is desirable to achieve the purpose of the RMA, namely enhancing water quality – and in particular when:-

(a) there is a high public interest in, or use of the water; or
(b) there is a particular tangata whenua interest in the water; or
(c) there is a particular value to be maintained or enhanced; or
(d) there is a direct discharge containing human sewage.

It is stated in that report that the rules should provide that discharge of human sewage direct into the water, without passing through land, may only occur where (a), (b), (c) above exist. These are close to the requirements of policy 48 which require consultation with Maori and the community (the latter as a substitute for high public interest).

Clauses (a), (b), (c) of 5.2.2 therefore suggest a dual interest by both Maori and the community in the direct discharge of sewage to water and this is reflected again in the provisions of policy 48(b), (c). Maori place great spiritual significance on the sea and its value for their traditional fisheries. Those values can be compromised by the discharge of pollutants, but especially that of human waste.

We conclude also, from the tenor of submissions from individuals, NGOs, Conservation Boards and community groups, that there is sufficient interest in the community about the ongoing discharge of sewage into the waters of the coast to warrant including these interests here. It is not just a tangata whenua issue.

- **Disposal onto land?**

Policy 48(a) infers that 'disposal onto land' is generally acceptable to Maori and the community. But the evidence to the inquiry does not substantiate this. We noted Kahungunu and the Hauraki Maori Trust Board wish for an addition (d) to be added to the policy – namely that 'it has been treated' which infers from these two iwi authorities at least human sewage may be discharged without passing 'through the land' but only after treatment. It appeared to the Board that whereby in the past tangata whenua generally preferred discharges to take place on land, or to sea only after 'passing through land', whatever that may mean, those views are changing.

The point is also made in the expert evidence that the discharge directly through outfalls is linked to treatment plants or to outfalls after the treated water has also passed through wetlands, oxidation ponds or other land contact type facilities such as rock papatuanuku land passages, the latter to meet the cultural and spiritual values of Maori. Land contact type

[189] 1994 Department of Conservation.

facilities are thus available to Maori and supported, but it will depend on the circumstances of each case.

Also, from Mr Bradley's evidence a majority of such disposal to water is through long and short outfalls currently 80-85% of New Zealand's treated domestic wastewater from municipal systems into the coastal environment on the coast. The reality of wastewater management in New Zealand has shown that in most cases discharge of treated human sewage, particularly large quantities, is not sustainable on the land in the long term nor does it meet a BPO approach or alternatives under the RMA.

Policy (a) should be deleted.

- **'Consultation with Maori'?**

With reference to policy 48(b) we accept the submission that s36A(1) RMA precludes consultation with Maori on resource consents and notices of requirement as a 'duty' but it does not preclude consultation. The same applies to the community generally under policy 48(c).

- **Conclusion**

We recommend that policy 48 be amended and become part of policy 26 as clauses (2) and (3) as follows:

> **(2) In managing discharge of human sewage decision makers must 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 mana whenua values and the effects on them.**
>
> **(3) Before including objectives, policies and rules in plans which provide for the discharge of treated human sewage into waters of the coastal environment all decision makers must have had early, meaningful and ongoing consultation with tangata mana whenua.**

Policy 49 Stormwater discharges

Adverse effects of stormwater discharges to waters in the coastal environment shall be reduced, over time, including by:

(a) promoting design options that reduce inflows to stormwater reticulation systems at source,

(b) reducing contaminant loadings, including sediment, in stormwater through appropriate controls on land use activities;

(c) avoiding sewage entering stormwater systems;

(d) setting stormwater discharge standards; and

(e) promoting integrated management of stormwater catchments;

and priority should be given to improving management of stormwater discharges where:

(f) existing uses or values of the receiving waters are adversely affected; or

(g) the cumulative adverse effects of discharges on receiving waters are significant.

The s32 Report

The s32 report states:

> Discharges of stormwater are a major contributor to degraded water quality and substrate contamination, particularly where discharges are occurring from urban areas, or to enclosed waters (like estuaries). These impacts can be addressed by improving stormwater management in urban catchments, and requiring new subdivision and development to avoid adverse sedimentation and contamination of waters in the coastal environment. To require the improvement of all stormwater discharges that are degrading the quality of receiving waters would impose considerable costs, and the authors consider it is appropriate in achieving [an] objective … to provide guidance on priorities for enhancement.

Submissions

- **Individuals and conservation groups**

Most individuals and community groups that comment on this policy support it. Some individuals request an additional clause referring to the adoption of mitigation techniques. Several individuals are concerned that the policy should explicitly recognise non point source discharges from farming and other land use practices.

The Bay of Plenty Conservation Board seeks an additional policy to the effect that catchments are managed to avoid, remedy or mitigate effects on the coastal environment of land management practices, which include stormwater, sedimentation, industrial discharge, etc.

Other conservation boards and groups strongly support the proposed policy. Two suggest the inclusion of specific reference to preventing stormwater discharge into marine protected areas and marine reserves. One conservation group says that wetlands should be promoted as a means of cleaning stormwater and enhancing biodiversity. The Christchurch Estuary Association notes that 'contaminants' mean different things to different people. It seeks more clarity on the sediment loading standards to be attained for stormwater.

- **Iwi**

One iwi group calls for the policy to include reference to both point source and non point source discharges of stormwater. Two iwi groups note that policy (c) recognises the issue of sewage entering stormwater systems, but does not recognise the opposite. They consider that the issue of stormwater entering sewage systems needs to be recognised and reduced over time.

- **Councils**

A number of district councils and regional councils support this policy. Others seek further clarification of the general approach or specific clauses. Several councils say that there is a need to clarify who is to give effect to this policy.

The ARC considers that this policy does not adequately address the full range of stormwater impacts; and, that the wording is not clear. It submits that 'stormwater' should be defined because it is ambiguous as to whether it refers to water flowing off land, to stormwater infrastructure, or runoff from impervious surfaces. The Nelson City Council suggests that it would be more appropriate to focus on integrated management of stormwater catchments and upstream solutions to identify the best practicable options for avoiding contamination, rather than enforcing end of pipe discharge standards. The West Coast Regional Council considers that the policy is not practical or justifiable, unless it is established that adverse effects are more than minor. It recommends replacing 'shall be reduced' with 'shall be no more than minor'.

- **Issues around different clauses**

The Taranaki Regional Council asks why it is necessary to reduce inflows to stormwater systems in clause (a) if the inflow is not polluted and requests that the clause be deleted. The Auckland City Council says the intent of clause (a) is unclear and asks if it is referring to rainwater detention tanks or to reducing impervious surfaces. In terms of clause (a) the Wellington City Council considers the clause should be amended to read, 'promoting design options that reduce inflows to stormwater reticulation systems at source where conditions allows', because it has found that low impact solutions are not always possible due to lack of permeability and thin clay soils.

Several marina operators and property interests also say it is impractical in many cases to reduce stormwater inflows and suggest that this clause (a) has confused stormwater systems with the issue of preventing stormwater inflow into sewage systems.

Tauranga City Council and two property interests seek the addition of the phrase 'and appropriate stormwater treatment systems wherever possible' to the end of policy 49 (b). The Greater Wellington Regional Council recommends adding the following phrase to the end of the clause, '(including adoption of low impact urban design) and requirements for stormwater

treatment (where appropriate)'. The ARC considers that the clause should be rewritten to explicitly cover requirements such as source control and contaminant treatment, as well as controlling land use activities.

The Auckland City Council suggests inserting the words' where reasonably practicable' between 'avoiding' and 'sewage' in policy 49 (c). Watercare considers that clause (c) is not practicable because of the historical combined stormwater and wastewater network in Auckland. If the policy is to remain it considers the clause should include the phrase 'unless reasonable in the circumstances'.

The Wellington City Council is encouraged to see discharge standards proposed in clause (d) but believes this work can only happen after the characteristics of existing discharges and their effects on receiving environments have been investigated. The Greater Wellington Regional Council also believes work is required to investigate receiving environments and that this could have high costs for local authorities. It seeks government assistance for setting stormwater standards. EBOP does not support clause (d) and is of the view also that there needs to be national consistency with standards, which should be led by central government.

As to clause (d), Watercare and several property interests believe that the clause is not consistent with s107(1)(ba) of the RMA, which refers to 'after reasonable mixing'. Watercare submits that if a standard method is to be promoted, it should not be imposed through the NZCPS until such time as a NES is prescribed. These submitters consider that the clause should be deleted. The Auckland International Airport also considers that clause (d) is inconsistent with the RMA, which allows for and promotes the use of mixing zones rather than discharge standards they are impractical for stormwater and difficult to monitor. Along with Metrowater, it says that flexibility is essential and that the clause should be deleted.

The Hawke's Bay Regional Council considers that the policy should distinguish between point source stormwater discharges, diffuse sources and rainfall runoff.

Metrowater submits that clause (e) should be redrafted to read, 'promoting integrated management of stormwater networks or catchments because the stormwater network should be assessed as a whole'. Greater Wellington says that the term 'integrated management' needs clarification or definition.

The Wellington City Council has concerns about clause 49 (g) and asks from what baseline significant cumulative adverse effects of discharges is to be determined.

- **Other interests**

IPENZ considers that it is not practicable to set stormwater quality standards. It submits that the clause should be altered to require compliance with the best practicable option (BPO) that specifies appropriate methods for the construction and management of stormwater systems.
Aquaculture interests support the policy as a whole. The Tourism Industry Association, the NZHPT and the Waikato District Health Board do also.

Issues Arising

- **Water catchments**

The point was made by ARC through D. McCarthy, Manager of its Coastal Policy Group[190] that urban stormwater effects are arguably a matter of greater concern in Auckland than much of the rest of the country given the level of development in the region. But 70% of the region's catchment is not urban, and it is run off from rural areas which is causing considerable adverse effects on the marine receiving environment through sedimentation and increased nutrient presence. The ARC considers that by focusing on urban stormwater above, policy 49 fails to rise to the opportunity to also provide national direction on discharges to coastal waters from activities in rural areas. As pointed out too by the Bay of Plenty Conservation Board 'the activities in catchments, i.e. large scale (rural residential) subdivisions, earthworks, unsustainable farming practices, large scale changes in land use all manifest themselves in the coastal environment' – either through stormwater discharges or run off[191].

Sedimentation which is linked to run off we have already addressed in a new policy. Other policies also provide relevant national direction in activities in rural areas e.g. new policies 8-11, 13, 24 and the others parts of 26. In addition the amended policy 26(4) is intended to strengthen the consideration of activities involving discharges on a catchment by catchment basis.

Stormwater discharge can affect coastal processes by contributing to erosion thereby affecting coastal amenity. Poorly designed structures and scouring at outfalls were evident on a number of on site visits and a number of councils referred to their aging stormwater infrastructure which is gradually being replaced. The ARC considers that the prioritised and progressive improvement of the drainage infrastructure provides the opportunity to address not only contaminant effects but also to upgrade inappropriately obtrusive designs and to address scouring and erosion risks. Amended policy 26(4) should address this concern.

- **Control at source control**

Policy 49 (a) and (b) promote the reduction of stormwater flows and contaminants at source. Mr Mayhew for Metrowater argues for this approach because where flows and contaminants are not reduced in this way, the process produces the potential for adverse effects and the need for subsequent and generally less effective management. He considers however, that there are various methods by which this may be achieved in addition to design and land use with the emphasis on management at source.

- **National standards**

Many submitters seek robust stormwater discharge standards to be established by government to reduce or avoid the wastage of resources involved in a region by region development of a standard. Such standards are under the control of the Minister for the Environment and outside the functions, powers and duties of the Minister of Conservation in respect of the NZCPS.

[190] #364 McCarthy.
[191] #126.

- **Integrated management**

The notion of integrated management of all effects from stormwater catchments was supported by the engineers or consultants for wastewater companies who gave evidence. Mr Bradley identifies that too often managers have only looked at the 'end of pipe' approaches to the effects of stormwater effects on the coastal environment rather than holistic and integrated approaches. Only in this way will the focus shift to encompass not only water in the coastal environment, but to sediment and ecological issues. Mr Mayhew considered that for a fully developed city such as Auckland, it is desirable that integrated management occur on a 'whole of network basis' to ensure that improvements are optimised and prioritised across the city to ensure the best outcome is achieved.

Taking all these issues into account we recommend amended policy 49 become amended policy 26 under discharge of contaminants and aligned with other issues under that heading because they are integrally connected.

We recommend that policy 49 be amended to become part of new policy 26 clause (4) as follows:

> **(4) In managing discharges of stormwater all decision makers must take steps over time to avoid adverse effects of stormwater discharge to water in the coastal environment on a catchment by catchment basis by:**
>
> **(a) avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems;**
>
> **(b) reducing contaminant and sediment loadings in stormwater at source, through contaminant treatment and by controls on land use activities;**
>
> **(c) promoting integrated management of catchments and stormwater networks; and**
>
> **(d) promoting design options that reduce flows to stormwater reticulation systems at source.**

Policy 50 Ports and other marine facilities

Local authorities shall:

(a) require port areas and other marine facilities to avoid adverse contamination of coastal waters and substrate;

(b) ensure that the disturbance or relocation of contaminated seabed material and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed; and

(c) require ports, marinas and other relevant marine facilities to provide sewage and waste collection facilities for vessels, and for residues from vessel maintenance.

The s32 Report

The s32 report states:

> Runoff and other point and non-point discharges of contaminants from port areas and other marine facilities such as slipways and marinas can significantly degrade water quality and contaminate the seabed in and adjoining these areas. Dredging and dumping of material, particularly where this involves contaminated materials, can also give rise to adverse effects on water quality and the seabed. The provision of collection facilities at marine facilities for ships waste and maintenance residues would assist in avoiding contaminants and waste materials entering coastal waters from these sources. In achieving [an] objective … it is therefore appropriate to provide clear guidance in relation to these activities.

Submissions

- **Individuals and community groups**

Many individuals comment on this policy by simply reiterating their view that the draft provisions on water quality do not address the problem of sedimentation. A number of other individuals, community groups and conservation interests support the policy. Ngati Awa seeks the retention of the policy. The NZHPT supports it and notes that water quality is a particularly important issue for places and areas of significance to Maori.

The relatively few councils that comment on this policy generally support it, although some are concerned that policy 50 (a) is not practicable. The Hawke's Bay Regional Council has concerns about the ability of RMA tools (plans and consent conditions) to achieve policy 50 (c). It recommends that the policy is reworded to provide for the collection of sewage and waste residues, although it notes that there may be difficulties with how that material is stored and treated.

The ARC also says that it is generally impracticable to fully avoid a low level of contamination adjacent to port areas and recommend that the policy is amended to address 'more than minor' adverse effects. Two other councils seek similar amendments. The ARC notes that the term 'seabed' should be replaced with 'substrate' to be consistent with the other

clauses in this policy. It also says that the clause should refer to effects on ecosystems or habitats.

Infrastructure companies have a number of concerns about the draft policy, which are set out below under the relevant clauses. Meridian notes that policy 50 requires local authorities to do certain things and recommends that the opening requirement should rather be expressed as, 'plans and proposed plans including regional coastal plans shall…'. The companies consider that clause (a) is not practicable because it does not recognise that the use of ports and marine facilities will necessitate some localised contamination of coastal waters and substrate. They submit that requiring these facilities 'to avoid' adverse contamination is simply not feasible. They therefore consider that the clause should be deleted or amended to provide either for adverse effects to be avoided 'as far as practicable', or to allow for the effects to be avoided, remedied or mitigated. Several companies (and one council) say it is not clear what is meant by the term 'adverse contamination' as to some degree all contamination is adverse.

Most companies believe also, that clause (c) needs to be more flexible and provide for a means of collecting sewage and waste, as in some port areas this is done by truck. The infrastructure companies included several amendments to consider. Yachting New Zealand (YNZ) requests an amendment to require that where vessel maintenance is carried out, systems facilities are made available that 'can contain and safely dispose of residues from vessels'.

Challenger FinFisheries is concerned that the policy is particularly vague as to how it might relate to fishing operations and has concerns about how it might apply to the disposal of organic matter from commercial fishing vessels.

NIWA considers that, to be consistent with policies 46 and 47, clause (b) should apply only 'after reasonable mixing'.

Half Moon Bay Marina notes that it is the receiving environment for external sources of storm-water contamination from surrounding environment and submits that it should not be made responsible for remedying this as a result of policy 50.

Wellington Waterfront Ltd notes that many buildings on wharves support a mixture of recreational and commercial uses and do not provide sewage and waste collection facilities, but these are covered by the definition of 'marine facilities' and all associated structures and activities in the Glossary. This submitter provided an amendment to consider.

The Tourism Industry Association of New Zealand comments that the requirement for ports and marine facilities to provide sewage and waste collection facilities for vessels may incur costs for marine-based tourism operators. It considers if this is the case, then consultation with the industry will be necessary.

Issues Arising

- **A policy absolute in its intention**

The infrastructure companies and Wellington Waterfront consider that clause (a) is inappropriately worded as it appears to have absolute requirement to avoid any degree whatsoever of any contamination of coastal waters and substrate. We acknowledge that this

could mean because the definition of contaminants in s2 RMA is extremely broad the discharge of stormwater containing minor sediments or any degree of contaminants in accord with today's technology and council standards would breach the policy[192].

