

Coast Hearing

Volume 1 - Part 6

Chapters 9 and 17 and Schedule H

Table of Contents

6.1	Introduction	6-1
6.2	Submissions and Further Submissions Received	6-1
6.3	Reports, Evidence and Other Material	6-2
6.4	Evaluation and Reasons	6-4
6.5	Legal Matters	6-5
6.6	Principal Issues of Contention	6-6
6.6.1	How should the RCP delineate various management zones?	6-6
6.6.2	What activities should be provided for in the Port Activity Management Area?	6-7
6.6.3	Should specific provision be made for energy generation infrastructure?	6-7
6.6.4	Should mineral and oil exploration be provided for?	6-8
6.6.5	Should shellfish enhancement be provided for?	6-9
6.6.6	How should water quality be dealt with?	6-9
6.6.7	Should there be water quality Estuary Water Management Sub-zones?	6-10
6.6.8	What should the Schedule H water quality provisions and standards be?	6-10
6.7	Other Issues	6-14
6.7.1	Overall Plan General and Coast General	6-15
6.7.2	9.1.1 Scope	6-15
6.7.3	9.1.3 Future Approach	6-15
6.7.4	Chapter 9 Issues - General and Issue 9-1 Integration between the coastal marine area and the wider coastal environment	6-15
6.7.5	Issue 9-2 Appropriate protection, use and development in the CMA	6-16
6.7.6	Objective General and Objective 9-1	6-16
6.7.7	Objective 9-2 Appropriate protection, use and development in the CMA	6-16
6.7.8	Policy General	6-16
6.7.9	Policy 9-1 Integration between the coastal marine area and the wider coastal environment	6-17
6.7.10	Policy 9-2 Zones	6-17
6.7.11	Policy 9-3 Aquaculture zones	6-17
6.7.12	Policy 9-4 Appropriate use and development	6-17
6.7.13	Policy 9-5 Public access	6-18
6.7.14	Methods General	6-18
6.7.15	Method 9-1 Coastal Management Forum	6-18

6.7.16	Method 9-2 Coast Care	6-18
6.7.17	Method 9-3 Vehicle Bylaw	6-18
6.7.18	Method 9-4 Coastal Information	6-18
6.7.19	Method 9-5 Coastal Advocacy	6-18
6.7.20	Anticipated Environmental Results Table	6-19
6.7.21	Chapter 17 General	6-19
6.7.22	Policy 17-1 Occupation of space by aquaculture	6-20
6.7.23	Chapter 17 Policy 17-2 Consent decision-making for occupation of space by other activities	6-20
6.7.24	Policy 17-3 Decision-making for occupation charges	6-20
6.7.25	Policy 17-4 Consent decision-making for new structures	6-20
6.7.26	Policy 17-5 Consent decision-making for existing structures	6-20
6.7.27	Policy 17-6 Consent decision-making for reclamation and drainage	6-20
6.7.28	Policy 17-7 Consent decision-making for activities involving disturbance, removal or deposition	6-21
6.7.29	Policy 17-9 Consent decision-making for damming and diversions in the CMA	6-21
6.7.30	Policy 17-10 Consent decision-making for discharges into the CMA	6-21
6.7.31	Policies 17-11, 17-12 and 17-13	6-21
6.7.32	New Rules Sought	6-22
6.7.33	Table 17.1 Standard conditions for permitted and controlled activities in the coastal marine area	6-22
6.7.34	Rule 17-1 Occupation by existing structure	6-23
6.7.35	Rule 17-2 Temporary occupation	6-24
6.7.36	Rule 17-5 Occupation of space in protection zones	6-24
6.7.37	Rules 17-6, 17-7 and 17-8	6-24
6.7.38	Rule 17-9 Structures in the port zone	6-24
6.7.39	Rules 17-10 and 17-12	6-24
6.7.40	Rule 17-14 Structures in a protection zone	6-24
6.7.41	Rules 17-17, 17-18, 17-23, 17-24, 17-25, 17-26, 17-27, 17-29, 17-30, 17-33, 17-34, 17-35, 17-36, 17-37, 17-38 and 17-39	6-25
6.7.42	Glossary Coastal foredune	6-25
6.7.43	Schedule H	6-25
6.8	Conclusion	6-26

6.1 Introduction

This decision of the Regional Council is made by the Coast Hearing Panel (Coast Panel or Panel).

The decision deals with Chapters 9 and 17, Schedule H and relevant Glossary terms. In that context, it also deals with relevant Water Management Zones and Sub-zones, values, management objectives and water quality standards for areas that were included in Schedule D but which are part of the coastal marine area (CMA).

This decision comprises:

- Part 1 (Introduction, Comments Forming Part of All Decisions and Conclusion) of this Volume;
- this Part, where, among other things, we set out our evaluation of the submissions and our reasons for accepting or rejecting them;
- Part 6 of Volume 2, which sets out the summary of submissions and further submissions and our decision in respect of each; and
- Chapters 9 and 17, the relevant Glossary definitions and Schedule H shown in the marked-up version of the POP in Volume 3 (clean version in Volume 4).

The Coast Panel comprised:

- Joan Allin (Chairperson);
- Jill White;
- Lynne Bailey;
- Annette Main;
- Rob van Voorthuysen; and
- Che Wilson.

The Coast hearing was held on 12 and 15 September 2008. Three submitters¹ were also heard on 1 July 2008 at a hearing that provided an opportunity for submitters who wished to present all, or part, of their submission or further submission (which we refer to either as separate terms or as submission) on different topics at one time. The Hearing Panel at that hearing included the members of this Panel. In addition, the Coast Hearing Panel sat with the Water Hearing Panel on 11 December 2009 to hear evidence relevant to both hearings.

6.2 Submissions and Further Submissions Received

The submitters and further submitters on Chapters 9 and 17 and Schedule H are listed below. Further submission numbers are those above number 473.

Submission No	Submitter
51	Affco New Zealand Ltd - Wanganui Imlay
36	Airways Corporation of New Zealand (Airways Corporation)
464	Aohanga Incorporation

¹ Environment Network Manawatu, NZ Fire Service Commission and Powerco Ltd.

237	Bruce & Marilyn Bulloch
356	Environment Network Manawatu
386	Environmental Working Party
501	Ernslaw One Ltd
426 and 533	Federated Farmers of New Zealand Inc (Federated Farmers)
525	Genesis Power Ltd
313	George & Christina Paton
182	Horizons Regional Council
280	Horowhenua District Council
425	L M Terry
440	Landlink Ltd
433	Manawatu Branch of NZ Green Party
340	Manawatu District Council
312	Manawatu Estuary Trust
363 and 522	Meridian Energy Limited (Meridian)
359 and 519	Mighty River Power Limited
372 and 492	Minister of Conservation
243	Ministry of Economic Development
149	New Zealand Fire Service Commission
353 and 518	New Zealand Historic Places Trust - Central Region
427	Ngā Pae o Rangitikei
180	Ngati Kahungunu Iwi Incorporated (NKII)
161	ONTRACK (New Zealand Railways Corporation) (ONTRACK)
476	Palmerston North Airport Ltd
481	Palmerston North City Council
303	Pirie Consultants Ltd, Pacific Farms Ltd, Hoult Contractors Ltd, Keegan Contractors Ltd, Parau Contractors Ltd, Ryman Healthcare Ltd, M & M Earthmovers Ltd, Titan1 Ltd and O'Hagan Contracting Ltd
272	Powerco Limited
332	Progress Castlecliff Inc
310	Rayonier NZ Ltd
258 and 489	River City Port Ltd
460	Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird)
176	Sustainable Whanganui
374	Taranaki / Whanganui Conservation Board
461	Te Iwi o Ngāti Tūkorehe Trust
424	Te Runanga o Raukawa Inc
307	The Energy Efficiency & Conservation Authority (EECA)
358 and 511	TrustPower Limited
291	Wanganui District Council
311	Water and Environmental Care Assn Inc
375	Wellington Conservation Board.

