BEFORE THE HEARING PANEL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the applications by Energy Bay Limited to the Tararua District Council (202.2022.136.1) for resource consents to establish and operate a solar farm at 410 Managamaire Road, Pahiatua.

APPLICANT'S BUNDLE OF AUTHORITIES

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88 The Strand Ltd v Auckland City Council

High Court Auckland M 330-PL02
3 July 2002 15 July 2002
Chambers J

Notification — Noise effects — Permitted baseline test applied — Judicature Amendment Act 1972, s 8; Resource Management Act 1991, ss 93, 94.

The respondent council granted the second respondent, Rawson 2000 Limited, a non-notified resource consent to operate a service outlet for motorists which included a 24–hour-a-day self-service car wash and vacuum facility. The applicant challenged the council's decision not to notify the application. It claimed that it was an adversely affected party whose consent should have been sought, as the noise from the car wash would interfere with the residential amenity of occupants of the apartment towers it was building. The issue therefore was whether the council had correctly exercised its discretion under s 94(2) of the Resource Management Act 1991 ("the RMA").

Held (dismissing the application for review)

(1) The respondent had specifically considered whether the occupants of the apartment towers under construction would be adversely affected by the noise from the car wash and vacuum facility. Conditions were imposed on the consent that noise of activities on this site would comply with the relevant rule of the proposed district plan. A monitoring condition to consider adverse noise effects on nearby residents was also imposed on the consent.

(2) The "permitted baseline" test applies to s 94(2)(a) and (b) of the RMA. Because the noise levels would not exceed what was permitted under the plan, the noise-making activity on the site was part of the permitted baseline against which the application should have been assessed. Therefore, under s 94(2)(a) the noise effect of the proposed activity had to be considered as nil.

(3) Applying the permitted baseline test to s 94(2)(b), the applicant could not be regarded as adversely affected.

Observation

It was not legally possible for the council to impose a condition more stringent than that contained in its rules.

Cases referred to in judgment
Aley v North Shore City Council [1998] NZRMA 361
Arrigato Investments Ltd v Auckland Regional Council [2002] 1 NZLR 323 (CA)
Barrett v Wellington City Council [2000] NZRMA 481
Barry v Auckland City Council [1975] 2 NZLR 646 (CA)
Bayley v Manukau City Council [1999] 1 NZLR 568 (CA)
Sheppard v North Shore City Council (High Court, Auckland, M 1791-SW00, 1 May 2001, Priestley J)
Smith Chilcott Limited v Auckland City Council [2001] 3 NZLR 473 (CA)

Resource Management Act 1991
Application for review of council's decision.

K Littlejohn for the 88 The Strand Ltd
W Loutit and *B Carruthers* for the Auckland City Council
M Cooper QC for Rawson 2000 Ltd

CHAMBERS J.
Non-notification – again
[1] One thing guaranteed to get people worked up is when their neighbours get a resource consent on a non-notified basis. The present case is another example.
[2] 88 The Strand Ltd, the applicant, is the owner of a piece of land next to the railway line in The Strand, Parnell, Auckland, on which it is presently developing two towers of residential apartments. That company is concerned about a new business about to be established on nearby land in Quay Street. That business, which is to be operated by Rawson 2000 Ltd, the second respondent, will be a service outlet for motorists. The outlet will sell and fit brakes, mufflers, and tyres. In addition, it will have a 24-hour-a-day self-service car wash and vacuum facility. That use of land was judged overall a discretionary activity under the Auckland City Council's district plan, with the consequence that a resource consent was required. Accordingly, Rawson filed an application for resource consent.
[3] In February this year, the council determined that that application did not need to be notified in accordance with s 93 of the Resource Management Act 1991 because, in the council's view, s 94(2) permitted non-notification. The council, having determined that the application did not need to be notified, then went on to grant the application subject to conditions.
[4] In March, 88 The Strand filed an application for review under the Judicature Amendment Act 1972, challenging the council's decision not to notify. 88 The Strand argued that the council's decision was unlawful. It said that it should have been notified of Rawson's application because it would be and is adversely affected by the granting of the resource consent. Its concerns relate solely to noise, and in particular the noise predicted to emanate from the 24-hour-a-day operation of the car wash facility. It is that application for review with which this judgment is concerned.

Issues
[5] There is only one issue on this application. That is whether the council correctly exercised its discretion under s 94(2) of the Resource Management Act.

The baseline

[6] In July last year, Rawson submitted to the council a detailed application for a resource consent. Colin Hardacre, a resource management planning consultant of many years' experience, prepared it. The application dealt with noise and made reference to the rules relating to noise levels under the city's district plan. The rules relating to noise are specific and objectively verifiable. The application stated that the noise levels prescribed by the rules would be met. That is to say, Rawson did not seek any exemption with respect to the plan's rule requirements.

[7] Rawson's application was primarily processed by Karl Cook, an independent resource management planner, retained as a consultant by the council to process notified and non-notified resource consent applications. Mr Cook followed up various matters with Mr Hardacre in the second half of last year. In January this year, Mr Cook specifically turned his mind to the question of noise from the car wash and vacuum facility and to its potential to affect the amenity of occupants of the apartment towers being constructed by 88 The Strand. Mr Cook telephoned Mr Hardacre for clarification about the proposed hours of operation, compliance with the noise rules, whether monitoring and review consent conditions were proposed, and about the nature of proposed screening on the southern boundary, which faced the apartment block. He asked Mr Hardacre whether Rawson had considered the possibility of a fence along the southern boundary between the car wash facility and the railway line which separates the two properties.

[8] On 23 January, Mr Hardacre responded, reiterating that the proposal would comply with the noise standards specified in the rules. Mr Hardacre also made reference to the noise levels already experienced in the locality, particularly from the 24-hour-a-day operations of the Ports of Auckland container facility on the other side of Quay Street, the high number of vehicles using Quay Street, and from the railway. Mr Hardacre advised that Rawson was "happy" for the council to impose monitoring and review conditions. He said that Rawson was also prepared to erect a 1.8 m high close-boarded wooden fence along the southern boundary "to reduce any potential noise and visual effects to the residential properties to the south, across the railway line/corridor".

[9] Mr Cook completed his s 94 report on 24 January. A s 94 report is the processing planner's recommendation to the appropriate council committee, expressing an opinion as to whether the resource consent application needs to be notified. Mr Cook's recommendation, co-signed by Mark Vinall, the manager: central area planning, was that the application did not need to be notified for the reasons given in the report.

[10] That report was initially considered by the council's planning fixtures subcommittee at its meeting on 1 February. The committee deferred a decision on that occasion as it wanted further information on some matters.

[11] Mr Cook was at this time also preparing his ss 104/105 report. That report recommended that resource consent be granted subject to conditions. Among the 24 proposed conditions were these:

(17) Noise of activities on site following construction shall comply with rule 7.6.3 of the 1997 Proposed District Plan, Central Area Section (as amended by Council decisions – 12 October 2000), which shall be met by measures including sound insulation and hours of operation as necessary to avoid adverse effects on nearby residents.

. . .

(19) Pursuant to section 128 of the Resource Management Act 1991, the Council may serve notice on the consent holder of its intention to review conditions 17 and 18 of this consent at 6-monthly periods following the commencement of the activity for the purpose of dealing with adverse noise and lighting effects on residents living on land situated within 200 metres of the site, that may arise from the exercise of this consent.

[12] In accordance with council's normal practice, those draft conditions were sent to Rawson to see whether it agreed with them. On 5 February, Mr Hardacre responded on Rawson's behalf, indicating that company's agreement to the proposed conditions.

[13] The matter came back before the planning fixtures subcommittee on 8 February. At that time, that committee had both Mr Cook's s 94 report and his ss 104/105 report. The committee resolved that the application did not need to be notified. No doubt the committee, in making that decision, took into account the proposed conditions to which Rawson had consented. Mr Littlejohn, for 88 The Strand, accepted in his submissions that a consent authority is entitled to have regard to proposed conditions of consent when considering s 94 determinations. The committee then went on to grant the application subject to conditions. Those conditions included conditions 17 and 19 set out above.

[14] 88 The Strand complain that this process was flawed because neither Mr Hardacre's application nor Mr Cook's s 94 report properly analysed the potential effects of the noise likely to be generated by the car wash facility. Extensive affidavit evidence was filed on behalf of 88 The Strand, suggesting that noise levels might exceed those stipulated in the rules. Accordingly, Mr Littlejohn submitted that the committee could not properly have been satisfied that the adverse effects on the environment of the activity for which consent was sought would be minor. Further, 88 The Strand was a person "adversely affected" by the granting of the resource consent. It was accordingly entitled to notification.

[15] Unfortunately, Mr Littlejohn's argument was, with respect, fundamentally flawed. Mr Loutit, for the council, submitted that it was not legally possible for the council to impose a noise condition more stringent than that contained in its rules. Mr Littlejohn and Mr Cooper QC, for Rawson, accepted that that proposition of law was correct. In this case, Rawson did not seek an exemption from the rules. It has at all stages of its application agreed to abide by the noise rules. The importance of those rules has been reinforced by condition 17.

[16] Under s 94(2), a fundamental concept is "the environment" from which the proposed activity's effects are to be measured. This has come to be known as the "permitted baseline" and the concept has been developed in a number of cases of which *Bayley v Manukau City Council* [1999] 1 NZLR 568 (CA), *Aley v North Shore City Council* [1998]

NZRMA 361, *Smith Chilcott Ltd v Auckland City Council* [2001] 3 NZLR 473 (CA), and *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323 (CA) are the best-known examples.

[17] In determining the "permitted baseline", the consent authority takes the actual environment "overlaid with such relevant activity (not being a fanciful activity) as is permitted by the plan": see *Arrigato* at para [29]. The Court went on to say that "if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count in the ss 104 and 105 assessments. It is part of the permitted baseline in the sense that it is deemed to be already affecting the environment or, if you like, it is not a relevant adverse effect". A little later in the judgment, the Court of Appeal said that "what is permitted as of right by a plan is deemed to be part of the relevant environment" at para [38].

[18] Although Rawson's proposed use of its Quay Street site is not a permitted activity, there are any number of activities which are permitted for the site, all of which would be entitled as of right to generate noise up to the levels specified in the noise rules. In light of that, noise-making activity on the Rawson site is part of the "permitted baseline", provided, of course, the noise does not exceed rule limits. Rawson says, and has always said, that it will operate its proposed business within the specified noise limits. Accordingly, given the rules and given the extra emphasis placed on them by condition 17, all of which was accepted by Rawson before the council's committee made its s 94 decision, Rawson's proposed activity will not create *any* adverse noise effects when judged against the permitted baseline.

[19] I asked Mr Littlejohn what more the committee could have imposed by way of controls. He could point to nothing. He said, however, that the expert evidence presented by 88 The Strand indicated a risk that the noise levels imposed by the rules would be exceeded if the car wash was operated as Rawson contemplated. There are several answers to that proposition. First, a consent authority, when it imposes conditions, is entitled to assume that the applicant and its successors will act legally and adhere to rules and conditions: see *Barry v Auckland City Corporation* [1975] 2 NZLR 646 (CA) at p 651. That is obvious. Nothing could ever be approved if consent authorities had to work on the contrary assumption, namely that its rules and conditions would not be observed. There is no suggestion in this case that the noise conditions *cannot* be observed.

[20] Secondly, Rawson accepts, and has always accepted, that if, contrary to the expert opinion available to it, noise levels would exceed the permitted maxima, then the business activities may need to be modified. Additional screens may need to be put in. Car washing hours may need to be restricted. The number of bays available at particular times may need to be restricted. It will be for Rawson so to manage the business that maximum noise levels are not exceeded.

[21] Thirdly, 88 The Strand has a number of remedial options available to it should noise levels be exceeded. Those remedies could be achieved on an urgent basis. As well, 88 The Strand has the comfort of

knowing that the council itself intends to be proactive in monitoring noise and potentially reviewing the noise condition.

[22] In *Bayley*, the Court of Appeal said that "it would make little sense to require a consent authority to notify an application because it may involve effects which the authority must then disregard at the hearing of the application. That would provide false hope for objectors and be wasteful of time and money" (at p 577). That comment is directly applicable here.

[23] There was for a time some doubt as to whether the "permitted baseline" test applies to both paras (a) and (b) of s 94(2). That question has been considered by two High Court Judges, by Chisholm J in *Barrett v Wellington City Council* [2000] NZRMA 481 at paras [28] - [30], and by Priestley J in *Sheppard v North Shore City Council* (High Court Auckland, M 1791-SW00, 1 May 2001) at paras [94] - [95]. Both Judges concluded that the test did apply to both limbs of s 94(2). Chisholm J expressly adopted the views set out in an article written by two resource management specialists, M Williams and D Nolan, "The Notification Debate: Eroding the *Bayley* baseline – A question of policy" (2000) 3 BRMB 99. Mr Littlejohn advised that he accepted the correctness of those decisions and that article. I too agree with them. It follows that, just as the adverse noise effects of Rawson's proposed activity must be considered as nil because noise levels will not exceed levels permitted as of right, so 88 The Strand cannot be regarded as "adversely affected". 88 The Strand is not being asked to put up with any more noise than the plan permits.

[24] The simple answer to this case is that neither Rawson nor the council has at any time sought to exceed permitted noise levels. Since noise is the only "effect" relied on by 88 The Strand, it follows that that company has not established that the council's decision under s 94(2) was wrong.

Result

[25] I dismiss the application for review.

Costs

[26] I hope that the parties will be able to settle costs among themselves. If they cannot, I shall receive memoranda. If either respondent seeks costs by memorandum, 88 The Strand must respond within ten working days. The costs-claiming party will then have five working days to file and serve a memorandum in reply. "Working days" has the meaning ascribed in R 3 of the High Court Rules. Unless any party seeks an oral hearing, I shall deal with costs on the papers.

Queenstown Lakes District Council v Hawthorn Estate Ltd

Court of Appeal CA 45/05
14 March; 12 June 2006
William Young P, Robertson and Cooper JJ

Resource consent — Non-complying activity — Appeal on a question of law — Further appeal to Court of Appeal — Land use activity consent — Subdivision consent — Permitted baseline — Assessment of effects of proposed activity on the environment — Relevance of future environment on determination of resource consent application — Resource Management Act 1991, ss 2, 5, 6, 7, 8, 30(1), 31, 45, 56, 61, 66, 94, 104, 105, 123(b), 125, 271A, 308.

Hawthorne Estate Ltd applied to the Queenstown Lakes District Council for both subdivision and land use activity consent to subdivide and develop 33.9 ha of land in the Wakatipu Basin, near Queenstown. The council declined to grant resource consent for the non-complying activity. A key question which arose in relation to the assessment of the effects of the proposed activity on the environment was whether a consent authority should take account of the environment as it might be in the future, assuming that unimplemented resource consents would be given effect to in the future. The council argued that the assessment of effects should be limited to the environment as it existed at the time when the application was considered. On appeal the Environment Court set aside the council's decision and granted consent for the proposed activity. The decision of the Environment Court was upheld on further appeal to the High Court on a question of law. The council then obtained leave to pursue a further appeal to the Court of Appeal.

Held (dismissing the appeal)

1 The "permitted baseline" analysis was designed to isolate activities permitted by a district plan or activities which had been approved by the grant of resource consent, with the result that the effects of such activities should not be taken into account when assessing the effects of a proposed activity on the environment. The "permitted baseline" analysis was conceptually different from the question of whether the future environment should be considered when carrying out the assessment of effects on determination of a resource consent application (see paras [65], [66]).

2 There was no justification for borrowing the term "fanciful" from the "permitted baseline" cases to determine whether the future environment was relevant to determination of the resource consent application. That question could be determined in a practical way by receiving evidence about any resource consents granted by the consent authority in the past in relation to the surrounding area, and whether those consents were likely to be implemented. The possibility of "environmental creep", where successive consents were obtained in respect of the same site, did not result in such consents being disregarded from any assessment of the future environment notwithstanding the fact that later consents may have replaced earlier consents (see paras [74], [75], [77], [79]).

3 Having regard to consented activities as part of the future environment did not create a precedent for the approval of other activities, and cumulative effects arose in the context of a proposed activity not from other activities which might take place in the vicinity (see paras [80], [81], [82], [83], [84]).

Cases mentioned in judgment

Aley v North Shore City Council [1998] NZRMA 361.

Arrigato Investments Ltd v Auckland Regional Council [2001] NZRMA 481; [2002] 1 NZLR 323 (CA).

Bayley v Manukau City Council [1999] NZLR 568 (CA).

Dye v Auckland Regional Council [2001] NZRMA 513; [2002] 1 NZLR 337 (CA).

Fleetwing Farms Ltd v Marlborough District Council [1997] 3 NZLR 257.

Geotherm Group Ltd v Waikato Regional Council [2004] NZRMA 1.

O'Connell Construction Ltd v Christchurch City Council [2003] NZRMA 216.

Rodney District Council v Gould [2006] NZRMA 217.

Smith Chilcott Ltd v Auckland City Council [2001] NZRMA 503; [2001] 3 NZLR 473 (CA).

Wilson v Selwyn District Council [2005] NZRMA 76.

Appeal

This was an appeal by the Queenstown Lakes District Council from the judgment of the Environment Court setting aside a decision of the council declining a resource consent application made by Hawthorn Estate Ltd, the first respondent. The Court of Appeal gave leave to appeal on a question of law.

E D Wylie QC and *N S Marquet* for Queenstown Lakes District Council.

N H Soper and *J R Castiglione* for Hawthorn Estate Ltd.

The judgment of the Court was delivered by

COOPER J. [1] This is an appeal from a judgment of Fogarty J pursuant to leave granted by this Court under s 308 of the Resource Management Act 1991 (the Act).

[2] Fogarty J had dismissed an appeal by the Queenstown Lakes District Council and the second respondents against a decision of the Environment Court. The Environment Court had set aside a decision of the council declining a resource consent application made by the first respondent (Hawthorn).

[3] As a result of the Environment Court decision, Hawthorn was authorised to proceed to subdivide and carry out subdivision works on a property near Queenstown. Some 32 residential lots were proposed to be created.

[4] This Court gave leave for the following questions to be pursued on appeal:

1. Whether His Honour Justice Fogarty erred in law when he determined (either expressly or by implication):
   (a) that the receiving environment should be understood as including not only the environment as it exists but also the reasonably foreseeable environment;
   (b) that it was not speculation for the Environment Court to take into account approved building platforms in the triangle and on the outside of the roads that formed it;
   (c) that the Environment Court had given adequate and appropriate consideration to the application of the permitted baseline.
2. Whether His Honour Justice Fogarty erred in law when he determined that the Environment Court had not erred in law in concluding that the landscape category it was required to consider was an "Other Rural Landscape".
3. Whether His Honour Justice Fogarty erred in law when he held that the Environment Court had not erred in law when it considered the minimum subdivision standards in the Rural Residential zone in addressing the first respondent's proposal which is in a Rural General zone.

[5] As was observed by the Court in granting leave, the questions are interrelated, and the answers to the second and third questions are in large part dependent on the answer to the constituent parts of the first. The main issue that underlies the appeal is whether a consent authority considering whether or not to grant a resource consent under the Act must restrict its consideration of effects to effects on the environment as it exists at the time of the decision, or whether it is legitimate to consider the future state of the environment.

[6] It was common ground that the three questions fall to be considered under the Act in the form in which it stood prior to the coming into force of the Resource Management Amendment Act 2003.

Background

[7] Hawthorn applied to the council for both subdivision and land use activity consent in respect of land in the Wakatipu Basin. The land comprises 33.9 ha, and is situated near the junction of Lower Shotover and Domain Roads, with frontage to both of those roads. It is part of a triangle of land bounded by them and Speargrass Flat Road, known locally as "the triangle".

[8] Hawthorn's development would subdivide the land into 32 separate lots, containing between 0.63 and 1.30 ha, together with access

lots, and a central communal lot containing 12.36 ha. The application also sought consent to the erection of a residential unit on each of the 32 residential sites, within nominated building platforms that were shown on plans submitted with the application. The proposal required consent as a non-complying activity under the operative district plan, and as a discretionary activity under the proposed district plan.

[9] There was an existing resource consent which allowed subdivision of the land into eight blocks of approximately 4 ha in each case. Those approved allotments contained identified building platforms.

[10] The Environment Court recorded that the whole of the land proposed to be subdivided is flat, apart from a small rocky outcrop. The Court observed that the triangle had been the subject of considerable development pressure over the past decade, and that within the 166 ha area so described, 24 houses had been erected, with a further 28 consented to, but not yet built. Outside of the roads that physically form the triangle were a further 35 approved building platforms. It is unclear from the Environment Court's decision whether any of those had been built on.

[11] In assessing the effects of the proposal on the environment for the purposes of s 104(1)(a) of the Act, a key question that arose was whether the consent authority ought to take into account the receiving environment as it might be in the future and, in particular, if existing resource consents that had been granted but not yet implemented, were implemented in the future. The council had declined consent to the application and on the appeal by Hawthorn to the Environment Court argued that that Court's consideration should be limited to the environment as it existed at the time that the appeal was considered. That proposition was rejected by the Environment Court, and also by Fogarty J.

[12] Before we confront the questions that have been asked directly, we briefly summarise the reasoning in the decisions respectively of the Environment Court and the High Court.

The Environment Court decision

[13] The Environment Court held that the dwellings, and the approved building platforms yet to be developed by the erection of buildings, both within and outside the triangle, were part of the receiving environment. As to the undeveloped sites, that conclusion was founded on evidence that the Court accepted that it was "practically certain that approved building sites in the Wakatipu Basin will be built on". That conclusion, not able to be challenged on appeal, is critical to the arguments advanced in the High Court and in this Court.

[14] The Environment Court held that the eight dwellings for which resource consent had already been granted on the subject site were appropriately considered as part of the "permitted baseline", a concept explained in the decisions of this Court in *Bayley v Manukau City Council* [1999] NZLR 568, *Smith Chilcott Ltd v Auckland City Council* [2001] 3 NZLR 473 and *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323. However, it rejected an argument by Hawthorn that landowners in the area could have a reasonable expectation that the council would grant consent to subdivisions that matched the intensity of

three other subdivisions in the triangle, for which the council had recently granted consent. Those subdivisions had an average area of 2 ha per allotment. Hawthorn had argued that the present development should be considered in the light of a future environment in which subdivision of that intensity would occur throughout the triangle.

[15] The Court rejected that proposition as being too speculative. Noting that all subdivision in the zone required discretionary activity consent, the Court observed that:

> [25] We have no way of knowing whether existing or future allotment holders will apply for consent to subdivide to the extent of two hectare allotments, nor whether they can replicate the conditions which led the Council to grant consent in the cases referred to by Mr Brown, nor at what point the consent authority will consider that policies requiring avoidance of over-domestication of the landscape have been breached. In general terms we do not consider that reasonable expectations of landowners can go beyond what is permitted by the relevant planning documents or existing consents.

[16] At the time that the appeal was heard before the Environment Court, there was both an operative and a proposed district plan. The Court's focus was properly on the proposed district plan, however, because the relevant provisions in it had passed the stage where they might be further modified by the submission and reference process under the Act. Under the proposed district plan (which we will call simply "the district plan", or "the plan" from this point), it was necessary for the Court to classify the landscape setting of the proposed development. The Court found that the appropriate landscape category was "other rural landscape". In doing so the Court rejected the arguments that had been put to it by the council and by parties appearing under s 271A of the Act that the proper classification was "visual amenity landscape". Both are terms used and described in the district plan.

[17] Once again, the Court's reasoning was based on what it thought would happen in the future. It held that the "central question in landscape classification" was whether the landscape "when developed to the extent permitted by existing consents" would retain the essential qualities of a visual amenity landscape. That would not be the case here, because of the extent of existing and likely future development of "lifestyle" or "estate" lots both in the triangle and outside it.

[18] The Environment Court then discussed the effects of the development on the environment. It found that the subdivision works would introduce an unnatural element to the landforms in the triangle, but that they would be largely imperceptible, and the landform was not one of the best examples of its type. In terms of visual effects, the Court concluded that, although the development could be seen from positions beyond the site, it would not intrude into significant views, nor dominate natural elements in the landscape. As to the effects on "rural amenity" the Court held that the position was "finely balanced", but after it identified and considered relevant district plan objectives and policies dealing with rural amenity, concluded that the development was marginally compatible with them.

[19] The Court also considered the proposal against relevant assessment criteria in the district plan. It found that the proposal would satisfy most of them. This part of the Court's decision required it to revisit under s 104(1)(d) of the Act matters already dealt with in the inquiry into effects on the environment under s 104(1)(a).

[20] One of the assessment criteria raised as an issue whether the proposed development would be complementary or sympathetic to the character of adjoining or surrounding visual amenity landscape. Another required consideration of whether the proposal would adversely affect the naturalness and rural quality of the landscape through inappropriate landscaping. The Court was able to repeat here conclusions that it had already arrived at earlier in its decision. In particular, it said that although the effects of the proposal on the retention of the rural qualities of the landscape were "on the cusp":

> . . . in the context of consented development on this and other sites in the vicinity the proposal is just compatible with the level of rural development likely to arise in the area.

[21] Having considered the objectives and policies of the district plan as a whole, the Court concluded that while the proposal was marginal in respect of some significant policies, it was supported by others. Consequently, it was "not contrary to the policies and objectives taken as a whole".

[22] In the balance of its decision the Court rejected an argument of the council that the decision would create an undesirable precedent. It considered the proposal against the higher-level considerations flowing from Part II of the Act, expressed a conclusion that the effects on the environment of allowing the activity would be minor, provided that there was a condition proscribing any further subdivision of the land, and then moved to the exercise of its discretion to grant consent under s 105(1)(c) of the Act. For present purposes it should be noted that the Court's conclusion that there would not be an undesirable precedent set by the grant of consent was expressly justified on the basis that the proposal had been comprehensively designed, and would provide facilities for the public that would link to other facilities in the triangle. The Court considered that it was difficult to imagine that another such comprehensive proposal could be designed for another location, given the "level of subdivision and building that has already occurred within the triangle". Further, the Court's conclusion that adverse effects on the environment would be minor was reached:

> [h]aving considered carefully the changes that will occur on the surrounding environment as a result of consents already granted and the "baseline" set by existing resource consents on the land . . . .

[23] So it can be seen that, in respect of the main issues that the Court had to decide, its reasoning in each case was predicated on the ability to assess the development against the future conditions likely to be present in the area.

The High Court decision

[24] The questions earlier set out particularise the challenged conclusions of Fogarty J. On the first issue, as to whether the receiving

environment should be understood as including not only the environment as it exists, but also the reasonably foreseeable environment, Fogarty J essentially adhered to his own reasoning in *Wilson v Selwyn District Council* [2005] NZRMA 76. He held in that case that "environment" in s 104 includes potential use and development in the receiving environment.

[25] Accordingly, the Environment Court had not erred when it took into account the approved building platforms both within and outside of the triangle. In para [74] of the judgment Fogarty J said:

> In my view the reason why the baseline analysis is abrupt is that the Court had no doubt at all that advantage would be taken of approved building platforms in this very valuable location. Mr Goldsmith's view was not challenged in cross-examination. Ms Kidson, the landscape witness for the Council, took into account that more houses would be built as a result of a number of consents.

[26] Fogarty J went on to observe that the Environment Court's approach did not involve speculation, and that the Court had rejected an argument that it should take into account the possibility of further subdivision as a result of possible future applications for discretionary activity consent. He observed that in that respect, the approach of the Environment Court was more cautious than that which he himself had taken in *Wilson v Selwyn District Council*.

[27] One of the questions that has been raised on the appeal concerns the adequacy of the Environment Court's consideration of the application of what has come to be known as the "permitted baseline". Although that expression was used by Fogarty J in para [74], we doubt that he was using the term in the sense that it is normally used, that is with reference to developments that might lawfully occur on the site subject to the resource consent application itself. Rather, Fogarty J appears to have used the expression to refer to the likely developments that would take place beyond the boundary of the subject site, utilising existing resource consents. Nothing turns on the label that the Judge used to refer to lawfully authorised environmental change beyond the subject site. However, it would be prudent to avoid the confusion that might result from using the term other than in its normal sense, addressed in *Bayley v Manukau City Council*, *Smith Chilcott Ltd v Auckland City Council* and *Arrigato Investments Ltd v Auckland Regional Council*. As we will emphasise later in this judgment the "permitted baseline" is simply an analytical tool that excludes from consideration certain effects of developments on the site that is subject to a resource consent application. It is not to be applied for the purpose of ascertaining the future state of the environment beyond the site.

[28] The second and third questions raised on the appeal have their genesis in particular provisions in the council's proposed district plan. Under the landscape classification employed by that plan, the Environment Court held that the receiving environment of the subject application should be regarded as an "other rural landscape". In a passage which again uses the expression "baseline" in an unusual context, Fogarty J said at para [76]:

> Mr Wylie argued that, although there was evidence before the Court on which it could conclude the landscape was Other Rural Landscape that it reached that decision after taking into account, irrelevantly, that the landscape would be developed to the extent permitted by existing consents. So he was arguing that the much earlier finding of Other Rural Landscape was affected by this same area of baseline analysis. As I do not think that there is any error of baseline analysis, this point cannot be sustained. It is, however, appropriate to comment on one detail in Mr Wylie's argument in case it be thought I have overlooked it.

[29] The Judge accepted Mr Wylie QC's argument that the Environment Court had considered their judgment regarding the effect of the proposal on rural amenity as finely balanced. Having observed that the Environment Court was an expert Court, was thoroughly familiar with the Queenstown area and skilled in the assessment of landscape values, Fogarty J said at para [79]:

> In my view Mr Wylie's argument has to depend on the point he has reserved, namely that a consent authority applying s 104 in these circumstances must consider the receiving environment *as it exists*, and ignore any potential development: whether it be imminent pursuant to existing building consents; or allowed as permitted uses; or potentially allowable as discretionary activity, controlled activity, or non-complying activity. If that is the law, then the judgment by the Environment Court on other rural landscape may be infected with an error of law, in a material way.

[30] The Judge had already decided that there was no such error of law, because it was proper for the Environment Court to consider the future state of the environment.

[31] Fogarty J also held that the Environment Court had not erred in assessing the proposed development by reference to the lot sizes permitted in the Rural Residential zone. Essentially, he held that this was a legitimate course to follow, because the site was located in an other rural landscape, which is the least sensitive of the landscape categories provided for in the district plan. Using terms that appear in the district plan itself, Fogarty J said at para [87]:

> Obviously different levels of protection of landscape value will depend on whether the proposed developments impact on romantic landscape, Arcadian landscape or other landscape. Reading the [plan] as a whole one would expect quite significant protection of romantic and Arcadian landscape. The degree of protection of other landscape, including Other Rural Landscape from any further development is less certain.

[32] He noted there were no minimum subdivisional allotment sizes for the Rural General zone. It was a zone that contemplated consents being granted for a wide range of activities provided they did not compromise the landscape and other rural amenities. The proposal had been designed to have a park-like appearance and would incorporate planting that would to some extent screen the development from neighbouring land use. He concluded at para [90]:

> Had the Court been proceeding on the basis of a classification of the landscape as Arcadian, considering Rural Residential Standards could well

> have been taking into account an irrelevant consideration. But where the Court considers that the Arcadian character of the landscape has gone and is dealing with a rural landscape already showing some kind of residential character, I do not think it can be said that an expert Court has fallen into error of law by looking at the standards in the rural living area zones, when exercising a judgment as to how to address a proposal which is a discretionary activity in the rural general zone of the [plan].

[33] Mr Wylie contends that in respect of all these determinations Fogarty J's decision was incorrect in law. We discuss the reasons that he advanced for that contention in the context of the questions that we have to answer.

Question 1(a) – the environment

[34] Mr Wylie's principal submission was that Fogarty J erred in holding that the word "environment" includes not only the environment as it exists, but also the reasonably foreseeable environment after allowing for potential use and development. The council contended that such an approach is not required by the definition of the word "environment" in s 2 of the Act, and that to read the word in that way would be inconsistent with Part II of the Act, in particular with s 7(f).

[35] Mr Wylie further submitted that a purposive approach to the relevant statutory provision would lead to a conclusion that the "environment" must be confined to the environment as it exists. He submitted that the reference to "Maintenance and enhancement of the quality of the environment" in s 7(f) of the Act was strongly suggestive that it is the environment as it exists at the date of the exercise of the relevant function or power under the Act which must be relevant. He contended that it would be difficult, perhaps impossible, to have particular regard to the maintenance and enhancement of the quality of a speculative future environment.

[36] Further, referring to the importance of district plans made under the Act and the process of submission in which members of the public may formally participate in the plan preparation process, Mr Wylie argued that when a plan becomes operative, it represents a community consensus as to how development should proceed in the council's district. Such plans, he submitted, focus on existing environments and put in place a framework for future development. But they do not, as he put it, "assume future putative environments degraded by potential use or development".

[37] In addition, Mr Wylie pointed to practical difficulties that he said would make the approach that found favour with the Environment Court and Fogarty J unworkable. There was, in addition, the potential for "environmental creep" if applicants having secured one resource consent were then able to treat the effects of implementing that consent as something which would alter the future state of the environment whilst returning to the council on successive occasions to seek further consents "starting with the most benign, but heading towards the most damaging".

[38] Mr Wylie also argued that to uphold Fogarty J's view on the meaning of the word "environment" would be to run counter to authorities which have established rules for priority between applicants, authorities

dealing with issues of precedent and cumulative effect as well as the authorities already mentioned on the "permitted baseline".

[39] Both parties have argued the matter as if the word "environment" in s 2 of the Act ought to be seen as neutral on the issue of whether it requires the future, and future conditions to be taken into account. We think that that is true only in the superficial sense that none of the words used specifically refers to the future.

[40] The definition reads as follows:

> "Environment" includes —
>
> (a) Ecosystems and their constituent parts, including people and communities; and
> (b) All natural and physical resources; and
> (c) Amenity values; and
> (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

[41] This provision must be construed on the basis prescribed by s 5(1) of the Interpretation Act 1999; the meaning of the provision is to be ascertained from its text and in the light of its purpose.

[42] Although there is no express reference in the definition to the future, in a sense that is not surprising. Most of the words used would, in their ordinary usage, connote the future. It would be strange, for example, to construe "ecosystems" in a way which focused on the state of an ecosystem at any one point in time. Apart from any other consideration, it would be difficult to attempt such a definition. In the natural course of events ecosystems and their constituent parts are in a constant state of change. Equally, it is unlikely that the legislature intended that the inquiry should be limited to a fixed point in time when considering the economic conditions which affect people and communities, a matter referred to in para (d) of the definition. The nature of the concepts involved would make that approach artificial.

[43] These views are reinforced by consideration of the various provisions in the Act in which the word "environment" is used, or in which there is reference to the elements that are set out in the four paragraphs of its definition. The starting point should be s 5, which states and explains the fundamental purpose of the Act in the following terms:

> **5. Purpose** — (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
>
> (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while —
>
> (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
> (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
> (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[44] "Natural and physical resources" are, of course, part of the environment as defined in s 2. The purpose of the Act is to promote their sustainable management. The idea of management plainly connotes action that is ongoing, and will continue into the future. Further, such management is to be sustainable, that is to say, natural and physical resources are to be managed in the way explained in s 5(2). Again, it seems plain that provision by communities for their social, economic and cultural well-being, and for their health and safety, is an idea that embraces an ongoing state of affairs.

[45] Section 5(2)(a) then makes an express reference to the "reasonably foreseeable needs of future generations". What to this point has been implicit, becomes explicit in the use of this language. There is a plain direction to consider the needs of future generations. Paragraph (b)'s reference to safeguarding the life-supporting capacity of air, water, soil, and ecosystems also points not only to the present, but also the future. The idea of safeguarding capacity necessarily involves consideration of what might happen at a later time.

[46] The same approach is requisite under para (c). "Avoiding" naturally connotes an ongoing process, as do "remedying" and "mitigating". The latter two words, in addition, imply alteration to an existing state of affairs, something that can only occur in the future.

[47] Each of the components of s 5(2) is, therefore, directed both to the present and the future state of affairs. An analysis of the concepts contained in ss 6 and 7 leads inevitably to the same conclusion. That is partly because the particular directions in each section are all said to exist for the purpose of achieving the purpose of the Act. But in part also, the future is embraced by the words "protection", "maintenance" and "enhancement" that appear frequently in each section. We do not agree with Mr Wylie's argument based on s 7(f). "Maintenance" and "enhancement" are words that inevitably extend beyond the date upon which a particular application for resource consent is being considered.

[48] The requirements of ss 5, 6 and 7 must be complied with by all who exercise functions and powers under the Act. Regional authorities must do so, when carrying out their functions in relation to regional policy statements (s 61) and the purpose of the preparation, implementation and administration of regional plans is to assist regional councils to carry out their functions "in order to achieve the purpose of this Act". Further, the functions of regional councils are all conferred for the purpose of giving effect to the Act (s 30(1)). Consistently with this, s 66 obliges regional councils to prepare and change regional plans in accordance with Part II.

[49] The same obligations must be met by territorial authorities, in relation to district plans. The purpose of the preparation, implementation and administration of district plans is, again, to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act. Similarly, the functions of territorial authorities are conferred only for the purpose of giving effect to the Act (s 31) and district plans are to be prepared and changed in accordance with the provisions of Part II. There is then a direct linkage of the powers and duties of regional and territorial authorities to the provisions of Part II with the necessary consequence that

those bodies are in fact planning for the future. The same forward-looking stance is required of central government and its delegates when exercising powers in relation to national policy statements (s 45) and New Zealand coastal policy statements (s 56). The drafting shows a consistent pattern.

[50] In the case of an application for resource consent, Part II of the Act is, again, central to the process. This follows directly from the statement of purpose in s 5 and the way in which the drafting of each of ss 6 to 8 requires their observance by all functionaries in the exercise of powers under the Act. Self-evidently, that includes the power to decide an application for resource consent under s 105 of the Act. Moreover, s 104 which sets out the matters to be considered in the case of resource consent applications, began, at the time relevant to this appeal:

> **104. Matters to be considerd** — (1) Subject to Part II, when considering an application for a resource consent and any submissions received, the consent authority shall have regard to . . .

[51] The pervasiveness of part II is once again apparent. In the case of resource consent applications, reference must also be made to the list of relevant considerations spelled out in paras (a) to (i) of s 104(1). These include: "Any actual and potential effects on the environment of allowing the activity" (para (a)); the objectives, policies, rules and other provisions of the various planning instruments made under the Act (para (c) to (f)) and "Any other matters the consent authority considers relevant and reasonably necessary to determine the application" (para (i)).

[52] Each of these provisions is likely to require a consent authority, in appropriate cases, to have regard to the future environment. In so far as ss 104(1)(c) to (f) is concerned, that will be necessary where the instruments considered require that approach. If the precedent effects of granting an application are to be considered as envisaged by *Dye v Auckland Regional Council* [2002] 1 NZLR 337 then the future will need to be considered, whether under s 104(1)(d) or s 104(1)(i). As to s 104(1)(a), its reference to potential effects is sufficiently broad to include effects that may or may not occur depending on the occurrence of some future event. It must certainly embrace future events.

[53] Future potential effects cannot be considered unless there is a genuine attempt, at the same time, to envisage the environment in which such future effects, or effects arising over time, will be operating. The environment inevitably changes, and in many cases future effects will not be effects on the environment as it exists on the day that the council or the Environment Court on appeal makes its decision on the resource consent application.

[54] That must be the case when district plans permit activities to establish without resource consents, where resource consents are granted and put into effect and where existing uses continue as authorised by the Act. It is not just the erection of buildings that alters the environment: other activities by human beings, the effects of agriculture and pastoral land uses, and natural forces all have roles as agents of environmental change. It would be surprising if the Act, and in particular s 104(1)(a), were to be construed as requiring such ongoing change to be left out of

account. Indeed, we think such an approach would militate against achievement of the Act's purpose.

[55] A further consideration based in particular on the provisions concerning applications leads to the same conclusion. When an application for resource consent is granted, the Act envisages that a period of time may elapse within which the resource consent may be implemented. At the time relevant to this appeal, the statutory period was two years or such shorter or longer period as might be provided for in the resource consent (s 125). Consequently, the effects of a resource consent might not be operative for an appreciable period after the consent had been granted. Mr Wylie's argument would prevent the consent authority considering the environment in which those effects would be felt for the first time. Rather, the consent authority would have to consider the effects on an environment which, at the time the effects are actually occurring, may well be different to the environment at the time that the application for consent was considered. That would not be sensible.

[56] Similarly, it is relevant that many resource consents are granted for an unlimited time. That is certainly the case for most land use and subdivision consents (see s 123(b)). Yet it could not be assumed that the effects of implementing the consent would be the same one year after it had been granted, as they would be in 20 years' time.

[57] In summary, all of the provisions of the Act to which we have referred lead to the conclusion that when considering the actual and potential effects on the environment of allowing an activity, it is permissible, and will often be desirable or even necessary, for the consent authority to consider the future state of the environment, on which such effects will occur.

[58] We have not been persuaded to a different view by any of Mr Wylie's arguments based on practical considerations and conflict with other lines of authority. It was his submission that the practical difficulties arising from Fogarty J's judgment would be significant. He contended that to require those administering district plans, and applicants for resource consents, to take account of the potential or notional future environment would be unduly burdensome, and would require them to speculate about what might or might not occur in any particular receiving environment, about what future economic conditions might be, and possibly about how such future economic conditions might affect future people and communities. He submitted that this would require a degree of prescience on the part of consent authorities that was inappropriate.

[59] In support of those propositions he referred to *O'Connell Construction Ltd v Christchurch City Council* [2003] NZRMA 216, and in particular to what was said by Panckhurst J at para [73]:

> I also agree with the submission of Mr Chapman for AMI/AMP that an extension of the rule to include potential activities on sites other than the application site would place an intolerable burden on the consent authority when assessing resource consent applications.

[60] The concerns expressed by Mr Wylie about practical difficulties were overstated. It will not be every case where it is necessary to consider the future environment, or where doing so will be at all

complicated. Suppose, for example, an application for resource consent to establish a new activity in a built up area of a city. There will be rules which provide for permitted activities and in the vast majority of cases it would be likely that the foreseeable future development of surrounding sites would be similar to that which existed at the time the application was being considered. In such a case, it might be a safe assumption that the environment would, in its principal attributes, be very much like it presently is, but perhaps more intensively developed if there are district plan objectives and policies designed to secure that end. At the other end of the spectrum, if one supposed an application to carry out some new activity involving development in an area which was rural in nature and which was intended to remain so in accordance with the policy framework established by the district plan, then once again it ought not be difficult to postulate the future state of that environment.

[61] Difficulties might be encountered in areas that were undergoing significant change, or where such change was planned to occur. However, even those areas would have an applicable policy framework in the district plan that, together with the rules, would give considerable guidance as to the nature and intensity of future activities likely to be established on surrounding land. In cases such as the present, where there are a significant number of outstanding resource consents yet to be implemented, and uncontested evidence of pressure for development, the task of predicting the likely future state of the environment is not difficult.

[62] The observations made by Panckhurst J in *O'Connell v Christchurch City Council* must be read in context. He was dealing with an appeal from an Environment Court decision overturning a decision by the City Council to grant consent to establish a tyre retail outlet. AMI and AMP occupied multi-storey office premises adjoining the subject site and had appealed to the Environment Court against the council's decision. When the Environment Court set aside the council's decision, the applicant for resource consent appealed to the High Court. One of the issues raised on the appeal was a contention that the Environment Court had misapplied the "permitted baseline test" in as much as it had considered the effects of permitted activities on only the subject site and had not considered the effects of permitted activities on adjacent sites as well. At [70] Panckhurst J said:

> [70] I accept that the Court did apply the baseline test with reference only to the subject site. That is it compared the proposed activity against other hypothetical activities that could be established on this site as of right in terms of the transitional and proposed plans. Regard was not had to the impact of the establishment of hypothetical activities on a closely adjacent site. Was such an approach in error?
>
> [71] I am not persuaded that it was. This conclusion I think follows from a reading of various decisions where the permitted baseline assessment has been considered in a number of contexts . . .

[63] The Judge referred to *Bayley v Manukau City Council*, *Smith Chilcott Ltd v Auckland City Council* and *Arrigato Investments Ltd v Auckland Regional Council*, and concluded that the required comparison for purposes of "permitted baseline" analysis is one that is restricted to the

site in question. There was nothing in those cases which was consistent with the extension of the test for which the appellant had contended. We have earlier expressed our view that the "permitted baseline" has in the previous decisions of this Court been limited to a comparison of the effects of the activity which is the subject of the application for resource consent with the effects of other activities that might be permitted on the subject land, whether by way of right as a permitted activity under the district plan, or whether pursuant to the grant of a resource consent. In the latter case, it is only the effects of activities which have been the subject of resource consents already granted that may be considered, and the consent authority must decide whether or not to do so: *Arrigato Investments Ltd v Auckland Regional Council* at paras [30] and [34] - [35].

[64] We agree with Panckhurst J's observations about the limits of the "permitted baseline" concept, and we also agree with him that the decisions of this Court have not suggested that it can be applied other than in relation to the site that is the subject of the resource consent application. However, it is a far step from there to contend that *Bayley v Manukau City Council* and the decisions that followed it, dictate the answer on the principal issues to be determined in this appeal. The question whether the "environment" could embrace the future state of the environment was not directly addressed in those cases, nor was an argument in those terms apparently put to Panckhurst J.

[65] It is as well to remember what the "permitted baseline" concept is designed to achieve. In essence, its purpose is to isolate, and make irrelevant, effects of activities on the environment that are permitted by a district plan, or have already been consented to. Such effects cannot then be taken into account when assessing the effects of a particular resource consent application. As Tipping J said in *Arrigato* at para [29]:

> Thus, if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count in the ss 104 and 105 assessments. It is part of the permitted baseline in the sense that it is deemed to be already affecting the environment or, if you like, it is not a relevant adverse effect. The consequence is that only other or further adverse effects emanating from the proposal under consideration are brought to account.

[66] Where it applies, therefore, the "permitted baseline" analysis removes certain effects from consideration under s 104(1)(a) of the Act. That idea is very different, conceptually, from the issue of whether the receiving environment (beyond the subject site) to be considered under s 104(1)(a), can include the future environment. The previous decisions of this Court do not decide or even comment on that issue.

[67] We do not overlook what was said in *Bayley v Manukau City Council* at p 577, where the Court referred to what Salmon J had said in *Aley v North Shore City Council* [1998] NZRMA 361 at p 377:

> On this basis a consideration of the effect on the environment of the activity for which consent is sought requires an assessment to be made of the effects of the proposal on the environment as it exists.

The Court said that it would add to that sentence the words:

> . . . or as it would exist if the land were used in a manner permitted as of right by the plan.

[68] However, it must be remembered first, that *Bayley* was the case in which the "permitted baseline" concept was formally recognised, and as we have explained did not deal with the issue which has to be decided in this case. Secondly, it was a case about notification of resource consent applications. The issue that arose concerned the proper application of s 94 of the Act, and the provisions it contained allowing non-notification in cases where the adverse effect on the environment of the activity for which consent was sought would be minor. In that context there could be no need to consider the future environment, because if the effects on the existing environment were not able to be described as minor, there would be no need to look any further.

[69] Mr Wylie referred to other practical difficulties which he illustrated by reference to Fogarty J's decision in *Wilson v Selwyn District Council*. In that case, as in this, Fogarty J held that the term "environment" could include the future environment where the word is used in s 104(1)(a) of the Act. He held further that, to ascertain the future state of the environment it was appropriate to ask, amongst other things, whether it was "not fanciful" that surrounding land should be developed, and to have regard in that connection to what was permitted in a proposed district plan. Because the district plan contemplated the subdivision of neighbouring land as a controlled activity, His Honour held that it was plain that the district council did not regard it as fanciful that the land in the locality might be subdivided down into smaller sites with increased dwellings. Mr Wylie pointed out that although subdivision was a controlled activity under the proposed plan relevant in that case, and there were no submissions challenging that, there were, however, submissions challenging the right to erect dwellings, as Fogarty J himself had recorded in para [38] of the judgment. Mr Wylie criticised the decision on the basis that it had effectively "pre-empted" the submission process in relation to the district plan. It would also, in his submission, lead to considerable uncertainty.

[70] Mr Wylie further argued that in the present case, some of the remarks made by Fogarty J suggested that the possibility of development pursuant to resource consents for discretionary or even non-complying activities should be taken into account to ascertain the future state of the environment, in advance of such consents being granted.

[71] That is an inference which can arise from what the Judge said at para [79]:

> In my view Mr Wylie's argument has to depend on the point he has reserved, namely that a consent authority applying s 104 in these circumstances must consider the receiving environment *as it exists*, and ignore any potential development: whether it be imminent pursuant to existing building consents; or allowed as permitted uses; or potentially allowable as discretionary activity, controlled activity, or non-complying activity. If that is the law, then the judgment by the Environment Court on Other Rural Landscape may be infected with an error of law, in a material way.

[72] Fogarty J noted that the decision of the Environment Court in the present case had rejected an argument that it should take into account the likelihood of future successful applications for discretionary activity consent. At para [74] he said:

> As noted, the Court did go on to reject taking into account the further subdivision and thus even more houses resulting from successful applications for discretionary activities. It may be noted that that is a more cautious approach than I took in *Wilson and Rickerby*, see [62] and [81].

[73] The reference here to *Wilson and Rickerby* was a reference to the case now reported as *Wilson v Selwyn District Council*.

[74] These observations by the Judge express too broadly the ambit of a consent authority's ability to consider future events. There is no justification for borrowing the "fanciful" criterion from the "permitted baseline" cases and applying it in this different context. The word "fanciful" first appeared in *Smith Chilcott Ltd v Auckland City Council* at para [26], where it was used to rule out of consideration, for the purposes of the "permitted baseline" test, activities that the plan would permit on a subject site because although permitted it would be "fanciful" to suppose that they might in fact take place. In that context, when the "fanciful" criterion is applied, it will be in the setting of known or ascertainable information about the development site (its area, topography, orientation and so on). Such an approach would be a much less certain guide when consideration is being given to whether or not future resource consent applications might be made, and if so granted, in a particular area. It would be too speculative to consider whether or not such consents might be granted and to then proceed to make decisions about the future environment as if those resource consents had already been implemented.

[75] It was not necessary to cast the net so widely in the present case. The Environment Court took into account the fact that there were numerous resource consents that had been granted in and near the triangle. It accepted Mr Goldsmith's evidence that those consents were likely to be implemented. There was ample justification for the Court to conclude that the future environment would be altered by the implementation of those consents and the erection of dwellings in the surrounding area.

[76] Limited in this way, the approach taken to ascertain the future state of the environment is not so uncertain as to be unworkable or unduly speculative, as Mr Wylie contended.

[77] Another concern that was raised by Mr Wylie was the possibility of "environmental creep". This is the possibility that someone who has obtained one resource consent might seek a further resource consent in respect of the same site, but for a more intensive activity. It would be argued that the deemed adverse effects of the first application should be discounted from those of the second when the latter was considered under s 104(1)(a). Mr Wylie submitted that if s 104(1)(a) requires that consideration be given to potential use and development, there would be nothing to stop developers from making a number of applications for resource consent, starting with the most benign, and heading towards the most damaging. On each successive application, they would be able to argue that the receiving environment had already been

notionally degraded by its potential development under the unimplemented consents.

[78] This fear can be given the same answer as was given in *Arrigato* where the Court had to determine whether unimplemented resource consents should be included within the "permitted baseline". At para [35] the Court said:

> [35] Resource consents are capable of being granted on a non-notified as well as a notified basis. Furthermore, they relate to activities of differing kinds. There may be circumstances when it would be appropriate to regard the activity involved in an unimplemented resource consent as being part of the permitted baseline, but equally there may be circumstances in which it would not be appropriate to do so. For example, implementation of an earlier resource consent may on the one hand be an inevitable or necessary precursor of the activity envisaged by the new proposal. On the other hand the unimplemented consent may be inconsistent with the new proposal and thus be superseded by it. We do not think it would be in accordance with the policy and purposes of the Act for this topic to be the subject of a prescriptive rule one way or the other. Flexibility should be preserved so as to allow the consent authority to exercise its judgment as to what bearing the unimplemented resource consent should have on the question of the effects of the instant proposal on the environment.

[79] The Environment Court dealt with the implications of the existing resource consents in the present case in a manner that was consistent with that approach. It will always be a question of fact as to whether or not an existing resource consent is going to be implemented. If it appeared that a developer was simply seeking successively more intensive resource consents for the same site there would inevitably come a point when a particular proposal was properly to be viewed as replacing previous proposals. That would have the consequence that all of the adverse effects of the later proposal should be taken into account, with no "discount" given for consents previously granted. We are not persuaded that the prospect of "creep" should lead to the conclusion that the consequences of the subsequent implementation of existing resource consents cannot be considered as part of the future environment.

[80] Three other issues, raised by Mr Wylie in support of his argument that "environment" should be confined to what exists at the time the resource consent application is considered by the consent authority, can be briefly mentioned. First, he suggested that the contrary approach would have the effect of negating the result of cases that have decided that priority as between applicants should be established in accordance with the time when applications are made to a consent authority (*Fleetwing Farms Ltd v Marlborough District Council* [1997] 3 NZLR 257 and *Geotherm Group Ltd v Waikato Regional Council* [2004] NZRMA 1). That argument would only be legitimate if we were to endorse Fogarty J's decision that resource consent applications not yet made but which conceivably might be made, could be taken into account. That is not our view.

[81] Secondly, Mr Wylie contended that to hold that the word "environment" included potential use or development would undermine the decision of this Court in *Dye v Auckland Regional Council* where it

had been decided that the grant of a resource consent had no precedent effect in the "strict sense". It is apparent from para [32] of that decision, that what was meant by use of the expression "the strict sense" was that one consent authority is not bound by its own decisions or those of any other consent authority. We do not agree that a decision that the "environment" can include the future state of the environment has any implications for what was decided in *Dye.*

[82] Finally, Mr Wylie contended that if unimplemented resource consents are taken into account, then consent applications will fall to be decided on the basis of the environment as potentially affected by other consents. He submitted that this was to all intents and purposes "precedent by another route". We do not agree. To grant consent to an application for the reason that some other application has been granted consent is one thing. To decide to grant a resource consent application on the basis that resource consents already granted will alter the existing environment when implemented, and that those consents are likely to be implemented is quite a different matter.

[83] There is nothing in the High Court's decision in *Rodney District Council v Gould* [2006] NZRMA 217 on the question of cumulative effects which has any implications for the current issue. That decision simply explained what was already apparent from what this Court had decided in relation to cumulative effects in *Dye v Auckland Regional Council* — that is, that the cumulative effects of a particular application are effects which arise from that application, and not from others.

[84] In summary, we have not found, in any of the difficulties Mr Wylie has referred to, any reason to depart from the conclusion which we have reached by considering the meaning of the words used in s 104(1)(a) in their context. In our view, the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented. We think Fogarty J erred when he suggested that the effects of resource consents that might in future be made should be brought to account in considering the likely future state of the environment. We think the legitimate considerations should be limited to those that we have just expressed. In short, we endorse the Environment Court's approach. Subject to that reservation, we would answer question 1(a) in the negative.

Question 1(b) – speculation

[85] The foregoing discussion means this and the subsequent questions can be answered more briefly. The issue raised by this question is whether taking into account the approved building platforms in and near the triangle, was speculative. The process adopted by the Environment Court cannot properly be characterised as having involved speculation. The Court accepted Mr Goldsmith's evidence that it was "practically certain" that the approved building sites in and near the triangle would be

built on. Mr Wylie confirmed that there was no issue with the Environment Court's finding of fact on the likelihood of future houses being erected.

[86] However, Mr Wylie argued that the environment against which the application fell to be assessed comprised only the existing environment. If that assertion were correct, he submitted that it followed that the potential effects of unimplemented resource consents were irrelevant.

[87] We have already rejected his contention that the relevant environment was confined to the existing environment. It follows that there is no basis upon which we could find error of law in relation to question 1(b).

Question 1(c) – consideration of the permitted baseline

[88] The issue raised by this question is whether the Environment Court had given adequate and appropriate consideration to the application of the permitted baseline. Mr Wylie's argument on this issue proceeded as if the Environment Court had been making a decision about the permitted baseline when it allowed itself to be influenced by its conclusion that the building sites in and around the triangle would be developed. For reasons that we have already given, we do not consider that the receiving environment was properly to be approached on the basis of a "permitted baseline" analysis, as that term has normally been used.

[89] Whatever label is put upon the exercise, Mr Wylie's main contention in this part of his argument was that there was nothing in the Environment Court's decision to show that it had a discretion of the kind that had been explained by this Court in the decision in *Arrigato Investments Ltd v Auckland Regional Council*, in particular the passage at para [35] that we have earlier set out. Mr Wylie submitted that, properly understood, the decision in *Arrigato* meant that there was a discretion when it came to the consideration of unimplemented resource consents. Mr Wylie also contended that it was not obvious from the Environment Court's judgment that it was aware that it had that discretion, let alone that it had exercised it.

[90] We do not consider that it is appropriate to describe what is simply an evaluative factual assessment as the exercise of a discretion. Further, we agree with Mr Castiglione that the council's argument wrongly conflates the "permitted baseline" and the essentially factual exercise of ascertaining the likely state of the future environment. We have previously stated our reasons for limiting the permitted baseline to the effects of developments on the site that is the subject of a resource consent application. On the relevant issue of fact, the Environment Court relied on the evidence of Mr Goldsmith about the virtual certainty of development occurring on the approved building platforms in and around the triangle. There was no error in that approach.

[91] In reality the present question simply raises, in a different guise, the central complaint that the council makes about the acceptance by both the Environment Court and the High Court that the receiving environment can include the future environment. That issue is not to be approached by invoking the permitted baseline, so the question posed does not strictly

arise. We simply answer the question by saying that the issues raised by the council in this part of the appeal do not establish any error of law by the Environment Court, nor by Fogarty J.

Question 2 – landscape category

[92] The council argued that the Environment Court had wrongly concluded that the landscape category it was required to consider was an "other rural landscape" under the district plan. It was contended that Fogarty J had erred by approving the Environment Court's approach.

[93] The district plan defines and classifies landscapes into three broad categories, "outstanding natural landscapes and features", "visual amenity landscapes" and "other rural". The classification of a particular landscape can be important to the consideration of resource consent applications, because different policies, objectives and assessment criteria apply to land within the different categories.

[94] Landscapes in the "outstanding" category are described in the district plan as "romantic landscapes — the mountains and the lakes — landscapes to which s 6 of the Act applies". The important resource management issues are identified as being the protection of these landscapes from inappropriate subdivision, use and development, particularly where activity might threaten the openness and naturalness of the landscape. With respect to "visual amenity landscapes", the district plan describes them in the following way:

> They are landscapes which wear a cloak of human activity much more obviously – pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the district's downlands, flats and terraces.

The district plan seeks to enhance their natural character and enable alternative forms of development where there are direct environmental benefits of doing so. This leaves a residual category of "other rural landscapes", to which the district plan assigns "lesser landscape values (but not necessarily insignificant ones).

[95] There was a contest in the Environment Court as to whether the landscape to be considered in the present case was properly categorised as "visual amenity" or "other rural". In making its assessment as to which classification should apply, the Environment Court plainly had regard to what the landscape would be like when resource consents already granted were utilised. At para [32], it said:

> We consider that the landscape architects called by the Council and the section 271A parties have been too concerned with the Court's discussion of the scale of landscapes and have not sufficiently addressed the central question in landscape classification, namely whether the landscape, when developed to the extent permitted by existing consents, will retain the essential qualities of a VAL, which are pastoral or Arcadian characteristics. We noted (in paragraph 3) that development of "lifestyle" or "estate" lots for rural-residential living is not confined to the triangle itself.

[96] It then made reference to existing developments in the area finding some to be highly visible and detracting significantly from any

"Arcadian" qualities of the wider setting. It concluded that the landscape category was other rural.

[97] We accept, as Mr Wylie submitted, that in large part that conclusion of the Environment Court was apparently based on the view that it had formed about what the landscape would be like when modified by the implementation of as yet unimplemented resource consents.

[98] In the High Court, Fogarty J recorded the submission that had been made to him by Mr Wylie that, although there was evidence before that Court on which it could have concluded that the landscape was "other rural", nevertheless it had reached that conclusion after taking into account, irrelevantly, that the landscape would be developed to the extent permitted by existing consents. Fogarty J held first that this was in effect a repetition of the arguments previously made about faulty baseline analysis. As he did not consider that the Environment Court had made any error in that respect, Mr Wylie's argument could not be sustained. A little later in the judgment, Fogarty J confirmed his view that a landscape categorisation decision could only be criticised if the Court was obliged to ignore future potential developments in the area (para [79] of his decision, set out in para [29] above).

[99] Mr Wylie repeated in this context his argument that the Court had been obliged to consider the environment as it existed at the time that it made its decision. That argument must fail for the reasons that we have already given. However, in this Court Mr Wylie developed another argument based not on the relevant statutory provisions, but on provisions of the district plan itself. Mr Wylie's argument was based on rule 5.4.2.1 of the district plan.

[100] Rule 5.4.2 contains "assessment matters" which are to be considered when the council decides whether or not to grant consent to, or impose conditions on, resource consent applications made in respect of land in the rural zones. As we have previously noted those assessment criteria vary according to the categorisation of the landscape. Before the actual assessment matters are stated, however, rule 5.4.2.1 sets out a three-step process to be followed in applying the assessment criteria. It provides as follows:

> 5.4.2.1 **Landscape Assessment Criteria – Process**
>
> **There are three steps in applying these assessment criteria.** First, the analysis of the site and surrounding landscape; secondly determination of the appropriate landscape category; thirdly the application of the assessment matters. For the purpose of these assessment criteria, the term "proposed development" includes any subdivision, identification of building platforms, any building and associated activities such as roading, earthworks, landscaping, planting and boundaries.
>
> **Step 1 – Analysis of the Site and Surrounding Landscape**
>
> An analysis of the site and surrounding landscape is necessary for two reasons. Firstly it will provide the necessary information for determining a sites ability to absorb development including the basis for determining the compatibility of the proposed development with both the site and the surrounding landscape. Secondly it is an important step in the determination

of a landscape category – ie whether the proposed site falls within an outstanding natural, visual amenity or other rural landscape.
An analysis of the site must include a description of those existing qualities and characteristics (both negative and positive), such as vegetation, topography, aspect, visibility, natural features, relevant ecological systems and land use.
An analysis of the surrounding landscape must include natural science factors (the geological, topographical, ecological and dynamic components in [sic] of the landscape), aesthetic values (including memorability and naturalness), expressiveness and legibility (how obviously the landscape demonstrates the formative processes leading to it), transient values (such as the occasional presence of wildlife; or its values at certain times of the day or of the year), value of the landscape to Tangata Whenua and its historical associations.
Step 2 – Determination of Landscape Category
This step is important as it determines which district wide objectives, policies, definitions and assessment matters are given weight in making a decision on a resource consent application.
The Council shall consider the matters referred to in Step 1 above, and any other relevant matter, in the context of the broad description of the three landscape categories in part 4.2.4. of this Plan, and shall determine what category of landscape applies to the site subject to the application.
In making this determination the Council, shall consider:

(a) to the extent appropriate under the circumstances, both the land subject to the consent application and the wider landscape within which that land is situated; and
(b) the landscape maps in Appendix 8.

Step 3 – Application of the Assessment Matters
Once the Council has determined which landscape category the proposed development falls within, each resource consent application will then be considered:
First, with respect to the prescribed assessment criteria set out in r 5.4.2.2 of this section;
Secondly, recognising and providing for the reasons for making the activity discretionary (see para 1.5.3(iii) of the plan [p 1/3]) and a general assessment of the frequency with which appropriate sites for development will be found in the locality.

[101] Mr Wylie argued, that even if his argument confining "environment" to the current environment failed, nevertheless in accordance with these district plan provisions it could not be relevant to consider the future environment other than at step 3. He submitted that for the purposes of step 1 and step 2, attention should be focused solely on the current state of the environment.
[102] Mr Castiglione argued to the contrary, suggesting that the words used in step 1, ". . . the basis for determining the compatibility of the proposed development with both the site and the surrounding landscape", were apt to refer to proposed development generally within the landscape. We reject that submission. In context, the reference to "the proposed development" must be the development which is the subject of a particular application for resource consent.
[103] But the wording of steps 1 and 2 does not exclude a consideration of the environment as it would be after the implementation

of existing resource consents. Although the second paragraph in step 1 refers to "existing qualities and characteristics", the words used are inclusive, and there is nothing to suggest that they are exhaustive. The same applies in respect to the last paragraph in step 1. We do not read the words in either paragraph as ruling out consideration of the future environment. Even if that conclusion were wrong it would be legitimate for the council to consider the future environment as part of "any other relevant matter", the words used in the second paragraph within step 2. Further, the second part of step 2 authorises a broadly based inquiry when it requires the council to "consider . . . the wider landscape" within which a development site is situated. There is no reason to read into these words, or any of the other language in step 2, a limitation of the consideration to the present state of the landscape.

[104] It follows that the future state of the environment can properly be considered at steps 1 and 2, before the landscape classification decision is made. Neither the Environment Court nor Fogarty J erred and question 2 should be answered No.

Question 3 – reliance on minimum subdivision standards in the Rural Residential zone

[105] In the High Court, the council had argued that the Environment Court had misconstrued the relevant district plan provisions, and taken into account an irrelevant consideration by referring to the subdivision standards contained in the district plan for the Rural Residential zone. The subject site is zoned Rural General.

[106] Mr Wylie pointed to three separate paragraphs in the Environment Court's decision where there had been references to the Rural Residential provisions of the plan. In para [74] of its decision the Environment Court had discussed evidence that had been given about the desire of the developer to create a "park-like" environment. A landscape architect whose evidence had been called by the council expressed the opinion that although the proposal would not introduce urban densities, it was not rural in nature. The Court referred to the fact that in the rural-residential zone a minimum lot size of 4000 m^2 and an associated building platform was permitted. It will be remembered that the subject development would comprise allotments varying in size between 0.6 and 1.3 ha. No doubt with that comparison in mind, the Environment Court expressed the view that the development would provide more than the level of "ruralness" of Rural Residential amenity.

[107] The next reference to the Rural Residential rules was in para [78]. The Environment Court was there dealing with the issue of whether the development would result in the "over-domestication" of the landscape. The Court expressed its view that the proposal could coexist with policies seeking to retain rural amenity and that while it would add to the level of domestication of the environment, the result would not reach the point of overdomestication. That was so, because the site was in an "other rural landscape", and the district plan considered that Rural Residential allotments down to 4000 m^2 retained an appropriate amenity for rural living.

[108] Finally, Mr Wylie referred to the fact that at para [92], where the Environment Court was dealing with a proposition that the proposal would be contrary to the district plan's overall settlement strategy, the Court made a reference to the reluctance that it had expressed in a previous decision to set minimum allotment sizes in the rural-residential zone. Mr Castiglione suggested that the Environment Court had made a mistake, and that it had meant to refer to the rural general zone in that paragraph, not the Rural Residential zone. We do not need to decide whether or not that was the case.

[109] Having reviewed the various references to the Rural Residential zone in context, Fogarty J held that the Environment Court had not considered an irrelevant matter or committed any error of law in its references to the Rural Residential zone. We cannot see any basis to disturb that conclusion. In this Court Mr Wylie contended that Fogarty J's reasoning had been based on the fact that the Environment Court had considered that any "Arcadian" character of the landscape had gone. He then repeated the point that that conclusion had turned on the fact that the Court had considered the likely future environment as opposed to confining its consideration to the existing environment. He submitted that the decision was wrong for that reason. We have already rejected that argument.

[110] We do not consider that there was any error of law in the approach of either the Environment Court or the High Court on this issue. Question 3 should also be answered No.

Result

[111] For the reasons that we have given, each of the questions raised on the appeal is answered in the negative. That answer in respect of question 1(c) must be read in the context that the Environment Court's analysis of the relevant environment was not a "permitted baseline" analysis.

[112] The respondent is entitled to costs in this Court of $6000 plus disbursements, including the reasonable travel and accommodation expenses of both counsel to be fixed, if necessary, by the Registrar.

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2013-409-789
[2013] NZHC 1324

IN THE MATTER OF	an appeal under s 299 Resource Management Act 1991
BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Appellant
AND	BULLER DISTRICT COUNCIL AND WEST COAST REGIONAL COUNCIL First Respondents
	BULLER COAL LIMITED Second Respondent
AND	WEST COAST ENVIRONMENTAL NETWORK INCORPORATED Interested Party

Hearing: 27, 28 and 30 May 2013

Appearances: P D Anderson and S R Gepp for the Appellant
B G Williams and R A Lowe for First Respondents
J O M Appleyard for Second Respondent
Q A M Davies for Interested Party

Judgment: 6 June 2013

JUDGMENT OF FOGARTY J

Introduction

[1] The Environment Court has delivered two decisions in relation to an application by Buller Coal Ltd (BCL) for consents required to establish an open cast coal mine on the Denniston Plateau on the West Coast. This proposed open cast coal mine is known as the escarpment mine proposal (EMP).

[2] BCL is a subsidiary of a publicly listed Australian mining company, Bathurst Resources Limited. Bathurst Resources has exploration permits under the Crown Minerals Act 1991 over almost the whole of the Denniston Plateau. Under the Crown Minerals Act exploration permits can progress ultimately to a permit to mine. But by s 9 of that Act, a Crown permit to mine still requires consents under the Resource Management Act 1991. Bathurst has a mining proposal for the Denniston Plateau, called the escarpment mining proposal or the EMP. The initial overburden from the EMP mine will be placed in a narrow valley, known as Barren Valley (because it has no coal). Subsequently, that overburden will be replaced in an engineered landform (ELF) behind the advancing coalface. The EMP mine is expected to have a life of approximately five years. It is that mine for which resource consents are being sought.

[3] Solid Energy has a coal mining licence, originally granted in 1987 under the Coal Mines Act 1979. Under s 107 of the Crown Minerals Act, the rights acquired under the earlier Act are preserved. The parties agree the effect of that protection is that Solid Energy does not require land use activity consents under the RMA, but does require all other consents, particularly for water rights. The Solid Energy proposal is known as the Sullivan Mine proposal or SMP. It is also on the Denniston Plateau.

[4] Because coal mining as a land use activity is permitted in the SMP, the appellant (Forest and Bird) seeks to take advantage of [84] of the Court of Appeal's decision in *Queenstown Lakes District Council v Hawthorn Estate Ltd*.[1] Forest and Bird argue that the potential effects on the environment from the escarpment mine proposal should be assessed cumulative to effects from the Sullivan Mine. They rely upon [84] of *Hawthorn*, to require the Environment Court to treat the mining licence as permitted land uses.

The regulatory context

[5] The Denniston Plateau is a harsh unforgiving environment. It has an average rainfall in excess of 6000 mm per year. This leads to a number of significant surface

[1] *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

water catchments, with an extensive network of lower order tributaries across the plateau. In addition to water bodies, the plateau includes an extensive range of unique flora and fauna. Given its unique vegetation assemblages, wet climate and high conservation values, the whole of the plateau has also recently been classified as a wetland of significance for the purposes of the West Coast Regional Council's Land and Riverbed Management Plan. There has been an extensive history of mining across the plateau. The relics of this include significant acid mine drainage, which makes water quality issues complex. The inherent nature of the plateau creates significant issues for anyone wanting to undertake mining on it. Open cast coal mining is a very complex, resource intensive and intrusive process. The EMP will impact on approximately 9 per cent of the Denniston Plateau.

[6] Resource consents are required from both the West Coast Regional Council and the Buller District Council. Broadly, all the activities are described as discretionary. The EMP requires consents under the Proposed Regional Land and Water Plan to mine coal, for associated land disturbance activities, for the coal processing plant and transport facilities. Some of the activities under the Buller District Plan, where the land is zoned rural, are restricted discretionary.

[7] There is a sliding scale in the RMA between permitted activities, controlled activities (both of which must be granted), restricted discretionary activities (being activities which can be declined, but only in respect of matters over which there are restrictions), discretionary activities, non-complying activities, and prohibited activities.[2] As one would expect, the restrictions, and the rules relating to restricted discretionary activities address protection of areas of significant indigenous vegetation, or significant habitats of indigenous fauna.[3]

[8] In the main decision, the Environment Court commented that:[4]

> We accept that provisions which enable mining and encourage these types of mitigation/offsetting proposed pull in the opposite direction. Overall we find that the provisions of the plans are evenly balanced with respect to the proposal rather than consistent.

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2 Section 87A.

3 Main Environment Court decision, *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC 47 at [25].

4 At [307].

That is to be expected. The same can be said of s 5(2), the core provision of the RMA. The RMA sets in play criteria enabling the development of natural and physical resources, alongside the protection of natural and physical resources. This is captured in s 5(2), which provides:

> **5 Purpose**
>
> ...
>
> (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
>
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

"Sustainable management" is a system of decision-making, which effectively chooses in any particular context which objective, and its values will predominate.

[9] The Denniston Plateau is set for change in the foreseeable future. It is not a mature urban environment or rural residential environment replete with permitted activities and existing resource consents, which was the setting of the "existing environment" cases which date from *Bayley v Manukau City Council*[5] through to *Hawthorn*.

[10] The Environment Court identified a preliminary question prior to the substantive hearing on appeals against consents granted to BCL to establish and operate the escarpment mine proposal. This preliminary issue was whether the Sullivan Mine proposal (SMP) of Solid Energy should form part of the "existing environment", such that potential effects on the environment from the EMP should be assessed cumulative to effects from the proposed Sullivan Mine. The parties in this litigation agree that the Sullivan Mine cannot proceed without these water

[5] *Bayley v Manukau City Council* [1999] 1 NZLR 568 (CA).

resource consents. The consents required also extended to include land use consents outside the Sullivan coal mining licence boundary. The status of the majority of the activities is discretionary activity under the relevant plans, in respect of which s 104B provides that the consent authority may grant or refuse such applications.

[11] The Environment Court found:[6]

> **The possible open cast Sullivan mine adjoining the EMP is not, for the reasons recorded, a part of the "existing environment" that would otherwise trigger a need for assessment of cumulative effects.**

The meaning of "existing environment", and the importance of distinguishing contexts

[12] As discussed, BCL's escarpment mine proposal requires resource consents for discretionary activities. All applications requiring resource consents fall to be considered by application of s 104 of the RMA. Section 104(1) provides:

> **104 Consideration of applications**
>
> (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–
>
> (a) any actual and potential effects on the environment of allowing the activity; and
>
> (b) any relevant provisions of—
>
> (i) a national environmental standard:
>
> (ii) other regulations:
>
> (iii) a national policy statement:
>
> (iv) a New Zealand coastal policy statement:
>
> (v) a regional policy statement or proposed regional policy statement:
>
> (vi) a plan or proposed plan; and
>
> (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

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6 *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC 42.

[13] The phrase "existing environment" is found nowhere in the Act. It is shorthand jargon used by practitioners and Judges as a reference to the decisions of the Court of Appeal guiding consent authorities as to the range of activities to be taken into account when examining any actual or potential effects of allowing the activity the subject of the application. The cases distinguish between examining activities which are permitted on the site of the application for a new activity, which analysis is called "permitted baseline", from examination of the activities which can be anticipated in the surrounding environment, which is called the "receiving environment". The proposed Sullivan Mine is in the receiving environment. The leading decision on the extent to which one has regard to possible future activities in the receiving environment is the *Hawthorn* decision.

[14] That decision, on my reading of it, does not encourage perpetuating the use of the jargon "existing environment". Most of the reasoning in the judgment is in support of the conclusion that the word "environment" as appearing in s 104(1)(a) requires a consent authority "to have regard to the future environment".[7]

[15] Paragraph [84] reads:

> [84] In summary, we have not found, in any of the difficulties Mr Wylie has referred to, any reason to depart from the conclusion which we have reached by considering the meaning of the words used in s 104(1)(a) in their context. In our view, the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented. We think Fogarty J erred when he suggested that the effects of resource consents that might in future be made should be brought to account in considering the likely future state of the environment. We think the legitimate considerations should be limited to those that we have just expressed. In short, we endorse the Environment Court's approach. Subject to that reservation, we would answer question 1(a) in the negative.

[16] Forest and Bird argue that because the coal mining licence held by Solid Energy for the proposed Sullivan Mine permits the land use activity of coal mining, that land use activity must be taken into account, by reason of the application of [84].

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[7] *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [52].

[17] The only time the Court of Appeal in *Hawthorn* refers to the environment as it exists is in a sequence of four paragraphs, which are worth citing, as they are relevant to the Forest and Bird argument:

> [65] It is as well to remember what the "permitted baseline" concept is designed to achieve. In essence, its purpose is to isolate, and make irrelevant, effects of activities on the environment that are permitted by a district plan, or have already been consented to. Such effects cannot then be taken into account when assessing the effects of a particular resource consent application. As Tipping J said in *Arrigato* at [29]:
>
> > Thus, if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count in the ss 104 and 105 assessments. It is part of the permitted baseline in the sense that it is deemed to be already affecting the environment or, if you like, it is not a relevant adverse effect. The consequence is that only other or further adverse effects emanating from the proposal under consideration are brought to account.
>
> [66] Where it applies, therefore, the permitted baseline analysis removes certain effects from consideration under s 104(1)(a) of the Act. That idea is very different, conceptually, from the issue of whether the receiving environment (beyond the subject site) to be considered under s 104(1)(a), can include the future environment. The previous decisions of this Court do not decide or even comment on that issue.
>
> [67] We do not overlook what was said in *Bayley v Manukau City Council* at p 577, where the Court referred to what Salmon J had said in *Aley v North Shore City Council* [1998] NZRMA 361 at 377:
>
> > On this basis a consideration of the effect on the environment of the activity for which consent is sought requires an assessment to be made of the effects of the proposal on the environment as it exists.
>
> The Court said that it would add to that sentence the words:
>
> > …or as it would exist if the land were used in a manner permitted as of right by the plan.
>
> [68] However, it must be remembered first, that *Bayley* was the case in which the permitted baseline concept was formally recognised, and as we have explained did not deal with the issue which has to be decided in this case. Secondly, it was a case about notification of resource consent applications. The issue that arose concerned the proper application of s 94 of the Act, and the provisions it contained allowing non-notification in cases where the adverse effect on the environment of the activity for which consent was sought would be minor. In that context there could be no need to consider the future environment, because if the effects on the existing environment were not able to be described as minor, there would be no need to look any further.

[18] I would add that when Salmon J in *Aley*[8] used the phrase "as it exists" as a qualifier of "environment", he did so as part of a real world analysis to exclude taking into account permitted activities on the subject site which were permitted by the plan but which were unlikely to ever exist for commercial reasons. His qualifier "as exists" was intended to exclude an extension to "environment" to include "what might be built as of right" in terms of the district plan, whether or not that was ever likely to happen. That was a material distinction in the context of *Aley*. That case was set in Browns Bay, particularly in the commercial area extending down to the beachfront reserve. Existing development within that area was substantially low-rise – one or two levels. The proposal which was the subject of the proceedings was to have a five level building. The height and bulk of the building created concern. Counsel for the applicant argued that the height and bulk of the building should be disregarded because a building of that height and bulk could be erected as of right as a permitted activity. Salmon J was rejecting that submission. In this regard, Salmon J was reversed in the Court of Appeal, in the case of *Bayley*, as set out above.

[19] The Court of Appeal in *Hawthorn* at [84] continues the extended meaning of "environment" established by the dictum in *Bayley*, cited above, changing the words slightly, but not their meaning, to "as it might be modified by the utilisation of rights to carry out permitted activity under a district plan". As I have explained, this notion of "might" applies only to permitted uses and has nothing to do with "likelihood". Likelihood only applies to whether existing resource consents, which are for activities not permitted, will be implemented.

[20] In the recent *Queenstown Central Ltd v Queenstown Lakes District Council Foodstuffs*[9] decision, I have reasoned that [84] should be understood for what it is, a summary. It is a summary of an extensive argument in favour of reading the reference to have regard to the environment in s 104 as to have regard to the future environment. Second, it should also be read in the context of the arguments being presented to the Court by Mr Wylie QC, as he then was, in the context of to what extent there might be future applications for resource consents in a rural residentially

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8 *Aley v North Shore City Council* [1998] NZRMA 361 (HC).
9 *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815.

zoned environment of the Queenstown Lakes District Plan. The detail of the reasoning was set into context.

[21] The Court of Appeal in *Hawthorn* appreciated the importance of context. The Court discussed my decision in *Wilson v Selwyn District Council*.[10] The setting here was in the context of a proposed change, where subdivision was a controlled activity, but there were submissions challenging the right to erect dwellings. The Court of Appeal in *Hawthorn* considered that the context in *Wilson* made it too speculative to consider whether or not building consents might be granted:[11]

> [74] These observations by the Judge express too broadly the ambit of a consent authority's ability to consider future events. There is no justification for borrowing the "fanciful" criterion from the "permitted baseline" cases and applying it in this different context. The word "fanciful" first appeared in *Smith Chilcott Ltd v Auckland City Council* at [26], where it was used to rule out of consideration, for the purposes of the "permitted baseline" test, activities that the plan would permit on a subject site because although permitted it would be "fanciful" to suppose that they might in fact take place. In that context, when the "fanciful" criterion is applied, it will be in the setting of known or ascertainable information about the development site (its area, topography, orientation and so on). Such an approach would be a much less certain guide when consideration is being given to whether or not future resource consent applications might be made, and if so granted, in a particular area. It would be too speculative to consider whether or not such consents might be granted and to then proceed to make decisions about the future environment as if those resource consents had already been implemented.

[22] By contrast, the Court of Appeal in *Hawthorn* distinguished the context:

> [75] It was not necessary to cast the net so widely in the present case. The Environment Court took into account the fact that there were numerous resource consents that had been granted in and near the triangle. It accepted Mr Goldsmith's evidence that those consents were likely to be implemented. There was ample justification for the Court to conclude that the future environment would be altered by the implementation of those consents and the erection of dwellings in the surrounding area.

[23] For these reasons, I do not perpetuate the summation of this line of authority as guidance as to examination of the "existing environment". Second, I do not read the Court of Appeal in *Hawthorn* as intending [84] to be read like a statute, to be applied in any context.

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10 *Wilson v Selwyn District Council* (2004) 11 ELRNZ 79 (HC).

11 *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [74]-[75].

"Analogising" [84] of *Hawthorn*

[24] As counsel before me recognised, the Courts are increasingly finding themselves asked to analogise a resource management problem to fit into the text of [84]. And this case is another example of it; as we will see, counsel could not agree on how the Environment Court was applying *Hawthorn*.

[25] Forest and Bird argue that Solid Energy's existing licence under the Coal Mines Act 1979, removing, as all parties agree, the need for land use consents under the RMA, requires the Court to treat the land use of open cast mining on the Sullivan site in the receiving environment as analogous to "rights to carry out permitted activity under a district plan", as appearing in [84]. Therefore, the adverse effects of such land use need to be taken into account cumulative to the effects of the EMP. It can now be understood that the formal order of the Environment Court, set out above, was a finding against Forest and Bird.

[26] Counsel before this Court disagreed as to exactly how the Environment Court got to this conclusion. Forest and Bird submitted that the Court found that the effects authorised by the coal mining licence did not comprise part of the existing environment because further water and offsite land consents were required, which might or might not be granted. Second, that the Environment Court also erred by saying that there has to be a judgment that the activities causing those effects, being activities authorised by the coal mining licence must be proved to be likely to be implemented.

[27] BCL argued that what the Environment Court did was determine that the Sullivan Mine should not form part of the existing environment because of the need for the additional consents before the mine could operate. But if it was wrong, went on to find that it would be speculative to assume that, if granted, those resource consents would be implemented. Counsel for BCL argued further that it was a fair reading of the decision that the Environment Court found that there would be insurmountable difficulties in the way of establishing the Sullivan open cast mining system.

[28] BCL argued that the Environment Court's analysis of the evidence was effectively finding that the Sullivan Mine would never get underway.

[29] The principal reason for this conclusion was the vast quantities of water required, and the fact that it was agreed that under the *Fleetwing Farms Ltd v Marlborough District Council/Central Plains Water Trust v Synlait Ltd*[12] principles, BCL's escarpment mining proposal had priority for the purposes of applying for water takes and water discharges, so that essentially there would not be enough water left to enable both open cast mines to proceed.

[30] The Environment Court never found that the potential Sullivan Mine could not ever start up with all the appropriate consents.

[31] Against this disputation background, it is appropriate then to set out now the detailed findings of the Environment Court:[13]

> **Does the potential Sullivan Mine comprise part of the legal "existing environment"?**
>
> [43] Returning to the findings of the Court of Appeal in ***Hawthorn***, we have already noted that the Coal Mines Act licence for the Sullivan block is not a permitted activity under a District Plan. Neither is it a resource consent. Nevertheless, for present purposes, we are prepared to find that a legal consent under other legislation, authorising mining activity with no further consents or permissions necessary (particularly under the Resource Management Act), could constitute another manifestation of the "existing environment" which would trigger the need to take account of cumulative effects potentially arising from another proposal such as the EMP. This would be analogous to findings of the Courts in relation to designations not yet given effect to, and the presence of existing use rights.
>
> [44] Importantly on this occasion, we find on the unchallenged evidence discussed above that there are a number of further consents and authorisations that would undoubtedly be required, including land use consents outside the Sullivan CML boundary, land use consents from the regional council in relation to s 13 RMA matters both inside and outside the Sullivan CML boundary; diversions and discharges to water (regional council); water takes and a number of other activities associated with water such as damming, use and diversion (regional council); and discharges to air (regional council). In a little more detail, it is beyond question that at least one of the following would be triggered:

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12 *Fleetwing Farms Ltd v Marlborough District Council* [1997] NZRMA 385 (CA); *Central Plains Water Trust v Synlait Ltd* [2010] NZRMA 237 (CA).

13 *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC 42.

- disturbance of ground within 20 metres of any creek, stream, river or lake;

- diversion of water within the complex wetland environment that is present, involving any waterway that is either a creek, stream, river or lake, or within 20 metres thereof;

- any activity that initiates or accelerates watercourse bank slumping or erosion;

- the taking and damming of water, inside or outside the Sullivan CML area; and

- discharge of any contaminant to water and/or land in circumstances where they may enter water - with a particular likelihood of the presence of considerable quantities of mine-influenced water.

[45] The status of the majority of these activities is discretionary activity, in respect of which there could be either refusal or consent.

[46] In case we are wrong in any of these findings, we turn finally to consider the phrase from ***Hawthorn*** *"where it appears likely that those resource consents will be implemented."*

[47] The appellants submitted, amongst other things, that the fact of the change in the coal mining licence to include open-cast mining, indicated an intention by Solid Energy to exercise it. That is too much of a leap of faith, even for an inference, and would amount to speculation that we simply cannot undertake.

...

Conclusions

[49] The possible open-cast Sullivan mine adjoining the EMP is not, for the reasons recorded, a part of the "existing environment" such as to trigger a need for assessment of cumulative effects.

Application of *Hawthorn* to this case

[32] As already noted, Forest and Bird pursued the argument that the Environment Court was required by *Hawthorn*, at [84], to take into account the activities permitted by the existing coal mining licence, as being analogous to a permitted activity under a plan. By contrast, counsel for BCL were happy to be guided by my recent judgment, *Queenstown Central Ltd v Queenstown Lakes District Council*, arguing that [84] should not be read out of context, but rather consent authorities should pursue a real world analysis of the future environment. BCL's counsel submitted that that approach fitted with the conclusions of the Environment Court, which were

essentially to the effect that it was unrealistic now to presume that the Sullivan Mine would ever be developed, and so inappropriate to embark on assessment of cumulative effects.

[33] BCL also argued that, in any event, they had priority, particularly over the use of the nearby water resources, and in accordance with *Fleetwing* and *Synlait*, they were entitled to have their application considered first, and independently of the prospects of success of any subsequent applications. That argument too leads to the conclusion that there is no basis for a cumulative effects analysis, bringing into the picture adverse effects that would be caused by the Sullivan Mine.

[34] Forest and Bird did not wholly rely on applying [84] of *Hawthorn*. They submitted that s 104(1)(a), requiring to have regard to any actual or potential effects on the environment, is not wholly determinative by some definition of "future environment". They advocated for a broad definition of effects to be considered when determining which cumulative effects are relevant considerations. They emphasised the fact that the whole of s 104 is "subject to Part 2". Counsel submitted that relevant Part 2 provisions support having regard to effects authorised by the Sullivan proposal. Counsel emphasised that the cumulative effects of two open cast mines, the Sullivan and the EMP, "will not ever be considered if they are not taken into account when deciding whether to consent the EMP, which has significant implications for Part 2 matters."

[35] So in short, I heard Forest and Bird's argument as appealing to [84] of *Hawthorn*, but also arguing to be released from any shackles in that paragraph there, by the Court reading the problem raised in this context against relevant Part 2 provisions. By contrast, for the most part, BCL were pursuing an argument that the coal mining licence was not analogous to a permitted use, so [84] should not apply, and that the evidence showed that the possible Sullivan Mine would not be part of the future environment.

General evaluation of the arguments of the appellant and the respondents

[36] Forest and Bird submitted it was beyond contention that the wider Denniston Plateau comprised "significant indigenous vegetation" and "significant habitats of indigenous fauna". Thereby appealing to Part 2 provision, s 6(c):

> **6 Matters of national importance**
>
> In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
>
> ...
>
> (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
>
> ...

[37] The second material fact is that Solid Energy holds a coal mining licence which was granted in 1987 and has a life of 40 years. It has been recently amended by the Minister to allow open cast mining. As a third material fact, Forest and Bird relied on the fact that implementation of the coal mining licence will have inevitable adverse effects on the vegetation and habitat of the Sullivan footprint in the wider Denniston Plateau. That is obvious. There is ample evidence in support of it, and no need to go through that in this judgment. There was evidence that 133.9 hectares of the Sullivan block could be feasibly mined, coming from BCL.

[38] Forest and Bird relied upon the fact that, in June 2011, Solid Energy issued a media release which indicated that it and Bathurst Resources, the owner of BCL, were to cooperate on developing their energy resources on the Denniston Plateau. BCL's chief executive officer, Mr Bohannan, gave evidence that on 21 June 2011 Bathurst Resources and Solid Energy entered into an agreement that sets a framework for their ongoing relationship on the plateau. This includes, for example, "ensuring their respective interests are developed in an integrated way, and various provisions around the possible joint use of any coal conveyance infrastructure to ensure better overall efficiency". There was further confirmation of this in his cross-examination. Solid Energy's 2011 Annual Report advises that the Sullivan Mine is in the feasibility stage, while Forest and Bird argued it had passed the conceptual and

pre-feasibility stages, with the next stage being the detailed design. The variation to the licence to allow open cast mining was granted on 8 October 2012. The Bathurst/BCL executive's (Mr Bohannan's) evidence included the statement:

> We fully intend to extract, as does Solid Energy adjacent...

[39] All these pieces of evidence were assembled by Forest and Bird to argue that the development of the Sullivan Mine is for real, countering the proposition that this is all window dressing to ready Solid Energy for sale.

[40] It hardly needs to be added that the timeframe of excavation of the coal is essentially irrelevant to the values engaged on the long term despoliation of land by open cast mining. So the examination of future environment in this context invites a long term view. Yet there is some lingering concern amongst counsel as to the potential timeframe, again because of the terms of the *Hawthorn* judgment. It will be recalled that in *Hawthorn* resource consents can only be taken into account if they are likely to be implemented. It was pointed out by counsel that the resource consents also have a life for only two years if they are not going to be implemented.

[41] I observed in the *Queenstown Central Ltd v Queenstown Lakes District Council* judgment that all the authorities examined by the Court of Appeal in *Hawthorn* were dealing with relatively mature environments, either already built up commercial areas, such as in *Aley*, or established towns with residential subdivisions. In *Queenstown Central* the context was quite different, because a large area of land zoned rural had been earmarked in the operative plan for intensive development for residential, commercial and industrial use.

[42] Here, the context is different again. We are dealing with a remote area on the West Coast. The EMP mining is intended to take five or six years, the rehabilitation years after that. Bathurst holds exploration permits over all of the plateau, except for the possible Sullivan mine. Other open cast mining by Bathurst is likely to follow.

[43] BCL's response to Forest and Bird began with the submission that determining before the Environment Court what the future environment is likely to be is primarily a factual enquiry. This is an appeal which depends on proof of error

of law to succeed. BCL counsel modified "*Hawthorn* orthodoxy" in order to have a "real world" approach to analysis without artificial assumptions, creating an artificial environment.[14] In that context, they submitted as an adaptation of the orthodoxy:

> It will then be necessary to consider whether there is evidence around the certainty of any future activities that might properly form part of the "existing environment". In the case of unimplemented resource consents it is submitted that will only be appropriate where, for example:
>
> > There is some degree of certainty over:
> >
> > (a) What the terms of the resource consents will be;
> >
> > (b) Whether those resource consents will be granted; and
> >
> > (c) The likelihood of those resource consents being implemented; and
> >
> > In the case of limited resources, there is no impact on the rights and legitimate expectations (ie, priority) of any first-in-time applicant – in this respect the Court needs to be mindful of the long line of authorities that require a decision-maker to consider an application for resource consent without having regard to later-in-time applications.[15]

They then submitted:

> If a possible future proposal fails any of those requirements, then it will not form part of the existing environment for the purposes of assessing the effects of the proposal...

Here, BCL counsel relied both on the Court of Appeal in *Hawthorn* and on my earlier decision in *Wilson*, and on the *Fleetwing/Synlait* priority authorities.

[44] Obviously, the BCL argument before this Court was adapted to its audience. Nonetheless it is, I think, a strong counterpoint to the argument of Forest and Bird. It led to the conclusion by counsel for BCL that there was insufficient certainty as to the future environment to undertake cumulative effect analysis.

[45] It needs to be kept in mind that the issue here is whether or not the Environment Court should embark on a cumulative effects analysis when considering the merits of the escarpment proposal. It is certainly impossible at the

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[14] See *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815 at [85].
[15] From *Fleetwing* to *Synlait*.

present time to do that in detail, in the absence of the detailed design of the proposed Sullivan Mine and information as to its timing and/or staging relative to the EMP mine. Counsel for BCL submitted to do cumulative effect analysis would effectively require the consent authority and the Court on appeal to embark on the speculative exercise of considering what the Sullivan Mine might look like in terms of size, conditions, and time of operation. The decision-maker would then need to go on to consider the even more speculative hypothetical or contingent effects that may or may not arise in the event that other consents are both applied for and then granted. Counsel submitted:

> This is hardly consistent with the "*real world*" determination of the existing environment as espoused by the "modified *Hawthorn*" line of cases.

[46] BCL further submitted that the requirement in s 104(1)(a) to have regard to "any actual and potential effects on the environment of allowing the activity" cannot have been intended to require having regard to hypothetical or contingent effects. Such effects do not readily fall within the definition of effects under the Act.

[47] The definition of effects in s 3 of the RMA is very broad. That is why BCL's submission is qualified. It includes "any potential effect of low probability which has a high potential impact". There is another question as to how contingent that potential effect must be.

[48] The cumulative effect part of the definition is as follows:

> (d) Any cumulative effect which arises over time or in combination with other effects -

The word "potential" is not there as a qualifier of "effect". "Arises" is present tense.

[49] There is no doubt the cumulative effect analysis can often be very valuable. But it is particularly difficult to do here, when the current environment is relatively natural and is undeveloped currently, as it has not been mined for a long time. What the consent authorities are facing are one detailed application ready for processing and the stated intentions to activate a longstanding coal mining licence recently modified for open cast mining.

[50] It is a feature of the RMA that it does not provide for applications, which are potentially rivalrous in some respects, to be heard together. This was perceived as a gap or want in the Act which the Court of Appeal filled in the *Fleetwing* decision, by glossing the Act with a first in time policy. This feature of the Act is the source of the hard answer to the otherwise very powerful proposition of Forest and Bird, that if cumulative effects are not considered now, they never will be. In this case, this is a consequence of the fact that the RMA does not provide for comparative or joint hearings of applications which generate cumulative effects.

[51] The Court of Appeal identified in *Fleetwing* a policy position which essentially lets private market forces dictate the timing and order of hearing applications. So if one rival gets in ahead of the other, that rival's application is heard first. It is heard and considered without taking into account the adverse effects likely to be generated by the second rival, whose application will be heard later.

[52] It is plain that the Supreme Court has been, in the past, ready to revisit the *Fleetwing* line of authorities. It gave leave to appeal in *Synlait Ltd v Central Plains Water Trust*.[16]

[53] But at the present time, the "first come, first served" policy is the law. Both as a matter of fact, and I am told from the bar it has been accepted, BCL is first in time for its RMA consents, ahead of Solid Energy on the Denniston Plateau.

[54] Like the parties, I have found it difficult to interpret the Environment Court decision. It certainly is speculative to forecast the terms of any water rights for the Sullivan Mine. It is possible, as BCL argues, that water rights will not be granted. But the evidence falls far short of proving that, and the Environment Court did not make that decision. Indeed, it clearly said that consents that the Sullivan Mine required might be granted or might not be granted.

[55] BCL argued there were insufficient water resources available for the two mines in the Denniston Plateau. They relied on [42] of the judgment, where the Environment Court heard evidence that the capacity of a sump and water treatment

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[16] *Synlait Ltd v Central Plains Water Trust* [2010] NZSC 32.

plant for the Sullivan Mine would likely be of the order of 176,000 m^3 and 310 litres per second. Together with this paragraph and other paragraphs, they argued that there would be insufficient water to operate the Sullivan Mine, in conjunction with the operation of the Buller EMP. Therefore, the Sullivan Mine was at best a near possibility and, for practical purposes, should be discounted, and certainly should not be taken into account as a permitted activity for the purposes of applying the *Hawthorn* test.

[56] As already recorded above in [38], Forest and Bird relied on the fact that there is an agreement to cooperate between Solid Energy and Bathurst Resources. After discussion with counsel, it appears likely that the two companies would stage their mining on the plateau with Buller's mine going first, and thus recognise the fact there probably are not enough water resources or it is inefficient to run two mines at the same time. For these reasons, it cannot be argued, and was not, that Sullivan Mine is fanciful. It should be understood that [84] of the *Hawthorn* decision leaves intact the qualification on taking into account permitted uses where the activity is only a very remote possibility, so long as it is not fanciful.[17]

[57] I do not think it can be said with confidence that the Court of Appeal in *Hawthorn* ever envisaged [84] being deployed in this sort of context, where the activities over a large locality are going to change. A similar distinction was taken by me in the *Queenstown Central Ltd* case.

[58] I do not think that the uses permitted by a coal mining licence are in any way equivalent to the permitted use aspect of [84]. The fact of the matter is that the activities permitted on the land cannot be done without water rights, and water rights can only be obtained by resource consent, and are not likely to be obtained in the short term.

Resolution of the issue

[59] I distinguish *Hawthorn's* [84], but rely on the earlier paragraphs, as I did in *Queenstown Central Ltd*. There was no need for the Environment Court to frame the

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[17] See [17]-[19] above and *Smith Chilcott Ltd v Auckland City Council* [2001] 3 NZLR 473 (CA) at [26].

issues around the parameters of [84] of *Hawthorn*, as distinct from the preceding paragraphs which explain the need to look at the future receiving environment.

[60] I note, however, that the Environment Court did so because it was responding to the way the case was presented by Forest and Bird.[18]

[61] It is my interpretation of the Environment Court's decision that it did not find that the permitted land uses under the Coal Mines Act licence were equivalent to a permitted activity under a district plan. Their finding was the other way. It is contained in [43]. I emphasise the key sentence:

> ...Nevertheless, for present purposes, we are prepared to find that a legal consent under other legislation, authorising mining activity **with no further consents or permissions necessary (particularly under the Resource Management Act)**, could constitute another manifestation of the "existing environment"...
>
> (Emphasis added)

That, of course, is not the case.

[62] The Court then goes on in [44] to say:

> ...we find on the unchallenged evidence discussed above that there are a number of further consents and authorisations that would undoubtedly be required...

[63] In [45] they say:

> The status of the majority of these activities is discretionary activity, in respect of which there could be either refusal or consent.

[64] Although the Environment Court does not say so then expressly, those findings are rejecting the application of [84] of *Hawthorn* by analogy to apply to permitted uses under the Crown Minerals Act, s 107.

[65] Then we have the reasoning from [46]:

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[18] See [11].

> In case we are wrong in any of these findings, we turn finally to consider the phrase from ***Hawthorn*** *"where it appears likely that those resource consents will be implemented"*.

[66] This appears to be treating the mining licence not as a permitted use, but as a resource consent, as another alternative application of *Hawthorn* at [84]. The Court then goes on to make the finding of fact:

> [47] The appellants submitted, amongst other things, that the fact of the change in the coal mining licence to include open-cast mining, indicated an intention by Solid Energy to exercise it. That is too much of a leap of faith, even for an inference, and would amount to speculation that we simply cannot undertake.

[67] That finding of fact appears to be a finding that it amounts to speculation as to whether or not Solid Energy intend to exercise the coal mining licence. It is not a function of this Court to revisit such findings of fact.

[68] While I consider that in the context before it, the Environment Court could have distinguished [84], but not the preceding reasoning, particularly [34] to [83], the Environment Court did not err in the way it applied [84]. Second, its factual finding of "speculative" as to the future implementation of the Sullivan Mine proposal ruled out, as a matter of law, cumulative effect analysis. This is because the submissions of BCL set out in [43] are applicable, given this finding of fact.

[69] It follows that there is no material error of law in this decision not to embark upon cumulative effect analysis. This appeal is dismissed. Costs are reserved.

Solicitors:
Royal Forest and Bird Protection Society of New Zealand, Christchurch
Chapman Tripp, Christchurch
Gascoigne Wicks, Blenheim

IN THE MATTER	of an application by **HARMONY ENERGY LIMITED** to the **ENVIRONMENTAL PROTECTION AGENCY** under the COVID-19 Recovery (Fast-Track Consenting) Act 2020 to establish and operate the Tauhei Solar Farm in Te Aroha West, Waikato Region
Expert Consenting Panel:	Simon Berry (Chair) Paul Cooney (Member) Steven Wilson (Member)
Date of decision:	19 September 2022
Date of issue:	20 September 2022

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 OF SCHEDULE 6 OF THE ACT

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ACRONYMS

The following abbreviations and acronyms have been used throughout this decision.

AEE	4Sight Assessment of Environmental Effects
ALE	Assessment of Landscape Effects
Applicant	Harmony Energy New Zealand Limited
ARCAE	Assessment of Rural Character and Amenity Effects
CIA	Cultural Impact Assessment
CMP	Construction Management Plan
CTMP	Construction Traffic Management Plan
DESCP	Draft Erosion and Sediment Control Plan
DSI	Detailed site investigation
EPA	Environmental Protection Authority
ESCP	Erosion and Sediment Control Plan
FTCA	Resource Management (Covid-19 Recovery Fast Track Consenting) Act 2020
HEL	Harmony Energy New Zealand Limited
HNZ	Heritage New Zealand Pouhere Taonga
IEMP	Iwi environmental management plans
ITA	Integrated Traffic Assessment
Minister	Minister for the Environment
MPDC	Matamata-Piako District Council
NES-CS	National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2012
NPS-FM	NPS for Freshwater Management 2020
NPS-REG	NPS for Renewable Energy Generation 2011
NZEECS	New Zealand Energy Efficiency and Conservation Strategy 2017-2022
Project	refers to the proposal to establish and operate a large solar electricity generation farm at Tauhei, Te Aroha West
RFAB	Royal Forest & Bird Protection Society of New Zealand Inc
RFI	requests for further information

RITS	Waikato Regional Council Regional Infrastructure Technical Standard
RMA	Resource Management Act 1991
RMP	Restoration Management Plan
RPS	Operative Waikato Regional Policy Statement
SCS	NES-CS Soil Contamination Standards
SMP	Site Management Plan
SMP-CS	Site Management Plan – Contaminated Soil
WRC	Waikato Regional Council
WRP	Waikato Regional Plan

1. INTRODUCTION AND THE PANEL'S DECISION AND REASONS

Introduction

1.1 Harmony Energy New Zealand Limited ("HEL" or "the Applicant") proposes to establish and operate a large solar electricity generation farm on 260ha of farmland (currently two dairy farms) at Tauhei, Te Aroha West ("Project"). The relevant local authorities that would normally consider HEL's resource consent applications for the Project are the Waikato Regional Council ("WRC") and Matamata-Piako District Council ("MPDC").

1.2 HEL applied to the Minister for the Environment ("Minister") pursuant to section 27 of the Resource Management (Covid-19 Recovery Fast Track Consenting) Act 2020 ("FTCA") to have the applications for the Project referred to an expert consenting panel for determination. That application was successful, and, in June 2022, HEL filed applications in accordance with the requirements of Schedule 6 of the FTCA with the Environmental Protection Authority ("EPA") which is tasked under the FTCA with reviewing applications for completeness and administration of the fast-track consenting process.

1.3 The panel convener, Judge Newhook, then appointed an expert consenting panel comprising specialist resource management lawyers, Simon Berry (Chair) and Paul Cooney (Waikato Regional Council and Matamata Piako District Council nominee), and iwi consultant (and Waikato-Tainui nominee) Tipene (Steven) Wilson to consider and determine the HEL application in accordance with FTCA procedures. This is the decision report of that expert consenting panel ("Panel").

1.4 Administrative and logistical support was provided throughout the entire FTCA process by our appointed EPA Project Lead, June Cahill.

1.5 The procedural history of the processing and consideration by the Panel of the information supplied under FTCA procedures is set out in Section 2 of this report.

The Panel's decision and reasons

1.6 The key issues in contention related to potential local adverse effects, particularly in terms of rural character and local residential amenity, landscape and visual effects (including 'glint and glare' effects associated with sunlight reflecting off the solar panels), and alleged diminution of property values.

1.7 The culmination of the Panel's process of deliberations are decisions:

(a) That no hearing was required on any issues on the basis that information available to it was thorough and able to be adequately tested via FTCA procedures; and

(b) To grant the resource consents applied for subject to the conditions contained in **Appendix 1**.

1.8 The findings that give rise to the reasons for the Panel's decision are addressed throughout this report. However, the reasons for the Panel's decision can be summarised as follow:

(a) The Project is consistent with and will promote the purpose of the FTCA in terms of providing

> *"…employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote*

the sustainable management of natural and physical resources."

(b) The Project provides very significant benefits in terms of renewable energy generation that are consistent with:

(i) The objectives of the National Policy Statement for Renewable Electricity Generation 2011 ("NPS-REG"); and

(ii) The matters of national importance to which the NPS-REG applies, namely:

"(a) The need to develop, operate, maintain, and upgrade renewable electricity generation activities throughout New Zealand; and

(b) The benefits of renewable electricity generation."

(c) In terms of benefits, the Project will also:

(i) Result in produce local ecological benefits through the retirement of two dairy farms and significant proposed ecological enhancements, including wetland restoration;

(ii) Educational and cultural opportunities.

(d) Engagement with iwi and hapū has been genuine and effective, and iwi and hapū support the Project, as confirmed via the cultural impact assessments provided.

(e) Potential adverse effects during construction (noise, construction traffic, dust, erosion and sediment control) have been assessed to be minor and can be addressed by conventional means through the implementation of conditions of consent and a Site Management Plan ("SMP").

(f) Due to the nature of the activity, potential adverse effects associated with the ongoing day-to-day operation of the solar farm will be minor.

(g) Potential adverse effects on rural character, residential amenity effects, and associated landscape and visual effects, including glint and glare, will be addressed by planting within, say, four years, via the conditions that the Panel has imposed.

(h) Based on relevant legal authorities, the Panel is not entitled to consider potential adverse effects associated with the diminution of property values.

(i) Given that potential adverse effects fall within a fairly narrow compass and can be adequately addressed, and having regard to the significant positive effects associated with the Project, the Panel is satisfied that:

(i) The Project aligns with relevant national, regional, and local planning instruments; and

(ii) The purpose of the Resource Management Act 1991 ("RMA") is better served by a grant of consent subject to the conditions that the Panel has elected to impose, rather than a decline of consent.

1.9 Indeed, the Panel wishes to observe that its members have seldom observed a Project that delivers such significant benefits with such comparatively few

adverse effects. HEL is to be commended for the care it has taken in conceptualising the proposal in the manner that it has.

Purpose and scope of decision report

1.10 The purpose of this report is to canvass the application and issues arising and to set out the Panel's process of reasoning and findings.

1.11 The scope and structure of this decision report is apparent from the table of contents set out above. For the most part, those aspects of our decision report dealing with the assessment of effects or of relevant planning and policy instruments follow the structure of the 4Sight assessment of environmental effects ("AEE") to facilitate cross-referencing of the decision with the AEE. The exceptions to that approach relate to:

(a) Mana whenua issues which the Panel considers warrants separate and primary consideration.

(b) Addressing positive effects separately from potential adverse effects.

(c) The manner and order in which some of the topics are addressed, e.g., the merging of the assessment of landscape and visual effects with consideration of rural character and amenity and dealing with those issues alongside glint and glare.

1.12 All members of the Panel have read and closely considered the comprehensive 4Sight AEE, all supporting technical reports and the comments made by all persons and bodies invited to comment. In the interests of brevity, it is neither proposed (nor considered necessary) to rehearse (or footnote) in detail the technical assessments and comments provided other than in relation to the main matters in contention.

1.13 As a preliminary comment, we note that the AEE concludes that many of the potential adverse effects are 'less than minor'. Given that we are dealing with an application that is required to be assessed as a discretionary activity (as opposed to a non-complying activity), the Panel's approach has been directed towards assessing whether the potential adverse effects can be adequately addressed (avoided, remedied, or mitigated), not whether the effects are less than minor or more than minor on the basis that those yardsticks are not relevant to our decision-making.

2. PROCEDURAL MATTERS

2.1 This section briefly canvasses the process followed by the EPA and the Panel, and the procedural background in terms of requests for comments, requesting further information, etc.

Panel functions

2.2 The Panel commenced its functions on 19 July 2022. From that date, the Panel was required by Clause 37 Schedule 6 of the FTCA to deliver a decision within 25 days from the date that invited comments closed (16 August 2022), i.e., 20 September 2022, unless an extension is sought. We are pleased to have been able to deliver our decision in the minimum time frame.

Site visit

2.3 The Panel undertook a site visit on Monday, 25 July 2022 accompanied by June Cahill (EPA project lead) as well as Nacre Maiden (Tauhei Farms Manager), Lisa Walker (4Sight Consulting) and Pete Grogan (HEL).

2.4 The route and destinations we visited enabled us to gain a good understanding of the application site, the rural character of the surrounding environment, the roading network and the views that might be gained from the solar panels.

Panel meetings / deliberations

2.5 The Panel convened its initial meeting at the MPDC offices following the site visit.

2.6 Thereafter, the Panel convened weekly meetings by way of videoconference (Microsoft Teams) or on an as needed basis. Videoconference meetings which were held on 19 and 26 August 2022; and 5, 8 and 13 September 2022.

2.7 Much of the Panel's deliberations / decision-making occurred over email as a result of drafting, reviewing and commenting on various drafts of this report.

Invitations for comments and comments received

2.8 On 26 July 2022, as required by, and in accordance with, the FTCA, the Panel issued an invitation to a number of parties and organisations to comment on the applications, requiring comments to be filed by 16 August 2022. The list of invitees is available on the EPA website.[1]

2.9 The EPA had inquired whether the Panel wished to seek comments from the landowners whose land is adjacent to the cable that will carry the power generated by the wind farm to Transpower's substation. However, the trenching of that cable is a permitted activity, which means that the Panel has no jurisdiction to impose conditions (unless volunteered by the Applicant) and we did not wish to give rise to a false expectation in that regard. The Panel therefore decided at its initial meeting not to seek comments from those landowners.

2.10 Sixteen individuals or entities provided comments within the specified time frame.

2.11 Five comments were received outside the specified period. Having regard to the timing of the lodgement of submissions or their content, the Panel accepted and has considered all late comments.

[1] Tauhei_Solar_Farm_Invitee_list_for_website-v2.pdf (epa.govt.nz).

2.12 The key issues raised by the persons / entities that supplied comments are set out in the table attached as **Appendix 2** and are addressed in the relevant sections of this decision report.

HEL response to comments

2.13 HEL submitted its responses to comments, which are available on the EPA website.[2] The comments received as a result of the above comments have also been closely considered and are addressed in the appropriate section of this decision report.

Requests for further information

2.14 The Panel issued two requests for further information ("RFI") to HEL to clarify issues raised by the application or as a result of the comments received, and one to MPDC in relation to the proposed review conditions.

Circulation of draft conditions and related RFIs

2.15 The Panel spent some time reviewing the proposed conditions filed with the application and circulated an amended set of conditions for comment on 29 August 2022 with a requirement for comments by 7 September 2022. At the same time, the Panel requested, via the EPA, further information from HEL and MPDC in relation to condition-related issues.

Comments on draft conditions

2.16 Nine comments on draft conditions were received. These can be accessed at the EPA website.[3] The issues raised are addressed throughout this report.

[2] Comments from invited parties | EPA
[3] Draft conditions | EPA

3. THE SITE AND SURROUNDING ENVIRONMENT

3.1 The site and surrounding environment are fully described in the comprehensive AEE that accompanied the application. This section provides a brief overview of the site / locality.

The site

3.2 The application site comprises two adjoining dairy farms held in six parcels totalling 262.5163ha in area. The area within the solar farm security fence will include approximately 182ha (as shown in Figure 1 below).

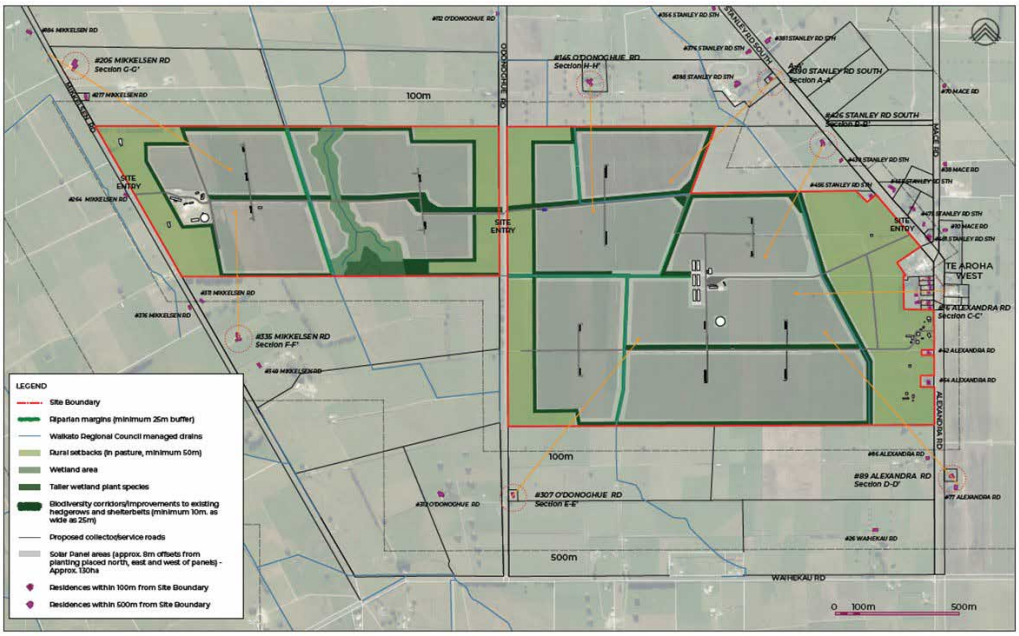


Figure 1 – Aerial Photograph (Site outlined in Blue) supplied by the Applicant.

3.3 The site is owned by Tauhei Farms Limited and is utilised for dairy farming, with a sharemilker in residence. A wholly-owned subsidiary of HEL has a registered option in respect of an easement agreement over the land which contains all the land rights needed to construct and operate the solar farm for 34 years[4].

3.4 The site is located on the Hauraki Plains. It is flat with artificial drains incised throughout, some of which are managed by WRC.

3.5 The site contains three houses and a number of farm buildings, such as dairy sheds.

3.6 There are currently four access locations / vehicle crossings to the site:

(a) The first of these is located off Stanley Road South and services the dairy shed.

(b) The second and third entrances are located on Alexandra Road, servicing a cluster of farm sheds and the southernmost dwelling, and the second dwelling, respectively.

(c) The remaining access is located off Mikkelsen Road and services both the farm sheds and the third, westernmost, dwelling.

[4] The easement agreement is confidential, and the Panel saw no need to review that document.

Vegetation and ecological features

3.7 An assessment of existing vegetation and ecological features of the site was filed as Appendix F to the AEE[5].

3.8 Three vegetation types have been identified on site, comprising:

(a) In the main, exotic pasture grasses, including annual and perennial rye grass, within the paddock areas.

(b) Existing hedgerows, which are located between most paddocks and along the tracks and farm races. These hedgerows comprise predominantly exotic species such as hawthorn and barberry. There are also occasional individual trees scattered throughout the site including oak, maple, willow, and poplar.

(c) Riparian vegetation located along the wetted drain in the western section of the site. This area comprises a more diverse and native dominated composition with species such as ponga, mamaku, kiokio, and tī kōuka as well as some exotic species such as willow, conifers and radiata pine.

3.9 The site survey confirmed the presence (seen or heard) of several native and exotic bird species (14 in total). The survey also indicated that pekapeka (long-tailed bats) may feed and possibly roost on the site. It was considered unlikely for there to be high densities of mokomoko (skinks and geckos) due to the lack of suitable habitat.

Surrounding environment

3.10 As regards the broader environment in the vicinity of the site, the AEE notes that:

(a) The small township of Te Aroha West at the eastern end of the property, which comprises a small number of dwellings, an old dairy factory (now utilised for commercial purposes), the old town hall and a number of commercial/industrial premises.

(b) The wider environment predominantly comprises farmland, with dwellings intermittently dispersed throughout.

(c) The Waihou township is located some 1.5km to the north-west of the site and Te Aroha is located some 4 kilometres to the north.

(d) The Kaimai-Mamaku Forest Park, which includes the Te Aroha summit is located some 6km to the east of the site and extends both north and south.

[5] Appendix F – Ecological Effects Assessment.

4. THE PROJECT AND CONSENTS REQUIRED

4.1 The Panel is thoroughly familiar with all aspects of the proposal, which is fully described in the AEE and need not be repeated here. The purpose of this section is to provide a very broad and high-level overview of the Project and consents required.

Key elements of proposal

4.2 The Project involves the installation of approximately 330,000 monocrystalline solar panels rated to output 186MW DC. As some power is lost throughout the system, the maximum capacity at peak times will be 147MW AC.

4.3 Within the 260ha site, the panels will occupy a 180ha area with the remainder being significant setbacks from surrounding roads and extensive ecological restoration included within the security fence is proposed, comprising:

(a) The restoration of a 6.9ha wetland;

(b) The restoration of 4.8ha of riparian areas;

(c) Boundary planting and biodiversity corridors over an area of 14.9ha; and

(d) Comprehensive weed and pest control.

4.4 The panels will sit 800mm to 1m above ground at the lower end, with a maximum height of 2,900mm to allow for small manufacturer variations, and it is more than likely that most panels will be at or below 2,700mm. The panels will be mounted on a combination of full tables, being 29,440mm long, and half tables, being 14,970mm long.

4.5 Underground cabling and connections are required, being:

(a) An underground connection from the site to the Waihou Substation; and

(b) An underground cable under O'Donoghue Road linking the two parts of the solar farm site.

4.6 Other ancillary infrastructure and equipment includes:

(a) Two customer substations. The substation dimensions will be 3,500mm high x 12,000mm long x 4,200mm wide. The structures will sit on piles approximately 1,200mm above ground level.

(b) A 224 MVA transformer to the east of O'Donoghue Road, adjacent to the substations. The approximate dimensions of the transformer will be a maximum of 7,600mm high x 9,100mm long and 6,900mm wide. A height of 6,700mm for the transformer is likely. The bulk of the transformer will be approximately 4,500m high, with only the bushing extending above that height.

(c) 49 container-like structures housing electrical equipment (inverters, transformers, switchgear), known as 'power stations'. The dimensions of each power station will be 2,886mm high x 6,058mm long x 2,438mm wide. The structures will sit on piles approximately 600mm above ground level.

(d) A spare parts container.

(e) Infrared cameras.

(f) Deer-type fencing for security purposes.

4.7 Earthworks will be required for the trenching of cables and the establishment of bases for infrastructure. All cut material will be re-used within the site, primarily compacted within roadways or at the base of structures. In the event that any soil remains, it will be spread thinly across the site. No import or export of fill (excluding aggregate) will be required.

4.8 Construction will occur over a period of approximately 12 months and will generally follow the sequence set out in detail in the Draft Construction Method Statement filed with the AEE[6], namely:

(a) The planting of the eastern boundary adjacent to Stanley Road South/Alexandra Road Eastern and the western boundary adjacent to Mikkelsen Road. This will allow between eighteen months to two years of growth prior to the completion of the solar farm, increasing the speed of screening for adjacent properties.

(b) Site set up, including the establishment of laydown areas, located either side of O'Donoghue Road, an additional vehicle entrance and access tracks, perimeter fencing, etc.

(c) Mechanical and module work.

(d) Electrical connections and site commissioning, including all internal and external connections and wiring required to enable the site to become operational, including the installation of lighting and cameras.

(e) Planting, weed and pest control.

(f) Installation of Operational Signage and Site Clean-up.

4.9 All construction traffic will be directed to the site via O'Donoghue Road. The Integrated Traffic Assessment ("ITA") outlines three possible options for the management of construction traffic, which can be put into practice either separately or in combination. Details of the selected option(s) will be comprehensively outlined in a Construction Traffic Management Plan ("CTMP"), once delivery and construction details have been refined.

Consents required, reasons and activity status

4.10 The reasons for the application are considered in Section 8 of the AEE.

4.11 Discretionary activity consent is required under Rule 4.2.18.1 of the Waikato Regional Plan ("WRP") in relation to maintaining access for maintenance purposes. All other proposed activities are permitted activities under the WRP.

4.12 The consent triggers under the Matamata-Piako District Plan for the activities proposed are set in Table 10 of Section 10 of the AEE (below).

4.13 The consents have been 'bundled' for the purpose of assessment with the overall activity status as a discretionary activity, bringing into play section 104B of the RMA.

4.14 The creation of the proposed wetland is a permitted activity under the National Environmental Standard for Freshwater ("NPS-FM"), so no consent is required for that.

[6] Appendix Q – Draft Construction Management Plan.

RULE #	Description	Activity Status
2.2.2.2 Education facilities for greater than 10 people	Educational Facilities are defined as: *means land and/or buildings used to provide regular instruction or training and includes pre-schools, schools, tertiary education institutions, works skills training centres, outdoor education centres and sports training establishments.* Given the proposal includes provision for educational/community visits to the site a maximum of once a week, this activity status has been precautionarily applied.	Discretionary Activity
2.2.9.2	Cleanfill activities involving the deposit of 1000m³ or more of material. Cleanfill activities are defined as: *means the depositing of more than 1000m³ of any non-biodegradable material such as rocks, soil and clay excluding combustible materials and hazardous substances but does not include earthworks associated with an approved plan of subdivision or development and on-site farm contouring.* We are advised that MPDC apply the cleanfill provisions to earthworks associated with a development and therefore have conservatively applied this provision.	Discretionary
3.9.1.3	All Zones A sign giving the name and related information concerning places of assembly, education or accommodation facilities, community facility and marae – 2m².	Restricted Discretionary
3.9.5	Development Controls – Sign Letter Height	Restricted Discretionary
8.2.9	New and extensions to existing transformers, substations, and switching stations conveying electricity at a voltage up to and including 66kV and ancillary buildings.	Discretionary
8.2.10	New and extensions to existing substations and switching stations conveying electricity at a voltage including and in excess of 110kV and ancillary buildings.	Discretionary Activity
8.3.5	Other renewable energy generating facilities	Discretionary

4.15 The land contains low levels of cadmium due to historical use of superphosphate, but the concentrations of cadmium within the soil were below the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2012 ("NES-CS"), so the provisions of the NES-CS are not applicable to this proposal.

4.16 However, given the extent of works, a Site Management Plan – Contaminated Soil ("SMP-CS") has been prepared to manage any unexpected discovery of contaminants.

5. MANA WHENUA MATTERS

5.1 This section considers matters relevant to mana whenua, including discussions on sensitive information, consultation, cultural impact assessments from mana whenua/iwi, statutory analysis as it relates to mana whenua/iwi, Iwi Environmental Management Plans and further comments received.

Sensitive information

5.2 No sensitive information brought to the Panel's attention, though all of the Ngaati Whanaunga Cultural Impact Assessment ("CIA") and part of the Ngāti Tumutumu and Ngāti Hauā joint CIA are redacted (as discussed below).

Consultation with Mana Whenua

5.3 The Applicant's advisor developed an Iwi Engagement Plan to assist with hapū/iwi engagement with the plan to be *"tailored to meet iwi/hapū cultural expectations".*[7] This plan outlined numerous engagement methods, summarised initial feedback from seven hapū/iwi, and the further active involvement of three hapū/iwi, Ngaati Whanaunga, Ngāti Rāhiri Tumutumu and Ngāti Hauā. Appendix U of the AEE provided a record of the initial iwi engagement, including those hapū/iwi that had indicated active involvement, declined to be involved or, apparently, did not provide a firm position.

5.4 The consultation undertaken is further summarised in the AEE.[8]

5.5 The Panel considers that this information provides evidence of a genuine attempt by the Applicant to engage with hapū/iwi for this project. The Panel therefore concludes that those with mana whenua interests in the project area were invited to be and could be involved in the application process.

Cultural impact assessments

5.6 Ngaati Whanaunga Incorporated Society prepared a comprehensive CIA on behalf of Ngaati Whanauanga.[9] However, the Applicant, on behalf of Ngaati Whanaunga, requested that the CIA was not published. Ngāti Tumutumu and Ngāti Hauā provided a combined CIA and also requested that the cultural histories in their CIA be redacted.[10]

5.7 The Panel considered these requests and advised via the first minute that the Panel issued that, out of respect for mana whenua, it would:

(a) Not publish Appendix V; and

(b) Accept the redacted version of Appendix W for publication.

5.8 The Panel has been provided with and read unredacted copies of both CIAs. As a consequence of the above requests and actions, the Panel has:

(a) Considered all relevant matters available to it in relation to matters relevant to mana whenua; but

(b) Has confined itself in this report to addressing the non-redacted part of the Ngāti Tumutumu and Ngāti Hauā CIA, and the parts of the CIAs

[7] Application document Appendix T – Iwi Engagement Plan, p 1.
[8] Application document – Assessment of Environmental Effects, 6.1.1.
[9] Application document Appendix V – CIA – Ngaati Whanaunga (subsequently redacted in its entirety per Minute 1).
[10] Application document Appendix W – CIA – Ngāti Tumutumu and Ngāti Hauā (subsequently redacted in part as per Minute 1).

referred to in the Applicant's publicly available documents. These redacted sections provided context.

Ngaati Whanaunga commentary

5.9 The Ngaati Whanaunga rohe includes the Project site and they have provided their history, association with, and interest in the project area. The CIA provided a description of Ngaati Whanaunga values, potential impacts of the proposed activities on those values, their view of the statutory context, and recommendations on how *"cultural values may be avoided, remedied or mitigated".*[11]

5.10 Ngaati Whanaunga noted that:

(a) There are no known wāhi tapu within the immediate site.

(b) The proposal aligns well with the overarching strategic objectives of Ngaati Whanaunga to enhance the wellbeing of people and the environment.

(c) Effects during construction are likely to be primarily related to the proposed earthworks, and it is considered that these can be adequately addressed through erosion and sediment control management/measures.

(d) Once operational, it is anticipated that the proposal will have negligible adverse cultural effects as long as stormwater and health and safety are appropriately managed.[12]

5.11 The Applicant has proffered consent conditions to address effects that Ngaati Whanaunga raised in their CIA and note a commitment to keep Ngaati Whanaunga informed and to enter into a memorandum of understanding ('MoU') with Ngaati Whanaunga.[13]

Ngāti Tumutumu and Ngāti Hauā CIA[14] and commentary

5.12 Norman Hill prepared a CIA on behalf of Ngāti Tumutumu Iwi Trust and Ngāti Hauā (collectively called 'NTNH Iwi' in this section of the decision). This decision does not attempt to duplicate the CIA's content but, rather, summarises the parts of the CIA that the Panel considers material for its decision-making process.

5.13 NTNH Iwi consider cultural principles and values in subsection 3.3. In the Statutory Context section, the CIA notes an outstanding action for the Applicant to engage with Heritage New Zealand Pouhere Taonga ("HNZ") regarding potential *"significant sites, waahi tapu and archaeological areas within the proposed solar farm area."*[15] Comment has been received from HNZ, who have suggested slight amendments to the proffered conditions, which the Panel has adopted.[16]

5.14 Section 6 of the CIA provides an overview of cultural and environmental issues, along with the NTNH Iwi recommendations. The *"key cultural landscape character attributes and values associated with the site"* are summarised as

[11] Application document Assessment of Environmental Effects, p25.
[12] Ibid.
[13] Ibid.
[14] Application document Appendix W – CIA – Ngāti Tumutumu and Ngāti Hauā (redacted in part per Panel's Minute 1).
[15] Ibid, 4.2.
[16] Condition C4.

cultural biophysical landscape values, cultural sensory qualities, and cultural activities and meanings.[17]

5.15 The CIA requests that an archaeological assessment be undertaken. This assessment is the subject of a separate report and is discussed in the AEE where it is noted:

> *"…[t]he field survey undertaken as part of the assessment identified no archaeological material within the paddocks or near the existing ephemeral creeks or farm drain."* [18]

5.16 Further that, given the *"low impact"* earthworks with *"minimal ground disturbance required"*

> *"…there is no reasonable cause to suspect that any archaeological material will be encountered during works due to the lack of historical Māori settlement in the area."*[19]

5.17 Reviewing the two CIAs, the AEE, and the Archaeological Assessment, we accept that conclusion. HEL has nevertheless proffered, and the Panel has imposed, an accidental discovery protocol condition in the event that this conclusion is proven inaccurate .[20]

5.18 Other matters raised or requested in the CIA and the Panel's comments are set out below.

Environmental protection

5.19 The CIA opposes any risk of environmental contamination, including from site construction works and associated earthworks, and in any discharges to waterways and supports the use of environmentally friendly cleaners.

5.20 The Panel considers that the risk of environmental contamination will be appropriately managed by compliance with the conditions that we have decided to impose. Condition D12 addresses the issue of cleaners.

Indigenous biodiversity

5.21 The CIA seeks that the proposal to protect, restore and enhance indigenous biodiversity be a condition of consent, encouraging eco-sourcing of plants, including as part of a visual mitigation landscape plan.

5.22 The Panel considers these and the above aspirations are met either through the imposition of appropriate consent conditions, particularly but not limited to Condition D10, the Restoration Management Plan, proffered by the Applicant and adopted in the consent, or by the ongoing relationship and MoU with the Applicant.

Cultural landscape plan

5.23 The CIA seeks NTNH Iwi involvement in developing a cultural landscape plan. The AEE notes that this will be developed as part of a proposed MoU and Condition D9(c)(i) refers to signage for cultural interpretation/narratives.

[17] Application document Appendix W – CIA – Ngāti Tumutumu and Ngāti Hauā (redacted in part per Panel's Minute 1), p13.
[18] Application document – Assessment of Environmental Effects – p53, Appendix G – Archaeology Report.
[19] Ibid.
[20] Application document – Appendix CC Draft Conditions of Consent; Conditions C24 & C 25.

MoU with HEL

5.24 The CIA seeks to progress a MoU partnership with the Applicant that provides access to socio-economic opportunities (plant supply, landscape and plant maintenance, reducing energy hardship, employment and future business opportunities).

5.25 HEL has committed to progressing an MoU with NTNH Iwi.[21] The Panel notes it is beyond the scope of the Panel's function to comment on or determine the nature of any MoU.

Structural integrity

5.26 The CIA requests that the structures can withstand storm events. The Panel considers this expectation will be met through compliance with the consent conditions proffered by the Applicant and adopted or amended in this decision,

Proposed conditions

5.27 The Applicant proffered consent conditions[22] that the Panel has amended and imposed, which have been discussed above, and which the Panel considers will address cultural considerations and adequately ensure any potential adverse effects on Māori cultural and spiritual considerations are appropriately managed.

Statutory assessment

5.28 In the context of RMA processes, the statutory matters that are generally principally relevant to Māori are set out in sections 6(e) (Māori cultural and spiritual matters), 7(a) (kaitiakitanga) and 8 (principles of Te Tiriti o Waitangi) of the RMA. They state as follows:

> *"6 Matters of national importance*
>
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*
>
> *…*
>
> *(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
>
> *7 Other matters*
>
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*
>
> *(a) kaitiakitanga"*

5.29 Both of these sections apply in the FTCA context. However, the same cannot be said for section 8 of the RMA which, for completeness, states:

[21] Application document – Assessment of Environmental Effects – p27.
[22] Application document – Appendix CC Draft Conditions of Consent.

> *"8 Treaty of Waitangi*
>
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."*

5.30 Rather, the context of FTCA, processes section 8 of the RMA does not apply due to the operation of Clause 31(2) of Schedule 6 of the FTCA, which states:

> *"(2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi)."*

5.31 Section 6 of the FTCA states:

> *"6. In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner that is consistent with—*
>
> *(a) the principles of the Treaty of Waitangi; and*
>
> *(b) Treaty settlements."*

5.32 The Panel has disregarded section 8 of the RMA in favour of this provision for the purpose of assessing the application, including the passage in the AEE that addresses that section.

Treaty settlements

5.33 The AEE[23] discusses:

(a) Two current Treaty settlements:

(i) The Ngāti Hauā Claims Settlement Act 2014; and

(ii) The Ngāti Hinerangi Claims Settlement Act 2021; and

(b) One pending Treaty settlement, the Pare Hauraki Collective Redress Deed 2018.

5.34 The AEE concludes that:

(a) The Ngāti Hauā CIA is in support of the application and the Project is not considered to conflict with the Ngāti Hauā Act.

(b) Ngāti Hinerangi matters of interest, as it relates to the Project, are confined to the cultural values and associations with the Waihou Stream with the effects considered to be negligible.

(c) The Pare Hauraki Collective were consulted regarding the Project with collective members Ngaati Whanaunga and Ngāti Rāhiri Tumutumu providing CIAs in support of the Project.

[23] AEE, Subsections 11.1 – 11.3.

Iwi Environmental Management Plans

5.35 Under subclause 9(1)(h) and 9(2)(g) of Schedule 6 of the FTCA, every consent application must include an *"assessment of the activity against any relevant provisions"* of *"a planning document recognised by a relevant iwi authority and lodged with a local authority."*

5.36 To that end, subsection 10.5 of the AEE assesses Iwi Environmental Management Plans ("IEMP") from Waikato Tainui, Ngāti Hauā, and Hauraki. The assessment against each IEMP summarises sections of the IEMP that the Applicant considers material for its Project. We do not attempt to further summarise the assessment here.

5.37 The Applicant concludes that:

(a) For each IEMP, the proposal aligns with or does not conflict with the objectives, policies and desired outcomes set out in the IEMPs.

(b) The NTNH Iwi "provide a position of support to the proposed TAUHEI SOLAR FARM proposal by Harmony Energy Storage Limited". [24]

The Panel's findings

5.38 In light of the above, the Panel finds that:

(a) HEL has undertaken good faith consultation prior to the formal application and is committed to continuing this relationship throughout the life of the project and beyond, including establishing formal relationship agreements with the three iwi who have provided CIAs.

(b) HEL has acted in a manner that is consistent with:

(i) The principles of the Treaty of Waitangi, and

(ii) Current and pending Treaty settlements.

(c) HEP has appropriately considered relevant IEMPs.

(d) A grant of consent is consistent with the objectives of Part 2 of the RMA as it relates to mana whenua/iwi matters.

[24] Application document – Appendix W – CIA – Ngāti Tumutumu and Ngāti Hauā, p19.

6. ASSESSMENT OF POSITIVE EFFECTS

6.1 Section 19 of the FTCA sets out the factors that are required to be considered when determining whether a project meets the purpose of the FTCA. This includes potential positive effects (benefits) of the Project. This section addresses such effects.

AEE / specialist reports

6.2 The key areas of alignment between the purpose of the FTCA and the project are those set out in Section 9 of this decision report.

6.3 HEL has identified the following positive effects (benefits) of the Project identified in Section 9.13 of the AEE:

(a) The project will provide a significant contribution to New Zealand's target for renewable energy generation, through the provision of electricity for approximately 30,000 New Zealand homes.

(b) The increase in solar energy infrastructure will result in a corresponding decrease in reliance on coal or new hydro in responding to increasing energy needs and will subsequently result in the reduction of New Zealand's carbon emissions relative to kilowatts of energy produced.

(c) The proposal will result in an increased diversification of New Zealand's energy supply in addition to an increased resilience to climate effects because:

(i) Solar farming is a reliable source of energy with a low dependence on weather conditions and can be located away from high-risk areas. The annual output of any solar farm is also highly predictable and can be ascertained to a high degree of accuracy.

(ii) Solar farms can tolerate flooding due to the mounting of panels and infrastructure above ground level.

(iii) The increase in diversity and resilience will also result in a greater security in electricity supply.

(d) Comprehensive ecological restoration is proposed for the site's ecological enhancement, including:

(i) The restoration of the low-lying seepage area with wetland species, resulting in the restoration of a degraded wetland.

(ii) Riparian planting along the wetted drain, which will increase shading of the watercourse to the benefit of biota.

(iii) The replacement of existing exotic hedgerows with indigenous species, enhancing connectivity and biodiversity throughout the site.

(iv) Boundary planting, which will increase the extent of native cover.

(e) The replacement of dairy cattle with sheep farming, which is expected to reduce environmental pressure on the land and the impacts on downstream aquatic ecosystems and water quality through a reduced runoff of nutrients.

(f) Local employment and economic benefits, including an estimated job creation of:[25]

(i) 2,720 hours for system design and engineering;

(ii) 35,520 hours for project and contract management; and

(iii) 14,290 hours per year for operation, maintenance, and asset management.

6.4 A benefit not mentioned in that section of the AEE but which the Panel considers relevant is the proposed provision of educational facilities given that solar energy is a novel form of renewable energy in Aotearoa / New Zealand.

Comments received

6.5 Comments in support of the Project were received from:

(a) Minister for Climate Change (Hon. James Shaw), who commented that the Project:

(i) Is consistent with the National Policy Statement - Renewable Energy Generation.

(ii) Will increase energy generation while displacing greenhouse gas emissions.

(iii) Will increase the resilience of the overall national energy system through diversification.

(iv) Will contribute to the mitigation of climate change and the transition to low emissions economy.

(b) Associate Minister for Arts, Culture and Heritage for the Minister of Arts, Culture and Heritage (Hon. Kiri Allen) supports the intent of the project.

(c) New Zealand Infrastructure Commission (Te Waihanga), Transpower and Ngāti Tumutumu Iwi Trust all support the Project.

(d) The owners / occupiers of 16 Alexandra Road and 38a Seddon Road also support the Project.

Further information received

6.6 HEL's response (via a 4Sight letter dated 1 September 2022) to a question posed by the Panel is helpful insofar as it neatly captures the positive effects that would be foregone if the consents were declined, or construction of the panels were delayed until glint and glare effects were avoided:

> *"…a 3.5 year delay will:*
>
> *(i) deny New Zealand the opportunity to generate circa 900 GWh of clean energy from solar and require it to generate the same from coal-fired production, at a time when it is pursuing ambitious carbon reduction commitments;*

[25] Numbers reported by Green Enco in its '*Tauhei Farm Solar Project – Work Phases and Job* Report, included in the Application as Appendix L.

(ii) risk stifling economic activity post COVID and undermining the purpose of the Fast-track consent process;

(iii) put the entire project in jeopardy due to the uncertainty that will be injected into the development programme in relation to the market, finance, off-take, grid capacity and land; and

(iv) jeopardise the Applicant's ability to bring forward a project which offers New Zealand a wide range of environmental and social benefits beyond clean energy generation."

The Panel's findings

6.7 The Panel:

(a) Accepts HEL's assertions as to positive effects (benefits) of the Project in terms of renewable electricity generation and ecological enhancement;

(b) Finds that a grant of consent would meet the objective of the NPS-REG and be consistent with the matters of national importance identified in the NPS-REG.

7. ASSESSMENT OF POTENTIAL ADVERSE EFFECTS

7.1 There is a range of potential adverse effects associated with the proposal. In this section of our decision report, we address each of these potential adverse effects (generally but not always) in the order in which they are addressed in the AEE under the following subheadings:

(a) The AEE and supporting technical reports filed with the application;

(b) Comments received and HEL's responses;

(c) Any further information requested and provided; and

(d) The conditions of consent proposed by HEL and imposed by the Panel.