We recommend that an amendment to policy 49 (a) to 'take all practicable steps' in this regard be adopted, (new policy 26 (5)(a)). That approach would be consistent with the stormwater policy.

The port companies also identified that policy 49(c) needs to be more flexible than it is because all kinds of methods of collecting waste exist and they may fall outside the policy as written. We recommend only an amendment broadening the safe disposal of residues from vessel maintenance.

- **The significance of other marine facilities**

We recognise the significance of other marine facilities[193] than ports in the sustainable management of the discharge of contaminants. In particular the provision for waste facilities for the collection of sewage and other wastes from recreational and commercial boating activities. Accordingly we recommend a new additional matter (d) to cover that matter (see below).

- **Conclusion**

We recommend that policy 50 be amended and become part of policy 26 as follows:

> **(5) In managing ports and other marine facilities all decision makers must:**
>
> **(a) require operators of ports and other marine facilities to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats;**
>
> **(b) ensure that the disturbance or relocation of contaminated seabed material and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed, substrate, ecosystems or habitats;**
>
> **(c) require operators of ports, marinas and other relevant marine facilities to provide sewage and waste collection facilities for vessels, and for residues from vessel maintenance to be safely disposed of; and**
>
> **(d) consider the need for facilities for the collection of sewage and other wastes for recreational and commercial boating.**

[192] #378 Auckland International Airport.
[193] Defined in the Glossary to the recommended NZCPS (2009).

Policy 51 Identification of hazard risks

Policy statements and plans shall identify areas in the coastal environment that are potentially affected by coastal hazards (excluding tsunami), giving priority to the identification of areas at high risk. Hazard risks shall be assessed over at least a 100-year timeframe, having particular regard to:

(a) short-term natural dynamic fluctuations of erosion and accretion;

(b) long-term trends of erosion or accretion;

(c) slope stability or other geotechnical issues;

(d) the potential for natural coastal features and areas of coastal hazard risk to migrate as a result of dynamic coastal processes, including sea level rise; and

(e) the effects of climate change on:

(i) matters (a) to (d) above;

(ii) storm frequency, intensity and surges; and

(iii) coastal sediment dynamics;

taking into account the most recent available national guidance on the likely effects of climate change on the region or district.

The s32 Report[194]

The authors of the report are concerned to ensure areas potentially at risk from coastal hazards are identified and assessed. Good information is seen as a fundamental step in the proactive management of existing or potential risks for development. The authors also point out that it is also critical to recognise that there will be areas of the coast that are at higher risk than others and therefore should be given a higher priority for the identification and assessment of the risk. Without such information appropriate management of use and development cannot be undertaken.

On the information available at the time the s32 report was written, it was established coastal processes tend to have trends that occur over the short-term (e.g. months upwards to 50 years) and the long-term (e.g. 50 years upwards to hundreds of years).

The current default period of 50 years for planning decisions, (as influenced by the Building Act 2004), was not considered by the authors of the report as appropriate for risk assessment purposes for coastal hazards. They consider a period of 100 years allows for short term fluctuations and trends to be acknowledged within the longer time cycles of geological changes. Therefore the 100 year time span was considered to be a more reasonable and realistic planning period.

The authors also consider if risk is to be progressively reduced over time, risk assessments should apply to new developments proposed in existing green field areas as well as to existing

[194] *Proposed New Zealand Coastal Policy Statement 2008. Evaluation under s32 of the Resource Management Act 1991*, Department of Conservation Policy Group, Wellington, 105-112.

developed areas. While risk assessments can cover a range of matters, there are some fundamental components that should be considered. This includes, in particular, the effects of climate change, as now emphasised in s7 RMA. The report notes national guidance on climate change is derived from the work undertaken by the Inter-Governmental panel on Climate Change (IPCC). This provides internationally peer reviewed data on climate change impacts at regular intervals. The New Zealand government then produces guidance on this data in a national and regional context[195]. Nevertheless to the potential for this international data to change over time as a result of the work of the IPCC, it is considered not appropriate to specify a specific sea level or climate change range for application at a national level for New Zealand.

Also the authors of the s32 report found that while this country has the potential to be adversely affected by tsunami, this is not a coastal hazard that can be readily identified or managed cost effectively. It is considered to be a lower priority than the need to manage development from other coastal hazards and that it is appropriate at this stage to exempt areas at risk from tsunami from requiring identification and assessment.

Submissions

Most submitters, including councils, supported draft policy 51. The few negative submissions the Board received sought deletion of the reference to sea level rise and climate change. The issues emerging from the submissions are summarised here.

- **Need for definitions**

A number of submitters comment on the need for definitions of terms such as 'coastal hazards' and 'risk', high risk, 'short term' and 'long term.' Some also recommended substitution of the term 'natural hazard' for 'coastal hazard', as this is used in the NZCPS (1994) and therefore has a recognised and current meaning

- **Implementation issues (including cost)**

Some councils and infrastructure companies are concerned that the requirement for all policy statements and plans to identify areas in the coastal environment that are potentially affected by hazards, will place a considerable and unjustified burden upon councils. They recommend allowing for the option to update *either* regional policy statements or regional and district plans i.e. using 'and/or plans' in the first sentence. Other councils recommend that the policy is integrated into plans by utilising s55(2)(a) of the RMA.

A number of councils are concerned at the significant costs imposed on councils with a slender ratepayer base due to the need for extensive information on how hazards are created and the necessity for sophisticated technical input.

These councils, along with most infrastructure companies, submit that the policy is overly prescriptive and that the mandatory requirement implicit in the word 'shall' should be removed and replaced with the word 'should'.

[195] See particularly *Coastal Hazards and Climate Change : A Guidance Manual for Local Government New Zealand*, Revised by Ramsay D. and Bell R. Ministry for the Environment. 2nd Edition July 2008.

- **Need for central government guidance**

Several submitters require the NZCPS to specify government responsibilities for providing national level guidance regarding the effects of climate change for each region. For example, Transit strongly endorses the development of national guidelines for managing the effects of climate change as a mechanism for ensuring consistency by consent authorities, developers, utility operators and infrastructure providers. Other submitters also suggest consideration of the provision of national guidance on the management of coastal hazards through a national environmental standard (NES) or national policy statement (NPS).

Environment Waikato considers that the NZCPS should provide guidance on the appropriate sea level rise models to use in planning and consent processes.

- **Call for guidance on appropriate risk methodologies and timeframes**

Many submitters seek guidance on the appropriate risk methodologies and timeframes for evaluating coastal hazard risk. Some call for the method of risk assessment to be addressed in the policy itself. Others for the policy to provide a clear expression of the accepted risk methodology in the form of a risk equation such as, 'risk (impact) = (probability of the event/effect) x (the consequences of damage),' thus providing a standard for evaluation.

A number of submitters, including councils, seek guidance on what should be the planning horizon, and what is realistic, e.g. 50 years, 80 years or 100 years?

- **Need to include 'tsunami' as a hazard risk**

Some submitters point to the need for the risk of 'tsunami' to be included in the list of hazard risks. They note that the definition of 'natural hazard' in the RMA includes tsunami, which the s32 report overlooks.

NIWA supports the inclusion of tsunami in the identification of hazard risks observing that while severe tsunami inundation and damage arising from a low-probability high-impact event may have been the reasoning for excluding tsunami, for consistency, small to moderate tsunami hazards should be included in planning for coastal hazards along with storm-surge inundation and coastal erosion. It states:

> A fundamental coastal hazard management issue is in defining the demarcation between managing an acceptable tsunami risk within the coastal planning framework and covering the residual tsunami risk through emergency-management evacuation arrangements, changes to building codes for critical infrastructure and risk-transfer mechanisms (e.g. insurance, EQC). It needs to be an informed integration of both approaches to treat the overall risk of any and all foreseeable hazards that can impact on coastal environments. Integration should not only be between the planning and CDEM functions of local authorities but also in consideration of the range of coastal hazards, rather than treating each separately in setting up hazard set-back zones.

- **'Coastal inundation' not addressed**

NIWA submits that coastal inundation hazard consideration (either due to storms or tsunami events) needs to also be addressed. It says that clauses (a) - (e) of the policy are poorly defined and exclude some factors (e.g. coastal inundation and tsunami)

with the focus on coastal erosion or slope stability only. Others also consider that 'coastal inundation' needs to be addressed as a separate policy.

Issues Arising

- **Policy 51 outside the normal scope of a National Policy Statement?**

Section 58 provides that the NZCPS may state objectives and policies about any one of, or more of the following matters in s58(a)-(h). S58(h) relates to:

> any other matter relating to the purpose of a New Zealand coastal policy statement.

The purpose of New Zealand coastal policy statement in s56 RMA is to:

> state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.

Section 5(1) states:

> The RMA's purpose is to provide sustainable management of natural and physical resources….

while s5(2) defines 'sustainable management' as:

> ….managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while –
>
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 2 defines 'natural hazard' as:

> …. means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment;

and 'climate change' to:

> mean a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods.

Meanwhile s7(i), which informs s5, requires:

> In achieving the purpose of the Act, all persons exercising functions and powers under it in relation to managing the use, development, and protection of natural and physical resources shall have particular regard to the effects of climate change.

'Natural hazards' are referred to directly under the functions of regional councils (s30(1)(d)):

> …in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of - …
>
> (v) any actual or potential effects of the use, development or protection of land, including the avoidance or mitigation of natural hazards…

And district councils (s31(1)(b)):

> The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –
>
> (i) the avoidance or mitigation of natural hazards…

In addition the regional council controls the **use of land** for the avoidance or mitigation of natural hazards (s30(1)(c)(iv)).

Regional policy statements (RPS) provide a major policy framework role for stating which local authority is responsible for managing natural hazards (s62(1)(i)):

> A Regional Policy Statement must state -…
>
> (i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land –
>
> (i) to avoid or mitigate natural hazards or any group of hazards…

As coastal hazards impact primarily on the coastal margins, the interrelationship between regional coastal plans, regional plans and district plans is fundamental.

S64(2) enables a regional coastal plan to:

> form a part of a regional plan where it is considered appropriate in order to promote the integrated management of a coastal marine area and any related part of the coastal environment.

S65(3) outlines the requirement for a regional council to consider preparing a regional plan in certain circumstances which includes, among other matters:

- any threat from natural hazards, and
- the implementation of a New Zealand coastal policy statement.

In addition, s78A provides the opportunity to prepare a combined regional and district plan.

Further, s106(1) enables a district council to refuse a subdivision consent if it considers the land or any structure on the land or any subsequent use of the land, is likely to be subject to 'material damage by erosion, falling debris, subsidence, slippage, or inundation from any source'.

The purpose of esplanade reserves and strips is given under s229 and include:

- contributing to the protection of conservation values (including maintaining or enhancing the natural functioning of the adjacent sea; or protecting the natural values; or mitigating natural hazards) (s229(a)(i), (iv) and (v)); or
- enabling public access (s229(b)); or
- enabling public recreational use where use is compatible with conservation values (s229(c)).

Sections 330-331 provide for emergency works to be undertaken, (followed by a retrospective consent process), by local authorities or network utility operators or persons responsible for public works. Section 341 provides for defence against prosecution if an event was unforeseen and actions were taken for the purpose of saving lives or preventing serious damage to property, and the effects of the action were adequately remedied or mitigated after the event.

Section 58 RMA sets out the policy areas that may be addressed in the NZCPS. These include in particular, the preservation of natural character, protection of special characteristics of special value to tangata whenua, activities involving subdivision, use or development, Crown's interest in land of the Crown and public access. Each of these areas has a key linkage with the management of the effects of coastal hazards.

It is also noted that regional policy statements and regional and district plans 'must give effect to' any NZCPS (ss62(3), 67(2), and 75(2) RMA).

In discussing climate change in respect of clause (d) Dr R Bell of NIWA[196] states that sea-level rise will continue for at least several centuries and the real challenge for managing and designing for coastal margins is not the increased hazards but the escalating human dimension of the problem, including:

- sustainability of coastal subdivisions;
- 'coastal squeeze' in historical developments[197];
- existing use rights v greater community rights and the community's entitlement to the open space of the coast.

Dr Bell also identifies the following challenges:

- high tides will rise and tend to move inland with increased erosion;
- climate change, including sea-level rise is underway but coastal hazards are not just about sea-level rise;

[196] #32 NIWA Written submission with background slides and input from Mr Doug Ramsay and Dr Terry Hume, Hamilton 22.10.08. See Appendix F to Volume 2.

[197] On a retreating coastline with a seawall, the natural features of foreshore, beach, dune, inter dune wetlands, estuaries etc cannot migrate landward. As each feature reaches the wall it will progressively disappear. This is known as 'coastal squeeze'. See M. Jacobson *Review of the New Zealand Coastal Policy Statement 1994* and *Coastal Hazards* Volume 1 – Report, para 1.3,15.

- storms, waves, sediment supply, rainfall, salinization and drainage problems are all projected to impact;
- effects are hidden behind more obvious short and long-term natural cycles, e.g. El Nino, IPO;
- effects will 'kick in' slowly, so give the community time to respond and to learn to work with climate variability (coasts are natural buffers, and cycles, i.e. variability, occurs across a wide range of time and spatial scales).

For all these reasons the Board considers it has jurisdiction to include a policy on coastal hazards and climate change issues in the NZCPS and recommends accordingly that a policy be included to encompass such issues.

In this context the RMA policy statements and plans are a critical mechanism for providing guidance on managing the environment sustainably and in a way which contributes to reducing risk to property and people.

- **A definition of 'coastal hazards'**

'Natural Hazard' or 'Coastal Hazard'?

A definition of 'coastal natural hazards' is given in the *NZCPS review – Scoping paper for Coastal Hazards* and primarily include:-

- coastal erosion (soft shore and sea cliff, including slumping) and accretion;
- inundation by the sea (from storm surge, waves and sea level rise);
- tsunami; and
- flooding from rivers (influencing tidal deltas, estuaries, river mouths, bars and sediment processes).

Other hazards such as earthquakes and liquefaction are acknowledged as potentially impacting on coastal margins as well (e.g. through reclamations). But climate change issues are essentially caused by the discharge of green house emissions into the air which is the result of human, not natural, activity. The term 'coastal hazard' therefore contains wider issues than in 'natural hazard' and appears more in context with the definition of 'coastal environment'. We agree.

The Scoping paper identifies:-

> It is important to note that natural coastal processes such as erosion, sea level rise and inundation are not in themselves hazards. Coastal *hazards* only arise when natural processes affect sites that people value (this may include structures and/or land). It is also noted that the effects from natural hazards can be exacerbated by development or human intervention[198]

Thus this definition is slightly different from 'natural hazard' which ties the natural occurrences cited there to actions which adversely affects human life, property, etc.

> While coastal erosion is a significant threat to development, it does not generally affect life and it is predictable over a long timeframe. A tsunami, by contrast, is a

[198] March 2006, para 1.6, 7.

> low probability but high impact event, occurring suddenly with significant impacts likely on life and property.

Successful management of hazards is heavily reliant on identifying the level of risk (perceived or real) to people, and the extent to which individuals and society are willing to adapt to the risks or avoid them.

Development of a policy approach to hazards in the coastal environment relies on the development of an approach consistent with the levels of risk to humans or structures present, or reasonably likely to arise in the foreseeable future. This is why we consider the term 'coastal hazard' is appropriate in this context.

- **Risk**

Under this heading we address the issue of 'risk', how it is used in association with the management of coastal hazards, and whether words such as 'significant' should be introduced to define the degree of risk. The West Coast Regional Council asks what are we planning for, for example, policy 51 refers to 'high risk', policy 52 'risk' and policy 54 'coastal hazard risk'[199].

Mr M Jacobson, a scientist who has worked extensively on coastal hazards, considers that the term 'risk' is considerably ambiguous and needs to be used with care. He gave examples of how the term 'risk' could be variously interpreted in the natural hazard policies.

Mr W Skinner, an engineer who did not support policy 51,[200] considers that there is confusion around 'potential', 'probability' and 'effects' in association with 'risk'. He suggests that risk be expressed in the usual engineering assessment of risk, namely (impact) = (probability of the event/effect) x (the consequences of the damage) on a consistent basis.

We agree and provide a definition in the Glossary. We also take care to be consistent in the use of the terms 'high risk' and 'coastal hazard'.

In respect of policy 51, Mr Skinner also considers the policy goes beyond what is required in the RMA, namely s3(f) which is defined as:

> In this Act, unless the context otherwise requires, the term 'effect' includes –
> …
> (f) any potential effect of low probability which has a high potential impact.

We consider the 'probability of an effect' is a matter of fact to be decided by the decision-makers on the scientific evidence before them. It is not limited to the application only of s3(f). It is now very arguable that climate change effects are of low probability and could easily apply to **s3(d) – 'any cumulative effect which arises over time or in continuation with other effects'**.

