

Hearing Panel S42A questions and council staff responses

Hearings for the Proposed Regional Plan for Northland

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Purpose of the report

This report sets out questions from the Hearing Panel on the S42A reports, and council staff's response to them. The report is broken up into sections based on the S42A reports.

Recommended changes are changes to the wording of provisions in *Proposed Regional Plan for Northland – S42A recommended changes*.

Questions and responses

General Approach

(Responses by Ben Lee unless otherwise stated)

1 *Paragraph [101] - Are there more places where Te Reo Māori can be included throughout the plan? Would dropping down to the next level of headings as well as chapter headings be of use to Te Reo readers.*

- 1.1 There is no reason why second level heading could (or should) not be bilingual, other than it would make for longer headings.
- 1.2 Because the Plan is a legal document, care must be taken with translating into Te Reo Māori because meaning can change through translation. This is not a risk for headings, but it would be a risk if provisions were translated.
- 1.3 Council does not (yet) have an adopted policy on the use of Te Reo Māori in council documents. However recent practice has been to have bilingual headings in council plans and strategies, but for it to be limited to 1st level headings.

2 *Paragraph [101] - Is the reference to “mihi whakataki” correct, or should this refer to “mihi whakatau”?*

- 2.1 It should be “mihi whakatau”.

3 *Paragraph [104] - Is it possible to indicate within the plan where the methods can be accessed (with a potential link)?*

- 3.1 We have not developed a monitoring programme for the Plan so there is currently nothing to link to.

- 3.2 Should a monitoring programme be developed then there is no mechanism in the RMA to add links (and explanatory text) without formality – it would require a plan change.
- 3.3 A solution would be to add a statement to the *A Introduction* section of the Plan to make it clear that it does not form part of the formal regional plan. Should a monitoring programme be developed, then a link to it and explanatory text could be added without formality. This would also allow council to add other explanatory information to the Plan in the future. The Plan already includes content that does not form part of the formal plan – the index and rule guides at the start of each rule section. Proposed text to be added immediately below heading *A Introduction*:

This section does not form part of the Plan.

4	<i>Paragraph [119] - Do you consider that the effects of climate change can be adequately accounted for when assessing the duration of a consent under the proposed clauses?</i>
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(Response by Michael Day)

- 4.1 No – I do not consider that explicit reference to climate change in Policy D.2.4 is necessary. This is because under s123 of the Act, the maximum duration that a coastal permit or a land use consent for an activity that contravenes sections 12 or 13 of the RMA can be granted is for 35 years. Most experts agree that while changes in climate (such as temperature and rainfall) are already occurring, these changes will occur to differing extents in different parts of New Zealand throughout this century and beyond. It is difficult to see a discernible change (for example sea level rise) over a short time frame (less than 35 years), which is why most experts, when discussing potential impacts of climate change, outline what they country might be like 100 years in the future. See the following example from the MfE website:

Based on the latest climate projections for New Zealand, by the end of this century we are likely to experience:

- *higher temperatures – greater increases in the North Island than the South, with the greatest warming in the northeast (although the amount of warming in New Zealand is likely to be lower than the global average)*
- *rising sea levels*

- *more frequent extreme weather events – such as droughts (especially in the east of New Zealand) and floods*
- *a change in rainfall patterns – with increased summer rainfall in the north and east of the North Island and increased winter rainfall in many parts of the South Island.*

4.2 I note that ‘the effects of climate change’ are an RMA Section 7 matter and under s104 of the RMA, when considering applications for resource consent, consent authorities should consider the effects of climate change. In my opinion, the proposed new policy on climate change (see below) is sufficient.

5 *Would the recommended new Policy on climate change be clearer if it were to read:*

Particular regard must be had to the potential effects of climate change on a proposed development requiring consent under this Plan, taking into account the scale and type of development proposed, ~~whilst~~ using the latest national guidance and best available information on the likely magnitude effects of climate change during the anticipated lifespan of the development.

