Wellington City Council

Hearing of Submissions and Further Submissions

on

Proposed District Plan

Report and Recommendations of Independent Commissioners

Hearing Stream 8

Report 8

Coastal Environment
Natural Character
Public Access
Natural Features and Landscapes

Commissioners

Trevor Robinson (Chair)
Elizabeth Burge
Lindsay Daysh
Heike Lutz

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1. INTRODUCTION

1.1 Topics of Hearing

1. This Report addresses the matters heard as part of Stream 8 of the PDP process.

2. The Stream 8 hearing considered a number of Overlay Chapters, as follows:

    (a) Coastal Environment (including associated Schedule 12 – High Coastal Natural Character Areas);

    (b) Natural Character;

    (c) Public Access;

    (d) Natural Features and Landscapes (including associated Schedule 10 – Outstanding Natural Features and Landscapes and Schedule 11 – Special Amenity Landscapes).

3. Mr Jamie Sirl was the Council Reporting Officer on the first three of these chapters. Ms Hannah van Haren-Giles was the Reporting Officer on the Natural Features and Landscapes Chapter.

4. Mr Sirl prepared a single Section 42A Report on all hearing topics for which he was responsible. Ms van Haren-Giles prepared a separate Section 42A Report in relation to the Natural Features and Landscapes Chapter.

5. Each hearing topic is addressed in a separate section of our report. Each section generally follows the structure of the relevant Section 42A Report.

1.2 Statutory Background

6. The topics before us were heard pursuant to Part 1 of the First Schedule to the RMA. We refer readers to Report 1A for a discussion of the background to this Report, noting that matters discussed in Report 1A specific to the Intensification Streamlined Planning Process (**ISPP**) are not relevant to this hearing stream. In particular, Report 1A sets out relevant background on:

    (a) Appointment of Commissioners;

    (b) Notification and submissions;

(c) Procedural directions;

(d) Conflict management;

(e) General approach taken in Reports; and

(f) Abbreviations used.

7. As foreshadowed in Report 1A, we have adopted an exceptions approach to the matters before us, focussing principally on matters put in contention by the parties who appeared before us, and aspects of the relevant Section 42A Reports we felt required closer examination. If we have not addressed a submission point in our Report, it is because we agree with the recommendation of the relevant Section 42A Reporting Officer.

8. Report 1B, which addresses strategic objectives, together with the Council's decisions on our recommendations in that Report, also provides relevant background to this Report.

9. The content of the Coastal Environment chapter means that the New Zealand Coastal Policy Statement 2010 (**NZCPS**) assumes particular importance in that context. We discuss the provisions of the NZCPS that are relevant to the issues we had to address in the Report that follows.

1.3 Hearing Arrangements

10. The Commissioners who sat on Hearing Stream 8 were:

(a) Trevor Robinson (Barrister) as Chair;

(b) Elizabeth Burge (Planner);

(c) Lindsay Daysh (Planner);

(d) Heike Lutz (Building Conservation Consultant).

11. The Stream 8 hearing commenced on 29 April 2024. We sat for four days of that week, with the hearing concluding approximately mid-day on 2 May 2024.

12. Over the course of the hearing, we heard from the following parties:

(a) For Council:

- Clive Anstey (Landscape);

- Jamie Sirl (Planning);
- Hannah van Haren-Giles (Planning).

(b) For Tyers Stream Group[1]:

- Neil Deans.

(c) For Parkvale Road Limited[2]:

- Mitch Lewandowski (Planning);
- David Compton-Moen (Urban Design, Landscape and Visual Amenity);
- John Thompson.

(d) For WCC Environmental Reference Group[3]:

- Michelle Rush.

(e) For Glenside Progressive Association Inc[4]:

- Barry Blackett.

(f) John Tiley[5].

(g) For Guardians of the Bays Inc[6]:

- Yvonne Weeber.

(h) Barry Insull[7].

(i) Dr Brent Layton[8].

(j) Kilmarston Developments Limited and Kilmarston Properties Limited[9]:

- Morgan Slyfield (Counsel);
- Milcah Xkenjik (Planning).

(k) Andy Foster[10].

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[1] Submission #221
[2] Submission #298
[3] Submission #377
[4] Submission #374
[5] Submission #142
[6] Submission #452, Further Submission #32
[7] Submission #32
[8] Submisision #164
[9] Submission #290
[10] Further Submission #86

(l) Meridian Energy Limited (**Meridian**)[11]:

- Andrew Feierabend;
- Christine Foster (Planning).

(m) Wellington International Airport Limited (**WIAL**)[12]:

- Amanda Dewar (Counsel);
- Jo Lester;
- Kirsty O'Sullivan (Planning).

(n) For Horokiwi Quarry Limited[13]:

- Pauline Whitney (Planning);
- Shannon Bray (Landscape);
- Ross Baker.

13. We also received a tabled statement of evidence from Michael Brown on behalf of KiwiRail Holdings Limited[14].

14. We note that when she appeared for WIAL, Ms Lester tabled a series of photographs of the coastal margins immediately to the south and south-east of the Airport. We accepted this additional material as being helpful for our understanding of that area.

15. Following their appearance, we received the following additional material from parties:

(a) Horokiwi Quarry Limited: At our request, Mr Bray provided us with an additional set of cross sections showing both the Coastal Environment boundary now sought by the submitter, and the boundary that was originally sought in its submission;

(b) Parkvale Road Limited: Again at our request, Mr Compton-Moen provided us with additional plans showing varied Zone boundaries now sought by the submitter and contour elevations on the site;

[11] Submission #228, Further Submission #101
[12] Submission #406, Further Submission #36
[13] Submission #271, Further Submission #28
[14] Submission #408

(c) WIAL: Pursuant to leave we gave at the hearing, Ms O'Sullivan provided us with additional commentary on the Reporting Officer's recommended amendments to CE-R5 and R6.

16. We note also that on the afternoon of 29 April 2024 we undertook a site visit as follows:

(a) We travelled to elevated locations on the Horokiwi Quarry site accompanied by Mr Sirl, Mr Baker, and one of Mr Baker's colleagues, in order to view the different options for location of the coastal environment boundary east and west of the active Quarry area;

(b) We walked up a pathway at 16 Patna Street in order to get a sense of the Kilmarston site; and

(c) We drove up to the entranceway for 173 and 175 Parkvale Road, and then walked up to a vantage point not quite at the connection to the Skyline Track, in order that we could view the Parkvale Road site from above. We then viewed the Parkvale Road site from vantage points on the opposite side of the Karori Valley (in Campbell Street, opposite Benburn Park, and in Croydon Street, below its intersection with Versailles Street).

17. The Council provided us with a detailed Reply on 7 June that included a statement of evidence from Mr Anstey.

18. Subsequently, Mr Insull provided the Hearing Administrator with a commentary taking issue with Mr Sirl's Reply. The Hearing Procedures we established in Minute 1 do not allow for any submitter to provide input after the Council has formally replied. To the contrary, paragraph 101 recorded that that the Hearings Panel would not receive any further comment from submitters on matters the subject of hearing without the Chair's specific approval. The reason for this is obvious. We have to draw a line after each hearing. Otherwise, the hearing process would never be completed.

19. Mr Insull's further contribution criticised Mr Sirl for not addressing what Mr Insull identified as errors and misstatements in the Summary of Submissions of how his submission was summarised. This fails to take account of the fact that what we asked Mr Sirl to do, was advise in his Reply whether his consideration of the clarification Mr Insull provided of what he was seeking indicated that amendments were required to the provisions of the PDP. Mr Sirl has done that.

20. While it is important that we understand correctly what relief was sought in Mr Insull's submission, our primary focus is on whether and how the PDP should be changed in response to his submission. We have taken Mr Insull's comments about the first question on board. His comments do not address the latter question and thus we do not consider that his commentary needs to be entered into the hearing record, or be the subject of a formal response from Council.

2. COASTAL ENVIRONMENT:

2.1 Introduction and Overview

21. This section of this report considers submissions received by the Council in relation to the relevant objectives, policies, rules, definitions and maps as they apply to the Coastal Environment Chapter.

22. The introduction to the chapter, as Mr Sirl recommended it be amended, states that:

> *Wellington City's coastline extends for over 100 ~~kilometers~~ kilometres. The western and southern parts of this coastline are largely undeveloped. Narrow shore platforms and steep escarpment and cliff faces are typical along this part of the coastline, where exposure to rigorous environmental conditions has helped shape rugged landforms. Parts of the rural environment above the coastal escarpments have been modified by development. ~~At the same time~~ tThe urban areas of the coastal environment have been heavily modified, with public roads present nearly the entire length of the coastline around the harbour from Sinclair Head to Petone, with residential and commercial development having modified the natural character throughout this area. Similarly, the 'Moa Point Road Seawall Area', as shown on the ePlan mapping, is another area where the natural character of the coast has been heavily modified by the existing hard engineering natural hazard mitigation structures that protect the Airport, road and network utilities located in this area. There has also been development of large scale infrastructure within the coastal environment, such as wind turbines, quarries, the National Grid, roads and other built facilities.*

23. The reporting officer was Mr Jamie Sirl who advised that there were 231 submission points and 66 further submission points received on the provisions relating to the Coastal Environment, and 21 submission points and 10 further submission points on the High Coastal Natural Character Areas - Schedule 12 and mapping.

2.2 General Submissions and Definitions

General Submissions

24. Firstly, we acknowledge that Yvonne Weeber[15] sought to retain the chapter as notified.

25. Forest and Bird[16] submitted that all provisions in zones still have to give effect to the requirements of the Act and national direction, including the NZCPS. Any exemptions from those requirements are opposed. It sought to amend all zones to remove any exemptions to requirements of national direction instruments, particularly the NZCPS.

26. We note that Mr Sirl advised that he considered that the PDP, as an integrated plan, gives effect to national direction including the NZCPS throughout the various area specific (e.g. zone) and district-wide (e.g. overlay) provisions in the Plan. In his opinion, it is not necessarily a matter of a specific provision being tested in isolation of the wider plan framework as to whether that provision gives adequate effect to higher order direction. We agree with this approach, but note that overall, the chapter has been the subject of much change to provide for greater consistency and direction.

27. Forest and Bird[17] also sought to amend all rules to refer to all areas of 'natural character', not only areas of 'high natural character'.

28. We agree with Mr Sirl, who considered that extending the Coastal Environment rules that apply to High Coastal Natural Character Areas to apply to the entire Coastal Environment would unnecessarily constrain the use of land resource outside of those areas identified as having high natural character. It is not necessary to preserve the natural character values in those parts of the Coastal Environment which are already highly modified and more resilient to change.

29. WIAL[18] sought that the Coastal Environment chapter and the associated infrastructure related provisions within the chapter should be reworked to focus on effects that specifically relate to the Coastal Environment and have not already been addressed, or cannot otherwise be addressed, by the underlying land use zone.

[15] Submission #340.19
[16] Submission #345.383
[17] Submission #345.290, opposed by WIAL FS36.82, and Meridian FS101.148
[18] Submission #406.289

30. WIAL[19] also submitted that the relationship and consenting pathway for activities within the Coastal Environment (insofar as they relate to activities undertaken within the Airport Zone) be enabled, streamlined, and reflective of the existing environment.

31. Further, WIAL[20] sought that the Coastal Environment chapter is amended to give effect to all relevant parts of the NZCPS, including those provisions that recognise the functional and operational requirements of activities (such as infrastructure) to locate within these areas and the associated management of effects.

32. These were consistent submission points, and a number of changes have been made to the chapter including to make specific reference to the Coastal Environment near the airport. These changes are outlined under the individual provisions for the chapter.

33. Yvonne Weeber[21] sought that mining and quarrying activities within the Coastal Environment are not permitted. We note that this is tightly controlled through either the Quarry Zone provisions that may apply or through a likely significant assessment as part of a resource consent process.

34. GWRC[22] sought the mapping of natural character ratings at all levels (low, moderate, high) at the wider area scale in Schedule 12, as undertaken in the 2016 Boffa Miskell natural character assessment[23]. It considered the primary function of mapping area scale natural character ratings (low – high) in the PDP is to ensure applicants do not have to undertake this work as part of applications for resource consent, to give effect to NZCPS Policy 13(1)(b). It also considered that it would not be efficient or effective to require applicants for resource consent to undertake this step as part of a consent process, especially when the work has already been commissioned by WCC, presumably to be included in the PDP. It suggested that mapping the full range of natural character areas in the PDP also provides more certainty to applicants/developers on areas that are more suitable/less suitable for development based on an improved understanding of the natural character values present.

35. As with Mr Sirl, we do not agree that inclusion of all the Coastal Terrestrial Areas in Schedule 12 and associated mapping of the Coastal Terrestrial Areas (as High Coastal Natural Character Areas or simply as areas with some degree of natural

[19] Submission #406.288
[20] Submission #406.290
[21] Submissions #340.21 and 340.22, opposed by Horokiwi Quarries FS28.12]
[22] Submissions #351.26, 351.32 and 351.33
[23] Boffa Miskell Ltd Wellington City and Hutt City Coastal Natural Character Assessment 12 May 2016

character such as those with a very low to moderate overall natural character rating) is necessary. We also consider that to be an inefficient approach that would be confusing for plan users.

36. Mr Sirl also carried out an analysis of alternate options and concluded that the introduction of a new appendix and Section 88 information requirements for specific rules relating to High Coastal Natural Character Areas and coastal and riparian margins will result in a more effective Plan with respect to the protection of natural character of the Coastal Environment, and also result in a more efficient approach to the Plan's requirements for consideration of natural character. We note that we did not have any supporting evidence from GWRC in support of its submissions.

37. Poneke Architects[24] considered that the Coastal Environment provisions are too broad and will effectively stop development in Wellington. Council interpreted their submission as seeking the deletion of the chapter in its entirety.

38. Mr Sirl explained that in simple terms, the Plan achieves the protection of areas of greatest remaining natural character within the Coastal Environment by defining the coastal margin area and riparian margins within the Coastal Environment and the identification and mapping of High Coastal Natural Character Areas, and associated plan provisions. Outside of these areas, the PDP relies on the underlying zone rules with respect to maintaining natural character. We agree, noting that the identification of the Coastal Environment is required under Sections 6 and 7 of the RMA, the NZCPS, the National Planning Standards and the RPS (Policy 4).

Definitions

39. CentrePort Limited[25] sought to retain the definition of Coastal Environment as notified.

40. Transpower[26] sought that the definition of Coastal Margin is amended to clearly define the Coastal Margin boundary, and clearly identify it on the planning maps. CentrePort Limited[27] sought to retain the definition of Coastal Margin as notified.

41. In his Section 42A Report, Mr Sirl considered that the definition of the Coastal Margin Area and the ancillary diagram is clear as it is. However, he agreed that mapping of

[24] Submission #292.4
[25] Submission #402.5, opposed by WIAL FS36.15 and Transpower FS315.18
[26] Submission #315.19 supported by WIAL FS36.17
[27] Submission #402.7

the Coastal Margin would improve ease of interpretation and application of the provisions relating to the Coastal Margin and recommended that the District Plan mapping be amended to include the Coastal Margin Area consistent with the definition in the PDP.

42. On a related matter there was some discussion at the hearing on the matter of whether mapping of the Coastal Margin Area is appropriate due to the dynamic nature of Mean High Water Springs. This was in response to WIAL's submissions relating to the airport environs (the Moa Point Road Seawall Area). In his Reply, Mr Sirl[28] agreed with Ms O'Sullivan who advised that the certainty achieved by mapping is preferrable compared to reliance on the definition. The matter of whether the definition or mapped area takes precedence was also raised during the hearing. In Mr Sirl's view, the mapped area is intended to determine how the rules of the Plan apply and consequently takes precedence. To avoid any misapplication of the definition Mr Sirl recommended the following revision to the definition of Coastal Margin Area:

> *means all land within a horizontal distance of 10 metres landward from the coastal marine area <u>as mapped within the District Plan</u>.*

43. While we can see the benefit of mapping, we consider that producing such a map at this stage in the process and without any other party being able to comment on the specifics has unacceptable natural justice implications. We do not recommend that change, but we suggest Council consider this at some future stage.

2.3 Coastal Environment Overlay

44. Aggregate and Quarry Association[29] considered that the Coastal Environment overlay is a barrier to new or expanding quarries near State Highway 2, which runs along much of the available rocks of the Wellington fault. Consequently, it sought amendments to the overlay to remove overlap with the Special Purpose Quarry Zone and to enable access to aggregate.

45. Horokiwi Quarries Ltd[30] opposed parts of the Coastal Environment Overlay as it relates to part of the existing Horokiwi quarry site. It sought that the boundary of the Coastal Environment overlay be amended to reflect the nature of the existing quarrying activities undertaken and the modified nature of the environment.

[28] Reply paragraph 65
[29] Submissions #303.7 and 303.8
[30] Submissions #271.10, 271.11, and 271.42

46. In his Section 42A Report, Mr Sirl disagreed with these submissions based on the evidence of Council's natural character adviser, Mr Anstey, who was of the view that the boundary of the Coastal Environment overlay should stay in its current position.

47. We understand that Mr Anstey had met with the landscape architect for Horokiwi Quarries, Mr Shannon Bray who had an alternative approach to establishing the boundary of the Coastal Environment. In his evidence, Mr Anstey[31] was of the view that:

> *The Horokiwi Quarry is located above the escarpment on the Western Hills above Wellington Harbour. The boundary of the Coastal Environment along the Western Hills is consistent in its relationship to the existing topography except where it crosses the Quarry site. Here the landform has been radically altered; former ridges and hilltops have been removed by quarrying activities. The boundary on the mapped overlay is therefore an approximation of where the boundary would once have been. In my opinion this approximation is acceptable in being consistent with the methodology as well as the broader landform patterns of the harbours Western Hills.*
>
> *Mr Bray adopts an alternative approach to establishing the boundary of the Coastal Environment. Mr Bray argues that the Coastal Environment boundary should be defined on the basis of values rather than topography, and that to qualify as 'Coastal Environment' the area should have significant Biotic, Abiotic, and Experiential values. Mr Bray assesses all values within the quarried area of the Coastal Environment (as currently shown on the PDP overlay) as low and proposes that the boundary be moved to include only areas with significant Natural Character values; to the boundary of existing workings at the top of the coastal escarpment, the upper boundary of indigenous forest regeneration on the coastal escarpment.*

48. In evidence Mr Bray[32] was of the view that:

> *Mr Anstey indicates that across the quarry, which has resulted in excavation of the land for over 90 years, the CE line has been mapped by Council in approximation of where the topography once was. I don't agree with such a method – there is no current (or indeed realistic) proposal to reinstate the site to its historical contours, therefore the landscape needs to be considered as it presents today. However, even if such historical contours were estimated, it remains apparent based on the topography east and west that there would have been several ridgeline peaks within the landform, none providing an obvious first-ridgeline location for the CE line.*

[31] Evidence of Clive Anstey paragraphs 42 and 43
[32] Evidence of Shannon Bray Paragraph 32

49. Further, in his summary statement for the hearing[33] Mr Bray discussed the uncertainty around the demarcation boundary for where the Coastal Environment existed in other locations and referenced our questions of Council experts in respect of Kilbirnie Town Centre that is considerably away from the coast as we now know it. He considered that the Coastal Environment boundary in respect of Horokiwi was not in that situation. He stated that:

> *But Horokiwi is none of these situations. It sits behind a clear, defined ridgeline, and when you are within the working quarry behind this line there is little evidence of being near the coast. The activity of the quarry is all consuming, and its impacts have changed its landscape values. This hasn't happened recently – it's been operating for 90 years, and it will continue to operate beyond the life of this District Plan.*

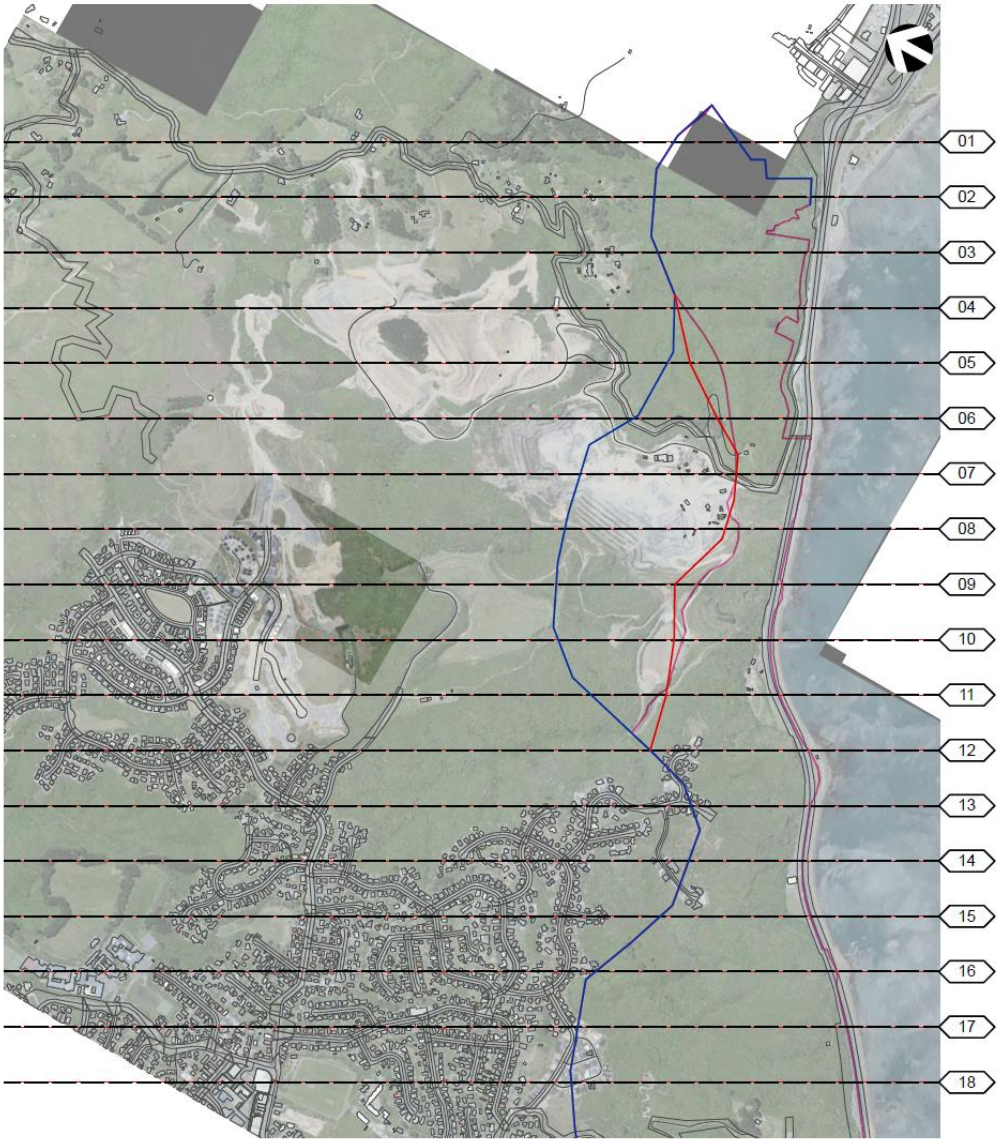
50. In that written statement, Mr Bray[34] also commented on Mr Anstey's view that time was irrelevant – that 100 years ago Kilbirnie was a swamp and the coastal processes that created it remain evident. He referenced his experiences with Te Mata Peak in Hawkes Bay some 400 metres above sea level and 6 km from the coast:

> *…. But this is not a coastal environment – it once was, but time has altered it.*
>
> *This will happen at Horokiwi. As I set out in my evidence, it was once in the CE, but time – and activity – has changed this. It will likely change again sometime long in the future. These changes may mean it returns to the coastal environment in the future. District Plans, policies, and lines on a map change and adapt. This is why we need to fundamentally come back to values.*

51. We requested Mr Bray provide us with his preferred Coastal Environment boundary and this was received shortly after the hearing concluded. We also visited the Horokiwi Quarry and were able to view the operations and the surrounding area.

52. Mr Bray's plan below showed the Coastal Environment as notified with his recommended boundary of the Coastal Environment at the first ridge.

[33] Opening Statement of Shannon Bray Page 2 paragraphs 3 and 4
[34] At Page 2 paragraphs 5 and 6



1 SITE PLAN
Scale: 1:20000

KEY

Council proposed
Coastal environment boundary

Recommended
Coastal environment boundary

Previous Recommended
Coastal environment boundary

53. Having initially supported the notified Coastal Environment boundary (purple), Mr Anstey[35] accepted that the working quarry area should not be included. Mr Anstey also included an Appendix that showed a revised boundary and explained:

> *A revised boundary would need to join the Boffa Miskell Boundary in a manner that respects the natural contours and contains the visual effects of earthworks as far as possible. The revised boundary I have drawn (Appendix A) attempts to satisfy the objectives outlined.*
>
> *The proposed revised boundary essentially excludes the working area of the quarry from the coastal environment, as proposed by Mr Shannon Bray. This boundary is located to include unworked ground and naturally regenerating indigenous vegetation within the Coastal Environment. This will protect the integrity and visual coherence of the 'skyline' from public roads and public spaces.*

54. In his Reply, Mr Sirl[36] stated that Mr Anstey's response was that the Boffa Miskell Coastal Environment Boundary (shown in the PDP) had followed an imagined 'pre-cultural' ridgeline across the Horokiwi Quarry. Quarrying has removed a substantial area of land however, including the imagined ridgeline.

55. At the risk of appearing overly simplistic, we start from the premise, based on the approach stated by Boffa Miskell in its 2014 report[37], that the primary basis for identifying the inland boundary of the Coastal Environment is the first ridgeline. In areas where there is no obvious ridgeline, or where the first ridgeline is well inland, other factors play more of a role. That, however, is not the case in the vicinity of the Quarry. There is a reasonably clear ridgeline seaward of the actively quarried area that Mr Bray has identified. We consider that this, rather than any historical land formation, should guide the outcome, as Mr Anstey now accepts.

56. Clearly the degree of coastal influence might justify shifting from the first coastal ridgeline, and in that regard, Mr Bray was able to demonstrate a systematic and finer grained pragmatic identification of the Coastal Environment than did Mr Anstey. While they essentially agreed that the area of the active quarry should be excluded, the point in contention was how the boundary of the Coastal Environment within the quarry boundaries joined with the Coastal Environment boundary off-site. Mr Bray was also able to provide a preferred Coastal Environment boundary which both

[35] Reply of Clive Anstey paragraph 11
[36] Reply paragraph 11
[37] At 1.13

followed natural contours and met the notified Coastal Environment boundary at either end of the quarry site.

57. It follows that we prefer Mr Bray's position, and adopt the plan he tabled a showing the appropriate boundary of the Coastal Environment in this area.

58. The outcome is a Coastal Environment boundary that varies from the zone boundary recommended in Report 6. We do not consider that problematic because they serve different purposes. Having said that, while the provisions of the Quarry Zone are enabling, the Coastal Environment Chapter also has specific provisions relating to existing, extended and new quarrying activities.

59. WIAL[38] was concerned that the complex relationship between the Coastal Environment, Infrastructure and Airport Zone provisions created an inefficient consenting pathway for airport and airport related activities. Consequently, it sought that the Coastal Environment Overlay is removed from the Airport Zone.

60. We received evidence from Ms O'Sullivan, the planner for WIAL, and we encouraged further discussions to be held on the issue of the seawalls that border the airport. We also asked through Minute 49 for Mr Sirl to consider:

> *How the area of NOSZ around the Airport margin intended to be treated the same way as the Airport Zone should be described, noting any consultation he has had on this point with Ms O'Sullivan*

61. In his Reply, Mr Sirl stated [39]:

> *I consider that the most effective and accurate way of identifying this area of the coastal margin is to include a mapped area in the ePlan, identified under the Map Layers and Legend in the ePlan maps. The area proposed is included in Appendix B. The term 'Moa Point Road Seawall Area' used as the title of the mapped area can then be used within the associated provisions. I note this approach is not uncommon, with the Plan's reference to the specific control 'non-residential activity frontage' being a term that is not defined, but is mapped. This approach will also reduce the text within rules that refer to this area making for a more user-friendly Plan. I note that there are consequential amendments to the NOSZ that will be required for consistency.*

62. The map[40] defining the Moa Point Road Seawall Area reflected Mr Sirl's agreement with Ms Weeber and Ms O'Sullivan and addressed the concern Ms Weeber had

[38] Submissions #406.15, 406.16, 406.286, and 406.287 opposed by Guardians of the Bays Inc FS44.178 and FS44.179
[39] Sirl Reply paragraph 35
[40] Council Reply Appendix 2

expressed about the generality of the language WIAL had used in its submission. This flowed through to the detailed text of the CE chapter he recommended. The need for such text was canvassed in the subsequent wrap-up hearing, given Council's acceptance in Stream 9 that the seawall is 'infrastructure'. Mr Sirl's view was that it should be retained, because not all activities in the defined area will be infrastructure. We accept that reasoning and have approached the suggested text in that light.

2.4 Schedule 12 - High Coastal Natural Character Areas

63. Yvonne Weeber[41] and Guardians of the Bays[42] sought to retain the Lyall Bay connection between Te Raekaihau and Hue te Taka Peninsula/Moa Point in the schedule as notified while DoC[43] sought to retain the schedule as notified. These matters are noted.

64. Barry Insull[44] sought to amend the subtitle "*Sinclair Head*" to "*Sinclair Head/Te Rimurapa*". Mr Insull[45] also sought that the language in the Key Values for Coastal Cliffs East of Karori Stream Estuary be amended to remove mention of "*a historic habitat for*".

65. We agree with the first change, which Mr Sirl also supported. Mr Sirl advised after some research that reference to the Long Bay Beach Weevil in relation to the Coastal Cliffs East of Karori Stream Estuary should be replaced with Speargrass Weevil (Lyperobius huttoni). That research also supported identification of an historic habitat. We therefore recommend retention of that terminology, along with deletion of wording that confuses the matter.

66. John Tiley[46] and Churton Park Community Association[47] sought that the 18 identified ridgelines and hilltops (and Marshalls Ridge) are listed in either Schedule 11 or Schedule 12. We note that this area is a long way from the coast and would not be a candidate for a High Natural Character Area in Schedule 12. The categorisation of Marshalls Ridge is addressed further in Section 5 of our report below.

[41] Submission #340.157
[42] Submissions #452.104 and 452.105
[43] Submission #385.94
[44] Submission #32.24
[45] Submission #32.25
[46] Submission #142.31 opposed by Meridian FS101.190 and supported by Andy Foster FS86.34
[47] Submission #189.31, opposed by Meridian FS101.191

67. Forest and Bird[48] sought clarity in the relationship between the sections "*Relevant values under Policy 13 of the NZCPS*" and "*Key values*" for each identified area in the schedule. Forest and Bird[49] also sought that Schedule 12 be amended to include the values of each High and Very High Coastal Natural Character Areas to give effect to Policy 13 of the NZCPS.