7.2 Where no comments have been made nor further information requested in relation to a particular effects category, these subheadings are not included.

7.3 We then set out the Panel's key findings on that issue and express a conclusion on potential adverse effects.

Effects associated with site contamination

AEE / specialist reports

7.4 A detailed site investigation was undertaken in relation to potential site contamination[26]. It is evident from these investigations that the site has been subject to low-level contamination from the application of superphosphate fertilisers, as the concentrations of cadmium in soil exceed the adopted background concentrations.

7.5 However, the concentrations of cadmium reported in all surface soil samples analysed were below the NES-CS Soil Contaminant Standard assessment criteria for the protection of human health (commercial/industrial land use).

Proposed conditions

7.6 The conditions proposed by HEL in relation to site contamination are set out as Condition C11 as part of a Site Management Plan ("SMP"). The purpose of these conditions is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated). This includes managing any unexpected discoveries of contamination.

7.7 The Panel considers that the proposed condition is appropriate and has imposed it as Condition C11, as shown in **Appendix 1**.

The Panel's findings

7.8 In light of all information received and considered, the Panel finds that:

(a) Concentrations of cadmium are below the NES-CS standard.

(b) There are no issues associated with existing and potential site contamination that cannot be addressed by conventional measures, which can be imposed by way of conditions.

[26] AEE Appendix E – Detailed Site Investigation.

Potential construction effects

7.9 The potentially adverse effects associated with the construction of the Project are those associated with dust, erosion and sediment, noise, and construction traffic. The Panel addresses each in turn.

Dust

AEE / specialist reports

7.10 There is potential for dust to be generated during the construction of the Project due to the exposure and stockpiling of soil and movement of construction machinery, which may create potential effects on the surrounding environment.

7.11 Dust effects on the environment may include the exposure of soil surfaces and movement of construction machinery across these surfaces, creating the potential for mobilisation of dust particles and subsequent air quality effects, especially during dry and windy conditions.

7.12 HEL's position is that these effects can be managed by the proposed methods described in the AEE, which will be incorporated into the SMP and Construction Management Plan ("CMP"), which would be required to be prepared and implemented by way of conditions proposed within the AEE (Appendix CC) which the Panel is prepared to impose.

7.13 The management of dust created by the construction traffic is covered in the CTMP.[27] And dust produced from the construction of the plant will be managed by the Project Manager and the Site Manager using the systems included in the Erosion and Sediment Control Plan.[28]

7.14 Such methods include:

(a) Staging of works (to reduce the extent of soil exposed).

(b) Use of a water tanker to dampen exposed surfaces during dry periods.

(c) Covering of exposed soils and stockpiles.

(d) Avoidance of work during adverse weather conditions.

(e) Progressive stabilisation and reinstatement of exposed soil.

7.15 Consent conditions are proposed to manage dust effects. The AEE concludes that with implementation and maintenance of the recommended conditions and methods identified by the AEE, any potential adverse effects in relation to dust will be less than minor.

Comments received and HEL's response

7.16 At least three of the comments received were concerned about construction / traffic dust effects, particularly at the Stanley Road entrance to the application site.

7.17 HEL's response was to the effect that:

(a) Dust suppression measures (per those outlined above) will be in place during the construction phase and managed through the CMP.

[27] Appendix R – Construction Traffic Management Plan.
[28] Appendix AA – Draft Erosion and Sediment Control Plan.

(b) Suppression of dust associated with farming activities cannot be the subject of conditions because farming is a permitted activity.

Further information requested and received

7.18 The Panel requested the following information from HEL:

> *"Mr de Latour has requested that dust suppression measures be implemented at the Stanley Road entrance to the site to address adverse dust effects associated farming activities. HENZL has responded that farming is a permitted activity so that it is not appropriate to impose conditions. The Panel's questions are:*
>
> *(a) Does HENZL consider that dust suppression of farming activities would reduce adverse amenity effects for neighbours?*
>
> *(b) If so, would HENZL be prepared to volunteer appropriate conditions under the principle in Augier?"*

7.19 HEL's response (via a 4Sight letter dated 1 September 2022) was as follows:

> *"The change in farming activity, away from dairy cattle, will result in a significant decrease in traffic (and particularly heavy traffic) utilising this accessway. This will lead to a corresponding decrease in any dust nuisance that may currently be occurring and will positively impact on amenity values for neighbours. Accordingly, it is unnecessary to proffer further conditions relating to dust suppression or maintenance measures for this access.*
>
> *Although the solar farm will result in a significant decrease in existing traffic and dust nuisance associated with this entrance, it is important to note that this entrance will not be utilised by The Applicant. As such, perhaps it would be more appropriate for Mr de Latour to discuss his concerns with the party/parties causing the nuisance."*

7.20 Given this response and the fact that farming is a permitted activity, the Panel cannot take the matter any further.

Proposed conditions

7.21 The conditions proposed by HEL in relation to the control of dust are set out as conditions C9 and C17 in Appendix CC of the AEE. The purpose of these conditions is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.22 The proposed conditions require that operations on the site not to cause any dust which causes a noxious, dangerous, offensive or objectionable effect at or beyond the boundary of the site, and that measures to control dust will be through approval of a finalised Erosion and Sediment Control Plan ("ESCP") and CMP.

7.23 The Panel considers that the proposed conditions are appropriate and has imposed them as Conditions C9 and C21.

The Panel's findings - dust

7.24 In light of the information received and considered, the Panel finds that:

(a) The Panel has no jurisdiction to impose conditions in respect of dust nuisance from farming activities.

(b) The potential generation of nuisance dust during construction can be avoided or mitigated to an acceptable degree by the conventional measures proposed by HEL.

(c) With the implementation of the conditions and methods recommended by HEL in the AEE, and the requirements of the conditions that the Panel has imposed, any potential off-site adverse effects associated with dust generation can be adequately addressed, will be acceptable, and do not preclude or count against a grant of consent to the Project.

Erosion and sediment discharges

7.25 The earthworks proposed are limited to the upgrade of existing access tracks, creation of new access tracks, minor footings for ancillary infrastructure and trenching of cables. The AEE records that while erosion is expected to present a negligible risk due to the site's flat topography and the nature of the works, sediment runoff to drains or waterways presents the potential for adverse effects.

7.26 A draft Erosion and Sediment Control Plan ("DESCP")[29] has been completed by 4Sight for the Applicant. It contains a range of erosion and sediment control measures to manage these effects, including:

(a) Staging of works to limit exposed areas along with progressive rehabilitation.

(b) Undertaking works during favourable weather conditions.

(c) Stabilisation of entrance ways.

(d) Use of silt fences.

(e) Methods for dewatering of trenches.

7.27 The AEE concludes that with the implementation and maintenance of the measures proposed in the DESCP, including regular inspections of any control measures, adverse effects on the receiving environment from erosion and sediment are expected to be less than minor.

Proposed conditions

7.28 The purpose of the conditions proposed by HEL in relation to erosion and sediment control[30] is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.29 In summary, the proposed conditions require:

(a) An ESCP to be submitted to MPDC prior to the commencement of construction with reference to Waikato Regional Council's Erosion and Sediment Control: Guidelines for Soil Disturbing Activities[31] and re-vegetation and / or stabilisation of all disturbed areas is to be completed in accordance with the "Erosion and Sediment Control – Guidelines for

[29] Appendix AA of the AEE.
[30] Set out as conditions C8, C11, C19 and C20 in Appendix CC of the AEE.
[31] A Draft Erosion and Sediment Control Plan is provided in the AEE as Appendix AA.

Soil Disturbing Activities" (WRC Technical Report No. 2009/02 – dated January 2009).

(b) HEL to ensure that those areas of the site where earthworks have been completed are stabilised against erosion as soon as practicable and within a period not exceeding 14 days after completion of any works authorised by this consent. Stabilisation shall be undertaken by providing adequate measures (vegetative and / or structural) that will minimise sediment runoff and erosion to the satisfaction of the MPDC.

(c) HEL to monitor and maintain the site until vegetation is established to such an extent that it prevents erosion and prevents sediment from entering any water body.

7.30 The Panel considers that the proposed conditions are appropriate and has imposed them as conditions C8, C11, C24 and C25.

The Panel's findings – erosion and sediment control

7.31 In light of all information received and considered, the Panel:

(a) Accepts HEL's findings per the AEE and relevant supporting technical reports.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE and to be required by the conditions that the Panel has imposed, any potential adverse effects associated with earthworks in terms of potential erosion and sediment discharges can be adequately addressed, will be acceptable, and do not preclude or count against a grant of consent to the Project.

Noise

7.32 Potential noise effects associated with both construction and the ongoing operation of the solar farm have been addressed in the 'Assessment of Noise Effects' prepared by Styles Group[32]. This assessment concluded that:

(a) The upper limits for construction noise are in accordance with NZS 6803 for long-term projects.

(b) Construction noise levels at sensitive receivers are likely to vary considerably over time, depending on the phase and location of construction.

(c) Construction noise, under the worst-case scenario (i.e., in which multiple machines are working together near a neighbouring dwelling), will readily comply with the permitted standards.

(d) Construction noise will always be below the permitted baseline of 70dB L_{Aeq}.

Comments received and HEL response

7.33 Mr Brendon Putt's comments raised an issue in relation to noise impacts above 35dBA.

7.34 HEL's response was that:

[32] AEE, Appendix I - Noise Assessment.

"Noise will be below permitted standards and will not occur at night."

Proposed conditions

7.35 The purpose of the conditions proposed by HEL in relation to noise[33] is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.36 The proposed conditions require compliance with the Construction Noise Standard and submission of a CMP to provide measures to be undertaken to ensure compliance.

7.37 The Panel considered that the proposed conditions required modification to address concerns raised by MPDC. These modifications are discussed in Section 10 of this Decision. The amended conditions are considered appropriate by the Panel and have been imposed as Conditions C9 and C18 to C20.

The Panel's findings - noise

7.38 In light of all information received and considered, the Panel:

(a) Accepts HEL's findings per the AEE and relevant supporting technical reports.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE and to be required by the conditions that the Panel has imposed, any potential off-site adverse effects associated with noise can be adequately addressed, will be acceptable, and do not preclude or count against a grant of consent to the Project.

Construction traffic

7.39 The AEE includes an ITA which assesses the potential construction traffic effects of the proposal. As all construction traffic will enter and exit the site of O'Donoghue Road, the AEE addressed only the effects of construction traffic via this road.

7.40 O'Donoghue Road is an access road under the One Network Road Classification. It operates as a two-way road with a default speed of 100km/hr, which is generally straight, level and partially sealed.

7.41 The traffic associated with the Project has an estimated annual daily volume of 50 vehicles per day, 10% being heavy commercial vehicles ("HCV").

7.42 The AEE states that, over the 12-month construction period, between 60 and 260 construction staff will be active on-site at any one time, with travel predominantly during the morning and evening peak periods.

7.43 The AEE states that:

(a) There will be between 55 and 236 vehicles arriving and leaving the site each day. In addition, between 2 and 186 HCV deliveries are anticipated each month, with the busiest month resulting in approximately 16 HCV per day.

(b) Even in a worst-case scenario, this is not anticipated to have a noticeable effect on the wider roading network.

[33] Set out as conditions C9 and C16 in Appendix CC of the AEE.

7.44 Three management options are proposed in the AEE to mitigate the effects of construction traffic associated with the Proposal to a low level. For each management option, the AEE provides timing requirements for the arrival and departure of staff and HCVs. The AEE recommends that the selection of the preferred management option(s) be deferred until the preparation of a Construction Traffic Management Plan ("CTMP").

7.45 The AEE:

(a) Recommends several conditions (see also Appendix CC of the AEE) to appropriately mitigate any potential adverse construction traffic effects.

(b) Concludes that with the adoption of these management options and the implementation of the suggested conditions, adverse effects associated with construction traffic will be mitigated such that they are less than minor.

Comments received and HEL's response

7.46 Mr Brendan Putt's comments raised an issue in relation to the use of O'Donoghue Road for construction traffic, creating delays and disruption.

7.47 HEL's response is that:

> *"CTMP will ensure delays and disruptions for neighbours are minimised."*

Proposed conditions

7.48 The purpose of the conditions proposed by HEL in relation to construction traffic is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.49 The proposed conditions require the Construction Traffic Management Plan to set out measures relating to construction traffic, including roles and responsibilities, staging of works, vehicle movements, points of access and parking/loading locations, hours and nature of work, restrictions on the direction of travel, proposed upgrades, tracking of dust and debris, and communications with local residents.

7.50 The Panel received several comments on HEL's proposed conditions. HEL helpfully responded by offering two additional conditions which impose an obligation on the Applicant to:

(a) Undertaken three-monthly inspections of O'Donoghue Road; and

(b) Repair and requirements around the repair of roads that are damaged.

7.51 HEL accepts those conditions which have accordingly been imposed by the Panel.

7.52 The Panel considers that the proposed conditions are appropriate and has imposed them as Conditions C9, C10, C14 and C15.

The Panel's findings – construction noise

7.53 In light of all information received and considered, the Panel:

(a) Accepts HEL's findings per the AEE and relevant supporting technical reports.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE and to be required by the conditions that the Panel has imposed, any potential off-site adverse effects associated with construction traffic can be adequately addressed, will be acceptable, and do not preclude a grant of consent to the Project.

Operational traffic effects

AEE / specialist reports

7.54 The ITA also contained an assessment of operational traffic effects. The AEE advises that operational traffic effects will be less than minor and will generally be restricted to maintenance visits on a quarterly basis with a light vehicle and educational visits occurring a maximum of once per week (likely outside of) holiday periods and winter months.

7.55 Accordingly, the AEE concludes that the scale and extent of these visits will not create any perceivable effect on the traffic network.

Comments received and HEL response

7.56 Stuart and Debbie Vincent's comments raised a concern regarding traffic on O'Donoghue Road.

7.57 HEL'S response is that:

> *"Following the completion of construction, traffic movements relating to the solar activity will be very minimal and are unlikely to result in any discernible effect."*

Proposed conditions

7.58 The purpose of the conditions proposed by HEL in relation to operational traffic[34] is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.59 The proposed conditions require that traffic associated with educational / community / iwi visits enter the site via O'Donoghue Road and implement an Operational Management Plan post construction.

7.60 A draft Operational Management Plan is presented in the AEE in Appendix S, although the final Operational Management Plan will be certified by the MPDC prior to the site becoming operational[35].

The Panel's findings

7.61 In light of all information received and considered, the Panel:

(a) Accepts HEL's findings per the AEE and relevant supporting technical reports.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE and to be required by the conditions that the Panel has imposed, any potential off-site adverse effects associated with operational traffic can be adequately addressed, will be acceptable and do not preclude or count against a grant of consent to the Project.

[34] Set out as conditions D2 and D9 in Appendix CC of the AEE.
[35] Refer Conditions B13 and D11.

Glint and glare

7.62 The potential adverse effects associated with glint and glare from the solar panels being seen and affecting the amenity of households in the vicinity was raised by a number of owners and occupiers in the vicinity. Indeed, this was the subject of the most pressing local concern, alongside concerns about rural character and amenity, and negative impact on property values.

7.63 Given those concerns and the relative novelty of this technology in New Zealand, the Panel paid particularly close attention to this issue, including inquiring into the credentials of HEL's technical advisors on glint and glare effects, Pager Power who prepared a solar photovoltaic glint and glare report[36] to assess potential glint and glare effects.

Pager Power credentials

7.64 Pager Power's credentials to address this issue are impressive in terms of their breadth of international experience and expertise.

7.65 Pager Power has developed a methodology for assessing glint and glare effects based on information obtained through consultation with stakeholders by reviewing the available guidance, studies and Pager Power's practical experience. This methodology has been used by Pager Power in undertaking over 700 glint and glare assessments in over 50 countries, including throughout the UK and Europe[37].

Pager Power methodology

7.66 The Power Pager methodology is addressed in section 9.5 of the AEE, and involves:

(a) Identifying receptors in the area surrounding the proposed development.

(b) Considering direct solar reflections from the solar panels towards the identified receptors by undertaking geometric calculations.

(c) Considering the visibility of the reflectors from the receptor's location. If the reflectors are not visible from the receptor, then no reflection can occur.

(d) Determining (based on the results of the geometric calculations) whether a reflection can occur and, if so, at what time it will occur, including its duration throughout the year.

(e) Considering both the solar reflection from the solar panels and the location of the direct sunlight with respect to the receptor's position.

(f) Considering the solar reflection with respect to the published studies and guidance.

(g) Determining the level of expected impact (i.e., no impact, low, moderate, major).

7.67 It strikes the Panel that this methodology is similar to a landscape / visual assessment (with elements of shading studies).

[36] AEE, Appendix H-Power Pager Solar Photovoltaic Glint and Glare Study.
[37] https://www.pagerpower.com/what-we-do/, accessed, 19 August 2022.

Application of Pager Power assessment methodology to the Project

7.68 Twenty-five 'road receptors' were identified from several points on Stanley Road South and Alexander Road and the AEE noted the following:

(a) Solar reflections were geometrically possible for 24 of the 25 road receptors.

(b) 13 of the 25 receptors were identified as being 'moderately' screened by existing vegetation and / or buildings.

(c) Any viewing of the panels from the remaining road receptors was stated to be intermittent and outside the driver's field of vision (50 degrees on either side or straight ahead).

7.69 Forty-six 'dwelling receptors' were identified from properties in the surrounding area and the AEE noted the following:

(a) Solar reflections are geometrically possible from all 46 dwelling receptors.

(b) Solar reflections may be partially visible from 13 of these 46 receptors, but the remaining receptors will be screened by existing vegetation and / or buildings.

(c) For all dwellings where solar reflection is possible, it is predicted that solar reflection would occur over the summer months, with the worst-case scenario being an impact of ten minutes per day.

7.70 Per the AEE[38], the Pager Power Assessment concludes that the solar farm will have:

(a) 'No impact' on road users, and therefore, no mitigation is required.

(b) A 'moderate' impact on dwelling receptors so that some form of mitigation is therefore required.

7.71 In light of the Pager Power findings, HEL proposes the following mitigation measures in respect of the 13 dwelling receptors discussed above:

(a) In the medium to long term, mitigation will be provided through the landscape planting proposed by the Application.

(b) In the interim, either temporary screening will be used, or other "site–specific" mitigation measures will be considered (e.g., shade cloth).

7.72 However, the AEE notes that adverse visual effects associated with the use of shade cloth are less likely to be tolerated than occasional glint / glare. HEL has therefore undertaken to plant both the easternmost and westernmost boundaries of the site prior to the commencement of construction, thus reducing the extent of temporary effects. In doing so, the AEE states that full screening will be achieved approximately 2.5-3 years after the completion of the solar farm construction.

7.73 Finally, the AEE discusses the permitted baseline under the Matamata – Piako District Plan, which would allow for the construction of a large building, such as a calf raising shed, in any permitted location on the site.

[38] Application document – Assessment of Environmental Effects - subsection 9.5, page 47.

7.74 Overall, the AEE concluded that:

(a) Prior to mitigation, a moderate impact is predicted for 13 of the 46 dwelling receptors and no impact is predicted for the other 33 receptors.

(b) Adverse effects will be minor for approximately three years, after which time full screening will be established via landscape planting, and no discernible effect will occur.

(c) A 'low impact' is predicted on road receptors which will reduce to 'no impact' once the landscape planting is established, completely screening the solar farm from Stanley Road and Alexander Road.

Comments received and HEL's response

7.75 The comments made by most (if not all) people within the vicinity of the Project site raised issues in relation to glint and glare, which included the following.

7.76 Local residents, Brendon Putt, Sandra Pederson and Cecil de Latour, and Jacobus and Susan Tessellar expressed concerns about glint and glare and local residential and rural amenity, including requests that all planting be required to be in place prior to construction beginning and for temporary screening until planting is established.

7.77 On 1 September 2022, provided a comprehensive and helpful further commentary on potential glint and glare, including an appendix commenting on the effects on 11 receptors. This analysis concluded that in relation to 7 of the 11 receptors:

> *"Actual adverse effects arising from glint and glare are anticipated to be less than minor."*

7.78 In the case of Mr De Latour and Ms Pedersen, the studies showed there was no anticipated glint and glare effect.

7.79 The glint and glare effects on the other four receptors are anticipated to be "de minimis", i.e., in plain English, so trifling that they are entitled to be, from a legal perspective, ignored.

7.80 The letter also helpfully identified that there are a range of factors, e.g., cloud, existing screening, etc., which have not been factored into the Power Page glint and glare assessment and which would likely further reduce potential effects. The letter points out that the Pager Power assessment identifies the theoretical worst case; however, the factors that were just listed suggest that actual effects will be considerably less.

Further information requested and received

7.81 The Panel asked HEL the following question:

> *2. "The AEE states that full screening will be achieved by screen planting in 2.5-3 years after the completion of the solar farm. The Panel assumes that, until then, there will be a moderate adverse effect on 13 'dwelling receptors' as a result of glint and glare until screen planting becomes fully effective. The Panel wishes to understand the duration of glint and glare effects from the commencement of construction rather than completion. Please:*

(a) Advise whether glint and glare effects on these receptors will arise prior to the total completion of the solar farm? If so, what will be the total period of time that glint and glare effects will affect those 13 dwelling receptors until full screening is achieved? How would you characterise those effects?

(b) Having regard to the time period specified in your response to (a) above, please:

(i) Quantify (or provide a best estimate) of the opportunity cost in terms of delayed electricity generation (or other appropriate metric); and

(ii) Advise any other adverse consequences for HENZL, commercial or otherwise -

as a result of delaying construction of the panels until that glint and glare effect is completely avoided."

7.82 The purpose of this question was to enable the Panel to compare potential adverse effects on people within the vicinity as compared with the disadvantages / costs to the HEL associated with waiting until those effects are avoided by screen planting, as commentators have requested.

7.83 HEL's response sets out a comprehensive analysis of the threats to the Project resulting from a delay, having regard to a number of factors, including financial arrangements and uncertainty for investors that would render the Project unviable.

7.84 The Applicant's position was summarised thus:

"…a 3.5 year delay will:

(i) deny New Zealand the opportunity to generate circa 900 GWh of clean energy from solar and require it to generate the same from coal-fired production, at a time when it is pursuing ambitious carbon reduction commitments;

(ii) risk stifling economic activity post COVID and undermining the purpose of the Fast-track consent process;

(iii) put the entire project in jeopardy due to the uncertainty that will be injected into the development programme in relation to the market, finance, off-take, grid capacity and land; and

(iv) jeopardise the Applicant's ability to bring forward a project which offers New Zealand a wide range of environmental and social benefits beyond clean energy generation."

7.85 The Panel finds these points very compelling given the purpose of the FTCA and the NPS-REG, which we are required to place significant weight on in making our decision on this application, particularly given the narrow compass of potential local adverse effects and their duration.

Proposed conditions

7.86 No condition is expressly identified in the 'Glint and Glare' section of the AEE. However, in order to address potential adverse landscape and visual effects, HEL proposes a condition that would require HEL to implement landscape planting along the easternmost and westernmost boundary of the site in the first planting season following the grant of the consent (discussed further in this context below).[39] Given that we are dealing with a 'line of sight' issue, it follows that this mitigation measure, i.e., screening, would also mitigate glint and glare effects.

7.87 The purpose of this proposed condition is twofold:

(a) In the context of glint and glare, to mitigate the adverse glint and glare effects caused by the solar farm on the affected receptors.

(b) The timing requirement for the screen planting is intended to reduce the extent of the temporary adverse glint and glare effects, with significant screening anticipated to be present by the time construction of the solar farm is completed.

7.88 The Panel considers that the proposed condition is appropriate and would be effective and has imposed it accordingly.

The Panel's findings

7.89 In light of all information received and considered, the Panel finds that:

(a) Pager Power is well qualified to be assessing glint and glare effects, and the methodology they have applied in assessing glint and glare effects is robust and well tested. The Panel accepts their findings.

(b) Glint and glare effects have the potential to affect 25 road users and 46 dwellings. Of the 46 dwellings, there may be a 'moderate' impact on 13 of them, but that these potential adverse effects are less than minor or de minimis.

(c) The implementation of the conditions and methods proposed by HEL to achieve mitigation by way of landscape planting, which is required by the conditions imposed by the Panel, will mitigate this moderate effect within a 3.5 year period.

(d) Delaying the implementation of the Project until such effects are completely avoided would place the viability of the Project at risk and would be contrary to the objectives of the FTCA and the NPS – REG. granting

(e) Any adverse glint and glare effects will be experienced by a relatively small number of locals for a temporary period and will eventually be avoided.

7.90 Many of the above comments apply to the following section in terms of potential local adverse rural character and amenity and landscape / visual effects.

[39] See condition C5 of Appendix CC.

Landscape and visual effects / rural character and amenity effects

7.91 Landscape and visual effects, on the one hand, and rural character and amenity, on the other, are dealt with in separate sections of the AEE. However, the Panel considered that these matters are so closely related in terms of the comments received and measures available to address adverse effects that the two could be addressed together for the purpose of deliberations and this decision report.

AEE / specialist reports

7.92 Two technical reports are relevant to these potential adverse effects:

(a) An Assessment of Landscape Effects ("ALE") has been provided and is discussed in the AEE[40].

(b) An assessment of rural character and amenity effects ("ARCAE") has been provided and is discussed in the AEE[41] with reference to the appropriate sections of the ALE and in Appendix J of the AEE.

7.93 The AEE concludes that the landscape character of the Project site can be characterised as rural in nature, with a low level of natural character. This rural character was observed during the Panel's site visit.

7.94 The visual catchment of the site includes surrounding land, from which parts of the site will be visible. However, the entire site is not visible from any one location due to topography and the existing built environment. This visibility reduces significantly once planting is established so that views into the site are largely eliminated, with the exception of some viewpoints near the wetland from which a small portion of the site can be observed.

7.95 The proposal has been designed to mitigate potential adverse landscape and visual effects / rural character and amenity effects. The ARCAE concludes:

> *"…that the proposal can be considered to have a minor adverse effect on rural character in the short term (until approximately three years post construction), after which effects will reduce to less than minor."*

7.96 The proposed planting strategy and setbacks will reinforce the open and natural character of the landscape setting and integrate the low-level panels behind 20 – 30 hectares of planting. Further, the proposed planting provides ecological benefits and proposes the use of indigenous vegetation while also drawing on iwi values.

7.97 The Applicant proposes early planting and ecological restoration along the front of 264 Mikkelson Road (the western boundary) as this is the most sensitive visual receptor and will provide 18 months to two years of growth by the time construction is completed.

Comments received and HEL's response

7.98 Several comments were received in relation to landscape and visual effects / rural character and amenity.

7.99 The Vincents and the Environmental Defence Society commented that the view of Mt Te Aroha will be affected by the Project and queried the effectiveness of proposed planting features in mitigating elevated views.

[40] Application document – Assessment of Environmental Effects – subsection 9.6; Appendix J – Assessment of Landscape Effects and Graphic Supplement.
[41] Application document – Assessment of Environmental Effects – subsection 9.11.

7.100 In response, HEL noted its assessment that the views from Mt Te Aroha are constrained by the bush cover, the existing visual environment, the distance of the Project site from Mt Te Aroha, and the recessive visual nature of the solar panels. The Panel notes the proposed Project site's current use for dairy farming and its proposed use as a solar farm with the proposed mitigation measures.

7.101 Owners / occupiers of properties in the vicinity, Ms Pedersen, the Tesselaars, Mr Putt and Mr De Latour expressed concerns about visual effects until planting is established. Some of the comments noted a preference for construction not to occur until planting is established and / or for temporary screening to be put in place until planting is established.

7.102 MPDC is supportive of the proposed landscaping and ecological restoration, suggesting some amendments to conditions relating to management plans. In response, HEL accepted these amendments, and the Panel has similarly accepted the amendments.

7.103 HEL's response reiterated the proposed landscaping and visual measures to mitigate glint and glare, the more than 200m setback between Stanley Road South and the proposed landscaping, and the predicted less than minor visual effect.

7.104 HEL also reiterated its initial assessment that the adverse landscape effects from the use of artificial screens would be significantly greater than the effects arising from the Project.

Further information requested and received

7.105 In its request on 29 August 2022, the Panel asked HEL for further information to assist the Panel in understanding the duration of glint and glare effects from the commencement of construction rather than completion. In that regard, it was understood that the mitigation measure for glint and glare are effectively the same as for landscape and visual effects, i.e., effective screening.

7.106 As noted above, the Panel also sought clarification on the opportunity costs and other adverse consequences in the event of delaying construction of the panels until the glint and glare effect (and, almost by definition, landscape / visual / rural character and amenity effects) are completely avoided by screening.

7.107 The Panel accepts that the effect of delaying implementation of the Project until glint / glare and landscape / visual effects would be significantly adverse to the point that it would put the viability of the Project at risk.

Proposed conditions

7.108 The conditions proposed by HEL in relation to landscape and visual effects / maintenance of rural character and amenity are set out as conditions C5 and D8 in Appendix CC of the AEE. The purpose of these conditions is to ensure that these potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.109 In essence, what the proposed conditions require are that the easternmost and westernmost boundaries be planted in the first planting season following the granting of the consent, development and implementation of a Restoration Management Plan post construction. A draft Restoration Management Plan is presented in the AEE in Appendix O, though the final Restoration Management Plan will be submitted for certification by MPDC no later than 30 working days following the site becoming operational.

7.110 The Panel considers that the proposed conditions are appropriate and have imposed them as Conditions C5 and D10.

The Panel's findings

7.111 In light of all information received and considered (including comments and further information received), the Panel:

(a) Accepts HEL's findings per the AEE and relevant supporting technical reports.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE, and to be required by the conditions that the Panel has imposed, any potential off-site adverse effects associated with potential adverse landscape and visual effects / rural character and amenity effects, the Project can be adequately addressed via conventional measures and will be acceptable.

(c) Finds that:

(i) Delaying the implementation of the Project until such effects are completely avoided would place the viability of the Project at risk and would be contrary to the objectives of the FTCA and the NPS – REG.

(ii) The consequences of any delay would significantly outweigh the moderate adverse landscape and visual effects / rural character and amenity effects that will be suffered by a relatively small number of locals for a temporary period.

(d) With the implementation of the conditions and methods recommended by HEL in the AEE and to be required by the conditions that the Panel has imposed, any potential adverse effects associated with landscape and visual effects and rural character and amenity effects can be adequately addressed, will be acceptable, and does not preclude or count against a grant of consent to the Project.

Potential reduction of property values

7.112 A number of comments made by local landowners expressed a concern that their property value would be reduced as a result of the local adverse effects of the Project, principally those local effects in terms of glint and glare and adverse landscape / visual and rural amenity effects just addressed. It is, therefore, appropriate to address that effect here.

7.113 This issue was not addressed in the AEE on the basis that we assume that adverse effects on property values do not, for the reasons outlined below, comprise adverse effects for the purpose of assessing an application under the RMA and/or FTCA.

Relevant legal principles

7.114 The extent to which a potential diminution of property values in the context of resource consent applications or notices of requirement has been considered many times for many years. The authorities have all consistently held that a potential reduction in the property value is not relevant as a stand-alone effect but rather as a proxy for the adverse effects that may result in that alleged devaluation.

7.115 In *North Canterbury Gas Ltd v Waimakariri DC,*[42] the Environment Court acknowledged that:[43]

> *"The Courts have held in cases involving disputes as to valuation effects that the evidence is often speculative and unhelpful, and that physical effects on the environment are usually of more importance to the case."*

7.116 In *Tram Lease Ltd v Auckland Transport*[44]*,* the Environment Court provided a helpful summary of observations by the Environment Court in several other judgments in relation to the Court's view on the adverse effects a project may have on property value[45]. It stated that:

> *"The starting point is that effects on property values are generally not a relevant consideration, and that diminution of property values will generally simply be found to be a measure of adverse effects on amenity values and the like.*[46]
>
> *Similarly in Bunnick v Waikato District Council*[47]*, the Court held that if property values are reduced as a result of activities on an adjoining property, then any devaluation experience would no doubt reflect the effects of that activity on the environment. The Court held that it was preferable to consider those effects directly rather than the market's response, because the market can be an imperfect measure of environmental effects."*

The Panel's findings

7.117 In making its findings, the Panel is bound by the decisions of the Environment Court. Based on the well-established legal principles outlined above, the Panel finds that the potential diminution of property values as a result of adverse effects is not a relevant consideration in determining whether resource consent should be granted. On that basis, we are required to disregard the comments raising this issue.

Ecological effects

AEE / specialist reports

7.118 An assessment of ecological effects has been provided and is discussed in the AEE[48]. The AEE concludes that the ecological values of the site are 'low' due to its highly modified nature, and the overall ecological impact has been assessed as 'very low'. That said, some ecological issues need to be considered, in particular:

(a) Site monitoring indicates that pekapeka (long-tailed bats) are utilising the site for commuting, feeding and, potentially, roosting. HEL proposes that any site lighting will be designed to be unobtrusive and minimise any effects on the pekapeka.

(b) There is potential for sediment discharge, although HEL considers earthworks will be limited in extent and will have in place appropriate sediment and erosion measures.

[42] *North Canterbury Gas Ltd v Waimakariri DC* EnvC A217/02 at [86].
[43] *North Canterbury Gas Ltd* at [86].
[44] *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137.
[45] at [57]-[59].
[46] *Foot v Wellington District Council,* EnvC W073/98 at [256].
[47] *Bunnik v Waikato District Council,* EnvC A42/96, page 6.
[48] Application document – Assessment of Environmental Effects – subsection 9.7; Appendix F – Assessment of Landscape Effects and Graphic Supplement.

7.119 Proposed protection of existing trees, restoration planting, wetland restoration, and unobtrusive lighting lead the AEE to consider the ecological effects of the Project positive, resulting in an overall ecological impact of 'Net Gain'.

Comments received and HEL's response

7.120 The Royal Forest & Bird Protection Society of New Zealand Inc ("RFAB") provided a comment that noted concern at the impact on the habitat and natural behaviours of pekapeka and raised two questions:

> *"(a) If lighting within the site is not a deterrent would the structures themselves have any effects on bats and their habitat?*
>
> *(b) Whether bats are anticipated to be able to continue to use the area within the solar farm generally as a foraging habitat?"*

7.121 RFAB suggested changes to the conditions to:

(a) Address lighting effects on the pekapeka, including the need for monitoring;

(b) Support the retention of existing trees;

(c) Protect the pekapeka's habitat in any vegetation replacement; and

(d) Pest management (particularly wasp control).

7.122 HEL provided a memorandum in response to ecological concerns, including those related to bats[49]. HEL's comments were to the effect that:

(a) Its Ecological Effects Assessment and the memorandum concludes that the Project will avoid any adverse effects on bats, and wider ecology effects will be negligible or low. They, therefore, consider that mitigation is not required but have nevertheless offered mitigation in the form of additional plantings, and appropriate lighting has been offered, with an anticipated result of an overall increase in ecological benefit.

(b) Reference was also made to the retention of trees required by draft condition C17 and conditions requiring planting.

(c) A pekapeka monitoring condition is not appropriate as such a condition does not seek to manage an environmental effect but, rather, may provide *"desirable information from an academic standpoint."*

7.123 HEL corrected its draft lighting condition C27(c) from 20 lux to 0.3 lux and required infrared security lighting throughout the site to reflect the ecological recommendations.

7.124 Following discussions with WRC staff, HEL agreed that two weirs are added as part of the wetland area. WRC raised an issue as to whether the weirs require resource consent.

7.125 HEL's position was that no consent was necessary or, in any event, that it fell within the scope of its application. Either way, HEL developed Condition E4 requiring detailed information to be supplied about the weirs and their effects and the Panel has imposed that condition as requested.

[49] Hannah Mueller memorandum dated 22 August 2022.

Proposed conditions

7.126 The conditions proposed by HEL in relation to ecological effects are set out as conditions B14, C5, C8, C11, C15, C23, D8 and D9 in Appendix CC of the AEE. The purpose of these conditions is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.127 The Panel notes the comments and suggestions proposed by the Society. Based on the bat monitoring information that the Applicant provided, the proposed retention of existing trees and the required planting, the Panel does not consider it necessary to impose more stringent pekapeka monitoring conditions. Further, the Panel has adopted the amended lighting and pest management conditions.

7.128 The Panel considers that the proposed conditions are otherwise appropriate and have imposed them, with minor amendments as appropriate, as Conditions B14, C5, C8, C11, C17, C28, D10 and D11.

The Panel's findings

7.129 The Panel notes RFAB's comments. Based on the bat monitoring information that the Applicant provided, the proposed retention of existing trees and the required planting, the Panel does not consider it necessary to impose monitoring conditions.

7.130 The Panel has also imposed amended lighting and pest management conditions.

7.131 In light of all information received, including comments received and HEL's response, the Panel:

(a) Accepts HEL's findings per the AEE.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE, and to be required by the conditions that the Panel has imposed, any potential adverse effects on ecological values can be adequately addressed, will be acceptable and do not preclude or count against a grant of consent to the Project.

Archaeological effects

AEE / specialist reports

7.132 A desktop archaeological analysis indicated that very little archaeological research and investigation had been undertaken in the Te Aroha West area, with no known archaeological sites impacted by the Project.

7.133 This was supported by a field survey that identified no archaeological features on the Project site. The assessment concludes that there is no reasonable cause to suspect any archaeological materials will be encountered due to the lack of historical mana whenua settlement in the area[50].

Comments received and HEL's response

7.134 Comments were received from Heritage New Zealand Pouhere Taonga ('HNZPT'), supported by the Hon Kiri Allan (Associate Minister for Arts, Culture and Heritage), who generally concurred with the Applicant's assessment of archaeological effects and made some suggested amendments to draft consent conditions C2 and C3, along with providing a rationale for those amendments.

[50] Application document – Assessment of Environmental Effects – subsection 9.9; Appendix G – Archaeology Report.

In its response, the Applicant accepted the requested changes, which the Panel has similarly adopted.

Proposed conditions

7.135 Notwithstanding the above study, the Applicant proposes Accidental Discovery Protocol conditions C24 and C25 in Appendix CC of the AEE to define a protocol in the event of the discovery of potential kōiwi (human bone material) or taonga. The proposed protocol involves mana whenua, HNZPT, an archaeologist and the New Zealand Police.

7.136 The Panel considers that the proposed conditions are appropriate and have imposed them as Conditions C29 and C30.

The Panel's findings

7.137 In light of all information received, including comments received and HEL's response, the Panel:

(a) Accepts HEL's findings per the AEE and HEL's response to comments.

(b) Agrees with and has amended and adopted the suggested condition changes to conditions C2 and C3 from HNZPT and have imposed them as Conditions C2 and C3.

(c) Finds that, with the implementation of Conditions C29 and C30 recommended by HEL in the AEE and to be required by the conditions that the Panel has imposed, any potential adverse effects on archaeological features can be adequately addressed, will be acceptable and do not preclude a grant of consent to the Project.

Operational noise effects

AEE / specialist reports

7.138 The Assessment of Noise Effects (Appendix I of the AEE) identified in the discussion of construction noise effects above also contains an assessment of operational noise effects. The key points raised in the AEE are that:

(a) The primary noise sources associated with the solar farm are the fixed plant items (substations, inverters and transformers). Solar panels do not generate any noise.

(b) The fixed plant items only operate during daylight hours when power is being generated and produce the maximum level of noise during peak power conditions (i.e., in clear, sunny conditions).

(c) A 'project noise standard' of 45 dB L_{Aeq} at any notional boundary on another site is recommended. This is 5dB lower than the Matamata-Piako District Plan level. The remaining activities on site (e.g., farming, maintenance visits and educational visits) will comply with the Matamata-Piako District Plan standards.

(d) Modelling has been carried out and demonstrates that the proposal will readily comply with the above standards, with the highest predicted noise rating level being 35 dB L_{aeq} at the closest receiver (145 O'Donoghue Road).

(e) Given the lower project noise level and the greater level of background noise during daylight hours (when the plant will generate noise), the solar plant is unlikely to be audible most of the time. However, where

peak power conditions coincide with calm meteorological conditions, the farm may be audible but not dominant or intrusive.

(f) No corona discharge (i.e., a hissing or cracking noise associated with electrical discharge) is anticipated as transmission lines will be buried.

7.139 The AEE concludes that adverse effects arising from operational noise will be de minimis under normal operating conditions and less than minor in a worst-case scenario.

Comments received and HEL's response

7.140 Mr Brendan Putt's comments raised an issue in relation to the proposed 35dBA from the general operating of the solar farm. MPDC's comments requested noise monitoring.

7.141 HEL's response is that:

> *"Noise will be below permitted standards and will not occur at night."*
>
> *"Suggested changes to conditions have been made, including the requirement for noise monitoring."*

Proposed conditions

7.142 The conditions proposed by HEL in relation to operational noise are set out as conditions D4 to D6 in Appendix CC of the AEE. The purpose of these conditions is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.143 The proposed conditions require that the noise (rating) level from all solar plants and other activities on site to comply with specified noise limits and to be measured in accordance with the requirements of the National Planning Standards rather than those set out in the District Plan.

7.144 Concerns were raised about the adequacy of the noise related conditions in ensuring compliance with relevant noise standards. In response to these concerns, the Panel included two new conditions (being Conditions D7 and D8). These conditions are discussed further in Section 10.

7.145 The Panel considers that the proposed conditions are appropriate and have imposed them as Conditions D4 to D8.

The Panel's findings

7.146 In light of all information received and considered, the Panel:

(a) Accepts HEL's findings per the AEE.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE, and to be required by the conditions that the Panel has imposed, any potential adverse effects arising from noise associated with the operation of the solar generation facility can be adequately addressed, will be acceptable and do not preclude or count against a grant of consent to the Project.

Natural hazards – geotechnical

AEE / specialist reports

7.147 An assessment of site stability and natural hazards was prepared by CMW Geosciences and is included with the Application in Appendix K. The discussion by the AEE can be summarised as follows:

(a) The nearest known active fault is identified as the Kerepehi Fault, which runs approximately 5km west of the site at its closest point. The AEE therefore concludes that the risk of fault rupture affecting the site is very low.

(b) An assessment of underlying soils found that the risk of effects due to liquefaction is low, with only isolated and marginal liquefaction predicted at depth in some locations. The risk of lateral spreading is also considered to be low.

(c) The risk of deep-seated land instability occurring is assessed to be low. However, it was considered that further investigation might be required to confirm whether any further improvements or designs were required to ensure compliance with the minimum standards of the Waikato Regional Council Regional Infrastructure Technical Standard.

(d) The subsoils on the site are generally considered to be suitable to support typical lightweight buildings such as single-storey site offices resting on standard slab-on-grade foundations or shallow piles. However, the AEE suggests that some areas may require foundations designed for a reduced bearing capacity or excavation and re-compaction of soils to support shallow foundations. The soils encountered in the boreholes are also considered suitable for driven piles, which may be used to support the solar panels.

7.148 Based on the geotechnical investigation and assessment undertaken, the AEE / report concluded that the geotechnical conditions at this site are appropriate for the proposed development and will not give rise to any undue subsurface effects.

Proposed conditions

7.149 The purpose of the conditions proposed by HEL in relation to site stability and natural hazards[51] is to ensure that the potential adverse effects associated with this aspect of the Project are appropriately managed (avoided, remedied or mitigated).

7.150 The proposed condition requires that HEL produce a design producer statement for the subsoil investigations, foundation / pile design and pavement design to be constructed and stating that the works have been suitably investigated and are properly designed in accordance with good engineering practice and in accordance with the application documents identified in Condition A1 of this consent. A copy of the geotechnical producer statement and plans shall be forwarded to the MPDC at least 10 working days before commencement of construction of the structure(s).

7.151 The Panel considers that the proposed condition is appropriate and has imposed it as Condition C6.

[51] Set out as condition C6 in Appendix CC of the AEE.

The Panel's findings

7.152 In light of all information received and considered, the Panel:

(a) Accepts HEL's findings per the AEE.

(b) Finds that, with the implementation of the conditions and methods recommended by HEL in the AEE, and to be required by the conditions that the Panel has imposed, any potential adverse effects arising from geotechnical considerations and natural hazards can be adequately addressed, will be acceptable and do not preclude or count against a grant of consent to the Project.

Potential adverse effects – the Panel's overall findings

7.153 The section of our decision report has addressed all potential adverse effects associated with the implementation of the Project and the ongoing operation of the solar farm, and have made findings in relation to each. Having regard to each of those findings, the Panel finds that there are no potential adverse effects, individually and collectively, that:

(a) Cannot be adequately and appropriately addressed by the conditions imposed by the Panel; and

(b) Preclude or count against a grant of consent to the Project.

8. ASSESSMENT OF STATUTORY PLANNING INSTRUMENTS

8.1 A number of national, regional and district-level policy and planning instruments need to be considered and assessed in the context of these applications. This section of our decision report addresses those policy and planning instruments that are or may be relevant to the proposed solar farm. These policies and planning instruments are addressed in sections 7 and 9 of the AEE and need only a brief summarising in this section.

NPS for Renewable Energy Generation 2011

8.2 The NPS-REG was promulgated in 2011 to set out:

> *"…objectives and policies to enable the sustainable management of renewable electricity generation under the Resource Management Act 1991."*

8.3 The generation of energy from solar sources falls within the definition of "renewable electricity generation." The Project is required to be considered as a "renewable electricity generation activity" for the purposes of considering the objectives and policies of the NPS-REG.

8.4 The Panel has accorded the NPS-REG considerable attention and weight in considering the Project. Relevant considerations were canvassed in section 10.1.1 of the AEE and need not be repeated here. However, the Panel wishes to highlight aspects of the NPS-REG that it has had particular regard to.

8.5 The Preamble to the NPS-REG highlights[52]:

> *"The contribution of renewable electricity generation, regardless of scale, towards addressing the effects of climate change plays a vital role in the wellbeing of New Zealand, its people and the environment…*
>
> *Development which increases renewable energy generation capacity can have effects that span local, regional, and national scales, often with adverse effects manifesting locally and positive effects manifesting nationally".*
>
> (Emphasis ours.)

8.6 The stated objective of the NPS-REG is:[53]

> *"To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation."*

8.7 The matters of national significance to which the NPS-REG applies are: [54]

> *(a) "The need to develop, operate, maintain, and upgrade renewable electricity generation activities throughout New Zealand; and*

[52] National Policy Statement for Renewable Energy Generation 2011, page 3.
[53] National Policy Statement for Renewable Energy Generation 2011, page 4.
[54] National Policy Statement for Renewable Energy Generation 2011, page 4.

(b) The benefits of renewable electricity generation."

8.8 The NPS-REG contains strong directions to decision-makers considering resource consent applications (or developing policy or planning instruments) to recognise the benefits of renewable electricity generation activities, with a strong implication that such activities may need to be looked on more favourably than non-renewable energy activities where in a context in which renewable energy activities conflict with competing environmental considerations. For example, Policy C:

> *"C. Acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities*
>
> *Policy C1*
>
> *Decision-makers shall have particular regard to the following matters:*
>
> *(a) the need to locate the renewable electricity generation activity where the renewable energy resource is available."*

8.9 In that regard, the Panel agrees with the observation in the AEE[55] that:

> *"Overall, the National Policy Statement for Renewable Electricity Generation 2011 requires decision makers to recognise the benefits of renewable energy and acknowledge the need for renewable energy to be located in a practical manner."*

8.10 Other policies that the Panel has had particular regard to include the following:[56]

> *"A. Recognising the benefits of renewable electricity generation activities*
>
> *Policy A*
>
> *Decision makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable generation activities. These benefits include:*
>
> *…*
>
> *(b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation.*
>
> *B. Acknowledging the practical implications of achieving New Zealand's target for electricity generation from renewable resources*
>
> *Policy B*
>
> *Decision-makers shall have particular regard to the following matters:*

[55] Application document – Assessment of Environmental Effects, subsection 10.1.1, page 60.
[56] National Policy Statement for Renewable Energy Generation 2011, page 5.

…

(c) meeting or exceeding the New Zealand Government's national target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities."

8.11 The positive effects (benefits of the proposal) are specifically considered in Section 6 of this decision report. It is sufficient for present purposes to record that the AEE notes that the Project will provide for a significant electricity generation activity that will:

(a) Generate sufficient energy to meet the annual electricity requirements of circa 30,000 typical households;

(b) Contribute to the diversification of electricity generation and greenhouse emissions reduction in New Zealand; and

(c) Positively impact the environment through reduced reliance on fossil fuels and diversity in electricity supply.

8.12 The AEE concludes that the Proposal will result in a number of benefits, including contributing to the New Zealand Government's national target for renewable energy and is therefore consistent with the outcomes sought under the NPS-REG.

The Panel's findings

8.13 The Panel finds that the Project is consistent with and will promote the objectives of the NPS-REG and that the benefits of providing for this new renewable electricity generation activity weigh heavily in favour of a grant of consent, particularly when weighed against relatively moderate localised adverse effect for a temporary period.

NPS for Freshwater Management 2020

8.14 The purpose of the NPS for Freshwater Management 2020 ("NPS-FM") is stated to be:[57]

"…to ensure that natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future."

8.15 The AEE states that the Project:

(a) Will not have any significant adverse effects on the health and wellbeing of freshwater ecosystems and instead will significantly improve the health and wellbeing of the watercourses within the site due to the

[57] National Policy Statement for Freshwater Management 2020, s 2.1.

proposed riparian planting and a decrease in nutrient runoff as a result of a switch from cattle dairy farming to sheep farming.

(b) Will not have any impact on any source of drinking water. The Proposal provides for the enhancement of the natural environment through riparian planting, wetland restoration and provision of biodiversity corridors.

8.16 Further, under the NPS-FM, freshwater must be managed in a way that gives effect to Te Mana o te Wai. The AEE notes that there has been no opposition to the proposal arising from this consultation, and three iwi groups have provided CIAs. Early consultation with iwi has informed design and recommendations arising from the CIAs have been incorporated into proposed consent conditions (Appendix CC of the AEE).

8.17 Overall, the AEE suggests that the Proposal is consistent with the NPS-FM in that it will not result in any loss of wetland or stream extent; rather, it provides for riparian and wetland enhancement.

The Panel's findings

8.18 The Panel finds that the Project is consistent with and will promote the objectives of the NPS-FM.

NES for Assessing and Managing Contamination in Soil to Protect Human Health 2012

8.19 This issue is addressed in Section 7 of the Panel's decision and need not be repeated here. The Panel's findings were:

> *"In light of all information received and considered, the Panel finds that:*
>
> *Concentrations of cadmium are below the NES-CS standard; and*
>
> *There are no issues associated with existing and potential site contamination that cannot be addressed by conventional measures proposed by HEL that cannot be addressed secured by way of conditions."*

The Panel's findings

8.20 The Panel finds that the Project is consistent with the NES-CS.

Waikato RPS

8.21 The Operative Waikato Regional Policy Statement ("RPS") provides an overview of the significant resource management issues in the Waikato Region and puts in place objectives, policies and methods to achieve the integrated management of the natural and physical resources of the region.

8.22 Many policies of the RPS are interrelated and overlapping. In the AEE, HEL helpfully grouped the objectives and, where relevant, policies under the topic heading it considers most relevant to the aspect of the application relevant to WRC.

8.23 The objectives and policies that 4Sight identified as being relevant to the Project are as follows[58]:

[58] AEE, subsection 10.2.

(a) Renewable Energy and Infrastructure:

(i) Objective 3.5 – Energy;

(ii) Policy 6.5 – Energy demand management; and

(iii) Policy 6.6 - Significant infrastructure and energy resource.

(b) Freshwater:

(i) Objective 3.14 – Mauri and values of freshwater bodies;

(ii) Objective 3.16 – Riparian areas and wetlands; and

(iii) Policy 8.3 - All freshwater bodies.

(c) Iwi Involvement:

(i) Objective 3.2 - Resource use and Development;

(ii) Objective 3.3 - Decision Making;

(iii) Objective 3.9 – Relationship of tangata whenua with the environment;

(iv) Objective 3.14 - Mauri and values of freshwater bodies;

(v) Objective 3.18 – Historic and Cultural Heritage;

(vi) Policy 4.3 - Tangata whenua;

(vii) Policy 6.4 – Marae and Papakainga;

(viii) Policy 10.1 – Managing historic and cultural heritage;

(ix) Policy 10.2 – Relationship of Māori to taonga; and

(x) Policy 12.3 - Maintain and enhance areas of amenity value.

(d) Amenity:

(i) Objective 3.21 – Amenity; and

(ii) Policy 12.3 – Maintain and enhance areas of amenity value.

(e) Indigenous Vegetation:

(i) Objective 3.8 – Ecosystem services;

(ii) Objective 3.19 – Ecological integrity and indigenous biodiversity; and

(iii) Policy 11.1 – Maintain or enhance indigenous biodiversity.

8.24 The AEE concluded that the proposal is not contrary to any objectives and policies of the RPS; rather, that it provides for an outcome that is consistent with the overall direction of the RPS.

8.25 Specifically, it provides for the development of renewable energy generation in a manner that avoids, remedies or mitigates adverse effects on the landscape,

freshwater, and ecosystem services. In addition, extensive iwi consultation has been carried out, and the proffered conditions of consent provide for the ongoing involvement of Māori in the project.

The Panel's findings

8.26 The Panel finds that the Project is consistent with and will promote the objectives of the RPS.

Waikato Regional Plan

8.27 The Waikato Regional Plan ("WRP") gives effect to the direction set by the RPS, including the identification of issues and associated objectives, policies and implementation methods.

8.28 Section 10.3 of the AEE addressed the WRP by reference to a number of issues.

Section 2 - matters of significance to Māori

8.29 The AEE records that HEL has undertaken extensive consultation with iwi, and consent conditions have been proposed by the Applicant that provides an opportunity for the ongoing expression of kaitiakitanga.

Section 3 - matters relevant to water quality

8.30 The WRP seeks to avoid any loss of values associated with freshwater, including wetlands, in accordance with the requirements of the NPS-FM. The AEE concludes that:

(a) The proposal is a permitted activity under the NPS-FW and will result in positive outcomes for freshwater.

(b) The proposed weirs will assist in wetland restoration and will have no adverse impacts beyond the site boundary or on waterways within the site.

Section 5 - discharges

8.31 The WRP seeks to avoid adverse effects on human health, water quality, aquatic ecosystems and the relationship that tangata whenua as kaitiaki have with their identified taonga such as ancestral lands, water and wāhi tapu.

8.32 Given that we are dealing with a solar farm, the issues arising in relation to water quality are limited.

8.33 Issues in relation to potential site contamination are addressed in Section 7 and the Panel's findings were that:[59]

> *"(a) Concentrations of cadmium are below the NES-CS standard; and*
>
> *(b) There are no issues associated with existing and potential site contamination that cannot be addressed by conventional measures proposed by HEL that cannot be addressed secured by way of conditions."*

[59] Para. 7.8.

8.34 A Site Management Plan ("SMP") has been prepared that details procedures for the management of any unexpected discovery of contaminants (Appendix BB of the AEE).

The Panel's findings

8.35 The Panel finds that:

(a) The Project is consistent with the direction provided by the WRP.

(b) The measures that have been proposed by the Applicant for wetland restoration align with the principles and objects of section 3 of the WRP.

(c) The Project is not contrary to any key objectives or policies in the WRP.

(d) Assessment by reference to the WRP does not preclude or count against a grant of consent provided that the conditions that the Panel has imposed are complied with.

Matamata – Piako District Plan

8.36 HEL provided a helpful table in section 10.4 of the AEE that comprehensively addressed the objectives, policies and development standards relevant to the Project at an 'on the ground' level. We note, in particular, the following comments in relation to key strategies.

Chapter 2 Sustainable management strategy

2.4.7 Regionally significant infrastructure

8.37 The proposal involves the provision of regionally significant infrastructure that will provide energy needs and associated benefits to surrounding communities while minimising adverse effects on the natural and physical environment.

2.4.8 Energy efficiency and renewable energy generation

8.38 The proposal involves the generation of renewable energy that will be fed into the National Grid to help meet local and national energy demands.

Chapter 3 Environment

3.1.2.1 Natural environment and heritage – Landscape character

8.39 The proposal has been specifically designed to protect the natural character, amenity and landscape values whilst also providing for regionally significant infrastructure.

3.2.2.1 Natural Hazards – Flooding

8.40 The proposed solar farm will not generate further flood risk on the surrounding environment and will also provide flood attenuation benefits through the proposed wetland restoration works and riparian planting.

3.2.2.4 Natural Hazards – Land movement

8.41 The proposal involves minimal earthworks on flat land where it has been demonstrated that the geotechnical and ground conditions are appropriate as to not aggravate any instability or erosion.

3.3.2.1 Land and development - Sustainable activities

8.42 The proposed solar farm will protect the district soil resource as well as result in less intensive primary production use and will reduce erosion and improve water quality through the proposed planting and restoration works.

3.5.2.1 Amenity - Development standards

8.43 The proposal complies with the relevant development standards and has been designed in a manner that maintains the open character of the rural landscape.

3.5.2.3 Amenity – Nuisance effects

8.44 The proposal has been specifically designed and located to minimise effects relating to noise, dust and glare on surrounding properties, and appropriate steps have been employed to internalise effects, as much as practicable, through the use of landscape planting.

3.8.2 Transportation

8.45 The proposal will not generate significant traffic volumes, and suitable and safe site accesses are proposed to ensure the continued safe operation of the surrounding traffic network while retaining safe access to surrounding properties.

The Panel's findings

8.46 The Panel finds that:

(a) The Project is consistent with the direction provided by the MPDP.

(b) The Project is not contrary to any key objectives or policies in the MPDP.

(c) Assessment by reference to the MPDP does not preclude a grant of consent provided that the conditions that the Panel has imposed are complied with.

Statutory planning instruments – the Panel's findings

8.47 As is apparent from the findings throughout this section, the Panel is satisfied, and finds, that the Project either promotes or is consistent with all statutory planning instruments that apply. Of particular significance in this context is the extent to which the Project promotes the objective of and is consistent with the matters of national importance in the NPS-REG.

9. STATUTORY CONTEXT AND STATUTORY ASSESSMENT UNDER THE FTCA AND THE RMA

9.1 This section:

(a) Briefly traverses the statutory and legal context relevant to the Panel's functions and duties under the FTCA and the RMA.

(b) Assesses and makes findings as to the consistency of the Project with those provisions, including whether the purpose of the FTCA and the RMA are both met.

9.2 The statutory context and Panel's findings in relation to Māori cultural issues and Treaty settlements are addressed in the section dealing with mana whenua issues.

Referral of the Project under the Resource Management (Covid-19 Recovery Fast Track Consenting) Act 202

9.3 Section 4 of the FTCA states that:

> *'The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.'*

9.4 Section 19 of the FTCA sets out the matters that the Minister is required to consider when determining whether a project meets the purpose of section 4. The matters that HEL relied upon in its application to the Minister (per Section 7 of the AEE) comprised the following by reference to the relevant provisions of section 19:

(a) Employment and economic benefits in terms of sections 19(a) and (d)(i).

(b) Social and cultural wellbeing in terms of section 19(b).

(c) Speed of progression in terms of section 19(c).

(d) Public benefits in terms of section 19(d).

(e) Contributing to a well-functioning urban environment in terms of section 19(d)(iii).

(f) Provision of infrastructure in terms of section 19(d)(iii).

(g) Improving environmental outcomes in terms of section 19(d)(v).

(h) Mitigating climate change in terms of section 19(d)(vii).

(i) Promoting the protection of historic heritage in terms of section 19(d)(viii).

(j) Strengthening environmental, economic and social resilience in terms of management of risk from climate change in terms of section 19(d)(ix).

(k) Sustainable management of natural and physical resources in terms of section19(e).

9.5 As the Project was referred, it follows that the Minister was satisfied that the Project would be consistent with the purpose of the FTCA. This Panel is not bound by the referral decision and must independently determine whether the Project meets the purposes of the FTCA and whether the consent should be granted or not.

Decision-making under the FTCA

9.6 If an application is made under the FTCA, the process for obtaining a resource consent under Schedule 6 of the FTCA applies in place of the process under the RMA.

9.7 The process for a referred project such as this one was described in the decisions of the expert consenting panel on the Kohimarama Retirement Village and the Rotokauri Project[60]. For the purposes of our decision, we adopt the approach set out in those decisions whichwe set out as follows.

Relevant considerations

9.8 Under clause 31 of Schedule 6, the Panel must have regard to the following matters when considering an application for a referred project:

> *1. When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—*
>
> *(a) any actual and potential effects on the environment of allowing the activity; and*
>
> *(b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and*
>
> *(c) any relevant provisions of any of the documents listed in clause 29(2); and*
>
> *(d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.*
>
> *2 In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).”*

9.9 Section 12 of the FTCA sets out the relationship between the FTCA and the RMA. Decisions made under the FTCA are subject to Part 2 of the RMA, as well as the purpose of the FTCA as set out above. The purpose of the FTCA does not ‘trump’ Part 2 of the RMA – the two purposes are to be considered together “on an equal footing”[61].

[60] Rotokauri decision dated 27 July 2022 at Part 3; Kohimarama decision dated 12 May 2021, at Part C.
[61] Kohimarama decision dated 12 May 2021 at [41].

9.10 It is plain that this provision is the FTCA equivalent of section 104(1) of the RMA – clause 29(2) lists the same statututory instruments that are in section 104(1)(b) of the RMA and which are set out here for ease of reference, namely:

> *"(a) a national environmental standard:*
>
> *(b) other regulations made under the Resource Management Act 1991:*
>
> *(c) a national policy statement:*
>
> *(d) a New Zealand coastal policy statement:*
>
> *(e) a regional policy statement or proposed regional policy statement:*
>
> *(f) a plan or proposed plan:*
>
> *(g) a planning document recognised by a relevant iwi authority and lodged with a local authority.*

9.11 The Panel has a wide discretion to grant or decline consent to a referred project.

Statutory assessment and the Panel's findings

9.12 The Panel has considered the Project in light of all maters made relevant by clause 31 of Schedule 6 and made findings on them throughout the course of this decision report. That material does not need to be repeated here. It is sufficient to note the following.

Clause 31(1)(a) – actual and potential effects

9.13 The Panel has considered potential effects on Mana Whenua (Section 6 of this report); positive effects (Section 7 of this report); and potential adverse effects (Section 8 of this report). Our findings on all such effects are contained in those sections, which are to the effect that:

(a) There are significant positive effects associated with renewable energu generation.

(b) No mana whenua issues in terms of potential adverse effects arise.

(c) That all potential adverse effects are minor to moderate ande can be addressed via the conditions of consent that we have imposed.

Clause 31(1)(b) – offsetting and compensation

9.14 The Applicant did not place any reliance on the provision of works for offsetting, presumably not wishing to acknowledge that any potential adverse effects were of such a magnitude as to require offsetting or compensation. It is therefore not necessary for the Panel to make a finding on this issue.

9.15 However, the Panel observes that had it viewed adverse effects as being more serious than they are, we would have entertained an argument that the significant ecological enhancements would qualify to be considered under this provision.

Clause 31(1)(c) – relevant statutory and iwi planning instruments

9.16 The Panel's assessment of relevant statutory and iw planning instruments are considered in Section 9 of this report. The Panel concluded that is satisfied that the Project either promotes or is consistent with all statutory planning instruments that apply.

Clause 31(1)(d) – other relevant matters

9.17 The New Zealand Energy Efficiency and Conservation Strategy 2017-2022 ("NZEECS") was identified by the Applicant a relevant consideration in respect of the Project.The overarching policy direction of this document is the promotion of energy efficiency, conservation and the use of renewable sources of energy. The NZEECS recognises the importance of renewable energy in both the reduction of climate change and the resilience of supply.

9.18 A key target identified in the NZEECS contains specific target relating to the use of renewable energy which states:

> *"Ninety per cent of electricity will be generated from renewable sources by 2025 (in an average hydrological year), providing security of supply is maintained.*

9.19 The NZEECS also identifies public and private benefits associated with the increase in renewable energy generation and energy efficiency, including employment and market growth in related sectors and whole system resilience and security.

9.20 The AEE concludes that the Project will assist with New Zealand's progression towards achieving this target consistent with the policy direction of NZEECS and will assist New Zealand's progress toward the stated target.

9.21 The Panel finds that the Project is consistent with this target.

9.22 The Applicant also made reference to the *Aotearoa New Zealand Energy Strategy,* a strategy which is intended to support a transition to a low carbon economy. However, it has no legal status at this point in time and the Panel has not accorded it any weight.

9.23 Having regard to the above, the Panel finds that all relevant considerations relevcant to the above matters have been assessed and that no issues arise under this assessment to preclude or count against a grant of consent sibject to the conditions that we have imposed.

Decision-making under the RMA

Relevant considerations

9.24 Referred projects require consideration of sections 104A to 104D and sections 105 to 107 of the RMA. Overall, the application is required to be assessed as a 'full' discretionary activity. Section 104B comes into play as does, of course, section 104.

9.25 Of these provisions, only three are brought into play – sections 104B, 105 and 107. (Section 104 does not apply as it is replaced by clause 31 of Schedule 6 in the context of referred projects under the FTCA.)

Statutory assessment and the Panel's findings

9.26 Section 104B states the following:

> *After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*
>
> *(a) may grant or refuse the application; and*
>
> *(b) if it grants the application, may impose conditions under section 108."*

9.27 A full assessment has been made of the Project throughout this decision report and as summarised above. The Panel, has based on its findings, decided to grant conditions and impose the conditions contained in **Appendix 1**.

9.28 Having reagard to the controls on stormwater discharges and proposed cleanfill activities, the Panel is satisfied that no aspect of the Project contravenes or brings into play sections 105 or 107 of the RMA.

Dual purpose assessment of Part 2 of the RMA and the purpose of the FTCA

9.29 The matters to which we must have regard when considering a referred application for consent are also expressed as being subject to Part 2 and the purpose of the FTCA. The Panel considers that it is appropriate to deal with these issues togther given that we dealing with a dual purpose, neither of which 'trumps' the other.

Assessment against Part 2 of the RMA

9.30 Part 2 contains the 'sustainable management' purpose of the RMA as set out in section 5 being:

> *"…means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
>
> *(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
>
> *(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
>
> *(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

9.31 The Supreme Court's decision in *King Salmon*[62] (and the subsequent decision of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*[63]) make clear that when there is no ambiguity in lower order planning

[62] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC).
[63] [2018] NZCA 316, [2018] 3 NZLR 283.

documents, there is generally no need to refer back to Part 2 of the RMA.[64] There are several 'caveats' to this general rule, including:[65]

(a) Where there is a challenge to the lawfulness of a planning document, this needs to be resolved before it can be determined if a decision maker is acting in accordance with Part 2 of the RMA;[66]

(b) There may be instances where the document concerned does not "cover the field" and the decision-maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered;[67] and

(c) If there is uncertainty as to the meaning of particular policies, reference to Part 2 may be justified to assist in a purposive interpretation.[68]

9.32 There is no reason to believe that any the relevant planning documents referred to throughout this decision and the AEE were not competently prepared in a manner that reflects Part 2 of the RMA. However, for completeness, we have reviewed the Applicant's assessment of Part 2 of the RMA, contained in section 13 of the AEE.

9.33 The AEE contains a brief assessment of the Project by reference to sections 5 – 8 of the RMA. We have disregarded the comments in relation to section 8 of the RMA on that basis that, in the context of FTCA applications, section 8 of the RMA is not relevant as it has been is replaced by section 6 of the FTCA.

9.34 In the context of section 6 (matters of national importance), the only matter that the Panel consider to be relevant is section 6(e) relating to:

> *"(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."*

9.35 This matter has been comprehensively addressed in Section 5 of this report and the Panel finds that has been "recognised and provided for" as section 6 requires.

9.36 The Panel does not agree that section 6(a) is relevant on the basis that thenone of the features sought to be provided for by that section retain any "natural character" on the application site.

9.37 The Panel is required to have "particular regard" to matters in section 7. Those that we consider that are or may be relevant to this Project comprise:

> *"(a) kaitiakitanga:*
>
> *(b) the efficient use and development of natural and physical resources:*
>
> *(c) the maintenance and enhancement of amenity values:*
>
> *(f) maintenance and enhancement of the quality of the environment:*
>
> *(i) the effects of climate change:*

[64] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC), at [85].
[65] Ibid.
[66] *The New Zealand King Salmon Company Limited*, at [88].
[67] Ibid.
[68] Ibid.

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

9.38 For the reasons outlined in the AEE and throughout this decision, we have had particular regard to these factors and find that they have been properly recognised in terms of policy thrust / benefits and can be addressed via the design of the Project and the conditions that we have imposed. Section 7(j) is of course particularly relevant.

The Panel's finding

9.39 In terms of section 5, for all the reasons set out in this decision report the Panel is satisfied that the Project will be consistent with and promote the sustainable management purpose of the RMA.

Assessment against the purpose of the FTCA

9.40 In assessing this matter, the Panel is required to consider the purpose of the FTCA as a set out in paragraph 9.3 above.

The Panel's finding

9.41 For all the reasons outlined in the AEE and throughout this report the Panel is satisfied that the Project will achieve the purpose of the FTCA.

Dual purpose assessment - the Panel's findings

9.42 Given the nature of the application site and character of the area, the Panel is satisfied that no aspects of sections 6 or 7 (and therefore 5) of Part 2 of the RMA call the Project seriously into question – the Project will produce very substantial benefits in terms of renewable energy generation, economic and employment outcomes and ecological enhancements while potential adverse effects can be adequately addressed.

9.43 On that basis, although respective purposes of the FTCA and the RMA are different, in the context of this project, the purposes are consistent and complementary – and there is no need to consider whether one 'trumps' the other; the two purposes are to be considered together "on an equal footing".

9.44 The Panel therefore finds that the purposes of both statutes will be achieved and promoted by the Project.

10. CONDITIONS

10.1 A comprehensive suite of proposed conditions was filed with the application documents.

10.2 The process followed in terms of circulating conditions for comment, etc., are summarised in Section 2 and need not be addressed here except to record that:

(a) The Panel reviewed and made tracked changes to these conditions and on 29 August 2022 invited comments on the draft conditions from the Applicant and those parties who were entitled to comment, particularly MPDC and WRC by 7 September 2022.

(b) Seventeen comments were received a within the specified period. We were also required to accept late comments on conditions from Mr and Mrs Singh-Mahals given that we had accepted their late comment on the Project.

(c) The Panel made several further inquiries of the Applicant to land the final details around conditions.

10.3 The Panel has considered all comments made in relation to conditions.

10.4 The Panel's approach has been throughout this decision report has been to address conditions in the context of the potential adverse effect to which they relate, and the Panel's findings have been made in light of them. As a result, it is only necessary in this section to address more recent amendments to, or new, conditions brought about by the above process.

10.5 Where these amendments were grammatical or did not alter the effect of the proposed conditions but provided clarification or a better wording, we have imposed them without addressing them in our comments below.

Analysis of conditions and the Panel's findings

10.6 The following sets out the amendments that the Panel has made to the proposed conditions as a result of receiving comments, by reference to the relevant conditions.

Conditions A3 and (new) E5 - review conditions

10.7 The Panel pointed out that the review condition as originally proposed was unlawful for lack of certainty. Comments were received from MPDC as to the frequency of potential reviews of conditions and WRC sought to be a consent authority that may initiate a review under Part A of the consent.

10.8 HEL was not agreeable to a WRC power of review unless it related to the planting of the drain.

10.9 The Panel has addressed this issue by:

(a) Providing for a review condition per that requested by MPDC (although we consider it to be excessive) on the basis that it has been agreed to by HEL.

(b) Providing WRC with a separate power via a new Condition E5 to review the consent conditions that fall within the scope of its functions. (The review condition is not restricted to drain planting.)

Condition B4 and B9 – management plan certification and amendment

10.10 RFAB sought amendments to:

(a) Condition B4 to improve the process for certifying a management plan; and

(b) Condition B9 relating to amendments to such plans.

10.11 HEL indicated that it has no objection the amendments requested by RFAB, so the Panel has imposed them on an agreed basis.

Conditions B7 and B10 – management plans

10.12 The proposed conditions purported to impose obligations on MPDC in the context of the certification of management plans, which is not permitted by the RMA which only allows obligations to be imposed on the consent holder.

10.13 HEL has proposed conditions with an alternative wording that achieve the same objective, but which are valid and enforceable. The Panel has imposed the amended conditions as requested.

Condition C2 – attendance at pre-start meeting

10.14 The condition relating to the pre-start meeting has been amended to include the Project Archaeologist as requested by Heritage New Zealand.

Condition C3 - Heritage New Zealand Pouhere Taonga Act 2014

10.15 As requested by Hon. Kiri Allan (Associate Minister of Arts, Culture and Heritage) and NZHPT, the Panel has amended the wording of Condition C3 to ensure communicating obligations under the Heritage New Zealand Pouhere Taonga Act 2014 a requirement rather than just a suggestion.

10.16 The Panel is grateful for the Minister's participation in the process.

Conditions C19 and C20 – construction noise measurements

10.17 In light of concerns expressed about whether noise requirements during construction, HEL offered two further conditions requiring that monitoring be undertaken that steps be taken to address any non-compliance with until that has been achieved. The Panel has imposed those conditions as requested.

Condition C23 – vibration

10.18 MPDC had expressed a concern about how HEL would demonstrate compliance with this condition. HEL helpfully produced a new condition relating to vibration-related complaints which the Panel is satisfied appropriately addresses this issue, which the Panel has imposed accordingly.

Condition C28 – lighting

10.19 RFAB sought a reduction in the lighting (lux) levels so that lux levels should be 0.1lux adjacent to the site or that screening be installed. Reference was made to lux levels in an industrial zone and to a residential subdivision at Amberfield. The main purpose of the condition is to protect bats / bat habitat.

10.20 In response, HEL made a number of comments which can be summarised as follows:

(a) In the absence of New Zealand guidelines, the proposed lighting level had been based on Australian research, UK guidelines and discussions between bat experts.

(b) The lux levels for this project were recommended by Dr Hannah Mueller, who also provided expert advice in relation to Amberfield development referenced by RFAB.

(c) Amberfield is a large-scale residential development which includes street lighting, light within dwellings, etc., and therefore has a much denser lighting environment and the lower lux level was considered necessary to address the cumulative light spill from the site and due to the proximity of bat roosting and nursery areas.

(d) In the Tauhei scenario, where lighting is much more limited and bat activity is significantly less, the project specific and expert recommendation of 0.3lux level is considered to be appropriate.

10.21 Having regard to these comments, the Panel accepts that the 0.3 lux level is appropriate and has not amended the condition as requested.

10.22 RFAB also commented that the condition does not restrict security lighting and does not apply to operational matters. In response, HEL confirmed that:

(a) Condition C28(a) restricts lighting to infrared security lighting; and

(b) Condition C28 is intended to restrict operational use as well as the construction phase.

10.23 In order to address (b) above, the Panel has added the following to Condition C28:

> *(For the avoidance of doubt, this condition applies to both the construction phase and to the ongoing operation of the solar farm.)*

Conditions D7 and D8 – noise levels associated with educational / community / iwi visits

10.24 MPDC raised an issue as to how compliance with noise levels required by Condition D6 would be achieved. HEL is agreeable to a condition requiring monitoring if complaints were made and offered new Conditions D7 and D8 to address that issue. These conditions have been agreed by MPDC planners and is imposed accordingly.

Condition D11 – Operational Management Plan

10.25 RFAB requested a number of amendments to improve the purposes and certainty of this condition and also:

> *"j. Monitoring to determine the success of management plan objectives."*

10.26 HEL accepted the amendments requested to the condition other than the monitoring requirement requested.

10.27 As noted in Section 7, based on the bat monitoring information that the Applicant provided, the proposed retention of existing trees and the required

planting, the Panel does not consider it necessary to impose pekapeka monitoring conditions.

10.28 The Panel has therefore imposed the conditions as agreed between RFAB and HEL, the Panel has imposed most of the amendments, other than the bat monitoring requirement.

Comments from local residents

10.29 The Panel acknowledges the concerns expressed by local residents and thanks them for their contribution.

Glint and glare and landscaping requirement

10.30 Mr and Mrs Tesselaar and Ms Pederson used the opportunity to comment on conditions to make further comments on effects arising from 'glint and glare' and landscaping, but these comments do not take us beyond their initial comments. Our consideration of glint and glare effects is contained in Section 7 of this decision report, as is the rationale for the conditions imposed.

Local dust

10.31 Ms Pederson commented that dust from Stanley South Road has been a major issue and that now there is a change in the farming type proposed by the Project, it is appropriate for dust emission to be included in the consent conditions.

10.32 HEL's position that the dust is associated with farming cannot be the subject of conditions because it is a permitted activity.

10.33 The Panel agrees with that proposition; the change of a use of land does not alter the fact that effects associated with a permitted activity cannot be the subject of conditions.

10.34 The Panel inquired whether HEL might volunteer a suitable condition under the principle in *Augier* but it declined to do so, on the basis that HEL will not be the source of dust.

10.35 The Panel is unable to take that matter any further in terms of conditions as it has no jurisdiction to impose conditions on permitted activities.

Conditions - the Panel's decision on conditions

10.36 The Panel has given considerable attention to the conditions throughout the entire FTCA process and the rationale for the conditions imposed are addressed throughout this decision report. All comments received were carefully considered by the Panel. The draft conditions originally proposed by the Applicant were further amended by the Panel, including by reference to comments received from the parties noted above.

10.37 Overall, the Panel is satisfied that the final condition set imposed, comprising use of management plans, monitoring and reporting, and a range of other requirements and restrictions represents an appropriate means to:

(a) Address (avoid, remedy or mitigate) any potential adverse effects associated with the Project; and

(b) Achieve positive environmental outcomes.

11. CONCLUSION

11.1 For all the foregoing reasons and on the basis of the findings throughout this decision report, the Panel has decided to grant the consent sought by HEL, subject to the conditions in **Appendix 1**, for the maximum period of 35 years provided for by the RMA, but noting that a two year lapse period to implement the consent is mandatory under the FTCA.

11.2 The Panel's reasons are set out in Section 1 and need not be repeated in full here, but in summary:

(a) The Project is consistent with and will promote the purpose of the FTCA.

(b) The Project provides very significant benefits in terms of renewable energy generation that are consistent with the objectives of the NPS-REG are consistent with the matters of national importance to which the NPS-REG applies.

(c) The Project will also produce local ecological benefits through the retirement of two dairy farms and significant proposed ecological enhancements, including wetland restoration. Educational opportunities are also to be provided.

(d) Engagement with iwi and hapū has been genuine and effective, and iwi and hapū support the Project.

(e) Potential adverse effects during construction (noise, construction traffic, dust, erosion and sediment control) have been assessed to be minor and can be addressed by conventional measures through the implementation of management plans and conditions of consent.

(f) Potential adverse effects associated with the ongoing day-to-day operation of the solar farm will be minor.

(g) Potential adverse effects on rural character and residential amenity effects associated with landscape and visual effects and glint and glare will be addressed by planting within, say, four years, via the conditions that the Panel has imposed.

(h) Based on relevant legal authorities, the Panel is not entitled to consider potential adverse effects associated with the diminution of property values.

(i) Given that potential adverse effects fall within a fairly narrow compass and can be adequately addressed, and having regard to the significant positive effects associated with Project, the Panel is satisfied that:

(i) The Project aligns with relevant national, regional, and local planning instruments; and

(ii) The purpose of both the RMA and the FTCA is better served by a grant of consent subject to the conditions that the Panel has elected to impose rather than a decline of consent.

11.3 In concluding, the Panel wishes to acknowledge and thank:

(a) Kei te mihi ake mātou ki a koutou o Ngaati Whanaunga, o Ngāti Tumutumu, o Ngāti Hauā, nāu ōu whakaaro mō te kaupapa nei i tuku.

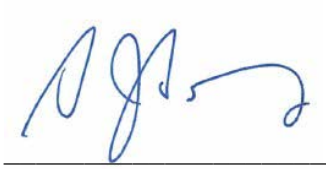
(b) Local residents for their participation in the process. The Panel has had very close regard to your concerns and are hopeful that there will come a time when you do not give the solar farm a second thought.

(c) HEL for its assistance in providing information as required and MPDC, WRC and RFAB for their contributions to the condition set.

(d) Hon. James Shaw, Minister for Climate Change, and Hon. Kiri Allan, Associate Minister of Arts, Culture and Heritage, for their participation in the process.

(e) Our EPA Project Lead, June Cahill, for excellent support throughout the FTCA process.

DATED this 19th day of September 2022



Simon Berry (Chair)

Steven Wilson (Member)

Paul Cooney (Member)

APPENDIX 1 – CONDITIONS

Proposed Conditions of Consent

Tauhei Solar Farm

1. The Panel has granted a single resource consent to MPDC and WRC with parts of the consent being related to the duties and functions of each relevant council as follows.

Table 1 - Index of Resource Consents

Condition reference	Details	Local authority	Lapse period
RC1- -Parts A-D	Land use consent Matamata Piako District Plan	MPDC	2 years
RC2 -Parts A and E.	Land use consent Waikato Regional Plan	WRC	2 years

1. Abbreviations and Definitions

The following abbreviations and definitions are relevant to all consent conditions

Table 2 - Definitions and Abbreviations

Construction	Refers to work associated with the development of the site. Provided that this excludes enabling works.
Completion of Construction	When construction of the project (or the relevant part of the project) is complete and available for use.
Operation/Operational	Means the period after which the project is connected to the National Grid and generating power.
Project	The construction, operation and maintenance of the Tauhei Solar Farm.
Suitably Qualified Person (SQEP)	a) Means a person (or persons) who can provide sufficient evidence to demonstrate their suitability and competence in a relevant field or expertise. b) For the purposes of the SMP-CS, SQEP means a suitably qualified environmental practitioner for the purposes of the assessment of contaminated land. (Guidance on what is expected of the Suitably Qualified Person is provided in the NES-CS Users' Guide 2012.)
CMP	Construction Management Plan.
CTMP	Construction Traffic Management Plan.
ESCP	Erosion and Sediment Control Plan.
NES-CS	Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
NES-FW	Resource Management (National Environmental Standard for Freshwater) Regulations 2020.
OSMP	Operational Site Management Plan.
SMP-SC	Site Management Plan for Contaminated Soil under the NES-CS.
RMP	Restoration Management Plan.
MPDC	Matamata Piako District Council.
WRC	Waikato Regional Council.
wds.	"Working days" as per section 2(1) of the Resource Management Act 1991.

2. Condition Structure

Conditions are structured as follows:

Table 3 - Condition Structure

Relevant to all Resource Consents	
Part A	Contains general conditions.
Relevant to RC1 (Matamata Piako District Council)	
Part B	Contains management plan conditions
Part D	Contains construction conditions.
Part E	Contains post construction requirements.
Relevant to RC2 (Waikato Regional Council)	
Part E	Contains regional consent conditions.

Part A – General Conditions

These conditions apply to all consents.

A1. Except as modified by the conditions in this consent, the Project shall be undertaken in general accordance with the following plans:

Table 4 - Approved Plans and Documents

Title	Reference	Date
Site Design Plan: With All Sections	PL.001.1	22-03-2022
Site Design Plan: Section a	PL.001.a	22-03-2022
Site Design Plan: Section b	PL.001.b	22-03-2022
Site Design Plan: Section c	PL.001.c	22-03-2022
Site Design Plan: Section d	PL.001.d	22-03-2022
Site Design Plan: Section e	PL.001.e	22-03-2022
Site Design Plan: Section f	PL.001.f	22-03-2022
Site Design Plan	PL.0001	22-03-2022
Technical Details – Mounting Structure	PL.004	11-08-2021
Technical Details – MV Power Station	PL005.A	13-08-2021
Technical Details – Customer Substation	PL.006	12-08-2021
Technical Details Spare Part Container	PL.007	12-08-2021
Technical Details_ Gate-Fence-Construction Road, Camera, Satellite	PL.008	12-08-2021
Technical Details – DC String Cable Layout on the Solar PV Table	PL.011	12-08-2021
Technical Details – Underground Cable Trench Cross Section	PL.015	14-03-2022
General Arrangement 240 MVA 132/33 KV ODAF Transformer	Q28573_3E	25-07-2017
Tauhei Solar Farm – Assessment of Landscape Effects, Graphic Supplement - Planting Plan	LA12	23/05/2022

Where there is any inconsistency between the above-mentioned documents and the conditions of consent, the conditions of consent shall prevail.

A2. That pursuant to section 36(1)(c) of the Resource Management Act 1991, the Consent Holder shall pay MPDC and WRC all actual and reasonable costs associated with monitoring this consent, including but not limited to costs associated with:

a. Site visits;
b. Review and certification of management plans;
c. Monitoring of works; and
d. Administration.

Review of conditions

A3. The MPDC may, under sections 128 and 129 of the Resource Management Act 1991 (Act), initiate a review of any or all conditions of this resource consent on the first, second and third anniversary of the commencement of the consent and every three years after that, for the duration of the resource consents, subject to the following:

a. Any such review of conditions shall be the for the purposes of responding to any adverse effect on the environment which may arise from the exercise of the consent and which it is most appropriate to deal with at a later stage. These effects include, but are not limited to, those that may arise in relation to:
    i. dust management during construction;
    ii. noise during construction;
    iii. landscaping; and
    iv. access.

b. deal with any unanticipated adverse effects on the environment which may arise from the exercise of the consent, which it is appropriate to deal with at a later stage; and

c. ensure that the conditions are effective and appropriate in managing the effects of the activities authorised by these consents.

Part B – Management Plan Conditions

This section relates to RC1 – Matamata Piako District Council

B1. The Consent Holder shall prepare the following management plans for approval by MPDC in a technical certifying capacity. The Consent Holder shall prepare the management plans in accordance with the requirements of the relevant conditions and in general accordance with the application documents.

B2. The Consent Holder shall ensure that all management plans are prepared by a suitably qualified and experienced person (SQEP).

Table 5 - Management Plans

Management Plan	Regulatory Authority	Condition Reference	Documents to Council for Certification – Minimum Timeframe
Construction Management Plan	MPDC	C9	Prior to construction
Construction Traffic Management Plan	MPDC	C10	Prior to construction
Erosion and Sediment Control Plan	MPDC	C8	Prior to construction
Site Management Plan for NES -CS	MPDC	C11	Prior to construction
Restoration Management Plan	MPDC	D10	30 wds. prior to the site becoming operational
Operational Managment Plan	MPDC	D11	30 wds. prior to the site becoming operational

Management Plan Certification

B3. The Consent Holder shall submit the above management plans to MPDC in accordance with the timeframe specified in Table 5.

B4. The certification process shall be limited to confirming that the management Pan has been prepared in accordance with the relevant condition(s) and will achieve the objectives of the management plan.

B5. If requested by MPDC and for the purposes of ensuring the CTMP appropriately achieves the purpose outlined in condition C10, the Consent Holder shall arrange, at its cost, a peer review of the CTMP by an independent and SQEP.

B6. Excepting the additional process for the CTMP outlined in condition B5, if no response is received by MPDC within 20 wds. of lodgement of any management plan, the relevant management plan shall be deemed to be certified.

B7. If the MPDC response is that they are not able to certify the management plan, the Consent Holder shall consider any reasons or recommendations provided by MPDC and resubmit an amended Management Plan for certification.

B8. If the Consent Holder has not received a response from MPDC within ten (10) wds. of the date of resubmission under Condition B7 above, the management plan will be deemed to be certified.

Amendments to Management Plans

B9. The Consent Holder may make amendments to the above management Plans at least ten (10) wds. before the relevant works (or relevant portion of works) are undertaken, in accordance with conditions B4-B6 above, and subject to the certification of the amendment prior to works being undertaken. Any such amendment shall be consistent with the objectives and performance requirements of the management plan and relevant consent conditions.

B10. If the MPDC response is that they are not able to certify the Management Plan, the Consent Holder shall consider any reasons or recommendations provided by MPDC and resubmit an amended Management Plan for certification.

B11. If MPDC does not provide a certification decision for any amendment within ten (10) wds of resubmission under Condition B10 above, the amendments will be deemed to be certified.

Implementation/Compliance

B12. The Consent Holder shall comply with and implement the following most recently certified management plans for the duration of construction actvities:

a. Construction Management Plan.
b. Construction Traffic Managment Plan.
c. Erosion and Sediment Control Plan.
d. Site Management Plan.

B13. The Consent Holder shall implement the following certified management plans, prior to the site becoming operational. following the site becoming operational:

a. Operational Managment Plan.
b. Restoration Management Plan.

B14. Planting, weed and pest control and fencing shall be implemented in accordance with the guidelines and timeframes set out in the Certified Restoration Management Plan, with initial planting occuring as soon as practicable during the first planting season.

B15. The Certified Restoration Management Plan shall continue to be implemented for the period specified in the management plan.

Part C – Construction Conditions

These conditions relate to RC 1 – Matamata Piako District Council

General

C1. At least ten (10) wds. prior to commencement of construction on site, the Consent Holder shall provide to MPDC, the following:

a. The name and contact details of the successful contractor.
b. The planned date, staging and duration of construction.

C2. The Consent Holder shall hold a pre-start meeting that:

a. Is located on the subject site;
b. Is scheduled not less than five (5) wds. prior to the commencement of activities;
c. Includes:
    - MPDC Monitoring Officer(s), or delegated representatives;
    - Representatives of the contractors who will undertake operations on site; and
    - The project archaeologist.

C3. The purpose of the pre-start meeting is to ensure that all relevant parties are aware of and understand the requirements for compliance with the conditions of this consent and the certified Construction Management Plans in accordance with Condition B1, above and other relevant legislation requirements including the Heritage New Zealand Pouhere Taonga Act 2014. A copy of the final conditions of consent and certified Construction Management Plans, including but not limited to the accidental discovery protocol conditions C28 and C29 shall be made available by the Consent Holder at the pre-start meeting.

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C4. The Consent Holder shall, at least ten (10) wds. prior to the commencement of construction, invite a representative(s) of Ngaati Whanaunga, Ngāti Rāhiri Tumutumu and Ngāti Hauā to:

a. Provide a karakia prior to the commencement of site works.
b. Undertake a cultural induction for key site personnel.

Landscape Planting – Eastern and Western Boundaries

C5. In the first planting season following the grant of this consent, the Consent Holder shall implement landscape planting along:

a. The eastern most boundary of the site (where it is adjacent Stanley Road South and Alexandra Road).
b. The western most boundary of the site (where it is adjacent to Mikkelsen Road).

Landscaping shall be implemented and maintained in accordance with the certified Restoration Management Plan.

Design Certification

C6. The Consent Holder shall engage an appropriately experienced chartered geotechnical engineer to provide a design producer statement for the subsoil investigations, foundation/pile design and pavement design to be constructed and stating that the works have been suitably investigated and are properly designed in accordance with good engineering

practice and in accordance with the application documents identified in Condition A1 of this consent. A copy of the geotechnical producer statement and plans shall be forwarded to the MPDC at least ten (10) wds. before commencement of construction of the structure(s).

C7. A detailed design for entranceway works and internal roading shall be submitted to the District Planner, MPDC for certification at least 20 wds. prior to commencing construction. Design and implementation shall be in accordance with the Matamata-Piako District Council Development Manual.

Construction Management Plans

Erosion and Sediment Control

C8. Prior to the commencement of construction, the Consent Holder shall submit to MPDC , an Erosion and Sediment Control Plan (ESCP) for the construction works. The purpose of the ESCP is to provide a framework of controls for the construction earthworks to avoid, remedy and/or mitigate the potential effects of earthworks and associated construction works on the receiving environment, including measures to ensure sediment generation is minimized and the works are conducted in accordance with best practice. The plan shall be prepared by a SQEP, taking into account the Waikato Regional Council's Erosion and Sediment Control: Guidelines for Soil Disturbing Activities.

Construction Management Plan

C9. In accordance with the timeframe set out in Table 5, the Consent Holder shall submit to MPDC, for certification, a Construction Management Plan (CMP). The purpose of the CMP is to avoid, remedy and/or mitigate adverse effects arising from construction. The plan shall include, but not be limited to:

a. Confirmation of the construction works program, including staging of work, construction methodology.
b. Identification of the key personnel and contact person(s).
c. Methods and systems to inform and train all persons working on the site of potential environmental issues and how to avoid, remedy or mitigate potential adverse effects.
d. Measures to ensure the protection of trees to be retained in accordance with condition C17.
e. Measures to ensure compliance with the noise requirements outlined in condition C18.
f. Measures to control the generation of dust to ensure compliance with condition C21 of this consent.
g. Reference to, or inclusion of, the Construction Traffic Management Plan.
h. Inclusion of the Accidental Discovery Protocols and a list of contact names and numbers relevant to accidental discovery.

Construction Traffic Management Plan

C10. In accordance with the timeframe set out in Table 5, the Consent Holder shall submit to MPDC, for approval in a certifying capacity, a Construction Traffic Management Plan (CTMP). The purpose of the CTMP is to avoid, remedy and/or mitigate effects associated with Construction Traffic. The plan shall be prepared by a SQEP and shall include, but not be limited to:

a. Roles, responsibilities and contact details, including for public enquiries.

b. Construction staging and proposed activities.
c. Expected number of vehicle movements, particularly heavy vehicle numbers during each phase of construction.
d. Hours of work.
e. Points of site access.
f. Construction traffic routes
g. Nature and duration of any temporary traffic management proposed.
h. Any road upgrades proposed.
i. Location of on-site parking and loading areas for deliveries.
j. Measures to prevent, monitor and remedy tracking of debris onto public roads and dust onto sealed sections.
k. Measures for regular communications with residents located on O'Donoghue Road.

Advice Note: This consent does not constitute authorisation to work on the road. Works affecting the road will require approval for access to the corridor. A separate Corridor Access Request will need to be made to Matamata Piako District Council.

Site Management Plan (NES-CS)

C11. Prior to any soil disturbance works commencing the consent holder shall submit a Site Management Plan (SMP - NES) prepared by a SQEP in accordance with the current edition of the Ministry for Environment Contaminated Land Management Guidelines No.1 – Reporting on Contaminated Sites in New Zealand. The SMP - NES shall detail the procedures, controls and contingency measures that must be implemented for the duration of the works in order to protect human health by ensuring exposure pathways are minimised for the duration of the soil disturbance works and shall include, but not be limited to:
a. Erosion and sediment controls;
b. Environmental controls for stockpiling;
c. Procedures to minimise on-site contaminant dispersal;
d. Unexpected contamination discovery protocols; and
e. Transport and disposal of any on-site contaminated materials to off-site.

Roading

C12. Prior to the commencement of works on site, the Consent Holder shall submit to MPDC, for certification, a video survey and a National Association of Australia State Road Authorities. (NAASRA) roughness survey of the surface condition of O'Donoghue Road prepared by a SQEP.

C13. On the completion of construction works, the Consent Holder shall submit to MPDC, approval in a certifying capacity, a survey of the surface condition of O'Donoghue Road, prepared by a SQEP. Where O'Donoghue Road has been damaged or negatively impacted by construction works, the consent holder shall also submit a methodology and timeframe to repair the road so as to return it to, at a minimum, the standard pre-works.

C14. During the construction period, three-monthly inspections of O'Donoghue Road shall be undertaken, and any damage shall be repaired to a condition that, as a minimum, is as far as practicable, consistent with its pre-works condition.

C15. Notwithstanding the requirements of condition C14 above, any damage that, in the view of MPDC, has the potential to result in adverse traffic safety effects must be repaired as soon as practicable.

C16. Any new permanent vehicle crossing to the site must be constructed in accordance with the requirements of the Matamata-Piako District Council Development Manual

Construction Condition Standards

Retention of Trees

C17. The Consent Holder shall take all reasonable measures to ensure that existing trees identified in Appendix F of the Ecological Effects Assessment Report, prepared by 4Sight Consulting and dated March 2022, as being recommended for retention, are protected from damage during construction.

Noise

C18. Construction noise levels at the façade of any occupied dwelling on any other site shall comply with the following limits, when measured and assessed in accordance with NZS 6803:1999: Acoustics – Construction Noise:

Timeframe	Noise Limit	
	L_{Aeq}	L_{AFMax}
7.30am to 6.00pm	70dB	85dB
8.00pm to 7.00pm	45dB	70dB

C19. Within three months of the commencement of construction, noise shall be measured during representative construction activities in accordance with the NZS6803:1999 Acoustics – Construction Noise and the results of that monitoring provided to the District Plan MPDC.

C20. In the event that noise monitoring, completed under condition C19 above, demonstrates that the noise standards set out in condition C18 have not been complied with, the Consent Holder shall:

a. Take all necessary steps to reduce noise and provide details of those steps to the District Planner MPDC;
b. Carry out further monitoring in accordance with the requirements of condition C19.

The requirements of subclauses (a) and (b) must be repeated as required until such time that compliance with the noise standards set out in condition C18 are complied with.

Dust

C21. The Consent Holder shall adopt all reasonable and practicable measures to ensure that any dust caused by construction operations on the site which causes an effect that is noxious, dangerous, offensive or objectionable at or beyond the boundary of the site.

Vibration

C22. Construction vibration shall be measured and assessed in accordance with German Standard DIN 4150-3:1999 “Structural Vibration – Part 3: Effects of Vibration on Structures” and comply with the limits in Tables 1 and 3 of the Standard.

C23. That should MPDC receive a verified vibration complaint associated with the construction of the solar farm, the consent holder shall, at the Council's request, install monitoring devices for vibration to allow it to be measured in accordance with German Standard "DIN 4150-3:1999 Structural Vibration – Effects of Vibration on Structures". Following their installation, the consent holder shall provide data from the vibration monitoring devices to the MPDC Monitoring Officer(s), or delegated representatives at their request.

Earthworks

C24. Re-vegetation and/or stabilisation of all disturbed areas shall be completed in accordance with the measures detailed in the document titled "Erosion and Sediment Control – Guidelines for Soil Disturbing Activities" (WRC Technical Report No. 2009/02 – dated January 2009).

C25. The Consent Holder shall ensure those areas of the site where earthworks have been completed are stabilised against erosion as soon as practicable and within a period not exceeding 14 days after completion of any works authorised by this consent. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural) that will minimise sediment runoff and erosion to the satisfaction of the MPDC acting in a technical certification capacity. The Consent Holder shall monitor and maintain the site until vegetation is established to such an extent that it prevents erosion and prevents sediment from entering any water body.

Solar Panels

C26. Solar Panels shall be a maximum of 2900mm above finished ground level.

Complaints Management

C27. The Consent Holder shall maintain a register of any complaints received regarding the construction activities authorised by these resource consents at all times that physical works are being undertaken.

a. As a minimum, the register shall include:
   i. the name and contact details (if supplied) of the complainant;
   ii. the nature and details of the complaint;
   iii. the location, date and time of the complaint and the alleged event giving rise to the complaint;
   iv. the weather conditions at the time of the complaint, where relevant to the complaint;
   v. other activities in the area, unrelated to the Project, that may have contributed to the complaint;
   vi. the outcome of the Consent Holder's investigation into the complaint; and
   vii. a description of any measures taken to respond to the complaint.

b. The Consent Holder shall notify the MPDC of any complaint received that relates to the activities authorised by these resource consents as soon as reasonably practicable and no longer than two (2) wds. after receiving the complaint.

c. The Consent Holder shall respond to any complainant as soon as reasonably practicable and, within five (5) wds, advise the MPDC and the complainant of the outcome of the Consent Holder's investigation and all measures taken, or proposed to be taken, to respond to the complaint.

Lighting

C28. Outdoor lighting shall be designed and installed in accordance with the following requirements:

a. Lighting shall be restricted to infrared security lighting.
b. Lights shall be shielded to avoid upward light spill.
c. Lights shall have a temperature of no more than 2700K.
d. Lighting shall not result in any greater than 0.3lux at the infrastructure perimeter at any height.
(For the avoidance of doubt, this condition applies to both the construction phase and to the ongoing operation of the solar farm.)

Accidental Discovery Protocols

C29. If bone material is discovered that could potentially be of human origin, the following protocols shall be adopted:

a. Earthworks works should cease in the immediate vicinity while an Archaeologist establishes whether the bone is human.
b. The site will be secured in a way that protects the kōiwi as far as possible from further damage.
c. If it is not clear whether the bone is human, work shall cease in the immediate vicinity until a specialist can be consulted and a definite identification made.
d. If bone is confirmed as human (kōiwi), the Archaeologist will immediately contact Iwi representatives (if not present), Heritage New Zealand Pouhere Taonga and the New Zealand Police.
e. Consultation will be undertaken with Iwi representatives from Ngaati Whanaunga, Ngāti Rāhiri Tumutumu and Ngāti Hauā, the Heritage New Zealand Pouhere Taonga Regional Archaeologist and the Consent Holder to determine and advise the most appropriate course of action. No further action will be taken until responses have been received from all parties, and the kōiwi will not be removed until advised by Heritage New Zealand Pouhere Taonga.
f. The Iwi representatives will advise on appropriate tikanga and be given the opportunity to conduct any cultural ceremonies that are appropriate.
g. If the Iwi representatives are in agreement and so request, the bones may be further analysed by a skilled bio-anthropological specialist prior to reburial, in line with the Heritage New Zealand Pouhere Taonga Guidelines Koiwi Tangata Human Remains(2014).
h. Activity in that place can recommence as soon the bones have been reinterred or removed and authorisation has been obtained from Heritage New Zealand Pouhere Taonga.

C30. If taonga, including artefacts such as carvings, stone adzes, and greenstone objects are discovered, the following protocols shall be adopted:

a. The area containing the taonga will be secured in a way that protects the taonga as far as possible from further damage.

b. Consultation will be undertaken with Iwi representatives from Ngaati Whanaunga, Ngāti Rāhiri Tumutumu and Ngāti Hauā, who will advise on appropriate tikanga and be given the opportunity to conduct any cultural ceremonies that are appropriate.
c. An archaeologist will examine the taonga and advise Heritage New Zealand Pouhere Taonga
d. These actions will be carried out within an agreed stand down period and work may resume at the end of this period or when otherwise advised by Heritage New Zealand Pouhere Taonga.
e. The Archaeologist will notify the Ministry for Culture and Heritage of the find within 28 days as required under the Protected Objects Act 1975. This can be done through the Auckland War Memorial Museum.
f. The Ministry for Culture and Heritage, in consultation with Iwi representatives from Ngaati Whanaunga, Ngāti Rāhiri Tumutumu and Ngāti Hauā, will decide on custodianship of the taonga (which may be a museum or the iwi whose claim to the artefact has been confirmed by the Māori Land Court). If the taonga requires conservation treatment (stabilisation), this can be carried out by the Department of Anthropology, University of Auckland (09-373-7999) and would be paid for by the Ministry. It would then be returned to the custodian or museum.

Part D – Post Construction Conditions

These conditions relate to RC 1 – Matamata Piako District Council

Educational/community/iwi Visits

D1. Educational/community/iwi visits to the site shall be limited to one per week.

D2. Traffic associated with educational/community/iwi visits shall enter the site via O'Donoghue Road.

D3. The Consent Holder shall maintain a register of visits to the site and shall produce that register within 48 hours on request from a duly authorised officer of the MPDC.

D4. The noise (rating) level from all solar plant shall comply with the following noise levels when measured and assessed at any notational boundary on another site.

Timeframe	Noise Limit
7.00am to 8.00pm	45dBL_{Aeq}
8.00pm to 7.00am	35dBL_{Aeq}

D5. The noise (rating) level from all other activities on the site shall comply with the following noise levels when measured and assessed at any notational boundary on another site.

Timeframe	Noise Limit
7.00am to 8.00pm	50dBL_{Aeq}
8.00pm to 7.00am	40dBL_{Aeq}

D6. The noise levels in Conditions D4 and D5 shall be measured in accordance with the requirements of New Zealand Standard NZS 6801:2008 "Acoustics – Measurement of Environmental Sound" and assessed in accordance with the requirements of New Zealand Standard NZS 6802:2008 "Acoustic – Environmental noise".

D7. That if MPDC receive a minimum of three complaints, which are verified, the Consent Holder shall, at MPDC's request undertake noise monitoring during an education/community/iwi visit in accordance with the requirements of New Zealand Standard NZS 6802:2008 and the results of that monitoring provided to MPDC.

D8. In the event that noise monitoring, completed under condition D7 above, demonstrates that the noise standards set out in condition D4-D6 have not been complied with, the Consent Holder shall:

a. Take all necessary steps to reduce noise and provide details of those steps to the District Planner MPDC;
b. Carry out further monitoring in accordance with the requirements of condition D7.

The requirements of subclauses (a) and (b) shall be repeated as required until such time that compliance with the noise standards set out in conditions D4-D6 is achieved.

D9. Internal signage for the purposes of educational/community/iwi visits shall:

a. Not exceed a total area of 4m²;
b. Be placed so not visible from any road or public place;
c. Include a range of educational information, including but not limited to:
    i. Cultural interpretation/narratives;
    ii. Workings of the solar farm; and
    iii. Wetland information.

Advice Note: The above condition does not restrict the placement of additional signage permitted under the provisions of the Matamata Piako District Plan.

Restoration Management Plan

D10. The Consent Holder shall submit to MPDC, a Restoration Management Plan (RMP) for certification at least 30 wds. before operation of the site, in accordance with Table 5. The restoration management plan shall be in general accordance with the draft restoration management plan provided for this consent application. The purpose of the RMP is to set out the objectives and methods for maintaining and restoring ecological values, the timing of restoration planting and the requirements for ongoing pest control. The RMP shall include (but not be limited to):

a. The objective of maintaining habitat for long tailed bats/pekapeka on the site.
b. Identification of planting zones in accordance with the approved planting plan and development plans identified in A1.
c. For each planting zone, details of species, spacing and size and planting.
d. Timeline for planting works.
e. Details of site preparation and maintenance required for plant establishment.
f. Requirements for fencing of vegetated areas.
g. Requirements of ongoing maintenance and monitoring.
h. Requirements, including methods and timing of plant weed control.
i. The species, methods, and timing of animal pest control.
j. Methods and timing for the management of wasps.
k. Monitoring to determine the success of management plan objectives.

Operational Management Plan

D11. In accordance with the timeframe set out in Table 5, the Consent Holder shall submit to Council, for approval in a certifying capacity, an Operational Site Management Plan (OSMP). The purpose of the OSMP is to ensure the solar farm and educational/community/iwi visits are operated in a manner that avoids, mitigates or remedies adverse effects on the environment. This should include, but not be limited to:

a. Measures for management of health and safety.
b. Measures for scheduled maintenance and off-site monitoring of equipment.
c. Measure for arranging and recording educational/community/Iwi visits to the site.
d. Measures to ensure that food scraps and rubbish are appropriately disposed of.
e. Measures for controlling traffic, including parking and manoeuvring, in relation to educational/community/Iwi visits to the site
f. Reference to, or inclusion of, the ongoing maintenance requirements set out in the Certified RMP, including measures for pest and weed control.

Cleaning

D12. Solar Farm Infrastructure within the site (including, but not limited to panels; inverters; transformers and switchgear) shall only be cleaned with water or a biodegradable cleaner.

Part E – Regional Consent Conditions

Drain planting

E1. Prior to any planting of drains managed by WRC, a final planting and maintenance plan shall be provided to WRC for approval in a certifying capacity. The plan shall include the following:

a. Details of species to be planted.
b. Details of maintenance required.
c. Planting on one side of the drain shall be limited to 3m in width to allow for maintenance and shall be planted with low growing species.

Advice Note: The above plan can be included in the Restoration Management Plan at the Consent Holders discretion.

E2. Planting and maintenance of any drains managed by WRC shall be carried out in accordance with the plan certified under condition E1.

Wetland restoration

E3. Prior to any of the following works:

a. Land disturbance within, or within 10m of a natural wetland.
b. The installation of a weir(s) adjacent to the natural wetland.
c. Restoration of the natural wetland.

The Consent Holder shall, at least ten (10) wds. before commencing that work, provide to WRC:

l. A description of the activity to be undertaken.
m. A description of, and a map showing, where the activity will be undertaken.
n. Statement of when the activity will start and when it is expected to end.
o. A description of the extent of the activity.
p. The contact details of a representative.
q. In relation to wetland restoration – a list of plants to be used within the wetland.
r. In relation to a weir(s) – details as to design and anticipated effects on the water levels within the wetland and surrounds.

E4. Within 20 days of the installation of any weir, the consent holder shall provide the following information to WRC:

a. A description of the weir, including:
    i. the type of weir(s);
    ii. the weir's crest shape;
    iii. the weir's height;
    iv. the weir's width;
    v. the material from which the weir(s) is/are made;
    vi. the type of bed substrate that is present across most of the weir(s);
    vii. whether there are any remediation features (for example, baffles or spat rope) in the weir(s);
    viii. whether the weir has wetted margins;
    ix. the slope of the weir;

x. the backwater distance from the weir, meaning the distance furthest upstream where the water level is influenced by the weir;
xi. The geographical location and the width of the connected area at both the water level and bed of the connected area;
xii. Whether the structure provides for or will impede fish passage;
xiii. Whether the structure protects a particular species is

b. Details of the flow of the connected area.
c. Confirmation that the water is not tidal at the location of the weir(s).
d. Visual evidence (e.g. photographs) that show both ends of the structure(s).
e. In the event the weir(s) have an apron, the following information shall also be provided:
    i. the length of the apron;
    ii. the height of the drop (if any) from the apron's downstream end;
    iii. the material from which the apron is made;
    iv. the mean depth of the water across the apron;
    v. the mean water velocity across the apron;
    vi. the type of bed substrate that is across most of the apron.
f. In the event the weir(s) have a ramp, the following information shall also be provided:
    i. the length of the ramp
    ii. the slope of the ramp;
    iii. the type of surface that the ramp has;
    iv. whether the ramp has wetted margins;

Review of conditions

E5 The WRC may, under sections 128 and 129 of the Resource Management Act 1991 (Act), initiate a review of any or all conditions of this resource consent falling within the scope of the WRC's functions under section 30 of the RMA on the first, second and third anniversary of the commencement of the consent and every three years after that, for the duration of the resource consents, subject to the following:

a. Any such review of conditions shall be the for the purposes of responding to any adverse effect on the environment, which may arise from the exercise of the consent and which it is most appropriate to deal with at a later stage.

b. Deal with any unanticipated adverse effects on the environment which may arise from the exercise of the consent, which it is appropriate to deal with at a later stage; and

c. Ensure that the conditions are effective and appropriate in managing the effects of the activities authorised by this consent.

APPENDIX 2 – SUMMARY OF COMMENTS RECEIVED

Appendix 2

Summary of Comments from Invited Parties

Adjacent Owners / Occupiers	
Sandra Pederson	• Visual impact of solar panels, suggests temporary screening until plantings are established • Concerned about dust with traffic entering from Stanley Road
Cecil De Lautour	• Visual impact of glint and glare from panels, suggests planting are completed before construction commences • Effects of dust at Stanley Road entrance
Susan and Jacobus Tesselaar	• Ongoing effect of glint and glare • Visual impact on surrounding landscape • Impact on property value
Brendon Putt	• Impact on property value • Effects on glint and glare from solar panels • Noise impacts above 35 dB • Impact of construction traffic on O'Donoghue Rd and dust on surrounding homes • Proposed vegetative screening to be planted early
Keith Rackham	• Impact of solar farm facilities on property value, seeking compensation if property value drops
Stuart and Alice McRobbie	• Impact of solar farm on them and property value
Stuart and Debbie Vincent	• Effects of noise and traffic • View of Mt Aroha will be interrupted by the proposed plantings • Planned house will be on boundary of O'Donoghue Rd • Disagrees with change in land use from prime dairying to solar and sheep farming
Donna and David Mellish	• Supportive of the project
Jane Anderson	• Supportive of the project
Virnek and Pawandeep Singh-Mahal	• Visual impact • Noise and increased traffic during construction • Effect on property values
Local and Regional Authorities	
Matamata Piako DC	• Reminds the Panel to have regard to the MPDC District Plan to ensure significant adverse effects of a particular activity are avoided, remedied, or mitigated, and any residual adverse effect and appropriately managed. This includes the Land Development objectives and policies of the District Plan with respect to high quality soils are not compromised.

	• Suggests clarification of sheep farming as a permitted activity and ensure rural character and amenity values are maintained • Supports the proposed landscaping and ecological restoration • Suggests a review condition to address unanticipated adverse effects to be dealt with later • Suggests changes to some conditions
Waikato RC	• Reminds the Panel of discretionary rule (4.2.18.1) that access to riparian planning for maintenance requires resource consent • Accepts NES-FW assessment in Appendix M but notes that consents will be require of weirs are installed • Recommends the Applicant undertake an assessment of the activities against National Policy Statement for Freshwater Management 2020 • Supports the consultation undertaken with iwi and potentially affected parties
Specified Organisations	
NZ Infrastructure Commission (Te Waihanga)	• Supports the application as it addresses: o Te Waihanga 30 Year Strategy for renewable energy o Improves resilience of regional network through diversification of power generation o Plays a significant role in decarbonising the economy and achieving Net Zero targets
Royal Forest and Bird Society	• Has concerns about potential impact of solar farm on habitat and natural behaviour of long-tailed bats (pekapeka) particularly habitat, lighting and noise. • Suggests changes to conditions to address lighting effects on the bats and include monitoring of bats and pest management • Generally supports of the Restoration Planting initiatives and supports proposed planting
Environmental Defence Society	• Suggests the Panel would benefit from a more complete cost/benefit appraisal of the change in land use and is relevant for a Part 2 analysis • Comments that draft conditions do not address the achievement of screening outcomes noted in the AEE and suggests interim screening and response to complaints should be addressed in an appropriate Management Plan • Notes there does not appear to be an assessment from the elevated position of Mt Te Aroha and suggests the Panel should be advised as what prominence the solar farm has in the wider view from this viewpoint • Acknowledges the setback of the solar farm from the Te Aroha West hub and the planting of the eastern boundary • Notes the ecological assessment predicts a 'net gain' in ecological values of the site • Notes the input of Ngāti Whaunanga and Ngāti Tumutumu/Ngāti Hauā cultural assessments and the response to those matters in the proposal

Heritage New Zealand Pouhere Taonga	• Notes proposed draft conditions includes provision for mana whenua to provide appropriate tikanga and advocates for continued meaningful consultation with mana whenua • Does consider that there would be benefit in the prestart meeting conditions being amended to include a discussion of the Accidental Discovery Protocol • Notes screening proposed as part of this resource consent will limit the potential for adverse effects on the scheduled heritage item 87 (historic dairy factory fronting Stanley Street) • Changes to some draft conditions are proposed
Property Council of NZ	• Policy prevents them from commenting on a specific site application such as Tauhei Solar Farm
Specified Ministers	
Associate Minister Arts Culture and Heritage	• Supports the intent of the project to develop and operate a solar farm and install the associated underground cabling to connect it to the National Grid • Supports HNZPT's request to change draft conditions
Minister for Climate Change	• Notes the project: o is consistent with the intent of the NPS for Renewable Electricity Generation o will use renewable resources to increase NZ's electricity generation capacity o will increase resilience of overall national energy system o will contribute NZ's effort to mitigate climate change and transition more quickly to a low-emissions economy
Appropriate parties	
Transpower	• Confirms the connection of the proposed solar farm will not compromise the National Grid and would not be inconsistent with the National Policy Statement on Electricity Transmissions 2008 • Transpower is continuing engineering investigations and will apply for the necessary approvals from relevant councils to enable the connection with the Waihou Substation
Ngaati Tumutumu Iwi Trust	• The iwi has proved a cultural impact assessment • Supports the project and proposed environmental and economic benefits

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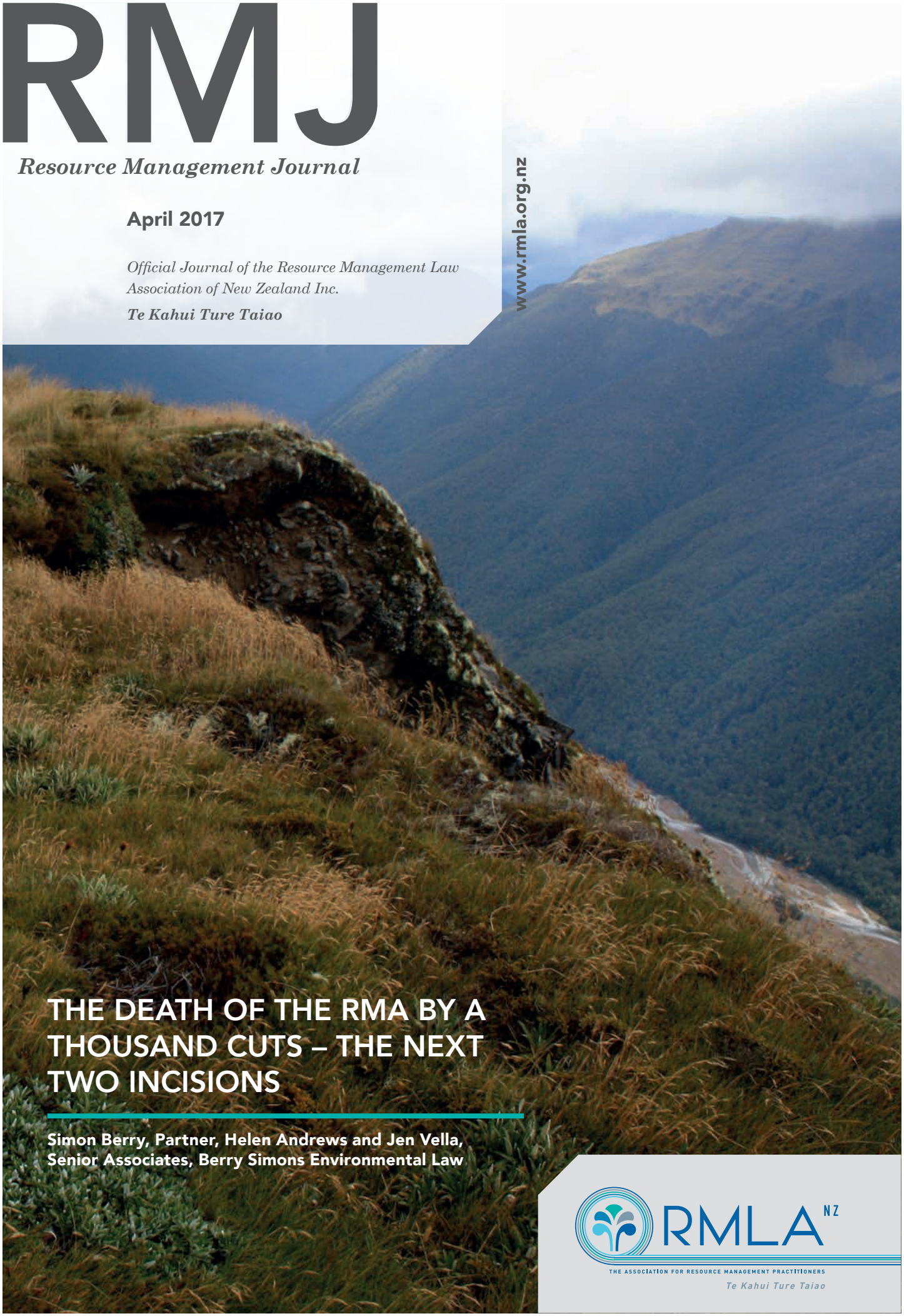


THE DEATH OF THE RMA BY A THOUSAND CUTS – THE NEXT TWO INCISIONS

Simon Berry, Partner, Helen Andrews and Jen Vella, Senior Associates, Berry Simons Environmental Law

RMLA NZ
THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS
Te Kahui Ture Taiao

INSIDE

Editorial:

INTRODUCTION

Our August 2016 RMJ article entitled "The Final Straw for the RMA? Some shortcomings of the Resource Legislation Amendment Bill" (August 2016 article) addressed some of the shortcomings of the Resource Legislation Amendment Bill 2015 (RLAB) that we were concerned would result in significant additional transaction costs and delays. We surmised that that legislation may transpire to be the straw that breaks the camel's back in terms of the workability of the Resource Management Act 1991 (RMA).

The four main concerns expressed in the August 2016 article were as follows:

(a) amendments that are based on flawed assumptions or seek to address problems which have not been proven to exist and/or which could be dealt with under the existing framework;

(b) poor drafting coupled with the introduction of entirely novel legal concepts that will introduce further confusion, costs and delay [for which the RMA will inevitably and simplistically be blamed];

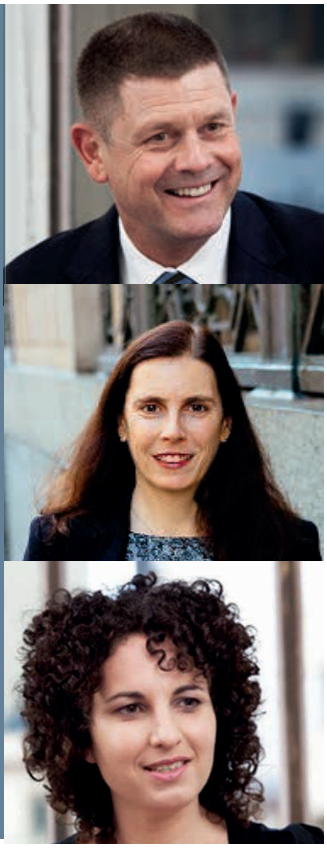
(c) further reductions in opportunities for public participation and access to justice; and

(d) the continued aggregation of power to the Minister for the Environment at the expense of planning by cooperative mandate, which has always been one of the cornerstones of New Zealand planning legislation." (August 2016 RMJ at 2)

Given the potentially significant adverse consequences, we suggested that the government should pause for thought before enacting such poor-quality legislation. The rationale for doing so is underpinned by the existence of a number of high-level reports on the future of the RMA and New Zealand's planning system, in particular those prepared by:

(a) the Environmental Defence Society (EDS) – Marie A Brown, Raewyn Peart and Madeleine Wright *Evaluating the environmental outcomes of the RMA* (EDS, June 2016), as commissioned by Property Council New Zealand, the Employers and Manufacturers Association and the New Zealand Council for Infrastructure Development;

(b) Local Government New Zealand (LGNZ) – MartinJenkins *A 'blue skies' discussion about New Zealand's resource management system* (LGNZ, December 2015); and



Authors:
Simon Berry, Partner, Helen Andrews and Jen Vella, Senior Associates, Berry Simons

(c) the New Zealand Productivity Commission (NZPC) – NZPC *Better urban planning: Draft report* (August 2016) and NZPC *Better urban planning: Final report* (February 2017).

The EDS paper notes, correctly in our view, that the key issues the government is seeking to address via the RLAB lie in the manner in which the RMA is administered, not flaws inherent in the legislation itself. Two of the key themes of the EDS paper are that:

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(a) further regulatory change should only be undertaken on the basis of strong evidence to ensure that solutions "fit" the problems that the reforms are intended to address; and

(b) we should pause for thought to facilitate a mature debate about these issues, potentially via some form of independent inquiry.

Commenting on the release of the NZPC's final report, Gary Taylor of EDS said:

> *"A range of other recommendations including a one-stop shop for planning hearings, with rights of appeal to the Environment Court limited to points of law, need more thought. Public participation rights should not be curtailed.*
>
> *The big question is what's next? EDS contends that while this review establishes a sound basis for reform, we need to think carefully about a process that works for all. Reform of the resource management system will affect all New Zealanders and has constitutional implications. EDS is therefore embarking on its own major review of the system and expects to generate further useful ideas over the next 18 months.*
>
> *In terms of process, we favour the appointment of a Royal Commission on Resource Management. The way forward must be depoliticised, have huge integrity and focus on our country's needs over the next 30 years[.]" (EDS "EDS congratulates the Productivity Commission on urban planning report" (press release, 29 March 2017))*

Unfortunately, the call for mature informed debate of this nature ahead of enactment of the RLAB has not been taken up. The RLAB has passed its second reading and, at the time of writing, is likely to be enacted prior to the General Election in September 2017.

Happily, the Local Government and Environment Select Committee has taken heed of some of the concerns expressed by submitters. Some of the more worrying aspects of the RLAB (particularly in relation to the notification provisions) would be improved if the Committee's recommendations are accepted, although some of the features we were concerned about remain in the version as reported back from the Committee. It is beyond the scope of this paper to address the Committee's recommendations.

Two further pieces of fast-tracked legislation that would override RMA processes and planning instruments and further erode access to environmental justice are currently being promoted by the government. They are:

(a) The Point England Development Enabling Bill 2016 (PE Bill).

(b) Proposed legislation setting out the development of "urban development authorities" (UDAs) as outlined in a recent Ministry of Business, Innovation and Employment (MBIE) discussion document (MBIE *Urban Development Authorities: Discussion Document* (February 2017) (UDA Discussion Document). This initiative cannot be implemented without a significant "carve out" from normal RMA processes.

Both initiatives are being promoted by the Hon Nick Smith in his capacity as Minister for Building and Construction, which seems ironic given that the RMA is the statute that is the centrepiece of Mr Smith's other major portfolio as Minister for the Environment.

SCOPE OF PAPER

The purpose of this paper is to briefly canvass both initiatives, using as touchstones the four concerns expressed in our August 2016 article, to assess the extent to which these measures give rise to similar concerns. We deal first with the PE Bill and then address the UDA proposals, noting that it is beyond the scope of this paper to consider the UDA proposals in a comprehensive way.

THE POINT ENGLAND DEVELOPMENT ENABLING BILL 2016

The PE Bill was introduced to Parliament on 7 December 2016, and submissions closed on 31 January 2017. The Local Government and Environment Select Committee heard submissions on 20 February 2017, and at the time of writing the Bill was being considered by the Committee, which is due to report back on 28 April 2017.

The purpose of the PE Bill is to fast-track the development of a large (11.69 ha) area of the Point England Recreation Reserve in Tāmaki, east Auckland to enable housing development (the development land). The land is owned by the Crown but vested in the Auckland Council as a recreation reserve under the Reserves Act 1977. Under the

Bill, the reserve status of the land will be revoked and it will be rezoned to Residential – Mixed Housing Urban, but without any of the rights to public participation that would normally arise under the Reserves Act or the RMA.

The land was identified in conjunction with Ngāti Paoa under the Crown Land Development Programme, which seeks to identify vacant and underutilised land in Auckland that is suitable and available for housing development to facilitate the construction of dwellings.

If the PE Bill is enacted, the land will be offered to Ngāti Paoa as part of their Treaty of Waitangi settlement, although Ngāti Paoa will purchase the land at an agreed price. The MBIE's Regulatory Impact Statement: Point England Development Enabling Bill (21 October 2016) (PE RIS) records that no public consultation was undertaken prior to the Bill being introduced into Parliament because the Treaty negotiation process is confidential.

Overview of the PE Bill

If enacted, the PE Bill will:

(a) Subdivide a portion of land to be developed from the reserve, exempt the subdivision from the normal RMA processes, and vest the development land in the Crown.

(b) Rezone the development land from Public Open Space to Residential – Mixed Housing Urban by way of a "deemed" amendment to the partly operative Auckland Unitary Plan (PE Bill, cl 6(1)(e)). That is despite the fact that the Auckland Council has just completed its Unitary Plan process, which has rezoned most of the city. That process involved careful consideration by the Independent Hearing Panel of a significant volume of evidence relating to the appropriateness of certain zones in particular areas.

(c) Revoke the recreation reserve status of the development land and exempt the revocation from the provisions of the Reserves Act 1977.

(d) Set the development land aside for State housing purposes so it can be sold on that basis.

The PE Bill does not require the Crown to transfer the land to Ngāti Paoa or limit the provisions coming into force if Ngāti Paoa does not purchase the land as part of the Treaty settlement. If Ngāti Paoa elects not to purchase the land, the land will be able to be offered to other developers.

Details of the proposed development are not contained in the PE Bill and are the subject of ongoing negotiations between Ngāti Paoa and the Crown. It is understood that the shape of the proposed development, including any proportion of social or affordable housing, will be the subject of a separate development agreement with the Crown.

The legislation is being fast-tracked through parliamentary processes so that it can be passed before the 2017 General Election.

Concerns arise in relation to the lack of any assessment of the environmental effects of the proposal, the elimination of rights of public participation, the loss of reserve land, and the appropriateness of the government decision by statute.

Quality of environmental assessment/removal of access to environmental justice

The PE RIS explicitly acknowledges that it does not assess the rezoning aspect of the PE Bill. However, issues have been raised about the suitability of development at the site due to the presence of rare and endangered shore birds. Once the land is rezoned to Residential – Mixed Housing Urban, a subdivision consent will be required; however, that will not present an opportunity for the potential adverse effects on birdlife to be assessed. These issues would ordinarily be considered in the context of a First Schedule process.

No such assessment of these or other effects has been undertaken, nor do the public have the opportunity to be part of that process. How will these effects be considered? Or will they? The apparent upshot is that the land will be rezoned in a complete vacuum in terms of the type of information that would ordinarily be required for a plan change, and in the knowledge that the proposal is likely to have adverse effects on native fauna which have not been assessed.

This approach is not only contrary to principles of sound decision-making, but results in ad hoc planning which is directly contrary to the findings of the NZPC in its *Better urban planning* report with respect to the need for better decision-making and the OECD's recent recommendation to ensure that areas of fast-track development are

Continued

screened against environmental impacts, especially against cumulative and irreversible effects.

Use of reserve land for housing – poor decision-making

Putting aside the process-related issues, the merits of the proposal to take reserve land for housing are also questionable from a resource management perspective.

Auckland is projected to grow by over 800,000 people over the next 30 years (medium growth projection: Statistics New Zealand "Population projections overview" <http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/projections-overview/subnat-pop-proj.aspx>). This means that 400,000 additional houses need to be built in Auckland over that period. With such significant population growth projected and the increase in density provided for by the Unitary Plan, few would disagree that sports fields, parks, reserves and other green spaces become increasingly important – and represent finite resources that should be sustainably managed in terms of s 5 of the RMA.

In short, once public open space is gone, it is lost forever; building houses on public open space would seem to be a short-sighted solution to the need for housing.

While the government might not, the Auckland Council recognises the need to maintain public open green space. The Council has already identified a shortage in sports fields across the region, and is in the process of assessing reserve requirements in the Tāmaki area, which is due to be completed in mid-2017.

The PE RIS acknowledges that this assessment would have contributed to the analysis of the impacts of the proposal on local residents' access to reserves, but the government has nevertheless pushed on with the legislation.

Also highly questionable is the appropriateness of the government deciding that Auckland reserve land can be foregone for housing and implementing that decision via fast-track legislation that overrides normal statutory processes, thus stifling the ability for these issues to be fully debated and properly tested.

Commentary

The Auckland Council's Maungakiekie-Tāmaki Local Board submitted that the PE Bill "[s]ets a dangerous precedent by cutting across the existing requirements of the Resource Management Act and the Reserves Act", and "[f]ast tracks development and avoids a robust public consultation process including a right of appeal" ("The submission of the Maungakiekie-Tāmaki Local Board on the Point England Development Enabling Bill" (31 January 2017) at [1.4]). We agree. The government's use of legislative powers to override the Auckland Council's functions is directly contrary to sound decision-making and the devolved decision-making which lies at the heart of New Zealand's local government and resource management regime.

This PE Bill parallels the government's attempt through the RLAB to increase ministerial powers and severely limit opportunities for public participation and access to environmental justice.

Clause 105 of the RLAB received heavy criticism because it enabled the Minister for the Environment to recommend the promulgation of regulations to, amongst other things, permit specified land uses, override existing rules which restrict land use, and prohibit a local authority from making new rules which would restrict land use for residential development. Despite the Local Government and Environment Select Committee acknowledging submitters' concerns about the inappropriate breadth of that power and recommending that the power be removed, the government is proposing to exercise the very type of power that would have been enabled by that clause, via special legislation.

In other words, the PE Bill represents a failure in terms of all four of the concerns we expressed about the RLAB and more of the same in terms of the willingness to override RMA processes.

THE URBAN DEVELOPMENT AUTHORITY PROPOSALS

The government's proposals for the development of UDAs to fast-track urban development projects are outlined in the MBIE's UDA Discussion Document, which is open for public consultation. Submissions close on 19 May 2017. Subject to the outcome of September's General Election, the government is proposing to introduce a bill on the UDA proposals by April–May 2018, with a view to that being referred to a parliamentary select committee by October–November 2018.

To be clear, we do not oppose the concept of UDAs in principle, and several aspects of the UDA proposals are worthy of support. In particular, a lack of coordination between the planning of urban development and the funding and delivery of infrastructure required to support this development has repeatedly been identified as a key impediment to enabling growth of our urban areas, particularly Auckland. The ability to address this via UDAs is welcomed.

A detailed review of the UDA proposals is beyond the scope of this article, which only focuses on those aspects of the UDA proposals that impact on RMA processes. To that extent, our key focus is on the powers being proposed for UDAs in relation to planning and resource consenting, namely:

> *"… powers to override existing and proposed district plans and regional plans, and streamlined consenting processes." (UDA Discussion Document at 2)*

The UDA Discussion Document also states:

> *"The planning, land-use and consenting regime proposed for urban development projects will shift the balance of matters that must be considered in decision-making towards the strategic objectives of the development project." (at 59)*

This refers to the intent to shift decision-making away from consent authorities to UDAs, to provide UDAs with the ability to override existing planning instruments, and to relegate pt 2 of the RMA as secondary to the "strategic objectives of the development project" for the purpose of decision-making.

Before turning to those issues, we set out an overview of the UDA proposals to provide context for that analysis.

The UDA Proposals – Overview

The UDA Discussion Document states:

> *"The proposed legislation will provide government with a range of development powers that support urban development; provide greater coordination, certainty and speed; and are capable of supporting a wide range of development projects, including for housing, commercial and economic development purposes." (at 19)*

The proposed new legislation would enable local and central government to:

(a) empower nationally or locally significant development projects in urban areas (or on land that is sufficiently close to an urban area to be serviced or become part of that area) to access more enabling development powers and land use rules; and

(b) establish new UDAs to support those projects where required.

Under the proposal, the government (in consultation with the relevant territorial authority) would identify qualifying projects to be planned and facilitated by publicly-controlled UDAs, potentially in partnership with private companies and/or landowners. UDAs can be either new or existing entities, provided they are publicly controlled and willing to take on the role.

Once the project is identified, the government has the power to: set the "strategic objectives" of the project; select which of the development powers that project can access; determine who can exercise the development powers for the project; and determine who is accountable for delivering the project's strategic objectives. There is no right to appeal the decision to formally establish a development project.

UDAs would be established by Order in Council, which would include details of:

(a) the development project(s) that the UDA will be responsible for;

(b) the area covered by the development project;

(c) the strategic objectives for the development project;

(d) the development powers that will be available to the UDA as determined by the responsible minister (expected to be the Minister for Building and Construction); and

(e) any conditions imposed on the UDA, including on the use of its powers.

The proposals include a "tool-kit" of development powers that could be granted to particular projects (UDA Discussion Document at 2), which may include powers to:

(a) assemble parcels of land, including via existing compulsory acquisition powers under the Public Works Act 1981;

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(b) override existing and proposed district plans and regional plans, and use streamlined consenting processes;

(c) plan and build infrastructure such as roads, water pipes and reserves;

(d) buy, sell and lease land and buildings;

(e) borrow to fund infrastructure; and

(f) levy charges to cover infrastructure costs.

Once established, a UDA is required to develop a draft development plan, which:

(a) states the "strategic objectives" the government has set for the project;

(b) identifies how each of the development powers the UDA has been granted will be exercised (including the nature and location of new land use regulations);

(c) shows how the UDA's use of the development powers will contribute to delivering the development project's strategic objectives;

(d) shows how the UDA will comply with any conditions attached to the development powers it has been provided;

(e) includes an assessment of effects on the environment, including cumulative effects; and

(f) identifies any further development powers the UDA has not been granted but proposes to apply for.

The minister would be responsible for making the final decision approving the development plan, and the UDA is required to exercise its powers in accordance with that plan. There will be public consultation (but no formal hearing) on the draft development plan, and an opportunity to object to a recommended development plan before it is put forward to the minister. However, there is no right to appeal the minister's decision on the development plan.

UDA proposals in relation to planning, land use and consenting

The extent to which the development plan and the UDA can override normal RMA processes and institutions is neatly captured in proposal 98 of the UDA Discussion Document:

> *"98. To the extent it is necessary to achieve the strategic objectives of the development project:*
>
> *(a) the development plan can override one or more of the existing and proposed: district plan, regional plan and the applicable regional policy statement that would otherwise apply to the development project;*
>
> *(b) the Government can choose the extent to which one or more of the district plan, regional plan and regional policy statement can be overridden in each case;*
>
> *(c) an urban development authority can be granted the planning and consenting powers of a regional council and territorial authority;*
>
> *(d) the Government can impose conditions on the use of any planning powers that are granted (such as a condition to comply with a rule concerning discharges in a regional air plan, notwithstanding that the Government is granting a power to override the regional plan more generally); and*
>
> *(e) the urban development authority can take on the compliance and enforcement responsibilities and powers of a territorial authority and regional council, for breaches of the development plan and associated development consents (except where the authority is the developer and a development consent has been required, in which case compliance and enforcement will rest with the relevant local authority)." (at 61; emphasis added)*

Other aspects of the UDA Discussion Document worthy of comment in this context are as follows:

(a) In preparing the development plan, the decision-maker must have regard to a hierarchy of relevant considerations in which the government-set "strategic objectives of the development project" must be given the greatest weight, followed by pt 2 of the RMA, with matters that are relevant under ss 66 and 74 of the RMA bringing up the rear. The project's strategic objectives are therefore of central importance, as they become the

key yardstick against which the planning framework for the development area is to be prepared – thus setting up something of a "self-fulfilling prophecy".

(b) This hierarchy also applies in considering resource consents for activities taking place within the project area, with the third matter being ss 104–107 of the RMA.

(c) The development plan can provide for development activities that can "automatically proceed" (UDA Discussion Document at 64–65) without the need for a development consent (ie the equivalent of a permitted activity, with no rights of submission or public input), as well as controlled, restricted discretionary and prohibited activities (but not discretionary or non-complying activities).

(d) Consent applications within the project area for land use and subdivision will generally be processed on a non-notified basis. Where applications are notified, submissions can be made but no hearing will be held.

(e) There will be significantly reduced processing time frames for development consents, with decisions on non-notified consents made within 15 working days of receipt. Such short time frames are unlikely to be conducive to thorough consideration of the issues which arise and may well lead to poor decision-making.

(f) Only the applicant will have the opportunity to appeal decisions on development consents to the Environment Court, and even then only in respect of conditions where the consent is granted.

Obviously, these proposals involve a very significant override of the most basic elements of our RMA system, including quality assessment of proposals and access to environmental justice. The combination of speed, centralised decision-making and the severe limits on public participation has the significant potential to give rise to disenfranchised local communities.

To explain why UDAs may require access to such extensive planning and consenting powers, the MBIE's *Regulatory Impact Statement: Urban development authorities* (1 December 2016) (UDA RIS) relies on conclusions of the NZPC rather than undertaking its own robust research and policy analysis, but nevertheless acknowledges that "existing powers and processes can overcome at least some of the issues faced by urban development" (at 3).

Why the hurry?

If UDAs are going to be effective, the devil will be in the detail; the legislation will need to be drafted carefully if it is going to achieve its purpose. If the UDA legislation transpires to be as poorly drafted as the RLAB was, uncertainty and process delays will continue to arise. On that basis, we have serious doubts whether it is appropriate to move as quickly as the government is intending on legislation of this complexity and importance, particularly in advance of assessing the effectiveness of the amendments to the RMA to be made by the RLAB.

The UDA RIS notes that, in order to address the issues perceived to be precluding urban development, and as an alternative to the introduction of bespoke legislation for UDAs:

> *"There is scope to rely on currently or soon to be available tools and processes of the RMA, Resource Legislation Amendment Bill 2015 (RLAB) and the NPS on Urban [D]evelopment Capacity to deliver positive urban change." (at [159])*

The RLAB was aimed at "making development easier in urban areas" (Nick Smith (Minister for Building and Housing) *Discussion document on urban development legislation* (Cabinet paper, December 2016) at [131]). If the RLAB is as effective at facilitating urban development as the government hopes, there may be no need to provide UDAs with the ability to override regional and district planning instruments or "shift the balance" of matters that must be considered for identified urban development projects (at [132]; see also UDA Discussion Document at 59). The alternative of waiting to assess the effectiveness of the RLAB is discounted in the UDA RIS as follows:

> *"While these initiatives would all make a difference at the margin, they are unlikely to provide the speed of outcomes, especially with respect to housing supply projects.*
>
> *It is difficult to predict with certainty that any of them will deliver focused improvements to urban development outcomes." (at [165]–[166])*

Continued

Commentary

Assuming that the RLAB is passed prior to the 2017 General Election, the UDA legislation could be enacted less than two years after the RLAB. This will be well before there has been any opportunity to assess whether the amendments introduced by the RLAB have adequately addressed concerns regarding the speed and responsiveness of the RMA's consenting and plan-making processes, particularly for urban development. Both the UDA Discussion Document and UDA RIS note that the UDA proposals are potentially premature given the likely enactment of the RLAB, and neither adequately explains the need for such haste.