(Response by Michael Day)

5.1 I have discussed this with Toby Kay (NRC Natural Hazards Advisor) and Stuart Savill (NRC Consents Manager) and we agree that the proposed wording improves the new Policy. This aside, we are of the view that it can be made more descriptive and clearer as follows:

Particular regard must be had to the potential effects of climate change on a proposed development requiring consent under this Plan, taking into account the scale, type and design life of the development proposed and with reference to the latest national guidance and best available climate change projections

6 *Paragraph [110] - Does the plan include a link to the technical documents – can it be included in the introduction along with a link to the methods?*

6.1 The Plan does not include a link to the technical documents.

6.2 In my response to question 3, I propose the idea of excluding section *A Introduction* from the formal plan to enable information like this to be added and updated without formality. If this proposal is adopted, then I would be comfortable with the inclusion

of a single web link to the council webpage where the technical documents are located.

7 *Paragraph [123] - The author has made the assumption that the Far North District council's request for an additional clause to recognise any relevant "iwi partnership agreement" was more correctly intended to refer to "iwi participation arrangements" (i.e. Mana Whakahono a Rohe). This may be the case but equally the submission might have intended to refer to "iwi partnership agreements" such as MoU's, contractual relationships and other mechanisms for giving effect to the Treaty principles in s8 RMA. If this is the case, would the author support the inclusion of an additional clause along the ones requested by FNDC?*

7.1 In the submission from Far North District Council, the reason offered for the proposed inclusion of "iwi partnership agreement" was:

Reforms to the RMA require the development of Iwi Partnership Agreement.

7.2 The RMA does not refer to "iwi partnership agreements – but it does refer to "iwi participation arrangements" and so hence my assumption.

7.3 The relief suggested in the question would in my view be beyond the scope of the submission.

7.4 If the reference to "iwi participation agreements" was as suggested in the question and/or there was scope to add an additional clause along the lines suggested by FNDC, I do not have enough information to be able to recommend its inclusion. For example, I do not know whether the reference should be iwi partnership agreements, or whether it should also include hapu partnership agreements. Council has a MoU with Te Uri o Hau (for example) which is a hapu and has a settlement.

8 *Paragraph [125] - Does the revised D.2.5 policy achieve the original intent or is it too general? If the intent is still as outlined in [125], can the policy be modified by retaining 'community and tangata whenua' while providing more detail?*

8.1 My view is the policy as I have recommended (intentionally) does not achieve the original intent (being the notified version), because the recommendation is to delete "have regard to the values of the local community and tangata whenua". Also, by removing this text it makes the policy (intentionally) less general.

- 8.2 If the text “*have regard to the values of the local community and tangata whenua*” was retained, I think it would be a difficult task to provide more detail. “Values” is a very broad term and I am not sure where one would start defining the values, particularly values that are not already captured in the Plan.
- 8.3 I would also note that the policies in D.1 already address the consideration of tangata whenua values.
- 8.4 I continue to recommend the wording of Policy D.2.5 as outlined in the Section 42A report.

9 *To assist our understanding of the implications of Policy D.2.5, can you name some of the documents that would come within its scope?*

- 9.1 An example is council's [Moorings and Marinas Strategy](#). This strategy set out how council intends to provide for mooring and marina space over the next 20 years.
- 9.2 Another example is [catchment plans](#). These plans were developed by local catchment groups with a particular focus on freshwater management. Some of the outcomes of the catchment plans have been implemented in the Plan (Section E), but there are also other outcomes that may be relevant to a resource consent application.

10 *Paragraph [126] - The recommendation is to retain Policy D.2.5 Recognising Community and Tangata whenua Values, with the deletion of clause 2 to “have regard to the values of the local community and Tangata whenua”. Will this deletion reduce the focus on, and thereby weaken, consideration of community and Tangata whenua values by decision-makers when considering resource consent applications?*

- 10.1 The intention of the policy was to ensure the values of the local community and tangata whenua were in the spotlight of resource consent decision makers. In my view, the proposed amendment to Policy D.2.5 may (slightly) weaken consideration of community and tangata whenua values by decision-makers when considering resource consent applications.
- 10.2 I think that the generality of the reference to local community and tangata whenua values would mean that decision makers would not give a lot of attention to the

clause. I differentiate this with clause 1) of Policy D.2.5 which specifically references plans and strategies.

- 10.3 Tangata whenua values are addressed by the suite of policies in *D.1 Tangata whenua*.
- 10.4 Local community values and tangata whenua values may be represented in plans and strategies developed in accordance with clause 1) of the policy.
- 10.5 Lastly, Section 104 *Consideration of applications* (RMA) already requires decision makers to 'have regard' to any effects. 'Have regard' is the same level of consideration clause 2) of Policy D.2.5 required regarding the values of the local community and tangata whenua.

