

IN THE MATTER OF the Resource Management
Act 1991 ('The Act')

AND

IN THE MATTER OF hearings on submissions
concerning natural character
provisions of Chapter 7 of the
proposed One Plan notified
by the Manawatu-Wanganui
Regional Council ('The
Council').

STATEMENT OF EVIDENCE OF JULIAN WATTS

INTRODUCTION

Qualifications and Experience

1. My full name is Julian Derick Watts. I am an environmental planner and appear in connection with the submission and further submissions on the Proposed One Plan by the Minister of Conservation ('the Minister').
2. I am employed by the Department of Conservation as a Resource Management Planner in the Wanganui Conservancy Office. I hold an MA in Town and Regional Planning from the University of Sheffield (UK) and corporate membership of the Royal Town Planning Institute (UK). I have approximately twenty years' experience in the field of

environmental planning in the United Kingdom and New Zealand, the majority of it specialising in the planning and protection of significant natural areas and landscapes.

3. I am currently responsible for providing advice to the Conservancy on issues under the Resource Management Act, 1991. During the past two years this has included co-ordination of the Department's involvement in the Proposed One Plan. The Horizons Region includes parts of five Lower North Island Conservancies, with the largest part lying within the Wanganui Conservancy.
4. I have read the Code of Conduct for Expert Witnesses (Section 5 of the Environment Court Consolidated Practice Note 2006). I agree to comply with this Code of Conduct. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

INTRODUCTION AND SCOPE OF EVIDENCE

5. I have read the S42 report of Mr Anstey and the Planning Evidence and Recommendations Report of Ms Gordon and for the most part I agree with their analyses and recommendations.
6. In my opinion there is, however, one matter which I believe still needs to be adequately addressed since it has a bearing on the way in which the One Plan is interpreted and also raises issues of consistency with other parts of the plan. This relates to the One Plan's approach to restoration, rehabilitation or enhancement of natural character of the coastal environment, rivers, lakes and their margins.

MINISTER'S SUBMISSIONS

7. The Minister's submissions sought a number of amendments to Chapter 7 and other sections of the Proposed Plan to provide for this matter and supported provisions in the Proposed One Plan which provide for restoration, rehabilitation or enhancement of natural character in appropriate circumstances.

8. These included submissions seeking the addition of a specific sub-clause in Objective 7-2 to read:

'(c) the natural character of the coastal environment, wetlands, and rivers, lakes and their margins and the characteristics and values of outstanding landscapes are restored or enhanced'

and amendment to Section 7.6 of the explanatory text (7.7 as notified) in order that the second sentence under 'Natural character' would read;

"The approach of the One Plan is to maintain the current degree of naturalness of the natural character of the coastal environment, wetlands, rivers, lakes and their margins and restore and rehabilitate natural character where appropriate" .

9. In her report on the relevant parts of Chapter 7 Ms Gordon makes the following recommendations:

Firstly that the submission requesting the addition of a new sub-clause to Objective 7.2 be rejected. This was on the grounds that a sub-clause in Objective 7 is unjustified since "the restoration or enhancement of landscapes or natural character is not the main thrust of the policies provided in the POP. It should also be noted that the vision and philosophy of the POP is to place emphasis (and therefore resources over the life of the POP) on the big Four Issues that the Region faces, i.e. water quality, water quantity, biodiversity, and sustainable land use....." (p.60 of Ms Gordon's report).

Secondly that the submission requesting the additional explanatory text in Section 7.7 be accepted. However, for reasons which are not stated, the additional text is recommended for insertion as a sub-clause (and only refers to restoration) in a manner which implies that restoration of natural character is a means towards maintaining the current degree of natural character rather than being an end in itself.

10. In my opinion Ms Gordon's analysis and recommendations on this particular point have significant implications for the way the plan is interpreted and used in individual cases. I am in disagreement with them for the following reasons:

Scope and relevance of ‘natural character’

11. ‘Natural character’ is a wide concept which (consistent with Mr Anstey’s recommended description) is generally accepted to include, amongst other things, the ‘naturalness’ of river flow regimes, water quality and ecosystems (and hence biodiversity). It does therefore have a strong relationship to at least three of the ‘big four’ issues and therefore should be considered in a consistent manner to the way in which the One Plan seeks to address those issues. Furthermore whilst restoration, rehabilitation or enhancement of natural character in general may not be the ‘main thrust’ of the One Plan, this does not make it inappropriate to provide for these matters in the plan, as Ms Gordon appears to me to be arguing in her report.