6.3 Reports, Evidence and Other Material

In terms of the Council, we received reports and evidence and heard in person from Robin Britton, a resource management consultant. We also heard from Helen Marr, a planner and the One Plan Manager. We received an end of hearing report by Robin Britton and material that we received in response to

issues raised by the Panel included responses from both Robin Britton and Natasha James.

We also received written reports from Richard Thompson, meeting facilitator, on pre-hearing meetings that had taken place.

We considered Appendix 7 of the “End of hearing statement of Helen Marr for the Te Ao Maori hearing” as it is relevant to our obligations (as explained in section 6.5). We also received some information from the Biodiversity and Heritage hearing relating to historic heritage and conditions.

When the Coast Panel sat with the Water Panel, we received material and reports by, and heard in person from, Maree Clark (Environmental Scientist - Water at the Council), Dr John Zeldis (Principal Scientist and Marine Group Manager at NIWA), Graham McBride (Principal Scientist NIWA) and Kate McArthur (Senior Environmental Scientist - Water Quality at the Council). In that context, we received a report from Dr Robert Davies-Colley, a researcher and consultant with NIWA, and a memorandum from the end of hearing material from the Water hearing that set out expert agreement on water quality standards, including those for estuaries.²

In terms of submitters, we heard in person from:

- Dr Terry Kelly (Chairperson of Environment Network Manawatu) and Sally Pearce for Environment Network Manawatu (1 July 2008);
- Charlotte Crack (Planner with Beca Carter Hollings and Ferner Ltd), Kerry Stewart (Risk Management Coordinator) and Mitchell Brown (Assistant Fire Region Commander) for NZ Fire Service Commission (1 July 2008);
- Karen Frew (Technical Regulation Manager) and Catherine Ross (Advisor Environmental Matters) for Powerco (1 July 2008);
- Joan Leckie for Forest & Bird;
- Michael Moodie (Legal Counsel) and Richard Peterson (an Associate and the Wellington Planning Manager of Harrison Grierson Ltd) for Mighty River Power;
- James Hardy (Legal Counsel) and Julian Watts (Resource Management Planner) for the Minister of Conservation;
- Dr Christine Cheyne for Taranaki / Whanganui Conservation Board;
- Christina Paton for George and Christina Paton, Water and Environmental Care Assn and Manawatu Estuary Trust; and
- Julie Ireland (Policy Analyst), Tim Matthews (Vice-President Wanganui Federated Farmers) and Andrew Day (President Tararua Federated Farmers) for Federated Farmers.

We received written evidence or material that was not presented orally at the hearing from:

- Ben Farrell (Senior Environmental Planner with Boffa Miskell Ltd) for River City Port;
- Rob Robson (Manager, Petroleum and Minerals Policy) for Ministry of Economic Development;
- Lisa Hooker (Planner with Opus International Consultants Ltd) for Airways Corporation;

² McArthur, Zeldis, Davies-Colley, Gibbs and McBride, Memorandum - Memo to the Water Hearing Panel, 15 March 2010.

- Robert Schofield (Environmental Planner and Senior Principal with Boffa Miskell Ltd) for TrustPower;
- Catherine Clarke (Planner and Senior Principal with Boffa Miskell Ltd) for Meridian; and
- Maurice Black (Resource Management Consultant) for NKII.

In response to matters raised by the Panel, we received additional material from Michael Moodie and Dr Christine Cheyne. We considered relevant material from the Overall Plan and General hearings, including energy-related material and written evidence of Brad Coombs and Richard Peterson about landscape issues presented on behalf of Mighty River Power to the General hearing.

As a Hearing Panel, we also undertook a field trip to examine some of the areas and issues that had been raised by submitters.

6.4 Evaluation and Reasons

The following sections of this Part set out our evaluation of the submissions and our reasons for accepting or rejecting them. The evidence presented to us is not summarised in this decision. However, specific matters are referred to as appropriate.

We deal first with legal matters and then the principal issues of contention. We then deal with remaining issues of contention, generally using the same headings as were used in the respective POP chapters or in Volume 2. Where we have omitted a heading, it was because we concluded that no evaluation under that heading was needed.

Where we have dealt with a topic in principal issues of contention, we do not repeat the reasons in the remaining issues.

In some cases, submitters raised the same matter in their submissions on several different parts of the POP chapters. For the sake of brevity, we do not repeat our evaluation of those matters under multiple POP chapter headings. Instead, we generally address the matter when it is first raised.

In addition:

- some submissions may be coded under one heading in Volume 2 (or in some cases in a different Part of Volume 2 eg Part 2 Overall Plan Hearing) but the relevant reasoning may be dealt with here under a different heading; and
- some matters dealt with under one heading may be relevant to other provisions or have general applicability across the chapters and so may have resulted in changes shown in Volume 3 in various provisions.

Submitters should therefore carefully read all components of the decision including this Part and Part 1 of this Volume, the relevant Parts of Volume 2 and the relevant POP provisions in Volume 3 (clean version in Volume 4) to see how their concerns have been dealt with.

General matters that cross all hearing topics, such as the adequacy of consultation in the POP process for all chapters, are dealt with in Part 2

(Overall Plan Hearing) of this Volume. We therefore do not deal with consultation issues, or the adequacy of consultation, in this decision.

6.5 Legal Matters

Chapter 9 forms part of the Regional Policy Statement (RPS) portion of the POP and Chapter 17 forms part of the Regional Coastal Plan (RCP). Part 1 of this Volume discusses a range of legal matters and refers to provisions relevant to the RPS and the RCP. We do not repeat them here.

The New Zealand Coastal Policy Statement (NZCPS) was gazetted in 1994. We gave particular attention to it in accordance with ss 62(3) and 67(3) of the RMA which require the RPS and RCP to “give effect to” any NZCPS. We note that a proposed NZCPS was released in 2008, but to date (June 2010) it has not been finalised by the Minister of Conservation. Because there is an operative NZCPS which we are bound to give effect to, our focus of attention was on that document.

We have given effect to the National Policy Statement on Electricity Transmission 2008. By way of example, various policies in Chapter 17 provide a cross-reference to policies in Chapter 3 which are relevant. Policy 3-1(a)(ia) provides that the Regional Council and territorial authorities must recognise the National Grid, among other things, as being a physical resource of regional or national importance.

We considered the proposed National Policy Statement for Renewable Electricity Generation, which sets out the objectives and policies for managing renewable electricity generation activities under the RMA, but were conscious that it is not operative.

In terms of Part 2 of the RMA, in addition to s 5, all of s 6 and ss 7(a), (aa), (b), (c), (d), (f), (g), (i) and (j) and 8 are relevant.

With respect to s 64A of the RMA, Policy 17-3 of the POP records that there will not be occupation charges and there was no dispute about that.

In relation to ss 61(2A)(a) and 66(2A)(a), we are aware of the two documents: “Ngāti Rangī Waterways Document” (2002) and “Ngāti Tūwharetoa Environmental Iwi Management Plan” (2003) referred to in the Te Ao Māori hearing. In Appendix 7 of the “End of hearing statement of Helen Marr for the Te Ao Maori hearing”, Ms Marr provided a detailed assessment of how the provisions of those two documents linked to the POP provisions. In light of the various water provisions that were in Schedule D of the POP as notified and which are now incorporated into Schedule H, we are satisfied that those two documents have been taken into account in an appropriate manner.

We note the relevant provisions in ss 64 and 66 to 70. No particular matter was drawn to our attention. No foreshore or seabed reserve currently exists in the Region.

Under s 64 of the RMA (and clause 19 of Schedule 1 to the RMA), the Minister of Conservation is ultimately responsible for approving the RCP part of the POP as it relates to the CMA.