We have considered these issues in the evaluation of policy 51 and apart from recommending a definition of 'risk' in the Glossary at this point some of the issues traversed under this

[199] #141.
[200] #213.

heading are accounted for in other policies. We are content to accept that the methodology exists to identify areas of high risk within the time frame set out in the policy – to which we now turn.

- **Planning horizons and climate change**

In terms of planning time horizons, Manukau City Council query why a 2080 timeframe is not used instead of a 100 year timeframe, while the Christchurch City Council seeks the addition of areas of high risk from coastal hazards with the timeframe set at 20 years requiring also that identifying hazards shall be the primary responsibility of regional councils.

The Auckland City Council points out that the Building Code only requires assessments of flooding over a 50 year timeframe; the NZCPS should address the conflict that this provides with the 100 year timeframe identified in the policy. The council also considers that it is not realistic for local authorities with large areas of coastline to identify all areas of high risk within a 5 year timeframe as required in policy 13. Some of these areas may be sparsely populated and the costs of evaluation may well exceed the benefits.

The Kapiti Coast District Council which is grappling with significant coastal erosion issues along part of its popular coastline at the present time says this:-

> The 100 year timeframe is problematic in relation to assessing Coastal Hazard risks (Policy 51) such as erosion. These risks become wildly speculative beyond a 50 year timeframe and it is not appropriate to apply a mandatory 100 year planning horizon to all aspects of hazard risk assessment. Council has undertaken an extensive review of Coastal Hazard risks and been informed by our consultants that using a 50 year timeframe will result in a far more robust assessment that can be defended. Using a 100 year assessment period, the error component or safety margin needed would be extremely large due to long term uncertainty.

Environment Southland identified that it has pushed for a 100 planning horizon for years with developers probably settling for 50 years. Relying on IPCC current predictions, this council acknowledged that sea level rise is moving much faster and higher than people expected. It looks therefore for any higher level national guidance until such time as the IPCC predictions are reviewed. It was the view of Mr Bradley, Senior Natural Hazards Policy Manager for the Southland region, that the council should be identifying areas of coast that it knows are eroding and requiring any developer of that land for rural residential and residential purposes to undertake a coastal hazard assessment. Meanwhile he is doubtful as to the precision of tsunami modelling up until now, acknowledging that if there is some consistent methodology available that could be relied on he would accept it.

Christchurch City Council agrees with all NZCPS policies on hazards and supports the s32 Report which identifies areas of risk is the critical first step before authorities are able to implement controls for land use. In addition the council requests a new clause be added to policies 51 and 52 requiring identification of developed areas at risk within the next 20 years because these should be the priority areas for managed retreat or land use change in the near future. The 20-year timeframe in which to identify these areas would achieve the resilience these policies seek to achieve. It should also be noted it is the consequences of the risk and not just the actual risk itself that need to be recognised and addressed.

Environment Canterbury notes the inconsistencies around the documentation leading to policy 51. It notes that this policy separates 'sea-level rise' (clause (d)), from 'the effects of climate change' (clause (e)) and queries why the separation is necessary. It identifies too, there is a disparity between the final sentence, taking into account the most recent available national guidance on the likely effects of climate change on the region or district, and the s32 report which states, 'it is not appropriate to specify a specific sea level or climate change range for application at a national level for NZ'. Given that this is the case, and that there will be no national, let alone regional guidance, it asks how can local authorities reasonably give effect to clauses (d) and (e)? It is not reasonable to ask each authority to debate the climate change implications of their identification of hazard risks, especially since the implications of the policy are likely to reach the Environment Court. Environment Canterbury also notes that the IPPC has, to date, not attempted to apply its forecasts to any specific country in relation to sea-level rise. NIWA has also stated that it cannot provide regional figures in relation to sea-level rise.

Environment Canterbury identifies it is one of the very few regional councils to operate coastal hazard zones down to high water mark springs in which coastal development is controlled. Like the Kapiti District Council it has difficulty with planning horizons projected out to 100 years because of the likely failure of any methodology which employs projections to achieve the 100 year timeframe. The Canterbury Plains is an outwash plain and Environment Canterbury already knows its characteristics and the nature of the erosion that is likely to take place. Sea and water inundation problems have already been reported along sections of the Kaikoura Coast, Rakaia-Taumeiti, Leithfield and Amberly. It therefore has a more predictable situation than most, as other parts of the country are not able to tell what is going to be in their coasts in 100 years time that may affect the hazards like erosion. Accordingly Environment Canterbury has defined 2 hazard zones along the region's coast:

Hazard Zone 1 — This is a zone delimited by a line approximately parallel with the shoreline, set inland from mean high water mark springs, which contains the current active beach system and land that is at risk from coastal erosion within 50 years of this plan being produced.

Hazard Zone 2 — This is inland from Hazard Zone 1, and marks land that is at risk from coastal erosion in the period 50 to 100 years of this plan being produced.

Even so, Mr D. Gregory, Senior Resource Management Planner for the regional council explains it is now advancing those zones inward and may be including a Hazard Zone 3 which will not have any rules but would be advisory – i.e. that is an area that the council believes will be affected by sea level rise. Meanwhile this witness identified 'the Hazard Zone Rules appear on the LIM or PIM reports of the property for new development', alterations and additions, and prohibited and non-complying activity status for some development is used as well[201].

Environment Waikato[202], through Councillor Southgate, Mr R Brodnax, Manager, Policy and Strategy, and Ms J Paul and Mr G Silver, Coastal Policy advisers, provided us with a snapshot of what occurs on the wild west coast from Port Waikato to Mokau while the east of the region includes most of the Firth of Thames, an area under significant pressure from coastal

[201] #33.
[202] #95, #444.

subdivision and coastal erosion. Houses are at risk from coastal erosion or flooding in over half of this region's coastal settlements. In many cases coastal development has damaged sand dunes (Mokau township was built on a sandspit) and vegetation and it is adduced that climate change will worsen the situation with rising sea levels, changes in wind, waves and currents. We were provided with a number of graphic photographs illustrating the degree of the problem.

In assessing such evidence we note that residential development along New Zealand's coastline has risen exponentially – particularly in the North Island, and particularly in the 18 years since the RMA has been implemented. There is no indication such development is likely to slow down in the longer term. We also conclude from the experience of regional and district councils which have seriously addressed climate change issues, together with the evidence of Professor Manning, that with the likelihood of the Arctic and Antarctic ice-sheet melts that a planning horizon of at least 100 years is required. Furthermore, we conclude that there is a need to identify areas at risk from coastal hazards, and particularly those with urban characteristics as a priority.

The Resource Management Law Association submitted that we should give attention to MfE (2008) *Coastal Hazards and Climate Change: A Guidance Manual for Local Government in New Zealand* which states that (only) a 0.8m sea level rise is anticipated by 2010. The manual records two levels of risk overseas. The first being at a slower level than the 'median' case (0.6m) and the second being slightly less than the 'high' values (1.0m)[203]. Professor Manning however says this:

> In my view the MfE/NIWA document did not take sufficient account of recent literature (although some of that has appeared since the MfE report was completed), and did not recognise some of the caveats given in the 2007 IPCC report which formed its main source of information. Additional factors that might have been taken into account would be that:
>
> - the IPCC uncertainty ranges were stated not to include the full ranges of uncertainties in climate – carbon cycle feedback effects which extend to 50% above the central estimates for warming by 2100;
> - the effects of thermal expansion are expected to lead to slightly higher sea level rise in the New Zealand region than the global average; and
> - significant loss of ice from the Greenland Ice Sheet is expected to increase sea level in the Southern Hemisphere by more than in the Northern Hemisphere.

Based on the most recent important scientific studies at the time of hearing, Professor Manning indicated a sea level rise of 1.6m in the upper level of guidance is being published this year – i.e. higher sea level rise by 2100 than the figure given in the 2007 IPCC report, with the caveat that higher maximum values can still not be precluded. And he says:

> Perhaps more importantly, uncertainty about the magnitude of sea level in 2100 should not obscure the fact that there is very high scientific confidence as to the direction of change and that, in the long term, a rise of one meter or more now seems inevitable. Thus the IPCC document will emphasis that adaptation to coastal changes needs to be set within a general strategy of a staged coastal retreat[204].

[203] See note 55.
[204] #539.

The Board has considered carefully the views of these experts as well as the diverse experiences of the councils which made submissions. We acknowledge that there is some conflict between the greater safety margin afforded by a conservative approach (a long period for determining risk) and the increasing uncertainty of risk estimates as the risk period increases.

We found, however, the evidence of Dr Bell and Professor Manning compelling, in particular as it refers to recent increases in estimates of likely sea-level rise, the need to consider cumulative and feed-back effects on coastal inundation and erosion and the recent findings of accelerating ice cap deterioration which have yet to be factored into the sea-level rise models.

In addition we note that, even if the predicted severity of climate change was to remain unchanged, a 50 year risk assessment horizon is incompatible with the 50 year 'building lifetime' of the Building Act 2004 due to the decade or more between successive plan reviews. Also under the RMA the requirement is to consider the reasonably foreseeable need of future generations. While the Building Act can be used as a mechanism to inform property owners and reduce vulnerability of structures, it cannot achieve the proactive land use planning that is fundamental to reducing risk from coastal hazards.

Accordingly, we consider that decision makers should adopt the longest practicable timeframe over at least 100 years in considering the coastal hazard risk under policy 51. And in follow-up action under other coastal hazard policies we acknowledge that may vary depending on location, (Professor Manning notes a regional component to sea level rise and coastal geomorphology). Decision-makers should also consider the effects of climate change on hazard risks taking into account the most recent available national and international guidance.

Accordingly, we found a fixed planning horizon to the year 2100 is inappropriate.

- **Tsunami risk**

As noted the definition of 'natural hazard' in s2 RMA includes 'tsunami' while the Civil Defence Emergency (CDEM) Act (2002) s17(3), lists the RMA as one of the Acts providing for the management of natural hazards. Despite s2, RMA listing, 'tsunami' is not a word included in the Coastal Hazard Section of the NZCPS.

A submission to the Board from the Ministry of Civil Defence and Emergency Management (CDEM) through its Director, Mr J Hamilton, seeks the inclusion of tsunami in the policy framework for managing coastal hazards through identifying hazard areas and giving guidance to councils on risk reduction measures that should apply within those areas. Mr Hamilton is also the chairman of a national inter-agency Tsunami Steering Group, which provides strategic direction and co-ordination for the national tsunami risk management work programme[205]. Exclusion of consideration tsunami risk from the list of hazards is seen by the CDEM Department as undermining the principles of the CDEM legislation and the existing government policy of adopting a comprehensive all-hazards approach to land use planning and to the management of the coastal environment.

The CDEMA is a significant piece of legislation for coastal management designed to:

[205] #333 Ministry of Civil Defence and Emergency Management.

- promote the sustainable management of hazards (in a way that contributes to the social, economic, cultural, and environmental well-being and safety of the public and also to the protection of property);
- enable communities to identify and manage risk;
- plan for response and recovery from an emergency;
- focus emergency management on reduction, readiness, response and recovery; and
- encourage coordinated efforts across a range of agencies and other legislative responsibilities

The CDEMA (s6) clearly states that this Act does not affect the functions, duties, or powers of any other legislation. Section 17(3) of the CDEMA also specifically refers to the RMA and the need for coordination with this legislation. Integration between these pieces of legislation to better address reduction in risk (ideally across all natural hazards) will be required. The RMA has a critical and complementary management role for reducing the potential of adverse effects from coastal hazards, through proactive land use planning.

The RMA has the primary coastal hazard planning role in land use planning (to avoid or mitigate natural hazards), and in the management of development (including protection works) on both sides of the line of MHWS. There are strong similarities in the wording between the CDEMA and the RMA and the intent of the two pieces of legislation, particularly in relation to managing land. The key difference between them is that the RMA is primarily about managing physical and natural resources, while the CDEMA is primarily concerned with the safety of people and property. Both Acts have a role in providing for public infrastructure and essential utilities. Likewise the focus on reducing vulnerability and increasing resilience are common factors and are critical to ensuring sustainable communities.

Several Environment Court cases on the coastal environment have already touched on tsunami risk as one of the hazards to be managed, planned for or otherwise avoided when considering developments in at-risk areas[206].

We note the s32 analysis of the NZCPS however states that tsunami were excluded from the coastal hazards under proposed policy 51 on the basis that they were not a coastal hazard that can be readily identified and managed cost effectively. And that they were also considered to be a lower priority than the need to manage risk from other coastal hazards.

CDEM refute the s32 report's conclusions. It also refutes the notion that tsunami risk should be given a lower priority than other coastal hazards. Mr Hamilton identified that a 2005 government-commissioned report by GNS Science '*Review of Tsunami Hazard and Risk in New Zealand*' estimated the risk and damage of tsunami as being the same or potentially higher than that from earthquakes. Furthermore, New Zealand has been struck by large tsunami in the past, and, in CDEM's opinion, will be again. In support, a map was produced by GNS Science illustrating the areas in which tsunami had struck the coastlines of New Zealand in the years 1826 – 2007 – both from local and distant sources.

[206] *Buckley* v *The South Wairarapa District Council,* W4/2008 [Environment Court] found that in an area of risk from moderate to high storm surge already, likely to be exacerbated from sea-level use over next 50-100 years, a residential dwelling would be overwhelmed by a tsunami event.

It is acknowledged that tsunami may differ from the other coastal hazards by being an isolated and possibly less predictable event. But a large event may also have an impact over a wider area of the coastal environment. Small tsunami that are more common may have an impact similar to storm surge. In 2007 alone, four small tsunami were recorded as reaching the New Zealand coast. Tsunami risk assessment has already identified that different areas of New Zealand are at risk from tsunami from different sources (i.e. distant, regional or local), which will affect the way tsunami risk must be managed. As with all hazards, tsunami risk may be mitigated in a number of ways.

CDEM organisations and related agencies are responsible for detection, warning and evacuation systems, and public education and planning[207]. These hazard management measures are potentially very effective for distant source tsunami, which are 3 to 12 hours travel time to New Zealand. They can do little to protect property however and may have limited effect for regional or local source tsunami that can have only minutes in travel time to New Zealand. A significant decrease in tsunami risk, particularly for areas prone to local source tsunami will thus not be easy using just warning and evacuation systems.

We were informed scientific research is a key part of the Ministry of Civil Defence's work programme. Research and modelling techniques are expected to improve rapidly in the next 10 years and the resulting information will be made available to local authorities. This is expected to reduce the expense and difficulty for individual local authorities, some of whom appeared before the Board seeking to identify their tsunami risk areas, but were anxious about the complexity and cost of such an exercise.

Mr Hamilton acknowledged predicting the likelihood of tsunami of different magnitudes is difficult, but the modelling of an impact zone is less so, being primarily a factor of ground height and distance from the shore. In fact, he explained other coastal hazards can also be less than predictable, as coastal geomorphologic processes and climate may change with time. Mr Hamilton outlined that tsunami inundation zones are now being mapped in different parts of the New Zealand coast. As for other hazards this zoning can also identify areas of higher and lower risk.

In his oral presentation Mr Hamilton stressed:

- the shift from risk response (readiness) to risk reduction as knowledge and modelling about tsunami increase;
- the many issues that can reduce the risk of tsunami;
- the importance of the location and type of coastal development, particularly when the risk is from local source tsunami;
- the importance of locating key infrastructure and community facilities away from the coast;
- the importance of increasing access perpendicular to the beach to give faster access away from the risk;
- the significance of dune restoration to act as a buffer to wave impact;
- the importance of strengthening buildings and increasing surfaces roughness by mounting vegetation behind the dune systems (such as pines);

[207] A CDEM Group is a mandatory committee found under the CDEM Act and comprises some local authorities. There are 16 such groups in New Zealand.

- the importance of putting reserves between beach and developments;
- the importance of increasing the capacity of people to acknowledge the risk of tsunami and adapt accordingly.

The evidence from CDEM was therefore significant in:

- the issues it explored;
- the insights into managing tsunami risk it gave;
- the information around modelling which is to be distributed nationally, thereby assisting councils to diminish costs to the regions;
- the sense of urgency it identified around tsunami issues tempered with methods of building individuals' capacity to cope with the hazard;
- the inference it gave that those who create residential development in areas of risk do so at their own risk.

Mr Hamilton concludes:-

> With the intensification of coastal development over the last few decades a large tsunami today is likely to be highly damaging. Tsunami is identified as one of New Zealand's 17 most significant hazards. Tsunamis and more importantly their consequences are a significant component of coastal hazards. Robust and defensible tsunami hazard information is currently available for many parts of New Zealand and the New Zealand coastal environment and this information should be used for managing development in the coastal environment. Given the Ministry's priorities and drives for action heightened by the 2004 Indian Ocean tsunami, existing and proposed work by various central, regional and local organisations and advances in tsunami modelling, tsunami research, the quantity and quality of tsunami hazard information will only continue to increase. The growing recognition of potential affecting the tsunami and other hazards risk of reduction through land use planning compare to readiness and response initiatives should be recognised in the NZCPS by the inclusion of tsunami as a coastal hazard[208].