68. We received no supporting evidence from Forest and Bird and agree with Mr Sirl that if the recommended amendments to Schedule 12 within this report are made, the Schedule is clear and easily understood with respect to the key values that contribute to the high character of the identified areas. However, Mr Sirl also recognised that there is a disconnect between the 'key values' in the Schedule and the wider values identified at the Coastal Terrestrial Area scale in the Coastal Natural Character Assessment, and that a plan user should consider this at a greater level of detail when considering the potential adverse effects of activities on the natural character in High Coastal Natural Character areas through the resource consenting process.

69. GWRC[50] sought to amend Schedule 12 that contains the areas identified in the 2016 Boffa Miskell coastal natural character assessment. It sought that:

- the title of the schedule is amended to refer to all coastal natural character areas rather than areas of high natural character in isolation[51];
- the schedule is amended to include natural character ratings at all levels (low, moderate, high) at the wider area scale, as undertaken in the 2016 Boffa Miskell coastal natural character assessment[52]; and
- to achieve CE-O1, the schedule be amended to map area scale natural character ratings identified in Boffa Miskell's natural character assessment on the basis that the proposed mapping approach is not appropriate[53].

70. GWRC did not appear at the hearing to support what would be a potentially extensive series of changes to the plan. We agree with Mr Sirl that:

> *Policy 13.1.c. of the NZCPS requires only that 'at least' areas of high character are identified or mapped, whereas Policy 3 of the RPS specifically directs the protection of high natural character in the coastal environment in*

[48] Submissions #345.417 and 345.418, opposed by Meridian FS101.192 and FS101.193
[49] Submission #345.419, opposed by Meridian FS101.194
[50] Submission #351.351, opposed by Meridian FS101.195
[51] Submission #351.354, opposed by Meridian FS101.198
[52] Submissions # 351.352, 351.353, opposed by Meridian FS101.196
[53] Submission #351.355, opposed by Meridian FS101.197

district and regional plans. I also note that Policy 23(a) of the NRP only requires identification of outstanding and high natural character in the coastal environment. It follows that it is not a requirement to map and identify values for areas of relatively low natural character, and that a District Plan (and Regional Plan for that matter) can use other methods to achieve the overall intent of higher order direction.

71. Terawhiti Station[54] sought to delete Ōteranga Head/Outlook Hill from the schedule as an area of High Coastal Natural Character and also sought[55] to delete Terawhiti/Ohau Point from the schedule as an area of High Coastal Natural Character.

72. We received no supporting evidence or comment from the submitter and so rely on the advice from Mr Anstey supporting the retention of Ōteranga Head/Outlook Hill and Terawhiti/Ohau Point in Schedule 12 as areas of High Coastal Natural Character.

2.5 Coastal Environment chapter – Introduction

73. CentrePort Limited[56] considered that there are Port Zone objectives and policies relevant to the Coastal Environment chapter and seeks to add a reference to the Port Zone in the Coastal Environment chapter introduction as follows:

> *Provisions relating to infrastructure within the coastal environment are located in the INF-CE sub-chapter and in the Special Purpose Port Zone. The provisions in the INF-CE chapter apply in addition to the general provisions of the infrastructure chapter.*

74. Mr Sirl supported this change, as do we.

75. Meridian[57] considered that the text in the introduction describing Wellington's coastline is only partially accurate. It considered the description fails to acknowledge the presence of the turbines, roads and other built facilities in the West Wind and Mill Creek wind farms. It sought the following amendments:

> *Wellington City's coastline extends for over 100 ~~kilometers~~ kilometres. ~~The western and southern parts of this coastline are largely undeveloped~~. Narrow shore platforms and steep escarpment and cliff faces are typical along this part of the coastline, where exposure to rigorous environmental conditions has helped shape rugged landforms. Many areas of Wellington's rural coastal environment are largely undeveloped (for example, the west-facing and south-facing escarpments adjacent to Raukawa Moana (Cook's Strait) west of Owhiro Bay). Parts of the rural environment above the coastal escarpments*

[54] Submission # 411.30
[55] Submission #411.31
[56] Submissions #402.113 and 402.114
[57] Submissions #228.96, 228.97

have been modified by development (for example, by the establishment of the West Wind and Mill Creek wind farms which now form part of the existing environment). ~~At the same time t~~The urban areas of the coastal environment have been heavily modified, with public roads present nearly the entire length of the coastline around the harbour from Sinclair Head to Petone, ~~with~~ and residential and commercial development having modified the natural character throughout this area.

76. We agree with Mr Sirl, who recommended adding a reference in the introduction to the chapter acknowledging the wind farms, but suggested a more succinct addition. We also agree with the correction of spelling and improved clarification sought by the submitter.

77. Meridian[58] supported commentary indicating that the rules for renewable electricity generation activities, structures and buildings would be wholly contained in the REG chapter. It considered that the standards listed for activities in the Coastal Environment are inappropriate for renewable electricity generation activities and structures and should not be construed as a 'permitted baseline' for renewable electricity generation activities there, and particularly not for existing wind farms. It sought amendments to the Introduction to include the following clarification note:

> *The rules applicable to renewable electricity generation activities in the coastal environment, including in areas of high and very high coastal natural character, are contained in Chapter REG Renewable Electricity Generation. The rules in Chapter CE Coastal Environment do not apply to renewable electricity generation activities in the coastal environment, including in areas of high and very high coastal natural character in the coastal environment*.

78. This is a consistent theme across a number of plan chapters. While Ms Foster[59] for Meridian provided alternative wording, we agree with Mr Sirl that the addition of the following words in the introduction provide certainty as to the relationship of renewable energy generation activities to the Coastal Environment.

> *The Coastal Environment chapter provisions do not apply to renewable energy generation activities located within the Coastal Environment (unless specifically stated within a renewable electricity generation rule or standard, for example, as a matter of discretion).*

[58] Submissions #228.98 and 228.99
[59] Evidence of Christine Foster paragraph 5.8

79. WIAL[60] considered that the introductory text should also reference the relevant enabling provisions within the NZCPS relating to the operational and functional needs of infrastructure. It sought the following amendment:

> *Coastal Environment chapter introduction*
>
> *…*
>
> *The coastal and riparian margin provisions do not apply in highly modified areas like the Airport Zone, Port Zone, ~~or~~ the City Centre Zone, or the area of Natural Open Space Zone located between Lyall Bay and Moa Point.*
>
> *...*
>
> *Any activities within the City Centre Zone or are associated with the Wellington Airport, operational port activities, passenger port facilities and rail activities are assessed against their own specific objectives, policies and rules contained in Part 3. This is in recognition of the social and economic benefits these activities have and that their position in the City is largely fixed as well as the policy directives of the NZCPS and RPS that recognise and provide for the functional and operational needs of infrastructure.*

80. Again, this was the subject of some discussion at the hearing. Ms O'Sullivan and Mr Sirl were able to agree the following text to take into account the site-specific nature of the Moa Point Road Seawall Area within the Coastal Environment.

> *Similarly, the 'Moa Point Road Seawall Area', as shown on the ePlan mapping, is another area where the natural character of the coast has been heavily modified by the existing hard engineering natural hazard mitigation structures that protect the Airport, road and network utilities located in this area. There has also been development of large scale infrastructure within the coastal environment, such as wind turbines, quarries, the National Grid, roads and other built facilities.*

81. We consider that this is a useful explanation of the context within the chapter introduction.

82. Lastly, we note that in the Wrap-Up hearing, Mr Sirl recommended a minor wording change, deleting reference to the application of Regional Policy Statement criteria. He considered that unnecessary detail, and we agree. Appendix 1 reflects that change.

[60] Submissions #406.284, 406.285 opposed by Guardians of the Bays Inc FS44.65; and FS44.66

2.6 Coastal Environment – New Provisions

83. Forest and Bird[61] sought to add:

(a) A new policy CE-PX to give effect to Policy 11 of the NZCPS outside Significant Natural Areas and within the Coastal Environment.

(b) A new Policy CE-PX and Rule CE-RX to give effect to Policy 13(1)(a) of the NZCPS with regards to outstanding natural character in the Coastal Environment.

(c) A new objective CE-OX, policy CE-PX, and rule CE-RX to give effect to Policy 13(1)(b) of the NZCPS to protect natural character in all other areas of the Coastal Environment.

84. We concur with Mr Sirl that these new provisions are not required. He was of the view that CE-P8 provides policy direction for the management of vegetation removal in the Coastal Environment and consequently, in conjunction with the ECO chapter provisions (which notably includes a non-complying activity rule status for indigenous vegetation removal in an SNA where matters identified in Policy 11a of the NZCPS are present), adequately gives effect to Policy 11 of the NZCPS without the need for an additional objective or additional policies.

2.7 Coastal Environment – Objectives

CE-O1 Coastal Environment

85. Forest and Bird[62], Horokiwi Quarries Ltd[63] and Te Rūnanga o Toa Rangatira[64] sought that the objective be retained as notified.

86. DoC[65] sought the addition of the word 'rehabilitated' to ensure the objective is in line with Policy 14 of the NZCPS, which promotes either restoration or rehabilitation of the natural character of the Coastal Environment. We agree that this wording is a useful addition and has been included in the revised objective.

[61] Submissions #345.291, 345.292 and 345.293, opposed by Meridian FS101.149, FS101.150, FS101.151 and WIAL FS36.83, FS36.84 and FS36.85
[62] Submission #345.294, opposed by WIAL FS36.86
[63] Submission #271.43
[64] Submission #488.58
[65] Submissions #385.58, 385.59

87. GWRC[66] sought that CE-O1 be amended to align with NZCPS Policies 13 and 15 to reflect the requirement to "*preserve*" and "*protect*" natural character. It sought the following amendments:

> *The natural character and qualities that contribute to the natural character within the landward extent of the coastal environment are ~~maintained~~ preserved and protected and, where appropriate, restored or ~~enhanced~~ rehabilitated*

88. We consider that these changes are not necessary and agree with Mr Sirl's view[67] that:

> *In my opinion the use of maintain in CE-O1 is appropriate as this objective is relevant to the wider coastal environment, parts of which are highly modified and urbanised where it is more a matter of maintaining the existing coastal natural character, which has been assessed as relatively low. I consider this to still achieve the 'preserve and protect' direction of the NZCPS.*
>
> *Also, CE-O1 should not be read in isolation from CE-O2 which is relevant to High Coastal Natural Character Areas and directs the preservation and protection of these areas from inappropriate subdivision, use and development, and CE-O3 relevant to coastal margins and riparian margins within the coastal environment are protected from inappropriate subdivision, use and development.*

89. Meridian[68] considered that CE-O1 fails to acknowledge the presence of the existing modifications (including buildings and structures) made by the West Wind and Mill Creek wind farms. It sought amendments to more accurately describe the modified natural character of these parts of the Coastal Environment in SCHED10, in the description of the Coastal Environment in the Coastal Environment Chapter and in the objectives of Chapter CE Coastal Environment, including CE-O1. Specifically, it sought the following amendment to CE-O1:

> *The natural character and qualities that contribute to the natural character within the landward extent of the coastal environment are maintained and, where appropriate, restored or enhanced, recognising the presence of existing renewable electricity generation activities and the importance of the renewable electricity generation resource in the coastal environment.*

90. As an alternative, Meridian requested that if the amendments to CE-O1 are not supported, a new objective be inserted as follows:

[66] Submissions #351.196, 351.197 and 351.198, opposed by Meridian FS101.152 and FS101.153
[67] Section 42A Report paragraphs 159 and 160
[68] Submissions #228.100, 228.101 and 228.102

The benefits of the existing wind farms along Wellington's coastline are recognised and their generation capacity is optimised.

91. We do not consider that CE-O1 should either be amended to specifically recognise wind farms or a new Objective inserted, and agree with Mr Sirl that the provisions in the REG Chapter of the Plan provides the necessary direction to inform decision-making with respect to these activities in the Coastal Environment, particularly when read in conjunction with the statement we have recommended be included in the Introduction to this Chapter, as above. We note that Ms Foster accepted that position when she appeared at the hearing.

92. WCC ERG[69] considered that it is important to ensure that, in the midst of an ecological emergency, the default attitude towards environmental protection is one of restoration. It sought an amendment to CE-O1 to replace the word 'appropriate' with 'possible'.

93. Confirming our agreement with Mr Sirl, we note his view that "*where appropriate*" is a more apt test than "*where possible*" particularly given the extent of the Coastal Environment overlay which, as previously highlighted, includes highly urbanised areas where it may be theoretically possible to restore natural character, but not appropriate to do so.

94. WIAL[70] sought that CE-O1 be amended so it focuses on effects that specifically relate to the Coastal Environment and have not already been addressed, or cannot otherwise be addressed, by the underlying land use zone.

95. We do not consider that Objective needs to be changed at this level of the policy hierarchy in this regard, noting that amendments to other provisions have been made to give effect to this submission.

96. Further, WIAL[71] also sought that the Coastal Environment objectives, including CE-O1, are amended to ensure the provisions give effect to all relevant parts of the NZCPS, including those provisions that recognise the functional and operational requirements of activities (such as infrastructure) to locate within these areas and the associated management of effects.

[69] Submission #377.221 opposed by Meridian FS101.154
[70] Submissions #406.294 and 406.295
[71] Submission #406.296

97. We concur with Mr Sirl's position that CE-O1 does not need to be amended to recognise all parts of the NZCPS as other PDP provisions (some of which directly implement CE-O1) achieve this. He noted for example, that CE-P5 recognises some activities will have a functional or operational need to locate in a High Coastal Natural Character Area, with the underlying zone or infrastructure chapter providing the consenting pathway for activities in the Coastal Environment. Also, rules CE-R8 and CE-R15 acknowledge established use and activities and thereby give effect to Policy 6 of the NZCPS.

98. In relation to CE-O1, we asked[72] the reporting officer why there was a duplicated reference in the first line to natural character. In his Reply, Mr Sirl[73] advised that the intent is to address both natural character and the qualities that contribute to natural character. However, in his opinion, there is no material difference between the two. If the objective is seeking to maintain natural character as a 'whole', there is no need to maintain the 'parts', being the qualities that contribute to natural character.

99. Further Mr Sirl advised that he had also considered this objective in light of Ms O'Sullivan's presentation at the hearing. He agreed that as CE-O1 directly relates to natural character, amending the title of this objective to 'Natural character within the Coastal Environment' would better reflect the outcomes being sought by the objective. We agree.

100. Therefore, the following amendments to Objective CE-O1 are included in Appendix 1.

> ***CE-O1 <u>Natural character within</u> the coastal environment***
>
> *The natural character ~~and qualities that contribute to the natural character~~ within the landward extent of the coastal environment <u>is</u> ~~are~~ maintained and, where appropriate, restored, <u>rehabilitated</u>, or enhanced.*

CE-O2 High coastal natural character areas

101. DoC[74] and WCC ERG[75] sought to retain the objective as notified while Te Rūnanga o Toa Rangatira[76] sought to retain the objective as notified, subject to amendments in subsequent submission points.

[72] Minute 49 6(e)
[73] Reply paragraph 45
[74] Submission #385.60
[75] Submission #377.222
[76] Submission #488.59

102. GWRC[77] considered that to give effect to NZCPS Policy 13(1)(b), natural character is also required to be preserved "*in all other areas of the coastal environment*", rather than just sites of high natural character in isolation. It sought the following amendment:

> ***CE-O2 ~~High~~ C~~c~~oastal natural character areas***
>
> *Adverse effects on identified characteristics and values of sites and areas of ~~high~~ coastal natural character in the landward extent of the coastal environment are avoided.*

103. Similarly, Forest and Bird[78] considered that in order to give effect to NZCPS Policy 13, this objective cannot be limited to areas of high natural character only, and sought amendment to apply to the entire landward extent of the Coastal Environment. It further considered that the objective should not be limited to identified values. It sought the removal of the word 'high' in relation to natural character areas from the objective.

104. We agree with Mr Sirl's position that CE-O2 is specific to the outcomes sought for High Coastal Natural Character Areas in the Coastal Environment to directly give effect to Policy 13(1)(c) of the NZCPS. CE-O1 provides more general direction with respect to natural character within the wider Coastal Environment, as directed by Policy 13 of the NZCPS. Mr Sirl also advised us that NZCPS Policy 13(1)(b) only requires the avoidance of significant adverse effects on natural character of the wider Coastal Environment, with provision within this policy for the remediation or mitigation of non-significant effects.

105. However, like Mr Sirl, we do not see the benefit of referencing "*identified characteristics and values*" and consider that the objective can be simplified to achieve the intended outcome as CE-P1 adequately addresses the identification of High Coastal Natural Character Areas.

106. Meridian[79] considered that the focus of CE-O2 should be on avoiding inappropriate subdivision, use and development within the mapped 'high coastal natural character areas'. It sought retention of CE-O2 with amendment to acknowledge and recognise the existing West Wind and Mill Creek wind farms as legitimate, authorised and appropriate existing development established within the backdrop to areas of

[77] Submissions #351.199 and 351.200, opposed by Meridian FS101.156
[78] Submission #345.295, opposed by Meridian FS101.155 and WIAL FS36.87
[79] Submissions #228.103 and 228.104

identified ‘high coastal natural character’ by adding additional wording at the end of the objective.

> *The identified characteristics and values of areas of high coastal natural character areas in the landward extent of the coastal environment are preserved and protected from inappropriate subdivision, use and development occurring within the mapped high coastal natural character areas*.

107. Ms Foster[80] for Meridian accepted Mr Sirl’s reasoning that no amendment was required to achieve the outcome Meridian sought. In particular, Ms Foster was satisfied that the areas that have high or very high natural character in the Coastal Environment will be identified in the PDP with precision and that the characteristics and values that qualify them as having high or very high natural character will be identified in detail (by reference to the Boffa Miskell 2016 report).

108. Therefore, we endorse Mr Sirl’s proposed amendments to CE-O2 as follows:

> ***CE-O2 High coastal natural character areas***
>
> *~~The identified characteristics and values of areas of~~ hHigh coastal natural character areas in the landward extent of the coastal environment are preserved and protected from inappropriate subdivision, use and development.*

CE-O3 Coastal margins and riparian margins

109. Forest and Bird[81], DoC[82] and WCC ERG[83] sought to retain the objective as notified while Te Rūnanga o Toa Rangatira[84] sought to retain the objective as notified, subject to amendments in subsequent submission points.

110. WIAL[85] sought that CE-O3 be amended so it focuses on effects that specifically relate to the Coastal Environment and have not already been addressed, or cannot otherwise be addressed, by the underlying land use zone.

111. Further, WIAL[86] sought that the objectives, including CE-O3, be amended to ensure the provisions give effect to all relevant parts of the NZCPS, including those

[80] Evidence of Christine Foster paragraphs 8.2 and 8.3
[81] Submission #345.296, opposed by WIAL FS36.88
[82] Submission #385.61
[83] Submission #377.223
[84] Submission #488.60
[85] Submissions #406.297 and 406.298
[86] Submission #406.299

provisions that recognise the functional and operational requirements of activities (such as infrastructure) to locate within these areas and the associated management of effects.

112. In evidence, Ms O'Sullivan[87] for WIAL was of the view that the Objective should be amended to ensure it is clear to plan users that the provisions only relate to natural character in the Coastal Environment.

113. Mr Sirl did not agree, and nor do we, as this objective and associated policies and rules apply beyond natural character protection, specifically through contributing to achieving the direction of Policy 11 of the NZCPS.

CE-O4 Customary Harvesting

114. Forest and Bird[88] and WCC ERG[89] sought to retain the objective as notified, while Te Rūnanga o Toa Rangatira[90] sought to retain the objective as notified, subject to amendments in subsequent submission points. There were no submissions seeking its amendment.

115. No assessment is therefore required.

2.8 Coastal Environment – Policies

CE-P1 Identification of the coastal environment and of high coastal natural character areas within the coastal environment

116. Horokiwi Quarries Ltd[91], WCC ERG[92] and Yvonne Weeber[93] sought that the policy be retained as notified.

117. Aggregate and Quarry Association[94] sought that CE-P1 is amended to refer to existing lawful activities such as quarries. We disagree, as we were advised that CE-P9 adequately recognises, and provides a consenting pathway, for quarrying activities in conjunction with CE-R10. Additionally, lawfully established activities are protected by existing use rights.

[87] Evidence of Kirsty O'Sullivan paragraph 23
[88] Submission #345.297, opposed by WIAL FS36.89
[89] Submission #377.224
[90] Submission #488.61
[91] Submission #271.44
[92] Submission #377.230
[93] Submission #340.25
[94] Submission #303.16

118. Forest and Bird[95] sought that CE-P1 be amended to provide for the identification of outstanding areas of natural character in the Coastal Environment as an additional matter, as follows:

> *1. Identify and map the landward extent of the Coastal Environment.*
>
> *2. Identify and map areas of very high and high natural character within the Coastal Environment and list the identified values in SCHED 12 – High Coastal Natural Character Areas.*
>
> *3. Identify and map areas of outstanding natural character in the Coastal Environment.*

119. We accept Mr Sirl's view that no change is necessary. He advised that the Coastal Natural Character Assessment that has informed the areas of high natural character within Schedule 12 did not identify any outstanding natural character areas and consequently it is unnecessary to include specific provisions for a matter not relevant to the Plan.

120. GWRC[96] considered that natural character ratings have not been scheduled at the area scale across the full extent of the Coastal Environment. To give effect to Policies 13, 14, and 15 of the NZCPS, it sought that area scale natural character ratings be included in the PDP, and that CE-P1 is amended by changing clause 2 to read:

> 2. *Identify and map sites ~~areas~~ of very high and high natural character and area scale natural character ratings within the coastal environment and list the identified values in SCHED 12 – ~~High~~ Coastal Natural Character Areas.*

121. We disagree that this level of change is necessary for similar reasons as those outlined above in respect of Schedule 12. We were advised that the Coastal Natural Character Assessment involved an evaluation of natural character within the Coastal Environment at a Coastal Terrestrial Area 'area' scale and 'local/component' scale. It is the local/component areas that were found to have very high or high level of natural character and are the High Coastal Natural Character Areas mapped in the Plan and listed in Schedule 12.

122. However, Mr Sirl recommended the addition of the word "*key*" prior to "*values*" within the policy to clarify that the values to be listed in Schedule 12 are the 'key' values. This responds to those submitters seeking recognition that Schedule 12 does not

[95] Submission #345.302 opposed by WIAL FS36.94
[96] Submission #351.204, opposed by Meridian FS101.157

contain all of the values identified in the Coastal Natural Character Assessment. We agree and clause 2 of CE-P1 is recommended to be amended as follows:

> 2. *Identify and map areas of very high and high natural character within the coastal* environment *and list the identified key values in SCHED 12 – High Coastal Natural Character Areas*.

CE-P2 Use and development within the coastal environment

123. GWRC[97] sought to retain the policy as notified. We note the support of WIAL[98], which sought that CE-P2 be retained as notified, subject to its general relief seeking that the chapter be amended so it focuses on effects that specifically relate to the Coastal Environment and ensures the provisions give effect to all relevant parts of the NZCPS, including those provisions that recognise the functional and operational requirements of activities (such as infrastructure) to locate within these areas, and the associated management of effects.

124. Forest and Bird[99] sought that CE-P2 be amended to be less definitive about providing for use and development. It sought the following amendment:

> ***CE-P2 Use and development within the coastal environment***
>
> *Consider pProvideing for use and development in the landward extent of the coastal environment where it:*
>
> *1. Consolidates existing urban areas; and*
>
> *2. Does not establish new urban sprawl along the coastline*

125. As part of this submission, Forest and Bird also sought that if its amendments to CE-P5 are not accepted, as an alternative, CE-P2 be amended to give effect to Policy 13 of NZCPS with regard to avoiding significant adverse effects.

126. As with Mr Sirl, we agree in part with Forest and Bird, but only to the extent that CE-P2 should be amended to better give effect to Policy 13 of NZCPS with regard to the avoidance of significant adverse effects on High Coastal Natural Character Areas, and the avoidance, remediation or mitigation of adverse effects on the Coastal Environment outside of High Coastal Natural Character Areas and coastal and riparian margins.

[97] Submission #351.205
[98] Submissions #406.304, 406.305, 406.306
[99] Submission #345.303, opposed by Meridian FS101.158 and WIAL FS36.95

127. Horokiwi Quarries Ltd[100] sought that CE-P2 is amended to include recognition of existing activities which are lawfully established, by adding a third clause:

> "*Relates to an existing lawfully established activity*".

128. We do not agree. The amendment sought is unnecessary as existing use rights can be relied upon for existing lawfully established activities and reference to them does not need to be specifically included in a policy.

129. Meridian[101] considered that in the absence of any explicit recognition of the presence of the West Wind and Mill Creek wind farms, CE-P2 could be applied in a manner that restricts appropriate upgrading of those wind farms or the establishment of replacement wind turbines in appropriate locations. It sought the following amendments:

> *Provide for use and development in the landward extent of the coastal environment where it:*
>
> *1. Consolidates existing urban areas; or*
>
> *2. Is necessary to enable the use, development, maintenance and upgrading of regionally significant infrastructure (including the repowering of existing wind farms by replacing and upgrading existing turbines and their support structures identified on the Plan Maps and associated electricity transmission facilities); and*
>
> *3.~~2.~~ Does not establish new urban sprawl along the coastline;*

130. We disagree that including such specificity within a general policy is necessary as the provisions in the REG Chapter of the Plan provide the necessary direction to inform decision-making with respect to these activities in the Coastal Environment. The recommended amendment to the Introduction also makes it clear that provisions in this Chapter do not apply to REG activities. Ms Foster accepted that this addressed Meridian's concerns.

131. WCC ERG[102] considered that it is important that the environmental significance of the Coastal Environment is recognised and seek amendment to add a further clause stating, "*Does not adversely affect the environmental values of the coastal environment"*.

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[100] Submissions #271.45 and 271.46
[101] Submissions #288.105 and 288.106
[102] Submission #377.231, opposed by Meridian FS101.159 and WIAL FS36.137

132. We consider that the relief sought is akin to the changes already proposed as a result of the Forest and Bird submission.

133. Similarly, Yvonne Weeber[103] sought that CE-P2 be amended to acknowledge the uncertainty surrounding the full extent of the impacts of climate change and sea level rise, by adding a further clause stating, "*Takes into consideration the level of uncertainty about the full extent of the impacts of climate change (storm surges and costal inundation) and sea level rise."*

134. We agree with Mr Sirl that these matters are appropriately addressed by the coastal hazard provisions in the PDP, and that the reference to climate change in CE-P2 is unnecessary.

135. We therefore agree with the following amendments to CE-P2:

> ***CE-P2 Use and development <u>effects on natural character</u> within the coastal environment***
>
> *Provide for use and development in the landward extent of the coastal environment where it:*
>
> *<u>1. Avoids remedies or mitigates adverse effects on the natural character of the coastal environment and</u>*
>
> *<u>2</u>. Consolidates existing urban areas; ~~and~~ <u>or</u>*
>
> *3. Does not establish new urban sprawl along the coastline*;

CE-P3 Restoration and enhancement within the coastal environment

136. DoC[104], Forest and Bird[105], Grant Birkinshaw[106], WCC ERG[107], and Yvonne Weeber[108] sought to retain the policy as notified.

137. GWRC[109] considered that natural character ratings have not been scheduled at the area scale across the full extent of the Coastal Environment. It sought that CE-P3 be amended to include the area scale natural character ratings to give effect to Policies 13, 14 and 15 of the NZCPS, by amending clauses 1 and 7 of the policy as follows:

[103] Submission #340.26, opposed by WIAL FS36.136
[104] Submission #385.62
[105] Submission #345.305
[106] Submission #52.6
[107] Submission #377.232
[108] Submission #340.27
[109] Submissions #351.206 and 351.207

Provide for restoration or rehabilitation of the natural character values and coastal and riparian margins within the landward extent of the coastal environment by:

1. Recognising the values present that could be ~~enhanced~~ restored in areas of low and moderate natural character;

….

7. Providing for mana whenua to exercise their responsibilities as kaitiaki to protect, restore and maintain values in the coastal environment ~~areas of indigenous biodiversity~~.

138. Mr Sirl considered that CE-P3 is an enabling policy that supports rules (CE-R2 and CE-R3) that are generally permissive of restoration and enhancement activities in the wider Coastal Environment – giving effect to CE-O1. He considered that this policy (CE-P3.1) as notified speaks to values within the wider Coastal Environment, but does not require or limit restoration or rehabilitation, and simply enables this to occur in an appropriate manner. Further, he considered that the general outcomes sought by GWRC can be achieved without the proposed changes to CE-P3.1 and would require the identification of areas of low and moderate coastal natural character and associated values in the Plan, which he disagreed with. However, he did support the amendments suggested to CE-P3.7 that recognise the values of the wider Coastal Environment, not just those relevant to indigenous biodiversity.

139. We accept this position and note that we received no evidence to support this submission from GWRC.

140. WIAL[110] considered that, as drafted, CE-P3 has broad application within the entire Coastal Environment, despite generally being focussed on matters within the coastal margins. It considered that providing for the restoration and rehabilitation of 'natural character values' within the landward extent of the Coastal Environment is inappropriate in areas that are highly modified and otherwise urbanised environments, and sought that the policy be amended to apply to the coastal margins only as outlined below:

Provide for restoration or rehabilitation of the natural character values within the ~~and~~ coastal and riparian margins ~~within the landward extent~~ of the coastal environment where appropriate by:

[110] Submissions #406.307 and 406.308

141. Mr Sirl did not support the changes sought. He saw no need to revise CE-P3 in response to concerns that the policy has implications with respect to activities other than restoration and enhancement activities in the Coastal Environment.

142. In evidence, Ms O'Sullivan for WIAL agreed with that position and with the changes recommended by Mr Sirl. We agree that those changes are appropriate as they provide greater clarity in respect of restoration and enhancement activities. Therefore CE-P3 is recommended to be amended as follows:

> ***CE-P3 Restoration and enhancement <u>of natural character</u> within the coastal environment***
>
> *Provide for restoration or rehabilitation of the natural character values and coastal and riparian margins within the landward extent of the coastal environment by:*
>
> 1. *Recognising the values present that could be enhanced;*
> 2. *Encouraging natural regeneration of indigenous ~~species~~ <u>vegetation</u>, including where practical the removal of pest species;*
> 3. *Rehabilitating dunes or other natural coastal features or processes;*
> 4. *Restoring or protecting riparian and coastal margins;*
> 5. *Removing redundant structures that do not have heritage or amenity value;*
> 6. *Modifying structures that interfere with coastal or ecosystem processes; or*
> 7. *Providing for mana whenua to exercise their responsibilities as kaitiaki to protect, restore and maintain <u>natural character</u> <u>values in the coastal environment</u> ~~areas of indigenous biodiversity~~*

CE- P4 Customary harvesting within the coastal environment

143. Forest and Bird[111], and WCC ERG[112] sought to retain the policy as notified. No change has been requested to the policy and therefore no further assessment is required.

