

Introduction, Comments Forming Part of All Decisions and Conclusion

Volume 1 - Part 1

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1.1 Introduction

Volumes 1-5, explained in more detail in 1.3, set out the decisions of the Manawatu-Wanganui Regional Council (Regional Council or Council) on the Proposed One Plan made by commissioners on various Hearing Panels acting under delegated authority from the Council.

The “Proposed One Plan - The Consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu-Wanganui Region”¹ (POP) was publicly notified on 31 May 2007. As its title foreshadows, the POP is a composite planning instrument combining the Regional Policy Statement (RPS), Regional Plan and Regional Coastal Plan into one document. Section 78A of the Resource Management Act 1991 (RMA) provides for such instruments. The Regional Coastal Plan is subject to final approval by the Minister of Conservation.²

When operative, the POP will replace the operative RPS and six operative regional plans. The Foreword to the POP notes that the idea of developing a single document was not simply about joining the existing plans together; the vision was a plan that is simple, comprehensive, focussed on what is important and, most significantly, focussed on results. The “Big Four” issues identified in the POP are surface water quality degradation, increasing water demand, unsustainable hill country land use, and threatened native biodiversity.

A total of 467 submissions and 62 further submissions were received by the Regional Council, which trades under the name Horizons Regional Council.

Under s 34A(1) of the RMA, the Regional Council delegated the responsibility to hear and make decisions on submissions and further submissions on specified topics of the POP to commissioners sitting as different Hearing Panels (Hearing Panel or Panel). The Panels comprised both Councillor commissioners and independent commissioners. The topics dealt with by each Panel, and its membership, are set out in 1.2 and in the later Parts of this Volume that relate to hearings on various topics.

Hearings started on 1 July 2008 and ended on 30 April 2010. The decisions of the Hearing Panels are later than the time set out in clause 10(3) of Schedule 1 to the RMA. In response to submissions, requests were made by members of Hearing Panels for there to be a planning and legal audit of the provisions of the POP. The Council helpfully agreed to do this. Consequently, there was extra time involved in dealing with various chapters in the first part of the hearing process. In addition, because of the interrelated nature of the POP, the Hearing Panels decided that all decisions on all provisions should be made and released at the same time. As a result, it was not possible for the Council to meet the time limit in clause 10(3). Under s 37(1)(a) of the RMA, the time was extended to 30 September 2010.

¹ The green title page of the POP records the name as described here. Page i of the POP, which certifies the document by resolution of the Regional Council, refers to “Resource” Policy Statement.

² Section 28(b).

This Part, which forms part of the decision of each Hearing Panel, deals with:

- (a) hearings, topics and Hearing Panels;
- (b) the structure of the decisions;
- (c) the hearing process;
- (d) Provisional Determinations that were issued;
- (e) legal matters;
- (f) general wording issues across the POP;
- (g) Glossary matters; and
- (h) the overall evaluation and conclusion of each Hearing Panel (and signatures of Panel members).

1.2 Hearings, Topics and Hearing Panels

The hearings and the matters dealt with were:

- (a) Overall Plan - matters arising across the POP;
- (b) Te Ao Māori - Chapter 4;
- (c) Land - Chapter 5, Chapter 12 (excluding biodiversity) and Schedule A;
- (d) Biodiversity and Heritage - biodiversity in Chapters 7 and 12 and Schedule E; heritage in Chapter 7;
- (e) Coast - Chapter 9, Chapter 17 and Schedule H;
- (f) General - setting the scene in Chapter 1; administration in Chapter 2; infrastructure, energy and waste in Chapter 3; landscape in Chapter 7 and Schedule F; discharges to air in Chapters 8 and 14 and Schedule G; natural hazards in Chapter 10 and Schedule I; introduction to rules and general objectives and policies in Chapter 11; and financial contributions in Chapter 18; and
- (g) Water - Chapter 6; discharges to land and water in Chapter 13 and Schedule D; takes, uses and diversions of water, and bores in Chapter 15 and Schedules B and C; structures and activities in beds of rivers and lakes, artificial watercourses, and damming in Chapter 16 (which also included some activities in the vicinity of, but beyond, these areas).