As noted in Part 1 of this Volume, s 161 of the 2009 Amendment Act provides that the POP must be determined as if the Amendment Act had not been made. It 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, section 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, section 14(1) deals with taking, using damming or diverting open coastal water. As noted in Part 1, 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.

6.6 Principal Issues of Contention

The principal issues of contention for the Coast chapters were:

- (a) How should the RCP delineate various management zones?
- (b) What activities should be provided for in the Port Activity Management Area?
- (c) Should specific provision be made for energy generation infrastructure?
- (d) Should mineral and oil exploration be provided for?
- (e) Should shellfish enhancement be provided for?
- (f) How should water quality be dealt with?
- (g) Should there be water quality Estuary Water Management Sub-zones?
- (h) What should the Schedule H water quality provisions and standards be?

6.6.1 How should the RCP delineate various management zones?

The POP as notified established a Port Zone and six Protection Zones, together with a table of “values of significance/importance” relating to each Protection Zone. Submitters³ wished to have the application of the table clarified and the activity status of various activities within the Port and Protection Zones amended.

The officers recommended moving all of the water quality standards that applied in the CMA from Schedule D into Schedule H. This would ensure that all of the provisions of the RCP were contained in the relevant parts of the POP. The water quality standards apply to Water Management Zones and Sub-zones.

To avoid potential confusion between the zones used to manage activities and the water quality zones, we have renamed the Port Zone and the six Protection Zones to be “Activity Management Areas” as those zones are primarily used to delineate the extent of resource consent activity classifications for activities covered by the Chapter 17 rules, as opposed to the Water Management Zones or Sub-zones that deal with water quality matters (and various Values) set out in Schedule H (discussed later).

³ Mighty River Power and River City Port.

6.6.2 What activities should be provided for in the Port Activity Management Area?

River City Port, which operates the Port at the mouth of the Whanganui River, sought⁴ that Rule 17-9 be amended to be a permitted activity rule and that it apply to any activity in the Port Zone (now the Port Activity Management Area). We do not find that to be appropriate as some Port-related activities should be assessed through a consent process, possibly with public input through a submissions process.

However, we note that the Port of Wanganui is now described as infrastructure that is a physical resource of regional or national importance in Chapter 3 and, in particular, Policy 3-1. Accordingly, in order to facilitate the ongoing operation of the Port in an efficient and effective manner, we have decided that changes to the existing Port wharf should be a permitted activity and we have created a new rule (Rule 17-9A) to achieve that. Additionally, we have decided that small reclamations within the Port Activity Management Area should be restricted discretionary activities and we have created a new rule (Rule 17-16A) to achieve that.

We are grateful to Mr Farrell for providing⁵ detailed wording for both of those rules for our consideration. We have largely adopted his recommended wording.

We have concluded that Rule 17-39, the normal discretionary activity default rule, is appropriate for activities in the Port Activity Management Area not covered by other rules as it is too difficult to identify the matters of discretion for a restricted discretionary activity.

River City Port also sought to amend the activity classification for Port structures in Rule 17-5 in the Whanganui River Protection Zone (now called the Whanganui River Protection Activity Management Area). For the reasons discussed in the next section, we have concluded that Rule 17-5 should be a non-complying activity, rather than a prohibited activity.

6.6.3 Should specific provision be made for energy generation infrastructure?

Some submitters were concerned that infrastructure and energy development were not adequately recognised in Chapters 9 and 17. We note that these matters are dealt with at an RPS level in Chapter 3, with associated rule provisions being made in Chapter 17. Chapter 3 makes particular reference to the renewable energy resources available within the coastal environment. Section 3.1 now states “The Region has potential for the development of renewable energy facilities, given the areas with high wind speeds, the potential to develop hydroelectricity resources, and some potential for the use of wave energy around the coastline.”

Nevertheless, Meridian and Mighty River Power⁶ sought stronger cross-referencing between Chapters 3 and Chapter 17. We find that to be appropriate and so we have amended the various “decision-making policies”

⁴ River City Port, submission 258-4.

⁵ Farrell, Supplementary Evidence, 15 September 2008, pages 2 and 3.

⁶ Clarke (Boffa Miskell), Letter - Submissions and Further Submissions (evidence), 28 August 2008, page 2; Peterson, Statement of Evidence, undated, page 5.

in Chapter 17 to refer to relevant provisions of the RPS component of the POP, including Chapter 3.

Chapter 17 as notified made the occupation of space within the Protection Zones (now Protection Activity Management Areas) by energy generation structures as well as port structures and marinas⁷ a prohibited activity under Rule 17-5. We find that to be an unduly harsh activity classification. It effectively precludes decision-makers from considering applications on their merits. We have decided that it is more appropriate to use a non-complying activity classification for the occupation of space by all activities. That still sends a signal that activities are not generally to be condoned, but it allows applicants to present a case for consideration.

In that regard, we note that the Minister of Conservation's representative⁸ advised us, in relation to Rule 17-5, "Non-complying activity status would in my opinion be more consistent with the status in the Proposed One Plan of activities in rare and threatened habitats on land and the national priority accorded to the protection of estuaries in Policy 1.1.2 of the NZCPS." While he indicated that it would be reasonable to retain the prohibited activity status for the Manawatu Estuary, we have concluded that all the Protection Activity Management Areas are important, they were all treated in the same way in the POP as notified, and that should continue to be the case.

6.6.4 Should mineral and oil exploration be provided for?

The Ministry of Economic Development⁹ sought a new permitted activity rule for the discharge of drilling muds, cuttings, and drilling fluids from offshore installations in the CMA. They also sought that associated activities such as minor bed disturbances and the flaring of hydrocarbons be permitted. We have decided that such activities are desirable in terms of social and economic wellbeing, namely they are necessary precursors to the development and use of mineral and petroleum resources, and their potential adverse effects are able to be managed by conditions.

We note that exploration or drilling of the seabed more than 1 km offshore was covered by Rule 17-21¹⁰ as a permitted activity in the POP as notified. However, that rule contained no relevant conditions for the drilling activity.

Conversely, the Ministry proposed specific wording for the conditions they deemed necessary for each of their recommended permitted activity rules, which was helpful. We have decided that it is more efficient to authorise all of the necessary exploration or drilling activities in one rule. Accordingly, we have inserted a new rule (Rule 17-21A) which allows minor disturbances from exploration or drilling (and ancillary activities) as a permitted activity.

We have adopted the Ministry's recommended conditions and have added a condition that any flare point must be more than 1 km offshore. We find that to be a distance that is sufficiently removed from Protection Activity Management Areas and areas of high public use. It is also consistent with Rule 17-21 as notified. We note that this does not prevent any developer from seeking a

⁷ And aquaculture.

⁸ Watts, Supplementary Statement, 10 September 2008, para 33.

⁹ Submission points 243-3, 243-4, 243-6.

¹⁰ Clause (a) of the activity description.

consent to operate within the 1 km area. We have also, as a cautionary measure, added a condition that no non-petroleum well stream products can be combusted.

We note that the Ministry additionally requested¹¹ that explosives be allowed in down-hole operations (condition (d) of Rule 17-21A). We find that to be a reasonable request but have referred to down-hole activities, to avoid confusion with the defined term “operation”.

As a consequence of adopting the approach recommended by the Ministry, we have amended Rule 17-21 to delete (a) of the activity description.

We note, that although the submission of the Minister of Conservation initially opposed the permitted activity rule described above, in evidence the Minister’s representative¹² indicated support for such a rule, subject to the type of conditions that we have imposed. We concluded that it was not appropriate to add a condition to Table 17.1 that flaring occur, as far as practicable, during daylight hours as the rule should be self-contained, there is difficulty with the term “practicable” and, at 1 km offshore, it is not reasonable to constrain the operator in that manner.