Acid Sulphate Soils

No questions

Agrichemicals

(Responses by Michael Payne)

11 *Appendix A, page 16 – Alspach, R. submission re availability of NZS:8409: While acknowledging that website url links change over time, it is worth investigating the ability to provide a url link to the document, [https://shop.standards.govt.nz/catalog/8409:2004\(NZS\)/scope](https://shop.standards.govt.nz/catalog/8409:2004(NZS)/scope) as a note in the rules. A shortcut url may be available given the importance and wide user base of the standard.*

- 11.1 Providing a url link to the full standards is problematic. Staff have enquired with Standards New Zealand on the cost of purchasing a general licence to upload the NZS 8409:2004 management of agrichemical standards to the council website. While Standards New Zealand do not usually provide licences of this nature, they could do it but it would cost "*many thousands of dollars*". The cost of this was deemed to be prohibitively expensive. Additionally, while I agree a url link could be provided to the webpage which gives the option to purchase the standards, we have generally avoided including url's in the plan to external websites due to the potential for broken links in the future. However, to somewhat mitigate Mr Alspach's concerns, we have

committed to purchasing several hard copies of the standards and having them available for the public to use at the council's regional offices. Their availability can be clearly advertised on council's website and we could include a footnote in the rule advising that the standards are available at offices.

12 *Appendix A, page 19 – Alspach, R. submission re limiting aerial spraying of 2, 4-D at specific times of the year. Given the current plan (RAQP) includes specific calendar restrictions, namely ground and aerial spraying outside winter months due to higher volatility in different weather conditions, and the HSNO rules do not specify calendar restrictions for this chemical, can the report author please explain why the HSNO rules are considered to be adequate?*

12.1 Following the release of the 42A reports I have had several discussions with the EPA on 2,4 – D. As a result of those discussions, I am increasingly of the view a rule, like that sought by Mr Alspach, is warranted.

12.2 Rule 10.1.6 of the operative Air Quality Plan focuses on 2,4 – D Ester. This is only one of many products containing 2,4 – D. Products containing 2,4 – D come in a range of chemical formulations and have different degrees of volatility. A number of these products have similar levels of volatility to 2,4 – D Ester. If a rule is included in the proposed plan managing this risk. I recommend that it covers a range of 2,4 – D products rather than focusing on 2,4 – D Ester. Staff will continue to work on a rule to manage the risks of agrichemicals containing 2,4 – D migrating offsite which will be presented to the Hearing Panel either in the opening statements or in the officer's reply

13 *Appendix A - page 24. RFBPS on Rule C.6.51 – are any amendments recommended in relation to the stated preference to provide for agrichemical applications in SEAs to manage non-native species as a permitted activity?*

13.1 No. While I stated my preference was for a permitted activity for the application of agrichemicals in the CMA this recommendation was never carried through to the *Proposed Regional Plan for Northland – S42A recommended changes*.

13.2 In my opinion, there is value in both requiring resource consent for agrichemical application within the CMA and allowing this activity to occur as a permitted activity. I am not in a position make a recommendation at this time. I expect this matter will

become clearer following the receipt and presentation of submitters evidence. My preference is to delay my recommendation to the committee until this time.

Air Quality

(Responses by Michael Payne)

- | | |
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| 14 | <i>Paragraph [64] - Are these recommended amendments reflected in the revised Plan?</i> |
| 15 | <i>Paragraph [72] - Are these recommended amendments reflected in the revised Plan?</i> |
| 16 | <i>Appendix A, page 26 – is the recommended amendment to the definition of “ambient air quality” reflected in the revised Plan?</i> |
| 17 | <i>Appendix A, page 35 – are the recommended amendments to Rule 7.1.3 reflected in the revised Plan?</i> |
| 18 | <i>Appendix A, page 44 – are the recommended amendments to Rule 7.2.6 in response to NZTA reflected in the revised Plan?</i> |
| 19 | <i>Appendix A, page 46 – are the recommended amendments to Policy D.3.1 in response to GBC Winstone reflected in the revised Plan?</i> |
| 20 | <i>Appendix A, page 47 – are the recommended amendments to Policy D.3.1 in response to GBC Winstone reflected in the revised Plan?</i> |
| 21 | <i>Appendix A, page 48 – Policy D.3.1 in response to Balance – is the recommended deletion of Clause 8 (now clause 9) reflected in the revised Plan?</i> |
| 22 | <i>Appendix A, page 49 – Policy D.3.1 in response to Egg Producers – is the recommended amendment to Clause 3 (now clause 4) reflected in the revised Plan?</i> |