For the One Plan process, the Council appointed a Chairperson (Joan Allin) and Deputy Chairperson (Jill White). Each chaired different hearings.

The Council appointed a mix of Councillor commissioners and independent commissioners to various Hearing Panels. The Councillor commissioners were Jill White, Lynne Bailey, Lindsay Burnell, Murray Guy, Annette Main, David Meads and Michael Plowman. The independent commissioners were Joan Allin, Rob van Voorthuysen and Che Wilson. Jill White and Rob van Voorthuysen were on all Hearing Panels.

The Hearing Panels comprised:

- (a) Overall Plan - Joan Allin (Chairperson), Jill White, Rob van Voorthuysen;
- (b) Te Ao Māori - Joan Allin (Chairperson), Jill White, Lynne Bailey, Lindsay Burnell, Annette Main, Rob van Voorthuysen, Che Wilson;
- (c) Land - Joan Allin (Chairperson), Jill White, Murray Guy, Annette Main, David Meads, Rob van Voorthuysen, Che Wilson;
- (d) Biodiversity and Heritage - Joan Allin (Chairperson), Jill White, Annette Main, Michael Plowman, Rob van Voorthuysen;
- (e) Coast - Joan Allin (Chairperson), Jill White, Lynne Bailey, Annette Main, Rob van Voorthuysen, Che Wilson;
- (f) General - Jill White (Chairperson), Lindsay Burnell, Annette Main, Rob van Voorthuysen;

- (g) Water - Joan Allin (Chairperson), Jill White, David Meads, Rob van Voorthuysen.

1.3 Structure of the Decisions

We now explain in more detail the content and format of the five Volumes that comprise the decisions made by the various Hearing Panels. Clause 10 of Schedule 1 to the RMA sets out the requirements for decisions.

The relevant Volumes are:

- (a) Volume 1 - Reasons for the Decisions;
- (b) Volume 2 - Decisions on Individual Submissions and Further Submissions;
- (c) Volume 3 - Marked-up Version of the Proposed One Plan;
- (d) Volume 4 - Clean Version of the Proposed One Plan; and
- (e) Volume 5 - Some of the Documents Incorporated by Reference into the Proposed One Plan.

In addition to this Part, Volume 1 sets out, in a separate Part for each hearing, each Panel's evaluation of the submissions and further submissions (referred to either as separate terms or as "submissions") and the reasons for accepting or rejecting them.

Volume 2 sets out the summary of submissions and further submissions, and the decision made on each by the relevant Hearing Panel. The submissions are shaded in grey highlight and the further submissions are not. Where a submission was withdrawn, decisions have been made on the further submissions that relate to that submission. If the relevant Panel accepted the intent of a submission but adopted a different approach to achieving the intent, the submission is recorded as being "Accept in part" or "Accept". Where the relevant Panel accepted only part of what had been submitted, the submission is generally recorded as "Accept in part".

Submission points that state support for, or seek the retention of, the notified provisions have been accepted where the relevant Panel decided that to be appropriate. The general reasons provided in the relevant Parts are applicable to those submissions and, in general, the Panels do not provide any further specific reasons for accepting such submissions.

The summary and numbering of submissions and further submissions is based on what was provided to the Hearing Panels in the planning officers' reports. The coding of the submissions done by the Council does not include macrons for Maori words and we have not changed that in Volume 2. As the planning officers' reports included the summary of submissions and the further submissions relating to each submission, as well as their numbering, everyone has had an opportunity to point out any errors. Consequently, we have generally relied on the material provided to us, unless an error was brought to our attention. In a few cases where we noticed that submissions were coded to the incorrect hearing or coded to more than one hearing, we located them under the most relevant topic.

Volume 3 contains a marked-up version of the POP, showing the changes that the Panels have made to the POP as compared with the POP as publicly notified. The changes result from consideration of the matters in this Volume,

including this Part, the decisions on submissions and further submissions in Volume 2, and any alterations under clauses 10(2) or 16(2) of Schedule 1 to the RMA.