6.6.5 Should shellfish enhancement be provided for?

NKII sought an additional rule to enable shellfish beds to be enhanced. As with mineral exploration, we have decided that such activities are desirable in terms of social and economic wellbeing and their potential adverse effects are able to be managed by conditions. Accordingly, we have inserted a new rule (Rule 17-21B) which allows disturbance from non-commercial shellfish enhancement (and ancillary activities) as a permitted activity.

6.6.6 How should water quality be dealt with?

The POP as notified contained Water Management Zones and Sub-zones as well as water quality values, management objectives and standards in Schedule D. These dealt with parts of identified rivers in the CMA (included in various tables in Schedule D) as well as quality standards for “marine coastal waters” listed in Schedule D on page D-92. The officers recommended that these provisions be moved to Schedule H. We accept that recommendation as it assists with delineating the scope and contents of the RCP.

However, if water quality standards are included in Schedule H then it is consequentially necessary to have water quality issues, objectives and policies in Chapter 9. Accordingly, in our Provisional Determination on the Coast chapters we included a new Issue 9-3, a new Objective 9-3 and a new Policy 9-5A dealing with water quality matters. We are grateful to the Minister of Conservation’s representative¹³ for providing detailed wording suggestions for the new objective. We used that wording as a starting point and amended it to refer to the Schedule H tables that set the water quality standards.

In the Provisional Determination, we drew the attention of parties who were submitters to the Coast or Water chapters to those new provisions and invited

¹¹ Robson, Memorandum, 10 September 2008, page 2.

¹² Watts, Statement of Evidence, 27 August 2008, pages 14 - 15.

¹³ Ibid, page 6.

comments from them at the Water hearing. In the event, we received no comments and so we have largely retained the wording from the Provisional Determination, subject to amendments to reflect changes to Table 17.1 and Schedule H outlined below. The Provisional Determination showed a number of provisions, including those relating to water quality and Table 17.1, shaded in grey as they were linked to the Water hearing.

6.6.7 Should there be water quality Estuary Water Management Sub-zones?

As we have noted, Schedule D as notified had water quality values, management objectives and standards in Schedule D for water that is in the CMA.

In particular, there was one set of water quality standards on page D-92 applying to “marine coastal waters”. There were also water quality values and standards for estuarine areas that form part of the CMA included as part of wider Water Management Sub-zones within certain rivers. The values and standards in those estuarine areas were consistent with those applying to the upstream portions of the rivers.

However, the CMA extends landwards up rivers for varying distances. The water quality in the estuarine areas is influenced by both coastal water and river water. Therefore, the officers recommended that the RCP identify estuary Water Management Sub-zones and that a separate suite of water quality standards apply within those estuarine areas.

We accept that recommendation as it represents reality and so within Schedule H we have delineated¹⁴ the spatial extent of a range of “Estuary Water Management Sub-zones”. They were part of wider Water Management Sub-zones, so the suffix CMA is used. For the remainder of the CMA, we have established a “Seawater Management Zone”.

For the reasons explained by Ms Clark in her Section 42A Report¹⁵, we agree that the Ohau River Estuary Water Management Sub-zone should be revised from what was shown in the Provisional Determination to that shown in Schedule H.

6.6.8 What should the Schedule H water quality provisions and standards be?

In this section, we deal with:

- (a) the approach to incorporating water quality standards into Schedule H;
- (b) a more detailed discussion about two tables (Tables H2 and H3) that the officers recommended should be included in Schedule H;
- (c) water quality standards in the Seawater Management Zone; and
- (d) water quality standards in the Estuary Water Management Sub-zones.

The approach to incorporating the water quality standards into Schedule H was to move the CMA provisions from Schedule D to Schedule H. The approach to water quality in Schedule D was based on:

- (a) identifying various values, the management objective related to the value and where it applies; and
- (b) setting water quality standards related to the values.

¹⁴ Figures H:3A to H:9A.

¹⁵ Clark, Section 42A Report, August 2009, pages 33 - 34.

Some of the values and water quality standards recommended were aspirational rather than currently achievable.

As part of their recommendation to move the CMA water quality standards from Schedule D to Schedule H, the officers recommended the creation of a suite of new tables H2 through to H13, based on the tables in Schedule D. Tables H2 to H9 dealt with the values and where they would apply and Tables H10 to H12 set out the water quality standards.

In terms of the values and where they would apply, Table H2 sought to mirror Table D.1 and Table H3 sought to mirror Table D.2. In addition to a Seawater Management Zone, Table H3 identified new estuary Water Management Sub-zones for specified rivers (with a suffix CMA). As noted above, these Sub-zones had previously been part of larger Water Management Sub-zones for those rivers in Schedule D.

Tables H4 to H9 sought to additionally identify where specific values were located in the CMA, mirroring the approach taken for fresh water in Tables D.3 to D.15. In our Provisional Determination, we decided that recommended new Tables H4 to H9 were unnecessary and we deleted them. We invited relevant parties to comment on that at the Water hearing if they so desired. We heard no evidence at the Water hearing that led us to review our position and so those recommended new tables remain deleted.

Finally, Tables H10 to H13 sought to establish water quality definitions and standards for the newly-created Estuary Water Management Sub-zones and the residual Seawater Management Zone, again mirroring the approach in Schedule D.

We now discuss Tables H2 and H3 (the values and where they would apply) as recommended by the officers in more detail. As noted previously, these tables were not included in the POP as notified, but their contents were included in various parts of Schedule D.

The POP as notified did include a table (untitled) on page H-2 setting out a list of “values of significance/importance” for the Protection Zones (now Protection Activity Management Areas). There was only one submission¹⁶ on that table which sought to make it clear “which sections of the Rivers listed to which the values apply”. We have addressed that submission by mapping¹⁷ the Protection Activity Management Areas in Schedule H.

A consequence of moving the water quality values and standards material from Schedule D to Schedule H is that there is considerable overlap between the Protection Activity Management Areas (dealing with activities) and the Estuary Water Management Sub-zones (dealing with the values, where they apply and water quality). With some further evaluation, which we have not done, it is feasible that those areas and zones could be combined into one suite of areas.

In addition to the values and the management objectives, Table H2 set out briefly “Where it applies” (as did Table D.1). Table H3 (as with Table D.2)

¹⁶ Mighty River Power.

¹⁷ Figures H:11A to H:13A.

then set out in more detail the various Water Management Zones or Sub-zones and the values, with ticks for which values applied in which Zones or Sub-zones.

Unfortunately, the “Where it applies” in Table D.1 (page D-1 as notified) and the detail in Table D.2 (pages D-3 to D-10 as notified) did not always match.

In addition, the terminology used on page D-1 for “Where it applies” referred variously to “[a]ll natural waterbodies”, “[a]ll waterbodies”, “coastal marine area” and “coastal waters”. The Glossary of the POP as notified said that a term or expression defined in the RMA and used in the POP has the same meaning (unless defined in the Glossary). Water body as defined in the RMA does not include the CMA. However, the way in which the term “waterbody” or “waterbodies” was used in the POP and in Table D.1 made us conclude that “waterbody” in Table D.1 was intended to include the CMA, except where it would clearly be inappropriate (eg. stock water and irrigation).

Tables D.1 and D.2 are the jurisdictional sources for our Tables H.2 and H.3 in Volume 3. We have therefore carefully examined Schedule D as notified and have amended Table H.3 from that included in our Provisional Determination to ensure that it accurately reflects the content of Schedule D as notified in terms of the Values that are “ticked” for the Seawater Management Zone and each Estuary Water Management Sub-zone.

Based on Table D.1 (and, for some, based also on Table D.2), we have ticked the boxes for the Seawater Management Zone and each Estuary Water Management Sub-zone for Contact Recreation, Amenity, Mauri, Industrial Abstraction and Capacity to Assimilate Pollution. We have similarly ticked Existing Infrastructure because existing infrastructure exists in the areas and it was apparent from the provisions of the POP as a whole that the Existing Infrastructure Value ought to apply where infrastructure exists; this approach is consistent with the provisions in the POP outside the CMA. Otherwise, we have ticked the boxes based on the information in Table D.2.