[111] Submission #345.306
[112] Submission #377.233

CE-P5 Use and development in high coastal natural character areas

144. DoC[113], Ministry of Education [114], and Yvonne Weeber[115] sought to retain the policy as notified.

145. Forest and Bird[116] sought to amend the policy to give effect to NZCPS Policy 13(1)(b) as follows:

> ***CE-P5 Use and development in ~~high~~ coastal natural character areas***
>
> *Only allow use and development in ~~high~~ coastal natural character areas in the coastal environment where:*
>
> 1. *Any significant adverse effects on the ~~identified~~ values described in SCHED12 are avoided and any other adverse effects on the identified values described in SCHED12 are avoided remedied or mitigated;*
>
> 2. *It can be demonstrated that:*
>
> a. *The particular values and characteristics of the high coastal natural character areas ~~as identified~~ in SCHED12 are protected from inappropriate use and development, <u>including by</u> considering the extent to which the values and characteristics of the area are vulnerable to change including the effects of climate change and other natural processes;*
>
> b. *Any proposed earthworks, building platforms and buildings or structures are of a scale and prominence that ~~respects~~ <u>protects</u> the identified values and the design and development integrates with the existing landform and dominant character of the area;*
>
> c. *The duration and nature of adverse effects are limited;*
>
> d. *There is a functional ~~or operational~~ need for the activity to locate in the area;*
>
> e. *There are no reasonably practical alternative locations that are outside of the high coastal natural character areas or are less vulnerable to change; and*
>
> f. *Restoration or rehabilitation planting of indigenous species will be incorporated to mitigate any adverse effects.*

[113] Submission #385.63
[114] Submission #400.62
[115] Submission #340.28
[116] Submission #345.307, opposed by Meridian FS101.160 and WIAL FS36.96

g. <u>Use and development will only be allowed where natural character values of the area are retained</u>.

146. We do not support these changes for the reasons outlined in the Section 42A Report, notably that the deletion of 'identified' is not necessary in this circumstance, and retention of 'identified' would be more consistent with the general approach across the Plan when referencing values described in schedules. We received no evidence that the identified values in Schedule 12 are not comprehensive nor that these values omit any material matters that may need to be considered when an activity is proposed in High Natural Character Areas.

147. In addition, we do not agree that the removal of the provision for activities with an operational need is necessary as this has been a consistent use of terminology in other parts of the Plan. Mr Sirl also disagreed with the suggested additional policy limb 'g' as this matter is adequately addressed under CE-P5.1. We agree with this position.

148. However, Mr Sirl agreed that the term 'respects' is vague and supported its replacement with 'maintains' as a more appropriate alternative to replace the term 'respects' than 'protects'. We note that the word 'respects' is used in other parts of the plan in respect of Historic Heritage, Sites and Areas of Significance to Māori and Te Ngakau Civic Square Precinct. However, in this context, we consider that 'maintains' would be a better term than 'respects' as the values that make a site qualify as an area of High Coastal Natural Character have already been thoroughly evaluated, so maintaining those values is the appropriate terminology.

149. GWRC[117] considered that the policy does not give effect to NZCPS Policy 13(1)(b) which is to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas which are not outstanding, rather than just in sites of high natural character. It sought that the policy be amended to apply to natural character in all areas of the Coastal Environment by removing the word "*high*" from the term 'high natural character areas'.

150. We accept Mr Sirl's position that CE-P5 intentionally does not apply to 'all other areas', and is relevant only to High Coastal Natural Character Areas. Policy direction to give effect to NZCPS Policy 13(1)(b) is also provided by CE-P2. We agree that the

[117] Submission #351.208, opposed by Meridian FS101.161

overall policy direction contained in the Coastal Environment chapter gives effect to the natural character protection required by the NZCPS.

151. Meridian[118] considered that CE-P5 should be amended to capture all areas of 'high coastal natural character' and also that any earthworks or other activities associated with any future upgrading or repowering of turbines within wind farms are not unduly restricted. It sought rewording as follows:

> *~~Only allow~~ Provide for use and development in very high ~~or~~ and high coastal natural character areas in the coastal environment where:*
>
> 1. *~~Any s~~Significant adverse effects on the ~~i~~dentified values described in SCHED12 are avoided and any other adverse effects on the identified values described in SCHED12 are avoided remedied or mitigated; and*
>
> 2. *It can be demonstrated that:*
>
> a. *The particular values and characteristics of the high coastal natural character areas ~~as identified~~ in SCHED12 are protected from inappropriate use and development, considering the extent to which the values and characteristics of the area are vulnerable to change including the effects of climate change and other natural processes;*
> b. *Any proposed earthworks, building platforms and buildings or structures are of a scale and prominence that respects the identified values and the design and development integrates with the existing landform and dominant character of the area, recognising the functional and operational needs of renewable electricity generation activities;*
> c. *There is a functional or operational need for the activity to locate in the area; or*
> d. *The duration and nature of adverse effects are limited*
> e. *The use and development will upgrade, repower or replace existing renewable electricity generation assets and enable more effective use of natural resources for renewable electricity generation;*
> f. *There are no reasonably practicable ~~practical~~ alternative locations that are outside of the high coastal natural character areas or are less vulnerable to change; and*
> g. *~~Restoration or rehabilitation planting of indigenous species will be incorporated to mitigate any adverse effects.~~*

[118] Submissions #228.107 and 228.108

152. Mr Sirl disagreed with the specific changes sought with respect to wind farms and renewable energy for similar reasons as those outlined previously. Other amendments sought were seen to be useful changes to provide for greater clarity. Mr Sirl did not agree with the deletion of notified CE-P5.2.f, but suggested it be broadened in scope.

153. Ms Foster disagreed with Mr Sirl and still sought changes to provide for provisions to provide for specific recognition of renewable energy generation in High Coastal Natural Character Areas. Ms Foster[119] considered:

> *As proposed by Mr Sirl, Policy CE-P5 presents the protection approach of the NZCPS but not the equally valid outcomes sought by the NPS-REG. Meridian's wind farms are in or closely adjacent to the coastal environment and to areas of high and very high natural character in the coastal environment as identified by this PDP. It is highly relevant to consider and contemplate the benefits of these generation assets in setting the framework for use and development in the coastal environment, including as may affect natural character in the coastal environment*.

154. By the hearing, however, Ms Foster accepted that if it was clear that the Chapter did not apply to REG activities, Meridian's concerns fell away. We consider that with the amendments we have recommended, it is now clear, and accordingly no further amendments are required to address Meridian's submission.

155. WCC ERG[120] considered that the Coastal Environment is home to indigenous biodiversity and that should be provided for in the District Plan. It sought the addition of a clause to CE-P5, "*Any adverse effects on indigenous biodiversity are applied in accordance with ECO-P2*".

156. We concur with Mr Sirl's view that no change is required. The presence and contribution of indigenous biodiversity to the natural character of the Coastal Environment is part of the identification of High Coastal Natural Character Areas, and as such, is already encompassed by CE-P5.1 and CE-P5.2.

157. We asked Mr Sirl to consider in his Reply whether there was scope to broaden CE-P5.2.f in the manner he had proposed. He agreed that Meridian's submission supported only a more limited change in this and the parallel provision in CE-P7.2.d. He therefore revised his position.

[119] Evidence of Christine Foster paragraph 11.2
[120] Submission #377.234, opposed by WIAL FS36.138

158. We accept Mr Sirl's reasoning. Therefore, we adopt his amendments to CE-P5, as follows:

> ***Policy CE-P5 Use and development in high coastal natural character areas***
>
> *Only allow use and development in high coastal natural character areas in the coastal environment where:*
>
> *1. Any significant adverse effects on the identified values described in SCHED12 are avoided and any other adverse effects on the identified values described in SCHED12 are avoided remedied or mitigated;*
>
> *2. It can be demonstrated that:*
>
> *a. The particular values and characteristics of the high coastal natural character areas including but not limited to the key values ~~as~~ identified in SCHED12 are protected from inappropriate use and development, including by considering the extent to which the values and characteristics of the area are vulnerable to change including the effects of climate change and other natural processes;*
>
> *b. Any proposed earthworks, building platforms and buildings or structures are of a scale and prominence that ~~respects~~ maintains the identified values and the design and development integrates with the existing landform and dominant character of the area;*
>
> *c. The duration and nature of adverse effects are limited;*
>
> *d. There is a functional or operational need for the activity to locate in the area;*
>
> *e. There are no reasonably ~~practical~~ practicable alternative locations that are outside of the high coastal natural character areas or are less vulnerable to change; and*
>
> *f. Restoration or rehabilitation planting of indigenous vegetation ~~species~~ will be incorporated where practicable to mitigate any adverse effects on natural character.*

CE-P6 Use and development within coastal margins and riparian margins in the coastal environment - located inside Port Zone, Airport Zone, Stadium Zone, Waterfront Zone, City Centre Zone, or Evans Bay Marine Recreation Area

159. FENZ[121] and WCC ERG[122] sought to retain the policy as notified, while Yvonne Weeber[123] and Guardians of the Bays[124] were neutral on CE-P6 and did not specify any relief sought.

160. Forest and Bird[125] considered that CE-P6 should not be a blanket enabling policy and that it needs to recognise that there may be limits to development in those areas. It sought the policy be amended to refer to potential limits on the use of these areas in accordance with Policies 11, 13, and 15 of the NZCPS.

161. The reporting officer considered that the provision framework is consistent with the NZCPS, noting in particular Policy 6(1)(b) and (e), and Policy 9 which are enabling of use and development in the Coastal Environment where other values of the Coastal Environment are not compromised.

162. As stated above, Forest and Bird did not provide any evidence to support these submissions, and we consider that no change is required for the reasons Mr Sirl gave.

163. WIAL[126] sought that CE-P6 be deleted in its entirety as it does not recognise or provide for the existing hard engineering structures located between Lyall Bay and Moa Point which protect regionally significant infrastructure, including Council's wastewater network and Wellington International Airport, as well as Moa Point Road, from the effects of coastal erosion. Alternatively, if deletion is not accepted, it sought that the policy be amended to recognise the Open Space zone between Lyall Bay and Moa Point, as follows:

> ***CE-P6 Use and development within coastal margins and riparian margins in the coastal environment – located inside the Port Zone, Airport Zone, Stadium Zone, Waterfront Zone, City Centre Zone, ~~or~~ Evans Bay Marine Recreation Area <u>or the Natural Open Space zone between Lyall Bay and Moa Point</u>***
>
> *Provide for use and development within coastal margins and riparian margins in the coastal environment where it is located in the highly modified Port Zone, Airport Zone, Stadium Zone, Waterfront Zone, City Centre Zone, or the Evans*

[121] Submission #273.133
[122] Submission #377.235
[123] Submission #340.29
[124] Submission #452.21
[125] Submission #345.308, opposed by WIAL FS36.97
[126] Submissions #406.309, 406.310, and 406.311, opposed by Guardians of the Bays Inc FS44.68, FS44.69, and FS44.70

Bay Marine Recreation Area or the area of Natural Open Space Zone located between Lyall Bay and Moa Point.

164. As stated previously, this matter was subject to much discussion across a number of hearing streams. We concur with the agreed position reached that a common descriptor for the Moa Point Road Seawall Area should be used in related provisions that may apply.

165. This then raises the questions as to where the Moa Point Road Seawall Area should be referenced in the Plan. We discuss in Report 9 the debate as to whether the seawalls within the defined area, which were WIAL's focus, were 'infrastructure'. The ultimate conclusion of the reporting officer (Mr Anderson) was that they were, and the amendments Mr Sirl had drafted to policies and rules in this Chapter referencing the Moa Point Road Seawall Area should be imported into the INF-CE Sub-Chapter. The Hearing Panel accepted that position. The continued need for them in this Chapter was addressed in the Wrap-Up hearing. The reporting officer there (Mr Sirl) considered they should remain to manage non-infrastructure activities in the defined area. We agree with that reasoning. Accordingly, we recommend reference be made to the Moa Point Road Seawall Area in this and subsequent provisions, as recommended by Mr Sirl in Stream 8.

CE-P7 Use and development within coastal margins and riparian margins in the coastal environment - located outside the Port Zone, Airport Zone, Stadium Zone, Waterfront Zone, City Centre Zone and the Evans Bay Marine Recreation Area

166. DoC[127], FENZ[128], Guardians of the Bays[129], WCC ERG[130], and Yvonne Weeber[131] sought to retain the policy as notified.

167. Forest and Bird[132] considered that the CE-P7 is unclear on which effects are being mitigated and sought that CE-P7.2.d be amended to specifically refer to natural character effects. Additionally, it sought that CE-P7 be amended to give effects to policies 11, 13, and 15 of the NZCPS by adding an additional clause to the policy stating:

[127] Submission #385.64
[128] Submission #273.134
[129] Submission #452.22
[130] Submission #377.235
[131] Submission #340.30
[132] Submission #345.309, opposed by Meridian FS101.162 and WIAL FS36.98

e. Use and development will only be allowed where the natural character values of the area are retained.

168. Mr Sirl did not agree that CE-P7 is unclear on which effects are being mitigated as CE-P7.1 clearly references "*adverse effects on the natural character of the coastal environment*". We concur with this position.

169. WIAL[133] sought that CE-P7 be deleted in its entirety as it does not recognise or provide for the existing hard engineering structures located between Lyall Bay and Moa Point which protect regionally significant infrastructure, including Council's wastewater network and Wellington International Airport, as well as Moa Point Road, from the effects of coastal erosion. Alternatively, if deletion is not accepted, it sought that the policy be amended to recognise the area of Natural Open Space Zone located between Lyall Bay and Moa Point.

170. As stated above this consistent change to referencing the Moa Point Road Seawall Area has been agreed, and we agree with a relatively minor addition to CE-P7.2.d. to provide for conceivable scenarios where restoration planting is not appropriate. We recommend CE-P7 is therefore amended as follows:

> ***CE-P7 Use and development within coastal margins and riparian margins in the coastal environment – located outside the Port Zone, Airport Zone, Stadium Zone, Waterfront Zone, City Centre Zone, ~~and~~ the Evans Bay Marine Recreation Area or the Moa Point Road Seawall Area***.
>
> *Only allow use and development within coastal and riparian margins in the coastal environment outside of the Port Zone, Airport Zone, Stadium Zone, Waterfront Zone, City Centre Zone, ~~or~~ the Evans Bay Marine Recreation Area, or the Moa Point Road Seawall Area.*
>
> *1. Where:*
>
> *Any significant adverse effects on the natural character of the coastal environment are avoided and any other adverse effects on the natural character of the coastal environment are avoided, remedied or mitigated; and*
>
> *2 It can be demonstrated that*:
>
> *a. Any proposed earthworks, building platform, building or structure are able to integrate with the existing landform, do not dominate*

[133] Submissions #406.312, 406.313, and 406.314, opposed by Guardians of the Bays Inc FS44.71, FS44.72, and FS44.73

the natural character of the area and do not limit or prevent public access to, along or adjacent to the coast and waterbodies;

b. *There is a functional or operational need for the activity to locate within the coastal or riparian margin;*

c. *There are no reasonably practical alternative locations that are outside of the coastal or riparian margins or are less vulnerable to change; and*

d. *Restoration or rehabilitation planting of indigenous ~~species~~vegetation will be incorporated where practicable to mitigate any adverse effects on natural character*.

CE-P8 Vegetation removal within the coastal environment

171. Horokiwi Quarries Ltd[134] and WCC ERG[135] sought to retain the policy as notified.

172. FENZ[136] considered that CE-P8 should be amended to allow property owners and occupiers to be able to remove flammable vegetation, as required, to provide sufficient clearance to mitigate the potential for fire risk/spread between flammable vegetation and property.

173. As will be seen, a number of changes are proposed to this policy. Responding to FENZ, Mr Sirl recommended a clause allowing indigenous vegetation removal within High Coastal Natural Character Areas or coastal and riparian where there is an imminent threat to the safety of people or significant damage to property.

174. Forest and Bird[137] opposed the policy direction providing generally for vegetation removal outside of High Coastal Natural Character Areas, and exotic vegetation removal in High Coastal Natural Character Areas. It considered that exotic vegetation can contribute to natural character and can also have ecosystem and habitat values. It supported the policy direction that vegetation removal within the Coastal Environment should be limited, but sought amendments to apply to any area of natural character in the Coastal Environment, not just areas of high natural character. It considered limiting protections to High Coastal Natural Character Areas only is inconsistent with Policy 13 of the NZCPS. It sought deletion of the wording of the policy and replacement with the following amended policy:

[134] Submission #271.47
[135] Submission #377.237
[136] Submissions #273.135 and 273.134
[137] Submission #345.310, opposed by Meridian FS101.163

CE-P8 Vegetation removal within the coastal environment

Only allow for vegetation clearance in the coastal environment where:

a. The removal is of a scale that retains the biodiversity and natural character values of the area; and

b. Is associated with ongoing maintenance of existing public accessways; and

c. *The removal does not contravene policy 11 or 13 NZCPS*.

175. Mr Sirl did not agree for the following reasons:

- Policy 11 of the NZCPS is given effect to through the identification of SNAs within the Coastal Environment and the associated ECO provisions (ECO-O2 and ECO-P5) in combination with CE-P8, CE-R6 and CE-S1. Mr Sirl noted that CE-P8 (and the associated rule – CE-R6) is not intended to apply to SNA, which should be clarified by removing all references to SNAs in the CE policies and rules to avoid any confusion.

- With respect to Policy 11(b), he agreed in part with the submitter that CE-P8 is more enabling of vegetation removal in the Coastal Environment than directed by the NZCPS. He considered that CE-P8 should be amended to explicitly manage indigenous vegetation removal in coastal margin and riparian margins within the Coastal Environment, in a manner consistent with the policy direction of CE-P6 and CE-P7.

176. Mr Sirl also considered CE-P8 in the context of Policy 13 of the NZCPS and agreed with the submitter that the presence of vegetation can contribute to coastal natural character outside of High Coastal Natural Character Areas, particularly in less modified areas such as in the Rural and Open Space zones. However, given the extent of highly modified/urbanised character in the city, he was of the opinion that additional controls on vegetation removal are not necessary or appropriate. We agree with this position.

177. GWRC[138] considered that the policy does not give effect to NZCPS Policy 13(1)(b), which directs avoidance of significant adverse effects and avoidance, remediation or mitigation of other adverse effects of activities on natural character in areas which are not outstanding, rather than just in sites of high natural character in isolation.

[138] Submission #351.209, opposed by Meridian FS101.164

Furthermore, GWRC considered that allowing for the removal of indigenous vegetation in areas of low and moderate natural character could lead to a reduction in natural character and would not give effect to CE-O1. It sought amendments to reflect this.

178. Mr Sirl agreed that CE-P8 should be amended to ensure adverse effects on natural character as a result of vegetation removal outside of High Coastal Natural Character Areas, and within coastal margins and riparian margins, are adequately managed.

179. Guardians of the Bays[139] sought that the policy be amended to consider coastal erosion and other environmental, social, and cultural benefits of both indigenous and exotic vegetation in the Coastal Environment in a manner consistent with the direction in the Proposed RPS-Change 1 (and draft NPSIB).

180. Yvonne Weeber[140] sought that CE-P8 be amended to consider coastal erosion and other environmental, social, and cultural benefits of both indigenous and exotic vegetation in the Coastal Environment.

181. In response, we agree with Mr Sirl, who advised that coastal erosion is addressed in the coastal hazard and earthworks provisions relevant to coastal areas. However, he noted that the amendments recommended below provide improved direction with respect to vegetation removal within coastal margins and riparian margins in the Coastal Environment.

182. Waka Kotahi[141] sought that CE-P8 be amended to provide for indigenous vegetation removal for the maintenance of public roads as well as accessways, to align with CE-R6 and CE-S1. This is accepted and amendments have been made to provide for this.

183. Meridian[142] considered that CE-P8 is potentially restrictive of vegetation removal that is necessary to support regionally significant infrastructure and needs to be amended to recognise and provide for the particular operational and functional needs of regionally significant infrastructure.

184. This issue of providing for renewable energy generation activities within the Coastal Environment Chapter has been traversed. We consider that leaving REG and INF

[139] Submission #452.23
[140] Submissions #228.109 and 228.110, supported by KiwiRail FS72.63.31
[141] Submissions #370.200 and 370.201
[142] Submissions #228.109 and 228.110, supported by KiwiRail FS72.63

matters to those respective chapters instead of the Coastal Environment chapter is the best course of action. We understood Ms Foster to agree with that position in her planning evidence for Meridian.

185. A range of submitters also sought specific amendments to CE-P8 to provide policy support for specific exclusions relating to the removal of indigenous vegetation in High Coastal Natural Character Areas.

186. In a broad sense, the PDP is permissive of vegetation removal in all areas of the Coastal Environment except for indigenous vegetation removal in High Coastal Natural Character Areas. We agree with the reporting officer that a number of changes are, however, necessary and recommend the following:

> ***CE-P8 Vegetation removal within the coastal environment***
>
> *Manage the removal of vegetation in the coastal environment as follows:*
>
> *1. Allow for the removal of vegetation in the coastal environment:*
>
> *a. outside of areas of high coastal natural character; and*
>
> *b. outside coastal and riparian margins*
>
> *2. Allow for the removal of exotic vegetation in the coastal environment within areas of high coastal natural character or within coastal margins and riparian margins; and*
>
> *3. Only allow for the removal of indigenous vegetation in the coastal environment within areas of high coastal natural character or within coastal and riparian margins that:*
>
> *a. Is of a scale that maintains the ~~identified values~~ existing natural character; or*
>
> *b. Is necessary for the safe and efficient operation, maintenance and repair of public accessways, or*
>
> *c. Is necessary to avoid an imminent threat to the safety of people, or significant damage to property.*
>
> *b. Is associated with ongoing maintenance of existing public accessways.*

CE-P9 Mining and quarrying activities within the coastal environment

187. WCC ERG[143] sought to retain the policy as notified while Horokiwi Quarries Ltd[144] supported the recognition in CE-P9 for existing quarry activities, and their expansion. It sought that CE-P9 be retained as notified, with amendments to the Coastal Environment Overlay.

188. Forest and Bird[145] sought to remove the blanket provision for existing activities as it considered it to be inconsistent with the requirements of the NZCPS. Also, it considered that the policy should not be limited to areas of high natural character. It sought amendments to CE-P9 to reflect this position.

189. Mr Sirl agreed in part with some aspects of this submission, but considered that existing quarrying activities have an operational need to locate in the Coastal Environment where they are currently located and should be recognised. These areas are zoned (Special Purpose Quarry Zone) for this specific activity. This approach is consistent with Policy 6 of the NZCPS which recognises the value of mining.

190. However, he considered that CE-P9.2 should not provide for 'new quarry activities' as new mining and quarrying activities are appropriately addressed under CE-P9.4 and CE-R11. The latter applies a Non-Complying Activity status to new mining activities in the Coastal Environment.

191. Additionally, three minor amendments were recommended being:

    a. deletion of "*potential*" where it precedes "*adverse effects*";

    b. Specific reference to "*natural character of the coastal environment*" following reference to "*adverse effects";* and

    c. Replacing "*can be*" with "*are*".

192. We agree with Mr Sirl's position, as did Ms Whitney, the planner for Horokiwi Quarries. There is a clear hierarchy of effects from those associated with existing zoned quarries that are provided for, extensions to existing quarries that may be acceptable dependent on location and the extent of effects, and with new mining and

[143] Submission #377.238
[144] Submission #271.48
[145] Submission #345.311, opposed by Horokiwi Quarries Limited FS28.8

quarrying activities that are actively discouraged. With minor grammatical changes from Mr Sirl's version, CE-P9 is proposed to be amended as follows:

> ***CE-P9 Mining and quarrying activities within ~~in~~ the coastal environment***
>
> *Manage mining and quarrying activities within in the coastal environment as follows:*
>
> 1. *Allow for established mining and quarrying activities in the Coastal Environment;*
> 2. *Only allow for the extension of established mining and quarrying activities ~~or new quarrying and mining activities~~ where ~~it is~~:*
>   a. *it is located outside of high coastal natural character areas and outside of coastal and riparian margins ~~and~~;*
>   b. *any ~~potential~~ significant adverse effects on the natural character of the coastal environment are avoided; and*
>   c. *any other adverse effects on natural character ~~can be~~ are avoided, remedied or mitigated;*
> 3. *Avoid the extension of established mining and quarrying activities and the establishment of new mining and quarrying within high coastal natural character areas and within coastal and riparian margins in the coastal environment; and*
> 4. *Avoid the establishment of new mining and quarrying activities within the coastal environment.*

CE-P10 Inappropriate activities within the coastal environment

193. DoC[146], Forest and Bird[147], Guardians of the Bays[148], WCC ERG[149] and Yvonne Weeber[150] sought to retain the policy as notified, while the Council[151] sought to amend the policy to include commas for clarification purposes.

194. Fabric Property Limited[152] considered CE-P10.3 is restrictive and fails to recognise that a significant portion of the CBD is subject to High Hazard Areas under the Coastal Hazard Overlays. It considered this policy fails to recognise that there is already significant investment in the CBD, and is inconsistent with CE-O8, which is to

[146] Submission #385.65
[147] Submission #345.312
[148] Submission #452.24
[149] Submission #377.239
[150] Submission #340.32
[151] Submission #266.111
[152] Submission #425.35

provide for activities in the City Centre Zone that do not increase the risk to people, property or infrastructure. It is also inappropriate for this policy to apply to tsunami risk. The submitter has not specified any amendments sought to CE-P10.

195. This submission has been incorrectly allocated to CE-P10, and we note that this matter has already been addressed in Hearing Stream 5[153].

196. Meridian[154] considered that CE-P10 provides no guidance on what is considered 'inappropriate' in the Coastal Environment and sought the deletion of CE-P10 in its entirety.

197. WIAL[155] considered that it is inappropriate for such a directive policy to apply to such a large and generally urbanised area, with highly variable levels of 'natural character and quality'. The extent to which an activity is 'incompatible with or detrimental to' its surrounding environment, including its potential effects on the Coastal Environment is addressed within the underlying land use zone provisions and the various natural environment overlays within the Proposed Plan. It sought the deletion of CE-P10 in its entirety.

198. As with Mr Sirl, we agree that amendments are required to CE-P10 as the policy does not provide any detail on the type of activities considered to be 'inappropriate' in the Coastal Environment or the extent to which an activity is 'incompatible with or detrimental to' its surrounding environment. However, we also agree with the reporting officer's position that given the relationship between the Coastal Environment chapter provisions (CE-R7 in particular) and the underlying zone, and the policy support that CE-P10 provides to CE-R11, this policy is necessary and should be retained.

199. Ms O'Sullivan for WIAL and Ms Foster for Meridian continued to oppose the breadth of the policy. Ms O'Sullivan[156] was of the view:

> *In my view, the policy support that the section 42A reporting officer is seeking for non-complying activities can be found within the proposed amendments to Policy CE-P2. That is, if an activity has significant adverse effects on natural character, then that activity must be avoided.*

[153] Hearing Stream 5 Report 5B- Natural and Coastal Hazards paragraph 368
[154] Submission #228.111
[155] Submission #406.315
[156] Evidence of Kirsty O'Sullivan paragraphs 30 and 31

Furthermore, it is inefficient to subject all activities within the coastal environment to CE-P10 if its intent is to manage the discrete set of activities listed in Rule CE-R11 (those activities being quarrying, mining and plantation forestry). In my view, CE-P10 would look quite different if the efficacy and costs of such a broad-brush approach had been appropriately evaluated in terms of section 32.

200. In his rebuttal evidence, Mr Sirl remained of the view that that there is a need for an 'avoidance' policy to provide the policy support for the associated non-complying rule (CE-R11), but he agreed with Ms O'Sullivan's advice that CE-P10 could be amended to be specific to the activities that the plan seeks to avoid i.e. new quarrying and mining activities and new plantation forestry. Consequently, he recommended amendments to CE-P10, and a consequential amendment to remove CE-P10 as a matter of discretion for CE-R7, as set out in Appendix 1.

201. We agree with the amendments proposed. The policy is now much more targeted toward the activities rather than the broad-brush approach in the PDP as notified. CE-P10 is proposed to be amended as follows:

CE-P10 Inappropriate activities within the coastal environment

Avoid the establishment of ~~activities that are incompatible with or detrimental to the natural character and qualities~~ new quarrying, mining and plantation forestry activities within the landward extent of the coastal environment.

2.9 Coastal Environment – Rules

CE-R1 Customary harvesting by tangata whenua within the coastal environment

202. Forest and Bird[157] and WCC ERG[158] sought to retain the rule as notified. No submitter sought to amend it, and so no further assessment is required.

CE-R2 Restoration and enhancement activities within the coastal environment: 1. Outside of high coastal natural character areas; and 2. Outside of coastal and riparian margins

203. WCC ERG[159] and Yvonne Weeber[160] sought to retain the rule as notified.

[157] Submission #345.329, opposed by Meridian FS101.182
[158] Submission #[377.256
[159] Submission #377.257
[160] Submission #340.46

204. Forest and Bird[161] sought that CE-R2 be deleted in its entirety. If this relief is not accepted, it sought that more detail is added to clarify the intent of the rule.

205. The reporting officer considered that the rule is clear in its intent that it is permissive of 'restoration and enhancement activities' in those parts of the Coastal Environment not identified as High Coastal Natural Character Areas or coastal and riparian margins - where restoration and enhancement activities are more strictly controlled.

206. However, he agreed that the lack of definition of 'restoration and enhancement activities' results in the possibility for misinterpretation of what it is that is permitted.

207. As both restoration and restored are terms relied upon throughout the Plan in the context of the natural environment and natural character, he promoted the following amendment to the definition of restored:

> *means the rehabilitation of sites, habitats or ecosystems to support indigenous flora and fauna, ecosystem functions and natural processes that would naturally occur in the ecosystem and locality. <u>This definition applies to the use of the term restoration in the context of the natural environment and natural character.</u>*

208. We note that the term is used elsewhere within the Plan including in the Natural Environment, Renewable Electricity Generation, Ecosystems and Indigenous Biodiversity chapters. The term 'restoration' also has connotations specifically in relation to heritage. We consider that the additional sentence to the definition is appropriate in that it confines the terminology to natural environment and natural character. However, we note that this definition was also addressed in the Stream 11 hearing, and the final recommendation in relation to it is set out in Report 11.

CE-R3 Restoration and enhancement activities within the coastal environment: Within high coastal natural character areas; or within coastal and riparian margins

209. WCC ERG[162] and Yvonne Weeber[163] sought to retain the rule as notified.

210. Forest and Bird[164] sought that CE-R3 be amended to apply in all areas of the Coastal Environment and riparian margins.

[161] Submissions #345.330 and 345.331, opposed by Meridian FS101.183 and FS101.184
[162] Submission #377.259
[163] Submission #340.47
[164] Submission #345.332

211. As with similar submission points, we disagree with Forest and Bird. Like Mr Sirl, we consider that it is neither necessary nor efficient to apply the same level of control with respect to restoration and enhancement activities in those parts of the Coastal Environment not identified as High Coastal Natural Character Areas or coastal and riparian margins. We therefore support a different level of control for different areas based on their assessed character.

CE-R4 Vegetation trimming or removal within the coastal environment, outside of high coastal natural character areas

212. FENZ[165], Horokiwi Quarries Ltd[166], and WCC ERG[167] sought to retain the rule as notified.

213. Yvonne Weeber[168] opposed this rule as it is too permissive of vegetation trimming and removal. The submitter considered that vegetation takes a long time to grow due to extreme coastal environments and needs to have a higher level of protection than what is being proposed in the Plan.