In general, in Volume 3, words added are shown in underline and words removed are shown in ~~strikethrough~~. However, changes that we decided were minor, such as the following, are not shown:

- (a) correcting typographical errors;
- (b) inserting macrons in Māori words;
- (c) changing, for consistency, upper case to lower case or one word to two words (or vice versa) or adding or removing hyphens;
- (d) changing, for consistency, punctuation at the end of provisions;
- (e) changing defined terms used in the text of the POP to italics.

In relation to complete provisions (eg a policy), where a Panel has moved the provision to another location in the POP, the original provision is shown as ~~strikethrough~~ in its original location. In its new location, the provision is shown with its original numbering (eg policy number) in ~~strikethrough~~ so that the source of the provision can be identified, is given a new number which is underlined, and the provision is inserted without all of the text being underlined. Only changes that the Panel made from the original wording is shown as ~~strikethrough~~ or underlined. That is so people will know that the Panel has not created a whole new provision and so that people can identify easily what the Panel has changed.

Where revised or new Figures have been included, the heading of the Figure is shown in underline to identify that the Figure is new but because of difficulties associated with showing changes in captions, captions in the Figures generally do not show changes from wording in the previous Figures. Where there is a change in a caption, a new Figure has been inserted.

In relation to Schedule D, material has been moved from it to new schedules (Schedules AA or AB) and the order has also been changed. The base material from the POP has not been shown as deleted in Schedule D. It has been moved to the new schedule and is shown as deleted in that location. The relevant page reference from the POP as notified has been added to the inserted or deleted pages so people can identify where the provision was in the POP as notified.

In general, where existing provisions were deleted or new provisions added, Panels did not change the numbering of the notified POP provision, so that there would not be confusion about which provision was being referred to and cross-references throughout the Plan would remain valid. Added provisions are identified with capital letter suffixes (eg 12-5A). That means that some provisions have unusual numbering or lettering and that it is not sequential. After appeals are dealt with, the numbering and lettering of all the provisions of the POP will need to be made sequential.

Volume 4 is a clean version of the POP incorporating the Panels' changes without underlining or ~~strikethrough~~. Getting the documents finalised has been a large undertaking and the Panels' attention has been on Volume 3, rather than Volume 4. Preparation of Volume 4 was a task undertaken by the Council as a result of the Panels' decisions reflected in Volume 3. Although

Volume 4 has been checked on behalf of the Panels, in the event of a conflict between Volume 3 and Volume 4, Volume 3 prevails.

Volume 5 includes a copy of some of the documents that relevant Panels have decided should be incorporated by reference, in whole or in part, into the POP. It only includes those documents that were revised during the course of the hearing. Where only part of a document is incorporated by reference, then only the portion incorporated is included with the changes shown in underline and ~~strikethrough~~. Where external documents were incorporated and no revisions were made to those documents, copies of them are not reproduced in Volume 5. The reason for including the documents in Volume 5 is so that it is clear which version is (or portions of which version are) being incorporated by reference.

An issue arose about documents being incorporated by reference that changed during the hearing process. That issue is dealt with in Part 8 (Water Hearing) of this Volume.

The components of the decision on each topic made by the relevant Hearing Panel are set out in the relevant decision on each topic. However, in summary, the components of each decision are:

- (a) this Part;
- (b) the Part of this Volume dealing with the relevant topic;
- (c) the relevant Part of Volume 2, setting out the decisions on the submissions and further submissions on the relevant topic. In the event of a conflict between Volume 2 and Volume 3, Volume 3 prevails;
- (d) the relevant chapter(s), schedules and Glossary definitions in Volumes 3 (and Volume 4); and
- (e) where relevant, the documents in Volume 5 or the portions of those documents incorporated by reference into the POP.

The later Parts of this Volume are written on the basis that the reader will refer to all the relevant components of the decision when reading the Part dealing with the topic.

1.4 Hearing Process

Because of the range of matters to be addressed in the hearings, the complexity of the process, and the interrelated nature of the provisions, various procedural and other steps were taken to provide guidance to, and make material available to, participants in the process (and others).