The only relevant submission on what is now Table H.3 is that of TMI, who sought the inclusion of Sites of Significance - Cultural for the Manawatu River, including its estuary area. We have accepted that submission.

In the end of hearing materials at the Water hearing, the officers recommended that other Sites of Significance - Cultural should be added. We have decided that there is not scope for such additions, notwithstanding Mr Maassen’s advice to the contrary.¹⁸

For consistency with the Water provisions, we have altered the names of several Values (such as Whitebait Spawning from the previous Native Fishery) so that the terminology in Schedule AB (as the Values component of Schedule D is now called) and Schedule H is consistent. Upper case is used for Values to distinguish those Values identified in the schedule from values generally.

Finally, while we understand that what is now Table H.3 was intended to inform the implementation of Table H.2, in our view, Table H.3 also informs

¹⁸ Maassen, Memorandum - Answers to outstanding questions from Water Hearing Panel, 21 June 2010.

the implementation of Table 17.1 in Chapter 17. Table 17.1 lists conditions that apply to various permitted and controlled activity rules. The Table 17.1 conditions in the POP as notified were organised so that they apply to specified values. Table H.3 then identifies where those values are located in the CMA.

We now address the water quality standards in the Seawater Management Zone and then deal with those in the Estuary Water Management Sub-zones.

As we have noted, Schedule D as notified contained water quality standards for 14 parameters for “marine coastal waters” on page D-92. As far as we can tell, there were no submissions specifically on those standards, but there were submissions¹⁹ about the Schedule D water quality provisions asking that they “be amended so that they more appropriately reflect existing water quality” or that they be reviewed “taking into account site specific scientific consideration”. We find that reviewing the Schedule H water quality standards on that basis is appropriate.

In the various reports from officers at the Coast hearing, page D-92 as notified was split and presented as Tables H12 and H13. Table H12 set out the “water quality definitions” and Table H13 set out the numerical “water quality standards”. In Schedule H in Volume 3, the tables are labelled H.6 and H.7.

In the context of the Water hearing, we received evidence orally or in writing on the water quality standards from Mrs McArthur, Dr Zeldis, Mr McBride and Dr Davies-Colley. These experts appeared for the Council. No submitters presented expert evidence on the coastal water quality standards at either the Coast or Water hearings.

The officers recommended that we delete the page D-92 standards relating to pH, temperature, turbidity and cyanobacteria.

Dr Zeldis advised us “pH and temperature are unlikely to be negatively affected by activities in the coastal environment due to buffering in seawater, so standards for these parameters are considered unnecessary for Schedule H”.²⁰ We accept that advice.

The officers also recommended that the algal biomass Chl *a* standard of 1 mg/m³ should be amended to 3 mg/m³. In that regard, Dr Zeldis told us that “The proposed chlorophyll *a* concentration standard of 1 mg/m³ in the Seawater Management Zone is too low for an appropriate phytoplankton threshold.”²¹ Dr Zeldis²² recommended 3 mg/m³. We accept the recommended correction of the Chl *a* value.

With regard to turbidity, Dr Davies-Colley advised us “Note that I am of the view that nephelometric turbidity, measured in (arbitrary) NTU units, is not appropriate for enumeration of guidelines or standards. This is because turbidity 1) is not a proper ‘scientific’ measurement amenable to absolute physical calibration; and 2) is appreciably instrument-specific. Turbidity measurement can be useful for measurements at night and for continuous

¹⁹ WPI, submission 288-44; Pedersen, submission 101-2.

²⁰ Zeldis, Section 42A Report, August 2009, para 68.

²¹ Ibid, paragraph 72.

²² Zeldis, Supplementary Evidence, undated, para 12.

monitoring, but should always be locally calibrated to the issue of real concern, usually visual clarity or suspended sediment concentration.”²³ Dr Zeldis agreed²⁴ that the turbidity standard should be removed and we accept that.

The officers recommended a new minimum clarity standard (1.6 m horizontal visibility). Dr Zeldis stated that he “support[s] the recommendation of Dr Davies-Colley for a minimum horizontal visibility standard of 1.6 m (black disc measurement) to protect contact recreation and no more than 20% change in horizontal visibility for the Seawater Management Zone.”²⁵ We have accepted this.

With regard to cyanobacteria, Dr Zeldis advised us “Periphyton standards as applied to the freshwater systems are not appropriate in the estuarine/coastal context, and marine filamentous algae, macroalgae, and phytoplankton should be considered instead. It is suggested that monitoring be put in place to detect change in filamentous and macroalgal cover, which at present appears to be low in most places.”²⁶ Our understanding is that he is referring to monitoring in the Estuary Water Management Sub-zones, which we discuss next, and that there is no need to have cyanobacteria standards at this stage in the Seawater Management Zone.

As there was no dispute, the wording of the standards in Table H.6 is generally as recommended by the officers except for some changes for consistency with Schedule D and that the standards are now referred to as “targets”, for the reasons explained in Part 8 (Water Hearing) of this Volume.

In terms of water quality in the Estuary Water Management Sub-zones, water quality standards for these newly-created Sub-zones were recommended to us by the officers at the Coast hearing in the form of Tables H10 and H11. In our Provisional Determination, those tables were shaded grey as linked to the Water hearing.

As with the Seawater Management Zone, in conjunction with the Water hearing, we received evidence orally or in writing on the water quality standards from Mrs McArthur, Dr Zeldis, Mr McBride and Dr Davies-Colley. No submitters presented expert evidence about those standards at either the Coast or Water hearings or raised any specific issues in their submissions.

We therefore had no reason to query the evidence of these Council officers and experts that we received in the context of the Water hearing. We have therefore adopted it in our Tables H.4 and H.5. Again, we have made some changes for consistency with Schedule D and the standards are now referred to as “targets”, for the reasons explained in Part 8 (Water Hearing) of this Volume.

6.7 Other Issues

The following parts of this decision deal with matters that have not already been canvassed in the evaluation of the principal issues of contention above.

²³ Davies-Colley, Section 42A Report, undated, para 22.

²⁴ Zeldis, Section 42A Report, August 2009, para 41.

²⁵ Ibid, page 21.

²⁶ Zeldis, Supplementary Evidence, undated, para10.

6.7.1 Overall Plan General and Coast General

The suggested policies²⁷ in relation to Castlecliff are too detailed for inclusion in the RCP. These matters would be better addressed elsewhere as indicated in a number of the methods, including those relating to the Coast Management Forum and Coastal Advocacy. For other matters raised in submissions, we generally adopt the evaluation contained in what we will call from now on “Coast officer’s reports”.²⁸

6.7.2 9.1.1 Scope

We accept that renewable energy is a s 7 RMA matter which we must have “particular regard to”. The relevant issues have been dealt with in Part 7 (General Hearing) of this Volume in relation to Chapter 3 and there is no need to repeat them here. The wording suggested is too detailed for what should be a relatively succinct statement about scope.

We have amended the Chapter 9 provisions, and section 9.1.1 in particular, to clarify that Chapter 9 relates to the wider coastal environment. This issue was raised by some submitters.²⁹

We have deleted reference to the other chapters for the reasons in Appendix 2 of the Council officer’s End of Hearing Report. For the other matters raised in submissions that have resulted in changes to 9.1.1, we generally adopt the evaluation contained in the Coast officer’s reports.

6.7.3 9.1.3 Future Approach

For the matters raised in submissions, we generally adopt the evaluation contained in the Coast officer’s reports.

6.7.4 Chapter 9 Issues - General and Issue 9-1 Integration between the coastal marine area and the wider coastal environment

For the reasons given in the Planning Evidence and Recommendations Report, an extra issue is not needed.