22.1 These questions are addressed in the *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

23	<i>Paragraph [46] - What does the last sentence mean?</i>
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23.1 The last sentence of paragraph [46] said “*The range would be smaller to manage the length of the table and the cost in developing it*”.

- 23.2 I intended to say that the advice given to council by Ms Deborah Ryan¹ indicated that it would be more efficient in terms of time and money to calculate a minimum chimney height for a group of heat outputs. For example, for appliances between 5 – 10 MW chimney height will be a minimum of x. Rather than calculating a chimney height for every burning appliance covered by the permitted activity. For example, 1MW = x, 2MW=X ...40MW=X
- 23.3 Specifying a minimum chimney height for a group / range of heat output would also have the added benefit of creating a shorter table.

24 *Paragraph [48] - Given the concerns expressed in [45], is there adequate scope in the submissions to simplify the table (yet to be provided) along the lines of the Canterbury plan and will it effectively cover the wide range of burning appliances that were covered in the proposed plan rules?*

- 24.1 I believe there is adequate scope to make the changes discussed in the 42A report. Fonterra made the following statement “*Fonterra request that a simpler table is used, such as that contained in the Canterbury Air Regional Plan*”
- 24.2 The table that will be presented to the committee is expected to be similar to the equivalent table in the Canterbury Air Plan and will cover the range of fuel types and heat outputs covered in the proposed plan rules.
- 24.3 Staff are working with an air quality consultant on this matter and will report on progress during opening statements.

25 *Paragraph [96] - Air objective F.O.13(1) lists “dust, smoke, spray, and odour.” Spray is not defined and agrichemical is used in the rules. Should this not be listed as ‘agrichemical’ (with or without ‘spray’) as opposed to just ‘spray’ (which could be referring to naturally occurring sea/water spray)?*

- 25.1 ‘The meaning of ‘spray’ is broader than just agrichemical sprays and could also refer to other chemical spray such as paint or solvent spraying. Spraying could also apply to the spraying of fertiliser or other organic substances. ‘Spray’ is also a term that is used elsewhere in the plan, for example Policy D.3.4 and intended to mean all

¹ Associate Air Quality Consultant for Jacobs Consulting Ltd

anthropogenic sources of spraying. For this reason, I do not recommend limiting 'spray' to just 'agricultural spraying'. In terms of the need to distinguish between natural and anthropogenic sources, I do not think this is necessary as natural source emissions are not within the scope of the RMA and therefore the Plan.

26 *Appendix A, page 29 – can you clarify what amendments are recommended to the definition of “incineration device”?*

26.1 The submitters raise two points in relation to the definition of *incineration device*. Firstly, Tegel Foods Limited have requested a new clause as shown below;

A device made from non-combustible materials designed to burn waste that:

- 1) contains all embers and sparks, and
- 2) has a grate and lid or spark arrestor- and
- 3) is not used to generate energy.

26.2 I recommend that the submission point from Tegel Foods limited be accepted. Please note: there is an error in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*. The recommendation should have been shown as it is above.

27 *Appendix A, page 27 – NZTA definition revision and recommended addition of a new rule ‘discharges from a road or rail tunnel’. Do the staff consider there is sufficient evidence in the NZTA submission to include the proposed rules? Why is the staff recommendation to not include the new rules and where is the analysis of them?*

27.1 The analysis of the request (by NZTA and Kiwirail) to include a new rule for discharges from a road or rail tunnel is on Page 30 of the S42A. My recommendation is to not include a rule governing discharges from tunnels as it is unnecessary because it is already permitted under rule C.7.2.6, or C.7.2.4 (if from an industrial or trade premise). While there may be a case to have these rules in the Auckland Plan, it is noted that there are very few rail tunnels in Northland and no road tunnels and therefore there is likely to be little utility in having such a rule.