The Christchurch City Council and its members and officers who addressed the issue were positive in their support for CDEM and the need to address tsunami in the policy. Council officers identified that tsunami risk around Canterbury comes from long distance events in South America while around Kaikoura it comes from near-shore undersea landslides.

We have spent some time exploring tsunami risk because it was clear that the modelling that will be available to local authorities under CDEM's auspices will also be helpful in identifying areas of coastal risk – and will be cost effective in that regard. So too would the implementation of some of the measures to counter tsunami inundation be also useful for other coastal hazards. Further, with a specific policy of integration issues in the NZCPS it is clear that councils should not act in silos, and information sharing, collaboration, and concerted action on such matters will be required.

Finally under this heading, under s2 RMA 'natural hazards' is defined as including 'tsunami', and local authorities have explicit responsibilities for avoiding or mitigating and managing

[208] #333.

such issues. The intent of the RMA therefore appears to be that tsunami are able to be identified and managed in some form under this legislation.

We recommend 'tsunami' be added to the list of coastal hazards under policy 51.

- **The implementation costs to councils of identifying hazard risks**

Some local authorities, particularly those with coastal plans, have implemented hazard planning provisions into their plans already and two in particular have commissioned extensive information on management of risks[209]. But LGNZ states while it supports the intent of policies 51-54, it is concerned by the huge financial and resourcing costs on councils to undertake this work and the limited guidance and funding provided by central government. There is also the potential for significant duplication of costs and litigation regarding assessment methodologies, particularly around climate change and sea level rise.

The Grey District Council supports policy 51, identifies resourcing issues, and observes it could be carried out if adjoining local authorities work together, share methodology and/or resources. It submits it would be beneficial to have a reference in the policy to regional and district councils to work together to achieve this. One such council which would benefit from this approach to the Waitaki District Council. We heard from its members, of the substantial coastal erosion the council faces along the North Otago coastline and we viewed it for ourselves on a site visit. A large area of the southern Waitaki coast has already collapsed into the sea which is continuing to invade the scenic highway together with farm land, despite hard protection works undertaken at significant cost to this small council. The coastal heritage of Oamaru is also under considerable threat with some historic structures already having fallen into the sea.

The Environment Canterbury council officers identified that three-quarters of the Canterbury coast is in a long term erosive state and 3 metres a year may be lost from its coastal frontage because it is an outwash plain of unconsolidated material. Factoring in climate change issues may provide additional difficulties. Hurunui District Council is another which is already facing coastal erosion/inundation issues with managed retreat of some coastal structures an only option. It considers central government should fund and undertake research required to nationally identify the risk and establish the appropriate databases which can be used locally. The council is also concerned with the impact on wellbeing of local communities' property values.

Westland District Council, which wrestles with the Tasman Sea and an extensive rugged coastline, sought deletion of the policies because of the funding difficulties it envisages for implementation of some of them. The West Coast Regional Council identified that it has been advocating in various forums that coastal hazard identification should be a priority as a national project rather than having each individual regional council having to commission its own. This council considers the four policies in the NZCPS are restricted in their intent and also policies do not allow scope to manage issues at a local and regional level.

In assessing such issues, the Board took into account the helpful manuals for local authorities put out by the MfE on managing natural coastal hazards and climate change. And we also

[209] *Coastal Hazard Risk Indicators*: *A Report To Environment Bay of Plenty*. Hill Young Cooper Ltd in Association With Eco Nomas Ltd, Environment Bay of Plenty, October 2003: *Managed Retreat from Coastal Hazards: Options for Implementation*. Turnbull and Stewart Ltd for Environment Waikato Regional Council.

understand that the newly formed Transport Agency is looking at the effects of climate change on transport and ports infrastructure. And as part of any background reading *The Review of The New Zealand Coastal Policy Statement 1994 – Coastal Hazards* by Mr Jacobson[210] contained very useful information on the coastal hazard phenomena and problematic examples of how the NZCPS provisions on coastal hazards have been implemented (or not) over the country in various regional and district plans and through consents. In addition, CDEM is preparing tsunami risk models which may provide guidance for other risk hazards. There is thus beginning to be a body of knowledge along with the very important IPCC reports themselves that needs to be co-ordinated and made available to all councils.

- **Should coastal hazards management be addressed by a national environmental standard or a National Policy Statement?**

At a meeting with officials from the Ministry for the Environment this year, the Board was advised that a possible national environmental standard on climate change issues was under consideration.

The latest informed advice from Professor Manning identifies the ever-changing projections of the height of sea-level rise. While the exact levels of sea level rise are difficult to project, he said this:-

> With the magnitude of sea level rise being in the order of metres rather than centimetres it would seem to me that the NZCPS provides an opportunity to signal a change in the underlying mindset used for planning and for considering property rights and existing use rights. This would be a change away from the expectation of long term stability, to an expectation of inexorable change.
>
> To some extent the wording in objective 8 may be doing this through use of the language "… *managed increasingly by locating or relocating development away from risk areas, …*". I believe that the science strongly supports this sense of managing a dynamic situation…
>
> Discussions with local government also suggest that while the 2008 MfE Guidance Manual makes some important progress in establishing two different levels corresponding to different levels of risk averseness, it has not gone far enough to articulate how these levels should be applied. Lack of uniformity in this regard would seem to be undesirable.
>
> I have no expertise to comment on the issue of private vz public liability in this area, but it seems clear that expectations for perpetual rights to existing use need to be managed. Any sense that a particular hazard line allows risk-free development behind it now needs to be associated with a timeframe for the expiry of that risk-free status. Developers and the general public probably also require more understanding of the expected changes in coastal hazards.
>
> When you know that something is going to happen, but you do not know when, it may be more appropriate to plan in terms of what will be done as different levels of change occur. This would require a shift from planning in terms of specific time horizons, to one of anticipatory planning for different levels of sea level rise and then implementing those plans as and when they become necessary.

[210] #319. Jacobson. Volume I & Volume II (Appendices).

> For example, such an approach would encourage establishment of plausible adaptation strategies to relocate or protect a major coastal transport corridor for 0.5m, 1m, or 2m of sea level rise. The knowledge and understanding of appropriate retreat strategies, particularly for essential services and very large investments in settlement patterns, would then provide the necessary context for considering the lead time for adaptation as and when necessary[211].

We found Professor Manning's suggestions practical and constructive. We suggest as a result the solutions may need to be more flexible than rigid with a precautionary approach and adaptive management techniques to assist.

- **Conclusion**

We recommend policy 51 be amended and become policy 27 as follows:

> **Policy 27 Identification of coastal hazards**
>
> **All decision makers must identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed having regard to:**
>
> **(a) physical drivers and processes that cause coastal change including sea level rise;**
>
> **(b) short term and long term natural dynamic fluctuations of erosion and accretion;**
>
> **(c) geomorphological character;**
>
> **(d) the potential for inundation of the coastal environment, taking into account potential sources, inundation pathways and overland extent;**
>
> **(e) cumulative effects of sea level rise, storm surge and wave height under storm conditions;**
>
> **(f) influences that humans have had or are having on the coast;**
>
> **(g) the extent and permanence of built development; and**
>
> **(h) the effects of climate change on:**
>
> **(i) matters (a) to (g) above;**
>
> **(ii) storm frequency, intensity and surges; and**
>
> **(iii) coastal sediment dynamics;**
>
> **taking into account the most recent available national and international guidance on the likely effects of climate change on the region or district.**

[211] #539.

Policy 52 Subdivision and development in areas of hazard risk

In areas potentially affected by coastal hazards, local authorities shall:

(a) avoid new subdivision and residential or commercial development on land at risk from coastal hazards;

(b) avoid redevelopment, or change in land use, that would increase risk from coastal hazards; and

(c) encourage redevelopment, or change in land use, that would reduce risk from coastal hazards, including:

(i) managed retreat, by relocation, removal or abandonment of existing structures;

(ii) replacement or modification of existing development to reduce risk without recourse to hard protection structures, including by designing for relocatability or recoverability from hazard events.

The s32 Report

The report identifies that the location and design of subdivision and development must be managed appropriately to ensure risk to property and infrastructure is not exacerbated. This builds on the previous policy direction of the identification and assessment of hazard risk areas and promotes proactive management of existing or potential risks for subdivision and development.

The s32 report states:

> [E]ffective implementation … requires that the location and design of subdivision and development in areas in the coastal environment that are at risk from coastal hazards should be managed to:
>
> - avoid creating new risks in 'greenfield' areas;
> - avoid increasing the potential level of risk in areas of existing development;
> - seek to reduce the level of risk through proactive adaptive management decisions such as retreat; and
> - avoid reliance on hard protection structures to protect property from coastal hazards.

Submissions

- **Support from conservation groups, individuals and community groups**

Conservation organisations such as EDS and ECO, and environmental action groups such as Kapiti Environmental Action Inc, the NSaPS, and Guardians of Paku Bay, strongly support the policy, along with many individuals and community groups. Professional organisations such as IPENZ and the Tourism Industry Association also strongly support the policy.

- **Policy should include infrastructure and other forms of development**

A considerable number of individuals are concerned that the draft policy does not include all forms of development (such as infrastructure). They seek amendment to clause (a) to include '*all new development on land at risk from coastal hazards'*.

Several regional and district councils, as well as IPENZ, also consider that broader references should be made to 'development,' rather than focusing on 'residential and commercial'. They consider that the words 'residential and commercial' would seem to unnecessarily limit the scope of clause (a) and should be removed.

- **'Abandonment' not always an appropriate option**

Most regional councils (supported by NIWA and IPENZ) disagree with the use of the word 'abandonment' as encouraging an option that may not lead to the best outcome. Local government is occasionally faced with arguments about allowing dwellings to fall into the sea when it is preferable to remove them. They suggest that 'abandonment of structures' be deleted as an option because this could be seen as encouragement to do so when it may not be the best outcome and say it is more appropriate to 'relocate' or 'remove' rather than 'abandon'.

Several individual submitters also consider the inclusion of the word 'abandonment' in clause (c)(i) may not be appropriate for it may be inconsistent with policies 26 and 35(h) which discourage the 'abandonment of structures'. They recommend that if 'abandonment' remains it should be modified by the inclusion of the phrase 'in extreme circumstances'.

- **Hard protection structures may sometimes be appropriate**

Several submitters considered that hard protection structures should not be disallowed completely, for if they were, the whole of the Hauraki Plains and the township of Whitianga and other larger coastal communities would disappear.

Two councils do not agree with the bias against hard protection structures and consider that, where there is a reasonable chance of success and adverse effects are no more than minor, they are more in keeping with the purpose of the RMA. For example, the Waikato District Council draws attention to the highly modified nature of the coast in some areas where protection works form an integrated frontage. It believes the policy should recognise that hard protection structures may be appropriate in some places, such as Raglan, where wind energy is low.

A further council points out that the phrase 'without recourse to hard protection structures' in clause (c) suggests that developers are put on notice and there is no guarantee of hard protection being approved in the future, nor that hard protection will be provided by local authorities.

- **Concern that policy narrowly focuses on avoidance of development**

Most infrastructure companies consider the policy adopts a very restrictive and narrow approach to dealing with hazard risks in the coastal environment. They submit that it should be up to local authorities, property owners and developers to find creative solutions to hazard risks, and the 'avoid' policies are far too restrictive. They also point out that is unrealistic to

encourage 'managed retreat by relocation…' of existing infrastructure. This is particularly problematic for significant infrastructure which simply cannot be relocated, such as ports, airports, major roads and railway infrastructure.

Infrastructure companies also say the policy is too broadly worded at present, as it simply refers to any coastal hazard, no matter the likely extent or risk of it actually occurring. While it would be sensible to ensure that any new facilities took into account issues such as sea level rise it is not likely to be sensible, nor practical, to expect existing facilities not to continue to operate or that new facilities cannot be constructed and used.

While these submitters accept that subdivision of a residential nature should not be located in coastal hazard areas, they believe commercial development such as ports, can appropriately assess and provide for the risks of locating in such areas and should not necessarily be prevented from doing so. Meridian, for example, submits that the draft policy could result in significant areas of the coastal environment being unusable, and provide no flexibility for innovative responses to coastal hazards. It requests that policy is amended to reflect an 'avoid, remedy or mitigate' approach (i.e. the s5(c) RMA standard).

Developers also consider that the policy is very narrow and does not recognise or provide for the possibility of technical solutions which avoid the risk of hazards and which may constitute a more efficient way for people and communities to provide for their social, economic and cultural wellbeing. They submit that the policy needs to be amended to encourage technical solutions, which avoid the risk but allow efficient use of resources through subdivision and development

Some councils are also concerned that the policy is too restrictive. The Auckland City Council considers that it would rule out any redevelopment or restoration of a breakwater for a harbour or marina or restoration barriers along a property frontage and that is of concern.

- **Need for a prioritised management framework**

The Hawke's Bay Regional Council considers the policy should be enhanced by providing greater guidance and direction on a prioritised management framework (e.g. to manage hazards, avoid new development; reduce risks for existing activities; protect and enhance natural buffers; soft engineering solutions are then considered and hard protection structures are a last resort). It notes that climate change and sea level rise planning guidelines by MfE already suggest a prioritised approach, which the NZCPS could adapt and give greater weight.

Similarly, the Kapiti Coast District Council considers 'that 'managed retreat' assumes that the community will pull back from the coast and let nature take its course (with subsequent loss of the dune system). It says the NZCPS therefore needs to be clear about the hierarchy of protection or restoration rather than having competing policies as it does now.

- **Need for clearer guidance from central government**

Several councils seek clearer guidance and funding from central government to develop a national approach to the avoidance of coastal hazard risk.

Environment Bay of Plenty suggests that central government should assess the cost of future property losses and ensure that the right planning decisions are made now to minimise those costs. The Hurunui District Council believes that central government should fund and

undertake the research to nationally identify the risk and establish the appropriate databases which can be used locally.

The Waitaki District Council considers that the relocation, removal or abandonment of existing structures and infrastructure is likely to have an adverse effect on communities who use these structures and a significant financial impact on local authorities who will need to relocate infrastructure or provide alternative assets. It considers a national strategy is required to address the impact of coastal erosion with specific funding to support coastal erosion protection works or fund the replacement of assets as needed.

- **No definition of 'coastal hazard'**

The Wellington Waterfront Company is concerned that there is no definition of 'coastal hazards' in the Glossary. It says that it is unclear whether policy 52 is intended to apply to all development in the coastal environment where some form of coastal hazard protection either has been constructed or would be prudent, or merely to areas where there is a particularly high risk of adverse effects from coastal hazards. It suggests an amendment to address these concerns.

Marlborough District Council also seeks clarification of the term coastal hazard and whether it includes slope stability. It considers that if 'slope stability' is considered to be a coastal hazard then mitigation options should be provided for within the policy options.

- **Changing land values**

A number of individual submitters, together with EDS, are critical that clause (b) does not explicitly address the increase in the value of assets which are put at risk when a small cheap structure such as an old bach is replaced by a large modern home on a coastal property subject to a coastal hazard. They consider the policy should seek to discourage this type of redevelopment which increases the magnitude of the risk. They suggested this could be achieved by amending the policy to read 'avoid redevelopment, or change in land use, that would significantly increase the value of assets at risk from coastal hazards and/or that would increase risk from coastal hazards'.

- **Tsunami inundation may extend to inland and urban areas**

CDEM identified that tsunami modelling has indicated that the inundation areas for (infrequent) high impact tsunami are likely to cover greater areas than other coastal hazards, possible extending beyond the coastal environment, to include in-land and urban areas. For this reason the land use policies of policy 52, as currently phrased, are seen by CDEM as too restrictive. Accordingly, CDEM requires the inclusion of a new subsection in policy 52 to reflect this issue and we agree with that.

- **Clause (c) is ambiguous**

Several submitters note that the wording of clause (c) is potentially ambiguous and open to argument, because an old bach replaced by a new relocatable swelling is entirely consistent with (c)(ii), despite being contrary to (c)(i). They seek amendment to clause (c) to clearly express the intent of the clause that relocatability and relocation of new structures is not an appropriate mitigation method for managing coastal hazards.

Issues Arising

In connection with the hard protection structures, the literature around coastal hazards generally identifies repeated issues around public perceptions and/or expectations that identify[212]:

- a lack of understanding of shoreline movement over the short term and long term (beaches breathe in and they breathe out) and much coastal development in New Zealand has not adequately responded to this phenomena;
- a lack of understanding of the adverse effects hard protection structures have on coastal processes, natural features, natural character, biodiversity, public access and that they can create downstream hazards with adjacent areas requiring further intensification of use and investment;
- a reliance on hard structures perceived to be the only realistic and immediate solution if coastal processes affect private property even coastal reserves;
- a lack of understanding about what alternative responses there may be;
- a presumption that local authorities because of their delegated responsibilities from the Crown are responsible for protecting private and public land investments subsidised by the ratepayers;
- a lack of understanding of the long term costs of on-going maintenance and repair of hard protection structures which becomes unaffordable in the long term.

These are the reasons for adding clause (e) to discourage hard protection structures and promote the use of natural defences as well as alternatives.