As noted above, we have amended Chapter 9 to clarify that it relates to the wider coastal environment. We also note that the second and third bullet points in 9.1.3 deal with the impact of landward activities on the CMA. We have decided that additional detail³⁰ is not required.

We have amended the title of the issue to reflect the concept of integrated management, as provided for in the RMA.

²⁷ Progress Castlecliff Inc.

²⁸ Britton, Planning Evidence and Recommendations Report, July 2008; Britton, Introductory Statement and Supplementary Recommendations, undated; Britton, End of Hearing Report for the Coast Hearing, undated; Britton and James, Memorandum - Questions asked of the reporting officer for the coast topic by the coast hearing panel, June 2009.

²⁹ For example, Minister of Conservation, submission 372.

³⁰ Sought by Forest & Bird.

6.7.5 Issue 9-2 Appropriate protection, use and development in the CMA

We accept that reference to “tikanga Māori” is appropriate³¹ in this issue, and it would provide consistency with Chapter 4 Te Ao Māori.

We have additionally amended the description of the issue to refer to aquaculture and renewable energy generation in response to the general Coast submissions of EECA, TrustPower and Meridian.

6.7.6 Objective General and Objective 9-1

A number of new objectives were sought by submitters. However, we have concluded that the matters they seek to address are covered by other chapters within the POP (Chapter 4 for Māori issues and Chapter 7 for heritage issues) or through existing Chapter 9 objectives (Objective 9-2 deals with Port of Wanganui issues as does Chapter 3). We have therefore decided, apart from the matter of water quality addressed above, that there is no need for additional objectives.

We have made some minor wording changes to Objective 9-1 to improve grammar and consistency with changes to preceding provisions. We amended the first line to refer to the coastal environment as the Minister of Conservation’s representative sought³² reference to the coastal environment in the objective. We also decided that more precision was needed in (b) and that reference should be to the “coastal marine area”, as sought by Manawatu District Council, rather than the “coast”.

For the other matters raised in submissions, we generally adopt the evaluation contained in the Coast officer’s reports.

6.7.7 Objective 9-2 Appropriate protection, use and development in the CMA

While we appreciate the sensitivity of foreshore and seabed ownership, most, if not all, of the CMA in the Region is a publicly available area. We accept that the term “sensitive areas” requires clarification. We have therefore deleted that term and referred instead to the characteristics and Values in the tables in Schedule H.

The Minister of Conservation³³ suggested that the objective also refer to natural character. We find that to be appropriate, but we have incorporated the reference in a manner more consistent with s 6(a) of the RMA.

For the other matters raised in submissions, we generally adopt the evaluation contained in the Coast officer’s reports.

6.7.8 Policy General

We do not consider that a new policy is required as sought by Environmental Working Party and Ngā Pae o Rangitikei. The matters sought for inclusion in the new policy are either already dealt with in Chapter 4 and Chapter 7 or are outside the scope of the Plan.

³¹ Sought by NKII.

³² Watts, Statement of Evidence, 27 August 2008, page 14.

³³ Ibid, page 5.

6.7.9 Policy 9-1 Integration between the coastal marine area and the wider coastal environment

In response to the matters raised by submissions, we have amended Policy 9-1 to include a new (aa) which explicitly refers to the chapters and schedules that comprise the RCP. We have also reworded (a) so that it more accurately reflects the matters covered by Chapters 7 and 3 respectively.

We accept that (b) requires rewording to clarify the implications for district plans. In our view, the focus should be on sustainable land use and urban growth management. We accept that coastal water quality degradation is primarily a matter for the Regional Council to deal with and so we have deleted those provisions. We accept that the term “significant coastal fauna” is not helpful and so we have deleted it.

For the other matters raised in submissions, we generally adopt the evaluation contained in the Coast officer’s reports.

6.7.10 Policy 9-2 Zones

As discussed above, we have amended the terminology of “zones” to that of “Activity Management Areas”. We have also clarified that the Protection Activity Management Areas are sensitive and should generally be protected from the adverse effects of activities.³⁴ We have used the term “characteristics” to distinguish the Table H.1 characteristics from the “Values” in Tables H.2 and H.3.

River City Port sought³⁵ that Policy 9-2(a)(iii) be amended to include the extension of existing structures. We find that, as well as reference to upgrade, to be appropriate within the Port Activity Management Area as that area is already highly developed and used for commercial purposes.

For the other matters raised in submissions, we generally adopt the evaluation contained in the Coast officer’s reports.

6.7.11 Policy 9-3 Aquaculture zones

We note the general support for this policy. We have, however, decided to delete the reference to s 68A of the RMA as it is sufficient to note that a Plan change is required to implement an aquaculture management area. There is no current legal basis for the power of veto sought.

6.7.12 Policy 9-4 Appropriate use and development

We accept the submissions supporting this policy. However, there were a number of submissions that were concerned about the absolute nature of (c) which required the avoidance of any adverse effects on certain values. Absolute avoidance is akin to a prohibition on any further activities and that is not appropriate in our view. We have therefore amended the policy to refer to avoiding adverse effects as far as reasonably practicable and otherwise remedying or mitigating them. This is wording that has been used elsewhere in the POP and it provides clear guidance to decision-makers, while retaining

³⁴ Environment Network Manawatu.

³⁵ Farrell, Brief Statement of Evidence, 29 August 2008, page 4.

some flexibility for resource users. In our view, it therefore strikes an appropriate balance. We note that some submitters³⁶ accepted this approach.

6.7.13 Policy 9-5 Public access

We do not find it appropriate to delete this policy³⁷ as restrictions on public access are provided for in the NZCPS. We also note that this policy relates only to the CMA and not to dry land that is farmed. We have concluded that it is appropriate to amend the policy to allow for the exclusion of the public for commercial reasons (such as at a port) or for a level of security appropriate for consented activities.

6.7.14 Methods General

It is not the role of the POP to deal with Council staffing issues.

6.7.15 Method 9-1 Coastal Management Forum

In response to submissions, we accept that a general reference to hapū and iwi, and conservation, energy and infrastructure groups should be made in the "Who" part of the method as those parties have an active interest in coastal management matters. The frequency of the group meeting has been set as six-monthly and we find this appropriate for the first two years of the Forum.

6.7.16 Method 9-2 Coast Care

We accept that the Department of Conservation should be included in this method. We understand the Department to be involved in coast care-type work.

6.7.17 Method 9-3 Vehicle Bylaw

We note the support for this Method. The detail of what should be done is for those involved in the method.

6.7.18 Method 9-4 Coastal Information

We accept that reference should be made to historic heritage and to other relevant agencies within this method. The identification of historic heritage is an important precursor to its protection.

6.7.19 Method 9-5 Coastal Advocacy

This method relates to the advocacy actions of the Council in terms of ensuring that the provisions of Chapter 9 are implemented by other agencies. It is therefore not necessary to extend the method to infrastructure and energy interests. We assume that those development-focused interests will undertake their own advocacy action as they see fit.

³⁶ For example, Mighty River Power. See Moodie, Submissions (legal), 12 September 2008, pages 5 - 6.

³⁷ Federated Farmers.

6.7.20 Anticipated Environmental Results Table

There were two submitters on the Anticipated Environmental Results (AER) Table. We are mindful that the AER are required by the RMA and that they must be realistic and measurable.

We do not consider that the water quality AER should have any “activity exceptions” attached to it pertaining to infrastructure and energy developments, as sought by TrustPower. The AER are about measuring change regardless of the type of activity causing that change.

The second AER is not relevant for this chapter and so to correct the provisions we have deleted it.