28 Appendix A, page 28 – change to dust sensitive area definition. Does the revised definition of indigenous vegetation mean that any area of native vegetation beside an unsealed road is considered to be dust sensitive?

28.1 This is potentially the case and could therefore be too broad. The NZ General Circular Investment No 16/04 (dust mitigation) refers to ‘*ecologically sensitive areas such as rare species habitats or wetlands*’ which would narrow the scope of this definition away from any native vegetation. A corresponding change would need to be made to the definition of ‘spray sensitive areas’ which uses the same terminology.

28.2 I therefore recommend the following changes to the definitions:

Dust sensitive area

...

7) ~~wetlands and areas of indigenous vegetation and species habitat~~ ecologically sensitive areas such as rare species habitats or wetlands, and

...

Spray sensitive area

...

8) ~~wetlands and areas of indigenous vegetation and species habitat~~ ecologically sensitive areas such as rare species habitats or wetlands, and

...

29 Appendix A, page 47 – The author notes that intent of the submitter is achieved through D.2.2 and D.2.4 but recommends changes to D.3.1 – why is a change to 3.1 required if this is the case?

29.1 The discussion on the submission reflected my early thinking on the submission and should have been amended.

29.2 I still believe that Policy D.2.2 addresses the matters raised in relation to consent duration.

29.3 While Policy D.2.2 includes direction to have regard to “*social, cultural and economic benefits of the proposed activity*” the relief sought by the submitter is different in that it focusses on long term benefits. I believe there is value in adopting the additional

clause shown in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

30 *Appendix A, page 48 – Policy D.3.1 in response to Ravensdown – what would happen if the name of the MfE documents changes when new versions are released? Would the wording sought by Ravensdown avoid such unintended consequences?*

30.1 Addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

Allocation and Use of Water

(Responses by Ben Tait)

31 *Paragraph [35] - Is the second sentence worded correctly?*

31.1 The second sentence of paragraph 35 in the RMA section 42A report on allocation and use of water should state:

However, the Proposed Plan does not specify the spatial resolution at which the limits are to apply. [My emphasis.]

32 *Paragraph [40] - Noting the amendments to NPS-FM regarding the inclusion of community and Tangata whenua values (outlined in para 39 above), to what extent has consultation with Tangata whenua and the wider community, been undertaken as part of the process for establishing the freshwater objectives sought in Policy D.4.13? if there has been no consultation to date, at what point in the Council's NPS-FM plan will this consultation occur and how will the outcomes be integrated into the Plan?*

32.1 Policy CA2 of the National Policy Statement for Freshwater Management (NPS-FM) sets out the approach by which freshwater objectives must be established. It was amended in August 2017 (one month before the Proposed Plan was notified). The amendments are shown under paragraph 39 of the section 42A report (from page 13).

32.2 Northland Regional Council consulted and collaborated with the community, including tangata whenua, through a range of fora on the Proposed Plan including on the freshwater quantity objectives set out in policy D.4.13. These include targeted engagement with (but not limited to):

- a range of stakeholders during the preparation of the plan (including the Draft Regional Plan, which contained a similar policy (D.4.11));
- five collaborative stakeholder groups, which have hapu/iwi representatives; and
- Te Taitokerau Māori Advisory Committee.

32.3 Please see chapter 1.4 of the RMA section 32 evaluation report for the Proposed Plan for further details on consultation and community engagement.

32.4 To be clear, the objectives in policy D.4.13 (relocated to section F.0.2 of the plan) are freshwater (quantity) objectives as defined by the NPS-FM. Please note however that the Proposed Plan does **not** contain freshwater quality objectives required by the NPS-FM. Freshwater quality objectives will be established through discussions with the community, including tangata whenua, and will be included in the regional plan around 2021.

32.5 Keir Volkerling added:

During 2015 there was an investigation into tangata whenua freshwater values in Northland. This was a comprehensive study² involving literature review, interviews, hui, draft documents for feedback from tangata whenua, and a final peer reviewed document. A cascade of values was identified, which at an operational / planning level were expressed as: crystal clear water, fish stocks, tuna, repo, and safe swimming and drinking. These values are addressed in the PRP.

32.6 In conclusion, I consider that the council satisfied the direction in policy CA2 of the NPS-FM 2014 to establish freshwater quantity objectives.