On the basis of the UDA Discussion Document and the UDA RIS that have been released to date, we have concerns that the UDA proposals will suffer from many of the same issues as those expressed in relation to the RLAB and PE Bill, namely:

(a) By having the ability to grant UDAs extensive planning and consenting powers, central government is continuing the trend of aggregating power to itself.

(b) These powers are conferred at the expense of local decision-making and further reduce opportunities for public participation/access to environmental justice.

(c) Quality decision-making will be sacrificed for speed, without adequate justification for doing so.

In our view, the explanations provided by the government do not provide sufficient justification for the significant imposition on democratic and private property rights that the UDA proposals could entail. If UDAs are to be provided for, a more appropriate balance will need to be struck.

CONCLUDING COMMENTS – MORE OF THE SAME, BUT WORSE

What we have seen in the RLAB is symptomatic of the continuing decay of New Zealand's resource management framework and institutions, and the sheer quality of decision-making in that space, as a result of:

(a) an ongoing assault on the workability and integrity of the RMA via legislation which is poorly drafted and rapidly enacted, giving rise to uncertainty, unforeseen consequences and the need for further amendments;

(b) a steady erosion of access to environmental justice via restrictions on notification and the introduction of novel concepts (eg deemed permitted activities) designed to limit public participation;

(c) the sidelining of existing structures and institutions, including the Environment Court, in favour of ad hoc decision-making structures such as Boards of Inquiry and Independent Hearing Panels;

(d) a trend toward fast-track, bespoke legislation to provide "solutions" to (sometimes largely imagined and unquantified) "problems"; and

(e) an ongoing aggregation of power to Wellington, rather than to the institutions created by legislation and mandated by local and regional communities to carry out the task.

We indicated in our August 2016 article that the government's attitude towards notification and access to justice had:

> *"… spawned proposed reforms of a nature never seen before – amendments that represent a difference in kind rather than degree that if enacted would strike at the very heart of the RMA." (August 2016 RMJ at 2)*

Analysis of the PE Bill and the UDA proposals demonstrate that what we have before us is more of the same – but worse.

The principles of local decision-making and public participation/access to environmental justice have always been the cornerstones of New Zealand's planning legislation. In our view, these principles should only be restricted in a transparent manner and with sound justification.

Some features of the UDA proposals demonstrate not only a lack of understanding of, but also apparent contempt for, the RMA and RMA processes. The mere existence of the PE Bill demonstrates that.

One must ask: when is the erosion of the RMA, RMA processes and RMA institutions going to stop? Access to environmental justice and quality decision-making are not luxuries; they represent democratic rights that we are entitled to rely on and that should not be dispensed with when the government thinks that RMA processes might cause inconvenient delays.

In short, if the RMA is in the process of suffering "death by a thousand cuts", these two initiatives can be seen as the latest two incisions.

The PE Bill and the UDA proposals also demonstrate that there is a readily apparent conflict between the objectives of the Minister for Building and Construction to facilitate rapid development of housing and (what should be) the objectives of the Minister for the Environment to ensure that the environmental effects of such developments are properly assessed in accordance with due process.

What both measures demonstrate is that the motivation to achieve rapid housing development, both now and in the future, are overriding the need for good decision-making, proper environmental assessment and access to environmental justice. It is clearly contrary to sound administration for both portfolios to reside with the same minister, and the existing government – or any new government following the 2017 General Election – should address this issue.

EDITORIAL

Professor Jacinta Ruru, University of Otago; Co-Director Ngā Pae o te Māramatanga New Zealand's Māori Centre of Research Excellence; RMLA General Editor

Welcome to the first issue of the *Resource Management Journal* for 2017. It is filled with wonderful contributions all wrapped up in a new-look journal image. We hope you like it!

Significant news this month has obviously been the controversial enactment of the Resource Legislation Amendment Act 2017. As one news story headlined, "Eight-year RMA reform saga enters home straight" (Scoop, 4 April 2017). The Amendment Act enables the National Party's second phase of reform for resource management. Its reach is enormous, with more than 40 significant changes now made to six pieces of legislation: the Resource Management Act 1991, the Reserves Act 1977, the Public Works Act 1981, the Conservation Act 1987 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

As the Hon Dr Nick Smith, Minister for the Environment, said when moving that the Bill be read a third time, "The bill radically changes the way plans are written by introducing a new streamlined and collaborative process" (6 April 2017).

Change is also certainly forthcoming for freshwater management. On 23 February 2017 the government launched a consultation process on its proposed amendments to the National Policy Statement on Freshwater Management. On 27 April 2017 the government released *Our Fresh Water 2017*, heralded by Dr Smith in a press release as "the first comprehensive and independent report on the state of New Zealand's fresh water" (27 April 2017). As reported on Radio New Zealand, "The report's starkest findings were those about nutrient levels in waterways. Nitrogen levels were getting worse at 55 percent of monitored river sites across New Zealand and getting better at only 28 percent of sites" (Kate Gudsell, 27 April 2017).

Interestingly, on 25 February 2017 the Ministers for Conservation and the Environment released the new Conservation and Environment Science Roadmap, which details the research priorities for the next 20 years: environmental monitoring, climate change, biosecurity, integrated ecosystems, freshwater, coasts and oceans, species and populations, and social and economic factors. As Conservation Minister Maggie Barry said in a press release, "We need to be certain that we have the best research and evidence available to help us protect and save our threatened bird and plant life and for all New Zealand to achieve important Government targets such as Predator Free 2050" (25 February 2017).

This *Resource Management Journal* issue addresses some of these "big change" matters. Our opening article queries whether change is always good. Simon Berry, Helen Andrews and Jen Vella call for the government to "pause for thought", and illustrate their arguments with a focus on the Point England Development Enabling Bill 2016 and the proposed legislation for the development of urban development authorities.

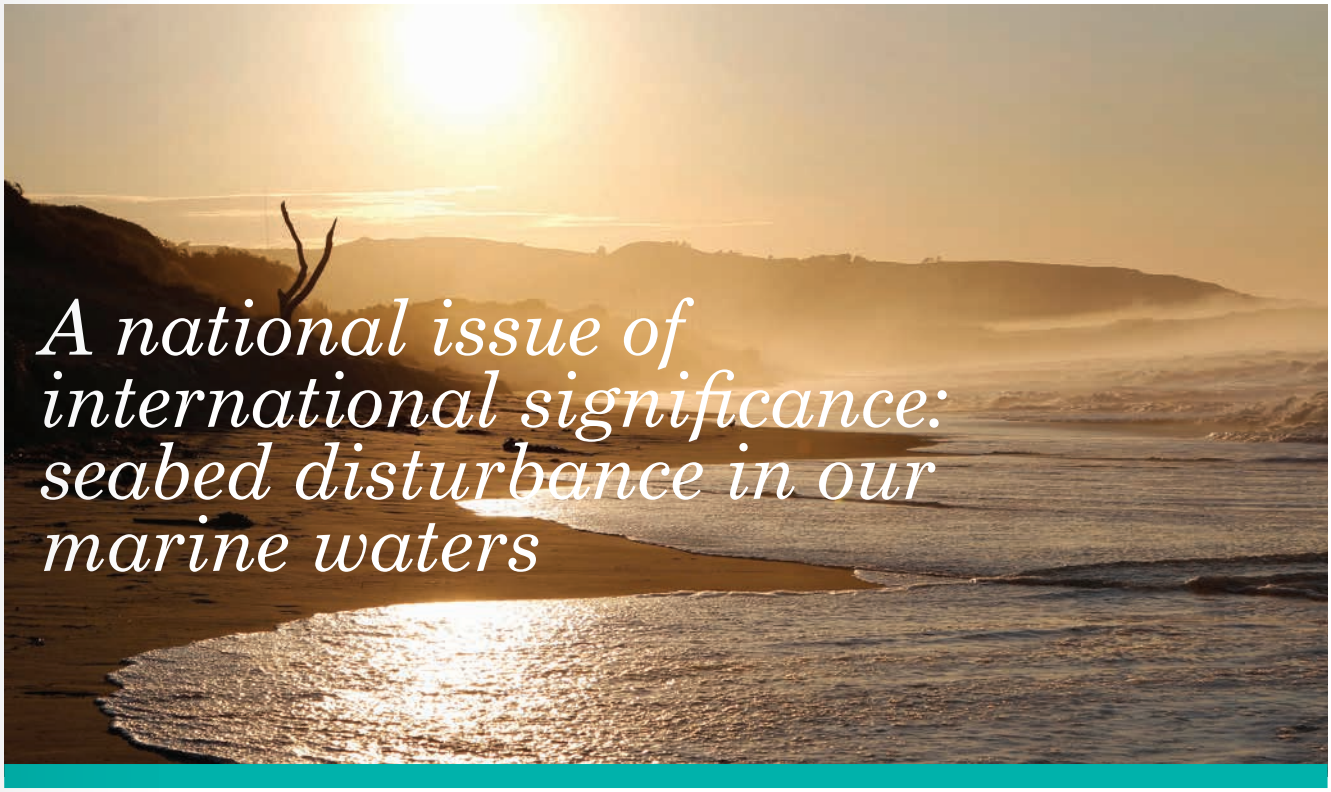
Steve Urlich then takes us to the "sobering" change that has occurred in our marine environment, with a focus on the Ministry for the Environment's October 2016 publication *New Zealand's Environmental Reporting Series: Our marine environment 2016*.

Keeping with the marine environment, Hannah Marks and Georgina Thomas consider the impact of the Supreme Court's 2014 *King Salmon* case, especially with a focus on the recent *RJ Davidson Family Trust v Marlborough District Council* High Court decision. Martin Williams also considers these cases, providing a rich contribution to better understanding the impact of King Salmon.

Louise Wickham provides a timely opportunity to consider existing case law for air quality in response to three recent Ministry for the Environment reports: *Good Practice Guide for Assessing and Managing Odour, Good Practice Guide for Assessing and Managing Dust*, and *Good Practice Guide for Assessing and Managing Discharges to Air from Industry* (all published November 2016).

Emergency planning for hazardous substances is the focus of Kari Schmidt's article, which brings attention to a serious issue that requires further attention. James Gardner-Hopkins assesses development contributions and recent relevant case law pursuant to the Local Government Act 2002.

Enjoy reading this issue. As always, we are keen to hear from you if you are interested in contributing an article for consideration for publication in the RMLA's journals: *Resource Management Journal* or *Resource Management Theory and Practice*. Ngā mihi.



A national issue of international significance: seabed disturbance in our marine waters

Note: the opinions in this article are entirely those of the author. The views expressed do not necessarily reflect those of the Marlborough District Council.

Author:
Dr Steve Urlich, Coastal Scientist, Marlborough District Council, steve.urlich@marlborough.govt.nz

INTRODUCTION

> *"When I was a boy the Dead Sea was only sick."*
> *George Burns (1896–1996)*

Our marine environment is under pressure. In October 2016, the Ministry for the Environment (MfE) and Statistics New Zealand published a sobering assessment of habitat damage and destruction, numerous threatened seabird and marine mammal species, and significant changes to the physical and chemical properties of our oceans driven by climate change and rising CO_2 levels (MfE and Statistics New Zealand *New Zealand's Environmental Reporting Series: Our marine environment 2016* (ME 1272, October 2016), available at <http://www.mfe.govt.nz/publications/marine-environmental-reporting/our-marine-environment-2016>).

This is the first report produced under the Environmental Reporting Act 2015 (ERA). The purpose of the Act is to require regular reports on New Zealand's environment, divided into the marine, land, freshwater, atmosphere and climate, and air domains. Each domain is reported on at three-year intervals. A synthesised all-domain report is to be presented to Parliament three years after the first domain report.

The ERA specifies that the Government Statistician and the Secretary for the Environment must act independently of any Minister of the Crown in preparing any domain report.

The Parliamentary Commissioner for the Environment (PCE) also has an independent role, and may choose to comment on any report. The PCE has not, at the time of writing, determined whether to undertake a report on *Our marine environment 2016*.

There are a number of individual environmental issues in the report which meet the PCE's five tests for concern (Jan Wright "The State of New Zealand's Environment: Commentary on *Environment Aotearoa 2015*" (29 June 2016) YouTube <https://www.youtube.com/watch?v=Br6FbE7KNXg>). These tests are whether an

Continued

issue is: irreversible; cumulative; large in scale or pervasive; increasing, especially if accelerating; and near or at a tipping point.

The issues include the data within *Our marine environment 2016* on trawling that contacts the seabed, more commonly known as bottom trawling. It is our largest-scale environment issue not driven by global climate change, and affects extensive areas of our marine waters.

In this article I first describe the fundamental ecological importance of intact seabed habitats for the diversity and abundance of marine species, and the provision of ecosystem services.

I next outline the effects of seabed disturbance on different types of habitats, and the scale of bottom trawling throughout our marine waters. I then place the extent of bottom trawling in an international context, as a national issue within our power to solve.

I examine the management of this issue in the Marlborough context, in light of the statutory powers that regional and unitary authorities appear to have under the Resource Management Act 1991 (RMA).

I find that marine ecosystems have not been well served by the lack of clarity in the regulatory functions of central and local government over the 25 years that the RMA has been in force.

I conclude that a collaborative approach using the knowledge and appropriate roles of each level of government will best achieve a sustainable outcome.

ECOLOGICAL VALUES OF SEABED HABITATS

> *"On a sea floor that looks like a sandy mud bottom, that at first glance might appear to be sand and mud, when you look closely and sit there as I do for a while and just wait, all sorts of creatures show themselves, with little heads popping out of the sand. It is a metropolis." Sylvia Earle (1935–)*

The sea floor is our second largest ecosystem type by area, after the marine water column. Sand, mud, sandy mud, calcareous gravels, gravel, bedrock, cobbles and reefs provide a range of substrata for different types of habitats. The most vulnerable are biogenic habitats.

Biogenic habitats are formed by living organisms, such as kelp, "coral-like" bryozoans, tubeworms, rhodoliths (calcified algae), horse mussels, green-shell mussels, sponges and seagrass.

These species are ecosystem engineers, and the habitats they create can be thought of as biodiversity oases within otherwise featureless sediments, as they provide three-dimensional structures on the seabed (Figure 1).

The calcified structures of tubeworms and horse mussels, for example, provide establishment sites for sessile and encrusting organisms and algae. It takes many years to form the structural complexity which provides shelter and feeding areas for marine invertebrates and small fish.

Biogenic habitats elevate biodiversity and provide nursery grounds for recreational and commercial fish species (Mark A Morrison and others *Linking marine fisheries species to biogenic habitats in New Zealand: a review and synthesis of knowledge* (Ministry for Primary Industries, New Zealand Aquatic Environment and Biodiversity Report No 130, May 2014)). The habitats stabilise the sediments, and are a source of marine productivity through photosynthesis of benthic micro- and macro-algae. Nutrient recycling, oxygenation of sediments, and carbon sequestration are other ecosystem services provided by intact seabed habitats (Morrison and others (2014)).

Research into long-term change to seabed ecosystems in the Marlborough Sounds, and elsewhere, has shown that these habitats were once extensive in our marine waters (Sean Handley *The history of benthic change in Pelorus Sound (Te Hoiere), Marlborough* (National Institute of Water and Atmospheric Research (NIWA), February 2015) and Sean Handley *History of benthic change in Queen Charlotte Sound/Totaranui, Marlborough* (NIWA, March 2016), prepared by NIWA for the Marlborough District Council; Tim Haggitt and Oliver Wade *Hawke's Bay Marine Information: Review and Research Strategy* (eCoast, June 2016), prepared by eCoast for the Hawke's Bay Regional Council).

Many types of biogenic habitats are found on soft sediments (Figure 1), so they are vulnerable to seabed disturbance from anchors, recreational and commercial fishing gear, and/or sedimentation. They may never recover from the impacts, as has occurred with naturally occurring green-lipped mussel beds in Pelorus Sound (Handley (2015)), and in the Hauraki Gulf (Alison B MacDiarmid and others *Taking Stock – the changes to New Zealand marine ecosystems since first human settlement: synthesis of major findings,*

and policy and management implications (Ministry for Primary Industries, New Zealand Aquatic Environment and Biodiversity Report No 170, June 2016)).

Figure 1: Biogenic habitats in the Marlborough Sounds. Photos: Danny Boulton (top) and Rob Davidson (bottom).

ENVIRONMENTAL EFFECTS AND SCALE OF BOTTOM TRAWLING

> *"Bottom trawling is a ghastly process that brings untold damage to sea beds that support ocean life. It's akin to using a bulldozer to catch a butterfly, destroying a whole ecosystem for the sake of a few pounds of protein. We wouldn't do this on land, so why do it in the oceans?" Sylvia Earle (1935–)*

The effects of bottom trawling can range from moderate damage to destruction of fragile biogenic habitats, which result in changes to ecosystem function and loss of ecosystem services (Simon F Thrush and Paul K Dayton "Disturbance to marine benthic habitats by trawling and dredging: implications for biodiversity" (2002) 33 Annual Review of Ecology and Systematics 449). The damage is caused by the weight of heavy steel doors, which hold the net open, being dragged hard along the seabed, as well as the codend, sweeps and bridles and groundrope gear (SJ Baird, JE Hewitt and BA Wood *Benthic habitat classes and trawl fishing disturbance in New Zealand waters shallower than 250 m* (Ministry for Primary Industries, New Zealand Aquatic Environment and Biodiversity Report No 144, January 2015)).

It is not only the seabed that is impacted. There are also adverse effects on the water column from sediment plumes induced by the hard contact with the seabed. The ensuing disturbance from seabed contact can attract targeted fish species as they feed on the dead and dying organisms.

The most common species targeted on the coastal shelf are flatfish, terakihi, gurnard and snapper (Baird and others (2015)). In the deeper waters of our 200 NM exclusive economic zone (EEZ), the main species caught are hoki, squid, jack mackerel, barracouta, orange roughy and ling (J Black and R Tilney *Monitoring New Zealand's trawl footprint for deepwater fisheries: 1989–90 to 2010–11* (Ministry for Primary Industries, New Zealand Aquatic Environment and Biodiversity Report No 142, January 2015)).

Each trawl tow can range from 10–40 km and the tow width from 70–200 m, depending on the size of the vessel and the type of fish species targeted. The tow length and the area swept by the trawl gear are calculated from GPS points, so the actual area of seabed contacted within those points is estimated within 5 km x 5 km cells. Nevertheless, it is the best information available to our scientists (Baird and others (2015); Black and Tilney (2015)).

Within our coastal shelf waters down to 250 m depth, potential seabed contact occurs from tows of approximately 1,000,000 km each year, much of it within the 12 NM territorial sea (Figure 2) (Baird and others (2015)). The coverage within the wider EEZ is significantly greater (Black and Tilney (2015)).

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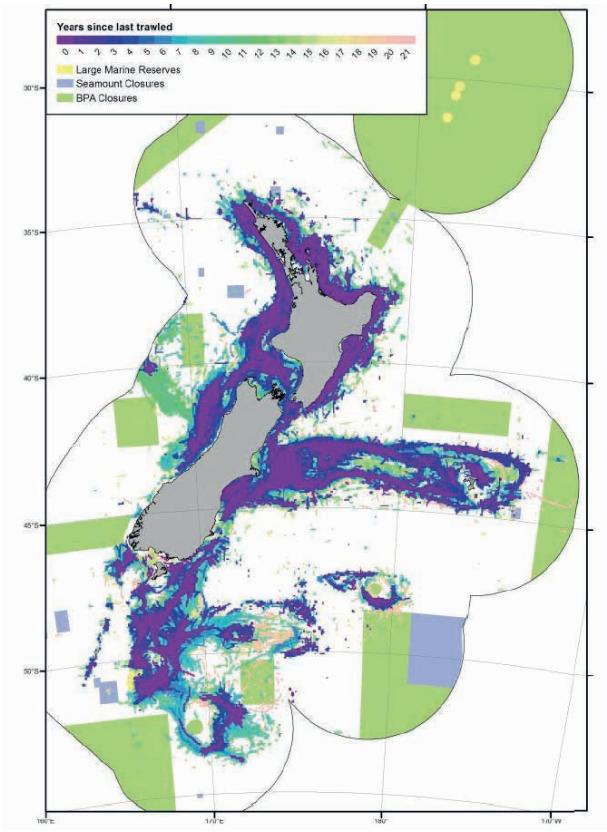

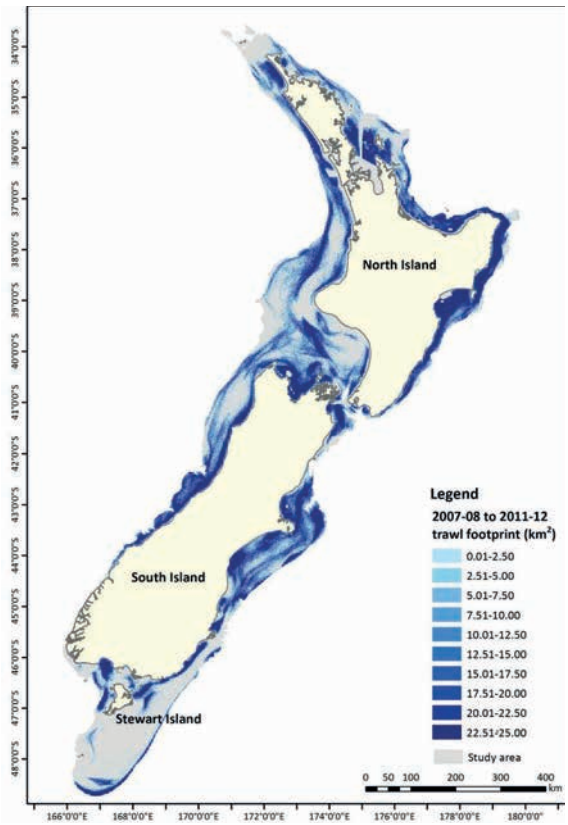

Figure 2: (Top) Extent of trawls and years since each 5 km x 5 km cell was last trawled throughout New Zealand marine waters (Figure 30 from Black and Tilney (2015)). (Bottom) Total trawl cell-based footprint 2007–2008 to 2011–2012 in coastal shelf waters to 250 m deep (Figure 13 from Baird and others (2015)).

Each tow may not contact the entire coloured area, as this is influenced by subsurface topography, currents, tow speed, vessel size and trawl gear configuration (Baird and others (2015)).

Scale in an international context

Our marine waters encompass about 4,100,000 km^2 of surface area, which is about the same size as the estimated forest cover in Brazilian Amazon in 1970.

Data are available from 1990–2014 for both biomes, so the area impacted by damage and destruction can be roughly compared to get a sense of scale.

Our marine environment 2016 data are available from the Statistics New Zealand website (<www.stats.govt.nz>). These data show that over the 25-year reporting period, 387,965 km^2 of our sea floor ecosystems at various depths had been at risk of impacts from heavy trawl gear.

This exceeded the Brazilian Government figures of 355,124 km^2 for the same period in the Amazon. (Daniel Nepstad and others "Slowing Amazon deforestation though public policy and interventions in beef and soy supply chains" (2014) 344 Science 1118; Rhett Butler "Calculating Deforestation Figures for the Amazon" (26 January 2017) Mongabay <http://rainforests.mongabay.com/amazon/deforestation_calculations.html>, reproduced in Wikipedia "Deforestation of the Amazon rainforest" <https://en.wikipedia.org/wiki/Deforestation_of_the_Amazon_rainforest>).

There is no question that the Amazon as a tropical environment hosts much greater numbers of species. The comparison is useful when thinking about: disruption to ecosystem function; habitat change; alteration of ecological processes; loss of resilience; and reduced abundance of species.

It is arguably also analogous when comparing damage, as the Amazon damage is not uniform or complete over all areas, as some habitat can remain, depending on the intensity of slash-and-burn, logging by heavy machinery,

selective logging, and/or where access roads penetrate intact habitat.

There is insufficient information available to scientists to assess and predict the sensitivity and resilience of different areas trawled (Baird and others (2015)). One trawl tow in 25 years could cause little visible damage to a hard substrate, but could destroy a biogenic habitat which may take a long time to recover if left undisturbed, if it could recover at all.

Where the comparison does fall down is that the international community (and probably many Kiwis too) are worried about Amazonian deforestation, but remain largely unaware of trawling effects on seabed ecosystems at the scale occurring within our marine waters.

MANAGEMENT IN MARLBOROUGH

> *"Think global, act local."* Agenda 21

Marlborough's coastal waters cover a relatively modest 7,250 km^2 or 0.002 per cent of New Zealand's marine waters. Long Island–Kokomohua Marine Reserve (6.2 km^2) and the Cook Strait cable protection zone (146 km^2) together comprise 0.02 per cent of Marlborough's waters that are not available for bottom trawling.

Bottom trawling is also excluded from large areas of the inner Marlborough Sounds, but seabed disturbance occurs by recreational and commercial dredging for scallops over much of this area.

Biogenic habitats are now rare in Marlborough's coastal waters (Rob Davidson and others *Ecologically significant marine sites in Marlborough, New Zealand* (Marlborough District Council and Department of Conservation, September 2011)). These habitats used to be extensive, but have been regressively damaged and destroyed since the 1930s (Handley (2015) and (2016)).

In 2016 the Marlborough District Council (MDC) notified rules to prohibit seabed disturbance of ecologically significant subtidal sites. These are assessed by the MDC's own thorough analysis of sites that qualify as ecologically significant, and their values are identified in the Marlborough Environment Plan. The assessment is by an expert panel which is comprised of marine biologists from different organisations.

Sections 6 and 30(1)(ga) of the RMA provide the statutory basis for the prohibition, so as to protect indigenous biodiversity and habitats of significance, which gives effect to objective 1 and policy 11 of the New Zealand Coastal Policy Statement 2010.

In the MDC's view, the prohibition does not offend 30(2) of the RMA, as the purpose is not to manage fishing or fisheries resources. This was confirmed by the Environment Court late last year in *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 240. This decision is shortly to be tested in the High Court, under challenge by the Attorney-General and others.

Regardless of the outcome, there are strongly-voiced community expectations that central government will work more closely with the MDC to protect biodiversity for the long-term ecologically sustainable management of Marlborough's coastal waters. These community expectations are not unique to Marlborough.

Should the courts determine that councils have no role in protecting indigenous biodiversity on or within the seabed, communities may demand increased resourcing from government departments to address the ecological issues within our oceans that are outlined in *Our marine environment 2016*. Marlborough's ratepayers will no longer fund the survey and monitoring of significant marine sites if the MDC has no statutory role in managing biodiversity or significant habitats in coastal waters.

A NATIONAL ISSUE OF INTERNATIONAL SIGNIFICANCE

> *"People protect what they love."* Jacques Cousteau (1910–1997)

Our marine environment 2016 records seabed disturbance at a scale that makes it the country's largest environment issue that is within our collective power to solve.

Although there are large benthic protection areas (BPAs) in the EEZ, the entire coastal shelf is more or less available to be disturbed by bottom trawling and dredging (Figure 2).

Within the territorial sea, Parliament gave councils the power to regulate within our largest marine ecosystem: the water column; by controlling discharges from point sources, such as from sewerage outfalls and fish farms.

The situation for the seabed, our second largest ecosystem, is more turbid. Section 12(1) of the RMA requires specific authorisation for any person to disturb, damage or destroy

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the seabed, unless it involves the lawful harvest of any plant or animal.

Parliament, some argue, intended that the effect of repeated disturbance of the seabed is regulated by other legislation, ie the Fisheries Act 1996. That is the situation in s 20(5)(c) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. Others argue that regional councils have a role to manage seabed disturbance for other purposes, including biodiversity, in concert with the Minister of Conservation. The drafting has created uncertainty whichever view is correct.

So, while sediment generated from disturbance of the seabed by bottom trawling (and dredging) is discharged into the water column and can unquestionably causes adverse effects, it is unclear if it can be regulated under the RMA, as it involves the lawful collection of an animal (fish or shellfish). Although "animal" is not defined in s 2 of the RMA, "aquatic life" has the same meaning as in s 2(1) of the Fisheries Act 1996, where it includes any species of animal inhabiting water at any stage in its life history.

A good question for the PCE to address is: after 25 years of the RMA, why there is still uncertainty about the nexus between the RMA and the Fisheries Act for protecting and maintaining biodiversity; and also what lessons and improvements are there for administering bodies? During that time, 38,796,500 hectares of seabed was contacted by bottom trawling, much of it repeatedly (Figure 2), which has probably resulted in widespread adverse effects to biodiversity and habitats.

The important role of regional coastal planning to protect biodiversity has not always been unclear to central government. In 2005, the Fisheries and Conservation Ministers jointly published a marine protected areas policy which recognised that councils have the power to zone areas in their regional coastal plans for protection of indigenous biodiversity (Department of Conservation and Ministry of Fisheries *Marine Protected Areas: Policy and Implementation Plan* (December2005)).

The Environment Court in *Motiti Rohe Moana Trust* agreed, and clarified that that jurisdiction includes other matters of national importance in s 6 of the RMA.

This has intriguing possibilities for restoration, in addition to protection, provided that these were the sole or dominant purposes for control in regional coastal plans.

For example, the MDC could take measures to restore kelp beds in the now-ubiquitous kina barrens of Tōtaranui/Queen Charlotte Sound, to give effect to the duty of protection of taonga, including restoration of mauri. This may not be most effectively achieved by regulatory methods in its regional coastal plan, as set out in *Motiti Rohe Moana Trust*. For example, a collaborative approach to management could be explored with iwi, government, industry and the wider community, through the Marlborough Marine Futures forum.

The MDC has high-quality information on key resources necessary to protect the biodiversity values of Marlborough's coastal waters – information that central government can also use in formulating its management response to *Our marine environment 2016*.

An integrated multi-agency approach underpinned by ecosystem-based management offers the best chance to address these issues, and to make progress towards meeting the United Nation's global Sustainable Development Goal 14 "Life Below Water" (United Nations Development Programme "Goal 14: Life Below Water" <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-14-life-below-water.html>).

Goal 14's targets by 2020 include an end to destructive fishing practices, and another target is to:

> *"… sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans[.]" (United Nations Development Programme "Goal 14 Targets" <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-14-life-below-water/targets/>)*

New Zealand is committed to "protecting our environment" in contributing towards the United Nations achieving Goal 14 (Ministry of Foreign Affairs and Trade "Sustainable Development Goals" <https://www.mfat.govt.nz/en/peace-rights-and-security/work-with-the-un-and-other-partners/new-zealand-and-the-sustainable-development-goals-sdgs/>).

Our marine environment depends on this. Otherwise future ERA reports will merely serve to record and impotently lament the ecological decline of the oceans which sustain much life, including us.

RESOURCE
MANAGEMENT
JOURNAL

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King Salmon reigns … for now

The Supreme Court's 2014 decision in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 (*King Salmon*) provided an unequivocal statement as to how pt 2 of the Resource Management Act 1991 (RMA) is to be referred to (or rather, not referred to) by decision-makers in plan change applications. How the *King Salmon* decision might impact on other applications, including applications for resource consent, has been a matter of much discussion since then. It was understood that applications for resource consent necessitated a different decision-making process and balancing exercise than plan changes. Would the courts consider that the need to specifically reference pt 2 matters remained important after *King Salmon*, or would the hierarchy of planning instruments give enough assurance that pt 2 was being given effect to?

In late January the High Court provided some further clarity on this matter when it released the judgment of *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 (*Davidson*). The High Court tested how the "*King Salmon* approach" should be applied in a resource consent context, in particular to what extent pt 2 of the RMA should be considered by decision-makers in determining applications for resource consent.

KING SALMON AND THE HIERARCHY OF PLANNING INSTRUMENTS

Prior to the *King Salmon* decision, the "overall judgment" approach was widely used in the context of changes to lower-order policy statements and plans. Decision-makers closely considered how an application (whether it was for a plan change or a resource consent) gave effect to pt 2 of the RMA, particularly when assessing how to give effect to planning instruments. This approach required specifically assessing an application against the different values expressed in s 5 of the RMA, then assessing the application against ss 6–8 of the RMA.

Authors:
Hannah Marks, Senior Associate, and Georgina Thomas, Lawyer, Greenwood Roche

King Salmon refined the role that pt 2 of the RMA plays in the decision-making process for changes to regional- and district-level policies and plans. The Supreme Court found that policy-makers are acting "in accordance with" pt 2 when preparing and changing higher-order planning documents (in that instance, the New Zealand Coastal Policy Statement (NZCPS)) and thus there is no need to refer back to pt 2 when determining a plan change in a lower-order document (at [85]). The Court said:

> *"… we think it implausible that Parliament intended that the ultimate determinant of an application such as the present would be Part 2 and not the NZCPS. The more plausible view is that Parliament considered that Part 2 would be implemented if effect was given to the NZCPS." (at [86(a)])*

And further:

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

> *effect in relation to the coastal environment." (at [86(b)])*

The Supreme Court was careful to outline three caveats where decision-makers may need to refer back to pt 2, these being: invalidity; incomplete coverage; or uncertainty of meaning (at [88]).

APPLICATION OF *KING SALMON* IN RESOURCE CONSENT CONTEXT

However, since *King Salmon* there has been some inconsistency in how the reliance on the hierarchy of planning documents to give effect to pt 2 of the RMA has been applied in a resource consent context.

The Environment Court in *KPF Investments Ltd v Marlborough District Council* [2014] NZEnvC 152, (2014) 18 ELRNZ 367 (*KPF Investments*) distinguished *King Salmon* based on the difference in context between plan changes and resource consent applications, stating that "the evaluation under s 104 RMA is … wider than the plan change test" (at [198]). The Environment Court reasoned that resource consent applications are likely to have a number of different aspects to them, and that some of those aspects may be given more weight under pt 2 than others. By way of example, consideration of historic heritage or the coastal environment may present circumstances in which "s 104 obliges us to return to pt 2 of the RMA, to resolve the case" (at [195]).

Later in 2014, the Environment Court in *Saddle View Estate Ltd v Dunedin City Council* [2014] NZEnvC 243, [2015] NZRMA 1 considered the reasoning in *KPF Investments* and found that in *KPF Investments* the Environment Court had only examined narrow parts of the *King Salmon* decision, and had failed to take into account the passage in *King Salmon* where the Supreme Court held:

> *"[151] Section 5 was not intended to be an operative provision … ; rather, it sets out the RMA's overall objective. … Parliament has provided for a hierarchy of planning documents the purpose of which is to flesh out the principles in s 5 and the remainder of Part 2 in a manner that is increasingly detailed both as to content and location."*

Saddle View concluded by adopting the *King Salmon* approach, and determining that there was "insufficient conflict in the evidence between s 104(1)(a)–(c) considerations to justify opening up pt 2 factors" (at [106]).

APPLICATION OF *KING SALMON* IN *DAVIDSON*

Davidson: Environment Court decision

The use of pt 2 of the RMA was further tested in *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81. The RJ Davidson Family Trust applied for a resource consent to establish a mussel farm in Pelorus Sound, an application which was declined by the Marlborough District Council. Similarly to *King Salmon*, the application required an assessment of the NZCPS and relevant regional and district planning provisions.

The Environment Court reviewed the litigation history on the interpretation of the phrase "subject to Part 2" in s 104(1) since the *King Salmon* decision, including a review of the High Court decision in the Basin Bridge Project case, *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, (2015) 19 ELRNZ 163 (*Basin Bridge*), where similar wording in relation to designations (in s 171(1)) was discussed. As a result of this review, the Court acknowledged that the reasoning applied in *KPF Investments* was likely erroneous.

Central to the Environment Court's decision in *Davidson* was the function of s 5, and in particular the statement of Arnold J in *King Salmon* which described s 5 as "a guiding principle which is intended to be applied by those performing functions under the RMA rather than a specifically worded purpose intended more as an aid to interpretation" (at [28]).

The Environment Court concluded at [262] that the correct interpretation of s 104(1)(b) in the context of s 104 as a whole is to ask: Does the proposed activity achieve the purpose of the RMA as outlined in the objectives and policies of the district/regional plan? In making such an assessment, decision-makers should ask:

(a) Were the relevant plans created before or after the superior central and regional policy statements?

(b) Is there is any illegality, uncertainty or incompleteness in the relevant plan?

Only if either (a) or (b) exists should the decision-maker then assess the activity against pt 2 of the RMA.

Continued

Davidson: High Court decision

The Environment Court decision was appealed to the High Court on the grounds that the Environment Court had erred in failing to apply pt 2 of the RMA when considering the application under s 104. The appellant family trust argued that the Environment Court should have applied the plain statutory language of s 104(1), which requires the decision-maker to have regard to the relevant matters in s 104, "subject to Part 2". The appellant further argued that *King Salmon* is limited in its applicability to the context of plan changes, as the Supreme Court did not consider the meaning of the words "subject to Part 2" but rather considered how a decision-maker must 'give effect' to a planning instrument (s 67(3)).

The substance of Cull J's decision on the application of *King Salmon* in the context of resource consent applications is outlined in *Davidson* at [76]–[78]. There are three main aspects to her reasoning:

- The reasoning in *King Salmon* applies to s 104(1) because the relevant provisions of the planning documents have already given substance to the principles of pt 2 (at [76]). The Environment Court was "not required to consider Part 2 of the RMA beyond its expression in the planning documents, as the Court correctly applied the Supreme Court's decision in *King Salmon* in s 104 of the RMA" (at [93(b)]).
- In situations where there is invalidity, incomplete coverage or uncertainty of meaning within the planning documents, decision-makers should resort to pt 2 (at [76]).
- Moreover, Cull J focused on the inherent inconsistency with the overall scheme of the RMA that would occur if regional or district plans could essentially be rendered ineffective by recourse to pt 2 when determining resource consent applications (at [77]).

The comments in relation to consistency with the scheme of the RMA are interesting when considered in light of the High Court judgment in *Basin Bridge* with respect to designations. In a similar manner to s 104, s 171 provides a list of matters that a decision-maker must have regard to, with the list then made "subject to Part 2". The High Court in *Basin Bridge* determined that the context of s 171 demanded a different approach to that taken by the Supreme Court in *King Salmon*. Unlike a plan change made under s 67, the outcome of s 171 (and s 104) is not determined solely by a planning document. Therefore the High Court agreed with the Board of Inquiry's reasoning that s 171 has a *"specific statutory direction* to appropriately consider and apply that part of the Act in making our determination" (at [118]).

Interestingly in *Davidson,* unlike *Basin Bridge*, the High Court did not explicitly address the difference in wording between the RMA provisions relating to plan changes and resource consent applications. As it currently stands then, there will be some inconsistency in how pt 2 is applied. Decisions made on plan changes and resource consents will require the approach outlined in *King Salmon*; however, designations (and possibly heritage orders) appear to have reserved the right to refer back to pt 2 and rely on the overall broad judgement.

At the time of drafting this article, an appeal of the *Davidson* decision had been filed in the Court of Appeal and looks likely to be set down for mid to late 2017. The appeal means that the longevity of the application of *King Salmon* to resource consent applications has been called into question. However, in the interim the High Court decision provides much greater certainty in an area that has been the subject of much speculation.

IMPLICATIONS OF *DAVIDSON*

There are likely to be three main implications of *Davidson* for resource management practitioners to consider:

- heightened importance on objective and policies;
- potential inadequacies of existing planning documents; and
- the extent of the *King Salmon* caveats.

Objectives and policies

Objectives and policies within plans and policy statements at district, regional and central government levels now assume greater importance, and both *King Salmon* and *Davidson* illustrate how important it will be for the public to participate in plan development processes. In our experience of both the fast-tracked Auckland Unitary Plan and Christchurch Replacement District Plan processes, when plan-making processes are truncated, concessions (consciously or otherwise) are made in order to meet the short time frames. Such concessions are sometimes made

in the expectation that consistency with pt 2 of the RMA will be able to be revisited through a resource consent process. That opportunity has now been removed. As such, it is likely that for future reviews of resource management policies and plans, both submitters and local authorities will need to be significantly more attentive to their position during the review process. This will inevitably result in increased time and cost for all involved at that juncture, although arguably with consequential cost and time savings at the resource consent stages.

It is also likely that greater reliance will be placed on the provisions of policy statements and plans setting out assessment criteria and environmental outcomes for zones in order to interpret the objectives and policies of those documents. In practice, further scrutiny will also be needed in the drafting and review of these provisions.

Potential inadequacies of existing planning documents

The majority of planning instruments pre-date the decisions in *King Salmon* and *Davidson*. In light of those decisions, the wording of planning instruments now carries a level of significance that was not contemplated when the plans were promulgated. An example of this is the term "avoid", which is used frequently in many policy statements and plans. One of the outcomes of *King Salmon* is the clarification that "avoid" means "not allow" or "prevent the occurrence of" (at [96]).

When this term was incorporated into a number of regional policy statements, many submitters may have thought that there would be room for interpretation of the term by reference to pt 2 of the RMA in a consenting process. That door is now firmly closed.

The extent of the King Salmon caveats

The decision in *Davidson* makes it clear that the three caveats outlined in *King Salmon* at [88], where reference to pt 2 of the RMA may still occur, also apply to resource consent applications. Part 2 can be considered if there is any illegality, uncertainty or incompleteness in the relevant planning instruments. These caveats are wide and are likely to prove easily adaptable to many applications for resource consent.

It seems inevitable that there will be debate with regard to the extent that lower-level planning instruments adequately address a proposed activity, or are "incomplete" or outdated in their application to an activity. It is inherent that there will always be tension in the objectives and policies in plans, such as the pull between intensification and protection. Whether parties and decision-makers will continue to turn to pt 2 in these instances, on the basis that there is an uncertainty within the relevant planning provisions, remains to be seen.

Just days after the *Davidson* decision was released, the Environment Court sidestepped the decision, stating in *Envirofume Ltd v Bay of Plenty Regional Council* [2017] NZEnvC 12 at [143] that "Part 2 is still relevant ... as an overview or check that the purpose of the Act and that Part 2 issues are properly covered and clear".. Old habits die hard, and we expect to see decision-makers relying more and more on the "*King Salmon* caveats" to get their pt 2 fix. Given this, there must still be some uncertainty as to whether there really will be any substantive change in practice.

ENVIRONMENT AND RESOURCE MANAGEMENT

Andrew Beatson
PARTNER

DDI +64 4 915 6770 MOB +64 21 223 9170
andrew.beatson@bellgully.com

Lisa McLennan
SENIOR ASSOCIATE

DDI +64 9 916 8876
lisa.mclennan@bellgully.com

Natasha Garvan
SENIOR ASSOCIATE

DDI +64 9 916 8956 MOB +64 27 420 0561
natasha.garvan@bellgully.com

CLIMATE CHANGE

Simon Watt
PARTNER

DDI +64 4 915 6854 MOB +64 21 605 384
simon.watt@bellgully.com

Claire Harmsworth
SENIOR ASSOCIATE

DDI +64 4 915 6821 MOB +64 21 947 869
claire.harmsworth@bellgully.com

To learn more about our expertises and team, please visit **www.bellgully.com**

Part 2 of the RMA – "engine room" or backseat driver?

INTRODUCTION

Marine farming has generated its share of groundbreaking jurisprudence under the Resource Management Act 1991 (RMA). Most recently, the High Court in *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 determined that general recourse to pt 2 of the RMA is not available in deciding resource consent applications. The Court found that the reasoning of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 applies to s 104, such that the terms of the relevant planning instruments will dictate the fate of a consent application, unless found to be invalid, incomplete or uncertain.

In this article, I respectfully offer the humble opinion that this approach to the application of pt 2, under s 104 of the Act, is wrong. When Parliament moved in 1993 to make all other s 104 considerations "subject to Part 2", it meant exactly that. Part 2 of the RMA is fundamental, and was intended by Parliament to have an "overarching" position.

The *Davidson* decision turns this legislative instruction on its head. Consideration of the objectives and policies of planning instruments is no longer subject to pt 2. The opposite would apply. Consideration of the provisions of pt 2 is made subject to the objectives and policies of the planning instruments. Planning instruments are thereby not just the "frame" within which resource consent decisions are made, but the "straitjacket".

Author:
Martin Williams,
Barrister, Shakespeare Chambers

ENVIRONMENT COURT DECISION IN *DAVIDSON*

The case at issue involved a non-complying activity application for a mussel farm in Beatrix Bay in Pelorus Sound (covering a total of 7.37 hectares).

In *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 the Environment Court found that, when considered cumulatively with the 37 existing mussel farms in Beatrix Bay, the adverse effects on natural character, and on King Shag habitat, would be significant. While the first gateway in s 104D of the RMA was therefore not passed, the proposal was not seen as contrary to the objectives and policies of the Marlborough Sounds Resource Management Plan (Sounds Plan) as a whole.

Before assessing the merits of the application under s 104, the Court addressed the relationship between pt 2 and the

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other s 104(1) matters as a preliminary issue (albeit not one apparently addressed by counsel in the case).

First, the Environment Court questioned the accuracy of its earlier decision in *KPF Investments Ltd v Marlborough District Council* [2014] NZEnvC 152, (2014) 18 ELRNZ 367, where (in the words of the Court in *Davidson* at [253]) it had concluded that the "overall broad judgment under Part 2" as to whether a proposal would promote the sustainable management of natural and physical resources still applies (ie despite *King Salmon*). In doing so, the Court in *Davidson* referred to *Thumb Point Station Ltd v Auckland Council* [2015] NZHC 1035, [2016] NZRMA 55, a case dealing with the subdivision rules of the Hauraki Gulf Islands District Plan, in which context the High Court found that the Environment Court was generally entitled to rely on the settled plan provisions as giving effect to the purpose and principles of the Act.

In *Davidson* at [257] the Environment Court also questioned the "accuracy" of the High Court's description of pt 2 as "the engine room" of the RMA in *Auckland City Council v John Woolley Trust* (2008) 14 ELRNZ 106 (HC) at [47], as applied by the High Court in the Basin Bridge Project case, *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, (2015) 19 ELRNZ 163 (*Basin Bridge*). In the latter case, the words "subject to Part 2" in s 171 of the RMA were found (by the Board of Inquiry appointed to consider that project) to justify retention of pt 2 as the "focal point of the assessment" rather than the planning instruments (see *Basin Bridge* at [102]).

The Environment Court referenced the Supreme Court's observation in *King Salmon* at [151] that the provisions in pt 2 are not "operative" in the sense of being sections under which particular planning decisions are made. It reasoned that *King Salmon* modified the Court of Appeal's formulation of the meaning of the words "subject to" in *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 (CA). There the Court of Appeal had stated:

> *"The qualification 'Subject to' is a standard drafting method of making clear that the other provisions referred to are to prevail in the event of a conflict." (at 260)*

The Environment Court stated:

> *"We now know, in the light of King Salmon, that it is not merely a 'conflict' which causes the need to apply Part 2. The Supreme Court has made it clear that, absent invalidity, incomplete coverage or uncertainty of meaning in the intervening statutory documents, there is no need to look at Part 2 of the RMA even in section 104 RMA." (at [259]; emphasis added)*

After deciding that the approach in *King Salmon* logically applied to resource consent applications, the Environment Court made the following observation:

> *"We note that the majority of the Supreme Court in King Salmon was clearly of the view that its reasoning would apply to applications for resource consents." (at [260])*

The Environment Court then set out a detailed decision-making framework whereby relevant effects are assessed in light of the objectives and policies of the planning instruments, and whereby recourse to pt 2 is only made if there is some "relevant deficiency" in those instruments (at [262]). The question to ask under s 104 is whether the proposed activity would "achieve the purpose of the Act as particularised in the objectives and policies of the district/regional plan" (at [262]).

Ultimately the Court found that "the objectives and policies of the Sounds Plan, reinforced by the more directive policies of the NZCPS, require that we should refuse the consents sought" (at [297]).

HIGH COURT DECISION IN *DAVIDSON*

On appeal to the High Court (*RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52), the Davidson Family Trust (as applicant for the mussel farm) argued that the Environment Court had wrongly relegated pt 2 of the RMA to a "back seat" role (at [64]–[65]), despite the specific statutory wording in s 104(1) that all other considerations are "subject to Part 2".

It argued that the Supreme Court's consideration in *King Salmon* arose in the context of a plan change and a different statutory directive, whereby under s 67(3) a regional plan must "give effect to" the New Zealand Coastal Policy Statement (NZCPS).

The High Court addressed the argument in a relatively brief way. The Court also recorded the observation in *King Salmon* that s 5 is not intended to be an "operative" provision, and that the Supreme Court had rejected

the "overall judgment" approach "*in relation to the implementation of the NZCPS in particular*" (at [75]; emphasis added).

On that basis, the High Court then stated:

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

GETTING BACK TO BASICS – A NOTE ON LEGAL METHOD

As can be seen from this account, central to both the Environment Court and High Court decisions in *Davidson* is the proposition that the reasoning in *King Salmon* applies to resource consent applications. The Environment Court stated that the majority of the Supreme Court was "clearly of [that] view" (at [260]).

On their face, there is nothing in the paragraphs of the Supreme Court's decision referenced by the Environment Court which contains an express statement from the Supreme Court that it was intending its reasoning to apply to applications for resource consent. More fundamentally, the language and structure of s 104 of the RMA was simply not before the Supreme Court in *King Salmon*.

As I now explain, in my respectful opinion, as a matter of basic legal method the Supreme Court's decision does not displace over 20 years of case law, established by decisions made through all levels of the courts, as to the manner in which s 104 considerations are to be considered and applied "subject to" pt 2 of the RMA.

It is accepted that there are observations in the Supreme Court's judgment in *King Salmon* that do not favour application of an "overall judgment" approach, at least in relation to implementation of the NZCPS. The question of whether pt 2 sets up an "overall judgment" approach, or was intended to establish "bottom lines", is however a different issue, and is beyond the scope of this article. However applied (ie either way), you essentially do not get to pt 2 in considering a resource consent application under *Davidson*.

To determine whether the Supreme Court's decision in *King Salmon* can correctly be said to have reset the law under s 104, reference to basic principles of legal method seems to be required.

Under our legal system, through the doctrine of precedent, cases can create rules of more general application. The aspect of a decision which other courts will follow is known as the "ratio" (shorthand for "ratio decidendi", meaning "the reason for the decision") (see Jacinta Ruru, Paul Scott and Duncan Webb *The New Zealand Legal System: Structures and Processes* (6th ed, LexisNexis, Wellington, 2016) at 392).

To determine the "ratio" of a decision, ie that part of the decision which would be binding in future cases, it is crucial to identify:

- the **issue** before the court; and
- the **material facts** of the case, ie those facts which are essential to the making of the decision.

The rule set in any decision made by a court is, strictly speaking, confined within the issue before that court, in the context of the material facts.

In contrast to the ratio are non-binding statements of law which are only indirectly relevant to the decision, known as "obiter dicta" (or simply "obiter"). Notably, the Environment Court in *Davidson* at [258] described as "presumably obiter" the observation of the Supreme Court in *King Salmon* that the provisions of pt 2 are not "operative" in the sense of being decisions under which particular planning decisions are made. Yet the Environment Court (and subsequently the High Court) determined to apply that very statement, in sweeping aside 20 years of jurisprudence as to the place of pt 2 under s 104 of the RMA.

Looking back at King Salmon itself, the **material facts** (within which the ratio is nested) were that:

- a Board of Inquiry had found that a particular salmon farm would have significant adverse effects on an area of outstanding natural character and outstanding natural landscape value; and
- policies 13 and 15 of the NZCPS require that adverse effects on outstanding natural character and landscape areas must be avoided.

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The issue in the case was that the Board of Inquiry had nevertheless granted the plan change on the basis that this would "give effect to" the NZCPS "as a whole" (see King Salmon at [5] and [81]).

Having set out the Board of Inquiry's approach in that regard, the Supreme Court stated:

> *"The effect of the Board's view is that the NZCPS is essentially a listing of potentially relevant considerations, which will have varying weight in different fact situations. We discuss at [106]–[148] below whether this approach is correct." (at [83])*

For various reasons the Supreme Court determined that this approach was not correct. The Court found that given the Board's findings on the facts in relation to policies 13 and 15 of the NZCPS, the plan change should not have been granted because the plan change did not comply with s 67(3)(b), as the directions in these specific policies would not be given effect to.

The ratio of the case is that the NZCPS is not to be applied in an "overall" way. A plan change (or indeed any lower-order planning instrument) that does not meet the strongly-worded directives of policies 13 and 15 will not give effect to that instrument, and so cannot be approved.

Seen in that context, and approached as a matter of basic legal method, there is simply nothing in the decision that has a direct bearing on the issues at stake in *Davidson*, or indeed any case involving an application for resource consent being considered in the context of s 104 of the RMA.

The Supreme Court was not addressing the express reference to pt 2 in s 104(1) in reaching its findings. The words "subject to Part 2" simply do not appear in the judgment. Section 104 is not addressed in any specific way at all. Nor is the body of case law referred to below determining the meaning of the words "subject to Part 2" in that context, or within the very similar wording expressed in s 171 (for designations).

The Supreme Court's finding that s 5 is not an operative provision could only be obiter accordingly, at least regarding the application of s 104. The Environment Court was right to record that, but not to apply that reasoning as the basis of its decision, and nor (with respect) was the High Court. That was not the issue before the Supreme Court on the material facts of the case, and *King Salmon* does not reset the law as to the circumstances in which recourse can be made to pt 2 of the RMA for a resource consent application (or designation).

PARLIAMENT'S INTENT AND CASES ADOPTING IT

When first enacted, s 104 of the RMA set pt 2 considerations within a list of matters that the consent authority was required to have regard to.

For that reason, the High Court in *Batchelor v Tauranga District Council (No 2)* [1993] 2 NZLR 84 (HC) determined that pt 2, which includes s 5, is but one in a list of matters and is "given no special prominence" (at 89).

In response to that decision, Parliament moved to restructure s 104 and place pt 2 directly at the forefront, where it sits now. Section 171 was also amended in that way at the same time.

In introducing the Bill that became the Resource Management Amendment 1993, the then Minister for the Environment (the Hon Rob Storey) stated:

> *"Part II of the Resource Management Act sets out its purpose and the key principles of the Act. It is fundamental, and applies to all persons whenever exercising any powers and functions under the Act. The current references in the Act in Part II are being interpreted as downgrading the status of Part II. Amendments in this Bill restore the purpose and principles to their proper overarching position." (532 NZPD 13179)*

Ever since Parliament intervened in this way, the courts have consistently, and I suggest with respect faithfully, applied Parliament's express intent.

I have not attempted to count them, but there must be literally hundreds of Environment Court decisions made under s 104 whereby, following consideration of the other s 104 matters (including effects on the environment, the provisions of the planning instruments, and other relevant matters) the Court has stepped back and considered how to apply its overall discretion to grant or refuse consent, focusing squarely on pt 2 considerations. Exemplifying that approach, in *Lee v Auckland City Council* [1995] NZRMA 241 (PT) at 248 the Planning Tribunal referred to s 5 as the "lodestar" of the Act "which guides the provisions of s 104", with the Tribunal being "guided by the over-arching purpose of sustainable management as defined".

In *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) at [21] the Privy Council recorded that "[t]he Act has a single broad purpose". It went on to state that:

> *"… s 171 is expressly made subject to Part II, which includes ss 6, 7 and 8. This means that the directions in the latter sections have to be considered as well as those in s 171 and indeed override them in the event of conflict." (at [22])*

This observation of the Privy Council directly reflects and applies the earlier decision of the Court of Appeal in *Mangonui County Council* mentioned above.

As also mentioned earlier, in *John Woolley Trust* the High Court stated:

> *"Part 2 is the engine room of the RMA and is intended to infuse the approach to its interpretation and implementation throughout, except where Part 2 is clearly excluded or limited in application by other specific provisions of the Act." (at [47])*

This body of case law was applied by the High Court in *Basin Bridge* in upholding the Board of Inquiry's reasoning. The High Court found that the Board of Inquiry had correctly analysed and understood the ratio of *King Salmon* – and the Court also observed that the provisions which *King Salmon* was concerned with did not contain the "subject to" drafting method addressed by the Court of Appeal in *Mangonui County Council*.

Returning to the legal method principles addressed earlier, it is unclear to me why both the Environment Court and the High Court in *Davidson* chose to apply the reasoning of decisions involving the preparation of planning instruments (*Thumb Point* and *King Salmon*, with the reasoning in the latter arguably obiter), instead of following what appear to me to represent aspects of the ratio of High (and superior) Court decisions addressing the specific statutory directive actually at issue in the case.

COMMENTS ON THE APPROACH IN *DAVIDSON*

In my opinion, the approach set out in *Davidson* has the potential to frustrate rather than promote sustainable management outcomes.

Instead of the provisions of the district and regional plan being applied "subject to Part 2" of the RMA, it is essentially the other way around. Part 2 is only applied subject to the provisions of the district or regional plan.

Earlier on in its judgment, the High Court in *Davidson* refers to the observations of the Supreme Court in *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] NZSC 17, [2005] 2 NZLR 597 at [10], where the Chief Justice described a district plan as the "frame" within which resource consents fall to be assessed.

With respect, what the Supreme Court was saying there is that the district plan provides a framework within which relevant effects fall to be considered, even given particular emphasis (in that case, effects on the amenity values of existing shopping centres for example). A similar approach was applied by the High Court in *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673, [2017] NZRMA 22, also in a notification context, in terms of identifying relevant effects that should be given particular attention.

The approach in *Davidson*, however, is to reset this "frame" as an effective "straitjacket". It may not be going too far to say that the approach taken establishes a "gateway" similar to that set out in the Act for non-complying activities, but through which all resource consent applications must now pass. The district plan objectives and policies become paramount. Unless found to be uncertain, invalid or incomplete, recourse to pt 2 for any party to the process (applicant or submitter) is unavailable.

In my further humble opinion, it is simply taking things too far to assume that the objectives and policies of a given planning instrument can pretend to be all things, suitable for application in all cases. Such provisions may not be "incomplete" or even necessarily invalid. There may however be features of a particular case which ought to be given some prominence in order to address the overarching provisions of pt 2 of the Act, as intended by Parliament. In a situation where conflict of that type arises, the conventional approach to the application of pt 2 should be maintained.

A resource consent is, after all, inherently an attempt to depart from the framework of the district plan. Where something new, innovative, perhaps not foreseen or even evolutionary arises over the 10- to 15-year lifetime of plan provisions, there must be scope to access pt 2 in deciding the fate of that proposal well beyond the limited strictures set by the High Court in *Davidson*.

As noted above, I leave to one side, and deliberately so, the more vexed question of whether the pt 2 provisions

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themselves set "bottom lines" or retain scope for application of the overall judgment approach. I personally do not consider that the Supreme Court's decision in *King Salmon* expressly overrules the overall judgment approach in that pt 2 setting, but instead as to the manner of application of NZCPS provisions.

Leaving that debate for another day, where I consider it properly resides, s 104 should in the meantime be left to work as was unarguably intended by Parliament, whereby issues of effects and the provisions of planning instruments assume no greater provenance than through their application "subject to Part 2".

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New Zealand air quality case law review: what stinks and why

Author:
Louise Wickham,
Director and Senior Air Quality Specialist,
Emission Impossible Ltd

The recent updates of three Good Practice Guides for the assessment and management of odour, dust and discharges to air from industry by the Ministry for the Environment (*Good Practice Guide for Assessing and Managing Odour* (ME 1278, November 2016); *Good Practice Guide for Assessing and Managing Dust* (ME 1277, November 2016); *Good Practice Guide for Assessing and Managing Discharges to Air from Industry* (ME 1276, November 2016)) provides a timely opportunity to consider the legal context. This article reviews existing case law for air quality and identifies some helpful principles for general resource management.

AIR QUALITY CASE LAW OVERVIEW

The outstanding feature, when reviewing New Zealand air quality case law, is that it is nearly all about odour. This concentration of litigation reflects regional council air quality complaints data, which are heavily skewed towards odour issues. From a Resource Management Act 1991 (RMA) perspective, odour is the penultimate *effects*-based discharge because:

> *"Odour is perceived by our brains in response to chemicals present in the air we breathe – it is the effect those chemicals have on us." (Good Practice Guide for Assessing and Managing Odour at [2.1])*

The other result of odours being directly, and intimately, connected with our brains is that they can produce extraordinarily emotional responses:

> *"Unlike other sensory information, olfactory stimulation is the only sense that reaches the cerebral cortex without first passing through the thalamus. This can lead to intense emotional and behavioural responses to certain odours." (Good Practice Guide for Assessing and Managing Odour at [2.1])*

However, despite being readily perceptible by the general public at extremely low concentrations (parts per billion and parts per trillion), odours can be technically difficult and expensive to characterise with any accuracy. Even if they can be characterised, odours cannot be readily quantified and assessed within a toxicological framework because odours are typically comprised of hundreds, if not thousands, of chemicals. Thus it is practically impossible

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to establish on a quantitative basis the health effects, if any, of a problematic odour. (This is not true for instances where the discharge is a singular pollutant (eg methyl methacrylate from chemical manufacture). However, such examples are rare.)

To counter this, air quality professionals have derived an ingenious assessment approach – the FIDOL factor framework, these factors being:

- Frequency – how often an individual is exposed to the odour.
- Intensity – the strength of the odour.
- Duration – the length of exposure.
- Offensiveness (character) – the "hedonic tone" of the odour, which may be pleasant, neutral or unpleasant.
- Location – the type of land use and nature of human activities in the vicinity of an odour source.

Each FIDOL factor is assessed individually, and then all FIDOL factors are considered together to make an overall judgement of whether an odour is offensive or objectionable for the purposes of s 17 of the RMA. This works surprisingly well in practice to assess the actual severity of an odour in spite of the differences in individual odour perception, whilst taking into consideration reasonable expectations for the location where the odour is occurring. (After all, a strong odour of jet fuel is publicly acceptable at the airport but not in an office block in the city.) Or, in legal terms, the *reasonable person test* as first outlined in *Zdrahal v Wellington City Council* [1995] 1 NZLR 700 (HC).

New Zealand courts have supported the FIDOL assessment framework (see for example *Waikato Environmental Protection Society Inc v Waikato Regional Council* [2008] NZRMA 431 (EnvC) (the New Zealand Mushrooms Ltd case), *R v Interclean Industrial Services Ltd* DC Auckland CRI-2011-092-16845, 2 August 2012 and *Waste Management NZ Ltd v Auckland Council* [2015] NZEnvC 178), and have even applied it to the assessment of noise (another perception-based effect) in *Brooks v Western Bay of Plenty District Council* [2011] NZEnvC 216. It is also used widely overseas, for example in the United Kingdom (Department for Environment, Food and Rural Affairs *Odour Guidance for Local Authorities* (March 2010)), Ireland (Environmental Protection Agency (Office of Environmental Enforcement) *Air Guidance Note 5 (AG5): Odour Impact Assessment Guidance for EPA Licensed Sites* (2010)) and Australia (Department of Environment and Heritage Protection (Queensland) *Guideline: Odour Impact Assessment from Developments* (2013)).

From a legal perspective, the application of this assessment methodology has resulted in case law determining that an offensive or objectionable odour is both unreasonable and a significant adverse effect (*Wilson v Selwyn District Council* EnvC Christchurch C23/04, 16 March 2004). Notably, this includes chronic (low-level, high-frequency) odours (see the New Zealand Mushrooms Ltd case). Because after all, as noted by Judge Thompson when considering odour in *R v Interclean Industrial Services Ltd* DC Auckland CRI-2011-092-16845, 2 August 2012:

> *"It is perhaps somewhat like pornography – you will know it when you see it or, in this case, smell it." (at [20])*

INTERNALISING EFFECTS: SEVEN PRINCIPLES

The New Zealand Mushrooms Ltd case is possibly New Zealand's longest-running odour dispute. The upside, however, is that it has resulted in some excellent case law that is instructive for general resource management.

In one judgment from the case, *Waikato Environmental Protection Society Inc v Waikato Regional Council* [2008] NZRMA 431 (EnvC), the Environment Court identified seven general principles with respect to internalisation of effects (at [185]–[186], referring to *Winstone Aggregates v Matamata-Piako District Council* (2004) 11 ELRNZ 48 (EnvC) and *Wilson v Selwyn District Council* EnvC Christchurch C23/04, 16 March 2004):

(1) In every case, activities should internalise their effects unless it is shown that they cannot do so.

(2) There is a greater expectation of internalisation of effects of newly established activities than of older activities.

(3) Having done all that is reasonably achievable, total internalisation of effects within the site boundary will not be feasible in all cases, and there is no requirement in the RMA that that must be achieved.

(4) The test for odour is objective.

(5) There is a duty to internalise adverse effects as much as reasonably possible.

(6) It is accepted that in respect of odour the concern is to ensure that odour levels beyond the boundary are

not unreasonable (being the same as offensive or objectionable or significant adverse effects).

(7) In assessing what is reasonable, one must look into the context of the environment into which the odour is being introduced, as well as the planning and other provisions (location).

This last principle – the requirement to consider the location, and specifically the planning provisions of a location – should, on the face of it, be well supported. The need for industries with significant emissions of dust and odour to have healthy separation distances from sensitive activities such as housing and schools are the driving force behind the introduction of Business Heavy Industry and Special Purpose Quarry zones in the Auckland Unitary Plan. It is similarly reflected in the recent update to the *Good Practice Guide for Assessing and Managing Odour*, which now states:

> *"For assessment of amenity effects, reference should be made in the first instance to the relevant district/city and, in some cases, regional plans for specific amenity values for various land-use zones." (at [2.5])*

However, consideration of location is still subject to the reasonable person test. It is widely accepted to be unreasonable for city folk moving to the country to complain about rural odours from a cowshed. The same is not true for people living in the country being adversely impacted by industrial levels of odour from poultry farming, as was found to be the case in *Craddock Farms Ltd v Auckland Council* [2016] NZEnvC 51, (2016) 19 ELRNZ 390.

TERM OF CONSENT: KEY DETERMINANTS

The RMA is silent on the matter of term of consent, and little guidance is available for councils and decision-makers alike on what is acceptable or appropriate for different applications. Whilst it is clearly reasonable to provide the maximum 35-year term of consent for the construction of a new hydroelectric dam (assuming any adverse effects are avoided, remedied or mitigated), the same is not necessarily true for an existing coal-fired power station that is nearing the end of its design life. And how to address future changes in the surrounding environment that may alter the basis on which an assessment of effects, and a decision, are founded?

Air quality is also an area in which research is constantly updating our state of knowledge. Whilst there has been scientific consensus on the need for ambient air quality guidelines for particulate matter since the 1980s (World Health Organization (WHO) *Air quality guidelines for Europe* (1987)), it was only in 2006 that global guidelines for both $PM_{2.5}$ and PM_{10} were published (WHO *Air Quality Guidelines Global Update 2005: Particulate matter, ozone, nitrogen dioxide and sulfur dioxide* (2006)). Then in 2013 the International Agency for Research on Cancer (IARC) classified particulate matter as carcinogenic because of an increased risk of lung cancer (IARC "Outdoor air pollution a leading environmental cause of cancer deaths" (Press Release No 221, 17 October 2013)). More recent research indicates that particulate matter is associated with artherosclerosis, adverse birth outcomes and childhood respiratory disease, as well as Alzheimer's disease and other neurological endpoints, cognitive impairment, diabetes, systemic inflammation and aging (WHO *Review of evidence on health aspects of air pollution – REVIHAAP Project: Technical Report* (2013); WHO *WHO Expert Consultation: Available evidence for the future update of the WHO Global Air Quality Guidelines (AQGs)* (2016)). All of which have serious implications for assessments of effects and decisions based thereon.

Fortunately, case law has considered some of these issues for determining duration of consent, at least with respect to odour. In *PVL Proteins Ltd v Auckland Regional Council* EnvC Auckland A61/01, 3 July 2001 the Environment Court identified the following matters that would generally support a longer term of consent:

- An applicant's need for certainty, particularly to protect investment.
- An activity that generates known and minor effects on the environment on a constant basis.

However, the Court also identified the following matters that would generally support a shorter term of consent:

- Future changes in the vicinity of a proposal.
- An activity which generates fluctuating or variable effects, or which depends on human intervention or management for maintaining satisfactory performance, or which relies on standards that have altered in the past and may be expected to change again in future.

Continued

- Uncertainty of the effectiveness of conditions to "protect the environment" and taking into consideration the applicant's "past record of being unresponsive to effects on the environment and making relatively low capital expenditure on alleviation of environmental effects compared with expenditure on repairs and maintenance or for profit" (at [31]).

In doing so, the Court specifically noted:

> *"The term of a consent, and the ability of a consent authority to review conditions of the consent, provide different safeguards." (at [78]; for a concise explanation, see [78]–[79])*

The Court further helpfully outlined the advantages, or otherwise, afforded by a review under s 128 of the RMA instead of a varying term of consent:

- A review, as opposed to a shorter term of consent, may be more effective in keeping conditions up to date, relevant and adequate.
- A review, in conjunction with a longer term of consent, may be used if it is capable of addressing all areas of concern.
- However, a review may not be adequate, as opposed to a shorter term of consent, where the operation has given rise to considerable public disquiet, as it cannot be initiated by affected residents.
- Similarly, a review may not be adequate where a consent-holder's financial viability might constrain controls intended to avoid, remedy or mitigate significant adverse effects on the environment.

CAUSATION OF DISCHARGE TO THE ENVIRONMENT: SEVEN PRINCIPLES

In science, determination of causality is an iterative and meticulous process wherein consensus that *A* caused *B* can only be achieved once chance, bias and confounding can be ruled out with reasonable confidence. Similarly in law, as noted by Harrison J in *URS New Zealand Ltd v District Court at Auckland* [2009] NZRMA 529 (HC) at [59] (upholding Judge McElrea's decision in *Auckland Regional Council v URS New Zealand Ltd* DC Auckland CRI-2008-004-13603, 16 April 2009), "the causation inquiry is of a purely factual nature, to be undertaken on all the evidence".

The *URS* case helpfully summarised seven principles by which causation of discharge can be determined:

(1) The question of causation must be approached on a common-sense basis. In each case it will be a question of whether the evidence establishes that the defendant contributed sufficiently to the chain of causation of discharge to justify a finding of guilt.

(2) There can be more than one cause of discharge and more than one liable party.

(3) It would be unjust to prosecute only those who were responsible for a discharge at the final stage of the chain of causation. The RMA is designed to promote self-regulation and acceptance of responsibility.

(4) A person may discharge a contaminant in terms of s 15(1) of the RMA unintentionally, that is, without knowledge or foresight of the discharge. A requirement of foresight or knowledge of the discharge would be inconsistent with the available defences. There is no room for a mental element in the act of discharge.

(5) For a person to discharge a contaminant, he or she must have a causal connection to the discharge. The statutory meaning of "discharge" extends to engaging in an activity which results in the emission or discharge of a contaminant.

(6) The word "discharge" embraces the concept of causing to discharge, thereby bringing into the net of liability a party whose acts or omissions are an operative or effective factor in the chain of causation leading to a physical discharge.

(7) A person will discharge for the purposes of s 15(1) if the operations which that person was in a position to control caused the discharge. The element of control in the context of s 15(1) does not relate to the site at the point or time of discharge, but rather to control of a causative act or omission. It is not necessary for a person to control a site to be liable for a discharge at or from the site.

Taranaki Regional Council v Fonterra Ltd [2015] NZDC 12604 provides an illuminating (air quality) case study of these principles in action. In this case Fonterra was held criminally liable and fined $192,000 for a discharge to air (odour) from a plant they neither owned nor operated (see *Taranaki Regional Council v Fonterra Ltd* [2015] NZDC 14962 for sentencing). Fonterra had contracted the South

Taranaki District Council (STDC) to dispose up to 8,000,000 litres of waste buttermilk in the Eltham wastewater treatment plant. Specifically, Fonterra contracted with the STDC to treat the waste in the earthen anaerobic digester (EADER) which had previously been decommissioned because *it never worked properly*. Consequently the buttermilk decomposed, the EADER leaked, and the town of Eltham was subjected to extremely offensive odours for many months.

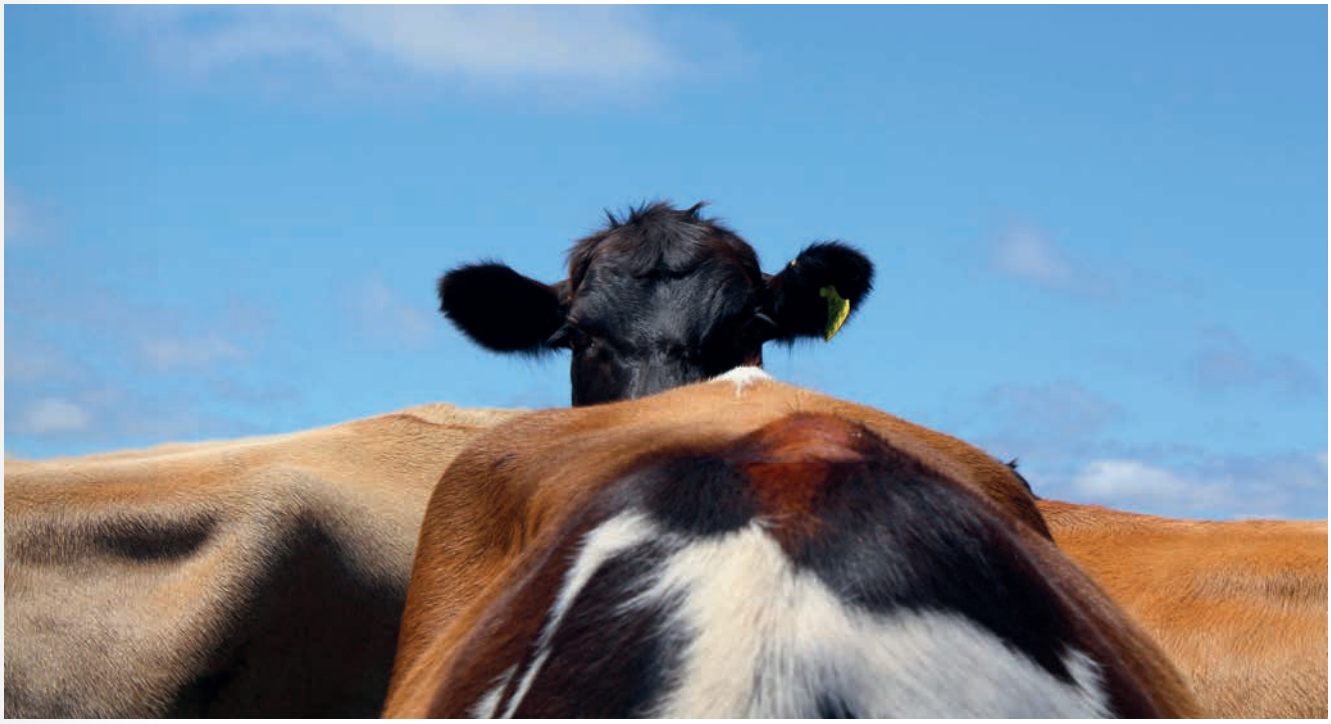
In this case the District Court systematically considered causation of discharge to determine that:

- Fonterra's contract with the STDC was the reason that the EADER was pressed into use. As such, the STDC was contracting to treat and dispose of Fonterra's waste.
- In doing so, the STDC noted uncertainty in its ability to suitably treat the waste. As such, the STDC (which was also prosecuted and fined for offensive odours: *Taranaki Regional Council v South Taranaki District Council* DC New Plymouth CRI-2014-043-1196, 24 November 2014) was not fully responsible for the buttermilk from Fonterra.
- Given the plant's history, the discharge of offensive odours was reasonably foreseeable. However, Fonterra asked "virtually no questions" (at [51]), and failed to take steps that reasonably prudent persons would have taken to have confidence that the waste would be suitably treated.
- Fonterra was thus liable for the discharge of odours. It would be unjust to only prosecute the STDC at the final stage of causation.

Thus Fonterra was determined to be the prime contributor in the chain of causation leading to the discharge of offensive odours. On the matter of contracting, Judge Dwyer made the point of noting:

> *"Firstly, as a matter of basic principle I do not consider that a party conducting an activity which might potentially cause adverse effects can evade its responsibility to do so in a manner which avoids or prevents those adverse effects (in this case the escape of odour) by delegating responsibility to a third party, whether by arms' length contract or otherwise[.]" (at [42])*

Industry contracting for the disposal of any environmental waste would do well to take note.



Spilling the beans on environmental compliance: emergency plans in the New Zealand legislative framework

Author:
Kari Schmidt, Solicitor, Simpson Grierson

Emergency management for hazardous substances is, from a legislative perspective, oriented towards protecting the environment and the public from spills and other untoward events. This is reflected, for example, in s 4 of the Hazardous Substances and New Organisms Act 1996 (HSNO), with the purpose of the Act being to "protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances".

Although there is very little literature or analyses available on emergency plans, they are an essential mechanism in protecting our environment and the public via emergency management. Additionally, they are required under various district and regional plans, hazardous substances regulations and, potentially, local trade waste bylaws. In the last year, the Auckland Unitary Plan and health and safety at work regulations have also instigated changes in this area.

Environmental compliance in regards to safety management is likely to become increasingly important in the future, in light of Marie A Brown's *Last Line of Defence: Compliance, monitoring and enforcement of New Zealand's environmental law* (Environmental Defence Society, 2017). This article will outline the various legal mechanisms requiring emergency plans and consider the consequences of businesses failing to fulfil their obligations, as well as the benefits of compliance.

THE LAW

Hazardous substances regulations

Where a business has environmentally hazardous substances on-site that are over certain threshold quantities, it will require an Emergency Response Plan (ERP) under the Hazardous Substances (Emergency Management) Regulations 2001. These regulations are enforceable under the HSNO, which enables territorial authorities to inspect premises (ss 97–103) and issue compliance orders (ss 104–108) and infringement notices for fines for non-compliance (s 112). Additionally, the HSNO makes it an offence to fail to comply with any controls specified in any regulations (s 109(1)(e)(ii)), and to fail to comply with any controls imposed by any approval granted under the Act (s 109(1)(e)(i)), for which there is a maximum penalty of a term of imprisonment not exceeding three months or a fine not

exceeding $500,000 and, if the offence is a continuing one, to a further fine not exceeding $50,000 per day (s 114(1)).

District and regional plans

The Resource Management Act 1991 (RMA) makes it an offence to use land in a manner that contravenes a district rule or regional rule (s 9). Section 15 addresses unlawful discharges of contaminants into the environment, which is a strict liability offence under s 338(1)(a). The maximum penalty for an offence under either of these provisions is $300,000 in the case of a natural person, or a term of imprisonment of two years, and $600,000 in the case of any other person (s 339(1)).

Additionally, enforcement orders and abatement notices can be issued for an offence, as well as an infringement fee of $300 for an offence under s 9 and a fee of $300–$1,000 for an offence under s 15 (under the Resource Management (Infringement Offences) Regulations 1999).

Under the Auckland Unitary Plan (AUP), "industrial or trade activities" are required by the permitted activity standards to have an Emergency Spill Response Plan (ESRP) and potentially also an Environmental Management Plan (EMP) where hazardous substances are stored on-site in quantities "greater than used for domestic purposes" (ie five litres). There are many businesses that this impacts on, as "industrial or trade activities" span a wide variety of industries, from agricultural support and animal feedstuffs to wood and paper product storage and manufacturing. If a business already has an ERP as a result of its complying with the Hazardous Substances (Emergency Management) Regulations 2001, only *some* of the requirements of an ESRP under the AUP will need to be included. Additionally, where a business was established prior to a plan being notified and remains the same or similar in terms of its character, intensity and scale, it may constitute an existing use and be lawful under the RMA (under ss 10(1)(a), 10A, 10B or 20A). As such, the AUP requirements will tend to apply only to *new* businesses, or to older businesses whose emergency plans and systems were not originally compliant with the regional plan that preceded the AUP.

The district and regional plans for Dunedin, Wellington and Christchurch all approach the matter of emergency plans in regards to hazardous substances relatively similarly. While some of these plans do not touch upon emergency plans at all, on the whole they all appear to allow for some form of emergency plan or management plan to be required as a condition of granting a resource consent. Additionally, the Regional Plan for Discharges to Land for the Wellington Region (updated July 2014) requires a discharge management plan (which includes emergency response procedures) in regards to reticulated sewerage systems (at [4.2.14]). However, outside of these examples there is nothing in these plans specifically requiring businesses to institute such plans. Rather, the onus is on the council to encourage the adoption of such plans, or to require them within the context of granting a consent – in contrast with the AUP where it is a permitted activity standard that industrial and trade activities must have such plans in place. The AUP may signal the way of the future in terms of protecting the environment, given that what it requires is so much more stringent as compared to the other district and regional plans reviewed here.

Health and safety at work regulations

The Health and Safety at Work (Major Hazard Facilities) Regulations 2016 apply to relatively more hazardous substances, such as those that are acutely toxic. Additionally, the threshold quantities required for the regulations to apply are relatively high, ranging from five to 50,000 tonnes. The regulations require the operator of a major hazard facility to prepare an emergency plan, somewhat different again from an ESRP, EMP and ERP.

2016 also saw the implementation of the Health and Safety at Work (General Work and Workplace Management) Regulations 2016. Regulation 14 requires a person conducting a business or undertaking (PCBU) to prepare a general emergency plan, covering effective responses, evacuation procedures and testing of the plan. Hazardous substances would likely need to be addressed by such a plan.

Contravention of either of these provisions may lead to a fine not exceeding $10,000 for an individual and $50,000 for any business or undertaking.

Trade waste bylaws

Additionally, the relevant council's trade waste bylaw may be relevant. For example, under the Auckland Council's Trade Waste Bylaw 2013 the Council may consider whether a business has a trade waste management plan and/or emergency response procedures in deciding whether to

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grant a conditional trade waste consent, or it may require a business to institute such procedures. A breach of this bylaw can lead to a maximum penalty of $200,000 per offence (cl 24(1)).

ENFORCEMENT

Spills

The case law makes it clear that, where a spill of environmentally hazardous substances takes place, a business that is prosecuted is likely to experience significant penalties.

The latest example of this is *Waikato Regional Council v Chemwash Hamilton Ltd* [2017] NZDC 3284, where a Hamilton cleaning company was convicted under the RMA for a toxic discharge of chemicals in Paeroa that killed a significant number of fish (at least 53 eels and 28 banded kōkopu). Judge Kirkpatrick stated that the company's activities were "at least reckless", and that the steps it had taken to protect against a discharge were "completely inadequate" (at [13]). The company instigated a review and implemented changes to its systems as a result of the incident. It was fined $39,000. Similarly, on 8 March 2017 the Waikato Council fined a farmer $65,750 for discharging dairy effluent into the Piako River and the Waihou River.

The case law indicates that fines for a spill will range from around $25,000 (as in *Machinery Movers Ltd v Auckland Regional Council* [1994] 1 NZLR 492 (HC)) to the highest fine in New Zealand of $300,000 for the Rena oil spill in *Maritime New Zealand v Daina Shipping Co* DC Tauranga CRI-2012-070-1872, 26 October 2012.

Emergency plans

There is little case law as regards the enforcement of emergency plans themselves. The only case which appears to have a prosecution of a party in regards to such a situation is that of *Manawatu-Wanganui Regional Council v Ruapehu Alpine Lifts Ltd* (2014) 18 ELRNZ 68 (DC), which involved a spill of diesel. The defendant was fined $15,000 under the Hazardous Substances (Emergency Management) Regulations 2001 for failing to ensure that an ERP was tested every 12 months (this was reduced in the High Court to $8,500 to recognise the defendant's co-operation with WorkSafe New Zealand's investigation and its assistance in clean-up efforts). Judge Dwyer in the District Court stated:

> *"[54] … It is reasonable to ask the question, if a tested emergency response plan had been available and executed when this discharge occurred, would the consequences of the offending have been what they were?"*

In relation to the spill itself, the charge for failing to maintain a stationary container system so that it contained a hazardous substance without leakage resulted in a fine of $51,500 (under the HSNO) and the charge under s 15 of the RMA amounted to $240,000, indicating the significance for the Court of such incidents.

There is very little data available to indicate the extent to which councils, the primary enforcers of the RMA and HSNO regulations, enforce the requirement to have these plans. Although the *Last Line of Defence* report, for example, notes how many infringement notices, abatement notices, enforcement orders and prosecutions have been undertaken by councils over the last few years, the data does not specify what breaches have taken place. However, this report identifies a lack of monitoring and enforcement by councils in general – signalling that enforcement of the requirements to have such plans may not, in itself, be extensive.

An example of this can be seen in the monitoring of dairy farms in the Waikato region. Of the 773 farms monitored thus far between 30 June 2016 – 30 June 2017, 16.5 per cent or 127 of them were found to have high-risk effluent

systems that could contaminate the environment. However, while there are 4,500 farms in this area, only 1,200 will be investigated in this time: Alexa Cook "More than 100 Waikato dairy farms found to be 'high risk' for effluent spills" (9 March 2017) Radio New Zealand <www.radionz.co.nz>.

However, at least within the context of the RMA, it appears that having appropriate systems in place (such as an emergency plan) will act as a mitigating factor in sentencing where a spill does occur. For example, in *Te Kinga Farms Ltd v West Coast Regional Council* [2015] NZHC 293 the High Court considered that the implementation of an EMP costing $300,000 after the discharge justified relatively small fines of $17,100, $25,650 and $17,100 for three separate instances of farm effluent entering water. Similarly, in *Mainstream Forwarders Ltd v Canterbury Regional Council* HC Christchurch CRI-2009-409-105, 1 October 2009 (on appeal from *Canterbury Regional Council v Mainstream Forwarders Ltd* DC Christchurch CRI-2009-009-1431, 28 May 2009), where blue ink liquid concentrate had entered water, the High Court quoted the District Court, which considered that the defendant had put reasonable steps in place to manage a spill and this was a mitigating factor:

> *"While the steps taken by the defendant proved to be inadequate, nevertheless steps were taken – it did have on hand a containment spill kit and also a spill response plan, which it implemented." (District Court judgment at [31]; High Court judgment at [13])*

Conversely, in *Auckland Council v Jenners Worldwide Freight Ltd* DC Auckland CRI-2014-092-257, 4 February 2015, which involved an unlawful discharge of 1,000 litres of methyl violet onto land in circumstances where it entered water, the defendant "accepted that it was negligent in not providing procedures concerning the storage of hazardous goods and training to its staff, and that it failed to comply with the provisions of the Regional Plan" (at [37]). The starting point for the fine was thus $180,000, with an ultimate fine of $103,561.88.

THE BENEFITS OF COMPLIANCE

Emergency plans are legally required in New Zealand. Additionally, they are an effective mechanism for ensuring that a spill or other adverse event does not occur in the first place, as they provide businesses with the opportunity to methodically assess: the environmentally hazardous substances they have on-site and how to avoid discharges of environmentally hazardous substances; how discharges will be managed in the event of a spill or other emergency; how substances will be disposed of; who will need to be contacted; their responsibilities in terms of drainage; how spills will be mitigated or avoided; how the plan will be tested; where spill kits, fire extinguishers and other such materials will be located; how staff will be trained to deal with an emergency; how the permitted activity controls in a district or regional plan will be complied with; and much more.

These are all aspects of environmental compliance that businesses should take responsibility for, both in order to fulfil their legal obligations and to manage their risk into the future – not only to avoid potentially significant penalties in the event of a spill, but to protect from reputational damage. This is particularly so in a legal environment where monitoring and enforcement are likely to become more important in the future.

Developer contributions: back to the future?

Author:
James Gardner-Hopkins, Barrister

INTRODUCTION

Development contributions (DCs) are one of the funding mechanisms a territorial authority (Council) may employ to fund the costs of certain activities, namely the growth-related costs of reserves, network infrastructure and community infrastructure. DCs can only be imposed in accordance with a development contribution policy (DC policy), which is contained in a Council's long-term plan (and can be updated in its annual plan). One of the other funding mechanisms is financial contributions (FCs). FCs are imposed as conditions of resource consents, in accordance with the purposes ssand determined in the manner specified in the relevant District Plan.

DCs were introduced as an alternative to FCs in 2002, with the enactment of the Local Government Act 2002 (LGA 2002). They were a response to complaints from Councils about "difficulties" with the FC regime. As conditions of resource consents, FCs could be appealed to the Environment Court (and beyond). The FC provisions in a District Plan could themselves also be appealed to the Environment Court (and beyond). Many Councils complained about the time, cost and delay in resolving appeals. There were also some concerns about whether FCs could capture wider growth-related costs.

The DC regime introduced in the LGA 2002 was the response to these concerns. There was no provision in that legislation for appeals to the Environment Court (or otherwise) in respect of a DC policy, or an individual DC assessment. The only basis by which a substantive challenge could be mounted was judicial review.

It was left to Councils to decide whether to have a DC policy, FC policy, or both. However, Councils could not "double-dip" and collect both DCs and FCs from the same development to fund the same activities. Over time, most Councils have moved to DCs, although some operate dual policies.

Complaints from developers about the lack of appeal rights under a DC regime, and less than robust DC policies, have increasingly surfaced (despite the success of an early judicial review challenge, *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC)). The Local Government Act 2002 Amendment Act 2014 (LGAAA 2014) introduced a number of changes to the DC regime to make it fairer, better focused, more transparent

and more workable. One change was the introduction of a right to "object" to a DC levy under s 199C of the LGA 2002 – which was something of a return to an FC appeal rights regime.

The current Resource Legislation Amendment Bill 2015, in cls 153–159, proposes to remove the FC provisions from the Resource Management Act 1991, so that all "developer contributions" in the future will be through the DC regime. In light of this potential move to one regime only (DCs) with objection rights (is this back to the future?), this article:

- briefly recaps some of the DC "fundamentals";
- summarises the key changes to the DC regime introduced by the LGAAA 2014;
- analyses *Mapua Joint Venture v Tasman District Council: A Decision by Development Contributions Commissioners* (Commissioners Atkins, St Clair and Abley, 11 December 2015), with a focus on the limitations of the objection process; and
- concludes with brief observations about the potential for judicial review of a DC policy or levy.

DC FUNDAMENTALS

Neil Construction established the need for Councils to strictly apply the "critical filter" (at [214]) of s 101(3) of the LGA 2002 to their funding decisions, including those in respect of a DC policy. Section 101(3) requires a Council to consider (in relation to each activity to be funded) a range of matters, including:

- community outcomes;
- the distribution of benefits;
- the period in or over which those benefits are expected to occur;
- the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and
- the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities.

Failure to give genuine thought and attention to any of these matters could give rise to an error of law in adopting a DC policy.

In addition, before imposing a DC a Council must also consider:

Whether the relevant activity is a "development", ie does it generate demand for reserves, network infrastructure or community infrastructure (refer s 197(1))?

If the relevant activity is a "development", whether there is a causal nexus between it and the particular activities that are to be funded by the DC. For example, capital expenditure directed solely at providing higher levels of service rather than to accommodate growth from the development should not attract a DC.

The alternative sources of funding available (s 199). Obviously, Councils have a range of funding mechanisms and sources available to it (such as rates, direct user charges, and so on). Councils cannot consider DCs in a vacuum.

Under s 198(1), DCs can be imposed at the time a resource consent is granted, a building consent is granted, or a service connection is granted (for example, water and wastewater connections). Usually Councils will look to impose development contributions at the first available opportunity.

THE 2014 AMENDMENTS TO THE DC REGIME

Key changes introduced in the LGAAA 2014 included the introduction of two new sections, ss 197AA and 197AB of the LGA 2002, to explain the purpose and principles of DCs. They emphasise the need for there to be a "causal nexus" between development and the demand for infrastructure.

Significantly, the LGAAA 2014 provided a new right to "object", under s 199C of the LGA 2002, to a DC that has been levied. An objection can be made on one of four grounds identified in s 199D, being that the DC, or the Council in levying the DC:

- failed to properly take into account features of the development that would, on their own or cumulatively with those of other developments, substantially reduce the impact of the development on requirements for community facilities in the Council's district or parts of its district;
- required a DC for community facilities not required by, or related to, the objector's development, whether on its own or cumulative with other developments;

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- required a DC in breach of s 200; or
- incorrectly applied the DC policy to the development.

An objection is heard by a DC "commissioner" appointed under s 199F. In making a decision, under s 199J a DC commissioner must consider:

- the grounds on which the DC objection was made;
- the purpose and principles of DCs under ss 197AA and 197AB;
- the provisions of the DC policy;
- the cumulative effects of the objector's development, in combination with the other developments in a district or parts of a district, on the requirement to provide the community facilities that the DC is to be used for or put toward; and
- any other relevant factor associated with the relationship between the objector's development and the DC to which the objection relates.

The LGAAA 2014 also provided for a "reconsideration" process under ss 199A and 199B of the LGA 2002. This is more of a process to correct errors in calculations of application of a DC policy. The LGAAA 2014 also formalises the scope and process around "development agreements" between Councils and developers, under ss 207A–207F of the LGA 2002.

THE *MAPUA JOINT VENTURE* DECISION

This objection related to a DC of some $1,000,000 imposed by the Tasman District Council (TDC) in respect of an 80-lot subdivision. The developer, Mapua Joint Venture (MJV), considered that, properly applied, a DC of approximately $335,000 was the appropriate amount (ie it sought a reduction of around $665,000).

While there were a number of issues in contention, the key issue of wider relevance was whether the use of a district-wide catchment in the DC policy was within or outside the scope of a valid objection under the LGA 2002. MJV considered that the DC policy should have taken a finer-grained "catchment" approach, rather than spread costs across the entire district away from where many of the works were occurring.

This gave rise to a legal question. As the DC commissioners framed it, the question was whether they were entitled to "look behind" the DC policy and determine that the district-wide approach was not appropriate. They stated:

> *"At face value, s199J appears to impart significant scope on our enquiry and considerations. However, this is tempered by the caveat in s199C(3) that we cannot enquire into the content, or as we say look behind the DCP." (at [38])*

Section 199J provides:

> *"When considering a development contribution objection and any evidence provided in relation to that objection, development contributions commissioners must give due consideration to the following:*
>
> *(a) the grounds on which the development contribution objection was made:*
>
> *(b) the purpose and principles of development contributions under sections 197AA and 197AB:*
>
> *(c) the provisions of the development contributions policy under which the development contribution that is the subject of the objection was, or is, required:*
>
> *(d) the cumulative effects of the objector's development in combination with the other developments in a district or parts of a district, on the requirement to provide the community facilities that the development contribution is to be used for or toward:*
>
> *(e) any other relevant factor associated with the relationship between the objector's development and the development contribution to which the objection relates."*

Section 199C(3), however, provides:

> *"The right of objection conferred by this section does not apply to challenges to the content of a development contributions policy prepared in accordance with section 102."*

While MJV was not seeking a rewrite of the DC policy or its setting aside as unlawful (it was seeking that the application of the DC policy to its 80-lot development be modified to meet the relevant statutory requirements), the DC commissioners ultimately found:

> *"In summary we consider the district wide approach is an integral part of the DCP and is a determining factor in the setting of the charges. We therefore agree with the submissions for Council that 'the proper focus of these proceedings must be the section 199D objection grounds set out in the notice of objection'. Consequently we do not look behind the DCP in making our determination but we do make a number of observations regarding the appropriateness of district wide catchments within the existing DCP." (at [41]; footnote omitted)*

The DC commissioners' observations indicated that they were not impressed with the TDC approach, despite finding that they could not look behind the DC policy. In respect of the use of catchments, the DC commissioners observed or emphasised that a key DC principle is that the cost "should be determined according to, and be proportional to, the persons who will benefit from the assets", and that while this could be the "whole community", they expected that this would be "specific to the community of benefit" (at [49], citing s 197AB(c)). This was consistent with another general principle that DC policies should avoid "grouping [assets] across an entire district wherever practical" (at [49], citing s 197AB(g)(ii)). In particular, the DC commissioners commented that:

> *"… it [was] difficult to understand [how] the existing DCP wastewater catchment grouped assets in Mapua, St Arnard and Takaha given these communities are distant from each other by at least 75 kilometres. …*
>
> *…*
>
> *… it appeared odd that vastly disconnected spatial communities should … somehow be connected through a financial mechanism. Consequently on that matter the existing DCP also fell short of expectations." (at [51]–[53])*

The DC commissioners also had concerns about the level of information that the TDC had originally provided to support its DC policy. Much of the information only came out through the objection process, rather than being provided up front and/or accompanying the DC policy itself.

The TDC has since acknowledged some of these shortcomings in its DC policy, and is considering moving to a multi-catchment approach in the future. Accordingly, the MJV objection might have triggered a review of the TDC DC policy of potential benefits to other developers in the future. But the objection did not directly help MJV, and in light of the approach that the DC commissioners took to "scope", many developers might still look to judicial review in the future, rather than the objection process under the LGA 2002.

JUDICIAL REVIEW

The validity or lawfulness of a DC policy or a specific DC levy remains open to challenge by way of judicial review, notwithstanding the objection procedure. The LGA 2002 also preserves, in s 199N, the opportunity to judicially review a decision of a DC commissioner on an objection (there is no general right of appeal against a decision on a DC objection).

Judicial review of a DC policy would generally be framed within one or more of the three traditional grounds of judicial review, ie "procedural impropriety", "irrationality" and/or "illegality"; or, as Robin Cooke put it in "Third Thoughts on Administrative Law" (1979) 5 New Zealand Recent Law 218 at 225, has the decision-maker acted "in accordance with law, fairly and reasonably"?

The shortcomings in the TDC's provision of information to explain and support its DC policy, and allow its validity to be tested through the development of the DC policy, might have grounded a procedural challenge, for example. The substantive failure of the TDC to use catchments when it is practical to do so might also have founded a challenge based on a failure to comply with the relevant statutory requirements.

It will be interesting to see if developers do still take up the objection process in the future, despite its limitations, or instead continue to seek judicial review. In other words, are we back to the future of judicial review (as was the case with DCs originally), rather than the limited quasi-appeal objection process now provided under the LGA 2002?

**Note: The author was counsel for Mapua Joint Venture in respect of its objection to the development contributions imposed by the Tasman District Council.*

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Otago graduate and Kahui Legal Associate Maia Wikaira is the recipient of a prized 2016 Resource Management Law Association post graduate scholarship.

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Publishing Date	Synopsis Deadline	Copy Deadline
August 2017	16 June 2016	14 July 2017
November 2017	10 September 2017	17 October 2017

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[104 Consideration of applications

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LEGISLATION

CURRENT VERSION (APPLIES FROM 7 AUGUST 2020)

[104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–

(a) any actual and potential effects on the environment of allowing the activity; and

[[(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and**]]**

[[(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and**]]**

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if **[[**a national environmental standard or**]]** the plan permits an activity with that effect.

[[(2A) When considering an application affected by section 124 **[**or 165ZH(1)(c)**]**, the consent authority must have regard to the value of the investment of the existing consent holder.**]]**

[[(2B) When considering a resource consent application for an activity in an area within the scope of a planning document **[**prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011**]**, a consent authority must have regard to any

resource management matters set out in that planning document.**]]**

[[(2C) Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under section 93 of the Marine and Coastal Area (Takutai Moana) Act 2011.**]]**

(3) A consent authority must **[[**not,**]]**—

[[(a) when considering an application, have regard to—

(i) trade competition or the effects of trade competition; or

(ii) any effect on a person who has given written approval to the application:**]]**

(b) *Repealed*.

[[(c) grant a resource consent contrary to—

[(i) section 107, 107A, or 217:**]**

(ii) an Order in Council in force under section 152:

(iii) any regulations:

[(iv) wāhi tapu conditions included in a customary marine title order or agreement:**]**

[(v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:**]]]**

(d) grant a resource consent if the application should have been notified and was not.

[[(3A) *See also* section 103(3) of the Urban Development Act 2020 (which relates to resource consents in project areas in transitional periods for specified development projects (as those terms are defined in section 9 of that Act)).**]]**

[[(4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.**]]**

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

[[(6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.**]]**

[[(7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.**]]]**

COMMENTARY

Cross references

s 2 "consent authority", "controlled activity", "designation", "discretionary activity", "district plan", "environment", "esplanade reserve", "national policy statement", "New Zealand coastal policy statement", "non-complying activity",

"person", "plan", "proposed plan", "regional plan", "regional policy statement", "regulations", "resource consent", "restricted discretionary activity", "rule", "submission"
s 3 "effect"
s 5 purpose
s 6 matters of national importance
s 7 other matters
s 8 Treaty of Waitangi
s 45 purpose of national policy statements
s 58 contents of New Zealand coastal policy statements
s 88 making an application
s 88A description of type of activity to remain the same
s 92 further information may be required
s 96 making of submissions
s 104A determination of applications for controlled activities
s 104B determination of applications for discretionary or non-complying activities
s 104C determination of applications for restricted discretionary activities
s 104D particular restrictions for non-complying activities
s 105 matters relevant to certain applications
s 106 consent authority may refuse subdivision consent in certain circumstances
s 107 restriction on grant of certain discharge permits
s 108 conditions of resource consents
s 123 duration of consent
s 152 Order in Council may be made requiring holding of authorisation
s 217 effect of water conservation order
s 360 regulations
s 391 applications for licences and approvals under the CAA72
s 406 grounds of refusal of subdivision consent

A104.01"Subject to Part 2"

(1)Part 2 prevails in the event of conflict

In *Reith v Ashburton DC* [1994] NZRMA 241 (PT), the Tribunal accepted that the interpretation of the Court of Appeal in *EDS v Mangonui CC* [1989] 3 NZLR 257; (1989) 13 NZTPA 197, per Cooke P, at 260; 202, can be applied to s 104 as amended, namely, that the words "subject to" are "a standard drafting method of making clear that the other provisions referred to are to prevail in the event of a conflict". In *Paihia & District Citizens Assn Inc v Northland RC* A077/95 (PT), the Tribunal noted that the effect of the words "subject to Part 2" is that the general direction to have regard to the matters listed in s 104(1) does not apply to any one or more of those matters where to do so would conflict with something in Part 2.

See also *Re an Application by Canterbury RC* [1995] NZRMA 110; (1994) 1B ELRNZ 366 (PT), and *RFBPS v Manawatu-Wanganui RC* A086/95 (PT), partially reported at [1996] NZRMA 241.

See [A5.02A], [A75.03(3)] and [A104.01(7)].

(2)Exercise of discretionary judgment to be informed by the statutory purpose and Part 2 matters to be given greater weight

In *Minister of Conservation v Kapiti Coast DC* (1993) 1B ELRNZ 234; [1994] NZRMA 385 (PT), the Tribunal also referred to *EDS v Mangonui CC* (above) as authority that the provisions referred to were to prevail in the event of conflict; and that the matters referred to in that way were to be given greater weight, or primacy, when compared with other considerations. The Tribunal also suggested:

> "It is possible that by prefacing s 104(1) with the phrase 'Subject to Part 2', Parliament intended to convey, indirectly, that it was not only the process of having regard to the various matters listed in that subsection, but also the weighing of them to make the discretionary judgment enabled by [what is now s 104B] and (c), that was to be subject to Part 2."

(3)Relationship between Part 2 and local authority functions

In *Re an Application by Canterbury RC* [1995] NZRMA 110; (1994) 1B ELRNZ 366 (PT), the Tribunal found that, when considering resource consent applications, a regional council is not limited to considering only the effects on the environment which come within its rule-making functions under s 30(1)(c) to (g), but must also consider Part 2 matters (such as the existence of waahi tapu on the site). The Tribunal was of the view that deciding consents is a distinct and additional function which comes within s 30(1)(h). The function of a regional council as a consent authority to hear and decide a resource consent application cannot be performed independently of Part 2. See also *RFBPS v Manawatu-Wanganui RC* A086/95 (PT), partially reported at [1996] NZRMA 241.

The effect of these decisions is that a submitter may raise, and a consent authority must consider, relevant Part 2 matters even though the reason for the consent being required is based on more limited considerations. In *Banks v Waikato RC* A031/95 (PT), conditions were imposed relating to waahi tapu in the context of a regional council consent to clear land, notwithstanding that the rule requiring consent related only to soil and water matters.

(4)Weight to be given to tangata whenua views on Part 2 matters

A number of cases have advanced the view that the provisions of Part 2 are not to be read down, nor their importance underestimated, since they contain "the spirit of the new legislation": *TV3 Network Services Ltd v Waikato DC* [1998] NZLR 360; [1997] NZRMA 539 (HC). However, as the Environment Court observed in *Mason-Riseborough v Matamata-Piako DC* (1997) 4 ELRNZ 31 (EnvC), despite the weight to be given to the concerns of tangata whenua on Part 2 matters, this does not signal a right of exclusionary veto. See *Minhinnick v Watercare Services Ltd* (1997) 3 ELRNZ 351; [1997] NZRMA 553 (HC), confirmed by the Court of Appeal in *Watercare Services Ltd v Minhinnick* [1998] 1 NZLR 294; (1997) 3 ELRNZ 511; [1998] NZRMA 113 (CA).

That approach was taken in *Paokahu Trust v Gisborne DC* EnvC A162/03, which concerned waste water discharge to the coastal marine area. It was acknowledged that the discharge violated Maori tikanga, and had a major adverse effect on the cultural and spiritual sensitivities on tangata whenua. Nevertheless, the community interest also had to be served and conditions were therefore imposed on the consent, including a limitation on the duration of the consent, rather than declining the consent outright.

(5)Burden on applicant concerning Part 2

In *Baker Boys Ltd v Christchurch CC* (1998) 4 ELRNZ 297; [1998] NZRMA 433 (EnvC), the Court held that an applicant for a resource consent must satisfy the Court that the single purpose of the Act (s 5) is met by granting rather than refusing consent. The extent of the obligation depends on what matters are raised under s 5(2)(a), (b), and (c), ss 6 and 8, and, to a comparatively lesser extent, s 7. Even if no evidence is called, the Court may decide that the applicant has not reached the threshold. The Environment Court noted that the position was different for references of plans and plan changes, citing *Hibbit v Auckland CC* [1996] NZRMA 529 (PT).

(6)Implications of s 7(b) and economics

In *Baker Boys Ltd v Christchurch CC* (1998) 4 ELRNZ 297; [1998] NZRMA 433 (EnvC), the Court noted that, in certain circumstances, taking account of s 7(b) means the Court can consider whether letting markets in land and goods resolve the issues is a more appropriate solution than second-guessing the best solution for the community. The Environment Court observed that s 7(b) has implications even at the preliminary evidential and fact-finding level.

(7)Part 2 when considering plan provisions

In *Wilson v Selwyn DC* (2004) 11 ELRNZ 79; [2005] NZRMA 76 (HC), the Court held that the words "subject to Part II" enables the consent authority to form a reasoned opinion as to whether or not plan provisions achieve pt 2 when assessing an application against those provisions. While the consent authority should approach plans and proposed plans as being an outcome of a pt 2 analysis, it is not required to assume that operative provisions necessarily fully reflect pt 2.

In *Saddle Views Estate Ltd v Dunedin CC* [2014] NZEnvC 243, [2015] NZRMA 1, in the context of an application for subdivision consent, the Court inferred, from the approach taken in *King Salmon* that the matters in pt 2 of the RMA and in the higher order statutory instruments must be applied as they are particularised in regional and district plans. Plans are to be applied as containing, in particularised form, all the relevant provisions of pt 2. Any specific objectives or policies in plans must not be "subverted" by reference to pt 2 or other matters.

In *Aro Valley Community Council Inc v Wellington CC* [2015] NZHC 532 the High Court said that the Act envisages the formulation and promulgation of a cascade of planning documents, each intended to ultimately give effect to pt 2, including s 6. A decision under the relevant district plan provisions is at the bottom of that cascade. The decision maker must apply the relevant provisions, prepared in conformity with s 6(f). Independent reference to s 6(f) is not a mandatory consideration. The Court did not however preclude reference to s 6.

The Court of Appeal has held that recourse can (and in some circumstances must) be had to pt 2, and that the Supreme Court in *King Salmon* cannot have intended to prohibit doing so in the context of resource consent applications. Section 104(1) plainly contemplates direct consideration of pt 2 matters. It will be appropriate and necessary to refer to pt 2 in some circumstances, including:

> (a) If higher order policies are equivocal and it is unclear from them whether consent should be granted or refused, or
>
> (b) If the relevant plan has not been competently prepared in accordance with pt 2, or if there is some doubt about that.

On the other hand, if a proposed activity was demonstrably in breach of a higher order policy, separate resort to pt 2 may not be required because it would not provide any additional guidance. Resort to pt 2 could not justify an outcome that is contrary to the thrust of coherent policies that are designed to achieve clear environmental outcomes and have been prepared with regard to pt 2. To refer to pt 2 for the purpose of subverting a clear higher order restriction would be contrary to *King Salmon* and would leave the decision exposed on appeal: *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283.

Although it should be read with some care in light of the Court of Appeal's subsequent decision, the Environment Court's earlier decision in *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 may still provide some useful guidance. The Environment Court held that the correct way of applying s 104(1)(b) in the context of s 104 as a whole is to ask, does the proposed activity, after:

> (a) assessing the relevant potential effects of the proposal in light of the objectives, policies and rules of the relevant plans;
>
> (b) having regard to any other relevant statutory instruments but placing different weight on their objectives and policies depending on whether:
>
> > (i) the relevant instrument is dated earlier than the district (or regional) plan in which case there is a presumption that the district (or regional) plan particularises or has been made consistent with the superior instruments' objectives and policies;
> >
> > (ii) the other, usually superior, instrument is later, in which case more weight should be given to it and it may over-ride the district plan even if it does not need to be given effect to; and/or
> >
> > (iii) there is any illegality, uncertainty or incompleteness in the district (or regional) plan, noting that assessing such a problem may in itself require reference to pt 2 of the Act, can be remedied by the intermediate document rather than by recourse to pt 2;
>
> (c) applying the remainder of pt 2 of the RMA if there is still some other relevant deficiency in any of the relevant instruments; and
>
> (d) weighing these conclusions with any other relevant considerations;

achieve the purpose of the Act as particularised in the objectives and policies of the district/regional plan?

Resort to pt 2 may also be appropriate where there is a proposed plan that has not been fully tested by reference to pt 2: *Skyline Enterprises Ltd v Queenstown Lakes District Council* [2017] NZEnvC 124.

In *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36, the Court considered whether the *King Salmon* approach extends to the relationship between regional or district plan provisions and higher order instruments such as regional and national policy statements. The Court noted that in *RJ Davidson Family Trust* at first instance it had indicated that logically the *King Salmon* approach should apply so that higher order documents should be regarded as being particularised in the relevant plan unless there is a problem with the relevant plan (one

of the three caveats) or the relevant plan precedes the higher level documents in which case more weight will need to be accorded to the higher level documents than would otherwise be the case. If the higher level instrument post dates the plan provisions then there can be no assurance that the plan provisions give effect to the higher order instrument. See also *Bunnings v Queenstown Lakes District Council* [2019] NZEnvC 59. There will also need to be consideration as to whether the plan does in fact give effect to the higher level statement. If the plan provisions are ambiguous, incomplete or illegal then an answer should be looked for in the higher level instruments rather than reverting to pt 2 which is a last resort when considering a resource consent application.

In *Blueskin Energy Ltd v Dunedin City Council* [2017] NZEnvC 150, the Environment Court took a more flexible approach than the Environment Court's "structured inquiry" approach in *RJ Davidson Family Trust*, by assessing considerations under s 104(1)(b) and weighing them against the relevant planning provisions and the considerations in pt 2. The Court noted that its approach should not be applied as a formula to decision making; the facts of a case may lend itself to a different structure.

In *Gibbston Vines Ltd v Queenstown Lakes District Council* [2019] NZEnvC 115, the Court held that it could have direct regard to pt 2 matters because the relevant zone provisions addressed priorities which related to pt 2 matters and these provisions were still to be determined in the sch 1 process. Direct consideration was also required in order to render the zone intentions properly effective with regard to pt 2 matters, due to their lack of clarity on some pt 2 matters.

A104.02"Must have regard to" — subs (1)

(1)Matters which must be considered

In *Donnithorne v Christchurch CC* [1994] NZRMA 97 (PT), "have regard to" was considered to indicate matters that are required to be considered as part of the weighing-up process contemplated by s 104, as opposed to requirements or standards that have to be fully met. A consent authority still has a discretion that is not limited by subs (1). See A7.01.

The scope of the mandatory directive was considered in *Foodstuffs (South Island) Ltd v Christchurch CC* (1999) 5 ELRNZ 308; [1999] NZRMA 481 (HC). The directive "must have regard to" is not to be elevated to mean "must give effect to". Rather, "the requirement for the decision maker is to give genuine attention and thought to the matters set out in s 104, but they must not necessarily be accepted".

In *Unison Networks Ltd v Hastings DC* [2011] NZRMA 394 (HC), the High Court confirmed the position in *Foodstuffs* when considering whether the Environment Court was entitled to find that an area not identified in the district plan was an outstanding natural landscape. It held that the district plan does not necessarily define the scope of the inquiry under s 104, which is subject to pt 2. It observed that the Environment Court is also required by s 290A to "have regard to" the decision that is the subject of the appeal, and it would be a nonsense that the Court on appeal was required to "give effect to" that decision.

In *The Warehouse Ltd v Dunedin CC* EnvC C101/01, the Court adopted the approach taken in *R v C D* [1976] 1 NZLR 436, emphasising the importance of preserving the discretion of the decision-maker when applying the duty "to have regard to". Though the specified matters must be considered, any or all of them may be rejected or given whatever weight the decision-maker considers appropriate.

(2)No primacy of any particular matters

Section 104 does not give any of the matters to which a consent authority is required to have regard primacy over any other matter. All the matters are to be given such weight as the consent authority sees fit in all the circumstances: *Kennett v Dunedin CC* (1992) 2 NZRMA 22 (PT).

Section 104(1) adopts an open-ended approach to the weight that is to be attached to the relevant matters. It is open to a decision-maker to decide that the absence of adverse effects is not determinative and that the enquiry should be made whether the proposal would achieve the objectives of the plan: *Stirling v Christchurch CC* HC Christchurch CIV-2010-409-2892, 19 September 2011.

However, where a superior policy document such as a national policy statement contains a clear directive that is relevant to the proposal in question, such a directive may have a constraining effect. See *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593, where the Supreme Court considered the directive effect of NZCPS provisions in a plan change context. See [A104.01(7)] for the way in which *King Salmon* applies to resource consent applications.

The RMAmA09 amended subs (1)(b) to include National Environmental Standards and other regulations as subs (1)(b)(i) and (ii).

The expression "any relevant provisions" goes beyond just objectives, policies, and rules, and incorporates other provisions such as the identification of issues, explanations, and methods contained in the plan: *Rawlings v Timaru DC* [2013] NZEnvC 67.

A104.03Actual and potential effects on the environment of allowing the activity

(1)"On the environment"

(a) Precedent and integrity of plans (see also [A104D.06])

In *Dye v Auckland RC* [2002] 1 NZLR 337; (2001) 7 ELRNZ 209; [2001] NZRMA 513 (CA), the Court of Appeal concluded that what is now s 104D(1)(a) and s 104(1) are both concerned with the impact of the particular activity on the environment. They are not concerned with the effect which allowing the activity might have on the fate of subsequent applications for resource consent. If there is a concern as to precedent effect, that should be addressed under the new para (b)(iv) or para (c) of s 104(1). The precedent effect of granting a resource consent (in the sense of like cases being treated alike) is not an effect on the environment but is a relevant factor for a consent authority to take into account when considering an application for a consent to a non-complying activity. So too are cumulative effects. But, in taking those matters into account, neither the applicant nor the consent authority is under any obligation to conduct an area-wide investigation involving a consideration of what others may seek to do in the future in unspecified places, and unspecified ways, in reliance on the granting of the application before it. The Court of Appeal referred with approval to *Wellington RC (Bulk Water) v Wellington RC* EnvC W003/98, where the Environment Court noted that, "to even consider future applications as a potential effect or a cumulative effect is to make a totally untenable assumption that the consent authority will allow the dyke to be breached without evincing any further interest in control, merely because it has granted one consent."

See also *Cassidy v Queenstown Lakes DC* EnvC C039/06 and *Scurr v Queenstown Lakes DC* EnvC C060/05.

That is not to say that future subdivision applications cannot be established on the evidence to give rise to a cumulative effect due to the resulting fragmentation of land. See for example *Jennings v Tasman DC* (2003) 9 ELRNZ 344 (EnvC), upheld on appeal *Jennings v Tasman DC* 2/6/04, Young J, HC Wellington CIV-2003-485-1654. See also A104.03(9) and A104.10(9).

Following *Dye* (above), the Environment Court in *Gould v Rodney DC* EnvC A163/03, and *Tuohey v Rodney DC* EnvC A167/03, maintained that the issue of the integrity of the district plan could not be dealt with under s 104(1)(a), but must be addressed in the context of paras (d) or (i) as the Act then was (now, paras (b) or (c)). The risk of establishing a precedent must be weighed in that context. As to integrity of the plan see A104.09(6) and A104D.06. On appeal, the High Court in *Rodney DC v Gould* (2004) 11 ELRNZ 165; [2006] NZRMA 217 (HC), upheld the approach of the Environment Court as to the scope of the jurisdiction under s 104(1)(a).

The decision of the High Court in *Rodney DC* (above) was approved by the Court of Appeal in *Auckland RC v Living Earth Ltd* (2008) 14 ELRNZ 305, [2009] NZRMA 22 (CA). There was no error in failing to mention the integrity of the planning instruments or coherence, public confidence in the administration of the district plan, or precedent; there is no obligation to make a specific finding on the integrity of the plan or those related matters.

In *Feron v Central Otago DC* EnvC C075/09, the Court observed that the precedent created by earlier decisions provides an expectation of like treatment, not an absolute entitlement. Precedent should not be relied upon where an earlier decision is inappropriate, as one questionable decision should not form the basis for ongoing questionable decisions.

There is no requirement to establish that other applications would have to present precisely the same factual matrix as the application presently under consideration. Broadly similar facts could suffice: *Stirling v Christchurch CC* HC Christchurch CIV-2010-409-2892, 19 September 2011, relying on *Murphy v Rodney DC* (2004) 10 ELRNZ 353, [2004] NZRMA 393 (HC).

(b) "Environment"

The Court of Appeal in *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), considered that the "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears that those resource consents will be implemented. The environment does not include the effects of resource consents that might be made in the future. When considering *Hawthorn* the High Court in *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104 said that it thought the distinction the Court of Appeal sought to draw was between activities that were likely to happen and those that were not. It was not appropriate to consider a future environment that was artificial. See also *Unison Networks Ltd v Hawkes Bay Wind Farm Ltd* [2007] NZRMA 340 (HC), on the continuing relevance of the priority rule. In that case, the wind farm structures of Unison's application were appropriately accorded priority by the Court and therefore properly regarded as part of the receiving environment for the purposes of the competing interest of Hawkes Bay Wind Farm Ltd in the same resource. The issue of whether a resource is finite or non-finite is not relevant to the application or implications of the priority rule.

See also *Herzog Investments v Waitaki DC* HC Wellington CIV-2006-485-1061, 29 November 2006.

It will not be every case where it is necessary to consider the future environment. In many cases, it will be difficult, if not impossible, to consider the effects on anything except the neighbourhood as it exists. However, a genuine attempt is required to envisage the environment in which future effects, and effects arising over time, will be operating. Ascertaining the likely future state of the environment is essentially an evaluative factual exercise. The

Court does, however, have a discretion to have regard to an unimplemented resource consent if it is likely to be implemented: *Living Earth Ltd v Auckland RC* EnvC A126/06.

In *Canal v Rodney DC* EnvC A067/07, the Court declined to regard 12 lots of a subdivision consent under appeal as being part of the environment due to concerns about "environmental creep", and because the Court's decision would probably result in substantial redesign of the proposal such that it could not be regarded as being "likely" to be implemented.

In *Smith v Marlborough DC* EnvC W098/06, the Court considered the extent to which an implemented consent that was not being fully exercised could be taken into account as part of the existing environment. It was the Court's preliminary view that when a Court comes to determine an application for consent, it should consider the effects of the application on an environment that already includes the effects caused by full implementation of the existing consent.

The High Court in *Biomarine Ltd v Auckland RC* (2006) 13 ELRNZ 1 (HC) applied the reasoning in *Hawthorn* in finding that effects associated with the attraction of a proposed future regional park, and the potential future increase in walking, were not part of the permitted environment and should have been disregarded, as no resource consent permitting such effects existed at the date of a hearing.

For a discussion of the interpretation of the word "environment", see *Contact Energy Ltd v Waikato RC* (2000) 6 ELRNZ 1 (EnvC), where the Court held, in the context of an application for the extraction of geothermal fluid, that consideration had to be given to the effects on the environment as it actually existed at the present time including the effects of past extraction. In considering the effects in the future of the proposed extraction, it was necessary to consider the environment as it was likely to be from time to time, taking into account further effects of past abstraction and effects of further abstractions authorised by existing consents.

In *Opiki Water Action Group Inc v Manawatu-Wanganui RC* EnvC W064/04, the Court treated the loss of the flowing artesian characteristic of a water source as an effect on the environment.

The extent of the environment was considered in *Heron v Auckland CC* EnvC W086/06, to be the visual and residential catchment along a road, not the entire zone, in the context of a non-complying building density proposal on one site in the zone.

The environment should not be regarded as static, and the changing nature of dynamic environments such as rivers should be considered: *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough DC* [2010] NZEnvC 403, following *Lower Waitaki River Management Soc Inc v Canterbury RC* EnvC C080/09. The *Marlborough* case also emphasised that private interests and rights in the use of land are irrelevant to determining resource consent matters. In *Action for Environment Inc v Wellington CC* [2012] NZHC 1687 (the Wellington Badminton case), the appellants were not able to rely on the terms of a trust deed of 1873 (and a private Act of 1908) under which the Town Belt was to be held by the City in trust for public recreation to defeat the resource consent application of Wellington Badminton Inc. Only the effects of the proposed activity were relevant to the application, not the purpose for which the Town Belt had been granted in trust to the City.

The Environment Court in *Bay of Plenty RC v Fonterra Cooperative Group Ltd* [2011] NZEnvC 73, (2011) 16 ELRNZ 338 paraphrased the *Hawthorn* principle as being, "[t]he existing environment is the environment as it exists at the time of hearing including all operative consents and any consents operating under section 124 of the Act, overlain by those future activities which are permitted activities and also unimplemented consents (which can be considered at the discretion of the authority)". However the Court held that assumptions about future expiry of consents and/or their replacement is beyond the range of activities that should be contemplated as part of the existing or future environment. This decision, in relation to assessing consents operating under s 124, contrasts with the Environment Court's decision in *Port Gore Marine Farms v Marlborough DC* [2012] NZEnvC 72. In the later case this application was

made for new consents when existing consents were due to expire. While the applications were assessed, the farms continued operating under ss 165ZH and 124. The Court said the environment must be imagined as if the three marine farms were not actually in it – and that this was a logical consequence of the expiry of the earlier permits.

The Environment Court in *New Zealand Energy Ltd v Manawatu-Wanganui Regional Council* [2016] NZEnvC 59 ("NZEL") acknowledged that in *Port Gore* (above) and *Sampson v Waikato RC* EnvC A178/02, the Court had been correct in ruling, in the circumstances of those cases, that an assessment of the existing environment for the purposes of s 104(1)(a) must not take into account existing activities. However, in the NZEL case, dealing with an application to renew discharge and abstraction consents, that approach ought not to be applied, in light of:

(a) the long history of electricity generation at the site (the Raetihi hydroelectric power scheme);

(b) the protection afforded the scheme by the relevant planning document ("One Plan", incorporating the regional policy statement);

(c) the compliance of the proposal with the objectives and policies of the One Plan;

(d) the recognition by the One Plan of:

(i) the effects of the existing activity in the allocation policy; and

(ii) the status of the activity, for renewal purposes, as a controlled activity.

Together, these gave strong policy protection to the continuation and duration of consents for the power scheme, but only to the extent of replacing the existing consents, subject to revised conditions on monitoring.

On appeal, the High Court in *Ngati Rangi Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948 allowed the appeal, quashed the decision in the Environment Court, and directed that court to reconsider its decision in the light of the High Court decision. The Environment Court had erred in not taking into account all relevant considerations when it analysed only two of the eight scenarios possible as the basis of the decision required. That error of law was enough to require a direction to the Environment Court. The High Court also held that the lower court had erred in applying the existing use test of *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347 for water consents which are not permanent and for which the existing use right is not protected under s 14. The approach of *Port Gore* (above) should have been applied in this context.

In *Queenstown Central Ltd v Queenstown Lakes DC* [2013] NZHC 815, [2013] NZRMA 239 and the related decision in *Queenstown Central Ltd v Queenstown Lakes DC* [2013] NZHC 817, the High Court held that it was an error for the Environment Court to have completely disregarded a proposed plan change for urban rezoning of the relevant land, and to have assumed that the area was going to remain undeveloped. This conclusion was incorrect in light of an objective in the operative plan which provided for the urbanisation of the plan change area (including industrial zoning). The High Court held that the Environment Court had wrongly used the Court of Appeal's decision in *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA) to remove consideration of the relevant objective in examining the future environment concerned.

In two related judgments, *Royal Forest & Bird Protection Soc of New Zealand Inc v Buller DC* [2013] NZHC 1324, [2013] NZRMA 275 and *Royal Forest & Bird Protection Soc of New Zealand Inc v Buller DC* [2013] NZHC 1346, [2013] NZRMA 293, the High Court again cautioned against reading the Court of Appeal's decision in *Hawthorn* out of context

and held that consent authorities should instead be pursuing a real world analysis of the future environment. In *Royal Forest & Bird Protection Soc of New Zealand Inc v Buller DC* [2013] NZHC 1324, [2013] NZRMA 275, the High Court concluded that the possibility of another mining operation in future should not be considered when assessing cumulative effects, and that permitted land uses under a coal mining licence did not equate to permitted activities under a district plan when applying the *Hawthorn* principles. In *Royal Forest & Bird Protection Soc of New Zealand Inc v Buller DC* [2013] NZHC 1346, [2013] NZRMA 293, the High Court concluded that a proposed condition offering permanent protection of an area can be considered under ss 104 and 5.

In *Shotover Park Ltd v Queenstown Lakes DC* [2013] NZHC 1712, the High Court considered whether the Environment Court in considering plan change appeals should have regarded the environment as including resource consents granted by another division of the Environment Court for the same land, but subsequently appealed to the High Court. The High Court held that the Environment Court was correct to distinguish the reasoning in *Hawthorn* in declining to reach a conclusion on the likelihood of the implementation of the consents. The High Court also confirmed its view that *Hawthorn* was intended to involve a real world analysis for resource consent applications, rather than applying to the application of ss 31 and 32 in the plan appeal context.

In *Flax Trust v Queenstown Lakes District Council* [2016] NZEnvC 202, the Court held that the existing environment comprised what was authorised by registered consent notices, rather than subsequent variations to those consent notices which had not been registered. In that case, the environment which had been created in accordance with varied conditions (which had not been registered as changes to corresponding consent notices), was not the existing environment for the purposes of assessment of effects. The existing environment was held to be that represented by the original registered consent notices. The High Court disagreed with this approach, holding that the varied consent conditions had effect and authorised the relevant activity despite not having been registered as consent notices: *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009.

(c) Permitted baseline discretionary

Section 104(2) reverses the mandatory effect of *Smith Chilcott Ltd v Auckland CC* [2001] 3 NZLR 473; (2001) 7 ELRNZ 126; [2001] NZRMA 503 (CA), and *Arrigato Investments Ltd v Auckland RC* [2002] 1 NZLR 323; (2001) 7 ELRNZ 193; [2001] NZRMA 481 (CA), which stated that permitted adverse effects were not relevant adverse effects. This approach is based on the nature of the provisions of the relevant plans and of the particular location.

The effects of an existing implemented land use consent and existing use rights for land use activities, to the extent they are part of the "existing environment" may fall within the permitted baseline. See A104.04.

In *Liberton Holdings Ltd v Dunedin CC* EnvC C037/04, the Court considered an application to establish a retail liquor outlet. Consents had already been granted to the same applicant for industrial and residential activities. The Court concluded that the industrial activities had to be included in the permitted baseline because they had commenced, and that the proposed residential activities should be included in the permitted baseline in terms of the Court's discretion.

In *Empire Entertainment Ltd v Auckland CC* [2010] NZRMA 525 (HC), the High Court concluded that the Environment Court in *Vicki Vuleta Trust v Auckland CC* [2010] NZEnvC 119, [2010] NZRMA 463 had erred in not considering the permitted baseline in relation to a proposed entertainment facility. The Court found that the Environment Court should have assessed the effects of what was proposed against the effects which might be expected with a compliant facility of a similar type. Although the Court had a discretion it had wrongly confined itself to consideration of the effects from the facility as it was rather than the effects of the facility as it might be, complying with relevant permitted activity standards.

In *Blueskin Bay Forest Heights Ltd v Dunedin CC* [2010] NZEnvC 177, the Court found that the permitted baseline was of limited assistance in assessing adverse effects when considering the effects of granting consents for dwellings in relation to an already implemented subdivision. Changes to the district plan had rendered the building of residential properties a restricted activity requiring consent. The construction of substantial barn-type buildings was permitted on each lot under the current plan as of right. However, it was questionable whether the development of one of these buildings on all, or the majority of lots, was non-fanciful.

In *McGrade v Christchurch CC* [2010] NZEnvC 172, the Court disregarded the effects of an extension to an existing dwelling. The dwelling itself was already in contravention of certain rules in the city plan. However, as the plan permitted extensions in such circumstances, provided that they did not contravene the standards, the Court chose to exercise the discretion under s 104(2). When compared to the existing building, this was an adverse affect. The effect, however, was very close to what would occur with a permitted extension of that building. The Court stated that exercising the discretion would best serve the purpose for which the discretion was conferred.

(d) "Existing environment principle"

Drawing on *Contact Energy* (above) and applying *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), the Environment Court in *Rotokawa Joint Venture Ltd v Waikato RC* EnvC A041/07 (which related principally to resource consents for geothermal generation at Wairakei) amplified the principle that it would have to consider not just "the environment as it is likely to be from time to time, taking into account further effects of past extraction and the effects of further abstraction authorized by existing consents" but noted that it would also have to have "regard to the natural recharging process in the event of consents not being granted".

The principle of the "existing environment" (or receiving environment) was considered by the High Court in *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC) as necessarily including activities conducted under an existing use right. The potential adverse effects are those not already impacting on the existing environment. That approach was adopted in *Marr v Bay of Plenty RC* [2010] NZEnvC 347, (2010) 16 ELRNZ 197, so that the adverse effects on water quality that had already occurred from lawful discharges, the long since modified river, and lawful intake and outfall structures and their past effects were to be evaluated as part of the existing environment and not relevant to potential adverse effects.

A temporary residence which was required to be removed once the occupant no longer lived in it was not part of the existing environment nor within the permitted baseline for the purposes of disregarding the adverse effects of a proposed permanent residence at the same location: *Smith v Marlborough DC* [2011] NZEnvC 328.

In *Blueskin Bay Forest Heights Ltd v Dunedin CC* [2010] NZEnvC 177, the Court held that a implemented subdivision consent formed part of the existing environment under s 104(1)(a).

(2)Actual and potential effects

As to the meaning of the term "effect", see s 3. In *Dye* (above), the Court of Appeal concluded that the s 3 definition of "effect" does not apply to s 104(1)(a), noting that had Parliament wished to adopt the definition it would have simply used the word "effects" rather than the words "any actual or potential effects". However, the Court noted that this difference does not seem to have any confining effect. It also noted that the definition in s 3 is in any event "non-exhaustive".

In *Upper Clutha Environmental Soc Inc v Queenstown Lakes DC* EnvC C104/02, the Environment Court considered *Dye* (above) and the meaning of "actual and potential effects" in s 104(1)(a). The Environment Court concluded that

the comments from *Dye* were obiter and that whatever classes of effects are not included in s 104(1)(a) can and should be considered anyway because an examination of s 104(1) as a whole and the context of the Act generally shows that Parliament did not intend the matters, including effects, to be considered by a consent authority to be tightly defined.

Distinguishing *Dye* (above), the Environment Court in *Clifford Bay Marine Farms Ltd v Marlborough DC* EnvC C131/03, took into account all effects, including potential accumulated effects of low probability and high impact, based on the inclusive definition of "effects" in s 3, notwithstanding that in this case the particular effects did not fit within the scope of s 104(1)(a) or s 3(a) - (e).

"Potential" has its ordinary meaning of capable of coming into being or action: *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT).

In *Mahuta v Waikato RC* EnvC A091/98, the Court accepted that it must have regard to the effects of allowing the proposed discharges, given the association of tangata whenua with the Waikato River, in particular how the effects of the proposal may impact on the present and future relationship of the Tainui-Waikato people with that river. It concluded that there would be adverse effect on the spiritual relationship of Maori with the river, whether or not there was a discernible effect.

The duty is to have regard to effects that exercising the consent sought would (actual) or could (potential) have on the environment. Although a potential effect includes one of low probability but high potential impact, the duty to have regard to it only applies if it is an effect on the environment. It is not permissible in considering a resource consent application to have regard to an effect on a putative activity or development that would require resource consent that has not been applied for, or require a plan change that has not been notified: *Living Earth Ltd v Auckland RC* EnvC A126/06. That approach was upheld on appeal: *Auckland RC v Living Earth Ltd* HC Auckland CIV-2006-404-6659, 26 June 2007. That position was not disturbed by the Court of Appeal in *Auckland RC v Living Earth Ltd* (2008) 14 ELRNZ 305, [2009] NZRMA 22 (CA) and was affirmed by Priestley J in *Dome Valley District Residents Soc Inc v Rodney DC* HC Auckland CIV-2008-404-587, 8 December 2008.

In *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36, the Court considered the approach to assessing the likelihood of an effect occurring. It concluded that the preferable approach was to assess the hypotheses of effects separately before going on to the overall evaluation as to effects. It observed that this approach contrasted with the traditional approach which is to include the assessment of effects with consideration of the environment and then go directly to the "global intuitive roundup" described in *Dunedin City Council v Saddle Views Estate Ltd* [2016] NZEnvC 107 at [58].

(3)Weight to be given to environmental effects

In *Boddy v Grey DC* W088/94 (PT), the Tribunal noted that considerations as to actual and potential effects do not have primacy over other s 104 matters, and that the weight to be given to such considerations is for the discretion of the Tribunal.

When considering the actual and potential effects of an activity, it is permissible to consider any mitigation of effects that might be achieved by the imposition of conditions: *Bethwaite v Christchurch CC* C085/93 (PT); *Turner v Grey DC* W089/94 (PT); *Shell Oil NZ Ltd v Rodney DC* (1993) 2 NZRMA 545 (PT). That approach was taken in *Montessori Preschool Charitable Trust v Waikato DC* [2007] NZRMA 55 (HC) and *Guardians of Paku Bay Assn Inc v Waikato RC* (2011) 16 ELRNZ 544, [2012] 1 NZLR 271 (HC).

(4)"Effects of allowing the activity"

(a) "Activity"

The term "activity" is not defined in the Act, unlike "use" in s 2. In the absence of a statutory definition, the word "activity" is a word of movement. While the absence of "use" in this section may have statutory significance, it was accepted in *Marlborough Hockey Assn Inc v Marlborough DC* (1992) 1 NZRMA 274 (PT) and *Bruce v Tasman DC* W043/92 (PT) that, at least in those cases, the two words were synonymous, as the wording of s 9(1) (now substituted) indicated.

(b) Effects on other activities

The consideration of actual and potential effects of allowing the activity includes considering the effects of undertaking the activity as well as the effects of granting consent: *Batchelor v Tauranga DC* (1992) 1A ELRNZ 100, partially reported at (1992) 1 NZRMA 266, affirmed on appeal *Batchelor v Tauranga DC (No 2)* [1993] 2 NZLR 84; (1992) 2 NZRMA 137 (HC). See also *Mackie v Tararua DC* W056/95 (PT).

In *Thompson v Queenstown Lakes DC* (1992) 2 NZRMA 189 (PT), *Design 4 Ltd v Queenstown Lakes DC* (1992) 2 NZRMA 161 (PT), and *Van Erkel v Queenstown Lakes DC* A057/93 (PT), the Tribunal considered the actual and potential effects of each proposal in the context of other activities which might occur as permitted activities in terms of the plan. See also A104.03(1)(b).

(c) "Effects"

In *Auckland CC v Auckland RC* EnvC A101/97, it was held that under s 104, the scope of the "effects" is not restricted. "Effects" flow from allowing an activity that may include those effects which inevitably follow.

Whether an activity has a minor effect on a particular zone is a question of fact and is not defined by the rules of the district plan applicable to that zone: *Neil Construction Ltd v North Shore CC* W136/95 (PT).

In *Pukenamu Estates Ltd v Kapiti Environmental Action Inc* HC Wellington CIV-2002-485-22, 17 December 2003, the Court affirmed the finding of the Environment Court that it could consider the effects of earthworks following a subdivision, even though the applications for earthworks were not before the Court. See also A104.10.

See also *Mason v Invercargill CC* EnvC C032/09, where the Court held that when considering a subdivision application it should consider the effects of the future use of land on subdivision services, even where that future use requires a further resource consent. The Court considered that the effects of the subdivision and the subsequent land use overlapped in that case.

In *Stacey v Auckland Council* [2011] NZEnvC 109, the Court took the view that the effects on the surrounding environment of traffic on a road (in that case noise effects) are effects which the Court can take account of in deciding issues about activities on land which give rise to that traffic.

For a discussion of noise amenity effects and acoustic health effects from a proposed windfarm, (declining to consider "annoyance" as a separate effect) see: *Re Meridian Energy Ltd* [2013] NZEnvC 59 and *Cammack v Kapiti Coast DC* EnvC W069/09. Also see *Motorimu Wind Farm Ltd v Palmerston North CC* EnvC W067/08.

(d) Test for assessing effects

In *Kaikaiawaro Fishing Co Ltd v Marlborough DC* (1999) 5 ELRNZ 417 (EnvC), the Environment Court applied the test in *Bayley v Manukau CC* [1999] 1 NZLR 568; (1998) 4 ELRNZ 461; [1998] NZRMA 513 (CA), with regard to assessing effects:

> "The appropriate comparison of the activity for which the consent is sought … is with what either is being lawfully done on the land or could be done there as of right."

(e) Future effects

In *Tasman Forestry Ltd v Tasman DC* HC Wellington AP134/92, 21 December 1993 (decided under the TCPA77), the High Court held that the Tribunal was correct in finding that the interception of rainfall by forestry could be a relevant consideration when considering a land use consent. Interception was relevant to the effect of the proposed commercial forestry on the foreseeable future amenities of the neighbourhood and downstream water availability even though the use of such water did not require a water right under the WSCA67.

In *Marr v Bay of Plenty RC* [2010] NZEnvC 347, (2010) 16 ELRNZ 197, following *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), it was further clarified that the future state of the environment is relevant, but only as it might be modified by the operation of permitted activities and those conducted under lawful consents, provided it appears that they will be implemented. Future applications not yet granted are not part of the definition of "environment". Section 104(1) precludes the Court from taking theoretical future activities into account in considering the actual and potential effects of the relevant activities on the environment.

(5)Effects of low probability but high potential impact

(a) High potential impact outweighed other considerations

In *Te Aroha Air Quality Protection Appeal Group v Waikato RC (No 2)* (1993) 2 NZRMA 574 (PT), a proposed beef by-products rendering plant in rural-zoned land was a non-complying activity. Although the emission of odours was of low probability, it had high potential impact, which in the context of sustainable management (and as a non-complying activity) outweighed all other considerations.

The *Te Aroha Air Quality* decision was distinguished in *Medical Officer of Health v Canterbury RC* [1995] NZRMA 49 (PT). The Tribunal rejected a submission that a discharge permit should not be granted because, if the fertiliser plant broke down, there would be an event of low probability but high potential impact. The possibility of breakdown of plant was not of itself grounds for rejecting the grant of a discharge permit.

(b) Scientific hypothesis in relation to effects of low probability

The existence of a serious scientific hypothesis is not necessarily sufficient by itself to establish a potential effect, even one of low probability but high potential impact. The grounds for the hypothesis have to have been tested and scrutinised to see whether it meets a basic threshold of reliability: *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT).

In *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC), the Court found that when considering s 3(f) effects, it was required to evaluate "beyond the balance of probabilities" (ie 50-50) where the risk (even if low) is of high potential impact. The Court also found that the appropriate standard of proof is on a sliding scale between "the

balance of probabilities" and "beyond reasonable doubt", depending on the impact of the effect. See also A3.06.

Adopting the principles set out in *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC), the Environment Court in *Clifford Bay Marine Farms Ltd v Marlborough DC* EnvC C131/03, outlined the approach to assessing risk. Each potential effect raised in the evidence should be assessed quantitatively (and preferably qualitatively) in light of the principles of the RMA as to (a) the probability of occurrence; and (b) the force of the impact.

The Court also set out five types of steps useful in undertaking risk analysis, citing AS/NZS 4360: 1999 "Risk Management", approved by the Council of Standards New Zealand 22/3/99; "Guidelines for Environmental Risk Assessment and Management", DEFRA (UK) 2002; and S Breyer, "Breaking the Vicious Circle", Harvard University Press, 1993.

For an analysis in relation to a proposal involving explosives, where the risk was low but could not be internalised, see *Orica Mining Services NZ Ltd v Franklin DC* EnvC W032/09.