“Hearing Procedures” and “Directions and requests from the Chairperson” documents were issued in April 2008, with revised documents in October 2008. Various Minutes and Directions were issued on a range of topics during the process, including caucusing of experts.

In general, the process adopted involved:

- (a) officers³ reports⁴ and any supplementary reports to be provided in advance (generally taken as read);

³ The term officer is used to include Council staff, consultants and legal advisers.

⁴ Under s 42A of the RMA, a direction was made to the One Plan Manager that related to providing a report(s) sufficient for each Hearing Panel to understand the technical and planning basis for the relevant provisions of the POP and to respond to submissions.

- (b) expert evidence on behalf of submitters to be provided in advance (again, generally taken as read);
- (c) a request in the revised documents that other evidence from submitters be provided in advance;
- (d) hearings for those who wanted to be heard, including provision for rebuttal evidence from the officers.

When some submitters appeared, they had other people supporting them in various roles. Generally, only if the supporting person spoke at the hearing have we noted in the relevant Part of this Volume that we heard from them. Otherwise, we do not refer to supporting people by name.

The written material provided by officers and submitters is held on file at the Council.

The Council's website included a considerable amount of information about the POP and the hearings. Submitters were made aware of this in various ways. The officers' reports, pre-circulated expert evidence and some other materials were lodged on the website as they were received by the Hearings Administrator. The website also included the various Minutes, Directions and communications to, and on behalf of, the Chairpersons of the different Hearing Panels.

A Direction was made to minimise the need for participants in the process to repeat previous material that had already been presented and to enable a later Hearing Panel to consider the same material without requiring it to be repeated. In addition, because of the interrelated nature of the POP, when matters arose in one hearing that were relevant to another, the Panels generally tried to adopt a flexible approach so that the information could be available to the relevant Hearing Panel.

Reports, evidence and other material from the Overall Plan hearing, where submitters presented submissions that related to matters that applied across the POP, were lodged on the website and were available to relevant Hearing Panels. Similarly, material from all hearings was available to the Overall Plan Panel.

There were numerous pre-hearing meetings arranged by the Council. Some were facilitated by an independent person engaged by the Council and various reports were provided to, and have been considered by, relevant Hearing Panels. Numerous other meetings occurred among officers and submitters. These meetings resulted in considerable success in narrowing the issues and achieving consensus. We commend the facilitator, officers and the submitters for that success, although the Panels did not always adopt the outcome reached.

Panel members have read and considered all of the submissions relevant to the topics dealt with by the Panel, regardless of whether the submitter appeared at the hearing or not.

The POP is a considerable undertaking, involving a significant workload for officers and many submitters. There were strong feelings on a number of issues. We are grateful to the officers for their helpful reports and their constructive participation in the process. We are also grateful to the

submitters who provided input or appeared before us for their constructive participation in the process. We received much useful material from the officers and submitters and the cooperation of those involved in the process assisted the Panels greatly in dealing with the issues.

We also want to acknowledge and thank the Hearings Administrator, who provided outstanding assistance to the Chairpersons and the Hearing Panels in numerous ways. She was crucial in enabling a well-organised hearing process and a website that provided access to relevant information.

1.5 Provisional Determinations

For composite planning instruments, such as the POP, a challenge is to achieve coherence and consistency throughout the entire document. That was a particular issue in this case with different Hearing Panels, different submitters, and different Council staff and consultants involved in various topics and chapters of the POP. Therefore, the technique of issuing Provisional Determinations was adopted.

The Provisional Determinations stated, among other things, that:

- (a) they were not decisions within the meaning of the RMA and were not appealable decisions;
- (b) they reflected the current thinking of the relevant Panel;
- (c) they were to enable other Hearing Panels, officers and submitters to understand the likely form of the provisions so as to enable an integrated planning instrument at the conclusion of the entire hearing process;
- (d) the Panel reserved the right to make further changes;
- (e) there were provisions shaded in grey and other provisions which were linked to other hearings;
- (f) a number of matters remained to be completed before the provisions would be final.