214. Forest and Bird[169] opposed this rule, given the requirement in Policy 13 of the NZCPS to avoid significant adverse effects on all areas of natural character. It also considered that it is unclear why this rule does not exclude significant natural areas, as the other rules in this part do.

215. The reporting officer agreed in part with these submissions, in that this rule is too permissive of vegetation removal in the Coastal Environment given the importance of indigenous vegetation with respect to indigenous biodiversity and natural character of the Coastal Environment. In his view, this rule should not enable indigenous vegetation removal in coastal and riparian margins, and he accepted that this may have been an oversight in the PDP.

216. We agree with his view that the rule framework relating to indigenous vegetation should be amended to provide greater control of indigenous vegetation removal in the Coastal Environment, in particular in the coastal and riparian margins within the Coastal Environment (with the exception of highly modified areas such as the Port, consistent with CE-P6), consistent with the recommended changes to the associated

[165] Submission #273.142
[166] Submission #271.49
[167] Submission #377.259
[168] Submission #340.48
[169] Submission #345.333

policy (CE-P8). In his opinion, this amendment would better give effect to Policy 11 and Policy 13 of the NZCPS.

217. WIAL[170] considered that CE-R4 is inefficient and should be addressed to the extent relevant within the underlying zone provisions. It sought the deletion of the rule in its entirety. We note, however, that Ms O'Sullivan supported Mr Sirl's proposed amendments.

218. Therefore, we adopt the proposed amendments to CE-R4 as follows:

> ***CE-R4 Vegetation trimming or removal within the coastal environment,***
>
> ***1. Ooutside of high coastal natural character areas; and***
>
> ***2. Outside of coastal or riparian margins****.*
>
> *1. Activity status:* ***Permitted***

CE-R5 Exotic vegetation trimming or removal within the coastal environment, within high coastal natural character areas but outside significant natural area

219. FENZ[171] and WCC ERG[172] sought to retain the rule as notified.

220. Yvonne Weeber[173] opposed this rule, as it generally makes vegetation trimming and removal permitted. Ms Weeber considered that vegetation takes a long time to grow in extreme coastal environments and needs to have a higher level of protection than what is being proposed in the Plan.

221. Forest and Bird[174] considered exotic vegetation can form part of natural character and can also contribute to the maintenance of biodiversity. It sought deletion of the rule in its entirety.

222. Mr Sirl did not agree that exotic vegetation removal needs to be controlled in High Coastal Natural Character Areas to protect natural character. He noted that this rule does not apply to SNAs, and that controls on exotic vegetation apply in SNAs. He also noted that a selection of other recent District Plans do not control the removal of exotic vegetation in High Coastal Natural Character Areas.

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[170] Submission #406.334
[171] Submission #273.143
[172] Submission #377.260
[173] Submission#340.49
[174] Submission #345.334

223. Further, Mr Sirl considered that a consequential amendment to CE-R5 was required to improve clarity with respect to the inter-relationship of the Coastal Environment chapter and SNAs as a result of considering submissions on CE-R4 and in relation to coastal or riparian margins.

224. We agree with this position and recommend rule CE-R5 be amended as follows:

> ***CE-R5 Exotic vegetation trimming or removal within the coastal environment:***
>
> ***1. ~~w~~Within high coastal natural character areas; and***
>
> ***2. Within coastal and riparian margins.***
>
> ***~~but outside of a significant natural area~~***
>
> *1. Activity status:* ***Permitted***

CE-R6 Indigenous vegetation trimming or removal within the coastal environment, within high coastal natural character areas but outside of significant natural area

225. FENZ[175], Waka Kotahi[176] and WCC ERG[177] sought to retain the rule as notified.

226. DoC[178] considered that CE-R6 needs to be amended to align with Policy 11 of the NZCPS. We note that we had no evidence or explanation from DoC in support of the submission.

227. We therefore agree with Mr Sirl that is not appropriate to essentially duplicate Policy 11 of the NZCPS as a district plan policy. Like Mr Sirl, we understand that the submitter's concerns relate to the protection of threatened or naturally rare vegetation types, threatened or at risk indigenous species, and the habitats of indigenous species. We note that these are addressed through the SNA provisions in the ECO Chapter without the need for amendments to CE-R6.

228. Forest and Bird[179] considered that the rule should apply more broadly to the whole Coastal Environment, outside of SNAs, and to exotic vegetation. Forest and Bird also sought that the CE-R6 matters of discretion should cross reference its requested new

[175] Submission #273.144
[176] Submission #370.202
[177] Submission #377.261
[178] Submissions #385.66 and 385.67
[179] Submissions # 345.335, 345.336

ECO policy related to the maintenance of biodiversity outside of SNAs, and other relevant ECO policies.

229. We agree with the reporting officer that an additional matter of discretion is not necessary within CE-R6.2 to allow for the consideration of adverse effects on indigenous biodiversity values, as any adverse effects, including those relating to natural character, can be considered under the notified matters of discretion relevant to CE-R6.2.a. We have also outlined our position that the provisions should not be amended to apply to exotic vegetation in addition to indigenous vegetation or for the rule to apply to the entire Coastal Environment. We consider that, subject to an amendment to CE-R6 to include coastal and riparian margins in the Coastal Environment, the suite of exotic and indigenous vegetation rules adequately give effect to the NZCPS.

230. In his rebuttal[180], Mr Sirl identified that the revised policy direction of CE-P8 recommended in the Section 42A Report had not been adequately reflected in CE-R5 and CE-R6. He recommended that CE-R5 and CE-R6 are amended to include reference to coastal and riparian margins.

231. Mr Sirl also proposed including a Section 88 requirement for an assessment by a suitably qualified landscape architect to assess the proposal against the identified natural character values of the Coastal Environment in accordance with APPX be provided when a consent is triggered under this rule.

232. Through Minute 49 we requested Mr Sirl to consider two matters in relation to CE-R6, CE-R9 and CE-R15:

- we asked Mr Sirl to provide discussion of the merits and scope for the inclusion of the proposed Section 88 information requirements; and
- to address the scope to add the suggested new APPX in greater detail.

233. He responded[181] as follows:

> *In my opinion, the merit for inclusion of a specific Section 88 information requirement is twofold. Firstly, to provide clarity for Plan users when a landscape assessment will be required and the information that is required to be provided. The proposed Appendix provides greater recognition of the Natural Character Evaluation report prepared by Boffa Miskell, and the*

[180] Statement of supplementary evidence of Jamie Sirl paragraph 30
[181] Reply paragraph 53

information contained with respect to natural character present in the coastal environment. Secondly, the information requirement has been introduced to those rules that are considered to address activities and development that are most likely to have the potential to adversely impact those parts of the Coastal Environment with the highest levels of remaining natural character intact, or where restoration is of greatest relevance i.e. the high coastal natural character areas and coastal and riparian margins.

In terms of scope, I consider that this approach is an alternative way to partly achieve the relief sought by submitters (GWRC [351.26, 351.32, 351.33, 351.351, 351.352, 351.353 and 351.355], Forest and Bird [345.290, 345.417 and 345.418]) who similarly sought a greater level of protection beyond the identified high coastal natural character areas. In my opinion, considered together, the proposed s88 information requirements and appendix better recognise the Boffa Miskell report and assist in achieving the general outcomes sought by these submitters.

234. We agree with this approach. When this rule is triggered, we consider that an expert analysis of coastal natural character values from vegetation trimming, or removal will be very important for decision makers to determine the existence or scale of adverse effects. While Mr Sirl's proposed Appendix X (APP16 in Appendix 1 to this report) is still very general in relation to guiding evaluations, in our view it has utility. In particular, we support it as it describes how natural character values have been assessed including specifically when it comes to identified areas of high coastal natural character.

235. We therefore recommend the following amendments to CE-R6:

CE-R6 Indigenous vegetation trimming or removal within the coastal environment:

1 W~~w~~ithin high coastal natural character areas; or

2 Within the coastal margin or a riparian margin*.*

~~, but outside of significant natural area~~

1. Activity status: ***Permitted***

Where:

a. Compliance with CE-S1 is achieved

2. Activity status: ***Restricted Discretionary***

Where:

a. Compliance with the requirements of CE-R6.1.a ~~cannot be~~ is not achieved.

Matters of discretion are:

1. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standard; and

2. The matters in CE-P8.

Section 88 information requirements for applications:

Applications under this rule must provide the following in addition to the standard information requirements:

1. An assessment by a suitably qualified landscape architect to assess the proposal against the identified natural character values of the coastal environment in accordance with APP16.

236. We also agree with Mr Sirl's recommendation that the Chapter Introduction note the relevance of what is now APP16.

CE-R7 Any activity not otherwise listed as permitted, restricted discretionary, discretionary or non-complying within the coastal environment but: Outside of high coastal natural character areas; and Outside of coastal or riparian margins

237. WCC ERG[182] sought to retain the rule as notified.

238. GWRC[183] sought to amend CE-R7.2 by adding reference to the use of design guides to support implementation. As already outlined, we agree that the notified versions of CE-P2 and CE-P10 are vague as matters of discretion, and that an additional matter of discretion that is more specific to the potential adverse effects on natural character values present in the Coastal Environment would be beneficial. This would feed into assessments under CE-R7.

239. Forest and Bird [184] considered that it is generally inappropriate to have Permitted Activities in the Coastal Environment, particularly in the context of a district plan that only identifies High Coastal Natural Character Areas. It considered that this does not give effect to Policy 13 NZCPS, and consequently sought that the rule is deleted in its entirety. Alternatively, if its primary relief is not accepted, it sought that the activity

[182] Submission #377.262
[183] Submission #351.225
[184] Submission #345.337 and 345.338, opposed by WIAL FS36.115

status of CE-R7 is amended to Restricted Discretionary and reference added to all policies of the CE and ECO chapters in the matters of discretion.

240. Mr Sirl did not agree. He considered that is not inappropriate to have Permitted Activities in the Coastal Environment and considered that the NZCPS quite conceivably provides for 'appropriate' subdivision, use, and development without the need for controls. He also disagreed that all other activities not expressly addressed in other CE chapter rules should default to a Restricted Discretionary Activity status, as this would be an inefficient and unnecessarily restrictive approach, particularly given the extent to which the identified Coastal Environment includes highly modified urbanised areas. We agree.

241. WIAL[185] considered that CE-R7 is inefficient and does not relate to effects management within the Coastal Environment given that the trigger for consent is non-compliance with rules or standards of the underlying land use zone. It considered that if consideration of Coastal Environment provisions is relevant to a Restricted Discretionary Activity within the underlying land use zone, this should instead be referenced within those matters of discretion. Consequently, it sought the deletion of the rule in its entirety.

242. Mr Sirl proposed further changes to this rule, and we note that these were agreed by Ms O'Sullivan. These were to make amendments as follows:

> ***CE-R7 Any activity not otherwise listed as permitted, restricted discretionary, discretionary or non-complying within the coastal environment ~~but~~***
>
> ***1. Outside of High Coastal Natural Character Areas; and***
>
> ***2. Outside of coastal or riparian margins***
>
> *1. Activity status:* ***Permitted***
>
> *Where*:
>
> *a. Compliance is achieved with the permitted activity rules ~~and standards~~ for land use activities in the underlying zone~~s~~.*
>
> *2. Activity status:* ***Restricted Discretionary***
>
> *Where:*

[185] Submission #406.335

a. Compliance with the requirements of CE-R7.1.a ~~cannot be~~ <u>is not</u> achieved.

Matters of discretion are:

1. The matters in CE-P2 ~~and CE-P10~~.

243. In our Minute 49, after the hearing had been concluded, we requested Mr Sirl to consider:

> *Options available to reduce the need for assessment of coastal values in urban areas the subject of the Coastal Environment overlay at locations where there are few/no apparent 'coastal' values.*

244. This question reflected a lengthy discussion we had with him of the apparent inefficiency, if not absurdity, of requiring consideration of coastal values in highly urbanised areas such as the Kilbirnie Metropolitan Centre that the Plan seeks to further intensify.

245. Mr Sirl focused his response to this query on how the need for an assessment of coastal values (as required under CE-R7 and CE-R12) could be reduced for proposals in urban areas subject to the Coastal Environment Overlay.

246. He stated[186]:

> *CE-R7 only relates to the activities outside of areas of high natural character and coastal or riparian margins. Similarly, CE-R12 only relates to the construction of, or additions and alterations to, buildings and structures outside of areas of high natural character and coastal or riparian margins. It is these two rules that create the requirement for proposed activities and development outside of areas of high natural character and coastal or riparian margins to consider the adverse effects on the Coastal Environment resulting from proposals where they do not comply with the permitted activity requirements of the underlying zone.*
>
> *The Panel's concern as I understand it is that given the extent to which the Coastal Environment Overlay applies to urban areas, an assessment of effects on natural character will be required for activities and development that is not permitted in the underlying zone in areas where there are few/no apparent 'coastal' values. The concern is that this may result in an inefficient and unnecessary resource consent process, particularly where an expert landscape assessment was requested to be provided*.

[186] Sirl Reply paragraphs 15 and 16

247. Mr Sirl's understanding was correct. We were particularly concerned about the utility of these rules in some areas mapped as being within the Coastal Environment and how development applications may be assessed.

248. Taking a screenshot of the Lyall Bay area with the Coastal Environment overlay shown it is apparent that the entire Rongotai Isthmus is covered by the overlay. In our view, there is a clear case to differentiate the extent of coastal character (as opposed to coastal hazards) between a site on Lyall Parade and a site on Coutts Street.

249. While we have some issues with how the rule could be applied, it does raise the question of the efficacy of having a Coastal Environment overlay in this location in particular. We had no submissions that requested a change to the spatial coverage of the Coastal Environment in this area (or indeed anywhere else except the Airport and Horokiwi Quarry) and so we have no scope to recommend a material change in this regard.

250. However, in support of his conclusion that CE-R7 and its accompanying rule CE-R12 would work in practice, Mr Sirl[187] explained the reasons he considered why there was a case for them to remain:

> *I remain of the view that for applications that require consideration of natural character values where there are low/no natural character values, an applicant should simply be able to explain that without the need for a landscape assessment. The Boffa Miskell Natural Character Evaluation report provides an appropriate resource to inform an applicant's consideration of natural character of the wider area a site is located in. Similarly, if an activity is in an area that the Boffa Miskell Natural Character Evaluation report highlights as having 'moderate' natural character values, the level of detail required will be commensurate with the adverse effects of the proposal on existing natural character. This approach is often required through a resource consent application and assessment process. I also reiterate that this approach simply introduces effects on natural character as an additional matter of discretion requiring assessment and does not result in the need for a resource consent when there was not already the need for one.*

251. Mr Sirl[188] also considered an alternative option:

- Do not manage activities and development outside of areas of high natural character and coastal or riparian margins through rules in the Coastal Environment chapter; and

- Rely on the underlying zone policies, rules and standards, and the matters of discretion and assessment criteria within these rules and standards, including the Design Guides, in combination with earthworks rules.

252. This option would obviously leave the management of adverse effects to the underlying zone, with CE-R7 and CE-R12 deleted from the Coastal Environment chapter.

253. We seriously considered the deletion of these two rules to address the problems of excessive regulation in areas of the Coastal Environment that are entirely urban and relatively far from the coastal margin. As outlined, while we have a significant difficulty with the extent of the CE overlay, there are areas within the area like Lyall Bay Parade and other roads that circle Wellington's coastline, and especially the few

[187] Sirl Reply paragraph 16
[188] Sirl Reply paragraph 17

residential properties not zoned Natural Open Space on the seaward side of the coastal road that we consider have a more genuine 'coastal' character.

254. We also considered the extent of the problem and whether there would be a 'regulatory hole' if Rules CE-R7 and CE-R12 were deleted. Mr Sirl[189] explained:

> *Where development is occurring in less modified areas, i.e. areas with some remaining natural character, I note that larger-scale development in residential zones (e.g. multi-unit housing developments) or centres zones would be assessed against either the*
>
> *Residential Design Guide (isoplan.co.nz) or the Centres and Mixed Use Design Guide (isoplan.co.nz). Design outcome O1. and O2. are of most relevance to natural character, along with guidance point G1. Although not specifically referencing the coastal environment, the guidance point requires the consideration of relevant characteristics including 'natural features, including topography, landform, valued established vegetation, and water bodies'.*

255. While the Design Guides have some utility, they do not specifically reference the matters in CE-P2 that is the only Matter of Discretion when a Restricted Discretionary Activity application is triggered under Rule CE-R7. Therefore, the amended rule proposed by Mr Sirl and agreed by Ms O'Sullivan should remain in place as an additional matter to be considered should Resource Consent be required.

256. However, in making this assessment there is an additional complication. We have also considered the fact that CE-R7 and CE-R12, (relating to activities outside of high coastal character areas or outside of coastal or riparian margins), as well as CE-R14 and CE-R15 (for existing or new buildings and structures within the coastal or riparian margins) make Restricted Discretionary Activity status turn on compliance with Permitted Rules. There may be few or any Permitted Activities, depending where it is, and what it is being proposed, and the proposal may have an entry level of Restricted Discretionary Activity in any event. We do not consider that there is scope to add a precondition or a qualifier for Restricted Discretionary Activity status that only guides development outcomes by virtue of compliance with the underlying zone framework and assessment under a reasonably broad Policy in CE-P2.

257. On that basis we consider that this issue is an obvious matter to be addressed in the future as we have already signalled that a review of the spatial extent of the Coastal Environment Overlay in as much as it applies to Coastal Character should be

[189] Sirl Reply paragraph 20

undertaken. As part of the review we therefore recommend the matters within these rules be considered.

258. In summary, to make the rules more effective for applicants, we would suggest that Council review both the relevant rules and the extent to which urban areas of the city are identified as having Coastal Natural Character and being in the Coastal Environment, with a view to taking a less inclusive approach by way of a future plan change.

CE-R8 Any activity not otherwise listed as permitted, restricted discretionary, discretionary or non-complying within the coastal environment, within coastal or riparian margins

259. WCC ERG[190] sought to retain the rule as notified.

260. Forest and Bird[191] sought that CE-R8 is amended from a Permitted Activity status to Discretionary or Non-Complying. Alternatively, if a Restricted Discretionary Activity status is preferred, it sought that the matters of discretion reference more policies aimed at protecting natural character and maintaining and protecting biodiversity.

261. Similarly, Yvonne Weeber[192] opposed CE-R8 as it is generally very permissive for a list of activities that have not been listed in the plan.

262. Mr Sirl considered that the permissive nature of CE-R8.1 and CE-R 8.2 is appropriate, given these rules are only applicable to the highly modified parts of the Coastal Environment (noting the limited presence of riparian margins within many of these zones due to the lack of natural streams). In his opinion, ensuring public access (where appropriate) is the primary consideration which is adequately addressed in the notified matters of discretion. He was of the opinion that a Discretionary Activity status for all other zones not covered by CE-R8.1 and CE-R 8.2 is adequate and appropriate, giving Council full discretion and the ability to consider a proposal on its merit. Putting aside our reservations about the spatial extent of the Coastal Environment Overlay, this appears to be the most pragmatic solution.

263. WIAL[193] considered that CE-R8 is inefficient and does not relate to effects management within the Coastal Environment given the trigger for consent is non-

[190] Submission #377.263
[191] Submissions #345.339 and 345.340, opposed by WIAL FS36.116 and FS36.117
[192] Submission #340.52
[193] Submission #406.336

compliance with rules or standards of the underlying land use zone. It considered that if consideration of Coastal Environment provisions is relevant to a Restricted Discretionary Activity within the underlying land use zone, this should instead be referenced within those matters of discretion. Consequently, it sought the deletion of the rule in its entirety.

264. In her evidence for WIAL, Ms O'Sullivan was initially critical of the notified approach, but after discussion at the hearing and the recommended inclusion of the Moa Point Road Seawall Area as an identified area she had no further comment. Therefore, we agree with the proposed amendment to:

- Add Moa Point Road Seawall Area as an identified area;
- Alter CE-R8 1 a to read – "*Compliance is achieved with the permitted activity rules ~~and standards~~ for land use activities in the underlying zones~~"~~.*
- Alter CE-R8 1 2.a to read – *"Compliance with the requirements of CE-R7.1.a ~~cannot be~~ is not achieved".*

CE-R9 Any activity not otherwise listed as permitted, restricted discretionary or discretionary within the coastal environment, within high coastal natural character areas

265. WCC ERG[194] sought to retain the rule as notified.

266. Forest and Bird[195] sought to amend the activity status to Non-Complying. Yvonne Weeber[196] was opposed to CE-R9 as she considered that it is generally very permissive for a list of activities that have not been listed in the plan.

267. Mr Sirl did not agree that CE-R9 is too permissive. In his view a Discretionary Activity status provides Council full discretion and the ability to consider a proposal on its merit and adequately ensures that High Coastal Natural Character Areas are protected. This is more appropriate given the rule relates to a range of unspecified activities that may conceivably include activities that are acceptable in a High Coastal Natural Character Area. In his opinion, this rule adequately gives effect to Policy 13(1)(b) of the NZCPS.

[194] Submission #377.264
[195] Submission #345.341, opposed by WIAL FS36.118
[196] Submission #340.53

268. We agree with this approach, and for the reasons outlined above in relation to CE-R6, we also recommend addition of the same Section 88 information requirement relating to the assessment of a suitably qualified landscape architect.

CE-R10 Extension of existing mining and quarrying activities within the coastal environment

269. Horokiwi Quarries Ltd[197] sought to retain the rule as notified.

270. Forest and Bird[198] sought to amend the activity status to Non-Complying. Yvonne Weeber[199] was opposed to CE-R10 as it relates to mining and quarrying activities within the Coastal Environment, which she generally opposed.

271. In the reporting officer's opinion, Non-Complying Activity status is not appropriate for the extension of existing mining and quarrying where outside of High Coastal Natural Character Areas and outside of coastal and riparian margins in the Coastal Environment. He informed us that the Coastal Environment extends a significant distance inland, and applies to areas specifically zoned for quarrying activities that are already highly modified through existing quarrying operations. In his opinion, a Restricted Discretionary Activity status for the extension of existing mining and quarrying where outside of High Coastal Natural Character Areas and outside of coastal and riparian margins in the Coastal Environment appropriately recognises the strategic importance of these activities, while ensuring effects of the activity on the natural character of the Coastal Environment are adequately assessed as part of the resource consenting process. While the extent of the overlay has been reduced as per our recommended amendment where it crosses the Horokiwi site, we still agree with his logic.

272. WCC ERG[200] sought that an additional matter of discretion, "*the long-term emissions profile of such an activity, in particular the impact of such an emissions profile on future generations*", is included in CE-R10.

273. We agree with Mr Sirl that this is not a matter directly relevant to the purpose of the Coastal Environment chapter, and is best considered in the context of the Quarry

[197] Submission #271.50
[198] Submission #345.342, opposed by Horokiwi Quarries Limited FS28.9 and WIAL FS36.119
[199] Submission #340.54, opposed by Horokiwi Quarries Limited FS28.13
[200] Submission #377.265, opposed by Horokiwi Quarries Limited FS28.10

Zone provisions and the Plan's consideration of the appropriateness of the extension of existing or new quarrying activities more generally.

274. As a consequential amendment, we also support using the same terminology that has been adopted elsewhere by altering CE-R10.2 a to read:

Compliance with the requirements of CE-R10.1.a ~~cannot be~~ is not achieved.

CE-R11 New quarrying and mining activities and new plantation forestry within the coastal environment

275. Forest and Bird[201] sought to retain the rule as notified.

276. Yvonne Weeber[202] opposed CE-R11 as it relates to mining and quarrying activities within the Coastal Environment.

277. WCC ERG[203] sought to amend the activity status to Prohibited. We agree with Mr Sirl's view, based on the further submission of Horokiwi Quarries Limited, that a Non-Complying activity status provides an appropriate and comprehensive assessment framework within which new quarry and mining activities might be considered, and that a Prohibited Activity status would not allow for consideration of the nature of the activity or environment in which it is proposed.

278. Further, we also agree that a Non-Complying Activity status appropriately signals that new quarrying activities are unlikely to be appropriate in the Coastal Environment, while still providing a potential consenting pathway that allows for the consideration of a proposed new quarrying or mining activity should that be contemplated. We therefore recommend that CE-R11 remain as notified.

CE-R12 Construction, addition or alteration of buildings and structures, within the coastal environment: Outside of high coastal natural character areas; and Outside of coastal and riparian margins

279. Fabric Property Limited[204], Ministry of Education[205], WCC ERG[206], and Yvonne Weeber[207] sought to retain the rule as notified.

[201] Submission#345.343, opposed by WIAL FS36.120
[202] Submission#340.55, opposed by Horokiwi Quarries Limited FS28.14
[203] Submission#377.266, opposed by Horokiwi Quarries Limited FS28.11
[204] Submission #425.44
[205] Submission #400.69
[206] Submission #377.267
[207] Submission #240.56

280. Forest and Bird[208] sought to amend the rule by removing Permitted Activities and ensuring the matters of discretion reference policies protecting natural character and maintaining and protecting biodiversity.

281. In the view of the reporting officer, reliance on the underlying zone rules is an effective and efficient approach to the management of adverse effects from the construction, addition or alteration of buildings and structures in the Coastal Environment outside of High Coastal Natural Character Areas and coastal and riparian margins. This approach reflects the range of modified and urbanised areas within the identified Coastal Environment. Mr Sirl considered that requiring a resource consent for any construction, addition or alteration of buildings and structures in the Coastal Environment would be highly inefficient, resulting in significant costs for little, if any, benefit.

282. We agree with this approach for reasons that we have outlined in respect of the parallel rule CE-R7.

283. Kāinga Ora[209] sought that the rule be redrafted to include Permitted Activity criteria that relate to the Coastal Environment and the outcomes this chapter is trying to achieve, as opposed to Permitted Activity criteria that relate to the development standards of the underlying zoning.

284. In relation to this submission, we also accept the position of Mr Sirl that drafting Permitted Activity standards that are easily measurable with respect to an acceptable scale of development (beyond that permitted in the underlying zones) in the Coastal Environment presents a significant challenge, noting that CE-R12.2 only comes into play when buildings or structures already require resource consent.

285. WIAL[210] also considered that CE-R12 is inefficient and does not relate to effects management within the Coastal Environment given the trigger for consent is non-compliance with rules or standards of the underlying land use zone. It considered that if consideration of Coastal Environment provisions is relevant to a Restricted Discretionary Activity within the underlying land use zone, this should instead be referenced within those matters of discretion. Consequently, it sought the deletion of the rule in its entirety.

[208] Submission #345.344, opposed by WIAL FS36.121
[209] Submission #391.261 and 391.262
[210] Submission #406.337

286. We do not consider that deletion is necessary as with the amendments proposed, when land use or development is not a Permitted Activity in the underlying zone, adverse effects on the natural character of the Coastal Environment is then required to be assessed. This is subject to the caveat, outlined above in relation to CE-R7, that Council review the extent of the Natural Character component of the Coastal Environment Overlay to reduce the extent to those areas that truly portray coastal values as well as the rule framework that applies.

287. We do disagree with the reporting officer on one minor point. In his Reply, Mr Sirl suggested that this rule (and the subsequent CE-R14 and CE-R15) refer to "*buildings and structures* ***activities***". Although consistent with the heading of this group of rules, we consider the word "*activities*" is unnecessary in this context.

288. Therefore, the substantive changes we recommend are:

- Amendments to CE-R12.1 a. to read "*Compliance is achieved with the permitted activity rules ~~and standards~~ for buildings and structures in the underlying zones~~"~~*.
- Alter CE-R12.2 a to read – *"Compliance with the requirements of CE-R12.1.a ~~cannot be~~ is not achieved".*
- Remove PA-P1 from the matters of discretion as it no longer applies.

CE-R13 Construction, addition or alteration of buildings and structures, within the coastal environment, within high coastal natural character areas

289. FENZ[211], WCC ERG[212] and Yvonne Weeber[213] sought to retain the rule as notified.

290. Forest and Bird[214] sought to amend the rule so it extends to anywhere in the Coastal Environment. It further sought that matters of discretion reference policies protecting natural character and maintaining and protecting biodiversity.

291. Mr Sirl agreed in part with Forest and Bird for similar reasons to CE-R12, but considered that the notified matters of discretion are adequate, subject to the amendments recommended in this report in relation to CE-P2.

[211] Submission #273.145
[212] Submission #[377.268
[213] Submission #240.57
[214] Submission #345.345, opposed by WIAL FS36.122

292. We agree with this outcome. In addition, we recommend that the same Section 88 information requirements as in CE-R6 apply when consent is required, and the same wording change be made to CE-R13.2.a as follows:

Compliance with the requirements of CE-R13.1.a ~~cannot be~~ is not achieved.

CE-R14 Additions and alterations to existing buildings and structures within the coastal environment: within coastal or riparian margin

293. FENZ[215], WCC ERG[216] and Yvonne Weeber[217] sought to retain the rule as notified.

294. Forest and Bird[218] sought to amend the rule by removing Permitted Activities and ensuring the matters of discretion reference policies protecting natural character and maintaining and protecting biodiversity.

295. In disagreeing, Mr Sirl expressed the view that additions and alterations to existing buildings and structures in coastal or riparian margins represent a scale of development that, subject to underlying zone standards, are acceptable from an adverse effects perspective. This approach also provides for continued use of coastal margins and in his opinion is a more efficient approach that reduces unnecessary costs from having to obtain a resource consent for relatively minor works that will not adversely affect the existing natural character of the Coastal Environment.

296. Kāinga Ora[219] sought that the rule be redrafted to include permitted activity criteria that relate to the Coastal Environment and the outcomes this chapter is trying to achieve.

297. As with the similar submission on CE-R12, Mr Sirl considered that drafting Permitted Activity standards that are easily measurable with respect to an acceptable scale of development (beyond that permitted in the underlying zones) in the Coastal Environment presents a significant challenge. We agree, while noting that further amendments to this rule are recommended.

[215] Submission #273.146
[216] Submission #377.269
[217] Submission #240.58
[218] Submission #345.346, opposed by WIAL FS36.123
[219] Submissions #391.263 and 391.264

298. WIAL[220] considered CE-R14 is inefficient and does not relate to effects management within the Coastal Environment given the trigger for consent is non-compliance with rules or standards of the underlying land use zone. It considered that if consideration of Coastal Environment provisions is relevant to a Restricted Discretionary Activity within the underlying land use zone, this should instead be referenced within those matters of discretion. Consequently, it sought the deletion of the rule in its entirety.

299. In recommending rejection of this submission, Mr Sirl referred us to his commentary[221] on other related submissions where the issue of complying with underlying zone provisions apply. We agree with the general view that:

> *The objectives, policies and rules within the Coastal Environment chapter are directly relevant to the Coastal Environment and do not duplicate, but simply rely on, permitted activity provisions of the underlying zone. This approach is premised on the permitted activity provisions within underlying zones adequately managing adverse effects on natural character within each zone.*

300. In our Minute 49, we queried whether the suggested CE-R14.2.b *(The addition or alteration is a restricted discretionary activity in the underlying zone)* in the Section 42A Report is required, and if so, whether as currently framed, that wording leaves a gap where rules with an activity status other than RDA apply. Mr Sirl[222] reconsidered this matter and agreed that the suggested sub-rule 2.b is not required. He also recommended changes, that we endorse with one exception, being insertion of the word "*activities*" after the words "*buildings and structures*". This is considered unnecessary as the rule relates to buildings and structures, not the activities contained within them.