The third AER relates to Schedule F features within the CMA. However, there are few Schedule F features that reside solely within the CMA. The only features that might fall within that category are the coastline of the region and the Akitio Shore Platform. There is also considerable overlap between this AER and the AERs in Chapter 7 relating to landscapes and natural features. Nevertheless, our view is that the cross-reference to Schedule F is appropriate, as it provides a baseline for measuring change. We accept that natural features and landscapes can improve over time and that this should be recognised in the AER. We also accept that activities authorised by consents may change the values of those landscapes and features, but that such change is acceptable. We have reworded the provisions accordingly.

With respect to the fourth AER, we agree that infrastructure should be referred to, however there is no need to refer to highly erodible coastal land (formerly CHEL) as Chapter 5 no longer includes any reference to such land.

6.7.21 Chapter 17 General

A number of general submissions were made on Chapter 17. These submissions were evaluated in section 4.24.2 of the July 2008 Planning Evidence and Recommendations Report. We generally adopt the evaluation and recommendations in that Report, other than as set out here.

As discussed previously, we have decided that the “decision-making” policies in Chapter 17 should be amended to include a cross-reference to the relevant provisions of Chapter 3. This provides a reminder to decision-makers that Chapter 3 recognises the importance of infrastructure and energy generation facilities.

We have amended³⁸ the “Important Note” at the commencement of Chapter 17 so that it correctly lists all of the POP components that form the RCP, including Schedule H. We have defined MHWS, NZCPS and NZCPS 1994 at the commencement of the chapter.

We also record that we have inserted two new objectives into Chapter 17. These deal with activities in the CMA and water quality in the CMA. The inclusion of such objectives in the regional plan component of the POP was sought in general submissions by a number of territorial authorities who

³⁸ As sought by the Minister of Conservation.

formed a Territorial Authority Collective. Consequentially, we have inserted a new Policy 17-1A dealing with regional rules for the CMA to implement one of those new objectives.

Consistent with the approach adopted for the rest of the POP, the rules refer to the relevant provisions of the RMA.

6.7.22 Policy 17-1 Occupation of space by aquaculture

In response to submissions, we have included relevant cross-references to other provisions in the RPS component of the POP that are particularly relevant. Consistent with the approach across the POP, we have consistently used formulations of “have regard to” in this policy and elsewhere where relevant. For the matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

6.7.23 Chapter 17 Policy 17-2 Consent decision-making for occupation of space by other activities

As noted previously, in response to submissions, we have expanded the cross-referencing to relevant RPS provisions in (a). We have made further consequential amendments to ensure that the term “functional necessity” is used throughout the Coast provisions in relation to occupation of space in the CMA and to insert “reasonably” where “practicable” occurs in policy provisions, again throughout the Coast provisions. We have amended (e) to cover the situation where there is demand for different spaces in close proximity as those situations are also potentially problematic in the CMA.

6.7.24 Policy 17-3 Decision-making for occupation charges

For the matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

6.7.25 Policy 17-4 Consent decision-making for new structures

We have made further consequential amendments to this policy for consistency in terminology used and clarification of intent. For the matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

6.7.26 Policy 17-5 Consent decision-making for existing structures

We have amended this policy so that it is consistent with Policy 17-4. We accept the Minister of Conservation’s submission that the word “reduce” in (b) should be replaced with the word “have”. The evaluative test is the nature and scale of adverse effects of an activity.

6.7.27 Policy 17-6 Consent decision-making for reclamation and drainage

We accept the submissions of the Minister of Conservation regarding (e) and the nature of materials that should be allowed in reclamations. It is important to ensure that material used in reclamations does not exacerbate pest plant problems. We also accept that (g) should refer to “avoid, remedy or mitigate” as decision-makers should be able to consider the appropriate course of action based on the merits of each consent application. We have also

amended (g) to refer to the Protection Activity Management Areas in Schedule H and Table H.1, which now lists the “ecological and other important characteristics” in those Areas.

As a consequential amendment, we have revised (d) so that it is consistent with Policy 9-5(a). For the other matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

6.7.28 Policy 17-7 Consent decision-making for activities involving disturbance, removal or deposition

For the matters raised in submissions, we generally adopt the evaluation contained in the Coast officer’s reports.

We have made some consequential amendments to (a), (c), (e) and (f) for consistency in terminology with earlier policy provisions that have been amended. We have also revised (b) dealing with water quality matters as a consequence of including water quality matters in Chapter 9.

6.7.29 Policy 17-9 Consent decision-making for damming and diversions in the CMA

For the matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports. We have made some consequential amendments to (a), (b) and (c) for consistency in terminology with earlier policy provisions that have been amended.

6.7.30 Policy 17-10 Consent decision-making for discharges into the CMA

With respect to (e)(iv), we find that the use of the term “significant” is appropriate as it reflects s 107(1) of the RMA. Furthermore, its removal³⁹ would mean that the policy induces an absolute prohibition on adverse effects. That would create a veto on further discharges which is not appropriate. Because the definition of reasonable mixing in the Glossary is not suitable for the CMA and we concluded that the alternative solutions suggested⁴⁰ to us were not within the scope of any submissions, reasonable mixing is not shown as a defined term throughout the chapter and its ordinary meaning will need to apply.

For the other matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports. We have made some consequential amendments to (a), (ba) and (d) of this policy for consistency in terminology with earlier policy provisions that have been amended.

6.7.31 Policies 17-11, 17-12 and 17-13

We record that we have made consequential amendments to Policies 17-11, 17-12 and 17-13 for the sake of consistency with other provisions that have been amended. For the other matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

³⁹ As sought by the Minister of Conservation.

⁴⁰ Response to Hearing Panel Questions - Water (Water Hearing), undated, page 12 Q 76.

6.7.32 New Rules Sought

A number of submitters sought new rules. We have already discussed rules sought for well drilling, shellfish enhancement and activities in the Port of Wanganui area.

In addition, the Ministry of Economic Development sought a new rule for the discharge of cooling water from ships and offshore installations. Rule 17-29 deals with ships. In relation to offshore installations, in the absence of any material to the contrary, we adopt the evaluation of that submission as set out on page 126 of the July 2008 Planning Evidence and Recommendations Report.

NKII⁴¹ sought new rules for the occupation of space or activities related to a marina or slipway, electricity generation and seabed mining. The occupation of space in Protection Activity Management Areas is dealt with in Rule 17-5 where, apart from the exceptions set out in that rule, it is a non-complying activity. Where not explicitly covered in other rules, occupation of space would be a discretionary activity under Rule 17-39. The various rules in the chapter relating to activities are suitable to cover the activities referred to by NKII. We find that the provisions in Volume 3 are appropriate.

For the other matters raised in submissions, we adopt the evaluation contained in the Coast officer's reports.

6.7.33 Table 17.1 Standard conditions for permitted and controlled activities in the coastal marine area

We have also discussed Table 17.1 in section 6.6.8 of this decision. While there were only six submissions specifically on Table 17.1, it is similar to Table 16.1 dealt with in the Water hearing. The two tables were similar in the POP as notified. We decided that some consistency remains appropriate so we have made some changes to Table 17.1 in light of the material we received in conjunction with the Water hearing as well as the Biodiversity and Heritage hearing.

We have changed the heading to "General" conditions to avoid any confusion about the term "Standard". In light of s 35(5) of the Interpretation Act 1999, we have deleted "between" and inserted "(inclusive)" for all provisions that included dates to clarify that the dates specified are also included in the condition.

We have decided to amend Table 17.1 to make it clear where the various conditions apply. Most of the Chapter 17 permitted and controlled activity rules appropriately lists which parts of Table 17.1 apply in each case.

We accept the submission of the Minister of Conservation that the conditions relevant to the Life-supporting Capacity Value should apply across the entire CMA.

The wording in (c) is based on the provision as notified, taking into account submissions seeking clarity in the conditions, standards and terms used in the

⁴¹ NKII, submissions 180-96, 180-101 and 180-102.