(c) Precautionary principle

See also A104.03(15) and *McIntyre* (above) for use of the precautionary principle when the decision involves an effect of high potential impact, but the likelihood of occurrence is low or unclear.

The Environment Court considered the application of the "precautionary principle" in *Aquamarine Ltd v Southland RC* EnvC C126/97. It took the view that, if the principle applied to proceedings under the RMA, it would apply only when the Court was exercising its discretionary judgment under s 105 in circumstances where there was scientific uncertainty or ignorance about the nature or scope of environmental harm, as in the radiation cases: *Trans Power NZ Ltd v Rodney DC* A085/94 (PT); *Telecom NZ Ltd v Christchurch CC* EnvC W165/96; and *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT).

In *Clifford Bay Marine Farms Ltd v Marlborough DC* EnvC C131/03, the Court modified the approach to be taken to the precautionary principle, promoting "adaptive management" as commended in the New Zealand Biodiversity Strategy (Department of Conservation, February 2000), in this case relating to the risk marine farming posed to Hectors dolphins. Adaptive management provides for the management of large complex ecological systems when management decisions cannot await final research results. See *Oruawharo Marae Trust v Auckland RC* EnvC A083/06, where consent conditions effectively set up an adaptive management regime for sand extraction in the Kaipara Harbour.

In an appeal against the grant of water permits, *Burgoyne v Northland Regional Council* [2019] NZEnvC 28, the concern of the appellants was with whether the conditions were appropriate for management of the aquifer from which water would be drawn in order to avoid adverse effects on coastal and wetlands areas. The Court cited the Supreme Court's *King Salmon* approach to applying a precautionary approach. A number of factors must be assessed in determining whether an activity is to be prohibited or may be undertaken subject to adaptive management. Those factors are the extent of the environmental risk, the importance of the activity, the degree of uncertainty, and how much adaptive management will mitigate the risk and uncertainty. See note at [A5.03].

In *Rotokawa Joint Venture Ltd v Waikato RC* EnvC A041/07, the Court held that there was so much scientific uncertainty about the environmental context of the activity (abstraction of geothermal water), that it was unable to determine positively the best discharge strategy. In the circumstances it hesitated to require the most conservative and costly option for minimising adverse effects, as it was not known whether a more moderate response would suffice. It would not therefore be appropriate to impose conditions that could prove to be of poor cost effectiveness if

the adverse effects were to prove to be not be so serious as to justify high cost measures.

(d) Proving a negative

It may not be possible to prove in advance of an activity commencing that there will be no adverse effects. This hypothesis is valid only when a number of preliminary questions can be satisfactorily answered, including:

(i) Is there enough base data satisfactorily to determine the effects (adverse or otherwise) of the proposed activity?

(ii) If adverse effects do arise from the activity, are they likely to be serious?

(iii) If the activity is modified or discontinued, are any adverse effects able to be reversed over time?

See *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC* EnvC W025/02. That approach was approved in *Kuku Mara Partnership (Beatrix Bay) v Marlborough DC* EnvC W039/04.

See also A104.03(1)(b) and A104.05(2).

(6)Effects on future offsite activities

In *Wilson v Selwyn DC* (2004) 11 ELRNZ 79; [2005] NZRMA 76 (HC), the Court found that the Environment Court had erred in disregarding the effects of the proposal — for the expansion of a chicken farm — on proposed future activities on a neighbouring property. The "environment" includes potential future activities beyond the site.

In *Cashmere Park Trust v Canterbury RC* EnvC C048/04, the Court concluded that the consent authority is required to make a judgment as to whether the relevant environment includes permitted but unimplemented activities on nearby land.

In *Stalker v Queenstown Lakes DC* EnvC C040/04, the Court concluded that a local authority must have regard to not only the existing environment but also the reasonably foreseeable environment on which the effects of the proposal will impact, and then make a judgment based on the realistic possible effects, their probabilities and potential impacts. *Stalker* has been partially overruled by the High Court in *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC), with regard to existing use rights.

The High Court in *Freda Pene Reweti Whanau Trust v Auckland RC* 9/12/05, Courtney J, HC Auckland CIV-2005-404-356, confirmed the principle set out in *Wilson v Selwyn DC* (2004) 11 ELRNZ 79; [2005] NZRMA 76 (HC), that the Environment Court had correctly taken into account the fact that an area of the coastal marine area, adjacent to the subject area, was almost certain to be *Gazetted* as a scenic reserve.

The Court of Appeal in *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), confirmed that the off-site "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears that those resource consents will be implemented. The off-site environment does not include the effects of resource consents that might be made in the future.

(7)Beneficial effects

In *Boddy v Grey DC* W088/94 (PT), the Tribunal took into account the beneficial effects on the environment of remedying and mitigating the adverse effects of an activity..

In *Elderslie Park Ltd v Timaru DC* [1995] NZRMA 433 (HC), Williamson J, when considering the use of the word "minor" for notification purposes, found that in determining whether an effect is minor, it is appropriate to evaluate all matters that relate to the effects. These matters would include counterbalancing benefits and possible conditions. See also *Telecom NZ Ltd v Christchurch CC* EnvC W165/96.

Any package of positive measures is viewed separately from the mitigation measures proposed: *Stretch v Queenstown Lakes DC* EnvC C009/04, applying *Stokes v Christchurch CC* [1999] NZRMA 409 (EnvC). Some positive measures are unlikely to be described as mitigation per se for the effects of the proposed development. Rather, they are a positive benefit to be taken into account. See also A104.03(8) and A108.06(2). Measures already considered in remediation or mitigation cannot be counted again as positive effects of the proposal.

The value of restoring a heritage building may outweigh some adverse environmental effects. In *Cassidy v Queenstown Lakes DC* EnvC C039/06, it was held that the statutory purpose of promoting the sustainable management of natural and physical resources would be more effectively served by granting consent to enable the re-orientation and restoration of a cottage.

See also s 104(1)(a) and [A104.03(5)(8)] below.

(8)Environmental compensation and offsets: (subs (1)(ab))

Following the RLAmA17, it is now mandatory for a consent authority to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

The concept of environmental compensation (public ownership or covenants in exchange for development rights which may otherwise fail the test of sustainable management, as here) is discussed in terms of land and money payments in *Rutherford Family Trust v Christchurch CC* EnvC C026/03 (the first *Port Hills* decision). Environmental compensation can only be distinguished from financial contributions if there is a net conservation benefit with a link to the proposal that creates the need for such compensation. See also *Remarkables Park Ltd v Queenstown Lakes DC* [2004] NZRMA 433 (EnvC).

In the *Upper Clutha Environmental Soc Inc v Queenstown Lakes DC* EnvC C047/04, the Court weighed the positive benefits of proposed walkways and public access against the encroachment of houses in an outstanding natural landscape but concluded the subdivision could not achieve the purpose of the plans or the Act.

See also A5.08(2) and (3) and A108.06(2) and (3).

Environmental compensation is distinguished from financial compensation. The former involves a net conservation benefit: *Alexandra District Flood Action Soc Inc v Otago RC* EnvC C102/05.

In *Canterbury Too Good To Waste Inc v Canterbury RC* EnvC C029/04, the Court allowed preparation for a new landfill site to remove areas of remnant lowland forest, in return for increased protection and maintenance of other larger and

hence ecologically more desirable remnants.

See also *JF Investments Ltd v Queenstown Lakes DC* EnvC C048/06. The Court concluded that off-site works or service, or a covenant, if offered as environmental compensation or a biodiversity off-set, will often be relevant and reasonably necessary under s 104(1)(c). The factors for assessing the desirability of environmental compensation set out in *JF Investments* were endorsed in *Director-General of Conservation v Wairoa DC* EnvC W081/07.

The test for environmental compensation is whether it is reasonably related to the natural and physical resources being used in the application. Whether that test is satisfied as a mixed matter of fact, opinion and degree should be assessed on an issue-by-issue basis: *Upper Clutha Tracks Trust v Queenstown Lakes DC* [2012] NZEnvC 43.

The High Court in *Royal Forest & Bird Protection Soc of New Zealand Inc v Buller DC* [2013] NZHC 1346, [2013] NZRMA 293 reviewed the various authorities on environmental compensation and offsets, in order to determine how they were relevant to decision making on resource consent applications for an open cast coal mine on the Denniston Plateau. It held that compensation and offsets were not synonyms, and that offsets were not mitigation of an effect as they did not occur at the point of impact. Rather, offsets offer a positive new effect or benefit and may be taken into account under s 104(1)(a) and (c), and s 5(2).

In *Re P & I Pascoe Ltd* [2014] NZEnvC 255, the Court chose not to view off-site compensatory work as mitigation in considering the extent or degree of adverse effects on ecology.

See also the *Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal* (June 2012) for a useful discussion of environmental offsets.

The Court in *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41 accepted that there are limits to the concept and application of offsetting, in that biodiversity offsets will be inappropriate for certain ecosystem or habitat types where, due to rarity or value, their clearance or allowance of adverse impacts would not be acceptable under any circumstances. As such, plan provisions should identify unacceptable impacts that should not be provided for even where an offset is technically achievable.

(9)Cumulative effects

In *Dye v Auckland RC* [2002] 1 NZLR 337; (2001) 7 ELRNZ 209; [2001] NZRMA 513 (CA), the Court of Appeal held that the precedent effect that may result from the granting of a non-complying resource consent is not within the concept of cumulative effect. That concept is confined to the effect of the activity itself on the environment. The Court of Appeal found that the Environment Court was not required to have regard to the cumulative wastewater or other effects, resulting from the change in land use and increased population densities, that might result from subsequent subdivision proposals (which might follow from allowing the particular proposal in question). It noted that such an inquiry would be a speculative exercise. See also *Fisher v Taupo DC* EnvC A062/02. The Court in *Stallard v Nelson CC* EnvC C160/06 also applied the decision in *Dye v Auckland RC*, holding that a finding of a cumulative effect requires evidence of a particular effect that would be cumulative on an effect of the same kind arising from other activities, past or present.

The High Court in *Rodney DC v Gould* (2004) 11 ELRNZ 165; [2006] NZRMA 217 (HC), held that it would be inconsistent with the approach of the Court of Appeal in *Dye* (above) to regard evidence on "community expectations" as relevant to precedent or to the integrity of the district plan. A cumulative effect must be one that arises as an effect of the particular application. It is not legitimate to consider, as cumulative effects in relation to a particular application, any effects relating to possible future applications. An effect that may never happen, or if it does, arises

from a different activity from that for which consent is sought, is not a cumulative effect.

In *Wilson v Selwyn DC* (2004) 11 ELRNZ 79; [2005] NZRMA 76 (HC), the Court noted that it did not read *Dye* as excluding consideration of cumulative effects where those were actual effects. See A104.03(6) as to the effects on potential future activities.

In *Foster v Rodney DC* EnvC A123/09, the Court concluded that cumulative effects can properly be taken into consideration as to whether the threshold test in relation to minor effects is met.

In *Cashmere Park Trust v Canterbury RC* EnvC C048/04, the Court found it was not bound by the *Dye* decision notwithstanding that the new para (a) is the same as the old one. The Court also noted that the statements in *Dye* were in any event obiter and inconclusive. The Court followed *Emerald Residential Ltd v North Shore CC* EnvC A031/04, in concluding that what must be considered is the impact of any adverse effect of the proposal on the environment. The environment is to be taken as it exists, with whatever strengths or frailties it may already have, which make it more or less able to absorb the effects of the proposal. See also *Upper Clutha Environmental Soc Inc v Queenstown Lakes DC* EnvC C104/02, where the Court concluded that the purpose of qualifying "effects" by "actual and potential" is to ensure decision makers consider likely effects, which do not come within the "actual" category, especially if they are longer term cumulative/accumulative effects, which are assessed to be significant. See also A3.01.

In *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81, the Environment Court noted that *Dye* took a relatively narrow approach to consideration of cumulative effects, excluding effects of other stressors other than the activity for which consent is sought. These wider effects might still be relevant under s 104(1)(c) or as part of the existing or reasonably foreseeable future environment. However, on appeal in *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 the High Court noted that the definition of "effect" does not include "accumulated effects", and the term was an unhelpful gloss on the statutory language of the RMA.

(10)Economic effects

(a) Financial viability not an economic effect

Economic effects can be relevant: see the definition of "environment" at A2.59.01. However, the financial viability of the proposed activity is not an economic effect: *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70 (HC). The High Court in *Manos v Waitakere CC* HC Auckland AP17/93, 10 October 1994, expressed the view that adverse effects in economic terms may also be a relevant matter in terms of what is now s 104(1)(c). See also *Wightman v Waipa DC* EnvC A062/97, partially reported at (1997) 3 ELRNZ 191, and *AMI Insurance Ltd v Christchurch CC* EnvC A055/01.

The issue of financial viability raised in *Te Rangatiratanga O Ngati Rangitihi Inc v Bay of Plenty RC* EnvC A035/09, was determined in light of the district plan's requirement to have regard to the best practicable option before undertaking works that would modify natural features and processes. The Court noted the relevance of dicta in *Beadle v Minister of Corrections* EnvC A074/02 and *Keep Okura Green Soc Inc v Western Bay of Plenty DC* EnvC A110/03. See note at A5.04(2).

(b) Central business district

In *Countdown Properties (Northlands) Ltd v Ashburton DC* (1996) 2 ELRNZ 223; [1996] NZRMA 337 (PT), the Tribunal held that a central business district is part of the physical environment which serves the people and community of the

district. A similar approach was taken in *AFFCO NZ Ltd v Far North DC (No 2)* [1994] NZRMA 224 (PT). Contrast *Imrie Family Trust v Whangarei DC* (1994) 1B ELRNZ 274; [1994] NZRMA 453 (PT), where the Tribunal held that a plan change should not be refused because of the effects of additional retailing on another shopping centre or on the provisions of the district plan which provided for a hierarchy of shopping centres.

In *Westfield NZ Ltd v Upper Hutt CC* EnvC W044/01, the Environment Court reviewed these cases, as well as *Marlborough Ridge Ltd v Marlborough DC* (1997) 3 ELRNZ 483; [1998] NZRMA 73 (EnvC), and *Queenstown Property Holdings Ltd v Queenstown Lakes DC* [1998] NZRMA 145 (EnvC). The Court approved and applied the approach taken in those latter cases, that the emphasis of the RMA is on enabling or providing the "environment" or conditions in which people can provide for their wellbeing. In light of these cases, the Environment Court noted that its concern about the proposal (a suburban mall) was that it was "disenabling" of the CBD. As such, concerns went beyond trade competition to conflict with Part 2, particularly s 5. See also A5.04(2)(a) and A104.12.

(11)Social and cultural effects

In *McQueen v Waikato DC* A045/94 (PT), the Tribunal held that the mere fact that neighbourhood residents may find that a rural nudist club was embarrassing, objectionable, or unacceptable does not necessarily amount to an effect on the social or cultural conditions which affect the community, nor does it amount to an effect on the amenity values of an area.

In *Ruru v Gisborne DC* W100/93 (PT), the Tribunal took account of the applicant's history of use of the site in assessing the adverse effects of a non-complying activity. It found that an adverse social effect arises where an activity has caused social stress in the past and there is a high probability that it will cause it again.

(12)Effects on other activities — "reverse sensitivity"

In *McQueen v Waikato DC* A045/94 (PT), the Tribunal found that, if it allowed a rural nudist club, there was a potential effect on the environment because of spray drift from adjoining properties. Orchardists in the vicinity would be restrained from spraying at the times and in the ways they might otherwise do, because of the risk to the health of people using the property for nudist club purposes. See also *Arataki Honey Ltd v Rotorua DC* (1984) 10 NZTPA 180 (PT) and *Precious v Western Bay of Plenty DC* W074/94 (PT). These cases were distinguished in *J Crooks & Sons Ltd v Invercargill CC* EnvC C081/97, in relation to a proposed quarry located next to land on which beekeeping activities were conducted. The Court held that a quarry was not a people-intensive activity and the likelihood of attack by bees in the quarry was low.

In *AFFCO NZ Ltd v Waikato DC* EnvC A036/98, the Environment Court expressed reservations about the possible application of the "reverse sensitivity" principle if it were to have the effect of creating a "buffer zone" for the protection of a landowner by minimising the adverse effects of an activity where such effects are not confined to a site. Reference may also be made to *Winstone Aggregates Ltd v Papakura DC* EnvC A049/02, where the Court considered the concepts of reverse sensitivity and internalisation of effects in the context of a district plan reference relating to zoning of land. After reviewing the relevant case law, the Court concluded that it was a matter of judgment as to whether in a particular case the adverse effects are such that the cost of avoidance should be totally internalised. It was a question of what was reasonable in the circumstances.

In *Auckland RC v Auckland CC* (1997) 3 ELRNZ 54; [1997] NZRMA 205 (EnvC), the Court defined "reverse sensitivity" as "the effects of the existence of sensitive activities on other activities in the vicinity, particularly by leading to

restraints and the carrying on of those other activities." It noted that complaints can be the first sign of a groundswell of opposition that can chip away at a lawfully established activity.

In *Sugrue v Selwyn DC* EnvC C043/04, the Court granted consent for the establishment of a restaurant café and residence notwithstanding objections from the owners of a nearby piggery. The applicant offered a covenant not to complain about odours from the piggery provided that the effects were no greater than the effects, which were lawfully established at the date of the covenant. Various other conditions were imposed aimed at reducing the impact of odour on patrons.

(13)Effects authorised by another consent

The fact that particular activity is authorised under another (regional) resource consent does not preclude the effects of that activity from being assessed in the consideration of land use consent for a proposal: see, for example, *Pokeno Farm Family Trust v Franklin DC* EnvC A037/97.

In *Cayford v Waikato RC* EnvC A127/98, the Environment Court found that (in the context of an application to take water) the potential effects of the use of the water due to claimed contaminants in the water were not adverse effects on the environment. It also found that the suitability of water for the purposes for which it was to be taken was not a relevant matter to consider for a consent to take water.

(14)Relationship to other Acts

The provisions of the Civil Aviation Act 1990 (1990 No 98) do not prevent the Tribunal from investigating matters of air safety generally and assessing public safety risks the consequent effect on the environment of an air accident: *Glentanner Park (Mt Cook) Ltd v MacKenzie DC* W050/94 (PT). See also *Director of Civil Aviation v Planning Tribunal* [1997] 3 NZLR 335; [1997] NZRMA 513 (HC), *ZJV (NZ) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 205, and *Dome Valley District Residents Soc Inc v Rodney DC* EnvC A099/07.

A developer's right to apply to trim or remove trees under s 129C of the Property Law Act 1952 (see now s 333 of the Property Law Act 2007) was rejected as irrelevant by the Tribunal, when considering an application for consent to cut down trees on a subdivision. The decision was upheld by the High Court. The RMA and the Property Law Act have separate objectives, criteria, and jurisdictions, and the Property Law Act criteria do not fall within what is now s 104(1)(c) as they do not promote the objectives of the RMA: *NZ Suncern Construction Ltd v Auckland CC* (1997) 3 ELRNZ 230; [1997] NZRMA 419 (HC). That approach was followed in *Somers-Edgar v Millennium Fixtures Ltd* [2002] DCR 989. The District Court found that though application for removal of a tree could be made under s 129C, the criteria of the RMA would not be satisfied by that approach.

As to the application of the provisions of the Maritime Rules, the question of safety cannot be delegated by a decision-maker under the RMA to a decision-maker under the Maritime Rules: *Southern Alps Air Ltd v Queenstown Lakes DC* [2007] NZRMA 119 (EnvC), applying *Dart River Safaris Ltd v Kemp* [2001] NZRMA 433 (HC) and *Turner v Allison* [1971] NZLR 833; (1971) 4 NZTPA 104; 14 NZLGR 348 (CA). However, that approach was not upheld on appeal in *Southern Alps Air Ltd v Queenstown Lakes DC* (2007) 13 ELRNZ 221; [2008] NZRMA 47 (HC).

The Environment Court has no authority to direct the Executive or any of its agencies as to any choice available in the exercise of that agency's powers, such as powers of a road controlling authority under the Local Government Act 1974, Land Transport Act 1998 or Heavy Motor Vehicle Regulations 1974. However, it is a relevant consideration under s 104 to look at the other options that a road controlling authority has under such legislation to address damage

that may occur in the future: *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC 109, (2017) 19 ELRNZ 774.

(15)Precautionary approach

(a) Distinguishable from general environmental precautionary principle

The precautionary or risk avoidance policy of the Act is derived from s 104(1)(a), s 3, and the definition of "environment" in s 2(1). This is distinguishable from a general precautionary principle of environmental law: *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT). Although the RMA does not expressly prescribe adoption of the precautionary principle, the requirement for a consent authority to have regard to the potential effects of an activity on the environment, including a potential effect of low probability with high potential impact (s 3), is precautionary in substance: *Sea-Tow Ltd v Auckland RC* EnvC A066/06.

In *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC), the Court reviewed the applicability of the "precautionary approach" under the Act. It held that s 3(f) justifies a precautionary approach. It is doubted whether a wider "precautionary principle" is useful, given that the approach is already inherent. Application of the precautionary principle would lead to double counting of the need for caution. The general precautionary approach required by the Act applies where there is a threat of "serious or irreversible damage". The Court also found that the appropriate standard of proof is on a sliding scale between the "balance of probabilities" and "beyond reasonable doubt", depending on the impact of the effect.

In *Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council* [2016] NZEnvC 151, the Court indicated that considering the precautionary approach as per the Rio Declaration on Environment and Development 1992 (as distinct from the precautionary principle) is not helpful in the New Zealand context. It went on to discuss the precautionary principle and the way in which an adaptive management regime could give effect to that principle.

See also A104.03(5)(b) and A3.06.

(b) General principles for adoption of precautionary approach

In *Sea-Tow Ltd v Auckland RC* EnvC A066/06, the Court set out the general principles derived from *Greenpeace NZ Inc v Minister of Fisheries* HC Wellington CP492/93, 27 November 1995 and a number of Environment Court decisions to guide the adoption of a precautionary approach in deciding resource consent applications. The following principles are relevant to good environmental decision-making under the Act:

(i) Careful balanced judgment is required; in some cases that may only be achieved by adopting a precautionary approach: *Rotorua Bore Users Assn Inc v Bay of Plenty RC* EnvC A138/98;

(ii) The precautionary approach may be applied to influence the exercise of a discretion to the extent consistent with the purpose of the RMA: *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT);

(iii) Even if there is a dispute of material fact, that does not necessarily mean that the precautionary approach must be adopted; rather, the obligation is to consider the evidence: *Greenpeace* (above); and

(iv) A precautionary approach should only be applied where there is scientific uncertainty or ignorance about the

scope or nature of the relevant environmental harm; there needs to be a plausible basis, not just suspicion or innuendo, for adopting the precautionary approach: *Aquamarine Ltd v Southland RC* EnvC C126/97 and *Trans Power NZ Ltd v Rodney DC* A085/94 (PT).

In *Ngati Kahu Ki Whangaroa Co-op Soc Ltd v Northland RC* [2001] NZRMA 299 (EnvC), the Environment Court held that the precautionary approach is applied where the Court finds on the totality of evidence that, due to scientific uncertainty, exercise of a resource consent would be likely to cause serious or irreversible harm to the environment. The Court stressed that opponents could not invoke the precautionary approach in default of presenting a case.

Applying the *Greenpeace* principles, the High Court in *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2013] NZHC 1992, [2013] NZRMA 371 held that to constitute an error of law from failure to apply the precautionary approach, there would have to be an absolute obligation to apply it in the specific circumstances of the case. That obligation did not arise in *Environmental Defence Soc Inc* because an adaptive management regime was a viable approach to managing the risk of unacceptable adverse effects. The board of inquiry, as the decision maker, had the discretion as to the weight to be given to the precautionary approach.

As a threshold, before an adaptive management regime can even be considered, there must be an adequate evidential foundation to have reasonable assurance that the adaptive management approach will achieve its goals of sufficiently reducing uncertainty and adequately managing any remaining risk. Adaptive management is not a "suck it and see" approach: *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 40, (2014) 17 ELRNZ 520. The Court went on to note that the secondary question of whether the precautionary approach requires an activity to be prohibited until further information is available, rather than an adaptive management or other approach, will depend on an assessment of a combination of factors (with (d) being the vital part of the test):

(a) The extent of the environmental risk (including the gravity of the consequences if the risk is realised);

(b) The importance of the activity (which could in some circumstances be an activity it is hoped will protect the environment);

(c) The degree of uncertainty; and

(d) The extent to which an adaptive management approach will sufficiently diminish the risk and the uncertainty.

(c) Risk

The precautionary principle should not be applied where the risk is insignificant or the issues are evenly balanced. It may however be applied where there is a need to prevent serious or irreversible harm to the environment in situations of scientific uncertainty: *Wratten v Tasman DC* (1998) 4 ELRNZ 148 (EnvC).

In *Golden Bay Marine Farmers v Tasman DC* EnvC W042/01, in the context of references on a coastal plan, the Court concluded that the precautionary principle as opposed to the precautionary approach only arose in the context of the New Zealand Coastal Policy Statement (and the regional coastal plan in that case).

In *Land Air Water Assn v Waikato RC* EnvC A110/01, the Environment Court observed that, in the context of resource consent applications for a landfill, the Act did not explicitly promulgate a "no risk" approach and that case law has indicated that a certain element of risk is acceptable. The Environment Court also observed that the measure of risk

and its assessment and the acceptable degree of risk avoidance are matters of fact in each particular case. The Environment Court stated that it is required to exercise its discretion in the circumstances of each case, including:

(i) Evidence of adverse effects or risk to the environment, rather than mere suspicion or innuendo;

(ii) The gravity of the effects, regardless of scientific uncertainty, if they do occur;

(iii) Uncertainty or ignorance regarding the extent, nature, or scope of potential environmental harm;

(iv) The effects on the environment and whether they are serious or irreversible;

(v) Recognition that the Act does not endorse a "no-risk regime"; and

(vi) The impact of otherwise permitted activities.

For a further application of the approach (refusal of a mid-bay marine farm), see *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC* EnvC W025/02.

In *Envirowaste Services Ltd v Auckland Council* [2011] NZEnvC 130, the Court reiterated that the Act is not a no risk statute, and noted that some risks are beyond the best design and intent and can confound all human endeavour. It is therefore necessary to take a pragmatic approach to both the risk itself and its prevention.

(d) Flexible approach to risk assessment

The High Court in *Royal Forest & Bird Protection Soc of NZ Inc v Buller DC* [2006] NZRMA 193 (HC), accepted that a flexible approach to risk assessment is appropriate. In particular, regard must be had to the particular context and the seriousness of the potential effects and impacts of a proposed activity in deciding whether a matter is proved on the balance of probabilities (applying *Re H (Minors)* [1996] AC 563 (HL)). Approving the approach taken by the Environment Court in *Clifford Bay Marine Farms Ltd v Marlborough DC* EnvC C131/03, the High Court held that even where the values at stake are of high national importance, such as those protected by s 6, it is appropriate for a decision-maker to evaluate the relative seriousness of the risk against the factual findings. See note at A6.02.

(16)Effects of the whole proposal to be considered

(a) Effects of the development as a whole

The basic principle is that the effects of the development as a whole should be considered. In *Burton v Auckland CC* [1994] NZRMA 544 (HC), the Court held that an assessment of actual or potential effects prepared in accordance with Schedule 4 must take into account relevant cumulative effects "of the development as a whole". See also *Rudolph Steiner School v Auckland CC* (1997) 3 ELRNZ 85 (EnvC).

In *Kapiti Environmental Action Inc v Kapiti Coast DC* [2002] NZRMA 289 (EnvC), the Court noted the importance of timing the filing of applications so as to avoid having a judgment skewed by not having some of the important

considerations of the effects. Thus, in that case involving a subdivision consent application, the lack of evidence about the effects of earthworks needed to implement the subdivision meant that an evaluation of the environmental effects of allowing the subdivision was not capable of being complete.

The High Court in *Newbury Holdings Ltd v Auckland Council* [2013] NZHC 1172 confirmed the bundling approach to overlapping consents and the adoption of the most restrictive activity status. It also held that the bundling approach could be applied to different consents from district and regional plans, provided there is a requisite overlap between the plans and the activities for which consent is sought.

See also *Emerald Residential Ltd v North Shore CC* EnvC A031/04, and *Stewart v Wellington CC* EnvC W031/05.

At least from a practical perspective, permitted activities can be "bundled" with other classes of activity. It is however preferable to avoid the use of the term "bundling" when discussing permitted activities. Rather, a holistic approach is called for in assessing all inter-related effects of land uses and therefore considering permitted and other categories of activity together: *Marlborough District Council v Zindia Ltd* [2019] NZHC 2765, (2019) 21 ELRNZ 364.

See also A104.03(4)(c) and A104.10(12).

(b) Locke and later cases — hybrid activity status

In *Locke v Avon Motor Lodge* (1973) 5 NZTPA 17 (SC), and under the RMA in *Rudolph Steiner School v Auckland CC* (1997) 3 ELRNZ 85 (EnvC), it has been accepted that in general there is no hybrid planning status for a proposal, and that the more stringent activity classification applies to the whole of the proposal where there are multiple consents involved. However, under the Court of Appeal decisions in *Bayley v Manukau CC* [1999] 1 NZLR 568; (1998) 4 ELRNZ 461; [1998] NZRMA 513 (CA), and *Body Corporate 97010 v Auckland CC* [2000] 3 NZLR 513; (2000) 6 ELRNZ 303; [2000] NZRMA 529 (CA), if some of the activities for which consent is sought are restricted discretionary or controlled activities, and if the council has a very limited discretion, then the council (or Court on appeal) may be able to deal with those parts of the application separately.

(c) Where use of a hybrid status can be appropriate

In *South Park Corp Ltd v Auckland CC* [2001] NZRMA 350 (EnvC), the Environment Court held that the *Locke* approach remains generally applicable, so that a consent authority should not artificially split off components of the proposal on the basis of different activity classifications. However, that approach is not appropriate where one of the consents sought is for a controlled activity or restricted discretionary activity and where the scope of the consent authority's discretion is relatively restricted and the effects of exercising the two consents would not overlap or have consequential or flow-on effects on matters to be considered on the other application. For example, as stated in *North Canterbury Gas Ltd v Waimakariri DC* EnvC A217/02, the holistic approach required by *Locke* is not required, provided:

(i) One of the consents relates to a controlled or restricted discretionary activity; and

(ii) The scope of the discretion is restricted and does not cover a broad range of factors; and

(iii) The effect of the exercise of both consents would not have consequential effects on other matters to be considered in another application.

See also *Brice v Wellington CC* EnvC W038/03, where the Court applied *South Park* to distinguish between those effects permitted under the district plan (requiring only a certificate of compliance), and those requiring resource consent.

In *Lake Edge Holdings Ltd v Taupo DC* EnvC A053/05, and *Stallard v Nelson CC* EnvC C160/06 the Court applied *South Park* and considered and granted consents with a different activity status separately.

In *Tairua Marine Ltd v Waikato RC* HC Auckland CIV-2005-485-1490, 29 June 2006, the Court declined to separate components of the proposal on the basis of different activity classifications. The Court treated each aspect of the application as non-complying, because the non-complying activity lay at the heart of the proposal.

An exception to the bundling principle was identified in *Ahuareka Trustees (No 2) Ltd v Auckland Council* [2017] NZEnvC 205, where the only non-complying element of a proposal was determined to have effects which did not overlap with other parts of that proposal and where that aspect was also ancillary to the principal residential element of the proposal.

(17)Relevance of end-use to resource consents

In *Beadle v Minister of Corrections* EnvC A074/02, the Environment Court held that, in deciding resource consent applications for earthworks and streamworks required to construct a corrections facility, they were able to have regard to the intended end-use of that facility, and any consequential effects on the environment that that might have, if not too uncertain or remote.

In *Te Runanga o Ngati Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, (2019) 21 ELRNZ 539, the Court considered the relevance of the "end use" of the activity in determining its jurisdiction on that element of the appeal. The end use alleged to be non-compliant with the law was that of the export and use of the bottled water overseas (the fact that plastic bottles were to be used being the main issue). The Court stated that the end use was not governed by New Zealand law and the effects alleged as being of concern were not related to the activity for which consents were sought: these were to take groundwater, undertake earthworks, and discharge stormwater and wastewater. On the facts, there was not the necessary nexus between the activity and the effect. In dismissing the appeal, the Court relied on the reasoning in *Beadle v Minister of Corrections* EnvC A074/02, *Cayford v Waikato RC* EnvC A127/98, *Royal Forest and Bird Protection Soc of NZ Inc v Buller Coal Ltd* [2012] NZHC 2156, [2012] NZRMA 552 and *West Coast ENT Inc v Buller Coal Ltd* [2013] NZSC 87, [2014] 1 NZLR 32.

(18)Effects on views

At common law and in planning law there is no absolute right to the preservation of a view, although owners are entitled to rely on the general anticipation that bulk, height, and location requirements will be complied with and plan their own houses accordingly with the justifiable expectation that the benefits of those standards (such as view) will not be encroached upon: *Anderson v East Coast Bays CC* (1981) 8 NZTPA 35. *Anderson* was cited in *Re Meridian Energy Ltd* [2013] NZEnvC 59, which contains a useful discussion regarding effects on private views. The Court concluded that the wind farm proposal would in some areas have a significant adverse effect on visual amenity and required some changes to the proposal.

In *Smith Chilcott Ltd v Martinez* [2001] NZRMA 108 (HC), the Court rejected an argument that it was only bulk, height, and location requirements which should be considered in relation to the protection of views and that density requirements were not relevant. The Environment Court was right to have considered the effects on views even

though the purpose of the density controls that were infringed may not be to protect private views. This approach was upheld on appeal in *Smith Chilcott Ltd v Auckland CC* [2001] 3 NZLR 473; (2001) 7 ELRNZ 126; [2001] NZRMA 503 (CA). See also *Corson v Taupo DC* EnvC A061/02, where the relevance of protection of views was also discussed.

The question of the relevance of protection of views was also discussed in *Corson v Taupo DC* EnvC A061/02, where the Court considered that a proposed reduction of the radius of existing rural views towards Lake Taupo was a more than minor adverse effect. This was based on an examination of the environmental effects of the change proposed, and whether the extent of that change was compatible with the maintenance and enhancement of the existing character and visual amenity of the surrounding rural environment.

In *McGrade v Christchurch CC* [2010] NZEnvC 172, the Court noted that the proposed extension to a building in front of the appellant's property would take away all views of the city and the distant mountains. When compared to the existing building, this was an adverse effect. The effect, however, was very close to what would occur with a permitted extension of that building. Requiring adherence to the height limitation was therefore held to be unreasonable.

In the context of view protection in relation to development on the Wellington waterfront area, the Court noted in *Re Site 10 Redevelopment Ltd Partnership* [2015] NZEnvC 173 that the district plan did not seek to avoid loss of views. However, if any loss were an adverse effect, that would be a matter for assessment under the district plan.

A104.04Relevance of the permitted baseline

(1)Permitted baseline discretionary

In *Smith Chilcott Ltd v Auckland CC* [2001] 3 NZLR 473; (2001) 7 ELRNZ 126; [2001] NZRMA 503 (CA), the Court of Appeal confirmed that the "permitted baseline" formulated in *Bayley* applied to the substantive considerations under s 104 and the former s 105(2A) (now s 104D after the RMAmA03 came into force) as well as to the procedural matters under the former s 94.

Section 104(2) has added a statutory base for the permitted baseline, and has made its application at the discretion of the consent authority. This has reversed the effect of *Smith Chilcott* (above) which stated that the permitted baseline was mandatory and that permitted adverse effects were not relevant adverse effects. Section 104(2) also confirms that the permitted baseline only relates to effects permitted by the plan, which overturns and clarifies the effect of a number of later decisions which held that the permitted baseline could, in certain circumstances, include effects of controlled and restricted discretionary activities. See *Tairua Marine Ltd v Waikato RC* HC Auckland CIV-2005-485-1490, 29 June 2006.

While some commentators have described s 104(2) as a codification of the previous common law permitted baseline test, there is some doubt as to whether this is in fact the case. As noted in the High Court decision in *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC) the Act is not a code and is ordinarily to be read alongside the common law. While Section 104(2) has modified the approach adopted in successive Court of Appeal authorities by enacting a discretion where none formerly existed, it is not a total substitution for the common law.

The discretionary application of the permitted baseline should also address concerns raised by the Court in *Kapiti Environmental Action Inc v Kapiti Coast DC* [2002] NZRMA 289 (EnvC). In that case, the Court observed that a mandatory application of the permitted baseline did not allow a consent authority to take into account permitted adverse effects on Part 2 matters such as outstanding landscapes or the natural character of the coastal environment.

Its discretionary application may also be of assistance in dealing with the difficulty surrounding how the Environment

Court should realistically consider "cumulative effects", while at the same time as acknowledging the "permitted baseline" approach, as enunciated in various Court of Appeal decisions. See *Emerald Residential Ltd v North Shore CC* EnvC A031/04. In that case, the Court was led to the conclusion, in relation to the situation prior to the 2003 Amendment Act, that "cumulative effects" should be an exception to the "permitted baseline" concept.

For a summary of the questions a Court should ask in determining the relevance of the permitted baseline, see *Lyttelton Harbour Landscape Protection Assn Inc v Christchurch CC* [2006] NZRMA 559 (EnvC), subsequently endorsed in a number of cases, including *Mapara Valley Preservation Soc Inc v Taupo DC* EnvC A083/07. See *Smith v Marlborough DC* [2011] NZEnvC 328 and *Hood v Dunedin City Council* [2017] NZEnvC 190 for the application of the Court's discretion not to apply the permitted baseline. In *Hood* the Court declined to take the permitted baseline into account on the basis that it would not be consistent with justice in that it would effectively set aside the appellant's case and would not be consistent with the public interest in terms of flood risk issues. The Court stated that to disregard a flood risk on the crude footing that a permitted activity dwelling would be at no less risk clearly missed the s 5 dimension of allowing people and communities to provide for their health and safety.

The Court of Appeal addressed the permitted baseline issue in *Auckland RC v Living Earth Ltd* (2008) 14 ELRNZ 305; [2009] NZRMA 22 (CA). The Environment Court had appeared to assess the odour effect of the composting activity without regard for another odour-creating activity in the vicinity. However, a precise correspondence between the effects permitted under the baseline and those associated with a particular proposal is not fundamental to the application of the permitted baseline test. See note at A104.04(3).

(2)Application of the permitted baseline

In *Barrett v Wellington CC* [2000] NZRMA 481 (HC), the Court found that once the proposal became fully discretionary or non-complying, the overall effects (including privacy effects) on all neighbours had to be considered against the permitted baseline. The entire situation at the time of the consent application must be looked at.

In *Beadle v Minister of Corrections* EnvC A074/02, it was accepted that the ability to apply permitted baseline comparisons extended to requirements for designations.

The Environment Court, in *Taranaki Energy Watch Inc v Taranaki RC* EnvC W039/03, held that the effects of end users' activities in relation to a gas resource would only fall within the permitted baseline if not large in scale.

There is no requirement to have regard to potential restraints on the permitted activity under other legislation, such as a court order under the Property Law Act 2007. The permitted baseline comparison is between the effects of what is proposed and the effects of what is permitted under the relevant plan: *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009. The Court also held that, in deciding whether to apply the permitted baseline, the presence of an existing consent authorising other activities on the subject site may be a relevant consideration, as the existing consent might give rise to a combination of effects that was not anticipated under the plan.

The suggestion that there is a level of development that could occur within the environment and that this is a baseline against which a proposal should be assessed was rejected in *Granger v Dunedin City Council* [2018] NZEnvC 250. While the Court found that some level of residential development in the rural environment was acceptable, it held that unless the future environment was one which was permitted and for which no consent was required, then the application had to engage with relevant and directive objectives and policies in the proposed plan.

(3)"Subject site"

In *O'Connell Construction Ltd v Christchurch CC* [2003] NZRMA 216 (HC), the High Court determined that it was appropriate to apply the baseline test with reference only to the subject site, not to activities that could be established on other sites. The High Court thought the words "what either is being lawfully done on the land or could be done there as of right" in *Bayley* indicated the required comparison is between the proposed activity and other activities on the subject site only.

The *O'Connell* approach was followed in *Cashmere Park Trust v Canterbury RC* EnvC C048/04, in terms of the permitted baseline, but the Court noted that cumulative effects of likely future permitted activities on other sites may still be a relevant matter which may weigh against an application.

The Court of Appeal in *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), confirmed that the permitted baseline assessment should be limited to the effects of the developments on the site that is the subject to a resource consent application. The Court emphasised that it should not be applied for the purpose of ascertaining the future state of the environment beyond the site. See also *Herzog Investments v Waitaki DC* HC Wellington CIV-2006-485-1061, 29 November 2006.

The Court of Appeal again considered the application of the permitted baseline test in *Auckland RC v Living Earth Ltd* (2008) 14 ELRNZ 305; [2009] NZRMA 22 (CA), noting that the concept of the "receiving environment" involves principles that overlap with those relevant to the permitted baseline test, as set out by the Court of Appeal in *Queenstown Lakes DC v Hawthorn Estate Ltd* (above). See note at A104.04(1).

(4)Appropriate comparison with "non-fanciful" (credible) as-of-right development

While s 104(2) does not distinguish between fanciful and non-fanciful permitted activities, that distinction may have a bearing on the ultimate exercise of the discretion in any given case: *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC).

In *Barrett v Wellington CC* [2000] NZRMA 481 (HC), the Court noted that the baseline outlined by the Court of Appeal "represents a combination, first, of what is lawfully being done on the site and secondly, what could be done there as of right in terms of the plan". What could be done on site as of right involves credible developments, not purely hypothetical possibilities which are out of touch with the reality of the situation. See also *Kaikaiawaro Fishing Co Ltd v Marlborough DC* (1999) 5 ELRNZ 417 (EnvC).

That approach was followed by the Court of Appeal in *Smith Chilcott Ltd v Auckland CC* [2001] 3 NZLR 473; (2001) 7 ELRNZ 126; [2001] NZRMA 503 (CA), which held that using a "likely" test rather than a "credible" test was an error, albeit that it used the words "not fanciful" rather than "credible". See also *Te Whakaruru Ltd v Thames Coromandel DC* EnvC W086/08 at [62].

In *Opiki Water Action Group Inc v Manawatu-Wanganui RC* EnvC W064/04, the Court decided it should exercise its discretion under s 104(2) and disregard the adverse effects of hypothetical permitted activities because it could not sufficiently ascertain to what extent they might occur.

In *Keystone Ridge Ltd v Auckland CC* HC Auckland AP24/01, 3 April 2001, an application of the permitted baseline was a matter of eliminating "purely hypothetical possibilities which are out of touch with the reality of the situation" (referring to *Barrett*, above). This is not a test of likelihood, nor does it require evidence as to what will occur or be likely to occur in the absence of the development under consideration. It is an issue of judgment for the Court.

If the permitted baseline exercise is applied in the case of an application for a subdivision consent, consideration must be given to the effects of building dwellinghouses on the subdivided sites, against the backdrop of activities permitted under the plan or for which there are already resource consents: *Kircher v Marlborough DC* EnvC C090/09, citing *Pukenamu Estates Ltd v Kapiti Environmental Action Inc* HC Wellington AP106/02, 1 July 2003.

In *McGrade v Christchurch CC* [2010] NZEnvC 172, the relevant plan permitted the extension of an existing dwelling even where that dwelling was already in contravention of certain rules in the plan, provided that the additions themselves were compliant. The Court therefore had no hesitation in finding that the permitted extension was a non-fanciful and credible development.

Te Runanga-a-Iwi o Ngati Kahu v Far North DC [2010] NZEnvC 372, (2010) 16 ELRNZ 259, was another case concerned with the effects of subdivision. The case involved a situation where the adverse effects alleged to impact on a wahi tapu site arose not from the proposed subdivision but from activities that were already permitted, such as earthworks permitted as of right, and the construction on the unsubdivided site of 12 houses under existing resource consents. The Court was satisfied that the existing resource consents were likely to be implemented, thus meeting the *Hawthorn* test of s 104. The Court did not approve of the apparent piecemeal approach to the consenting process, accepting that it could give rise to "environmental creep", but accepted that the concerns could largely be met by the imposition of appropriate conditions. That interim decision was set aside by the High Court in the judicial review proceeding in *Te Runanga-a-Iwi o Ngati Kahu v Carrington Farms Ltd* (2011) 16 ELRNZ 664 (HC) and *Te Runanga-a-Iwi o Ngati Kahu v Carrington Farms Ltd* (2011) 16 ELRNZ 708 (HC) (see note at A95A.04(3)(c)). The High Court stated that the Environment Court had fettered its discretion by treating the land use consent as part of the permitted baseline, "an inevitable and necessary precursor" to the subdivision while issues under s 6(a) and (b) that should have been central to the subdivision decision were not considered.

The High Court decisions were overturned on appeal in *Far North DC v Te Runanga-a-Iwi o Ngāti Kahu* [2013] NZCA 221 and the land use consent reinstated. The Court of Appeal held that the High Court had erred in emphasising that the land use consent was unlikely to be implemented with a subdivision consent. Rather, the land use consent should have been seen as a stand-alone proposal for which no other consents were needed and should therefore have been treated as part of the permitted baseline under the *Hawthorn* approach. The Court of Appeal emphasised the difference between the concept of "environment" and that of the permitted baseline in the RMA context. Both are discrete statutory considerations. "Environment" refers to a state of affairs to be determined and taken into account by a consent authority; the permitted baseline provides an optional means of excluding the adverse effects that, but for the permitted baseline, would be inherent in the proposal. Adopting the approach of the Environment Court, the Court of Appeal noted that the "environment" is not a static concept in the RMA; it cannot be viewed in isolation from all operative extraneous factors, taking into account the "receiving environment" as it might be in the future (*Hawthorn*). See note at A95A.03(8).

The Court in *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248 noted that the permitted baseline can include adverse effects of staged development. The Court held that, where adverse effects of an activity permitted on the site as of right are difficult to predict, the question is one of degree as to which adverse effects of the activity on the environment should be taken into account as part of the permitted baseline.

In *Te Runanga o Ngati Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, (2019) 21 ELRNZ 539, the taking of water for a water bottling export enterprise was challenged by iwi groups on the grounds that the activity would cause loss of te mauri o te wai, the essential spirit of the water in the aquifer, and loss of the opportunity for the people of the iwi to exercise kaitiakitanga. The activity was therefore contrary to the protections within pt 2. However, the Court was satisfied that, given the minimal extent of the proposed taking, neither of the iwi concerns was justified. Tikanga evidence was that the economic betterment represented by the proposed activity would be a positive influence on the mauri of the people in the area. The biophysical evidence supported the conclusion that the taking

would have no appreciable effect on the aquifer, and therefore on the mauri of the water or the ability of the iwi to carry out their kaitiaki obligations.

(5)Deleted

(6)Positive effects — permitted baseline

Positive effects of allowing the activity are not relevant to the assessment of the permitted baseline: *Kalkman v Thames-Coromandel DC* EnvC A152/02, applied in *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC) and *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104. This is reinforced by s 104(2) which provides that a consent authority "may disregard an adverse effect on the environment if the plan permits an activity with that effect". Positive effects will however still be relevant in terms of ss 104(1)(a) and 104(1)(ab).

(7)Existing environment in relation to an application for a retrospective consent to validate an unlawful activity

In *NZ Kennel Club Inc v Papakura DC* EnvC W100/05, the Court took the baseline as being the effects of what lawfully exists on the site at present, what may be done there as of right and, although not relevant in that particular case, what might be done under a granted but unexercised resource consent. It noted that it could not regard the use of the indoor arena buildings as lawfully existing where a consent was required. It follows that there is no presumption that an existing but unlawful activity has some form of de facto existing-use advantage: *Maskill v Palmerston North CC* EnvC W037/06. That approach was adopted in *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125, where the potential for the effects of reverse sensitivity was a further reason for declining the application to legalise the residential use of buildings consented for commercial uses. Other commercial users in the area objected on this ground, pointing to their need to protect the development opportunities of the site, not impaired by the potentially conflicting interests of residential users. See note at A10.07(2).

In *McGrade v Christchurch CC* [2010] NZEnvC 172, the relevant city plan permitted the extension of an existing dwelling even where that dwelling was already in contravention of certain rules in the plan, provided that the additions themselves complied. The Court held that, in such circumstances, the effects on the environment of that dwelling and its extensions was a baseline against which the effects of a proposed activity could be considered.

(8)Existing use rights

The High Court in *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC), held that the permitted baseline, as modified by the enactment of s 104(2), precludes considering existing use rights as part of the existing environment, because existing use rights are not permitted as part of a plan. The role of existing use rights is, however, a consideration under s 104(1)(a) as they form part of the receiving environment against which the effects of the proposal will be assessed.

In *McGrade v Christchurch CC* [2010] NZEnvC 172, the Court noted that the effects of the proposed activity do not have to be considered against all possible permutations for permitted activities on a given site.

(9)Comparison with existing consent

In *Luggate Holdings Ltd v Queenstown Lakes DC* EnvC W081/09, in granting consent to a non-complying subdivision proposal on a sensitive landscape, the Court compared the effects of a new application against those which could occur as of right due to the grant of an earlier consent for the same site. In using the effects of the consented development as the basis for considering the effects of the new proposal, the Court concluded that the new proposal would have considerably reduced adverse effects compared to the consented development, such that consent for the new proposal could be granted.

(10)Functional need versus operational need

These two terms are defined for RMA use in the National Planning Standards (2019). In *Te Runanga o Ngati Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, (2019) 21 ELRNZ 539, the Court was satisfied that there was a functional need for the activities to take place on the existing site and not merely an operational need or matter of convenience. See notes at [A104.03(17)] and [A104.04(4)].

A104.05Standard of proof

(1)General

In *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT), it was held that in considering effects under s 104(1)(a) the first issue is defining the question of fact on the finding is to be made, and the second issue is the standard of proof required to establish the fact to support a finding. As to the first issue, it was held there was no burden of proof on any party but there was an evidential burden on the party making an allegation to present evidence supporting the allegation. On the second issue, the Tribunal is free to receive anything in evidence that it considers appropriate and is not bound by the rules of evidence that apply to judicial proceedings: s 276.

The approach in *McIntyre* (above) was followed in *Baker Boys Ltd v Christchurch CC* (1998) 4 ELRNZ 297; [1998] NZRMA 433 (EnvC), where the Court accepted that there was no burden of proof on a party, but that an evidentiary burden would arise for a party to support allegations it makes with evidence, and in *Auckland/Waikato Fish & Game Council v Waikato RC* EnvC A085/02, where the Fish and Game Council had not met the evidentiary burden to support allegations that its actions had not had undue adverse effects on the environment. Nor had it shown how the purpose of the Act under s 5(2)(b) would be met by granting rather than refusing consent, or how the requirements of ss 6(a) and 7(d) would be met.

In *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC), the Environment Court again considered the question of onus and burden of proof under the Act, and summarised its views as follows:

> "(1) In all applications for a resource consent there is necessarily a legal persuasive burden of proof on the applicant. The weight of the burden depends on what aspects of Part 2 apply. The Court also noted that under [what is now s 104D] a burden of proof rests on the applicant for the resource consent when it refers to the consent authority being 'satisfied that' one of the two tests is met.
>
> "(2) There is a swinging evidential burden on each issue that needs to be determined by the Court as a matter

of evaluation.

"(3) There is no one standard of proof, if that phrase is of any use under the Act. The Court must simply evaluate all the matters to be taken into account under section 104 on the evidence before it in a rational way, based on the evidence and its experience; and giving its reasons for exercising its judgment the way it does.

"(4) The ultimate issue under [what is now s 104B] is a question of evaluation to which the concept of a standard of proof does not apply."

The Court also stated that:

"As the evidence of varying weight develops … the evidential burden of proof will, in accordance with ordinary principles of evidence, remain with or shift to the person who will fail without further evidence; (Donaldson LJ in *Forsythe v Rawlinson* [1981] RVR 97 202)."

The general proposition that an applicant for a resource consent has a legal or persuasive burden to persuade the adjudicator to grant the resource consent, was confirmed by the Court of Appeal in *Ngati Rangi Trust v Genesis Power Ltd* [2009] NZRMA 312 (CA). This is because the ultimate issue in each case is whether the granting of consent will meet the RMA's statutory purpose, and the decision maker would be entitled to decline consent even if it did not hear evidence from anyone other than the applicant.

There is a discussion of the burden of proof in *Re Meridian Energy Ltd* [2013] NZEnvC 59 citing *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC). The Court at [60]–[67] also discussed the weight to be given to lay evidence and applied s 24 of the Evidence Act 2006, notwithstanding s 276 of the RMA. The Court also cited and followed *Rangitikei Guardians Soc Inc v Manawatu-Wanganui RC* [2010] NZEnvC 14. The evidence of lay witnesses identifying aspects of the environment appreciated by them and expressing views as to how their appreciation might be affected by a proposal is a legitimate subject for lay evidence. However the Court there declined to consider information sourced from the internet.

(2)Evaluating future events

Under s 104(1), the decision-maker has first to decide what the primary facts are, and then to evaluate those facts as propositions about the future (risks if adverse effects, chances if beneficial). Usually those propositions are given as the opinion of experts. It then has to carry out a further evaluation when undertaking the weighting and balancing exercise to decide the ultimate question. The Court noted that there was high authority for the proposition that evaluating future events is a matter of judgment, not proof, and thus the standard of proof is not relevant. "There is no general rule of English law that when a court is required, either by statute or at common law, to take account of what may happen in the future and to base legal consequences on the likelihood of its happening, it must ignore any possibility of something happening merely because the odds on its happening are fractionally less than evens": *Fernandez v Government of Singapore* [1971] 2 All ER 691 (HL) at 696 per Lord Diplock. This was confirmed in *Long Bay-Okura Great Park Soc Inc v North Shore CC* EnvC A078/08, which held that there was no standard of proof for future events. What is required is for the decision maker to make an assessment of the probabilities of the future event, given an array of frequencies and intensities. It is not useful for an arbitrary standard of acceptance of the probability as fact to be adopted (eg the probability of a predicted event exceeding 50 per cent).

The High Court in *Jennings v Tasman DC* 2/6/04, Young J, HC Wellington CIV-2003-485-1654 confirmed the Environment Court's application of a probable (more likely than not) standard of proof when considering whether the

grant of consent would create a precedent for similar consent applications to be made.

In *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 (upheld on appeal in *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52), the Environment Court noted that a standard of proof of "on the balance of probabilities" is problematic in relation to predictions of future effects. Agreeing with the approach in *Long Bay*, the Court held that predictions of the likelihood of an effect are decided on the preponderance of the evidence.

(3)Proposals must establish how adverse effects are to be avoided, remedied or mitigated

In *Blakeley Pacific Ltd v Western Bay of Plenty DC* [2011] NZEnvC 354, the Court found that the application did not provide appropriately detailed evidence to enable the Court to be certain as to how the proposal would meet the requirements of Part 2 and the relevant planning instruments in relation to the adverse effects identified. Consent was therefore refused.

A104.06National policy statements — subs (1)(b)(iii)

For current national policy statements see:

(a) National Policy Statement on Electricity Transmission 2008;

(b) National Policy Statement for Renewable Electricity Generation 2011;

(c) National Policy Statement for Freshwater Management 2014;

(d) National Policy Statement on Urban Development Capacity 2016.

A104.07New Zealand Coastal Policy Statement — subs (1)(b)(iv)

In *First Wave Ltd v Marlborough DC* EnvC W046/97, the Court noted that the "principles" in the NZCPS are not general fundamental truths or propositions about the coastal environment on which other policies and plans depend; but they are a source from which the policies subsequently flow and which in turn affect the policies and objectives in other planning instruments.

It was noted in *Save the Bay Ltd v Christchurch CC* EnvC C050/02, that although the New Zealand Coastal Policy Statement adopts a precautionary approach to development in the coastal area (see Policy 3), it should not be used to eliminate existing uses.

Policy 1.1.1(a) of the 1994 NZCPS (see now Policy 13) set the preservation of the natural character of the coastal environment as a national priority, and encouraged appropriate subdivision, use, or development in areas where the natural character of the coastal environment had already been compromised by sporadic subdivision, use, or development. The necessity to avoid sprawling development was discussed in *Kuku Mara Partnership (Forsyth Bay) v*

Marlborough DC EnvC W025/02. An application for a mid-bay marine farm was not sprawl, defined in *Wakatipu Environmental Soc Inc v Queenstown Lakes DC* [2000] NZRMA 59 (EnvC).

Policy 1.1.1(b) of the 1994 NZCPS (see now Policy 13) refered to potential effects on values relating to the natural character of the coastal environment. "Values" included issues other than natural character components, processes and elements, such as the community's perception of natural character. See A6.04(1).

In *Transit NZ v Auckland RC* EnvC A100/00, the provisions of the Hauraki Gulf Marine Park Act 2000 were relevant because the subject area was within the Hauraki Gulf catchment. Under s 10(1) Hauraki Gulf Marine Park Act 2000, ss 7 and 8 of that Act are to be treated as a NZCPS under the RMA. Therefore, those matters are of mandatory relevance in relation to areas subject to that Act.

See *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 in relation to the directive effect of NZCPS provisions in a plan change context. See [A104.01(7)] for the way in which *King Salmon* applies to resource consent applications.

A104.08Regional policy statements and proposed regional policy statements — subs (1)(b)(v)

In *Clark v Tasman DC* W004/95 (PT), the Tribunal accepted that there was considerable force in the proposition that a proposed regional policy statement, to the extent that it accords with the principles of the RMA, is unlikely to change to any significant degree during the objection and appeal procedure. Accordingly, more weight should be given to proposed regional policy statements in their early stages than had previously been the case with planning documents. That approach was confirmed in *Body Corporate 97010 v Auckland CC* [2000] 3 NZLR 513; (2000) 6 ELRNZ 303; [2000] NZRMA 529 (CA). See also *The Trustees of the Estate of Chisnall v Tasman DC* W093/95 (PT), *Sutherland v Tasman DC* W038/95 (PT), and *Freda Pene Reweti Whanau Trust v Auckland RC* 9/12/05, Courtney J, HC Auckland CIV-2005-404-356.

In *Auckland RC v Roman Catholic Diocese of Auckland* (2008) 14 ELRNZ 166; [2008] NZRMA 409 (HC), the High Court had to consider whether the Environment Court had erred in finding that it had no jurisdiction under s 75(2) to consider any inconsistency between a regional policy statement and the district plan in the context of a resource consent application. The Court held that the appropriate treatment of any inconsistency is under s 104, as a factor to be given such weight as the Court thinks appropriate.

A104.09Plans and proposed plans — subs (1)(b)(vi)

See also A104.01(7) in relation to the correct way of applying s 104(1)(b).

(1)Proposed plans

(a) Statutory provisions

As to proposed rules relating to prohibited activities, see s 87B(1)(c), which has the effect that the activity is discretionary, and not prohibited until the prohibition is past the point of challenge. See also s 86F, which has similar effect in relation to a proposed rule that permits an activity previously restricted.

(b) Proposed plan must be taken into account

In *Hanton v Auckland CC* [1994] NZRMA 289 (PT), the Tribunal accepted that the reasoning in *Ireland v Auckland CC* (1981) 8 NZTPA 96 (HC) was applicable. Once a proposed plan is notified, an application must be considered in terms of the objectives and policies of that plan as well as the existing plan (s 86A(2)). See ss 86B-86F for when rules in a proposed plan have legal effect.

(c) Weight to be given to proposed plan

The Tribunal in *Hanton* (above) agreed with the decision in *Lim v Hutt CC* [1994] NZRMA 183 (PT), that the weight to be given to a proposed plan depends on what stage the relevant provision has reached, the weight generally being greater as a proposed plan moves through the notification and hearing process.

The RMA does not distinguish between weights to be accorded to an operative and a proposed plan and does not accord proposed plans equal importance. Each case depends on its own circumstances. Relevant factors to the exercise of discretion include the extent to which the proposed measure has been exposed to independent decision-making, possible injustice to the applicant or others, and the extent to which a new measure may implement the objectives and policies of a plan.

The weight to be given to proposed plans is open-ended. Implicit in the Environment Court's discretion is the weight it may give to a proposed plan awaiting hearings or submissions: *Lee v Auckland CC* [1995] NZRMA 241 (PT), followed in *Wyatt v Auckland CC* (1995) 1B ELRNZ 436; [1995] NZRMA 512 (PT).

While regard must be given to the proposed plan, this does not necessarily mean giving full effect to the content of the proposed plan. See *Hanton* (above), and *Entwisle v Dunedin CC* C105/94 (PT).

In *Pooley v Whangarei DC* EnvC A114/03, the Environment Court held that, as there was little challenge to the subdivision provisions of the proposed plan, the proposed subdivision provisions deserved more weight than the provisions of the transitional district plan.

In *TV3 Network Services Ltd v Waikato DC* [1998] NZLR 360; [1997] NZRMA 539 (HC), the High Court held that, despite the general legal and constitutional principle against the prospective application of statutory amendments, Parliament has legislated to validate proposed policies and plans in certain circumstances. However, it would be wrong in law to accord a proposed plan exclusive effect, as that would give the plan an anticipatory effect which is objectionable on fundamental principles. *TV3 Network Services* was followed in *Landrover Owners Club (Otago) Inc v Dunedin CC* (1998) 4 ELRNZ 252 (HC).

(d) High Court observations concerning weight

In *Keystone Ridge Ltd v Auckland CC* HC Auckland AP24/01, 3 April 2001, the High Court held that the importance of the proposed plan (or change) will depend on the extent to which it has proceeded through the objection and appeal process.

The extent to which the provisions of the proposed plan are relevant should be considered on a case by case basis and might include:

(i) The extent (if any) to which the proposed measure might have been exposed to testing and independent decision making;

(ii) Circumstances of injustice;

(iii) The extent to which a new measure, or the absence of one, might implement a coherent pattern of objectives and policies in a plan.

Where there has been a significant shift in council policy and the new provisions are in accord with Part 2, the Court may give more weight to the proposed plan.

For an application of this approach, see *Mapara Valley Preservation Soc Inc v Taupo DC* EnvC A083/07 where the Court placed substantial weight on recently notified plan changes relating to growth management and rural land use.

(e) Other decisions on weight

Where a proposed review was largely inchoate because there were many objections and cross-objections which had not been determined, the Tribunal held that a proposed rule was not in such a condition that it could properly form part of the considerations to be taken into account under s 104: *Stevens v Tasman DC* W043/92 (PT); *Banks v Nelson CC* W015/93 (PT).

See also *Prestige Print (1965) Ltd v Wellington CC* W094/95 (PT), *Maggs v North Shore CC* W087/95 (PT), and *Swindley v Waipa DC* A075/94 (PT) for examples of the relative weight given to transitional and proposed district plans.

In relation to the demolition of heritage buildings, the Environment Court held in *A A McFarlane Family Trust v Christchurch CC* [1999] NZRMA 365 (EnvC), that because the proposed plan had been prepared under the RMA, the correct approach was to give the proposed plan more weight than the transitional plan.

(2)Operative or proposed plan?

(a) Conflict between plans

Where there is a conflict between plans, it is necessary to consider whether to grant resource consents under each plan, and what priority to give them. This approach was taken in *Stokes v Christchurch CC* [1999] NZRMA 409 (EnvC), relying on the principle set out in *Hanton v Auckland CC* [1994] NZRMA 289, *Burton v Auckland CC* [1994] NZRMA 544 (HC), *Lee v Auckland CC* [1995] NZRMA 241 (PT), all confirmed in *Bayley v Manukau CC* [1999] 1 NZLR 568; (1998) 4 ELRNZ 461; [1998] NZRMA 513 (CA).

In *Stokes* (above), greater weight was accorded to the proposed plan than to the operative plan, as the proposed plan was prepared under the RMA and reflected its provisions.

After an application has been considered in terms of both a transitional and a proposed plan, if the inclination is to grant or refuse the application under both, then there is no need to assess the weight to be accorded to each plan. That further step will be necessary only where the inclination is to grant under one and refuse under the other: *O'Connell Construction Ltd v Christchurch CC* [2003] NZRMA 216 (HC); see also *Stokes* (above) and *Boon's Neighbourhood Action Group (Inc) v Christchurch CC* EnvC C071/01.

(b) Effect of council decisions on submissions on proposed plans and policy

statements

Clause 10(5) of Schedule 1 provides that a local authority's decisions on submissions are deemed to amend the proposed provisions to which the decisions relate from the date of the public notification that the decisions have been made. Accordingly, as from that date the provisions must be considered and applied in their amended form rather than the form in which they were originally notified. Provisions subject to unheard Environment Court references will be accorded less weight than provisions that are not subject to any appeals. (See also s 86F as to the effect of proposed permitted activity rules and s 87B(1)(c) for the effect of proposed prohibited activity rules.)

(3)Rules in a plan

(a) Interpretation of rules

As to this topic generally, see A76.03.

The fact that a particular activity is expressly catered for in one part of the plan does not necessarily lead to the conclusion that the activity is intended to be excluded from the more general provisions for a particular class of use: *Archibald v North Shore CC* HC Auckland M2388/91, 18 December 1992.

(b) Environmental standards

Even though an activity may comply with environmental standards in a plan, such as noise standards, that does not always guarantee that such standards provide adequate protection for the amenities that the plan seeks to protect. Such standards tend to be of general application, and one has to have regard to the particular circumstances of the case: *LRG Investments Ltd v Christchurch CC* EnvC C064/98.

In *Smith Chilcott Ltd v Auckland CC* [2001] 3 NZLR 473; (2001) 7 ELRNZ 126; [2001] NZRMA 503 (CA), the Court of Appeal upheld the High Court's decision that the Environment Court was entitled to take into account a density rule/standard in the context of neighbours' views. This was despite the fact that the density standard was expressed to be for a particular purpose which did not include protection of private views (see A104.03(18)).

(4)Objectives and policies

In *Wyatt v Auckland CC* (1995) 1B ELRNZ 436; [1995] NZRMA 512 (PT), the Tribunal held that the provisions of rules govern whether an application for planning consent is necessary. It is not permissible for the consent authority to go beyond those rules and extract from the objectives and policies some overriding discretion to decide whether a particular use complies with a rule.

In *Landrover Owners Club (Otago) Inc v Dunedin CC* (1998) 4 ELRNZ 252 (EnvC), consent was required by virtue of discretionary activity status under the transitional district plan, but the activity was a permitted activity under the proposed district plan. The High Court held that the Environment Court had erred in law by declining consent on the basis that the proposed activity was incompatible, or in fundamental conflict, with the policies and objectives of the zone under the proposed district plan.

When considering the provisions of a plan and, in particular, objectives and policies, it is permissible to adopt a

thematic approach. It is not necessary to expressly set out and construe all allegedly relevant provisions in order to have regard to them: *Progressive Enterprises Ltd v North Shore CC* HC Auckland CIV-2008-485-2584, 25 February 2009.

In *Kennett v Dunedin CC* (1992) 2 NZRMA 22 (PT), the Tribunal rejected a submission that the zone statement and other similar statements within the former district scheme were not "objectives and policies" in terms of s 104 and what is now s 104D, simply because they had been framed under a different legislative background.

On the question of whether the objectives and policies of a plan are sufficiently clearly worded to assist the decision-maker, see note at A75.03 relating to *Orica Mining Services NZ Ltd v Franklin DC* EnvC W032/09.

As to objectives and policies in relation to non-complying activities, see A104D.04.

(4A)Relevance of objectives and policies of adjoining zones

The objectives and policies of the receiving environment (including adjoining zones) can be considered to gain an understanding of the effects of interest concerning the proposal. Those effects should then be considered under s 104(1)(a). However, for the assessment under s 104(1)(b), it is only the provisions that are relevant to the site itself that are to be considered, namely the zone provisions and any higher level provisions of relevance, but not including provisions applying to adjacent land: *Pierau v Auckland Council* [2017] NZEnvC 90.

(5)Other provisions

The reference to "a plan or proposed plan" allows consideration of such matters as preamble sections in district plans: *BP Oil NZ Ltd v Waitakere CC* W037/94 (PT).

In *BP Oil NZ Ltd v North Shore CC* EnvC A062/98, the Environment Court found it relevant to have regard to the assessment criteria that applied to applications for private plan changes, when considering a resource consent application for a similar activity. This was relevant to the overall consideration of the purpose and scheme of the plan.

(6)Integrity of the plan

In *Batchelor v Tauranga DC (No 2)* [1993] 2 NZLR 84; (1992) 2 NZRMA 137 (HC), in an obiter statement, the High Court noted that the integrity of the plan could be considered. However, the weight to be given to any effect on that integrity is a matter of judgment for the consent authority or Environment Court. In *Hopper Nominees Ltd v Rodney DC* (1995) 2 ELRNZ 73; [1996] NZRMA 179 (HC), the High Court held that the approach taken by it in *Batchelor* (above), in considering the integrity of the plan, remained valid, despite the RMAmA93. See also A104D.06 and A104.03(1).

In *Elderslie Park Ltd v Timaru DC* [1995] NZRMA 433 (HC), the High Court held that impacts on the integrity of a plan were not adverse effects on the environment. It is potentially a relevant issue to be considered under s 104(1)(b)(iv). See also *Rosscroft Orchards Ltd v Waimakariri DC* EnvC C160/01. It was considered to be a s 104(1)(c) matter in *Heron v Auckland CC* EnvC W086/06, although shading over into precedent.

Distinguishing *Heron* (above, a case concerned with a non-complying activity), the Environment Court observed in *McLauchlan v Hutt CC* EnvC W062/08 that a discretionary activity will not, of itself, be contrary to or incompatible with

the plan, depending on the degree to which it is able to comply with relevant standards. In any case, that issue is better dealt with under s 104(1)(c).

See also discussion on relevance of integrity of the plan with regard to non-complying activities at A104D.06.

See also *Bell v Rodney DC* [2003] NZRMA 559 (EnvC), and *Norwood Lodge v Upper Hutt CC* EnvC W073/04.

See also *Auckland RC v Roman Catholic Diocese of Auckland* (2008) 14 ELRNZ 166; [2008] NZRMA 409 (HC), and the discussion of precedent at A104.10(9).

The floodgates argument (plan integrity) tends to be overused and needs to be treated with some reserve. The short and inescapable point is that each proposal has to be considered on its own merits. If a proposal can pass one of the s 104D thresholds, then its proposers should be able to have it considered against the s 104 range of factors. Only in the clearest of cases involving an irreconcilable clash with important provisions of the plan, when read overall, and a clear perception there will be materially indistinguishable and equally clashing further applications to follow, will plan integrity be imperilled to the point that the instant application should be declined: *Beacham v Hastings DC* EnvC W075/09. See also *Hamilton East Community Trust v Hamilton CC* [2010] NZEnvC 176. *Beacham* was followed for its approach to plan integrity in a subdivision case, where the plan's protection of versatile soil was under challenge: *Endsleigh Cottages Ltd v Hastings District Council* [2020] NZEnvC 64.

In *Blueskin Bay Forest Heights Ltd v Dunedin CC* [2010] NZEnvC 177, the Court stated that plan integrity might be a matter to be considered under s 104(1)(c). It cited *Rodney DC v Gould* (2004) 11 ELRNZ 165; [2006] NZRMA 217 (HC), for the proposition that it is not necessary that a proposal for a non-complying activity be truly unique before plan integrity ceases to be a potentially important factor. The Court concluded that an application will only be declined on the bases of plan integrity where:

> (a) The proposal clearly clashes with important provisions of a district plan, and
>
> (b) It is likely that further applications will follow, which are both materially indistinguishable and equally incompatible with the plan.

The Court held that a grant of land use consent relating to a specific piece of land could not harm the integrity of the relevant district plan. The Court was satisfied both that no other comparable piece of land existed and that, even if it did, it was unlikely that any such piece of land would have similar characteristics and history to the land subject to the application.

In a situation where a proposal is a direct challenge to an important policy approach, the fact that the planning document is "newly minted" means that plan integrity considerations can carry greater weight: *Ahuareka Trustees (No 2) Ltd v Auckland Council* [2017] NZEnvC 205.

(7)Variations to a proposed plan

Clause 16B(2) of Schedule 1 makes it clear that a variation to a proposed plan or policy statement is effective and varies the proposed plan or statement from the date the variation is notified and therefore must be considered if relevant. (See also A2.142.01, definition of "proposed plan".)

(8)Designations and heritage orders

Regard is also to be had to any designations that are part of plans, and to whether the proposed activity is inconsistent with the designation on the land. If so, this may weaken the public's confidence in the integrity and consistent administration of the district plan: *Gill v Rotorua DC* (1993) 2 NZRMA 604 (PT). However, a designation would not have to be considered if the district plan made it clear that an activity could be allowed if it fell within the underlying zoning.

Contrast *Oggi Advertising Ltd v Auckland CC* [1995] NZRMA 529 (PT), and *Oggi Advertising Ltd v Waitakere CC* W055/95 (PT), in which council decisions declining consents were overturned. In both cases, the nature of activities already established under designation was material to how the Tribunal regarded the underlying policies and objectives. In *Auckland CC*, the Tribunal found that the nature of the activities established under the designation rendered the plan's open space objectives and policies essentially irrelevant to the proposal.

A104.10Other relevant matters — subs (1)(c)

(1)General considerations

The consent authority is entitled, but is not obliged, to have regard to any relevant information provided or reports obtained under ss 88 and 92. It is also required to have regard to any report of any prehearing meeting (s 99(3)).

Other relevant matters must be related to the issues contemplated by the purpose of the Act. Section 104(1)(c) gives scope for a relevant national environmental standard to be considered: *Todd Energy Ltd v Taranaki RC* EnvC W101/05.

(2)Consideration of alternatives

Alternative locations or methods may be a relevant matter under s 104(1)(c). Clause 1(b) of Schedule 4 requires an assessment of the effects on the environment to include a description of any possible "alternative locations or methods" for undertaking an activity where the activity would result in any *significant* adverse effect on the environment or involve a discharge. Unless cl 1(b) of Schedule 4 applies, every proposal must be assessed on its own merits without regard to whether there might or might not be a better alternative or site: *All Seasons Properties Ltd v Waitakare CC* EnvC W021/07.

In *Meridian Energy Ltd v Central Otago DC* [2010] NZRMA 477 (HC), the High Court found that if a consent authority or the Environment Court concludes that a proposal may have significant adverse effects on the environment then the availability of alternatives is a relevant matter for consideration and it may require the applicant to provide a *description* of alternative locations but only in relation to the area within the district or region of the consent authority. The decision suggests however that the consent authority or court cannot insist upon a full assessment or comparison of alternatives. A "description" does not extend to a full cost-benefit analysis of alternative locations or methods. Nor is an applicant required to demonstrate that its proposal represents the *best* use of the subject resources or is best in net benefit terms. The High Court accepted that the Environment Court had not made an error in that regard. See also A7.04(2)(d).

Section 88(3) allows a consent authority to determine that an assessment of effects in an application is inadequate, and return the application as incomplete. Given the reference in s 88(2) to preparing an assessment of effects in accordance with Schedule 4, an application could potentially be considered to be incomplete if alternatives are not considered. In addition, s 92(1) authorises a consent authority to request further information as to alternatives if it

considers that the proposal would have a significant adverse effect (including information on the applicant's reasons for making the proposed choice). In *Trans Power NZ Ltd v Rodney DC* A056/94 (PT), the Tribunal refused to rule out a possible alternative as a preliminary matter of law. It noted that first it would have to make a finding as to whether the activity would result in any significant adverse effect on the environment before the question of alternatives became relevant. (See also s 105(1) in relation to discharges.)

A similar conclusion was reached in *Lakes District Rural Landowners Soc Inc v Queenstown Lakes DC* EnvC C162/01. The Court indicated that in some circumstances, where important resource management issues are raised, the consent authority should look at alternatives even if they are not within the capacity of the applicant to arrange. Accordingly the question of alternatives is one of practical and substantial merits, and not a question of jurisdiction.

This decision was challenged in *Queenstown Lakes DC v Lakes District Rural Land Owners Soc Inc* [2002] NZRMA 81 (HC). The High Court accepted the proposition that a consent authority can take into account only the effects of the particular activity under consideration, but interpreted the application of the "alternatives" test as one allowing the consent authority to make a decision that was fully informed at the macro level before granting any consents in relation to a limited resource. The requirement to consider alternatives is a "filtering device" and does not infringe the principle that only the effects of the subject activity are relevant.

If an application is for discretionary activity, it is not necessary for an applicant to demonstrate that there is no alternative method or site, or that adequate consideration has been given to alternative sites or methods: *Freilich v Tasman DC* (2005) 11 ELRNZ 321; [2005] NZRMA 410 (EnvC) and *South Kaipara Harbour Environment Trust v Auckland RC* EnvC A045/06. See also *Upper Clutha Environmental Soc Inc v Queenstown Lakes DC* EnvC C113/09, where the Court held that an applicant for a discretionary activity consent does not have to prove there is no better location within its property if only because several sites might be suitable in a given case.

However, in *Te Maru O Ngati Rangiwewehi v Bay of Plenty RC* (2008) 14 ELRNZ 331 (EnvC), the Environment Court considered an application by Rotorua DC for increased abstraction and use for public supply purposes of water from springs, which would have significant adverse cultural effects on Maori in terms of s 6(e) and s 8 of the RMA. It held that where matters of national importance are involved, and there will be significant adverse effects, consideration of alternative sources of supply was necessary. It found on the evidence that a feasible alternative groundwater supply existed, and had not been adequately considered. While consent was granted in order to recognise the public interest in providing a suitable potable water supply, the Court reduced the term of the consent from 25 years to 10 years in order to provide sufficient time for the council to investigate alternative water supply options. This decision was followed in *Waiareka Valley Preservation Soc Inc v Waitaki DC* EnvC C058/09.

The Court in *Man O'War Station Ltd v Auckland CC* [2010] NZEnvC 248 considered that, in circumstances where matters of national importance under s 6(a) and (b) were strongly present, it was incumbent on the applicant to assess possible alternative locations. The finding of the Environment Court that Man O'War Station Ltd had failed to consider alternative sites was overturned on its facts as an error of law on appeal, though the High Court did not dispute the relevance of considering alternative sites: *Man O'War Station Ltd v Auckland RC* [2011] NZRMA 235 (HC).

See also *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough DC* [2010] NZEnvC 403. In that case the Court noted that alternative methods that are outside the applicant's capacity to arrange are not for the applicant or court to assess.

(3)Other legislation

Section 104 does not require the provisions of other Acts to be considered in granting a consent (except where those

provisions are integrated into the relevant plans). Thus, it could not be argued in *Darroch v Whangarei DC* A018/93 (PT), that consent should not be given because the requisite approval under the Health Act 1956 had not been obtained. See also *Andrews v Auckland RC* EnvC A009/99, as to the relevance of the legality of a proposal in terms of the Reserves Act 1977.

In *RFBPS v Manawatu-Wanganui RC* A086/95 (PT), partially reported at [1996] NZRMA 241, the Tribunal, in reliance on the former s 104(1)(h), had regard to the provisions of the Forests Amendment Act 1993 and to the possible need for a land use consent.

The Tribunal could not have regard to the District Court's power under s 129C of the Property Law Act 1952 (see now s 333 of the Property Law Act 2007) to order removal or trimming of trees, as this did not promote the objectives of the RMA was an irrelevant consideration under subs (1)(c): *NZ Suncern Construction Ltd v Auckland CC* (1997) 3 ELRNZ 230; [1997] NZRMA 419 (HC).

See *Aviation Activities Ltd v MacKenzie DC* EnvC C072/00, and *Director of Civil Aviation v Planning Tribunal* [1997] 3 NZLR 335; [1997] NZRMA 513 (HC) as to the relationship between Rule 157 of the Civil Aviation Rules and the RMA.

In *Auckland Volcanic Cones Soc Inc v Transit NZ Ltd* [2003] NZRMA 54 (EnvC), the fact that part of the land through which a motorway corridor was proposed was held under the Reserves Act 1977 was raised as a jurisdictional barrier, since a determination of the Environment Court could be thwarted by a decision of the Minister of Conservation. While acknowledging that the Environment Court would not normally enter a hearing and reach a determination in such a circumstance, there was also the problem that the Minister's decision could depend on the Environment Court's decision under the RMA. The Environment Court emphasised that its decision was based on the RMA and did not take into account the provisions of the Reserves Act 1977. That case was cited as authority for the proposition that a consent authority is concerned with the effects of a proposed activity, not with the applicant's legal rights in the land: *Action for Environment Inc v Wellington CC* [2012] NZHC 1687. See note at A104.03(1)(b).

In *Howick Residents and Ratepayers Assn Inc v Manukau CC* EnvC A001/09, it was held that it was not mandatory to consider a management plan prepared under the Reserves Act 1977. It could however be relevant under s 104(1)(c) when considering the proposed development of a reserve, particularly in circumstances where such reserves' management plans were recognised in the district plan as a relevant method and where objectives and policies referred to the functions and purposes of reserves.

(4)Relevance of NZ Standards and other guidelines

Neither the Standards Act 1988 nor the RMA gives NZ Standards any status that would bind a consent authority to use them as a basis for deciding a resource consent application. The standard provides guidance and is not decisive. A party is entitled to rely on compliance with the relevant standard as tending to show that the effects on the environment of a proposed activity should be acceptable; a consent authority may also rely on the levels set in the standard, unless it is asserted that significant adverse effects on the environment would occur despite compliance with the standard: *McIntyre v Christchurch CC* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT). That position was accepted by the High Court in *Dome Valley District Residents Soc Inc v Rodney DC* [2008] 3 NZLR 821; (2008) 14 ELRNZ 237; [2008] NZRMA 534 (HC).

In *Eyre Community Environmental Safety Soc Inc v Canterbury Regional Council* [2016] NZEnvC 178, the Court adopted the 2015 New Zealand Dam Safety Guidelines of the New Zealand Society on Large Dams as the yardstick by which it assessed the various components of an application for resource consent to construct and operate an off-stream storage dam, on the basis that the expert witnesses accepted that the guidelines contained current good

practice.

(5)Relevance of designations, previous resource consents, recently expired and lapsed consents, and previously established lawful use

(a) Designation

In *Ammon v New Plymouth DC* EnvC W027/97, the Court took account of the fact that the site, although in a residential zone, was already designated by hospital authorities and had been used as a hospital for accommodating psychiatrically disturbed patients (who had caused problems to neighbours), in determining that a secure rehabilitation centre for parolees would have a minor effect on neighbouring properties.

(b) Expired resource consent

In *Wilson Parking NZ (1992) Ltd v Auckland CC* [2001] NZRMA 364 (HC), the Court took into account what had until recently been lawfully undertaken and what could be done as a matter of right, including activities undertaken pursuant to an expired resource consent, on the basis that the use might be authorised by an existing use right. However, the appeal was allowed by consent, and the judgment of the High Court set aside, with the resource consent being amended as to certain conditions: *Wilson Parking NZ (1992) Ltd v Auckland CC* CA226/00, 26 March 2001.

(c) Lawfully existing activity

In *Graham v Dunedin CC* EnvC C043/01, and in *Parkbrook Holdings Ltd v Auckland CC* EnvC A004/01, the Court said it could take into account effects of existing (unlawful) activities, which went beyond existing consents.

Where all infrastructural works had been completed pursuant to a consent which was then set aside pursuant to a judicial review, the Court considered the state of the land as it presently existed. The setting aside of a subdivision consent did not make an earthworks consent unlawful. No mandatory injunction had been sought to reinstate the land to its pre-consent stage, and the Environment Court was doubtful it could, even under its enforcement powers, do so, even had that been sought: *Murray v Whakatane DC* EnvC A176/02.

(d) Relevance of lapsed consent

Lapsed consents may be a relevant matter to be considered, although they should not be regarded as a benchmark for acceptable environmental effects: *Kapiti Environmental Action Inc v Kapiti Coast DC* [2002] NZRMA 289 (EnvC).

(6)Relevance of non-RMA documents

A consent authority may, under s 104(1)(c), have regard to management plans developed by the council which relate to the resource in question: *Goodall v Queenstown Lakes DC* W105/95 (PT). Documents prepared by local authorities pursuant to the Local Government Act 2002 and other statutes may potentially be relevant matters, but where they have not been prepared in accordance with Schedule 1 to the RMA, little weight may be accorded to them. See for example: *Campbell v Napier CC* EnvC W067/05, where the Court declined to give weight to urban growth strategies prepared by the council; and *Infinity Group v Queenstown Lakes DC* EnvC C010/05, where the results of an informal

council community workshop process had little weight placed on them. See also *Upper Clutha Environmental Soc Inc v Queenstown Lakes DC* EnvC W088/06, where the Court declined to give weight to directions in non-RMA structure plans or growth strategies where adverse environmental effects were likely to result.

In *Frasers Papamoa Ltd v Tauranga CC* EnvC W090/07, the Court had regard to a growth management strategy prepared pursuant to the Local Government Act 2002 as being relevant, but gave little weight to it or a consequential change to the Regional Policy Statement.

In *Transit NZ v Auckland RC* EnvC A100/00, the Court held that the Auckland Regional Land Transport Strategy and the Department of Conservation Management Strategy were both matters relevant and reasonably necessary to determining the application.

In a case involving cultural heritage considerations, the Court had regard to the International Council on Monuments and Sites (ICOMOS) New Zealand Charter as being relevant and reasonably necessary to determine the application: *Palmer v Masterton DC* [2009] NZRMA 1 (EnvC). The ICOMOS Charter was also relied on in *Wellington Boys and Girls Institute v Wellington CC* EnvC W010/08.

The Court in *Johns Road Horticulture Ltd v Christchurch CC* [2011] NZEnvC 185 placed very little weight on a strategic plan as it was not clear whether it was consistent with the city plan, its status was unclear, it was a non-statutory document, the rigour of consultation was unknown, and it had not been independently checked (for example, through a submission and hearing process).

In *Re Site 10 Redevelopment Ltd Partnership* [2015] NZEnvC 173, the Court accepted the Waterfront Watch Framework as being a "reasonably necessary" consideration (s 104(1)(c)). The Framework, a non-statutory strategic policy document, was prepared in respect of development of the waterfront area after extensive public debate and consultation and had been partially incorporated into the district plan.

(7)Prior conduct of applicant

The Tribunal in *NZ Suncern Construction Ltd v Auckland CC* A051/96 (PT), partially reported at [1996] NZRMA 411, refused to have regard to Suncern's self-created difficulties. Consent was refused by the Tribunal and on appeal: *NZ Suncern Construction Ltd v Auckland CC* (1997) 3 ELRNZ 230; [1997] NZRMA 419 (HC). Although recognising that under what is now subs (1)(c) Suncern's prior conduct might be relevant as another matter which promoted the underlying objectives of the RMA, the Tribunal's approach had not erred in law, as Suncern's conduct was a peripheral consideration, which could never override one of the more explicit statutory criteria in any of ss 5, 6, 7, and 104.

In *Hinsen v Queenstown Lakes DC* [2004] NZRMA 115 (EnvC), the Court held that commencing an activity without consent, or other conduct by an applicant should not influence the judgment of a resource consent application in a punitive manner, although equally the applicant should not benefit by prior irregular conduct. See also *Kemp v Rodney DC* EnvC A087/09.

(8)International obligations

It is a basic tenet of international law that international instruments are not themselves part of domestic law unless expressly incorporated: *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA) and *NZALPA v A-G* [1997] 3 NZLR 269 (CA). In *Transit NZ v Auckland RC* EnvC A100/00, the Court held that, in the absence of inconsistency between the New Zealand legislation and particular international instruments, it can be assumed that the New Zealand

legislation represents the application of the appropriate standards of New Zealand's international obligations.

Although at the time *EDS v Auckland RC* [2002] NZRMA 492 (EnvC), was decided New Zealand had not ratified the Kyoto Protocol and although not part of New Zealand law, both the Framework Convention and the Kyoto Protocol were relevant considerations under what is now s 104(1)(c). The weight to be given to them depended on New Zealand's obligations under them, and the extent to which government policy had crystallised, to indicate how New Zealand's obligations would be given effect to in its domestic law.

(9)Precedent

In *Dye v Auckland RC* [2002] 1 NZLR 337; (2001) 7 ELRNZ 209; [2001] NZRMA 513 (CA), the Court of Appeal noted that it is well established that precedent, while not an effect on the environment, can be a relevant matter to be taken into account under what is now ss 104(1)(b)(iv), 104(1)(c), and 104D(1)(b). It is now a permissive rather than mandatory consideration. See *Eyres Eco-Park Ltd v Rodney DC* EnvC A147/04 and *Murphy v Rodney DC* (2004) 10 ELRNZ 353; [2004] NZRMA 393 (HC). See also *Harris v Central Otago District Council* [2016] NZEnvC 52, [2016] NZRMA 250.

In *Phantom Outdoor Advertising Ltd v Christchurch CC* EnvC C090/01, the Environment Court noted that, in regard to a resource consent to erect a sign, what is now s 104(1)(c) requires consideration of matters such as the equivalent treatment of applicants. The Environment Court held that the applicant for resource consent should have been treated on an equivalent basis to other previous parties, and the consent authority should fully and appropriately spell out distinctions between cases leading to different conclusions. For further cases on the difference between precedent and cumulative effects, see A104.03(1).

For cases involving consideration of precedent, see *Jackson Bay Mussels Ltd v West Coast RC* EnvC C077/04, *Ferguson v Waikato DC* EnvC A079/04, *Calapashi Holdings Ltd v Marlborough DC* EnvC W045/04, *Manger v Banks Peninsula DC* EnvC C114/04, *Norwood Lodge v Upper Hutt CC* HC Wellington CIV-2004-485-2068, 14 December 2005, *Stallard v Nelson CC* EnvC C160/06 and *Maymorn Land Trust v Upper Hutt CC* EnvC W036/08.

A consent authority has to have regard to a full range of matters canvassed by s 104. Neither the absence of environmental effects, nor the importance of the policy matters can be decisive on its own. In this context, precedent concerns can be important. The need to treat like cases alike is a central imperative of justice, including environmental justice. Inconsistency can threaten not only the integrity of a district or regional plan, but also the integrity of consent authorities themselves: *Auckland RC v Waitakere CC* EnvC A169/05.

In *Feron v Central Otago DC* EnvC C075/09, the Court observed that the precedent created by earlier decisions provides an expectation of like treatment, not an absolute entitlement. Precedent should not be relied upon where an earlier decision is inappropriate, as one questionable decision should not form the basis for ongoing questionable decisions.

In *Auckland RC v Roman Catholic Diocese of Auckland* (2008) 14 ELRNZ 166; [2008] NZRMA 409 (HC), the High Court considered whether the Environment Court had erred in its analysis of the precedent and integrity effects of a proposal to build a school outside of the Metropolitan Urban Limits. The High Court found that the Environment Court had correctly interpreted the regional policy statement when considering precedent effects, and noted that the regional policy statement's policies on urban development were not determinative but were but one consideration to take into account. The Court stated that both precedent and integrity effects must largely be based on the particular circumstances of an application. Accordingly, it held that it cannot be assumed that allowing any urban activity to establish outside the Metropolitan Urban Limits will automatically have adverse precedent and integrity effects.

(10)Reserves

Reserves established under the Reserves Act 1977, and administered in terms of the purpose set out in s 19 of that Act, while relevant to consideration of an application on an adjoining site, are not themselves a sufficient reason to decline an application: *Director-General of Conservation v Marlborough DC* EnvC W089/97, and *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC* EnvC W025/02. The contribution of the reserve to natural character considerations was, however, significant in *Forsyth Bay*.

(11)Coastal permits — navigational issues

In considering an application for a coastal permit in *Marlborough Mussel Co v Marlborough DC* EnvC W169/96, the Court held that the navigational evidence put the question of public safety in issue. This is a matter of primacy, which must be met by protecting boating routes. In this case, in terms of s 5, the safety and amenity of the boating public offset the advantages of another marine farm in a well-farmed and well-used coastal bay.

A later application for the same site was considered in *Apex Marine Farm Ltd v Marlborough DC* EnvC W037/02. The Court considered the Maritime Safety Authority Guidelines on Applications for Coastal Permits Relating to Marine Farming, noting while they were not binding, they were useful.

(12)Irrelevant matters

In *Heaney v Rodney DC* HC Auckland CIV-2003-404-3480, 16 March 2004, the High Court found that it was an irrelevant matter for the Environment Court to take into account whether owners or operators of other potential sites for the proposed activity (helicopter landing) had refused to allow the applicant to carry out the activity. Personal difficulties of an applicant are not a relevant planning issue or justification for allowing more than minor adverse effects. (Citing *Taylor v Waimakariri DC* C022/96 (PT).)

Effects that will not result from a particular application (eg for land use consent) but may result from a possible future application on the same land (eg for subdivision consent), are not relevant to the assessment of effects at least in terms of decisions to notify because they are not effects of the application. Nor is the fact that there are alternatives available to an applicant and that these may not have been properly considered a relevant matter in terms of assessing the effects and affected persons at least where the council concludes that the proposal will not have significant adverse effects. See *Housiaux v Kapiti Coast DC* HC Wellington CIV-2003-485-2678, 19 March 2004.

In *Rodney DC v Auckland RC* A022/94 (PT), the Tribunal held that the RMA costs incurred by public authorities for their works are executive matters for which they have political responsibility to their electorates, and are not relevant land use planning matters on appeal.

(13)Miscellaneous matters

In the case of an application for a resource consent to demolish a heritage building, seismic, fire, and electrical issues that arise in respect of buildings are relevant: *NZ Historic Places Trust v Christchurch CC* EnvC C173/01. Proper management of fire risk was confirmed to be a relevant s 5 matter in *Skyline Enterprises Ltd v Queenstown Lakes*

District Council [2017] NZEnvC 124.

In *Paremata Residents Assn Inc v Porirua CC* EnvC W041/03, the Environment Court held that it was appropriate to have regard to the planning history of a site where it was proposed to establish a service station on a site that had been previously considered for the same activity.

However, in *Progressive Enterprises Ltd v North Shore CC* HC Auckland CIV-2008-485-2584, 25 February 2009, the High Court held that an earlier Environment Court decision which declined consent for a similar proposal on the same site did not bind the decision maker to make the same decision, particularly when there were material differences between the proposals considered. The conclusions in the earlier Environment Court decision were therefore of marginal relevance.

The Court in *Royal Forest and Bird Protection Soc Inc v Gisborne DC* EnvC W026/09 held that an offset offer of pest management control was highly relevant and reasonably necessary to determine the application.

(14)Competing proposals

The conventional principle is that the merits of competing applications are irrelevant (see the decisions cited at A100.02). The Court of Appeal in *Central Plains Water Trust v Synlait Ltd* [2009] NZCA 609, [2010] 2 NZLR 363, held that a competing applicant cannot present its own application by way of its submission at the hearing of the earlier application. They may, as any member of the public may do, challenge the detail of the first application or put to the consent authority competing concepts which may lead to the consent authority:

(a) Rejecting the first application;

(b) Allowing it in part only;

(c) Reserving judgment until later applications have been heard; or

(d) In exceptional circumstances adjourning the hearing only partly heard (although the Court noted that this in itself may risk infringing s 21, and in general may not work with the strict timetable under the RMA).

(15)Causing unnecessary expense to ratepayers

It is lawful to refuse an application for resource consent on the grounds that it would cause unnecessary expense to ratepayers, for example through creating a need to provide additional infrastructure: *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC 109, (2017) 19 ELRNZ 774; *Coleman v Tasman DC* EnvC W067/97 and *Coleman v Tasman DC* [1999] NZRMA 39 (HC).

A104.11Investment a matter to which regard must be had –– subs (2A)

This subsection was inserted by the RMAmA05. The amendment displaces those decisions that proceeded on the basis that sunk costs had to be disregarded. See, for example, the Court's criticism of a provision in a regional plan indicating that the investment in dams and associated structures made it inappropriate to prevent the use of the

dammed water for the purpose for which it was dammed: *Alexandra District Flood Action Soc Inc v Otago RC* EnvC C102/05. However, the Court did accept that for the purpose of achieving sustainable management the dam and structures were physical resources whose existence and potential were important considerations.

Before assertions of investments ("sunk costs") can be given weight, those relying on this ground must provide robust evidence as to the value of the investments: *Marr v Bay of Plenty RC* [2010] NZEnvC 347, (2010) 16 ELRNZ 197.

A104.12Trade competition — subs (3)(a)

(1)Irrelevant planning consideration

The prohibition having regard to trade competition reflects the established principle that planning is not to be used for licensing purposes: *Foodstuffs Properties (Wellington) Ltd v Upper Hutt CC* (1990) 14 NZTPA 232 (PT), followed in *Mobil Oil (NZ) Ltd v Manukau CC* A088/92 (PT). See also *Archibald v North Shore CC* HC Auckland M2388/91, 18 December 1992, and *Shell Oil NZ Ltd v Auckland CC* (1993) 2 NZRMA 363 (PT). That approach accords with the promotion of the public interest against restraint of trade, as expressed in the purpose provision of s 1A of the Commerce Act 1986: "to promote competition in markets for the long-term benefit of consumers within New Zealand": see *Montessori Preschool Charitable Trust v Waikato DC* [2007] NZRMA 55 (HC). See also A74.04.

The purpose of s 104(3)(a) is to prevent trade competitors frustrating legitimate activities purely for the purpose of preventing commercial competition. The purpose is not to prevent competition for use and enjoyment of resources between resource use competitors, or the avoidance of mitigation of adverse effects on the environment; it is the narrow concept of economic market impairment arising for trade competition that the Court cannot consider: *Kuku Maru Partnership (Beatrix Bay) v Marlborough DC* EnvC W050/02.

In *Todd Energy Ltd v Taranaki RC* EnvC W101/05, the Court drew a distinction between "trade competition", understood in the terms of subs (3)(a) and the situation in this case where Todd Energy Ltd and Fonterra Co-operative Group Ltd were joint venturers. Though they may have used the RMA process to jostle for indirect commercial advantage, they were not competing for the same business.

In *Montessori Preschool Charitable Trust v Waikato DC* [2007] NZRMA 55 (HC), the High Court held that the test was whether there was competitive activity with a commercial element. The status of the body carrying out the activity was not relevant. The fact that one of the parties in competition was a charitable trust did not remove the matter from the scope of subs (3)(a).

The fact that other commercial boat operators may be able to provide the same or similar service in an area is an issue of trade competition rather than an issue of adverse effects on the environment: *Cruising Milford Sound Ltd v Southland RC* EnvC C165/05.

In *Contact Energy Ltd v Clutha DC* EnvC C073/08, the Court refused to impose conditions that would delay the commissioning of a wind farm until certain upgrades on the National Electricity Grid had been undertaken. The Court held that the effect complained of was essentially a lost bargain, and that the condition sought was unreasonable and sought to protect Contact's position in the market. The Court noted that the condition may also have had the effect of frustrating any consent granted. See also A7.10.

The RMAmA09 strengthened the restrictions on trade competitors. See Part 11A. The cases decided under the pre-October 2009 RMA provisions may still provide some guidance, but in light of the amendments they should be applied with caution.

(2)Effects on commercial centres

In *Queenstown Property Holdings Ltd v Queenstown Lakes DC* [1998] NZRMA 145 (EnvC) it was held that "trade competition" includes "any activity relating to the buying and leasing (and/or eventual sale) of land".

Queenstown Property was followed in *Baker Boys Ltd v Christchurch CC* (1998) 4 ELRNZ 297; [1998] NZRMA 433 (EnvC), where the Court observed "trade competition" encompasses competition as between existing and proposed supermarket operators (or as between other trades), and as between their existing and proposed building owners/lessees, and as between existing shops (and lessors) anchored around an existing supermarket and a proposed supermarket (or its owner/lessor).

In *Kapiti Coast Airport Holdings Ltd v Alpha Corporation Ltd* [2016] NZEnvC 137, the Court made a declaration that some of the submitters in question on a private plan change request were trade competitors but declined to do so in relation to others. The Court applied the approach in *Montessori* (above) "that what matters is that there be a competitive activity having a commercial element". The Court concluded that three of the submitters were commercial land owners, developers and lessors and competed with the applicant for leasees to rent their premises. The Court distinguished *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815, (2013) 17 ELRNZ 585 and found that unlike that case the submitters in question were not simply competing for use of limited resources. The Court declined to make a declaration that some other submitters were trade competitors on the basis that they were investors in one of the trade competitors, rather than themselves being commercial lessors (the Court noted that the extent to which the submission or evidence was tainted by commercial concerns was a matter for the council decision makers). The Court also declined to declare that a submitter who was a CEO of some of the trade competitors was a trade competitor in his own right. The Court noted that the surrogacy provisions in ss 308E and 308F only apply to proceedings in the Environment Court.

In *The Blenheim Centre Ltd v Marlborough DC* (1997) 3 ELRNZ 204 (EnvC), the Court noted that while it is directed not to have regard to the effects of trade competition on trade competitors, this does not affect its ability to take into account, against the background of the basic purposes of the Act, the wider economic effects on existing commercial centres when determining the extent to which new commercial development should be provided. In *National Trading Co of NZ Ltd v North Shore CC* EnvC A182/02, consideration of the viability of existing retail centres and their positive contribution to the social and economic well being of the community was not precluded by trade competition, because the indirect and consequential effects of trade competition could be considered under the Act. The RMAmA09 amendments appear to have reversed this position.

See also *Westfield NZ Ltd v Upper Hutt CC* EnvC W044/01, where the Environment Court reviewed *Marlborough Ridge Ltd v Marlborough DC* (1997) 3 ELRNZ 483; [1998] NZRMA 73 (EnvC), and *Queenstown Property Holdings Ltd v Queenstown Lakes DC* (above). The Court approved and applied the approach taken in those cases, that the emphasis of the RMA is on enabling or providing the "environment" or conditions in which people can provide for their wellbeing. In light of these cases, the Environment Court noted that its concern about the proposal (a suburban mall) was that it was "disenabling" of the CBD. As such, concerns went beyond trade competition to conflict with Part 2, particularly s 5.

The Court in *Kiwi Property Management Ltd v Hamilton CC* (2003) 9 ELRNZ 249 (EnvC), considered consequential or "distributional" effects, meaning the effects of the redistribution of retail expenditure. Such effects are often at a distance, and are the collateral effects of trade competition on amenity, efficiency and community enablement.

(3)Genuine issues of public interest

Sometimes a trade competitor is able to raise genuine issues of public interest, especially if the proposal is on a site which is an area of considerable public, as opposed to private, interest and where the general public may be unaware of what is proposed or are not sufficiently informed to be concerned about difficulties which might impact on future amenities: *Foxley Engineering Ltd v Wellington CC* W012/94 (PT). See also *Aqua King Ltd v Marlborough DC* EnvC W054/00.

In *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC* EnvC W025/02, while questions of trade competition arose (but were not argued), the overall importance of the inshore ecological systems to the coastal marine area generally outweighed issues of potential trade competition. In that case, a degree of trade protection was an inevitable consequence of needing to manage the ecological effects: see also *Southern Alps Air Ltd v Queenstown Lakes DC* [2007] NZRMA 119 (EnvC). That point was accepted on appeal in *Southern Alps Air Ltd v Queenstown Lakes DC* (2007) 13 ELRNZ 221; [2008] NZRMA 47 (HC). Compare the approach adopted by the Environment Court in its subsequent decision in *Southern Alps Air Ltd v Queenstown Lakes DC* [2010] NZEnvC 132.

(4)Deleted

(5)When irrelevant trade competition effects become relevant amenity effects

In *Discount Brands Ltd v Northcote Mainstreet Inc* [2004] 3 NZLR 619; (2004) 10 ELRNZ 204; [2005] NZRMA 57 (CA), the Court of Appeal considered that there would only be a relevant environmental impact, which was more than minor, if there was a "ruinous" or "major commercial and economic impact on existing centres". The approach was not accepted by the Supreme Court in *Westfield (NZ) Ltd v North Shore CC* [2005] 2 NZLR 597; (2005) 11 ELRNZ 346; [2005] NZRMA 337 (SC). Blanchard J considered, at [120], that:

> "In equating major effects with those which were "ruinous" the Court went too far. A better balance would seem to be achieved in the statement of the Environment Court … that social or economic effects must be "significant" before they can properly be regarded as beyond the effects ordinarily associated with trade competition on trade competitors."

The Supreme Court also stated that the "significant" effects test is not necessary for amenity effects to be established. Blanchard J noted, at [20], that it would be:

> "[n]ecessary for a consent authority first to consider how trading patterns may be affected by a proposed activity in order that it can make an informed prediction about whether amenity values may consequentially be affected"

Decision makers are not to take into account effects such as the erosion of patronage or profit margins, or even the enforced closure of competing businesses. But if the effects of allowing a new business into the arena would be to cause significant economic and social effects to an existing centre as a whole, to the point where its amenity values are affected in a significantly adverse way, then that is to be weighed in coming to an overall decision under s 5: *Southern Alps Air Ltd v Queenstown Lakes DC* [2010] NZEnvC 132.

The Environment Court in *Foodstuffs (South Island) Ltd v Queenstown Lakes DC* [2012] NZEnvC 135 expressed

reservations about whether consideration of significant adverse social, amenity and economic effects as a consequence of trade competition was in fact permissible. While such effects may be more remote effects of trade competition, the Court observed that their cause was the same and arguably within the prohibition imposed by s 104(3).

A104.13Persons affected who give written approval — subs (3)(a)(ii) and (4)

(1)Written approval

Section 104(3)(a)(ii) prohibits a consent authority from having regard to any effect on a person who has given written approval to an application.

Although the effects of a proposal on persons most closely affected by it cannot be taken into account when those persons have given their approval, the fact of that approval is a relevant consideration when weighing the question of public confidence in the administration of the district plan: *Transit NZ v Nelson CC* W021/94 (PT).

In *Oggi Advertising Ltd v Auckland CC* [1995] NZRMA 529 (PT), the Tribunal granted consent to a non-complying activity. The Tribunal noted that consistent administration of the district plan was not a relevant consideration where affected neighbours' written approvals had been obtained. The Tribunal also rejected any suggestion that the neighbours' approvals were in any way less important because of the motive for the giving of approvals. See also *BP Oil NZ Ltd v Palmerston North CC* [1995] NZRMA 504 (PT) on this point.

The requirement for written approval, read in the context of the section as a whole, means that the approval only needs to be an agreement to the proposal: it need not be positive. Thus, in *Queenstown Property Holdings Ltd v Queenstown Lakes DC* [1998] NZRMA 145 (EnvC), a deed recording agreement not to oppose the proposed development was sufficient approval. This approach was followed in *Waiheke Island Airpark Resort Ltd v Auckland CC* EnvC A088/09, where the Court held that an agreement or approval need not be "positive", but may be couched in somewhat more negative terms and still amount to a binding approval.

Where an apartment block owner had given an express approval under (the former) s 94, the Court was still entitled to consider adverse effects on the apartment's tenants, even though they had not made submissions on the proposed development: *Queenstown Property* (above).

In *Ngai Te Hapu Inc v Bay of Plenty Regional Council* [2017] NZEnvC 73, the Court opined that the comments in *Queenstown Property* and *Waiheke Island Airpark Resort Ltd* (above) were not intended to apply in relation to s 104(3) approvals for the more complex situation of iwi or hapu groups, especially when incorporated and unincorporated bodies were being utilised. If the Court were to rely on such consents, a decision might always be open to challenge on the basis that a group providing the consent was not authorised to do so on behalf of all of the constituent members.

The Act does not expressly exclude consideration of effects on future owners of land the present owners of which have consented, but future owners as a class cannot ordinarily be taken to have a greater interest, at the point in time at which the consent authority must make its decision, than does the general public: *Adcock v Marlborough DC* HC Blenheim CIV-2010-406-230, 24 May 2011.

In *Taranaki Energy Watch Inc v South Taranaki District Council* [2020] NZEnvC 18, the Court held that written approval by a landowner would not necessarily preclude the consent authority considering potential effects on visitors who might be present on that landowner's property. Persons who have given their approval to a proposed activity are

not the "sole arbiter of effects"; this is the consent authority's role. If it is reasonably foreseeable that a member of the public may be present at or in occupation of the sensitive activity, depending on the nature, scale and severity of adverse effects, the effect on those persons may be able to be considered pursuant to s 104(1)(a).

In *Coneburn Planning Ltd v Queenstown Lakes DC* [2014] NZEnvC 267, the Court held that a registered covenant constituted written approval under s 104(3) of the RMA from various owners and occupiers of land which was subject to the covenant. The Court reviewed the terms of the covenant and held that the persons who entered into the covenant must have consciously turned their minds to all the possible planning applications that could be made by the developer or its successor thus satisfying the requirement that there was a written approval from those persons.

(2)Withdrawal of written approval

Under s 104(4), where any person gives written notice to the consent authority that their approval is withdrawn, either before a hearing or otherwise before the determination of the application, then a consent authority is entitled to consider effects on that person. The weight to be given to effects on that person will be at the discretion of the consent authority.

In *Deegan v Southland RC* EnvC C110/98, a transfer conferring a right to take and convey water was held to be a form of approval contemplated by what is now s 104(3)(a)(ii). This could not be revoked as to do so would amount to an abuse of process of the Court.

A104.14Restrictions on grant of certain water permits and coastal permits — subs (3)(c)

Section 104(3)(c) imposes a prohibition on consent authorities granting resource consents which are contrary to the provisions of s 107 (discharge permit or coastal permit to discharge), s 217 (water conservation orders), s 152 (Orders in Council relating to activities in coastal marine area), or any regulations.

Note the provisions of s 217(2), which impose restrictions on the grant of water permits in order to protect the integrity of water conservation orders.

On water conservation orders generally, see ss 199 - 217.

For the relevance of a WCO to an application for a land use consent, see *Kemp v Queenstown Lakes DC* [2000] NZRMA 289 (EnvC), and commentary at A200.03 and A217.04.

A104.15Testing non-notification before the Environment Court? — subs (3)(d)

(1)Background

Section 104(3)(d) provides a jurisdictional barrier to a consent authority granting a resource consent if the application should have been publicly notified and was not.

(2)An alternative to judicial review? — limited notification only

This provision is only likely to offer an alternative in limited circumstances where consents are processed on the limited notification track in terms of s 95B. Where an application is processed on a limited notification basis, persons who were notified would have the opportunity to argue on appeal to the Environment Court that the application should have been publicly notified. Given that it is a jurisdictional barrier to the grant of a consent (in much the same way as s 104D(1) in relation to non-complying activities), it will be a matter which the Environment Court is obliged to consider if it is raised on appeal in those circumstances, or if a consent authority declines consent on the basis that the decision should have been publicly notified and was not, as was the case in *Oasis Clearwater Environmental Systems Ltd v Selwyn DC* [2007] NZRMA 497 (EnvC).

In the *Oasis* case, the council mistakenly restricted the exercise of its discretion at notification stage, when in fact the activity was non-complying, in concluding that effects were minor and proceeded on a limited notification basis. The application proceeded to a hearing before a commissioner who determined that effects were more than minor, despite the applicant having secured affected party approvals and proposed various refinements to the proposal in the meantime. The council therefore issued a decision refusing consent pursuant to s 104(3)(d). The two main issues confronting the Court on appeal were whether it could be "satisfied" that effects were minor for the purposes of (the then) s 93(1)(b), and whether it should consider effects as at the date of the notification decision or the date of the substantive decision.

The Court did not reach a firm conclusion on the appropriate time at which the assessment should be made, but even using the time of substantive decision as being the relevant time for assessing effects being most favourable to the applicant, it concluded that it could not be satisfied that the adverse effects of the activity on the environment would be minor. It therefore concluded that it had no jurisdiction to grant consent, and accordingly upheld the council's decision.

In *Maungaharuru-Tangitu Trust v Hawke's Bay Regional Council* [2016] NZEnvC 232, the Environment Court disagreed with a submission that s 104(3)(d) meant that consent could be granted as long as one of the two forms of notification was undertaken. As a consequence, if a decision-maker concludes that an application processed with limited notification should have been publicly notified, the s 104(3)(d) bar would appear to be triggered.

(3)Not a substantive consideration when deciding on grant of consent

In *Bayley v Queenstown Lakes DC* C080/94 (PT), the consent authority dealt with an application to subdivide a property into two lots as non-notified, as most of the affected neighbours had given their approval. The council, however, then declined to grant a consent. On appeal, the Tribunal reversed the decision of the consent authority, giving rise to the question as to whether the prohibition under what is now subs (3)(d) would apply. The Tribunal considered that the one neighbour who had not given written approval was highly unlikely to be adversely affected by the subdivision, and, though not an objector, he had preferred not to be involved. However, if the new lot of the subdivision was ever built on, that would give an opportunity for notification.

In *Fullers Group Ltd v Auckland RC* [1999] NZRMA 439 (CA), the Court of Appeal held that when a consent authority is deciding whether to grant consent, there is no statutory obligation on it to separately consider whether the application should have proceeded on a non-notified basis if that has already been considered at a prior stage.

Subsection (3)(d) qualifies the decisions in *Fullers* and *Bayley* (above), but only in respect of decisions on applications which have been processed through limited notification. In those circumstances, it will be a substantive consideration.

A104.16Activity differently classified — subs (5)

Subsection (5) allows consent authorities to grant consent for the correct category of activity notwithstanding that this may differ from the description in the application and notwithstanding that the activity classification may have changed since the application was lodged. There is, in any event, no obligation for an applicant to classify activities within an application: that is a matter for the consent authority. See, for example, *Westfield NZ Ltd v Upper Hutt CC* (2000) 6 ELRNZ 335 (EnvC).

The application of s 88A in *Canterbury RC v Christchurch CC* (2001) 7 ELRNZ 97 (EnvC), means that if the activity type/class changes, as a result of an amendment to a plan or proposed plan after the application has been made, the application is to be considered and determined in terms of the provisions of the plan or proposed plan as they are at the time of consideration.

A consent authority may decline a consent application if it has inadequate information to determine the applicaton. Before doing so, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

A104.17Irrelevant considerations

(1)Applicant's financial or personal circumstances

Consent authorities are not called on to judge the business viability of proposals that are the subject of resource consent applications, either separately or by comparison with any adverse effects on amenity values: *Warbrick v Whakatane DC* [1995] NZRMA 303 (PT); *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70 (HC). The personal circumstances or financial difficulties of an applicant are not a relevant planning issue nor justification for allowing adverse effects of a proposal on the surrounding environment: *Taylor v Waimakariri DC* C022/96 (PT).

See also *Whiting v Tasman DC* W070/95 (PT).

See also *Munro v Manukau CC* EnvC A074/01, where irrelevant considerations included the applicants' commitment to the land, the level of subdivision consents granted to the applicants over the past decade, and the benefit granted to the public by the transfer of significant native bush blocks to the Department of Conservation.

The concept of fiduciary duty to ratepayers is not an appropriate basis for the Environment Court to intervene in a local authority's decision to carry out a public work, the cost of which would have to be met by the community that would be served. A decision that the cost of a public work is appropriate is one to be made by the elected members of the council for which they are responsible to the electorate. See *Omokoroa Ratepayers Assn Inc v Western Bay of Plenty RC* EnvC A102/04.

(2)Matters irrelevant to type of consent

A consent authority in respect of land use (even in the case of a joint hearing) must confine itself to considerations relating to the land use. It should not concern itself with matters for which a quite separate consent would be required from another consent authority (such as sewerage and stormwater): *Manos v Waitakere CC* [1994] NZRMA 353 (HC). See also *Quarantine Waste (NZ) Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC), and *Aquamarine Ltd v Southland RC* (1996) 2 ELRNZ 361 (EnvC). See also *Beadle v Minister of Corrections* EnvC A074/02, at A104.03(17).

(3)Statutory defences not relevant matters

In *Te Aroha Air Quality Protection Appeal Group v Waikato RC (No 2)* (1993) 2 NZRMA 574 (PT), defences that would have been available to a consent holder under s 341 were not taken into account when deciding whether to issue a consent for a non-complying activity (a rendering plant out of zone on land where that activity was not permitted).

(4)Private property rights at common law

In *Saunders v Northland RC* EnvC A040/98, in an appeal by affected landowners against a resource consent to discharge stormwater over their land, the Environment Court determined that it was not relevant to consider private property rights at common law. The Environment Court applied *Falkner v Gisborne DC* [1995] 3 NZLR 622; [1995] NZRMA 462 (HC), at 632; 477, for the principle that where common law rights are inconsistent with the scheme of the RMA, those rights are no longer applicable.

A common law right to quarry or mine privately owned minerals can be controlled or modified under the RMA, although they may not necessarily be abrogated completely or automatically: *Gebbie v Banks Peninsula DC* (1999) 5 ELRNZ 362 (EnvC).

The Environment Court in *Project Management Ltd v Marlborough DC* EnvC C041/09 adopted the Court of Appeal's finding in *McLaurin v Hexton Holdings Ltd* (2008) 10 NZCPR 1 (CA), that it has no jurisdiction in respect of property matters, and cannot make findings on matters of land ownership or property rights. See also *Norris v Northland RC* [2013] NZEnvC 208.

In *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough DC* [2010] NZEnvC 403, the Court confirmed that land ownership and disputes about private property rights are outside the Environment Court's jurisdiction and should only be taken into account where they are relevant, or reasonably necessary, to determine an issue under the RMA.

(5)Rating implications

The RMA does not include any provision that allows councils considering subdivision consents to take into account the rating implications of allowing more intensive residential use: *Precious v Western Bay of Plenty DC* W074/94 (PT).

(6)Past conduct

The past conduct of an applicant is a matter of enforcement and does not provide a legitimate ground for refusing to grant a resource consent: *Walker v Manukau CC* EnvC C213/99, applying a line of authority beginning with the Court of Appeal in *Barry v Auckland CC* [1975] 2 NZLR 646; (1975) 5 NZTPA 312 (CA). See also *Gulf District Plan Assn Inc v Auckland CC* EnvC A101/03. Past conduct may be relevant to deciding the adequacy of conditions if there is evidence that earlier conditions have proved to be unsatisfactory. For a review of case law on the point, see *Hinsen v Queenstown Lakes DC* [2004] NZRMA 115 (EnvC), where prior conduct was taken into account, although it could not be influential in a punitive manner. See also *Haines House Haulage Northland v Whangarei District Council* [2019] NZEnvC 124, where due to the applicant acting contrary to the Court's interim decision, the Court had concerns over whether the applicant would comply with any conditions of consent, and refused the resource consent.

An applicant is entitled to be treated on the basis that it will comply with the consents it holds, and with the Act: *Guardians of Paku Bay Assn Inc v Waikato RC* (2011) 16 ELRNZ 544, [2012] 1 NZLR 271 (HC).

(7)Effects on property values

Effects on property values are not a relevant consideration in determining whether a resource consent should be granted. Diminution in property values is simply another measure of adverse effects on amenity values: *Foot v Wellington CC* EnvC W073/98. See also the summary in *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137.

In *North Canterbury Gas Ltd v Waimakariri DC* EnvC A217/02, the Environment Court noted that the physical effects on the environment are usually of more importance to a case than the speculative evidence of effects on valuation. See also *Wilson v Dunedin CC* [2011] NZEnvC 164 where the Court took a similar approach in the absence of evidence to support the expression of concern about property values.

(8)Community perceptions

Community perceptions of risk are not themselves effects on the environment. It would not be consistent with the RMA for the council to be influenced by the number of people who express opposition to a proposal, or who perceive themselves to be at risk or concerned about possible adverse effects. If adverse effects on the environment are shown to be well founded, it is the adverse effects, rather than the supposed secondary results of them, that should be considered in the ultimate judgment: *Contact Energy Ltd v Waikato RC* (2000) 6 ELRNZ 1 (EnvC), and *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC).

(9)Pending legislation

The Court in its 2nd interim report (*Golden Bay Marine Farmers v Tasman DC* EnvC W019/03) could not take into account proposed legislative reforms for aquaculture (coastal tendering). Nor could it take into account the provisions of the Resource Management (Aquaculture Moratorium) Amendment Act 2002, which added new s 68A, which includes a new consideration of the adverse effects of aquaculture on fishing. This was because the Amendment Act was passed after Stage II of the Inquiry was completed.

(10)Sustainability of mineral resources

In considering an application to take schist from a riverbed, it was not relevant to consider the sustainability of the resource in light of s 5(2)(a): *Whitcombe Veneer v West Coast RC* EnvC C140/03.

(11)Need for the activity

The Environment Court, in *Gulf District Plan Assn Inc v Auckland CC* EnvC A101/03, held that its task was to consider the potential effects on the environment from granting consent to an activity, and not the need (or lack thereof) for the facility. The Environment Court followed the approach of the Court of Appeal in *Fleetwing Farms Ltd v Marlborough DC* [1997] 3 NZLR 257; [1997] NZRMA 385; (1997) 3 ELRNZ 249 (CA), and held that every case should be

determined on its merits and that it is not the role of the Court to identify the "best" proposal to achieve a given end.

However, the Court in *White v Waitaki DC* EnvC C066/06 considered that while it is not incumbent upon an applicant to prove demand for a particular activity, where the Court has to consider the sustainable development of limited resources such as coastal land it is likely to take demand (or lack of it) into account in weighing up matters and exercising its overall discretion.

(12)Purported fettering of council's ability

It is unlawful to have regard to a resolution purporting to fetter the council's ability to freely consider the objectives, policies, rules and other requirements of any planning document set out in s 104(1)(b) of the Act; or the council's ability to decline an application for resource consent and to freely consider the appropriate duration and conditions of a consent: *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37.

(13)Procedural unfairness unrelated to application in question

Alleged unfairness in a previous, separate consent process is not a relevant factor when assessing effects under s 104: *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009, relying on *McGuire v Hastings District Council* [2000] 1 NZLR 679; (2000) 6 ELRNZ 102; [2000] NZRMA 337 (CA), where the Court said that the exercise of a statutory power of a council must be accepted as lawful unless and until set aside.

A104.17AAdequacy of information – subs (6) and (7)

The power in s 104(6) to decline a consent application on the basis of inadequate information should be exercised reasonably and proportionately in all the circumstances of the case. It is a discretionary power, and the consent authority may grant consent even if it lacks sufficient information, for example if an adaptive management proposal is to be used to manage uncertainties. Section 104(6) imposes a type of legal burden on an applicant to supply adequate information, although that does not mean an applicant must pre-empt all possible arguments made by opponents, in order to disprove alleged effects. The information must be of adequate quality, as well as sufficient detail, to enable the grant of consent if no other information is put forward: *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81, upheld on appeal in *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

A104.18Scope of interpretation of resource consents

(1)Documents that may form part of consent

(a) General

If the consent incorporates by reference other documents provided in connection with an application, those other documents can be referred to in assisting in the interpretation and construction of the resource consent: *Hutt CC v Turnbull* (1993) 2 NZRMA 553 (PT). See also *A-G ex rel Hing v Codner* [1973] 1 NZLR 545; (1973) 15 NZLGR 173

(SC); *NZ Post Ltd v Moore* (1992) 1A ELRNZ 38 (PT), partially reported at (1992) 1 NZRMA 213, and *Marchant v Marlborough DC* EnvC W022/97.

It is a question of evidence whether accompanying documents or other items form part of an application. To avoid doubt, accompanying documents should be referred to in the application: *Freemans Bay Community v Auckland CC* A067/88 (PT); *Briscoes (NZ) Ltd v Christchurch CC* (1990) 14 NZTPA 275 (PT); *Queenstown Bungy Centre Ltd v Hensman* [1994] NZRMA 360 (PT). See A88.08.

(b) A more liberal approach to considering scope of consents

In *Clevedon Protection Soc Inc v Warren Fowler Ltd* (1997) 3 ELRNZ 169 (EnvC), the Court reviewed case law regarding the scope of resource consents. In contrast to *Marchant* (above), the Court held that it was entitled to have regard to the application documents when considering the scope of the consent. This was because, as a matter of jurisdiction, consent cannot be granted for more than what is applied for. See also A88.05.

Following this line of cases, the High Court in *Red Hill Properties Ltd v Papakura DC* (2000) 6 ELRNZ 157 (HC), considered that express reference to the application itself is an unnecessary precondition to referring to the application as an aid to interpretation. Any documents produced as information for the consent authority under s 92 may be referred to when construing the terms of the resource consent. Such an approach was considered to be in line with the less formalistic approach to the interpretation of contracts generally: *Investors Compensation Scheme Ltd v West Bromwich Building Soc* [1998] 1 WLR 896; [1998] 1 All ER 98 (HL), followed in *Boat Park Ltd v Hutchinson* [1999] 2 NZLR 74 (CA). See also commentary at A108.16(1).

In *Jefferies v Wellington RC* [2013] NZHC 1059, the High Court referred to the Privy Council decision in *Opua Ferries Ltd v Fullers Bay of Islands Ltd* [2003] 3 NZLR 740 (PC) in finding that background communications between the applicant and officers could not be used as an aid to interpreting the scope of a resource consent.

In *Marlborough District Council v Zindia Ltd* [2019] NZHC 2765, (2019) 21 ELRNZ 364, the High Court observed that the expansive approach to interpretation in *Red Hill Properties Ltd* (above) was expressly limited in *Opua Ferries Ltd* (above) to information provided as part of the consent process (whether as part of the application documents or in response to requests for further information).

(2)Court's guidelines for interpreting resource consents

(a) Manukau v Warren Fowler Ltd

In *Manukau CC v Warren Fowler Ltd* EnvC C124/98, the Environment Court held that: "if there is an overriding principle for the construction of a resource consent it is that it has to be interpreted in the factual matrix (circumstances) at the time it was granted and so as to reflect the purposes and the duties imposed by the Act." See also *Clevedon Protection Soc Inc v Warren Fowler Ltd* (1997) 3 ELRNZ 169 (EnvC), and *Birchfield Minerals Ltd v West Coast RC* EnvC C173/03.

The Court set out the following guidelines for establishing what those circumstances are:

> (i) So far as possible the consent should be interpreted upon its face subject to consideration of the matters raised below;

(ii) Where possible, the words used should be given their ordinary meaning, so that they may be understood by the general public: *Stop CRA Pollution (SCRAP) Inc v NZ Refining Co Ltd* (1993) 2 NZRMA 586 (PT);

(iii) The consent may be qualified by the wording of the wider application, as discussed in *Clevedon Protection Soc* (above);

(iv) A land use consent needs to be read in the context of the rule that required that consent be obtained. Other resource consents may also need to be read in the context of statutory instruments. There is no express authority for this guideline, but it is taken for granted, eg *Hutt CC v Turnbull* (1993) 2 NZRMA 553 (PT);

(v) The Court may have regard to special meanings of a particular industry: *Stop CRA* (above);

(vi) Regard should be had to the purposes of the Act (*Stop CRA*) although care should always be taken not to work backwards from adverse effect so as to define them out of the word being constructed; and

(vii) The use of affidavits to establish meanings is generally discouraged because interpretation is a question of law, not fact.

These guidelines were subsequently applied in *Wellington CC v Milburn NZ Ltd* EnvC W118/98. In that case, the Court reiterated the statement in *Clevedon Protection Soc* (above) that the starting point is the principle that every resource consent is limited by the terms of the relevant application. As in *Clevedon*, the Court again noted that when it was necessary to go behind the resource consent to the originating documents there should be no conflict over the evidence because the documents relied on form part of the council's records.

In reliance upon the Privy Council case of *Opua Ferries Ltd v Fullers Bay of Islands Ltd* [2003] 3 NZLR 740 (PC), the Environment Court in *Re Barrhill Chertsey Irrigation Ltd* EnvC C119/08 held that where there is uncertainty as to the wording of a particular consent, it is permissible to refer to the underlying documents.

An application for declarations as to the scope of certain water consents concerned consents related to the operation of a freezing works and processing plant. However, the consents were transferred to a new owner as consents for a water-bottling plant. In a preliminary proceeding, the High Court in *Aotearoa Water Action Inc v Canterbury Regional Council* [2018] NZHC 3240 relied on the approach taken in *Manners-Wood v Queenstown Lakes District Council* EnvC W077/07, 4 December 2007 and *Re Barrhill Chertsey Irrigation Ltd* EnvC C119/08 for the principle that the use to which consents were to be put, as disclosed in the documentation for the original consents, was relevant to determining the scope of the consents transferred. In this case, the Court declared that the proposed use of the water take was not within the scope of the consents transferred. See also *Marlborough District Council v Zindia Ltd* [2019] NZHC 2765, (2019) 21 ELRNZ 364.

A104.19Retrospective consents

There is nothing inherently wrong with the grant of a retrospective consent. In *Colonial Homes Ltd v Queenstown Lakes DC* W104/95 (PT), the Tribunal emphasised that consent authorities should not use the resource consent provisions of the RMA in a punitive manner. An activity which a council believes breaches the Act or the terms of a plan

should be the subject of prosecution or enforcement proceedings, rather than refusal of resource consent. In *Fiordland Travel Ltd v Queenstown Lakes DC* W106/95 (PT), the grant of a retrospective consent did not raise the issue of public confidence in the administration of the district plan, as that concept has only limited application, restricted as it is to the threshold tests of what is now s 104D(1): applying *Elderslie Park Ltd v Timaru DC* [1995] NZRMA 433 (HC).

OPERATIVE DISTRICT PLAN
REVIEW NO. 1

September 2012

Incorporating Plan Change 1 (Operative August 2019) and
Designations (new and uplifts) and changes directed by the
National Policy Statement on Urban Development 2020 (June 2021)

PO Box 115
Gordon Street
Dannevirke, New Zealand

Telephone 06-374 4080
Fax 06-374 4137
Email info@tararuadc.govt.nz

TARARUA DISTRICT PLAN
REVIEW NO. 1

This plan was approved by resolution of the Council on the 25th July 2012 to become operative on the 1st September 2012.

The Common Seal of the Tararua District Council was affixed hereto in the presence of: -

.....
Mayor

.....
Chief Executive

The Common Seal of the TARARUA DISTRICT COUNCIL

Plan Change No.1 was approved by resolution of the Council on the 31st July 2019 to become operative on the 19th August 2019.

The Common Seal of the Tararua District Council was affixed hereto in the presence of: -

.....
Mayor

.....
Chief Executive

The Common Seal of the TARARUA® DISTRICT COUNCIL

CONTENTS

GUIDE TO USING THIS DISTRICT PLAN

1.0 WHAT IS THE DISTRICT PLAN?

This District Plan has been prepared in accordance with the requirements of the Resource Management Act 1991 (RMA or 'the Act'). The purpose of the RMA is to achieve the sustainable management of natural and physical resources throughout the country.

It is generally the case, under the RMA, that Regional Councils have primary responsibility for water and air resources and soil conservation, while District Councils have primary responsibility for managing land resources. The specific functions and powers of the respective Councils are set out in the Act and they are inter-related and, in some cases overlapping.

The District Plan sets out the significant resource management issues in the Tararua District and it explains the objectives, policies and methods of implementation that the Council is proposing to adopt to ensure that the District's land and associated natural and physical resources are sustainably managed.

The Plan contains rules, which have the force and effect of regulations in law, relating to the use, development and protection of all land in the Tararua District. The Plan specifies what can and cannot be done in different parts of the District and the environmental standards that must be met. It is, therefore, an important document for all involved in current or proposed land use activities or land subdivision and development.

2.0 STRUCTURE OF THE DISTRICT PLAN

The District Plan comprises 10 Parts. The following brief explanation of Parts 1 to 10 of the Plan is intended to assist readers to find their way around the Plan. Reference should also be made to the Table of Contents for further details of the Plan's structure.

Part 1: Introduction - This part of the plan provides an introduction to the RMA and outlines the purpose of the District Plan and its relationship with other plans produced by the Council and other authorities. A brief description of the Tararua District provides the context within which the District Plan has been prepared.

Part 2: Resource Management Policy Section - This part of the Plan sets out the significant resource management issues in the Tararua District, the Council's objectives and policies in relation to these issues, and the range of implementation

methods that will be used to give effect to the policies. This section is important as it "sets the scene" for the rules which follow in later Parts.

Part 3: Management Areas - For the purposes of this District Plan, the District has been divided up into five categories of "Management Area" on the basis of the differing environmental qualities and community expectations with respect to amenity in different areas of the District. Part 3 of the Plan introduces the Residential, Commercial, Industrial, Settlement and Rural Management Areas, and the environmental outcomes sought for each area as a result of the implementation of the District Plan.

Part 4: Rules - Listing of Activities - This part of the Plan must be read in conjunction with Parts 5 and 6. Part 4 lists the broad categories of activity that are permitted in each Management Area, subject to meeting the environmental standards in Part 5. All activities which are not permitted activities in the Management Area concerned require a resource consent.

Part 5: Rules - Environmental Standards - The RMA places an emphasis on controlling the "effects" of land use activities rather than the activities themselves. This part of the Plan specifies the environmental standards that have to be met by permitted activities in order for them to establish and operate as of right. The environmental standards include both fixed physical standards (development standards) and also performance standards to control the ongoing operational effects of activities. Where environmental standards are not met, a resource consent application is required and this part of the Plan specifies the criteria to be used by Council to assess applications.

Part 6: Interpretation - This part of the Plan contains the definitions of terms used in the Plan. In addition there is an explanation of Maori terms used in the Plan. The definitions section forms part of the Plan rules but the explanation of Maori terms does not. It is intended only as a guide for readers unfamiliar with the few Maori terms which are used.

Part 7: District Plan Administration, Resource Consent Procedure and Information Requirements - This part of the plan explains the different categories of activity, and types of consent, that are referred to in the Plan and the RMA. It then explains the procedure for lodging a resource consent application, the information to be provided and the process by which an application will be considered and determined.

Part 8: Monitoring and Review - The District Plan should not be seen as a static document which, once adopted, is "set in stone" for the next 10 years. On the contrary, there is a need (and legislative duty) to regularly monitor the effectiveness of the Plan's policies and methods in achieving the environmental results sought. This part of the Plan sets out the Council's monitoring strategy.

Part 9: Schedules and Appendices - This part of the Plan contains various schedules, lists, diagrams and so on that are referred to in different parts of the Plan.

Part 10: District Plan Maps - The District Plan maps are a very important part of the Plan as these identify the Management Area (Residential, Commercial, Industrial, Settlement or Rural) which applies to each parcel of land in the District. This in turn identifies the activities which can be carried out "as of right" on that land, those which require a resource consent and the environmental standards which apply in any particular case. The maps also identify the District's roading hierarchy, designations, heritage and natural features in the District.

3.0 HOW TO USE THIS DISTRICT PLAN

(a) The first step is to establish the Management Area in which the subject property is located, from the District Plan maps (Part 10).

(b) If you want to know the range of activities which can be undertaken on that particular piece of land, or if you have a particular activity in mind, refer to Part 4 "Listing of Activities". This specifies the activities which are permitted as of right in each Management Area, providing that all environmental standards are met. Turn to Part 6 for the definitions of terms used, and to Part 5 to determine the applicable environmental standards.

(c) If the proposed activity is a permitted activity in the Management Area concerned, and it meets all the applicable environmental standards, then it can be carried out "as-of-right" without the need for a resource consent.

(d) If the proposed activity is a permitted activity in the Management Area concerned, but does not meet one or more of the applicable environmental standards, then a resource consent must be obtained before it can proceed. Refer to Part 2 (Policy Section), Part 3 (desired characteristics in each Management Area) and then Part 7 for details on how to lodge an application and the process that will be followed.

(e) If the proposed activity is specifically listed as a controlled, restricted discretionary or discretionary activity, or is deemed in the Plan to be a discretionary activity because it is not otherwise specifically provided for, a resource consent must be obtained before it can proceed. Refer to comments in (d) above.

(f) If the District Plan maps show that the property is subject to a "designation" for a specific purpose, or it contains or is close to a heritage feature or natural feature, then reference should be made to the Schedules in Part 9 to determine the nature of that feature and any controls imposed.

(g) Finally, if you have any questions or require further information or clarification, please contact:

The Manager Environmental Services
Tararua District Council
Gordon Street
PO Box 115
DANNEVIRKE

Tel: **(06) 374 4080**
Fax: **(06) 374 4137**
Email: **info@tararuadc.govt.nz**

1 INTRODUCTION PART 1

Part One outlines the context within which the District Plan has been prepared. The legislative background to the Plan is introduced in sections 1.1 - 1.3 and the geographical, demographic and economic features of the Tararua District are summarised in section 1.4.

1.1 Background to the Resource Management Act

1.1.1 BEFORE THE RESOURCE MANAGEMENT ACT 1991

Prior to 1991, New Zealand's environmental laws were characterised by numerous uncoordinated statutes which had been enacted over the years to deal with the many different aspects of the natural and built environment. There were many different approaches and procedures in place for the management of various natural and physical resources (land, water, air, soils, minerals and the built environment) and responsibilities were equally fragmented. Recognition of the need for a more integrated approach to resource management was a significant factor behind the development of the RMA.

1.1.2 INTERNATIONAL ENVIRONMENTAL CONCERNS

There has also been increasing international concern about global environmental issues. The conclusion from the "Earth Summit" in Rio de Janeiro, Brazil 1992, was for action from Governments worldwide to move towards sustainable development of the earth's resources by the 21st century. The concept of "sustainable development" means development that meets present day needs without compromising the ability of future generations to meet their own needs. The New Zealand Government was a signatory to "Agenda 21", thereby accepting the concept of global sustainable management. This concept had already been accepted as a central tenet of the RMA.

More recently, the Kyoto Protocol (a protocol to the international Framework Convention on Climate Change) was ratified by New Zealand in December 2002 and took effect in February 2005. The objective of the protocol is to reduce overall greenhouse gas emissions of developed countries to 5 percent below 1990 levels by 2012.

1.1.3 THE RESOURCE MANAGEMENT ACT 1991

The RMA has resulted in the consolidation of New Zealand's environmental laws and provides a framework for the management of our natural resources in an integrated manner. It assigns resource management responsibilities and functions to central and local government, and duties and restrictions upon us all.

1.1.4 AN EMPHASIS ON NATURAL AND PHYSICAL RESOURCES

The RMA recognises that the natural environment operates within a social, economic, cultural and political context and that these are matters to be taken into consideration. They remain secondary, however, to the primary purpose of the RMA which is the "sustainable management of natural and physical resources" (section 5 of the RMA).

1.1.5 AN "EFFECTS-BASED" APPROACH TO RESOURCE MANAGEMENT

The introduction of the RMA has seen a philosophical shift from controlling activities to controlling the adverse effects of activities. This means that "market forces" and "individual choice" may generally play a larger role in the location of activities, provided that their effects are not incompatible with the environmental outcomes sought for the area concerned.

1.2 Purpose of District Plan

Section 73 of the RMA requires that a District Plan must be prepared for each district. The District Plan provides the framework for managing the use, development and protection of the land resources of the District, and its rules have the effect of regulations in law. Water and air resources are amongst the responsibilities of Regional Councils. There are a few exceptions to this general rule. For example, controlling the effects of activities on the surface of water is a function of the District Council. Similarly, the Regional Council is responsible for activities on land in some instances, as well as soil conservation and discharges to land that may affect water quality.

The District Plan sets out the significant resource management issues of the Tararua District and explains the objectives, policies and methods that the Council has adopted to achieve the sustainable management of the District's natural and physical resources.

Rules in the District Plan are not the only means of achieving the sustainable management of resources. Desired environmental outcomes may also be achieved by such measures as:

- the provision of information and education;
- the provision of works or services by the Council or other public authority (for example, refer to the Council's Annual Plan);
- financial incentives and disincentives (such as rates);
- negotiation;
- legal and economic instruments;
- encouraging voluntary approaches and recognising good stewardship
- taking no action

In preparing the District Plan, the Council has considered these alternative methods. It has only adopted District Plan rules where these are necessary to achieve the purpose of the RMA and are the most appropriate means of exercising the function.

1.3 The Relationship between the Tararua District Plan and other Policy Statements and Plans

The District Plan does not stand on its own as an isolated Plan for resource management. The RMA requires that the District Plan must give effect to any national policy statement, any New Zealand coastal policy statement and any regional policy statement. It must also not be inconsistent with any regional plan for any matter specified in Section 30(1) of the RMA or a water conservation order. Other plans (such as those prepared under the Local Government Act 2002), the statutory plans of adjoining territorial authorities, and regulations, all have the potential to influence and affect the District Plan. It is possible that changes could be required in the future having regard to:

- National Environmental Standards (regulations).
- National Policy Statements on matters of national significance.
- New Zealand Coastal Policy statements.
- Water Conservation Orders.
- Regional Policy Statements and Regional Plans including Regional Coastal Plans.
- District Plans for adjacent areas.
- Planning documents recognised by the iwi authority affected by the District Plan.
- Regulations relating to the conservation or management of taiapure or fisheries.
- Management Plans and strategies prepared under other legislation.

1.3.1 NATIONAL POLICY STATEMENTS

Under Section 45 of the RMA, the Minister for the Environment may prepare national policy statements where these are considered desirable. The purpose of a national policy statement, other than a New Zealand coastal policy statement, as set out in Section 45(1) of the RMA, is *"to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act"*. Additionally, Section 57 of the RMA requires that at all times there must be at least

one New Zealand coastal policy statement (NZCPS) prepared and recommended by the Minister of Conservation. The purpose of an NZCPS as stated in Section 56 of the RMA, is "*to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand*".