Rehabilitation, restoration and enhancement of natural character

12. The Environment Court has accepted that natural character goes beyond the purely visual to include ecological and biotic systems and the elements, patterns and processes of those systems, including the potential naturalness of an environment.
13. The importance of ‘potential naturalness’ in terms of assessing natural character was highlighted in the Environment Court decision in *Browning vs. Marlborough District Council W20/97* Kenderdine J.
14. In determining the effect that the proposal would have on the natural character of the coastal environment, the Environment Court raised the question as to whether there was **sufficient** natural character worthy of protection in the first place. The landscape architect for the applicant took the view that the site was of low landscape quality due to the severity of cultural influence, stressing the impact of roads and erosion. The Council was also of the opinion that the area did not have a significant natural character. The Environment Court upheld the evidence presented by the expert witness for the appellant, Ms Lucas, and emphasised the importance of the site in terms of ecological resilience and restoration. Consequently, the appeal was allowed and the Council’s decision cancelled. The Court said, in relation to the environment in question:

“It is not for example the kind of ‘working environment’ which includes pastoral farming or forestry such as contributed to our approval of marine farm sites elsewhere in other

parts of the sounds. The evidence established that the island has a benign climate and the next five years will see significant regeneration of the bush as long as the browsers, such as the goats continue to disappear”.

“The experiential recognition of what is natural character and a landscape worthy of protection goes not to the matter of tasteful subjective judgement but to a recognition that the dominant land patterns on the landform consist of scrub and regenerating forest uncluttered by buildings or jarring colours, and an unencumbered land/sea interface. We find that the only unnatural features are the farm road tracks which, in the overall vistas of the landscape, do not overwhelm it to the point where the modification of its natural character is detrimental”.

15. I would agree that there may be circumstances where natural character may have been modified to such an overwhelming extent that ‘potential naturalness’ carries little or no weight (and therefore section 6(a) would not apply). However, in my view the appropriateness of restoration, rehabilitation or enhancement should be considered on a case by case basis, as I believe is intended in the wording of Policy 7-8. There may be situations, such as in the above-cited case, where although modifications have occurred the site holds sufficient naturalness and potential that restoration, rehabilitation or enhancement is appropriate in terms of section 6(a) of the Act. In addition, consideration of RMA Section 7 matters (including Section 7(f) relating to the maintenance and enhancement of the quality of the environment) may also have a bearing on restoration or rehabilitation of natural character.

Proposed One Plan Objectives and Policies

16. Objective 7-2 and Policy 7-8 of the Proposed One Plan as notified and as recommended in the tracked changes document make both implicit and explicit reference to restoration, rehabilitation or enhancement of natural character.
17. Objective 7.2 implicitly provides for a degree of enhancement, restoration or rehabilitation of natural character through sub-clause (b) which provides for adverse effects (which would include past or unforeseen effects) to be remedied or mitigated as well as avoided. However the wording implies that the objective relates to decision

making on applications requiring consents, rather than to enhancement, restoration or rehabilitation of natural character in a wider or more general sense.

18. Policy 7-8 indicates that restoration of natural character will be encouraged 'where appropriate' and this is supported. However the way that the policy is worded and the ordering of the phrases within it to my mind results in uncertainty over how the policy will be applied. By only referring to restoration of natural character in the first part of the policy (ie before '..and by taking into account' in the tracked changes version) there remains a degree of doubt over whether it would be 'appropriate' to take restoration, rehabilitation or enhancement of natural character into account in consent decision making, which the second part of the policy deals with. This to my mind leaves uncertainty over how the policy is to be applied. If the policy does not require that restoration, rehabilitation or enhancement of natural character be taken into account in consent decision making, then in my opinion this also raises issues regarding consistency between Policy 7-8 and Objective 7-2 (b), with its clearer emphasis on remedying or mitigating adverse effects on natural character in decision making processes. If the policy does require that these considerations are taken into account, then this should be more explicitly stated.
19. In summary, both Objective 7-2(b) and Policy 7-8 both appear to encourage or allow for restoration, rehabilitation or enhancement of natural character, but not in a manner which is open to sufficiently clear or consistent interpretation.
20. Provisions elsewhere in the plan clearly provide for enhancement or restoration of natural character in a variety of unequivocal ways, for example by restoring wetlands and improving water quality.
21. These references to restoration, rehabilitation or enhancement of natural character in the Plan are supported; however, for the reasons stated, I consider that more explicit and unequivocal reference to restoration, rehabilitation and enhancement of natural character is required in Objective 7-2 and, as a consequence and, for the avoidance of doubt in Policy 7-8 also, in order to integrate and clarify the intent of these provisions and provide for consistency across the One Plan as a whole.

22. In addition Policy 1.1.5 of the NZCPS states that it is a national priority to restore and rehabilitate the natural character of the coastal environment where appropriate and the One Plan is required to give full and clear effect to this policy.