Some of the Provisional Determinations also sought feedback on certain matters.

1.6 Legal Matters

During the process, the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (Amendment Act) was passed. Section 161 of the Amendment Act provides that the POP must be determined as if the Amendment Act had not been made. Therefore, the references to sections of the RMA in each decision are to the sections as they were prior to the Amendment Act. However, at the end of this discussion of legal matters, we deal with one issue that arose out of the Amendment Act in relation to RMA section references in Volumes 3 and 4.

There is no presumption in favour of the provisions in the POP as publicly notified. Equally, the Council is not on trial. Rather, the process is to determine the most appropriate policy framework to achieve the purpose of the RMA. What is required is an evaluation based on the totality of the evidence before each Panel.⁵

⁵ See for example *Foreworld Developments Ltd v Napier City Council* W008/05 para 22, *Eldamos Investments v Gisborne District Council* W47/05 para 129 and *Kerr Trusts v Whangarei District Council* A060/04.

Each Panel is acting as a regional planning authority.⁶ However, apart from statutory powers (eg clauses 10(2) and 16(2) of Schedule 1 to the RMA), the power of each Panel is limited to responding to submissions and the relief sought. Consequently, the power is limited to the scope of submissions and any other modifications that can fairly and reasonably be described as being within the scope of those submissions. Whether something is within the scope of submissions is a matter of fact and degree.⁷ Further submissions either support or oppose submissions and cannot extend the scope of the original submission.

The Regional Council's functions are set out in s 30 of the RMA and functions of territorial authorities are set out in s 31. As there are overlapping functions in certain areas, these sections are important and are dealt with in more detail in decisions on topics where particular issues arose.

The RMA contemplates a hierarchy of planning instruments as follows:

- (a) Part 2 RMA, discussed further below;
- (b) national policy statements or New Zealand coastal policy statements;
- (c) regional policy statements;
- (d) regional plans, including regional coastal plans; and
- (e) district plans.

Within each of the planning instruments referred to above, there is a hierarchy of:

- (a) objectives;
- (b) policies; and
- (c) rules (where applicable).

Under s 67(3)(c) of the RMA, a regional plan must give effect to any regional policy statement. While that provision is referring to an operative regional policy statement and the POP process is dealing with proposed documents, the intent of the provision is apparent. In addition, once the POP is operative, the provisions will be applicable. Hearing Panels have approached the decision-making task on the basis that the provisions of the POP that will form the Regional Plan and the Regional Coastal Plan must give effect to the RPS chapters of the POP. The relevant Part of this Volume on each topic deals with other planning instruments that are relevant to the topic being addressed.

As the POP includes the RPS, Regional Plan and the Regional Coastal Plan, different provisions of the RMA are relevant. In general, we do not include quotations from the provisions of the RMA in the decisions, as readers can access those provisions themselves.⁸

Part 2 of the RMA is relevant to all provisions of the POP. Section 5 of the RMA sets out the all-important purpose of the RMA. In addition, Part 2 sets out:

- (a) the matters of national importance that, in achieving the purpose of the RMA, decision-makers must "recognise and provide for"⁹;

⁶ The authority cited to us for this proposition was *Coromandel Watchdog of Hauraki Inc v Ministry of Economic Development* [2008] NZRMA 77 para 22 (CA). We note that the paragraph is referring to submissions from the parties but no submitter disagreed with the proposition put to us.

⁷ For further explanation see *Christchurch International Airport Limited v Christchurch City Council* C77/99.

⁸ Available at www.legislation.govt.nz.

⁹ Section 6.

- (b) other matters that, in achieving the purpose of the RMA, decision-makers must “have particular regard to”¹⁰; and
- (c) the requirement, in achieving the purpose of the RMA, for decision-makers to take into account the principles of the Treaty of Waitangi.¹¹

The decision on each topic identifies the Part 2 RMA matters that are most relevant to the particular topic.

Section 32 (consideration of alternatives, benefits, and costs) of the RMA, dealt with in more detail below, is also applicable to all provisions of the POP.