301. The changes we recommend are:

> ***CE-R14 Additions and alterations to existing buildings and structures within ~~in~~ the coastal environment:***
>
> ***1. Within coastal or riparian margins***
>
> *1. Activity status:* ***Permitted***
>
> *Where:*
>
> *a. Compliance is achieved with the permitted activity rules ~~and standards~~ for buildings and structures in the underlying zone~~s~~.*

[220] Submission #406.338
[221] S42A Report paragraphs 73 and 74
[222] Reply of Jamie Sirl paragraph 55

2. Activity status: ***Restricted Discretionary***

Where:

a. Compliance with the requirements of CE-R14.1.a ~~cannot be~~ is not achieved.

Matters of discretion are:

1. The matters in CE-P2, PA-P1, PA-P2 and PA-P3

302. We note that we have recommended that Council review the extent of the Natural Character component of the Coastal Environment Overlay to reduce their extent to cover those areas that truly portray coastal values as well as the rule framework that applies. This recommendation also applies to CE-R14 and CE-R15.

CE-R15 Construction of new buildings and structures within the coastal environment and within coastal or riparian margins

303. FENZ[223], Ministry of Education[224], WCC ERG[225], and Yvonne Weeber[226] sought to retain the rule as notified.

304. Forest and Bird[227] sought to amend the rule by removing Permitted Activities and ensuring the matters of discretion reference policies protecting natural character and maintaining and protecting biodiversity.

305. We agree in part with this submission as did Mr Sirl. It is noted that this rule is framed in a similar manner to CE-R7, CE-R12, and CE-R14, meaning that it only allows for consideration of activities that breach Permitted Activity standards. In our view, it should also apply to activities with a Restricted Discretionary starting point under the underlying zone provisions. It is therefore recommended to amend the Permitted Activity component of rule CE-R15 to align with that which applies to R12 and R14.

306. Kāinga Ora[228] sought that the rule be redrafted to include Permitted Activity criteria that relate to the Coastal Environment and the outcomes this chapter is trying to achieve.

[223] Submission #273.147
[224] Submission #400.70
[225] Submission #377.270
[226] Submission #240.59
[227] Submission #345.347, opposed by WIAL FS36.124
[228] Submission #391.265 and 391.266

307. As with the similar submission on CE-R12, Mr Sirl considered that drafting Permitted Activity standards that are easily measurable with respect to an acceptable scale of development (beyond that permitted in the underlying zones) in the Coastal Environment presents a significant challenge.

308. WIAL[229] considered CE-R15 is inefficient and does not relate to effects management within the Coastal Environment given the trigger for consent is non-compliance with rules or standards of the underlying land use zone. It considered that if consideration of Coastal Environment provisions is relevant to a Restricted Discretionary Activity within the underlying land use zone, this should instead be referenced within those matters of discretion. Consequently, it sought the deletion of the rule in its entirety.

309. Ms O'Sullivan for WIAL[230] drew our attention through her evidence of a mismatch between the zones and the policies that apply. She stated:

> *Given that the section 42A reporting officer has recommended supporting WIAL's amendments to Policy CE-P7 which seek to expressly exclude its application to the area between Lyall Bay and Moa Point Road, it seems somewhat counterintuitive and inefficient to subsequently bring the matter back into consideration as a matter of discretion.*

310. This prompted us to ask, in our Minute 49, the reporting officer to respond to the following question:

> *6(l) Query whether the cross reference in recommended CE-R15 to CE-P7 achieves the intent, or whether the relevant matter of discretion needs to be stated more clearly.*

311. In response, Mr Sirl[231] noted that CE-P7 is a matter of discretion for CE-R15.2 as notified. He stated that the recommended amendments contained in the Section 42A Report simply sought to reduce confusion that could result from the title and chapeau of CE-P7 stipulating that this policy does not apply to the zones that CE-R15 applies to.

312. Having considered this matter further, in his opinion, it would be clearer if CE-P7 as a matter of discretion for CE-R15.2 was replaced by specific matters of discretion. Mr Sirl noted that the submissions of Kāinga Ora and WIAL provided broad scope to amend or delete CE-P7, and he considered that this extends to deletion of aspects of CE-P7 that are unnecessary matters of discretion for activities considered under CE-

[229] Submission #406.339
[230] Evidence of Kirsty O'Sullivan paragraph 37
[231] Reply paragraphs 56 and 57

R15.2. He had considered the relevance and appropriateness of the matters contained in CE-P7 as matters of discretion for CE-R15.2 and reframed them for this purpose.

313. We accept this position, and consider it addresses Ms O'Sullivan's point. Therefore, the following amendments to CE-R15 are proposed:

> ***CE-R15 Construction of new buildings and structures within ~~in~~ the coastal environment:***
>
> ***1. Within coastal or riparian margins***
>
> *1. Activity status:* ***Permitted***
>
> *Where:*
>
> *a. Compliance is achieved with the permitted activity rules ~~and standards~~ for buildings and structures in the underlying zone~~s~~.*
>
> *2. Activity status:* ***Restricted Discretionary***
>
> *Where:*
>
> *a. Compliance with the requirements of CE-R15.1.a ~~cannot be~~ is not achieved.*
>
> *Matters of discretion are:*
>
> *1. The matters in ~~CE-P7~~, PA-P1, PA-P2 and PA-P3;*
>
> *2. Any measures proposed to avoid, remedy or mitigate the adverse effects on the natural character of the coastal environment, including restoration or rehabilitation planting of indigenous vegetation; and*
>
> *3. The functional or operational need for the activity to locate within the coastal or riparian margin.*
>
> *All other zones*
>
> *3. Activity status: Discretionary*
>
> *Section 88 information requirements for applications:*
>
> *Applications under this rule must provide the following in addition to the standard information requirements:*
>
> *1. An assessment by a suitably qualified landscape architect to assess the proposal against the identified natural character values of the coastal environment in accordance with APP16.*

314. The Moa Point Road Seawall Area has also been added to the list of zones or areas that the permitted and restricted discretionary rules apply. The full text is in Appendix 1.

2.10 Coastal Environment Standards

CE-S1 Indigenous vegetation trimming or removal within the coastal environment and within high coastal natural character areas

315. Waka Kotahi[232] sought to retain the standard as notified.

316. DoC[233] sought to amend the standard to align it with Policy 11 of the NZCPS. Mr Sirl considered that the submitter's concerns relating to the protection of threatened or naturally rare vegetation types, threatened or at risk indigenous species, and the habitats of indigenous species are addressed through the SNA provisions in the ECO Chapter without the need for amendments to CE-S1. We agree, noting that we had no evidence on this or any other submissions from DoC.

317. FENZ[234] sought that the standard be amended to allow for property owners and occupiers to be able to remove flammable vegetation, as required, to provide sufficient clearance to mitigate the potential for risk.

318. The reporting officer considered that the 50m^2 allowance along with the exclusion in CE-S1.c. adequately provides for vegetation removal that will reduce risk of wildfire. We agree.

319. Forest and Bird[235] sought amendments to reduce the permitted width of vegetation removal from the external wall of an existing building from 35 to 10 metres. We agree with Mr Sirl that 35m from an external wall of an existing building appears to be very permissive on top of the 50m^2 of area indigenous vegetation removal allowance provided for by CE-S1.1. Although the Section 32 evaluation report is unhelpful in this respect, Mr Sirl checked the Draft District Plan (DDP) and found that it was 3m. On that basis, he concluded that 35m was in error and it was intended to be 3m as per the DDP. Although Mr Sirl initially recommended substituting 3m, we had concerns about the scope to reduce the notified standard to that extent. In his Reply, Mr Sirl referred us to a very general submission from DoC as providing scope, but

[232] Submission #370.203
[233] Submission #385.68 and 385.69
[234] Submission #273.153 and 273.154
[235] Submission #345.360

having reflected on FENZ guidance regarding management of fire risk from flammable vegetation, recommended a reduction to 10 metres as sought by Forest and Bird.

320. We also note in Hearing Stream 11 relating to Ecosystems and Indigenous Biodiversity that Mr McCutcheon[236] in response to a similar issue with firebreaks and Significant Natural Areas. Mr McCutcheon stated:

> *In my view, no convincing evidence has been presented by Fire and Emergency NZ that an exception is necessary. Specifically, no information has been provided on the flammability and risk of particular species of indigenous vegetation or within SNAs in Wellington City which demonstrates that a proactive management approach to fire risk in urban zones is needed*.

321. Mr McCutcheon also recommended a 10 metre clearance for firebreaks. We remain dubious about scope to recommend less than 10m, and agree that a 10m separation better meets FENZ guidelines. On that basis, we adopt Mr Sirl's recommendation.

322. Forest and Bird also sought to amend assessment criteria 1 where the standard is infringed, as follows:

> *The effects on ~~identified~~ coastal natural character values and measures proposed to avoid, remedy or mitigate the adverse effects*.

323. We do not see that this is necessary as the relevant coastal natural character values are either already identified or will need to be where the standards are infringed.

324. Thirdly the submitter sought to add the following assessment criteria:

> *2. Biodiversity values included those protected by policy 11 of NZ Coastal Policy Statement.*

325. In this regard, Yvonne Weeber[237] also considered that the assessment criteria should be amended to prevent all indigenous vegetation trimming and removal within the High Coastal Natural Character Areas of the Coastal Environment without a full management plan.

326. Again, we do not consider this as necessary as biodiversity values are specifically considered in the ECO chapter.

[236] Hearing Stream 11, Reply of Adam McCutcheon paragraph 48
[237] Submission #340.72

327. The amended CE-S1 we recommend, including amending formatting, spelling and terminology changes (*Vegetation removal that is necessary to ensure the safe and efficient operation of any formed public ~~road or~~ accessway*), is included in Appendix 1.

CE-S2 New buildings and structures within the coastal environment and within high coastal natural character area

328. FENZ[238] considered that it may have an operational and functional need to establish and operate fire stations in the Coastal Environment. Consequently, it sought an exclusion in CE-S2 for emergency service facilities.

329. We agree with the reporting officer that this is best managed through a resource consenting process due to the sensitivity of the receiving environment. Mr Sirl also noted that there are no High Coastal Natural Character Areas in urbanised areas where a new emergency service facilities would be more likely to be established.

330. GWRC[239] considered that buildings or structures in sites of high natural character should not exceed the relevant standards and sought an amendment to CE-S2 to specifically reference sites, in addition to areas, to give effect to NZCPS Policy 13(1)(b).

331. We disagree on the basis that CE-S2 as notified applies to High Coastal Natural Character Areas and following our general non-acceptance to GWRC's wider relief seeking to identify high natural character at an area and site scale.

332. Yvonne Weeber[240] considered that new buildings and structures within the Coastal Environment and within High Coastal Natural Character Areas should be built and designed in a manner that fits into the high coastal natural character. She sought an additional assessment criterion that addresses this matter. She did not, however, provide any detail as to the specific additional elements she sought be included in the standard.

333. In the absence of any clear alternative, we agree with Mr Sirl that the standard adequately addresses adverse effects on the natural character in High Coastal Natural Character Areas and recommend only minor formatting changes.

[238] Submission #273.155 and 273.156
[239] Submission #351.226
[240] Submission #340.73

3. NATURAL CHARACTER

3.1 Background

334. As noted above the Reporting Officer for the Natural Character (**NATC**) chapter of the PDP was Mr Jamie Sirl.

335. The Natural Character chapter is made up of an Introduction, two objectives, three policies and five rules.

336. This chapter attracted 48 submission points and 5 further submissions. Mr Sirl notes that the submissions were diverse and sought a range of outcomes and detailed the key issues in contention as raised in submissions to be:

(a) Whether the NATC chapter is sufficiently *clear* as to when and where the chapter applies;

(b) Whether the NATC objectives, *policies* and rules are appropriate to mitigate the effects of activities, buildings and structures in riparian margins;

(c) Whether the policy direction adequately addresses the identification of natural character values; and

(d) Whether the permitted rules relating to restoration and enhancement are sufficiently clear.

337. This report addresses each of these key issues, generally following the format of the Section 42A Report, as well as other relevant issues raised in submissions and that we heard during the hearing.

3.2 General Submissions

338. Mr Sirl noted the following submissions under this heading:

(a) Forest and Bird[241] considered that the Introduction section of NATC is uncertain and the scope of the chapter very unclear, particularly in regard to the Coastal Environment. It sought an amendment to clarify that the NATC chapter applies outside the Coastal Environment and recognise that activities landward of the Coastal Environment may have downstream effects which are recognised in the activity focussed chapters having

[241] Submission #345.213, opposed by Meridian FS101.138

regard to the policy direction in the NATC and CE chapters. Forest and Bird acknowledged that the Introduction mentions the NESFW and NRP regulations, but noted that it doesn't mention where in the PDP these are managed. It suggested that the NESFW and NRP regulations should be given effect to through the NATC policies to ensure integration of the policy direction across the District Plan.

(b) GWRC[242] sought that the Council identify natural character ratings at both site and area scales in riparian margins landward of the Coastal Environment, as required by section 6(a) of the RMA. It considered that this work, which has not yet been undertaken, is necessary to manage adverse effects on natural character in riparian margins. GWRC sought the insertion of a new 'process policy' in the PDP to direct this work to commence. This will indicate to District Plan users that this mapping work has not yet been undertaken and ensure that natural character in riparian margins is appropriately preserved and protected in the interim. The new policy sought by GWRC was as follows:

> ***NATC-Px: Identification of natural character ratings in riparian margins landward of the coastal environment***
>
> *Identify in the Plan natural character ratings in riparian margins landward of the coastal environment.*
>
> *Until natural character ratings in riparian margins landward of the coastal environment are mapped in this Plan, an assessment may be required as to whether an activity is within an area of high or outstanding natural character. Wellington City Council officers will assist resource consent applicants in determining whether an assessment is required. The need for such an assessment will depend on the level or scale of potential effects and the sensitivity of the receiving environment. Any assessment shall be commensurate with the scale and significance of the effects that the use or development may have on the environment.*

(c) Taranaki Whānui[243] and Lance Lones[244] sought retention of the chapter with amendments and other relief to enable Taranaki Whānui to exercise tino rangatiratanga over their properties in Te Motu Kairangi.

[242] Submission #351.158, #351.159, #351.160
[243] Submission #389.76 and 389.77, opposed by Buy Back the Bay FS79.10, FS79.27, FS79.46
[244] FS81.12

(d) Tawa Community Board[245] was concerned about streambank erosion of the Porirua Stream and sought that the PDP requires adequate setback distances from the stream edge for new structures.

339. Mr Sirl addressed each of these in turn, as we have.

340. In his Section 42A Report[246] Mr Sirl agreed with Forest and Bird that amendments to the Introduction were necessary to improve clarity as to how the chapter applies. This was particularly in relation to the Coastal Environment, and the relationship with the rest of the plan and the NRP, RPS and NESFW (2020). He also recommended restructuring of the chapter introduction.

341. Mr Sirl, referring to the Section 32 Evaluation Report Part 2: Natural Character and Public Access, outlined that the National Planning Standards (**NPS**) (section 7, Clause 20) require any provisions to protect the natural character of wetlands, lakes and rivers and their margins must be addressed in a Natural Character chapter. However, the NPS (section 7, Clause 28) also directs that matters relating to the Coastal Environment to give effect to the NZCPS must be located in a Coastal Environment chapter. Following the direction of the NPS, he confirmed that the PDP approach was to address matters relating to riparian margins that are located in the Coastal Environment in the Coastal Environment chapter.

342. We did not hear from Forest and Bird, and so were unable to discuss the amendments further with them. However, we agree that the amendments proposed by Mr Sirl improve the clarity of the Introduction for plan users.

343. Mr Sirl also recommended an amendment with respect to management of riparian margins to improve clarity in response to other submissions which he considered would also provide relief in the form sought by Forest and Bird. We agree.

344. Mr Sirl disagreed with Forest and Bird's submission that there is a need for further clarity within the NATC chapter that activities landward of the Coastal Environment may have downstream effects which are recognised in the activity focussed chapters having regard to the policy direction in the NATC and CE chapters. We agree with Mr Sirl that the relevant activity rule (NATC-R1 Activities within riparian margins) is clear and the 'other relevant District Plan provisions' text contained in the NATC chapter's Introduction provides adequate information on how the Plan manages activities and

[245] Submission #294.12
[246] Section 42A Report Mr J Sirl paras 451-454

use of riparian margins in addition to the associated provisions of the NATC chapter. No further amendments are necessary to address this submission point.

345. Mr Sirl noted that no specific wording or examples were provided to demonstrate why Forest and Bird considered that the plan does not fulfil its regulatory obligations with respect to the NESFW and NRP policies. He recorded that the PDP approach is to rely on the NESFW and not duplicate the NRP. We agree this is a more efficient approach as it does not result in requiring local and regional consent to manage the same effects.

346. Mr Sirl agreed with the Section 32 evaluation report for Natural Character and Public Access which outlined:

> *"the proposed 10m setback is consistent with margins in other legislation (e.g. the NES-FW) and consolidates and aligns the current [Operative District Plan] provisions, which range from 5m to 20m depending on the underlying zone";*
>
> *"The NATC chapter does not apply to wetlands as the protection of wetlands lies within regional council jurisdiction and sufficiently covered by other legislation (NES-FW and PNRP). Policy 61(b) 45 of the RPS states that the management of biodiversity within wetlands is GWRC's responsibility, although 61(c) does not specifically exclude city and district councils from managing wetlands';*
>
> *"WCC's responsibility for the protection of ecological function of water bodies is sufficiently covered through identified SNA's and related provisions of the ECO chapter"; and*
>
> *In a broad sense, the PDP approach aligns with higher order direction.*[247]

347. As a result, Mr Sirl disagreed that the amendments sought by Forest and Bird were required. We agree with that position and adopt the reasons canvased above.

348. Through our Minute 49 we queried Mr Sirl as to whether there was merit in generalising the reference to the NESFW to provide for potential regulatory change. In his Reply, Mr Sirl was of the opinion that should there be future regulatory change, Council can revise the Plan if necessary, following the appropriate process. We accept Mr Sirl's opinion. In an environment where so much else could potentially be changing, there appears little justification for picking out this example.

349. Mr Sirl disagreed with the relief sought by GWRC. He commented that Method 30 of the NRP commits GWRC to produce a regional list of areas with high and outstanding

[247] Section 42A Report Natural Character para 457

natural character in the beds of lakes and rivers, and wetlands by 2026. Until this has been achieved, Method 31 notes that GWRC will assist applicants to identify high natural character values.

350. For clarity, Mr Sirl noted that a jointly commissioned[248] natural character assessment had been undertaken for the Coastal Environment (which includes riparian margins within the Coastal Environment), but not for riparian margins outside of the Coastal Environment. He also noted the PDP approach which requires the identification of natural character values within riparian margins at a site level at the time of resource consent.

351. We agree with Mr Sirl that until GWRC completes the riparian margin natural character values identification and mapping exercise, the PDP approach remains the most efficient and effective approach to give effect to higher order direction and the objectives of the PDP. We are also unconvinced that there is benefit in essentially duplicating the NRP provisions in the PDP as sought by GWRC, and agree with Mr Sirl that following the implementation of Method 30 of the NRP by GWRC, revisiting the District Plan to make any necessary consequential mapping and provision amendments is best achieved through a future plan change.

352. In response to Tawa Community Board, Mr Sirl noted that the provisions of the NATC chapter operate so that within 10m from the edge of a stream, a resource consent application is required for new buildings and structures to consider their appropriateness, and that this chapter works in conjunction with the Natural Hazards chapter provisions governing flood hazards. As the submitter did not provide an alternative setback distance to be considered, and they did not appear at the hearing, we agree with Mr Sirl that the PDP provisions adequately manage the risks relating to new buildings and structures near streams.

353. Mr Sirl also noted that the Section 32 evaluation report for Natural Character and Public Access and the NATC Introduction outlined that the only lakes in the Wellington City District are located within Zealandia and as the natural character of the margins of these lakes is considered to be sufficiently protected through other plan provisions (Natural Open Space zoning, the SNA and ONFL overlays), the NATC chapter need not apply to the margins of lakes.[249] We agree.

[248] Jointly commissioned and managed by GWRC, WCC and HCC
[249] Section 42A Natural Character para 464

354. In response to Taranaki Whānui, Mr Sirl noted the legal obligations to recognise and provide for the preservation of natural character under Section 6(a) of the RMA, and not be inconsistent with the direction of the NRP. Accordingly, Mr Sirl disagreed with Taranaki Whānui. He did however recognise that there are a number of PDP overlays that apply to sites of Taranaki Whānui that were detailed within their submission and that the PDP does therefore impose development restrictions upon these sites. However, in his view, the NATC provisions in themselves would not result in significant additional restriction on the development of these parcels. He also noted that streams within the wider Miramar Peninsula site are located within the Coastal Environment and are regulated by the provisions of the CE chapter, not the NATC chapter.

355. The Panel recognised that due to the nature of the submission of Taranaki Whānui it spans the topics of several hearing streams, and we questioned Mr Sirl as to how this submission has been addressed in a comprehensive manner. To address this matter, we asked that in the Wrap-Up hearing, the issue be addressed afresh, so that Taranaki Whānui would have the opportunity to address the effect of the combination of overlays.

356. In his Wrap-Up Section 42A Report[250], Mr Sirl acknowledged that the combined effect of overlays and zone provisions represented a significant constraint on the ability of Taranaki Whānui to realise their aspirations in relation to the former Wellington Prison site. He considered that the issue is best addressed in the context of the Te Ao Māori Plan Change that Council is working on. We did not hear from Taranaki Whānui in the Wrap-Up hearing, and it seems to us that in the absence of their detailed feedback, Mr Sirl's recommendation is the best way to address a complex issue. We therefore adopt it.

3.3 Definitions

357. Forest and Bird[251] sought that the definition of 'riparian margin' is retained as notified. As no other submission sought anything different, no further assessment is required.

[250] Section 5.2
[251] Submission #345.13

3.4 Objectives

NATC-O1 Natural Character

358. Mr Sirl noted the following submissions for NATC-O1:

(a) Tyers Stream Group and WCCERG[252] sought that NATC-O1 be retained as notified.

(b) Forest and Bird[253] considered that the objective should be amended so that the preservation of natural character within riparian margins also be focused on maintaining or enhancing the ecological functions of riparian margins.

(c) GWRC[254] sought that it be clarified as to whether the objective applies to the Coastal Environment and requested an amendment to align the objective with its Coastal Environment equivalent by including reference to natural character being able to be "*restored or rehabilitated"*.

359. In response to Forest and Bird, in his Section 42A Report, Mr Sirl disagreed that any amendments were required at an objective level. He noted that the objective as notified includes the enhancement (where appropriate) of natural characteristics and qualities that contribute to natural character. He further noted that the RMA does not define 'natural character' but the Environment Guide – Best Practice Natural Character Planning (2015)[255] provides guidance as to what is meant by the term 'natural character', which can be summarised as 'natural processes, natural elements and natural patterns'. We agree with Mr Sirl that it follows that any reference to natural character already encompasses the ecological function of riparian margins.

360. Regarding the clarification sought by GWRC, Mr Sirl noted that his recommendation to clarify in the Introduction to the chapter that the NATC provisions do not apply to sites within the Coastal Environment addresses this submission point. We concur.

361. Mr Sirl agreed in part with GWRC with respect to amending NATC-O1 to align with CE-O1 by replacing the word 'maintains' with the words 'restored or rehabilitated' within the objective as do we. We adopt Mr Sirl's reasoning which is consistent with

[252] Submissions #221.51 and #377.135 respectively
[253] Submission 345.214
[254] Submissions #351.161, #351.162 and #351.163
[255] Section 42A Report Natural Character para 475 https://www.environmentguide.org.nz/issues/natural-character/

his amendments to CE-O1.[256] We agree with his opinion that this amendment would reduce any uncertainty regarding policy direction for the preservation and protection of natural character for freshwater bodies and their margins, and the preservation and protection of natural character in the coastal environment as directed by the NZCPS.

NATC-O2 Customary Harvesting

362. Taranaki Whānui[257] supported the general direction of the NATC chapter (customary harvesting), while noting their broader relief sought to enable Taranaki Whānui to exercise tino rangatiratanga over their properties in Te Motu Kairangi, and did not seek any changes to the objective. We note the support of Taranaki Whānui and our discussion above at paragraphs 354-356 where we acknowledge their comprehensive submission and recommend that the issue be addressed in the Te Ao Māori Plan Change.

363. We acknowledge that Forest and Bird, Tyers Stream Group, and WCCERG[258] sought that NATC-O2 be retained as notified. No further assessment is required.

3.5 Policies

NATC-P1 Appropriate use and development

364. The following submissions were noted by Mr Sirl in relation to NATC-P1:

(a) WCCERG[259] sought that NATC-P1 be retained as notified.

(b) Forest and Bird[260] sought that the policy be amended so that the preservation of natural character within riparian margins should also be focussed on maintaining or enhancing the ecological functions of riparian margins. Its amendments are shown below:

"NATC-P1 Appropriate use and development

Only p~~P~~rovide for use and development within riparian margins where:

1. It protects the natural character and integrates with the landform;

[256] Section 42A Report Coastal Environment paras 161 and 162
[257] Submission #389.78
[258] Submissions #345.215, #221.52 and #377.136 respectively
[259] Submission #377.137
[260] Submission #345.216

2. It provides for planned natural hazard mitigation works where undertaken by Wellington City Council, Greater Wellington Regional Council or their nominated agents;

3. It has a functional or operational need to be located within the riparian margin; ~~and~~

4. It does not limit or prevent public access to, along or adjacent to waterbodies~~.~~; and

5. It maintains or enhances the ecological functions of the riparian margin."

(c) Tyers Stream Group[261] sought that the policy be amended so that matters such as provision of good riparian management and public access to and along water bodies are something developers have an active duty to provide, not something developers need to avoid adverse effects on. The changes sought are set out below:

"*NATC-P1 Appropriate use and development*

~~Provide for~~ Protect natural character, avoid natural hazards and provide for biodiversity and public access to and along water bodies by only allowing use and development within riparian margins which ~~are~~:

1. P~~It p~~rotects the natural character and integrates with the landform And;

2. P~~it p~~rovides for planned natural hazard mitigation works where undertaken by Wellington City Council, Greater Wellington Regional Council or their nominated agents AND;

3. H~~lt h~~as a functional or operational need to be located within the riparian margin; and

4. ~~It does not limit or prevent~~ Improves practical public access to, along or adjacent to waterbodies."

365. Mr Sirl's response to Forest and Bird was consistent with his response to NATC-O1 discussed above, which we agreed with. While he considered that the ecological function of riparian margins is implicit in the reference to natural character, explicit recognition of the enhancement of ecological values at a policy level (in addition to NATC-P2 restoration activities) would align with the PDP's strategic objectives NE-O2 and NE-O5. It would also give effect to Policy 43(b) of the RPS which requires

[261] Submission #221.53

Councils to have particular regard to maintaining or enhancing the ecological functions of riparian margins when changing/reviewing a District Plan. He consequently recommended the submission be accepted in part by including the words '*the ecological values of the margin will not be adversely affected*' as a new clause to the policy. We accept this recommendation. He disagreed, as do we, with the addition of 'only' to proceed 'provide' as there is no material difference achieved through this amendment, and we note that this policy informs rules that for the most part have a permitted activity status.

366. In accepting this amendment, the Panel also considered that there is merit in providing clarity that the ecological values represented in the new clause are specific to 'indigenous' ecological values – that is values that are worth protecting and not, for example, gorse.

367. In his Section 42A Report, responding to Tyers Stream Group submission, Mr Sirl disagreed that the proposed amendments were necessary, and considered that they would potentially create confusion. He noted that this policy was an 'enabling' policy that provided direction for rules NATC-R1 and NATC-R4 which provide for Permitted Activities subject to the protection of natural character, natural hazard and public access, which are in turn subsets of the policy. He did agree with the sentiment of their submission that public access should be something to encourage. However, he considered that if the 'and' conjunctive was used, it would provide an unnecessarily onerous test as a matter of discretion to require the 'improvement' of public access.

368. Mr Neil Deans spoke on behalf of Tyers Stream Group at the hearing, and we were able to further question their submission. It became clear that the requests that the Group was making were already provided for within the Public Access chapter of the Plan, and that there was no need to change anything in the Natural Character chapter.

369. The Panel also queried the Reporting Officer[262] as to whether NATC-P1.5 is consistent with the approach taken to public access provisions, or alternatively needs to be softened (perhaps by the use of a maintenance test) and/or needs to be qualified to allow minor works within the riparian margin.

370. In his Reply Statement, Mr Sirl considered that the maintenance of existing public access tracks is highly unlikely to have adverse effect on ecological values. He noted

[262] Through our Minute 49

that under PA-O2, the Plan seeks that any adverse effects of future provision of public access does not have a negative impact on existing values, including natural character and indigenous biodiversity. He did not consider there to be any inconsistency. He noted that NATC-P1 is a matter of discretion for NATC-R5 which provides for the construction of structures within riparian margins, such as a bridge for a walkway. He considered that it is reasonably plausible that a bridge over a stream could be constructed without adversely affecting ecological values of the stream margin. He also noted that indigenous vegetation removal and trimming within high coastal natural character areas and coastal and riparian margins (as per his recommendation) is necessary for the safe operation of public access tracks and is provided for under CE-R6 and CE-S1. We accept his reasoning.

NATC-P2 Restoration and enhancement

371. We acknowledge that Tyers Stream Group and WCCERG[263] sought the retention of this policy as notified.

372. Forest and Bird[264] supported the intent of NATC-P2 but sought to amend NATC-P2.1 so that it is consistent with the terminology in the PDP, in that 'indigenous vegetation' is defined and 'indigenous species' is not. These amendments are shown below:

> *"NATC-P2 Restoration and enhancement:*
>
> *Provide for restoration and enhancement of natural character within riparian margins ~~where appropriate~~ including:*
>
> *1. The replanting of riparian margins with indigenous vegetation ~~species~~;*
>
> *…"*

373. In his Section 42A Report, Mr Sirl agreed with the changes requested by Forest and Bird. We agree also. He noted that 'where appropriate' is a PDP drafting approach which acknowledges that there will be circumstances where an activity is not appropriate, and this provides for flexibility in the implementation of the Plan. However, in the context of this policy, which notably does not act as a matter of discretion, it is an enabling policy that informs Permitted Activity rules, and he considered that the words "*where appropriate*" are redundant and can be deleted. We concur.

[263] Submissions #221.54 and #377.138 respectively
[264] Submission #345.217

374. Mr Sirl also agreed to the change sought to reference 'indigenous vegetation' as do we. It is good practice to use terminology that is defined in the PDP and reference to 'indigenous vegetation' will assist with interpretation of this policy without any material difference in how the policy would be applied.