We also recommend a new policy 30 to complement aspects of this policy entitled 'Strategies for protecting significant existing development from coastal hazard risk'.

And in response to those submitters who query Crown/local authority responsibility for protecting private land investments subsidised by ratepayers we note that MfE are considering this issue under its consideration of a national environmental standard on climate change.

Accordingly, we recommend that policy 52 be amended and become policy 28 as follows:

> **Policy 28 Subdivision, use and development in areas of coastal hazard risk**
>
> **In areas potentially affected by coastal hazards over the next 100 years, all decision makers must:**
>
> **(a) avoid increasing social, environmental and economic risk[213] from coastal hazards;**
>
> **(b) avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;**
>
> **(c) encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing**

[212] *Scoping Paper for Coastal Hazards, 19.*
[213] Risk: as defined in the Glossary to the recommended NZCPS (2009).

structures or their abandonment in extreme circumstances, and by designing for relocatability or recoverability from hazard events;

(d) encourage infrastructure to locate away from areas of hazard risk;

(e) discourage hard protection structures and promote the use of alternatives to them, including natural defences; and

(f) consider the potential effects of tsunami and how to avoid or mitigate them.

Policy 53 Natural defences against hazards

> **Local authorities shall provide for the protection or restoration of natural features in the coastal environment that protect land uses from coastal hazards.**

Background

This policy continues the position of the NZCPS (1994) Policy 3.4.3 but without specifying the natural features that protect land from natural hazards. Policy 3.4.3 states:-

> **The ability of natural features such as beaches, sand dunes, mangroves, wetlands and barrier islands, to protect subdivision, use, or development should be recognised and maintained, and where appropriate, steps should be required to enhance that ability.**

The s32 Report

The authors consider the effective implementation of an objective requires that natural areas in the coastal environment that may provide a barrier to coastal processes that could result in hazards to property should be protected or restored. In addition it requires guidance for the appropriate location of hard protection structures.

The report states:

> [P]rotection of the built environment can be provided through the protection or restoration of natural features which provide barriers, such as dunes, estuaries and coastal vegetation or through the erection of hard protection works such as seawalls, groynes and other similar structures. …
>
> Hard protection structures (usually seawalls) are a common response when coastal development is at risk of damage from natural coastal processes but they can have significant adverse effects on natural character, amenity values (e.g. causing loss of beach sand and foreshore) and public access to and along the coastal marine area. It is therefore appropriate to provide guidance on the planning and decision making for such facilities.

As most of the land of the coastal marine area is held by the Crown on behalf of all New Zealanders, the report requires that this status should be recognised when considering the location of any such structures, to ensure that public values are addressed as well as any private gains. In this respect, the report observes hard structures should not be considered as the only management option. Due consideration should also be given to other options, as well as climate change trends, and the public costs and benefits over time periods as discussed under proposed Policy 51 (100 years). This will enable more robust sustainable management decision to be made involving environmental, social and economic considerations.

The s32 report also considers the effects of climate change (in particular sea level rise and an increase in storms of a greater intensity) will drive increasing pressures for more protection of the built environment. By not recognising this issue at this time, there is a risk that hard

protection works will become increasingly prevalent along many areas of New Zealand's coast. The associated risk is a loss of natural character, amenity and public access in many coastal marine areas. Hard protection structures thus need assessment to ensure their appropriateness for location and purpose.

The thrust of the s32 report on this issue therefore is seen by its authors to provide guidance on appropriate forms of protection from coastal hazard risks while recognising that total avoidance of such risks is not achievable in all instances.

Submissions

- **Individuals, community groups and conservation interests support the policy**

The majority of individuals, community groups and conservation interests support this policy, many with no requirements for amendments. One submitter, an expert on dunes as outstanding natural features, considered the policy is a very respected and significant advice[214]. Numerous individual submitters also supported protection, enhancement or restoration of natural features such as dune systems and three submitters in particular sought a separate policy for dune protection. Many make reference to dune restoration (replanting) as a very cost effective method for that process.

- **Councils consider the policy needs qualification and clarification**

Some local authorities agree in principle with the policy but maintain it needs qualification as there may be circumstances where restoration is not possible in highly modified environments. Others request that more specificity is given to the natural features the policy is required to protect, (as in NZCPS (1994)). Auckland Regional Council submits that the current wording of policy 53 could be used to justify inappropriate actions such as seawalls along a cliff face to protect the land uses above.

Kapiti Coast District Council, which is currently addressing coastal erosion issues along its coastline, is not clear how far the policy is expected to go in such protection and it seeks guidance on that. Environment Bay of Plenty also seeks clarification of the term 'protection', used in the policy. Other councils recommend the term 'enhancement' (as opposed to 'restoration') in relation to providing for protection of natural features.

Some councils consider the cost implications and the open ended nature of the policy are so great and so wide as to render the policy utopian rather than practical and seek its deletion. Two councils consider that the policy may work in opposition to policy 52 and should be deleted.

Environment Canterbury makes the point the policy cannot use the word 'local authorities' because regional and district councils have different responsibilities. It, along with several other councils, consider that phrase should be replaced with 'policies' and/or 'plans'.

Environment Waikato seeks clarification of the responsibilities of Department of Conservation, regional councils and territorial authorities in managing the issues around natural defences and hazards.

[214] #68 Hilton.

- **Infrastructure companies and property interests oppose the policy**

The infrastructure companies which submitted on this policy consider that as it requires local authorities to protect land uses from coastal hazards, this would place a considerable and unjustified burden upon them. Further, the requirement that natural features are 'restored' to protect land uses from coastal hazards is also opposed. In built-up urban areas 'natural features' may simply be unsuitable for providing protection from coastal hazards.

They consider that the policy in present form should be deleted and should be reconsidered in combination with policies 51 and 54. Other large development companies and marina companies submitted similarly.

Issues Arising

- **The significance of replacing the words 'local authorities' with 'policies and/or plans'**

The Auckland District Law Society submitted this is an extraordinary policy which appears to attempt to place a statutory duty, and possible common law liability for neglect, on a local authority which has not in the past been accepted as part of New Zealand law: see *Falkner* v *Gisborne District Council*[215]. As written it appears to make the local authorities liable if they do not take active steps to protect adjoining private properties from erosion. For example, must a local authority take steps to replace sand, vegetation or restore dunes in order to protect adjoining properties from land erosion? Does it require a local authority to erect an off shore barriers in the event of risks from storms or changes in sea levels? The committee suggest that if the policy was to be retained in any form it should not be mandatory.

In assessing this aspect of the policy we conclude that the authors of the NZCPS (2008) did not intend the wording of policy 53 to have the effect of concern to the Auckland District Law Society. This is clear from many of the background papers to the draft we sighted. We see that the policy requires decision making under the RMA to do no more than properly factor in the role of natural features in protecting coastal lands from coastal hazards.

- **Mangroves**

The question of the use of mangroves to protect land uses from coastal hazards however was a repeated one. We note they were used as a protective mechanism in the NZCPS (1994). But this is what a recent technical publication from the ARC, '*The New Zealand mangrove: review of the current state of knowledge',* has to say:

> The Resource Management Act (1991) allows governing bodies to uphold protection of mangroves against indiscriminate destruction and/or reclamation. However, concerns over recent expansion of mangrove areas, coupled with a push to preserve the ecology of adjacent habitats (e.g. saltmarsh, seagrass beds and open mudflats), has resulted in increased pressure on regional councils and environmental agencies to provide information about the causes of, and possible resolutions to, this perceived problem. Meanwhile, the public view of mangroves remains polarized, with some groups advocating protection at all costs, while others see mangroves as a nuisance and a loss to the economic and aesthetic values of the harbours and estuaries in which they grow. In some cases management

[215] [1995] 3 NZLR 622.

> initiatives have been put in place with governing agencies, research scientists, community groups and iwi working closely to find a balance between mangrove and other estuarine habitats. One such programme in the Waikaraka estuary in Tauranga Harbour has been very successful (Wildland Consultants 2003). However, despite these initiatives, protective legislation and due process, several groups and private individuals in other parts of the North Island have removed mangroves from estuaries in protest at controls and perceived inaction[216].

We note that formation of a number of marine reserves that encompass areas of ocean and foreshore, including mangroves, are managed for scientific and preservation reasons and have helped consolidate some important areas for mangrove research. And we note too that mangroves form a significant component of the protected foreshore vegetation at Motu Manawa (Pollen Island) marine reserve in the Waitemata Harbour and Te Maketu marine reserve on Waiheke Island.

From the evidence, it appears, that currently Environment Bay of Plenty, Waikato and Auckland all have differing management methods to control the spread of mangroves with the focus now moving to catchments since there is general acceptance that mangrove expansion is a response to increased sediment input into harbour and estuaries. On a site visit with EBOP we viewed one method of managing mangrove which are overwhelming a sensitive intertidal area. These methods include removal of all above and below-ground mangrove material (including crowns, stems, roots and pneumatophores); removal of above-ground material only (also including pneumatophores) and cutting all to the level of the substrate surface; and removing above-ground crowns and stems, but leaving pneumatophores and roots intact. Mangrove debris is either stockpiled, dried, and eventually burned within the intertidal area, or removed and disposed of outside the coastal marine boundaries.

We recommend that mangroves should not be included in the list of natural features to protect land use from coastal hazards. Mangroves may not always be suitable for this purpose.

- **Esplanade reserves**

The purpose of esplanade reserves and strips is provided under s229 RMA. It includes:

- contributing to the protection of conservation values (including maintaining or enhancing the natural functioning of the adjacent sea; or protecting the natural values; or mitigating natural hazards) (s229(a)(i), (iv) and (v)); or
- enabling public access (s229(b)); or
- enabling public recreational use where use is compatible with conservation values (s229(c)).

Utilising esplanade reserves or strips as barriers to mitigate natural hazards could mean allowing natural coastal processes to function and the land to erode. But the *Coastal Hazards and Climate Change* Guidance Manual is doubtful that such reserves or strips provide a primary mechanism for reducing coastal hazard risk because they will be typically backed by residential development so ongoing coastal erosion causes the progressive loss of the reserve. In many places, there is also considerable pressure on councils from property owners backing the reserve to protect it and hence their property. There are also cases of un-consented protection works that have been constructed on public reserves by front row property owners.

[216] #538 Pringle. Auckland Regional Council, Technical Publication No. TP325. May 2007.

However, councils do not have responsibility to protect reserves as a means of protecting private property. We therefore do not consider they should be included as natural defences against hazards. The Guidance Manual however identifies the Reserves Act 1977 as being useful for providing buffers from coastal hazards, but the primary purpose of a reserve has to be respected, i.e. it is an historic, scientific or scenic reserve and it is questionable whether they may, or should, be used for a buffering effect.

- **Beaches as a natural defence**

A submitter, Mr Skinner, notes the benefits demonstrated by one beach restoration project involving a process whereby excess sand is relocated from the lower profile of the near-shore beach, once the beach has recovered sufficiently following a storm event, and this is then placed directly into the dune escarpments created by extreme storm erosion, thereby protecting the integrity of the frontal dune and esplanade strip to protect against subsequent storm damage. This method has apparently been successfully trialled at Papamoa as an effective extreme storm mitigation measure. Failure to use this method, means that reliance is placed on natural sand movement (from fickle wind situations) from the lower shore to the dune. The time for this to occur naturally is such that the risk of damage to the frontal dune from a subsequent extreme storm event is significantly increased[217].

- **The significance of dunes restoration as a natural defence**

Sand dunes play, or have the capacity to play, a considerable part in protecting land uses from coastal hazards. Even beaches that have had chronic and sustained erosion problems, sometimes exacerbated by hard engineering works have, recovered after dune restoration treatment to survive severe storm events. Native dune plants which are used in such restoration are salt tolerant and extremely effective at trapping sand and they can slow down coastal inundation, storm surge and possibly tsunami. One submitter, Mr G Jenks, a scientist involved with dunes in respect of dune restoration over the last decade, cites a study indentifying the ability of natural sand dunes to accrete sand when restored. This is being undertaken through the Department of Earth & Ocean Sciences at the University of Waikato to ascertain how the conservation efforts of replanting dunes with the native plants have led to low sloping dune profiles which appear to dissipate rather than enhance storm energy thus reducing erosion. So far the restored sites demonstrate significant accretion despite climatic conditions favouring erosion. The measured rates of accretion (at the time of hearing) were an order of magnitude larger than would be required to mitigate the worst sea level rise predicted by the 4th Assessment Report of the IPCC[218]. This affordable and New Zealand initiative is cited by the IPCC in that report (2007)[219].

Natural dune function, states Mr Jenks, (who submitted on the basis of 12 years of success with dune restoration projects using native grass species such as *Pingao Desmosahoenus Spiriales* and *Spinifex Seruceus* through various beach systems in New Zealand), is vastly different and superior to planting with marram and lupin the steep eroding dunes adjacent to urban areas. The success of this work is reflected in the April 2008 release of the MfE Climate Change Adaptation Case Study 01 *Coast Care Bay of Plenty Dune Restoration*, an example of which the Board saw on its site visit to Tauranga and the coastline of the Bay of

[217] #213 Skinner.
[218] Dr Willem de Lange (University of Waikato 2007) cited in Jenks #69. Mr Jenks is currently employed as the Regional Coast Care Co-ordinator, Coast Care EBOP Programme.
[219] Intergovernmental Panel on Climate Change 4th Assessment Report, Chapter 6, 351 citing Jenks. G.K, Dahm, J, Bergin, D: *Changing Paradigms in Coastal Management Ideology, NZ Coastal Society Conference, Tutukaka 2005.*

Plenty. The Marine Parade beach of Mt Maunganui has in past years carried very little beach or sand along its frontage. In November 2008 the Board witnessed the results of 25 metres of accretion in 11 years after dune planting with native species had been carried out by EBOP together with the community supported by grants and support from various councils, MfE and DOC.

Community involvement is clearly a significant part of the dune restoration projects and had warm support from the councils spoken to about the project.

- **What may constitute 'natural features' in the policy?**

GNS Science make the point that natural features in themselves are not a guarantee from coastal hazard impacts as they may themselves be periodically affected by hazard impacts during natural cycles of erosion/accretion or due to sea level rise and other coastal hazards that will be exacerbated by climate change. We accept that too and suggest an educative element within plans themselves will be necessary to make the distinctions between coastal hazards and natural processes. For as Mr M Jacobson identifies in his *Review of the New Zealand Coastal Policy Statement 1994 – Coastal Hazards*:-

> The first dilemma is that coastal erosion, cliff collapse and inundation by the sea are both coastal hazards and natural coastal processes; and that sustainable coastal hazard management seeks both to protect the community from coastal hazards, and to protect the integrity and functioning of natural coastal processes.
>
> That dilemma is resolved by an understanding that natural coastal processes are only coastal hazards when development is in their way[220]…

The submissions and the site visits undertaken indicate that there is a case to include some of the natural features identified in the NZCPS (1994) - namely beaches, dunes, wetlands, intertidal areas, estuaries, coastal vegetation, barrier islands and coastal resources – and all should be identified as natural features in the policy. We recommend the policy be amended accordingly.

- **Conclusion**

We recommend that policy 53 be amended and become policy 29 to read:

> **Policy 29 Natural defences against coastal hazards**
>
> **(1) All decision makers must provide for circumstances where it is appropriate to provide for the protection, restoration or enhancement of natural defences that protect coastal land uses, or sites of significant biodiversity, cultural or historic heritage or geological value, from coastal hazards.**
>
> **(2) Such natural defences include beaches, estuaries, wetlands, intertidal areas, coastal vegetation, dunes and barrier islands.**

[220] Vol 1 Report, para 1.3, 14.

Policy 54 Protection structures

When considering the potential use of hard protection structures in response to coastal hazard risk, local authorities shall:

(a) promote alternative responses, including soft engineering solutions and the relocation, removal or abandonment of existing structures;

(b) take into account the expected effects of climate change, over at least a 100-year timeframe; and

(c) evaluate the likely public costs and benefits of any proposed hard protection structure, and the effects on the environment, over at least a 100-year timeframe.

Where hard protection structures are considered to be necessary, local authorities shall:

(d) generally avoid the location of such structures in the coastal marine area;

(e) promote the location of hard protection structures on private land, rather than public land, where the purpose is to protect private land;

(f) ensure provision for the continuation or restoration of public access to and along the coastal marine area at high tide; and

(g) ensure structures are designed to minimise consequential erosion.

The s32 Report

The s32 report states:

> In addition the implementation of [an] objective ... requires guidance for the appropriate location of hard protection structures. Hard protection structures (usually seawalls) are a common response when coastal development is at risk of damage from natural coastal processes. Such structures can have significant adverse effects on natural character, amenity values (e.g. causing loss of beach sand and foreshore) and public access to and along the coastal marine area. It is therefore appropriate to provide guidance on the planning and decision making for such structures ….hard structures should not be considered as the only management option. Due consideration should also be given to other options as well as climate change trends and the public costs and benefits over a long time period as discussed under proposed policy 51. This would enable more robust sustainable management decision to be made involving environmental, social and economic considerations.