In addition, sections of the RMA relevant to the provisions of the POP that comprise:

- (a) the RPS, include ss 59 (purpose of regional policy statements), 60 (preparation and change of regional policy statements), 61 (matters to be considered by regional council (policy statements)), and 62 (contents of regional policy statements);
- (b) the Regional Plan, include ss 63 (purpose of regional plans), 65 (preparation and change of regional plans other than regional coastal plans), 66 (matters to be considered by regional council (plans)), 67 (contents of regional plans), and 68 (regional rules);
- (c) the Regional Coastal Plan, in addition to ss 63 and 66-68 already referred to, include ss 64 (preparation and change of regional coastal plans) and 64A (imposition of coastal occupation charges).

A number of those sections impose obligations on the Hearing Panels and each Hearing Panel has been conscious of those obligations during the decision-making process. Where particular issues about obligations arose in the context of particular topics, including any issues that arose in relation to Schedules to the RMA, they are addressed in the Part of this Volume dealing with the topic. Obligations in relation to consultation are dealt with in Part 2 of this Volume in relation to the Overall Plan hearing.

There are also sections of the RMA that are relevant to particular issues (eg ss 69 and 70, which deal with rules in relation to water quality and discharges). Where a particular issue arose, the relevant sections are referred to in the Part of this Volume that deals with the topic.

Section 32 of the RMA states:

32 Consideration of alternatives, benefits, and costs

- (1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement ... is publicly notified, ... an evaluation must be carried out by – ...
 - (c) the local authority, for a policy statement or a plan ...
- (2) A further evaluation must also be made by –
 - (a) a local authority before making a decision under clause 10 ... of Schedule 1; ...
- (3) An evaluation must examine –
 - (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives ...

¹⁰ Section 7.

¹¹ Section 8.

- (4) For the purposes of the examinations referred to in [subsection] (3) ..., an evaluation must take into account –
 - (a) the benefits and costs of policies, rules, or other methods; and
 - (b) 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.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

The Council produced a s 32 evaluation report titled “Section 32 Report: One Plan” dated May 2007. Each Hearing Panel has read and considered the relevant parts of that report. There were numerous submissions challenging the adequacy of that report.

Each Hearing Panel also undertook its own evaluation as required under s 32(2)(a) of the RMA. While the evaluation is not explicitly documented in some of the decisions of Hearing Panels where the issues had been narrowed or where the adequacy of the s 32 report was not a particular issue for the topic, each Hearing Panel examined the matters in s 32(3) and took into account those in s 32(4).

Each Hearing Panel’s evaluation underlies:

- (a) the discussion on the topic in the relevant Part of this Volume;
- (b) the specific decisions in Volume 2 in relation to each decision sought in a submission or further submission;
- (c) the changes made to various provisions of the POP in Volume 3 (clean version in Volume 4); and
- (d) the decision to incorporate documents, or portions of documents, into the POP by reference, including those in Volume 5.

In undertaking that evaluation, each Hearing Panel was mindful of the *Eldamos*¹² Environment Court case, which established the parameters for the appropriateness test referred to in s 32 in the context of a district plan.¹³ There was no dispute that the *Eldamos* formulation is applicable to the POP.

In the context of the RPS or Regional Plan, including the Regional Coastal Plan, it would be reformulated as follows (with Regional Plan references in square brackets):

- A. An objective in a regional policy statement [regional plan] is to be evaluated by the extent to which:
 - 1 it is the most appropriate way to achieve the purpose of the Act (s 32(3)(a)); and
 - 2 it assists the regional council to carry out its functions in order to achieve the purpose of the Act (ss 59, 62, 66 [s 63]); and
 - 3 it is in accordance with the provisions of Part 2 (s 61(1) [s 66(1)]).
- B. A policy [, rule] or other method in a regional policy statement [regional plan] is to be evaluated by whether:

¹² *Eldamos Investments Limited and others v Gisborne District Council* W047/05.

¹³ Para 128.