NATC-P3 Customary Harvesting

375. We note that Forest and Bird, Tyers Stream Group and WCCERG[265] sought that NATC-P3 be retained as notified.

376. Taranaki Whānui[266] opposed the zoning and extent and overlays proposed over Te Motu Kairangi. While they supported protection of significant indigenous vegetation, as well as landscapes that have cultural, historical, spiritual and traditional significance, they have concerns as to the identification and protection of environmental overlays in previously developed areas, which have the potential to restrict future development and opportunities for Taranaki Whānui to exercise tino rangatiratanga over their properties in Te Motu Kairangi. They did not request any specific changes to NATC-P3.

377. In his Section 42A Report, Mr Sirl acknowledged the concerns of Taranaki Whānui but noted that they did not seek any specific amendments to NATC-P3.

378. We too acknowledge the concerns of Taranaki Whānui and as mentioned above have recommended that the issue be addressed in the Te Ao Māori Plan Change.

3.6 Rules

NATC-R1 Activities within riparian margins

379. It is acknowledged that Forest and Bird and WCCERG[267] sought that NATC-R1 be retained as notified.

380. Tyers Stream Group[268] sought that NATC-R1 be amended to meet the submitted requirements of NATC-P1.

[265] Submissions #345.218, #221.55 and #377.139 respectively
[266] Submission #389.79
[267] Submissions #345.219 and #377.140 respectively
[268] Submission #221.56

381. In response to Tyers Stream Group, Mr Sirl disagreed that any amendment was required to NATC-R1 for the same reasons as for NATC-P1. We agree and refer to our reasons outlined in our discussion for NATC-P1 above.

NATC-R2 Restoration and enhancement activities within riparian margins

382. We note that Forest and Bird, Tyers Stream Group and WCCERG[269] sought that NATC-R2 is retained as notified.

383. GWRC[270] supported NATC-R2 in part, but considered that it is likely that not all restoration activities will restore natural character rankings. Therefore, GWRC[271] sought that the rule be amended to include a Permitted Activity condition to clarify which restoration activities are permitted to ensure those activities will restore natural character.

384. Responding to GWRC in his Section 42A Report[272] Mr Sirl agreed that this Permitted Activity rule could lead to a lack of clarity as to what exactly is permitted, due to the lack of associated definition for restoration and enhancement activities or Permitted Activity conditions. Mr Sirl considered that replicating the Permitted Activity conditions of CE-R3 would provide consistency between riparian margins located within and outside of the Coastal Environment. This would also require a cascading activity status for restoration and enhancement activities that do not meet the Permitted Activity conditions to a Restricted Discretionary Activity status with NATC-P2 as the sole matter of discretion. We agree that the amendments provide clarity and plan consistency. Mr Sirl also noted that his recommendations relating to the definition of restoration in the context of the Coastal Environment Chapter (refer Section 2.9 of our report above) would provide at least part relief sought by the submitter. We concur.

NATC-R3 Customary harvesting within riparian margins

385. Forest and Bird, Tyers Stream Group and WCCERG[273] sought that NATC-R3 is retained as notified. This is acknowledged and no further assessment is required.

[269] Submissions #345.220, #221.57, #344.141 respectively
[270] Submission #351.164
[271] Submission #361.165
[272] Section 42A Report Mr J Sirl paras 511-512
[273] Submissions #345.221, #221.58 and #377.142

NATC-R4 Construction, addition or alteration of buildings or structures for natural hazard mitigation purposes where carried out within riparian margins by a Regional or Territorial Authority, or an agent on their behalf

386. We acknowledge that Tyers Stream Group and WCCERG[274] sought that NATC-R4 be retained as notified.

387. Forest and Bird[275] sought that NATC-R4 be amended to include a qualifier as per NATC-R1 to ensure effects are properly addressed, as follows:

> *Where:*
>
> *a. Compliance is achieved with the rules and standards for activities in the underlying zone.*

388. Zealandia[276] were concerned that NATC-R4 may prevent maintenance and management work of bridges and associated infrastructure within Zealandia, and sought to amend the rule to list the Karori Sanctuary Trust as an approved operator.

389. Mr Sirl disagreed with Forest and Bird relief sought as do we. We understand that NATC-R4 only applies in relation to buildings and structures for natural hazard mitigation purposes when undertaken by Regional and City Council entities (or their agents) and noted that natural hazard / flood mitigation works are a Permitted Activity when undertaken by these entities (NH-R3.1). Mr Sirl disagreed that the qualifier is necessary. He noted the functional need for natural hazard mitigation structures to be located in close proximity to the respective waterbody and to be designed for a specific issue for each site.

390. Responding to Zealandia, Mr Sirl considered that the works referred to do not appear to be for the purposes of hazard mitigation, and therefore would not fall under this rule. He noted also that Zealandia is a Council Controlled Organsation (CCO) and is arguably covered by the Permitted Activity rule NATC-R4 as written. We agree that no changes are necessary as a result of this submission point.

[274] Submissions #221.59 and #377.143
[275] Submission #345.222
[276] Submission #486.3

NATC-R5 Construction, addition or alteration of buildings and structures within riparian margins

391. We acknowledge that Tyers Stream Group and WCCERG[277] sought that NATC-R5 is retained as notified.

392. Forest and Bird[278] sought that the construction of new buildings be a non-complying activity within riparian margins. If the relief for a non-complying activity status is not accepted, it sought that matters of discretion be widened to include policies from the ECO chapter and NATC-R5.1.

393. In response to Forest and Bird's relief for a non-complying activity status, Mr Sirl disagreed. In his opinion the Restricted Discretionary Activity status is appropriate, particularly considering the policy direction of NATC-P1, which directs: "*Provide for use and development within riparian margins …*". We agree that the policy direction enables appropriate development within the riparian margins, with the matters in the policy providing the parameters for what is considered appropriate.

394. Regarding Forest and Bird's second submission point, Mr Sirl[279] considered that the specifics of this rule ensure that a thorough assessment is required for any proposal, noting there is no Permitted Activity rule (other than for natural hazard mitigation). As to seeking inclusion of ECO policies, we refer to our recommendation above at paragraph 366 to include reference to indigenous ecological values under NATC-P1 (Appropriate use and development) which is a matter of discretion for NATC-R5. Mr Sirl noted that the ECO chapter addresses Significant Natural Areas (SNA) and will apply in conjunction with the NATC where a SNA is also located within a riparian margin. Consequently, we agree with Mr Sirl that no changes are required as a result of this submission point.

4. PUBLIC ACCESS

4.1 Background:

395. Mr Sirl was also the Reporting Officer for the Public Access chapter of the PDP.

[277] Submissions #221.60 and #377.144
[278] Submissions #345.223 and #345.224
[279] Section 42A Report Mr Sirl para 529

396. The Public Access chapter is made up of two objectives and three policies. There are no rules in this chapter. Rather, the provisions are matters of discretion for other District Plan provisions.

397. There was a total of 34 submission points received in relation to the Public Access chapter. These were made by eight original submitters and two further submitters.

398. In his Section 42A Report, Mr Sirl considered that the following matters were the key issues in contention:

(a) Whether Public Access chapter is sufficiently clear as to when the chapter applies.

(b) Whether the Public Access objectives, policies and rules are appropriate to mitigate the effects of activities, buildings and structures in riparian margins.

399. This report addresses each of these key issues, generally following the format of the Section 42A Report, as well as other relevant issues raised in submissions and that we heard during the hearing.

4.2 General Submissions

400. Tyers Stream Group[280] sought that the plan provides for public access to and within areas for which WCC has jurisdiction.

401. Mr Sirl considered that this submission is not entirely a district plan matter, and we agree. It is more suited to consideration through Council's role as landowner and management through the Reserves Act. Mr Sirl further noted that Council continues to look for opportunities to increase public access through strategic land acquisition, and to achieve the outcomes sought by the WCC Open Space Access Plan. As such no changes are recommended because of this submission.

402. We asked Mr Sirl to advise how it is recommended that the apparent inconsistency of language as between the Introduction and in the Objectives and Policies vis a vis references to the 'coast' and 'coastal environment' be addressed.

[280] Submission #221.5

403. In his Reply Statement[281] Mr Sirl stated that in a broad sense, the term Coastal Environment should only be used when the matter relates to the entire area of the Coastal Environment Overlay, and where the matter only applies to a specific part of this area, then another more specific term, or qualification, is needed. Consequently, he considered that as the intention is not for public access to be provided to the entire Coastal Environment Overlay area, as the reference to the Coastal Environment in the Public Access chapter introduction suggests, the reference within the Introduction should be to the coast. We agree with Mr Sirl that this change can be made under Clause 16 of Part 1 Schedule 1 of the Act.

404. Regarding use of the terms 'coast' and 'coastal environment' in the provisions of the Public Access chapter[282], he stated that there was generally no scope to make the change and, in most cases, he did not consider that there would be problems with interpretation or overall consistency of terminology.[283] We generally agree with Mr Sirl, with the exception of PA-P2 which we discuss below.

4.3 Objectives

PA-O1 Public Access

405. We acknowledge that VUWSA, Tyers Stream Group, GWRC, WCCERG and DoC[284] sought that the objective be retained as notified. No other submission sought an amendment and therefore, no further assessment is necessary.

PA-O2 Adverse effects of public access

406. Mr Sirl noted the following submissions in relation to PA-O2:

(a) Tyers Stream Group, WCCERG, DoC, and Te Rūnanga o Toa Rangatira[285] sought that the objective be retained as notified and this is noted.

(b) Meridian Energy Limited[286] sought an additional qualification on the security of regionally significant infrastructure.

[281] Reply Statement Mr J Sirl paras 73-74
[282] PA-O1, PA-O2, PA-P1, PA-P2 and PA-P3
[283] Reply Statement Mr J Sirl para 74
[284] Submissions #123.44, #221.61, #351.170, #377.157 and #385.47
[285] Submissions #221.62, #377.158, #385.48 and #488.54 supported by GWRC FS84.115
[286] Submission #228.92, #228.93 supported by WIAL FS36.80

(c) GWRC[287] sought that riparian margins be assessed for their natural character rating and an amendment be made to PA-O2 to enable this.

(d) WIAL[288] sought that another clause be added with respect to public health and safety, in respect of the operation of the airport and port, in part to provide rationale for the related clauses of policy PA-P3. Its amendment is set out below:

*"**PA-O2 Adverse effects of public access***

Public access does not have a negative impact on:

a. existing values such as natural character, indigenous biodiversity, landscape values, historic heritage, sites of significance to Māori or the coastal environment; or

b. Public health and safety, particularly with respect to the safe operation and functioning of the Port and Airport."

407. Addressing each submission in turn, Mr Sirl noted that the submission of GWRC sought this relief across various provisions of the PDP and that PA-O2 already recognises that public access to areas needs to consider potential impacts on natural character. Consequently, he disagreed with GWRC's submission, as do we.

408. Mr Sirl agreed with Meridian and in part with WIAL. In his opinion, the wording should be modified to identify regionally significant infrastructure more generally, not just the port and airport as a subset of regionally significant infrastructure. We agree. The amendments will recognise the potential for adverse effects on health and safety and the operation of infrastructure from public access, and will provide stronger direction for the resultant policy PA-P3.

409. Ms Foster provided expert planning evidence for Meridian. She agreed with Mr Sirl's amendments to PA-O2 (and PA-P3.10 which we address below). However, she did have an editorial suggestion that the 'and' between clause (a) and (b) should be 'or' because the two listed sets of circumstances are separate considerations. Mr Sirl agreed that this change would be appropriate, as do we.

[287] Submission #351.171 and #351.172
[288] Submission #406.252 and #406.253

4.4 Policies

PA-P1 Appropriate activities

410. GWRC and WCCERG[289] sought that the policy be retained as notified and this is acknowledged.

411. Tyers Stream Group[290] sought an amendment to PA-P1 to clearly deliver the enhancement of public access to the coast and waterbodies required by objective PA-O1.

412. Mr Sirl agreed with Tyers Stream Group that an amendment was required to recognise that the higher order objective seeks at least maintenance, if not enhancement, of public access to coastal and riparian margins. We agree. The deletion of the words "*do not limit or prevent*" and replacement with "*maintain or enhance public access ….*" will better align the policy with the objective.

413. We asked Mr Sirl whether PA-P1 should be subject to PA-P3 (we address PA-P3 below). In his Reply Statement[291], Mr Sirl considered that the two policies serve different, and not inconsistent, purposes. In his view, PA-P1 as a matter of discretion does not exclude a scenario where public access is prevented, for example to provide for one of the situations set out in PA-P3, it simply provides policy support for activities that do not limit public access. He further noted that many of the rules that have PA-P1 as a matter of discretion also have PA-P3.

414. The Panel consider that including "*other than as provided for in PA-P3*" to the end of PA-P1 would provide some clarity for this matter. We consider that this change can be made under Clause 16 of the RMA as it is a matter of Plan user clarity.

PA-P2 Maintenance and enhancement of public access

415. It is acknowledged that WCCERG and DoC[292] sought that the policy be retained as notified.

416. GWRC[293] considered that natural character assessments in riparian margins landward of the Coastal Environment had not yet been undertaken.

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[289] Submission #351.173 and #377.159 respectively
[290] Submission #221.63
[291] Reply Statement Mr J Sirl para 75
[292] Submissions #377.160 and #385.49 respectively
[293] Submission #351.174

417. Tyers Stream Group[294] sought an amendment to PA-P2.3 to include setbacks from both existing and potential public access corridors to ensure linkages are made or enabled.

418. We addressed the submission of GWRC above at paragraphs 349-351.

419. Mr Sirl disagreed with Tyers Stream Group as do we. It is impractical to require a setback from a 'potential' future public access. However, Mr Sirl considered this will at least in part be achieved through the rules that control structures in coastal margins and riparian margins. He noted that securing future public access is achieved through PA-P2.1 (which guides subdivision design) and PA-P2.2 (through the creation of esplanade strips or reserves).

420. We consider that PA-P2.2 would benefit from an amendment to change 'coastal environment' to 'coastal margin'. An esplanade reserve or strip can only apply to the coastal margin, and therefore the change does not alter the effect of the clause. The change therefore falls within Clause 16.

421. We also note an error in the cross-reference to the Subdivision Chapter. The Council pointed out to us that the policy should reference SUB-P9 rather than SUB-P8. SUB-P9 is obviously the correct policy in this context and we recommend the error be corrected as a Clause 16 matter.

PA-P3 Restriction of public access

422. Tyers Stream Group, WCCERG and WIAL[295] sought that the policy be retained as notified and this is acknowledged.

423. Meridian[296] sought amendments to add protection of existing regionally significant infrastructure other than the Port and Airport as another legitimate reason for restricting public access that should be added to the list of exceptions.

424. GWRC considered that subclause 10 should be removed and WIAL supported this as a further submitter. In the further submission of WIAL, it noted that some airport infrastructure could be located outside of the airport zone, inferring that the amendment is necessary to address such infrastructure more broadly.

[294] Submission #221.64
[295] Submissions #221.65, #377.161 and #406.254
[296] Submission #228.94 and #228.95

425. Consistent with his advice in relation to PA-O2, which we agreed with, Mr Sirl was of the opinion that it is appropriate to broaden clause 11 to apply to regionally significant infrastructure more generally. This would also address the inferred concerns of WIAL.

426. Mr Sirl agreed with GWRC that the rather generic clause 10 is not sufficiently detailed to justify its inclusion and acts as a catch-all. He recommended that it be removed, and we agree. There remains a sufficiently detailed and varied list of reasons why public access may be restricted.

4.5 Minor and inconsequential amendments

427. Mr Sirl identified the following two minor inconsequential amendments to be corrected pursuant to Schedule 1, clause 16 (2) of the RMA.

(a) Delete the word "*area"* following reference to "*commercial port*" from the Public Access introduction to correctly align with the "*commercial port*" definition included in the Plan.

(b) Amend the Public Access introduction to delete reference to "*lakes*" on the basis there are no lakes in Wellington and for consistency with the NATC introduction.

428. The second point is not strictly correct. As discussed above, there are lakes within Zealandia. However, access to them is controlled and so it is appropriate to delete reference to them.

5. NATURAL FEATURES AND LANDSCAPES

5.1 Background

429. The PDP identifies three categories of natural features and landscapes:

(a) Outstanding Natural features and Landscapes (**ONFL**s);

(b) Special Amenity Landscapes (**SAL**s); and

(c) Ridgelines and Hilltops.

Each is the subject of a separate overlay.

430. The Reporting Officer, Ms van Haren-Giles identified that the jurisdictional base for ONFLs lay in Section 6(b) of the RMA whereas the other two categories sought to

address amenity values, consistent with Section 7(c) of the RMA, but at different levels of significance.

431. Accordingly, ONFLs have the greatest level of protection from activities that might potentially affect the values and characteristics that are important in those areas, and SALs have a greater level of protection than identified ridgelines and hilltops, reflecting the greater significance of the amenity values in SALs compared to the ridgelines and hilltops.

432. The spatial allocation of the respective overlays was consistent with that description. The ONFLs identified in the PDP are limited to areas adjacent to the coast from a point west of Ōwhiro Bay, round to the local authority boundary with Porirua City, together with Ōtari-Wilton's Bush and the valley occupied by Zealandia. By contrast, SALs are more numerous, bounding the outer and inner Wellington Urban Area and including the northern section of Watt's Peninsula (the northern headland of Motu Kairangi / Miramar Peninsula). As its name suggests, the Ridgelines and Hilltops Overlay identifies many of the ridgelines and hilltops across the city, overlapping in part with both ONFLs and SALs.

5.2 General Submission Points

433. In Section 3.2.1 of her Section 42A Report, Ms van Haren-Giles noted a number of submissions raising general issues about the Natural Features and Landscapes Chapter. First, two VUWSA submissions[297] were noted in support. That support is acknowledged.

434. The submissions of Churton Park Community Association[298] and John Tiley[299] were noted as recording reasonable expectations about the way in which ONFLs and SALs might operate, but not seeking any specific relief. As such, Ms van Haren-Giles did not consider them further. We concur, while noting that these submitters had more specific submissions that we will consider later in this Report.

435. Horokiwi Quarries Limited[300] was noted as seeking clarification of what the characteristics of Special Amenity Landscapes are in the PDP.

[297] Submissions #123.42-43
[298] Submission #189.6
[299] Submission #142.6
[300] Submission #271.27

436. Ms van Haren-Giles' initial response was that her recommendations in relation to Schedule 11 in response to other submissions would add clarity to the matter, but that she considered the language of the chapter and schedules to be both consistent and clear. Ms Whitney's evidence for the submitter clarified that the submitter was making a relatively narrow point, that the text referred to both values and characteristics, but Schedule 11 identified only values, raising the question of what characteristics might need to be considered. Having considered Ms Whitney's evidence on the point, Ms van Haren-Giles recommended a minor amendment to both Schedules 10 and 11 to make it clear that they list both relevant values and characteristics. We consider that the clarification is helpful and makes it clear that the provisions of the Natural Features and Landscapes Chapter were not seeking to draw attention to a separate unidentified series of characteristics.

437. Ms van Haren-Giles noted Taranaki Whānui [301] as seeking to include higher triggers for active engagement with Taranaki Whānui. In her view, there were triggers in the consenting process already to enable active engagement where appropriate, and she did not consider further amendments were necessary or appropriate. We did not hear further from Taranaki Whānui on this point and we accept Ms van Haren-Giles' reasoning.

438. Lastly, Ms van Haren-Giles identified two submissions of Forest and Bird[302] seeking to ensure provisions in the Chapter adequately protect Outstanding Natural Features and Landscapes and Special Amenity Landscapes, and are well integrated in the ECO Chapter to ensure no net loss of biodiversity, together with a new policy to give effect to Policy 11 of the NZCPS for SALs and ONFLs outside of identified SNAs. She noted that the first of these submissions did not seek specific relief and in relation to the second, she drew attention to the policy direction in the Coastal Environment Chapter which addresses the point raised by Forest and Bird. She did not consider an additional policy was required. We did not hear from Forest and Bird in support of its submission and we concur with Ms van Haren-Giles reasoning.

5.3 Definitions

439. The only submissions noted in relation to definitions specific to the Natural Features and Landscapes Chapter were in support of the existing definitions. No further assessment is therefore required.

[301] Submission #389.80
[302] Submissions #345.225 and #345.227

5.4 Mapping Overlays

440. Under this heading, Ms van Haren-Giles noted the following submissions:

(a) Taranaki Whānui[303] seeking removal of natural environment overlays over Watts Peninsula, and separately that the special amenity landscape mapping be amended to reflect historical and current built development over the Wellington Prison site;

(b) Kilmarston Developments Limited and Kilmarston Properties Limited (**Kilmarston**)[304] opposing identification of an SAL overlay over two blocks of Medium Density Residential Zone land Kilmarston owns in Crofton Downs (16 Patna Street and 76 Silverstream Road) while retaining the SAL overlay over the Natural Open Space Zone component of its land "*subject to agreement on appropriate tenure";*

(c) Thomas Brent Layton[305] seeking to remove the Ridgelines and Hilltops Overlay and Special Amenity Landscape Overlay from 183, 241, 249 and 287 South Karori Road;

(d) Parkvale Road Limited[306] seeking to remove the Ridgelines and Hilltops Overlay within 200 Parkvale Road, or alternatively amendment to the provisions of the overlay;

(e) Horokiwi Quarries Limited[307] addressing the absence of an ONFL Overlay within the Horokiwi Quarry site, but not seeking any specific relief.

441. All of these submissions except the last were the subject of numerous further submissions in opposition.

442. Ms van Haren-Giles addressed each of these sets of submissions in turn, as will we.

443. As regards the Taranaki Whānui submissions, Ms van Haren-Giles relied on Mr Anstey's evidence and the Boffa Miskell Wellington City Landscape Evaluation (2019) Report that had informed the Section 32 Evaluation Report for the notified plan provisions to the effect that Watt's Peninsula is an important SAL in the city. She therefore disagreed with removal of the SAL overlay, but did agree in part with the

[303] Submissions #389.81 and #389.23
[304] Submissions #290.2, 290.12, 290.14, 290.15, 290.16 and 290.20
[305] Submissions #164.1-2, #164.5-6
[306] Submission #298.4-5
[307] Submission #271.6

submission of Taranaki Whānui that the overlay should reflect development to date. Rather than recommend revised mapping, however, Ms van Haren-Giles recommended that the values of the peninsula record that historical development.

444. In the absence of any contrary evidence from Taranaki Whānui, we accept Ms van Haren-Giles recommendation. We did have some concern, however, that Taranaki Whānui was raising a broader point, that the combination of different overlays excessively constrained development options available to Taranaki Whānui in respect of their ancestral lands. As above, we requested that the Council address that aspect of the submission in the Wrap-Up hearing, since consideration of each overlay in different hearing streams would not address the cumulative effect Taranaki Whānui was raising. Based on the advice received in the Wrap-Up hearing, we have recommended that the issue be addressed in the Te Ao Māori Plan Change.

445. Turning to the Kilmarston submission, Ms van Haren-Giles' initial view in her Section 42A Report was that identification of the SAL overlay did not inappropriately constrain development, but rather provided a pathway to ensure that the values of the SAL are maintained and protected. Again, Ms van Haren-Giles relied on Mr Anstey's evidence and the Boffa Miskell Report we have already referred to. In response, Ms Xkenjik's planning evidence for the submitter provided a detailed commentary assessing the SAL overlay over the Medium Density Rural Zone against higher level policy direction, the NPSUD in particular, but also the regional policy statement, concluding that identification of the overlay over residentially zoned land was inconsistent with that higher order direction.

446. In her rebuttal evidence, Ms van Haren-Giles agreed that the identification of an SAL over residentially zoned land was inconsistent with the NPSUD, not so much for the broader policy reasons Ms Xkenjik had identified, but because the Council had not identified the overlay as qualifying matter or, more importantly, evaluated it in the manner directed in Sections 77I and 77J of the RMA.

447. She noted that the Kilmarston land was not alone in this regard and that there were a number of small pockets of HRZ or MRZ land that were the subject of an SAL overlay. Unlike the Kilmarston land, however, those sites were not the subject of submission and, in her view, there was no scope to correct this error.

448. The legal submissions of Mr Slyfield for Kilmarston reinforced the legal issue that Ms van Haren-Giles accepted, but also took issue with the merits of the SAL overlay from

a landscape perspective. Mr Slyfield also drew our attention to the fact that Kilmarston had submissions on the zoning of the land.

449. Like Ms van Haren-Giles, we do not consider that we need to address Ms Xkenjik's planning rationale for the relief she supported. We agree with Mr Slyfield's submissions that in the absence of the required statutory evaluation to support a qualifying matter, retention of the SAL overlay over the portion of Kilmarston's land zoned MRZ cannot be supported.

450. While Mr Slyfield was on strong ground in that regard, we do not accept his criticism of the landscape merits of the SAL overlay in the absence of any expert landscape evidence to contradict Mr Anstey (and the Boffa Miskell Report on which he relied).

451. Kilmarston did not provide us with any evidence to support removal of the SAL from the balance of the Kilmarston land and in the absence of any evidence from it in the Stream 7 Hearing, that Panel has not recommended any additional areas of the two sites be rezoned. Accordingly, we recommend redrawing of the SAL boundaries across the two Kilmarston properties to exclude the area of each currently zoned MRZ.

452. That leaves the problem identified by Ms van Haren-Giles, of other MRZ and HRZ land being the subject of an SAL overlay, unresolved. Ms van Haren-Giles identified the land in question in Appendix 1 of her rebuttal evidence. We agree with her view, that there is no scope for us to recommend amendment to the SAL overlay to exclude those properties. We record that Mr Slyfield did suggest that there was an alternative option open to Council, of withdrawing that part of the PDP (i.e. the SAL overlays over Residential Zoned land) pursuant to the power it enjoys under Clause 8D of the First Schedule. We are aware that there is High Court authority to suggest that part of a Plan can be withdrawn[308]. That option may therefore merit consideration. Alternatively, we recommend that as part of a follow up Plan Change, Council take steps to uplift the areas of SAL overlay over the residentially zoned land Ms van Haren-Giles identified.

453. Turning to the Parkvale Road Limited submissions, Ms van Haren-Giles' initial response in her Section 42A Report was to recommend that the Ridgelines and Hilltops Overlay be retained, notwithstanding the recommendation of the Reporting Officer in Stream 7 that the site be rezoned to MRZ. This was on the basis of the

[308] *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* [2007] NZRMA 32

landscape evidence of Mr Anstey and an Isthmus Report underlying the notified provisions. The submitter provided both landscape (Mr Compton-Moen) and planning (Mr Lewandowski) evidence on the point. Mr Compton-Moen recommended shifting the boundary of the Ridgelines and Hilltops Overlay to where it crosses the site from its western boundary to the 260 masl contour (currently it follows the 230 masl contour).

454. Mr Anstey agreed with Mr Compton-Moen's recommendation in that regard. However, in her rebuttal evidence, Ms van Haren-Giles recommended that the Ridgelines and Hilltops Overlay be removed entirely from the site on the basis that in Stream 7 the Reporting Officer had recommended that the entire site be rezoned to MRZ. She applied similar logic to that in relation to Kilmarston, observing that the Ridgelines and Hilltops Overlay had not been assessed as a qualifying matter and noted that the overlay previously identified in the ODP had been removed in other cases where land had been zoned to residential, describing it as a policy decision Council had made. She accepted that there may be other isolated areas where this had not occurred. She recommended that they be addressed by a future Plan Change.

455. We do not think that the position is the same as for SALs. Unlike SALs, the Ridgelines and Hilltops Overlay (at least as notified) does not qualify the MDRS in the sense of making them less enabling of development. It only introduces additional policy considerations where a consent would be required for other reasons. We do not, therefore, consider that the same legal impediment to identifying the overlay arises.

456. Addressing the issue as one of policy, we asked Ms van Haren-Giles to identify where the policy decision to remove the Ridgelines and Hilltops Overlay from all residentially zoned land had come from. She referred us principally to the Isthmus Ridgelines and Hilltops Review Report dated 24 November 2020 which had supported the Section 32 Report. Our reading of the Isthmus Report is that it is not as absolute as Ms van Haren-Giles suggested. While it clearly indicated a potential inconsistency between residential zoning and the overlay, we note the summary recommendation in the Report (at section 1.21) that adjustment of the overlay boundary is not recommended where development is only slightly extended into the overlay (by single or small groupings of dwellings) in a way that does not affect the continuity of the overlay overall.

457. We agree with that somewhat more nuanced approach and we recommend that the Council employ it when examining whether it is desirable to revise the Ridgelines and Hilltops Overlay on any sites where it extends over residentially zoned land in order to determine whether a Plan Change is required to amend those boundaries in ways that we do not have scope to recommend in this process.

458. In the Parkvale Road context, the issue is made somewhat academic because the Stream 7 Hearing Panel has not recommended rezoning of the submitters land above the 260 masl contour that Mr Compton-Moen recommended (and Mr Anstey agreed with) for the Ridgelines and Hilltops Overlay. Rather, the Panel's recommendation in Stream 7 is to locate the MRZ boundary below, but following, the Ridgelines and Hilltops Overlay boundary that Mr Compton-Moen recommended.

459. On that basis, the issue that was concerning Ms van Haren-Giles does not arise and given the consensus of technical evidence supporting it, we recommend that the Ridgelines and Hilltops Overlay be amended insofar as it applies to 200 Parkvale Road, and the adjoining properties at 173 and 175 Parkvale Road in the manner set out in Mr Compton-Moen's revised Appendix 1.

460. Turning to Dr Layton's submission, again, Ms van Haren-Giles relied on Mr Anstey's evidence supporting retention of both the SAL and Ridgelines and Hilltops Overlays over his properties in South Karori Road.

461. Dr Layton did not provide us with a landscape-based rationale for removing the overlays and is not qualified in that field (he is a well-known retired economist). Rather, he developed an essentially economic argument supporting a reduction and restriction in the use of his land in this regard. While Mr Anstey sought to respond to that line of reasoning, we do not think that we need to go there. Identification of SALs and the provisions governing the activities within them in the PDP implements Policies 27 and 28 of the Regional Policy Statement.

462. The policy underpinning of the Ridgelines and Hilltops Overlay is less authoritative but, in our view, none the less sound. We discuss the point further below, but refer, in particular, to the two Isthmus Reports which formed the basis of the Section 32 Report on this subject. We accept that the Ridgelines and Hilltops Overlay is well founded on amenity grounds. We also record our view that the policy-based restrictions on activities within the Ridgelines and Hilltops Overlay are not excessively onerous and match the jurisdictional underpinning of the overlay.

463. In summary, therefore, we do not recommend acceptance of Dr Layton's submissions in this regard, and we do accept the reasoning in Ms van Haren-Giles Section 42A Report.

464. Lastly, we record that no recommendation is required in respect of the Horokiwi Quarries Limited's submission, given that it sought no specific relief.