Submissions

- **Individuals, community groups and conservation interests generally support the policy**

Many individuals supported the policy without change. Some suggest replacing the term 'soft engineering' in the policy with 'dune enhancement options' or 'natural defences' or 'sustainable options.' One suggests a revised hierarchy from soft protection, through to dune plantings and sand works, followed by hard protection works with removal or relocation of existing structures only as a last resort. A few individual submitters oppose some or all of the policies, saying that they are based on the premise that hard protection structures have adverse effects and ignore the duty of local and central government to protect land from inroads of the sea.

Conservation Boards and EDS are supportive of the policy, with the Boards discouraging of hard protection structures. Community groups generally strongly support the policy and say the emphasis should be on alternative responses rather than hard protection structures; however, some do not support clause (e), which promotes the location of protection structures on private land.

- **Iwi views**

Ngati Kahu and Ngati Awa Trust Board provided a detailed amendment which suggested promoting alternative responses to hard protection structures, taking into account effects of climate change over a 100 year timeframe, evaluation of the costs and benefits of any hard protection structures and their effect on the environment, promotion of hard protection structures on private rather than public land, and provision for the continuation or restoration of public access to and along the CMA of high tide. Kahungunu also considers clause (d) restricts the use of artificial reefs when they may be the best solution for encouraging coastal accretion from dynamic coastal processes. We gave this amendment considerable attention.

- **Hard protection structures are sometime the most appropriate option**

Many councils do not support clauses (d) to (g) in relation to hard protection structures. Several regional councils again point out that hard protection structures sometime provide the most appropriate option, with one saying that, '*in some places rock walls cannot be avoided*'.

The Manukau City Council submits that hard protection can sometimes be the best practical solution to protect vital infrastructure such as coastal roads and that it is sometimes preferable to providing expensive soft protection measures or to moving a road inland. Sometimes it is also the best practical solution for protection to be provided on esplanade reserves (which can also protect reserve and access). Other councils also point out that the policy fails to recognise that hard protection structures such as stop-banks can enhance public access.

The Northland Regional Council (along with a number of other councils) considers that the focus on the policy should be on determining the most appropriate means of managing adverse effects of hazards rather than concerns about a specific method.

The Hawke's Bay Regional Council considers that the policy needs to provide a clearer direction that hard protection structures should only be used in response to existing coastal hazard risk (i.e. should not be used, or be expected to be used to protect future subdivision,

use and development or redevelopments). The council considers that the policy appears to have weakened tests for hard protection structures where the burden of proof is only that the structure is 'necessary'. This contrasts with the NZCPS (1994) (policy 3.4.6) test, which was to be the 'best practicable option' for the future.

IPENZ considers that clauses (d) and (g) are overly prescriptive and focus too much on what can and can't be done with hard protection structures. Rather, it recommends that a better approach would be to implement a policy that promotes a risk assessment of various risk-reduction options (including staged approaches and the 'do-nothing' option) for local situations and a cost-benefit analysis (including environmental effects) to arrive at a sustainable solution with the community.

NIWA also submits that the policy does little to assist local authorities to better manage the reactive nature and demand for coastal defences and the pressures they face to consent protection structures. It says that the policy should provide for a more strategic approach to identifying where protection structures and other engineered approaches may provide the most sustainable and cost effective solution, and other approaches should be considered. NIWA provides a detailed rephrasing of the policy, which the Board has considered.

- **Opposition to promoting the location of hard protection structures on private land**

Clause (e) requires local authorities to 'promote the location of hard protection structures on private land, rather than public land, where the purpose is to protect private land'. Some community groups and individuals oppose this clause.

A number of regional councils also comment on clause (e). The Greater Wellington Regional Council considers that when people build their own defence structures the approach is ad hoc and sporadic and they tend to fall into disrepair over time. It considers that it is better if engineered structures are part of a long-term co-ordinated strategy and it supports the deletion of (e). Environment Canterbury considers there is a conflict between clauses (d) and (e).

Taranaki notes that sometimes it may be even more detrimental to dig a hard protection structure into private land, which then creates greater erosion on the seaward side.

- **Policy not relevant to infrastructure and other developments**

Infrastructure, marina companies and development companies generally find the intention of this policy acceptable but consider that it is not very relevant or applicable to facilities like transport structures, airports, ports, marinas or city waterfront developments. Clause (f) is generally seen as inconsistent with policy 43 relating to public access and needs a cross-reference. Transit New Zealand seeks to ensure that the essential role of hard structures in protecting existing and new transport infrastructure is recognised in the NZCPS. The Port Companies that consider clause (e) doesn't apply properly to ports and marinas that inevitably cross the CMA boundary.

Generally the companies consider the policy places a considerable burden on local authorities and the implication of the policy doesn't appear to have been fully considered, e.g. the promotion of locating hard structures on private land doesn't consider who should pay for the structures, and will also result in the poor integration of such structures. Collectively the companies put forward an amended policy to which the Board gave careful regard.

LandCo Land Developments Ltd consider climate change should be omitted until a NPS has been introduced to avoid escalating costs and to avoid inconsistent decision making because guidelines are inadequate.

- **Need to address amenity and heritage values**

Several councils consider that the policy should also address the amenity issues around 'hard protection structures'. Auckland Regional Council considers clause (g) should be expanded to ensure hard protection structures are located and designed to minimise adverse effects on natural character, amenity and landscape values, as well as minimising consequential erosion.

The NZHPT considers that an amendment should be made to the policy to explicitly provide for the consideration of historic heritage and cultural and ecological values.

- **Comments on specific phrases used in the policy**

A number of regional councils reiterate issues expressed in relation to other policies; for example, that the policy should refer to 'policies and plans' (rather than 'local authorities),' that there is no guidance on an appropriate model for sea-level rise, and that some terms require clearer definition.

Two councils say the term 'abandonment' should be deleted from clause (a) because this could result in a situation of exacerbated erosion if a structure is left to deteriorate in CMA.

Issues Arising

- **Hard protection structures**

Mr Jacobson considers the first point to note is that this policy is about more than just 'hard protection structures' or 'protection structures' – it also promotes soft engineering methods and managed retreat. Nevertheless the focus is on protection works whether 'hard' or 'soft' in dealing with such proposals and the title therefore should be 'coastal hazard protection works'. There should also be a definition in the glossary for 'soft engineering'.

Representatives of the Ports of Auckland and Port of Napier and Centre Port identified that policies and regulations governing preservation use and development of the coast are absolutely critical to the way in which port companies operate and in turn to facilitate New Zealand's trading interests. The *Sea Change Policy Initiative,* that is to raise coastal shipping tonne per kilometre share from the current 15 percent to over 30 percent, to be effective relies on the port sector with its corresponding infrastructure to play an even greater role in the movement of cargo, and hence ports' impact on the New Zealand coast.

In addition, and given government studies have shown the predicted freight task is forecast to double over the next 20 years, then to achieve the government objectives this will require, and can only be achieved, by significant additional tonnage joining the shipping network and potentially additional infrastructure at individual ports to accommodate increasing cargo flows by sea of the volumes contemplated. The witness spoke of talking about a four-fold increase in coastal shipping in that timeframe.

Mr Courie of the Port of Napier made the point that hard protection structures, e.g. breakwaters, are the only practical option for managing coastal hazards in the port environment, and to suggest locating or relocating port development from risky areas fails to understand the nature and role of port infrastructure and its current environment. Breakwaters are not hard land – i.e. reclamations – they are porous. Water moves through the breakwater as a way of dissipating energy and it collects in a drain behind the structure to drain back through the breakwater once the wave action moves out.

As to the costs of the climate change we heard of some initiatives from the Ministry of Transport which is funding research specifically into the effects of climate change on the land transport system including ports. (We note the New Zealand Land Transport Authority now speaks on behalf of coastal shipping and its associated issues.)

There is no easy answer to the use of hard protection structures and the order in which they may be used to provide stability to existing settlements and property rights but we concluded that NIWA's approach in the circumstances was the one which carried more weight on to implications of such protection mechanisms and for that reason we set it out in full here.

NIWA considers that policy 54 needs a broader focus to managing already developed coastlines than just singling out a particular option. The main issue arising from this policy is that it does little to assist local authorities better manage the reactive nature and demand for coastal defences and the pressures they face to consent such structures to protect existing development. It needs to encourage local authorities to adopt a much more strategic approach to identifying where protection structures or other engineered approaches may form the most effective and economically and environmentally sustainable long term solution to managing coastal hazard risk, and more importantly where such approaches will not be considered, within a framework of all other potential risk management options, including those listed in policies 52 and 53 above.

There also needs to be recognition that engineering approaches have a limited design life, in a New Zealand context often less than 20-30 years, and that adopting approaches based on protection structures or other engineering approaches can lock in future generations to continued expenditure to maintain, upgrade or replace any such protection. In many cases it also encourages further intensification of development in areas apparently 'protected', identifying where there needs to be transitioning mechanisms to more sustainable forms of coastal risk reduction is a key challenge that needs to be captured in this policy.

In referring to protection structures, the policy should be broadened out to include all engineering approaches that attempt to 'hold the line' of a coastal buffer which should also include softer approaches such as beach nourishment. For example, due to cost, availability of suitable beach sediment, and technical feasibility on exposed coastlines, beach nourishment in a New Zealand context is going to be a very limited option for managing coastal hazard risk along developed coastlines, except at very small scale in highly developed locations (e.g. small pocket beaches along the Auckland coast such as Mission Bay, or in Wellington, Oriental Bay). It is not simply a generic substitution for hard protection structures in most cases.

One submitter put to us that beach restoration is a process whereby excess sand is relocated from the lower profile of the near-shore beach, once the beach has recovered sufficiently following a storm event, and this sand is then placed directly into the dune escarpments

created by extreme storm erosion, thereby protecting the integrity of the frontal dune and esplanade strip to protect against subsequent storm damage. This method has been successfully trialled at Papamoa (in Tauranga) and is an extremely effective extreme storm mitigation measure. Failure to use this method, means that reliance is placed on natural sand movement (from fickle wind situations) from the lower shore to the dune. The time for this to occur naturally is such that the risk of damage to the frontal dune from a subsequent extreme storm event is significantly increased.

Dune restoration projects, such as those undertaken by Mr Jenks and Waikato University, a number of councils and the community, are important. However, there could be situations justifying hard protection works, such as for ports, airports and transport authorities, after analysis of the options and their effects to resolve what should be done in conjunction with local authorities. A new policy 30 provides strategies for protecting significant existing development from coastal hazard risk. It specifically refers to hard protection structures, as does new policy 28(f).

- **Existing use rights**

Both the *NZCPS Review Scoping Paper for Coastal Hazards*[221] and the *Coastal Hazards and Climate Change* Guidance Manual address an issue of considerable concern to property owners at the coastal interface, namely existing use rights to the property they own. They are described in the Scoping paper as a key barrier to effective implementation of planned retreat approaches and, in general, to reducing coastal hazard risks on coastal margins where existing development is located.

> In managing this interface (between land and sea) under the RMA where people have assigned use values to the land and assets there is a fundamental tension between allowing natural processes to occur (thereby protecting natural character, amenity values, beach profiles, etc) and protecting land-based property or public infrastructure.
>
> 'Coastal squeeze' results when the natural cycles of erosion and accretion are constrained by development (i.e. the collision between naturally dynamic coasts and relatively static coastal communities) (Bell et al, 2001). Thus when hard structures are erected to protect property, it has a significant impact on public access. Not only are dry shore areas lost, but any reserve lands or buffer between private titles and the foreshore may also be lost. 'Coastal squeeze' will also be exacerbated by sea level rise and the effects of climate change[222].

There are also potentially wider effects such as on biodiversity.

One council's startling approach to this situation was advice to affected coastal property owners that 'if you want to protect your lands to protect your house we won't object to the wall going on our land but if it falls down we are not looking at funding its replacement' – which did not appear to take into account any of the issues implicit in ss6 and 7 RMA and is not one which should be encouraged.

The authors of *Climate Change and Coastal Hazards* observe:

[221] March 2006.
[222] Ibid, para 3.3, 17-18.

> On eroding coastlines that have been developed, there is typically high public (and often political) demand for coast protection measures to 'hold the line' and protect private property, infrastructure or utilities. Such measures are often viewed by the public as 'solutions' to coastal erosion problems. Unfortunately, they tend to:
>
> - be reactive;
> - rarely be the most effective or sustainable option in the long term;
> - lead to a false sense of future security and often encourage further development behind the structures (see the Development-defend-development cycle in Box 1.2);
> - lead to other environmental damage and severe impacts on other coastal values;
> - lead to an expectation that such defences will be maintained in perpetuum, leading to ever increasing financial commitment to maintain and upgrade such defences[223].

There may be other ways of addressing the issue. In the *Coastal Hazards and Climate Change* document the example is given as Environment Canterbury's management of existing use rights in the Canterbury Regional Environment Plan. The document's authors state:

> Councils need to consider carefully the implications of activities permitted in a district plan, the terms of consents granted, and the extent of existing use rights in circumstances where coastal hazards may be exacerbated – or new coastal hazards may occur – within the lifetime of a development or new activity…[224].

Environment Waikato told us that houses are at risk from coastal erosion or flooding in over half of their coastal settlements and this will be exacerbated by climate change. On the Coromandel about 920 properties are estimated to be at risk over the next 100 years, 670 currently so. The total value of the property likely to be affected is $850 million over the same time frame. This council also identifies that a potential NZCPS response is to encourage regional councils to manage land use activities in coastal zones through rules in regional plans. This would, as the Guidance Manual indicates, have the effect of extinguishing existing use rights under s20A.

- **Conclusion**

In reviewing all these issues we were drawn in the end to the need for a new policy 30, strategies for protecting significant existing development from coastal hazard risk. That draws on some of the policy material provided by NIWA as well as other submissions and evidence. We also recommend specific references to hard protection structures in new policies 28(d) and policy 30(d).

We recommend deleting policy 54 and the inclusion of a new policy 30 as follows:

> **Policy 30 Strategies for protecting significant existing development from coastal hazard risk**
>
> **(1) In areas of significant existing development likely to be affected by coastal hazards, all decision makers should assess the range of options for reducing coastal hazard risk, including:**

[223] See note 55, para 6.5.5, 73.
[224] Ibid, para 6.5.3, 72.

(a) promoting and identifying long-term sustainable risk reduction approaches including the relocation or removal of existing development or structures at risk;

(b) identifying the consequences of potential strategic options relative to the option of 'do-nothing';

(c) recognise that hard protection structures may be the only practical means to protect significant items of existing public infrastructure, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations;

(d) recognise and consider the environmental and social costs of permitting hard protection structures to protect private property; and

(e) identify and plan for transition mechanisms and timeframes for moving from any current unsustainable approaches to more sustainable approaches.

(2) In evaluating options under (1), all decision makers must:

(a) focus on approaches to risk management that reduce the need for protection structures and similar engineering interventions;

(b) take into account the nature of the coastal hazard risk and how it may change over at least a 100 year timeframe, including the expected effects of climate change; and

(c) evaluate the likely public costs and benefits of any proposed coastal hazard risk reduction options.

(3) Where hard protection structures are considered to be necessary, all decision makers must ensure that the form and location of any structures are designed to minimise adverse affects on the coastal environment.

(4) Hard protection structures, where considered necessary to protect private assets, should not be located on public land.

Policy 55 Historic heritage identification and protection

Local authorities shall assess and record historic heritage in the coastal environment, and in particular, historic heritage that is significant or otherwise important to the region or the district. Plans shall:

(a) avoid adverse effects of subdivision, use, and development on significant historic heritage;

(b) avoid, remedy, or mitigate adverse effects of subdivision, use, or development on other historic heritage;

(c) ensure that where an approved activity will involve damage or destruction of historic heritage, the affected site is investigated and historic information is recorded; and

(d) state the process to be followed for evaluation of any historic heritage discovered during development.

Policy 57 Collaborative management of historic heritage

Identification, assessment and management of historic heritage should be undertaken in collaboration with agencies that have historic heritage responsibilities. Policy statements and plans should integrate management of historic heritage that spans the line of mean high water springs.

For completeness we note policy 56 is dealt with under policies 2-4.

The s32 Report

The s32 report identifies there is a lack of certainty and information concerning historic resources in the coastal environment, and the CMA in particular. For example, there are over 2,000 known shipwrecks in New Zealand territorial waters, of which only approximately 150 have been accurately located (Ingram 1990 in McGavock, undated). Historic heritage is often only revealed by development processes.

The report identifies these issues present a risk unless there are clear policies requiring historic heritage protection together with the evaluation of any unexpectedly uncovered heritage resources.

The report states:

> The effective implementation of [an] objective . . . therefore requires that adverse effects on significant historic heritage should be avoided, while adverse effects on historic heritage that is otherwise of importance to district or region should be avoided remedied or mitigated. To improve the efficiency of plan development and resource consent applications this tiered evaluation should be included in the NZCPS. Because the evaluation allows for some adverse effects on historic heritage to occur in certain circumstances, and because historic heritage once lost cannot be replaced,

> the implementation of the objective requires that the information pertaining to any historic heritage which is damaged or destroyed should be recorded.