<p>33 <i>Paragraph [41] - When is the plan change scheduled for in Councils Progressive Implementation Programme?</i></p>

33.1 The first sentence of paragraph 41 of the section 42A report should state:

² Northland Regional Council. 2015. Northland tangata whenua freshwater values: A literature review. Northland Regional Council. Prepared for Northland Regional Council, Ministry for Primary Industries and Ministry for the Environment.; 2015. Northland Tangata Whenua freshwater values: A framework to guide decision-making. Prepared for Northland Regional Council, Ministry for Primary Industries and Ministry for the Environment.

The council has scheduled a plan change for circa. 2021 to include numeric freshwater quality objectives for a range of water quality attributes including periphyton. [My emphasis.]

34 *Paragraph [53] - Are the changes to Policy D.4.13 as proposed here to also provide for cultural values and the preservation of the natural character of freshwater bodies reflected in the revised plan?*

34.1 I stated at paragraph 53 of the section 42A report:

While I agree that the policy should be amended to provide for broader cultural values (than recreation and amenity values) and the preservation of the natural character of freshwater bodies...

34.2 I recommended in the report that part (5) of policy D.4.13 (relocated to objective F.0.2) should be amended to state:

...flows and water levels support sustainable mahinga kai, recreational, amenity and other social and cultural values associated with freshwater bodies, and

34.3 Keir Volkerling added:

Policy D.1.1 ensures relevant cultural values (eg mahinga kai, sites, biodiversity, cultural practices etc) are appropriately considered.

34.4 The recommended amendments to policy D.4.13 (objective F.0.2) does not include the term “natural character.” I consider that recommended objective F.0.2 implicitly provides for the preservation of the natural character of wetlands, lakes and rivers and their margins.

35 *Paragraph [54] - Is climate change a relevant factor in determining water quantity allocation limits? Will extreme weather events, including extended periods of dry in parts of the region, impact on water quantity? Is there any objective or policy that considers the effects of climate change on water quantity?*

35.1 Climate change is a relevant factor when setting water quality limits. Policy B1 of the National Policy Statement for Freshwater Management 2017 (NPS-FM) directs regional councils to have regard to the reasonably foreseeable impacts of climate change when setting environmental flows and/or levels for all freshwater management units in their regions.

- 35.2 NIWA recently prepared a report for Northland Regional Council on climate change projections and potential impacts for the Northland region over the coming century.³ Relevant findings include:⁴

Future precipitation projections indicate slightly less rainfall for eastern parts of the region in spring to 2040 and a less than 5% change in other seasons. The same pattern occurs for RCP 4.5 [scenario] at 2090, but by 2090 for RCP 8.5 [scenario] significant decreases in precipitation are projected for eastern areas in spring (up to 20% decrease) and increases are projected for eastern areas in summer and autumn (up to 10% increase).

For many locations in Northland Region, there is no clear precipitation signal, even at 2090 under RCP 8.5 [scenario]. The average across all models used in the study (ensemble-average) is often less than \pm 5% change, with the model range (the 5th and 95th percentile values) varying between quite large (>10%) increases and decreases. By 2040 (2031-2050, relative to 1986- 2005), spring is the season with the most precipitation change, with a small decrease in the ensemble-average (up to 7% at Whangarei under RCP 8.5 [scenario]).

Projections for Northland Region for the coming century show a decrease in the frequency of very heavy rainfall. This decrease is in contrast to the common expectations of increasing extreme rainfall with climate change. As such, this Northland specific result requires further analysis before it can be applied with any confidence.

An increase in drought frequency is projected for Northland Region of about 7% for 2030-2050 and 10% for 2070-2090, compared to 1980-1999 levels. These projections were calculated from the IPCC Fourth Assessment Report emissions scenarios and will be updated in due course.

- 35.3 While relevant, the predictions were not materially significant considerations for the purposes of setting environmental flows and levels for Northland's water bodies for the next decade (approximate 'life' of the plan). In other words, the uncertainties associated with the predicted effects of climate change are too large to reflect in the setting of environmental flows and water levels.

³ Petra Pearce, et al. 2016. Climate Change Projections and Implications for Northland. Prepared for Northland Regional Council. NIWA Client Report No: 2016072AK.