Section 75 of the RMA sets out the requirements for the contents of District Plans and Sections 75(3)(a) and (b) of the Act stipulate that a district plan must give effect to any national policy statement and any New Zealand coastal policy statement.

The National Policy Statement on Electricity Transmission (NPSET) came into force in April 2008. The matter of national significance to which the NPSET applies is "*the need to operate, maintain, develop and upgrade the electricity transmission network"*, and the objective stated in the NPSET is:

"*To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:*

- *managing the adverse effects of the network; and*
- *managing the adverse effects of other activities on the network"*.

The objectives, polices and methods set out in this Plan in Section 2.8.2 relating to network utilities and infrastructure are considered to give effect to the NPSET.

The Proposed National Policy Statement for Renewable Electricity Generation (NPSREG) was notified in September 2008 and came into force in May 2011.

The NPSREG was developed in accordance with the New Zealand Energy Strategy which was released by central government in October 2007. The Energy Strategy states that the major energy challenges facing New Zealand are the need to respond to the risks of climate change by reducing greenhouse gas emissions caused by the production and use of energy, and the need to deliver clean, secure, affordable energy while treating the environment responsibly. The Strategy also sets out central government's goal that 90% of electricity generated in New Zealand should be derived from renewable energy sources by the year 2025.

It is considered that this Plan gives effect to the NPSREG.

The first New Zealand Coastal Policy Statement, prepared by the Minister of Conservation, came into force in 1994. An independent review of the NZCPS was conducted between 2002 - 2004 and subsequently, the Minister notified the Proposed New Zealand Coastal Policy Statement 2008. It became operative in 2010. The objectives, policies and methods set out in this Plan relating to the coastal environment are designed to give effect to the NZCPS.

1.3.2 REGIONAL POLICY STATEMENTS AND PLANS

Under the RMA, Regional Councils are required to prepare a Regional Policy Statement (RPS) for their region. The District Plan must give effect to any Regional Policy Statement and not be inconsistent with a regional plan for any matter specified in Section 30(1) of the RMA. The purpose of a RPS is to provide an overview of the significant resource management issues of the Region, and to achieve the integrated management of natural and physical resources between district and regional councils. Most of the Tararua District lies within the Manawatu-Wanganui Region and, therefore, the objectives, policies and methods of the Regional Policy Statement section of the One Plan (made operative in 2014) are applicable. In the south east of the District, a small area of land (south of the Owahanga River) lies within the Wellington Region and, in this area, the objectives, rules, and methods of the Regional Policy Statement (made operative in May 1995) for the Wellington Region are applicable. The RPS for each region is a key document in the framework for resource management and provides policy guidance for the content and scope of the Tararua District Plan.

In addition to Regional Policy Statements, Regional Councils are required to prepare a Regional Coastal Plan and may prepare other Regional Plans relating to any of their functions under the RMA.

Regional Plans provide detailed provisions relating to specific issues. They are necessary where there are resource use conflicts, a high demand for the use of a resource, or for any other significant resource issues.

Regional Plans may be "region wide", or they may relate to a specific geographical area or resource.

1.3.3 THE MWRC ONE PLAN [OPERATIVE AS OF 19 DECEMBER 2014]

1.3.4 THE COUNCIL'S LONG-TERM PLAN AND ANNUAL PLAN

Under the Local Government Act 2002 (LGA) local authorities must show that they are efficient, accountable, and responsive to the community. Section 93 of the LGA requires that each local authority produce a Long-Term Plan (LTP). The LTP must provide a long-term focus for decision making and cover a period of no less than ten years. The LTP must (amongst other things):

- Describe the Community outcomes for the district;
- Provide integrated decision-making and co-ordination of the Council's resources;
- Provide details of the activities and services to be provided by the local authority;
- Provide information on indicative costs of each activity and sources of funding; and
- Provide a long-term focus and a basis of accountability of the Council to its Community.

In addition to the LTP, under Section 95 of the LGA local authorities must adopt an Annual Plan every financial year. The Annual Plan must (amongst other things) support the LTP by:

- Providing details of the annual budget and funding impact statement for the year to which the annual plan relates; and
- Identifying any variation from the financial and funding impact statements in the LTP.

The reason for preparing the LTP and the Annual Plan is to keep the community informed and involved in decision making and to ensure integrated decision making and co-ordination of resources and activities.

The matters and issues that may be included in the LTP and Annual Plan are very broad and relate to all the activities of the Council. In contrast, the District Plan is limited in terms of its scope to the matters set out in the RMA.

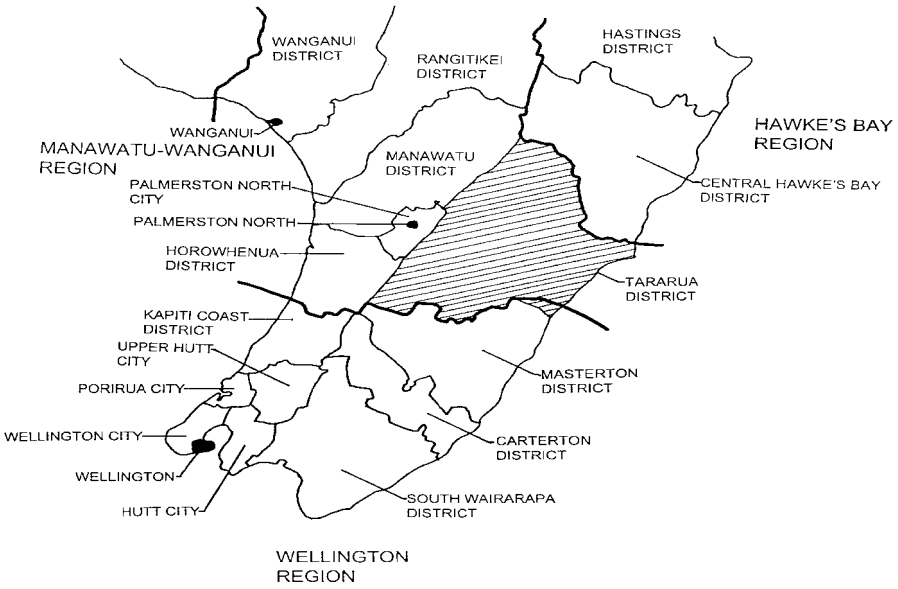
The District Plan is not a "stand alone" document. Mechanisms proposed in the District Plan to achieve resource management objectives and policies that require District Council resources or commitment to take certain actions, may need to be given effect to through the LTP and Annual Plan. The LTP and Annual Plan is the mechanism through which the Council's overall goals and objectives (c.f. environmental goals and objectives) are achieved.

1.4 Introduction to the Tararua District

1.4.1 LOCATION

The Tararua District is bounded to the north by the Central Hawkes Bay District, to the south by Masterton District and, on the western side of the Tararua and Ruahine Ranges, by Manawatu District, Palmerston North City and Horowhenua District. It covers an area of approximately 436,500 hectares (refer Figure One below).

Figure One: Location Map showing the Tararua District



1.4.2 HISTORY

Prior to European settlement, the general area now encompassed by the Tararua District was known to Maori as Tamaki-nui-a-rua. Areas and places of cultural significance to Maori include waahi tapu, urupa, battle sites, and traditional moorings in particular areas associated with the traditional use of the Manawatu River and what later became known as Seventy Mile Bush.

Places and sites of historic heritage value associated with European settlement in the District include buildings and monuments. They include, in particular, places

and sites associated with the arrival of Scandinavian immigrants to the area. Many of these immigrants originally came to New Zealand as part of the Vogel national development scheme to enable the construction of roads and railways.

In more recent years, the Mangatainoka Brew Tower has been registered as a Category 1 Historic Place by Heritage New Zealand. The tower has become the focus of a nationwide advertising campaign for 'Tui Beer'.

1.4.3 LAND RESOURCES

The Tararua District is dominated by landscapes which have developed from tectonic (earth movement) and fluvial (river) activity. Significant landscape features within the District include mountain ranges and hill country, interspersed with alluvial plains and fans, and river terraces. Refer to Figure 2 (overleaf) for a diagram of the main geographical features of the Tararua District.

To the west, the District is bordered by the Tararua and Ruahine Ranges, separated from each other by the Manawatu Gorge. These ranges form part of New Zealand's axial mountain ranges, which run in a south-west to north-west direction.

Immediately east of the Ranges lies a fertile alluvial plain, which has developed over the years from deposits from the Mangatainoka, Mangahao, Tiraumea and Manawatu Rivers and their tributaries. This alluvial plain forms a 'corridor' of high quality land intensively used for farming and horticulture. The District's main urban settlements are located within this vicinity. This corridor spans the entire length of the District, from Eketahuna in the south, to Norsewood in the north.

To the east of this corridor the landscape comprises rolling to steep hill country, further dissected by tectonic movement. The Puketoi Range runs parallel to the Tararua and Ruahine Ranges, creating a physical barrier between the coastal environment and the remainder of the District. The District is bordered on the east by the Pacific Ocean.

A wide range of soil types exist within the District, which are generally suited to pastoral farming. Changes in land use over the past ten years, however, have seen a decrease in pastoral farming in the District and an increase in more intensive dairy farming. While sheep numbers have steadied, beef cattle numbers have declined from 177,697 in 2002 to 149,505 in 2007. The amount of land used for production forestry increased from 8.568 hectares in 1995 (Statistics NZ 30 June, 1995) to 16, 206 hectares in 2002 (Statistics NZ 30 June, 2002) before reducing to 12,994 in 2007. Relatively small remnants of indigenous vegetation also exist throughout the District, in addition to that found within the Ruahine and Tararua Forest Parks.

Within this geographical setting are a number of different landscapes. There are large tracts of sparsely settled, extensive grazing land, usually in hill country areas. In these areas, the original vegetation has been highly modified from a forest landscape of high biodiversity to open grassland populated almost entirely by exotic species. This type of landscape is dominant in the eastern part of the district where vast tracts of land are managed as stations. Portions of the District's landscape remain natural, with very little evidence of human activity. Examples of this landscape within the Tararua District include the Tararua and Ruahine Forest Parks.

Since the first District Plan became operative in 1998, the development of wind farms has arisen as a significant resource management issue for the District. The wind resource in New Zealand is recognised as one of the best in the world because of the country's location within the area of prevailing westerly winds known as "the roaring forties". The Tararua District is recognised as having a particularly good wind resource because of its topographical characteristics. These characteristics have led to the development of several wind farms either side of the Manawatu Gorge on Te Apiti and the Tararua Ranges.

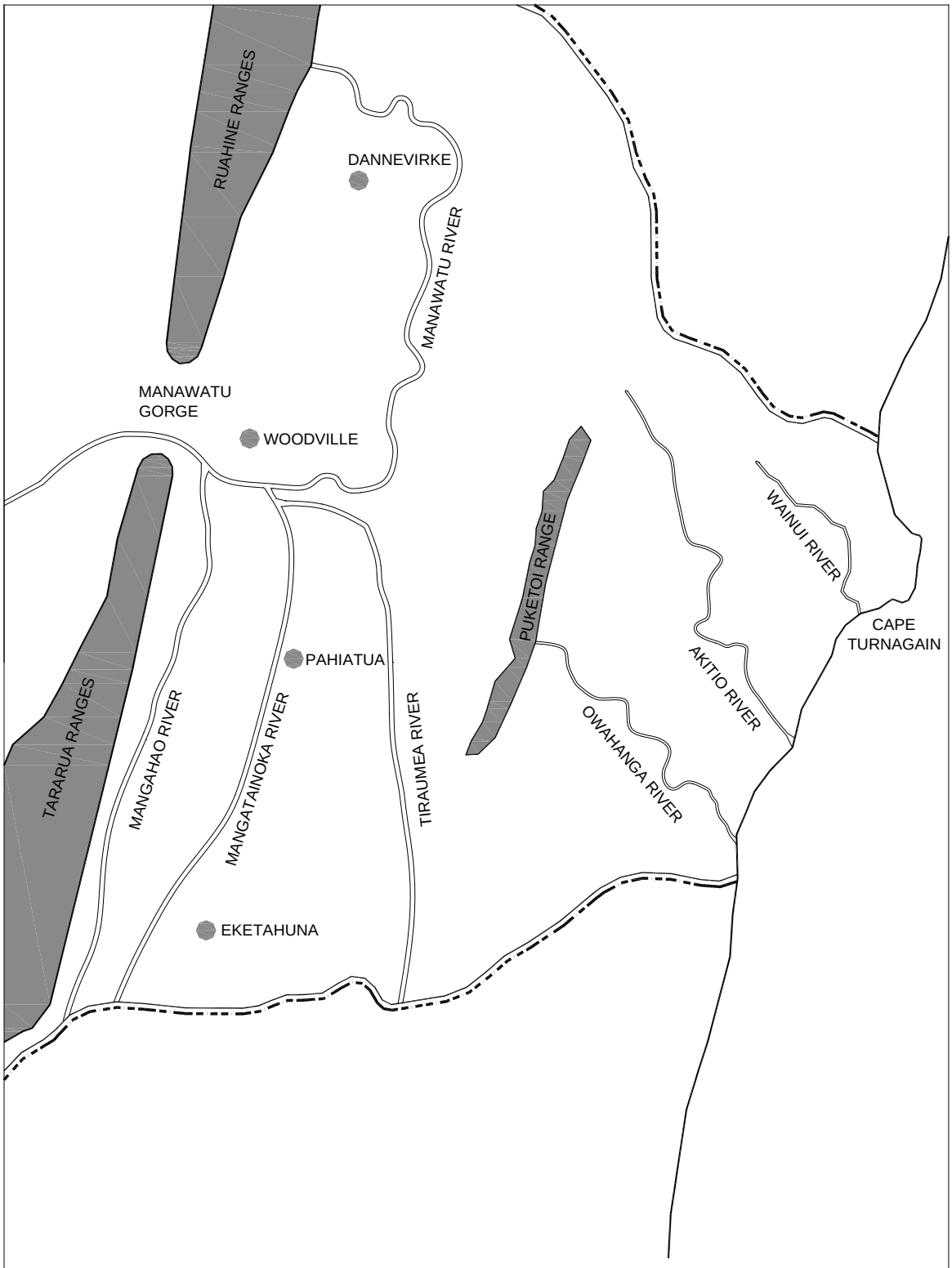


Figure Two: Diagram of Major Geographical Features in the Tararua District

1.4.4 WATER RESOURCES

Unique within New Zealand is the Manawatu Catchment, the headwaters of which are located within the Tararua District. The headwaters originate on the eastern side of the Ruahine Ranges northwest of Dannevirke. Tributaries to the Manawatu River, prior to it entering the Manawatu Gorge, include the:

- Tiraumea River and Makuri River;
- Makakahi River and Mangatainoka River; and
- Mangahao River.

The Manawatu River leaves the Tararua District through the Gorge and then flows through the Manawatu and Horowhenua Districts. The river mouth is located at Foxton. The entire catchment covers an area of 594,400 hectares. The upper catchment, i.e. the catchment area east of the Gorge, within the Tararua District, comprises 323,100 hectares.

The Manawatu River is unique as it flows through the axial ranges to the west coast.

Other significant river catchments located within the Tararua District are those associated with the Akitio and Owahanga Rivers. These catchments drain the land area east of the Puketoi Ranges and reach the east coast at the settlements of Akitio and Owahanga. Tributaries of these rivers include:

- Mangatiti Stream;
- Pongaroa River;
- Waihi Stream;
- Mangaone Stream;
- Rakaupuhipuhi Stream.

A significant feature of the rivers of the Manawatu Catchment is the trout fishery within the Mangatainoka and Makuri Rivers. Many rivers and streams within the Tararua District provide important habitat for trout and native fish.

The Pacific Ocean forms the eastern boundary of the Tararua District.

1.4.5 POPULATION

The Tararua District, at the time of the March 2013 Census, had a "usually resident" population of 16,854 (Statistics NZ 2013). This was a decline in population of 4.4% during the period between 2006 and 2013, with the population in the main urban centres varying from 0% to 8.6%. Table One shows the populations of the four main towns and the rural areas in the District and the percentage change in population between 2006 and 2013.

Table One:	**Population within the Urban Centres of Tararua District ("usually resident")**				
Urban Centre	1996	2001	2006	2013	Population change between 2001 and 2006 as a %
Dannevirke	5511	5376	5517	5043	8.6 loss
Woodville	1567	1476	1401	1401	no change
Pahiatua	2721	2610	2562	2412	5.9 loss
Eketahuna	642	579	456	441	3.3 loss
Rural Areas	8598	7815	7698	7557	1.8 loss

Within the Tararua District the population is older than the New Zealand average, with those aged over 65 years increasing rapidly. There is an average proportion of young people aged up to 19 years old, but a low proportion of residents aged 20 – 45 years (compared to New Zealand). This indicates that an increasing range of amenities and facilities need to be provided throughout the District for older people, but facilities for families are also still required.

The 2013 Census population estimates from Statistics New Zealand show a modest increase, driven by positive international migration trends. These recent statistics point to more positive long-term projections than those released after the 2013 Census.

The projected resident population of the District for the year 2038, using June 2013 figures as a base, varies from a 3.2% increase (if the high growth scenario were to occur from 2013 to 2033) to a loss of 6.3% for a medium growth scenario and a 16.0% loss for a low growth scenario (Statistics NZ, 2015). This Plan is consistent with the 2015 LTP and assumes the population of the District as a whole will show a modest growth of 3% over the next decade. However, some townships may continue to experience slow growth in population but necessitate increased development as a consequence of decreasing occupancy rates. The number of occupied households is forecast to increase at a faster rate than overall population due to this trend.

The Tararua District has a proud Scandinavian heritage. Scandinavian immigrants arrived at the port of Napier and moved south into the area that is

now the Tararua District, from 1872 onwards. The Scandinavian settlers had been encouraged to migrate to New Zealand under the Public Works and Immigration Act 1870 to clear the bush to enable the land to be farmed, and roads and railways to be built. The Scandinavian settlers earned a reputation for being extremely hard working and they cleared the “seventy mile bush” starting at Norsewood in the north of the District, and (just south of) Eketahuna in the south of the District, and working towards the middle. The town of Norsewood was formed in September 1872 by Norse settlers, and the town of Dannevirke was formed in October 1872 by Danish settlers. In return for their work, the settlers were given title to blocks of land generally varying from 20 to 40 acres. The settlers worked on the land and in the sawmills that flourished throughout the District at the time and until the early 1900’s. Many of the inhabitants of the District today are descendants of those pioneering Scandinavian settlers.

1.4.6 SERVICING AND INFRASTRUCTURE

The road network within the Tararua District is a particularly important physical resource. Parallel to the Tararua and Ruahine Ranges is State Highway 2, which travels from the Wellington Region in the South to the Hawkes Bay Region in the northeast. Woodville, in the middle of this transportation corridor, has an important function as a transport node. Links are made at Woodville between State Highway 2 and State Highway 3, which leads to the west of the Ranges through the Manawatu Gorge. Within the District there is 116.96 kilometres of sealed state highway. State Highway 2 accounts for 107.96 kilometres, and State Highway 3 for 9 kilometres of this total. Woodville is also the junction of the Wairarapa to Hawkes Bay railway line, and the Palmerston North to Woodville railway line.

Tararua District Council is responsible for the development and maintenance of all roads except state highways. Funding for a proportion of the costs associated with constructing and maintaining district roads is available from the New Zealand Transport Agency (NZTA). The balance is raised through rates. Table Two shows the length of both sealed and unsealed roads in the District.

Table Two: District Roads						
Community Board		**Sealed (kms)**		**Unsealed (kms)**		**Total**
		Rural	**Urban**	**Rural**	**Urban**	
Dannevirke Community Board	Dannevirke Area	165.507	35.582	20.619	0.154	221.862
	Akitio Area	154.776	4.972	232.070	0.042	391.860
	Norsewood Area	186.063	2.358	124.614	0.085	313.120
Subtotal Northern Ward		**506.346**	**42.912**	**377.303**	**0.281**	**926.842**
Woodville Area		196.495	12.932	27.477	0.00	236.904
Pahiatua Area		230.064	22.034	175.082	0.00	427.180
Eketahuna Community Board		166.455	6.253	193.440	0.264	366.412
Subtotal Southern Ward		**593.014**	**41.219**	**395.999**	**0.264**	**1030.496**
TOTAL DISTRICT		**1099.360**	**84.131**	**773.302**	**0.545**	**1957.338**

Reticulated water and sewerage services are provided in Dannevirke, Pahiatua, Woodville, Eketahuna, Pongaroa and Norsewood. A reticulated water supply is provided in Akitio, and a sewerage system in Ormondville.

Various utility networks are also located within, and serve the community of, the Tararua District. These network utilities include gas and electricity transmission and distribution networks, and communication and transport networks, amongst others. They play an important role in the efficient functioning and well-being of the District.

Existing infrastructure in the District includes over 200 operational wind turbines, as discussed in Section 1.4.3, and the transmission lines that connect these turbines to the local network and national grid.

1.4.7 ECONOMIC BASE

Tararua District is a rural district with the economy based largely on primary production. Agriculture is the predominant land use. In the eastern rolling to steep hill country, sheep meat and beef production are the main sources of income, while on the better classes of land in the central valley dairy farming is increasing.

Data from Statistics NZ's Agricultural Census 2012 shows that between 1996 and 2012 there was a significant swing to dairy cattle at the expense of sheep, beef and deer numbers, following a national trend. Numbers of dairy cows increased by 26% while sheep numbers dropped by 25%. Livestock numbers change in response to droughts and export prices. For example, in the period 2012 to 2015, regional survey data shows that stock numbers in the Manawatu-Wanganui Region fell 5.1% for dairy cattle, 2.1% for beef cattle and 1.7% for sheep. In terms of stock units, sheep farming remains the predominant land use. The number of farms has dropped by 15% since 1996 as farms are becoming larger in order to gain economies of scale. This has impacted adversely on rural population numbers.

Forestry is a viable land use, but after a busy planting period in the early 1990s very little expansion has taken place. There are many small plantings on farms and few large forestry plantings. In 2012 there was 16,442 hectares of exotic forest in the District. Increasingly, indigenous vegetation such as manuka, is being considered for retention, regeneration and utilisation as a source for honey production on marginal production land throughout the District.

The four main towns of Dannevirke, Woodville, Pahiatua and Eketahuna are service centres for the agricultural sector. In addition, they service other categories of economic activity such as manufacturing and tourism.

A small number of larger industries include meat processing and steel fabrication, and small-scale industries including cottage industries and home occupations are common. Tourism currently makes a small but growing contribution to the District's economy. Tourist attractions include Pukaha Mount Bruce, the Tararua and Ruahine State Forest Parks and an increasing number of owner-operated ventures.

District employment is currently at a moderate level. In recent years there has been growth in manufacturing and servicing and health sector employment. After a long period of stagnation in the agricultural sector, commodity prices recovered from 1999 with the downstream benefits accruing to the wider community. Record prices for milkfat over the last decade have stimulated expansion in the dairy farming sector. More recent declines in the milkfat prices is likely to slow or halt the number of dairy conversions, while beef prices are strong.

The value of Tararua properties, both residential and farming, has risen with the largest increases in value being on dairy farms.

Wind farms have also arisen as an important land use in Tararua that has added value to the District's economic base.

2 RESOURCE MANAGEMENT POLICY SECTION PART 2

2.1 Introduction to Resource Management Policy Section

This part of the Plan (Part 2) outlines the significant resource management issues of the Tararua District and the Council's objectives and policies in respect of these issues. This part of the District Plan is divided into the following sections for ease of reference, although it is important that each section is not considered in isolation from the others, as the policies are complementary and interconnected. The policy sections are:

2.2 Urban Land Use Management

2.3 Rural Land Use Management

2.4 Subdivision

2.5 Natural Hazards

2.6 Amenity and Environmental Quality

2.7 Activities on the Surface of Water in Rivers and Lakes

2.8 Infrastructure (Utility Services and Transportation)

2.9 Waste Management and Hazardous Substances

2.10 Treaty of Waitangi and Maori Resource Management Values

2.11 Cross-Boundary Issues

In accordance with section 75 of the RMA, each policy section sets out the following:

- **Significant resource management issues;**
- **Objective(s)** in relation to the issues concerned;
- **Policies** to be used to achieve the objectives;
- **Explanation** of the policies;
- **Methods** to be used to implement the policies (i.e. District Plan rules and/or other non-regulatory methods);
- **Principal reasons** for adopting the objectives, policies and methods of implementation;
- **Anticipated environmental results** from implementation of these policies and methods

2.2 Urban Land Use Management

2.2.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

While the Tararua District does not contain any cities or large urban centres, the four main towns of Dannevirke, Woodville, Pahiatua and Eketahuna, as well as the numerous small rural settlements in the District, present a variety of resource management issues. The significant resource management issues are outlined below.

2.2.1.1 Growth and vitality of urban areas

The purpose of the RMA, as set out in Section 5 of the Act, is the "*sustainable management of natural and physical resources*". This means managing resources in a way which *"enables people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety"* while sustaining the potential of resources for future generations, safeguarding the life-supporting capacity of resources, and avoiding, remedying or mitigating adverse effects on the environment. The primary emphasis of the RMA is clearly on environmental considerations, but it is significant that the RMA recognises the need for communities to meet their economic and social objectives. In the Tararua District, it is important that there be a resource management framework which enables the continued vitality of the district's urban areas and allows communities to evolve and develop in a flexible manner, while ensuring that there is sustainable management of resources and the environment. The issue is one of striking the appropriate balance.

2.2.1.2 Efficient and sustainable urban areas

An issue which is at the heart of sustainable management of resources, and which is particularly relevant for the Tararua District, is that of ensuring an efficient pattern of urban land use. This involves maintaining control over the shape and form of the district's urban areas. Uncontrolled development of urban activities would lead to inefficient use of the existing urban infrastructure and services which have been provided, and which continue to be maintained, at considerable cost to the community. The cost of servicing scattered, low density development around the periphery of towns is considerably higher than for consolidated urban areas, and represents inefficient and unsustainable resource use. This applies not only to services provided by the Council (and therefore funded by the community) such as roads, waste collection, sewerage and stormwater systems, but also to gas, electricity, telephone and other utilities, where costs are also passed on to consumers. Tararua's urban areas have a relatively small rating base which has to bear the increasing costs of maintaining and upgrading services to meet required standards and, in many cases, new legislative and environmental requirements. For the district's urban

areas to be sustainable in the long term, it is important that urban areas have a consolidated urban form. In addition, the encouragement of consolidated urban areas maintains the productive capacity of high quality soils around the periphery of the towns, and also helps to reduce dependence on motor vehicles, with resulting environmental and efficiency benefits.

2.2.1.3 Protection of urban environmental quality and amenity

A key element of sustainable management is ensuring that any adverse effects of activities are avoided, remedied or mitigated. Different activities may give rise to different environmental effects, and the acceptability of those effects may vary from area to area depending on existing levels of environmental quality and amenity. The "effects-based" philosophy of the RMA encourages flexibility of location for urban activities, subject to any adverse environmental effects being avoided, remedied or mitigated. The issue is one of defining (and quantifying where possible) acceptable levels of environmental quality and amenity in different areas. Furthermore, different individuals have different perspectives as to the levels of effects which are acceptable. The issue, once again, is about striking an appropriate balance which ensures that the high levels of environmental quality and amenity currently enjoyed in the district's urban areas are maintained or enhanced.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

***[Note:** In addition to the objectives and policies below, relevant objectives and policies for urban areas are also contained in other policy sections, particularly:*

- *Subdivision (section 2.4)*
- *Natural Hazards (section 2.5)*
- *Amenity and Environmental Quality (section 2.6)*
- *Infrastructure (section 2.8)]*

2.2.2 GROWTH AND VITALITY OF URBAN AREAS

The following objective, policies and methods are derived from issue 2.2.1.1 above.

2.2.2.1 Objective:

To encourage the District's urban areas to develop to meet communities' needs in a sustainable manner.

2.2.2.2 Policies

(a) To ensure that there is sufficient land within urban boundaries (having regard to the Plan's urban consolidation policy) to cater for the foreseeable demands for industrial, commercial and residential land.

(b) To facilitate community initiatives to promote the development of the District in a sustainable manner.

(c) To enable the establishment of activities and facilities which meet the environmental, economic, social, recreational, educational, and cultural needs of the District's inhabitants, in locations where their effects are compatible with the surrounding area.

2.2.2.3 Explanation:

Policy 2.2.2.2(a) recognises that significant "lead" times are required for subdivision, development and the provision of services and, therefore, it is important to plan ahead to ensure that there is sufficient vacant land available to cater for the foreseeable expansion of industrial, commercial and residential activities in the District. The potential for infill development and consolidation of urban areas will be realised before extensions to urban boundaries are contemplated and it may therefore be necessary to identify “future management areas” to ensure the provision of sufficient vacant land within urban areas for foreseeable growth. The Plan’s urban consolidation policy is stated in Policy 2.2.3.2(a). Policy 2.2.2.2(b) recognises that community initiatives can be a valuable way of improving amenity levels and the economic and social environment of the district's urban areas, and they should be supported. Policy 2.2.2.2(c) aims to provide flexibility of location for activities provided that their effects are compatible with the surrounding area. Reference should be made to Parts 3, 4 and 5 of this Plan to determine whether effects are compatible and, therefore, acceptable in a particular area.

2.2.2.4 Methods:

The Council shall implement Policies 2.2.2.2 (a) to (c) by the following methods:

(a) *District Plan rules* - The Council has defined the boundaries of the "Management Areas" on the District Plan maps, in a manner which allows sufficient scope for expansion of activities and for economic growth. The District Plan rules enable activities and facilities which meet the community's needs to be established where they will not give rise to significant adverse environmental effects. The Council has also identified a number of “Future Industrial Management Areas” and “Future Residential Management Areas” that are denoted on the District Plan maps. The intention of these areas is to indicate to plan users that they

will be re-zoned at some point in the future (via a Plan Change) and that industrial or residential development (as the case may be) will be given due recognition when considering resource consent applications. **[Refer to Parts 4 and 5 of the Plan]**

(b) *Service delivery/research and provision of information* - The Council shall continue to provide essential services to the inhabitants of the District in accordance with its LTP and Annual Plans. The Council shall, within one year of this Plan becoming operative and in consultation with Community Boards and Committees, investigate the location and need for further industrial land in the District, including the feasibility of establishing a serviced industrial park in an appropriate location in the District to promote economic growth.

(c) Community *"self-help"* - The Council shall support community initiatives such as "Mainstreet" Committees, organisations promoting heritage conservation in the District (including, particularly in the north of the District, the Scandinavian heritage) and other community and business groups which aim to promote the enhancement of the District in a sustainable manner, to the extent specified in the Annual Plan.

2.2.2.5 Reasons:

It is important for the economic development of the District, and therefore the economic and social welfare of the District's inhabitants, that adequate land is identified for future expansion of industrial, commercial and residential activities. In many cases, there are vacant serviced lots available for use within the urban areas of the District. To ensure the efficient and sustainable use of natural and physical resources, consolidation and "infill" development is a priority of the Council before any further extensions to urban (Residential, Commercial, Industrial and Settlement) Management Areas will be contemplated.

The possibility of establishing a serviced industrial park in an appropriate location within the District is a concept which first requires detailed research in order to adequately define the concept, and to assess the likely demand for such industrial land and facilities and the costs and benefits of establishing it. This research and subsequent analysis will consider other alternative or complementary measures such as temporary rate relief which could be used as an incentive to new industries to locate in the District.

Examples of community initiatives which have the support of the Council are the "Mainstreet" Committees of Dannevirke, Woodville and Pahiatua, and the Development Committee of Eketahuna. Through the Annual Plan process, the Council will consider proposals from such community groups for streetscape improvements and financial grants.

2.2.2.6 Anticipated environmental results:

(a) There will be sufficient land available for the development of new industrial, commercial and residential activities within the district's urban areas.

(b) There will be active involvement of the community in the development of attractive and sustainable urban areas.

(c) Activities which meet the environmental, economic, social, recreational, educational and cultural needs of the community will be located and operated in a manner which does not give rise to adverse environmental effects.

2.2.3 EFFICIENT AND SUSTAINABLE URBAN AREAS

The following objective, policies and methods are derived from issue 2.2.1.2 above.

2.2.3.1 Objective:

To ensure efficient and sustainable urban areas.

2.2.3.2 Policies

(a) To encourage the consolidation of urban activities within defined urban areas and settlements so as to:

- **maximise the efficient use of existing infrastructure and services; and**
- **retain the options for the future use of Class I and II land**

(b) To promote energy conservation in the design and construction of subdivisions and buildings, and in the operation of activities.

(c) To promote energy efficiency and conservation by undertaking energy use audits and implementing measures to conserve energy or improve energy efficiency in the Council's own activities where practicable and economically viable.

2.2.3.3 Explanation:

Policy 2.2.3.2(a) seeks to achieve sustainable and efficient urban areas. Infrastructure refers to the network of transportation, communication and public service facilities which support the functioning of the District. It includes road, rail, air and water transport networks, and television, radio, telecommunications, electricity, gas, sewerage systems, waste disposal, water

supply and stormwater facilities. The consolidation of urban areas will also serve to retain options for the future use of the District's highest quality soils (Class I and II soils) where these are located around the perimeter of towns. Refer also to Policy 2.3.2.2(b) in the Rural Land Use Management policy section with respect to Class I and II land.

Policy 2.2.3.2(b) recognises that the size, shape and form of towns and individual lots and subdivisions in the District has important implications (cumulatively) for energy consumption and efficiency and, therefore, energy efficient design principles should be promoted.

Policy 2.2.3.2(c) recognises the important role the Council can play by 'leading by example' and promoting and implementing energy efficiency and conservation measures in respect of its own activities.

2.2.3.4 Methods:

The Council shall implement Policies 2.2.3.2(a) and (b) by the following methods:

(a) *District Plan rules* - The District Plan maps define the urban/rural boundaries of the District's urban areas and settlements within the Rural Management Area. The District Plan rules seek to encourage urban activities to locate within consolidated urban areas. The Plan also defines an "urban buffer area" around the margins of the District's four main towns in which a minimum subdivision size of 8000m^2 applies in addition to the normal rules of the "Rural Management Area". In respect of energy conservation, the general assessment criteria for subdivisions in Section 5.2 include consideration of subdivision design and orientation for solar gain. **[Refer to Part 4 and 5 of the Plan]**

(b) *Financial incentives* - The Council shall require developers to pay the actual costs (rather than ratepayer subsidised costs) of extending service networks to the extent that these are directly related to the development.

(c) *Information and education* - The Council shall provide information to developers about energy efficiency relating to subdivision and building design.

(d) *Budgeting* – Where practicable and economically viable, the Council will make provisions for the promotion and implementation of energy efficiency and conservation measures in respect of its own activities in the Long Term Plan and the Annual Plan.

2.2.3.5 Reasons:

Considerable resources have been invested in infrastructure/service networks and the ongoing operation, maintenance and upgrading of these networks

continues to be a significant financial commitment for the District. The proposed District Plan controls are designed to achieve economies of scale with respect to existing service networks, through infill development and consolidation of towns. The "unit costs" of providing urban services will be reduced by increasing the density of development. In the longer term, a strategy of urban consolidation is essential to sustainably manage the District's urban resources. Inefficient resource use is simply not a viable option in the longer term. The "efficient use" of these resources means maximising use of the existing infrastructure before any extensions are contemplated. Where the existing infrastructure becomes outdated or there is a demand for a better service, existing infrastructure may be upgraded.

The District Plan's urban/rural boundaries have been defined having regard to existing land use patterns and the need for future development to be in areas which are, or can be, efficiently serviced. The Plan seeks to consolidate urban activities within defined urban areas. One method of encouraging this is to require any developers who wish to extend service networks to pay the actual cost of so doing. The minimum subdivision size control (min. 8000m^2) in the "special rural policy zones" serves as a density control to encourage activities which do not require a rural location but which desire to be close to towns, to locate within towns rather than the urban-rural fringe areas. It also serves as an additional control to avoid groundwater contamination effects as a result of effluent disposal from small subdivisions. Pressure for small rural "lifestyle" subdivisions is greatest in the urban-rural fringe areas.

Striving for energy efficiency makes sense in terms of both reducing the rate of depletion of non-renewable resources, and in reducing pollution. The design of buildings, subdivisions and urban areas has implications in terms of the amount of energy used for transportation and for the heating, cooling and lighting of houses and buildings. The Council shall consider the considerable amount of work that has already been carried out on energy efficient design in New Zealand and overseas, and consider providing information in the form of energy efficient design guidelines.

2.2.3.6 Anticipated environmental results:

(a) The District's towns and settlements will have a consolidated urban form and will operate effectively and efficiently.

(b) Buildings and subdivisions will have been designed to maximise the efficient use of energy and resources.

2.2.4 ENVIRONMENTAL QUALITY AND AMENITY

The following objective, policies and methods are derived from issue 2.2.1.3 above.

2.2.4.1 Objective:

To ensure a high level of environmental quality and amenity in the urban areas of the district.

2.2.4.2 Policies

(a) To provide flexibility of location for activities in urban areas where their environmental effects are compatible with the surrounding area.

(b) To ensure that any actual or potential adverse environmental effects of activities are avoided, remedied or mitigated.

(c) To ensure that there is adequate provision and maintenance of public open space in urban areas to meet the community's active and passive recreational and amenity needs.

(d) To ensure adequate access for people with disabilities to buildings and places that are available for use by the public.

2.2.4.3 Explanation:

Policies 2.2.4.2(a) and (b) reflect the emphasis of the RMA on controlling the effects of activities rather than the activities per se. The Plan attempts to achieve a balance between maintaining and enhancing the amenity of an area in the interest of the public good, and not unduly constraining the property rights of individuals to develop their own sites in an environmentally acceptable manner. Policy 2.2.4.2(c) recognises the importance of maintaining adequate open space in urban areas for recreational and amenity purposes. Policy 2.2.4.2(d) aims to ensure that all people in the community have adequate access to public buildings and facilities as this is an important amenity factor, particularly for people with disabilities.

2.2.4.4 Methods:

The Council shall implement Policies 2.2.4.2(a) to (d) by the following methods:

(a) *District Plan Rules* - The Council has included environmental standards in this Plan which are related to existing and desired characteristics in different urban Management Areas. This provides flexibility of location while ensuring that amenity and environmental quality is maintained. [Refer to Parts 4 and 5]

(b) *Abatement and enforcement procedures* - The Council shall, where appropriate, take enforcement action in respect of activities which contravene the District Plan rules or conditions of resource consents. In respect of activities which create a general nuisance or environmental quality problem which is not specifically covered by way of a rule in the

Plan, the Council shall, where appropriate, use the abatement provisions of the RMA.

(c) *Service delivery* - In respect of public open spaces, public facilities and public works which are the responsibility of the Council, action shall be taken as necessary to avoid, remedy or mitigate any adverse environmental effects from their use or operation. Management plans and operational plans shall be implemented as appropriate.

(d) *Financial instruments* - In respect of significant new developments and subdivisions which will generate increased demand for reserves and community facilities, the Council will require developers to pay a financial contribution towards the provision of such reserves and facilities, as a condition of consent pursuant to sections 108 and 220 of the RMA.

(e) *Building Consent procedures* - The Council shall ensure compliance with the provisions of the Building Act 2004 and the Disabled Persons Community Welfare Act 1975.

2.2.4.5 Reasons:

This Plan recognises that the significance of the environmental effects of an activity will vary depending on the nature and character of the area in which it is located. Community expectations will also vary. For this reason, the District has been divided up into five categories of Management Area on the basis of differing characteristics and acceptable environmental standards. The reason for defining different Management Areas and the environmental results sought for each Management Area are outlined in Part 3 of this Plan. The District's urban areas consist of Residential, Commercial and Industrial Management Areas. Broad categories of activity, which are generally acceptable provided they meet specified environmental standards, are listed for each Management Area. Provided that a resource consent is obtained, there is flexibility for any activity to be located anywhere provided it meets the specified environmental standards and is compatible with the desired environmental results for the area concerned.

The Council shall ensure that public confidence in this Plan is maintained by enforcing the provisions of the Plan and the conditions of all resource consents. On occasions, nuisances or problems may arise which do not strictly contravene the provisions of the District Plan or a resource consent. In such cases, the Council shall attempt to negotiate with those concerned in an effort to achieve a satisfactory outcome. In addition, sections 16 and 17 of the RMA place a general duty on all persons to avoid unreasonable noise and a duty to avoid, remedy or mitigate adverse effects. Section 322 of the RMA provides for abatement notices to be issued by enforcement officers (Council Officers) in respect of noise and other nuisances.

The Council operates a wide range of facilities for the benefit of the community. The Council will lead by example by taking either proactive or reactive measures as necessary to avoid, remedy or mitigate adverse environmental effects that may arise as a result of the use of community spaces or facilities. The preparation of management plans and operational plans is proposed for facilities such as sewage treatment plants, landfills and transfer stations to ensure that adverse environmental effects are avoided, remedied or mitigated.

The District's urban areas are presently well endowed with reserves and open spaces. The Council will not, therefore, impose financial conditions (development levies and reserves contributions) on all new developments and subdivisions as a matter of course, as has happened in the past under the provisions of the Local Government Act 1974. However, in the event of any new development or subdivision which will, in the opinion of the Council, generate a significant increase in demand for such facilities, a financial contribution will normally be required as a condition of consent under sections 108 and 220 of the RMA, to help mitigate the effect of the development on the amenity of the area concerned. **[Refer to Section 5.1.6]**

Many people in the community have disabilities of some kind. It is a statutory requirement to provide adequate disabled access to buildings that are, or will be, open to use by the public. The Council intends to ensure compliance through the building consent process. In addition, public places should also be readily accessible by all people.

2.2.4.6 Anticipated environmental results:

(a) Each defined "management area" within an urban area will comprise a mixture of land use activities which have environmental effects compatible with the predominant character and amenity of the management area concerned.

(b) Activities will be located and operated in a manner which protects or enhances the amenity levels of the area concerned.

(c) There will be adequate open space and reserves in urban areas to meet the needs of the community.

(d) There will be adequate access to all public buildings and places for people with disabilities.

2.3 Rural Land Use Management

2.3.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

The Tararua District is primarily a rural District, as outlined in the introduction to this District Plan. The economy of the District is dependant on primary production and secondary processing and the District's towns and settlements have, as their main role, an important rural service function for the surrounding rural areas. The sustainable management of the District's rural land resources, and the protection of environmental quality, makes good economic, as well as environmental, sense. Typical rural land uses include activities such as farming, factory farming, forestry, mining and excavation, as well as a range of rural housing, industries and services. Wind farms are also emerging as a resource management issue in some rural areas of the District due to the abundance of a world class wind resource in these areas. The significant resource management issues in the Rural Management Area are outlined below.

2.3.1.1 Sustainable and efficient rural land use

Those people whose livelihoods depend on production from the land usually need no reminding as to the importance of sustainable land management practices. In fact, many examples of good practice can be observed on farms throughout the District. This Plan complements these practices and other methods that are used to achieve sustainable resource management. Regional Councils play an important resource management role, particularly with respect to issues such as soil conservation, land and vegetation clearance, river and erosion control, excavation and mining, natural hazards and discharges to air, water and land. In some areas, the statutory responsibilities of Regional and District Councils can overlap. Refer also to section 2.11 "Cross-Boundary Issues". Sustainable land management issues in the District relate to:

(i) *Community awareness and attitudes* - there is a need to further enhance community awareness and attitudes towards sustainable land management practices. For example, some people still do not appreciate the significance of the adverse effects of clearing vegetation from steep hill country, and of continuing to cultivate fragile land so that erosion and slipping occur.

(ii) *Loss of the productive capability of the land (soil erosion)* - In steep hill country areas of the District, soils are vulnerable to accelerated erosion as a result of activities such as vegetation clearance, road/track construction, overcropping and overstocking. Downstream effects of accelerated soil erosion include increased sedimentation and siltation of waterways. Regional Councils have the primary statutory responsibility for soil

conservation. The MWRC's One Plan addresses soil conservation issues in the Region, using a land suite classification approach focussed on 'accelerated erosion' areas. It contains rules, for example, which control the steepness of land on which access roads may be constructed and from which commercial forestry may be harvested. The issue for the District Plan is how to encourage sustainable rural land use in a manner which is consistent with regional policies but avoids duplication or unnecessary rules.

(iii) *Loss of the productive capability of the land (urban expansion)* - Urban expansion into rural areas may lead to a loss of the productive capacity of land. Given the low to medium level of urban development in the Tararua District, this issue is not as significant as in other parts of the region. However, it is nonetheless important that the urban consolidation policies used to achieve the Plan's urban efficiency objective also serve to protect productive rural soils in the rural-urban fringe. The townships of Pahiatua and Eketahuna and the settlements of Ormondville, Makotuku, Mangatainoka and Mangamutu are all sited on "elite" Class I and II soils, and Woodville, Norsewood and Mangamaire have significant areas of very good soils, some of which are "elite", in their environs. The town of Dannevirke has few areas of elite soils in its environs, those at Piripiri being most significant.

(iv) *Degradation of water quality* - This issue arises as a result of the run-off of contaminants and sediments from rural land. This is primarily a Regional Council responsibility, but the District Plan can include complementary policies. In some areas, for example, riparian planting (planting along water margins) can be beneficial for water quality. The issue is whether, how, and where to encourage and/or enforce such planting. (Refer to section 2.6 of this Plan)

(v) *Loss of indigenous vegetation* - the rural area is characterised by important ecological values including indigenous vegetation. This vegetation contributes to the natural character of the rural area but can be degraded or lost by non-rural activities or by rural activities such as grazing, clearance, invasion of weed species and pests.

2.3.1.2 Nature of activities in rural areas

A significant issue is how to achieve the appropriate balance between rural and non-rural activities in the Rural Management Area, and in different parts of the Rural Management Area. It is recognised that the vitality of the District's rural area depends on the ability to maintain and enhance its population base, and to establish and retain essential services and facilities which serve the rural community. Furthermore, market forces play a critical role in the economy of the rural sector, and therefore of the District. The Council considers it is important that the District Plan does not inhibit the ability of people to adjust to

changing land use practices and emerging economic trends any more than is necessary to achieve the sustainable management of our natural and physical resources.

In this regard, a good example is the emergence of wind farms as a viable and legitimate land use of national significance and benefit. The District includes a number of large-scale wind farms. The Council acknowledges the benefits of the generation of electricity from renewable sources and also acknowledges that wind farms have particular characteristics in terms of their potential adverse effects on the environment (e.g. potential noise and visual effects) and amenity values. It also recognises that the benefits of wind farms accrue nationally whilst adverse effects manifest themselves locally. For this reason, it is considered appropriate to consider wind farms as a discretionary activity so that their benefits both in terms of the national interest and in terms of renewable electricity generation can be considered with regard to local adverse effects and amenity values.

Around the edges of the District's urban areas, however, the issue is somewhat different, largely due to increased development pressures. The issue of urban consolidation has been addressed in section 2.2, "Urban Land Use Management" in terms of the need to improve the efficiency of urban areas with respect to urban services and infrastructure. This is necessary to ensure the long-term sustainability of the District's urban areas and the efficient use of urban resources. This "urban consolidation" policy, however, gives rise to a significant issue in those parts of the Rural Management Area which are in proximity to urban areas, i.e. the "rural-urban fringe" areas. The issue is to what extent should "urban" activities be permitted to locate in the rural-urban fringe area when they could locate within the urban area and contribute to the sustainability of the district's urban areas?

With respect to rural subdivision and housing, the issue is whether or not there should be a minimum subdivision size throughout the District (or parts of it) in order to protect the character and productivity of the rural area. In the past, many Councils have adopted minimum subdivision size controls and new houses have only been allowed where they were accessory to farming activities and the farming unit could be demonstrated to be an "economic unit" or similar. Such rules are often inflexible, do not reflect market forces and individual preferences and, if people are forced to have more land than they want or need, this may lead to the inefficient use of the land. Notwithstanding this, in parts of the District such as around the margins of the main towns, there are greater rural development pressures, coupled with the need to promote urban consolidation and sustainability (see above) and avoid adverse environmental effects such as groundwater contamination. The issue is to determine the most appropriate way to manage the potential adverse effects of rural subdivision.

2.3.1.3 Protection of environmental quality and amenity

A key element of sustainable management is ensuring that any adverse effects of activities, including those arising from new subdivision and development on existing, lawfully established activities, are avoided, remedied or mitigated. The issue is one of defining (and quantifying where possible) acceptable levels of environmental quality and amenity in rural areas. Section 6 of the RMA states a number of matters of national importance which are relevant to environmental quality and amenity issues in rural areas. In summary, these relate to:

- preservation of the natural character of the coastal environment and other water bodies and their margins;
- protection of outstanding natural features and landscapes;
- protection of significant indigenous vegetation and habitats of indigenous fauna;
- maintenance and enhancement of public access to the coastal environment and lakes and rivers; and
- relationship of Maori and their culture and traditions with the environment and taonga;
- the protection of historic heritage from inappropriate subdivision, use and development;
- the protection of recognised customary activities.

These important matters are addressed in separate policy sections in this Plan, as they apply to the whole District, i.e. to urban areas, as well as to rural areas. Section 2.6 sets out the issues, objectives, policies and methods in relation to water margins (including the coastal environment) and public access, and important heritage and natural features. Section 2.10 sets out Treaty of Waitangi and Maori resource management issues.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

***[Note:** In addition to the objectives and policies below, relevant objectives and policies for rural areas are also contained in other policy sections, particularly:*

- *Subdivision (section 2.4)*
- *Natural Hazards (section 2.5)*
- *Amenity and Environmental Quality (section 2.6)*
- *Infrastructure (section 2.8)]*

2.3.2 SUSTAINABLE AND EFFICIENT RURAL LAND USE

The following objective, policies and methods are derived from issue 2.3.1.1 above.

2.3.2.1 Objective

To achieve sustainable rural land use and efficient use of resources

2.3.2.2 Policies

(a) To promote sustainable land management community programmes in order to achieve sustainable land use practices which:

- **are compatible with the inherent productive capabilities of the land;**
- **do not result in any on or off-site adverse environmental effects in areas vulnerable to erosion, subsidence or landslip;**
- **retain existing vegetation where steep slopes or erosion prone soils indicate a risk of accelerated erosion;**
- **protect water quality (this may include riparian management practices);**
- **do not result in any on and off-site adverse environmental effects from the discharge of contaminants to land;**
- **protect soil structure**

(b) To avoid, remedy or mitigate significant irreversible losses of the productive capability of the District's Class I and II soils.

2.3.2.3 Explanation:

Policy 2.3.2.2(a) recognises that many farmers and rural landowners adopt a stewardship ethic in respect of their land and recognise that it is in their interests to implement programmes to sustainably manage their land. The Council supports the recent trend to establish sustainable land management community programmes. These are groups of landowners who share a concern and who get together to address an aspect of sustainable land use in a local area. The Council wishes to encourage the widespread adoption of sustainable land management community programmes throughout the District's rural areas. The policy provides guidance as to what constitutes sustainable land use. The guidance is adapted from the Regional Policy Statement for the

Manawatu-Wanganui Region. This Plan does not contain specific rules regulating vegetation clearance or soil disturbance in vulnerable areas (such as steep hill country), as such rules are contained in the MWRC's One Plan. It is unnecessary and inappropriate to duplicate the rules in this District Plan. Instead, this Plan is intended to complement and reinforce the One Plan.

Policies 2.3.2.2(b) recognises that Class I and II soils are the highest quality soils in the District and the Council seeks to maintain their versatility and productive capacity for the future. This does not necessarily mean that high quality land should be in current productive use, but the potential of the soil should be protected.

2.3.2.4 Methods:

The Council shall implement policies 2.3.2.2 (a) and (b) by the following methods:

(a) Community programmes/action - The Council shall liaise with Regional Councils to facilitate and co-ordinate community involvement in programmes to promote sustainable land management. Specific assistance, including requests for rates relief and/or rebates, shall be a matter for consideration through the Annual Plan process.

(b) Provision of information and advice - The Council shall, in liaison with other relevant agencies and within its areas of expertise, provide information and advice to user groups and the wider community about sustainable land management. The Council shall also refer enquirers to others who can provide information and advice.

(c) District Plan rules - The District Plan defines the boundaries of rural and urban management areas and it contains rules which ensure that non-rural activities are generally located within urban management areas.

2.3.2.5 Reasons:

Most farmers and rural property owners adopt a stewardship ethic in respect of their land. These custodians of rural land have the greatest incentive and responsibility to ensure that their land is sustainably managed, as poor land management leads to declining farm incomes and property values as a result of which the farmers/property owners themselves, or their successors, suffer. In hill country areas, for example, many farmers and groups of farmers already recognise the value of planting farm woodlots, space-planting with trees, and retaining indigenous vegetation in order to reduce soil erosion and loss of productive potential. The Council wishes to encourage the wider adoption of these practices by other landowners and it supports the development of sustainable land management community programmes whereby farmer/community groups implement programmes to help themselves.

The Council considers that Class I and II land (i.e. elite soils) should be managed to minimise loss of versatility for productive use. It is noted that small rural holdings used for residential purposes do not necessarily represent a loss of good agricultural land as the land remains and could be used for productive purposes in the future, if required. Productive potential may, in some cases, be compromised if several new dwelling houses are developed in a rural locality resulting in over-capitalisation of the land. In most cases, however, under the effects-based philosophy of the Resource Management Act, the level of current production is a matter best left to market forces than the dictates of this Plan. In respect of rural-urban fringe areas, this Plan's urban consolidation policy also serves to maintain the availability, versatility and capacity of the District's high-quality soils for primary production.

2.3.2.6 Anticipated environmental results:

(a) Rural land use activities in the District will be managed in a sustainable manner which avoids, remedies or mitigates soil erosion, subsidence, sedimentation and other adverse effects.

(b) The productive potential of the District's elite soils (Class I and II land, as defined by Land Resource Inventory maps) will be maintained and enhanced.

2.3.3 ACTIVITIES IN RURAL AREAS

The following objective, policies and methods are derived from issue 2.3.1.2 above.

2.3.3.1 Objective

To maintain the vitality and character of the District's rural areas.

2.3.3.2 Policies

(a) To provide for a range of rural subdivision and housing in rural areas, subject to meeting specified environmental standards and being consistent with the environmental results sought for the Rural Management Area.

(b) To provide, in rural areas, for activities which require a rural location or which specifically serve or support the rural community, where their effects are compatible with the surrounding rural area and the environmental results sought for Rural Management Areas.

(c) To encourage non-rural activities to locate within urban management areas, rather than rural areas.

2.3.3.3 Explanation

In adopting Policy 2.3.3.2(a), the Council has (for the most part) moved away from specifying minimum lot sizes for rural subdivisions (as it has done in the past) towards assessing proposed subdivisions against specified environmental standards and the desired environmental results for the Rural Management Area. (Refer also to section 2.4 of this Plan for objectives and policies in relation to subdivision.) In most rural areas of the District, there is no minimum subdivision size specified. The minimum area required is defined by the area needed to meet the Plan's effluent disposal standards in Part 5. The minimum area necessary to prevent cross-boundary effects of effluent disposal will vary from case to case, depending on site characteristics and the effluent disposal technology to be used. Each case will, therefore, be considered on its merits having regard to the relevant standards in Part 5 of this Plan (including effluent disposal and water supply standards).

The only rural areas where this Plan imposes minimum subdivision size controls (in addition to the normal environmental standards) are in the "urban buffer areas" around the District's four main towns. The establishment of new settlements in rural areas and the growth of existing settlement areas will be

controlled through the environmental standards in Part 5 of this Plan applying to permitted activities, and the desired characteristics or environmental outcomes in Part 3 of this Plan which will be used as a baseline against which to assess all activities requiring a resource consent.

Policy 2.3.3.3(b) aims to provide greater flexibility of location for activities which need to be located in rural areas and where the rural community benefits from the provision of the service/facility. For guidance as to the compatibility or acceptability of effects, refer to section 2.3.3.5 (Reasons) below. However, to achieve the sustainable management of both urban and rural areas, policy 2.3.3.3(c) requires activities which are primarily of an urban nature to locate in urban management areas.

2.3.3.4 Methods

The Council shall implement policies 2.3.3.2(a) to (c) by the following methods:

(a) District Plan rules - The Council has included rules in this District Plan which allow a wide range of housing and subdivision types and sizes in the rural area. This District Plan also provides for a range of activities to locate in rural areas where they have characteristics which require a rural location or they serve and support the rural community, providing environmental standards are met and they are not contrary to achieving the desired characteristics or outcomes for the Rural Management Area. Other non-rural activities are provided for in urban management areas. **[Refer to Part 4 and 5 of this Plan]**

(b) Financial methods - The Council shall encourage the consolidation of urban activities in urban areas by requiring developers to install adequate on-site systems for effluent disposal and water supply or, particularly in rural-urban fringe areas, to pay the actual costs (rather than ratepayer subsidised costs) of extending any trunk service networks. Furthermore, if necessary, the Council may consider using differential rating techniques to correct the common perception that living just outside the urban-zoned (and urban-rated) area is a cheaper option than living in town.

2.3.3.5 Reasons

Achieving sustainable management and controlling the adverse environmental effects of activities is the primary purpose of the Plan which is why subdivision, housing and other activities must meet environmental standards specified in Part 5 of this Plan. Where standards are not met but it can be demonstrated through the resource consent procedure that the effects of the activity are not contrary to the desired characteristics or environmental outcomes for the area (as specified in Part 3 of this Plan), then consent to a discretionary activity may be granted.

Arbitrary minimum subdivision size standards throughout rural areas have often led to people being forced to have more land than they actually want or need, and this often results in a lack of stewardship of the land. Small rural holdings can be full-time farming units, part time farms, "stepping-stone" units, homes for retired farmers, or bases for rural contractors and workers. They are all legitimate rural activities and this District Plan enables attention to be focused on the actual and potential adverse environmental effects of such activities. Minimum subdivision size controls have only been retained in the "urban buffer areas" around the District's four main towns as an additional mechanism to promote urban consolidation.

In the past, houses have tended to be permitted in rural areas only where they were accessory to farming activities. Some planning schemes insisted that farming units be "economic units" before a building permit for a house could be issued, and this led to much debate as to what amounted to an economic unit. With development pressures at low levels throughout much of the District's rural area and with rural communities in need of maintaining a minimum population base in order to retain essential services, the need to restrict housing in Tararua's rural areas is questionable. Subject to meeting the Plan's environmental standards, marae, kaumatua flats, and associated marae activities (i.e. kohanga reo - Kura Kaupapa Maori) are permitted activities.

The Council wishes to encourage the continued vitality of rural areas and the sustainability of rural communities. The main priority is, however, the sustainable use of natural and physical resources.

There is a need to ensure that urban dwellers do not, in significant numbers, decide to build their houses in rural areas around the edge of the District's towns because of a perception of cheaper land prices and rates, while still enjoying all the facilities of the towns. A clear demarcation is required between urban and rural areas, with urban boundaries being based on the extent of existing service networks (particularly sewerage and water reticulation). There is a fundamental economic reason why the shape and size of the District's main towns should be controlled, and this is the need to ensure the long-term economic viability of the towns. In rural-urban fringe areas (the "urban buffer areas") where the cumulative effects of close housing would be a matter of environmental and economic concern, this Plan controls minimum subdivision size and, through that mechanism, controls housing density. The advantages of having consolidated urban areas and the efficient use of existing infrastructure and services are outlined in the urban and subdivision policy sections.

Outside of the "urban buffer areas", the District Plan's performance standards and specified environmental results for the Rural Management Area are considered to be sufficient to ensure that potential adverse effects are avoided.

2.3.3.6 Anticipated Environmental Results

(a) There will be a range and choice of rural living environments and community facilities which recognises the different lifestyle, social and cultural requirements of the people of the District.

(b) Activities which serve or support the rural community or require a rural location will be located and operated so that adverse environmental effects are avoided, remedied or mitigated.

(c) Urban activities which do not require a rural location will generally be located within consolidated, efficient urban areas.

2.3.4 ENVIRONMENTAL QUALITY AND AMENITY

The following objective, policies and methods are derived from issue 2.3.1.3 above.

2.3.4.1 Objective

To ensure a high level of environmental quality and amenity throughout the rural areas of the District.

2.3.4.2 Policies

(a) To ensure that any actual or potential adverse environmental effects of activities are avoided, remedied or mitigated.

(b) To maintain and/or enhance the character, level of amenity and environmental quality of the District's rural areas.

(c) To reduce the potential for conflict between incompatible activities in rural areas, particularly in the rural-urban fringe, and between existing, lawfully established activities and new subdivision and development.

2.3.4.3 Explanation:

Policies 2.3.4.2(a) to (c) reflect the emphasis of the RMA on managing the effects of activities rather than the activities per se. Consideration of the effects of activities in rural areas requires that regard be had to the location and sensitivity of adjacent land use activities and to the character and amenity of the rural area. For guidance as to the compatibility or acceptability of effects, refer to section 2.3.4.5 (Reasons) below and also to earlier sections 2.3.3.3 and 2.3.3.5.

2.3.4.4 Methods:

The Council shall implement policies 2.3.4.2 (a) to (c) by the following methods:

(a) *District Plan rules* - The Council has specified environmental standards in this District Plan and included rules, including a permitted activity rule for some existing industries, which will ensure that activities contribute to, or are consistent with, the anticipated environmental results for the District's Rural Management Areas. These standards, including the ability to use no- complaints covenants in relation to subdivision consents, also aim to manage the potential adverse effects of subdivision and development where there may be a potential conflict between incompatible activities in rural areas. Additionally, the Plan includes setback standards, acoustic insulation requirements, as well as the registration of no-complaints covenants as methods that can be used in order to protect existing activities from adverse effects arising from new subdivision and development **[Refer to Parts 4 and 5 of the Plan and to rule 4.1.2.2 and standards 5.2.4.3, 5.2.4.6 and 5.4.10.2 in particular]**

(b) *Abatement and enforcement procedures* - The Council shall, where appropriate, take action in respect of activities which contravene the District Plan rules. Where appropriate, it shall also use the provisions of the RMA in respect of other nuisances or environmental quality problems.

(c) *Provision of information* - The Council shall, within its areas of expertise, provide information and advice to owners/operators of activities to avoid, remedy or mitigate adverse effects on the environment.

2.3.4.5 Reasons:

The significance of the effects of an activity will vary depending on the nature of the area and so, for the purposes of this Plan, the District has been divided up into Management Areas on the basis of their existing characteristics and the environmental results sought for the area. The District's rural areas are contained within the Rural Management Area. Broad categories of activity are listed in section 4.1 which are generally acceptable in rural areas providing they meet the specified environmental standards. The relevant standards are also listed in Part 4 of this Plan. There is scope, through the resource consent process, for any other activity to locate in the rural area where it meets the specified standards and is compatible with the desired characteristics of the Rural Management Area as listed in Part 3 of this Plan. The desired characteristics in Part 3 have been formulated to protect rural amenity, character and environmental quality while providing increased flexibility of location for legitimate rural activities.

Some existing industries located in the Rural Management Area have been in operation for many years and have particular characteristics that need to be provided for and effects that need to be managed. There is the potential for

new subdivision and development to have adverse effects on these industries and other existing activities. This Plan therefore identifies such existing industries and includes a permitted activity rule for them. The Plan also provides for the use of no-complaints covenants and acoustic insulation requirements, where appropriate, as methods to avoid conflicts between new and existing activities. Other standards, such as setback requirements from existing activities, are also used to manage potential conflicts.

Many rural activities such as farming, factory farming, mining and excavation, forestry, rural industries and services have the potential to have an adverse effect on the amenity or environmental quality of an area if not properly managed or located. This Plan includes environmental standards (rules) which aim to avoid, remedy or mitigate adverse effects on amenity values and environmental quality. These environmental standards relate to noise, dust, odour, visual effects, pollution, significant natural features, indigenous habitats and species, heritage items, historic sites and waahi tapu and impact on roads and infrastructure.

The Council will ensure that public confidence in the District Plan is maintained by enforcing the provisions of the Plan and the conditions of all resource consents. On occasions, nuisances or problems may arise which do not strictly contravene the provisions of the District Plan or a resource consent. In such cases, the Council shall attempt to negotiate with those concerned in an effort to achieve a satisfactory outcome. In addition, sections 16 and 17 of the RMA place a general duty on all persons to avoid unreasonable noise and a duty to avoid, remedy or mitigate adverse effects. Section 322 of the RMA provides for abatement notices to be issued by enforcement officers (Council Officers) in respect of noise and other nuisances.

2.3.4.6 Anticipated environmental results:

(a) Activities in rural areas will be undertaken and managed so as to avoid, remedy or mitigate adverse environmental effects.

(b) Rural amenity values and character will be protected and enhanced.

(c) Conflict between activities is avoided as far as practicable.

2.4 Subdivision and Development

2.4.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

Section 31(2) of the RMA stipulates that the control of subdivisions is one of the methods that may be used by the Council in carrying out its functions under Section 31 of the Act. Subdivision is the legal and administrative process which defines and assigns property rights to parcels of land. It generally precedes the use of the land for an activity or development. While the legal process of land subdivision does not itself generate adverse environmental effects, the activities which follow can have important resource management implications which need to be considered in the District Plan. The significant resource management issues for subdivision in the District are:

2.4.1.1 Assessment process for subdivisions

Subdivisions vary widely from proposal to proposal in terms of the locality, natural and physical characteristics and legal tenure of the sites concerned. In many cases, subdivision is followed by physical works such as site clearance and preparation of land for development. Such works can potentially have significant environmental effects, particularly where important natural or cultural features are involved. The issue is how to achieve a degree of flexibility in the subdivision process so that the infinite variety of circumstances that may arise can be handled in a fair, balanced and practical manner, having regard to their varying environmental effects.

2.4.1.2 Sustainable land use pattern

The overall pattern of subdivision and development in the District has important implications for the efficiency with which the District's natural and physical resources are used, and this is central to the principle of sustainable management. One of the major potential effects of subdivision is the cumulative impact on the District's network utilities and infrastructure, as subdivision and development incrementally adds to the demands on the services and road networks, and has the potential to adversely affect the operation and maintenance of network utilities and infrastructure within the District. The issue is how to ensure an efficient land use pattern through controls on subdivision. Section 6 of the RMA identifies a number of matters of national importance which are relevant to subdivisions. In summary, these relate to:

- preservation of the natural character of the coastal environment and other water bodies and their margins;
- protection of outstanding natural features and landscapes;
- protection of significant indigenous vegetation and significant habitats of indigenous fauna;
- maintenance and enhancement of public access to the coastal environment and lakes and rivers; and
- relationship of Maori and their culture and traditions with the environment and taonga;
- the protection of historic heritage from inappropriate subdivision, use and development; and
- the protection of recognised customary activities.

These important matters are addressed in separate policy sections in this Plan. Refer to section 2.6 for the issues, objectives, policies and methods in relation to water margins (including the coastal environment) and public access, and important heritage and natural features. Refer also to section 2.10 for Treaty of Waitangi and Maori resource management issues.

2.4.1.3 Suitability for development

Subdivision is generally a precursor to development and it is important to ensure that the lots created are suitable for the intended use. This is particularly important given that the person creating the subdivision is often not the same person who ultimately buys the land with the intention of building on it. Lots should generally be of a size and shape to enable diversity of design for subsequent developments. It is also important, for example, that all lots have frontage to a formed legal road so that legal access can be gained to the site, and that all lots have a stable building platform to avoid later problems such as subsidence and damage to properties. Additionally, subdivision and development should not have adverse effects on the operation of, or prevent the maintenance of, network utilities or other infrastructure.

2.4.1.4 Reserves and recreational facilities

It has been a common past practice of Councils to impose a "reserves contribution" on subdividers on the basis that subdivision leads to development and increased pressure on existing public open spaces, reserves and recreational facilities, and demands for new facilities. Under the RMA, financial contributions such as "reserves contributions" on subdivisions may only be imposed where they can be justified on the basis of offsetting the additional (cumulative) effects of the subdivision. It is necessary to determine whether the District has sufficient reserves and recreational facilities at present and, if

not, in which areas are additional facilities required. The issue is to ensure that there is an appropriate distribution of reserves and recreational facilities and to establish a fair and equitable system for any financial contributions required at the time of subdivision.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.4.2 ASSESSMENT PROCESS FOR SUBDIVISIONS

The following objective, policy and methods are derived from issue 2.4.1.1 above.

2.4.2.1 Objective

To provide a flexible and reliable subdivision process which ensures the maintenance and enhancement of environmental quality in the District.

2.4.2.2 Policy

(a) To assess proposed subdivisions against specified environmental standards and assessment criteria in order to avoid, remedy or mitigate adverse environmental effects.

2.4.2.3 Explanation:

This policy establishes a subdivision process which enables assessment of proposed subdivisions against the environmental standards specified in Part 5 of this Plan. It is a process which enables flexibility of application while still providing developers with the degree of certainty that they require to make investment and development decisions.

2.4.2.4 Methods:

The Council shall implement Policy 2.4.2.2(a) by the following methods:

(a) *District Plan Rules* - The Council has included Rules in this District Plan which classify most subdivisions as a controlled activity, where environmental standards are met. The Plan also specifies subdivisions as a permitted activity (subject to meeting standards) in a few limited circumstances. Where environmental standards are not met, the Plan specifies subdivisions as a discretionary activity where the Council has the discretion to either grant or refuse consent. **[Refer to section 5.2 of the Plan]**

2.4.2.5 Reasons:

With the introduction of the RMA came the repeal of Part XX of the Local Government Act 1974 which had provided a separate statutory code for the approval of subdivisions. The control of subdivision is now a function of territorial local authorities and one which is appropriately implemented through District Plan Rules. It is not possible or desirable to have a subdivision process which attempts to prescribe detailed rules for all of the infinite number of different subdivision scenarios that could arise. Subdivisions will vary from proposal to proposal in terms of topography and natural features on the site, existing structures and services, form of land ownership or tenure, legal restrictions, and so on.

The "controlled activity" category is generally suitable for urban areas which are serviced or serviceable as it gives certainty as to approval "in principle" but enables appropriate conditions to be imposed to deal with the effects of the subdivision. In areas where reticulated services do not exist, environmental standards relate, inter alia, to the adequacy of effluent and stormwater disposal, and access.

2.4.2.6 Anticipated environmental result:

(a) There will be a flexible and reliable subdivision process which enables the potential adverse environmental effects of any subsequent land clearance, use and development to be avoided or mitigated.

2.4.3 SUSTAINABLE SUBDIVISION AND DEVELOPMENT

The following objective, policy and methods are derived from issue 2.4.1.2 above.

2.4.3.1 Objective

To promote a pattern of subdivision and land use in the District which results in the efficient use and development of natural and physical resources.

2.4.3.2 Policies

(a) To encourage a pattern of subdivision which maximises the efficient use of existing infrastructure networks (roads and service mains).

(b) To require developers to pay for any extension or upgrading of infrastructure (e.g. roads and service mains) required to meet the needs of a proposed subdivision. Where the Council requires

additional capacity to be provided, in order to meet future service demands and development requirements, the Council shall meet the costs of providing the additional capacity (for Council supplied services).

(c) To protect network utilities and infrastructure from adverse effects associated with subdivision and land use activities.

(d) To provide for boundary adjustments and the subdivision of sites which do not meet subdivision standards where required for the activities of network utility operators or heritage protection authorities (as defined in the RMA) or public works.

(e) To require developers to take into account principles of energy efficiency and energy conservation in the design and development of subdivisions (shape, size and orientation of lots, and urban form).

2.4.3.3 Explanation:

Policies 2.4.3.2(a) and (b) recognise that there has been considerable investment of natural, physical and financial resources in the District's infrastructure (services and road networks) and that there are considerable ongoing maintenance costs associated with these services. A consolidated and compact urban subdivision and land use pattern is a desired outcome in order to achieve sustainable management of these resources.

Policy 2.4.3.2(c) recognises the potential for subdivision and development to have adverse effects on network utilities and infrastructure, and creating a pattern of sustainable subdivision includes ensuring that such effects are avoided, remedied or mitigated.

Policy 2.4.3.2(c) will provide flexibility to enable the subdivision of sites which do not meet the subdivision standards in Part 5.2 of this Plan, for activities such as electricity substations and kiosks, transformer sites, pumping station sites and roadworks. This policy will also enable the subdivision (from a parent block) of significant heritage and environmental features in order to assist in the protection of such features. This allows for the transfer of that allotment and feature to the organisation or individual responsible for its protection. Appropriate legal instruments relating to protection of the significant feature may be attached to the title (e.g. covenants, sale agreements). A heritage resource should be recognised as a complete entity whose surrounds/setting may have an important relationship with the values of the resource. This shall be a factor to be taken into account when assessing proposed subdivisions. Refer also to section 2.6.3 "Protection of Heritage Resources".

Policy 2.4.3.2(d) recognises that the size, shape and form of towns and individual lots and subdivisions in the District has important implications (cumulatively) for energy consumption and efficiency.

2.4.3.4 Methods:

The Council shall implement policies 2.4.3.2 (a) to (e) by the following methods:

(a) District Plan Rules - The Council has included Rules in the District Plan (including environmental standards, information requirements and the definition of urban boundaries and "urban buffer areas" around main towns) which aim to maximise the efficient use of existing infrastructure and servicing networks. Within urban areas and most of the Rural Management Area, the Plan does not contain minimum subdivision size standards but a minimum size standard of 8000m^2 is imposed in "urban buffer areas" around the margins of the main towns, to give effect to the Plan's urban consolidation policies. Rules also provide for subdivisions of special lots for network utilities, heritage protection authorities and public works, to enable efficient and effective operations while controlling potential adverse environmental effects. Setback standards, no complaints covenants, as well as information requirements for resource consents are also included in the Plan in order to manage the potential adverse effects of subdivision and subsequent development on the operation and maintenance of network utilities and infrastructure. **[Refer to section 5.2 of this Plan]**

(b) Financial mechanisms - The Council shall require developers to pay the actual costs (rather than ratepayer subsidised costs) of extending service networks.

(c) Information and Education - The Council shall provide information and reference material to developers about how to achieve energy efficient subdivision and building design.

2.4.3.5 Reasons:

One of the major potential effects of subdivision is the cumulative impact on the District's infrastructure, as subdivision and development incrementally adds to the demands on the services and road networks. The most cost-effective and efficient use of resources is to maximise the use of existing service networks to utilise spare capacity before extending or upgrading networks further. A combination of District Plan rules and financial mechanisms is the Council's method of achieving these policies.

As explained in the Urban Land Use Management Policy Section, the urban boundaries of the District's major towns have been defined in this Plan having regard to the need to efficiently use natural and physical resources, including existing roads, water and sewerage networks. All subdivisions in areas with no

reticulated services (urban fringe and rural areas) will be required to be "self-sufficient" in terms of services (e.g. on-site effluent disposal and potable water supply). Close subdivision in such areas will be restricted due to the potential for cumulative adverse environmental effects such as the contamination of groundwater. Refer to Policy 2.4.4.2(a).

As a general rule, the Council will use financial mechanisms to ensure that ratepayers do not subsidise land developers who are seeking to extend service networks to serve their subdivisions and developments while there is still spare capacity in the existing network. Requiring developers to pay the actual costs of extending services is considered to be an appropriate method of encouraging an efficient, consolidated, compact pattern of land use. The Council intends to investigate further how best to require the "true" costs to be paid in relation to the extension of service networks. It is recognised, for example, that the "true" costs of service provision for an extended network would include not only the actual cost of the extension (i.e. the marginal cost), but also a share of the costs that have been invested by the community in the establishment of the existing service network. These latter costs can be recovered through financial mechanisms such as differential rates for new developments or through the imposition of a "service main connection fee", or similar. Until such time as a fair and reasonable charging regime can be established, the Council will require developers to pay all the actual costs (marginal costs) involved in any extension of services (refer to rules in section 5.1.6 of this Plan).

Network utility operators (as defined in the Resource Management Act) provide services which are essential to the effective functioning of the district, and for the economic, social and cultural wellbeing of the community. It is, therefore, in the public interest that they be permitted to operate effectively and without undue restrictions where they can do so without causing adverse environmental effects. It is also appropriate, therefore, to ensure that subdivision and development do not result in adverse effects on the operation and/or maintenance of network utilities and other infrastructure.

Urban form affects the amount of energy used for transportation and for the heating, cooling and lighting of houses and buildings. The Council shall research the considerable amount of work that has been done on energy efficient design in New Zealand and overseas, and consider providing information in the form of energy efficiency design guidelines.

2.4.3.6 Anticipated environmental result:

(a) There will be a pattern of subdivision which results in the efficient and sustainable use of existing infrastructure.

(b) There will be an equitable system for paying for all upgrading or extensions to existing infrastructure networks, whereby the costs are met by those who stand to benefit.

(c) The subdivision process will cater for the needs of network utility operators and heritage protection authorities in an efficient manner.

(d) New lots in the District will be of a size and shape that enables subsequent developments to maximise solar gain and energy conservation.

2.4.4 SUITABILITY FOR DEVELOPMENT

The following objective, policy and methods are derived from issue 2.4.1.3 above.

2.4.4.1 Objective

To ensure that all lots created are suitable for the intended development or use.

2.4.4.2 Policies

(a) To encourage a pattern of subdivision which enables a diversity of activities to be carried out throughout the District (now and in the future), while avoiding, remedying or mitigating adverse environmental effects.

(b) To ensure that all lots created contain a stable building platform suitable for the intended use.

(c) To ensure that all lots created have legal frontage and access to a formed legal road other than a State Highway, wherever possible.

(d) To avoid subdivision in identified natural hazard areas unless the proposed activity is expressly permitted in such areas or adequate mitigation measures can be put in place by the subdivider and/or the developer.

2.4.4.3 Explanation:

In Policy 2.4.4.2(a), the Council has taken the approach that subdivisions should be assessed on the basis of the suitability of the lots for the intended use of the land, having regard to the objectives and policies for development in the area, rather than by specifying minimum lot sizes and other arbitrary

standards (except in the "urban buffer areas" where there is a minimum subdivision size standard).

Policies 2.4.4.2(b) to (d) also recognise that subdivision is generally a precursor to development and that an integrated approach is required which links the subdivision process to the suitability of the land for its intended purpose. Refer also to section 2.5 in relation to natural hazard areas.

2.4.4.4 Methods:

The Council shall implement policies 2.4.4.2 (a) to (d) by the following methods:

(a) District Plan Rules - The Council has included environmental standards in this District Plan which aim to ensure that proposed lots will be suitable for the intended use of the land and that there will be a range of lot sizes dictated by the demands of the marketplace. Rules are also included which have the effect of restricting subdivision in locations which would be unsuitable for the intended development, such as hazard prone areas and areas of land instability. **[Refer to section 5.2 of the Plan]**

(b) Information and Education - The Council shall provide advice to potential subdividers on different effluent disposal methods and where to find further information and technical advice on these options

2.4.4.5 Reasons:

Arbitrary size standards, whether in urban areas or rural areas, often lead to people being forced to have more land than they actually want or need for their intended purpose, and often results in a lack of stewardship of the land. By adopting performance standards, the District Plan is able to cater for new trends, innovations and technologies in a flexible manner, by concentrating on the potential environmental effects and the desired outcomes for the area concerned. For most of the District, therefore, this Plan does not specify minimum lot sizes. However, in the "urban buffer areas" around the margins of the main towns, a minimum subdivision size of 8000m^2 has been adopted as a minimum to reflect the additional development pressures in such areas. While 8000m^2 is the "bottom-line" minimum size standard in these areas, subdivisions still have to meet the Plan's effluent disposal standards. It may be that, in order to meet these effluent disposal standards, a larger area will be required to prevent cross-boundary effects of effluent disposal. Each case will, therefore, be considered on its merits having regard to the relevant standards in Part 5 of this Plan. The type of effluent disposal system to be used may influence the area of land required to comply with the Plan’s effluent disposal standards. New technologies are developing all the time and Council staff will, to the best of their knowledge, advise potential subdividers as to the different effluent disposal options available, and where to seek further advice and information. It is important for the Council to ensure that opportunities for a diversity of land use activities in the future are maintained throughout the District. It is

concerned that the versatility of the District's most productive soils should be maintained by avoiding land being too closely subdivided (and later built upon). Opportunities to make productive use of the land in the future should be preserved. At the present time, however (and for the foreseeable future), this is not likely to be a significant issue in the District due to the relatively low level of development pressure which exists. The Council wishes to encourage development where it will not lead to significant adverse environmental effects, and it has introduced policies and rules only to the extent necessary to avoid or reduce adverse effects and achieve desired environmental outcomes. The Council shall monitor the results of these policies closely.

It is important for all subdivisions, where the lots are intended to be built upon, that each lot contains a stable building platform that is suitable for the proposed use. This is necessary to avoid any potential problems (including threats to human safety) and costs associated with subsidence or erosion. It is necessary also that all lots must have access to a formed legal road in order to ensure ongoing rights of access to all parcels of land.

2.4.4.6 Anticipated environmental results:

(a) The creation of lots that do not preclude alternative land use options in the future.

(b) All new lots intended for development will be able to be developed in a safe and efficient manner.

(c) There will be legal and physical access to all lots in the District.

(d) In hazard-prone areas, risks to life and property will be minimised during natural hazard events.

2.4.5 RESERVES AND RECREATIONAL FACILITIES

The following objective, policy and methods are derived from issue 2.4.1.4 above.

2.4.5.1 Objective:

To ensure that there is an adequate distribution and standard of reserves and recreational facilities throughout the District.

2.4.5.2 Policies

(a) To develop a Reserves and Recreational Facilities Strategy for the Tararua District.

(b) To require financial contributions for the purpose of providing and maintaining reserves and public recreation facilities only where subdivisions and developments will generate a significant increase in demand for facilities in areas which are identified as being in need of such facilities in the Council's Reserves and Recreational Facilities Strategy.

2.4.5.3 Explanation:

Policy 2.4.5.2(a) reflects the need to have accurate and up-to-date information about the current distribution of, and demand for, reserves and recreational facilities in the District. Policy 2.4.5.2(b) accepts that most parts of the District are already well endowed with reserves and recreational facilities, and accordingly, "reserves contributions" and other financial conditions will not be imposed on subdivisions simply as a matter of course. On the other hand, the District Plan contains rules enabling financial conditions to be imposed where large developments or large new subdivisions will generate significant increased demands for facilities in areas where these are lacking, as identified in the Reserves and Recreational Facilities Strategy. This strategy (which will be prepared in consultation with relevant organisations) will also identify priority areas for riparian management, as esplanade reserves and strips often have a public access function (i.e. recreation function) as well. Refer also to Policy 2.6.6.2(c).

2.4.5.4 Methods:

The Council shall implement policies 2.4.5.2 (a) and (b) by the following methods:

(a) Service delivery and provision of information - The Council shall carry out research into the distribution of existing reserves and recreational facilities and develop a strategy for future provision and maintenance. The main method of financing the provision and maintenance of reserves and recreational facilities will be through the collection of rates and user charges where appropriate.

(b) Co-operation and liaison with relevant organisations - In preparing the “Reserves and Recreational Facilities Strategy” referred to in (a), the Council shall liaise with the relevant Regional Councils, the Department of Conservation, tangata whenua and other relevant organisations to identify priority areas for the provision of reserves and recreational facilities. Refer also to method 2.6.6.4(a).

(c) District Plan Rules/Financial mechanisms - The Council has included rules in this Plan which enable financial contributions for the purpose of providing and maintaining reserves and recreational facilities to be required as a condition of subdivision and land use consents where they

will generate a significant increase in demand for facilities. **[Refer to section 5.1.6 of this Plan]**

2.4.5.5 Reasons:

There is a need to develop a strategy which outlines priorities for the provision of new reserves and facilities and the upgrading and maintenance of existing ones. The strategy will be used to determine how rates and any financial contributions will be spent. The development of such a strategy is important in order to identify where financial conditions for the provision and maintenance of reserves and recreational facilities can and cannot be justified. Until a strategy has been developed, it is inappropriate for financial contributions to be imposed for the purposes of providing and maintaining reserves and recreational facilities.

2.4.5.6 Anticipated environmental results:

(a) A reserves and recreational strategy will be prepared and implemented to ensure that there is an appropriate distribution and standard of reserves and recreational facilities throughout the District.

(b) Reserves and recreational facilities will be provided and maintained in areas of the District which currently have inadequate public open space and facilities to meet the cumulative needs of new subdivisions and developments in the area.

2.5 Natural Hazards

2.5.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

"Natural hazard" is defined in the RMA as *"...any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment."* The resource management issue is to determine how to minimise the impact of natural hazards in a proactive manner.

2.5.1.1 Minimising the impact of natural hazards

Natural hazards are the result of interaction between natural events and human communities. The impact of a natural hazard event on people and their communities is a function of the magnitude of the natural event, the density of population and the intensity of development. There is a higher potential impact of natural hazards in more densely developed areas. A further influencing factor is that human activities (such as clearance of vegetation, earthworks and water abstractions) may increase the probability and magnitude of some natural occurrences, such as flooding, sedimentation, drought or landslip. The issue is how to best manage the potential effects of natural hazards on communities.

One of the functions of District Councils under section 31 of the RMA is *"the control of any actual or potential effects of the use, development or protection of land, including for the purpose of the avoidance or mitigation of natural hazards"*. This can be achieved by minimising the intensity of development in hazard prone areas, and by promoting an awareness of natural hazard risks in the District, thereby enabling people to take a "self-help" approach and make informed decisions based on the risk they face from natural hazards. The need for Councils and individuals to take a proactive rather than reactive approach to natural hazards is reflected in recent shifts in Central Government policy in this area.

Having regard to the above issue, the Council has adopted the following objective, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.5.2 MINIMISING RISKS FROM NATURAL HAZARDS

The following objective, policies and methods are derived from issue 2.5.1.1 above.

2.5.2.1 Objective

To reduce the risks imposed by, and the effects of, natural hazards on the people, property and infrastructure of the Tararua District

2.5.2.2 Policies

(a) To enhance the level of information available on natural hazards and their associated risks within different parts of the Tararua District, and increase understanding in the community of the respective responsibilities of individuals and other authorities.

(b) To reduce the risk from natural hazards in the District by minimising the intensity of development in hazard prone areas and implementing mitigation measures and response procedures as appropriate.

2.5.2.3 Explanation:

Policy 2.5.2.2(a) recognises that, in order for the Council, the community and private individuals to make decisions about the use, development and protection of the District's natural and physical resources, it is important that there is a database of information about the natural hazards risk in the District. The Regional Policy Statement section of the One Plan (Part 1, Chapter 9) envisages that the District Council will provide measures to avoid or mitigate natural hazards, including controls on land use and subdivision aimed at avoiding or mitigating the effects of natural hazards. This is the reason for adopting Policy 2.5.2.2(b) above.

2.5.2.4 Methods:

The Council shall implement Policies 2.5.2.2 (a) and (b) by the following methods:

(a) Research and Provision of Information - The Council shall liaise with the Manawatu-Wanganui and Wellington Regional Councils and support regionally co-ordinated hazard analysis and hazard mapping programmes that are relevant to the Tararua District. The results shall be used by the Council to develop a natural hazard data base for the District and the Council shall facilitate its own research and analysis to complement the Regional Council programmes as necessary. The Council shall

endeavour to make this information available to the public by the most appropriate means.

(b) District Plan Rules - Where the extent of, and degree of risk posed by, natural hazards can be accurately quantified, the Council shall prevent or limit development in such areas by means of subdivision and development standards (rules).

(c) Service delivery - In accordance with the Council's responsibilities under the Civil Defence Emergency Management Act 2002, the Council shall provide emergency response and recovery functions during, and following, a civil defence emergency caused by a natural hazard event. The Council shall upgrade stormwater systems where these contribute to flooding problems within settlements, as finances permit and as specified in the Annual Plan. The Council may consider structural measures and financial assistance to control natural hazards and/or the relocation of communities out of hazard prone areas where comprehensive risk assessments and cost benefit analyses show that the option proposed is the most cost-effective and the proposed measures are acceptable to the community.

2.5.2.5 Reasons:

Legislative responsibilities for natural hazards under the RMA are shared between Regional and District Councils. The division of responsibility is not entirely clear in the RMA and it is intended that Regional Council's will provide guidance as to the division of responsibilities for matters relating to natural hazards via the Regional Policy Statement. Policy 9-1 of the Regional Policy Statement section of the MWRC's One Plan sets out the responsibilities of the Regional Council and District Councils within the Region in relation to natural hazards. The Policy states that the Regional Council and the District Council shall be jointly responsible for raising public awareness of the risks of natural hazards through education. The Policy also states that both the Regional Council and the District Council shall be responsible for developing objectives, policies and methods for the purpose of avoiding or mitigating natural hazards. Specifically, the Regional Council shall be responsible for natural hazard management in respect of all land use activities in the coastal marine area, erosion protection works that cross or adjoin mean high-water spring and all land use activities in the beds of lakes and rivers. The District Council shall be responsible for controlling the use of land to avoid or mitigate natural hazards in all areas except those the Regional Council is specifically responsible for including floodways and other areas known to be subject to inundation. This includes identifying floodways on the District Plan maps and generally avoiding development in these areas. The Regional Council has indicated that it will take a lead role in the investigation, identification, analysis and mapping of these parts of the region at risk from flood, seismic and volcanic hazards, subsidence and tsunami, including consideration of sea level rise. All of these hazards (except volcanic hazards) are relevant to the Tararua District.

Additionally, many parts of the District (particularly steep hill country areas close to the Tararua and Ruahine Ranges) are prone to erosion from wind and rain. This erosion potential in many hill country areas presents a significant limitation to the use of the land and it is important to retain suitable vegetative cover. Soil conservation is an issue for which the Regional Council has primary management responsibility and, as for all types of natural hazards, it is important that the District Council continues to liaise with the Regional Council to ensure a coordinated approach to hazard identification and management in order to meet the needs of the District's residents. The Council shall focus on the transfer of information to the community as the main method of mitigating the effects of natural hazards, thereby enabling a 'self-help' approach to be taken by residents.

Regulation, through District Plan rules, is considered by the Council to be an appropriate method of implementation for this policy where natural hazard risk can be accurately quantified and mapped. Rules have been developed to ensure that further development in identified "natural hazard areas" such as flood prone areas is limited.

In terms of service delivery, the Council must respond to natural hazard emergencies in accordance with its responsibilities under the Civil Defence Emergency Management Act 2002, and it also has responsibility for the recovery phase of a disaster. This includes facilitating the recovery of communities within the District, as well as ensuring that the District's infrastructure is restored. In situations where comprehensive risk assessments and cost-benefit analyses show that the provision of structural measures to control a hazard (such as coastal erosion or flooding) is the most appropriate option, the Council shall debate through the Annual Plan process whether or not to commit the financial expenditure required.

2.5.2.6 Anticipated environmental results:

(a) There will be increased public awareness of risks from natural hazards, and the community will be aware of its responsibility to make provision for such risks.

(b) There will be a reduction over time of the risk imposed by, and the effects of, natural hazards on the residents and assets of the District.

(c) There will be an up-to-date natural hazard database for the District, enabling hazard prone areas to be identified and relevant information made available to residents.

(d) Local authorities and other agencies responsible for natural hazard management will be carrying out their responsibilities in a fully integrated manner.

2.6 Amenity and Environmental Quality

2.6.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

Under Section 7 of the RMA, the Council is required to have particular regard to the maintenance and enhancement of amenity values and the quality of the environment. While the quality of the environment can be defined to a large extent by physical parameters, the concept of "amenity" is a more subjective matter which can be difficult to define and measure. "Amenity values" are defined in the RMA as *"those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes"*. Amenity values may, therefore, be thought of as those features in an area which give it a particular identity, including:

- the elements which constitute the character of the area
- heritage sites or features
- waahi tapu and urupa
- landscapes and views (including the coastal environment)
- habitats and ecosystems
- areas of conservation and open space value.

The significant resource management issues facing the Tararua District in this regard are:

2.6.1.1 Maintenance and enhancement of environmental quality and amenity

A "high quality" environment (which includes aspects such as freedom from pollution and the right to privacy) is an important element of the amenity of an area as it makes it a more pleasant place in which to live and work. Some activities can generate effects which detract from the character and quality of an area's amenities. The adoption of measures to avoid, remedy or mitigate such adverse effects is an important aspect of the sustainable management of natural and physical resources. Environmental effects to be managed include those associated with noise, dust, odour, visual effects, access to sunlight, privacy, traffic safety and efficiency, contamination of land/water and others. The issue is defining (and quantifying where possible) the level of effects that are acceptable to the community in different areas. Linked with this issue is the

need to determine the extent to which individual property rights should be limited in the public interest, by means of rules in the District Plan.

2.6.1.2 Protection of heritage resources

Section 6(f) of the RMA states, inter alia, that the “protection of historic heritage from inappropriate subdivision, use, and development” is a matter of national importance, and as such, the Council must recognise and provide for this matter. Heritage resources in the Tararua District include historic buildings and places, churches, structures and monuments, archaeological sites and waahi tapu. These resources have historic or cultural significance for different reasons and to different extents. It is in the public interest that the District's important heritage resources are protected and enhanced where possible. In many cases, however, buildings or places are in private ownership and the issue may become one of balancing public and private interests (e.g. determining the extent to which individuals may need to accept restrictions on their property rights for the benefit of the wider public and future generations). A related issue is how to implement an appropriate combination of methods to protect heritage resources in the face of change.

2.6.1.3 Protection of natural features and landscapes, significant trees, significant indigenous vegetation and significant habitats of indigenous fauna

Section 6 of the RMA states that the Council shall recognise and provide for the following "matters of national importance":

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

Section 7 of the RMA sets out a number of “other matters” to which the Council shall have particular regard, including:

(c) the maintenance and enhancement of amenity values;

(d) intrinsic values of ecosystems;

(f) the maintenance and enhancement of the quality of the environment.

The Tararua District contains a variety of different landscapes which have been modified to varying degrees by human activities and which together make up the character of the District. In managing the District's natural and physical resources, it is important that consideration be given to the impacts of activities on the District's natural features and landscapes. The Regional Policy Statement (RPS) section of the One Plan for the Manawatu-Wanganui Region

identifies (in Policies 6-6 and 6-7) several outstanding natural features and landscapes as being "regionally significant" for reasons including visual prominence, scenic characteristics, ecological, cultural or spiritual significance, or other amenity values. The features and landscapes included in the RPS that are within the Tararua District are scheduled in Appendix 3 of this District Plan.

The Tararua District also contains a scattering of relatively small pockets of the indigenous vegetation that once covered the entire District. These indigenous bush remnants are very important to ensure the ongoing survival of our unique flora and fauna. Over the years, native species of flora and fauna have declined in the District (as they have throughout New Zealand) due to the loss of habitat area; the fragmentation of remaining habitats; predation and competition with introduced species; hybridisation with introduced species; and selective logging which has removed food and nesting trees for native wildlife. The protection of significant indigenous natural habitats, and the ecosystems that they support, is important in order to reduce threats of species extinction, thereby maintaining biological diversity for future generations. However, as noted above in respect of heritage resources, in many cases bush remnants or other natural features are in private ownership and the issue may become one of public versus private interest (e.g. determining the extent to which individuals may need to accept restrictions on their property rights for the benefit of the wider public). A related issue is how to implement an appropriate combination of methods to protect natural features in private ownership.

Areas of conservation significance within the District include land/reserves administered by the Department of Conservation or the District Council, as well as some areas in private ownership which have significant conservation value.

2.6.1.4 The coastal environment

Section 6 of the RMA states that the Council shall recognise and provide for the following "matters of national importance":

*"(a) the preservation of the natural character of the **coastal environment (including the coastal marine area)**, wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;*

*(d) the maintenance and enhancement of public access to and along the **coastal marine area**, lakes and rivers;"*

Responsibilities for coastal management are complex. The Minister of Conservation prepared a New Zealand Coastal Policy Statement (NZCPS) in 1994 which was replaced in 2010. The Minister is responsible for approving all Regional Coastal Plans prepared by Regional Councils and granting or refusing applications for activities classified as Restricted Coastal Activities in Regional Coastal Plans. Regional Councils are responsible for policy matters below the

level of mean high-water springs (high tide mark) and District Councils have land use management responsibilities above mean high water springs. Many coastal management issues will not stop or start at the mean high-water springs mark and, therefore, there will be overlapping issues between this plan and regional plans. The large majority of Tararua District's coastline falls within the Manawatu-Wanganui Region. The MWRC has a Regional Coastal Plan section in its One Plan, with which this District Plan shall not be inconsistent.

The east coast is characterised by wave-swept rocky platforms backed by boulder/cobble beaches or sandy beaches dotted with boulders. There are few coastal flats. In most areas, the hills meet the sea as rounded slopes although there are some sand dunes in areas, like Herbertville. Cape Turnagain is located north of Herbertville. Cape Turnagain is listed as an outstanding, or "regionally significant", natural feature in the Regional Policy Statement for the Manawatu-Wanganui Region and the entire coastline of the Region and particularly the Akitio Shore Platform is identified in the Proposed One Plan as a “regionally important landscape”. In addition to landscape, ecological and cultural values, fossil crabs in the siltstone are of archaeological value.

There are two small coastal settlements in the District which are located at road ends at the mouths of rivers. Herbertville is located at the mouth of the Wainui River and Akitio at the mouth of the Akitio River. Both are small fishing settlements whose populations increase over summer with holidaymakers. In addition, at Owahango there are a few houses at the mouth of the Owahango River. There is no road running along the coastline, meaning that many parts of the District's coastline are inaccessible for the general public. Development pressure in the District's coastal area is at a relatively low level compared to many other coastal areas. The main issue for the District is to manage subdivision, use and development in the coastal area to ensure that it retains its natural character (including good water quality, retention of habitats and ecological values), and to ensure that public access to the coast is maintained and enhanced. Coastal erosion and infrastructural requirements (sewage disposal, water supply, and waste disposal) are also factors to be taken into account in relation to the siting of any new development in the beach settlement areas.

Since the first Tararua District Plan became operative in 1998, the “effects of climate change” has been added to the RMA, (via the Act’s 2004 amendments), as a matter to which the Council must have particular regard. Significant research has been undertaken by the Ministry for the Environment and the New Zealand Climate Change Office in order to predict the potential for and impact of climate change and to determine the likely effects of any changes in climatic conditions. Increased temperatures and associated rises in sea level around New Zealand, significant increases in the frequency and severity of extreme weather events (such as storms and flooding), as well as in the occurrence of predominant westerly winds and rainfall, are predicted. These conditions will in turn increase occurrences of flooding and erosion, and

sedimentation of coastal areas and waterways and will have the potential to impact negatively on housing, infrastructure and services in coastal areas of the District. Identification of areas that may be particularly at risk from the impacts of climate change will be a priority. These high risk areas may be unsuitable for development in this regard, and coastal development should be guided away from these areas. This precautionary approach provides a method for avoiding, rather than remedying or mitigating, the adverse effects arising from coastal storm events or tsunami in particular. Identifying areas where development is appropriate in coastal areas is also important for the purpose of other issues associated with coastal development including maintaining the natural character of the coast and planning for the provision of infrastructural services.

2.6.1.5 Water margins and public access

Section 6 of the RMA states that the Council shall recognise and provide for the following "matters of national importance":

*"(a) the preservation of the natural character of the coastal environment (including the coastal marine area**), wetlands, and lakes and rivers and their margins**, and the protection of them from inappropriate subdivision, use and development;*

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

*(d) the maintenance and enhancement of public access to and along the coastal marine area, **lakes and rivers**;*

The Tararua District contains limited wetland areas and lakes. There are a number of rivers which drain to the east coast and, in the case of the Manawatu River catchment, through the Manawatu Gorge to the west coast. As noted in 2.6.1.3 above, the Manawatu Gorge, the Mangatainoka River, and the Makuri River and Gorge are listed in the Regional Policy Statement for the Manawatu-Wanganui Region as regionally significant natural features. In addition, the Mangatainoka River and its tributaries are protected by a local water conservation notice in recognition of its recreational brown trout fishery which is of regional significance. The Makuri River is protected by a local water conservation notice in recognition of its scenic and recreational values and its importance as a fisheries and wildlife habitat.

The interface of land and water is one of the key areas of resource management. Riparian management recognises that waterways are not separate ecological systems and that non-point source pollution from land use is a greater problem for many waterways than direct discharges. Riparian planting can help to avoid, remedy or mitigate the effects of land use on in-stream water quality and ecosystem values. Water quality and quantity issues

are primarily the responsibility of Regional Councils. The main issue for the Council is to protect the District's waterbodies and their margins from subdivision, use and development which may adversely affect their character (having regard to existing circumstances), and to promote the maintenance and enhancement of riparian management along, and public access to, water margins.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.6.2 MAINTENANCE AND ENHANCEMENT OF ENVIRONMENTAL QUALITY AND AMENITY

The following objective, policy and methods are derived from issue 2.6.1.1 above.

2.6.2.1 Objective

To maintain and/or enhance amenity values and environmental quality in the District, for present and future generations.

2.6.2.2 Policy

(a) To manage the adverse effects of activities on amenity values by specifying minimum environmental standards for the development and maintenance of such activities.

2.6.2.3 Explanation:

Policy 2.6.2.2(a) reflects the emphasis of the RMA on controlling the effects of activities rather than the activities per se. The adverse effects of activities vary depending on the character and community expectations existing in an area.

2.6.2.4 Methods:

The Council shall implement Policy 2.6.2.2(a) by the following methods:

(a) District Plan Rules - The Council has included environmental standards in this District Plan to manage adverse impacts of development and land use on amenity values. **[Refer to section 5.4 of the Plan]**

(b) Abatement and enforcement procedures - The Council shall, where appropriate, take action in respect of activities which contravene the

District Plan rules. Where appropriate, it shall also use the provisions of the RMA in respect of other nuisances or environmental quality problems.

2.6.2.5 Reasons:

Activities may give rise to a number of different effects of varying significance depending on the character of the area in which the activity is undertaken. Potential effects include, amongst other things, noise, dust, smoke, vibration, glare, odour, and visual effects (including,for example, those arising from the presence of derelict vehicles, buildings and sites). These effects are likely to be more acceptable to the community in an industrial area than they would be, for example, in a predominantly residential area. Furthermore, some effects may be more acceptable in rural areas than in urban areas (such as farm odours) and others may be less acceptable. In this Plan, the Council has defined environmental standards which aim to control the adverse effects of activities, having regard to the differing levels of amenity and environmental quality in different areas. Mitigation measures which reduce adverse effects are encouraged. The Plan attempts to achieve a balance between maintaining and enhancing the amenity of an area as a public good, and not unduly constraining individual property rights.

The Council shall ensure that public confidence in the District Plan is maintained by enforcing the provisions of the Plan and the conditions of all resource consents. On occasions, nuisances or problems may arise which do not strictly contravene the provisions of the District Plan or a resource consent. In such cases, the Council shall attempt to negotiate with those concerned in an effort to achieve a satisfactory outcome. In addition, sections 16 and 17 of the RMA place a general duty on all persons to avoid unreasonable noise and a duty to avoid, remedy or mitigate adverse effects. Section 322 of the RMA provides for abatement notices to be issued by enforcement officers (Council Officers) in respect of noise and other nuisances.

2.6.2.6 Anticipated environmental result:

(a) Amenity values will be defined, maintained and/or enhanced, as appropriate, throughout the District.

2.6.3 PROTECTION OF HERITAGE RESOURCES

The following objective, policy and methods are derived from issue 2.6.1.2 above.

2.6.3.1 Objective

To protect heritage resources in the District which are of local, regional or national significance.

2.6.3.2 Policies

(a) To identify particular heritage resources that contribute in a significant way to the amenity of the District and to classify them according to their significance and relative value to the community, with priority being afforded to heritage resources most at risk. In determining the significance of heritage resources, the following matters shall be considered:

- **the extent to which the place or feature reflects important or representative aspects of New Zealand history;**
- **the level of association of the place or feature with events, persons or ideas of importance in the history of the Tararua District;**
- **the importance of the place or feature to tangata whenua;**
- **the level of the community association with, or public esteem for, the place or feature;**
- **the potential of the place or feature for public education;**
- **the level of technical accomplishment or value, or design of the place or feature including the rarity of technical accomplishment or design;**
- **the symbolic or commemorative value of the place or feature;**
- **whether it is an historic place or feature known to date from early periods of the district's settlement;**
- **the rarity of the type of historic place or feature;**
- **the extent to which the place forms a key part of a wider historical and cultural complex or historical and cultural landscape.**

(b) To encourage the protection and conservation of significant heritage resources and curtilage from inappropriate subdivision, use or development, and to promote public access where this will not adversely affect conservation or private property values.

2.6.3.3 Explanation:

The *"protection of historic heritage from inappropriate subdivision, use, and development"* line *"protection of historic heritage from inappropriate subdivision, use, and development"* is a matter of national importance which the Council shall recognise and provide for under section 6 of the RMA. *"The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga"* is also a "matter of national

importance" which must be recognised and provided for by the Council. Policy 2.6.3.2(a) recognises that heritage resources which are of value to the community must firstly be identified so that adequate protection may be provided. The criteria in Policy 2.6.3.2(a) are those used by Heritage New Zealand to register historic places and they shall be used by the Council in assessing the appropriate District Plan classification. Policy 2.6.3.2(b) recognises that the significant heritage resources should be protected in the public interest as their heritage values are a public good which are often not reflected by market forces or by individual land owners.

2.6.3.4 Methods:

The Council shall implement policies 2.6.3.2 (a) and (b) by the following methods:

(a) District Plan - The Council has included in this District Plan a Schedule of significant heritage resources and has adopted rules which aim to control the adverse effects of activities at, or in close proximity to, such sites and features. The Schedule classifies the heritage resources as Category A or B according to their significance and the level of protection required. The heritage resources may include a curtilage of land around the feature. The classified heritage resources are identified on the District Plan maps. In addition, requirements by heritage protection authorities for Heritage Orders in the District Plan will be considered as they arise in accordance with the RMA. Also, advice notes relating to potential effects of subdivision or development on heritage/archaeological resources will be included in resource consents where relevant, in accordance with the "*Sustainable Management of Historic Heritage Guide No. 3: District Plans*" (NZHPT 2007) or its successor. **[Refer to Part 9 of the Plan]**

(b) Provision of information and promotion of voluntary protection - The Council shall aim to raise community awareness of significant heritage resources and of the contribution that they make to the amenity of the District. The Council shall do this by undertaking research as necessary, and providing information to the public as to the location of significant sites and features and their particular values. The Council shall encourage the voluntary protection of such sites and features by relevant agencies and individuals wherever possible. In respect of development and building proposals in the vicinity of recorded waahi tapu and archaeological sites, the Council shall notify Heritage New Zealand and relevant iwi, in accordance with the Heritage New Zealand Pouhere Toanga Act 2004 in order to enable the implementation of the archaeological authority provisions of that Act.

(c) Covenants/legal instruments - The Council shall, where appropriate, encourage property owners to place legal heritage covenants (such as a QEII Covenant or Heritage Covenant) over the sites of significant heritage

resources. In addition, as a means of last resort, the Council shall consider the issue of a "heritage protection order" (in accordance with its status as a heritage protection authority under the RMA) in respect of the protection of threatened Category A heritage resources.

(d) Financial methods - The Council is a "heritage protection authority" under section 187 of the RMA and through the Annual Plan process, it shall consider committing resources in order to enable this function to be undertaken satisfactorily. Where heritage resources of outstanding amenity value to the community are under threat of destruction or irreversible damage, and other methods of protection are insufficient, the Council shall consider the possibility of providing financial assistance. Forms of financial assistance could include rates relief, grants to make improvements or, in extreme cases, purchasing the site or feature concerned and managing it to ensure its protection and enhancement. Where the Council is the owner of heritage resources, it shall complete conservation plans and works as appropriate to ensure their preservation. Each case shall be considered on its merits through the Annual Plan process.

2.6.3.5 Reasons:

The District Plan provides an opportunity to identify in a Schedule those heritage resources that are of particular value to the community and to classify them according to their significance. Rules are included in the Plan which afford differing levels of protection to sites and features depending on how they are classified. The Council's aim is not to restrict all development, or any modification, of significant heritage features but to provide a means for the assessment of proposals in a consistent manner. Sections 187 to 198 of the RMA provide for heritage protection authorities to include Heritage Orders in the District Plan in a similar manner to designations for public works. Heritage Orders place controls on the landowner's use of the land and provide a means for interested parties to ensure the protection of places of special merit or interest.

The education and provision of information to the community about the values of particular features will be achieved through this Plan as well as other methods. Information will be made available to developers through Project Information Memoranda (PIMs) which are required under the Building Act 2004 when applying for building consent, and through Land Information Memoranda (LIMs) under the Local Government Official Information and Meetings Act 1987. Where any resource or building consent application may affect any item listed in Category A or B of the District Plan Schedule, the Council shall advise all potentially affected or interested individuals or organisations, including Heritage New Zealand and/or the relevant iwi authority or hapu as appropriate. With respect to waahi tapu and archaeological sites, the Heritage New Zealand Pouhere Toanga Act 2004 (particularly sections 10-12) contains important

provisions relating to the protection of all archaeological sites from destruction, damage or modification, whether or not those sites are recorded in this Plan. The Council shall, through the provision of information and the facilitation of pre-hearing meetings, attempt to reduce or resolve conflicts which affect significant sites or features.

Legal instruments such as covenants and heritage protection orders are appropriate means which may be used to achieve protection of heritage resources. By necessity, voluntary protection will be encouraged wherever possible. Financial assistance from the Council as a means of protecting significant heritage resources shall generally only be considered in relation to sites and features of outstanding significance, where all other methods of protection have proven inadequate. Rates relief may be considered by the Council for particularly significant sites, in order to promote their permanent protection. These methods are appropriate given the Council's status as a "heritage protection authority" under section 187 of the RMA.

2.6.3.6 Anticipated environmental results:

(a) All significant heritage resources in the District, and their value to the community, will have been identified.

(b) Sites and features of significant heritage value will have been protected for present and future generations.

(c) Adverse environmental effects of activities on significant heritage and natural resources will be avoided, remedied or mitigated.

(d) People will be more aware of the heritage resources of the District.

2.6.4 LANDSCAPES, SIGNIFICANT TREES AND SIGNIFICANT INDIGENOUS VEGETATION AND SIGNIFICANT HABITATS OF INDIGENOUS FAUNA

The following objective, policies and methods are derived from issue 2.6.1.3 above.

2.6.4.1 Objective

To protect natural features and landscapes, trees and areas of indigenous vegetation and habitats of indigenous fauna that are of district, regional or national significance from inappropriate subdivision, use and development.

2.6.4.2 Policies

(a) To identify particular natural features and landscapes that contribute in a significant way to the amenity and environmental quality of the District and to classify them, in a Schedule in this Plan, according to their significance and relative value to the community. In determining the significance of natural features and landscapes, whether for the purpose of making additions to, or deletions from, the Schedule of Natural Features and Landscapes, or for assessing the effects of an activity on an item included in the Schedule, the following factors shall be taken into account:

1. Natural science factors which relate to the geological, ecological, topographical and dynamic components of the natural feature or landscape:

i. Representative: the combination of natural components that form the feature or landscape strongly typifies the character of an area.

ii. Research and education: all or parts of the feature or landscape are important for natural science research and education.

iii. Rarity: the feature or landscape is unique or rare within the district or region, and few comparable examples exist.

iv. Ecosystem functioning: the presence of healthy ecosystems is clearly evident in the feature or landscape.

2. Aesthetic values which relate to scenic perceptions of the feature or landscape:

i. **Coherence:** the patterns of land cover and land use are in harmony with the underlying natural pattern of landform and there are no, or few, discordant elements of land use or land cover.

ii. **Vividness:** the feature or landscape is visually striking, is widely recognised within the local and wider community, and may be regarded as iconic.

iii. **Naturalness:** the feature or landscape appears largely unmodified by human activity and the patterns of landform and

land cover are an expression of natural processes and intact health ecosystems.

iv. **Memorability:** the natural feature or landscape makes such an impact on the senses that it becomes unforgettable.

3. **Expressiveness (legibility):** The feature or landscape clearly shows the formative natural processes or historic influences that led to its existing character.

4. **Transient values:** The consistent and noticeable occurrence of transient natural events, such as daily or seasonal changes in weather, vegetation or wildlife movement, contributes to the character of the feature or landscape.

5. **Shared and recognised values:** The feature or landscape is widely known and is highly valued for its contribution to local identity within its immediate and wider community.

6. **Cultural and spiritual values for tangata whenua:** Maori values inherent in the feature or landscape add to the feature or landscape being recognised as a special place.

7. **Historical associations:** Knowledge of historic events that occurred in and around the feature or landscape is widely held and substantially influences and adds to the value the community attaches to the natural feature or landscape.

(b) To identify trees, indigenous vegetation and habitats of indigenous fauna in the District that contribute in a significant way to the amenity and environmental quality of the District and to classify them according to their significance and relative value to the community. In determining their significance, the following matters will be considered:

- representativeness;
- diversity and pattern;
- naturalness;
- rarity and distinctiveness;
- long term viability;
- importance for breeding, feeding, roosting, or loafing areas for indigenous fauna on a regular or annual basis;
- importance of contribution to the habitat requirements of rare, vulnerable or endangered indigenous flora or fauna.

(c) To encourage the protection of significant trees, significant indigenous vegetation, significant habitats of indigenous fauna, and identified natural features and landscapes from inappropriate subdivision, development or use, and to promote public access where this will not adversely affect conservation or private property values.

(d) To consider rates relief and/or rebates, as well as other financial instruments or measures, where an area of significant indigenous biodiversity is being voluntarily protected by landowners in conjunction with other agencies (e.g. QEII Trust, MWRC, Department of Conservation, Tararua District Council).

(e) To assist landowners, wherever possible and practicable, in obtaining information concerning the management of indigenous biodiversity on private land.

2.6.4.3 Explanation:

Policies 2.6.4.2(a), (b) and (c) are derived from a number of "Matters of National Importance" which are set out in section 6 of the RMA, and which must be recognised and provided for by the Council. These are:

"(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga"

In addition, section 7 of the RMA sets out a number of other matters to which the Council shall have particular regard, including:

"(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems: and

(f) The maintenance and enhancement of the quality of the environment"

Policies 2.6.4.2(a) and (b) recognise that it is necessary to identify natural features and landscapes, significant trees, and significant indigenous vegetation and significant habitats of indigenous fauna which are of particular value to the community, in order to provide protection where appropriate. The

policies provide guidance as to the values and attributes that will be considered in assessing the significance of a natural feature.

Policies 2.6.4.2(a) and (b) recognise that the natural features and landscapes, significant trees, and significant indigenous vegetation and significant habitats of indigenous fauna of the District should be protected, where appropriate, in the public interest as their scenic, ecological, cultural and spiritual (intangible) values are a public good which are often not reflected by market forces or by individual land owners. Additionally, significant trees of the District have been scheduled in Appendix 3 of this Plan. The MWRC's One Plan states that the District Council shall, in addition to implementing the stated objectives and policies in respect of biodiversity management in the One Plan, "retain schedules of notable trees and amenity trees" in the District Plan. This is necessary because the One Plan uses a region wide approach and includes a schedule of regionally outstanding landscapes and identifies at risk and threatened species and habitats but does not include specific provisions for significant trees in each District within the Region. Similarly, specific landscapes within the Region warrant specific management and, where appropriate, protection in the District Plan, in addition to the provisions of the One Plan.

The MWRC, in its One Plan, has taken the lead role in managing indigenous biodiversity in the Region. The One Plan includes rules that control activities in rare and threatened habitats and at-risk habitats. It is therefore unnecessary for the District Plan to include these rules as well. The One Plan also states that the Regional Council will work with landowners to maintain or enhance these habitats.

Whilst the Regional Council takes primary responsibility for maintaining indigenous biological diversity in the District, by using (inter alia) rules to control the use of land to protect areas of significant indigenous vegetation and habitat, the Council will continue to exercise its responsibilities in relation to any matters not regulated by the Regional Council such as when considering and determining resource (land use and subdivision) consent applications. It will work closely with the Regional Council to ensure that Policy 6-1 of the Operative One Plan is implemented in a consistent and effective manner as detailed in method (a) of 2.6.4.4 Methods.

Policies 2.6.4.2(d) and (e) aim to assist landowners in the management of indigenous biodiversity on private land and to support the efforts of the Regional Council, landowners, and other agencies (such as the QEII Trust) in the management of indigenous biodiversity.

2.6.4.4 Methods:

The Council shall implement policies 2.6.4.2 (a), (b) and (c) by the following methods:

(a) *District Plan and resource consents* - The Council has included in this District Plan, in Appendix 3, a Schedule of Significant Trees and a Schedule of Natural Features and Landscapes, and has adopted rules which aim to control the adverse effects of activities at, or in close proximity to these listed items. The Schedules classify the items as Category A or B according to their significance and the level of protection required. The scheduled significant trees, and natural features and landscapes are identified on the District Plan maps. **[Refer to Part 9 of the Plan].**

In respect of resource consent enquiries and processing, the Council shall work with the Regional Council to recognise and provide for S6(c) of the RMA and achieve consistent implementation of the respective Councils' functions for the maintenance of indigenous biological diversity. In particular, the Council shall consult with the Regional Council when land use or subdivision consent applications are being considered which may, were consent to be granted, have adverse effects on indigenous vegetation or habitats.

(b) *Public consultation and the provision of information and promotion of voluntary protection* - The Council shall consult with relevant groups and organisations in the community to identify natural features of value to the community. With respect to the majority of the District which lies within the Manawatu-Wanganui Region, the One Plan's Regional Policy Statement states that the Regional Council will act as lead agency in preparing inventories of areas of significant indigenous flora and habitats of indigenous fauna. The District Council will assist and cooperate with the Regional Council and other relevant organisations in relation to such research. The Council shall aim to raise community awareness of significant natural features, and of the contribution that they make to the amenity and environmental quality of the District. The Council shall do this by undertaking research as necessary and providing information to the public as to the location of significant sites and features and their particular values. The priority for this research and public awareness shall focus on National Priority 1: Indigenous Vegetation of Private Land, as identified in the *'Statement of National Priorities for Protecting Rare and Threatened Indigenous Biodiversity on Private Land'* published by the Ministry for the Environment and the Department of Conservation, 2007. The Council shall encourage the voluntary protection of such sites and features by relevant agencies and individuals wherever possible.

(c) *Covenants/legal instruments* - The Council shall, where appropriate, encourage property owners to place a QEII Covenant or a Conservation Covenant over the sites of significant natural or open space value. Conservation Covenants are agreements between landowners and the

Minister of Conservation under the Reserves Act 1977 or Conservation Act 1987.

(d) Financial methods - Where natural features of outstanding amenity value to the community are under threat of destruction or irreversible damage, and other methods of protection are insufficient, the Council shall consider the possibility of providing financial assistance. Forms of financial assistance could include rates relief, grants to make improvements or, in extreme cases, purchasing the site or feature concerned and managing it to ensure its protection and enhancement. Each case shall be considered on its merits through the Annual Plan process.

2.6.4.5 Reasons:

The District Plan provides an opportunity to identify in a Schedule those important natural features and landscapes that are of particular value to the community and to classify them according to their significance. Rules are included in the Plan which afford differing levels of protection to sites and features depending on how they are classified. The Council's aim is not to restrict all development, or any modification, of identified natural features and landscapes but to provide a means for the assessment of proposals in a consistent manner.

The education and provision of information to the community about the values of particular features will be achieved through this Plan as well as other methods. Information will be made available to developers through Project Information Memoranda (PIM's) which are required under the Building Act 2004 when applying for building consent, and through Land Information Memoranda (LIM's) under the Local Government Official Information and Meetings Act 1991. Where any resource or building consent application may affect any item listed in Category A of the District Plan Schedule, the Council shall advise all potentially affected or interested individuals or organisations, including Heritage New Zealand and/or the relevant iwi authority or hapu as appropriate. The Council shall, through the provision of information and the facilitation of pre-hearing meetings, attempt to reduce or resolve conflicts which affect significant sites or features.

Voluntary protection will be encouraged wherever possible. Depending on the circumstances, some financial assistance may be available from trusts or funds set up for conservation purposes under other legislation such as the:

- Te Ture Whenua Maori Act 1993 (Maori Land Act 1993)
- Conservation Act 1987
- Wildlife Act 1953 and Amendment Act 1985
- Reserves Act 1977

- Queen Elizabeth II National Trust Act 1977

Financial assistance from the Council as a means of protecting significant sites and features shall only be considered in relation to sites and features of outstanding significance, where all other methods of protection have proven inadequate. Rates relief may be considered by the Council for particularly significant sites that are formally protected by Conservation Covenants, in order to promote their permanent protection.

2.6.4.6 Anticipated environmental results:

(a) Natural features and landscapes in the District will have been identified according to their significance and relative value to the community.

(b) Identified natural features and landscapes will have been protected, where appropriate, for present and future generations.

(c) Adverse environmental effects of activities on identified natural features and landscapes will have been avoided, remedied or mitigated to the extent practicable.

(d) People will be more aware of the identified natural features and landscapes of the District.

2.6.5 THE COASTAL ENVIRONMENT

The following objective, policies and methods are derived from issue 2.6.1.4 above.

2.6.5.1 Objective

To avoid, remedy or mitigate the adverse effects of activities on the coastal environment and maintain and/or enhance public access to and along the coastline.

2.6.5.2 Policies

(a) To protect the natural character of the coastal environment from inappropriate subdivision, use and development, taking into account existing modification, use, natural character, ecological values and the extent to which adverse effects are avoided, remedied or mitigated.

(b) To identify priority areas for the establishment and maintenance of esplanade reserves, esplanade strips, and access strips to ensure public access to and along the District's coastline.

(c) To identify areas appropriate and suitable for future settlement growth in coastal areas of the District in order to maintain the character of existing coastal settlements, identify priority areas for future service provision and avoid the risk to development from natural hazards.

2.6.5.3 Explanation:

Policies 2.6.5.2(a) and (c) aim to provide guidance as to what subdivision, use and development is considered appropriate in the coastal environment. The term "coastal environment" is used in this Plan in the same context as described in the Regional Policy Statement Chapter 8 of the Manawatu-Wanganui Region's One Plan. The intention of the policy is not to achieve preservation at all costs. Whether a subdivision, use or development is appropriate, or the location is appropriate, will in part be determined by the extent to which that location still has a natural character, and the extent to which the natural character will be affected by the subdivision, use or development. The use of off-road vehicles such as dune buggies and trail bikes on sensitive coastal sand dune areas (areas where sand is completely or partially exposed) can cause significant damage to the structure and stability of the dune systems and the habitats they support. This is an example of an activity which is generally inappropriate in terms of policy 2.6.5.2(a).

The maintenance and enhancement of public access can be achieved through the creation of esplanade reserves and access strips along appropriate parts of the coastline. Policy 2.6.5.2 (b) recognises, however, that it is not practicable to establish esplanade reserves and strips along the whole coastline, given that roads lead to the coast at only three points, Herbertville, Akitio and Owahango. Priority areas for maintaining and enhancing public access along the coastline will be identified as part of the "Reserves and Recreational Facilities Strategy" that will be prepared for the Tararua District.

2.6.5.4 Methods:

The Council shall implement policies 2.6.5.2(a), (b) and (c) by the following methods:

(a) District Plan rules - This District Plan makes subdivision within one kilometre of the coastal marine area (line of Mean High Water Springs) a discretionary activity. It also contains rules which ensure that stormwater, water supply and effluent disposal is provided to a satisfactory standard for all development and subdivision, in order to protect the quality of the District's environment. In addition, the preservation of the predominantly natural character of the coastal environment is one of the stated environmental results sought for the Rural Management Area, which shall be taken into account in assessing all resource consent applications.

(b) Service delivery - Akitio has a community water supply at present but neither Akitio nor Herbertville have a community sewerage scheme. As noted in (a) above, this Plan permits further development and subdivision only where adequate provision can be made for water supply, stormwater and effluent disposal. Council will maintain existing levels of service delivery and will periodically review the situation to ensure that adverse environmental effects are avoided, remedied or mitigated.

(c) Future growth areas – Council will seek to direct development to identified future growth areas and away from any 'no-development' areas identified in the District Planning Maps. Provision for the servicing of growth areas will be made in the Council's Long Term Plan.

2.6.5.5 Reasons:

The District Plan seeks to complement the MWRC's One Plan's Coastal Provisions. The One Plan contains policies and rules in relation to the coastal marine area which is the "wet" part of the coastal area, below the mean high water springs (high tide) mark. It also contains provisions designed to control the discharge of contaminants; taking, use, damming or diversion of coastal waters; activities which disturb the foreshore and seabed; structures in the coastal marine area; and public access to the coastal marine area.

It is a matter of national importance under section 6(a) of the RMA that the natural character of the coastal environment be protected from inappropriate subdivision, use and development. As not all subdivision in the coastal area will necessarily be appropriate, it is important that the Council have the discretion to refuse consent if necessary. That is why subdivision within one kilometre of the coast is a discretionary, not controlled, activity. In the Tararua District, existing and foreseeable demand for development of the coastal environment is at a relatively low level. Nevertheless, it is important that the Plan contain standards which ensure that development and subdivision will not give rise to adverse effects on the coastal environment. Almost all of Tararua's coastline is within the "General Coastal Area" as defined in the MWRC's One Plan. Only one part is classified in the One Plan's Coastal Section as a "Protected Area", and that is Cape Turnagain. This area is deemed to be an area of significant conservation value. Cape Turnagain is identified in this Plan as an important natural feature to be protected. No other additional controls are specified in this Plan as the Council is satisfied that the controls in the Regional Coastal Plan are sufficient.

The maintenance and enhancement of public access to the coastal environment is a matter of national importance under section 6 of the RMA.

2.6.5.6 Anticipated environmental results:

(a) The coastline of the Tararua District will retain a predominantly natural character with a high level of environmental quality and amenity.

(b) Public access to the coastal environment will be maintained and enhanced in areas along the coastline identified as priority areas for public access.

2.6.6 WATERBODIES AND THEIR MARGINS

The following objective, policies and methods are derived from issue 2.6.1.5 above.

2.6.6.1 Objective

To protect the natural, scenic, ecological, cultural and amenity values of the District's lakes, rivers, and wetlands and maintain and/or enhance public access to and along their margins.

2.6.6.2 Policies

(a) To maintain, and enhance where appropriate, the natural character of the District's wetlands, lakes and rivers and their margins, and to protect them from inappropriate subdivision, use and development.

(b) To maintain existing public access to and along rivers and lakes, except where such access is in conflict with other riparian management objectives where conservation values are of higher priority.

(c) To identify priority areas for riparian management along, and the provision of public access to, the margins of the District's rivers and other water bodies.

(d) To establish and maintain a network of esplanade reserves, esplanade strips, and access strips in accordance with identified priority areas.

(e) To encourage and promote public access and the provision of facilities in areas of conservation, recreational and amenity value within the District.

2.6.6.3 Explanation:

Policies 2.6.6.2 (a) to (e) are derived from the following "matters of national importance" which shall be recognised and provided for by the Council under section 6 of the RMA:

"(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers."

A riparian margin is a strip of land of varying width adjacent to a waterbody which contributes to the natural functioning, quality, and character of the waterbody, the land margin, and their ecosystems. The term "riparian management", therefore, refers to management of riparian margins. This may include the retention of existing riparian vegetation, or planting of new riparian vegetation, to mitigate the adverse effects of the adjacent land use on water quality and ecosystems. The provision of esplanade reserves and strips is one method of achieving the above policies. Esplanade reserves and strips will only be taken in "priority areas" as identified in a Schedule to this Plan *[**Note**: at present there are no priority areas identified.]*

2.6.6.4 Methods:

The Council shall implement policies 2.6.6.2 (a) to (e) by the following methods:

(a) *Co-operation and liaison with relevant organisations* - The Council shall liaise with the Manawatu-Wanganui and Wellington Regional Councils, the Department of Conservation and other relevant organisations to identify priority areas for riparian management and the provision of public access to the District's coastal environment, rivers, and other water bodies. The Council has not yet developed a long term plan to provide for the circumstances under which, and the order of priority for acquisition of, esplanade reserves, esplanade strips and access strips. Consultation with the relevant Regional Councils, the Department of Conservation, tangata whenua and other relevant organisations will be necessary in order to identify significant riparian margins, identify and reconcile the values associated with the protection or conservation of such margins (e.g. landbased ecosystems and habitats, public access, recreation, bank (erosion) protection, water quality, aquatic habitats) and order priorities. Regard will be had to the provisions of the relevant Regional Policy Statement when determining the criteria for identifying priority margins. Many riparian margins will also have a public access function. The outcome of any such consultation shall be included within the Reserves and Recreational Facilities Strategy.

(b) District Plan Rules/resource consent conditions/Esplanade reserves and strips - The Council has included rules in this Plan which specify the circumstances in which the requirements of the Resource Management Act will be applied, modified or waived in relation to the provision of esplanade reserves and strips upon subdivision. In addition, this Plan's subdivision standards enable assessment of a proposed subdivision's impact on the natural environment, and regard will be had to Policy 2.6.5.1(a) in that assessment. Where an activity requiring a resource consent is likely to create adverse effects on water quality and ecosystems in an adjacent waterbody, conditions of consent may include a requirement to prepare a riparian management plan, or similar. **[Refer to section 5.2 of the Plan]**

(c) Encouragement of voluntary riparian management and/or provision of access - In areas which are identified as being a priority for riparian management or the provision of public access, the Council shall encourage landowners to undertake appropriate riparian management/planting and/or to voluntarily form access routes, having regard to the private property rights of landowners.

(d) Service delivery - The Council will, as resources permit and as information becomes available, update and maintain records of existing public accesses and unformed roads in the District. Where areas are identified as being of high priority for public access yet the opportunity to take esplanade reserves or strips upon subdivision is unlikely to arise in the foreseeable future, the Council shall consider negotiating with landowners with a view to acquiring land to provide public access.

2.6.6.5 Reasons:

Esplanade reserves and strips serve both conservation and public access functions. Esplanade reserves and strips may have significant benefits, including:

- maintaining or enhancing the natural functioning of the adjacent sea, river or lake;
- maintaining or enhancing water quality;
- maintaining or enhancing aquatic habitats;
- protecting the natural values associated with the esplanade reserve or strip;
- mitigating natural hazards;
- enhancing public access to, and recreational enjoyment of, the sea, river or lake and its margins, where this is compatible with conservation values.

It is not appropriate, however, for esplanade reserves and riparian management regimes to be established along all, or even most, of the District's water margins. There is a need to identify priority areas where benefits will outweigh costs. Potential considerations to be weighed against the benefits stated above include:

- the costs and responsibilities of maintaining the reserves and strips;
- the costs of fencing and planting land which is to retired, and the cost of lost production and loss of access to water for landowners, must be weighed against the environmental benefits which generally occur downstream;
- riparian planting can restrict public access to the water body.

For the above reasons, the District Plan includes rules which vary the standard provisions of Section 230 of the RMA. There is an emphasis in this Plan on taking Esplanade Strips (rather than Esplanade Reserves) so that ownership stays with the landowner and the strip is not surveyed. Esplanade Reserves will be taken in certain circumstances. Esplanade Strips and Reserves will only be taken in identified priority areas (Refer to Appendix 15) and for the purpose(s) specified. The rules also specify circumstances where reduced widths are required.

2.6.6.6 Anticipated environmental results:

(a) Public access to significant water bodies and areas of significant conservation, recreational or amenity value in the District will have been maintained and enhanced.
(b) The natural character of the District's rivers and water bodies, and their margins, will have been maintained and enhanced.
(c) The quality of the District's rivers and lakes will have been maintained and enhanced.
(d) The rights of property owners will have been acknowledged and taken into account in any decisions in respect of riparian management.

2.7 Activities on the Surface of Water in Rivers and Lakes

2.7.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

Under Section 31 of the RMA, "the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes" is one of the functions of territorial authorities. The control of activities in relation to the surface of water in coastal marine areas is the responsibility of Regional Councils, in conjunction with the Minister of Conservation.

Activities on the surface of water in rivers and lakes include such activities as commercial transportation of people or cargo; commercial operations for tourism, entertainment or recreation; houseboats; and private recreational activities such as speed boats, jet skis/wet bikes, rafting, canoeing, fishing and sailing.

2.7.1.1 Protection of environmental quality and amenity

There is the potential for activities on the surface of water to adversely affect environmental quality and amenity, including:

- adverse effects on the water quality/ecology of the river or lake;
- noise problems (particularly against the low ambient noise levels that people often come to rivers and lakes to enjoy);
- conflicts between different kinds of activities (e.g. water skiing and fishing);
- conflicts with the special spiritual and cultural relationship that Maori have with water.

Tararua District contains rivers which are important for their scenic, fishing, recreational and aesthetic values. The Manawatu, Mangatainoka, Makakahi, Makuri and Mangahao Rivers are all popular rivers for fishing. Some recreational activities such as jet boating can create adverse effects which may cause conflict with other water activities. Notwithstanding this, conflicts between water activities in the District are not at such a high level as are experienced in some areas of the country. The Council seeks to ensure that the public continue to enjoy access to the District's inland waters and a high level of environmental quality and amenity.

Having regard to these issues, the Council has adopted the following objective, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.7.2 PROTECTION OF ENVIRONMENTAL QUALITY AND AMENITY

The following objective, policies and methods are derived from issue 2.7.1.1 above.

2.7.2.1 Objective

To ensure that surface water activities maintain and/or enhance the environmental quality and level of amenity of the District's inland waters and environs

2.7.2.2 Policies

(a) To control the environmental effects of activities on the surface of rivers and other inland water bodies which have the potential to cause adverse environmental effects.

(b) To monitor trends, issues or problems that may arise in the future as a result of activities on the surface of water in rivers and lakes, and to liaise with the Regional Council in determining the appropriate response, if any, should problems be identified.

2.7.2.3 Explanation:

These policies provide for the control of the effects of activities on rivers and lakes and other water bodies. They enable activities on the surface of rivers and other inland water bodies to be permitted activities where there are no significant adverse effects. Trends, issues and any problems will be monitored and appropriate action taken.

2.7.2.4 Methods:

The Council shall implement Policies 2.7.2.2 (a) and (b) by the following methods:

(a) *Enforcement and abatement procedures* - The Council shall respond to any nuisance or environmental quality problems as they arise by using the Resource Management Act's enforcement and abatement provisions as appropriate.

(b) District Plan Rules - The Council has included rules in this Plan which deem surface water activities to be generally permitted throughout the District unless they cause, or have the potential to cause, significant adverse environmental effects, in which case they are classified as discretionary activities to enable their effects to be assessed and appropriate mitigation measures to be considered. **[Refer to Part 4 of the Plan]**

(c) Co-operation with the Regional Council and other relevant agencies - The Council shall liaise with the Regional Council as necessary.

2.7.2.5 Reasons:

The District's rivers and other inland water bodies are significant for the amenity and recreational values that they offer to the Tararua community and visitors. Current experience is that conflicts can occur between the various activities that take place on the District's water bodies but, on balance, most activities co-exist well together and do not give rise to adverse effects which need to be managed. Should problems or nuisances arise in the future, the RMA provides some solutions. Sections 16 and 17 of the RMA place a general duty on all persons to avoid unreasonable noise and a duty to avoid, remedy or mitigate adverse effects. Section 322 of the RMA provides for abatement notices to be issued by enforcement officers (Council Officers) in respect of noise and other nuisances.

A more proactive approach is needed in respect of potential activities (such as some commercial tourist, entertainment, motorised recreation or transportation operations) which could give rise to adverse environmental effects due to the scale or intensity of activity. Environmental standards are included in this Plan so that the effects of any activities which do not meet the standards can be assessed and conditions of consent imposed, if necessary. While surface water activities are not currently considered to be a major issue in the District, ongoing monitoring of the situation and liaison with the Regional Council will enable further responses to be put in place if that becomes necessary or desirable in respect of any particular area.

2.7.2.6 Anticipated environmental results:

(a) The public will enjoy a high level of amenity and environmental quality on the District's rivers and other inland water bodies.

(b) Emerging trends or problems will be identified and dealt with in an appropriate manner as the need arises.

2.8 Infrastructure

2.8.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

Infrastructure refers to the network of utility services, communication facilities, electricity generation facilities and transportation links throughout the District which are essential to the operation and well-being of the community. The District's infrastructure includes the physical resources, plant, equipment and networks necessary for the generation and provision of electricity, gas, water supply, radio and telecommunications, sewage treatment and disposal, stormwater, drainage, roading, rail and air transport. The above services are provided by "network utility operators" as defined in Section 166 of the RMA (refer to Part 6 of this Plan, "Interpretation"). The Council is a network utility operator in terms of its role in the provision and maintenance of, for example, water and sewerage reticulation, stormwater systems and local roads and bridges. Similarly, the New Zealand Transport Agency (NZTA) is a network utility operator in relation to the State Highway network. Many "network utility operators", formerly Government owned and operated, are now private and public companies but the services they provide remain essential for the functional wellbeing of the community. Likewise, and although they are not included in the RMA as 'network utilities', existing wind farms also contribute to the District's infrastructure.

2.8.1.1 Network utility and infrastructure operations

Existing network utilities and infrastructure, such as electricity, gas and communication networks, represent a significant investment of resources in the District. As the community is largely dependent upon the provision of effective and efficient network utilities and infrastructure, it is important that adequate provision be made for network utilities and infrastructure in this Plan without the imposition of undue restrictions. Network utility and infrastructure operators work within technical and operational constraints that must be recognised, particularly in the consideration of resource consent applications for network utilities and infrastructure. However, while it is important that provision be made for services to be established and maintained in an economically and practically viable manner, it is also in the community's interest that services be provided in an environmentally acceptable manner. Given the deregulated environment in which many network utilities and infrastructure now operate, it is important that the potential effects of the activities of network utility operations and infrastructure are considered. The significant resource management issue in the District (as elsewhere) is how to manage the potential adverse effects of network utilities in an efficient and practical manner.

2.8.1.2 Interaction of the transport network and adjacent activities

There has been considerable investment of resources in the transport (road, rail and air) infrastructure of the District, both in terms of financial resources and the considerable amount of land that is taken up by roads, railways and aerodromes/airstrips. It is, therefore, important that the transportation network be managed for maximum efficiency. Sustainable management of the transportation network requires that this Plan should seek to avoid, remedy or mitigate the adverse effects of:

- land use activities on the transport network; and
- the transport network on surrounding activities

A major influence in the management of the transport network is the New Zealand Transport Agency (NZTA), an authority whose primary focus is the provision of an integrated and safe roading network. An important function of the NZTA is to control the State Highway system (including planning, design, supervision, construction and maintenance) in accordance with the provisions of the Land Transport Management Act 2003 and the Land Transport Act 1998. The District Council has similar responsibilities in respect of the local road network. It is noted that via an amendment to the Land Transport Management Act 2003 (amended 2008), the New Zealand Transport Agency (NZTA) was created. The NZTA was established as an 'umbrella' organisation that brings together the functions of the former Land Transport New Zealand and the former Transit New Zealand in order to deliver an integrated approach to land transport planning and funding.

On a regional level, the MWRC has developed the Regional Land Transport Strategy 2010 – 2040 which sets out the Region's approach to land transport for that period of time. The Strategy outlines the key objectives to be achieved in terms of maintaining and improving the Region's transport network and serves as an overarching policy document for the integrated management of this network. The MWRC's Proposed One Plan includes policies aimed at ensuring that other activities do not adversely affect regionally important infrastructure, including the Region’s land transport system and that conversely, infrastructure does not adversely affect the environment, a vision shared by the District Council. The significant resource management issue is, therefore, how to minimise the adverse effects of land use activities on the safe and efficient operation of the transport network and, on the other hand, the adverse effects of the transport network on adjacent activities.

2.8.1.3 Electricity generation from renewable sources, including wind farms

The Tararua District is recognised as having a high quality wind resource. There are a number of existing wind farms in the District and there is the potential for more to be developed. There are local, regional and national benefits to be derived from wind farms, and other electricity generation from

renewable sources, and they are an important part of the District's, Region's and Nation's Infrastructure. However, wind farms and other forms of electricity generation from renewable sources can also have adverse effects, particularly on local amenity values. The significant resource management issue, therefore, is how to have particular regard to Sections 7(i) and 7(j) of the RMA, given the quality of the wind resource in the Tararua District, and the need to manage the potential adverse effects of wind farms on the environment.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.8.2 NETWORK UTILITY AND INFRASTRUCTURE OPERATIONS

The following objective, policies and methods are derived from issue 2.8.1.1 above.

2.8.2.1 Objective

To maintain and develop the District's infrastructure to meet the community's needs in a safe, effective and efficient manner while avoiding, remedying or mitigating adverse environmental effects.

2.8.2.2 Policies

(a) To enable the activities of network utility operators and the establishment and maintenance of network utility equipment and facilities (including roads) to be undertaken, provided that adverse environmental effects are avoided, remedied or mitigated.