Explanations and Principal Reasons

23. As noted above, the Minister's submission sought that the second sentence of the paragraph in Section 7.6 (7.7 as notified) be amended to read:

"The approach of the One Plan is to maintain the current degree of naturalness of the natural character of the coastal environment, wetlands, rivers, lakes and their margins and restore and rehabilitate natural character where appropriate" .

24. However Ms Gordon's recommendation is that the above sentence be retained in the plan as notified but that the restoration of natural character where appropriate should be added as a means of achieving the maintenance of the 'current degree of naturalness'. I do not consider that the revised wording as set out in the tracked changes document would address the Minister's concerns and believe that the recommended wording is inconsistent with the provisions in the plan noted in paragraphs 16 to 21 above. It also leaves open the question of how the 'current degree of naturalness' is to be determined and raises issues regarding consistency with Part 5 of the Act, which, for example, refers to remedying of effects which include past effects.
25. Objective 7-2(b) and Policy 7-8(a) indicate that it is appropriate to take account of the degree of natural character or existing level of modification to the environment in decision making, but neither of these provisions, nor any other plan provisions appear to me to preclude restoration, enhancement or rehabilitation of natural character to a higher level than that which applies at the current time.
26. Furthermore, as noted above, the Proposed One Plan provides for restoration, rehabilitation or enhancement of natural character in a number of ways, including provisions which would raise the 'degree' of natural character above its current level.

27. In my opinion the explanatory text as notified and as recommended in the tracked changes report does not adequately reflect the approach of the One Plan as expressed through the objectives and policies of Chapter 7 and elsewhere in the plan, nor does it give appropriate effect to Policy 1.1.5 of the NZCPS. As such it has potential to seriously undermine the intent of the plan provisions and create unnecessary ambiguity and uncertainty for decision-makers.

RECOMMENDATIONS

28. On the above basis I consider that the Proposed One Plan should be amended to more explicitly provide for restoration, rehabilitation or enhancement of natural character by amendments to Objective 7-2 and the explanatory text and an additional amendment to Policy 7-8 for the avoidance of doubt and as consequential amendment to the Minister's submissions. This would provide for greater consistency within the plan and a more adequate level of clarity and certainty for decision-makers and interested parties.

29. I would therefore recommend that

i) the Minister of Conservation's submission on Objective 7-2 be allowed and a sub-clause be added to read:

'(c) the natural character of the coastal environment, wetlands, and rivers, lakes and their margins and the characteristics and values of outstanding landscapes are restored or enhanced'

Or, alternatively, to provide for greater consistency with Policy 1.1.5 of the NZCPS:

'(c) the natural character of the coastal environment, wetlands, and rivers, lakes and their margins and the characteristics and values of outstanding landscapes are rehabilitated or restored ~~or enhanced~~'

ii) that, for the avoidance of doubt, and as a consequential amendment, Policy 7-8 be further amended to read as follows:

“Policy 7-8: Natural character

The natural character of the coastal environment, wetlands, rivers, lakes and their margins shall be preserved and protected from inappropriate subdivision, use and development, by encouraging the natural character of these areas to be restored or rehabilitated where appropriate and by taking into account, in making decisions on applications for resource consent at Regional Council and Territorial Authority level, whether the activity:

- (a) is compatible with the existing level of modification to the environment*
- (b) needs to be located in the coastal marine area or in or near any wetland, river or lake and whether any alternatives exist*
- (c) is of an appropriate form, scale and design to blend with the existing landforms, geological features and vegetation*
- (d) will not , by itself or in combination with effects of other activities, significantly disrupt natural processes or existing ecosystems.*
- (e) will not compromise (and, if so, to what extent) the components of natural character of the coastal environment, wetland, river or lake and will provide for their restoration and rehabilitation where appropriate.*

This Policy relates back to Issue 7-2 and Objective 7-2”

iii) that the Minister’s submission on the Explanation and Principal Reasons section be accepted and that the relevant paragraph in Section 7.6 (7.7 as notified) be amended to read:

“Natural character

The preservation of the natural character of the coastal environment, wetland, rivers, lakes and their margins is a matter of national importance. The approach of the One Plan is to maintain the current degree of naturalness of the natural character of the coastal environment, wetlands, rivers, lakes and their margins and restore and rehabilitate natural character where appropriate .

The objectives, policies and methods adopted in this document aim to achieve this by

- (a) providing policy guidance on natural character to be taken into account when making decisions on applications which may affect natural character, and*

(b) encouraging the restoration and rehabilitation of natural character where appropriate, and
(c) by actively protecting and managing biodiversity, important wetlands, rivers and lakes as described in other parts of this document.”

That concludes my evidence in relation to Chapter 7 matters relating to natural character. I would be happy to answer any questions on its contents or on any other matters raised in the Minister's submissions which are within my area of expertise.

Julian Watts

Department of Conservation

17 April 2009.