POP rules and similar provisions in the operative Plans for the Region (including the Regional Plan for Beds of Rivers and Lakes and Associated Activities⁴²). We note that we received a revised Water hearing caucusing meeting report⁴³ which recommended alternative wording for (c), but we reject that wording as being impracticable.

The wording in (d) now relates to the visual clarity value in Tables H.5 and H.7. As already noted, because the definition of reasonable mixing in the POP Glossary as notified is not suitable for the CMA and no satisfactory alternative was provided to us in relation to Table 17.1, reasonable mixing is not shown as a defined term throughout the chapter and its ordinary meaning will need to apply.

We do not find it appropriate to delete conditions (h) or (k).⁴⁴ With regard to (h), it is common practice to reinstate disturbed river and foreshore banks to their natural contour and vegetate them at the conclusion of earthwork-type activities. This is not an onerous requirement. We accept that the date in condition (k) should be changed to 15 August as that is the timing of the whitebait season⁴⁵ (which is consistent with Table 16.1) and that the condition should be amended⁴⁶ to allow the maintenance of infrastructure.

Consistent with the approach in the Biodiversity and Heritage hearing (Part 5 of this Volume) and the submissions of NZHPT, we have decided that condition (i) should refer to “historic heritage” and that it should be linked to the RCP. In addition, as a result of the respective roles of the Regional Council and the NZHPT in historic heritage, we decided that the purpose of notifying the Regional Council should be specified. We have linked (i) and (j) with a new value Historic Heritage but stated that it is additional to those Values in Schedule H.

New (ka) is a result of the Inanga Spawning Value (formerly Native Fish Spawning) being moved from Schedule D (and Table 16.1(o)) to Schedule H as it relates to the CMA. We find that to be appropriate, but we have provided for maintenance of infrastructure and other physical resources of regional or national importance.

We accept that condition (n) can be deleted⁴⁷ as it seeks to address the same issue covered by conditions (b), (c) and (d) and “public bathing beaches” were not shown, contrary to what the condition asserts.

For the other matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

6.7.34 Rule 17-1 Occupation by existing structure

Two submitters sought that Rule 17-1 be restricted to “lawfully established activities”. We have decided that is inappropriate as it would be difficult to

⁴² BRL Rule 4 referred to “5 consecutive days” in a similarly-worded condition.

⁴³ Thompson, Report of a meeting between experts - Brown, Death, Jordan, Lambie - in relation to discharge of sediment and channel straightening, 8 February 2010 but updated wording with a new paragraph 8 provided in a revised document in March 2010 but the date of the document was not changed.

⁴⁴ As sought by Meridian.

⁴⁵ Submission 182-82. See also Lambie, Section 42A Report (for the Water Hearing), August 2009, paras 30 and 118.

⁴⁶ In response to the submission of ONTRACK.

⁴⁷ As sought by Meridian.

determine whether some pre-RMA structures were indeed “lawfully established”. We are also aware that the operative RCP provides for most known structures in the Region’s coastal marine area to be “permitted” through a schedule in that Plan. That Schedule was not incorporated into the POP and so it cannot be relied on in the future.

6.7.35 Rule 17-2 Temporary occupation

In response to the submission from the Regional Council, we have amended (b) of the activity description to be consistent with Policy 9-5. The Minister of Conservation sought that the rule not apply in Protection Activity Management Areas or Sites of Significance - Aquatic listed in Schedule D (relevant parts now in Schedule H). Given that this rule relates to temporary events of three days duration or less, we find that level of exclusion to be unnecessary. We have, however, added condition (b) which ensures that the temporary events do not disturb nesting, roosting or breeding birds within the Protection Activity Management Areas. Given the types of events likely to rely on this rule, disturbance to those birds is the most likely adverse effect that should be avoided.

6.7.36 Rule 17-5 Occupation of space in protection zones

We discussed this rule in section 6.6.3 where we explained that we were changing the activity classification from prohibited to non-complying.

6.7.37 Rules 17-6, 17-7 and 17-8

There were no submissions on Rule 17-7 and the only submissions on Rules 17-6 and 17-8 sought their retention. We have, however, made minor amendments to these rules to improve clarity, ensure consistency with other provisions in Chapters 9 and 17 and Schedule H, and ensure that the correct conditions in Table 17.1 are referred to.

6.7.38 Rule 17-9 Structures in the port zone

Matters relating to the Port Activity Management Area are addressed in section 6.6.2.

6.7.39 Rules 17-10 and 17-12

For the matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports. For Rule 17-10, we have listed matters of discretion that we considered to be appropriate.

6.7.40 Rule 17-14 Structures in a protection zone

Meridian sought that this rule (and Rule 17-5) either be deleted or that energy generation facilities be made discretionary activities. We have already discussed Rule 17-5 and we note that it is now to be a non-complying activity rule. Rule 17-5 has wide application as it applies to the general occupation of space in the Protection Activity Management Areas. Rule 17-14 is different. While it too applies to the Protection Activity Management Areas, it restricts specific types of large scale or potentially hazardous activities. We are comfortable that those activities should be prohibited in those sensitive areas.

6.7.41 Rules 17-17, 17-18, 17-23, 17-24, 17-25, 17-26, 17-27, 17-29, 17-30, 17-33, 17-34, 17-35, 17-36, 17-37, 17-38 and 17-39

Rule 17-28 is dealing with a situation where drainage or diversion is authorised under Rules 15-9 to 15-11 in the Water chapter. Conditions to be imposed should occur in the context of those rules, so we have not added reference to Table 17.1

We have decided that Rules 17-29, 17-30 and 17-31 need not refer to Table 17.1. The conditions in Table 17.1 are not relevant to discharges from boats, discharges for fire-fighting purposes or the discharge of stormwater. We note that applying the Table 17.1 conditions to stormwater discharges would effectively render the rule defunct as stormwater discharges, by their very nature, will unavoidably breach conditions (b), (c) and (d) of Table 17.1 at times. However, any adverse effects that might result are either temporary or mitigated by conditions within the rule itself. We have not added reference to “cliff or escarpment” in Rule 17-30(d) as that would increase the inconsistent use of language in the POP and we have concluded that the existing wording is suitable.

We have revised Rule 17-37 to remove reference to “discharge” of noise for improved consistency with the RMA.

For the other matters raised in submissions, we adopt the evaluation contained in the Coast officer’s reports.

6.7.42 Glossary Coastal foredune

We are satisfied that the Glossary definition of coastal foredune is suitable.

6.7.43 Schedule H

We are satisfied that the process for setting the cross-river CMA boundaries was appropriately followed and that no changes to the location of those boundaries are required. With regard to the Manawatu River in Figure H:6 (now H:6A), the implication of the CMA boundary is that the RCP provisions apply to the Manawatu River seawards of the boundary.⁴⁸

An issue arose about “mouth” as defined in s 2 of the RMA as compared with the map references for “mouth” in Figures H:3 to H:9 as notified. We were provided with copies of the relevant agreements made between the Regional Council, the Minister of Conservation and the relevant territorial authority to define the “mouth” (under the s 2 RMA definition) of identified rivers. We expected the map references in Schedule H of the POP to be consistent with those detailed in the agreements. They were not in most cases and, although the differences are minor, we hold the view that the reference to “mouth” should be as agreed by the parties under the s 2 RMA definition of mouth. We have therefore amended the figures in Schedule H to ensure consistency with the agreements.

⁴⁸ Queried by Rayonier NZ.

We are aware of the gap in historic heritage information for the CMA and appreciate the intent of Council to remedy this through the Coastal Information Method 9-4 in Chapter 9.

With regard to Figure H:10 (now Figure H:10A), we note that the issues raised by River City Port were discussed between the officers and the Port representatives. That resulted in agreement that the Port area should not be extended to include the northern mole, but that the third dredging discharge area should be included. We accept that agreed position and note it was not opposed by any other party.

6.8 Conclusion

See Part 1 of this Volume.