Overall the report's authors consider that the benefits of the policy are medium to parties, with medium costs to local government authorities and resource users; with high benefits to the environment and low costs. It is noted, however, there will be some adverse effects on historic heritage from development.

Submissions on Policy 55

- **Individual submitters**

Many individuals, while supporting the policy requested clearer directions to councils on how matters of historic significance to Maori will be protected. The Ngatiwai Trust Board observes that in the coastal environment, management of the impacts on previously undiscovered heritage resources in the course of development is the main challenge. It considers that there are very few effective management responses for these in most parts of the country. The Board provided several amendments to the policy to encompass this issue. The Board also considered that as the s2 RMA definition of 'historic landscape' effectively includes 'heritage landscape' therefore there should be a nexus between the two in the policy. One submitter would like to see the definition of 'historic heritage' to include any building, structure or green space that represents a particular era or designer/architect regardless of age.

- **Community groups and organisations**

The Future Ocean Beach Trust consider the policy needs strengthening to ensure that local authorities give stronger protection to areas/structure of historical heritage in their plans by requiring more mandatory requirements. The Auckland District Law Society considers that policy 55 could be improved by including 'plans, where practicable, shall state, that a responsible authority or owner consider restoration of any heritage structure in the CMA.' Another submitter considers the policy should incorporate by way of reference the purposes of Hauraki Gulf Marine Park Act 2000 (ss7,8) and the management of the Te Waipounami Southland New Zealand World Heritage Area.

The West Coast Plan Liaison Group cautions that identification of these sites is the first step followed by policies to protect them from damage from subdivision and development, but also from neglect. This is echoed by the Auckland Conservation Board. The Wellington Conservation Board considers that historic heritage is sometimes construed too narrowly focussing only on European heritage (structures) rather than Maori cultural heritage by focussing on structures at the expense of the cultural, literary and artistic heritage of sites. It encourages a policy to reflect this broader view.

The specialist organisations involving identification and processing of artefacts and heritage items including the NZHPT and NZ Archaeological Association proposed a series of amendments with the former demonstrating what it perceives to be inconsistencies between clauses (a), (b), and with amendment to clause 55(c) to provide for appropriate conditions that are not in conflict with any authority issued under the HPA. The Archaeological Association echoes the NZHPT's approach with its proposals for amendment of the policy while noting that identification by councils of historic heritage is a key step in its assessment and protection and that it should be a national priority.

- **Councils**

The councils' responses ranged from concerns that:

- the policy does not disclose any matter of national significance and goes beyond what is achievable under the RMA;
- the policy should not include the word 'identify' because that requires stricter management than otherwise required under the RMA;
- disagreement with the word 'shall'; it is the role of the New Zealand Historic Places Trust (NZHPT) only to assess and record historic heritage in the coastal environment and elsewhere;
- the policy is redundant because assessment and management of such issues is required under the RMA already and the consenting processes deals with such matters anyway;
- it is difficult to see how the policy can be implemented for permitted activities;
- clause (d) should be removed and the involvement of other statutory authorities (such as NZHPT) recognised;
- the policy should include the notion that plans should encourage the protection of significant heritage sites at risk from coastal hazards;
- the policy should be divided so that the first part focuses on 'identification' and the second part on 'protection' of heritage resources;
- NZHPT already requires the work listed in clauses (c) (d) under the Historic Places Act 1993 (HPA) with clause (c) already undertaken as part of Schedule 4 RMA, so there is unnecessary duplication of responsibility under the policy's provisions, also there is potential for clause (c) to conflict with the Historic Places Act as it states things cannot be destroyed unless an authority is issued to do so; the intent of (c) appears to be otherwise;
- clarification of the phrase 'significant heritage' as against other forms of heritage is required;
- an amendment to the policy is required so it is not mandatory for regional councils to identify historic heritage within their entire respective regions; the function of regional councils is to control effects on heritage within the RMA and it is the territorial authorities which should be responsible for assessing and identifying heritage above MHWS in their districts;
- concern was expressed with the additional requirements put on councils to assess and record historic heritage because they will require additional resourcing;
- policy 55 would be better incorporated within policy 3 – 'characteristics of special value to tangata whenua';
- policy 55 should be reworded to focus only on national historic heritage priorities not regional or district ones.

- **Infrastructure and development companies**

The infrastructure and development companies focused largely on two issues:-

- the need to avoid 'inappropriate' subdivision, use and development on historic heritage a word which has been used in objective 9 and needs reflection in the policy;
- the necessity to introduce the words 'remedy or mitigate' into clauses (a) (b) not just that of 'avoid' because the policy will then follow the wording of s5(2)(c) RMA.

LandCo Land Developments Limited considers the policy inappropriately determines that historic heritage will have priority over all other requirements of the RMA, including s5. It suggests an amendment to reflect that the policy should be qualified by the words 'where it meets the purpose of the Act'. Two other development companies seek deletion of the policy but without giving reasons.

Challenger FinFisheries asks how, because the s32 report states historic heritage is yet to be identified and assessed, a policy can be developed for something that is not yet defined. It therefore requires a definition as it cannot be a place holder for a department to do initial work to assess whether historic heritage exists or not. Challenger also considers the policy be redefined to give some protection and recognition to fishers.

Issues Arising

- **The significance of the RMA to heritage protection**

Protecting historic heritage was only relatively recently identified as a matter of national importance under the RMA[225].

The PNZCPS is being written after the introduction of s6(f) into the RMA by s4 of the Resource Management Amendment Act 2003. It was unclear to the Board how many regional policy statements, regional coastal or regional plans and/or district plans had specific references to coastal heritage issues in their plans. It is important to identify that an amendment defining 'historic heritage' was introduced into the RMA (s2) in 2004 also, because this definition appeared to be unknown to several submitters. The *Independent Review of the New Zealand Coastal Policy Statement* (Rosier 2004) identified that the NZCPS should provide further guidance about processes to determine the protection of archaeological sites and other sites of cultural importance to Maori[226]. It appeared that many local authorities are relying on the HPT and its register rather than tangata whenua as sources of information about culturally important sites and that came through in some of the district council submissions. All councils need to be on enquiry as to such issues. Many of the Deeds of Settlement between Maori and the Crown over Treaty issues will be helpful in that regard.

The HPA and the NZHPT are limited in what they can achieve and rely on resource consents and plan provisions to protect historic heritage from activities that can destroy or modify sites, areas and their settings.

[225] Resource Management Amendment Act 2003: Part 2. Section (6) (f).
[226] A report prepared for the Minister of Conservation May 2004, 71.

The definition of an archaeological site in the Historic Places Act provides a cut off date for the assessment of 'heritage' at 1900 which is likely to cause problems as that date moves further into the past[227]. Further the HPA only provides for limited interim protection during the listing process. It relies on district and coastal plan rules to control land use and subdivision proposals that would damage and destroy listed items. Finally, approvals for archaeological authorities come very late in the process and proposals can be hard to redesign to avoid archaeological sites, with the consequence that recording information on the site is all that can occur. Meanwhile the sites themselves, more often than not, are lost.

Evidence from Mr R McLean, Senior Heritage Policy Adviser for the NZHPT, traversed a number of the issues raised by the submitters, including jurisdiction. He identified a consideration of registration procedures under the Historic Places Act 2004 by Professor Peter Skelton called *Identifying Our Heritage, a review of registration procedures under the Historic Places Act 2004*[228]. That review discussed not only registration procedures pertaining to historic heritage, but linkages between the HPA and various provisions of the RMA relating to the NZCPS, regional policy statements, regional plans and district plans. Professor Skelton concludes that the discussions around heritage need to be conducted in the context of all statutory instruments under the RMA. While the HPA provides for recognition of historic value via registration, the RMA provides for protection via rules in the regional and district plans.

Thus heritage protection under the RMA has a different but significant function than that under the NZHPT. To submit the policy does not cover a matter of national importance cannot stand, when it is implicit within the word 'protection' that heritage be identified, assessed and recorded in plans. It is clear to the Board that the respective roles of 'heritage' as controlled by NZHPT and protection by regional, district and city councils under the RMA in many places is not well understood.

Finally, under s35 RMA, we note that every local authority is required to gather such information and undertake or commission such as is necessary to carry out its functions under the Act, including, (inter alia) s6(f) heritage issues.

- **Historic heritage in the coastal environment**

The Ngatiwai Trust Board, through it's submitter, Mr K Volkering, was clear that under the RMA it is possible to achieve all kinds of results that NZHPT cannot achieve – 'they do not provide for heritage planning in the way the councils can do under the RMA'.

Historic heritage in the coastal environment may include structures such as wharves, wharf buildings, lighthouses, shipwrecks; places of special or traditional significance to Maori such as waahi tapu, urupa and tauranga waka; archaeological sites; places of historical or cultural significance. There are strong links between a site and its setting, an issue that has often gone unrecognised in the past. There exist throughout New Zealand, historic heritage and cultural landscapes, many as yet unidentified to the public, and therefore potentially at risk from development or neglect.

Meanwhile historic heritage, in all its forms, is being lost under pressure from other activities or coastal processes, including demolition, redevelopment, subdivision, infill, incremental

[227] Nor did Maori cease to exist in 1900 : #105 Ngatiwai Trust Board.
[228] NZHPT 2004.

loss (e.g. from theft of whale bone from archaeological sites, heavy use or vandalism), disturbances to the seabed, changes in technology (e.g. redundant lighthouses not being maintained) and coastal erosion. Increasing coastal development is adversely affecting coastal and marine features of particular value to Maori, in some cases causing their destruction. There is also a lack of information about marine historic heritage and climate change processes will exacerbate other pressures on coastal heritage.

At a minimum, local authorities need to give a greater priority to avoiding the loss of historic heritage. This is, therefore, not just the role of the HPT and the Historic Places legislation. It requires local authorities to identify, assess and factor in the protection of historic heritage into their objectives, policies and rules, working collaboratively with each other and with other bodies and agencies involved with heritage.[229] There are many such bodies involved in identifying and managing historic heritage under a complex legal and policy framework. Under the RMA the split between regional and district/city council functions across the line of mean high water springs is a further complication. Collaboration between agencies and groups is thus essential to achieve the protection of historic heritage.

Heritage, including archaeological sites, also needs to be a consideration in many resource consent applications.

Working with Maori is essential to achieve the objective of identifying (where necessary in areas under pressure for subdivision and development) and protecting their heritage. Authorities also need to be proactive in looking ahead to what is likely to become historic heritage in the future.

- **The Legislation**

Section 6(f) RMA requires as follows:

> **Matters of national importance**
>
> In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
>
> ……
>
> (f) the protection of historic heritage from inappropriate subdivision, use and development.

There are, in effect, two requirements for consent authorities in s6(f) RMA to give attention to –firstly 'to recognise', and secondly 'to provide for', as a matter of national importance the protection of historic heritage in the context of managing the use, development and protection of the natural and physical resources of the coastal environment, The s32 Report identifies the two processes but regrettably the policy as written:-

- duplicates some of the functions of the NZHPT and which are already in place under the RMA; the Board does not wish to replicate those;
- creates a hierarchy of 'significant heritage' compared with 'other heritage' which does not derive from either s2 or s6(f) RMA.

[229] 'Other bodies and agencies' may include Department of Conservation, Department of Internal Affairs, Historic Places Trust local branches, historical and archaeological societies, iwi authorities and hapūgroups, universities, museums.

- **'Significant heritage' and 'other heritage'**

All historic heritage as defined in s2 is a matter of national importance in s6(f) requiring the range of qualities set out in s2(a) (b) RMA to be considered and addressed in decision making[230].

As the Parliamentary Commissioner for the Environment observed in 1996 there is inevitably tension between the concept that all heritage is equal (in the context of the RMA as a matter of national importance), and therefore cannot be ranked, and the perceived necessity that effective conservation management requires decisions on protection priorities which inevitably involves ranking heritage[231]. For decision makers under the RMA it may mean priority is given to protection of heritage that is the most obvious or most at risk from destruction or modification, or under threat from the processes of climate change. These are issues for the regions or districts to resolve.

- **Duplication of processes**

The criticism that policy 55 duplicates processes already existing under the RMA such as district plans already having regard to any relevant entry in the NZHPT Register as part of s74(b)(ii)(a), does not assist in resolving the wider issues identified in the s32 report and in this document.

The policy throws up the requirements of s35 RMA as noted above, and the priority of knowledge about heritage in the coastal environment in order to adequately protect it.

- **Climate change**

Many heritage coastal settlements (Maori and early European) may come under threat from coastal inundation and storm surge. New Zealand may well lose much of this heritage unless structures such as buildings and matters of cultural value are able to be relocated. It is therefore important that the heritage of those areas at risk are at the very least identified and recorded for posterity.

Policy 57

The s32 Report

The report in conjunction with the other relevant policies on heritage considers that collaboration between agencies requires particular consideration when historic resources cross mean high water springs as the management, responsibilities, instruments and mechanisms for the protection of historic heritage protection differ on either side of that boundary. To achieve objective 9, the proposed NZCPS therefore needs to ensure that policy statements provide for integrated management of historic heritage across MHWS and that this is implemented in plans. The report states that such collaboration is:

- effective in requiring the integrated management of historic heritage across MHWS;

[230] See: #33 Christchurch City Council.

[231] *Historic and Cultural Heritage Management In New Zealand*. Parliamentary Commissioner For The Environment. June 1996. Appendix 5. 934. Table A5.1 Examples of territorial authority built heritage assessment approaches of that appendix demonstrates some of the systems already in district plans.

- effective in requiring the integrated management of historic heritage that is affected by natural processes;
- efficient in providing an overall benefit while generating no more than negligible costs.

Submissions

- **General submissions**

Most of the individual submitters to this policy support it but repeat those issues they submitted under policy 56. The National Council of Women supports both policies because they recognise the status of historic heritage as having new status within s6 RMA. Franklin District Council does also.

The NZ Marine Sciences Society questions how councils are going to weigh up the issues around protection from coastal hazards requiring guidance as to priorities when coastal heritage is at risk from natural coastal processes.

As to which agencies may have collaborative responsibilities, one submitter wishes the term 'agencies' to be expanded to include community organisations and interested individuals as parties. Another suggests it would be helpful to include a policy encouraging neighbouring local government organisations to make use of the provisions of the RMA encouraging joint policy arrangements.

- **Tangata whenua**

Several iwi and Maori submitters consider that identification assessment and management of historic heritage should be undertaken also in collaboration with 'iwi authorities'. A Maori Trust wanted an extension of that concept to 'those iwi authorities that have historic heritage responsibilities and/or interests'. The Waimarama Maori Committee considers 'kaitiaki' should be involved where appropriate, while supporting greater integration of the management of historic heritage so that it straddles MHWS.

Ngati Whatua has concerns however as to how local government can co-monitor with the tangata whenua the issues arising from the RMA and local government legislation. Ngati Whatua does not see itself as abdicating its responsibilities around heritage, but it views the capacity of local government to include tangata whenua into decision making thwarted from the outset in terms of the development of planning and resource consent decision making for the coastal environment because the Crown has delegated its responsibilities under the Treaty of Waitangi.

Kahungunu considers that identification etc of historic heritage of Maori needs to be undertaken in collaboration with tangata whenua and in accordance with tikanga Maori and further policy statements and plans should provide for ongoing liaison with Maori on management of identified sites.

- **NZHPT**

The NZHPT agrees that collaborative and integrated management of historic heritage is an important issue for the coastal environment. The Trust considers assessment to be part of the

identification process and that policies should focus on protection in addition to management. The Trust also observes that collaboration is not limited to responsible agencies and that in fact many restoration projects are achieved in the coastal environment by the active involvement of community groups, and societies including iwi and hapu.

- **Councils**

Some councils consider it should be incorporated within policy 6, with Greater Wellington Regional Council pointing out that policy 57 uses the term 'should' while policy 6 uses the term 'shall' and seeks to know what is implied by the difference. This council, as do others consider policy 6 is one of the few policies that it believes is appropriate to include a requirement for both policy statements and plans to implement. The council also seeks to know in what 'sense' is the term 'integrated management' being used here, e.g. in policy 49(e), the sense of integrated managements of catchments is about land-use, activities and practices, but here it seems to be about an organisational process.

Meanwhile, Auckland City Council considers that policy statements and plans do not have the ability to integrate management across the line of MHWS as it can only come about through local authorities.

The Hawke's Bay Regional Council considers policy 57 is unclear with reference to 'plans should integrate management of historic heritage'. Does this expect plans to actually integrate management or does the policy intend that plans just facilitate integrated management? The Clutha District Council, however, considers that the section is not needed as it is now appropriately provided for by other sections of the RMA. The policy creates a stricter framework for the management of these resources than the RMA itself and should be removed.

Taranaki Regional Council specifies the need for policy statements and plans to integrate management of historic heritage, but it believes it is more appropriate and cost efficient to specify policy statements and/or plans in order to reduce duplication. The Tasman District Council considers the policy does not disclose any matter of national significance and goes beyond what is achievable under the RMA and therefore it should be deleted. Environment Bay of Plenty seeks clarification on which 'agencies' the policy is referring to. Another district council suggests attention should be drawn to possible financial support or concessions for changes or rates which may be available to encourage restoration of historic heritage.