(b) To ensure that for all new activities and subdivisions within urban and settlement areas, utility services (pipes, wires and associated equipment) are placed underground at the expense of the developer, unless the operations require above-ground facilities for technical reasons, or unless the Council resolves that it is not practical or desirable for other demonstrated technical, economic, physical or environmental reasons to make such underground services available.

(c) To encourage the co-siting of network utility equipment where practicable.

(d) To ensure that any adverse effects of the subdivision, use and development of land on the safe and efficient operation of network utilities and infrastructure, are avoided, remedied or mitigated.

(e) To take into account the technical and operational requirements of network utilities and infrastructure in the assessment of resource consent applications for these activities.

2.8.2.3 Explanation:

Policy 2.8.2.2(a) recognises that the services provided by network utility operators are essential to the health, safety, social, economic and cultural well-being of the people of the Tararua District, and that it is in the community's interest that services are provided in an economically and practically viable manner. It is often the case that there will be some temporary effects during construction and maintenance operations (the effects of roadworks for example) but these are generally acceptable to the community as they are inevitable, short term effects as a result of providing essential services. At the other end of the scale, some network utility activities may have the potential to have considerable impact on the environment. The effects of such activities need to be controlled. In assessing the environmental effects of network utility activities, regard shall be had to the matters in Part II (Sections 5, 6, 7 and 8) of the RMA.

Policy 2.8.2.2(b) aims to maintain and enhance the visual amenity of urban areas by requiring new services to be placed underground wherever possible.

Policy 2.8.2.2(c) aims to minimise environmental effects and to use resources efficiently by encouraging co-siting and co-operation between utility operators where possible.

Policy 2.8.2.2(d) recognises that network utilities and infrastructure represent a considerable investment of resources and it is important that their safe and efficient operation and maintenance is not hindered by the effects of new subdivision, use or development.

Policy 2.8.2.2(e) recognises that there are technical and operational constraints that affect network utilities and infrastructure and that these need to be considered in the assessment of resource consent applications.

2.8.2.4 Methods:

The Council shall implement policies 2.8.2.2 (a) to (e) by the following methods:

(a) District Plan Rules - The Council has included rules in this Plan which classify network utility and infrastructure activities as permitted and controlled activities where the potential for significant adverse effects (other than temporary construction effects) is minor. Major works which

have the potential to have significant effects are classified as discretionary activities. **[Refer to section 5.3 of the Plan.]** It is noted that, in some cases, a resource consent from the relevant Regional Council may be necessary.

Additionally, the Plan provides the ability to register no complaints covenants. This is a method that can be used in order to protect existing network utilities and infrastructure activities from the adverse effects of new subdivision and development **[refer standards 5.2.4.3 and 5.2.4.6]**.

(b) Designations - The Council shall consider notices of requirement for designations received from requiring authorities in terms of the provisions of Part VIII of the RMA. Confirmed designations will be incorporated into this Plan and shown on the District Plan maps and listed in the Schedule of Designations in Part 9 of the Plan.

2.8.2.5 Reasons:

The potential for post-construction, or on-going, adverse effects of network utility and infrastructure facilities varies widely. Many network utilities and infrastructure activities have little or no adverse effect (underground pipes and equipment) whereas large-scale facilities such as power generating plants and above-ground transmission lines and pipes, or major transportation developments may have significant effects which need to be assessed. This plan therefore classifies a wide range of network utility and infrastructure activities as permitted and controlled activities where there will be no significant adverse effects. Major works, where there is the potential for significant environmental effects, are classified as discretionary activities to enable an assessment of environmental effects, alternatives and mitigation measures to be undertaken, with third party input. It is also important to ensure that the subdivision, use and development of land does not have the effect of restricting the safe and efficient operation of network utilities and infrastructure.

The urban boundaries of the District's towns and settlements have been defined on the District Plan maps having regard to the desirability of having consolidated and efficient urban areas. A prerequisite for any future boundary changes (which can only be achieved by changing the Plan) will be that the land can be effectively and efficiently serviced.

The undergrounding of services aims to enhance the visual amenity of urban areas where possible. While this may also be desirable, from a visual perspective, in rural areas, it is considered that the costs would be prohibitive due to the greater distances involved, and also the opportunities for new developments to make a significant impact on rural amenities are limited.

The "designation" procedure is an alternative method of providing for the essential works of "requiring authorities", including Ministers of the Crown, local

authorities and those network utility operators which have been approved as requiring authorities under section 167 of the RMA. A requiring authority may give notice to the Council of its requirement for a designation to be made in the District Plan. The information to be provided and the procedures to be followed are set out in Part VIII of the RMA. Refer also to section 5.6 of this Plan. The designation procedure provides opportunities for Council and public input and, while the requiring authority is not bound to accept all of the Council's recommendations, there are rights of appeal to the Environment Court. Generally speaking, the use of the designation technique is likely to be confined to proposed large-scale works. Most network utility activities are likely to rely on District Plan rules which classify them as permitted, controlled or discretionary activities depending on the significance of their effects.

2.8.2.6 Anticipated environmental results:

(a) There will be a minimum of adverse environmental effects and conflicts with other activities as a result of network utility operations and infrastructure activities.

(b) Essential utility services will be provided to the Tararua community in an effective and efficient manner.

(c) The visual amenity of the District's urban areas will be progressively improved as utility services are placed underground.

(d) Coordinated installation and maintenance of utility services will cause less disruption to the community.

2.8.3 TRANSPORTATION NETWORK AND ADJACENT ACTIVITIES

The following objective, policies and methods are derived from issue 2.8.1.2 above.

2.8.3.1 Objective

To ensure the safe, efficient and effective operation of the District's transportation networks while avoiding, remedying or mitigating adverse environmental effects.

2.8.3.2 Policies

(a) To establish a "roading hierarchy" based on a functional classification of roads within the District according to each road's access and through traffic functions.

(b) To maximise the efficiency of the roading network by controlling access to, and intensity of, traffic generating land uses on allotments adjacent to primary arterial roads.

(c) To specify standards for access to sites, on-site parking, loading and manoeuvring in order to avoid or mitigate the adverse effects of vehicle movements on the safety and efficiency of the road system.

(d) To encourage rural selling places to locate where they will not adversely affect the safety and efficient operation of the road system.

(e) To avoid the adverse effect of signs on the environment and on the safe and efficient operation of the transport system by controlling signs (other than road or traffic signs) within the road reserve of formed legal roads.

(f) To provide for the safe and efficient operation of the Dannevirke Aerodrome and other airstrips in the District.

(g) To encourage the use of "environmentally friendly" forms of transportation through the provision and enhancement of safe cycling and pedestrian facilities, particularly in town centres.

(h) To avoid, remedy or mitigate the adverse effects of transportation activities on the environment.

2.8.3.3 Explanation:

Policy 2.8.3.2(a) recognises that there is an interdependency between the efficiency of the transportation network and the efficiency of other activities. In preparing this section of the Plan, the Council has had regard to the guidelines produced by the then Transit New Zealand in its document "Planning for a Safe and Efficient State Highway Network under the Resource Management Act 1991". A roading hierarchy classifies roads on the basis of the relative importance of their access and through-traffic functions. The Council has adopted the categories of primary arterial roads, secondary (district) arterial roads, collector roads and local roads (refer to Appendix 5).

Policy 2.8.3.2(b) recognises that the main function of primary arterial roads (as defined in the roading hierarchy) is the movement of people and goods through the District. Access to these major strategic roads needs to be controlled to ensure that their efficiency and safety for this function is not compromised.

Policy 2.8.3.2(c) aims to ensure that vehicles are able to move between the road network and properties in a safe and convenient manner, without causing any undue adverse effect on the safe and efficient operation of the roading system.

Policy 2.8.3.2(d) aims to ensure that rural selling places are designed and located where they will not adversely affect the safety and efficiency of the road system. Rural selling places will be encouraged not to locate on primary arterial roads for safety and efficiency reasons.

Policy 2.8.3.2(e) recognises that signs play an important role in the District in terms of providing information to the public and advertising for businesses but that some control on signs is needed in order to protect the amenities of the District and ensure that traffic safety is not compromised.

Policy 2.8.3.2(f) recognises that the Dannevirke Aerodrome is an important District facility in which considerable resources have been invested. The safe and effective operation of the aerodrome (and other airstrips in the District) is in the public interest.

Policy 2.8.3.2(g) aims to make "environmentally friendly" forms of transport, such as walking and cycling around towns, a more attractive option for people to use.

Policy 2.8.3.2(h) recognises that transportation activities can have adverse effects on the surrounding environment and that these should be avoided or reduced where practicable to do so.

2.8.3.4 Methods:

The Council shall implement policies 2.8.3.2 (a) to (h) by the following methods:

(a) District Plan Rules - The Council has included a 4-level "roading hierarchy" for the Tararua District in this District Plan. This Plan contains rules to manage the effects of activities in the road reserve as well as adjoining land uses. Activities are classified as permitted, controlled and discretionary according to their potential impact on the safety and efficiency of the roading hierarchy. A "Dannevirke Aerodrome Protection Area" has been defined in Appendix 13 (refer to Part 9 of the Plan) and shown on the District Plan Maps with rules designed to protect the safe and efficient operation of the aerodrome. **[Refer to section 5.3 of the Plan]**

(b) Service delivery / District Land Transport Programme - The Council shall give priority to road maintenance and construction projects for those parts of the road network which have been identified as unsafe, by ranking such projects accordingly in the District Land Transport Programme. The Council shall also investigate ways in which pedestrian and cycling facilities can be made safer and more attractive to use and shall programme improvements accordingly.

(c) *Regional Community Road Safety Programme* - The Council shall continue to partially fund the Region's Community Road Safety Programme in conjunction with the MWRC and the other constituent District Councils.

2.8.3.5 Reasons:

Roads in the District generally serve a dual purpose. They provide access to properties and they provide for the movement of people and goods from one part of the District or country to another (i.e. through traffic). Some roads have local access as their main function; others are more important for through-traffic. A technique which has been commonly used in the past and which continues to be promoted by the NZTA is the development of a roading hierarchy which classifies roads according to their main function and traffic volumes. This enables priorities to be set for the management of the roading network and for the management of the effects of activities which impact on the efficiency and safety of the road network.

Standards for access, parking and loading space have been developed on the basis of the potential effects of activities and road classification (refer to section 5.3 of the Plan).

Rural selling places can be an important source of supplementary income for many farmers and they are a legitimate activity in the rural area provided they sell produce or goods grown or crafted on the site. They also have the potential to have an adverse effect on the efficiency and safety of the road network if not designed and located carefully. This issue is particularly important in respect of primary arterial roads. This District Plan contains rules making rural selling places discretionary activities on primary arterial roads and permitted activities on all other roads, subject to meeting specified standards.

Some signs, depending on their nature and location, may impede sight distances or be unduly distractive to drivers. In relation to State Highways, it is the policy of the NZTA to prohibit extraneous signs other than authorised road or traffic signs. Within all other legal roads the Council, as land owner, shall aim to control signs other than road and traffic signs. In respect of signs on private property, environmental standards in this Plan provide a flexible approach which permits signs subject to standards which are related to the surrounding environment and acceptable levels of amenity (e.g. not unduly visually intrusive). Standards are more restrictive in rural and residential areas and adjoining primary arterial roads than in commercial and industrial areas.

It is in the public interest that the Dannevirke aerodrome be able to continue to operate efficiently and safely. The Aerodrome Protection Area comprises land at the ends of the landing/take off strips and vertically below the take off/approach slopes. There are numerous other privately owned airstrips in the District but these do not warrant special management areas being established

as the frequency of use is low and there are no current or foreseeable conflicts between them and adjacent activities.

The impacts of transport activities on the local environment are numerous, especially in urban areas. The major effects at a local level are air and noise pollution, including vibrations, odours and smoke. There are also significant global issues surrounding the effects of transport on the environment. One of the major environmental problems facing the world is global warming, believed to be caused by the enhanced "greenhouse effect". Carbon dioxide is the single biggest contributor to the increasing greenhouse effect. The transport industry is a major contributor to the increasing carbon dioxide build-up in this country, producing some 19% of New Zealand's greenhouse gas emissions (MWRC Regional Land Transport Strategy 2010 – 2040 (RLTS), September 2010). Another major problem is the depletion of non-renewable resources. The need for efficient energy and resource use in the design and management of transportation systems, and the promotion of alternative forms of transport is recognised.

Localised road and streetscape improvements can make walking and cycling more attractive options. The Plan's policies also aim to contribute, in the longer term, towards reducing our dependence on motor vehicles for many day-to-day tasks. The policies also aim to achieve consolidated and efficient urban areas, with flexibility of location for activities on the basis of their effects rather than function.

In addition to District Plan responsibilities, the Council's main role in land transport relates primarily to the development and construction of roads, and road safety. Annually, every territorial authority must include in its Annual Plan, an outline of the road and road safety activities to be funded in the following year. Funding for identified projects comes from the National Land Transport Programme which is administered by the NZTA. For local roads, approximately 60% of the total cost for maintenance works is available from NZTA, while funding for other works varies. For, State Highways, 100% of funding is available (source: MWRC Regional Land Transport Strategy). Projects aimed at improving road safety shall be given priority. The Council also contributes, along with the other territorial authorities in the region and the MWRC, funding for a Community Road Safety Programme for the Region.

2.8.3.6 Anticipated environmental results:

(a) The District has a transport system which provides for the safe and efficient movement of people and goods in and through the District.

(b) The District has a transport system which has no or minor adverse effects on the natural and physical environment.

(c) The District has a transport system which is able to be maintained and sustained in the long term.

2.8.4 ELECTRICITY GENERATION FROM RENEWABLE SOURCES INCLUDING WIND FARMS

The following objective, policies and methods are derived from issue 2.8.1.3 above.

2.8.4.1 Objective

To recognise the potential of the District's Rural Management Area for renewable electricity generation and wind farms in particular.

2.8.4.2 Policies

(a) To recognise the local, regional and national benefits to be derived from the development of renewable energy resources, and wind farms, in particular.

(b) To remedy, mitigate, or avoid, where possible, the actual and potential adverse effects on the environment of wind farms and other renewable electricity generation facilities, by recognising that they have the potential to cause significant adverse effects on the environment, particularly in respect of amenity values, landscape ecology, noise and traffic, and may therefore be inappropriate in some locations.

2.8.4.3 Explanation:

The use of electricity is a fundamental part of the everyday functioning of New Zealand. It is therefore important to recognise the benefits that renewable electricity generation brings to local, regional and national communities.

Renewable electricity generation has particular benefits in terms of climate change, not using fossil fuels and sustainability.

Electricity generation can also have adverse effects on the environment and these effects need to be managed (avoided, remedied or mitigated) wherever practicable when new energy generation is developed. It may also be appropriate to avoid adverse effects altogether, which in some instances may mean that new electricity generation should not be developed. Policies 2.8.4.2(a) and (b) seek to ensure that both the benefits and the potential adverse effects of electricity generation, and wind farms in particular, are taken into account in decisionmaking.

Renewable electricity generation facilities also make up a significant part of the District's, Region's and Nation's infrastructure and it is important that the safe and efficient operation of existing facilities is not significantly adversely affected by the subdivision, use and development of other land. It is also important that the technical and operational requirements and constraints of electricity generation facilities are taken into account when resource consent applications for them are considered. These matters are recognised in the District Plan in Objective 2.8.2.1 and Policies 2.8.2.2(d) and 2.8.2.2(e) relating to network utilities and infrastructure.

2.8.4.4 Methods:

The Council shall implement policies 2.8.4.2 (a) and (b) by the following methods:

(a) District Plan Rules – The Council has included rules in this Plan which provide for the operation and maintenance of existing renewable electricity generation facilities, including wind farms, as a permitted activity and for new renewable electricity generation facilities as discretionary activities. The assessment criteria set out in relation to the discretionary activity rule include matters relating to both the benefits that can be derived from the development of new renewable electricity generation facilities, as well as to the potential for adverse effects relating to amenity values, landscape, ecology, noise and earthworks to arise in association with such activities.

2.8.4.5 Reasons:

Electricity generation facilities provide an important service to the New Zealand community, and generation from renewable sources has significant benefits. The on-going operation and maintenance of facilities, such as existing wind farms, is essential to ensure that this service can continue to be delivered. However, these facilities, and particularly the establishment of new generation facilities, can have adverse effects on the environment. The methods are intended to enable existing facilities to continue to operate, and to ensure that, when a new electricity generation facility is proposed to be established, a comprehensive assessment of both the positive effects and the adverse effects is undertaken.

Additionally, the efficient operation of electricity generation facilities can be adversely affected by the inappropriate siting and design of subdivision and subsequent development. Restrictive ‘no-complaints’ covenants may be used in relation to subdivision in proximity to these facilities.

2.8.4.6 Anticipated environmental results:

(a) The on-going operation and maintenance of existing electricity generation facilities, including wind farms.

(b) The establishment of new electricity generation facilities, and wind energy facilities in particular, in appropriate locations.

2.9 Waste Management and Hazardous Substances

2.9.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

Under the RMA, Regional Councils have primary responsibility for the control of discharges to land, water and air, and for the maintenance and enhancement of water quality. The control of the adverse effects of land use activities, however, is a territorial authority function and it is in the interests of sustainable management that objectives and policies dealing with waste management and hazardous substances are contained in this Plan. The significant resource management issues in the District associated with waste and hazardous substances management are as follows:

2.9.1.1 Waste minimisation

Waste management is the process by which individuals, businesses and the community as a whole generates, collects and disposes of its waste material. The manner in which this is done has important environmental implications both at the local level and, ultimately, at the global level. In the past, the true costs of waste generation and disposal have not been appreciated as environmental costs have not been taken into account. It was cheap and easy to simply take rubbish to the "dump" and individuals and businesses tended not to accept any personal responsibility for waste generated or what happens to it once it leaves their premises. Under the RMA, the true costs of waste disposal are starting to be felt by communities as Councils are forced to upgrade landfills and close ones with unacceptable levels of adverse environmental effects. There is a direct correlation between the amount of waste generated and the amount that has to be disposed of. There is a need to address all links in the chain, beginning with waste minimisation, which involves reducing waste, reusing waste and recycling waste.

2.9.1.2 Solid waste disposal

Historically, landfills in New Zealand have been sited and managed without particular consideration of their actual and potential effects on the environment. With an increasing understanding of the effects associated with landfill operations, there has been a significant change in the approach to the development of new landfills and the management of existing ones. In order to meet the requirements of the RMA, new landfills are now designed as 'sanitary landfills', requiring engineered lining, leachate collection and treatment, daily capping, environmental monitoring, and carefully considered siting. In order to

meet the increased costs associated with these more intensive landfill operations, the trend is for the development of large regional landfills, serviced by a number of transfer stations.

The Tararua District Council continues to maintain and operate a number of small local landfills within the District. These are managed in accordance with the Ministry for the Environment's "A Guide to the Management of Closing and Closed Landfills in New Zealand' (2001). While there has been considerable improvement in the management of the landfills within the District, it is important to maintain the currency and effectiveness of the management systems for both open and closed landfills in order to avoid, remedy or mitigate any adverse environmental effects.

2.9.1.3 Hazardous substances

The use, storage, transportation and disposal of hazardous substances is a significant environmental issue due to the potential for adverse effects on human health and the environment if not managed properly. The potential for significant adverse environmental effects on the environment and human health ranges from nuisance through to disaster in extreme cases.

2.9.1.4 Contaminated sites

In many cases, the effects of inadequate waste and hazardous substances management in the past are only being realised now and similarly, the effects of some current practices may not be felt for years to come. An issue for the Tararua District is that there is no accurate database on how many, and which, sites are contaminated, and to what extent. Where contaminated sites are identified, a significant resource management issue to be resolved is how to discourage inappropriate activities from locating on contaminated sites and, in relation to potential future contamination, how to minimise the opportunities for adverse effects to arise.

2.9.1.5 Liquid wastes

The disposal of liquid wastes is a significant resource management issue in the District. While the control of discharges to land and water is primarily the responsibility of Regional Councils, it is also an important responsibility of the District Council in terms of its control of subdivision and development and the effects of land use activities in the District. In non-sewered areas, for example, the effectiveness of discharging liquid wastes from septic tanks (or other method) into the ground depends on the capacity of the soil to assimilate the liquid waste. In some areas where groundwater is close to the surface, or where development density is too high (or, conversely, individual lots too small), the cumulative effects of the discharges may have an adverse effect on groundwater quality in the area. In some cases, water is taken from groundwater bores in the same areas and there may be a potential health and environmental risk. The significant issue for the Council is how to ensure that

liquid waste disposal does not generate adverse effects and to determine what standards should apply, taking the infinite variety of site characteristics in the District into account.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.9.2 WASTE MINIMISATION

The following objective, policy and methods are derived from issue 2.9.1.1 above.

2.9.2.1 Objective

To minimise the amount of waste generated in the District.

2.9.2.2 Policy

(a) To promote waste minimisation and cleaner production initiatives in the Council's own operations and within the community.

2.9.2.3 Explanation:

Policy 2.9.2.2(a) aims to eliminate or reduce waste at source, rather than controlling it once it is produced and discharged to the environment.

2.9.2.4 Methods:

The Council shall implement Policy 2.9.2.2(a) by the following methods:

(a) Service delivery - The Council has adopted a Waste Management and Minimisation Plan (2011 – 2017) for the District based on the 5 "R's" waste management hierarchy of "reduction, reuse, recycling, recovery and residual management" of waste. This will address the management of the Council's own activities and facilities and outline the actions to be carried out to manage and minimise solid waste.

(b) Financial incentives - As part of the Waste Management and Minimisation Plan (2011 – 2017), the Council shall implement appropriate user charges at landfills and transfer stations to reflect the cost of waste disposal.

(c) Education and Information provision - In implementing its Waste Management and Minimisation Plan (2011 – 2017), the Council shall produce consultation materials and provide other information to

encourage, promote and support waste minimisation and cleaner production initiatives in the District.

2.9.2.5 Reasons:

Large scale waste generation and use of finite natural and physical resources is unsustainable. Management of wastes should be based on a system of reduction, reuse, recycling, recovery and residual management. These are commonly known as the 5 "R's" of the waste management hierarchy. "Cleaner production" aims to minimise environmental effects by more efficient use of raw materials and energy, avoiding the generation of harmful wastes, and producing products which are not harmful during their use and disposal.

2.9.2.6 Anticipated environmental results:

(a) Throughout the District an increase in re-use, recycling and resource recovery will have led to a decrease in the volumes of waste requiring disposal.

(b) District Landfills will have a longer life and there will be a decrease in demand for new landfill sites.

2.9.3 SOLID WASTE DISPOSAL

The following objective, policy and methods are derived from issue 2.9.1.2 above.

2.9.3.1 Objective

To ensure that the District's solid waste is disposed of in an environmentally acceptable manner.

2.9.3.2 Policy

(a) To ensure that landfills are sited, designed and managed so as to avoid, remedy or mitigate adverse effects on the environment.

2.9.3.3 Explanation:

Policy 2.9.3.2(b) recognises that many of the adverse effects commonly associated with landfills can be avoided by careful planning and management.

2.9.3.4 Methods:

The Council shall implement Policy 2.9.3.2(a) by the following methods:

(a) *Service delivery* - The Council shall implement the Waste Management and Minimisation Plan for the District and update as necessary and implement management and operations plans for all its landfills. It shall also ensure that the necessary resource consents for the operation of the District's Landfills are obtained from the Regional Council.

(b) *District Plan Rules* - The Council has included rules in this Plan which make landfills and transfer stations discretionary activities to ensure that they are appropriately located and designed to minimise adverse effects. **[Refer to Parts 4 and 5 of the Plan]**

(c) *Financial disincentives* - The Council shall impose financial penalties on contractors operating the Council's landfills if they do not perform to the environmental standards required by the management and operation plan.

2.9.3.5 Reasons:

Under the RMA, resource consents from the Regional Council are required in respect of all landfills for discharges to land, air and water. In order to obtain the resource consents and meet the conditions imposed, a range of mitigation measures may be necessary. The Council will ensure that all its landfills are managed in a manner that minimises adverse environmental effects. However, service delivery alone is insufficient to ensure satisfactory management. In the case of new landfills in particular, Plan rules provide a means of ensuring that the landfills are located in a manner which minimises the potential for adverse effects, having regard to (amongst other things) topography, ecosystems, natural hazards and sensitive nearby activities.

2.9.3.6 Anticipated environmental results:

(a) Existing landfills will cause few, if any, adverse environmental effects.

(b) New landfills will cause few, if any, adverse environmental effects as a result of appropriate location, design and management.

2.9.4 HAZARDOUS SUBSTANCES

The following objective, policy and methods are derived from issue 2.9.1.3 above.

2.9.4.1 Objective

To ensure that the use, storage, transportation and disposal of hazardous substances in the District does not result in adverse health or environmental effects.

2.9.4.2 Policy

(a) To minimise opportunities for adverse effects to arise from the use, storage, transportation and disposal of hazardous substances by encouraging appropriate management and location of such activities.

2.9.4.3 Explanation:

Policy 2.9.4.2(a) recognises that hazardous substances are of concern because of their potential to cause significant adverse health and ecological effects, as a result of inappropriate storage, use, transportation or disposal. Hazardous substances may cause significant adverse environmental effects if spilled or discharged to watercourses (either directly or via stormwater systems) or to land where contamination of the soil and groundwater systems may occur. In the latter case in particular, if hazardous sites are not managed properly, the cumulative effects of spills to land over time may, result in contaminated sites.

2.9.4.4 Methods:

The Council shall implement Policy 2.9.4.2(a) by the following methods:

(a) District Plan Rules – None.

(b) *Service delivery* - The Council shall assist the relevant regulatory authorities (e.g. Regional Councils) and service agencies (e.g. New Zealand Fire Service) to prepare operational procedures for emergencies involving hazardous substances. The Council shall also ensure that hazardous wastes are not disposed of in the District's landfills which are not designed for such wastes.

(c) *Promotion and Co-operation* - The Council shall support the development of a national tracking system for hazardous substances, and shall cooperate with the Regional Council to develop a regional data base and a regional landfill for co-disposal of hazardous wastes.

(d) *Enforcement and Abatement procedures* - The Council shall liaise with the Regional Council as necessary and take appropriate action against activities which contravene Plan Rules.

2.9.4.5 Reasons:

Numerous agencies share overlapping responsibilities for controlling the use, storage, transportation and disposal of hazardous substances.

Their statutory functions and responsibilities are derived from a number of statutes and regulations. [These agencies and their responsibilities are described in the Introduction (5.1.8.1) of Section 5.1.8 Hazardous Substances of this Plan].

When the responsibilities of these statutory bodies are combined, the Council considers there is no need or justification to provide any further regulations (rules) or other provisions in the District Plan.

2.9.4.6 Anticipated environmental result:

(a) There will be less risk to the environment, including ecosystems, from pollution/contamination in the future as a result of improved siting, design and management of activities involving hazardous substances and wastes.

2.9.5 CONTAMINATED SITES

The following objective, policy and methods are derived from issue 2.9.1.4 above.

2.9.5.1 Objective

To avoid adverse health or environmental effects as a result of inappropriate activities establishing on contaminated sites.

2.9.5.2 Policy

(a) To develop and maintain an information data base on contaminated sites in the District in order to discourage inappropriate activities from establishing on known contaminated sites until site remediation is undertaken to an extent which reduces the potential adverse effects to an acceptable level.

2.9.5.3 Explanation:

Contaminated sites are areas of land where inappropriate storage (resulting in leakage or spillage), handling, or disposal in the past, has led to the accumulation in the soil of hazardous substances. Policy 2.9.5.2(a) recognises the importance of having accurate information about the extent of the

contaminated site problem in the District and the potential threats to the environment and human health.

2.9.5.4 Methods:

The Council shall implement Policy 2.9.5.2(a) by the following methods:

(a) Research and Information - The Council shall cooperate with the Regional Council to develop and maintain a database of known and potentially contaminated sites and remediated sites within the District. This information on known contaminated sites shall be publicly available and will be included in Project Information Memoranda (PIM's) and Land Information Memoranda (LIM's) under the Building Act 2004 and the Local Government Official Information and Meetings Act 1989 respectively.

2.9.5.5 Reasons:

Contaminated sites can result in adverse effects on human health and ecosystems as a result of leaching into groundwater, surface runoff into streams, wind-blown dust, ingestion by children or animals and growing food crops in contaminated soils. Existing and potential property owners and adjacent residents have a right to know about any known contaminated sites in the District. A database of known and potential contaminated sites shall be established, in conjunction with the Regional Council.

2.9.5.6 Anticipated environmental result:

(a) Identification and remediation of contaminated sites will have decreased the risk to human health and the environment.

2.9.6 LIQUID WASTES

The following objective, policy and methods are derived from issue 2.9.1.5 above.

2.9.6.1 Objective

To avoid the degradation of surface water and groundwater quality in the District.

2.9.6.2 Policy

(a) To encourage the adoption of the best practicable option for all domestic and industrial stormwater and effluent disposal systems, and prevent subdivision and the location of new activities where there will be or are likely to be significant actual or cumulative adverse effects.

2.9.6.3 Explanation:

Surface and ground water systems may be degraded as a result of inadequate management and disposal of liquid wastes. Liquid wastes include non-hazardous domestic, trade and agricultural wastes of a liquid nature. These include sewage, seepage of septic tank sludge, stormwater (which may be contaminated), building slurries, dairy shed effluent and other non-hazardous liquid industrial or factory wastes. Policy 2.9.6.2(a) aims to avoid or mitigate adverse effects, including cumulative effects.

2.9.6.4 Methods:

The Council shall implement Policy 2.9.6.2(a) by the following methods:

(a) District Plan Rules - The Council has included rules in this Plan to prevent subdivision and the location of new activities where proposed effluent disposal systems and stormwater systems are inadequate. [Refer to Section 5.1 of the Plan] It should be noted that the control of discharges of contaminants to the environment (land, water or air) is largely a Regional Council responsibility and reference should be made to the relevant Regional Council in order to determine whether any other requirements apply to any particular case.

(b) Information provision - The Council shall provide advice to the public as necessary as to the areas in which the adverse effects of existing non-sewered domestic effluent disposal systems (e.g. septic tank systems) may be significant.

(c) Service delivery - The Council shall investigate and implement the best practicable option in respect of the Council's sewage treatment and stormwater facilities, having regard to financial and environmental considerations. Preferred options shall be determined and outlined in the Annual Plan.

(d) Trade Waste bylaws - As the quality of an input affects the quality of an output, the Council shall review Trade Waste Bylaws in order to ensure that incoming effluent is of a standard which enables discharges from the Council's sewage treatment facilities to consistently meet the water quality standards required by relevant regional plans and/or conditions on resource consents. Effective Trade Waste Bylaws will also promote the adoption of cleaner production technologies.

2.9.6.5 Reasons:

Inappropriate management of liquid waste can lead to considerable degradation of surface and groundwater quality. Industrial discharges are primarily point source and the quality of effluent is normally controlled through the Trade Waste bylaws administered by the Council. Resource consents

(discharge permits) from the Regional Council must be held for all discharges from the Council's sewage treatment facilities, and increasingly stringent standards are being imposed on discharges in order to achieve improved water quality standards in the Region's rivers and streams. The flow-on effect of this is that the Council will have to review it's Trade Waste Bylaws to control the quality of discharges to sewerage systems. Some industries have their own waste treatment systems prior to discharging to water or land. Within the District, there are a number of communities which rely on septic tanks or other on-site systems for domestic waste disposal. Soil types, geology and water tables will determine the minimum size allotment that can support a septic tank or other system, without leading to adverse environmental effects beyond the site. Cumulative effects are an important consideration as increasing population density can lead to groundwater contamination from the cumulative effects of septic tank seepage. Rules in this Plan ensure that subdivision and new activities are not permitted where significant adverse effects are likely which cannot be adequately mitigated.

2.9.6.6 Anticipated environmental result:

(a) Degradation of surface and ground water quality in the District will be avoided.

2.10 Treaty of Waitangi and Maori Resource Management Values

*[**Note:** Where Maori terms are used but not defined in this section, please refer to Part 6, "Interpretation", for an explanation of the terms.]*

2.10.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

Section 8 of the RMA requires that the principles of the Treaty of Waitangi are taken into account in the management of the District's natural and physical resources. The Treaty was the first instance of non-Maori recognition and confirmation of Maori rights and responsibility to exercise their mana over resources. Sections 5, 6(e), 7(a) and 8 of the RMA reaffirm this responsibility in partnership with the Council. Section 6(e) states that: "*all persons exercising functions and powers under [the RMA] shall recognise and provide for ... The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."*

Section 7(a) further states that "*all persons exercising functions and powers under [the RMA] shall have particular regard to ... Kaitiakitanga*." The concept of Kaitiakitanga is defined in the RMA as "*the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself*." This concept is consistent with the purpose of the RMA and this District Plan which is to achieve the sustainable management of the District's natural and physical resources.

The significant resource management issues in the District are:

2.10.1.1 Participation of tangata whenua

The Council seeks to build a relationship with the tangata whenua (local iwi and hapu) of the District through which the Maori perspective of resource management may be fully integrated into the resource management planning and decision making process. The issue is how best to encourage participation of Maori in a constructive, practical and mutually beneficial manner, in the spirit of the Treaty of Waitangi.

2.10.1.2 Maori resource management values

Maori and European people do not necessarily always share the same outlook and values in resource management matters, although many sustainable management concepts are common to both. Maori people have a special

relationship with their ancestral lands, water, sites, waahi tapu and other taonga (treasures) which is to be recognised and provided for under the RMA. The resource management issue to be resolved is how to take account of, and respect, Maori resource management perspectives in the spirit of the Treaty of Waitangi.

Having regard to the above issues, the Council has adopted the following objectives, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.10.2 PARTICIPATION OF TANGATA WHENUA

The objective, policy and methods below are derived from issue 2.10.1.1 above.

2.10.2.1 Objective

To take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi) in the management of the District's natural and physical resources.

2.10.2.2 Policy

(a) To provide for, and encourage, the participation of tangata whenua (local iwi and hapu) in resource management planning and decision making processes.

(b) To foster a positive working relationship between the Council and hapu of the Tararua District.

2.10.2.3 Explanation:

To enable participation in the resource management process, it is necessary to undertake early and meaningful consultation with local iwi and hapu on all significant resource management issues. Where appropriate, applicants will be expected to consult with local iwi and hapu prior to lodging applications with the Council, and to provide sufficient information to enable the potential effects of the proposal to be fully understood. The Council wishes to enhance and develop the positive working relationship with tangata whenua (iwi and hapu) of the District. It considers that a positive working relationship is better than an adversarial or ill-informed one.

2.10.2.4 Methods:

The Council shall implement Policy 2.10.2.2(a) and (b) by the following methods:

(a) *Consultation and the provision of information* - The Council shall undertake early and meaningful consultation with the tangata whenua over significant resource management issues and in the preparation of the District Plan and any subsequent changes to or reviews of it. Applicants for resource consents will also be encouraged to consult with local iwi and hapu prior to lodging applications where the proposed activities have the potential to affect Maori interests. The Council shall refer all relevant resource consent applications to potentially affected iwi and hapu, in order to seek and take their views into account in the decision making process.

(b) *Education* - Tararua District Council staff and Councillors will be provided with opportunities to receive training and education about Treaty of Waitangi and Maori resource management values to enable a meaningful relationship with tangata whenua to develop.

2.10.2.5 Reasons:

In order to take full account of Treaty of Waitangi principles and Maori resource management values, it is essential that tangata whenua be able to participate in the resource management process in an informed manner. Early consultation is important as it enables any concerns to be taken into account and mitigation measures to be considered, as well as reducing the likelihood of misunderstandings and delays later in the process.

2.10.2.6 Anticipated environmental results:

(a) Tangata whenua are active participants in resource management planning and decision making processes.

(b) The Council and community is increasingly aware of Maori values and approaches to the management of natural and physical resources.

2.10.3 MAORI RESOURCE MANAGEMENT VALUES

The objective, policy and methods below are derived from issue 2.10.1.2 above.

2.10.3.1 Objective

To recognise and provide for Maori values in the management of the District's natural and physical resources.

2.10.3.2 Policy

(a) To recognise and provide for the relationship of tangata whenua (local iwi and hapu) and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and to have particular regard to the concept of kaitiakitanga.

2.10.3.3 Explanation:

The cultural and spiritual relationship of Maori with their ancestral lands, water, sites, waahi tapu and other taonga are referred to in the RMA as a matter of national importance. The concept of "taonga" relates to anything that is prized, treasured or valued for what it is, where it came from and its potential. Taonga may be both tangible and intangible and may be identified only by local iwi and hapu. Physical taonga include traditional forms of food and natural material harvested for traditional purposes.

2.10.3.4 Methods:

The Council shall implement Policy 2.10.3.2(a) by the following methods:

(a) Consultation with iwi and hapu - The implementation of Policy 2.10.2.2(a) will enable the implementation of Policy 2.10.3.2(a). This will ensure that Maori values and concerns are understood and taken into account in respect of significant resource management issues which may affect local iwi. Relevant iwi management plans will also be taken into account in consideration of resource management issues.

(b) District Plan - The Council has included in this Plan a Schedule of significant heritage sites and features in the District, including waahi tapu. These heritage items are classified according to their significance, and rules have been included in the Plan which provide varying degrees of protection for such features. The rules govern both subdivision and the effects of land use activities on such features. [Refer to section 5.5 and Part 9 of the Plan] Other sites not listed in the District Plan may be listed with the Council or iwi.

(c) Traditional Maori approaches to resource management - These include the practice of rahui which is a restriction over the use of a particular resource in order to conserve it, and tapu which is the placing of an item or place in a state of protection or sacredness. In keeping with the concept of kaitiakitanga, such traditional methods may be applied as local iwi see fit in relation to Maori land and resources. Iwi management plans shall also be recognised as appropriate by the Council and taken into account in resource management planning and decision making.

2.10.3.5 Reasons:

Adverse effects on physical taonga result in associated adverse effects on spiritual taonga, given the interrelatedness of the physical and metaphysical inherent in the Maori worldview. It is, therefore, important to Maori that resources of cultural and spiritual importance are protected. Waahi tapu are sacred places which may include urupa (grave sites), rua koiwi (places where skeletal remains are kept), wai tohi (streams where baptismal rites are performed), and waahi pakanga (battle sites). Such features are important elements in maintaining the traditional and cultural values of iwi with their taonga.

Consultation with local iwi, both during the preparation of this District Plan and on an ongoing basis, is important in order to identify those resources and sites that are of special significance to local Maori people. The District Plan is one method of providing recognition of and protection to waahi tapu, where such protection is requested by local iwi. The Schedule of significant heritage features in the District Plan was compiled following consultation with tangata whenua and other interest groups. Should local iwi wish further waahi tapu to be added to the Schedule, this may be done by way of a Plan change or review. In some cases, the precise locations of such sites may not be known and, in other cases, the tangata whenua may prefer not to disclose the precise locations to the general public. In such cases, either the general location of the site will be identified or the locations may be held in "silent files" held by either iwi only, or by both the Council and iwi.

2.10.3.6 Anticipated environmental result:

(a) Taonga of importance to local iwi are identified and protected.

2.11 CROSS-BOUNDARY ISSUES

2.11.1 SIGNIFICANT RESOURCE MANAGEMENT ISSUES

2.11.1.1 The need for integrated and consistent resource management across administrative boundaries

The boundaries of the Tararua District are administrative boundaries (lines on maps) which are not recognised by the processes of nature. Most, if not all, of the resource management issues addressed by this District Plan are also issues in neighbouring territorial authorities. In many cases, it does not matter if neighbouring authorities adopt differing policies and rules to deal with particular issues. In fact, it is a strength of the Resource Management Act and the local government process that policies and rules can be formulated to reflect the views of the local population. However, there are some resource management issues which cross territorial boundaries and for which consistency is desirable, or at least processes are in place for dealing with cross-boundary issues as they arise. It can happen, for example, that a property is split between territorial authorities. Furthermore, network utilities such as transmission lines often cross several districts. Physical features such as the Tararua and Ruahine Ranges, rivers and the coastline also run through several territorial authorities. The Regional Council is, to a significant extent, able to provide the coordinated approach and overview required in respect of resource management issues affecting these features. In some cases, however, co-ordination and co-operation at the territorial authority level will be required.

The Tararua District has a common boundary with the following Districts:

- Central Hawke's Bay District
- Masterton District
- Horowhenua District
- Palmerston North City
- Manawatu District

Co-ordination between the authorities is necessary to ensure efficient and effective administration of the District Plan, as well as to achieve integrated resource management. To ensure that the management of resources occurs in an integrated manner, section 75 of the RMA requires that a District Plan shall state:

"(f) the processes for dealing with issues that cross territorial authority boundaries".

The boundaries between the administrative hierarchy of District Councils, Regional Councils and Central Government also requires consideration. In respect of issues which cross between the responsibilities of the District Council and regional and national authorities, section 75(3) and (4) of the RMA states that:

"(3) A district plan must give effect to -

(a) Any national policy statement; and

(b) any New Zealand coastal policy statement; and

(c) any regional policy statement.

(4) A district plan must not be inconsistent with -

(a) a water conservation order; or

(b) a regional plan for any matter specified in section 30(1)." [Section 30(1) sets out the functions of regional councils].

This District Plan has been prepared with regard to the provisions of the Manawatu-Wanganui Regional Policy Statement and the Wellington Regional Policy Statement. The majority of the Tararua District lies within the Manawatu-Wanganui Region, but a small area of rural land in the south of the District lies within the Wellington Region (refer to Figure 1 in section 1.4). The District Plan policies are generally consistent with, and complementary to, the policies of both Regional Councils. Furthermore, the Plan is not known to be obviously inconsistent with any of the other matters contained in sections 75(3) and (4) of the RMA.

Having regard to the above issues, the Council has adopted the following objective, policies and methods, the implementation of which it is anticipated will achieve the stated environmental results.

2.11.2 CROSS BOUNDARY ISSUES

The objective, policies and methods below are derived from issue 2.11.1.1 above.

2.11.2.1 Objective

To address resource management issues which cross administrative boundaries in a coordinated and integrated manner.

2.11.2.2 Policies

(a) To encourage the formulation of industry-wide guidelines and Codes of Practice.

(b) To cooperate with other District and Regional Councils and other relevant agencies, and to facilitate joint hearings where appropriate, to address resource management issues in an integrated manner.

2.11.2.3 Explanation:

Policy 2.11.2.2(a) recognises that there are a number of areas where industries/business sectors can take (and have taken) the lead in an effort to achieve consistent resource management policies and rules between authorities. Policy 2.11.2.2(b) advocates use of the procedures available under the RMA to conduct joint hearings where this will facilitate integrated resource management and to keep "bureaucracy" (i.e. time and cost) to a minimum.

2.11.2.4 Methods:

The Council shall implement policies 2.11.2.2 (a) and (b) by the following methods:

(a) Co-operation with relevant agencies - The Council shall make use of procedures available under sections 102 and 103 of the RMA to facilitate joint hearings with other consent authorities, as appropriate. In addition, the Council shall cooperate with other agencies to promote integrated and consistent resource management decisions in respect of issues which cross administrative boundaries.

(b) Research/District Plan rules - In preparing this District Plan, the Council has had regard, where they are available, to industry or sector guidelines and Codes of Practice which set standards for those in the industry concerned to comply with. Where appropriate, these have been adopted as rules in the District Plan in order to achieve greater consistency and guidance to businesses and industries. It is also noted however that the value of many Codes of Practice and guidelines is that they are voluntary and it is not appropriate to adopt all codes and guidelines as rules. **[Refer to Part 5 of the Plan]**

2.11.2.5 Reasons:

The writers of industry-wide guidelines and Codes of Practice have a better understanding of the relevant subject matter than most other people and the Codes usually fairly reflect current issues and options. The Council wishes to encourage such methods of promoting consistency and up-to-date research.

Co-operation with other agencies and other Councils is important where resource management issues cross administrative boundaries and responsibilities.

2.11.2.6 Anticipated environmental result:

(a) Resource management issues which cross administrative boundaries will be dealt with in a coordinated and integrated manner.

3 MANAGEMENT AREAS PART 3

3.1 Introduction to Management Areas Section

Part 2 of the District Plan has set out the Council's policies for managing the natural and physical resources of the Tararua District. These policies, and the District Plan rules which are contained in Parts 4 and 5 of the District Plan, place an emphasis on managing the environmental effects of activities. The significance of the effects of activities depends, however, not only on the nature of the activity but also on the character of the area concerned. For example, the community's tolerance of environmental effects such as noise and smoke is generally higher in industrial areas than it is in commercial, residential or rural areas. Similarly, the effects of traffic (vehicle noise and congestion) tend to be more acceptable in commercial areas than in residential areas, and, as a final example, odours associated with farming activities tend to be less offensive to people in rural areas than they would be to people in urban areas.

The nature of the activity involved is also important. For example, activities that generate adverse traffic, parking or visual effects are more likely to be acceptable if they directly serve the area concerned (i.e. dairies and schools in residential or rural areas). The acceptable environmental impact of an activity may also vary depending on the level of public and private investment in different parts of the District. In residential areas, for example, the cumulative investment of private homeowners represents a significant physical resource to be sustained. The siting of environmentally incompatible activities in such areas would have an adverse impact on such investment.

3.1.1 MANAGEMENT AREAS IN THE TARARUA DISTRICT

Within the Tararua District, five broad categories of land use type have been identified, each of which has a particular character, level of amenity and environmental quality associated with it. As discussed above, the acceptability of the environmental effects of different land use activities varies with the type of area in which it is located. For the purposes of this District Plan, the District has been divided up into the following five "Management Areas":

- **Rural**
- **Residential**
- **Commercial**
- **Industrial**
- **Settlement**

The locations of the different Management Areas in the District are shown in the District Plan maps. However, in summary, and for ease of reference:

- "Residential", "Commercial" and "Industrial" Management Areas can all be found within the towns of Dannevirke, Woodville, Pahiatua and Eketahuna;

- "Settlement Management Areas" apply only to Norsewood, Ormondville, Pongaroa and Akitio;

- The "Rural Management Area" covers the remainder of the District, including the numerous other small, generally unserviced, settlements throughout the District.

A brief explanation of each Management Area, and a list of the desired characteristics sought for each Management Area, is set out below. The characteristics set out below should not be confused with the "anticipated environmental results" in Part 2 of this Plan, as they serve quite different purposes. Part 2 of the District Plan, the Resource Management Policy section, specifies objectives, policies and methods for resource management in the District, and also identifies the "anticipated environmental results" (AER's) that are sought as a result of implementation of the policy provisions. As required by the RMA, the AER's in Part 2 are directly related to the preceding policies and methods and they generally apply to specific resource management issues across the whole district. In contrast, the characteristics set out below serve two main purposes:

- they provide a basis for defining and delineating different "Management Areas" within the District; and

- they provide guidance for determining the outcome of resource consent applications.

Resource consent applications are required in two instances:

- when an activity **has** been provided for in this Plan as a permitted or controlled activity in a particular Management Area but the stated standards are (or would be) exceeded;

- when an activity **has not** been provided for in a particular Management Area (and is therefore generally deemed to be a discretionary activity)

In both instances, the purpose of the resource consent procedure is to provide flexibility to consider individual cases on their merits and, if the environmental effects are compatible with the surrounding area then there may be grounds to grant consent. The characteristics set out in this part of the Plan are, therefore, intended to provide guidance to potential applicants, the community and the Council to enable them to assess whether the environmental effects of an activity are acceptable. This approach is considered to be consistent with the spirit and intent of the RMA.

3.2 Desired Characteristics

3.2.1 RURAL MANAGEMENT AREAS

The "Rural Management Area" covers most of the Tararua District. This area is characterised by a predominance of rural land uses including farming, forestry and natural open space, in addition to a variety of residential, community, commercial and industrial activities which either serve and support the rural function of the area, or cannot be located in an urban area because of the nature of the activity. The level of amenity and environmental quality expected by the community in these areas reflects the predominantly rural character of such areas.

The following characteristics are sought in the District's Rural Management Areas:

(a) a predominance of rural activities;

(b) a range of rural housing and landholdings to satisfy the different lifestyles and circumstances of the people of the District;

(c) a range of other activities which:

(i) support or enhance the rural function of the area or the wellbeing of the rural community; and/or

(ii) are more appropriately located in a rural area than an urban area; and/or

(iii) provide social, economic, and/or environmental benefits to the District, Region and Nation;

(d) avoidance of activities that have the potential to give rise to adverse effects which are incompatible with the character of the surrounding rural area or which could adversely affect the ability of rural activities and other lawful land uses to function efficiently and effectively;

(e) development of buildings and properties which are in keeping with the low density, character and scale of the surrounding rural area;

(f) maintenance and/or enhancement of the amenity enjoyed by people living within the rural area or in adjoining urban areas;

(g) a clear demarcation of rural/urban boundaries, with urban activities being encouraged to locate within serviced urban areas in a manner which maximises the efficient use of existing infrastructure and services;

(h) where reticulated services do not exist, the development of activities and buildings only where:

i. there is adequate on-site disposal of effluent without causing (or potentially causing) adverse environmental effects; and

ii. this will not lead to demands for the uneconomic establishment or extension of services.

(i) an efficient and sustainable pattern of land use that protects the potential for high quality soils to be used for food production;

(j) preservation of buildings, places and other items which have special heritage or cultural value;

(k) protection of outstanding natural features and landscapes, and significant areas of indigenous natural vegetation and significant habitats of indigenous fauna from inappropriate subdivision, use and development;

(l) preservation of the predominantly natural character of the coastal environment, rivers, streams, other water bodies and their margins, and maintenance and enhancement of public access thereto;

(m) safe and efficient vehicular access and movement throughout the District;

(n) no buildings constructed on unstable or hazard prone land unless appropriate avoidance or mitigation measures are in place.

3.2.2 RESIDENTIAL MANAGEMENT AREAS

"Residential Management Areas" are those areas within the District's urban centres which predominantly consist of dwellinghouses but which include some community and commercial activities/uses which serve and support the residential function of the area. The level of amenity and environmental quality expected by the community in these areas reflects the predominantly residential character of such areas.

The following characteristics are sought in the District's Residential Management Areas:

(a) a predominance of residential activities;

(b) a range of residential types, sizes and densities to satisfy the different lifestyles and circumstances of the people of the District;

(c) development of buildings and properties which are in keeping with the character and scale of the surrounding residential area;

(d) avoidance of activities which have the potential to give rise to adverse effects (e.g. noise, dust, smoke, odour, glare, visual detraction) on a scale or at a level which is incompatible with residential areas;

(e) protection of amenity for residential properties and public open space within residential areas;

(f) distribution of public open spaces to meet the active and passive recreation needs of the community;

(g) a range of complementary activities which support and enhance the residential function of the area (such as dairies, community services, places of assembly, places of worship, and recreational, educational and healthcare facilities);

(h) a range of business activities that are operated and managed in such a way that their effects are compatible with the residential character and amenities of the area;

(i) preservation of buildings, places and other items which have special heritage or cultural value;

(j) residential expansion in a manner that maximises the efficient use of existing infrastructure and services;

(k) residential design and development that takes into account the principles of energy efficiency;

(l) safe and efficient vehicular and pedestrian access and movement;

(m) no buildings constructed on unstable or hazard prone land.

3.2.3 COMMERCIAL MANAGEMENT AREAS

"Commercial Management Areas" are those areas within the District's urban centres that are generally business oriented and contain activities including shops, commercial services, professional trades and offices, distribution and light manufacturing. The level of amenity and environmental quality expected by the community in these areas reflects the predominantly commercial character of such areas.

The following characteristics are sought in the District's Commercial Management Areas:

(a) a predominance of commercial activities;

(b) a range of commercial activities of different types and sizes;

(c) development of buildings and properties which are in keeping with the character, design and scale of the surrounding commercial area;

(d) avoidance of activities which have the potential to give rise to adverse effects (e.g. noise, dust, smoke, odour, glare, visual detraction) on a scale which is incompatible with the surrounding commercial area;

(e) protection of an acceptable level of amenity for residential activities existing in or adjoining commercial areas;

(f) public open space and landscaped areas for the enjoyment of workers and visitors to commercial areas;

(g) preservation of buildings, places and other items which have special heritage or cultural value;

(h) a range of complementary activities which support or enhance the commercial function of the area, including residential activities and other facilities where their effects are compatible with the commercial character and amenities of the area and will not adversely affect the ability of commercial activities to function efficiently and effectively;

(i) consolidation of commercial activities in a manner which maximises the efficient use of existing infrastructure and services;

(j) suitably serviced land is available for commercial development;

(k) safe and efficient vehicular and pedestrian access and movement;

(l) no buildings constructed on unstable or hazard prone land.

3.2.4 INDUSTRIAL MANAGEMENT AREAS

"Industrial Management Areas" are those parts of the District that generally contain industrial and manufacturing activities and some supporting commercial services. These industrial activities have the potential to cause significant adverse effects if located in proximity to incompatible activities, such as residential and commercial land uses. Previous planning regimes have, therefore, directed industrial activities to locate together in areas remote from residential and commercial activities so as to minimise such effects. This general trend will be continued under this District Plan's effects-based approach to resource management, not only to avoid or mitigate adverse effects on surrounding areas but also to ensure that adequate and appropriate services can be economically provided to such industrial areas.

The following characteristics are sought in the District's Industrial Management Areas:

(a) a predominance of industrial activities;

(b) a range of industrial activities of different types and sizes;

(c) a range of complementary activities which support and enhance the industrial function of the area, including residential and business activities and other facilities where this will not adversely affect the ability of industrial activities to function efficiently and effectively;

(d) avoidance of development which would lower levels of amenity in industrial areas to unaccepted levels, unless mitigation measures can be put in place;

(e) protection of an accepted level of amenity for adjoining residential, rural or commercial areas;

(f) public open space areas and landscaped areas for the enjoyment and amenity of people working in industrial areas;

(g) consolidation of industrial activities in a manner which maximises the efficient use of existing industrial infrastructure and services;

(h) an adequate supply of suitably serviced land available for industrial development;

(i) safe and efficient vehicular and pedestrian access and movement;

(j) no buildings constructed on unstable or hazard prone land;

(k) preservation of buildings, places and other items which have special heritage or cultural value.

3.2.5 SETTLEMENT MANAGEMENT AREAS

"Settlement Management Areas" apply to those small rural settlements in the District which are serviced by community sewerage and/or water supply schemes. There are numerous other small rural settlements scattered throughout the District which have been included in the Rural Management Area rather than the Settlement Management Area as they do not have community sewerage and water services and are therefore less suitable for close development. The settlements in the Settlement Management Area contain a mixture of rural, residential, commercial and industrial activities and they serve a vital social, economic and cultural function for the community. The level of amenity and environmental quality expected by the community in these settlements reflects the mixed use (or semi-rural) character of such areas.

The following characteristics are sought for the District's Settlement Management Areas:

(a) a range of residential, commercial and industrial activities that are developed and managed in such a way that their effects are compatible with the character and amenities of the settlement;

(b) a range of complementary activities which support or enhance the area, including public open space and community facilities;

(c) avoidance of activities which have the potential to give rise to adverse effects (e.g. noise, dust, smoke, odour, glare, visual detraction) on a scale which is incompatible with the surrounding area;

(d) maintenance and/or enhancement of amenity for residential properties and public open space;

(e) preservation of buildings, places and other items which have special heritage or cultural value;

(f) where reticulated services exist, the consolidation of activities in a manner which maximises the efficient use of existing infrastructure and services;

(g) where reticulated services do not exist, the development of activities and buildings only where:

(i) on-site disposal of effluent occurs without causing (or potentially causing) adverse environmental effects; and

(ii) this will not lead to demands for the uneconomic establishment or extension of services;

(h) safe and efficient vehicular and pedestrian movement;

(i) no buildings constructed on unstable or hazard prone land;

(j) preservation of the predominantly natural character of the coastal environment in the vicinity of Akitio.

4 RULES - LISTING OF ACTIVITIES

PART 4

4.1 Rural Management Area

4.1.1 INTRODUCTION

The "Rural Management Area" covers the predominantly rural parts of the Tararua District (i.e. most of the District). This area is delineated on the District Plan maps.
The area has a particular character, level of amenity and environmental quality which is typical of rural areas, and which is quite different from urban areas of the District.

The Rural Management Area is characterised by a predominance of rural land uses including farming, forestry and natural open space, in addition to a variety of residential, community, commercial and industrial activities which either serve and support the rural function of the area, or cannot be located in an urban area because of the nature of the activity. The level of amenity and environmental quality expected by the community in this area reflects its predominantly rural character. The desired characteristics of the Rural Management Area have been listed in Part 3 of this Plan.

Generic categories of activity are classified below as permitted, controlled and discretionary activities in the Rural Management Area on the basis of their potential environmental effects. Specific activities listed as permitted or controlled must also meet the environmental standards specified in Part 5 of this Plan. If a proposed activity does not meet these environmental standards, it shall be deemed to be a discretionary activity, requiring a resource consent.

This Part of the Plan should be read in conjunction with Part 6, Interpretation, which contains, inter alia, definitions of the activity categories listed below.

4.1.2 PERMITTED ACTIVITIES

4.1.2.1 Permitted Activities – General

The following are permitted activities in the Rural Management Area, provided they comply with the relevant environmental standards in Part 5 of this Plan (refer to 4.1.4 below for summary of applicable environmental standards):

(a) Dwellinghouses.

(b) Farming.

(bb) Goat farming at a distance of more than two kilometres from the legal boundary of any site on which one of the following is located (refer to Schedule 14.1 in Appendix 14 of this Plan):

- Puketoi Conservation Area;
- Makuri Gorge Scenic Reserve;
- Waewaepa Scenic Reserve;
- Red River Scenic Reserve;
- Manawatu Gorge Scenic Reserve;
- Ruahine Forest Park;
- Mount Bruce National Wildlife Centre and Scenic Reserve;
- Tararua Forest Park

provided:

(i) The goats are formally identified in accordance with the Animal Identification Act 1993, including the tagging (brass tag or plastic tag or ear-cut or tattoo) of goats with recognisable owner identification; and

(ii) The goats are to be contained on site at all times by either a boundary fence (the fence is to comply with standards for goat fencing contained in Appendix 18) or tethered, which may include a running wire; and

(iii) Written advice of the location of the goat farming activity is provided to Council.

Goat farming that fails to provide for the matters identified in (i) to (iii) above is a Discretionary Activity pursuant to Rule 4.1.6.1(a). Otherwise Rule 4.1.5(a) applies.

(c) Factory farming.

(d) Protection and amenity forestry.

(e) Commercial forestry, provided that where the commercial forestry is in a continuous block of 10 hectares or more, a "Forestry Development Notice" (as defined in Part 6 of this Plan) shall be submitted within one year of completion of planting, or such longer period as approved by Council, and provided that the forestry operation is managed generally in accordance with that Forestry Development Notice.
[Note: "Commercial forestry" now falls within the ambit of "Plantation Forestry" as defined and regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.]

(f) Home occupations.

(g) Visitor accommodation.

(h) Marae.

(i) Public and private open space.

(j) Reserves administered by the Tararua District Council or Department of Conservation (including Forest Parks and Conservation Areas) and associated recreational facilities and structures.

(k) Soil conservation, flood protection or river control works authorised by the relevant Regional Council (being the Greater Wellington Regional Council or the Manawatu-Wanganui Regional Council).

(l) Cemeteries.

(m) Community businesses.

(n) Rural selling places on roads other than primary arterial roads.

(o) Network utilities and other activities which are deemed to be a permitted activity in section 5.3.6 of this Plan.

(p) Activities on the surface of water in rivers and lakes.

(q) Temporary activities.

(r) Accessory buildings to any permitted or otherwise lawfully established activity.

(s) Subdivision which is deemed to be a permitted activity in section 5.2.4 of this Plan.

(t) Temporary military training activities not exceeding 31 days in duration and where the written consent of the owner has been obtained.

(u) Prospecting for minerals (excluding detailed exploration and mining) - refer to definition of “prospecting” in Part 6, Interpretation.

(v) Any other activity specifically listed in Part 5 of this Plan as a "permitted activity".

4.1.2.2 Permitted Activities – Existing Industries

The following existing industries are permitted activities provided that the performance standards set out in relation to each specific industry are complied with:

(a) Dairy manufacturing and processing, including the use, maintenance operation, and development of facilities for the receipt, processing,

handling, storage and dispatch of dairy products and related by-products and waste materials undertaken on land legally described as: Lot 2 DP 841, Lot 1 DP 940, Lots 1-32 DP 1168, Lot 5 DP 2599, Pt Sec 93 (two lots), Sec 141, Pt Mangatainoka 2HB2C, Blk VII Mangahao SD, provided that they either were undertaken at 6 November 2009 or comply with the following standards:

(i) Effluent Disposal

- Compliance with Standard 5.1.2.2(d)

(ii) Water Supply

- Compliance with Standard 5.1.3.2(c)(ii)

(iii) Stormwater Drainage

- Compliance with Standard 5.1.4.2(a)

(iv) Natural Hazards

Within a natural hazard area (as shown on the planning maps), any permitted activity must not include any of the following:

- The erection of, or extension to, any building or structure (other than temporary structures associated with temporary activities-refer part 6 Interpretation);
- Vegetation clearance and ground disturbance;
- The use, disposal or storage of hazardous substances.

(v) Hazardous Substances

- Compliance with Standard 5.1.8.2

(vi) Noise

Noise emissions shall not exceed:

From 7.00 am to 7.00pm daily:

- 55 dB $L_{Aeq(15\ min)}$ when measured at the notional boundary of any dwelling outside the dairy factory noise boundary as shown in Figure 4.1.2.2A [refer Appendix 17]; and
- 60 dB $L_{Aeq(15\ min)}$ when measured at the notional boundary of any dwelling that existed at 6 November 2009 and is located inside the dairy factory noise boundary as shown in Figure 4.1.2.2A [refer Appendix 17].

From 7.00pm to 7.00am daily:

- 45 dB $L_{Aeq(15\ min)}$ and 75 L_{AFmax} when measured at any point outside the dairy factory noise boundary as shown on Figure 4.1.2.2A [refer Appendix 17].

- 60 dB $L_{Aeq(15\ min)}$ and 80 L_{AFmax} when measured at the notional boundary of any dwelling that existed at 6 November 2009 and is located inside the dairy factory noise boundary as shown in Figure 4.1.2.2A [refer Appendix 17].

At all times

- 70 dB $L_{Aeq\ (15\ min)}$ when measured at the notional boundary of any dwelling or visitor accommodation established after 6 November 2009 and located within the dairy factory noise boundary as shown on Figure 4.1.2.2A [refer Appendix 17].

Noise shall be measured in accordance with NZS6801: 2008 *Acoustics-Measurement of environmental sound* and assessed in accordance with NZS6802: 2008 *Acoustics – Environmental noise.*

(vii) Height

- No building or structure shall exceed 40 metres in height.

- No more than 4,500 m^2 or 3% of the area of the site, whichever is the lesser, shall be covered by buildings and/or structures which exceed 15 metres in height.

(viii) Recession Plane

- Compliance with Standard 5.4.4.2(c)

*[**Note**: For the avoidance of doubt, any activity undertaken at the site described in (a) is not subject to any other requirement of this District Plan. Any activity undertaken on the site that is not encompassed by this rule, being not for the purposes described in (a), is subject to the relevant requirements of the District Plan for the Rural Management Area.]*

4.1.3 CONTROLLED ACTIVITIES

4.1.3.1 The following are controlled activities in the Rural Management Area provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Subdivision which is deemed to be a controlled activity in section 5.2.4 of this Plan.

(b) Rural industries.

(c) Network utilities which are deemed to be a controlled activity in section 5.3.6 of this Plan.

(d) Any other activity specifically listed in Part 5 of this Plan as a "controlled activity".

(e) Expansion of Existing Industries

Expansion of existing industries listed in Rule 4.1.2.2, which complies with the relevant rules and environmental standards in Part 5 of the Plan, as if the activities to be expanded were located within an Industrial Management Area, is a controlled activity in respect of:

- Site layout including the design and construction of parking, loading and manoeuvring areas;
- Site access, intersections and the safe and efficient operation of the roading network;
- Height and recession plan controls;
- Noise and vibration;
- Signs;
- Glare/artificial lighting;
- Landscape treatment and screening;
- Subdivision;
- Financial contributions.

4.1.3.2 Matters over which the Council reserves control in relation to controlled activities

In respect of the controlled activities listed in section 4.1.3.1 above, the matters over which the Council shall exercise control by the imposition of conditions are:

(a) Any matters relating to compliance with the environmental standards in Part 5 of this Plan.

(b) The imposition of financial contributions in accordance with Section 5.1.6 of this Plan.

(c) In respect of any application for goat farming under rule 4.1.3.1 (d):

(i) The adequacy of the fencing to prevent the escape of farmed goats; and

(ii) The means by which the goats to be farmed will be identified as to ownership.

4.1.4 ENVIRONMENTAL STANDARDS

All permitted and controlled activities shall meet the relevant rules and environmental standards below (refer to Part 5 of Plan for details).

General rules and standards

- effluent disposal (section 5.1.2)
- water supply (section 5.1.3)
- stormwater drainage (section 5.1.4)
- land disturbance and excavation (section 5.1.5)
- financial contributions (section 5.1.6)
- natural hazards (section 5.1.7)
- hazardous substances (section 5.1.8).

Subdivision rules and standards

- subdivision (section 5.2) - this only applies to land subdivision activities.

Infrastructural rules and standards

- management of roads (section 5.3.1)
- parking (section 5.3.2)
- access and intersections (section 5.3.3)
- Dannevirke Aerodrome Protection Area (section 5.3.4)
- rail corridor (section 5.3.5)
- network utilities (section 5.3.6).

Amenity rules and standards

- noise and vibration (section 5.4.1)
- dust, smoke and odour (section 5.4.2)

- signs (section 5.4.3)
- height and recession plane controls (section 5.4.4)
- outdoor living court (section 5.4.5)
- outdoor service court (section 5.4.6)
- glare/artificial lighting (section 5.4.7)
- landscape treatment/screening (section 5.4.8)
- pedestrian amenity (verandahs) (section 5.4.9)
- setbacks (section 5.4.10).

Cultural and natural heritage rules and standards

- heritage resources (section 5.5)
- important natural features (section 5.5)
- reserves (section 5.5.3).

4.1.5 RESTRICTED DISCRETIONARY ACTIVITIES

4.1.5.1 The following are restricted discretionary activities in the Rural Management Area:

(a) Goat farming at a distance of less than two kilometres from the legal boundary of any site on which one or more of the following is located (refer to Schedule 14.1 in Appendix 14 of this Plan):

- Puketoi Conservation Area;
- Makuri Gorge Scenic Reserve;
- Waewaepa Scenic Reserve;
- Red River Scenic Reserve;
- Manawatu Gorge Scenic Reserve;
- Ruahine Forest Park;
- Mount Bruce National Wildlife Centre and Scenic Reserve;
- Tararua Forest Park.

Discretion is restricted to the following matters:

(i) The area and location of the activity in relation to (ii), (iii) and (iv) below;

(ii) The risk of invasion to conservation land should goats escape from the site (such as proximity to conservation land, or features that act as natural corridors to invasion);

(iii) The ability to confine goats within the site (i.e. some terrain can be difficult to fence effectively due to such factors as steepness, erosion, watercourses and vegetation), and suitability of fences for effectively containing the goats on the property (having regard to the fencing standards in Appendix 18);

(iv) The removal of the goats from the site in the event the goat farming activity is discontinued; and

(v) Potential effects on indigenous vegetation and habitat for indigenous fauna.

4.1.6 DISCRETIONARY ACTIVITIES

4.1.6.1 The following are discretionary activities in the Rural Management Area:

(a) Any activity not listed in this Plan as a permitted, restricted discretionary or controlled activity.

(b) Any permitted or controlled activity listed in this Plan which does not meet the environmental standards specified in Part 5 of this District Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "discretionary activity".

(d) The use of off-road vehicles (including dune buggies and trail bikes) on coastal sand dune areas where sand is completely or partially exposed.

4.1.6.2 Criteria for Assessment

In assessing any application under section 4.1.6.1 above for a discretionary activity, the Council shall have regard to the following matters:

(i) the purpose and principles in Part II of the RMA;

(ii) other relevant provisions of the RMA;

(iii) relevant provisions of this District Plan, including:

- the objectives, policies and anticipated environmental results in Part 2 of this Plan;
- the desired characteristics for the relevant Management Area in Part 3 of this Plan;
- Where any activity is proposed within a Future Residential or Future Industrial Management Area overlay area, whether the proposed activity is likely to pre-empt or prevent the land on which the activity is

proposed to occur from being rezoned and/or used for the stated purpose of the particular Future Management Area.

- the rules and standards in Part 5 of this Plan.

(iv) where an activity is deemed to be a discretionary activity due to non-compliance with an environmental standard in Part 5 of this Plan, regard shall be had to any additional "criteria for assessment" specified in Part 5 of this Plan in relation to that environmental standard.

(v) any other matters the Council considers relevant and reasonably necessary to determine the application. Relevant matters include:

- the degree of non-compliance and the practicality of achieving any specified standard;
- details of any proposed mitigation measures;
- whether there are particular circumstances existing which justify the alteration of any standards relating to the proposed activity.

4.2 Residential Management Area

4.2.1 INTRODUCTION

"Residential Management Areas" cover the predominantly residential areas of the Tararua District's four main urban areas. These areas are delineated on the District Plan maps. They share a particular character, level of amenity and environmental quality which can be distinguished from other management areas in the District.

The Residential Management Area is characterised by a predominance of residential activities with some community and commercial activities which serve and support the residential function of the area. The level of amenity and environmental quality expected by the community in this area reflects its predominantly residential character. The desired characteristics of Residential Management Areas have been listed in Part 3 of this Plan.

Generic categories of activity are classified below as permitted, controlled and discretionary activities in the Residential Management Area on the basis of their potential environmental effects. Specific activities listed as permitted or controlled must also meet the environmental standards specified in Part 5 of this Plan. If a proposed activity does not meet these environmental standards, it shall be deemed to be a discretionary activity, requiring a resource consent.

This Part of the Plan should be read in conjunction with Part 6, Interpretation, which contains definitions of the activity categories listed below.

4.2.2 PERMITTED ACTIVITIES

The following are permitted activities in the Residential Management Area, provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Residential accommodation.

(b) Home occupations.

(c) Community business.

(d) Public and private open space.

(e) Reserves and recreational facilities.

(f) Healthcare and veterinary facilities (excluding overnight care).

(g) Accessory buildings to any permitted or otherwise lawfully established activity.

(h) Network utilities which are deemed to be a permitted activity in section 5.3.6 of this Plan.

(i) Soil conservation flood protection or and river control works authorised by the relevant Regional Council (being the Greater Wellington Regional Council or the Manawatu-Wanganui Regional Council).

(j) Activities on the surface of water in river and lakes.

(k) Temporary activities.

(l) Subdivision which is deemed to be a permitted activity in section 5.2.4 of this Plan.

(m) Temporary military training activities not exceeding 31 days in duration and where the written consent of the owner has been obtained.

(n) Any other activity specifically listed in Part 5 of this Plan as a "permitted activity".

4.2.3 CONTROLLED ACTIVITIES

4.2.3.1 The following are controlled activities in the Residential Management Area provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Subdivision which is deemed to be a controlled activity in section 5.2.4 of this Plan.

(b) Network utilities which are deemed to be a controlled activity in section 5.3.6 of this Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "controlled activity".

4.2.3.2 Matters over which the Council reserves control in relation to controlled activities

In respect of the controlled activities listed in section 4.2.3.1 above, the matters over which the Council shall exercise control by the imposition of conditions are:

(a) Any matters relating to compliance with the environmental standards in Part 5 of this Plan.

(b) The imposition of financial contributions in accordance with Section 5.1.6 of this Plan.

4.2.4 ENVIRONMENTAL STANDARDS

All permitted and controlled activities shall meet the relevant rules and environmental standards below (refer to Part 5 of Plan for details).

General rules and standards

- effluent disposal (section 5.1.2)
- water supply (section 5.1.3)
- stormwater drainage (section 5.1.4)
- land disturbance and excavation (section 5.1.5)
- financial contributions (section 5.1.6)
- natural hazards (section 5.1.7)
- hazardous substances (section 5.1.8).

Subdivision rules and standards

- subdivision (section 5.2) - this only applies to land subdivision activities.

Infrastructural rules and standards

- management of roads (section 5.3.1)
- parking (section 5.3.2)
- access and intersections (section 5.3.3)
- Dannevirke Aerodrome Protection Area (section 5.3.4)
- rail corridor (section 5.3.5)
- network utilities (section 5.3.6).

Amenity rules and standards

- noise and vibration (section 5.4.1)

- dust, smoke and odour (section 5.4.2)
- signs (section 5.4.3)
- height and recession plane controls (section 5.4.4)
- outdoor living court (section 5.4.5)
- outdoor service court (section 5.4.6)
- glare/artificial lighting (section 5.4.7)
- landscape treatment/screening (section 5.4.8)
- pedestrian amenity (verandahs) (section 5.4.9)
- setbacks (section 5.4.10).

Cultural and natural heritage rules and standards

- heritage resources (section 5.5)
- important natural features (section 5.5)
- reserves (section 5.5.3).

4.2.5 DISCRETIONARY ACTIVITIES

4.2.5.1 The following are discretionary activities in the Residential Management Area:

(a) Any activity not listed in this Plan as a permitted or controlled activity.

(b) Any permitted or controlled activity listed in this Plan which does not meet the environmental standards specified in Part 5 of this District Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "discretionary activity".

4.2.5.2 Criteria for Assessment

In assessing any application under section 4.2.5.1 above for a discretionary activity, the Council shall have regard to the following matters:

(i) the purpose and principles in Part II of the RMA;

(ii) other relevant provisions of the RMA;

(iii) relevant provisions of this District Plan, including:

- the objectives, policies and anticipated environmental results in Part 2 of this Plan;
- the desired characteristics for the relevant Management Area in Part 3 of this Plan;
- the rules and standards in Part 5 of this Plan.
- where any activity is proposed within a Future Residential or Future Industrial Management overlay area, whether the proposed activity is likely to pre-empt or prevent the land on which the activity is proposed to occur from being rezoned and/or used for the stated purpose of the particular Future Management Area.

(iv) where an activity is deemed to be a discretionary activity due to non-compliance with an environmental standard in Part 5 of this Plan, regard shall be had to any additional "criteria for assessment" specified in Part 5 of this Plan in relation to that environmental standard;

(v) any other matters the Council considers relevant and reasonably necessary to determine the application. Relevant matters include:

- the degree of non-compliance and the practicality of achieving any specified standard;
- details of any proposed mitigation measures;
- whether there are particular circumstances existing which justify the alteration of any standards relating to the proposed activity.

4.3 Commercial Management Area

4.3.1 INTRODUCTION

"Commercial Management Areas" cover the predominantly commercial (generally business and retail) areas of the Tararua District's four main urban areas. These areas are delineated on the District Plan maps. They share a particular character, level of amenity and environmental quality which can be distinguished from other management areas in the District.

The Commercial Management Area is characterised by business-oriented activities such as shops, commercial services, professional trades and offices, distribution and light manufacturing activities. The level of amenity and environmental quality expected by the community in these areas reflects the predominantly commercial character. The desired characteristics of Commercial Management Areas have been listed in Part 3 of this Plan.

Generic categories of activity are classified below as permitted, controlled and discretionary activities in the Commercial Management Area on the basis of their potential environmental effects. Specific activities listed as permitted or controlled must also meet the environmental standards specified in Part 5 of this Plan. If a proposed activity does not meet these environmental standards, it shall be deemed to be a discretionary activity, requiring a resource consent.

This Part of the Plan should be read in conjunction with Part 6, Interpretation, which contains definitions of the activity categories listed below.

4.3.2 PERMITTED ACTIVITIES

The following are permitted activities in the Commercial Management Area, provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Community business.

(b) General business.

(c) Residential accommodation.

(d) Public and private open space.

(e) Reserves and recreational facilities.

(f) Healthcare and veterinary facilities (excluding overnight care).

(g) Community facilities.

(h) Visitor accommodation.

(i) Car parks and associated facilities.

(j) Accessory buildings to any permitted or otherwise lawfully established activity.

(k) Network utilities which are deemed to be a permitted activity in section 5.3.6 of this Plan.

(l) Activities on the surface of water in river and lakes.

(m) Temporary activities.

(n) Subdivision which is deemed to be a permitted activity in section 5.2.4 of this Plan.

(o) Temporary military training activities not exceeding 31 days in duration and where the written consent of the owner has been obtained.

(p) Any other activity specifically listed in Part 5 of this Plan as a "permitted activity".

4.3.3 CONTROLLED ACTIVITIES

4.3.3.1 The following are controlled activities in the Commercial Management Area provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Subdivision which is deemed to be a controlled activity in section 5.2.4 of this Plan.

(b) Entertainment and sports premises.

(c) Network utilities which are deemed to be a controlled activity in section 5.3.6 of this Plan.

(d) Any other activity specifically listed in Part 5 of this Plan as a "controlled activity".

4.3.3.2 Matters over which the Council reserves control in relation to controlled activities

In respect of the controlled activities listed in section 4.3.3.1 above, the matters over which the Council shall exercise control by the imposition of conditions are:

(a) Any matters relating to compliance with the environmental standards in Part 5 of this Plan.

(b) The imposition of financial contributions in accordance with Section 5.1.6 of this Plan.

(c) Mitigation measures (including hours of operation) to reduce potential adverse effects.

4.3.4 ENVIRONMENTAL STANDARDS

All permitted and controlled activities shall meet the relevant rules and environmental standards below (refer to Part 5 of Plan for details).

General rules and standards

- effluent disposal (section 5.1.2)
- water supply (section 5.1.3)
- stormwater drainage (section 5.1.4)
- land disturbance and excavation (section 5.1.5)
- financial contributions (section 5.1.6)
- natural hazards (section 5.1.7)
- hazardous substances (section 5.1.8).

Subdivision rules and standards

- subdivision (section 5.2) - this only applies to land subdivision activities.

Infrastructural rules and standards

- management of roads (section 5.3.1)
- parking (section 5.3.2)
- access and intersections (section 5.3.3)

- Dannevirke Aerodrome Protection Area (section 5.3.4)
- rail corridor (section 5.3.5)
- network utilities (section 5.3.6).

Amenity rules and standards

- noise and vibration (section 5.4.1)
- dust, smoke and odour (section 5.4.2)
- signs (section 5.4.3)
- height and recession plane controls (section 5.4.4)
- outdoor living court (section 5.4.5)
- outdoor service court (section 5.4.6)
- glare/artificial lighting (section 5.4.7)
- landscape treatment/screening (section 5.4.8)
- pedestrian amenity (verandahs) (section 5.4.9)
- setbacks (section 5.4.10).

Cultural and natural heritage rules and standards

- heritage resources (section 5.5)
- important natural features (section 5.5)
- reserves (section 5.5.3).

4.3.5 DISCRETIONARY ACTIVITIES

4.3.5.1 The following are discretionary activities in the Commercial Management Area:

(a) Any activity not listed in this Plan as a permitted or controlled activity.

(b) Any permitted or controlled activity listed in this Plan which does not meet the environmental standards specified in Part 5 of this Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "discretionary activity".

4.3.5.2 Criteria for Assessment

In assessing any application under section 4.3.5.1 above for a discretionary activity, the Council shall have regard to the following matters:

(i) the purpose and principles in Part II of the RMA;

(ii) other relevant provisions of the RMA;

(iii) relevant provisions of this District Plan, including:

- the objectives, policies and anticipated environmental results in Part 2 of this Plan;
- the desired characteristics for the relevant Management Area in Part 3 of this Plan;
- the rules and standards in Part 5 of this Plan.

(iv) where an activity is deemed to be a discretionary activity due to non-compliance with an environmental standard in Part 5 of this Plan, regard shall be had to any additional "criteria for assessment" specified in Part 5 of this Plan in relation to that environmental standard;

(v) any other matters the Council considers relevant and reasonably necessary to determine the application. Relevant matters include:

- the degree of non-compliance and the practicality of achieving any specified standard;
- details of any proposed mitigation measures;
- whether there are particular circumstances existing which justify the alteration of any standards relating to the proposed activity.

4.4 Industrial Management Area

4.4.1 INTRODUCTION

"Industrial Management Areas" cover the predominantly industrial areas of the Tararua District. These areas are delineated on the District Plan maps. They share a particular character, level of amenity and environmental quality which can be distinguished from other management areas in the District.

The Industrial Management Area is characterised by industrial and manufacturing activities and some supporting commercial services. Some industrial activities have the potential to cause environmental effects, such as noise, odour or the visual effect of industrial buildings, which would be incompatible with other activities in, for example, Residential and Commercial Management Areas but which are normally acceptable in Industrial Areas. The level of amenity and environmental quality expected by the community in these areas reflects their predominantly industrial character. The desired characteristics of Industrial Management Areas have been listed in Part 3 of this Plan.

Generic categories of activity are classified below as permitted, controlled and discretionary activities in the Industrial Management Area on the basis of their potential environmental effects. Specific activities listed as permitted or controlled must also meet the environmental standards specified in Part 5 of this Plan. If a proposed activity does not meet these environmental standards, it shall be deemed to be a discretionary activity, requiring a resource consent.

This Part of the Plan should be read in conjunction with Part 6, Interpretation, which contains definitions of the activity categories listed below.

4.4.2 PERMITTED ACTIVITIES

The following are permitted activities in the Industrial Management Area, provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Industry (except those industrial activities listed in Appendix 1, Part 9 of the Plan).

(b) Factory shops.

(c) Community business.

(d) Bulk retail.

(e) Residential.

(f) Public and private open space.

(g) Reserves and recreational facilities.

(h) Vehicle parks and facilities.

(i) Accessory buildings to any permitted or otherwise lawfully established activity.

(j) Network utilities which are deemed to be a permitted activity in section 5.3.6 of this Plan.

(k) Soil conservation and river control works.

(l) Activities on the surface of water in river and lakes.

(m) Temporary activities.

(n) Subdivision which is deemed to be a permitted activity in section 5.2.4 of this Plan.

(o) Temporary military training activities not exceeding 31 days in duration and where the written consent of the owner has been obtained.

(p) Any other activity specifically listed in Part 5 of this Plan as a "permitted activity".

4.4.3 CONTROLLED ACTIVITIES

4.4.3.1 The following are controlled activities in the Industrial Management Area provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Subdivision which is deemed to be a controlled activity in section 5.2.4 of this Plan.

(b) Industrial activities listed in Appendix 1, Part 9 of the Plan.

(c) Network utilities which are deemed to be a controlled activity in section 5.3.6 of this Plan.

(d) Any other activity specifically listed in Part 5 of this Plan as a "controlled activity".

4.4.3.2 Matters over which the Council reserves control in relation to controlled activities

In respect of the controlled activities listed in section 4.4.3.1 above, the matters over which the Council shall exercise control by the imposition of conditions are:

(a) Any matters relating to compliance with the environmental standards in Part 5 of this Plan.

(b) The imposition of financial contributions in accordance with Section 5.1.6 of this Plan.

4.4.4 ENVIRONMENTAL STANDARDS

All permitted and controlled activities shall meet the relevant rules and environmental standards below (refer to Part 5 of Plan for details).

General rules and standards

- effluent disposal (section 5.1.2)
- water supply (section 5.1.3)
- stormwater drainage (section 5.1.4)
- land disturbance and excavation (section 5.1.5)
- financial contributions (section 5.1.6)
- natural hazards (section 5.1.7)
- hazardous substances (section 5.1.8).

Subdivision rules and standards

- subdivision (section 5.2) - this only applies to land subdivision activities.

Infrastructural rules and standards

- management of roads (section 5.3.1)
- parking (section 5.3.2)
- access and intersections (section 5.3.3)

- Dannevirke Aerodrome Protection Area (section 5.3.4)
- rail corridor (section 5.3.5)
- network utilities (section 5.3.6).

Amenity rules and standards

- noise and vibration (section 5.4.1)
- signs (section 5.4.3)
- height and recession plane controls (section 5.4.4)
- outdoor living court (section 5.4.5)
- outdoor service court (section 5.4.6)
- glare/artificial lighting (section 5.4.7)
- landscape treatment/screening (section 5.4.8)
- pedestrian amenity (verandahs) (section 5.4.9)
- setbacks (section 5.4.10).

Cultural and natural heritage rules and standards

- heritage resources (section 5.5)
- important natural features (section 5.5)
- reserves (section 5.5.3).

4.4.5 DISCRETIONARY ACTIVITIES

4.4.5.1 The following are discretionary activities in the Industrial Management Area:

(a) Any activity not listed in this Plan as a permitted or controlled activity.

(b) Any permitted or controlled activity listed in this Plan which does not meet the environmental standards specified in Part 5 of this Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "discretionary activity".

4.4.5.2 Criteria for Assessment

In assessing any application under section 4.4.5.1 above for a discretionary activity, the Council shall have regard to the following matters:

(i) the purpose and principles in Part II of the RMA;

(ii) other relevant provisions of the RMA;

(iii) relevant provisions of this District Plan, including:

- the objectives, policies and anticipated environmental results in Part 2 of this Plan;
- the desired characteristics for the relevant Management Area in Part 3 of this Plan;
- the rules and standards in Part 5 of this Plan.

(iv) where an activity is deemed to be a discretionary activity due to non-compliance with an environmental standard in Part 5 of this Plan, regard shall be had to any additional "criteria for assessment" specified in Part 5 of this Plan in relation to that environmental standard;

(v) any other matters the Council considers relevant and reasonably necessary to determine the application. Relevant matters include:

- the degree of non-compliance and the practicality of achieving any specified standard;
- details of any proposed mitigation measures;
- whether there are particular circumstances existing which justify the alteration of any standards relating to the proposed activity.

4.5 Settlement Management Area

4.5.1 INTRODUCTION

"Settlement Management Areas" cover those small settlements in the District which are serviced by community sewerage and/or water supply schemes. There are numerous other small rural settlements scattered throughout the District which have been included in the Rural Management Area rather than the Settlement Management Area as they do not have community sewerage and water services and are therefore less suitable for close development. This continues the past practice of zoning such settlements as "Rural". The Settlement Management Areas are delineated on the District Plan maps.

Settlement Management Areas tend to contain a mixture of rural, residential, commercial and industrial activities and the settlements serve an important social, economic and cultural function for the community. They have a particular character, level of amenity and environmental quality which can be distinguished from other management areas in the District.

The level of amenity and environmental quality expected by the community in these areas reflects the mixed use (or semi-rural) low density, open space character of such areas. The desired characteristics of Settlement Management Areas have been listed in Part 3 of this Plan.

Generic categories of activity are classified below as permitted, controlled and discretionary activities in the Settlement Management Area on the basis of their potential environmental effects. Specific activities listed as permitted or controlled must also meet the environmental standards specified in Part 5 of this Plan. If a proposed activity does not meet these environmental standards, it shall be deemed to be a discretionary activity, requiring a resource consent.

This Part of the Plan should be read in conjunction with Part 6, Interpretation, which contains definitions of the activity categories listed below.

4.5.2 PERMITTED ACTIVITIES

The following are permitted activities in the Settlement Management Area, provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Residential accommodation.

(b) Farming.

(c) Home occupations.

(d) Visitor accommodation.

(e) Marae.

(f) Public and private open space.

(g) Reserves and recreational facilities.

(h) Soil conservation flood protection or river control works authorised by the relevant Regional Council (being the Greater Wellington Regional Council or the Manawatu-Wanganui Regional Council).

(i) Community businesses.

(j) Rural selling places on roads other than primary arterial roads.

(k) Network utilities which are deemed to be a permitted activity in section 5.3.6 of this Plan.

(l) Accessory buildings to any permitted or otherwise lawfully established activity.

(m) Activities on the surface of water in river and lakes.

(n) Temporary activities.

(o) Subdivision which is deemed to be a permitted activity in section 5.2.4 of this Plan.

(p) Temporary military training activities not exceeding 31 days in duration and where the written consent of the owner has been obtained.

(q) Any other activity specifically listed in Part 5 of this Plan as a "permitted activity".

4.5.3 CONTROLLED ACTIVITIES

4.5.3.1 The following are controlled activities in the Settlement Management Area provided they comply with the relevant environmental standards in Part 5 of this Plan:

(a) Subdivision which is deemed to be a controlled activity in section 5.2.4 of this Plan.

(b) Network utilities which are deemed to be a controlled activity in section 5.3.6 of this Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "controlled activity".

4.5.3.2 Matters over which the Council reserves control in relation to controlled activities

In respect of the controlled activities listed in section 4.5.3.1 above, the matters over which the Council shall exercise control by the imposition of conditions are:

(a) Any matters relating to compliance with the environmental standards in Part 5 of this Plan.

(b) The imposition of financial contributions in accordance with Section 5.1.6 of this Plan.

4.5.4 ENVIRONMENTAL STANDARDS

All permitted and controlled activities shall meet the relevant rules and environmental standards below (refer to Part 5 of Plan for details).

General rules and standards

- effluent disposal (section 5.1.2)
- water supply (section 5.1.3)
- stormwater drainage (section 5.1.4)
- land disturbance and excavation (section 5.1.5)

- financial contributions (section 5.1.6)
- natural hazards (section 5.1.7)
- hazardous substances (section 5.1.8).

Subdivision rules and standards

- subdivision (section 5.2) - this only applies to land subdivision activities

Infrastructural rules and standards

- management of roads (section 5.3.1)
- parking (section 5.3.2)
- access and intersections (section 5.3.3)
- Dannevirke Aerodrome Protection Area (section 5.3.4)
- rail corridor (section 5.3.5)
- network utilities (section 5.3.6).

Amenity rules and standards

- noise and vibration (section 5.4.1)
- dust, smoke and odour (section 5.4.2)
- signs (section 5.4.3)
- height and recession plane controls (section 5.4.4)
- outdoor living court (section 5.4.5)
- outdoor service court (section 5.4.6)
- glare/artificial lighting (section 5.4.7)
- landscape treatment/screening (section 5.4.8)
- pedestrian amenity (verandahs) (section 5.4.9)
- setbacks (section 5.4.10).

Cultural and natural heritage rules and standards

- heritage resources (section 5.5)
- important natural features (section 5.5)
- reserves (section 5.5.3).

4.5.5 DISCRETIONARY ACTIVITIES

4.5.5.1 The following are discretionary activities in the Settlement Management Area:

(a) Any activity not listed in this Plan as a permitted or controlled activity.

(b) Any permitted or controlled activity listed in this Plan which does not meet the environmental standards specified in Part 5 of this Plan.

(c) Any other activity specifically listed in Part 5 of this Plan as a "discretionary activity".

4.5.5.2 Criteria for Assessment

In assessing any application under section 4.5.5.1 above for a discretionary activity, the Council shall have regard to the following matters:

(i) the purpose and principles in Part II of the RMA;

(ii) other relevant provisions of the RMA;

(iii) relevant provisions of this District Plan, including:

- the objectives, policies and anticipated environmental results in Part 2 of this Plan;
- the desired characteristics for the relevant Management Area in Part 3 of this Plan;
- the rules and standards in Part 5 of this Plan.

(iv) where an activity is deemed to be a discretionary activity due to non-compliance with an environmental standard in Part 5 of this Plan, regard shall be had to any additional "criteria for assessment" specified in Part 5 of this Plan in relation to that environmental standard;

(v) any other matters the Council considers relevant and reasonably necessary to determine the application. Relevant matters include:

- the degree of non-compliance and the practicality of achieving any specified standard;
- details of any proposed mitigation measures;
- whether there are particular circumstances existing which justify the alteration of any standards relating to the proposed activity.

5 ENVIRONMENTAL STANDARDS

PART 5

5.1 General Development Rules

5.1.1 INTRODUCTION TO PART 5

Part 5 of the Plan contains environmental standards (rules) which are applicable throughout the Tararua District. Standards for subdivision, infrastructure (transportation and utility services), amenity, heritage resources and energy efficiency are specified in sections 5.2 to 5.5. This section, 5.1, contains general standards which apply to subdivision and development in the District. In order to determine which standards are applicable to a proposed subdivision or development, reference should be made to all the sections in Part 5.

5.1.2 EFFLUENT DISPOSAL

5.1.2.1 Introduction

The existence of a reticulated sewerage system has been one of the primary factors used to determine the location of the boundaries of Urban (Residential, Commercial, Industrial and Settlement) Management areas in the District. Reticulated sewerage systems are available in the four main towns of the District (Dannevirke, Woodville, Pahiatua and Eketahuna) and in three out of the four settlements which have been classified as "Settlement Management Area" (Norsewood, Ormondville and Pongaroa). Akitio has also been classified as a "Settlement Management Area" although it has a reticulated water supply but, to date, no reticulated sewerage system.

In these "urban" areas of the District, the reticulated systems generally have capacity to allow additional connections to them and subdivision is generally the most appropriate time for assessing the ability of the system to cope with additional connections. Actual connection from any particular lot to the system must be made at the time of development. Where there is no public reticulated sewerage system available (i.e. in rural areas of the District and some parts of urban areas), all existing and future development must be capable of satisfactorily treating and disposing of sewage on-site, or through small-scale community-based schemes.

Standards are imposed to ensure that the quality of natural water (groundwater and surface water) is maintained and protected from contamination from effluent discharges, and to prevent human health risks and avoid problems of smell nuisance. The purpose of the standards is to ensure that sufficient area is available on-site to provide for buildings, a septic tank (or alternative treatment system) and effluent fields. Other legislation provides for the actual design and construction of the effluent disposal system. In addition to the

standards in the District Plan, the requirements of any relevant Tararua District bylaw, the Building Act 2004, the Health Act 1956 and any relevant regional plans shall also be met.

The MWRC's One Plan also contains rules relating to discharges to land from septic tanks and other effluent disposal standards. The rules aim to ensure that field soakage areas are of sufficient size (having regard to soil types) to ensure that suitable treatment can take place in the field soakage area and in the soil immediately surrounding that area, prior to entering groundwater systems. Developers need to have regard to the requirements of the relevant Regional Council in relation to effluent disposal matters.

It is the MWRC's intention to take primary responsibility for the management of on-site effluent disposal, including minimum allotment sizes, through administration of its 'Manual for On-Site Wastewater Systems Design and Management (Horizons Regional Council, 2010).

In relation to non-domestic effluent disposal systems such as treatment plants, oxidation ponds and other systems, care needs to be taken in the siting of facilities and effluent disposal fields to avoid unreasonable smell nuisance or any health risk for the occupants of neighbouring properties and dwellings.

The standards below aim to avoid such potential effects.

5.1.2.2 Standards

***[Note:** the word "development" (as used in the standards below) is defined in Part 6 of this Plan (Interpretation) as "any subdivision or any proposed activity to be undertaken on land, whether or not a resource consent is required". The word "developer" has a corresponding meaning (i.e. it includes persons undertaking subdivisions).]*

(a) Where developments are within an area serviced by a sewerage system:

(i) the developer shall provide a connection from the sewer main to the lot boundary (except as provided for in (b) below); and

(ii) all new developments must be connected to the system.

(b) Where an allotment is to be subdivided from a larger lot which is located within, and surrounded by, an established urban area (i.e. "infill" subdivision), proof shall be provided at the time of applying for subdivision consent that the allotment can be connected to the reticulated sewerage system, but it shall not be necessary to provide such connection until such time as the allotment is to be built upon.

(c) Where developments are proposed in an area which is not serviced by a sewerage system:

(i) there shall be an area of land (within each certificate of title) large enough for the disposal and treatment of sewage and domestic effluent in an environmentally acceptable manner, having regard to the proposed use of the land, and the size, shape and soil characteristics of the land (refer to (ii) and (iii) below). A drainage easement over adjacent land shall be an acceptable means of compliance with this standard where there is insufficient area of land within the Certificate of Title concerned.

For the purposes of this standard, on-site effluent disposal is "environmentally acceptable" where it does not (or will not), either on its own or cumulatively, lead to adverse environmental or health effects either within or beyond the boundaries of the site (including ground or surface water contamination, odours, surface run-off from land).

***[Note:** Where an area of land of less than 5,000m^2 is to be used to build a dwelling with associated domestic wastewater disposal, a resource consent will likely be required from MWRC prior to the installation of the wastewater disposal system and for any future upgrades to that system. The Council will require sufficient information to be presented to it to demonstrate that the site will be able to properly dispose of effluent within its boundaries in compliance with the requirements of One Plan Rule 14-14 and the Manual for Onsite Wastewater Systems Design and Management (Horizons Regional Council, 2010).]*

(ii) the information required in respect of subdivision applications is specified in section 7.3.3 of this Plan.

(iii) the information required as part of any resource consent or building consent application (as applicable) shall include a report from a registered engineer with experience in soil mechanics, geotechnical and/or wastewater engineering as appropriate and, if necessary, records of test data. The report shall include:

- a detailed soil and, if necessary, geotechnical assessment;
- identification of relevant topographic and drainage features;
- an assessment as to any actual or potential effects of effluent disposal on existing water bores and surface and ground water in the vicinity;

- an assessment of the likely volumes of effluent to be treated; and

- certification as to an appropriate on-site disposal system which would ensure that any adverse environmental effects are avoided.

(iv) the Council may waive the requirement for particular information (e.g. the engineer's report) where it is satisfied that such information is not necessary in the circumstances;

(v) where a building or other structure is proposed and the above requirements have previously been met in relation to the subdivision of the land, full details of the proposed effluent disposal system shall be provided at the building consent stage, but the requirements for permeation tests and a report from a suitably qualified expert shall be deemed to have been already met.

(d) In relation to any development in an area which is not serviced and where non-domestic effluent is or will be produced, the following requirements are additional to those in (c) above:

(i) any treatment plant or pond (excluding any disposal of effluent to land, such as by spray or trickle irrigation) shall be established a minimum of 50 metres from the boundary of the site. Any such treatment plant or pond shall also be established a minimum of 150 metres from any of the following activities that are in existence on an adjacent site at the time of establishment of the treatment plant or pond:

- a dwelling;

- visitor accommodation; or

- a community facility.

(ii) any disposal of effluent to land, including by spray or trickle irrigation, shall be undertaken not less than 20 metres from the boundary of the site and not less than 50 metres from any dwelling, visitor accommodation or community facility on an adjacent site where any such dwelling, visitor accommodation or community facility is in existence when the disposal activity is first established.

(iii) any disposal by way of spray irrigation shall be undertaken at times and in wind conditions so as to avoid spray drift onto an adjacent site.

(iv) where any effluent or manure (liquids, solids or slurry) is taken across a site boundary or along public roads, it shall be enclosed in containers or pipes so as to avoid a nuisance arising;

(v) the disposal of effluent from pig farms shall be carried out in accordance with EnviroporkTM: pork industry guide to managing environmental effects (NZ Pork Industry Board, V1.0 2005).

*[**Note**: the Council may waive the setback distance requirements set out in 5.1.2.2(d)(i) and/or 5.1.2.2(d)(ii) provided the written approval of the owner of the adjacent site has been obtained.]*

5.1.2.3 Non-compliance with standards

Where proposed activities do not meet the standards specified in section 5.1.2.2 above, they shall be deemed to be discretionary activities, requiring a resource consent.

5.1.2.4 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.1.2.3 above for a discretionary activity:

(a) whether there is adequate provision for the effective disposal of sewage without risk to public health or the environment.

(b) whether the development or subdivision would create adverse effects (including cumulative effects) on water, including groundwater, quality.

(c) whether the proposed design of the effluent disposal system can meet the maximum potential demand arising from the likely development.

(d) whether the topography, prevailing weather conditions or existing land uses are such that standards may be reduced without creating any significant nuisance or adverse environmental effects.

(e) whether the sewerage system is designed, located and constructed to allow relatively easy operation, cleaning, inspection and maintenance.

5.1.3 WATER SUPPLY

5.1.3.1 Introduction

The provision of an adequate and potable (drinkable) water supply is required for public health reasons and for domestic, commercial and industrial consumption. A water supply (not necessarily potable) is also necessary for fire fighting purposes. Where an urban or rural water supply system is not available, alternative methods of water supply are necessary, such as rainwater storage, bores or a combination of methods. In addition to the standards in the District Plan, the requirements of any relevant Tararua District bylaw, the

Building Act 2004, the Health Act 1956, the NZ Fire Service Code of Practice SNS PAS 4509:2008 and any relevant regional plans shall also be met.

5.1.3.2 Standards

***[Note:** the word "development" (as used in the standards below) is defined in Part 6 of this Plan (Interpretation) as "any subdivision or any proposed activity to be undertaken on land, whether or not a resource consent is required". The word "developer" has a corresponding meaning (i.e. it includes persons undertaking subdivisions).]*

(a) Where developments are within a Residential, Commercial, Industrial or Settlement Management Area which is serviced by an urban water supply system:

(i) the developer shall provide a connection from the water main to the lot boundary (except as provided for in (b) below); and

(ii) all new developments must be connected to the system.

(b) Where an allotment is to be subdivided from a larger lot which is located within, and surrounded by, an established urban area (i.e. "infill" subdivision), proof shall be provided at the time of applying for subdivision consent that the allotment can be connected to the reticulated water supply system, but it shall not be necessary to provide such connection until such time as the allotment is to be built upon.

(c) Where developments are proposed in an area which is not serviced by an urban water supply system:

(i) in relation to subdivisions, all land proposed to be held in one certificate of title shall be able to be provided with a satisfactory water supply suitable for domestic consumption, livestock consumption, and firefighting purposes, as appropriate to the circumstances.

(ii) In relation to building developments, all developments shall be able to be provided with a satisfactory water supply as appropriate to the circumstances. Evidence of a satisfactory water supply shall be provided at the building consent stage.

5.1.3.3 Non-compliance with standards

Where proposed activities do not meet the standards specified in section 5.1.3.2 above, the activity shall be deemed to be discretionary activity, requiring a resource consent.

5.1.4 STORMWATER DRAINAGE

5.1.4.1 Introduction

The adequate control and disposal of stormwater is important to ensure that people and communities are protected from the nuisance and, in some cases, social and economic disruption that stormwater run-off and flooding can cause. In urban areas, the higher proportion of impermeable surfaces means that adequate provision for stormwater drainage is particularly important. Stormwater needs to be disposed of so that it does not become contaminated by other effluent (e.g. septic tanks), chemicals, oils or pesticides. It also needs to be disposed of in a manner which causes minimal, if any, detriment to the environment. Therefore, the quality, as well as the quantity, of stormwater needs to be considered. There are a number of means available to control and dispose of stormwater including on-site soakage, roadside channels, soakage into reserves, or open areas, piping to existing streams or water bodies and connecting to established stormwater systems. Connections to sewerage systems are not permitted. Some means of stormwater disposal will require Regional Council consents; piping to existing waterbodies has the potential to adversely affect aquatic values and as such is not encouraged. The appropriate technique to use for stormwater drainage depends on the circumstances of each situation but it must avoid flooding downstream, and siltation, erosion or instability to any land or waterbodies. In addition to the standards in the District Plan, the requirements of any relevant Tararua District bylaw, the Building Act 2004, the Health Act 1956 and any relevant regional plans shall also be met.

5.1.4.2 Standards

(a) Each new lot or development shall be able to be provided with a means of stormwater drainage which avoids flooding downstream or on adjacent properties and does not cause any other adverse environmental effects such as increased siltation, or contamination of aquatic environments, erosion or instability of any land or watercourses.

(b) In Residential, Settlement, Commercial or Industrial Management Areas, all stormwater shall be disposed of in accordance with Part 4 of (NZS 4404:2010) Land Development and Subdivision Infrastructure.

5.1.4.3 Non-compliance with standards

Where proposed activities do not meet the standards specified in section 5.1.4.2 above, the activity shall be deemed to be discretionary activity, requiring a resource consent.

5.1.5 LAND DISTURBANCE AND EXCAVATION

5.1.5.1 Introduction

Many land use activities involve excavations and placement of deposits in the form of fill on land. In most circumstances, such activities are considered to constitute part of the main land use activity. Farming, for example, may involve activities such as digging offal holes, putting metal on races, constructing tracks and fencelines, digging private drains, establishing silage pits, land cultivation and minor land shaping, obtaining small amounts of gravel/sand for farm use, and so on. In the Rural Management Area, where farming is a permitted activity, these associated activities are also permitted. Nevertheless, resource consents from the Regional Council may be necessary in some circumstances.

On occasions it is necessary to dispose of surplus cut material from road works. Such material normally comprises clean topsoil/subsoil and is often valued by farmers to fill gullies and depressions and so on. This is a permitted activity in the District Plan, although reference should be made to the relevant Regional Council to see whether a resource consent from that Council is necessary.

It should be noted that Regional Councils have responsibility for controlling the effects of activities in the beds of rivers (e.g. gravel extraction from rivers) and also for land disturbance activities on steep country and other land that is particularly vulnerable to erosion, including wind erosion. Potential users of land in these circumstances should consult with the relevant Regional Council to determine whether a resource consent is required.

In urban areas, the management of excavations and fills on land is generally handled through either:

- the Building Act 2004, in terms of which site works (including earthworks) require approval by Council as part of the building consent; or

- the land subdivision procedures under the RMA and this Plan, particularly in terms of conditions of consent relating to filling, compaction, unstable or erosion prone land.

Some excavation and land disturbance activities are not just minor works associated with the principal land use activity but are commercial activities in their own right. These may be of a larger scale and with potentially greater adverse effects, such as noise, dust, traffic and visual effects. A distinction is made in the Plan between, on the one hand, minor excavations where fill is used on the same property, and on the other, when minerals, soil or fill is imported from, or exported to, another property for commercial sale and use. The latter is a discretionary activity. Mining and quarrying (including exploration, excavation and processing) are not permitted activities in any

Management Area and are, therefore, deemed to be discretionary activities. This enables the Council to assess the proposed work programme and the potential adverse effects of the works, and to set appropriate conditions to protect the amenities of the area.

One of the potential effects of earthworks and excavation is the disturbance or destruction of archaeological sites. It should be noted that the standards below are subject to compliance with the heritage provisions in section 5.5 of this Plan.

5.1.5.2 Standards

(a) In all Management Areas:

(i) The land disturbance and excavation standards in this section are subject to compliance with the heritage provisions in section 5.5 of this Plan, in relation to any archaeological sites, and the natural hazards rules in section 5.1.7 of this Plan.

(ii) Up to 30m³ of minerals or clean fill material may be excavated in any one year for transportation off the property where such works are not part of an approved subdivision or approved development;

(iii) Up to 30m³ of clean fill comprising topsoil and subsoil may be placed on a property at depths generally not exceeding 1 metre, where such works are not part of an approved subdivision or approved development;

(iv) Up to 100m³ of clean fill comprising topsoil, subsoil and/or demolition rubble may be placed on a property where such works are not part of an approved subdivision or approved development, and where the Council is informed before the activity is carried out. The detail to be provided is:

- legal description and street address of property
- nature and source of fill
- location of fill on site (site plan to be included)
- depth of fill
- compaction of fill.

(v) Any infilling activity shall not exacerbate or increase the risk of natural hazards.

(b) Additional standards in the Rural Management Area:

(i) For activities other than the development and maintenance of:

- Tracks that provide access to existing network utilities and/or infrastructure or to network utilities and/or infrastructure that is deemed to be a permitted activity in section 5.3.6 of this Plan;
- farm tracks;
- fencelines;
- forestry tracks; or
- forestry landings,

up to 1,000 m^3 of minerals, clean fill material, or soil may be excavated from and placed on land held in the same certificate of title in any one calendar year.

*[**Note**: Tracks that provide access to existing network utilities and/or infrastructure, or to network utilities and/or infrastructure that is deemed to be a permitted activity in section 5.3.6 of this Plan, farm tracks, fencelines, forestry tracks and forestry landings may be developed and maintained without limitation on the volume of material that may be excavated or placed for this purpose, or the limitation of the material being excavated from and placed on land held in the same certificate of title.]*

*[**Note:** The activity may require resource consent from the Regional Council or be restricted by means of Regional Rules.]*

(ii) In any one calendar year, up to 1,000 m^3 of clean imported fill, comprising topsoil, subsoil and/or demolition rubble may be placed on land which is not part of an approved subdivision or approved development, provided the Council is informed before the activity is carried out. Information to be provided is:

- legal description and street address of the subject site
- nature and source of fill
- location of fill on site (site plan to be included)
- depth of fill
- compaction of fill

- any mitigation measures necessary to ensure that there are no adverse effects in watercourses or beyond the boundaries of the site.

The 1,000 m^3 restriction on volume does not apply to surplus cut material from road works, which may be placed without restriction on volume. Such placement remains subject to informing the Council in the required manner before the activity is carried out.

*[**Note:** The activity may require resource consent from the Regional Council or be restricted by means of Regional Rules.]*

5.1.5.3 Non-compliance with standards

Where proposed activities do not meet the standards specified in section 5.1.5.2 above, the activity shall be deemed to be discretionary activity, requiring a resource consent.

5.1.5.4 Information requirements

In addition to the information requirements specified in section 7.3.2 of this Plan, a resource consent application for any mining or quarrying activity (including prospecting, exploration, excavation and processing) shall include an outline of the proposed works, including (where appropriate):

(a) description of the area (including legal description and physical features);

(b) objective of the activity;

(c) methods/processes to be used (including any hazardous substances to be used);

(d) timeframe for works;

(e) an assessment of the effects of the activity on vegetation, livestock and wildlife habitats, topographical features, watercourses, air quality, waahi tapu, archaeological, historic or other significant sites, and on any nearby residential activities;

(f) traffic movements and routes to be used;

(g) rehabilitation programme;

(h) details of other proposed mitigation measures;

5.1.5.5 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.1.5.3 for a discretionary activity (where applicable):

(a) significance of actual and potential environmental effects;

(b) extent (if any) to which there may be a detraction to, or adverse affect upon, the amenity of nearby residential activities, or other sensitive activities;

(c) significance of any effects on drainage patterns;

(d) effect on the sustainable management of the land;

(e) significance of any effects of traffic movements on the safety and efficiency of the road network;

(f) significance of any adverse visual impact;

(g) extent to which there is any disturbance to any heritage feature or important natural feature;

(h) whether there will be adequate compaction of fill for likely future uses;

(i) whether acceptable plans for rehabilitation of the area have been provided, including an implementation programme;

(j) details of other mitigation measures proposed;

(k) recommendations of the Regional Council or other relevant agency.

5.1.6 DEVELOPMENT CONTRIBUTIONS

5.1.6.1 Introduction

The RMA requires the Council to manage the effects of subdivision and development in a manner which promotes the sustainable management of the District's natural and physical resources. Contributions from subdividers and developers provide a means of offsetting, avoiding, remedying or mitigating the adverse effects of such activities.

Section 108 of the RMA specifies that contributions can take any of the following forms:

- *money;*
- *land;*
- *works* (such as landscape treatment, restoration);
- *services* (such as the provision of water supply, sewerage and stormwater disposal, roads);
- *any combination of the above.*

The provisions for contributions in this Plan state:

- the circumstances when contributions may be imposed;
- the maximum amount that may be imposed;
- the general purposes for which contributions may be used.

To assist in determining responsibility for their provision, services can be divided into two separate categories, as follows:

(a) *On-site services*, being those works carried out within and as part of a development (including subdivision - refer to "Note" in 5.1.6.2 below). On-site services include car parks, water and sewerage connections to trunk services, power, telephone and stormwater. The provision of on-site services is the responsibility of the subdivider or developer. The only exception to this approach is for car parks in the Commercial Management Areas where Council may accept a cash-in-lieu payment. In these specified areas the Council shall be responsible for the provision and maintenance of car parks within these central areas.

(b) *Off-site services*, being those trunk and community services outside the development (including subdivision - refer to "Note" in 5.1.6.2 below) which serve the community in general. These services include community facilities, reserves, libraries, roads, footpaths, public works and utilities (e.g. sewerage and water reticulation and treatment plants, and landfills), the provision and maintenance of which is the responsibility of the Council on behalf of the community. New subdivisions and developments incrementally add to usage and demands on such services and for this reason the Council imposes rates and user charges as appropriate. The Council considers that these mechanisms for funding community service provision are more appropriate, justifiable and equitable than a requirement for a financial contribution on all new developments as a matter of course. It is also intended that these provisions will give the

District a competitive edge over other Districts in attracting investment and growth opportunities.

While contributions are not automatically required for permitted activities, this Plan makes provision for contributions to be required as conditions of resource consents granted by the Council for controlled, discretionary and non-complying activities. The purpose of any conditions of consent requiring contributions is to help offset, avoid, remedy or mitigate the adverse effects of activities. The purpose of specific contributions is discussed further in section 5.1.6.3 below.

5.1.6.2 General rules

[Note: *the word "development" (as used in section 5.1.6) is defined in Part 6 of this Plan (Interpretation) as "any subdivision or any proposed activity to be undertaken on land, whether or not a resource consent is required". The word "developer" has a corresponding meaning (i.e. it includes persons undertaking subdivisions).]*

(a) All works and services required by this District Plan to be provided on or within any site in the District for the purpose of a development, and any works required to ensure compliance with any standard or rule, shall be funded entirely by the developer, to the extent that the costs are directly related to the development.

(b) All off-site works and services which are provided by the Council at the developer's request, and which are not programmed for implementation in the Council's Annual Plan for the current year, shall be funded entirely as a cost to the developer.

(c) Any spare capacity to meet future demand, which is built into the work or service by the developer at the Council's request, shall be paid for by the Council in either works, services, money or a combination of these. Any such arrangement is to be negotiated and agreed by both parties.

(d) Contributions payable in the form of money or works as part of a subdivision consent must be paid, or completed, prior to the issue of a certificate under Section 224 of the RMA, while contributions in the form of land shall vest on the deposit of the survey plan under Section 223 of the RMA.

(e) Contributions payable in any form in respect of a development must be paid prior to the uplifting of a building consent or where no building consent is involved, before the commencement of the activity.

(f) Except in the case of a money contribution in respect of a development, provision or installation of any contribution may be deferred subject to

satisfactory protection of that contribution by a bond (Refer to section 5.2 for the rules relating to bonds).

(g) Goods and Services Tax (GST) is payable on all monetary contributions, except where GST has already been included in a valuation upon which the financial contribution is based.

(h) No contribution shall be payable if a contribution for the same purpose has already been paid in respect of that area of land.

(i) Where an activity does not proceed and the consent lapses or is cancelled, the contribution shall be refunded in accordance with Section 110 of the RMA, upon application by the person who paid the contribution.

(j) Where the Council has accepted a financial contribution for the purpose of a specific work, it shall be obliged to carry out such work at the appropriate time. In the event that Council carries out the work at less cost than the contribution paid, the Council shall refund the balance to the person who paid the contribution.

5.1.6.3 Contributions as conditions of resource consents

Contributions (whether cash, land, works or services) may be required as conditions of land use and subdivision consent in relation to the matters below. It should be noted that the amount/value of contributions (if any) will depend upon the circumstances of each resource (land use or subdivision) consent application. The purpose, circumstances and maximum amount of financial contributions that may be imposed by the Council as a condition of consent is specified below:

[Note: *the word "development" (as used in section 5.1.6) is defined in Part 6 of this Plan (Interpretation) to include "any subdivision or any proposed activity to be undertaken on land...". The word "developer" has a corresponding meaning (i.e. it includes persons undertaking subdivisions).]*

(a) Provision of new roads and streets:

Circumstances: Where efficient and safe access to proposed developments cannot be adequately achieved from existing roads, or where the capacity of existing roads would be exceeded as a result of additional traffic generated by the development, the Council may require new roads to be constructed to standards specified by the Council.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of building the new road, including the value of the necessary land.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(a).

(b) Upgrading and widening of existing roads:

Circumstances: Where a proposed development will generate increased usage resulting in a need to increase the width, construction standard or maintenance programme of any existing roads (including state highways), the Council may require the road(s) to be upgraded to standards specified by Council, or require a contribution to be made for increased maintenance of the road.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of widening or upgrading the road or the increased maintenance costs for the duration of the activity.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(a).

(c) Private rights of ways, accessways and vehicle crossings:

Circumstances: Where a proposed development includes rights of way, accessways or vehicle crossings, the Council may require construction, sealing and maintenance of such accessways and vehicle crossings to standards specified by the Council so that there is no adverse effect on the safety and efficiency of the road network.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of constructing and maintaining the right of way, accessway or vehicle crossing.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(a).

(d) Off-street vehicle parking/loading spaces:

Circumstances: Where the on-site vehicle parking requirements of this Plan cannot be met in respect of any development, the Council may require a financial contribution, in the form of money, to provide and maintain public car parks in the vicinity of the development.

Maximum amount: The maximum amount of contribution that may be required is $2000 per car parking space/loading space.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(a).

(e) Street lighting:

Circumstances: Where new roads or accessways are formed or upgraded as part of a proposed development, the Council may require the provision or upgrading of street lighting to improve the safety of road users and pedestrians.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of providing the street lighting.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(a).

(f) Earthworks:

Circumstances: Where earthworks are required as part of a development to provide building areas, roads or services, or to enable better utilisation of the land, the Council may require the earthworks to be carried out to specified standards.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of carrying out the earthworks.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(a).

(g) Water supply:

Circumstances: Where any development is proposed, the Council may require a potable water supply to be established or connection to reticulated services to be made, in order to ensure that there is a satisfactory supply of water (for domestic, commercial and industrial use, or for fire-fighting and irrigation, as applicable),

Maximum amount: The maximum amount of contribution that may be required is the actual cost of providing the new, extended or upgraded water supply, including reticulation and connections within the development.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(b).

(h) Sewage/wastewater disposal:

Circumstances: Where any development is proposed, the Council may require either connection to an existing reticulated sewage system, the upgrading of such existing system if capacity is inadequate, or the

establishment of an on-site treatment and disposal system to the satisfaction of the Council, in order to ensure that all sewage/wastewater is able to be adequately disposed of in a manner that maintains the health and amenity of the occupants and the quality of the environment.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of providing the new, extended or upgraded sewage disposal system, including reticulation and connections within the development as applicable.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(b).

(i) Stormwater:

Circumstances: Where a development is proposed, the Council may require stormwater drainage facilities to be installed to the satisfaction of the Council, in order to reduce the adverse effects of uncontrolled run-off of stormwater from new roads, subdivisions, impervious surfaces and developments.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of providing the new, extended or upgraded stormwater drainage system, including reticulation and control structures within the development as applicable.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(b).

(j) Landscape treatment/fences:

Circumstances: Where landscape treatment or fences are desirable to reduce the adverse visual effects of a proposed development, or any existing activities, or to enhance the rehabilitation or restoration of an area, or provide increased privacy, the Council may require landscape treatment to be carried out and/or fences to be erected.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of implementing and maintaining the landscape treatment or fences.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(c).

(k) Open space, reserves and public recreational facilities:

Circumstances: Where major new developments (residential, commercial or industrial) are proposed which will generate a significant increase in demand for, and usage of, reserves and public recreational facilities, or where there is an opportunity to protect and enhance important natural features, open space, conservation values or heritage and cultural features (such as archaeological sites and waahi tapu), the Council may require financial contributions to help provide and maintain adequate reserves, facilities and open space in the area or town concerned.

Maximum amount: The maximum amount of contribution that may be required is:

(i) in relation to a building development: 0.5% of the assessed value of the building development, as determined by the Council.

(ii) in relation to a subdivision: 5% of the value of the additional allotments created as shown on the plan of subdivision.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(c).

(l) Esplanade reserves/strips/accessways:

Circumstances: Where a development (including subdivision) is proposed along the margins of watercourses/waterbodies (including the coast) that are identified in the District Plan or through the resource consent process as priority areas for riparian management, public access, recreation or the conservation of natural features and habitats, the Council may require financial contributions (vesting of land in the Council) to create an esplanade reserve, strip or access strip.

Maximum amount: The maximum amount of contribution that may be required is the actual cost of vesting a reserve or strip up to 20 metres wide adjacent to the watercourse/waterbody, or an access strip to such watercourse/waterbody, including the value of the land or interest in land and the conveyancing and survey costs.

Purpose: The contribution may be used for any of the purposes listed in section 5.1.6.4(c).

5.1.6.4 Purpose for which contributions may be used

(a) Road Environment

To provide, upgrade and maintain the District's roads and road environment, including:

- provision of new roads and streets;
- upgrading and widening of existing roads;
- private rights of way, accessways and vehicle crossings;
- off-street vehicle parking/loading spaces;
- street lighting;
- earthworks.

(b) Services

To provide, upgrade and maintain the District's servicing networks, including:

- water supply;
- sewage/wastewater disposal;
- stormwater disposal;

(c) Recreation and amenity

To provide, upgrade and maintain the District's recreational facilities and level of amenity, including:

- landscape treatment/fences;
- Esplanade reserves/strips/accessways;
- open space, reserves and public recreational facilities.

5.1.7 NATURAL HAZARDS

5.1.7.1 Introduction

In order to achieve the objectives and policies contained within Section 2.5 of this District Plan, a number of rules have been developed to control the use of land to avoid, remedy or mitigate the adverse effects of natural hazards.

Policy 9-1 of the Manawatu-Wanganui Regional Council's One Plan sets out the responsibilities for hazard management within the Region. For the Tararua District Council, these responsibilities include:

(i) developing objectives, policies and methods (including rules) for the control of the use of land to avoid or mitigate natural hazards in all areas and for all activities except the following (which are Regional Council responsibilities):
- all land use activities in the coastal marine area,
- erosion protection works that cross or adjoin mean high water springs,
- all land use activities in the beds of rivers and lakes, for the purpose of avoiding or mitigating natural hazards.

(ii) identifying floodways (as shown in Schedule J1 of the One Plan) and other areas known to be inundated by a 0.5% annual exceedance probability (AEP) flood event on planning maps in district plans and controlling land use activities in these areas in accordance with Policies 9-2 and 9-3 of the One Plan.

None of the floodways as shown in Schedule J1 of the One Plan are within the Tararua District.

Policy 9-2(b) of the One Plan states that TA's must not allow the establishment of any new structure or activity, or an increase in the scale of any existing structure or activity, within an area which would be inundated in a 0.5% AEP flood event unless:

(i) flood hazard avoidance is achieved or the 0.5% AEP (1 in 200 year) flood hazard is mitigated, or

(ii) the non-habitable structure or activity is on production land, or

(iii) there is a functional necessity to locate the structure or activity within such an area

The District Plan contains provisions that limit development in recognised natural hazard areas in order to reduce risk to human life, property and infrastructure. Rule 5.1.7.2 applies to the Natural Hazard Areas that are identified on the planning maps. No areas are currently identified on the maps.

The District Plan does however contain a series of maps at a scale of 1:50,000 which identify areas of land that could potentially be adversely affected by flooding or surface flooding. Areas affected by poor drainage are also shown as floodable areas. These maps have been prepared using a variety of sources such as photographs of and reports about flood events, anecdotal information and field visits. They have not been prepared using data modelling to identify areas of land likely to be inundated by a 0.5% annual exceedance probability

(AEP) flood event. They are indicative only and have been prepared solely for the purpose of showing areas in which the nature, extent and risk of flooding requires further investigation prior to any subdivision, development or change in land use occurring.

In addition to these District Plan 'Flood Maps', the Council is also able to consider Natural Hazard Area (Flooding) information (the 0.5% AEP flood modelling) provided by the Manawatu-Wanganui Regional Council for the Upper Gorge (including Woodville), Mangatainoka, Pahiatua and Herbertville. One in 100 year (1% AEP) flood modelling information, in respect of coastal inundation at Akitio, is also able to be referenced. When considering applications for building permits, subdivision of land or changes of use the Council will consider all the above-mentioned information and take this into account in the decision making process.

Persons intending to develop or purchase a property within an area identified by the Council as being floodable, will be advised to contact the Manawatu-Wanganui Regional Council (Horizons) for assistance in obtaining more detailed, site-specific information.

The Regional Council's Long Term Plan makes provision for a number of hazards information projects to be carried out in the Tararua District, over a period of 6 years, including 0.5% AEP flood modelling. Once these information gathering projects have been completed it ought to be possible to identify the areas at risk of inundation in a 0.5% AEP event on the District Planning maps and therefore become subject to Rule 5.1.7.2.

5.1.7.2 Standards

(a) Permitted Activities

The permitted and controlled activities in a natural hazard area (as shown on the planning maps) are those specified in Part 4 of this Plan for the underlying Management Area, subject to meeting the following standards:

(i) Activities shall not involve any of the following:

- The erection of, or extension to, any building or structure (other than temporary structures associated with temporary activities - refer to Part 6, Interpretation).
- land subdivision;
- any activity which requires vegetation clearance and ground disturbance;
- the use, disposal or storage of hazardous substances.

(b) Natural Hazard Area (Flooding)

The permitted and controlled activities on land falling within the definition of a 'Natural Hazard Area (Flooding)' are those specified in Part 4 of this Plan for the Management Area concerned, subject to meeting one or more of the following standards:

(i) the adverse effects of the identified 0.5% AEP (1 in 200 year) flood hazard are able to be avoided or mitigated; or

(ii) the activity, including any non-habitable structure, is on farming (production) land; or

(iii) there is a functional necessity to locate the activity or structure within the identified area.

5.1.7.3 Non-compliance with Standards

Where activities cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.1.7.4 Information Requirements

In addition to the information requirements specified in section 7.3.2, a resource consent application for any activity proposed to be undertaken within a natural hazard area shall include the following:

(a) a detailed written description of the proposal and its purpose;

(b) any known historical data relating to the hazard prevalent in that area;

(c) any proposed measures to ensure that the activity will not be adversely affected by the occurrence of a natural hazard at that area. A report from a suitably qualified expert may be required;

(d) details of consultation undertaken with the relevant Regional Council.

5.1.7.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.1.7.3 for a discretionary activity:

(a) views of the relevant Regional Council;

(b) estimated probability of a natural hazard occurring;

(c) estimated risk and the likely consequences of a natural hazard event;

(d) mitigation measures proposed;

(e) likely cost to the Council in terms of its natural hazard response and recovery programme should the activity be allowed to proceed and should such a natural hazard occur.

*[**Note:** In order to meet the requirements of 5.1.7.4(d) and 5.1.7.5(a), persons wanting to change or intensify a land use, subdivide land or erect or extend any building or structure in an area identified as being floodable or within 1 kilometre of the District's coastline, are advised to contact the Manawatu-Wanganui (Horizons) Regional Council for assistance and/or advice in respect of any detailed, site-specific hazard risk related thereto.]*

5.1.8 HAZARDOUS SUBSTANCES

5.1.8.1 Introduction

Numerous agencies share overlapping responsibilities for controlling the use storage, transportation and disposal of hazardous substances and managing contaminants in the environment. Their statutory functions and responsibilities are derived from the following statutes and regulations:

- Hazardous Substances and New Organisms Act 1996 and related Regulations (HSNO).
- Health and Safety at Work Act 2015 and Regulations relating to hazardous substances (HSWA).
- Resource Management Act 1991 (RMA).
- Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Soils).

In terms of the latter (the NES Soils), these regulations are administered by the Council and relate directly to the Council's S31(1)(b)(iia) RMA function, namely "… the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:"

The NES Soil regulations apply when a person wants to carry out an activity specified in the regulations, on land as described in the regulations which is contaminated or potentially contaminated.

The activities covered in the regulations include removing or replacing a fuel storage system, soil sampling (to determine if the soil is contaminated or not), soil disturbance for a particular purpose, subdividing land or changing the use of the land where such change of use could be harmful to human health, on land that is described in the Ministry for the Environment's Hazardous Activities and Industries List (commonly referred to as HAIL).

In terms of the former statutes (the HSNO and HSWA Acts), the HSNO Act will continue to be the primary legislation for the regulation of hazardous substances. Administered by the Environmental Protection Authority (EPA) the HSNO regulatory regime is responsible for:

- assessment and approval of all hazardous substances;
- classifying all hazardous substances;
- setting controls (EPA controls) that apply to all hazardous substances, including controls for labelling, material safety data sheets (MSDS), and disposal;
- setting content controls (i.e. allowable levels of hazardous substances) for substances that affect human health and safety and the environment (e.g. cosmetics, domestic cleaning products, and pesticides);
- setting controls for hazardous substances that adversely affect the environment;
- setting controls for hazardous substances that affect human health and safety used outside the workplace; and

Worksafe New Zealand, through the HSWA's regulatory regime, is primarily responsible for regulating substances that affect human health and safety within the workplace, including:

- incorporating or referring to EPA controls, where appropriate;
- setting controls on the use, handling, generation, and storage of hazardous substances at the workplace;
- quality assurance mechanisms, e.g. test certification; and
- generally regulating such substances within the legislative framework for work health and safety.

The HSWA (S212) enables regulations relating to hazardous substances to be implemented for a number of purposes, including (inter alia):

- prescribing controls to avoid or mitigate illness or injury to people or damage to the environment or chattels from any hazardous substance:
- prescribing requirements to manage any emergency involving a hazardous substance:
- prescribing systems for tracking hazardous substances, including requirements that—
  - (i) the whereabouts of the substances be recorded at all times or from time to time:
  - (ii) the quantity of the substances be recorded:
  - (iii) a person be identified as being in charge of the substances:

When these HSNO and HSWA responsibilities are combined, the Council considers there is no need or justification to provide any further regulations (rules) or other provisions in the District Plan.

5.2 Land Subdivision Rules

5.2.1 INTRODUCTION

The subdivision rules contained in this section are designed to give effect to the Council's objectives and policies for land subdivision outlined in section 2.4 of this Plan. They also aim to achieve the desired environmental results specified in Part 3 in relation to each Management Area. The rules in this section should be read in conjunction with the environmental standards specified elsewhere in Part 5.

NZS 4404: 2010 Land Development and Subdivision Infrastructure is a model for subdivision which is to be used by Council to assess urban subdivision. This code already uses a performance standard approach and the rules set out for subdivision in this Plan complement that established approach.

In addition to Plan rules, the other primary means of controlling subdivision is the provision (and non-provision) of Council services such as reticulated sewerage and water supply schemes. The provision of such Council services can act as a control over the timing, location and scale of subdivision. Council, as the provider of public infrastructure, can use the provision (or non provision) of that infrastructure as a tool to manage subdivision patterns. This means of control is particularly important in relation to Council's primary goal of containing and consolidating urban development in the District, and sustainably managing the District's resources.

Monitoring of subdivision consents and enforcement action to achieve compliance with consent conditions and environmental standards will be undertaken on an ongoing basis in the future (refer to Part 8), to establish whether or not the subdivision conditions and standards are satisfactorily achieving the desired environmental results or whether they require amendment by way of a change to the plan.

5.2.2 GENERAL RULES FOR SUBDIVISION

5.2.2.1 Subdivision Plan to be Approved before Work Commences

Before any work, other than essential investigatory work, involving disturbances of the land surface or excavation of the land surface is undertaken or other work on the land for the purpose of the subdivision is commenced, a subdivision plan shall be submitted to and approved by Council. This obligation is subject to any agreement which may be entered into between the Council and an owner under the RMA which allows such preparatory works to be undertaken in terms of such an agreement.

5.2.2.2 Approval of Survey Plan

Once a Certificate of Compliance has been issued pursuant to Section 139 of the RMA or a subdivision consent has been granted pursuant to Sections 104A or 104B of the RMA, the survey plan may be submitted for Council approval pursuant to Section 223 of the RMA. A full-size transparency of the survey plan and a copy (not necessarily full-size) of the survey plan shall be supplied at the time of seeking a Section 223 approval. The original transparency will be returned to the subdivider while the copy will be retained for Council's records.

5.2.2.3 Deposit of Survey Plan

The survey plan shall not be deposited until Council has certified pursuant to Section 224 of the RMA that all requirements of this District Plan have been met and that all conditions imposed under the subdivision consent have been satisfied.

5.2.2.4 Bonds

Council may enter a bond agreement to cover subdivisional works only, when the subdividing owner can establish that the works cannot be carried out in reasonable time for reasons beyond his or her control. Such reasons may include matters such as weather, legal or tenure problems and unexpected additional works.

Cash bonds only will be entered into and the term of the bond shall be for the shortest period practical in the circumstances.

The subdividing owner must also satisfy Council that a bond is the best alternative available and that other alternatives such as extending the subdivision approval time are not practical.

5.2.2.5 Applications for Subdivision

(a) Any person wishing to subdivide land (where that subdivision is not a permitted activity) shall make an application for subdivision consent as a controlled, discretionary or non-complying activity as applicable.

(b) The subdivision shall be assessed in relation to the standards and criteria specified for each Management Area. Even where a proposed subdivision complies with minimum standards, conditions may be imposed in order to create a more practical subdivision design (in respect of the number, arrangement, area, frontage and shape of the allotments and access to them).

(c) In some situations (e.g. the division of buildings into separate allotments, common areas associated with buildings), Council may require that the allotments be held under a cross lease, company lease or unit title tenure even when the subdivision may have been submitted in expectation of a freehold tenure. This change in tenure shall only be required where Council is of the opinion that the co-ordinated development and any subsequent redevelopment would be easier to achieve using an alternative tenure system.

5.2.2.6 Information Requirements

The information required to be submitted with subdivision applications is specified in section 7.3.2 and 7.3.3 of this District Plan.

5.2.2.7 Notification of Subdivision Applications

Applications for subdivision consent as a controlled activity shall not be publicly notified and no affected person approvals shall be required.

Notwithstanding the above, Council may require any application for subdivision consent to be publicly notified in accordance with Sections 95A to 95G of the RMA, where Council considers the subdivision would create effects that require wider public consideration than could be achieved by non-notified means.

[Note:

- *Reference should be made to section 7.3.5 for further information on notification of resource consent applications, including parties to be notified.*

- *That Regional Councils have requirements relating to the discharge of contaminants to land (i.e. effluent disposal) so it is advisable to consult with the relevant Regional Council to clarify any requirements (particularly in relation to effluent disposal) at an early stage.]*

5.2.2.8 Refusal of Subdivision Consent

Section 106 of the RMA specifies the circumstances in which the Council shall not grant consent to any subdivision application (i.e. where the land may be, or is, subject to erosion, falling debris, subsidence, slippage, or inundation). In addition to the requirements of that section, the Council may refuse to grant its consent to an application for a subdivision which is a discretionary activity in one or more of the following circumstances:

(a) the subdivision is inconsistent with the objectives and policies of this Plan and the desired characteristics of the management area in which the subdivision is located.

(b) the subdivision is inconsistent with the purpose and principles of the RMA.

(c) the degree of non-compliance with the Plan's standards is such that significant adverse effects on the environment or amenity of an area cannot be avoided, remedied or mitigated by conditions (i.e. rather than granting a consent with "unachievable" conditions, it is preferable that Council should be both "transparent" and certain in its decision making and refuse its consent).

(d) the orderly and sustainable use of land would not be achieved by the proposed subdivision.

(e) where the subdivision is in a hazard-prone area and the subdivision, or any activity arising as a result of the subdivision or subsequent use of the land, would increase or exacerbate the degree of hazard risk.

5.2.2.9 Other restrictions on use of land - consent notices

Pursuant to S221 RMA, the Council may grant a subdivision consent subject to a condition that the subject land will only be used for a specified purpose or purposes on a continuing basis. For the purposes of Section 224 RMA, the Council shall issue a consent notice specifying any such condition.

5.2.3 SUBDIVISION STANDARDS

5.2.3.1 Development Standards

(a) Unless otherwise specified in this Plan, all subdivisions in the Residential, Commercial, Industrial and Settlement Management Areas shall be assessed in accordance with NZS 4404: 2010 Land Development and Subdivision Infrastructure.

*[**Note**: **The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Soils) are required to be considered in relation to any subdivision of land (refer to explanation in Section 5.1.8.1 of this District Plan)]***

5.2.3.2 Dimension and design

(a) Each lot shall be designed so that the size and the shape of the lot will not prejudice the practical utilisation of the land within that lot or the practical utilisation of the balance area, having regard to the Plan's environmental standards (rules) for activities in the Management Area concerned.

(b) Each lot created shall be of sufficient size and shape to contain the intended activity/development in a manner that complies with all relevant environmental standards in this Plan, such as on-site parking requirements, sewage disposal requirements (particularly important in areas without sewerage reticulation) and, in relation to residential activities, recession plane, outdoor living court and service court requirements, as applicable.

*[**Note:** The Manawatu-Wanganui Regional Council's One Plan' contains requirements relating to minimum allotment sizes where on-site discharges of domestic wastewater are proposed and resource consent from the Regional Council may be necessary.]*

(c) Each lot shall be designed to take into account the following considerations:

- local topography and climatic conditions;
- environmental features identified as requiring protection from development and/or land use activities, including heritage items and archaeological sites;
- the location of network utilities such as high-pressure gas transmission lines or electricity transmission lines;
- stormwater management and the protection of land and subsequent development from erosion, falling debris, subsidence, slippage and inundation;
- needs of cyclists and pedestrians;
- notional building platform;
- principles of optimum energy efficiency and solar energy gain, in relation to the size and shape of each proposed lot, and the design and orientation of the subdivision as a whole;

(d) The minimum subdivision size in "Urban Buffer Areas" is 8000m^2.

*[**Note:** the "Urban Buffer Areas" apply only to land adjoining the urban boundaries of Dannevirke, Woodville, Pahiatua and Eketahuna, as shown on the Planning Maps.]*

5.2.3.3 Frontage

(a) Each lot shall have frontage of not less than the minimum standard specified below for the particular management area in question, unless the lot is to be held in the same certificate of title as another lot (or lots) or the lot is a rear lot and the Council is satisfied that legal access to the lot is to be provided pursuant to a registered right of way easement or access lot.

Management Area	Minimum Frontage Permitted
Residential	3.0 metres
Commercial	7.0 metres
Industrial	6.0 metres
Settlement	3.5 metres
Rural	6.0 metres

5.2.3.4 Access

(a) Each lot shall be provided with practical, physical access to a formed legal road, unless:

(i) The Council is satisfied that adequate access to the allotment is provided over other land pursuant to a registered right of way running with the land and appurtenant to that allotment or pursuant to a condition imposed under section 220(1)(b) of the RMA.

(ii) A new road, or an unformed road to be formed to the satisfaction of the Council, is designed as part of the proposed subdivision to provide practical, physical legal access to each lot. The total cost of developing new roads and streets (including unformed legal roads and streets) required to serve a subdivision shall be met entirely by the subdivider.

(b) Access to each lot shall be located and formed in accordance with the standards set out in Section 5.3.3 of this Plan.

5.2.3.5 Limited and Restricted Access Roads

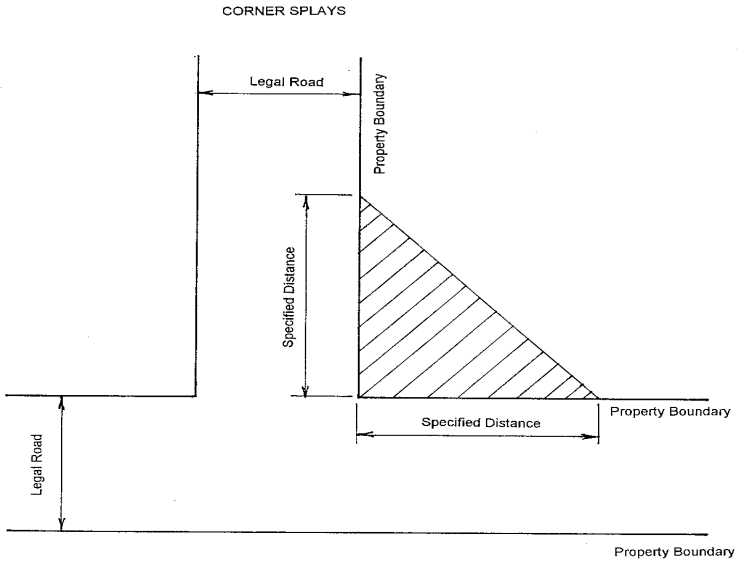
(a) A Limited Access Road (LAR) is deemed by Section 93 of the Government Roading Powers Act 1989 not to be a road for the purposes of obtaining access in relation to a subdivision (i.e. rule 5.2.3.4 above) or use of road, unless specifically authorised under that section by the Minister of Transport (at the request of NZTA). Unless such special authorisation is given, land adjoining a Limited Access Road cannot be subdivided unless legal frontage to an alternative road is provided.

(b) Any subdivision which proposes to create an allotment or allotments requiring vehicular or pedestrian access to a restricted access road requires the written approval of the road controlling authority (or authorities if the road is a territorial authority boundary) for it to be considered as a controlled activity.

*[**Note:** Where this Standard is not met, the proposed subdivision will be considered as a discretionary activity under Rule 5.2.4.4(b).]*

5.2.3.6 Corner Splays

(a) Where land fronting two roads is subject to subdivision, or where a new subdivision involves creating an intersection, corner splays to the dimensions set below shall be shown on the subdivision plan and shall be shown as "Road" to vest in the Council on the survey plan to be certified by Council pursuant to Section 223 of the RMA.