5.5 Natural Features and Landscapes Chapter Introduction

465. In Section 3.2.4 of her Section 42A Report, Ms van Haren-Giles noted submissions from Meridian Energy Limited (**Meridian**)[309] which sought to amend the Introduction to make it clear that renewable electricity generation activities within all categories of natural features and landscapes are managed by the Renewable Electricity Generation Chapter. Meridian's submission pointed, in particular, to an existing statement indicating that policies and rules relating to infrastructure in ONFLs and SALs are located within the Infrastructure – Natural Features and Landscapes Chapter, implying that that chapter might not apply to infrastructure within the Ridgelines and Hilltops Overlay.

466. Ms van Haren-Giles noted that the Renewable Electricity Generation Chapter already contained a statement in its Introduction stating that the rules in overlay chapters do not apply to renewable electricity generation activities unless specifically stated within a renewable electricity generation rule or standard. She recommended that the Natural Features and Landscape Chapter Introduction be amended firstly to reference the Ridgelines and Hilltops Overlay in the existing statement about infrastructure, and to include a specific statement that would effectively operate as the inverse of the statement in the Renewable Electricity Generation Chapter.

467. In her evidence for Meridian, Ms Foster drew attention to the desirability of greater clarity as to the relationship between both the Coastal Environment Chapter and the Natural Features and Landscapes Chapter if, as the Reporting Officers for both suggested, the Renewable Electricity Generation Chapter was intended to be entirely stand-alone.

468. We have discussed the resolution of that issue vis a vis the Coastal Environment Chapter in Section 2.5 of our Report above.

[309] Submissions #228.80-81

469. For present purposes, it is sufficient to note that in her rebuttal evidence, Ms van Haren-Giles sought to clarify the inter-relationship between these different chapters, and recommended that how exactly the PDP be expressed to make that intention clear be resolved in the Stream 9 hearing of submissions on the Renewable Electricity Generation Chapter.

470. We discussed the issues with both Reporting Officers and with Ms Foster at the hearing. It seemed to us that there was a consensus as to what the provisions needed to achieve, but revising the drafting to capture that consensus was proving elusive. We asked both Reporting Officers to confer and suggest revised text in their Reply. They did so. Ms van Haren-Giles' recommendation was that the Natural Features and Landscape Introduction be amended to state:

> *"The Natural Features and Landscapes chapter provisions do not apply to Infrastructure located within Outstanding Natural Features and Landscapes, Special Amenity Landscapes, or Ridgelines and Hilltops (unless specifically stated within a INF-NFL rule or standard for example, as a matter of discretion).*
>
> *The Natural Features and Landscapes chapter provisions do not apply to renewable energy generation activities located within Outstanding Natural Features and Landscapes, Special Amenity Landscapes, or Ridgelines and Hilltops (unless specifically stated within a renewable electricity generation rule or standard for example, as a matter of discretion)."*

471. Because this matter was addressed in numerous hearing streams, we also considered it in the Wrap-Up hearing and the reporting officer made comprehensive recommendations including that each of the above paragraphs have an additional sentence on the end (to make the position completely clear) and that reference to the INF-NFL Sub-Chapter be deleted from the 'Other relevant District Plan provisions' section. We consider these additional changes are helpful (subject to a minor change of our own) and adopt those recommendations.

472. Lastly, we note that Ms van Haren-Giles recommended a further amendment to the Natural Features and Landscapes Introduction to clarify the distinction between the Ridgelines and Hilltops Overlay and what she described as 'ridgetops' identified in relation to the Upper Stebbings and Glenside West development area. This was consequential on the identification as part of the Stream 6 hearing of such an area. We asked Ms van Haren-Giles to consider whether the Plan would be more understandable if a term were used for the 'ridgetops' in development areas that was more easily distinguishable from the 'Ridgelines and Hilltops' Overlay. She agreed,

and suggested that reference should be made to 'Marshalls Ridge' instead. We note that this particular amendment did not find its way into the revised version of the chapter annexed to Ms van Haren-Giles' Reply. We also record that we heard submissions from Glenside Residents Association Inc and Mr John Tiley challenging the failure to identify Ridgelines and Hilltops Overlays within the Upper Stebbings and Glenside West Development Areas. We will address those submissions in the next section of our Report. Suffice it to say, we have accepted Ms van Haren-Giles reasoning. Accordingly, we recommend that the statement added to the Natural Features and Landscape Introduction read:

> *"Upper Stebbings and Glenside West development area – policies and rules relating to Marshalls Ridge are located in the Upper Stebbings and Glenside West Development Area Chapter*."

5.6 Ridgelines and Hilltops

473. Ms van Haren-Giles identified a number of submissions on the Ridgelines and Hilltops Overlay, starting with submission of Heidi Snelson et al[310] seeking to retain the protections afforded to ridgelines and hilltops as notified.

474. Seeking material amendments, she identified:

(a) A series of submissions[311] seeking amendment of the list of identified ridgelines and hilltops to include Marshalls Ridge and/or amending the plan maps to show Marshalls Ridge as an identified ridgeline;

(b) A number of submissions[312] seeking retention of the Ridgelines and Hilltops Overlay in the ODP unamended either generally or specifically with reference to Glenside West or Woodland Road/Prospect Terrace;

(c) The submission of John Tiley[313] seeking explanation of the selection criteria for the 18 listed ridgelines and hilltops;

(d) The submission of Council[314] seeking to remove the list of ridgelines and hilltops from the Introduction and to clarify that the overlay does not apply

[310] Submission #276.18
[311] Churton Park Community Association (#189.8 and #189.2), Heidi Snelson et al (#276.17 and #276.19) and John Tiley (#142.8 and #142.2)
[312] Barry Ellis (#47.2), Heidi Snelson et al (#276.36), Margaret Ellis (#48.2), Rowan Hannah (#84.2) and Glenside Progressive Association (#374.1-2), Johnsonville Community Association (#429.26-27)
[313] Submission #142.7
[314] Submission #266.94

to either the Lincolnshire Farm Development Area or the Upper Stebbings and Glenside West Development Areas; and

(e) The submission of Horokiwi Quarries seeking to clarify the policy and rule framework for ridgelines and hilltops, given the lack of identified values within the PDP, and to review the appropriateness of the ridgelines and hilltops within the PDP[315].

475. Addressing the Horokiwi Quarries' submission first, Ms van Haren-Giles provided a summary of the policy underpinnings of the Ridgelines and Hilltops Overlay, noting that it provided connections between higher value ONFLs and SALs across the district. Based on the Isthmus Reports examining the overlay as a contributor to the Section 32 Evaluation and Mr Anstey's evidence, she was satisfied that the overlay added value in that it contributes to Wellington's recognised landscape character and identity at a district scale.

476. Ms Whitney's planning evidence for Horokiwi Quarries Limited questioned the absence of any higher order policy directive supporting the overlay and any identification of the values of the specific ridgelines and hilltops. She had a specific but relatively minor recommendation in relation to Objective NFL-O3 that we will address in that context. When she appeared, she sought to reinforce these points.

477. For her part, Ms van Haren-Giles referred us to more general provisions in the RPS. Although she accepted that the RPS may not include any objectives or policies directing Council to identify or manage ridgelines and hilltops, she considered that the RPS recognised their value.

478. She also accepted Ms Whitney's point regarding the absence of any identified specific values for ridgelines and hilltops. Her position was that there is no requirement to do so.

479. While we accept that there is no specific higher order policy underpinning for the Ridgelines and Hilltops Overlay, it is firmly based in the recognition in Section 7(c) of the importance of the maintenance and enhancement of amenity values. We agree with Ms van Haren-Giles that the Isthmus Reports (and Mr Anstey's evidence) provide technical support for the overlay. We also considered Ms Whitney's concern about the absence of identified values somewhat misplaced. As Ms van Haren-Giles

[315] Submission #271.28

explained, the Ridgelines and Hilltops Overlay is intended to recognise broader amenity values rather than the value or values of any specific ridgeline or hilltop. Accordingly, we find the Ridgelines and Hilltops Overlay soundly based in principle.

480. We therefore recommend rejection of the Horokiwi Quarries' submission and turn to submissions on its extent.

481. Addressing the submissions of a number of parties seeking greater protection of Marshalls Ridge, Ms van Haren-Giles sought to differentiate between what she referred to as the 'ridgetop area' within the Upper Stebbings and Glenside West development area, and the Ridgelines and Hilltops Overlay. This was the subject of representations from Mr Blackett, for the Glenside Progressive Association and Mr Tiley. The former supported retention of the ODP overlay intact, which would remove the distinction Ms van Haren-Giles drew, and extend the overlay into areas we have recommended (in Stream 6) to have a Medium Density Residential Zoning. Mr Tiley, by contrast, argued that Marshalls Ridge should have a status separate from that of other ridges and have protection under the Development Area Chapter.

482. We discussed with Ms van Haren-Giles why the ridgeline area in the Upper Stebbings and Glenside West Development Area was treated differently to other ridgelines. She emphasised that this was a means both to provide greater protection that the Ridgelines and Hilltops Overlay provided, and to recognise the proposed residential zoning below the identified 'ridgetop'.

483. We accept Ms van Haren-Giles' reasoning, which essentially parallels the position Mr Tiley put to us, although he sought still stronger protection of a larger area. We think that it is important that the remaining ridgeline areas above the Upper Stebbings and Glenside West development area receive greater protection than is afforded by the overlay. Mr Tiley's desire for changes to the nature and spatial extent of that protection have already been addressed in the recommendations of the Stream 6 Hearing Panel.

484. Ms van Haren-Giles also recommended an extension of the Ridgelines and Hilltops Overlay to include 22 Alexandra Road, consequential on the Stream 2 Hearing Panel's recommendation that that site be rezoned Open Space, which was accepted by Council. She accordingly recommended acceptance of the further submissions of Roseneath Residents Association[316] and Matthew Wells, Adelina Reis and Sarah

[316] FS#49.1

Rennie[317]. We accept that recommendation as a logical consequence of our earlier recommendation.

485. As regards more general submissions seeking that the PDP does not remove the ridgeline protection as it appears in the ODP, Ms van Haren-Giles did not consider that there was such a change.

486. Lastly, she disagreed with the Johnsonville Community Association's submission[318] seeking that Woodland Road/Prospect Terrace be added to the list of ridgelines. She observed that this is a highly modified built environment already zoned MRZ. We agree with Ms van Haren-Giles' reasoning in that respect also and note that we did not hear from the Association on this occasion.

487. Turning to the suggestion in the Council's submission[319] for changes to the chapter introduction, we agree with Ms van Haren-Giles' view that there is no particular harm in listing the identified ridgelines and hilltops, particularly given that the ONFLs and SALs are separately listed in the Introduction and that the position in the Upper Stebbings and Glenside West Development Area might be addressed more simply in the part of the Introduction devoted to other relevant District Plan provisions. We have addressed the wording of that addition in Section 5.5 of our Report above.

5.7 Outer Green Belt

488. In her Section 42A Report, Ms van Haren-Giles next addressed the status of the Outer Green Belt. She noted that a number of submitters supported identification of the Outer Green Belt as an SAL in its own right although Forest and Bird expressed concern[320] that the Outer Green Belt was not listed in Schedule 11 and that there were therefore no identified values to reference in NFL-P3.

489. Ms van Haren-Giles advised that the incorporation of the Outer Green Belt as an SAL was the subject of a Council resolution that was not supported by the Boffa Miskell Landscape Evaluation that underpinned the chapter. In addition, the Council resolution was not accompanied by direction to amend any other part of the Plan, which meant that the Outer Green Belt was not listed in Schedule 11 and, as Forest and Bird have noted, does not have identified values. Ms van Haren-Giles noted that this in turn makes implementation of NFL-P3 "*difficult to achieve*". Her initial

[317] FS#50.1
[318] Submission #429.26
[319] Submission #266.94
[320] Submission #345.233

recommendation (in her Section 42A Report) was nevertheless that the Outer Green Belt be added both to the NFL Chapter Introduction and Schedule 11, but she noted that further investigation would be required as to what values could properly be ascribed to it (Forest and Bird did not provide evidence on that question in support of its submission).

490. In her rebuttal evidence, Ms van Haren-Giles reported on the results of her further investigations. She noted that the Outer Green Belt, as defined in the Outer Green Belt Management Plan, applies only to Council-owned land, which is subject to change, and that the Outer Green Belt SAL is a very large tract of land with varying topography and landscape character. As such, it does not necessarily combine to make a 'distinctive' landscape as the RPS requires. She noted, however that some distinctive landscapes meeting the SAL criteria that form part of the Outer Green Belt are already identified (Mount Kaukau and Wrights Hill/Makara Peak).

491. Ultimately, she found that there was no evidence to support the notified extent of the Outer Green Belt SAL and she did not support gathering of evidence to backfill Schedule 11 with identified values.

492. Ms van Haren-Giles also noted that no submitter sought to remove the Outer Green Belt SAL. There was therefore no scope to remove it. She therefore recommended that it be retained, subject to the need for further investigation and evaluation.

493. Clearly the situation is unsatisfactory. We asked Mr Anstey for his technical view and he agreed with Boffa Miskell's assessment, that the Outer Green Belt as a whole is not an SAL.

494. We discussed with Ms van Haren-Giles how NFL-P3 could be applied to the Outer Green Belt given that it focusses on maintaining "*the identified landscape values and characteristics",* and there are none. Ms van Haren-Giles' suggestion that this situation makes the policy difficult to achieve is, in our view, something of an understatement.

495. Because there are no identified values, identification of the Outer Green Belt as a SAL is in practice illusory. In terms of the balance of costs and benefits, there are no benefits to weigh against the additional costs of greater regulation over any development in the Outer Green Belt, because the Plan does not provide any direction as to how the Outer Green Belt SAL should be managed.

496. We asked Ms van Haren-Giles to advise us further on the scope to delete the Outer Green Belt SAL and in Reply, she pointed out to us Dr Layton's submission[321] seeking that the SAL landscape overlays be removed from the PDP.

497. In the light of Ms van Haren-Giles confirmation that the Outer Green Belt SAL does not meet the RPS criteria, combined with Mr Anstey's evidence that it does not qualify as an SAL, we recommend that Dr Layton's submission be accepted in part and the Outer Green Belt SAL removed, save for those sub areas separately identified as SALs in their own right.

498. If the Council wants to take forward its resolution and have the Outer Green Belt recognised as an SAL, we recommend that it instruct the necessary landscape analysis to see if, notwithstanding Boffa Miskell and Mr Anstey's views to the contrary, it meets the RPS criteria for identification of a SAL. That exercise would also enable Council to fill in the gap in Schedule 11 by identifying the values of such an SAL so that the Plan could then apply to it as intended. In our view, however, such a step would necessarily need to be undertaken by way of a future Plan change given the absence of any evidence to support an SAL notation at present.

5.8 Objectives

499. Ms van Haren-Giles noted only submissions in support of NFL-O1. Accordingly, no evaluation of that objective is required.

500. Turning to NFL-O2, as notified, it read:

> *"The characteristics and values and special amenity landscapes are maintained and, where practicable, enhanced."*

501. Putting aside submissions that have already been addressed, the only submission we need consider at this point is that of Forest and Bird[322], which sought to delete the reference to practicability. Ms van Haren-Giles noted that Policy 28 of the RPS references enhancement of SAL landscape values, but does not require that outcome. Insofar as SALs are ultimately referenced back to Section 7(c) of the RMA, that is framed more generally with reference to amenity values. In Ms van Haren-Giles view the qualification of NFL-O2 recognises that enhancement may not always

[321] Submission #164.8
[322] Submission #345.229

be possible or viable, particularly given that SALs tend to be more modified environments already subject to existing activities.

502. We did not hear from Forest and Bird in support of its submission, and we agree with Ms van Haren-Giles' reasoning. Accordingly, we recommend retention of Objective NFL-O2 as notified.

503. Objective NFL-O3 relates to ridgelines and hilltops. As notified it read:

> *"The natural green backdrop provided by identified ridgelines and hilltops is maintained."*

504. Ms van Haren-Giles noted submissions on it of:

(a) Forest and Bird[323] and WCC Environmental Reference Group[324], supporting the objective as notified;

(b) Horokiwi Quarries Ltd[325], seeking to clarify the appropriateness of ensuring the natural green backdrop to the city on private land and to review the appropriateness of the Ridgelines and Hilltops Overlay within the PDP;

(c) John Tiley[326]; and Churton Park Community Association[327], seeking to include reference to the protection of the amenity value of associated open space, and opportunities to create continuity of open space;

(d) Meridian[328], seeking to delete reference to a "*natural green*" backdrop and to recognise the presence of regionally significant infrastructure, including in particular the wind turbines Meridian operates on the ridgelines and hilltops west of the urban area of the City.

505. We have already addressed the Horokiwi Quarries' submission and thus do not consider it further.

506. Ms van Haren-Giles agreed with Mr Tiley and the Churton Park Community Association that the continuity of open space provided by ridgelines and hilltops is an important outcome to recognise. She referred us to the initial Isthmus review dated 8

[323] Submission #345.230
[324] Submission #377.147
[325] Submission #271.30
[326] Submission #142.9
[327] Submission #189.9
[328] Submissions #228.82-83

April 2020 supporting the Section 32 Evaluation to this effect. She therefore recommended amendment of the objective to reference the continuity of open space.

507. Ms van Haren-Giles recommended that the Meridian submission be rejected on the basis that the needs of renewable electricity generation are addressed in the Renewable Electricity Generation Chapter and in the INF-NFL sub-chapter. She did, however, agree with Meridian's relief to the extent that it suggested the addition of reference to enhancement where practicable.

508. In her evidence for Meridian, Ms Foster continued to support Meridian's submission. She considered it artificial to ignore the turbines in this objective.

509. Responding in rebuttal, Ms van Haren-Giles suggested that it was unnecessarily specific to mention Meridian's interests in NFL objectives. She noted that there were a number of other existing structures and infrastructure such as Horokiwi Quarry that are also located within the NFL overlays. In her view, it was also neither efficient nor effective to duplicate renewable energy generation or infrastructure in the NFL Chapter when those outcomes are expressed in the respective chapters concerned.

510. We note that Ms Whitney for Horokiwi Quarries expressed concern that the wording of this objective suggested a focus on a single space and that spaces needed to be joined. Accordingly, she suggested that the objective refer to continuity of open spaces in the plural. Ms van Haren-Giles did not agree with that amendment because, in her view, the continuum of open space is an important component of the Ridgelines and Hilltops Overlay.

511. We discussed these issues with Ms van Haren-Giles when she appeared and suggested to her that while provision for renewable electricity generation and infrastructure is addressed in different chapters, because this objective did not acknowledge the existence of those features in the landscape, the outcome was effectively unachievable. We asked if perhaps the objective should talk about the desired outcome in terms of relative continuity.

512. In her Reply, Ms van Haren-Giles considered that this does not add any value to the objective. We disagree. The essential problem is the objective seeks to set out the desired outcome. In places where significant infrastructure already exists, be it Meridian's wind turbines, Transpower's National Grid structures or the quarry at Horokiwi, it will be difficult if not impossible to achieve that continuity of open space, and it would be illusory if the objective were to suggest that outcome. We agree with

Ms van Haren-Giles, however, that existence of competing elements does not remove the overwhelming sense of a natural green backdrop provided by the areas of overlay and do not see the same need to qualify that.

513. We do not think Ms Whitney's solution of referring to open spaces in the plural solves the problem. We think that is altogether too subtle a change to convey the suggested meaning. We accordingly recommend that the notified objective be amended to read:

> *"The natural green backdrop and relative continuity of open space provided by identified ridgelines and hilltops is maintained and enhanced where practicable."*

5.9 Policies

514. NFL-P1 relates to identification of ONFLs and SALs. The only submissions seeking substantive amendment to it were those of Mr John Tiley[329] and Churton Park Community Association[330] seeking to include reference to ridgelines and hilltops.

515. Ms van Haren-Giles did not support that recommendation. She noted that this policy seeks to give effect to Policies 25 and 27 of the RPS, whereas ridgelines and hilltops have not been identified by way of an assessment using RPS prescribed criteria and are not listed in the Schedules. We concur that there appears little value in making reference to ridgelines and hilltops in this context. The identified ridgeline and hilltops are set out in the Introduction to the NFL Chapter and reproducing that information in a schedule, without identification of related values (for which we have no evidence), would seem to serve little purpose.

516. We therefore recommend that these submissions be rejected. We note that in the Wrap-Up hearing, the reporting officer picked up a cross-referencing error that we recommend be corrected.

517. Turning to NFL-P2, this relates to use and development within the Ridgelines and Hilltops Overlay. As notified it read:

> *"Enable use and development within identified ridgelines and hilltops where:*
>
> 1. *The activity is compliant with the underlying zone provisions;*
> 2. *There is a functional or operational need to locate them within the ridgeline and hilltop area; and*

[329] Submission #142.10
[330] Submission #189.10

3. *Any adverse effects on the visual amenity and landscape values can be mitigated."*

518. Ms van Haren-Giles identified the following submissions seeking a material change to this policy:

(a) Meridian[331], seeking deletion of the second and third criteria and insertion of a new criteria that refers to avoidance, remediation or mitigation of adverse effects on visual amenity and landscape values and recognises the function and operational needs of regionally significant infrastructure;

(b) Forest and Bird[332], seeking to make the policy more restrictive by amending the opening words to read "only enable…";

(c) Horokiwi Quarries[333], seeking to delete the first criterion and to reference the third criterion to relate to significant adverse effects;

(d) Parkvale Road Limited[334], seeking to make the first and second criteria alternatives to operate in conjunction with the existing third criterion.

519. Ms van Haren-Giles did not consider the amendments suggested by Meridian to be either necessary or appropriate, noting her recommendations that text be added to clarify that the NFL Chapter provisions are not relevant to renewable electricity activities or infrastructure. As above, this was the subject of extensive discussion at the hearing and while her written evidence supported Meridian's submission, Ms Foster advised when she appeared that with the clarification that nothing in the NFL Chapter would apply to renewable electricity generation, her concerns fell away.

520. As regards the Forest and Bird submission, Ms van Haren-Giles noted that the existing wording aligned with the enabling permitted activity rule NFL-R2, following the general style of the PDP. She did not support the suggested amendment.

521. Ms van Haren-Giles likewise did not agree with the Horokiwi Quarries' submission. She did not consider the policy unclear in its application, noting that the general approach was premised on the Permitted Activity provisions within underlying zones adequately managing adverse effects, but where the underlying provisions are not complied with, the policy comes into play as a matter of discretion. She also

[331] Submissions #228.84-85
[332] Submission #345.232
[333] Submission #271.31
[334] Submission #298.6

considered the suggested qualification of the third criterion to reference significant adverse effects set an appropriately high threshold for acceptable effects. Ms Whitney advised acceptance of that recommendation on behalf of Horokiwi Quarries Limited.

522. Lastly, she disagreed with the submission of Parkvale Road Limited. In her view, all three criteria of the policy were relevant.

523. Ms van Haren-Giles reconsidered that view, in light of Mr Lewandowski's planning evidence for the submitter indicating agreement with the relief sought.

524. We discussed the end result with Mr Lewandowski suggesting that the combination of conjunctives between the different criteria would be clearer if what was notified as the third criterion (focussing on mitigation) be shifted to be first. Mr Lewandowski agreed with that view and we asked Ms van Haren-Giles to think about it further and advise her position in Reply.

525. At the hearing, we asked Ms van Haren-Giles what the purpose of a criterion focussing on functional and operational need was in this context. Her immediate reaction was that it served no purpose and could be deleted. We also queried what the extent of mitigation the policy was directing. Ms van Haren-Giles expressed the view that scope was an issue in relation to any amendment seeking to address that question. We asked her to consider the need for clarification as to the extent of mitigation required.

526. Ms van Haren-Giles' response in Reply was that:

> *The mitigation criterion should focus on whether adverse effects are mitigated, not whether they 'can be' mitigated;*
>
> *The criterion focussing on function and operational need was indeed redundant, because that was a matter relevant to infrastructure, which has been carved out of the Natural Features and Landscapes Chapter.*

527. Ms van Haren-Giles did not address our question about whether some guidance was required as to the extent of mitigation, and recommended deletion of the second notified criterion, amendment to the third criterion as above, and expressing the remaining two criteria as alternatives.

528. We accept Ms van Haren-Giles' reasoning as set out in her Reply, but we consider that further amendment is required to address the last point, even if only generally. Accordingly, we recommend that the notified policy be amended to read:

> ***Use and development within ridgeline and hilltops***
>
> *Enable use and development within identified ridgelines and hilltops where:*
>
> 1. *The activity is compliant with the underlying zone provisions; ~~and~~or*
> 2. *~~There is a functional or operational need to locate within the ridgeline and hilltop; and~~*
>
> *Any adverse effects on the visual amenity and landscape values ~~can be~~ <u>are appropriately</u> mitigated.*

529. Policy NFL-P3 relates to use and development in SALs outside the Coastal Environment. Ms van Haren-Giles noted, among submissions seeking substantive change to the policy, that of Forest and Bird[335] seeking to qualify the initial provision for use and development of the chapeau, and to direct that maintenance and enhancement of the quality to the environment be ensured, together with those of Meridian[336] seeking specific provision for the Brooklyn wind turbine.

530. Ms van Haren-Giles did not support the specific amendment suggested by Forest and Bird but did recommend reframing of the initial words from "*provide for"* to "*only allow".* That was, in her view, more consistent with the Restricted Discretionary Activity status of the associated rule (NFL-R3). She explained that this was the style that had been applied throughout the Plan.

531. Ms van Haren-Giles did not support Forest and Bird's submission seeking an additional clause referring to the quality of the environment, she did not consider that either necessary or appropriate, recording that Policy 28 of the RPS does not require enhancement of landscape values within SALs. She also noted the potential uncertainty a reference in this context to the quality of the environment would have, given the focus of the policy and the accompanying schedule on the values of the identified SALs.

532. Lastly, Ms van Haren-Giles did not accept Meridian's suggested amendments. Again, she did not consider them either necessary or appropriate. As regards the latter, Ms

[335] Submission #345.233
[336] Submissions #228.86-87

Foster advised that her concerns as to the wording of this policy would fall away, if, as noted above, it were clear that the chapter does not apply to renewable electricity generation activities.

533. Discussing that policy (and its companion NFL-P4) related to use and development within SALs inside the Coastal Environment, Ms van Haren-Giles considered that reference might be made to enhancement where practicable. She returned to this issue in her Reply advising that there was both merit, and in her view, scope (from Forest and Bird's submission).

534. We agree with Ms van Haren-Giles reasoning in relation to NFL-P3 and, in relation to the last issue, NFL-P4.

535. More specifically in relation to NFL-P4, the only substantive submission seeking amendments that we need address is that of Forest and Bird[337] seeking similar relief as it had for NFL-P3.

536. In relation to that submission, Ms van Haren-Giles agreed that the chapeau to the policy should have a stronger directive. Drawing on the recommendation in the Earthworks Section 42A Report in relation to similar submission points from Forest and Bird, she recommended that an avoid approach was more consistent with the NZCPS. At the hearing, we queried the difference in approach as between NFL-P3 and NFL-P4 in this regard. Ms van Haren-Giles remained comfortable with the differences that had been drawn between them based on the NZCPS.

537. Forest and Bird also sought deletion of the reference to 'identified' landscape values.

538. Ms van Haren-Giles did not accept the broadening of focus Forest and Bird had suggested to all values. She referenced the direction of the RPS, noting that the values and characteristics identified for each SAL had been subject to substantial evaluation. Removing reference to the identified values would in her view be neither an efficient nor effective approach. She noted also that Forest and Bird had not provided a Section 32AA evaluation with its submission. We concur with Ms van Haren-Giles' reasoning in this regard. The whole point of identifying values of landscapes is to enable those values to be relied on in the consent context, thereby avoiding the need for endless re-litigation of what the values of any particular SAL might be.

[337] Submission #345.234

539. NFL-P5 relates to use and development within ONFLs outside the Coastal Environment. Ms van Haren-Giles noted a Forest and Bird submission[338] seeking parallel relief to that sought in relation to NFL-P4 which we have discussed above.

540. Meridian also submitted on this policy[339] seeking to frame the chapeau more positively ("*allow for"* rather than "*only allow for")* and to delete the direction that activities must be designed to protect the identified landscape values and characteristics.

541. Ms van Haren-Giles relied on the same reasoning as in relation to NFL-P4. In relation to the specific point raised by Forest and Bird about the need to consider biodiversity values, her view was that this was best done within the framework of the ECO Chapter. As regards the submissions of both Forest and Bird and Meridian on the chapeau, Ms van Haren-Giles emphasised the consistency of approach across the PDP. In her evidence for Meridian, Ms Foster suggested that Ms van Haren-Giles response to its submission more generally (that the REG Chapter managed effects of renewable electricity generation activities within ONFLs) overlooked her point that the absolute direction of clause 2 seemed inappropriate and not mandated by any higher order policy document.

542. We asked Ms van Haren-Giles to consider in her Reply whether the second criterion, to which Ms Foster had taken exception was effectively covered by the first criterion. She pointed to the consistency of style in the policies of the chapter and expressed herself comfortable with the end result.

543. For our part, we consider Ms Foster's reasoning questionable. While, as she observed, Section 6(b) of the RMA qualifies the reference to protection of ONFLs by reference to inappropriate subdivision, use and development, it has been clear since the Supreme Court's decision in *EDS v New Zealand King Salmon Company Limited*[340] that the test of appropriateness in this regard references back to the identified values of the landscape or feature concerned, and that the only appropriate subdivision use and development is one that protects those values.

544. It follows that we concur with Ms van Haren-Giles recommendation that notified NFL-P5 not be changed.

[338] Submission #345.235
[339] Submissions #228.88-89
[340] [2014] NZSC 38 at [101] and [105]

545. NFL-P6 relates to use and development within ONFLs within the coastal environment.

546. Ms van Haren-Giles noted submissions of Forest and Bird[341] and Meridian[342]. Forest and Bird's submission sought to amend the chapeau in a similar manner to that which it had proposed in relation to other policies, be more directive in relation to avoidance of adverse effects and add the same criterion as is set out in NFL-P5.

547. Meridian sought to focus the policy on significant adverse effects and to provide that other effects might be avoided, remedied or mitigated. As regards the latter, Ms van Haren-Giles drew attention to the unqualified nature of the direction in NZCPS Policy 15(a). Ms Foster accepted that point and did not pursue the issue further. We agree. As Ms Foster acknowledged, Meridian's submission seems to have been based on a misreading of the NZCPS.

548. Turning to Forest and Bird's submission, Ms van Haren-Giles considered that the re-wording suggested would weaken the NZCPS direction. As regards the suggested deletion of reference to identified values, she took the same position as has been discussed above. We agree with Ms van Haren-Giles reasoning in this regard on all points except one. The notified policy uses the phraseology "*can be avoided"*. We think that the amendments suggested by Forest and Bird, to state that adverse effects "*are avoided*" is both clearer and more consistent with the NZCPS policy on the point.

549. Accordingly, we recommend that the notified policy be amended to read:

> "*Avoid use and development within outstanding natural features and landscapes within the coastal environment unless any adverse effects on the identified values ~~can be~~are avoided."*

550. NFL-P7 relates to mining and quarrying activities in ONFLs and SALs. Ms van Haren-Giles noted two submissions on it. The first, that of Forest and Bird[343], sought that the provision for existing operations be qualified by a reference to the objectives and policies of the Plan. The second, that of Horokiwi Quarries Limited[344], sought to amend both the heading and the policy to expand its scope to include ridgelines and hilltops.