- **Developers**

A number of development submitters such as New Zealand Aluminium Smelters and Wellington Waterfront Ltd support the recognition of the need to integrate management of historic heritage across the MHWS boundary.

Issues Arising

- **Is the policy ultra vires the RMA?**

LandCo Developments appears to indicate that a policy emanating from s6(f) appears to trump all others in Part 2, including that of S5(2)(c). That is not correct. It has long been established that s6 matters of national importance, of which s6(f) is one, inform the sustainable management provisions of the Act (s5(1) and (2)) as do ss7 and 8, - matters which have other relativities to the purposes of sustainable management. The High Court has held that:-

- Part II (now Part 2) of the Act, under s104, is mainly one of a number of matters to which regard must be had and it could not be said that Part II had been given primacy over all other parts of the Act;
- the preservation of the natural character of the coastal environment under s6(a) (example of other s6 matters) is subordinate to the primary purpose of sustainable management: see *Reid* v *Marlborough District Council*[232].

- **Achieve integrated management of heritage**

Local authorities have the ability to set up processes to ensure the integrated management of heritage. Also to enter into joint management agreements under s36B(1) RMA.

Ms R Soloman of Ngai Tahu spoke of Te Korawai o Te Tai o Marakura, a group of people standing for local leadership to undertake such facilitation with local councils. It is very clear to us that in the overall management of some issues in the coastal environment local authorities can no longer afford to work in silos either with each other or the community. We suggest:

- developing an integrated approach to managing heritage issues with the relevant iwi authorities and owners which occur in the coastal environment;
- developing and carrying out educational strategies with the relevant iwi authorities and agencies to provide a greater understanding of coastal heritage, particularly where it spans the line of mean high water.

- **How best to protect coastal heritage in the light of climate change issues?**

Professor Manning, in his appearance before the Board stated that the New Zealand coastline will change in the light of climate change issues. In an appendix to his evidence, Mr McLean from NZHPT attached a copy of a commentary on the effects of climate change on New Zealand's coastal heritage by the senior archaeologist for NZHPT which sets out how to provide for its future protection. In that document Dr McGovern Wilson[233] observes that given all the first contact cultural heritage sites are to be found in the coastal margin, this is a highly significant issue and will require detailed input from tangata whenua. Dr McGovern Wilson adds:-

> The most important mind-shift that we must develop is that we cannot save all the sites, and we cannot afford to excavate all those which we cannot save – there will be a vast majority that we will have to accept there is nothing that can be done, and we will simply have to lose them.

[232] [1994] HC NZRMA, 71-92.
[233] Appendix I. Extract from '*The Effects of Climate Change on New Zealand's Cultural and Historic Heritage*', *Heritage New Zealand, Winter 2008*. Dr Rick McGovern Wilson, NZHPT Senior Archaeologist.

In this case it seems to the Board that the emphasis on heritage would be the identification of sites of major risk as a first priority which would follow from the initial identification of those areas at high risk from coastal hazards. Dr McGovern Wilson identifies a range of management options which may be undertaken, many, if not most, involving local authorities.

- **MHWS and the importance of context for historic heritage**

Mr McLean for NZHPT identifies that in terms of the legal mean high water springs, boundary coastal historic heritage can be located on the foreshore and sea – shipwrecks, anchorages, caves, fishing grounds, signal stations, reef traps, tauranga waka, rocks, other landmarks – or on the landward side of MHWS – lighthouses, ferry buildings, coastal defence structures, sea walls, ferry walls, harbour and boat sheds. Historic heritage can straddle both sides of the line of MHWS such as the historically significant waterfront at Mangonui which extends into the CMA, or ancient wharf structures, (such as at Shelley Bay, Wellington), or canoe landings or burial sites such as on the coast at Taiaroa Heads on the Otakau Peninsula where the whole site is a waahi tapu. Often it is as important to protect the settings surrounding items of historic heritage as it is the item itself – these are the cultural landscapes which are so significant and can be easily run-over by development if not identified early and managed adequately through plan provisions and resource consents.

While a regional coastal plan spans the line of MHWS resulting in seamless regional policies on coastal heritage, an approach many councils are now adopting, the issue of integration between district plan rules still arises (as we have seen earlier). The ideal can be to have rules for heritage management that are the same or similar in the district and regional plans. Also rules to facilitate heritage identification assessment and management. There is also the potential for an agreement to transfer powers to one of the councils for heritage issues that potentially span the line of MHWS[234].

NZHPT submitted the heritage values of many coastal historic areas and buildings are enhanced by retaining the original relationships between the site and the sea, beach or coast – a key point for all decision-makers to remember in this assessment of heritage.

- **Conclusion**

We recommend amending policies 55 and 57 to become new policy 20 as follows:

> **Policy 20 Historic heritage identification and protection**
>
> **All decision makers must protect historic heritage[235] in the coastal environment by:**
>
> **(a) identification, assessment and recording of historic heritage, including archaeological sites;**
>
> **(b) providing for the integrated management of such sites with the collaboration of other councils, and heritage agencies, iwi authorities and kaitiaki;**
>
> **(c) initiating assessment and management of historic heritage in the context of historic landscapes;**
>
> **(d) recognising that heritage to be protected may need restoration;**

[234] *Review of The New Zealand Coastal Policy Statement 1994 – Coastal Hazards.* Vol 1 Report Mike Jacobson 90-91.
[235] Refer to definition in s2 RMA.

(e) regional policy statements and plans must facilitate and integrate management of historic heritage that spans the line of MHWS;

(f) including policies, rules and other methods relating to (a) to (e) above in regional policy statements and plans;

(g) imposing or reviewing conditions on resource consents and designations, including for the continuation of activities;

(h) requiring, where practicable, restoration conditions; and

(i) providing opportunities to owners for restoration of listed heritage structures by way of such devices as creating relief grants or rates relief;

Policy 00 New policy on dunes

Submissions

Dr Mike Hilton, a Senior Lecturer in Geography at the University of Otago, seeks a policy that aims to preserve remaining dune systems of high conservation value.

Dr Hilton provided a definition of active coastal dunes as:

> Coastal dunes where sedimentation (sand erosion by wind, sand transportation and deposition) is the dominant ecological process. The flora of these dunes systems may involve a range of associations, but the primary sand-colonising species (pikao or pingao, /Desmoschoenus spiralis/; spinifex, /Spinifex sericeus/; sand tussock, /Austrofestuca littoralis/, and the introduced /Ammophila arenaria/ (marram grass)) will nearly always comprise a significant element. The larger active dune systems, commonly found on the windward coasts of New Zealand, nearly always contain a mosaic of environments and plant communities, including wetlands, lakes, scrubland and (in places) established forest.

Dr Hilton gave evidence that about 70 percent of the area of coastal dunes was lost during the later half of the 20th century, with most of the remaining 30 percent is infested by exotic plants species and pest animals. One of the chief causes of decline in the natural value of dune systems is the introduction of marram grass which was originally imported from Australia (1873) to stabilise active dunes near major cities while many other dunes accommodated production forestry. He said it is likely that within 20 years marram grass will dominate the fore dunes of nearly all New Zealand dune systems except where it is being actively controlled. Agriculture, forestry, urbanisation, infrastructure development, residential subdivision, sand mining, waste disposal and military activities have all contributed to the destruction or extreme modification of dunes.

Dr Hilton said that New Zealand contains well over 1,000 dune systems but just 5% retain high natural value. He said that all of the dune systems with high natural value are threatened by one or more exotic species, including, for example, marram grass in Mason Bay and tree lupin on Kaitorete Spit. Many of these dune systems occur within the Conservation Estate. A number occur on private land or are affected by activities on adjoining private land.

Dr Hilton gave evidence that a distinctive indigenous flora and fauna, adapted to sand movement and exposure, is associated with this habitat. For example, the New Zealand fairy tern, banded dotterels, variable oyster catchers and the New Zealand dotterel. Moreover, these systems contain landforms and landscapes and preserve geomorphic processes that are an important element of the natural character of the coastal environment.

Dr Hilton stressed that New Zealand has reached a critical stage in the use and protection of coastal dunes, particularly the larger transgressive dune systems. The remaining dune systems of high conservation value barely contain the pre-human diversity of coastal types, habitats and species. He believed dune systems of high natural value should be identified as being of national significance because of their significant contribution to the natural character of our

coastline and their critically threatened status. The NZCPS would thereby provide the national leadership needed to protect these dune systems.

Dr Hilton sought a new policy:

> **Policy # Protection of active coastal dunes**
>
> **The protection of the active coastal dunes listed in Schedule # is a national priority. Plans and policy statements should ensure these dune systems are protected from inappropriate use and development, including by:**
>
> **(a) ensuring that activities within, adjacent to, or down-drift from, these dune systems do not result in the establishment of invasive exotic plants;**
>
> **(b) encouraging the restoration of degraded dune systems;**
>
> **(c) providing appropriate public access and information;**
>
> **(d) avoiding development that adversely affects the ecology, botany or geomorphology of these dune systems, including disturbance to coastal sand systems in the adjacent coastal marine area;**
>
> **(e) avoiding damaging off-road vehicle use;**
>
> **(f) protecting archaeological sites; and by**
>
> **(g) establishing appropriate environmental monitoring of dune system condition.**

There were also submissions on the value of the preservation of the dunes for hazard protection and the potential for and examples of successful dune restoration. Dunes play, or should play, a large part in protecting land uses from coastal hazards.

Issues Arising

- **Why a policy on nationally significant dunes?**

The information provided by Dr Hilton on dune modification and destruction caused the Board great concern. We heard of and saw examples of dune degradation, particularly the use of marram grass and from residential type development in such areas. Individual owners along coastlines have appropriated fore dunes for further development, gardens, or playgrounds. The NZCPS clearly needs to give greater emphasis to the importance of dune systems to the natural values of the New Zealand coastline.

We accept the evidence of Dr Hilton on the need for and value of recognising (and protecting) nationally significant active dunes specifically in the NZCPS. Other policies would not achieve the same ends. Such a policy approach comes under at least s6(a) in protecting natural character from inappropriate subdivision, use and development, and has particular regard to the finite characteristics of natural resources under s7(g) and the intrinsic values of ecosystems under s7(d). It would sustain the potential of natural resources to meet the reasonably foreseeable needs of future generations, safeguard the life-supporting capacity of ecosystems and promote sustainable management under the RMA.

- **Criteria for selecting active dunes of national significance?**

We invited Dr Hilton to suggest criteria and an associated list of dunes. Dr Hilton proposed the following criteria in establishing 'national significance':

- the system has distinct geographic boundaries;
- loss of the system would significantly threaten the distinctive biodiversity of active dune systems;
- the system is relatively intact (i.e. is not fragmented);
- the flora of the system has characteristic dune species, including both rare and representative species; and
- the system is likely to support indigenous native dune fauna.

Dr Hilton explained that the criteria did not include an even geographic spread of dune systems, although there is an argument for doing so to conserve, for example, the genetic diversity of key species (e.g. pingao).

Dr Hilton sent the Board a final list of proposed dune systems of national significance and associated maps, compiled from resource material, site visits and consultation with other specialists on the values of dunes. That list does not include any dune systems from the Wellington Region. Only two dune systems are identified in the Auckland Region. Most South Island dune systems of national significance are located in Southland. Only one dune system, Kaitorete Spit, is identified along the east coast of the South Island.

Dr Hilton gave evidence that this number is a small proportion of the total number of dune systems. The Sand Dune & Beach Vegetation Inventory (1992) listed 606 dune systems. Many systems were not surveyed. He said that there are probably well over 1000 active dune systems in New Zealand, covering in excess of 39,000 ha (Hilton, 2000).

We adopt the criteria for national significance put forward by Dr Hilton and the list for inclusion in the schedule to a new policy.

- **How specific should the schedule be?**

Dr Hilton provided a schedule, supported by an A4 map of the North and South Islands, indicating the general location of the dunes plus the specific locations of each dune system on a topographical base. This raises the question of what the NZCPS need contain to clearly identify the dune areas. We consider that the schedule provided by Dr Hilton is sufficient for inclusion in the NZCPS. The supporting documentation could be incorporated by reference (as is provided for by s46B RMA), and widely available through the Department of Conservation's website and other official websites that provide convenient access to the NZCPS. We attach an electronic version of the maps showing the locations of each dune system.

- **Should the policy be inclusive?**

We consider it sensible to make the policy inclusive, and not confine it to those dunes listed in a schedule. There may be other active dune systems deserving of recognition as of national significance. Indeed Dr Hilton could not say for sure that there are no other potential candidates for recognition as of national significance. It could be too that other criteria might result in additions.

- **Protecting nationally significant dunes**

There are a number of actions that are needed to protect active coastal dunes. Dr Hilton identified several. Marram grass is the main threat to remaining active dune systems[236]. Vehicle access to the beach (particularly from 4WDs), quad bikes, and cattle and sheep grazing can all be a problem, as can other land uses including sand extraction. The preservation of some dune systems may require the establishment of buffer zones and effective management of cross-boundary effects.

- **Other active dunes**

Dr Hilton said that many other dune systems still retain high natural values and are worthy of recognition at the regional level, if not the national level. Most of these systems have the potential to be restored (by the control of marram grass, for example) and are worthy of recognition. Some are recognised in Department of Conservation and other reports[237]. The natural character policy should also provide for the recognition of active dune systems that have not been identified as of national significance. Other policies recognise the role and importance of active coastal dunes for many reasons, such as natural hazards.

- **Outcome – a specific policy**

As a result of the evidence before us, we recommend that another policy should be included. We recognise that 'protecting archaeological sites' could be viewed as in a different category from the other actions, and is covered under other policies so omit it. We acknowledge the considerable assistance of Dr Hilton in providing the basis for this policy.

- **Conclusion**

We recommend a new policy 19, associated Schedule 3 and definition of 'active coastal dunes' for the Glossary. New policy 19 is as follows:

> **Policy 19 Protection of active coastal dunes**
>
> **All decision makers must recognise and protect active coastal dunes[238] of national significance, including those listed in Schedule 3, including by:**
>
> **(a) avoiding subdivision, use and development that adversely affects the geomorphology, ecology and botany of these dune systems, including disturbance to coastal sand systems in the adjacent coastal marine area;**
>
> **(b) ensuring that activities within, adjacent to, or down-drift from these dune systems do not result in the establishment of invasive exotic plants;**
>
> **(c) avoiding damaging off-road vehicle use;**
>
> **(d) encouraging the restoration of degraded dune systems;**

[236] Hilton, M.J., Harvey, N., Hart, A., James, K. and Arbuckle, C. *The impact of exotic dune-grasses on foredune development in Australia and New Zealand: A case study of Ammophila arenaria & Thinopyrum junceiforme*. Australian Geographer 37, 3, 313-335 (2006); Hilton, M.J. *The loss of New Zealand's active dunes and the spread of marram grass (Ammophila arenaria).* New Zealand Geographer 62, 2, 105-121 (2006).

[237] For example: Johnson P (1992). *The Sand Dune and Beach Vegetation Inventory of New Zealand. II*. South Island and Stewart Island, Land Resources Scientific Report Number 16, Department of Scientific and Industrial Research, Christchurch; Partridge T (1992). *The Sand Dune and Beach Vegetation Inventory of New Zealand. I.* North Island, Department of Scientific and Industrial Research, Christchurch.

[238] Active coastal dunes: as defined in the Glossary to the recommended NZCPS (2009).

(e) ensuring public access respects the values of dune systems, for example by providing public information; and

(f) monitoring dune system condition.

Schedule 3 contains the list of active coastal dunes of national significance. We also recommend the incorporation of the maps into the NZCPS by reference as is provided for by s46B RMA. That requires publication of an external document containing those maps and a reference in Schedule 3 to that document.

The recommended definition of 'active coastal dunes' to be added to the Glossary is as follows:

> Coastal dunes where sedimentation (sand erosion by wind, sand transportation and deposition) is the dominant ecological process. The flora of these dune systems may involve a range of associations, but the primary sand-colonising species (pikao or pingao, /Desmoschoenus spiralis/; spinifex, /Spinifex sericeus/; sand tussock, /Austrofestuca littoralis/, and the introduced /Ammophila arenaria/ (marram grass)) will nearly always comprise a significant element. The larger active dune systems, commonly found on the windward coasts of New Zealand, nearly always contain a mosaic of environments and plant communities, including wetlands, lakes, scrubland and (in places) established forest.

Appendices

Appendix A Terms of Reference

Appendix B List of Submitters

Note:
The following documents referred to in the Working Papers can be obtained electronically from the Department of Conservation:

Appendix C #147 EDS. Peart and Potton Presentation: Coast and Development Pressures Exhibits 8 – 9.10

Appendix D #123 Manukau City Council, #147 EDS Coastal Design Guidelines for NSW

Appendix E #147 EDS, Lucas and #364 ARC, Brown: Land Typing and Mapping of Natural Landscapes and Natural Features

Appendix F #347 NIWA: Dr R Bell Background Slides. Natural Hazards and Climate Change.