The corner splays shall be measured by a diagonal line joining two points the required distance from the corner of the property boundary (see diagram above), as follows:

(i) Residential, Commercial and Industrial Management Areas

Arterial and Collector Roads:
6 metres (minimum) - 10 metres (preferred)

Local Roads:
3 metres (minimum) - 6 metres (preferred)

(ii) Rural and Settlement Management Areas

All Roads: 15 metres, unless the following criteria are met

Exemption Clause (Applicable to all Management Areas)

Corner splays [refer 5.2.3.6(a)] are not required where all of the following criteria are met:

i. The site has less than 100 traffic movements per day.
ii. The site has no or a low record of accidents.
iii. The site will have no hedges, trees, signs, screens or other obstructions to sight lines above 1.0 metre (see p5-50) of ground level within 15 metres of the corner of the subject site.
iv. The site is not situated on either a primary arterial or a secondary (district) arterial road.
v. The intersection has clear visibility (sight lines) of no less than 250 metres.

If only some of these criteria are met, the relevant corner splay requirement can still be waived in its entirety or dispensation granted to provide a lesser splay distance where it can be demonstrated in the circumstances of the particular intersection that sight lines meet accepted standards.

***[Note:** In order to ensure appropriate site distances are provided and maintained either with or without a corner splay, the Council may impose a condition of consent requiring that there be no hedges, trees, signs, screens, fences, walls or other obstructions to the required sight lines above 1.0 metre of ground level within 15 metres of the corner of the subject site in Rural and Settlement Management Areas and 6 metres in Residential, Commercial and Industrial Management Areas.]*

5.2.3.7 Building Platform

(a) Each lot shall be able to be provided with a stable and sufficiently sized building platform and stable access to that platform for a dwelling and accessory buildings.

(b) 5.2.3.7 (a) above shall not apply where the Council is satisfied that the lot is not intended to be used as a site for a dwellinghouse or other buildings and the Council's resolution to this effect is a condition of consent (refer Rule 5.2.2.9).

5.2.3.8 Esplanade Reserves and Esplanade Strips

(a) *Transitional provisions for esplanade reserves*: Until such time as "priority areas" for riparian management and esplanade reserves are identified in Appendix 15 (by way of a Plan Change), where any allotment:

- of less than 4 hectares; or
- 4 hectares or more where riparian management issues or values (such as bank stabilisation or protection, indigenous vegetation protection, or public access) are evident at the time of subdivision and application,

is created when land is subdivided, an esplanade reserve 20 metres in width shall be set aside from that allotment along the mark of mean high water springs of the sea, and along the bank of any river or along the margin of any lake, as the case may be, and shall vest in the Tararua District Council, in accordance with Section 231 of the RMA.

(b) *Esplanade provisions applicable following identification of "priority areas" in Appendix* 15*:*

From such time as "priority areas" for riparian management and esplanade reserves have been identified and included (by way of a Plan Change) in

Appendix 15, where any allotment is created (regardless of size) which adjoins a section of river, lake or coastline which is identified in Appendix 15, an esplanade reserve 20 metres in width shall be set aside from that allotment along the margin of the waterbody concerned, and shall vest in the Tararua District Council, in accordance with section 231 of the RMA.

(c) Notwithstanding (b) above, where a new allotment is subdivided from a larger block (the balance area) which adjoins a section of river, lake or coastline which is identified in Appendix 15, and no part of the new allotment is within 200 metres of the waterbody concerned, an esplanade reserve or strip will not be required on the balance area of the subdivision.

(d) For the purpose of (a) above, a "river" means a river whose bed has an average width of 3 metres or more where the river flows through or adjoins an allotment; and a "lake" means a lake whose bed has an area of 8 hectares or more].

(e) In respect of any subdivision where an esplanade reserve is required, the Council may, at its discretion, accept, or seek to secure, an esplanade strip. The strip width will be specified at the time of Council approval of the subdivision plan and shall be not less than 10.0 metres or more than 20.0 metres wide and the contents and method of registration of the registered instrument are to be to the satisfaction of Council.

(f) Any esplanade reserve or strip that Council wishes to secure that is in excess of that required in 5.2.3.8(a) or (b) above (width, location, or extent), may only be obtained by negotiation and agreement between the parties concerned.

(g) A subdivision where a reduction in, or a waiver of, a requirement for an esplanade reserve or strip is sought, is a discretionary activity (refer to section 5.2.4.4 and 5.2.4.7 for details)

(h) Section 345(3) of the Local Government Act 2002 shall not apply within the Tararua District unless the subject land is identified in Appendix 15 “Schedule of Priority Water Margins for Riparian Management and Esplanade Reserves/Strips” in the Plan.

5.2.3.9 Wastewater and Sewage Disposal

The general development standards in Section 5.1.2 shall apply.

5.2.3.10 Water Supply

The general development standards in Section 5.1.3 shall apply.

5.2.3.11 Stormwater Drainage

The general development standards in Section 5.1.4 shall apply.

5.2.3.12 Exemptions from Subdivision Standards

The subdivision standards under Sections 5.2.3.1 to 5.2.3.11 shall not apply to the following subdivisions (although they will be used as guidelines for assessment where appropriate):

(a) special purpose lots (refer to Part 6, Interpretation)

(b) boundary adjustments and relocations (refer to section 5.2.4.2(c) below)

(c) the subdivision of different floors or levels of a building, or different parts of a floor or level of a building.

5.2.3.13 Financial Contributions

Refer to general development standards (Section 5.1.6)

5.2.4 CLASSIFICATION OF ACTIVITIES

5.2.4.1 Permitted activities

(a) In any management area, an **amendment** (to provide for a new building) to a cross lease, company lease or unit plan which has been approved, and a Certificate of Title issued by the District Land Registrar, shall be a permitted activity, subject to compliance with the following conditions:

(i) The dimensions and areas of the amendment shown on the subdivision plan shall be the same as those for the relevant building consent which has been approved by Council.

(ii) The building complies with all the relevant performance standards of the District Plan and a Certificate of Compliance pursuant to Section 139 of the RMA has been issued by Council.

(iii) A consent notice in accordance with Section 221 of the RMA has been prepared by the subdivider and issued by the Council, to the effect that the dimensions and areas of the buildings shown on the plan are binding on the subdividing owner(s) and subsequent owner(s) and shall not be varied, changed or modified without the consent of Council.

5.2.4.2 Controlled activities

(a) **In all Management Areas, subdivision which complies with the standards in 5.2.3 above, and all other relevant standards in Part 5 of this Plan, shall be a controlled activity, unless otherwise specifically stated.**

(b) Subdivision for special purpose lots.

(c) Subdivision by means of boundary adjustment or relocation between two or more adjoining and existing Certificates of Title, provided that:

- the number of Certificates of Title involved in the subdivision shall be the same or less after the subdivision has occurred.
- no lot shall be reduced to a size inconsistent with section 5.2.3.2(a) or, if already non complying, reduced to less than what it was prior to the subdivision.

***[Note:** Subdivisions of land where on-site disposal of waste water and/or effluent is likely to occur may require resource consent from either the Manawatu-Wanganui Regional Council or Greater Wellington Regional Council.]*

5.2.4.3 Matters over which the Council reserves control in relation to controlled activities

In respect of the controlled activities listed in 5.2.4.2 above, the matters over which the Council shall exercise control by the imposition of conditions are:

(a) the imposition of financial contributions in accordance with Section 5.1.6 of this Plan;

(b) the granting, reserving or modification of easements;

(c) the alteration of any lot boundary;

(d) the provision, location and dimension of outdoor living areas;

(e) the upgrading of accessways to comply with the access standards in Section 5.3.3 of this Plan.

(f) the registration of a no complaints covenant in order to ensure that existing, legally established activities are not actually or potentially adversely affected by the subdivision or subsequent development associated with it.

(g) the measures necessary to avoid or mitigate adverse effects on indigenous bio diversity, including those required to protect vegetation and habitat consistent with this Plan's 2.6.4.2 Policies.

5.2.4.4 Discretionary activities

(a) Where any part of a lot being subdivided is within 1 kilometre of the coastline (which for the purposes of this rule shall be defined as the coastal marine area landward boundary which is the line of Mean High Water Springs), the subdivision shall be considered as a discretionary activity.

(b) Where any proposed subdivision does not meet any one or more of the standards specified in 5.2.3 or 5.2.4, or does not meet one or more of the other relevant standards in Part 5 of this Plan, it shall be considered as a discretionary activity.

(c) Where any subdivision application, in any management area, is made in conjunction with an application for a land use consent for an activity specified as discretionary, it shall be considered as a discretionary activity.

(d) Subdivision where a reduction in, or waiver of, a requirement for an esplanade reserve or esplanade strip is sought, shall be considered as a discretionary activity.

5.2.4.5 General assessment criteria

(a) In assessing an application for a controlled, discretionary or non-complying activity for any subdivision, the following general criteria as appropriate to the situation shall be used:

(i) Whether the area, shape and design of all lots is appropriate to their specified purposes and intended use(s), taking into account any relevant environmental standards specified in this Plan.

(ii) Whether the boundaries of each new lot are appropriately located, taking into account the following factors:

- topography
- practical management of existing and potential activities on the site
- protection of the land from flooding, erosion and instability
- location of existing buildings, roads, fencelines, drains, shelter belts/hedges, streams and rivers, internal roading and other physical features
- surface and ground water conditions, including the quality and quantity of the water, the direction of the water flow and the effects that the subdivision and its subsequent uses may have on them
- local climatic conditions, especially the orientation of the lots in a manner that will allow buildings to be positioned to maximise winter solar gain and to act as a barrier to prevailing winds

- the extent to which the subdivision meets the Energy Efficiency Policies and objectives of the District Plan, namely objectives 2.2.3.1 and 2.4.3.1 and Policies 2.2.3.2 (a) and (b) and Policy 2.4.3.2 (d)

- environmental features that have been identified as requiring protection from development, including, but not limited to, heritage items, archaeological sites, and significant natural features and landscapes

- where on-site disposal of stormwater and septic tank effluent is required for existing and potential developments, whether there is sufficient area of land of a suitable type available for servicing purposes within each lot, or to service a number of lots by means of a community scheme.

- any existing resource consents and the conditions attached to them that need to be accommodated within any lot

(iii) In relation to any boundary adjustment or relocation, the following factors will be taken into account:

- whether the uses of land and buildings on all lots involved in the boundary adjustment or relocation are permitted as of right and/or have been authorised by resource consent and/or do not involve any increase in the extent to which it or they fail to conform to the District Plan performance standards.

- whether the usefulness of the lot(s) will improve following the boundary adjustment or relocation.

- where on-site effluent disposal is proposed, whether the allotments are of a size and shape that accommodate the disposal of domestic and/or non-domestic effluent in accordance with the General Development Standards in section 5.1.2 of this Plan.

(iv) In relation to any application to reduce the corner splay requirements, the following factors will be taken into account:

- whether the taking of a corner splay will not significantly improve visibility for motorists due to the structures (buildings, land or vegetation) between the corner and the necessary sight line, or there is a difference in road levels.

- whether a lesser standard will give a similar and adequate level of sight visibility and turning areas because of factors such as reduced traffic speeds in the area, low volumes of traffic or the nature of the traffic.

- whether the full corner splay cannot be provided due to existing physical factors which cannot be reasonably removed.

5.2.4.6 Assessment Criteria for Subdivisions as a Discretionary Activity

The following criteria shall be used to assess a subdivision application as a discretionary activity:

(a) The Environmental Standard(s) and Assessment Criteria applying to the management area in which the subdivision is located.

(b) The General Assessment Criteria contained in Section 5.2.4.5

(c) The degree to which the proposed subdivision (in terms of matters such as shape, size, access) will facilitate the establishment of the proposed land use activity.

(d) The objectives and policies for subdivision in general and the environmental results sought for the management area in which the subdivision is proposed.

(e) The requirements of the RMA.

(f) Whether the written approval of every person considered to be adversely affected by the application has been given.

(g) Whether there is a need for a no-complaints covenant to be registered on any new title created in order to ensure that existing, lawfully established activities are not actually or potentially adversely affected by the subdivision or subsequent development associated with it.

5.2.4.7 Assessment criteria where a reduction in, or waiver of, a requirement for an esplanade reserve or esplanade strip is sought

The following criteria shall be used to assess a subdivision application as a discretionary activity where a reduction in, or waiver of, a requirement for an esplanade reserve or esplanade strip is sought:

(a) the objectives and policies of Part 2 and Section 2.4 in particular, and of the management area in which the land concerned is situated, and the provisions of Section 5.1.6 "Financial Contributions".

(b) the extent to which the natural functioning of the water body, water quality, and land and water based habitats will be affected by any reduction in the width, size or non provision of the reserve or strip.

(c) the extent to which the public's access and recreational enjoyment of the reserve or strip is reduced or removed.

(d) the degree of protection of the natural values associated with the reserve or strip that will remain.

(e) whether the effects of natural hazards on the conservation values of the riparian margin will be compromised.

(f) the degree to which the purpose of the reserve or strip can be, or is already, achieved by other mechanisms (e.g. covenants, rules in the District or Regional Plans, conditions of resource consents).

(g) whether the loss of the reserve or strip will severely restrict the landowner in carrying out a viable activity on the balance area.

(h) whether the access by, and presence of, the public will significantly interfere with the legitimate land use activities on the balance area, in terms of safety, security, animal wellbeing, amenity (particularly residential) in a manner that cannot be compensated by other actions.

(i) the extent to which the public benefits gained with respect to the reserve or strip justify the costs of acquiring and maintaining them, while recognising that benefits in terms of improved water quality, habitat, and access have important value which cannot readily be expressed in monetary terms.

5.3 Infrastructure

5.3.1 MANAGEMENT OF ROADS (ROAD HIERARCHY)

5.3.1.1 Introduction

Roads are defined in the RMA as having the same meaning as in Section 315 of the Local Government Act 1974 and include motorways as defined in Section 2(1) of the Government Roading Powers Act 1989. For the purpose of this rule, 'road' means the full legal width of a road, including the carriageway.

Roads in the District generally serve a dual purpose. They provide access to properties and they provide for the movement of people and goods from one part of the District or country to another (i.e. through traffic). Some roads have local access as their main function; others are more important for through-traffic. A technique which has been commonly used in the past and which continues to be promoted by the NZTA is the development of a road hierarchy which classifies roads according to their main function and traffic volumes. This enables priorities to be set for the management of the road network and for the management of the effects of activities which impact on the efficiency and safety of the road network. It should also be noted that there is an interdependency between the efficiency of the transportation network and the efficiency of other activities.

By giving roads the status of designations and providing for road activities "as of right" with the designation, there is a statutory authorisation that recognises the importance of roads to the functioning of the District. Also recognised as 'restricted access roads' are those identified and listed roads which delimit the boundary between the Tararua District and a neighbouring district.

A range of standards are included in the District Plan, which are designed to protect the road resource and ensure its safe and efficient operation. These include:

- number and location of parking, manoeuvring and loading spaces.
- vehicle access and crossings.
- protection of traffic sight lines.
- corner splays.
- glare and lighting.
- signs.

Compliance with these standards allow activities to establish and operate without unacceptable adverse effect on the road network.

5.3.1.2 Road Hierarchy

The four-tier road hierarchy adopted in this Plan, and identified in Appendix 5 (Part 9) is as follows:

- *Primary Arterials* - roads which form part of the network of strategic arterial roads of national or regional importance. In the Tararua District, this classification applies only to State Highways, managed by the NZTA, on the basis of high traffic volumes. These routes predominantly carry through traffic and it is important to maintain a high level of user service. For this reason, primary arterial roads have a higher degree of access control than other roads, which is based on the traffic volumes served by the access. Access standards are also higher than for other roads. *[**Note:** Access may also be restricted to any road listed in Appendix 5 as a 'restricted access road'.]*

- *Secondary (District) Arterials* - roads which are important at the District level for carrying traffic between major areas within the District and as alternative routes to neighbouring Districts. Traffic movement is the main function but they often also serve as local roads.

- *Collector Roads* - These roads collect and distribute traffic to and from the arterial road network. These roads complement arterial roads in that through-traffic is an important function but property access is also important.

- *Local Roads* - are all other roads which have the provision of access to properties as their primary purpose. Some local roads have a minor role to play in the collection and distribution of traffic, but through traffic is generally to be discouraged due to the effect on the amenity of the surrounding area and the physical capability of the roads.

5.3.1.3 Designation of roads

All existing roads shown on the Planning Maps, whether formed or unformed, are deemed to be designated for this purpose and the activities that may be carried out in compliance with this designation include:

- road construction, upgrading and maintenance;

- bridge, culvert and drain construction, upgrading and maintenance;

- activities directly related to the movement of pedestrians and vehicles and shall include roadside rest areas, information centres and weigh stations.

- Signs within the road reserve as set out in Section 5.4.3 - Signs.

The District Planning Maps shall be used to determine the underlying Management Area which applies to any road, or section of road. Where a Management Area is not the same on both sides of the road, the Management Area provisions to apply shall be the more intensive of the two. For the purposes of applying this rule, and for the avoidance of doubt, the least intensive area is the Rural Management Area followed, in increasing intensity, by the Settlement, Residential, Industrial and Commercial Management Areas.

*[**Note:** Some roading activities may also be subject to Regional Council requirements, particularly where steep or vulnerable land is affected, so consultation with the relevant Regional Council in those cases is recommended to identify potential issues or requirements.]*

5.3.1.4 Rules

Notwithstanding the designation of existing roads (refer to 5.3.1.3 above), this section of the Plan specifies permitted, controlled and discretionary activities in relation to activities on land classified as legal road. Where there is reference in these rules to "roads", the rule shall apply also to proposed roads (i.e. proposed new roads, and widening and realignment of existing roads).

(a) Permitted activities - All roads

(i) Subject to standard 5.1.7.2(a) in relation to natural hazard areas, the construction of any new road or the realignment or widening of any existing road where this involves works outside the existing road reserve, is a permitted activity providing one of the following criteria apply:

- it is in accordance with an approved designation or is a minor variation thereof;
- it is otherwise provided for in the District Plan as proposed road or indicative road;
- it is proposed as an incidental part of an approved subdivision;
- it is in accordance with any other approved resource consent.

(ii) Site investigations (including geotechnical, survey and other preliminary investigations) associated with the construction of new roads, deviations, and realignments and which are outside a designated road.

(iii) The reconstruction and realignment or the establishment of a corner splay complying with the dimensions set out in section 5.2.3.6, provided that the works involved do not entail the creation of severances and the written approval of every landowner directly affected has been obtained.

(iv) Network utilities which are deemed to be a permitted activity in section 5.3.6 of this Plan.

(v) Vehicle crossing places which are deemed to be a permitted activity in section 5.3.3 of this Plan

(b) Permitted activities - All roads except Primary Arterial Roads

(i) The use of roads for the movement of traffic (including pedestrians and cyclists) and any associated activity, including maintenance and improvements in safety and efficiency, emergency works, road and traffic signs, and amenity planting;

(ii) The use of unformed roads for public access;

(iii) Markets, fairs, stalls, mobile shops, races and other temporary festive or recreational events providing that the written approval of the road controlling authority has been obtained.

(c) Controlled Activities - All roads

(i) Network utilities which are deemed to be a controlled activity in section 5.3.6 of this Plan. *[**Note:** the matters over which the Council reserves control are also specified in section 5.3.6.]*

(d) Discretionary Activities - Primary Arterial Roads

On Primary Arterial roads (State Highways) the following activities are discretionary:

(i) Significant changes to Primary Arterial roads, including new roads, intersections and major realignments (unless designated);

(ii) Any activity on roads which is not related to traffic movement;

(iii) Signs in road reserves other than road or traffic signs.

(iv) Vehicle crossing places which are deemed to be a discretionary activity (including where a crossing place does not meet the criteria for permitted activity status) in section 5.3.3 of this Plan

(e) Discretionary Activities - All roads

(i) Any activity which is not a permitted or a controlled activity, shall be a discretionary activity.

5.3.1.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.3.1.4 above for a discretionary activity:

(a) The nature of the activity;

(b) The extent to which the siting of the activity provides sufficient buffer to adjacent properties;

(c) Whether there will be any significant adverse effect on levels of amenity or environmental quality of surrounding areas;

(d) Any recommendations in a report of a traffic engineer or other suitably qualified traffic expert;

***[Note:** Refer to section 5.3.3.5 for the criteria for assessment of vehicle crossing places which are a discretionary activity.]*

5.3.2 PARKING

5.3.2.1 Introduction

Convenient parking spaces are valued by the community. In many instances parking spaces can be provided on the edge of the carriageway. However, when such parking occurs adjacent to a road with a high traffic volume it is possible that the smooth progression of traffic moving on to or along the road will be impeded. To avoid this, it may be appropriate (but not necessary) to provide for car parking spaces when establishing a new activity.

5.3.2.2 Standards - Requirements for Car Parking Spaces

[Note: In accordance with Policy 11(a), Clause 3.38, of the National Policy Statement on Urban Development 2020, all objectives, policies, and rules (standards in this Plan) that have the effect of requiring a minimum number of car parks to be provided for a particular development, land use or activity, have been removed from this District Plan, other than in respect of accessible/disabled persons parking spaces.]

5.3.2.3 Standards - Requirements for Loading Spaces

(a) There shall be 1 on-site loading space per each general business, bulk retail or industrial activity (refer Part 6 - Interpretation).

5.3.2.4 Standards - Design and Construction of Parking Spaces, Loading Spaces, Access and Manoeuvring Areas

(a) The minimum car park, manoeuvring and loading space dimensions shall be in accordance with the standards in Appendix 6.

(b) Parking spaces for disabled persons shall have dimensions in accordance with NZS 4121:2001.

(c) Parking areas must be provided with access drives and aisles for ingress and egress of vehicles to and from the road, and for the manoeuvring of vehicles (manoeuvring of vehicles shall be based on the tracking curve standards for 90 percentile cars and trucks, as shown in Figures 7.1 and 7.2 respectively in Appendix 7.)

(d) Gradients for service and manoeuvring areas shall be less than 1:12.5.

(e) The area used for parking, including access, manoeuvring and loading, shall be sealed in urban areas, or metalled in rural areas (unless the development requires sealing), drained and marked out to the satisfaction of the Council.

(f) Car parking and loading spaces, including access, must be kept clear and available at all times for vehicles used in conjunction with the particular activity to which the parking and loading relates.

(g) For parking areas of four or more spaces adjoining a property used for residential or open space purposes, the parking area shall be screened from the adjoining property by a screen of not less than 1.8 metres in height, consisting of a densely planted buffer or fence or wall constructed in brick, timber, concrete or stone.

(h) For parking or manoeuvring areas adjoining a road, a kerb or similar barrier of not less than 150 mm high and at least 600 mm wide shall separate the area from the road boundary.

5.3.2.5 Standards - Payment-in-lieu of Parking (Commercial Management Area)

[Note: Refer to Note in 5.3.2.2 above.]

5.3.2.6 Non-compliance with Standards

Where activities cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.3.2.7 Information Requirements

In addition to the information requirements specified in section 7.3.2 of this Plan, a resource consent application for a discretionary activity, as required by section 5.3.2.6 above, shall include:

(a) a detailed plan showing the location of the access points, buildings, and proposed car park layout;

5.3.2.8 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application, under section 5.3.2.6 above, for a discretionary activity:

- Whether it can be demonstrated that the specified standard is inappropriate in the circumstances.

5.3.3 ACCESS AND INTERSECTIONS

5.3.3.1 Introduction

Roads have two important functions, they provide a means of access onto the adjoining land, and they provide for the movement of people and goods. These two different functions, if not managed appropriately, have the potential to cause conflicts and thus reduce the safety and efficiency of the road network.

These conflicts can be avoided through the use of controls on development and access. The level of controls placed on access is dependent on whether the road is more important in terms of its through-traffic function or its access function. The most important function of primary arterial roads (State Highways) is to facilitate the movement of traffic safely and efficiently from one point to another. To maintain efficiency of use and ensure the safety of users, a higher level of access control is required on these roads. References to "TNZ, 1994" in this section relate to Transit New Zealand's document "Highway Planning under the Resource Management Act 1991" unless specified otherwise. In most instances, the Council has adopted the guideline suggested by TNZ as a standard in the District Plan.

5.3.3.2 Standards

(a) Permitted activities - Primary Arterial Roads

Any new or relocated vehicle crossing place to a Primary Arterial Road (State Highway) shall be a permitted activity providing all of the following criteria are met:

(i) no alternative legal access is available to another formed road;

(ii) there shall be just one vehicle crossing per property (as held in one Certificate of Title);

(iii) where the speed limit is above 50 km/hr, there shall be less than 30 "car equivalent movements" daily (24 hour period) where less than 2.5 m of sealed road shoulder widening exists or less than 50 "car equivalent movements" daily where sealed road shoulder widening of 2.5 m or greater exists, or where the speed limit is 50 km/hr or less, there shall be less than 90 "car equivalent movements" daily *[**Note**: refer to definition of "car equivalent movements" in Part 6 of this Plan*]; and

(iv) the vehicle crossing place complies with the relevant "access design and construction standards" in section 5.3.3.2 below and in Appendix 10 of this Plan.

(b) Permitted activities - All roads other than Primary Arterial Roads

Any new or relocated vehicle crossing place shall be a permitted activity, provided that:

(i) the vehicle crossing place complies with the relevant "access design and construction standards" in section 5.3.3.2(d) or (e) below and in Appendix 10 of this Plan.

(c) Access and intersection design and construction standards - Primary Arterial Roads in all Management Areas

(i) Approved vehicle crossings (crossing places) to a Primary Arterial Road (State Highway) shall meet the standards specified in Appendix 8 and 9 (in relation to design and dimensions).

(ii) All vehicle crossings and intersections to a Primary Arterial Road (including where an accessway crosses a railway line) shall meet the standards in Appendix 10 of this Plan (in relation to physical and sight distances from other crossing places and intersections).

(iii) Vehicle crossings for heavy vehicles shall be designed and constructed to carry the volume and weight of traffic likely to use the crossing. The surface shall be constructed to the same standard as the adjacent road carriageway. This requirement shall be deemed to have been complied with if the first 12 metres of the vehicle crossing measured from the near edge of the carriageway, is so constructed.

(iv) Vehicle crossings for heavy vehicles shall be designed and constructed so that heavy vehicles do not have to cross the road centre line when making a left turn.

(v) In Rural and Settlement Management Areas, the width of the vehicle crossing at the property boundary is to be no greater than 6 metres, except when the crossing is to be used by heavy vehicles and a greater width is necessary in order to meet (iv) above.

(vi) Access to a Primary Arterial Road (State Highway) in Residential, Commercial and Industrial Management Areas shall be constructed so that:

- the vehicle crossing shall intersect the property boundary at an angle of 90 degrees, plus or minus 15 degrees;
- the vehicle crossing shall intersect with the carriageway at an angle of between 45 degrees and 90 degrees;
- for activities with a low propensity to attract vehicles, the vehicle crossing shall be not greater than 3.5 metres wide when measured at the edge of the carriageway;
- for activities with a high propensity to attract vehicles the accessway, dimension shall be:
  - between 3.5 metres and 6.0 metres for a one way operation, or
  - between 6.0 metres and 9.0 metres for a two-way operation.

  (Refer to Appendix 9 for diagram)

(vii) Where an accessway crosses a railway line, it shall be a requirement that 20 metres each side of the railway is constructed generally at the same level as the railway.

(viii) In respect of an accessway which crosses a railway line and there is less than 25 metres separation between the primary arterial road (state highway) and the railway (i.e. insufficient space for large vehicles to wait), the sight distance (specified in Appendix 10) shall be measured from a point:

- on the accessway, and
- 5 metres back from the side of the railway furthest from the primary arterial road.

(d) Access design and construction standards - Roads other than Primary Arterial Roads in Residential, Commercial and Industrial Management Areas.

(i) All vehicle crossings/accessways shall be sealed and designed in accordance with the standards set out in Appendix 11 of this Plan.

(ii) Minimum widths of accessways for private access to residential activities shall be:

- 1 to 3 dwellinghouses: 3 metres
- 4 to 6 dwellinghouses: 4 metres
- 7 or more dwellinghouses: 6 metres

(iii) Minimum widths of accessways for access to other activities shall be:

- 6 metres, or ingress and egress accessways of 3 metres width each.

(iv) A site with a total road frontage of 60 metres or less may have only 1 vehicle crossing.

(v) A site with a total road frontage of more than 60 metres may have up to 2 vehicle crossings.

(vi) Access to any road which intersects with a primary arterial road shall be set back a minimum distance from the boundary of the primary arterial road as set out in Appendix 10.

(e) Access design and construction standards - Roads other than Primary Arterial Roads in Rural and Settlement Management Areas.

(i) Access to any road which intersects with a primary arterial road shall be set back a minimum distance from the boundary of the primary arterial road as set out in Appendix 10.

(ii) All accessways shall be designed in accordance with the standards set out in Appendix 12 to this District Plan.

(iii) Within the first 6 metres from the road boundary, the grade of accessway shall not be steeper than 1:5 for residential activities, and 1:8 for other activities. Any accessway shall be graded so as to abut the road boundary at the relative level of the roadway or footpath.

(f) Access to Rural Selling Places

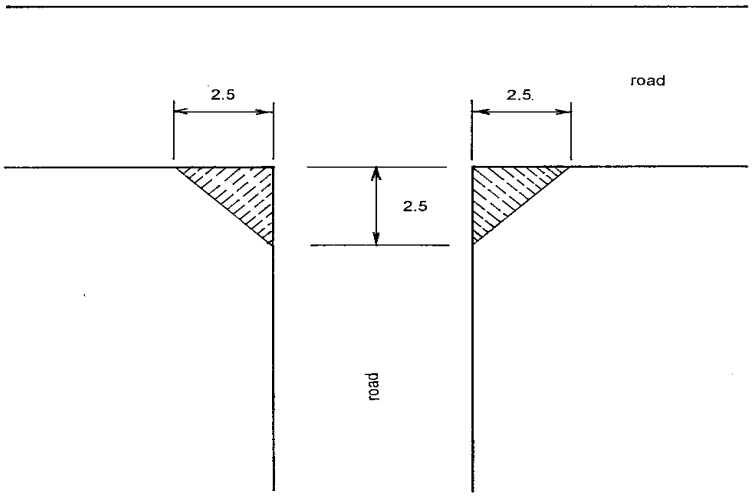
Vehicular access for rural selling places in the rural area shall be designed and constructed in accordance with the standards of the "Guidelines for Establishing Rural Selling Places", Road and Traffic Standards Section,

Safety Standards Branch, Land Transport Division, Ministry of Transport, August 1992.

(g) Visibility to and from Access Points onto all Roads

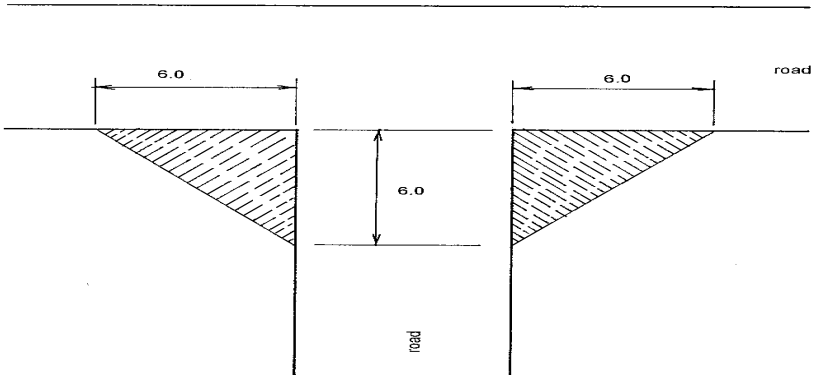
No construction of buildings, fences or other structures, placing of obstructions or the growth of vegetation shall be permitted on the immediate vicinity of road and railway intersections as shown in the following diagrams and text:

(i) Road Intersections in Residential, Commercial and Industrial Management Areas



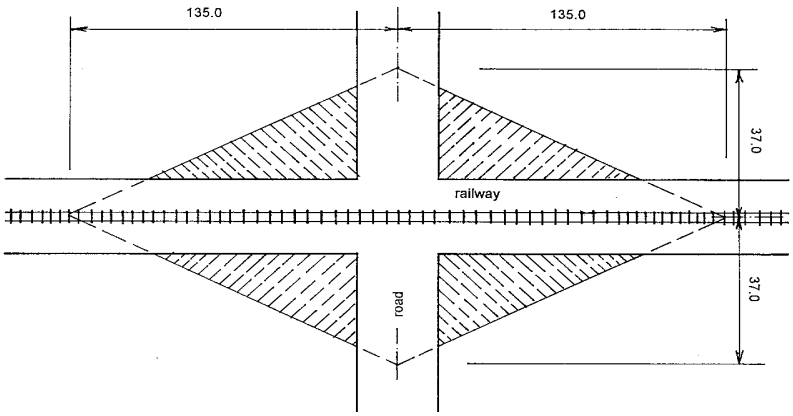
except when the building, fence, structure, obstruction, or vegetation is less than 1 metre in height.

(ii) Road Intersections in Rural and Settlement Management Areas



except when the building, fence, structure, obstruction, or vegetation is less than 1 metre in height.

(iii) Railway Intersections in all Management Areas



except

- when the building, fence, structure, obstruction, or vegetation is less than 1 metre in height; or
- dispensation to dimensions have been approved by NZ Rail Limited; or
- where a corner splay has already been vested and cleared in accordance with Standard 5.2.3.6.

5.3.3.3 Non-compliance with Standards

Where activities cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.3.3.4 Information Requirements

In addition to the information requirements specified in section 7.3.2 of this Plan, a resource consent application for a discretionary activity, as required by section 5.3.3.3 above, shall include:

(a) a detailed written description of the proposal and its purpose;

(b) the existing frequency and volume of traffic on the adjacent road;

(c) the potential for increased traffic volumes and frequencies;

(d) the location and number of existing access points, and the distances between successive access points regardless of which side of the road they are on;

(e) the standard of construction of access points and roads.

A resource consent application for a discretionary activity for an access/crossing place onto a Primary Arterial Road (State Highway) may be considered without notification where the written approval of the NZTA is obtained and where the Council considers that the NZTA is the only affected party.

5.3.3.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.3.3.3 for a discretionary activity:

(a) existing and potential volume of traffic using the road;

(b) existing and potential frequency of traffic using an access point;

(c) available sight distance from an access;

(d) whether access points to properties from State Highways have been located to ensure that minimum spacings between access points or between access points and intersections are achieved;

(e) the potential effect of the activity on the safety and efficiency of the road network;

(f) whether there is an area where vehicles can queue without adversely affecting the free flow of traffic on the primary arterial road;

(g) the location, formation, construction, maintenance or change to character, intensity and scale of use of a crossing place;

(h) whether there is any reasonably practicable alternative legal access to a road other than a State Highway;

(i) whether there is sufficient and appropriate off-street parking to meet the needs of the site activity and avoid or minimise any adverse effects on the safe and efficient operation of the State Highway;

(j) the degree of non-compliance with any standard or performance criteria;

(k) any topographical and/or site constraints;

(l) relevant NZTA guidelines, and any specific recommendations of NZTA including whether or not a notice pursuant to Section 93 of the Government Roading Powers Act 1989 has been received from the NZTA.

(m) In respect of visibility:

- whether the existence of traffic management methods (stop signs, railway signals) provide a level of traffic safety that cancel out the need for sight lines;
- whether factors such as traffic speed are such that traffic safety is maintained without the need for sight lines;
- whether train movements (time of day, speed of train) such that traffic safety is maintained without the need for sight lines;
- whether the consent of the controlling authority for the railway facility has been received. This will be required before Council will consider granting an application to reduced sight lines.

5.3.4 DANNEVIRKE AERODROME PROTECTION AREA

5.3.4.1 Introduction

The Dannevirke Aerodrome is a site that has been designated by the Council. The designated site includes the airspace above the land necessary for the approach surfaces, take off surfaces, transitional surface, and horizontal surface. It is recognised that some activities may be required to be undertaken on this site that are not subject to the provisions of the designation. It is necessary therefore to include controls relating to such activities.

5.3.4.2 Dannevirke Aerodrome Protection Area

The Aerodrome Protection Area is defined in Appendix 13. The provisions of the Rural Management Area, and the standards below, shall apply.

5.3.4.3 Standards

(a) No building, structure, tree or hedge shall be constructed or located within the Dannevirke Aerodrome Protection Area that will penetrate the approach surfaces, take off surfaces, transitional surface, or horizontal surface as shown in Appendix 13.

(b) Within 1 kilometre of the boundary of the Dannevirke Aerodrome Protection Area, no activity shall be established which, in the Council's opinion, could increase the number and density of birds above existing levels in the surrounding area (i.e. landfills and wildlife reserves) and subsequently hinder the safety and efficiency of the Dannevirke Aerodrome.

5.3.4.4 Non-compliance with Standard

Where activities cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.3.4.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.3.4.4 above for a discretionary activity:

(a) the nature of the activity;

(b) the extent to which the siting of the activity encroaches into the approach surface, take off surfaces, transitional surfaces or horizontal surfaces;

(c) the degree of risk the activity may pose in respect of aircraft and aerodrome operations

(d) any recommendations in a report of an aviation expert or other relevant professional.

5.3.5 RAIL CORRIDOR

5.3.5.1 Introduction

New Zealand Railways Corporation, as an approved network utility operator pursuant to section 166(f) of the RMA, is the requiring authority for a designation placed over railway land. For the purposes of this District Plan the area of land designated for rail purposes is termed the "rail corridor". It is recognised that in some instances the activities required to be undertaken on this designated land will be outside the scope of the designation. In these circumstances the provisions relating to the Industrial Management Area shall apply. It is considered that the desired environmental results specified for the Industrial Management Area are applicable to any areas designated for railway purposes.

5.3.5.2 Standards

All activities within the designated rail corridor, other than those activities which are undertaken in accordance with the designated purpose, shall be managed as for the Industrial Management Area. The standards applicable to permitted and controlled activities in the Industrial Management Area shall apply.

5.3.5.3 Non-compliance with Standard

Where activities cannot meet the standards referred to in section 5.3.5.2 above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.3.5.4 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.3.5.3 above for a discretionary activity:

(a) the nature of the activity;

(b) the extent to which the siting of the activity will affect the safety and efficiency of the rail service;

(c) any recommendations in a report of a transport engineer or other relevant professional.

5.3.6 NETWORK UTILITIES

5.3.6.1 Introduction

The District's infrastructure includes the physical resources, plant, equipment and networks necessary for the provision of electricity, gas, water supply, radio and telecommunications, sewage treatment and disposal, stormwater, drainage, roads, rail and air transport. The above services are provided by "network utility operators" as defined in Section 166 of the RMA (refer to Part 9 of this District Plan, "Interpretation").

The services provided by network utility operators are essential to the health, safety, social, economic and cultural well-being of the people of the Tararua District, and it is in the community's interest that services are provided in an economically and practically viable manner. It is often the case that there will be some temporary effects during construction and maintenance operations (the effects of roadworks for example) but these are generally acceptable to the community as they are inevitable, short term effects as a result of providing essential services. The potential for post-construction, or on-going, adverse effects of network utility facilities varies widely. Many network utilities have little or no adverse effect (underground pipes and equipment) whereas large-scale facilities such as power generating plants, transmission lines, or major transportation developments may have significant effects which need to be assessed. These potential effects include:

- **visual effects**, particularly in relation to large scale facilities, and radio and telecommunication facilities which require prominent locations on hilltops;
- **noise**, such as from humming and from wires moving as a result of wind;
- **health**, for example, the issue of electromagnetic radiation;
- **vehicle movements/access** to and from facilities;

- **effect on heritage items** - including disturbance of archaeological sites and waahi tapu.

This plan therefore classifies a wide range of network utility activities as permitted and controlled activities where there will be no significant adverse effects. Major works, where there is the potential for significant environmental effects, are classified as discretionary activities to enable an assessment of environmental effects, alternatives and mitigation measures to be undertaken, with third party input.

The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 apply to telecommunication facilities generating radiofrequency fields and to those located in road reserves. They also place controls on antennae, utility structures, cabinets and noise emissions and conditions designed to protect trees, vegetation, historic heritage values, amenity values and the coastal marine area. These regulations take precedence over the District Plan's provisions and must be considered if the activity involves or affects any of the abovementioned matters.

5.3.6.2 Standards

[NB. Refer to section 5.3.1 for standards relating to roads, section 5.3.4 for standards relating to the Dannevirke Aerodrome and 5.3.5 for standards relating to rail facilities, all of which are also network utilities and to the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 or successor.]

(a) Permitted activities in all Management Areas

The following activities shall be permitted in all Management Areas, subject to compliance with all relevant environmental standards in Part 5 of this Plan:

(i) Transformers and lines for conveying electricity at a voltage up to and including 110KV with a design capacity up to and including 100MVA per circuit;

(ii) Household, commercial and industrial connections to gas, electricity, water, drainage and sewer pipes and lines;

(iii) Water and irrigation races, drains, channels and pipes and necessary incidental equipment;

(iv) Equipment for broadcasting and telecommunications (including radiocommunication and meteorological data collection) purposes, provided it meets the following standards:

- masts, aerials and poles (including supporting structures for antennae) do not exceed 15 metres in height and, above 10

metres in height, shall have a maximum cross section dimension of no greater than 600 mm;

- antennae do not exceed 3 metres in dimension;
- any antenna attached to a mast does not project above the maximum height of the mast, or where the antenna is attached to a building it does not project above the highest part of the building by more than 3 metres;
- all radio frequency emissions comply with NZS2772.1:1999: Radio frequency fields.

(v) Line(s) as defined in section 5 of the Telecommunications Act 2001.

(vi) Underground pipes for the distribution (but not transmission) of natural or manufactured gas, at a gauge pressure not exceeding 2000 kilopascals and necessary incidental equipment, including regulator stations and metering equipment not exceeding 20m^2 in area;

(vii) Underground pipes for the conveyance or drainage of water or sewage, and necessary incidental equipment including household connections;

(viii) Maintenance, upgrading, replacement and repairs to network utility apparatus, subject to prior notification of Transit New Zealand in respect of any work on State Highways;

(ix) Ancillary buildings not exceeding a gross floor area of 50m^2;

(x) Network utilities in existence at the date of public notification of the Proposed Plan (22 April 2008), unless subject to a specific resource consent or designation;

(xi) The development, use and maintenance of tracks that provide access, and are ancillary, to existing network utilities and/or infrastructure or to network utilities and/or infrastructure that is deemed to be a permitted activity in section 5.3.6 of this Plan.

(b) Permitted activities in Rural and Industrial Management Areas

In addition to the activities permitted in (a) above, the following activities shall be permitted in Rural and Industrial Management Areas, subject to compliance with all relevant environmental standards in Part 5 of this Plan:

(i) Automatic weather stations, weather recording devices, and facilities for the distribution of meteorological information, subject to the standards in clause (iii) below;

(ii) Lighthouses, navigational aids and beacons, and survey monuments;

(iii) Network utilities for telecommunications and radio communications purposes provided they do not exceed the following standards:

- masts, poles and other supporting structures are no greater than 20 metres in height;
- masts, poles and other supporting structures do not exceed 3 metres in diameter;
- telecommunications and radio communications equipment attached to masts, poles and other supporting structures including attached equipment does not exceed 3 metres in any dimension;

(iv) Anemometer towers.

(c) Controlled Activities in Rural and Industrial Management Areas

(i) Electricity substations which receive lines having a voltage up to and including 110KV and which have a design capacity up to and including 100MVA per circuit;

(ii) Pipes for the transmission of natural gas at a gauge pressure exceeding 2000 kilopascals and necessary incidental equipment, including compressor stations, provided that:

- the written approval of all landowners through which the pipeline will be laid has been obtained; and
- land is reinstated to its original condition after the pipeline has been laid; and
- there is compliance with the relevant industry Code of Practice, the Petroleum Pipeline Regulations and Land Access Code.

(iii) Regulator stations exceeding 20m² in area and gate stations which are part of the natural gas distribution network;

(iv) Depots for the maintenance, upgrading, alteration, construction or security of lines or pylons associated with the National Grid, provided that they are situated within a substation property;

(v) The construction use and maintenance of structures for:

- the investigation of sustainable energy generation by solar or hydro means.

(d) Matters over which the Council shall exercise its control are as follows:

(i) The design and external appearance of all buildings and structures and signage;

(ii) The landscape design and site layout, including fences and screen planting, and lighting;

(iii) The location and design of vehicular and pedestrian access to and from the site, including emergency access;

(iv) Vehicle parking and loading and manoeuvring areas on site;

(v) The location and nature of possible noise generating equipment to be used on site, and hours of operation;

(vi) Other potentially adverse effects, including dust, glare, vibration, odours, electromagnetic radiation, use or storage of hazardous substances, and effects on any important natural or heritage feature.

5.3.6.3 Non-compliance with standards

Where a network utility does not meet the standards specified above, or is not listed as a permitted or controlled activity, it shall be deemed to be a discretionary activity, requiring a resource consent.

Discretionary activities therefore include, but are not limited to:

(a) Lines (and support structures) for conveying electricity at a voltage exceeding 110kV and which have a design capacity exceeding 100MVA per circuit, and electricity substations and transformers which receive such lines;

(b) Weather radars.

5.3.6.4 Information requirements

In addition to the information specified in section 7.3.2 of this Plan, a resource consent application for a network utility which is a discretionary activity, shall include:

(a) The design and external appearance of all buildings and structures and signage;

(b) Landscape design and site layout, including fences and screen planting, and lighting;

(c) The location and design of vehicular and pedestrian access to and from the site, including emergency access;

(d) Vehicle parking and loading and manoeuvring areas on site;

(e) The location and nature of possible noise generating equipment to be used on site, and hours of operation;

(f) Other potentially adverse effects, including dust, glare, vibration, odours, electromagnetic radiation and use or storage of hazardous substances.

5.3.6.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application for a discretionary activity:

(a) Whether any alternative locations have been considered;

(b) Whether the visual, noise and other effects of the proposed network utility facility are compatible with the character, scale and visual appearance of the surrounding area, having regard to the following factors:

(i) Visual effects:

- scale of the facility
- height of structures
- signage
- separation of structures to site boundaries
- site location - in terms of general locality, topography, geographical features, adjoining land uses and consideration of alternative sites
- planting, fencing, use of colour and other landscape treatment
- lighting - in terms of intensity and positioning

(ii) Noise effects:

- background noise levels in the neighbourhood of the site
- probable noise levels from the utility or any part of it
- any proposed noise mitigation measures

(iii) Other effects:

- any fumes, odour, dust, vibration, radio frequency emissions (including compliance with NZS 2772.1:1999), glare, hazardous substances
- traffic related effects, such as location of access, parking and manoeuvring areas
- any adverse effect on any important natural or heritage feature (having regard particularly to matters specified in Part II of the RMA).

(c) Whether adequate mitigation or avoidance measures can be put in place, having regard to the best practicable option and economic considerations, as well as the technical and operational constraints of the network utility operator.

5.3.7 RENEWABLE ELECTRICITY GENERATION FACILITIES

5.3.7.1 Introduction

Electricity generation is essential to everyday life and benefits the entire community of New Zealand. The generation of electricity from renewable sources has additional benefits in terms of environmental impact and sustainability. The Tararua District has a number of existing wind farms and there is the potential for more to be developed. The provisions included in this Plan for renewable electricity generation facilities seek to ensure that resource consent applications for such activities are considered on a case by case basis in order that the community benefits of generation are recognised and that the actual and potential environmental effects of generation are managed. The provisions also seek to provide guidance as to the information to be included in recourse consent applications for generation facilities, including wind farms, and the matters that the Council will consider when making decisions about any such applications.

5.3.7.2 Standards

(a) Permitted activities in all Management Areas

The operation and maintenance of facilities generating electricity from renewable energy sources including wind farms, in existence as at the date this Plan became operative.

*[**Note**: For the purpose of this standard, 'operation and maintenance' means activities necessary for the effective and ongoing operation of a facility and includes the replacement and/or upgrading of equipment and/or maintenance*

of existing access tracks, provided such activities do not change the nature or increase the scale of the effects of the activity being undertaken, as at the date this Plan became operative.]

Domestic scale electricity generation from renewable energy sources subject to meeting the following performance criteria:

(i) the facility generating the electricity meets all the applicable amenity standards for permitted activities in section 5.4 of this Plan;

(ii) the facility generating the electricity is not located on land identified as a scheduled heritage feature including its curtilage.

***[Note**: Any connection to the distribution network arising from domestic scale electricity generation from a renewable energy source must meet the requirements of the relevant electricity service provider and specific electricity sector legislation.]*

(b) Discretionary Activities in all Management Areas

The construction, operation and maintenance of renewable electricity generation facilities, including wind farms, not otherwise provided for as permitted activities, shall be considered as discretionary activities in all Management Areas.

5.3.7.3 Information Requirements

In addition to the information specified in section 7.3.2 of this Plan, a resource consent application for a renewable electricity generation facility, including a wind farm, shall include (but not be limited to), sufficient information to enable an assessment of the application with regard to the criteria set out in Section 5.3.7.4 of this Plan.

5.3.7.4 Criteria for Assessment

(a) The contribution that the proposed renewable electricity generation facility will make to the achievement of energy policy objectives and/or renewable energy generation targets of the New Zealand government;

(b) The local, regional and national benefits to be derived from renewable electricity generation and use;

(c) The extent to which the facility will adversely affect the amenity values of the locality, having particular regard to the impact of the development on existing residential dwellings, and including (but not limited to) the following effects:

(i) Electromagnetic interference to broadcast or other signals

(ii) Glint resulting from the reflection of the sun off of turbine blades

(iii) Shadow flicker resulting from shadows generated by moving turbine blades.

(d) The visual and amenity effects of the facility with regard to the existing character of the area to which the proposal relates, the desired characteristics for the relevant Management Area as set out in Section 3.2 of this Plan, any significant landscapes or natural features identified in this Plan and/or any Regional Policy Statement and/or Regional Plan that applies to the area in which the site of the proposal is located;

(e) The ecological effects of the facility, including any effect on significant natural areas including areas and habitats of indigenous flora and fauna, as identified in this Plan or any Regional Policy Statement or Plan that applies to the area in which the site of the proposal is located;

(f) The effects of the facility on recognised archaeological and/or historic heritage features identified in this Plan or in other heritage registers;

(g) The expected noise effects arising from the construction, maintenance and operation of the facility, with particular regard to the impact of noise on existing dwellings and the ability of the proposal to meet any relevant standards such as NZS6808:2010 Acoustics – Wind Farm Noise and the NZS6803:1999 Construction Noise or any subsequent versions of these standards.

(h) The effects of the facility on aviation, navigation and existing network facilities.

(i) The ability of the land to accommodate the earthworks, roads, building platforms or other infrastructure necessary to construct, maintain and operate the facility.

5.4 Amenity

5.4.1 NOISE AND VIBRATION

5.4.1.1 Introduction

Noise (including vibration) is a significant health and environmental quality issue and an important factor contributing to the varying levels of amenity in different areas of the District. Section 31(d) of the RMA assigns Council the function of controlling the emission of noise and the mitigation of the effects of noise. This function is supported by the abatement and enforcement provisions in Part XII of the RMA, particularly Sections 326 to 328 which relate to "excessive noise".

This District Plan sets minimum environmental standards in respect of noise, using New Zealand Standards to determine acceptable levels and methods of assessment, as there is currently no locally developed data base on noise levels in the District.

The following New Zealand Standards are applicable:

- NZS 6801:2008 Acoustics - Measurement of Environmental Sound
- NZS 6802:2008 Acoustics – Environmental Noise
- NZS 6803:1999 Acoustics - Construction Noise
- NZS 4403:1976 The Storage, Handling and Use of Explosives
- NZS 6805:1992 Airport Noise Management and Land Use Planning
- NZS 6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas
- NZS 6808:2010 Acoustics – Wind Farm Noise

The purpose of the District Plan's noise standards is to control noise levels to ensure that there is no degradation of amenity levels within the District, especially in residential, settlement and rural management areas. Reaction to noise varies considerably, not only between individuals but also between and within communities. The standards aim to provide a degree of certainty to the community and to developers as to what noise levels are acceptable in different Management Areas. At the same time, the Council wishes to avoid unnecessary restrictions within industrial areas, particularly given that all activities still have a duty under Section 16 of the RMA to avoid unreasonable noise and that the Council has

abatement and enforcement powers in relation to excessive noise. For example, by measuring noise levels at the Management Area boundary (not site boundaries) in Industrial Management Areas, a less restrictive standard is able to be set.

Vibration from land use activities can range in effect from structural damage to buildings (relatively extreme levels of vibration) to disturbance of sleep and reduction of amenity resulting from people being able to perceive vibration. The following New Zealand Standard is applicable:

- **NZS/ISO 2631.2-89 Mechanical Vibration and Shock - Evaluation of Human Exposure to Whole-Body Vibration:**

  Part 1: General Requirements

  Part 2: Continuous and Shock-Induced Vibration in Buildings (1-80 Hz)

5.4.1.2 Standards

(a) All noise levels shall be measured in accordance with NZS6801: 2008 and shall be assessed in accordance with NZS6802: 2008. Where NZS6802: 2008 does not include the type of noise in question, the appropriate standard or regulation which covers that type of noise shall be used.

(b) The following noise limits shall apply to all activities in the **Residential, Settlement and Rural Management Areas** of the District, with the exception that these standards shall not apply to the following:

- audible bird-scaring devices in the Rural Management Area;
- forestry activities which are undertaken during daylight hours only and for a period not exceeding 7 days duration, in any Management Area;
- temporary military training activities in any Management Area

7.00 am - 7.00 pm daily	55 $dBL_{Aeq(15\ min)}$
7.00 pm - 7.00 am daily	45 $dBL_{Aeq(15\ min)}$ and 75 dBL_{AFmax}

These noise limits are not to be exceeded at any point within the boundary of any site used for residential activities or, in the Rural Management Area, at any point within the "notional boundary" of any dwellinghouse on land held in a separate certificate of title or, if the complainant's dwellinghouse is on the same certificate of title, at any point within the notional boundary of the complainant's dwellinghouse.

(c) The following noise limits shall apply to all activities (except to temporary military training activities) in the **Commercial Management Areas** of the District:

7.00 am - 10.00 pm daily	60 $dBL_{Aeq(15\ min)}$
10.00 pm - 7.00 am daily	45 $dBL_{Aeq(15\ min)}$ and 75 dBL_{AFmax}

These noise limits are not to be exceeded at any point outside the site boundary, **except** that at any such point that is within a Residential, Settlement or Rural Management Area, the noise limits applying in that Management Area shall apply.

(d) The following noise limits shall apply to all activities (except to temporary military training activities) in the **Industrial Management Areas** of the District:

There are no specific noise limits applicable at any point outside site boundaries, except that at any such point that is within a Residential, Settlement, Rural or Commercial Management Area, the noise limits applying in that Management Area shall apply.

(e) **Blasting noise** and any vibration created by blasting shall comply with the limits set in NZS 4403:1976 and shall be conducted in a manner that does not cause a nuisance or adversely affect any person.

(f) **Construction noise** shall be measured and assessed in accordance with NZS6803: 1999 or any successor and shall not exceed the noise limits recommended therein.

(g) **Audible bird-scaring devices (including firearms)** may be operated in Rural Management Areas in accordance with the following conditions:

- not earlier than 7.00 am and not later than 8.00 pm
- the sound from any bird-scaring device shall not exceed 85 dBC peak (unweighted) level at the boundary of any adjoining property, or 20 metres from the facade of the closest dwelling on any adjoining property;
- where the sound from any bird-scaring device exceeds 70 dBC peak (unweighted), but is less than 85 dBC peak, at either the boundary of any adjoining property or 20 metres from the facade of the closest dwelling on any adjoining property, then it shall be operated at a frequency of not more than six events per hour. The term "events" includes clusters of up to 3 shots from gas operated devices or three multiple shots from firearms, in rapid succession. At lower noise levels, there is no restriction on frequency of use;

- These conditions may be waived at the boundary of any adjoining property if the owner agrees and notifies the Council of such agreement in writing.

(h) **Vibration:** No activity may create any vibration which exceeds the limits in NZS/ISO 2631.2-89.

(i) **Temporary military training activities:** The following noise limits shall apply to temporary military training activities in all Management Areas of the District. These noise limits are not to be exceeded at any point outside the site boundary.

Time	**Limits (dB)**	
(Any day)	$L_{Aeq(15\ min)}$	L_{AFmax}
0630 - 0730	60	70
0730 – 1800	75	90
1800 – 2000	70	85
2000 – 0630	45	-
Noise resulting from the use of explosives is not to exceed 122 dBC (between 0730 and 1800 only).		

5.4.1.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.1.4 Information requirements

In addition to the information specified in section 7.3.2 of this Plan, a resource consent application to exceed any noise or vibration standard shall include:

(a) A noise report from an acoustic engineer assessing the effect of the proposal on the locality, having regard to background noise levels;

(b) Assessment of the best practicable option (BPO) in relation to noise/vibration and the activity concerned;

(c) Details of any mitigation measures proposed.

5.4.1.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.4.1.3 above for a discretionary activity:

(a) The existing background noise level in the area concerned;

(b) Whether there will be any significant adverse effect on levels of amenity or environmental quality of surrounding areas;

(c) The ability to undertake noise reduction measures at a later date when the nature of changing adjacent activities may require lower noise levels to be met;

(d) Any recommendations in a report of an acoustic engineer or other relevant professional.

5.4.2 DUST, SMOKE AND ODOUR

5.4.2.1 Introduction

Primary responsibility for air quality management lies with Regional Councils. However, the "control of any actual or potential effects of the use, development or protection of land" (Section 31(b) of the RMA) is a function of the District Council. In this respect, dust, smoke and odour caused by particular activities may result in a significant adverse effect on the amenities of surrounding properties.

With respect to that part of the District that is within the Manawatu-Wanganui Region, the MWRC's One Plan contains policies, methods and rules for controlling discharges to air, including smoke, dust and odour. It is recognised that the Regional Council is the lead authority in respect of these "air" discharges and, therefore, this Plan seeks only to complement the Regional Council's requirements, not to duplicate or supplant them.

In relation to odours, it is a largely subjective matter whether an odour is offensive or not, depending on the opinion of the individual concerned. The hedonic tone of an odour is the judgement of the relative pleasantness or unpleasantness of the odour. It is this aspect which primarily dictates whether an odour nuisance occurs, since it is influenced by such factors as subjective experience, frequency of occurrence, odour character, intensity and duration. How pleasant or unpleasant an odour is perceived is often a matter of association.

It is, therefore, a complex matter to attempt to quantify performance standards for odour (and also for dust and smoke) and, to the Council's knowledge, no effective and practical numerical standards have yet been devised and widely accepted. Nevertheless, while the Council will liaise with the relevant Regional Council to use

the abatement and enforcement provisions of the RMA to mitigate nuisances as required, it is considered that it is necessary to also give some guidance to the community and developers as to what is likely to be acceptable, to avoid activities establishing in unsuitable locations and then encountering problems when operations commence.

To take an example, "home occupations" which create a dust, odour or smoke nuisance are unacceptable in Residential, Settlement and Rural Management Areas. Furthermore, oxidation ponds or factory farms which may produce significant odour should not be located in proximity to, or upwind of, residential areas or other sensitive land use activities or users.

The NZ Pork Industry Board's EnviroporkTM: pork industry guide to managing environmental effects (V1.0, 2005) provides recommended buffer distances for pig farms which are designed to mitigate the effects of odour. These have been adopted in slightly modified form as standards in this Plan.

5.4.2.2 Standard

(a) No part of an outdoor (extensive) pig farm shall be located within 500 metres of a Residential or Settlement Management Area.

(b) Intensive pig farms shall comply with the buffer distances specified in the following table:

Description	Minimum distance in metres
Piggery to Residential or Settlement Management Area:	D* = P* x 1.00, with a minimum separation distance of 150 metres
Piggery to a marae, public hall, church, school or recreation area:	D = P x 0.75, with a minimum separation distance of 150 metres
Piggery to an isolated rural residence:	D = P x 0.25, with a minimum distance of 150 metres

* D is the required distance and P is the number of pigs contained within the piggery.

(c) **Odour:** Except as specified in (a) and (b) above, no activity shall cause an odour which, having regard to the frequency, intensity, duration and offensiveness of the odour, is objectionable or creates a nuisance beyond the boundaries of the site.

(d) **Dust and smoke:** No activity may produce dust or smoke which has a significant adverse environmental effect, or that creates a nuisance beyond the boundaries of the site or which causes a visibility hazard for highway or road users.

5.4.2.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent, except that this shall not apply where the discharge is specifically covered by a rule in a relevant operative or proposed regional plan.

5.4.2.4 Information requirements

In addition to the information specified in section 7.3.2 of this Plan, a resource consent application required under section 5.4.2.3 shall include:

(a) Details of the proposed activity and processes used;

(b) Assessment of the best practicable option (BPO) in relation to dust/smoke and the activity concerned;

(c) Details of any mitigation measures proposed;

5.4.2.5 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.2.3 above for a discretionary activity:

(a) The nature of the activity;

(b) The extent to which the siting of the activity provides sufficient buffer to adjacent properties, including any road or State Highway;

(c) Whether there will be any significant adverse effect on levels of amenity or environmental quality of surrounding areas;

(d) Whether the emissions can be programmed in a manner that ensures they will only be emitted at times when the effects will not be objectionable (e.g. certain wind directions or velocities, or times of the day);

(e) Any recommendations in a report of any relevant professional;

(f) When assessing an application for intensive pig farming as a discretionary activity, the Council shall be guided by the Code of Practice - Pig Farming, 2nd edition, August 1993;

(g) The provisions of any relevant regional plans, and the views of the relevant Regional Council.

5.4.3 SIGNS

5.4.3.1 Introduction

Signs play an important role in the District by providing information on public services, providing directions, identifying places of interest and advertising goods and services. There is a need, however, for some controls on location, number, size, type and nature of signs in order to protect the amenities of the District and to maintain traffic safety. In the absence of a signs bylaw for the District, this Plan addresses the safety and aesthetic aspects of signs on both private property and legal roads (road reserves).

The NZTA is the organisation responsible for the provision of an integrated and safe road network throughout New Zealand, and it has particular responsibilities in relation to the State Highway network, in terms of the Government Roading Powers Act 1989. It is the policy of the NZTA to generally avoid extraneous roadside signs (except legitimate road and traffic signs) on state highways and motorways. The Council has a similar policy in respect of all other roads for amenity and traffic safety reasons, with the exception that authorised footpath signs are permitted in commercial and industrial management areas, as well as some remote location signs, subject to meeting the environmental standards in Section 5.4.3.2.

This Plan's standards for signs on private properties are less restrictive in Commercial and Industrial Management Areas than they are in Rural, Residential and Settlement Management Areas. Signs are generally more acceptable in commercial and industrial areas because of the mutual benefit of advertising both to businesses in these areas and to the public that they serve. There is no limit on the size or number of signs in Commercial and Industrial Management Areas, but some locational controls are necessary to ensure that signs do not become unsightly or a hazard.

In Residential, Rural and Settlement Management Areas, advertising signs are generally less acceptable due to their potential effect on the amenities of those areas, but there is still a need to provide for some legitimate signs for permitted activities, subject to strict controls on the size and number of such signs. Any proposed deviation from these rules will be carefully assessed on the basis of their effect on the qualities of the area which the rules are designed to protect.

All signs must comply with the Building Act 2004 to ensure that they are structurally sound.

5.4.3.2 Standards

(a) General standards applicable to all signs

(i) The standards in this section apply to all signs in the District whether located on private property, public property or legal roads.

(ii) No sign shall be permitted where it will detrimentally affect traffic safety and control by either:

- obstructing drivers' vision; or
- causing confusion or distraction for drivers; or
- creating a situation hazardous to the safe movement or direction of traffic.

(iii) No sign shall be permitted which restricts or blocks sight distances at intersections or accessways.

(iv) No sign shall obstruct, or predominate over, road users' views of official signs and no sign shall be designed so as to resemble, or potentially cause confusion with, official traffic signs.

(v) No sign shall be permitted which is offensive, poorly constructed, poorly maintained, or otherwise adversely affects the amenities of the area in which it is sited or the area from which it can be seen.

(vi) Signs using light (including illuminated signs, neon lights, flashing or revolving lights) are permitted only in Commercial and Industrial Management Areas. No sign shall be permitted to cause glare or dazzle which could detract from traffic safety.

(b) Permitted activities (signs) in all Management Areas

(i) Road directional, traffic safety, motorist service, tourist or name signs erected by the Council or the NZTA, whether or not within the road reserve.

(ii) Neighbourhood watch signs, subject to compliance with the following performance standard:

- Maximum area for each sign is 0.5m^2.

(iii) Community Welcome to Towns and District signs, subject to compliance with the following performance standards:

- Maximum area of each sign is 6.5m^2;

*[**Note**: the written approval of the NZTA (as road controlling authority) must first be obtained if the sign is to be located on the state highway road reserve.]*

(iv) Temporary signs for statutory notice, auctions, sale of land/buildings, and for trades/consultants' signs on construction projects, subject to compliance with the following performance standards:

- Maximum area of each sign is 3m²;
- Must be located on the subject property;
- Must be removed within 7 days of completion of the activity or sale of land/building.

(v) Signs on public open space (other than formed legal roads), reserves and recreational facilities, subject to compliance with the following performance standards:

- The written consent of the landowner (normally the Council) shall be obtained;
- One sign not exceeding 3m² is permitted at each entrance to the public open space, reserve or recreational facility;
- One sign not exceeding 3m² is permitted for each club or code with facilities on the reserve or in the building or complex;
- Signs for commercial advertising/sponsors signs, not exceeding 2m² each, and located so that they are visible primarily to spectators/participants in the reserve/recreational facility.

(vi) Temporary signs for elections subject to compliance with the following performance standards:

- The area of any sign is no more than 4 m²;
- Signs are erected no more than 3 months prior to the election and removed by the eve of the day before the election day;
- Signs are located on private property or on road reserve (legal road) with the approval of the road controlling authority.

(vii) Signs within the site of any heritage resource included in the Schedules in Appendix 2 of this Plan, provided that the written approval to the erection of any such sign has been obtained from Heritage New Zealand.

(viii) Advisory or warning signs erected by, or on behalf of, the Council except where such signs front State Highway in which case the written approval of the New Zealand Transport Agency, as the Road Controlling Authority, is required for such signs to be deemed a permitted activity.

(c) Permitted activities (signs) in Residential and Settlement Management Areas

In addition to the permitted activities specified in section 5.4.3.2(b) above, the following are permitted in Residential and Settlement Management Areas:

(i) One sign for each lawfully established activity, subject to compliance with the following performance standard:

- Maximum area of sign is 1.5m².

(ii) Signs not on the site in the Tararua District to which they relate, provided they meet all of the following standards:

- Maximum area of sign is no more than 2.0m²; and
- No more than two signs not on the site in the Tararua District to which they relate are erected per lawfully established activity.

(d) Permitted activities (signs) in Rural Management Area

In addition to the permitted activities specified in section 5.4.3.2 (b) and (c) above, the following are permitted in Rural Management Areas:

(i) One sign at the entrance to a rural selling place, subject to compliance with the following performance standard:

- Maximum area of sign is 3m²;
- Sign to be located on subject property.

(ii) One advance warning/directional sign either side of an entrance indicating the proximity of a rural selling place, subject to compliance with the general standards in 5.4.3.2(a) above and with the following performance standards:

- Maximum area of sign is 1.5m²;
- Sign is located on private property but not necessarily the subject property.

(iii) One sign for each lawfully established activity, subject to compliance with the following performance standard:

- Maximum area of sign is 1.5m²;
- Written notice has been provided to the Council, advising details of the size, location and content of the sign, its planned date of construction and expected date of completion

(iv) Signs not on the site in the Tararua District to which they relate provided they meet all of the following performance standards:

- Maximum area of the sign is no more than 3.0m²; and
- No more than two signs not on the site in the Tararua District to which they relate are erected per lawfully established activity; and
- The sign does not include telephone numbers or internet addresses, although physical or road addresses directing readers to the site to which the sign relates are permitted; and
- The sign is located not less than 1 km from any other sign not on the site in the Tararua District to which it relates except for those signs provided for in Rule 5.4.3.2 (b) (i) to (vi).
- Written notice has been provided to the Council, advising details of the size, location and content of the sign, its planned date of construction and expected date of completion.

(e) Permitted activities (signs) in Commercial and Industrial Management Areas

In addition to the permitted activities specified in section 5.4.3.2 above, the following are permitted in Commercial and Industrial Management Areas:

(i) Signs attached to buildings, subject to compliance with the following performance standards:

- Signs do not protrude more than 1 metre above the roof line of the building;
- Under veranda signs must maintain at least 2.6 metres clearance between the bottom of the sign and the footpath and a minimum horizontal clearance of 0.5 metres from the kerb line.

(ii) Fixed free-standing signs, subject to compliance with the following performance standards:

- Signs are not to exceed a total of 4m² in area per property;

- No sign shall be more than 1 metre higher than the roof line of the highest building on the subject site;
- All fixed free-standing signs to be located on subject property.

(iii) Footpath signs, subject to compliance with the following performance standards:

- One footpath sign or "sandwich board" per business, except for corner sites where one sign is permitted per frontage;
- Maximum area of each face of sign is 1m²;
- Signs must be located either adjacent to the building or secured against the kerb, and in all cases shall not be allowed to cause obstruction to pedestrian movement or the opening of parked vehicle doors.

(f) Controlled activities (signs) in all Management Areas

(i) Temporary signs for community events such as festivals, galas and reunions, subject to compliance with the following performance standards:

- Maximum area of each sign is 3m²;
- Signs are to be erected no more than 3 months prior to the event and removed within 7 days of the event having taken place;
- Sign to be located on private property;
- In respect of signs designed to be read from the road, there shall be a maximum of one on-site sign for each road frontage, and three off-site signs.

(ii) Unless otherwise permitted as of right, one sign at entrance to tourist attractions, subject to compliance with the following performance standards:

- Maximum area of sign is 3m²;
- Sign to be located on subject property.

(iii) One directional/advance warning sign indicating proximity to tourist attraction, subject to compliance with the general standards in 5.4.3.2(a) above, and with the following performance standards:

- Maximum area of sign is 1.5m²;

- Sign to be located on private property but not necessarily the subject property.

(g) Matters over which Council reserves control

The matters over which the Council shall exercise its control are:

(i) the extent to which the sign creates a potential traffic hazard due to its siting or orientation;

(ii) the availability of other locations or ways in which the sign could be orientated or located that would reduce the potential for the sign to create a traffic hazard.

5.4.3.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.3.4 Information requirements

In addition to the information specified in section 7.3.2 of this Plan, a resource consent application for a sign which is a controlled or discretionary activity shall include:

(a) The address and legal description of the site;

(b) Where the applicant is not the owner of the land on which the proposed sign is to be erected, the written consent of the owner;

(c) Plans and illustrations to enable the Council to understand the nature and design of the sign (including method of support, building materials, shape, size, colour and information to be displayed on the sign) and the proposed location of the sign;

(d) an assessment against the criteria in Rule 5.4.3.5 below.

5.4.3.5 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application for a discretionary activity:

(a) That the sign relates well to built and natural features existing in the vicinity of the proposed location of the sign, and is visually appropriate to the area;

(b) That the sign is tidy in appearance and does not detract from the amenities of the area, while still being able to be easily read by drivers (where applicable) without creating a traffic hazard;

(c) That the sign will not cause a nuisance to any person, nor any adverse effect on traffic safety;

(d) That there is a demonstrable need for the sign and sufficient reason why the Plan's standards cannot be met;

(e) That any sign to be erected adjacent to the State Highway has been given written approval from the NZTA.

5.4.4 HEIGHT AND RECESSION PLANE CONTROLS

5.4.4.1 Introduction

Height and recession plane controls are physical standards which aim to ensure that the height of buildings is compatible with the landscape, amenity and character of the area concerned, having regard to the activities permitted in each Management Area. The recession plane controls aim to ensure that no building or structure unreasonably overshadows any neighbouring residential property so that all residential properties can have access to reasonable sunlight for passive solar heating and outdoor living areas. This contributes to reducing the use of non-renewable energy sources. In the Residential and Settlement Management Areas, the height and recession plane controls also aim to ensure that properties may maintain a reasonable degree of privacy.

The Council considers it unnecessary to have additional "yard" requirements in the District Plan as the application of the recession plane control in Residential, Rural and Settlement Management Areas serves to achieve a setback of buildings in most cases (i.e. any building more than 2 metres high). This does mean that some buildings/structures can be built up to a boundary if they are 2 metres or less in height at the boundary and have a roof pitch which meets the recession plane control, but they will still have to comply with any fire rating, structural or other requirements of the Building Regulations under the Building Act 2004. By using the recession plane as the sole control over the setback for buildings, the Council is enabling more creative and effective layout of sites and less "wasted" space.

The Plan's height and recession plane controls apply to buildings and structures, but not to trees. The Council recognises that trees do cause shading but is of the opinion that in the event of any disputes between neighbours over such matters, civil remedies should be sought in the first instance. Should such problems repeatedly arise, the Council will consider changing the Plan to apply a recession plane control to trees, particularly evergreen trees.

5.4.4.2 Standards

(a) In Residential, Settlement and Rural Management Areas, the maximum height of any building or structure shall be 10 metres;

(b) In Commercial and Industrial Management Areas, the maximum height of any building or structure shall be 15 metres;

(c) In addition to the above height controls, all new buildings and structures, and additions to existing buildings and structures, shall be designed and constructed to fit within a recession plane (or height-to-boundary plane) which begins at 2 metres above the existing ground level at all site boundaries (including front boundaries) and then projects from this line inwards at a 45 degree angle, except that:

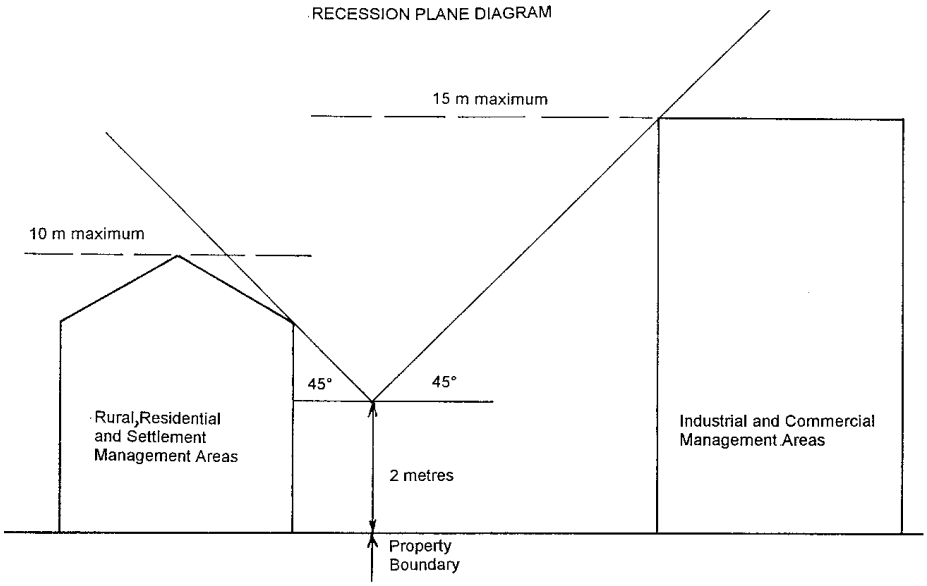
- In Commercial and Industrial Management Areas, this control shall only apply in relation to any site boundary which is adjacent to a Residential, Settlement or Rural Management Area.

(d) The following structures are exempt from the above height and recession plane controls in this section: *[**Note:** the standards in section 5.3.6 (network utilities) shall apply (as applicable).]*

- Activities permitted under standards 5.3.6.2(a) and (b).
- Flagpoles
- Wires
- Television and radio antennae
- Chimneys
- Vertical ventilation shafts
- Solar heating devices
- Up to one-third of the height of gable end roofs, and dormer windows not more than 3 metres wide.

*[**Note:** Any structures over 60 metres in height may require approval from the Civil Aviation Authority of New Zealand.]*

(e) Where garages, carports and other accessory buildings are proposed to be constructed up to the boundary of a site in the Residential or Settlement Management Area, the recession plane controls shall not apply where the owner(s) and occupier(s) of the adjacent property have given their written consent.



5.4.4.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.4.4 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under section 5.4.4.3 above for a discretionary activity:

(a) Topographical or other site constraints;

(b) The desirability of maintaining consistency in design and appearance with existing buildings on the site;

(c) The desirability of protecting existing trees, vegetation or other significant physical feature on the site;

(d) Whether the boundary to which the standard relates is a common boundary with an area of permanent open space, the use of which will not be detrimentally affected by any increased shading;

(e) The extent to which the neighbouring property will be affected by increased shading, loss of daylight (having regard to the orientation of the boundary in relation to the sun), amenity value and privacy;

(f) The extent to which the building or structure visually intrudes on any significant ridgeline or skyline or significant landscape, the degree of necessity for the location due to operational and technical requirements, and what measures are proposed to reduce the visual impact of that intrusion;

(g) In relation to front boundaries, the extent to which the development will be compatible with the existing character of the streetscape;

(h) Details of any other mitigation measures proposed.

5.4.5 OUTDOOR LIVING COURT

5.4.5.1 Introduction

It is important that all residential activities (such as houses, flats and retirement/convalescent homes) have adequate areas of useable and accessible open space for the recreation and leisure of occupants. The Council wishes to encourage innovation and flexibility of design within the District and for this reason it has aimed to avoid unnecessary rules and, where rules are necessary, it has preferred standards which are directly linked to the environmental outcome sought rather than standards which are, to an extent, arbitrary and inflexible. In relation to outdoor space requirements, therefore, this Plan does not specify minimum site areas, maximum site coverage, minimum yards or other such requirements which, while ensuring a minimum amount of outdoor space, may in some cases stifle excellence or innovation in design and the provision of useable and attractive outdoor space. It is the latter which the Council seeks to encourage and this is the reason for specifying outdoor living court requirements for residential activities in the District. The outdoor living requirements are particularly important where there is more than one residential unit (dwellinghouse/flat) on a site, so that each residential unit has its own private open space available to residents. The outdoor living court standard is less for self-contained housing which is purpose-built for elderly people, in recognition of the fact that many elderly people would prefer, for maintenance reasons, to have a small, manageable outdoor living area.

Other residential activities, such as institutional and community homes, are often occupied on a room basis rather than self-contained units. Outdoor living court areas for these activities are based on the number of occupants.

Where there is more than one residential unit on a site, there is a requirement that the outdoor living court be screened with a solid fence (or similar effective visual barrier) to provide privacy. The Council prefers this mechanism to ensure reasonable privacy for residents rather than specifying particular separation distances or other such rules.

5.4.5.2 Standard

(a) In all Management Areas, all residential units and accommodation shall be provided with an outdoor living court as follows:

- Residential units (including dwellinghouses and flats): the minimum area of the outdoor living court for each unit is 36m² and it shall be of a shape that is able to contain a circle which is 6 metres in diameter;

- Retirement villages or other self-contained units built specifically for elderly/retired/disabled people (including "granny flats"): the minimum area of the outdoor living court for each unit is 25m² and it shall be of a shape that is able to contain a circle which is 5 metres in diameter;

- Other residential uses (including resthomes and convalescent homes): a minimum outdoor living area of 10m² per person intended to be accommodated shall be provided, with at least 40% of this area being adjacent to the main living area.

(b) the outdoor living court shall be for the exclusive use of the residential unit/activity and shall be free of driveways, drying or other service functions or facilities, parking spaces, manoeuvring areas and accessory buildings;

(c) the outdoor living court shall be unoccupied and unobstructed from the ground upwards, except that structures designed to enhance the use and enjoyment of the outdoor living court (e.g. garden structures, garden furniture, pergolas), eaves and upper storey projections not exceeding 0.6 metres, and decks at ground level or on a downwards sloping outdoor living court site where the deck is at the same level or lower than the ground floor of the dwelling house are permitted;

(d) the outdoor living court shall be located to the north, north-west, or north-east of the residential unit/activity, as appropriate in the circumstances to receive the maximum amount of sun, and it shall be located so that it is adjacent to, or readily accessible from, the main living areas (i.e. kitchen, living room, lounge) of the dwelling unit;

(e) where there is, or is intended to be, more than one residential unit on the site, the outdoor living court shall be screened by the developer at the time the units are constructed, from the windows and outdoor living courts of other residential units on the site, to a minimum height of 1.5 metres;

(f) where a residential unit is proposed on a site already containing one or more residential units, outdoor living courts must be provided for the existing as well as the proposed residential unit(s).

5.4.5.3 Non-compliance with standard

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.5.4 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.5.3 above for a discretionary activity:

(a) the extent to which a living court can be provided which may not meet the standards but still provides a useable outdoor area which meets the purpose of the outdoor living court and provides a similar level of amenity and privacy;

(b) the existence of topographical or other site constraints;

(c) the availability of adjoining permanent open space (e.g. park or reserve) that is useable by occupants of the residential unit/activity and which may reduce the need for outdoor space on-site;

(d) whether there is communal outdoor space provided which is accessible to the occupants of the residential unit/activity, and provides similar levels of amenity;

(e) whether the residential unit is designed for a specific purpose not requiring an outdoor living court either of normal standards, or at all;

(f) details of any mitigation measures proposed.

5.4.6 OUTDOOR SERVICE COURT

5.4.6.1 Introduction

It is important that all residential accommodation (such as dwellinghouses, flats and retirement/convalescent homes) have adequate areas of useable and conveniently located outdoor space available for household service activities such as clotheslines, garden/storage sheds and refuse containers. It is also important that such space is not the same space that is set aside for the outdoor living court as this would compromise the latter's value for amenity purposes. The service court should, wherever possible, be orientated generally to the north in order to receive the maximum amount of sunshine for activities such as drying clothes, although refuse disposal and storage areas may best be located in the shade. Given this situation, however, and as outdoor living courts are to have a northerly aspect, it is not a requirement for all service courts to have a similar orientation. In fact a service court may involve two separate areas of land. There is no difference between residential units for the elderly and other residential units in relation to service court requirements, as all residents of self-contained residential units have certain basic servicing needs.

5.4.6.2 Standard

(a) In all Management Areas, all residential units shall be provided with a useable outdoor service court located near the service areas of the unit (laundry, kitchen, garage) of at least 20m² in total area, with a minimum dimension of 3 metres. The service court may be provided by means of one or two distinct areas of land on the site, provided the minimum dimensions are met.

(b) The outdoor service court shall be for the exclusive use of the residential unit/activity and shall be free of driveways, parking spaces, and vehicle manoeuvring areas.

5.4.6.3 Non-compliance with standard

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.6.4 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.6.3 above for a discretionary activity:

(a) the extent to which a service court can be provided which may not meet the standard above but still provides a useable outdoor area which meets the purpose of the service court.

(b) the existence of topographical or other site constraints;

(c) whether the residential unit is designed for a specific purpose not requiring an outdoor service court either of normal standards, or at all;

(d) details of any mitigation measures proposed.

5.4.7 GLARE / ARTIFICIAL LIGHTING

5.4.7.1 Introduction

Some building materials, particularly glass and unpainted corrugated iron, create glare in certain sunlight conditions which has the potential to detract from the amenity of adjoining areas and, in some cases, to be a hazard to motorists. Artificial lighting has a similar potential to glare, in creating a hazard and/or a detraction from amenities. In addition, because it is in operation during night-time, lighting can be a cause of disturbance to residential amenities. Lighting can be associated with security, advertising signs, sports fields, or to allow night-time work outside. Glare from buildings can be avoided or minimised by using screens or vegetation, non-reflective surfaces and orientation of walls to reflect glare away

from sensitive adjoining properties. Lights can be orientated or shaded in order that the spill of lighting remains within the site.

5.4.7.2 Standards

(a) In all Management Areas, buildings are to be constructed and finished in such a manner as to ensure reflection (glare) from the building surfaces does not reflect into adjoining properties or adversely affect the vision of motorists on a street or road.

(b) In all Management Areas, any exterior lights shall be installed, designed, shaded and arranged in order that the level of lighting measured on the boundaries of the site are no greater than 8.0 lux (lumens per square metre).

5.4.7.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.7.4 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.7.3 above for a discretionary activity:

(a) luminance, size and direction of the light source;

(b) luminance of the background against which the lighting is viewed;

(c) hours of operation;

(d) compatibility of building materials with the surrounding environment;

(e) whether the level of brightness from the surface or lighting is such that it could create a traffic hazard or interfere with the operation of activities on properties outside the site;

(f) whether the nature of activities on adjoining sites is such that any glare or lighting spill would not be noticeable and would not have a detrimental effect.

5.4.8 LANDSCAPE TREATMENT/SCREENING

5.4.8.1 Introduction

In this Plan, the provision of appropriate landscape treatment is a requirement in Industrial and Commercial Management Areas where an industrial or commercial activity is located adjacent to, or within 20 metres of, a Residential, Settlement or Rural Management Area. It is also required for car parks in all Management Areas,

and for any exterior storage areas related to any activity (including domestic storage/hobbies) which detract significantly from the amenities of the area. In addition, in respect of applications for resource consent in any Management Area, the Council may impose a condition requiring a landscape plan to be submitted, approved and implemented.

The purpose of landscape treatment (such as dense planting of trees and/or shrubs or fences) is often to provide a visual barrier in order to reduce the potential or perceived adverse effects of an activity on the amenity of the surrounding area. Such visual barriers can have a physical effect in terms of filtering wind-blown debris and screening unsightly buildings, storage areas or parking areas. Landscape treatment may also have a psychological effect which can make an activity (and its adverse effects) more acceptable to neighbours and the community. People often perceive, for example, that noise is reduced by vegetation even where little or no physical noise reduction can be measured.

In order for a natural visual barrier or screen (other than a fence) to be effective, it must:

- be located in the correct place;
- have sufficient depth to allow the vegetation to grow and provide an effective buffer;
- use plants that are suitable for the particular environment;
- have a maintenance programme in place to ensure that plants survive and are replaced if necessary (i.e. should any plants die);

5.4.8.2 Standards

(a) In Industrial and Commercial Management Areas, where an industrial or commercial activity is located adjacent to, or within 20 metres of a Residential, Settlement or Rural Management Area, effective screening of the activity from such areas shall be provided (if not already in existence) in accordance with the standards for landscape treatment/screening below.

(b) In all Management Areas, where an activity detracts in a significant way from the visual amenity of the surrounding area (including exterior storage associated with home occupations, hobbies or other activities), effective screening of the activity from the road and neighbouring properties shall be provided in accordance with the standards for landscape treatment/screening below;

(c) In all Management Areas, all car parking areas in excess of 4 spaces shall be provided with effective screening from any adjacent property used for residential or open space purposes and from the road (if screening is not

already in existence), in accordance with the standards for landscape treatment/screening below;

(d) Any landscape treatment/screening required by this Plan or by resource consent shall be completed within 6 months of any activity commencing on the site and shall be maintained in a satisfactory manner while the activity or development remains;

(e) Any landscape treatment/screening required by this Plan shall consist of a densely planted buffer strip, or a fence or wall constructed in brick, timber, concrete or stone, and shall be constructed, or designed to grow, to a height of not less than 1.8 metres (except for screening of car parking areas from the road which is exempt from the height requirement).

(f) Any landscape treatment/screening required by this Plan shall comply with the requirements of standard 5.4.10.2. Where compliance with the requirements of standard 5.4.10.2 prevent compliance with the requirements of standard 5.4.8.2, the requirements of standard 5.4.10.2 shall override the requirements of standard 5.4.8.2. No resource consent shall be required for an activity that cannot meet the requirements of standard 5.4.8.2 due to the obligation to meet the requirements of standard 5.4.10.2, provided all other relevant requirements of this plan for permitted activities are met.

5.4.8.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.8.4 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.8.3 above for a discretionary activity:

(a) effect on the amenity of the surrounding area;

(b) presence of existing natural or physical features;

(c) existence of any landscape treatment plan (including suitability of materials/plants, screening potential, timeframe for implementation, maintenance programme);

(d) any other mitigation measures proposed.

5.4.9 PEDESTRIAN AMENITY (VERANDAHS)

5.4.9.1 Introduction

In the commercial/retail areas of the District's towns, verandahs are an important part of the streetscape, particularly in the Main Streets. As well as being a design feature, verandahs provide shoppers and other pedestrians with protection from both sunshine and/or precipitation, as the case may be. The standards below aim to maintain and improve pedestrian amenity in the Commercial Management Areas of the District.

5.4.9.2 Standards

(a) Any new building(s) located along a section of road within a Commercial Management Area which is specified in Appendix 16 must include a veranda along its street frontage, except that this is not required where adjacent buildings on both sides do not have such verandas. For the avoidance of doubt, in respect of a new building development along the specified frontages, where an adjacent building on one side has a veranda, and the adjacent building on the other side does not have a veranda, a veranda is required.

(b) Verandas shall be not less than 2.6 metres above the footpath at their lowest point (including under veranda signs) and shall have a minimum horizontal clearance of 0.5 metres from the kerb line;

(c) Verandas shall be constructed so as to provide continuity with adjacent verandas.

5.4.9.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.9.4 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.9.3 above for a discretionary activity:

(a) whether the pedestrian amenity of shelter can be provided in another way to the same or similar level that the standards seek to achieve;

(b) the nature and location of the activity, and existing and potential pedestrian numbers;

(c) whether the adjacent buildings have, or are likely to have in the future, verandas;

(d) whether non-compliance with the standards would enable a veranda or other structure to be constructed which would achieve better harmony in design and character with an existing building which has architectural merit or historical significance.

5.4.10 SETBACKS

5.4.10.1 Introduction

As outlined in Section 5.4.4, "Height and Recession Plane Controls", this Plan includes a recession plane (height-to-boundary) rule to ensure that reasonable levels of amenity, privacy and daylight are maintained for properties adjacent to new developments in (or adjoining) Residential, Settlement and Rural Management Areas. The recession plane requirement also serves to ensure that most buildings are set back from boundaries, without having to impose a "minimum yard" requirement as such. There are, however, a number of cases where setbacks are appropriate for activities.

In relation to forestry, minimum setback distances from boundaries and residential uses on neighbouring properties are specified. The purpose is to maintain visual amenity, to avoid undue icing of roads in winter due to prolonged shading, and to act as a firebreak. Setback distances from roads and State Highways are also specified for forestry and other plantings in order to ensure that they do not have any adverse effect on the safe use and operation of roads and State Highways.
[Note: "Forestry" now falls within the ambit of "Plantation Forestry" as defined and regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.]

In relation to water bodies and the drainage network (public drains, lakes, rivers and streams) it is important that buildings and structures are set back for flood control and maintenance purposes. In some cases, reserves or easements in favour of the District or Regional Council are in place but where they are not, the setback of structures from drains and watercourses achieves a similar result.

5.4.10.2 Standards

(a) No forestry (except for a single or double row of protection or amenity forestry) shall be located within 40 metres of an existing residential dwellinghouse on an adjacent property, except that this distance may be reduced where the written approval of the owner and occupier of the dwellinghouse concerned is obtained.

(b) No forestry (except for a single or double row of protection or amenity forestry) shall be located within 10 metres of any property boundary (where the adjacent property is under separate Certificate of Title and different ownership) except that this distance may be reduced where the written approval of the owner and occupier of the land concerned is obtained.

(c) Forestry or other planting shall comply with the following standards:

(i) No forestry or other planting shall be planted or allowed to grow in a position which will prevent the driver of a vehicle from having a clear and unobstructed view of official traffic signs or signals, approaching or merging traffic or any corner, bend, intersection or vehicle crossing.

(ii) No forestry or other planting shall be planted or allowed to grow in a position that will reduce the effectiveness of road lighting.

(iii) In areas where ice can form on roads, no forestry or other planting shall be planted or allowed to grow in a position that will shade the carriageway of a state highway between the hours of 10 am and 2 pm on the shortest day of the year. This rule shall not apply where:

(a) The topography of the site is already preventing the direct access of sunlight onto the state highway.

(b) The forestry or vegetation existed at the time this Plan is operative.

(iv) Forestry and other planting shall be maintained in a condition which:

(a) Prevents damage to road surfaces, road structures, or drainage devices:

(b) If blown over or felled would not fall on the state highway carriageway or be a danger to passing vehicles.

***[Note**: Written approval of any proposed forestry or other planting from the road controlling authority, being the NZTA in relation to state highways and the Tararua District Council in relation to all other roads, shall be deemed to show compliance with this standard.]*

(d) Where written approval is not obtained in (a) above, the planting of forestry which does not comply with the specified setbacks shall be a discretionary activity.

(e) No forestry (except protection and amenity forestry) shall be located within 5 metres of the bank of a watercourse with a bed width of less than or equal to 3 metres or within 10 metres of the bank of a watercourse with a bed width of 3 metres or more.

(f) No building or other structure is permitted within 20 metres of each side of the centre-line of high voltage electricity transmission lines which are designed to operate at or over 110kV.

(g) No building or other structure is permitted within 20 metres of any open drain that is under the control of the Tararua District Council, the Manawatu-Wanganui Regional Council, or the Wellington Regional Council, unless the written approval of that controlling authority is obtained.

(h) No building or structure is permitted within 20 metres of each side of the centre-line of high pressure gas transmission pipelines which are designed to operate at or over 2000 kPa without the approval of the operator of the pipeline.

(i) No building or structure shall be located within 20 metres of the nearest river, stream, lake or watercourse, unless the written approval of the relevant Regional Council is obtained. The distance shall be measured as follows:

- from the edge of the bank contiguous with the bed of the river or lake;

or, where there is no bank,

- for any river, from the limit of the bed covered by the annual fullest flow;
- for any lake, from the limit of the bed covered by the annual highest water level.

*[**Note:** Lakes, rivers and streams are as defined in the RMA.]*

(j) No dwelling house or visitor accommodation shall be located within the dairy factory noise control boundary shown in Figure 4.1.2.2A unless:

- The site on which the dwelling house or visitor accommodation is subject to a no-complaints covenant in favour of the owner/occupier of the dairy factory permitted by rule 4.1.2.2(a) of this Plan, and
- Any habitable room in the dwelling or visitor accommodation is protected from noise arising outside the building by ensuring the external sound insulation level achieves the following minimum performance standard:

  $D_nT,w + C_{tr} > 35$ dB

  Where a bedroom, being a room intended for the primary purpose of sleeping, with openable windows is proposed, a positive supplementary source of fresh air ducted from outside is required at the time of fit-out. The supplementary source of air is to achieve a minimum airflow rate of 7.5 litres per second per person.

  Compliance with this performance standard shall be achieved by ensuring habitable rooms are designed and constructed in a manner that accords with an acoustic design certificate signed

by a suitably qualified acoustic engineer stating the design as proposed will achieve compliance with the above performance standard.

5.4.10.3 Non-compliance with standards

Where an activity cannot meet the standards specified above, the activity shall be deemed to be a discretionary activity, requiring a resource consent.

5.4.10.4 Criteria for assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.10.3 above for a discretionary activity:

(a) the extent to which the function of the drain or watercourse can be continued without significant impediment to its function(s), including cleaning and other maintenance works;

(b) the likelihood of an esplanade reserve, strip or access strip being formed in the future;

(c) whether there are other mitigation measures proposed, or agreements able to be entered into, which will allow the structure to be established without impeding the functions of the drain or watercourse or any necessary maintenance from being carried out;

(d) any topographical or physical constraints;

(e) whether the potential adverse effects of any reduction in a setback are significant (including visual impact, fire risk, shading, obstructions and, where relevant, water quality effects) and whether these would be offset by any positive effects;

(f) the guidelines in Transit New Zealand's publication "Guidelines for planting for road safety" (August 1991);

(g) the recommendations of the Regional Council or other relevant agency.

5.4.11 ENERGY EFFICIENCY AND CONSERVATION

5.4.11.1 Introduction

One of the Council's policies [2.4.3.2(d)] is to "require developers to take into account principles of energy conservation in the design and development of subdivisions". The standards (rules) in section 5.2.3 'Subdivision Standards' of this

Plan require that each lot on a plan of subdivision be designed to take into account the principles of optimum energy efficiency and solar energy gain in relation to the size and shape of each proposed lot and the design and orientation of the subdivision as a whole.

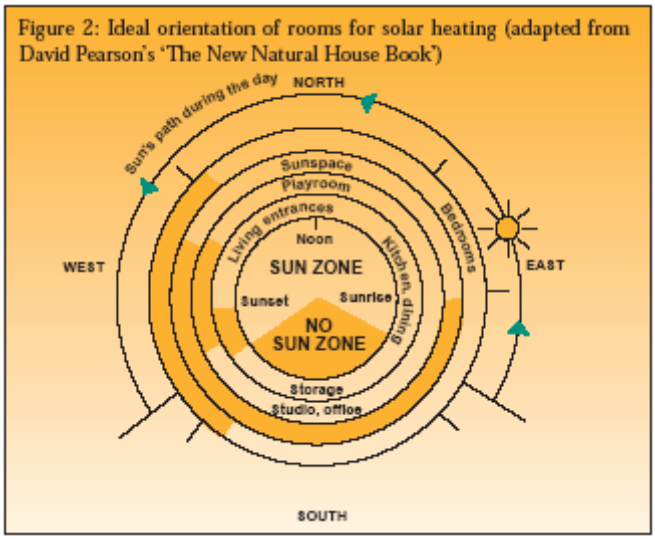
The standards of this section are designed to give effect to Objective 2.4.3.1 and Policy 2.4.3.2(d) in relation to the development stage of an approved subdivision or the development and use of land for permitted activities and buildings. All applications for building consent for buildings to be occupied are therefore to be assessed against the standards in rule 5.4.11.2 below.

Energy efficiency, conservation and the use of renewable energy (such as passive solar) have a direct impact on health and social wellbeing and amenity values and indirectly lessen the impact of climate change. The Council is committed to encouraging energy efficiency and the utilisation of renewable energy. In Residential and Settlement Areas, in particular, this commitment applies to enabling and ensuring forms of development which incorporate sustainable and energy efficient building design principles. In particular, those based on simple energy efficiency design principles such as orientation to the sun, and maximisation of passive solar gain (i.e. passive solar design) in buildings. Ensuring a building is well insulated is the other key to maximising solar gain and thereby reducing space heating costs. Central Government and the Council will encourage builders to design for conservation of energy use by means of incentives to insulate buildings to an appropriate standard and to optimise solar gain by means of design and building orientation respectively.

5.4.11.2 Standards

(a) Any new habitable building shall be located on a site and designed in such a way as to maximise its passive solar gain between 10:00 a.m. and 2:00 p.m. in winter and, in particular, on the shortest day. It must be demonstrated that the design and location of any new habitable building has taken into account the following passive solar design principles:

(i) The living areas are located on the northern side of the building and are generally in accordance with the position of rooms as shown in Figure 2 below:



SOURCE: Passive Design for New Zealand Homes. Energy Efficiency and Conservation Authority, Energy-Wise Renewables Information Sheet.

(ii) Sufficient land area is provided to the south of the building to enable planting, earth mounding, or fencing for the purpose of protecting and sheltering the building from southerly winds without infringing upon the height and recession plane requirements of the relevant zone in the Plan.

*[**Note**: Any new habitable building must also be constructed and insulated to the standard required by the New Zealand Building Code, Clause H1 Energy Efficiency, in order to obtain the necessary building consent.]*

5.4.11.3 Non-compliance with standards

Where it cannot be demonstrated that a habitable new building is able to meet the standards specified above (i.e. that all the specified principles have been incorporated into the design and layout of the building), the building shall be deemed to be a controlled activity, requiring a resource consent.

5.4.11.4 Criteria for assessment

In addition to the criteria specified in Section 5.2.4.5(a)(i) and (ii) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.11.3 above for a controlled activity consent:

(a) Whether it has been demonstrated that (passive) solar gain has been optimised in respect of the particular building and its location on the site, notwithstanding that all of the passive solar design principles in 5.4.11.2(a) have not been fully accounted for in its design and location.

5.4.12 LOCAL EYESORES (DETRIMENTS TO AMENITY VALUES)

5.4.12.1 Introduction

Throughout the District, derelict buildings, vehicles and sites which are unsightly and widely considered to be community eyesores can be deemed to be detracting from "amenity values". One of the primary objectives of the District Plan is "to ensure a high level of environmental quality and amenity" in both the urban and rural areas of the district (see objectives 2.2.4.1 and 2.3.4.1). The provisions of the Plan seek to achieve a balance between maintaining the amenity values of an area in the public interest and not unduly constraining the property rights of individuals to develop their own sites in an environmentally acceptable manner. This is a fine balance and a qualitative one, in the sense that one person's eyesore may be another person's 'thing of beauty'. That being the case, the following standards are designed to give effect to Objectives 2.2.4.1 and 2.3.4.1 and limit the extent to which derelict buildings, vehicles and sites may become community eyesores.

5.4.12.2 Standard

Any activity permitted by this Plan, in any Management Area, is only permitted provided the activity is not carried out on a derelict site.

***[Note:** see the definition of '**derelict site'** in this Plan.]*

5.4.12.3 Non-Compliance with Standard

Where an activity cannot meet the standard specified in 5.4.12.2 above, the activity shall be deemed to be a discretionary activity, requiring resource consent. An application for such a consent shall be publicly notified.

5.4.12.4 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following in respect of any application under 5.4.12.3 above for a discretionary activity:

(a) the degree and significance of any adverse effect on the amenity values of the locality;
(b) the existence of any proposed screening and/or landscape treatment plan (including suitability of materials/plants, screening potential, timeframe for implementation, maintenance programme);
(c) any other avoidance or mitigation measures proposed.

5.5 Heritage and Natural Features

5.5.1 INTRODUCTION

Part II of the RMA requires territorial authorities to recognise and provide for matters of national importance which include the protection of outstanding natural features and historic heritage from inappropriate subdivision, use and development. To achieve this, Section 2.6 of this District Plan establishes policies which aim to achieve the protection of:

- heritage features (including buildings, monuments, structures, places/sites, waahi tapu and archaeological sites);
- significant natural features and landscapes;
- significant individual trees and groups of trees;
- reserves (administered by either the Tararua District Council or the Department of Conservation)

Significant heritage and natural features in the District (i.e. those which warrant regulatory protection) have been identified and included in Schedules in the appendices to this District Plan. The rules in this section of the Plan apply to those heritage and natural features which are included in the Schedules (Appendices 2, 3 and 14).

These rules complement the non-regulatory methods of achieving the goals and objectives set out in Section 2.6. The purpose of the rules is to ensure that those resources of heritage or natural value that have been identified in the Schedules, are protected from the adverse effects of development. Protection will be achieved by rules which classify activities such as minor repairs, modification, damage, removal or destruction of a feature as either a "permitted", "controlled", "discretionary" or "prohibited" activity. This effectively means that adverse effects can be avoided, remedied or mitigated and that appropriate conditions for the protection of the specified feature can be placed on any consent granted.

Under the RMA, the Council is a heritage protection authority and, in that role, it shall advocate heritage protection within the District (refer to section 2.6.3 of the Plan for details). Statutory protection of significant heritage features can be achieved by way of a Heritage Protection Order (refer Section 7.4.4).

Under the Heritage New Zealand Pouhere Toanga Act 2004, all archaeological sites whether recorded (and therefore noted in this plan) or unrecorded are

protected and the consent of Heritage New Zealand is required before any work can be undertaken on these sites.

Within the Tararua District are a number of reserves and open spaces which contribute to the amenity of the District. Reserves in the District are the responsibility of either the Department of Conservation or, to a lesser extent, the Council. In many cases the reserves are subject to legislative controls prescribed through other Acts such as the Reserves Act 1977.

In accordance with Policy 6-1 of the MWRC's One Plan, the Regional Council is responsible for developing objectives, policies and methods (including rules) for maintaining and protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna throughout the Region, including the Tararua District.

5.5.2 CLASSIFICATION OF SCHEDULED FEATURES

The District Plan rules relating to heritage resources and natural features have been formulated to provide differing levels of protection. Two categories of protection are used in this Plan. Category A provides the highest level of protection and Category B provides a moderate level of protection, (refer to Table One for a summary of the Plan's heritage and natural features rules). In respect of heritage features, Category A includes items registered as Category I by Heritage New Zealand (under Section 22 of the Heritage New Zealand Pouhere Toanga Act 2004), while Category B includes items registered as Category II by Heritage New Zealand. Category B also includes recorded archaeological sites identified by the Department of Conservation and the New Zealand Archaeological Association Filekeeper, as well as other heritage items of local importance identified by the community. It should be noted that additions to, or removal of, items listed in the Schedules in Appendices 2, 3 and 14 requires a Plan Change.

5.5.3 RULES APPLYING TO ACTIVITIES AFFECTING, OR WITHIN, ANY AREA IDENTIFIED IN APPENDIX 2, 3 OR 14 OF THIS PLAN

5.5.3.1 Heritage Features (in Appendix 2)

(a) Permitted activities

(i) Minor repairs to any Category A or B heritage item, providing the activity does not alter the size, scale or layout of the item. *[**Note**: refer to definition of "minor repairs" in Part 6.]*

(b) Discretionary activities (refer to 5.5.3.6 below for criteria for assessment)

(i) Modification (excluding minor repairs) of any Category A or B heritage item

(ii) Removal, damage or destruction of any Category B item

(iii) Removal or destruction of any Category A item where necessary to ensure the health and safety of the community.

(c) Prohibited Activities

(i) Any activity involving the removal, damage, or destruction of any Category A item, except where specified as a discretionary activity.

5.5.3.2 Significant Trees (as listed in Schedule 3.1 in Appendix 3)

(a) Permitted activities

(i) Maintenance to any Category A or B item

(b) Discretionary activities (refer to 5.5.3.6 below for criteria for assessment)

(i) Modification to any Category A item;

(ii) Modification or damage to, or destruction of, any Category B item.

(c) Non-complying activities

(i) Damage to, or destruction of, any Category A item.

For the purposes of rule 5.5.3.2, “maintenance” means any work undertaken in relation to one or more of the following:

- Removal of diseased, dead or dying vegetation;
- Removal or clearance for the purpose of flood control activities undertaken by or approved by a local authority;
- Removal or clearance where necessary to maintain or restore existing essential services or emergency works to avoid injury to persons or damage to property;
- Removal of exotic species;

- Activities carried out subject to and in accordance with any specific covenant or other legal agreements entered into with the District Council, Regional Council, Department of Conservation or QEII Trust.

And "modification" includes:

- timber and firewood extraction;
- subdivision.

and "damage and destruction" includes:

- clearance of indigenous vegetation;
- dumping of fill or waste;
- burning of vegetation;
- earthworks with powered machinery.

*[**Note:** These provisions cover only listed items and areas. Provisions for areas of indigenous vegetation not specifically listed are detailed in Section 5.5.4.]*

5.5.3.3 Natural Features and Landscapes (as listed in Schedule 3.3 of Appendix 3)

Where an item listed in Schedule 3.3, Appendix 3, is also a reserve, or part of a reserve, which is listed in Appendix 14 (Schedule of Reserves), the rules applying to reserves in 5.5.3.4 shall prevail over the rules below.

(a) Permitted activities

(i) Maintenance to, or within, any Category A or B item

(b) Discretionary activities (refer to 5.5.3.6 below for criteria for assessment)

(i) Modification to any Category A item;

(ii) Modification or damage to, or destruction of, or within, any Category B item.

(c) Non-complying activities

(i) Damage to, or destruction of, or within, any Category A item.

*[**Note**: For the purpose of this rule, "modification" refers to an activity that will affect the values identified in Schedule 3.3 of this Plan.]*

5.5.3.4 Reserves (in Appendix 14)

(a) Permitted activities

(i) Activities permitted under any Reserve Management Plan, or under the provisions of the Management Area in which the reserve is located provided that prior written approval has been obtained from the organisation responsible for administering the reserve.

(b) Discretionary activities (refer to 5.5.3.6 below for criteria for assessment)

(i) Any other activity

Table One: Summary of rules applying to any activity within an area which is Identified in Appendix 2, 3 or 14 of this Plan

	CATEGORY A	CATEGORY B
HERITAGE FEATURE (Appendix 2)	**Permitted** Minor repairs **Discretionary** Modification; Removal or destruction where necessary to ensure health and safety of community **Prohibited** Removal, damage or destruction	**Permitted** Minor repairs **Discretionary** Removal, damage, modification or destruction.
SIGNIFICANT TREES (Schedule 3.1 in Appendix 3)	**Permitted** Maintenance **Discretionary** Modification **Non-complying** Damage or destruction	**Permitted** Maintenance **Discretionary** Modification, damage or destruction
NATURAL FEATURE OR LANDSCAPE (Schedule 3.3 in Appendix 3)	**Permitted** Maintenance **Discretionary** Modification **Non-complying** Damage or destruction	**Permitted** Maintenance **Discretionary** Modification, damage or destruction

	CATEGORY A	CATEGORY B
RESERVES (Appendix 14)	Activities permitted under any Reserve Management Plan, or under the provisions of the Management Area in which the reserve is located provided that prior written approval has been obtained from the organisation responsible for administering the reserve. **Discretionary** Any other activity	

5.5.3.5 Information requirements applying to activities adjacent to, or affecting, any feature identified in Appendix 2, 3 or 14 of this plan

Where any activity is located on land adjacent to an area or item identified in Appendix 2, 3 or 14, or would otherwise affect such an item, the provisions of the relevant Management Area shall apply. Where those provisions require a resource consent application to be made, the Assessment of Environmental Effects shall include (in addition to the information requirements specified in section 7.3.2 of this Plan) the following information:

(a) a statement outlining the consultation that has occurred with the person or body responsible for managing the listed feature. This statement shall include the views of those parties consulted, detail any agreements made, and/or any areas of concern highlighted by the interested parties;

(b) an explanation of the nature of the heritage resource or natural feature affected, including plans and photographs;

(c) a statement as to whether the activity will affect the whole or part of the heritage resource or natural feature;

(d) where it is likely that a significant adverse effect will result, a description of any possible alternative location or methods of undertaking the activity;

(e) the preferred option for protecting the heritage resource or natural feature;

(f) a statement of the actual and potential effects of the proposal on heritage and/or natural values.

5.5.3.6 Criteria for Assessment

In addition to the criteria specified in section 7.3.10(a) of this Plan, the Council shall have regard to the following matters when assessing applications for a discretionary activity pursuant to the above heritage and natural features rules:

(a) Heritage items

(i) the nature of the proposed activity, and any actual or potential effect on the heritage item or its surrounding area that would arise as a result of the activity;

(ii) the original reasons for inclusion of that item in the District Plan Schedule, the registration (if applicable) and the reasons for this registration of the heritage item under the Heritage New Zealand Pouhere Toanga Act 2004 ;

(iii) the assessment of environmental effects submitted with an application for resource consent;

(iv) the recommendations made by Heritage New Zealand and local conservation groups;

(iv) the provisions of any relevant conservation plan, heritage inventory, or iwi management plan;

(vi) proposed mitigation measures to avoid any detrimental effect on the heritage value of the item;

(vii) whether the item can be resited to another location;

(viii) whether the item is structurally unsound or has the potential to cause damage or risks to the surrounding infrastructure or to human health and safety;

(ix) whether the costs to the community or individual of maintaining the item are shown to significantly outweigh the community and/or environmental benefits of maintaining the item;

(x) methods, techniques and materials to be used in the work proposed;

(xi) landscape works, parking areas and location of vehicle access points;

(xii) any proposed signs, banners, flags, exterior lighting and any other fixture which may affect the characteristics for which the feature was scheduled;

(xiii) whether there is a need for the Council to obtain photographs and exact details as to the state and location of the item, prior to any proposed work commencing;

(xiv) the degree to which a proposal reflects the conservation principles of the ICOMOS (National Committee of the International Council on

Monuments and Sites) NZ Charter for the Conservation of Places of Cultural Heritage Value;

(xv) the significance of the item or place to tangata whenua.

(b) Significant tree, group of trees, vegetation or habitat

(i) the nature of the proposed activity, and any actual or potential effect on the natural feature that would arise as a result of the activity;

(ii) the original reasons for inclusion of that item in the District Plan Schedule;

(iii) the assessment of environmental effects submitted with an application for resource consent;

(iv) proposed mitigation measures to avoid any detrimental effect on the natural values of the vegetation and/or habitat;

(v) whether the costs to the community or individual of maintaining the item are shown to significantly outweigh the community and/or environmental benefits of maintaining the item;

(vi) whether the tree(s) or vegetation is:

- dying or dead, or at risk of falling over wholly or in part
- badly storm damaged or vandalised
- causing adverse effects on other parts of the infrastructure of the District, e.g. restricting motorists' sight lines, encroachment onto a road or footpath, encroaching on overhead power lines, or disturbing underground pipes or lines
- likely to be adversely affected by other works designed to enhance amenity and environmental quality, e.g. road works
- in the way of a proposed state highway deviation, realignment or widening, where there is no practical or economic way the alignment of the proposed road can avoid the tree/vegetation, or when the tree/vegetation cannot be replanted.

(c) Natural features or landscapes

(i) the nature of the proposed activity, and any actual or potential effect on the natural feature or landscape that would arise as a result of the activity.

(ii) the reasons in Schedule 3.3 of Appendix 3 for inclusion of that item in the District Plan Schedule.

(iii) the assessment of environmental effects submitted with an application for resource consent.

(iv) proposed mitigation measures to avoid any detrimental effect on those values of the natural feature or landscape for which it is significant.

(v) whether the costs to the community or individual of maintaining the item are shown to significantly outweigh the community and/or environmental benefits of maintaining the item.

(d) Reserves

(i) the nature of the proposed activity, and any actual or potential effect on the reserve that would arise as a result of the activity.

(ii) the assessment of environmental effects submitted with an application for resource consent.

(iii) the provisions of any relevant reserve management plan, conservation plan or iwi management plan.

(iv) the opinions of the organisation responsible for administration of the reserve.

(v) proposed mitigation measures to avoid any detrimental effect on the value of the reserve.

(vi) the safety, health and wellbeing of the community.

(vii) landscape design and site layout, including fences, screen planting, and lighting.

6 INTERPRETATION PART 6

6.1 Definitions

Unless otherwise defined in this Plan, the following definitions shall apply for the purposes of administering the District Plan:

Act means the Resource Management Act 1991.

Accessory building means any building or part of a building, or activity, which is ancillary and secondary to any lawful existing activity on a site.

Accessway means land which provides physical and legal access for one or more properties and which is held by an individual owner or in-common, and it includes entities such as a driveway, right-of-way, private way and common access lot.

Allotment means an allotment as defined in Section 218 (2) of the RMA.

Amenity forestry refer to definition of "Protection and amenity forestry"

Amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

Antenna means any device including any dish, panel, yagi, whip or aerial that receives or transmits radio communication or telecommunication signals.

Bed, in relation to a waterbody, has the same meaning as defined in Section 2 of the Resource Management Act 1991.

Bulk retail means the use of land or premises for retail or wholesale sales of bulky goods or other goods where a large amount of space is required, including, but not limited to, hardware and D.I.Y centres, garden centres, vehicle showrooms and yards and other low-density retail and wholesale activities.

Car equivalent movement is defined as follows:

- 1 car movement to and from the site = 2 car equivalent movements
- 1 truck to and from the site = 6 car equivalent movements
- 1 truck and trailer to and from the site = 10 car equivalent movements

provided that a single residential dwelling is deemed to generate 8 car equivalent movements per day (24-hour period).

Commercial forestry means forestry principally for commercial gain. It does not include protection and amenity forestry (refer also to definitions of "forestry" and "protection and amenity forestry").
[Note: "Forestry" now falls within the ambit of "Plantation Forestry" as defined and regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.]

Community business means an activity serving the needs of the local area or neighbourhood as its *primary* function, from premises having a gross floor area of less than 150m², including dairies and other small shops/businesses.

Community facility means the use of land or buildings for the provision of a community service to the general public and includes educational facilities (including, but not limited to, kohanga reo and childcare centres), hospitals, medical facilities and clinics, places of worship, community halls, libraries, police and fire stations.

Controlled activity means an activity which the Plan specifies as a controlled activity and which is allowed only if a resource consent is obtained from the Council in respect of that activity. The Council shall assess the activity only in respect of those matters specified in the Plan over which it has retained control and it shall grant consent subject to conditions relating only to the specified matters.

Council means the Tararua District Council or any committee, sub-committee or person to whom the Council's powers, duties and discretion under the provisions of the RMA or this Plan has been delegated pursuant to the provisions of the RMA or the Local Government Act 2002.

Crossing place means the point on the property boundary where there is authorised access to a legal road.

Derelict site means any land which detracts, or is likely to detract, to an observable, significant degree from the amenity, character or appearance of land in the neighbourhood of the subject site because of -

(a) the existence on the subject site of buildings or structures which are in a ruinous, derelict or dangerous condition, or
(b) the neglected, unsightly or objectionable condition of the land or any structures on that land, or
(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris, waste, or more than one derelict vehicle visible beyond the site, except where the presence, deposit or collection of such litter, rubbish, debris, waste or derelict vehicles results from the exercise of a right conferred by the District Plan or a resource consent.

Derelict vehicle means any car, truck, bus, tractor or other vehicle which is not currently registered or warranted as required by law and which is unable to be driven under its own power.

Designation means a provision made in a district plan to give effect to a requirement made by a requiring authority under Section 168 or Section 168A of the Resource Management Act 1991, or Clause 4 of the First Schedule of the Act.

Development means any subdivision or any proposed activity to be undertaken on land, whether or not a resource consent is required.

Discretionary activity means an activity which the Plan specifies as being allowed only if a resource consent in respect of the activity is obtained from the Council, which must exercise its discretion whether or not to grant consent in accordance with the criteria specified in the Plan and the RMA.

Domestic scale electricity generation from renewable energy sources means generating electricity on a site to meet the needs of the users of that site and includes the export from the site of any surplus electricity to a local electricity distribution network.

Dwellinghouse means a self-contained detached residence designed for, or occupied exclusively by, one household.

Energy conservation means a reduction in energy use.

Energy efficiency means a change to energy use that results in an increase in net benefits per unit of energy.

Entertainment and sports premises means any land or buildings used by the public, or members of a club, for indoor recreation, entertainment or sports, and includes premises licensed under the Sale of Liquor Act 1989, theatres, cinemas, amusement galleries, gymnasiums, sports clubs, saunas and premises controlled by the Prostitution Reform Act 2003.

External sound insulation level means the standardised level difference (outdoor to indoor) and is a measure of the airborne sound insulation provided by the external building envelope (including windows, walls, ceilings and floors where appropriate) described using *D*n*T,w* + Ctr as defined in ISO 717-1:1996 *Acoustics – Rating of Sound Insulation in Buildings and Building Elements* using spectrum No.2 (A-weighted traffic noise spectrum) and ISO: 140-5: 1998 *Acoustics – Measurement of Sound Insulation in Buildings and of Building Elements – Part 5: Field Measurements of Airborne Sound Insulation of Façade Elements and Façades*.

Factory farming means the production of plant or animal produce, or the keeping of plants or animals, where the process is carried out largely indoors or in a restricted space and which is not dependant on the soil characteristics of the site on which it is situated and includes for example, poultry farms, pig farms where groundcover is not maintained, apiaries, rabbit farms, fitch farms, opossum farms,

mushroom farms, feedlots for commercial livestock such as cattle, and animal boarding establishments such as kennels and catteries. It does not include glasshouse production and nurseries for pot grown plants where production is dependent on the soils of the site, calf-rearing where the calves are inside or in a restricted space only for the purpose of rearing (ie for only part of their lifespan), the wintering of farm animals in sheds or on pads and the stabling of horses.

Factory shop means a retail shop on the same site and secondary and ancillary to a permitted industrial use selling only items manufactured, processed, repaired or serviced on the site, or items reasonably associated with the principal use such as parts and accessories.

Farming means the use of land and accessory buildings for the purposes of growing vegetative matter or raising and/or breeding animals, and includes pastoral farming, dairy farming, horticulture, glasshouse production, tree or plant nurseries, seed orchards, vineyards, cropping and horse breeding and training where production primarily depends upon the soil characteristics of the site. Farming does not include factory farming or goat farming (refer separate definitions).

Forestry means the planting, replanting, management and harvesting of forests or tree plantations for soil conservation, catchment management, production of timber, or other forest produce, recreational, aesthetic, or scientific purposes.
[Note: "Forestry" now falls within the ambit of "Plantation Forestry" as defined and regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.]

Forestry Development Notice means a notice submitted to Council within one year of the completion of planting of a commercial forest in a continuous block of 10 hectares or more, and which contains the following information:

- the legal description and the area of the land planted in forestry;
- a site plan showing the area planted, any significant stands of indigenous trees/bush (and protective buffer areas as appropriate) and any known or potential archaeological remains;
- the species of trees planted;
- general details of forestry management which includes site preparation, stocking, timing of tending (pruning and thinning), weed control, fire control and protection, and measures to protect riparian margins adjacent to waterbodies;
- approximate timetable (years) for future harvesting of trees;
- date (generally when trees are about 15 years old) when the forest owner (or nominee) will advise the Council of the anticipated transportation routes that will be used for transporting timber, logs and machinery during harvesting.

General business means any business activity, including retail, wholesale, food service (eat in or takeaway), office and service activities, but excluding entertainment and sports premises and industrial (manufacturing and processing) activities.

Goat farming means the keeping of more than 10 goats.

Hazardous facilities means activities involving hazardous substances, sites where hazardous substances are stored or handled or which might be contaminated by hazardous substances, and installations containing hazardous substances, including vehicles for their transport. A hazardous facility does not include:

- the incidental use and storage of hazardous substances in minimal domestic scale quantities (i.e. household cleaners, swimming pool chemicals, lawn mower fuel and garden sprays);
- fuel in motor vehicles, boats, farm machinery and other small engines;
- retail outlets for hazardous substances used on a domestic scale (i.e. dairies, supermarkets, hardware shops, pharmacies, home garden centres);
- gas and oil pipelines;
- trade waste sewers and sewerage waste treatment and disposal facilities.

Hazardous substances as defined in Part 1 Section 2 of the Hazardous Substances and New Organisms Act 1996.

Healthcare facilities means facilities used by one or more health professionals (including dentists) for the purpose of providing a health care service to the public and includes medical laboratories but does not include a healthcare institution, such as a hospital, in which there is overnight accommodation of patients.

Height, in relation to a building means the vertical distance between the actual ground level and the highest part of the building (excluding aerials, lightning rods, flagpoles, chimneys and other attachments to the building not exceeding 0.2 metres in diameter or width) immediately above that point.

Heritage Protection Authority has the same meaning as defined in Section 187 of the RMA.

Heritage Resource means any place, site, structure, monument or area that the Council, in consultation with the community, has identified in the District Plan as significantly contributing to the amenity of the District.

Household means the person(s) inhabiting a dwellinghouse or household unit on a permanent basis including:

- Family occupancy (including extended families)
- A group of people in a domestic situation (e.g. flats)

Home occupation means any business, profession, craft or hobby which is undertaken from a site or premises used primarily for residential use and which does not give rise to significant adverse environmental effects.

Industry (and industrial activity) means premises used for the manufacturing, processing, packing, storage, distribution or servicing of goods, materials, equipment or other products.

Infrastructure means any of the following:

(a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:

(b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:

(c) a network of the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:

(d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person-

  (i) uses them in connection with the generation of electricity for the person's use; and

  (ii) does not use them to generate any electricity for supply to any other person:

(e) a water supply distribution system, including a system for irrigation:

(f) a drainage or sewerage system:

(g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:

(h) facilities for the loading or unloading of cargo or passengers transported on land by any means:

(i) an airport as defined in section 2 of the Airport Authorities Act 1966:

(j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:

(k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:

(l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166".

Loading space means a space on a site suitable and available for fuelling or loading and unloading of commercial vehicles.

Lot means "allotment" (refer above).

Marae means a defined area of land set apart for the common use of a Maori community and may include a complex of buildings such as a meeting house, dining hall, accommodation, ablution block, urupa and other community, recreational and educational facilities associated with the marae.

Minor repairs, in relation to any heritage item (such as an historic building), means the repair of materials by patching, piecing in, splicing and consolidating existing materials and including replacement of minor components such as individual bricks, cut-stone, timber sections, tiles and slates where these have been damaged beyond reasonable repair or are missing. The replacement should be of the original or similar material, colour, texture, form and design as the original it replaces and the number of components replaced should be substantially less than existing.

Natural Hazard Area (Flooding) means land at risk of inundation during a 0.5% Annual Exceedance Probability (1 in 200 years) flood event."

Network utility means an activity or operation of a network utility operator (see below) and generally includes those facilities which provide an essential service to the public in terms of telecommunications, radiocommunications, electricity and gas reticulation, water supply (including irrigation), sewerage reticulation, sewage treatment and disposal, drainage and stormwater systems, roads, railway and airports. Network utilities also include navigational aids and meteorological facilities.

Network utility operator has the same meaning as defined in Section 166 of the RMA.

No-complaints covenant means a restrictive covenant registered on the Title to a site (“Site”) by the landowner or a binding agreement by that landowner (“covenantor”) to covenant, that:

(i) Is in a form agreed to by and in favour of the owner/occupier of a specified activity or site existing at the time at which the agreement to covenant is entered into ("existing activity");

(ii) Is binding on any successors in title;

(iii) Requires that the owner/occupier of the Site not complain about or otherwise seek to limit or restrict (directly or indirectly) any effects generated by the lawful operation of the existing activity, including any effects that could be generated as of right at the time at which the agreement to covenant is entered into; and

(iv) Unless in conflict with (iii) and unless otherwise agreed between the covenantor and the owner/occupier of the existing activity, does not require the covenantor to forego any right to lodge submissions in respect of any resource consent application or plan change in relation to the existing activity.

Non-complying activity is an activity which contravenes a rule in the District Plan and is allowed only if a resource consent is obtained from the Council in respect of that activity.

Notice of Requirement means a notice lodged with a territorial authority by a Requiring Authority, which has financial responsibility for a public work or project, for a designation:

(a) for a public work

(b) in respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe and efficient functioning or operation of a public work.

A Notice of Requirement should be made in the prescribed form (i.e. Form 18 in the Resource Management (Forms, Fees and Procedure) Regulations 2003), or to like effect.

Notional boundary means a line 20 metres from any side of a dwelling, or the legal boundary where this is closer to the dwelling.

Plan means the Tararua District Plan, unless otherwise stated.

Prospecting means the use of standard geological survey techniques (including geophysical surveys, seismic surveys, geochemicals surveys, grid and line surveying) to assess the mineral potential of an area, in accordance with a Prospecting or Exploration Permit under the Crown Minerals Act 1991. It does not include detailed exploration (i.e. bulk sampling, drilling, trenching or tunnelling) or mining activities.

Protection and amenity forestry means forestry principally for river protection (including management of water quality and/or mitigation, avoidance or

remediation of the adverse effects of land use on rivers), erosion control, soil stabilisation, visual and recreational use, and the provision of shelter and general amenity, and includes the sale of timber from thinning or replacement operations.

Public work means every work which the Crown or any local authority is authorised to construct, undertake, establish, operate, or maintain, and every use of land which the Crown or any local authority is authorised to establish and continue, by or under this or any Act (including any existing or proposed public reserve within the meaning of the Reserves Act 1977 and any National Park purposes under the National Parks Act 1980); and includes anything required directly or indirectly for any such work or use.

Renewable energy has the same meaning as defined in Section 2 of the RMA.

Requiring Authority has the meaning set out in Section 166 of the RMA.

Residential unit means a self-contained dwelling house, flat, or unit which is used primarily for permanent or long-stay residential activity and may be either attached to, or detached from, other activities or residential units on the site.

Residential accommodation means the use of any land or premises primarily for permanent or long-stay residential activity and, in addition to dwellinghouses and other residential units, it includes retirement and convalescent homes. It does not include those activities included under the definition of "visitor accommodation".

Restaurant means any premise, including any land, building or part of a building, where meals are sold to the public for consumption on site.

Restricted Access Road means any road listed in Appendix 5: Road Hierarchy as a road to which access is restricted.

Riparian margin means a strip of land of varying width adjacent to a water body which contributes to the natural functioning, quality and character of the water body, the land margin, and their ecosystems. Riparian planting or riparian vegetation is vegetation in a riparian margin that help to mitigate adverse effects from the use or development of adjacent land, such as contaminated stormwater (run-off) discharges.

RMA means the Resource Management Act 1991, including all subsequent amendments to that Act.

Road reserve means the area of land situated between the edge of the formed section of a legal road and its boundary with adjoining land.

Rural industry means industry which serves or supports the rural area or has some specific feature which justifies a rural location, and includes, but is not limited to, operations for the processing or packing of agricultural or horticultural produce

or by-products, stock and saleyards, and rural transporting and agricultural contractors yards.

Rural selling place means any land, building or part of a building that is used for the sale of fruit, vegetables, or other natural products produced or grown on the site, or the products of home occupations produced or created on the site. Where the purchaser harvests the produce (i.e. "pick your own" activities) the rural selling place means any land, building or part of a building in which such produce is weighed, packaged or sold.

Sign means any name, figure, character, outline, display, notice, placard, delineation, poster, handbill, advertising device or appliance, or any other thing of a similar nature, which is designed to attract attention for the purpose of directing, identifying, informing or advertising. A sign includes any frame, background, structure or support and shall also include any of the foregoing things when displayed on a vehicle.

Site refers, as appropriate in the circumstances, to:

(a) An area of land, comprising one or more lots, which is contained in a single Certificate of Title; or

(b) An area of land, comprising one or more lots, which contain a proposed or existing development or land use.

Soil conservation and river control works means works undertaken for the mitigation of soil erosion or flood hazards, including any associated structures and construction and maintenance activities.

Special purpose lot means an allotment created for any of the following purposes:

(a) to be owned in common for access or similar other special purposes as part of a subdivision;

(b) network utility purposes;

(c) a public work;

(d) an esplanade reserve or strip;

(e) an access denial or segregation strip;

(f) an access strip from one public place to another public place;

(g) the protection of significant heritage and environmental features from development and the adverse effects of land use activities as specified below:

- a heritage protection site
- waahi tapu land gazetted under the Maori Affairs Act 1953
- any feature listed and described in Section 5.5
- a statutory acknowledgement area.

(h) Reserves under the Reserves Act 1977 and Conservation Act 1987.

Temporary activities means any use of land, building or other structures for the purposes of:

(a) a building, construction or demolition project (excluding any feature protected in the Schedule of Heritage Resources or Schedule of Natural Features in this Plan), for a duration of not more than 6 months;

(b) a sporting or recreational event, public meeting, gala and market days, or other public event, for a duration of not more than 7 days;

(c) temporary storage of goods or materials (excluding hazardous substances) for a duration of not more than 6 months;

Temporary military training means temporary training undertaken for defence purposes. Defence purposes are those in accordance with the Defence Act 1990. The Defence Act also enables access to Defence Areas, which includes areas utilised for temporary military training activities to be restricted.

Timber includes trees when they have fallen, or have been felled, and whether sawn, hewn, split, or otherwise fashioned; and includes tree ferns, woodchips, timber products, and the roots and stumps of trees.

Urban buffer area means the land around Dannevirke, Woodville, Pahiatua and Eketahuna which is shown as being in the “urban buffer area” on the planning maps.

Vehicle crossing means the formed area of accessway which is located on legal road and which is used to gain physical access from the formed part of the legal road to the property boundary.

Visitor Accommodation means the use of any land or premises for the provision of temporary accommodation and includes private hotels, motels, hostels and boarding houses, holiday or tourist flats, camping grounds, bed-and-breakfast facilities and other short-stay rented residential accommodation. *[**Note** that bed-and-breakfast activities may also be home occupations.]*

6.2 Explanation of Maori Terms used in the Plan

***[Note:** This section does not form part of the District Plan rules.]*

This section of the Plan provides a guide to the meaning of various Maori terms used in this Plan, particularly in Section 2.10 which sets out the Council's policies in relation to the Treaty of Waitangi and Maori resource management values. This section of the Plan has been adapted in part from the Regional Policy Statement for Manawatu-Wanganui Region. It is intended only as a **guide** for readers unfamiliar with the Maori language and, as such, it gives rather simplified explanations for sometimes complex Maori concepts. It is not the purpose of this section to provide a comprehensive definition of all Maori terms used.

Hapu means a social, economic and political unit comprised of **whanau** (extended families) each recognising descent from a common ancestor(s). Whanau belonging to a hapu combine in socio-political and economic activities and live, or own land, in a localised area. A hapu boundary will exist within which are situated marae, kainga and pa - hapu gathering places or villages).

Iwi means a political grouping comprised of several hapu, each recognising descent from a common ancestor(s). The hapu within an iwi recognise not only genealogical ties but geographical, political, and social ties. Today, iwi are represented by many organisations, including trust boards, runanga, iwi authorities etc., but only in specific areas where the mandate to do so has been given by their constituent hapu.

Kaitiakitanga means the exercise of guardianship (spiritual or physical) which, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.

Mana means legitimacy to act in an authoritative and responsible capacity.

Marae means spiritual, social, political and economic gathering places of iwi, hapu, whanau, and all manner of Maori groups and organisations. Marae may be whanau, hapu or iwi based. Strict observance of tikanga Maori ensures the retention of Maori language, lore, customs, values, and beliefs. Many whanau, hapu and iwi initiatives are run from this marae base (e.g. kohanga reo, kokiri administration centres, health clinics)

Rahui refers to a social system of prohibition which recognises the tapu state of a resource or used as a regulatory device to ensure wise management of a resource.

Tangata whenua refers to the iwi, hapu or whanau holding mana in a particular locality.

Taonga means all things prized or treasured, both tangible and intangible.

Tapu (or taapu) means a religious or superstitious restriction or condition affecting, or protecting, persons, places, and things.

Tikanga Maori refers to the social norms, practices and lore adhered to by Maori.

Te Tiriti O Waitangi is Maori for "the Treaty of Waitangi", and it refers to the Maori text which most iwi and hapu signed and which contains for Maori the fullest expression of the spirit (principles) of the Treaty.

Urupa is a graveyard or burial site. These can include registered and unregistered graveyards or places where skeletal remains are kept (caves, hollow trees etc). They are tapu because they are associated with death.

Waahi tapu are sites, areas, or localities associated with tapu (sacred places). These may include urupa, places where baptismal rites are performed, historic battlegrounds etc. Only tangata whenua may identify their waahi tapu.

Whanau is the basic unit of Maori social structure and is an extended family comprising children, parents, grandparents and cousins, uncles, aunties and so on. Today, whanau members may live separately yet share a mutual existence.

Whenua means the land.

7 PROCEDURES AND INFORMATION REQUIREMENTS PART 7

7.1 Introduction

The RMA establishes an administrative and statutory framework for the management, use and protection of the natural and physical resources of the District. By virtue of the RMA, the Council is required to enforce compliance with this Plan. Reference should be made to the provisions and requirements of this Plan before any activity is undertaken or commenced and before an application for a resource consent is lodged with the Council.

7.2 Resource Consents

7.2.1 CATEGORIES OF ACTIVITY

In terms of the RMA and for the purposes of administering the Plan, activities are classified into five groups. These are:

(a) Permitted

(b) Controlled

(c) Restricted Discretionary

(d) Discretionary

(e) Non-Complying

(f) Prohibited

7.2.1.1 Permitted Activity

A permitted activity does not require a resource consent provided the activity complies in all respects with the relevant rules/standards of the Plan. A "certificate of compliance" may be issued (but is not required) for a permitted activity on application to the Council, to certify that the activity fully complies with the provisions of the District Plan (refer to Section 7.4.5 below).

7.2.1.2 Controlled Activity

A "controlled activity" requires a resource consent before it can proceed. Consent to a controlled activity application must be granted, but conditions may be imposed as part of the consent. Controlled activities are those which are anticipated to have a minor adverse effect on the environment which is able to be controlled by way of conditions. The Council may only impose conditions in respect of those matters for which it has reserved control as set out in this Plan.

7.2.1.3 Discretionary Activity

A "discretionary activity" can only proceed once a resource consent is granted. The Council has discretion to refuse its consent to an application, or to grant consent with or without conditions. For a "restricted discretionary" activity, the Council's discretion in granting or refusing consent is limited to those matters to which it has restricted its discretion as set out in the District Plan. The Council

shall have regard to any matters it considers relevant and reasonably necessary to determine the application, in accordance with section 104 of the RMA.

7.2.1.4 Non-complying Activity

A "non-complying activity" is an activity which contravenes a rule in the Plan and is only allowed to proceed if a resource consent is granted. A non-complying activity is any activity which is not provided for in the Plan as a permitted, controlled, discretionary or prohibited activity.

7.2.1.5 Prohibited Activity

The RMA enables the District Plan to specify "prohibited activities" for which no applications for resource consent can be made, and no resource consents can be granted.

7.2.2 TYPES OF CONSENT

Reference has been made above (in 7.2.1) to the need to obtain resource consents in respect of certain categories of activity.

The Council is empowered to grant two types of resource consents, namely:

(a) a land use consent, and

(b) a subdivision consent.

Other resource consents such as water permits, discharge permits or coastal permits are issued by the MWRC or the Wellington Regional Council. Where more than one resource consent is required for an activity, this must be stated in the application.

7.2.2.1 Land Use Consent

A land use consent is required for the use of any land in a manner which contravenes a rule in this plan unless either:

(a) a resource consent has been applied for and granted, or

(b) the activity complies with Section 10 of the RMA which provides for certain existing uses to continue.

Activities which may generate adverse effects necessitating the specific formulation of mitigation conditions have been provided for either as controlled activities or as discretionary activities. In either case, a resource consent shall be applied for and an assessment of the effects on the environment must be submitted for the consideration of the Council.

The Council may, in considering applications for resource consents, grant consent in accordance with any criteria specified in the Plan, and shall include conditions in the consent, in accordance with the Plan, as appropriate.

As noted in Section 7.2.1.1, while no resource consent application is necessary for a permitted activity, a request may be made for a Certificate of Compliance. Such a certificate, if granted, will state that the particular proposal or activity complies with the plan in relation to that location on the date of receipt of the request by the Council. It is deemed to be either a land use consent or a subdivision consent, whichever is appropriate, and has a currency of five years.

7.2.2.2 Subdivision Consents

Rules governing the subdivision of land are set out in Section 5.1 of this Plan. Generally, land may not be subdivided unless expressly allowed by a rule in the Plan or a resource consent (subdivision consent) has been applied for and granted. Section 11 of the RMA (which relates to the subdivision of land) also provides for a number of specific instances where subdivisions may be undertaken.

The assessment of the impacts of subdivision is dealt with in the RMA, and is subject to the provisions of the District Plan.

The definition of subdivision includes cross leases, company leases, and unit title divisions.

The subdivision application will follow the standard process set out in Part IV of the RMA. Part X of the RMA sets out certain provisions which relate specifically to the subdivision of land.

Rule 7.3.3 sets out information requirements for subdivision consent applications. These requirements are additional to the type of information required to accompany applications for other resource consents (e.g. for land use consent).

7.3 Resource Consent Process

7.3.1 LODGING A RESOURCE CONSENT APPLICATION

The RMA sets out the process for applying for resource consents (Section 88). An application for a controlled, discretionary or non-complying activity shall be in the form as set out in Form 9 of the Resource Management (Forms, Fees and Procedure) Regulations 2003. Forms are available from all Council Offices.

7.3.2 INFORMATION REQUIREMENTS FOR RESOURCE CONSENT APPLICATIONS

Information required to be submitted with all resource consent applications is outlined in Section 88 and the Fourth Schedule to the RMA. For applications to subdivide land, additional information requirements apply (refer to 7.3.3 below).

Information to be supplied with all resource (land use) consent applications shall be as follows:

(a) A description of the activity and its location (including, where appropriate, legal description, street address, topographical map reference)

(b) An Assessment of Effects on the Environment, which is to include all those matters specified in the Fourth Schedule to the RMA (refer below).

The assessment is to be in such detail as corresponds with the scale and significance of the actual or potential effects that the activity may have on the environment. For applications involving controlled activities, an environmental assessment covering criteria specified in the Plan over which the Council has retained control shall be prepared by the applicant. Where the application relates to a discretionary activity, the assessment will be required to address those criteria over which discretion is identified. Where a resource consent application will affect any heritage item or significant natural feature which is listed in Appendix 2, 3 or 4 of this Plan, reference should be made to section 5.5 of this Plan for further details of information to be provided.

(c) A statement specifying all other resource consents required from any consent authority in respect of the activity, and whether or not the application has applied for such consents.

7.3.3 ADDITIONAL INFORMATION FOR SUBDIVISION CONSENT APPLICATIONS

The following information and explanation shall be shown on the subdivision plan, or included in an accompanying report, as the case may require. The Council may waive any of the following information requirements where it is satisfied that such information is not necessary in the circumstances.

(a) Existing and proposed easements.

(b) Existing and proposed amalgamation conditions.

(c) How the proposed subdivision complies with the subdivision and performance standards specified in this Plan. Where the subdivision does not meet the performance standards specified, evidence as to how the assessment criteria are to be met.