[341] Submission #345.236
[342] Submissions 228.90-91
[343] Submission #345.237
[344] Submissions #271.35-36

551. Ms van Haren-Giles considered that the Forest and Bird amendment was unnecessary and inconsistent with the drafting style of the PDP. We agree with her view that the Plan is to be read as a whole. Policies do not need to be qualified with reference to the objectives and policies of other parts of the Plan.

552. We agree also with Ms van Haren-Giles acceptance of the Horokiwi Quarries point and her recommended changes to insert reference to ridgelines and hilltops. She noted that this would align with the recommendation she had made to NFL-R5. We therefore adopt Ms van Haren-Giles' recommended amendments.

553. NFL-P8 relates to plantation forestry within ONFLs and SALs. The only submission on it seeking substantive amendment, that of Forest and Bird[345] sought to expand the policy direction to avoid extension of existing plantation forestry in ONFLs. Ms van Haren-Giles considered that submission had merit, as do we. We did have one concern, related to the unintentional extension of plantation forestry through the spread of wilding pines. We asked Ms van Haren-Giles to consider that and in her Reply, she suggested a further amendment so that what is avoided is the "*planned"* extension of new plantation forestry.

554. We agree with that change also. Accordingly, we adopt Ms van Haren-Giles recommended amendments to this policy.

555. NFL-P9 relates to restoration and enhancement works. The only substantive submission on it, again from Forest and Bird[346] sought that reference be added to fencing off areas of natural regeneration from stock. Ms van Haren-Giles considered that this submission had merit. Among other things, it would give effect to NRP Policy P108. We concur but we did have one issue with Ms van Haren-Giles suggested redrafting. That related to punctuation. Considering the issue in Reply, Ms van Haren-Giles agreed that deletion of a comma she had recommended in her Section 42A Report would make the end result clearer. We concur, and on that basis, we adopt the recommended revised policy wording contained in Ms van Haren-Giles' Reply, together with correction of a cross-referencing error noted in the Wrap-Up Section 42A Report.

[345] Submission #345.238
[346] Submission #345.239

5.10 Rules

556. NFL-R1 is a permitted activity rule for restoration and enhancement activities in ONFLs, SALs and ridgelines and hilltops. Ms van Haren-Giles noted two substantive submissions seeking amendments. The first, that of Nga Kaimanaaki o te Waimapihi[347] sought to add guidelines restricting roaming pets. The second submission, from Zealandia[348], sought to add explicit reference to ongoing exploration work at Zealandia undertaken by the Karori Sanctuary Trust.

557. As regards the former, Ms van Haren-Giles' initial response in her Section 42A Report was to suggest that the restriction to pets is not a District Plan matter. We thought that view questionable as a matter of law in light of the Environment Court's decision in *Western Lea Limited v Hamilton City Council*[349]. Ms van Haren-Giles' response in Reply was to refer us to the Wellington City Council Animal Bylaw 2024. She was therefore of the view, which we accept, that the PDP does not need to place controls on pets. As regards the Zealandia submission, Ms van Haren-Giles agreed with the submitter's point and recommended that its relief be accepted. We accept her reasoning in that regard also.

558. Lastly, we note that in her rebuttal evidence, Ms van Haren-Giles recommended a general change for rules notified with provisions suggesting compliance was based on whether a particular state of affairs "*cannot be achieved"*. Consistent with changes made in previous hearings, she recommended that the wording be "*is not achieved*", categorising this as a minor and inconsequential amendment. We agree noting that NFL-R1 is the first rule with this wording change. In our view, the more direct language states what the Plan was intended to achieve, and will avoid future arguments.

559. NFL-R2 is a permitted activity rule operating as a catchall within the Ridgelines and Hilltops Overlay, where activities are not otherwise listed as permitted, restricted discretionary, or non-complying. Ms van Haren-Giles noted John Tiley[350], Churton Park Community Association[351] and Forest and Bird[352] as expressing concern about the implications of such a rule.

[347] Submission #215.3
[348] Submission #486.4
[349] [2020] NZEnvC 189
[350] Submission #142.11
[351] Submission #198.11
[352] Submissions #345.241-242

560. In her Section 42A Report, Ms van Haren-Giles expressed comfort with the logic underpinning this rule, noting that the NFL Chapter alone does not determine what activity is appropriate to locate in the Ridgelines and Hilltops Overlay. Rather, this is determined by the provisions of the underlying zone, and district wide provisions. At the hearing, however, she tabled a suggested rule amendment which would have the effect that this rule would only apply to rural activities in the General Rural Zone or Large Lot Residential Zone, activities in the Natural Open Space Zone, and would make Permitted Activity status dependent on whether compliance can be achieved with the relevant permitted activity standards of the underlying zone. She suggested that specific reference to district wide provisions be deleted.

561. When she appeared for Horokiwi Quarries Limited, Ms Whitney expressed concern about the amendments Ms van Haren-Giles had tabled, noting that as a result of the rule referring to specific zones, the chapter would render it unclear what the position was within the Quarry Zone.

562. We asked Ms van Haren-Giles to address that question in her Reply and she noted that the amendment she had suggested would have unintended consequences. She accepted, in particular, that Ms Whitney had a point. She also noted that the amendment would result in conservation and recreation activities being categorised as restricted discretionary activities. She therefore reversed out the specific reference to zones that she had previously suggested leaving the rule applying to all zones and stating:

> *Activity status:* ***Permitted***
>
> *Where:*
>
> *a.Compliance can be ~~is~~ achieved with the relevant permitted activity rules for land use activities in the underlying zone ~~provisions and district wide provisions~~.*
>
> *Activity status:* ***Restricted Discretionary***
>
> *Where:*
> *a. Compliance with the requirements of NFL-R2.1.a ~~cannot be~~ is not achieved.*
>
> *Matters of discretion are:*
>
> 1 *The matters in NFL-P2.*

563. We agree with the end result. We agree in particular that the reference in the notified rule to district wide provisions is unnecessary. Those provisions will apply irrespective, and inserting reference to them in one rule raises questions as to whether the emission of similar references in other rules has substantive effect.

564. Accordingly, we adopt Ms van Haren-Giles' final revision to this rule, as above.

565. NFL-R3 is a catchall for activities within SALs not otherwise listed as permitted, restricted discretionary or non-complying. Unlike NFL-R2, however, the activity status is Restricted Discretionary.

566. The only substantive submission Ms van Haren-Giles noted was that of Forest and Bird[353], seeking that the matters of discretion refer relevant ECO and NFL policies directed at maintenance of biodiversity outside SNAs.

567. Ms van Haren-Giles noted that the relevant provisions are in other district wide rules (the ECO Chapter and the Coastal Environment Chapter) and that those rules would be relevant, irrespective of what the NFL rule says. Accordingly, she regarded the suggested amendment as unnecessary. We did not hear from Forest and Bird to provide us with any contrary reasoning, and we concur with Ms van Haren-Giles. We therefore recommend that NFL-R3 remain as notified.

568. The only submission on NFL-R4 was in support of the rule as notified. No further evaluation is therefore required.

569. NFL-R5 provides that operation of existing quarrying and mining activities within SALs is a permitted activity.

570. Ms van Haren-Giles noted Forest and Bird[354] as opposing Permitted Activity status (it sought Restricted Discretionary Activity status) and seeking that as for NFL-R3, matters of discretion cross reference ECO and NFL Policies aimed at maintenance of biodiversity outside SNAs. Further, Horokiwi Quarries[355] sought to amend the rule title to include ridgelines and hilltops.

571. Ms van Haren-Giles agreed with Horokiwi Quarries' submissions and disagreed with that of Forest and Bird. In relation to the matters of discretion, she had already addressed that in relation to NFL-R3 and we agree with her reasoning in this context

[353] Submission #345.243
[354] Submission #345.245
[355] Submissions #271.37-38

also. In relation to rule status issues, Ms van Haren-Giles referred us to the Section 42A Report which explained that the Plan had drawn a distinction between ongoing operation of existing activities (Permitted) and extensions (Discretionary). We agree with that reasoning. The only issue we had was whether, consistent with the Section 32 Evaluation, the heading should refer to the 'continuation' of existing activities rather than its operation. We asked Ms van Haren-Giles that question and she agreed that the former was more appropriate. That is, accordingly, the only amendment that we recommend to the version of the rule Ms van Haren-Giles tabled with her Reply.

572. NFL-R6 is the rule that is specific to extension of existing quarrying and mining activities within SALs.

573. Forest and Bird[356] sought that the activity status be shifted from Discretionary to Restricted Discretionary and that matters of discretion should reference relevant ECO and NFL policies aimed at maintenance of biodiversity outside SNAs. Ms van Haren-Giles did not agree with the suggested amendments. In her view, Restricted Discretionary status would limit the assessment to identified matters. We agree. In the case of SALs, it would appear somewhat odd if the only matters that could be considered were those related to biodiversity, and that the other landscape values causing an SAL to be classified as such are deemed irrelevant.

574. As with previous rules, we agree also that the Coastal Environment and ECO Chapters should be left to manage the values that Forest and Bird are seeking to protect, rather than expand the scope of the NFL rules.

575. We recommend, therefore, that NFL-R6 remain in the form notified.

576. NFL-R7 relates to new quarrying and mining activities within SALs. The only submissions on this rule sought to retain it as notified. Accordingly, no further evaluation is required.

577. The same is the case for the next two rules, NFL-R8 relating to extension of existing quarrying and mining activities, new quarrying and mining activities and new plantation forestry within ONFLs and NFL-R9 relating to maintenance, repair or demolition of existing buildings and structures within ONFLs, SALs and ridgelines and hilltops.

[356] Submission #345.246

578. NFL-R10 relates to the construction of, and alterations and additions to buildings and structures within ridgelines and hilltops. As notified, it provided that such activities were permitted as long as compliance can be achieved with the underlying zone provisions and districtwide provisions. Non-compliance defaulted to restricted discretionary status with matters of discretion limited to NFL-P2 and "*the operational and function [sic] need to locate within the ridgeline and hilltop area".* In relation to this rule, Ms van Haren-Giles noted first the submission of Barry Ellis[357] seeking that data should be provided by Council to justify filling in gullies and building over natural streams and springs. She noted that this submission relates to Glenside Valley, the development of which had been addressed in her Stream 6 Section 42A Report. We did not hear from Mr Ellis, and it was not obvious to us how this particular submission point related to the rule in issue. Accordingly, we agree with Ms van Haren-Giles reasoning.

579. The second submission, from Parkvale Road Limited[358] sought that specific reference to operational or functional need be deleted since it was already addressed in the relevant policy.

580. We agree with that reasoning, while noting that the amendments Ms van Haren-Giles recommended and we have accepted to NFL-P2 means that it no longer refers to operational or functional needs as a relevant criterion. However, the logic, as above, to that deletion was that this criterion is only relevant to infrastructure, which the Plan envisages being managed through the Infrastructure Chapter.

581. When she appeared, however, Ms van Haren-Giles tabled a suggested amendment to this rule which would restrict permitted activity status to the Natural Open Space Zone (provided compliance can be achieved with the relevant permitted activity standards) and make the activity restricted discretionary in all other zones. A new matter of discretion was inserted worded:

> *"Buildings and structures, including access, are sited and designed in ways that avoid being visually obtrusive including by:*
>
> (a) *Ensuring visual continuity is achieved on the upper slopes up to the apex of the ridgeline or hilltop; and*
>
> (b) *Minimising skyline effects and visibility of buildings and structure through construction, design and landscaping."*

[357] Submission #47.1
[358] Submissions #298.7-8

582. When she appeared, Ms Whitney expressed concern about the revised wording of this rule on behalf of Horokiwi Quarries Limited, noting that it had removed the permitted pathway for activities within the Quarry Zone and had inserted matters of discretion that do not line up with the relevant policies. She also queried some of the wording – the reference to visually obtrusiveness, and the lack of clarity about what might be considered an 'upper slope'.

583. We asked Ms van Haren-Giles to address Ms Whitney's concerns in Reply and she provided us with a detailed discussion of the point. Among other things, she explained that scope for the amendments she was suggesting was derived from another of Mr Ellis' submissions[359] and submissions from Glenside Progressive Association[360] who sought that the protections afforded to ridgelines and hilltops in the ODP be retained.

584. Ms van Haren-Giles also provided context for the suggested changes, noting the rationale for deletion of reference to district wide provisions (they apply anyway) and that her primary concern was that while a 400m^2 residential building meeting the Permitted Activity standards in the GRUZ might be entirely appropriate in most cases, it was not necessarily appropriate on the top of the prominent ridgeline. She considered that same was true of Permitted Activity buildings meeting the standards of the Large Lot Residential Zone and the Quarry Zone.

585. Addressing Ms Whitney's concerns, Ms van Haren-Giles agreed that her initial draft was too directive, referencing an approach of avoidance in relation to visual obtrusiveness. She recommended an approach of minimisation.

586. We agree generally with Ms van Haren-Giles reasoning, but we have two issues with her suggested reformulation of the rule (as per her Reply). The first is, as previously noted, there are areas of MRZ within the Ridgelines and Hilltops Overlay. Shifting the rule from Permitted Activity status to Restricted Discretionary status makes the Medium Density Residential Standards provided for in the Act less enabling than would otherwise be the case. This can only be done to reflect a qualifying matter that has been evaluated in accordance with the RMA. That has not been done. Accordingly, we think that the rule has to continue to apply a Permitted Activity status to the MRZ (where applicable). The second point we have relates to the language of

[359] Submission #47.2
[360] Submissions #374.1-2

Ms van Haren-Giles' suggested matters of discretion in two places. We think it can be improved with some minor amendments.

587. We do not have the same problem that Ms Whitney had about a matter of discretion focussed on visual obtrusiveness. We think it is clear enough what that means. We acknowledge that reference to 'upper slopes' is imprecise, but this is in the context of a matter of discretion, and what slopes are relevant in relation to buildings compromising visual obtrusiveness will vary from case to case.

588. Lastly, we recommend a minor grammatical change to the heading of this rule.

589. In summary, we therefore recommend revision of Ms van Haren-Giles suggested wording in the manner set out in Appendix 1 to this report, in order to address the issues we have identified.

590. NFL-R11 governs construction of or alterations and additions to buildings and structures within SALs. As notified, it provided that the activity was Permitted in all zones subject to compliance with NFL-S1, which specifies a maximum height and controls over colours, defaulting to Restricted Discretionary activity status. Ms van Haren-Giles noted two submissions in relation to it. Forest and Bird[361] sought its deletion. It opposed permitted activity status in SALs because of the failure to consider biodiversity and landscape values, particularly in the Coastal Environment. A second submission[362] sought amendment to the matters of discretion in line with the relief sought in relation to other rules and discussed above.

591. Secondly, Ms van Haren-Giles noted Kilmarston's submission[363] suggesting that an 11 metre height limit would be appropriate within the MRZ to support the strategic direction of the PDP.

592. In relation to Forest and Bird's submissions, Ms van Haren-Giles largely relied on the reasoning she had set out in relation to earlier rules. In particular, she considered that biodiversity factors had been considered when evaluating and classifying SALs, and that where relevant, are part of the identified values that need to be considered. Where they are not already identified, she considered that their management should be left to the ECO and Coastal Environment Chapters.

[361] Submission #345.251
[362] Submission #345.252
[363] Submission #290.40

593. We largely accept Ms van Haren-Giles reasoning, but we did wonder whether her confidence that NFL-S1 would restrict buildings and structures to a scale that would not compromise the characteristics and values of any SAL was well founded given the absence of any standard related to gross floor area (**GFA**). We put that to her and Ms van Haren-Giles agreed in principle, but said that she would need to consider whether there was scope to make such a change. We asked her to consider it further in Reply.

594. In her Reply, Ms van Haren-Giles confirmed her view that there was merit to a GFA standard to enable small scale buildings and structures such as playgrounds and sheds, while ensuring consideration of effects on visual amenity and landscape values for larger scale buildings and structures. She suggested that 50m^2 was an appropriate permitted GFA within SALs, noting that 82% of the notified SAL comprises publicly owned land, primarily zoned NOSL, within which a GFA standard of 30m^2 applies.

595. As regards scope, Ms van Haren-Giles pointed out to us that Forest and Bird's submission[364] sought deletion of the Permitted Activity rule, and also the submissions of John Tiley[365] and Churton Park Community Association[366] seeking to introduce a GFA standard into NFL-S1.

596. We agree with Ms van Haren-Giles that there is both scope and merit in amending Rule NFL-R11 to restrict the GFA of any Permitted buildings.

597. In light of her advice about the Permitted standard for floor area within the NOSZ, we consider that this provides a strong guide as to what would be appropriate in SALs. In our view, 30m^2 is sufficient for the kind of small sheds and playgrounds that Ms van Haren-Giles sought to make provision for, and we recommend that it be the standard adopted (in NFL-S1), rather than the 50m^2 she recommended.

598. Turning to Kilmarston's submission, we have already discussed the submitters concern about the application of the SAL to Kilmarston's own land that is zoned MRZ. That concern is addressed by our recommended rezoning of the land (refer Section 5.4 above). The more general issue of inconsistency with the requirements of the NPSUD drawn to our attention by Kilmarston remains as regards those isolated other

[364] Submission #345.251
[365] Submission #142.12
[366] Submission #189.12

areas of residential zoned land within an SAL overlay that Ms van Haren-Giles identified.

599. As she confirmed, Council has not evaluated any provisions that make the MRZ less enabling than is provided for in the Medium Density Residential Standards. We therefore agree with Ms van Haren-Giles advice that if SALs continue to apply to MRZ zoned land, it would not be appropriate to retain the height limit specified in NFL-S1. Accordingly, NFL-R7.1(b) needs to apply to zones other than the MRZ (and HRZ if there are any HRZ zoned properties within SALs). We have accordingly amended Ms van Haren-Giles Reply version of NFL-R11 to qualify it in that way, but otherwise we adopt her recommendations.

600. We note that at the hearing, Ms van Haren-Giles also suggested an additional matter of discretion in this rule, and in subsequent rule NFL-R12, to specifically refer to the extent and effect of non-compliance with any relevant standard. We agree that that is a helpful addition in both rules.

601. NFL-R12 relates to construction/alteration/addition to buildings and structures within ONFLs. The only substantive submission Ms van Haren-Giles noted was that of Forest and Bird[367] seeking to widen the matters of discretion to include relevant policies in the Plan. Ms van Haren-Giles had the same response to that submission as to parallel submissions made in relation to earlier rules that we have discussed already. For the same reasons, we agree with her recommendation that the rule does not need to be amended in response to that submission. Ms van Haren-Giles did recommend an amendment to the rule consequential on her recommendations as to how a submission on NFL-S2 should be addressed. We will come back to it in that context.

5.11 Standards

602. As above, NFL-S1 sets standards relating to height and colour. It was the subject of submissions from Forest and Bird[368] seeking to reduce the maximum height provided to less than eight metres, John Tiley[369] and Churton Park Community Association[370] seeking to ensure that SALs are free of buildings and Kilmarston[371] seeking that the standard apply only to land within the NOSZ.

[367] Submission #345.253
[368] Submission #345.254
[369] Submission #142.12
[370] Submission #189.12
[371] Submissions #290.41-42

603. Ms van Haren-Giles' evaluation noted that SALs incorporate modified landscapes. She therefore disagreed with suggestions that SALs should be free of buildings. She also noted that the majority of SALs are located within the NOSZ, which has its own maximum height, GFA and building coverage standards. In her view, NFL-S1 adequately provides for management of buildings and structures in these landscapes at an appropriate scale. She did not consider that any additional amendment was necessary in response to Kilmarston's submission. We record that our recommended amendments to NFL-R11 respond to that submission in any event.

604. At the hearing, however, Ms van Haren-Giles tabled an amended version of this standard to insert a maximum height of five metres (compared to the notified eight metres). She advised that having reflected on the matter, she felt that the lower height limit was a more appropriate standard for SALs. We discussed with her that that would exacerbate the problem of any remaining SALs over Residential Zoned land, but we have addressed that issue separately, as above. We therefore accept her reasoning. We record that we have already addressed her subsequent recommendation that we insert a GFA standard. The end result is that NFL-S1.1 would be amended as follows:

> 1. *Buildings and structures within a special amenity landscape must not exceed;*
>   a. *a maximum height of ~~8m~~ 5m above ground level; and*
>   b. *a gross floor area of 30m2; and…*

605. Turning to NFL-S2, this relates to buildings and structures in ONFLs. The only substantive submission Ms van Haren-Giles noted in relation to this was that of Zealandia[372] seeking clarification as to how this would apply to urgent replacement/repair of the sanctuary fence perimeter. Ms van Haren-Giles noted that NFL-R12 does not extend to include alterations or additions to existing structures and she agreed that this might pose a problem for Zealandia. She recommended, therefore, that rather than amending the standard, NFL-R12 be amended to delete reference to existing buildings on the Zealandia property. That has the effect that additions and alterations to both buildings and structures within that area are permitted. We adopt Ms van Haren-Giles reasoning and recommendation in that regard.

[372] Submission #486.6

606. At the hearing, Ms van Haren-Giles noted that this standard was notified with no assessment criteria. She recommended that the same assessment criteria as are specified in NFL-S1 apply, treating this as a minor change. We concur. This is an obvious error that needs to be corrected. Adopting the SAL assessment criteria is a sensible solution.

5.12 Schedule 10 – Outstanding Natural Features and Landscapes

607. Ms van Haren-Giles noted a number of substantive submissions seeking amendment to this Schedule, as follows:

(a) Barry Insull[373] sought amendments to the title of Te Rimurapa Sinclair Head/Pipinui Point Pariwhero Red Rocks by removing the reference to Pipinui Point;

(b) Barry Insull[374] sought to amend the language in the site summary for that site to be consistent with the title and to correct a grammatical error. He also sought to include reference to the historic reserve in the area;

(c) Barry Insull[375] sought to add reference in the site summary of Taputeranga Island by listing threatened and rare species of birds and lizards that have been identified in the area;

(d) Barry Insull[376] sought to amend the title of Raukawa Coast Cook Strait to 'Cook Strait Coast' and to delete reference in the site summary to Wellington's wild coast;

(e) Meridian Energy[377] sought to amend the site summary for Raukawa Coast Cook Strait to acknowledge the wind turbines and other built structures forming part of the West Wind and Mill Creek Wind Farms which form part of the backdrop to the coastal escarpments;

(f) Forest and Bird[378] sought to include the values of each ONL;

(g) Forest and Bird[379] sought to include a new ONF-Boomrock – Pipinui Point Escarpment or alternative to delete to clarify in the planning maps

[373] Submissions #32.16-17
[374] Submissions #32.18-20
[375] Submission #32.21
[376] Submission #32.22-23
[377] Submissions #228.123-124
[378] Submission #345.413
[379] Submission #345.414

whether that escarpment is contained within the Raukawa Coast Cook Strait ONL; and

(h) Terawhiti Station[380] sought to delete Terawhiti and Raukawa Coast Cook Strait from the Schedule as ONFs.

608. In response to Forest and Bird's point about where Boomrock/Pipinui Point Escarpment sits within the Schedule, Ms van Haren-Giles relied on Mr Anstey's evidence that it was appropriate that this area be included within the Raukawa Coast Cook Strait ONL given that the values identified by Boffa Miskell for the latter include values and characteristics relating to the escarpment. It followed that the separate ONF might be removed from the planning maps and from the title to Te Rimurapa Sinclair Head/Pipinui Point, Pariwhero Red Rocks (as Mr Insull had sought).

609. In relation to the content of entries for the latter, Ms van Haren-Giles addressed this in the context of her consideration of Forest and Bird's submissions seeking that values be identified for each ONFL, rather than just a summary of the nature of those values (as notified). She drew the content of her suggested amendments from Boffa Miskell's landscape analysis which had underpinned the NFL Chapter. She made a parallel recommendation in response to another Forest and Bird submission[381] in relation to Schedule 11 – Special Amenity Landscapes and it is appropriate that we deal with them together. We had no difficulty with relying on Boffa Miskell as an authoritative source for identification of the values in the absence of any expert landscape evidence to the contrary, but we did have some concern about the scope to make such a substantial change to the two schedules, and we asked Ms van Haren-Giles to address that point in Reply. She referred us to the detail of the relevant Forest and Bird submissions which clearly sought identification of the values. We had some residual concern that the submission relief is expressed very broadly. Notwithstanding that, in this particular case, the Boffa Miskell information which has been relied on was clearly in the public domain as a key reference point for these schedules, and any interested party looking to see what sort of values and characteristics the Plan was seeking to protect might have been expected to consult it. For that reason, we agree that there is scope to insert this additional material. As above, we have no difficulty with the merits of doing so.

[380] Submissions #411.28-29
[381] Submission #345.415

610. We also asked Ms van Haren-Giles to consider whether it was appropriate to acknowledge that cultural values of the identified ONFLs and SALs are addressed in the SASM Chapter. In her Reply, she confirmed that there was both scope and (in her view) merit from a Plan legibility perspective in inserting an advice note in both Schedule 10 and Schedule 11 to this effect. We agree with that recommendation also.

611. Returning to Ms van Haren-Giles discussion of Mr Insull's submissions in relation to Te Rimurapa Sinclair Head Pariwhero Red Rocks and Taputeranga Island, she accepted the need to correct the reference to 'Te Rimurapa'. She did not specifically address Mr Insull's suggestion that there is only one seal colony but relied on Boffa Miskell's Landscape Evaluation as an appropriate description of the values of Taputeranga Island.

612. We heard from Mr Insull who clarified that his submission had been mis-characterised and he had not sought to amend the Taputeranga site summary. We accept his clarification. It follows that the issue is not in contention and no amendment is required. As regards whether the correct description is of a seal colony, or more than one, this is an issue of definition, and we do not consider we had enough information to amend the existing description.

613. Ms van Haren-Giles also disagreed with Mr Insull's submission that the name of Raukawa Coast Cook Strait be amended. She noted the further submission of TRoTR[382] opposing the suggested change which she agreed with. We concur. She also disagreed that description of the coastline as Wellington's wild coast be deleted. We agree with her view that this is indeed a common way referring to this area of the coast and has no implications for the values and characteristics identified.

614. As regards Meridian's submission, Ms van Haren-Giles relied on Mr Anstey's evidence that the wind farms are not located within the ONFL and therefore need not form part of the site summary. We did not consider that that was a complete answer and asked Mr Anstey whether the values of the ONFL were influenced by the wind turbines further inland. He did not believe so. On that basis, and given the absence of any landscape evidence from Meridian to contradict that view, we agreed with Ms van Haren-Giles' recommendation that no amendment is required. Lastly, Ms van Haren-Giles relied on both Mr Anstey's evidence and the Boffa Miskell Landscape

[382] FS #138.2

Evaluation as a reason not to accept Terawhiti Station's submission. We did not hear from Terawhiti Station and had no basis on which to disagree with Ms van Haren-Giles' recommendation.

615. In summary, therefore, we adopt Ms van Haren-Giles recommendations as to the appropriate amendments to be made to Schedule 10.

5.13 Schedule 11 – Special Amenity Landscapes

616. Ms van Haren-Giles noted the following submissions seeking substantive change to this Schedule:

(a) John Tiley[383]; and Churton Park Community Association[384] sought that the 18 identified ridgelines and hilltops along with Marshalls Ridge are listed in either Schedule 11 or Schedule 12;

(b) Horokiwi Quarries[385] sought to clarify what characteristics of SALs are relevant to implementation of the NFL Chapter;

(c) Taranaki Whānui[386] sought to amend the Schedule to reflect historical and current built development over the Wellington Prison site;

(d) Thomas Brent Layton[387] sought to remove the SAL overlays from the PDP; and

(e) Kilmarston[388] sought to remove the SAL overlay from the submitters land.

617. We have addressed a number of these submissions already in Section 5.4 of our Report above. The only additional issue that we need to specifically address is the suggestion in Ms van Haren-Giles' Rebuttal Evidence that given the then foreshadowed option (in Stream 6) of introducing a Horokiwi Quarry Precinct, it may be appropriate to amend the SAL site summary for the Korokoro Stream Valley to include reference to the existence of the Quarry.

618. Report 6 confirms our recommendation to identify a precinct over some of the rural land on the Hutt City side of Horokiwi Road that Horokiwi Quarries owns and over which the SAL is identified. We do not think it follows that the SAL description should

[383] Submission #142.30
[384] Submission #189.30
[385] Submission #271.94
[386] Submission #389.140
[387] Submissions #164.8-9
[388] Submissions #290.92, #290.96-98

be changed as a result. Part of the reasoning of the Stream 6 Hearing Panel was that the existence of overlays should not determine the underlying zoning. In our view, the inverse is equally true. The fact that some of the land is zoned as Quarry Precinct does not affect its status as an SAL, unless and until the landscape values of that area have changed, so it no longer qualifies as such. For the same reason, we do not see the need for the description of the SAL in Schedule 11 to reference the Quarry at this point. We draw the parallel with our reasoning in relation to Meridian's submission as above. We also note that Ms Whitney did not pursue that matter when she appeared.

619. In summary therefore, we adopt Ms van Haren-Giles recommended amendments to Schedule 11.

6. CONCLUSIONS

620. We have sought to address all material issues of the parties who have appeared before us put in contention in relation to the topics discussed in this report.

621. To the extent that we have not discussed submissions on this topic, we agree with and adopt the reasoning of the Section 42A Reports prepared by the relevant reporting officers, as amended in their written Reply.

622. Appendix 1 sets out the amendments we consider should be made to the PDP as a result of our recommendations.

623. To the extent that a Section 42A Reporting Officer has recommended amendments to the Plan requiring evaluation in terms of Section 32AA that we agree with, we adopt their evaluation for this purpose.

624. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons in terms of Section 32AA of the Act are set out in the body of our Report.

625. Appendix 2 sets out in tabular form our recommendations on the submissions allocated to Hearing Stream 8 topics considered in this report.

626. Finally, we draw the attention of Council to our recommendations:

(a) That it consider introducing mapping of the coastal margin via a future Plan Change (refer Section 2.2 above);

(b) That it review the ambit of the Coastal Environment overlay within urban areas with a view to potentially reducing regulation over those areas through a future Plan Change. We have suggested that as part of that review, Council consider the adequacy of the rule framework where it considers identification of the Coastal Environment overlay in urban areas is warranted (refer Section 2.9 above);

(c) That it review instances where Special Amenity Landscape or Ridgeline and Hilltop overlays have been identified over residentially zoned land, to determine whether it would be appropriate to remove the overlay in such cases via a future Plan Change, or possibly through exercise of its discretion to withdraw part of a Proposed Plan (refer Section 5.4 above); and

(d) That it reviews whether the Outer Town Belt satisfies the criteria for identification as a Special Amenity Landscape, and if so, identify those areas not already within the SAL overlay as such through a future Plan Change (refer Section 5.7 above).

For the Hearing Panel:

Trevor Robinson
Chair
Wellington City Proposed District Plan Hearings Panel

Dated: 23 January 2025