- 1 it is the most appropriate way to achieve the objectives of the policy statement [regional plan] (s 32(3)(b)); and
- 2 it assists the regional council to carry out its functions in order to achieve the purpose of the Act (ss 59, 62, 66 [s63]); and
- 3 it is in accordance with the provisions of Part 2 (s 61(1) [s 66(1)]); and
- 4 if a rule, it achieves the objectives and policies of the regional plan s 68(1)(b)].

Each Hearing Panel has made its decisions in light of those matters.

Other relevant cases to which Hearing Panels have been referred are, if necessary, referred to in the decisions on the topics.

We return now to the Amendment Act that was passed during the process. As already noted, s 161 of the Amendment Act provides that the POP must be determined as if the Amendment Act had not been made. We have done that, except in relation to one matter that created somewhat of a dilemma for the Panels.

The Amendment Act made changes to Part 3 of the RMA so that sections referred to correctly in the POP when notified would make no sense to someone reading the Plan when operative in the post-Amendment Act regime. By way of example, s 14(1) of the RMA referred to in the POP (pre-Amendment Act) deals with taking, using, damming or diverting water (other than open coastal water). In contrast, under the post-Amendment Act regime, s 14(1) deals with taking, using, damming or diverting open coastal water. In the end, and relying on legal advice that we were given, the sections referred to in the POP following changes made by the Panels (Volumes 3 and 4) are the sections that will be correct post-Amendment Act. We have made these changes on the basis that we are correcting what would otherwise be errors when the POP becomes operative.

1.7 General Wording Issues Across the POP

During the course of the hearings, it became increasingly complicated and confusing as to when “recognise and provide for”, “have particular regard to”, “have regard to” as well as various other forms of wording should be used.

Various Panels received various different wording suggestions from officers and submitters and also legal input about using consistent language.

So, the general approach that we have adopted is that “recognise and provide for” should be restricted to matters expressly referred to in s 6 RMA and “have particular regard to” should be restricted to those in s 7. Otherwise, we have either adopted specific wording suitable to the provision or used “have regard to” consistently across the POP.

The POP used “shall” and “will”, but different people took different meanings from those terms. As a result of legal submissions to Panels, we have used the term “must” for obligations. We understand that this is the modern drafting style in statutes and avoids confusion about whether “will” is an obligation or is referring to something in the future. When we have used the term “will”, we are referring to the future and something that is not an obligation.

RMA-defined terms are shown as defined in the objectives, policies, rules, Glossary and most of the schedules. It became too complicated to identify them elsewhere so they are restricted to those places where it counts most from a legal perspective. There is an explanation at the beginning of the Glossary.

The way in which the POP uses the terms “and” and “or” is sometimes in the conjunctive sense and sometimes in the disjunctive sense, for each of them. By way of example, in the “Rule” columns of various chapters, the approach is to use “and” even when the wording of the actual rule uses “or”. That approach was used reasonably consistently across the POP as notified. Relevant Hearing Panels have generally not changed that approach. Occasionally, the POP also used “and/or”, which could create the impression that “and” or “or” did not mean “and/or”. Relevant Hearing Panels have therefore endeavoured to change references to “and/or” either to “and” or “or”.

A number of policy provisions referred to something being “practicable”. Based on input in response to questions from various Hearing Panels, the term “reasonably practicable” has generally been adopted across the POP.

Where a decision was made by a Hearing Panel that required consequential changes across the POP (eg changing Schedule D “standards” to “targets”), those consequential changes have been made across the POP.

1.8 Glossary

Glossary terms were dealt with in the relevant hearing where the issue arose. The Glossary of the POP in Volume 3 identifies the hearing to which each term is linked so people can go to the relevant decision to see the reasons for the Panel’s decision.

Each Panel does not refer to the Glossary terms unless an issue arose in relation to a term. We record here that each Panel has decided that the Glossary terms in Volume 3, including those changed by other Panels, are appropriate definitions for defined terms in the provisions dealt with by each Panel.

1.9 Overall Evaluation and Conclusion and Signatures of Panel Members

This overall evaluation and conclusion of each Hearing Panel is based on:

- (a) the reasons given in this Part and the relevant Parts of Volume 1;
- (b) the decisions on the submissions and further submissions in the relevant Part of Volume 2;
- (c) the relevant chapter(s), schedules and Glossary definitions in Volume 3 (and Volume 4); and
- (d) where relevant, the documents in Volume 5 or the portions of those documents incorporated by reference into the POP.