(d) A plan drawn accurately to a suitable metric scale showing:

(i) all the land being subdivided, the legal description and Certificate of Title boundaries of the land, and the area and dimension of all new lots;

(ii) the position of all new boundaries and easements (both existing and proposed);

(iii) the location and areas of new reserves to be created, including esplanade reserves or esplanade strips to be set aside;

(iv) the location and area of land to vest in Council as road;

(v) the location and areas of any part of the bed of a river or lake which is required to be shown on a survey plan as land to be vested in the Crown;

(vi) where appropriate, contours and spot heights to show the general fall of the land and appropriate grade of roads or access;

(vii) the location of any significant trees, heritage features or archaeological sites, including any feature that is listed in Appendix 2 or 3 of this Plan; *[**Note**: the undertaking of an archaeological survey would be desirable in some situations but it is not a mandatory requirement.]*

(e) Copies of the current Certificate of Title for the land being subdivided;

(f) The nature and standard of existing and proposed network utility services such as roads, sewage disposal, stormwater, electricity, gas, water and telecommunications;

(g) Where services are not available, evidence that the following are able to be provided in respect of each and every allotment shown on the plan of the proposed subdivision:

(i) A stable building platform;

(ii) A potable domestic water supply;

(iii) Practical physical access to an existing formed legal road;

(iv) An area of land large enough for the satisfactory disposal and treatment of sewage and domestic effluent;

(v) Satisfactory disposal of stormwater, such that erosion, pollution, siltation or flooding of any water course or groundwater is avoided.

(h) A report from a registered engineer with experience in soil mechanics, geotechnical and/or wastewater engineering as appropriate and, if necessary, records of test data, shall be provided as evidence that (g) (i), (iv) and (v) above are satisfied. Information to be provided shall include:

(i) A detailed soil and, if necessary, a geotechnical assessment;

(ii) Identification of relevant topographic and drainage features;

(iii) An assessment as to any actual or potential effects of effluent disposal on water supplies from existing bores;

(iv) An assessment of actual or potential effects of effluent on surface ground water in the locality of the proposed subdivision;

(v) An assessment of the likely volumes of effluent to be treated for a typical site; and

(vi) Certification as to an appropriate on-site disposal system which would ensure that any adverse environmental effects are avoided.

(i) Three copies of the subdivision report and three full scale copies of the plan along with a good quality A4 reduction shall be supplied when lodging an application in hard copy form.

A further full-scale copy is required in the following situations:

- Amalgamation of Lots;
- Waiver of Esplanade Reserve;
- Land abutting a Railway or State Highway;
- Land abutting land, that is, or will be, the subject of a Heritage Protection Order.

An application may be lodged with the Council in electronic form, provided it is secure and of a size and in a format able to be accepted by the Council.

(j) Where the subdivision abuts a railway or State Highway, information on consultation undertaken with the responsible agency and the results of that consultation shall be supplied;

(k) Where an archaeological site has been identified within the site, a report from an archaeologist may be required.

7.3.4 FURTHER INFORMATION

Where the Council considers that the information submitted with an application for a resource consent or a notice of requirement is deficient in terms of the requirements of the RMA it may require the applicant to provide further information (Sections 92 and 169 of the RMA). The Council may only require further information to enable it to better understand the nature of the activity in respect of which the application for a resource consent or requirement notice is made, the effect it will have on the environment, or the ways in which any adverse effects may be mitigated.

Section 92 of the RMA provides that where the Council considers that a significant adverse effect on the environment may result from an activity to which a resource consent application or requirement notice relates, the Council may require an explanation of:

(a) Any possible alternative locations or methods for undertaking the activity and the applicant's reasons for making the proposed choice; and

(b) The consultation undertaken by the applicant.

The Council may also commission a report, at the applicant's expense, on any matters relevant to the application or requirement notice where it is necessary for the Council to better understand the nature of the activity, the effect it will have on the environment, or the ways in which adverse effects may be mitigated. Council

shall discuss the commissioning of a report with the applicant prior to engaging persons for its preparation.

7.3.5 NOTIFICATION

Sections 95A to 95G of the RMA set out the requirements and provisions regarding notification of applications.

Where any heritage item listed in Appendix 2 is affected, Heritage New Zealand is considered to be an "affected person" for the purpose of considering the need for notification pursuant to Sections 95A to 95G of the RMA.

In considering such applications, Council will have regard to:

- the objectives, policies and rules of the District Plan; and
- the requirements of the RMA.

Notwithstanding the above, the Council may require any application for resource consent to be notified where special circumstances exist. Such circumstances include (but are not limited to) where there is potential for adverse effects on a matter specified in Part II of the RMA (Sections 5, 6, 7, and 8), and where there has been or is likely to be public concern expressed about the effects of the proposed activity.

Where the above does not apply, and once the Council is satisfied that it has adequate information, it shall notify the application in accordance with the requirements of Sections 95A to 95G of the RMA.

This procedure involves the Council preparing a notice in the form set out in the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (Form 12) and serving copies of it on the following people as appropriate:

- Owners and occupiers of the subject land
- Minister of Conservation
- Heritage New Zealand
- Minister of Fisheries
- Persons likely to be directly affected
- Iwi authorities
- Network utility operators
- Other persons and authorities.

The Council is also required to publish the notice in an appropriate newspaper circulating in the area of the District likely to be affected by the proposal to which the notice relates. It may also publish this notice on the Council's website (www.tararuadc.govt.nz) and may fix the notice to a conspicuous place on the subject site.

The notice will have details of the application and give the closing date for submissions to be received by the Council. Submissions are to be sent to the Council Office nominated in the notice. A copy of any submission lodged with the Council is to be served on the applicant by the person making the submission.

7.3.6 TIME FRAMES

The RMA specifies time limits for the processing of applications for resource consents. The Council may extend these time limits in terms of Sections 37 and 37A of the RMA, although the extension cannot have the effect of more than doubling the maximum limits specified, unless requested by, or with the agreement of, the applicant.

7.3.7 SUBMISSIONS ON NOTIFIED RESOURCE CONSENT APPLICATIONS

Any person may make a submission to a resource consent application that is notified. The information to be provided in the written submission and the time limit for lodgement with the Council is specified in the Resource Management (Forms, Fees and Procedure) Regulations 2003 (Form 13), and Section 97 of the RMA.

7.3.8 HEARING PROCEDURES

(a) Pre-hearing Meetings

The RMA provides for pre-hearing meetings to clarify, mediate or facilitate resolution of any matter or issue (Section 99).

Circumstances where the application is technically complex, raises a number of issues, has generated significant submission and/or concerns in the community, or is confusing due to more than one consent being sought are examples of where a pre-hearing meeting is beneficial.

The administrative, procedural, time, location arrangements and a meeting agenda shall be agreed by all parties prior to any pre-hearing meeting being held. Council shall not call a pre-hearing meeting unless all parties agree that the benefits of holding a pre-hearing meeting will outweigh the costs, i.e. matters may be clarified,

areas of agreement and disagreement identified or a negotiated agreement reached.

Where the outcome of any pre-hearing meeting is reported to the Council it shall be circulated to all parties involved, before the hearing commences, and shall become part of the information which a Council shall have regard to when considering the application.

(b) Hearings

The Council will hold a hearing to consider an application for a resource consent, unless there are no submissions, or the persons making the submissions have stated that they do not wish to be heard and the applicant does not wish to be heard.

A notice advising all parties of the hearing date will be sent out by the Council within the time limits specified under the RMA. The notice will include the location and time of the hearing, the procedural requirements to be followed for the conduct of the hearing, and the information to be provided by the parties involved.

A number of Council functions under the RMA have been delegated to staff. The schedule of such delegations is held by Council and available at Council offices.

(c) Joint Hearings

In order to encourage coherence and consistency in the consideration of consent applications and ensure consistent decision making and reduce delays, joint hearings will generally be held where an application involves the granting of resource consents by both the District Council and either the Manawatu-Wanganui Regional Council or the Wellington Regional Council. This approach shall apply unless the Council and the other consent authority agree that the applications are sufficiently unrelated, and the applicant agrees a combined hearing need not be held.

The Regional Council shall generally be responsible for notifying the hearing, setting the procedure and for providing the administrative services where joint hearings are conducted.

(d) Combined Hearings

When an application involves both a land use consent and a subdivision consent in respect of the same land, and the Council is to hear the applications, a combined hearing will generally be held.

7.3.9 DECISIONS

At the completion of the hearing, the Council considers all the evidence submitted and makes its decision on the application. The decision is then conveyed in writing to the applicant and submitters and such other persons or authorities the Council considers appropriate, including the reasons for the decision. Section 104 of the RMA sets out a range of matters that a Council must consider when making a decision.

The statutory provisions related to the granting of consents are set out in Sections 104 and 104A to 104F, together with other matters related to the granting of consents. Restrictions on the granting of subdivision consent are set out in Section 106.

The RMA provides for resource consents to include conditions relating to matters set out in the RMA (Sections 108 and 220). A resource consent may also include any other condition that the Council considers appropriate, provided it relates directly to the activity for which consent was sought in the application.

7.3.10 RESOURCE CONSENT PROCEDURES

(a) Criteria for Assessing Discretionary Activities

The criteria for assessing discretionary activities are specified in Part 4 of this Plan (for each Management Area) and, in some instances, additional criteria for assessment are included in Part 5 of the Plan in relation to specific standards.

(b) Conditions of Consent that may be imposed

In granting a consent for a proposed land use or subdivision, Council may impose any conditions of consent that it considers appropriate. Appropriate conditions are those which:

(i) are for a resource management purpose; and

(ii) are fairly and reasonably related to the development or subdivision authorised by the consent to which the condition is attached; and

(iii) are not ultra vires.

As specified in Section 108 of the RMA, conditions of a resource consent may include (but are not limited to) one or more of the following matters:

- financial contribution, of:

- money; or
- land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent) but excluding Maori land; or
- works, including (but not limited to) the protection, planting, or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource; or
- services;
- or a combination of the above.

- bonds, in respect of the performance of any one or more conditions of the consent, including the alteration or the removal of structures on the expiry of the consent;
- covenants, in favour of the consent authority in respect of the performance of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates);
- administrative charges (pursuant to Section 36 of the RMA or any regulations);
- information to be supplied relating to the exercise of the resource consent. Such a condition may require the holder of the resource consent:
  - to make and record measurements;
  - to take and supply samples;
  - to carry out analyses, surveys, investigations, inspections, or other specified tests;
  - to carry out measurements, samples, analyses, surveys, investigations, inspections, or other specified tests in a specified manner;
  - to provide information to the consent authority at a specified time or times;
  - to provide information to the consent authority in a specified manner;
  - to comply with the condition at the holder of the resource consent's expense.

In terms of a subdivision consent, the Council may impose any condition specified under Section 220 of the RMA.

7.3.11 CHANGES TO OR CANCELLATIONS OF CONDITIONS

The RMA permits an application to be made to the Council for the change or cancellation of any condition imposed in respect of a consent (other than a condition as to the duration of that consent). An application may be made at any time specified for that purpose in the consent, or on the grounds that a change in circumstances has caused the condition to become inappropriate or unnecessary (Section 127 of the RMA).

The RMA provides for applications to change or cancel resource consents to be non notified in some circumstances notwithstanding the originating application may have been notified (Section 127 of the RMA).

7.3.12 OBJECTIONS TO THE COUNCIL AND APPEALS TO THE ENVIRONMENT COURT

The RMA provides for objections and appeals to be made against certain decisions made by the Council (Sections 120, 357, 357A, 357B, 358 of the RMA). Objections are made to the Council responsible for the decision. Appeals are made to the Environment Court.

(a) Objections

An **objection** to the Council may be made by the applicant in respect of a Council decision concerning the matters set out in Sections 357, 357A and 357B of the RMA.

The procedure for lodging an objection, the time limits to be met and the Council's obligations in considering any objection are set out in the abovementioned Sections of the RMA.

(b) Appeals

An appeal to the Environment Court may be made against the whole or any part of a decision of the Council on a resource consent application, or an application for a change or review of consent conditions by the applicant, consent holder or by any person who made a submission on the application or review of consent conditions (Section 120).

In addition, any person who has made an objection as set out in (a) above, or any person who is affected by the Council's decision on the objection, may subsequently appeal to the Environment Court against the decision (Section 358).

The procedure for lodging an appeal with the Environment Court is set out in Sections 121 and 358 of the RMA.

7.4 Miscellaneous Provisions

7.4.1 CHANGES TO THE DISTRICT PLAN

Changes to the Plan may be made in accordance with the procedures outlined in the First Schedule of the RMA. The Council has a commitment to maintain a District Plan which is current and relevant and which addresses resource management issues and concerns of significance to the District. The provisions of the Plan may, therefore, be changed as necessary. Such changes may be in response to revised or updated national or regional policy statements, regional plans or regional coastal plans. The effectiveness of the Plan will be continuously monitored and the Council shall initiate plan changes which address evolving resource management issues and community needs, improve environmental conditions and enable the Council to better meet its obligations under the RMA.

The process of change is not limited to the initiatives of the Council. Any person may request the Council to change the Plan in accordance with the procedures set out in Part II of the First Schedule of the RMA.

Applicants requesting a change to the Plan must:

(i) Explain the purpose of and reasons for the proposed change; and

(ii) Describe the environmental effects anticipated to result from the implementation of the change.

7.4.2 EXISTING USE RIGHTS

In Section 10 of the RMA, provision is made for existing land uses and activities which do not comply with the rules of the operative or proposed District Plan. Generally speaking, such a use has existing use rights and can continue if:

(i) The use was lawfully established before the rule became operative or the proposed plan was notified; and

(ii) The effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified.

Under Section 139A of the RMA, an application can be made for an Existing Use Rights Certificate from the District Council to confirm an activity's compliance with the above conditions.

Provision is also made for existing use rights to be established by way of a designation.

Existing use rights do not apply in some situations as specified in Section 10, such as:

- If the work proposed would increase the degree of non compliance of a building with the provisions of the plan or proposed plan
- Where the activity is in the Coastal Marine Area or relates to certain other land use matters which are the responsibility of a Regional Council.

7.4.3 DESIGNATIONS

A `designation' is a provision made in a district plan to provide for public works and certain types of network utilities, such as electricity substations. A designation provides land use consent for the work, places restrictions on the kinds of activities that can be carried out within the area of that work (Section 176 and 178), and also allows network utility operators access to the compulsory acquisition process.

Land can be designated only by requiring authorities. A requiring authority is a Minister of the Crown, a regional or territorial authority or a network utility operator who has been approved by the Minister for the Environment for a particular project. It should be noted that a territorial authority may issue requirements within its own area of jurisdiction. That is, it may serve a requirement to designate land upon itself.

To designate land, the requiring authority issues a `requirement' to a Council. The information to accompany a notice of requirement is set out in Section 168(2) of the RMA and the form prescribed by the Resource Management (Forms, Fees and Procedure) Regulations 2003. Generally the information requirements are the same as for a notified application for land use consent. The Council's specific information requirements are set out in section 7.4.3.1 below. The Council may notify the requirement (in accordance with its determinations under Sections 95 to 95F), hear submissions from the public and make a recommendation to the requiring authority as to whether it accepts or rejects the requirement. If accepted, it may recommend conditions (refer section 7.4.3.2 below). The requiring authority then decides whether to confirm, withdraw, or modify the requirement. The decision is publicly notified and can be appealed to the Environment Court.

A requirement that is confirmed becomes a designation. Designated sites within the Tararua District are detailed in Appendix 4 of this Plan and are shown on the Planning Maps by a notation. A designation means that the requiring authority can do anything on the land that is consistent with the designated purpose, and that everybody else must have the permission of the requiring authority to do anything that would prevent or hinder the designated work within the designated area.

Affected landowners can apply to the Environment Court for an order making the requiring authority acquire the land, or an interest in it, if the designation means that they are unable to sell their land at a market rate.

The RMA aims to make it easier for affected landowners to obtain compensation. Landowners will not be required to show evidence of financial hardship to require the designating authority to purchase the designated land. Once approved as a requiring authority for a project, a network utility operator may apply to the Minister of Lands to have the land or an interest in it acquired under the Public Works Act 1981.

A designation lapses after five years unless it has been given effect to or substantial progress is being made towards giving effect to the designation (Sections 184 and 184A).

7.4.3.1 Information Requirements for Designations

The following information shall be included with a notice of requirement for a designation:

(i) The reasons why the designation is needed;

(ii) The physical and legal descriptions (noting any distinguishing characteristics) of the site to which the requirement applies;

(iii) The nature of the work and any proposed restrictions;

(iv) The effect that the proposed work will have on the environment and the proposed mitigation measures;

(v) What alternative sites, routes, and methods have been considered;

(vi) What resource consents will be required in relation to the activity to which the application relates, and whether these have been applied for;

(vii) A summary of the consultation that has been undertaken with parties likely to be affected by the designation, public work, project, or work. If no consultation has been undertaken the notice must give reasons as to why no consultation has taken place;

(viii) Site Plans and Locality plans showing the proposed works, the surrounding land uses, and the proximity of the subject site to any item listed in Appendix 2, 3 or 4 of this Plan;

(ix) Whether the work is a public work in respect of any land, water, subsoil, or airspace for protecting the safe or efficient functioning of a public work, or if

the requirement is for a proposed project or work by a network utility operator approved as a requiring authority under Section 167 of the RMA (if an approved network utility, details of the Gazette Notice empowering the body as a requiring authority must also be supplied, including any specified terms and provisions);

(x) Details of the current ownership of the subject site. Where the requiring authority does not own the land in question it should provide the following information:

- the proposed land acquisition programme and site clearance proposals; and
- if the subject land is currently owned by the Crown or Council, the likely extent of restrictions to the general public for the use and/or access to the land;

(xi) A 'Project Plan' outlining the programme of works, including whether works will be completed within 5 years or whether the requiring authority requires a longer period over which the designation is to remain operative;

(xii) Details of the proposed use of the site prior to works commencing, or details of the maintenance of the site once it has been designated for the purpose of protecting the safe or efficient functioning of a public work (e.g. underground pipelines).

7.4.3.2 Recommendations to Requiring Authorities

After considering a notice of requirement Council may recommend to the requiring authority that it amend the requirement to ensure that the purpose and principles of the RMA are not compromised. Such amendment shall be recommended on a case by case basis, and may relate to matters such as:

- the operation and design of the public work;
- public access;
- maintenance of the designated area;
- the use of the designated area in terms of compliance with relevant district or regional rules or regulations where the designated use may compromise the particular values that those other rules and regulations are designed to maintain, protect or enhance;
- adherence to a management plan, or programme or works, to be submitted prior to any works commencing. (This provision does not apply to emergency works).

7.4.4 HERITAGE PROTECTION ORDERS

The RMA provides for a system of heritage protection orders for features and places of national or local significance from a broad range of perspectives including sites of special significance to tangata whenua. It is to be noted that such orders can be applied to features, areas, or the whole or part of any structure, and are not intended to be applied only to historic sites/buildings.

A heritage protection order is similar to a designation, except that its purpose is to protect features and places of national or local importance, or which are significant to tangata whenua. The process followed is essentially the same as for designations and it takes effect through the provisions of the district plan.

An important feature of these provisions is the interim protection offered by issuing a requirement for a heritage protection order. Once a requirement is issued, no person can do anything that would nullify the effect of the order.

Under the RMA, Councils are heritage protection authorities and, therefore, have the power to issue heritage protection orders. So also does any Minister of the Crown, Heritage New Zealand and any heritage protection authority approved under the RMA (Section 188).

The criteria for the assessment of areas and places of significance to tangata whenua will be in terms of their historical, spiritual, or cultural significance.

Heritage New Zealand must be advised by the Council of resource consent applications where the land is subject to a heritage protection order or the proposed activity may affect any historic place, historic area, waahi tapu, or waahi tapu area registered under the Heritage New Zealand Pouhere Toanga Act 2004 .

7.4.4.1 Information Requirements for Heritage Protection Orders

The following information shall be included with a notice of requirement for a heritage protection order:

(i) The reasons why the heritage protection order is needed;

(ii) The physical and legal descriptions (noting any distinguishing characteristics) of the place to which the requirement applies, and the surrounding area;

(iii) Restrictive conditions applying to the place or surrounding area;

(iv) The effect that the heritage order will, or may, have on the lawful use of the place and surrounding area;

(v) The extent to which other uses may be continued without nullifying the effect of the heritage order;

(vi) A summary of the consultation that has been undertaken with parties likely to be affected by the designation, public work, project, or work (including any arrangement made in respect of the place's maintenance). If no consultation has been undertaken the notice must give reasons as to why no consultation has taken place;

(vii) Site Plans and/or Locality plans;

(viii) Details of the current ownership of the subject site. Where the heritage protection authority does not own the land in question it should provide the following information:

- details of any proposed acquisition; and
- if the place is currently owned by the Crown or Council, the likely extent of access restrictions to the general public;

(ix) Details of the maintenance of the place.

7.4.4.2 Recommendations to Requiring Authorities

After considering a notice of requirement, the Council may recommend to the heritage protection authority that it amend the requirement to ensure that the purpose and principles of the RMA are met and that the property rights of the owner are not impinged upon. Such amendments shall be recommended on a case by case basis, and may relate to matters such as:

- the heritage protection authority reimburse the owner of the place for any additional costs of upkeep of the place required as a result of the making of the heritage order;
- public access will be allowed, maintained, or upgraded.

7.4.5 CERTIFICATE OF COMPLIANCE

Any person proposing to undertake any land use or subdivision which is provided for in the District Plan as a permitted activity, may request from the Council a certificate stating that the particular proposal complies with the District Plan. A Certificate of Compliance will allow the enjoyment of the same rights as apply to resource consents. This thereby ensures that if the district plan changes, the activity may continue.

Any person requesting a Certificate of Compliance must provide sufficient information for the Council to understand the proposal. Once all the necessary information is at hand, Council will issue a Certificate in accordance with the

requirements of Section 139 of the RMA. Certificates of Compliance lapse after five years if the proposal is not undertaken within that period.

7.4.6 ENFORCEMENT MEASURES

The RMA provides for a range of enforcement measures, aimed at ensuring compliance with the rules of the District Plan and conditions of resource consents, so as to enable Council to achieve its anticipated environmental results. It is the intention of the RMA that persons other than the Council be able to play a direct part in enforcement matters.

There are four different enforcement mechanisms:

(a) Declarations (Sections 310 - 313)

Any person can seek a declaration by the Environment Court on almost any matter related to the RMA. This includes interpreting District Plan provisions and whether the Council is performing in accordance with its resource management obligations under the RMA.

(b) Enforcement Orders (Sections 314 - 321)

Any person, whether or not directly affected by an offending activity, can apply to the Environment Court seeking an order to restrain (among other things) unlawful activity, restore the environment and/or claim reimbursement, to change/cancel a resource consent, to obtain dispensation from the provisions of the Plan, suspend all or part of a Plan. Failure to comply with the order is an offence. The RMA also provides for interim enforcement orders as a means of dealing with emergency situations where significant environmental damage is occurring or is imminent. Interim enforcement orders do not involve the notification procedures required of enforcement orders.

(c) Abatement Notices (Sections 322 - 325)

The Council can issue written abatement notices requiring environmental nuisances to be remedied within a stated period (not less than seven days from when the notice is served). Abatement notices may also be served to require compliance with the District Plan or a resource consent. These are a "first aid" measure aimed at achieving immediate action in relation to such problems as noxious discharges. Failure to act on an abatement notice constitutes an offence, however any person(s) served with an abatement notice has the right of appeal to the Environment Court.

(d) Infringement Notices (Sections 343 A – D)

Where an enforcement officer observes a person committing an infringement offence, or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.

In addition to these enforcement mechanisms there are separate enforcement mechanisms for excessive noise. The RMA empowers the Council's enforcement officers and the Police to direct that noise judged to be excessive, be reduced (Sections 326 - 328).

7.4.7 EMERGENCY WORKS (SECTIONS 330 - 331)

In emergency situations, or where an adverse environmental effect requires immediate action, remedial actions may be taken by the following:

- The person financially responsible for a public work affected;
- The Council or other consent authority;
- A Network Utility Operator approved as a requiring authority for the work concerned.

Reimbursement or compensation for emergency works may be payable in certain circumstances.

7.4.8 MONITORING (SECTION 35)

Council is required under the RMA to monitor the whole or any part of the District, with particular attention given to the state of the environment, the effectiveness of the District Plan, the exercise of resource consents and any of the Council's functions, powers or duties. On the basis of this monitoring, the Council is required to take action as appropriate and necessary and keep to information relevant to such monitoring and action. (Refer to Part 8 - Monitoring and Review).

7.4.9 COUNCIL CHARGES FOR DISTRICT PLAN ADMINISTRATION

The Council shall recover reasonable costs incurred by the Council in undertaking various administrative functions with regard to the District Plan. The authority to make such charges is contained in the RMA (Section 36) and the procedures to be followed in establishing charges is as set out in the Resource Management Act and the Local Government Act 2002. The types of services for which the Council will impose charges include (but are not limited to):

- Costs associated with applications for plan changes including costs of plan change preparation;
- Receiving, assessing and determining applications for resource consent (including Certificates of Compliance);
- Administration, monitoring and supervision of resource consents;
- Costs associated with receipt, assessment and determination of requirements to designate land;
- Provision of information, plans, and documents.

Current charges for carrying out activities are available from the Council. Where the Council has adopted a fixed charge for a particular matter and this is inadequate to recover actual and reasonable costs, an additional charge may be made by the Council.

8 MONITORING AND REVIEW PART 8

8.1 Introduction

Section 35 of the RMA establishes a statutory obligation for the Tararua District Council to undertake a range of specific monitoring functions. The requirement is not just to gather information about compliance with the provisions of the RMA and relevant plans and policy documents but also to monitor the "State of the Environment" in the District. The obligation includes a requirement to take appropriate remedial actions and to provide information to the general public.

8.2 Monitoring Strategy

8.2.1 OBJECTIVE

To monitor the state of the environment in the Tararua District (to the extent necessary to fulfil the Council's obligations under Sections 31 and 32 of the Resource Management Act 1991) and the appropriateness, effectiveness and efficiency of the District Plan's policies.

8.2.2 POLICIES

a. To develop a monitoring strategy for the District consisting of the following three main elements:

- **complaint investigations**
- **compliance surveillance (conditions of consent)**
- **general surveillance (state of the environment)**

b. To analyse the information collected to identify any resource management trends or issues of concern in the District and to determine appropriate courses of action to remedy any District Plan ineffectiveness or inefficiencies identified.

8.2.3 METHODS

The Council shall implement Policies 8.2.2 (a) and (b) by the following methods:

(i) Council service delivery - The Council shall implement Policy 8.2.2(a) through the establishment of specific research, monitoring, enforcement and review programmes as follows:

- The Council shall respond to, and investigate, all complaints received from members of the public or other organisations relating to the effects of specific activities, and shall take remedial action, including enforcement actions, where appropriate.

- The Council shall monitor compliance with all conditions that have been imposed in relation to specific consents (building consents, land use consents and subdivision consents) and shall take remedial action, including enforcement actions, where appropriate.

- During the course of their normal duties, Council staff routinely monitor the state of the environment in the District and identify any matters in need of attention.

- The Council shall conduct specific research activities including land use surveys and statistical analysis of data obtained through surveillance and enforcement activities, and from records of complaints received, building, subdivision and other resource consents.

- The Council shall use the data and information gathered to review the appropriateness and effectiveness of the provisions of this District Plan, and the nature and type of conditions of consents being imposed by the Council. In particular, the Council will use information to review all objectives, policies and rules relating to subdivision, rural housing provisions, performance standards and the status of various activities. The maintenance of appropriate records and registers is a prerequisite to the process. To this end, a GIS database has been developed which will not only provide information as required to be supplied for PIMs and LIMs but also to meet the obligations of Section 35 of the RMA.

(ii) *Public consultation and education* - The Council shall consult with the community to gauge acceptance and understanding of the District Plan and, as a result, undertake appropriate educational programmes and/or review those parts of the Plan which give rise to concern. The Council shall encourage the use of consultative processes by applicants and consent holders as a means of addressing resource management concerns.

8.2.4 EXPLANATION

Sound decision making is based upon having the information necessary to have a clear understanding of the environment and the ways in which elements within it interrelate and react with each other. In preparing this District Plan, the Council has considered the following questions:

(a) What are the resource management issues that need to be addressed?

(b) In addressing these issues, what are the desired environmental results sought?

(c) Are the objectives, policies and rules selected the best ones for achieving the environmental results sought?

(d) Are there better (i.e., more efficient and effective) ways of doing things, both through the District Plan and through other methods?

These questions will continue to form the basis of the Council's ongoing monitoring and review programmes and to answer them adequately a system of information gathering and assessment needs to be developed and maintained. The monitoring policies and methods in this Plan will ensure that the Council has information on:

- the state of the environment in the District;
- the use, development and state of the physical resources of the District;
- the effectiveness of the policies and methods contained in the District Plan;
- the social, economic and cultural wellbeing, and the health and safety, of the community with regard to the use, development and protection of resources;
- the effectiveness and efficiency of the Council's administration of the District Plan and the RMA.

Monitoring resources and effort must be well targeted. The development of a monitoring strategy allows specific monitoring programmes to be planned, budgeted for through the Annual Plan process, and implemented in a co-ordinated way. Consultation is an effective way of obtaining and disseminating information between the Council, the general public, other statutory and non-statutory organisations, and assessing if the District Plan is working or not.

8.2.5 ANTICIPATED ENVIRONMENTAL RESULTS:

(i) An effective and efficient monitoring and evaluation (review) strategy that enables Council to assess whether it is achieving the purpose of the RMA (i.e. the sustainable management of the District's natural and physical resources).

NATIONAL POLICY STATEMENT

for Renewable Electricity Generation 2011

Issued by notice in the Gazette on 14 April 2011

newzealand.govt.nz

Contents

Preamble

This national policy statement sets out an objective and policies to enable the sustainable management of renewable electricity generation under the Resource Management Act 1991 ('the Act').

New Zealand's energy demand has been growing steadily and is forecast to continue to grow. New Zealand must confront two major energy challenges as it meets growing energy demand. The first is to respond to the risks of climate change by reducing greenhouse gas emissions caused by the production and use of energy. The second is to deliver clean, secure, affordable energy while treating the environment responsibly.

The contribution of renewable electricity generation, regardless of scale, towards addressing the effects of climate change plays a vital role in the wellbeing of New Zealand, its people and the environment. In considering the risks and opportunities associated with various electricity futures, central government has reaffirmed the strategic target that 90 per cent of electricity generated in New Zealand should be derived from renewable energy sources by 2025 (based on delivered electricity in an average hydrological year) providing this does not affect security of supply.

Development that increases renewable electricity generation capacity can have environmental effects that span local, regional and national scales, often with adverse effects manifesting locally and positive effects manifesting nationally.

This national policy statement does not apply to the allocation and prioritisation of freshwater as these are matters for regional councils to address in a catchment or regional context and may be subject to the development of national guidance in the future.

In some instances the benefits of renewable electricity generation can compete with matters of national importance as set out in section 6 of the Act, and with matters to which decision-makers are required to have particular regard under section 7 of the Act. In particular, the natural resources from which electricity is generated can coincide with areas of significant natural character, significant amenity values, historic heritage, outstanding natural features and landscapes, significant indigenous vegetation and significant habitats of indigenous fauna. There can also be potential conflicts with the relationship of Maori with their taonga and the role of kaitiaki. The New Zealand Coastal Policy Statement 2010 also addresses these issues in the coastal environment. Increased national consistency in addressing the competing values associated with the development of New Zealand's renewable energy resources will provide greater certainty to decision-makers, applicants, and the wider community.

Title

This national policy statement is the National Policy Statement for Renewable Electricity Generation 2011.

Commencement

This national policy statement will take effect 28 days after the date of its issue by notice in the New Zealand Gazette.

Interpretation

In this national policy statement, unless the context otherwise requires:

Act means the Resource Management Act 1991.

Decision-makers means all persons exercising functions and powers under the Act.

Distribution network means a distributor's lines and associated equipment used for the conveyance of electricity on lines other than lines that are part of the national grid.

Distributor means a business engaged in distribution of electricity.

National grid means the lines and associated equipment used or owned by Transpower to convey electricity.

Renewable electricity generation means generation of electricity from solar, wind, hydro-electricity, geothermal, biomass, tidal, wave, or ocean current energy sources.

Renewable electricity generation activities means the construction, operation and maintenance of structures associated with renewable electricity generation. This includes small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity.

Small and community-scale distributed electricity generation means renewable electricity generation for the purpose of using electricity on a particular site, or supplying an immediate community, or connecting into the distribution network.

Terms given meaning in the Act have the meanings so given.

Matters of national significance

The matters of national significance to which this national policy statement applies are:

a) the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand; and

b) the benefits of renewable electricity generation.

Objective

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

A. Recognising the benefits of renewable electricity generation activities

POLICY A

Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to:

a) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;

b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;

c) using renewable natural resources rather than finite resources;

d) the reversibility of the adverse effects on the environment of some renewable electricity generation technologies;

e) avoiding reliance on imported fuels for the purposes of generating electricity.

B. Acknowledging the practical implications of achieving New Zealand's target for electricity generation from renewable resources

POLICY B

Decision-makers shall have particular regard to the following matters:

a) maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continued availability of the renewable energy resource; and

b) even minor reductions in the generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on national, regional and local renewable electricity generation output; and

c) meeting or exceeding the New Zealand Government's national target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities.

C. Acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities

POLICY C1

Decision-makers shall have particular regard to the following matters:

a) the need to locate the renewable electricity generation activity where the renewable energy resource is available;

b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;

c) the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity generation activity, and the need to connect renewable electricity generation activity to the national grid;

d) designing measures which allow operational requirements to complement and provide for mitigation opportunities; and

e) adaptive management measures.

POLICY C2
When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.

D. Managing reverse sensitivity effects on renewable electricity generation activities

POLICY D
Decision-makers shall, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities.

E. Incorporating provisions for renewable electricity generation activities into regional policy statements and regional and district plans

E1 Solar, biomass, tidal, wave and ocean current resources

POLICY E1
Regional policy statements and regional and district plans shall include objectives, policies and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing renewable electricity generation activities using solar, biomass, tidal, wave and ocean current energy resources to the extent applicable to the region or district.

E2 Hydro-electricity resources

POLICY E2
Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region or district.

E3 Wind resources

POLICY E3
Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance and upgrading of new and existing wind energy generation activities to the extent applicable to the region or district.

E4 Geothermal resources

POLICY E4
Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing electricity generation activities using geothermal resources to the extent applicable to the region or district.

F. Incorporating provisions for small and community-scale renewable electricity generation activities into regional policy statements and regional and district plans

POLICY F
As part of giving effect to Policies E1 to E4, regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance and upgrading of small and community-scale distributed renewable electricity generation from any renewable energy source to the extent applicable to the region or district.

G. Enabling identification of renewable electricity generation possibilities

POLICY G
Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation by existing and prospective generators.

H. Time within which implementation is required

POLICY H1
Unless already provided for within the relevant regional policy statement or proposed regional policy statement, regional councils shall give effect to Policies A, B, C, D, E, F and G by notifying using Schedule 1 of the Act, a change or variation (whichever applies) within 24 months of the date on which this national policy statement takes effect.

POLICY H2
Unless already provided for within the relevant regional or district plans or proposed plans, plan changes or variations, local authorities shall give effect to Policies A, B, C, D, E, F and G by notifying using Schedule 1 of the Act, a change or variation (whichever applies) within the following timeframes:

a) where the relevant regional policy statement or proposed regional policy statement already provides for the Policies, 24 months of the date on which this national policy statement takes effect; or

b) where a change or variation to the regional policy statement or proposed regional policy statement is required by Policy H1, 12 months of the date on which the change or variation becomes operative.

Monitoring and reviewing the implementation and effectiveness of the national policy statement

To monitor and review the implementation and effectiveness of this national policy statement in achieving the purpose of the Act, the Minister for the Environment should:

- in collaboration with local authorities and relevant government agencies collect data for, and, as far as practicable, incorporate district and regional monitoring information into a nationally consistent monitoring and reporting programme, including monitoring the performance of local authorities against the timeframes for giving effect to this national policy statement;
- utilise other information gathered or monitored that assists in measuring progress towards the Government's national target for the generation of electricity from renewable sources;
- within five years of its taking effect, and thereafter as considered necessary, assess the effect of this national policy statement on relevant regional policy statements and regional or district plans, resource consents and other decision-making; and
- publish a report and conclusions on matters above.

Explanatory note

This note is not part of the national policy statement but is intended to indicate its general effect.

This national policy statement takes effect 28 days after the date of its issue by notice in the *New Zealand Gazette*. It recognises renewable electricity generation activities and the benefits of renewable electricity generation as matters of national significance under the Resource Management Act 1991.

This national policy statement is to be applied by all persons exercising powers and functions under the Act. The objective and policies are intended to guide applicants and decision-makers on applications for resource consent, in making decisions on the notification and determination of resource consent applications, in considering a requirement for a designation or a heritage order, in considering an application for a water conservation order and when exercising other powers as required by the Act. Regional policy statements, regional plans and district plans must give effect to this national policy statement.

This national policy statement requires regional councils, unless they have already provided for renewable electricity generation activities, to give effect to its provisions by notifying changes to existing or proposed regional policy statements within 24 months of the date on which it takes effect. In the case of district plans, proposed plans or variations, local authorities are required to give effect to its provisions by notifying changes within the following timeframes: 24 months of the date on which this national policy statement takes effect where the regional policy statement or proposed regional policy statement already provides for the policies; or, where a change or variation to the regional policy statement or proposed regional policy statement is required, within 12 months of the date on which the change or variation becomes operative.

Pasture production and lamb growth in agrivoltaic system

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Herbage Yield, Lamb Growth and Foraging Behavior in Agrivoltaic Production System

*Alyssa C. Andrew[1], Chad W. Higgins[2], Mary A. Smallman[1], Maggie Graham[2] and Serkan Ates[1]**

[1] Department of Animal and Rangeland Sciences, Oregon State University, Corvallis, OR, United States, [2] Department of Biological and Ecological Engineering, Oregon State University, Corvallis, OR, United States

Agrivoltaic systems are designed to mutually benefit solar energy and agricultural production in the same location for dual-use of land. This study was conducted to compare lamb growth and pasture production from solar pastures in agrivoltaic systems and traditional open pastures over 2 years in Oregon. Weaned Polypay lambs grew at 120 and 119 g head^{-1} d^{-1} in solar and open pastures, respectively in spring 2019 ($P = 0.90$). The liveweight production between solar (1.5 kg ha^{-1} d^{-1}) and open pastures (1.3 kg ha^{-1} d^{-1}) were comparable ($P = 0.67$). Similarly, lamb liveweight gains and liveweight productions were comparable in both solar (89 g head^{-1} d^{-1}; 4.6 kg ha^{-1} d^{-1}) and open (92 g head^{-1} d^{-1}; 5.0 kg ha^{-1} d^{-1}) pastures (all $P > 0.05$) in 2020. The daily water consumption of the lambs in spring 2019 were similar during early spring, but lambs in open pastures consumed 0.72 L head^{-1} d^{-1} more water than those grazed under solar panels in the late spring period ($P < 0.01$). No difference was observed in water intake of the lambs in spring 2020 ($P = 0.42$). Over the entire period, solar pastures produced 38% lower herbage than open pastures due to low pasture density in fully shaded areas under solar panels. The results from our grazing study indicated that lower herbage mass available in solar pastures was offset by higher forage quality, resulting in similar spring lamb production to open pastures. Our findings also suggest that the land productivity could be greatly increased through combining sheep grazing and solar energy production on the same land in agrivoltaics systems.

Keywords: grazing, solar farming, pasture production, sustainability, agrivoltaics, solar grazing, dual-use agriculture, food energy water nexus

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***Correspondence:**
Serkan Ates
serkan.ates@oregonstate.edu

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INTRODUCTION

Global food and energy demands are continuously increasing due to growing populations and economic growth. Development of efficient and integrated production systems is crucial to meet these demands in a sustainable manner. Solar energy production using photovoltaic panels causes substantially less carbon emissions than natural gas (DeMartis, 2018). Grasslands and croplands located in temperate agro-ecologies are ranked to be the best places to install solar panels for maximum energy production (Adeh et al., 2019). However, energy production in photovoltaic systems requires large areas of land, potentially causing a competition between agricultural uses (Marrou et al., 2013). In an attempt to overcome this competition, energy and agricultural

production could be combined through pairing of photovoltaics with open field crop production (Goetzberger and Zastrow, 1982; Amaducci et al., 2018).

Agrivoltaics not only decreases the conflict between agricultural and energy sectors, but it efficiently and effectively promotes sustainable land use. These systems have the potential to increase global land productivity by an impressive 35–73% (Dupraz et al., 2011). Furthermore, agrivoltaics help to improve the productivity of farms, as there is a 30% increase in economic value for those that combine shade-tolerant crop production and solar generated electricity as compared to more traditional practices (Dinesh and Pearce, 2016). This added income from the solar panels is especially beneficial, as the panels themselves can partially displace grain, vegetable, and fruit crops, which has the potential to decrease yields by 5–20% in locations such as Germany (Apostoleris and Chiesa, 2019). However, not all crops face a decreased yield with the introduction of the photovoltaics. For example, a study conducted in Massachusetts reported that crop growth and yield improved with the use of solar panels. Crops that tend to do well in these conditions are those that benefit from the added protection from sunlight or excessive evaporation (Apostoleris and Chiesa, 2019). In addition to improving some crop yields and increasing economic and land productivity, agrivoltaics may also benefit the solar energy industry further by supporting bringing more ground mounted photovoltaic systems back into the mainstream market, thereby increasing the economy further. Furthermore, agrivoltaics provide ecosystem service benefits such as providing nectar and pollen sources for bees and pollinators (Graham and Higgins, 2019; Hernandez et al., 2019).

While a growing body of information has been generated on the crop production in agrivoltaic systems, there is a paucity of information on the impact of solar panels on pasture and animal production. To the best of our knowledge, there is no study conducted to investigate the livestock production in agrivoltaics systems. The precursor for the livestock production in agrivoltaics is silvopastoral and agroforestry production systems, which involve planting trees in or around fields used for agricultural and animal production purposes (Dinesh and Pearce, 2016). Traditional silvopastoral studies report multiple benefits of livestock grazing under tree shade such as extended grazing period due to lower evapotranspiration, higher nutritive value of the forages and lower environmental pollution (Dixon, 1995; Lima et al., 2019). Although shade reduces the light interception potential of the crops, a higher soil moisture achieved by the installation of photovoltaics can be a more water efficient farming, leading to a significant increase in late season biomass of forages. Solar panels in agrivoltaic systems can provide cool microclimate for grazing livestock, promoting animal welfare by providing shelter from sun, wind, and predators. Livestock in particular sheep can also be used in targeted grazing systems to control the excess understory biomass production to reduce the cost of labor and herbicide applications (DeMartis, 2018). The objective of this study was to compare pasture production, lamb growth, grazing behavior and nutritive value of forages in traditional open and solar pastures in agrivoltaics.

MATERIALS AND METHODS

Site

The grazing experiment was carried out at the Oregon State University in Corvallis, OR (44° 34′ N, 123° 18′ W 78 m a.s.l.) in spring 2019 and 2020. All procedures were approved by the Institutional Animal Care and Use Committee (ACUP# 5146) prior to the commencement of the experiment. Experimental plots were located within the Rabbit Hills Solar Farm, a 2.4 ha, 1.4 MW agrivoltaic farm which combines sheep grazing with solar energy production. The 1.65 m wide photovoltaic panels are oriented east-west, and tilted south at an 18° angle. The lowest edge of the panel is 1.1 m above the ground, and rows of panels are 6 m apart. The soil type is a combination of Woodburn silt loam, Amity Silt loam and Bashaw silty clay (USDA Soil Survey Staff, 2020). The soil test result is presented in **Table 1**.

Experimental Design and Grazing Management

The experiment layout was a randomized complete block design with three replicates (blocks). A 0.6 ha pasture paddock under solar panels and adjacent open areas was fenced and divided into three, 0.2-ha blocks to serve as replicates. Each block was divided into two subplots (0.1 ha), which were randomly assigned to the grazing under solar panels and grazing in open pasture fields (control). In solar pastures, the distance between solar panels was 6 m giving a 3-m fully shaded and 3-m partially shaded areas (Adeh et al., 2019). Each solar pasture contained four solar arrays and four solar panels. Thus, these pastures had 50% open (partially shaded) and 50% fully shaded areas. In February 2019, a pasture seed mixture containing festulolium cv. Perun (X *Festulolium braunii*), white clover cv. Seminole (*Trifolium repens* L.), chicory cv. Antler (*Cichorium intybus* L.), plantain cv. Boston (*Plantago lanceolata* L.), was overdrilled into existing pastures using a lawn overseeder (The classen TS-20, Southampton, PA, USA) to improve pasture production and forage quality. The seed mixture was also broadcasted in the areas that were difficult to access with overseeder under solar panels (5–10% of the area under solar panels). All plots were fertilized with 50 kg N/ha as urea in February 2019 and 2020.

Weaned Polypay lambs (2.5 months old) were stratified by sex and liveweight (mean LW = 24.6 ± 4.1 kg in 2019 and 26.6 ± 3.0 kg in 2020) and allocated randomly to treatments in both years. Each treatment had a core group of 9 lambs (testers) with spare lambs (regulators) in spring. A put-and-take grazing system was used to match feed demand with changing supply

TABLE 1 | Soil test results from open, fully and partially shaded pasture sites (75 mm depth) in winter 2019.

Location	OM %	P	K	Ca	Mg	pH	dS/m
	%	ppm		meq/100 g			EC
Open pastures	6.44	61.8	340	16.2	7.2	6.0	0.07
Fully shaded sites	6.93	83.4	451	13.9	5.8	5.6	0.15
Partially shaded sites	7.97	71.5	356	15.4	6.4	5.6	0.14

(Bransby, 1989). The groups of lambs were randomly assigned to one of six, 0.1 ha pastures where they continuously grazed from 17 April to 12 June 2019 at the stocking rate of 60 weaned lambs ha^{-1} in the first period (17 April−15 May) and 30 and 36.6 weaned lambs ha^{-1} stocking rate in open and solar panel pastures, respectively in late spring period (15 May−12 June). In 2020, grazing commenced on 30 March and extended through 11 June. The average stocking rate was 50 and 30 weaned lambs ha^{-1} in the first (30 March−4 May) and second periods (4 May-11 June) in both solar and open pastures. Animals had free access to mineral supplement and fresh water in portable water troughs connected to a permanent water supply in open pastures and under solar fields.

Measurements

Herbage dry matter (DM) production (kg DM ha^{-1}) was measured inside 1-m^2 grazing exclosure cages ($n = 4$) during active growth in spring, summer, and autumn under fully shaded, partially shaded and open areas. Herbage growth was measured from a rectangular quadrat (0.25 m^2), harvested using electric hand clippers to a stubble height of ∼3 cm. After collecting the forage cuts, cages were placed over a new area where the pasture was pre-mown to 3 cm of stubble height at the start of each new growth period. Forage cuts were sub-sampled for sorting into botanical fractions (grass, forbs, weed, and dead material) before drying. All herbage from the quadrat cuts were oven dried at 65°C for 48 h. Herbage growth rates were calculated at each harvest by dividing total DM production by the number of elapsed days since the previous harvest.

Liveweight gain (g $head^{-1}$ d^{-1}) was determined by weighing individual tester animals prior to and following each grazing period. Lambs were held overnight without food and water and weighed "empty" the following morning. Liveweight gain per head of tester lambs was calculated from the change in weight between each liveweight measurement date. Liveweight gain (kg ha^{-1} d^{-1}) was calculated by multiplying liveweight gain per head of tester lambs by the number of testers plus regulator lambs per hectare.

Lamb foraging behavior was scored by visual scanning of each lamb at 5-min intervals from 8 a.m. to 4 p.m. in early and late spring periods (Orr et al., 2005). Lambs' activity in open pastures and under solar panels was scored for grazing, ruminating and idling parameters by three observers. The location of lambs was recorded as fully shaded or in solar alleys. Grazing was defined as when a lamb is actively eating with their heads down. Lambs were recorded as idling if they had no specific jaw movements either standing or laying down. Grazing, ruminating and idling time were converted from the observation scores and multiplied by 5, assuming the same behavior over the previous 5 min. Group water intake of the lambs were also determined in early and late spring periods in both 2019 and 2020. Water troughs were filled with 60 L water on a daily basis and consumption was calculated based on the amount of water disappeared from the troughs within a 24 h period. A second trough in grazing excluded areas in both open and solar pastures were placed to take into account of evaporation and rainfall. The measurement was repeated three subsequent days during each period.

Herbage mass (kg DM ha^{-1}) was measured in each plot using a rising plate meter (PM; Jenquip, Feilding, New Zealand) by collecting 50 measurements on a weekly basis. Rising plate meter measurements were calibrated by regression against the herbage masses that were obtained from 12, 0.25-m^2 quadrats. Calibrations of herbage pasture masses were performed in April 2018 and March 2019. Calibration curves for each treatment were generated by fitting a single line through all the data. Random pluck samples were collected from pre-grazing allocations of each pasture to determine chemical and botanical compositions of forage on offer. A total of 50–75 pluck samples, representative of herbage offered to lambs, were collected by hand randomly across pasture in each plot at weekly intervals. Subsamples were sorted into botanical components then dried at 65°C for 48 h. Percentage botanical composition of samples on a dry weight basis was then calculated. A well-mixed bulk sample was ground in a Wiley mill with a 1 mm screen (Thomas/Wiley, Swedesboro, NJ) and shipped to a commercial laboratory for NIRS analyses of the samples (Dairy One Forage Laboratory, Ithaca, NY) (https://dairyone.com/download/forage-forage-lab-analyticalprocedures).

Land Equivalent Ratio (LER) and Net Return of Spring Grazing

Land use efficiency for total annual herbage DM yield (kg DM ha^{-1} y^{-1}) and lamb liveweight production (kg ha^{-1} d^{-1}) in agrivoltaics was assessed using land equivalent ration (LER) formula. LER is specified as the sum of the respective yield ratios of dual land use (agrivoltaics) to single land use (traditional) as described by Trommsdorff et al. (2021):

$$LER = \frac{Yield\ a\ (dual)}{Yield\ a\ (mono)} + \frac{Yield\ b\ (dual)}{Yield\ b\ (mono)}$$

Where a and b are the biological yield (forage or animal) and electricity production, respectively. When LER > 1 the dual use (agrivoltaics) system is more efficient and advantageous than traditional single use power or pasture-based livestock production systems, whereas LER < 1 indicates a lower land use efficiency in dual use system as compared to single land use system. In our calculation, solar power production was assumed to be the same (yield ratio = 1) in both dual (agrivoltaics) and single use (photovoltaics) systems as the design and establishment of solar panels were arranged to maximize the energy production.

To calculate the net returns from the onsite grazing activity, we averaged the daily liveweight production (kg ha^{-1} d^{-1}) in 2019 and 2020, multiplied by the average number of grazing days across both years, and assumed an average price of $316.19 per hundred kg weight based on the USDA average price of lambs in 2018 (USDA Agricultural Marketing Service, 2018).

Statistical Analysis

Liveweight gain per head (g $head^{-1}$ d^{-1}) and per ha (kg ha^{-1} d^{-1}) were analyzed by one-way ANOVA with repeated measures for each liveweight gain measurement period. Pasture production and water consumption of lambs (L/d) was analyzed by one-way ANOVA with three replicates at each date. Separation of

treatment means declared significant by ANOVA were compared by Fisher's method of protected least significant difference (LSD) at a $P = 0.05$. The computations were conducted using GENSTAT statistical software (Payne, 2009).

RESULTS

Climatic Conditions

The site has a long-term mean (LTM) annual precipitation of 1086 mm. The annual precipitation was 704 mm in 2019 which was substantially lower than the LTM (**Figure 1A**). The precipitation in 2020 was greater in January, May and June than the LTM. Mean air (**Figure 1B**) and soil (**Figure 1D**) temperatures followed a similar trend in open and partially shaded areas throughout the experiment period. While mean air temperature were lower in fully shaded areas than open and partially shaded areas during spring and summer months, soil temperature appeared to be greater in spring but lower in summer in fully shaded areas than other areas. Overall, soil moisture (VWC) content was similar in both open and partially shaded areas but greater in spring and summer months in fully shaded areas (**Figure 1C**).

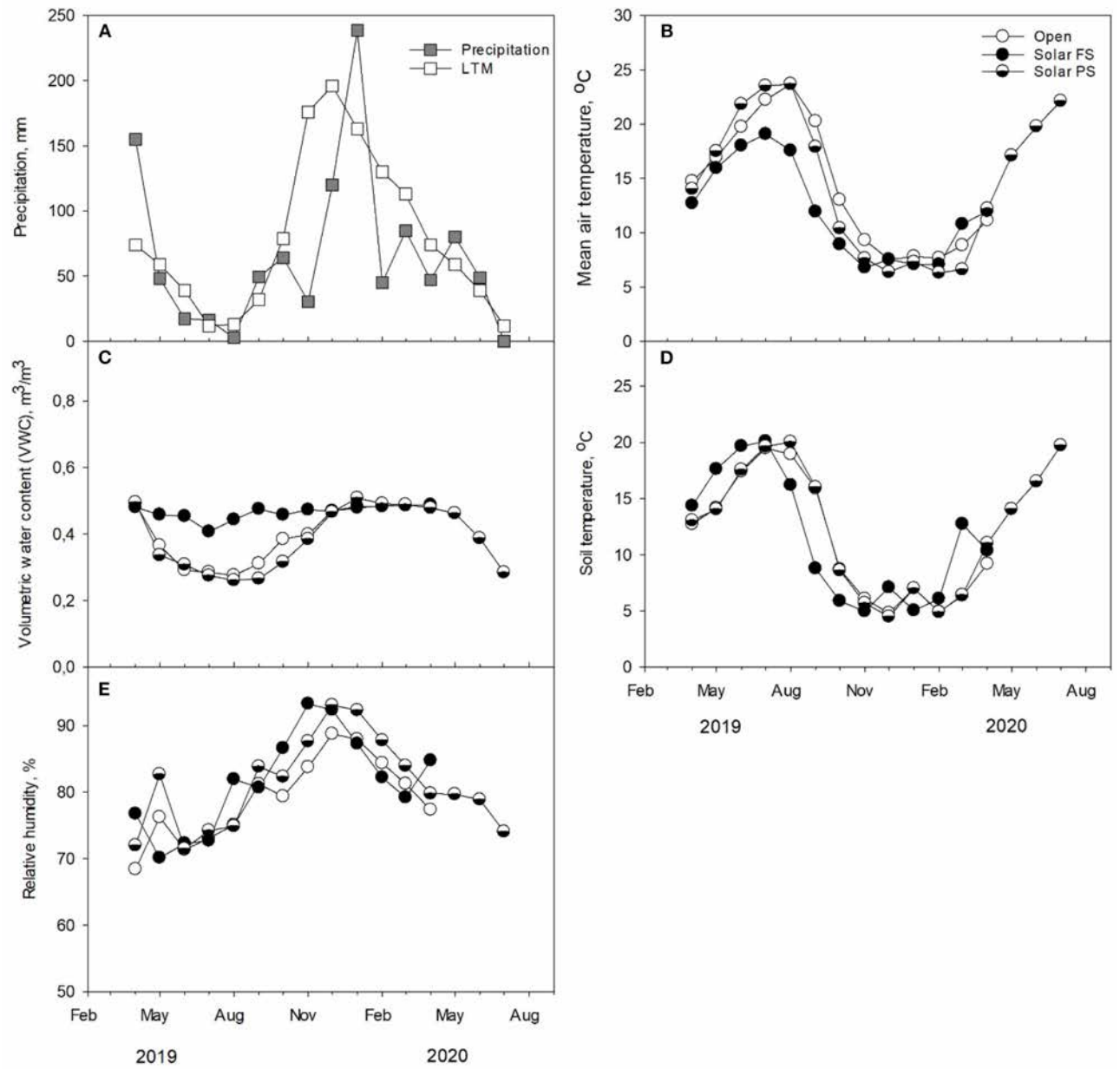

FIGURE 1 | Mean monthly precipitation **(A)** and microclimatic conditions **(B–E)** in fully (FS) and partially shaded (PS) areas under solar panels and open pastures in 2019 and 2020.

Pasture Dry Matter (DM) Production

In 2019, total herbage yield in spring-summer period was 3,609, 2,893, and 3,700 kg DM ha^{-1} for open pastures, partially shaded, and fully shaded solar pastures, respectively (**Figure 2**). While the DM yield from open and partially shaded areas was similar, pastures under fully shaded sites were substantially lower ($P < 0.01$). Seasonal herbage DM production between open pastures and partially shaded areas did not differ in 2019 ($P > 0.05$). However, the forage production in the fully shaded areas under solar panels was lower ($P < 0.05$) than open pastures on 23 May and 23 October while it was greater ($P < 0.05$) than open pastures on 11 July.

Earlier closing of the pastures in fall 2019 resulted in greater spring-summer 2020 production for both open and partially shaded pastures, while pasture production in fully shaded areas remained similar. In spring-summer 2020 total herbage yield in spring-summer period was 8,700, 3,079, and 8,579 kg DM ha^{-1} for open pastures, partially shaded and fully shaded solar pastures, respectively ($P < 0.01$). On average, the pasture production was 9–33% less in agrivoltaics systems than open pastures ($P < 0.01$).

Herbage Mass on Offer

The open pastures had a higher mean herbage mass than solar pastures in both years (**Figures 3A,B**). In spring 2019, the herbage mass in open pastures remained relatively stable throughout the grazing period, ranging from 1,268 kg DM ha^{-1} to 1,487 kg DM ha^{-1}. The herbage mass in solar pastures decreased from 1,268 kg DM ha in week 2 to 1,025 kg DM ha in week 3 and remained under 1,200 kg DM ha^{-1} until the end of the grazing. In spring 2020, herbage mass in open pastures fluctuated from 998 kg DM ha^{-1} to 1178 kg DM ha^{-1} until the end of April before it started to increase reaching to 1,510 kg DM ha in mid-May. The herbage mass in solar pastures were mostly stable fluctuating 999 kg DM ha^{-1} to 1,162 kg DM ha^{-1}. However, the difference in weekly herbage mass was only significant ($P < 0.05$) on 4 June and 11 July in 2019 and 17 April and 21 May in 2020.

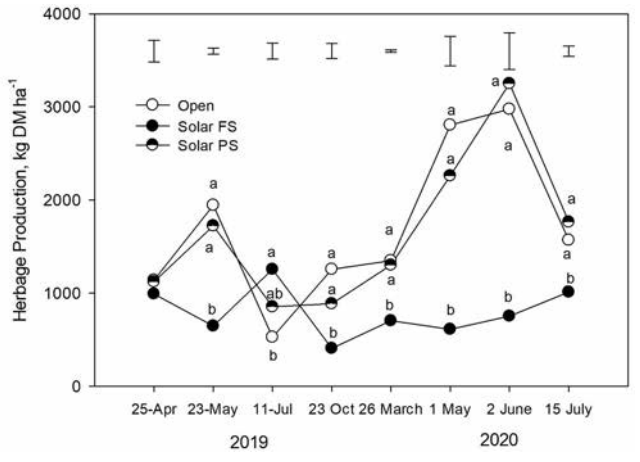

FIGURE 2 | Seasonal herbage dry matter (DM) production (kg DM ha^{-1}) in fully (FS) and partially shaded (PS) areas under solar panels and open pastures in 2019 and 2020. $^{a-b}$Lowercase letters indicate statistical differences for total herbage production according to Fisher's unprotected least significant difference ($\alpha = 0.05$). Bars represent SEM.

Botanical Composition and Nutritive Value of Herbage on Offer

In spring 2019, averaged across the grazing periods, the grass components of pastures were 83.3% and 82.8% in open and solar pastures, respectively ($P = 0.83$; **Figure 4A**). Forb components of open pastures (3.8%) were greater ($P < 0.05$) than solar pastures, which had only 1.7% legume content. A treatment × period interaction ($P < 0.05$) occurred for weed content. In period 1, both pastures had similar weed contents, while the solar pasture had greater broadleaved weed contents than open pasture by 6.2%. In spring 2020, grass content of pastures were similar ($P = 0.06$) in both open and solar pastures but the grass component increased from 74% in period 1 to 79.8% in period 2 ($P < 0.05$; **Figure 4B**). Averaged across the periods, the forb content of open pastures was 17.2% and this was greater ($P < 0.01$) than solar pastures that had only 10.2% forb content. Both pastures tended to have lower ($P = 0.06$) forb content in Period 2 than Period 1. Both pastures had comparable broadleaved weed ($P = 0.26$) and dead material contents ($P = 0.67$).

In spring 2019, average CP content of pastures reduced sharply ($P < 0.01$) from 21.6% on April 19 to 15.8% on May 1 and remained relatively stable until the end of grazing season (**Figure 5A**). Overall, solar pastures had greater ($P < 0.05$) CP content than open pastures. Similarly, ME and WSC contents of pastures declined ($P < 0.01$) as the season progressed (**Figures 5C,D**). While the difference between pastures for their NDF contents were not significant ($P = 0.16$), open pastures had consistently greater ($P < 0.05$) WSC except on June 11 (**Figures 5B,D**). The NDF content of pastures increased ($P < 0.01$) from 47.5% on April 19 to 57.1% on June 11 but both pastures had comparable ($P = 0.11$) NDF contents. Similar seasonal trends were observed in the change of chemical composition of pasture in spring 2020 (**Figures 5E,H**). However, for almost all chemical composition parameters, the nutritive value of pastures were greater in spring 2020 than spring 2019. Similar to spring 2019, solar pastures had greater CP ($P < 0.01$) and lower NDF and WSC contents ($P < 0.05$) than open pastures. In addition, in spring 2020, ME content of solar pastures were also greater ($P < 0.01$) than open pastures (**Figure 5G**).

Lamb Production

Averaged across the grazing periods, weaned lambs grew at 120 and 119 g head^{-1} d^{-1} under solar panels and open pastures, respectively in spring 2019 ($P = 0.90$; **Figure 6A**). Although a higher stocking density (36.6 lambs/ha) at the pastures under solar panels was maintained than open pastures (30 lambs/ha) in the late spring period, the liveweight production between grazing under solar panels (1.5 kg ha^{-1} d^{-1}) and open pastures (1.3 kg ha^{-1} d^{-1}) were comparable ($P = 0.67$; **Figure 6C**). Similarly, in spring 2020, lambs in both solar and open pastures had similar liveweight gains ($P = 0.64$; **Figure 6B**). In period 1, lambs grew at 130 g head^{-1} d^{-1} as the season progressed the average daily

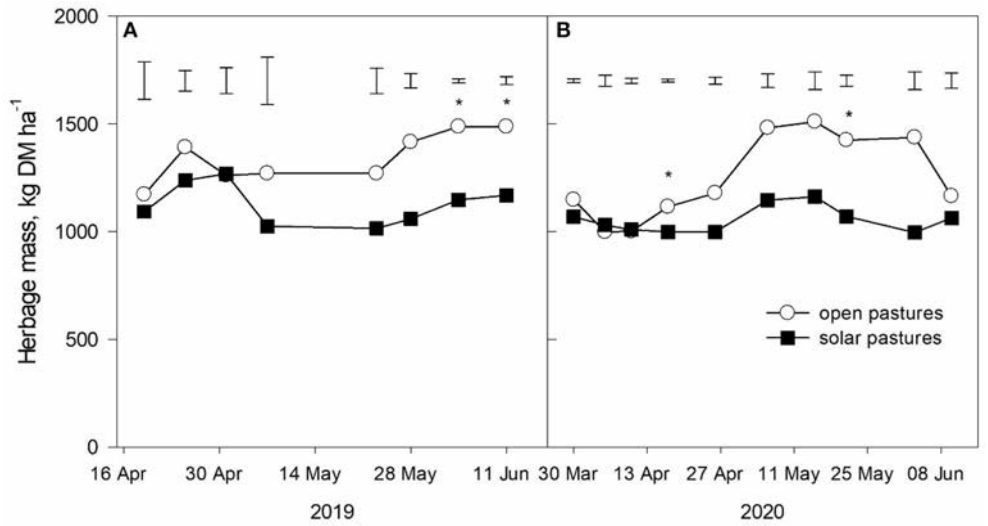

FIGURE 3 | Weekly herbage mass (kg DM ha^{-1}) in spring 2019 **(A)** and 2020 **(B)** in open and solar pastures. Bars represent SEM. *indicates above the period when the difference was significant according to Fisher's unprotected least significant difference ($\alpha = 0.05$).

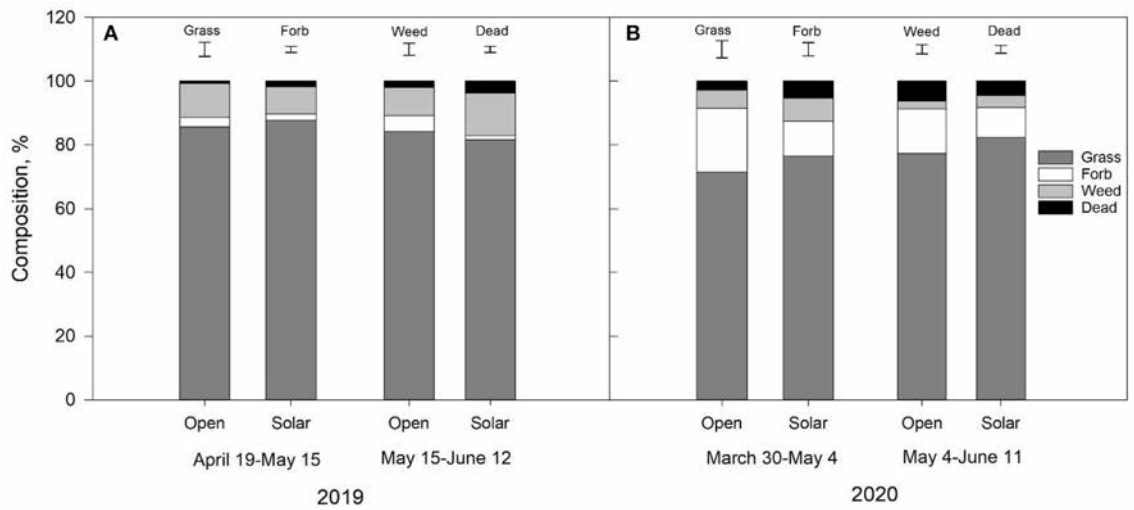

FIGURE 4 | Botanical composition of pasture on offer (%) in open and solar pastures in 2019 **(A)** and 2020 **(B)**. Bars represent SEM.

liveweight gains of the lambs dropped to 51 g head^{-1} d^{-1} ($P < 0.01$). Liveweight production of the lambs were similar as both open and solar pastures were grazed at same stocking rates in both periods ($P = 0.97$; **Figure 6D**).

Foraging Behavior and Water Intake

Lambs grazing both pasture types had similar foraging behaviors in both April and May 2020 (**Figures 7A,B**). Overall, total grazing, ruminating, idling and drinking times did not differ depending on the pasture type (All $P > 0.05$). In April, lambs spent more time ($P < 0.01$) grazing pastures in the morning and afternoon than the noontime. However, the time that lambs spent ruminating did not change ($P = 0.22$) depending on the time of the day. Lambs expressed more idling behavior in the noontime ($P < 0.05$) followed by afternoon while they spent the least time idling in the morning. The time spent drinking did not differ depending on the pasture type ($P = 0.52$) and time of the day ($P = 0.13$). In May, there was a tendency for interaction ($P = 0.054$) for the pasture type and grazing time of the day (**Figure 7B**). While the grazing times in morning were similar in both pasture types, lambs in solar pastures appeared to graze more during noon but much less in afternoon compared to those grazing open pastures. No differences were observed in ruminating (All $P > 0.05$) and drinking time regarding the time of the day or pasture types but lambs spent more time ($P < 0.05$) idling during noon than morning and afternoon.

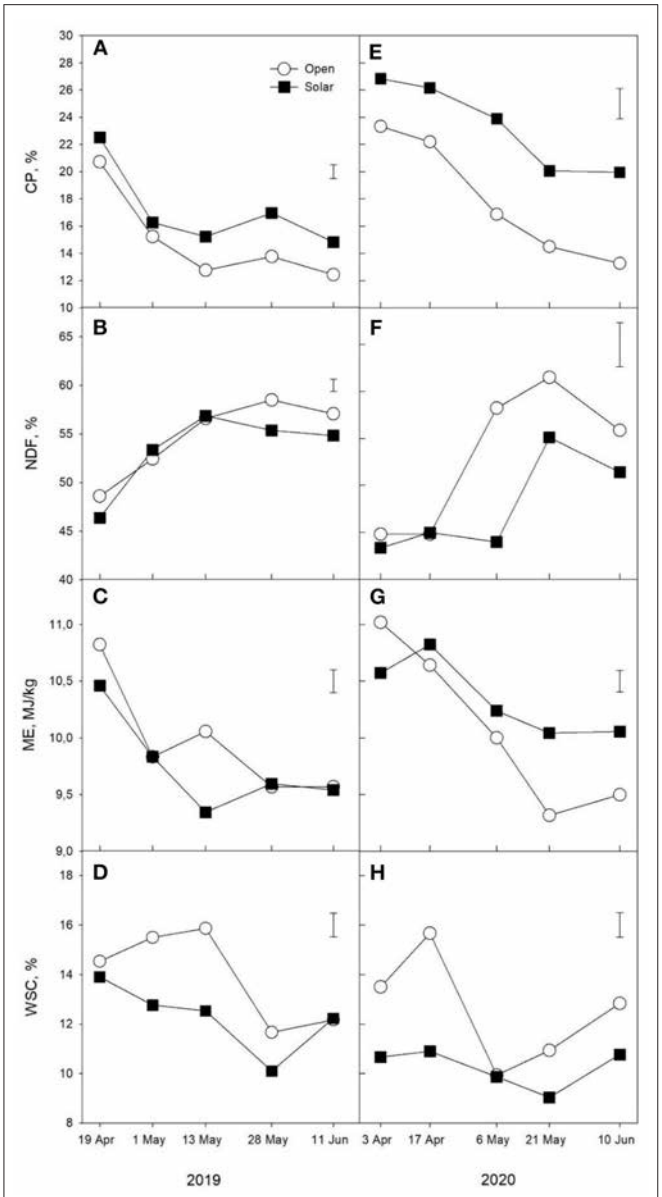

FIGURE 5 | Nutritive value of pasture on offer (%) in open and solar pastures in 2019 **(A–D)** and 2020 **(E–H)**. Bars represent SEM.

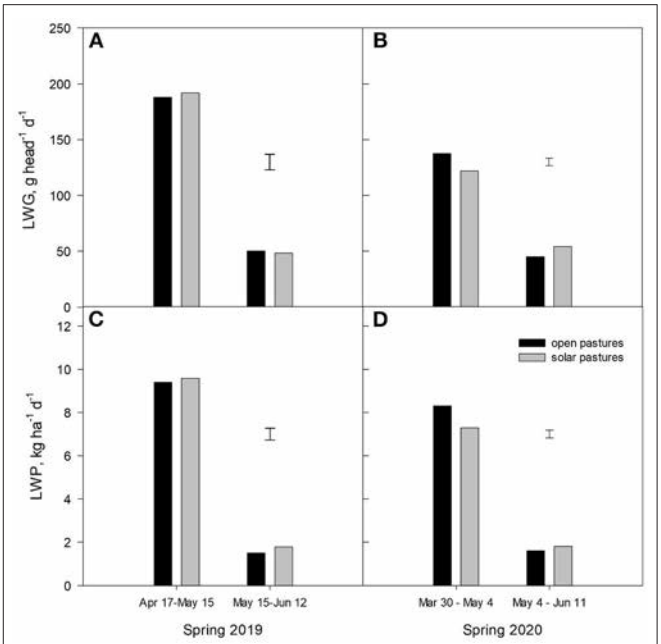

FIGURE 6 | Liveweight gains [LWG, g head^{-1} d^{-1}; **(A,B)**] and liveweight production [LWP, kg ha^{-1} d^{-1}; **(C,D)**] of lambs grazing under solar panels and open pastures in spring 2019 **(A,C)** and 2020 **(B,D)**. Bars represent SEM.

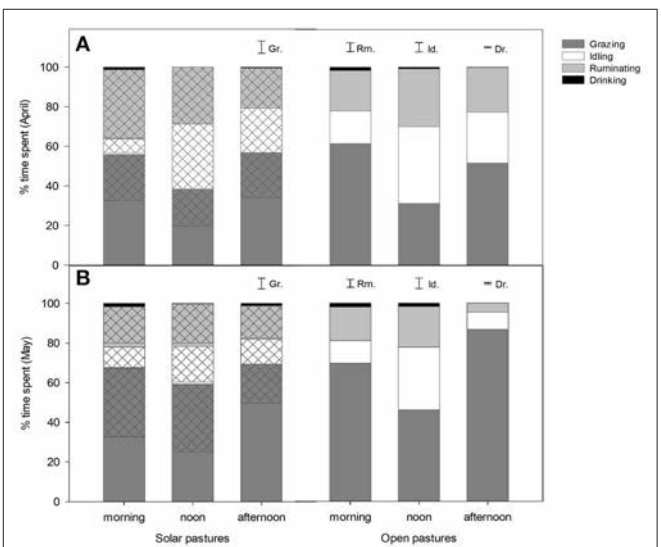

FIGURE 7 | Lamb foraging behavior in open and solar pastures in April **(A)** and May 2020 **(B)**. Crosshatch represents the time spent under full shade. Bars represent SEM. Gr = grazing, Rm = ruminating, Id = idling, Dr = drinking.

Lambs grazing solar pastures spent 96.1 and 96.5% of their idling time in shade directly under solar panels in April and May, respectively ($P = 0.95$) (**Figures 7A,B**). They also did their ruminating activities predominantly under the shade of the panels with an average 99.8% and 92.7% of their time in April and May, respectively. No period or time of the day effects were observed for the ruminating or idling time that was spent under shade (All $P > 0.05$). However, there was a tendency for period time of the day interaction for grazing time spent under shade ($P = 0.09$). On average, lambs only spent 43.5% of their grazing activities under solar panels, with no obvious time of the day difference in April. The grazing time that was spent under solar panels was similar in May (46.5%). However, there was a difference in time of the day that they spent grazing activities under solar panels. While, they also undertook over 50% of their grazing activity in shade as well in the morning and noon the lambs spent only 29% of their grazing time under solar panels in the afternoon.

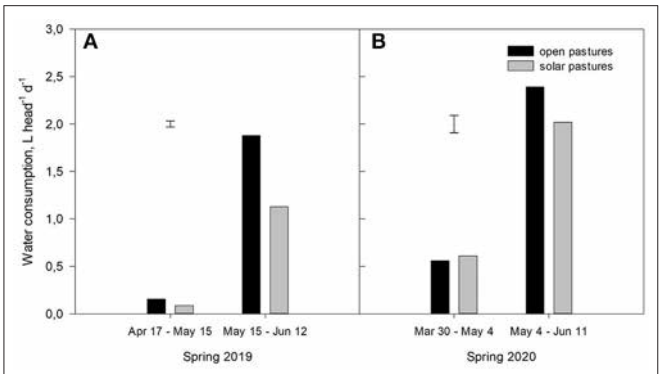

FIGURE 8 | Daily water consumption (L head^{-1} d^{-1}) of lambs grazing in solar and open pastures in spring 2019 **(A)** and 2020 **(B)**. Bars represent SEM.

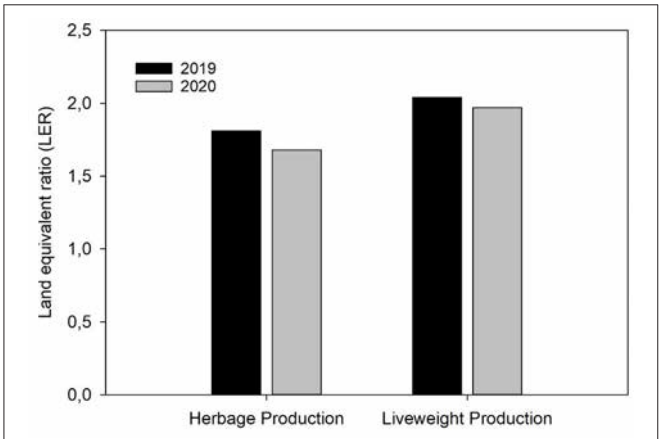

FIGURE 9 | Land equivalent ratio of herbage (kg DM ha^{-1}) and liveweight production (LWP, kg ha^{-1} d^{-1}) in 2019 and 2020.

In 2019, the daily water consumption of the lambs was similar during early spring, but lambs in open pastures consumed 0.72 L head^{-1} d^{-1} more water than those grazed under solar panels in the late spring period (P <0.01; **Figure 8A**). In spring 2020, the daily water intake of the lambs was 1.48 and 1.32 L head^{-1} d^{-1} for the lambs in open and solar pastures, respectively but the difference was not significant at neither early nor late spring periods (P = 0.42; **Figure 8B**). The water intake of the lambs increased from 0.59 L head^{-1} d^{-1} in early spring to 2.21 L head^{-1} d^{-1} in the late spring period (P < 0.01).

Land Equivalent Ratio and Net Economic Return of Solar Grazing

Land use efficiency of herbage DM yield (kg DM ha^{-1} y^{-1}) and lamb liveweight production (kg ha^{-1} d^{-1}) in agrivoltaics was 1.81 and 2.04, respectively in 2019. The LER of herbage DM yield was 1.68, while the LER of liveweight production was 1.97 in 2020 (**Figure 9**). Averaged across the years, our net return from grazing was $1,046 ha^{-1} year^{-1} in open pastures, and $1,029 ha^{-1} year^{-1} in solar areas.

DISCUSSION

Shade and Animal Trampling Reduced the Pasture Production in Fully Shaded Areas in Solar Pastures

Light interception is one of the primary drivers of plant growth together with nutrients, temperature and available soil moisture (Rayburn and Griggs, 2020). Previous studies that were conducted in artificial shade conditions (Varella et al., 2001; Dodd et al., 2005) or in silvopastoral systems (Devkota et al., 2009) reported that light was the main determining factor for the understory forage production. In the current study, the lower total annual forage yield in solar pastures compared to open pastures was a consequence of poor production in fully shaded areas. This is also in agreement with the conclusion of Hawke and Knowles (1997) who reported that of all the factors (e.g., nutrients, temperature) shade was the major limiting factor in understory forage production in temperate agroforestry systems.

It was reported that quality of light received by forages under a tree canopy does influence the annual growth cycle of understory forages (Krueger, 1981). A substantial variation in seasonal production patterns annual growth cycle in particular for the forages in fully shaded areas was also detected due to pertinent microclimatic conditions. The lower temperatures early in spring and higher availability of soil moisture later in spring coupled with overall low light intensity under the solar panels delayed the initial flush of spring growth of sparse pastures in these areas. In contrast, growth rates of pastures under the solar panels had an increasing trend toward summer, whereas pasture growth rates in open and partially shaded areas were slowing down during the same periods. Although the greater growth rates of pastures under solar panels was only evident in late spring-early summer in 2019 due to sparsity and lower density of these pastures, high summer production form the forages grown under solar panels could help reduce the summer feed gap when shade tolerant pasture mixtures are established and careful grazing management is applied.

While reduced light is the primary reason for the inferior production in solar pastures, trampling of the forages by livestock in fully shaded areas further penalized the biomass yield. A heavy traffic of livestock as evidenced by the foraging behavior observations resulted in decimation of forages under the solar panels, consequently leading to 9–33% less in solar pastures than open pastures. In traditional open pastures, Edmond (1964) reported a 4–39% reduction in annual biomass production of perennial ryegrass that was trodden nine times by sheep over a period of 11 months, compared with the non-pugged control treatment. Typically, soil consolidation due to pugging in saturated soils can cause severe deterioration to soil physical conditions, such as a reduction of volume of large pores resulting in poor hydraulic conductivity (Drewry, 2006). In contrast, from ungrazed pastures under the solar panels within the same site, Adeh et al. (2018) reported a 90% increase biomass per unit area, and 330% increase in water use efficiency under the solar panels during late spring-summer. This indicates the need for controlling grazing to avoid excess trampling and take advantage

of high biomass production potential in solar pastures in late spring-summer period.

It is of note that the current study was conducted on an unimproved, grass-dominated pasture established over 20 years ago and managed with no (e.g., irrigation) or low inputs (e.g., fertilizer, lime). We expect that the pasture conditions are representative to most grazed agrivoltaic systems in Pacific Northwest. Overseeding to improve the forage diversity and quality yielded little benefit with forbs contributing only 3.8% to the botanical composition during the grazing season in spring 2019. The effect of forbs in pasture composition and quality was more pronounced in 2020 when both open (17.2%) and solar pastures (10.2%) had substantially greater forb contents. The lower forb content in solar pastures was mainly because of the poorer establishment under full shade areas. In agreement with our finding, Dodd et al. (2005) also noted a decline in legume content under artificial shade. Consequently, the overall pasture production from both open and solar pastures did not compare favorably to the biomass yield from young, unirrigated pastures in the same location where annual forage production was 13.4 t DM ha^{-1} y^{-1} (Wilson, 2020). It was of note that earlier closing of the pastures from grazing in fall 2019 resulted in greater spring-summer 2020 production and extended grazing period for both open and partially shaded pastures, while pasture production in fully shaded areas remained similar.

Lamb Production Did Not Differ Despite Lower Herbage on Offer in Solar Pastures

Feeding value, a function of nutritive value and dry matter intake of the forages is the primary determinant of the animal performance in pasture based-livestock systems (Waghorn and Clark, 2004). Thus, the production level of grazing livestock is highly dependent on pasture quality and daily forage allowance (Penning et al., 1986). In particular, the high forage quality in dryland systems is crucial to bring the lambs to the slaughter weight before the onset of summer drought. The lamb growth rates in the current study was similar to those reported by Warner and Sharrow (1984) for spring (73-165 g $head^{-1}$ d^{-1}) and early summer (−13–98 g $head^{-1}$ d^{-1}) periods in a 3 year-grazing study. In contrast, Gultekin et al. (2020) reported greater lamb liveweight gains in dryland hill pastures in Pacific Northwest where the lamb growth rates were maintained over 141 g $head^{-1}$ d^{-1} in the late spring season (May-June). It is of note that the newly established pastures reported in Gultekin et al. (2020) study contained over 20% legume indicating the value of high legume content of pastures for improved forage quality and high lamb growth rates particularly in dryland pastures (Hyslop et al., 2000; Mills et al., 2015).

In the current study, the reduction in lamb liveweight gains was of note, despite the lower stocking rate in late, spring and pasture mass being maintained < 1,000 kg DM ha^{-1}. Overall, lamb growth rates and spring lamb production in the current study were similar in both production systems, although herbage mass on offer remained greater in open compared to solar pastures in the late spring period. Jamieson and Hodgson (1979) noted a 39% decline in lamb herbage intake as the herbage mass was reduced from 3,000 to 1,000 kg OM ha^{-1}. In contrast, the overall quality of solar pastures were greater as evidenced by the chemical composition of forage on offer. Although not quantified, we also observed grasses in open pastures contained more seed heads possibly because earlier phenological development as compared to the grasses in shaded areas (Krueger, 1981). It is also probable that at lower pasture masses in solar pastures, lambs may have done a closer grazing, suppressing the stem elongation and seedhead production (Garay et al., 1997). Consequently, it appears that higher forage nutritive value in solar pastures during the same period offset the lower herbage mass, leading to similar lamb liveweight gains in both systems. It is of note that our results on forage quality are also in line with the findings of several studies that reported improved forage nutritive values from both natural and artificial shade environments (Ciavarella et al., 2000; Kallenbach et al., 2006). For example, Dodd et al. (2005) reported a 0.2% increase in herbage N concentration while Ciavarella et al. (2000) noted a 0.6% increase in shaded pasture compared to unshaded pastures.

Lambs Spent Their Time Predominantly Under Shade and had Similar or Lower Water Intake Than Those Grazing Open Pastures

A further reason for comparable lamb growth in both systems might have been due to less heat stress that the lambs experienced under shade in solar pastures. Provision of shade as a mitigation strategy for the heat stress also leads to lower maintenance energy requirement and reduces production losses (Russel and Wright, 1983). It is likely that the lambs grazing under the solar panels might have required less maintenance energy to regulate their body temperatures. In the current study, the lambs in solar pastures spent their ruminating and idling activities predominantly under shade (<96%), while 45% of their grazing activity took place in shade directly under the solar panels. Similarly, in a recent silvopastoral study, Pent et al. (2020) noted that lambs spent over 90% of daylight hours within the boundaries of the shade. Cloete et al. (2000) recorded that lambs born in shaded paddocks were 3.8% heavier at weaning than those were born and raised in paddocks without shade. Similarly, Kendall et al. (2006) recorded higher milk yields from the grazing Holstein Friesian dairy cows that were provided shade in temperate pastures due to reduced level of moderate heat stress.

Foraging behavior observed in spring 2020 did not substantially differ among lambs grazing solar or open pastures, although the lambs grazing solar panels appeared to be more active during noontime. In line with our findings, Rovira and Velazco (2010) noted that provision of shade did not affect grazing behavior of cattle during daylight hours in Uruguay.

A feature of the results was that the lambs grazing solar pastures consumed less water in late spring period in 2019. However, the effect of shade on group apparent water consumption of lambs was not consistent and significant in spring grazing in 2020. Contrasting reports in literature on the response of livestock to shade have also been reported from different climatic zones and with various classes of animals. The studies conducted in the prevailing Mediterranean climatic regions of the world reported that sheep that were provided shade consumed less water than those did not have access to any shade (Olivares and Caro, 1998; Cloete et al., 2000). In contrast, Silanikove (1987) reported no difference between sheltered and unsheltered sheep for their water and feed intake in a hot Mediterranean climate. It is of note that grazing livestock can adapt to the environmental conditions such as heat stress through thermoregulatory responses. However, the benefit of shade provided by solar panels in agrivoltaics on animal welfare and water consumption can be more apparent in hot climatic regions of the world. Furthermore, agrivoltaics systems may alleviate the need of artificial shelter provision to livestock, also reducing the initial infrastructure cost in pasture-based livestock production.

Land Use Efficiency in Agrivoltaics Was Substantially Greater Compared to Single Use System

One of the features of our results was remarkably high land use efficiency in agrivoltaics system as indicated by LER of herbage and spring lamb production. The LER of herbage yield obtained in the current study is quite comparable to LER of grass-clover pasture (1.67–1.70) reported by Trommsdorff et al. (2021). It is of note that solar panels in the Trommsdorff et al. (2021) study was designed for an optimized energy and crop production with panels having a vertical clearance of 5 m and a width clearance of up to 19 m. Despite lower total annual herbage yield in agrivoltaics as compared to traditional open pastures in the current study, combining energy and pasture-based lamb production appears to be greatly advantageous. This finding is in line with Dupraz et al. (2011) who suggested that global land productivity in agrivoltaics systems could be increased by 35–73%. The land use efficiency in agrivoltaics in particular where energy and animal production was combined on the same land can possibly be increased further through more optimized design, choice of shade tolerant pasture species and sustainable livestock management practices.

Our net returns for grazing in solar pastures were 1.6% ($17 ha^{-1} $year^{-1}$) less than in open pastures, which is a small percentage when considering the potential profits from photovoltaics energy production in agrivoltaics system. While we only attempted to calculate net profits form spring grazing in the current study, an economic or a life cycle analyses of agrivoltaics system taking into account of photovoltaics component (e.g., establishment, maintenance, energy production) would provide a more detailed analyses from a whole production system standpoint.

CONCLUSION

This study reveals that successful agrivoltaic systems are possible where lamb and energy production can be produced simultaneously from the same land. Comparable spring lamb growth and liveweight production per hectare from open and solar pastures demonstrate that agrivoltaic systems would not decrease the production value and potential of the land. In contrast, LER indicated that the dual-purpose management enables increasing the land productivity up to 1.81 for pasture production and 2.04 for spring lamb production through combining sheep grazing and solar energy production on the same land as compared to single use systems. In addition to the increased land productivity and improved animal welfare, the results from this study support the benefits of agrivoltaics as a sustainable agricultural system. Overall, lower pasture yields under in fully shaded areas under the solar panels were the main cause of inferior pasture production in agrivoltaic sites in the current study. When designing pasture mixtures for agrivoltaic systems, a selection of pasture species that are not only tolerant to shade but also persistent under heavy traffic should be considered. Limiting the daily grazing time (e.g., on-off grazing: 3 h-grazing/d only) or rotational grazing pastures at low grazing intensities may be viable options for sustainable grazing of seasonally wet soils under solar panels.

DATA AVAILABILITY STATEMENT

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author/s.

ETHICS STATEMENT

The animal study was reviewed and approved by Oregon State University Animal Care and Use Committee.

AUTHOR CONTRIBUTIONS

All authors listed have made a substantial, direct and intellectual contribution to the work, and approved it for publication.

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Conflict of Interest: The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 6/2022
[2023] NZSC 112

BETWEEN	PORT OTAGO LIMITED Appellant
AND	ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED First Respondent
	OTAGO REGIONAL COUNCIL Second Respondent
	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Third Respondent
	MARLBOROUGH DISTRICT COUNCIL Fourth Respondent

Hearing:	11–12 May 2022
Court:	Winkelmann CJ, Glazebrook, Ellen France, Williams and William Young JJ
Counsel:	L A Andersen KC and S M Chadwick for Appellant D A Allan, M C Wright and C S S Woodhouse for First Respondent S J Anderson and T M Sefton for Second Respondent M C Smith, S T Shaw and M Downing for Third Respondent J W Maassen and B D Mead for Fourth Respondent V E Casey KC, V S Evitt and J W E Parker for Waka Kotahi | New Zealand Transport Agency R B Enright for Ngāti Whātua Ōrākei Whai Maia Limited P F Majurey and K Ketu for Ngāti Maru Rūnanga Trust, Te Ākitai Waiohua Waka Taua Incorporated, Ngāi Tai ki Tāmaki Trust and Ngāti Tamaoho Trust G C Lanning and C J Ryan for Auckland Council
Judgment:	24 August 2023

JUDGMENT OF THE COURT

A The appeal is allowed.

B The order remitting the matter to the Environment Court is set aside.

C The Otago Regional Council is directed to consult the parties and any other persons it considers appropriate on a redrafted policy 4.3.7(d)–(e) in the proposed Otago Regional Policy Statement either:

(a) along the lines in paragraph [87] of this judgment or to similar effect; or

(b) otherwise to give appropriate effect to the policies of the NZCPS and their inter-relationships.

D Costs are reserved.

REASONS
(Given by Glazebrook J)

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Introduction

[1] This appeal raises important issues about the relationship between the policies in the New Zealand Coastal Policy Statement (NZCPS) and how such policies should be reflected in lower-order planning documents.[1] Resolving these issues requires us to address the principles established by this Court in *Environmental Defence Society v The New Zealand King Salmon Co Ltd* (*King Salmon*)[2] and *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd* (*Sustain Our Sounds*)[3] in a different context. At issue in *King Salmon* and *Sustain Our Sounds* was the effect of the NZCPS on proposed plan changes to enable the establishment of salmon farms in particular locations. This appeal concerns the relationship between the policies in the NZCPS requiring aspects of the natural environment to be protected and the NZCPS policy on ports as it relates to Port Otago, which is critical existing infrastructure.

[2] In particular, the appeal relates to the validity of a policy relating to ports contained in a proposed Otago Regional Policy Statement (proposed regional ports policy) and the suggested modification by the Environment Court.[4] This requires a consideration of the following issues:

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1 "New Zealand Coastal Policy Statement 2010" (4 November 2010) 148 *New Zealand Gazette* 3710.

2 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 [*King Salmon*].

3 *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 40, [2014] 1 NZLR 673 [*Sustain Our Sounds*].

4 For the original proposed regional ports policy, see below at [14]. For the suggested wording of the Environment Court, see below at [32].

(a) the relationship between policy 9 of the NZCPS relating to ports (the NZCPS ports policy) and a number of other policies that require adverse effects of activities to be avoided (the NZCPS avoidance policies): policy 11 (indigenous biological diversity (biodiversity)), policy 13 (preservation of natural character), policy 15 (natural features and natural landscapes) and policy 16 (surf breaks of national significance);[5]

(b) whether any potential conflicts between the NZCPS ports policy and the NZCPS avoidance policies should be addressed in regional policy statements and plans or at the consent level under ss 104 or 104D of the Resource Management Act 1991 (RMA); and

(c) how any conflicts between those policies should be addressed.

[3] Before considering the above issues, we first give a brief factual background and set out the relevant parts of the NZCPS and the proposed regional ports policy. We then summarise the decisions in the courts below and the submissions in this Court.

Factual background[6]

[4] The Otago | Ōtākou Harbour is the only significant natural port location between Timaru | Te Tihi-o-Maru and Bluff | Motupōhue. Port Otago Ltd operates two ports: at Port Chalmers | Kōpūtai and Dunedin | Ōtepoti. Port Chalmers is now one of New Zealand's two deepest container ports and the country's third largest port by product value. Port Otago employs over 300 staff.

[5] Harbour dredging in Port Chalmers began in 1865 and in Dunedin in 1881. Dredging with regard to both ports still remains necessary to remove sediment as the

5 We have assumed for these purposes that there will be no conflict among the various avoidance policies.

6 A fuller factual background is provided in the Environment Court's decision *Port Otago Ltd v Otago Regional Council* [2018] NZEnvC 183 [EnvC interim judgment] at [8]–[21]; the High Court decision in *Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278, (2019) 21 ELRNZ 252 [HC judgment] at [6]–[17]; and the Court of Appeal decision in *Port Otago Ltd v Environmental Defence Society Inc* [2021] NZCA 638, [2022] NZRMA 165 [CA judgment] at [2]–[15].

channel fills in. A sand bar at the entrance of the harbour initially restricted the size of vessels that could enter. In the late 1880s, this was rectified by the building of the mole at Aramoana.

[6] The proposed Regional Policy Statement does not itself identify natural landscapes of high or outstanding natural character within the harbour. Such classifications are contained in derivative plans, not yet completed. Two relevant places where the ports operate were identified in evidence by Port Otago before the Environment Court as potentially being within areas of high or outstanding natural character or features.[7]

[7] There are also key habitats in the harbour that could potentially be affected by works related to the ports. For example, seagrass beds in the lower Otago Harbour provide nursery grounds for inter-tidal invertebrates and fish, as well as feeding areas for fish and birds. Part of the seagrass beds off Harwood (on the south side of the lower harbour) fall within a coastal protected area in the Otago Regional Plan. The salt marsh at Aramoana, adjacent to The Spit,[8] is another coastal protection area in the Otago Regional Plan and classified as an area of significant conservation value in the Dunedin City District Plan. There are also important rocky shore habitats, cockle beds and shell banks. The last of these were described in the Environment Court decision as "unique within Otago Harbour and very rare locally, nationally and internationally with birds using the banks in the harbour for roosting".[9]

[8] Finally, there are nationally significant surf breaks at The Spit, Aramoana and at Whareakeake, the latter outside the harbour to the west of Heyward Point. The Environment Court noted that the surf break of The Spit is maintained in part by managed disposal of dredged sediment from the main harbour channel and that there was some evidence that this also applies to the break at Whareakeake.[10]

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7 Namely, the Heyward Point dredging disposal site and the shipping channel: see EnvC interim judgment, above n 6, at [13].

8 The Spit is another stretch of land extending into the harbour, almost perpendicular to the Aramoana mole.

9 EnvC interim judgment, above n 6, at [11(f)].

10 At [14].

The NZCPS

[9] The NZCPS ports policy reads:[11]

> Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:
>
> (a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes; and
>
> (b) considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.

[10] Turning to the relevant NZCPS avoidance policies, policies 11, 13 and 15 have a similar structure. First, they define the circumstances in which adverse effects must be avoided. In the case of policy 13, this covers areas of the coastal environment with outstanding natural character. In policy 15, this is with regard to outstanding natural features and outstanding natural landscapes in the coastal environment. In policy 11, this relates to certain species and areas listed, for example indigenous ecosystems and vegetation types that are threatened in the coastal environment or are naturally rare, as well as areas containing nationally significant examples of indigenous community types. Moving one step down on the hierarchy of protection, the policies then provide that, in other cases, significant adverse effects must be avoided and other adverse effects avoided, remedied or mitigated.

[11] As an example of these two levels of protection we set out policy 13(1)(a) and (b):

> (1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:
>
> (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and
>
> (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;

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11 "New Zealand Coastal Policy Statement 2010", above n 1, policy 9.

[12] Policy 16, relating to surf breaks of national significance, provides:[12]

> Protect the surf breaks of national significance for surfing listed in Schedule 1, by:
>
> (a) ensuring that activities in the coastal environment do not adversely affect the surf breaks; and
>
> (b) avoiding adverse effects of other activities on access to, and use and enjoyment of the surf breaks.

[13] Policy 7, relating to strategic planning, was referred to by the Environment Court. It provides:

> (1) In preparing regional policy statements, and plans:
>
> (a) consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment at a regional and district level; and
>
> (b) identify areas of the coastal environment where particular activities and forms of subdivision, use and development:
>
> (i) are inappropriate; and
>
> (ii) may be inappropriate without the consideration of effects through a resource consent application, notice of requirement for designation or Schedule 1 of the Act process;
>
> and provide protection from inappropriate subdivision, use, and development in these areas through objectives, policies and rules.
>
> (2) Identify in regional policy statements, and plans, coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects. Include provisions in plans to manage these effects. Where practicable, in plans, set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects are to be avoided.

Proposed Regional Policy Statement

[14] A proposed Otago Regional Policy Statement was prepared by the Otago Regional Council (the Council) and publicly notified on 23 May 2015. The proposed regional ports policy was:

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[12] Footnote omitted.

Policy 4.3.7 Recognising port activities at Port Chalmers and Dunedin

Recognise the functional needs of port activities at Port Chalmers and Dunedin and manage their effects by:

(a) Ensuring that other activities in the coastal environment do not adversely affect port activities;

(b) Providing for the efficient and safe operation of these ports and effective connections with other transport modes;

(c) Providing for the development of those ports' capacity for national and international shipping in and adjacent to existing port activities;

(d) Providing for those ports by:

(i) Recognising their existing nature when identifying outstanding or significant areas in the coastal environment;

(ii) Having regard to the potential adverse effects on the environment when providing for maintenance of shipping channels and renewal/replacement of structures as part of ongoing maintenance;

(iii) Considering the use of adaptive management as a tool to avoid adverse effects;

(e) Where the efficient and safe operation of port activities cannot be provided for while achieving the policies under Objective 3.1 and 3.2 avoid, remedy or mitigate adverse effects as necessary to protect the outstanding or significant nature of the area; and

(f) Otherwise managing effects by applying policy 4.3.4.

[15] The proposed regional ports policy refers to objectives in the proposed Regional Policy Statement. Objectives 3.1 and 3.2 in the proposed Otago Regional Policy Statement are:

Objective 3.1 The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded

…

Objective 3.2 Otago's significant and highly-valued natural resources are identified and protected, or enhanced where degraded

[16] Proposed policy 4.3.4 is also referred to. It provides:

Policy 4.3.4 Adverse effects of nationally and regionally significant infrastructure

Manage adverse effects of infrastructure that has national or regional significance, by:

(a) Giving preference to avoiding its location in all of the following:

(i) Areas of significant indigenous vegetation and significant habitats of indigenous fauna in the coastal environment;

(ii) Outstanding natural character in the coastal environment;

(iii) Outstanding natural features and natural landscapes, including seascapes, in the coastal environment;

(iv) Areas of significant indigenous vegetation and significant habitats of indigenous fauna beyond the coastal environment;

(v) Outstanding natural character in areas beyond the coastal environment;

(vi) Outstanding natural features and landscapes beyond the coastal environment;

(vii) Outstanding water bodies or wetlands;

(viii) Places or areas containing historic heritage of regional or national significance;

(b) Where it is not practicable to avoid locating in the areas listed in (a) above because of the functional needs of that infrastructure:

(i) Avoid adverse effects on the values that contribute to the significant or outstanding nature of (a)(i)–(iii);

(ii) Avoid significant adverse effects on natural character in all other areas of the coastal environment;

(iii) Avoid, remedy or mitigate, as necessary, adverse effects in order to maintain the outstanding or significant nature of (a)(iv)–(viii);

(c) Avoid, remedy or mitigate, as necessary, adverse effects on highly valued natural features, landscapes and seascapes in order to maintain their high values;

(d) Avoiding, remedying or mitigating other adverse effects;

(e) Considering offsetting for residual adverse effects on indigenous biological diversity.

Where there is a conflict, Policy 4.3.4 prevails over the policies under Objectives 3.2 (except for policy 3.2.12), 5.2 and Policy 4.3.1.

[17] In relation to surf breaks, there are two particularly relevant proposed policies. The first repeats the NZCPS in recognising surf breaks of national importance including The Spit and Wharekeake.[13] The second policy provides:

> **Policy 3.2.12 Managing surf breaks of national importance**
>
> Protect surf breaks of national importance, by all of the following:
>
> (a) Avoiding adverse effects on the natural and physical processes contributing to their existence;
>
> (b) Avoiding adverse effects of other activities on access to, and use and enjoyment of, those surf breaks.

Decisions of the Courts below

Environment Court decision

[18] The Environmental Defence Society Incorporated (EDS) and 24 others appealed the decision of the Council regarding the proposed Regional Policy Statement to the Environment Court. They said that the proposed regional ports policy in (e) with its options to "avoid, remedy or mitigate adverse effects as necessary" failed to give effect to the NZCPS and in particular policies 11(a), 13(1), 15(a) and (b), and 16.[14]

[19] Mediation did not resolve the issue and the appeal was heard by the Environment Court in 2018. In September of that year, the Environment Court issued an interim decision.

[20] The Environment Court took the view that there was a potential conflict between the ports policy and the avoidance policies in the NZCPS. The Court noted the use of the prescriptive verb "requires" in the ports policy and considered that this was used to ensure that there would be an efficient network of safe ports. It said:[15]

> These must be able to service both national and international shipping, with the implication that even large ships need to be catered for if not necessarily the very largest supertankers or container ships. The core of policy 9 is accordingly strongly prescriptive even if there is some discretion as to where, when and how ports are to be located and developed.

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13 Proposed policy 3.2.11.
14 EnvC interim judgment, above n 6, at [5].
15 At [114].

[21] The Court considered that policy 7 (strategic planning) could be used to resolve the conflict between the ports policy and the avoidance policies. It said that some activities that have the potential to cause adverse effects (and therefore breach the avoidance policies) may need to be "considered on a case by case basis so that the potential adverse effects can be considered in the context of a specific factual and predictive situation".[16] Policy 7 suggests that subordinate plans can provide the method for resolving such conflicts by "requiring a resource consent be applied for and determined having regard to purposively framed objectives and policies".[17] In short, the Court held "that reference to policy 7(1)(b)(ii) may be used to resolve any conflict between the directory provisions of policy 9 (Ports) and the even more directory avoidance policies of the NZCPS".[18]

[22] Various parties in the Environment Court had put forward suggested wording to replace the wording in the regional ports policy.[19] The Court went on to evaluate these suggestions.

[23] In terms of efficiency considerations,[20] the Court noted that any analysis of efficiency had to compare the status quo against the other policy options, having particular regard to the efficient use and development of the resources.[21] The parties had, however, not attempted to quantify the net benefits of the options.[22] The Court held that there was no jurisdictional bar to considering the express costs of environmental protection but held that:[23]

> …equally the analysis needs to make an – in this case unquantified – value judgment about the benefits of protecting the life-supporting capacity of the biodiversity estuarine and near-shore (neritic) ecosystems, and of protecting the natural character of the coastal environment.

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16 At [91].
17 At [91].
18 At [92].
19 Set out at [94]–[95].
20 The Environment Court considered efficiency due to the effect of s 32AA of the Resource Management Act 1991 [RMA] which requires an assessment under s 32 and is complemented by s 7(b). Section 7(b) requires decision-makers to have particular regard to "the efficient use and development of natural and physical resources".
21 EnvC interim judgment, above n 3, at [96].
22 At [97].
23 At [100].

[24] The Environment Court identified the safe operation of the ports as a matter of national importance.[24] We comment that this highlights the importance the Court placed on safety considerations.

[25] The Environment Court then made some comments on the relevant policies in the NZCPS and proposed Otago Regional Policy Statement and provided some considerations that could be taken into account when reconciling them.

[26] The Court noted that the NZCPS ports policy contemplated not only existing ports in their current state but the potential development of new ones and the development and improvement of existing ports.[25] It considered that the most relevant and detailed part of policy 9 is sub-policy (b) which it viewed as requiring local authorities (and the court on appeal) to consider where, when and how to provide for three matters:[26]

(a) the efficient and safe operation of existing and future ports;

(b) the development of their capacity for shipping; and

(c) connecting shipping with other transport modes.

[27] The Court commented that, while there are choices to be made as to where, when and how port facilities are to be provided, they must be put in place to ensure New Zealand shipping services can continue. Policy 9(b) also contemplates the development of ports beyond their existing characteristics.[27] The Court nevertheless commented that policy 9 is not wholly prescriptive:[28]

> New ports need to be supplied but not in any particular place or at a particular time; and even existing ports cannot necessarily expand indefinitely and whenever their operators want. All these are part of the questions "where, when and how"?

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24 At [107].
25 At [118].
26 At [119].
27 At [120].
28 At [121].

[28] In terms of the avoidance policies, the Court referred to Part 2 of the RMA and s 6 in particular. It pointed out that, unlike s 6(a) and (b) of the RMA which only protect the coastal environment and outstanding natural landscapes from inappropriate development and use, s 6(c) of the RMA (protection of areas of significant indigenous vegetation and habitats of indigenous fauna) is more absolute in its terms. In the Court's view, this reinforces the strength of the avoidance aspect of policy 11(a) of the NZCPS.[29] The Court considered that the effects of port activities on natural character and natural landscapes (policies 13 and 15) might have a (slightly) lower standard applied with regard to conflicts between directive policies and the assessment as to whether a resource consent should be granted in a particular case.[30] We agree that this may be the case, but it would depend on the circumstances.

[29] Moving on to surf breaks, the Court noted the complex relationship between port operations and the surf breaks in that dredging was related, at least partly, to the creation and shape of the surf breaks.[31] The Court considered that the straight avoidance provision in the proposed Regional Policy Statement would not only cause problems of proof as to causation, but also cause practical problems in deciding whether port activities were improving or harming the surf breaks. In light of those practical difficulties the Court found it difficult to understand why policy 3.2.12 of the proposed Regional Policy Statement contains an avoidance policy when policy 16(a) of the NZCPS does not. In terms of that latter point, we comment that, while policy 16(a) does not contain the word "avoid", it does have the directive term "ensuring". Otherwise, we have some sympathy for the view that natural surf breaks may be more worthy of protection than ones created artificially and we agree that there are problems with proof of effects and also practical problems in ascertaining the effect of port activities on surf breaks.

[30] The Environment Court considered that 4.3.7(d) to (f) of the proposed regional ports policy should be amended to make their place in the overall policy statement easier to understand and to make a distinction between management of the effects of

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29 At [128].

30 At [129]. We comment that, if this lower standard did apply, it would apply to determining whether an effect was sufficiently harmful to breach an avoidance policy not to the strength of the operative verb "avoid" (which would be equivalent in both cases).

31 At [130].

ensuring safety and the effects of transport efficiency.[32] It also considered that it might be useful if the policy were to give "some guidance as to the different standards that might be expected of port activities in relation to different resources".[33] The hierarchy the Court proposed in terms of protection started with surf breaks, then increased in seriousness to effects on outstanding natural character or landscapes and finally effects on biodiversity. It said:[34]

> The reasons for that view are that the effects on human enjoyment of surfing and landscapes, while very important – and in the latter case, are of national importance – are largely reversible and potentially amenable to mitigation. Effects on biodiversity values may be irreversible.

[31] As an aside, we agree that the question of whether effects may be irreversible is an important consideration but question the view that the provisions related to outstanding natural character and landscapes are related to human enjoyment only. These values are subject to the protections in the NZCPS for their own sake also. The same may apply to surf breaks. It is difficult, in any event, to separate out the policies in this way as they will often be inter-dependent. For example, some outstanding natural landscapes, such as pristine indigenous forests, are outstanding in part because of their biodiversity.

[32] In light of its analysis summarised above, the Environment Court proposed the following wording to be inserted after 4.3.7(c) of the proposed regional ports policy:[35]

> (d) if any of the policies under objective 3.2 cannot be implemented while providing for the safe and efficient operation of Port Otago activities then apply policy 4.3.4 which relates to nationally and regionally significant infrastructure and prevails (in certain circumstances) over objective 3.2;
>
> (e) if in turn (d) cannot be achieved because the operation or development of Port Otago may cause adverse effects on the values that contribute to the significant or outstanding character identified in policy 4.3.4(1)(a)(i) to (iii) then, through a resource consent process, require consideration of those effects and whether they are caused by safety considerations which are paramount or by transport efficiency considerations and avoiding, remedying or mitigating the effects (through adaptive management or otherwise) accordingly;

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32 At [134].
33 At [134].
34 At [134].
35 At [135]. Compare the wording of the original proposed regional ports policy: above at [14].

(f) in respect of [nationally][36] significant surf breaks to avoid, remedy or mitigate the adverse effects of port activities.

[33] The wording suggested was provisional because it is for the Council and not the Court to set the wording. The Court commented that, to save time, it may be appropriate for the parties to agree on the above version of policy 4.3.7 or similar and to leave the suggested different management of the harbour's different resources to the regional plan. If that occurred, the Court considered that the Council may not have to do more than consult with the parties, and anyone else thought appropriate, before reporting back to the Court. It said that, if more detail were added to the policies, for example distinguishing further between safety and transport efficiency or between the types of resources affected, then this might require wider consultation and public notification.[37]

[34] In the formal orders of the Court, the Council was directed:

(a) to redraft proposed policy 4.3.7 to correct concerns expressed by the Court about the versions put forward by the parties;

(b) consult the parties and any other persons it considers appropriate on a redrafted policy 4.3.7(d) to (e) of the proposed Regional Policy Statement either

(i) along the lines of the Environment Court draft set out above; or

(ii) otherwise to give effect to the policies of the NZCPS and their inter-relationships as explained by the Court in its judgment.

High Court decision

[35] An appeal to the High Court by EDS was heard in June 2019. In September of the same year, Gendall J allowed EDS's appeal.[38] He held that, among other things,

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36 The Environment Court decision refers to "naturally" but, in-line with policy 16, we consider this was likely a typographical error.

37 At [137].

38 HC judgment, above n 6.

the Environment Court erred in recommending wording that did not give effect to the prescriptive NZCPS avoidance policies, contrary to s 62(3) of the RMA.[39] As a result he set aside the interim decision of the Environment Court and remitted the matter to the Environment Court to reconsider in light of his judgment.[40]

Court of Appeal decision

[36] The Court of Appeal dismissed the appeal against the High Court decision.[41] Kós P and Gilbert J held:[42]

> [87] At the end of the day, the short answer in this appeal is that a regional policy statement fails to give effect to an NZCPS policy requiring adverse effects in an area of outstanding natural character to be avoided, by instead providing for adverse effects in such areas to be avoided, remedied or mitigated. Correct application of the principles laid down in *King Salmon* compel that conclusion.

[37] Kós P and Gilbert J did not consider that the NZCPS ports policy is sufficiently textually or contextually different from the aquaculture policy in *King Salmon* so as to enable a different outcome from that case.[43] Both policies require recognition of the importance of port and aquaculture activities respectively. They did not accept that the operative verb in the ports policy is "requires". In their view, policy 9(b) is distinctive in providing a far lower level of direction than policy 9(a) and is broadly consistent with the provision for strategic planning in policy 7.[44]

[38] Kós P and Gilbert J did not see policies 7 and 9 as in conflict with the avoidance policies. They held that policy 7 directs, in an entirely generalised sense, the consideration of providing for future development and identification of where development is, or may be, inappropriate, accepting the submission that policy 7 is "essentially process-driven".[45] They said:[46]

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39 At [72], [104] and [113].
40 At [116].
41 CA judgment, above n 6.
42 They identified two errors in the High Court decision relating to adaptive management and prohibited activities but said they were immaterial to the result: at [88]–[91].
43 At [81] discussing *King Salmon*, above n 2.
44 At [81].
45 At [82].
46 At [82].

> The avoidance policies contain relatively clear environmental bottom lines; policies 7 and 9 contain lower level degrees of direction as to development and other activities in the coastal environment. To describe these policies as equally directive would be incorrect. Reconciliation is not a complex task because the NZCPS contains a clearly discernible prioritisation of values within its text.

[39] Miller J agreed that the appeal should be dismissed but partially dissented from some of the reasoning of the majority.[47] As a matter of construction, he did not agree that the NZCPS ports policy was subject to the NZCPS avoidance policies in this setting.[48] He considered the key verb in the NZCPS ports policy in this case is not "recognise" but "requires". The provision for ports is not optional for the Council, with a port already existing at Port Chalmers, and the Regional Council has no choice as to where the port is situated. Consequently, the ports policy requires the Council to provide for the existing port's safe and efficient operation. This distinguished it from the aquaculture policy at issue in *King Salmon*.[49]

[40] Miller J held that "it is both lawful and prudent to provide for the possibility that [the policies] cannot be fully reconciled".[50] Nevertheless, he said that the Environment Court erred by deciding that the NZCPS ports policy would ultimately prevail should it prove irreconcilable with the NZCPS avoidance policies. The Environment Court envisaged a resource consent process whereby adverse effects would be avoided, remedied or mitigated.[51]

[41] In Miller J's view, the possibility that the NZCPS avoidance policies will preclude any development of port facilities by Port Otago should remain open until Port Otago's needs and the existence, nature and extent of any adverse effects are better known. The Judge said that, in his view, "the Regional Council should return to the drawing board".[52]

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47 At [97] and [113].
48 At [112].
49 At [111].
50 At [112].
51 At [113].
52 At [115].

The submissions of the parties

Port Otago

[42] Port Otago's position is that the decision of the Court of Appeal majority incorrectly creates an absolute prohibition on Port Otago breaching the values protected by the NZCPS avoidance policies, including not permitting Port Otago to avoid potential adverse effects on the protected values by the use of adaptive management. Port Otago supports the dissenting judgment of Miller J.

[43] The potential problems for Port Otago arise from its location and the likelihood that some activity will be required in the future that is necessary for the safe and efficient operation of the ports that may have effects that breach the values protected by the NZCPS avoidance policies. One example given is the possibility that the shipping channel may need to be widened to accommodate large ships with the result that it would further encroach into the Aramoana salt marsh.

[44] Port Otago submits that reading the NZCPS avoidance policies and the NZCPS ports policy together requires the ports to operate safely and efficiently while avoiding the effects protected by the NZCPS avoidance policies. It is only where that cannot happen that there is a conflict that needs to be resolved. This conflict is not reconciled by making the ports policy subject to the avoidance policies but rather through an activity specific evaluation.

[45] Port Otago proposes instead that the following replace paragraphs (e) and (f) of the Environment Court's draft:

> (e) if in turn (d) cannot be achieved because the operation or development of Port Otago may cause adverse effects on the values that contribute to the significant or outstanding character identified in Policy 4.3.4(1)(a)(i) to (iii) *or to surf breaks identified as being nationally significant, Port Otago may apply for* a resource consent *for the operation or development which cannot be granted unless Port Otago establishes the adverse effects from the operation or development are the minimum necessary in order to achieve the efficient and safe operation of its ports*

[46] Port Otago submits that the issue of reconciliation should be dealt with at the regional policy statement level so that the principles are set. It is not satisfactory to

leave this solely to the resource consent stage as this would create major uncertainty and have a stultifying effect.

Marlborough District Council

[47] Marlborough District Council (MDC) supports Port Otago's appeal.[53] It submits that the Court of Appeal majority erroneously interpreted *King Salmon* to mean that the NZCPS avoidance policies are akin to regulation. The majority's approach would, in MDC's submission, unlawfully fetter the evaluative task of regional councils in developing regional policy statements under ss 61–62 of the RMA.

[48] It is submitted that it is inappropriate for objectives and policies in the NZCPS to be subjected to the rigid textual analysis applied by the Court of Appeal majority without regard to the nature of the policies and objectives, the NZCPS as a whole and a consideration of the potential environmental consequences at the regional level.

Environmental Defence Society

[49] EDS supports the approach of the Court of Appeal majority. EDS submits that the proposed Regional Policy Statement must "give effect to" the NZCPS.[54] This is a strong directive intended to constrain decision-makers. On the specific NZCPS policies in question, EDS describes the "avoid" requirements under the NZCPS avoidance policies as "a strong and specific direction". The NZCPS ports policy requires subordinate planning documents to consider "where, when and how" to provide for the safe and efficient operation of ports but does not alter the approach to managing the adverse effects of port activities as provided for under the NZCPS avoidance policies.

[50] EDS submits therefore that the NZCPS avoidance and ports policies do not conflict with each other and are reconcilable. The NZCPS ports policy can be applied according to its terms, within the bounds of the NZCPS avoidance policies. It is at the

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53 Note that the Marlborough District Council does not, however, support all of Port Otago's submissions.

54 RMA, s 62(3).

level at which consent is granted where possible residual conflict between the relevant policies can be resolved.

Otago Regional Council

[51] The Council's position is that the Court of Appeal was correct to dismiss the appeal. It takes essentially the same approach as EDS, although the Council accepts that any apparent conflict between the relevant policies can be resolved at both the consent stage and the regional policy planning stage.

Royal Forest and Bird

[52] Royal Forest and Bird (RFB) submits that the proposed formulation by Port Otago still allows for adverse effects in areas of significant biodiversity, outstanding natural character or significant surf breaks, where they are "the minimum necessary in order to achieve the efficient and safe operation of its ports". RFB says that this does not give effect to the NZCPS avoidance policies which require such effects to be avoided.

[53] RFB submits that the Court of Appeal majority decision in this case is an orthodox application of *King Salmon*. In its submission, there is no material difference between the NZCPS ports and the aquaculture policies at issue in *King Salmon* which could warrant a different outcome from the one reached in that case. The policies can be properly reconciled without conflict. The NZCPS ports policy is applicable but within the bounds set by the more directive NZCPS avoidance policies which provide something in the nature of a bottom line.

[54] Alternatively, if it is considered that there is an irreconcilable conflict, RFB submits that the conflict must be resolved in favour of the NZCPS avoidance policies.

Other submissions

[55] We heard submissions not only from the parties in this case but also from the parties and interested parties in *Royal Forest and Bird Protection Society of*

New Zealand Inc v New Zealand Transport Agency (the East-West Link appeal).[55] The Court of Appeal decision in this case was not available when we heard the East-West Link appeal and some similar issues arise.

[56] In brief, Waka Kotahi | New Zealand Transport Agency submits that the issues should be resolved at the consent level where "avoid" would be a strong policy directive and weighty consideration, but would not operate as an absolute veto. The Auckland Council takes a similar position, as do Ngāti Maru Rūnanga Trust, Te Ākitai Waiohua Waka Taua Inc, Ngāi Tai ki Tāmaki Trust and Ngāti Tamaoho Trust.

[57] Ngāti Whātua Ōrākei Whai Maia Ltd submits that any conflicts between the different NZCPS policies can be resolved at both the level of regional policy statements and at the consent level. It largely takes the same position as RFB in terms of reconciling any such conflict.

Issues

[58] As noted above at [2], the issues in this appeal are:

(a) the relationship between the NZCPS avoidance policies and the ports policy;

(b) whether conflicts should be addressed in regional policy statements and plans or at the consent level; and

(c) how any conflicts between those policies should be addressed.

Relationship between the NZCPS avoidance policies and the ports policy

[59] We begin our discussion on this issue with some comments on how the NZCPS should be interpreted and on the meaning of "avoid" as used in the avoidance policies. We then consider whether the ports policy is directive — in essence, whether the Court of Appeal majority or minority view of the ports policy in the NZCPS is correct.

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[55] Our decision on the appeal from *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2021] NZHC 390, [2021] NZRMA 303 [East-West Link HC judgment] is currently reserved in this Court.

Finally, we assess whether there is a conflict between the ports and the avoidance policies.

Interpretation of the NZCPS

[60] The meaning to be accorded to the NZCPS should be ascertained from the text and in light of its purpose and its context.[56] This means that close attention to the context within which the policies operate, or are intended to operate, and their purpose will be important in interpreting the policies. This includes the context of the instrument as a whole, including the objectives of the NZCPS, but also the wider context whereby the policies are considered against the background of the relevant circumstances in which they are intended to and will operate. National directives like the NZCPS are by their nature expressed as broad principles.

[61] The language in which the policies are expressed will nevertheless be significant, particularly in determining how directive they are intended to be and thus how much or how little flexibility a subordinate decision-maker might have. As this Court said in *King Salmon*, the various objectives and policies in the NZCPS have been expressed in different ways deliberately. Some give decision-makers more flexibility or are less prescriptive than others. Others are expressed in more specific and directive terms. These differences in expression matter.[57]

[62] A policy might be expressed in such directive terms, for example, that a decision-maker has no choice but to follow it, assuming no other conflicting directive policy. As this Court said in *King Salmon*:[58]

> … although a policy in a New Zealand coastal policy statement cannot be a "rule" within the special definition in the RMA, it may nevertheless have the effect of what in ordinary speech would be a rule.

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56 Legislation Act 2019, s 10(1) which applies to both Acts of Parliament and to secondary legislation: s 5 definition of "legislation". A national policy statement is secondary legislation: RMA, s 52(4). See also RI Carter *Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 206.

57 *King Salmon*, above n 2, at [127].

58 At [116]. See also *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 [*Trans-Tasman*] at [242] per Glazebrook and [292] per Williams J.

[63] Conflicts between policies are likely to be rare if those policies are properly construed, even where they appear to be pulling in different directions.[59] Any apparent conflict between policies may dissolve if "close attention is paid to the way in which the policies are expressed".[60] Those policies expressed in more directive terms will have greater weight than those allowing more flexibility.[61] Where conflict between policies does exist the area of conflict should be kept as narrow as possible.[62]

NZCPS avoidance policies

[64] It is clear from this Court's decision in *King Salmon* that the NZCPS avoidance policies have a directive character. This Court said that the term "avoid", as used in the NZCPS, has its ordinary meaning of "not allow" or "prevent the occurrence of",[63] meaning that the policies at issue in that appeal provided "something in the nature of a bottom line".[64] The Court noted, however, that what was to be avoided with regard to those policies was, in that case, the adverse effects on natural character and that prohibition of minor or transitory effects would not likely be necessary to preserve the natural character of coastal environments.[65]

[65] This Court in *Trans-Tasman* said that the standard was protection from material harm, albeit recognising that temporary harm can be material.[66] Although in a different context, the comments are nonetheless applicable to the NZCPS.[67] It is clear from *Trans-Tasman* that the concepts of mitigation and remedy may serve to meet the "avoid" standard by bringing the level of harm down so that material harm is avoided.

[66] In summary, the Court in *Trans-Tasman* said that decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean:[68]

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59 *King Salmon*, above n 2, at [129].
60 At [129].
61 At [129]. See also at [152].
62 At [130].
63 At [96].
64 At [132].
65 At [145].
66 *Trans-Tasman*, above n 58, at [252] per Glazebrook J, [292]–[293] per Williams J and [309]–[311] per Winkelmann CJ. See also at [5]–[6] of the summary.
67 *Trans-Tasman* concerned the assessment of applications for marine discharge consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
68 *Trans-Tasman*, above n 58, at [261] per Glazebrook J, [292] per Williams J and [318]–[319] per

(i) material harm will be avoided;

(ii) any harm will be mitigated so that the harm is no longer material; or

(iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material…

[67] Adaptive management may also have a role to play, again if the effect is to avoid material harm.[69] In *Sustain Our Sounds*, this Court held that, before an adaptive management regime can be considered, there must first be an adequate evidential foundation to provide reasonable assurances that an adaptive management approach will achieve the goals of "sufficiently reducing uncertainty and adequately managing any remaining risk".[70] If that threshold question is answered in the affirmative, the overall question is whether any adaptive management regime can be considered consistent with a precautionary approach and this depends on:[71]

… an assessment of a combination of factors:

(a) the extent of the environmental risk (including the gravity of the consequences if the risk is realised);

(b) the importance of the activity (which could in some circumstances be an activity it is hoped will protect the environment);

(c) the degree of uncertainty; and

(d) the extent to which an adaptive management approach will sufficiently diminish the risk and the uncertainty.

[68] All of the above means that the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.[72]

Winkelmann CJ. See also at [5] of the summary.

69 *Trans-Tasman* did not discuss whether adaptive management could be used to bring harm under the material threshold because adaptive management is not permitted in the context of marine dumping and discharge consents: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, s 64(1AA).

70 *Sustain Our Sounds* above n 3, at [125].

71 At [129] (footnote omitted). The Court at [133] noted that factor (d) was the "vital part of the test" dealing with "the risk and uncertainty and the ability of an adaptive management regime to deal with that risk and uncertainty" and noted four factors appropriate to assess the issue, at least in that particular case.

72 The position is summarised in Trevor Daya-Winterbottom "The meaning of sustainable management: applying *King Salmon*" [2020] NZLJ 52 at 54.

NZCPS ports policy

[69] Turning to the NZCPS ports policy, we broadly agree with the Environment Court and Miller J that "requires" is a key verb in the policy.[73] We accept that "recognise" is also an operative verb and that the clause begins with it. However, the verb "requires" colours what the decision-maker is being asked to "recognise". In other words, the decision-maker is being directed to recognise that a port network is required. To recognise that something is required is to accept that it is mandatory. So, the directive nature of the ports policy arises from the two verbs taken together.

[70] The ports policy in the NZCPS must also be interpreted in light of the existence of an already established ports network, including those operated by Port Otago, and the need to maintain the safe and efficient operation of the ports in that network. As Miller J says:[74]

> For the Regional Council, provision for ports is not optional. There already exists a port at Port Chalmers which is essential infrastructure, forming part of a national ports network and servicing national and international shipping. The NZCPS deems such infrastructure important to community wellbeing. The Regional Council has no choice about deciding whether to provide for the port, and no choice about where to situate it. It follows that what policy 9 requires of the Regional Council is that it consider how and when to provide in its plans for the port's efficient and safe operation, the development of its capacity for shipping, and its connection with other transport modes. In my opinion these requirements are imperative, which sufficiently distinguishes them from the aquaculture policy at issue in *King Salmon*.

Potential for conflict

[71] It follows from what we say above that the NZCPS avoidance policies and the ports policy all have a directive character. Port Otago is responsible for the safe and efficient operation of ports that are part of an established national network operating necessarily in the coastal environment. There is a potential therefore for the ports policy to conflict with the avoidance policies where measures may be needed for the

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73 See above at [20] and [39].

74 CA judgment, above n 6, at [111] per Miller J (footnotes omitted). Contrast the view of the majority at [81].

safe and efficient operation of a particular established port.[75] The next issues therefore are where and how such conflicts should be addressed.

Where conflicts should be addressed

[72] We accept Port Otago's submission that reconciliation of any conflict between the NZCPS avoidance policies and the ports policy should be dealt with at the regional policy statement and plan level as far as possible. This means those considering particular projects will have as much information as possible to allow them to assess whether it may be worth applying for consent and, if so, what matters should be the subject of focus in any application. Equally, decision-makers at the consent level will have as much guidance as possible on methods for addressing conflicts between policies.

[73] Leaving resolution of all possible conflicts to the consent stage would be unsatisfactory, given the large degree of uncertainty (and possible inconsistencies of methodology and results) that would ensue. Having said that, the extent to which a plan can anticipate conflicts and the means of resolving them may be limited by the amount of information available to the drafters of a regional planning instrument. It might not be possible or desirable for a regional planning instrument to do more than identify, where it can, the location and activities that may generate conflicts in the region and set out general principles for addressing the conflict, leaving particular cases to be dealt with at resource consent level.

[74] Dealing with conflicts, as far as possible, in regional planning instruments is consistent with this Court's decision in *Sustain Our Sounds*. That decision largely related to adaptive management, but an issue also arose as to whether a decision-maker considering a proposed plan change could take proposed consent conditions into account. The Court noted that it was common practice, albeit not mandatory in all circumstances, for regional plans to include assessment criteria for determining

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[75] We do not disagree with the Environment Court when it says that policy 9 of the NZCPS also applies to new ports and we also agree with its comment that this directive does not apply in any particular place or at a particular time: EnvC interim judgment, above n 6, at [118] and [120]–[121]; and see above at [27]. No issue relating to new ports is, however, before us in this appeal and the judgment is not therefore to be understood as dealing with new ports.

whether a discretionary activity should be granted a resource consent.[76] The Court commented that:[77]

> [153] If, however, a consent for a particular activity would only be granted on certain conditions, then it would certainly be good practice (and may in some circumstances be a requirement) that this be made clear in the plan, either as standards or as assessment criteria. Otherwise consent applications may not address relevant criteria and a future consent authority may risk making a decision on a basis that was not contemplated by the planning authority.
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> [154] … Assessment criteria are designed to give guidance to those applying for consents as to the types of information and analysis that will be required of applicants. They also give the community information on how such consents will be assessed. …

How any conflicts should be addressed

[75] As there is not sufficient information before us to attempt any detailed reconciliation between the ports policy and the avoidance policies, we provide only general guidance as to how a decision-maker at the resource consent level might approach the reconciliation between the ports policy and the avoidance policies.

[76] If there is a potential for conflict between the ports policy and the avoidance policies with regard to any particular project, the decision-maker would have to be satisfied that:

(a) the project is required to ensure the safe and efficient operation of the ports in question (and not merely desirable);[78]

(b) assuming the project is required, all options to deal with the safety or efficiency needs of the ports have been considered and evaluated. Where possible, the option chosen should be one that will not breach the relevant avoidance policies. Whether the avoidance policies will be breached must be considered in light of the discussion above on what

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76 *Sustain Our Sounds*, above n 3, at [151].

77 Footnote omitted.

78 Our comments are limited to the efficient and safe operation of existing ports. Because it is not before us, we do not deal with expansion of the operations of the ports, although the line between expansion and efficiency will not necessarily be fixed. As the Environment Court remarked, "even existing ports cannot necessarily expand indefinitely and whenever their operators want": EnvC interim judgment, above n 6, at [121] (see also above at [27]).

is meant by "avoidance";[79] including whether conditions can be imposed that avoid material harm; and

(c) if a breach of the avoidance policies cannot be averted, any conflict between the policies has been kept as narrow as possible so that any breach of any of the avoidance policies is only to the extent required to provide for the safe and efficient operation of the ports.

[77] Even where the decision-maker is satisfied of the above, this does not mean that a resource consent will necessarily be granted. There can be no presumption that one directive policy will always prevail over another. In this case, for example, always favouring the ports policy over the avoidance policies or vice versa would not align with the fact that both the ports policy and the avoidance policies are directive.

[78] The appropriate balance between the avoidance policies and the ports policy must depend on the particular circumstances, considered against the values inherent in the various policies and objectives in the NZCPS (and any other relevant plans or statements).[80] All relevant factors must be considered in a structured analysis to decide whether, in the particular factual circumstances, the resource consent should be granted. This means assessing which of the conflicting directive policies should prevail, or the extent to which a policy should prevail, in the particular circumstances of the case.

[79] In the course of the structured analysis, decision-makers will of course assess the nature and importance of the particular safety or efficiency requirements the project addresses. In this regard, we comment that safety issues may have greater weight than efficiency requirements.[81] Decision-makers will also identify the importance and rarity of the environmental values at issue in the particular circumstances and consider these against the background of the NZCPS's recognition of the intrinsic worth of the protected environmental values. As this Court said in

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79 See above at [64]–[66].

80 Reference to Part 2 of the RMA may also assist.

81 This was the view of the Environment Court: see above at [24], the draft policy set out above at [32] and the remarks summarised above at [33].

King Salmon, protection of environmental values is an element of sustainable management.[82]

[80] We comment that port safety and efficiency are largely instrumental considerations more capable of measurement, while preservation of the environment largely involves value judgments which are often not measurable in concrete terms.[83]

[81] We also comment that the structured analysis is not the same as the "overall judgment" approach rejected by this Court in *King Salmon*. This involved "an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources" under s 5 of the RMA.[84] The "overall judgment" approach tended to subordinate the preservation and protection of the environment to the promotion of sustainable management.[85] It did not give full recognition to the fact that protection of the environment is an element of sustainable management and therefore it did not reflect the proper relationship between ss 5 and 6 of the RMA. Nor did it reflect the approach of the NZCPS.[86] Of course, judgments must still be made by consent authorities in accordance with the purpose of the Act, but they are not loose "overall" evaluations. Rather they are disciplined, through the analytical framework we have provided, to focus on how to identify and resolve potential conflicts among the NZCPS directive policies.

[82] The proposed regional ports policy, even as modified by the Environment Court, does not reflect all of the considerations identified above at [76]. Further, the Environment Court's proposed para (e) could well be interpreted as favouring the ports policy over the avoidance policies in the event of any remaining conflict.[87] We recognise that, in some cases, there may be enough information

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82 *King Salmon*, above n 2, at [24(d)], [132], [146] and [148]–[150]; and RMA, ss 5(2) and 6.

83 See the comment in the EnvC interim judgment, above n 6, at [100], quoted above at [23].

84 *North Shore City Council v Auckland Regional Council* (1996) 2 ELRNZ 305 (EnvC) at 347 cited in *King Salmon*, above n 2, at [41]. See more generally discussion in *King Salmon* at [39]–[42] of the overall judgment approach.

85 See, for example, *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC) at 85 cited in *King Salmon*, above n 2, at [147].

86 *King Salmon*, above n 2, at [147]–[149].

87 This was Miller J's view: CA judgment, above n 6, at [113]. But [121] of the EnvC interim judgment, above n 6, may suggest otherwise: see the earlier discussion in this judgment above at [27]. It may be therefore that the Environment Court envisaged a structured analysis to occur at the resource consent level similar to the analysis we have outlined above.

available as to possible conflicts that may arise in future to be able to give, at the regional plan level, more guidance on the likely outcome of the structured analysis in particular factual circumstances. There was, however, not sufficient information before the Environment Court to allow a conclusion favouring the ports policy to be drawn on a global basis (if indeed that is what the Environment Court intended). Resolution of any conflict, through a structured analysis, will have to occur at resource consent level with regard to particular projects.

Summary of decision

[83] We now summarise our conclusions on the issues identified above at [2] and [58]:[88]

(a) *The relationship between the NZCPS ports policy and the NZCPS avoidance policies*

We conclude that the avoidance policies and the ports policy are all directive.[89] Further, the ports are part of an existing network necessarily operating in the coastal environment. There is thus potential for conflict between the ports policy and the avoidance policies.[90]

(b) *Whether any potential conflicts between the NZCPS ports policy and the NZCPS avoidance policies should be addressed in regional policy statements and plans or at the consent level under ss 104 or 104D of the RMA*

We conclude that the issue of the reconciliation of any potential conflict between the NZCPS avoidance policies and ports policy should be addressed at the regional policy statement and plan level as far as possible.[91]

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88 This is a summary only and the judgment must be read in full.
89 Above at [64]–[69].
90 Above at [71].
91 Above at [72]–[74].

(c) How any conflicts between those policies should be addressed

Where there is a potential conflict between the avoidance policies and the ports policy with regard to a particular project, the decision-maker would have to be satisfied that:[92]

(i) the work is required (and not merely desirable) for the safe and efficient operation of the ports;

(ii) if the work is required, all options for dealing with these safety or efficiency needs have been evaluated and, where possible, the option chosen should not breach the avoidance policies;

(iii) where a breach of the avoidance policies is unable to be averted, any breach is only to the extent required to provide for the safe and efficient operation of the ports.

[84] Even where the option chosen encroaches on the avoidance policies only to the extent necessary for the safe and efficient operation of the ports, this does not mean that a resource consent would necessarily be granted.[93] In deciding whether to grant a resource consent all relevant factors would have to be considered in a structured analysis, designed to decide which of the directive policies should prevail, or the extent to which a policy should prevail, in the particular case.[94]

Suggested policy amendment

[85] In this case there could be a continuum of legally acceptable versions of a policy providing guidance on the reconciling of the ports and avoidance policies in a regional planning instrument. These would differ primarily as to their specificity. As noted above, a non-specific policy may be necessary where the evidence is limited or non-existent.[95] In this case there are two ports in a particular harbour, a factual situation which provides a reasonable basis for assumptions as to the likely future

92 Above at [76].
93 Above at [77].
94 Above at [78]–[81].
95 Above at [73].

needs of the ports and the potential impacts on the environment of meeting those needs. A completely non-specific policy would probably be legal (in the sense of not being ultra vires) but would not be particularly consistent with the general scheme of the RMA (in terms of a downwards cascade, with increasing specificity, of national, regional and district planning instruments). More importantly perhaps, such a non-specific policy would not be very helpful. An example of a non-specific policy might be one that simply provided that, in the event of conflict between the ports and avoidance policies, the issue should be determined in accordance with the NZCPS (presumably via the resource consent process).

[86] On the other hand, it will usually not be possible to predict with precision what the future needs of ports will be and how they can be met and the extent to which meeting those needs will cause effects which are to be avoided under the avoidance policies. That being the situation here, it will not be possible for regional planning documents to be expressed with a level of specificity that obviates the need for future factual inquiry (through a structured analysis during the resource consent process) as to how best to reconcile the ports and avoidance policies in respect of the two ports in Otago Harbour in the particular circumstances.

[87] In light of this and our analysis of the required steps above, we provide suggested wording to be inserted after para (c), replacing (d)–(f), of the proposed ports policy (4.3.7):

> (d) if any of the policies under objective 3.2 cannot be implemented while providing for the safe and efficient operation of Port Otago activities then apply policy 4.3.4 which relates to nationally and regionally significant infrastructure and prevails (in certain circumstances) over objective 3.2;
>
> (e) if in turn (d) cannot be achieved because the operation or development of Port Otago may cause adverse effects on the values that contribute to the significant or outstanding character identified in Policy 4.3.4(1)(a)(i) to (iii) or to surf breaks identified as being nationally significant, Port Otago may apply for a resource consent for the operation or development where:
>
> (i) the proposed work is required for the safe and efficient operation of its port or ports; and

(ii) Port Otago establishes that the adverse effects from the operation or development are the minimum necessary in order to achieve the efficient and safe operation of its port or ports.

[88] As noted above, even when para (e) is satisfied, whether or not a resource consent will be granted will depend on the outcome of the structured analysis in the particular case.[96]

[89] We have taken (d) above from the Environment Court draft.[97] We have largely taken (e) from the draft in the submissions of Port Otago but have added that the work must be required.[98] We have not included the Environment Court's wording about safety being paramount because, while we consider safety very important, we do not consider safety considerations will always prevail over the avoidance provisions as the use of the word paramount might imply. That will depend on the particular circumstances which would be assessed at the resource consent level in the structured analysis.[99] We have included surf breaks as in Port Otago's draft but note that we agree with most of the Environment Court's comments about these, as explained above at [29].

Disposition

[90] As will be clear, we are in general agreement with the Environment Court's reasons, except where we have signalled otherwise. Therefore we do not consider it necessary to send the matter back to the Environment Court for further consideration. Instead, we would make similar orders to those made in the Environment Court but substitute a reference to our suggested draft.

[91] We stress that our wording set out at [87] above is a suggestion only and that it is for the Council to decide on the appropriate wording taking into account the policies in the NZCPS and their inter-relationships as outlined in this judgment.

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96 Above at [77]–[78].
97 EnvC interim judgment, above n 6, at [135] and set out above at [32].
98 See above at [45] and [76].
99 Above at [78]–[81].

Result and costs

[92] The appeal is allowed.

[93] The order remitting the matter to the Environment Court is set aside.

[94] The Council is directed to consult the parties and any other persons it considers appropriate on a redrafted policy 4.3.7(d)–(e) in the proposed Otago Regional Policy Statement either:

(a) along the lines in paragraph [87] of this judgment or to similar effect; or

(b) otherwise to give appropriate effect to the policies of the NZCPS and their inter-relationships.

[95] Costs are reserved. If costs cannot be agreed, the parties should file memoranda on costs on or before 21 September 2023.

Solicitors:

McMillan & Co, Dunedin for Appellant
Ellis Gould Lawyers, Auckland for First Respondent
Ross Dowling Marquet Griffin, Dunedin for Second Respondent
Gilbert Walker, Auckland for Third Respondent
B D Mead, Marlborough District Council, Blenheim for Fourth Respondent
Buddle Findlay, Auckland for Waka Kotahi
N T E Strong, Ngāti Whātua Ōrākei Trust, Auckland for Ngāti Whātua Ōrākei Whai Maia Limited
McCaw Lewis, Hamilton for Ngāti Maru Rūnanga Trust, Te Ākitai Waiohua Waka Taua Incorporated, Ngāi Tai ki Tāmaki Trust and Ngāti Tamaoho Trust
Simpson Grierson, Auckland for Auckland Council