Each Hearing Panel is satisfied that the relevant objectives in the RPS part of the POP dealt with in the relevant hearing are the most appropriate way to achieve the purpose of the RMA, they assist the Regional Council to carry out its functions in order to achieve the purpose of the RMA, and they are in accordance with Part 2 of the RMA.

The relevant policies in the RPS part of the POP implement the objectives and the methods implement the policies.

Each Hearing Panel is satisfied that:

- (a) the relevant policies and methods are, having regard to their efficiency and effectiveness (and their costs and benefits, alternatives, the risks of acting or not acting if there is uncertain or insufficient information, and all other relevant matters) the most appropriate way to achieve the objectives of the RPS part of the POP (and, for the methods, to achieve the policies);
- (b) those policies and methods assist the Regional Council to carry out its functions in order to achieve the purpose of the RMA; and
- (c) they are in accordance with the provisions of Part 2 of the RMA.

With the changes made by each Hearing Panel, the Regional Plan (including the Regional Coastal Plan) part of the POP gives effect to the RPS part of the POP.

For the Regional Plan part of the POP, each Hearing Panel is satisfied that the relevant objectives dealt with in the relevant hearing are the most appropriate way to achieve the purpose of the RMA, they assist the Regional Council to carry out its functions in order to achieve the purpose of the RMA, and they are in accordance with Part 2 of the RMA.

Within the Regional Plan part of the POP, the relevant policies implement the objectives and the rules and other methods implement the policies.

Each Hearing Panel is satisfied that:

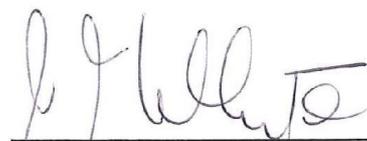
- (a) the relevant policies, rules and other methods are, having regard to their efficiency and effectiveness (and their costs and benefits, alternatives, the risks of acting or not acting if there is uncertain or insufficient information, and all other relevant matters) the most appropriate way to achieve the objectives of the Regional Plan part of the POP (and, for the rules and other methods, to achieve the policies);
- (b) they assist the Regional Council to carry out its functions in order to achieve the purpose of the RMA; and
- (c) they are in accordance with Part 2.

Each Hearing Panel is also satisfied that it is appropriate for the RPS and the Regional Plan (including the Regional Coastal Plan) to comprise one document and that their decisions and the amended provisions accord with the purpose and principles of the RMA.

In conclusion, for all the reasons stated in this Part and the other relevant Parts of Volume 1, the decisions of each Hearing Panel (including consequential alterations) are as set out in the relevant Parts of Volume 2 and the relevant provisions in Volume 3, including the relevant Glossary definitions and schedules (clean version in Volume 4) and including the relevant documents set out in Volume 5 or the portions of those documents incorporated by reference into the POP.

Dated 28 July 2010


Joan Allin
Overall Plan, Te Ao Māori, Land, Biodiversity and Heritage, Coast and Water Hearing Panels

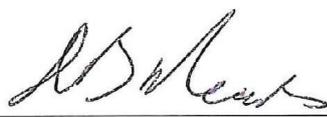

Jill White
All Hearing Panels


Lynne Bailey
Te Ao Māori and Coast Hearing Panels


Lindsay Burnell
Te Ao Māori and General Hearing Panels


Murray Guy
Land Hearing Panel


Annette Main
Te Ao Māori, Land, Biodiversity and Heritage, Coast and General Hearing Panels


David Meads
Land and Water Hearing Panels

Not signed¹⁴
Michael Plowman
Biodiversity and Heritage Hearing Panel


Rob van Voorthuysen
All Hearing Panels


Che Wilson
Te Ao Māori, Land and Coast Hearing Panels

¹⁴ The decision of the Biodiversity and Heritage Panel is a majority decision as Commissioner Plowman did not agree with it.