⁴ Ibid, p. 12

35.4 The Proposed Plan does not contain policies or objectives explicitly relating to the effects of climate change on water quantity.

36 *Paragraph [59] - Has the recommended addition of an objective in section H as per Refining NZ submission been reflected in the revised plan?*

36.1 The first sentence of paragraph 59 in the section 42A report (Allocation and use of water) refers to section H of the Proposed Plan. This is an incorrect reference; it should state section F. The recommended change to the water quantity objective is shown in section F of the plan.

37 *Paragraph [76] - Has the recommended addition of 'the limits are for the purposes of assisting with the achievement of the intended water quantity related environmental outcomes' been added to the water quantity objective in F?*

37.1 The 'link' between the freshwater quantity objectives (F.0.2) and the environmental flows and levels (water quantity limits) is made explicit through the inclusion of new policy ("Avoiding over-allocation") and an amendment to the first part of policy D.4.19. Both policies begin with "For the purposes of assisting with the achievement of Objective 1 [numbered F.0.2 in the track-change version] of this plan..."

38 *Regarding Amendment 103 in Policy D.4.19(1)(c) of the revised plan, should the sixth word be "or" not "of"?*

38.1 Clause (1)(c) of Policy D.4.19 should state:

...an individual's reasonable domestic needs or the reasonable needs of a person's animals for drinking water, or

39 *Paragraph [90] - Appendix H6 is recommended to refer to 'non-consumptive takes'. To assist Plan users should that be a defined term?*

39.1 The Proposed Plan does not define the term 'non-consumptive' take. Including a definition in the plan will assist plan users. For example, the following definition or similar could be adopted:

Non-consumptive take –
(a) where water is used but not taken or diverted from a water body, or

(b) where water is taken or diverted from a water body and the same volume, minus any water lost by evaporation or transpiration, is returned immediately to the source at the point of take or diversion following its use.

40 Paragraph [118] - Which is the new Policy referred to in the last bullet point?

40.1 The recommendation at the last bullet point refers to a new policy titled “Avoiding over-allocation” (inserted before policy D.4.18). It should also refer to the amendment to the first part of policy D.4.19 (“Minimum flows and levels”).

41 Paragraph [118] - Regarding the new policy ‘Avoiding over-allocation’, should the word “not” be deleted from clause (2)?

41.1 Clause (2) of the recommended new policy titled “Avoiding over-allocation” should state:

...ensure that no decision will likely result in over-allocation.

42 Paragraph [148] - Does new Policy D.4.19(1)(c) relate to a consent sought for a take that would otherwise be allowed under s14(3)(b), but that section of the RMA does not apply because the take will have an adverse effect on the environment? If so, is that clear in the policy wording? Should the sixth word in clause (1)(c) be “or” and not “of”?

42.1 Clause (1)(c) of policy D.4.19 applies to the taking and use of water for an individual’s reasonable domestic needs or the reasonable needs of a person’s animals for drinking water that (a) is, or is likely, having an adverse effect on the environment (that is, not ‘authorised’ by RMA s14(3)(b)), and (b) is not permitted by a rule in the Proposed Plan. I consider that clause (1)(c) of policy D.4.19 should be amended as follows:

c) an individual’s reasonable domestic needs or the reasonable domestic needs of a person’s animals for drinking water that (a) is, or is likely, having an adverse effect on the environment and (b) is not permitted by a rule in this plan.

42.2 The Panel asked if the sixth word in clause (1)(c) should be “or”, not “of”. As stated earlier, clause (1)(c) of Policy D.4.19 should state:

...an individual's reasonable domestic needs or the reasonable needs of a person's animals for drinking water, or

43 Paragraph [249] - In the revised Plan, is Rule C.5.1.7 MOC (2)(d) meant to be struck out?

43.1 In the RMA section 42A report (titled "Allocation and use of water") I recommended that matter of control (2)(d) should be deleted. This was not shown in the tracked changes version of the Proposed Plan, which is an error.

43.2 However, matter of control (2)(e) should not be deleted (that is, shown as struck through) because mapped Sites and Areas of Significance to Tangata Whenua are defined.

43.3 Matter of control (2) should state:

2) the design, location and maintenance of the intake structure to minimise adverse effects on fish species and ~~Measures to avoid, remedy or mitigate effects on:~~
a) ~~aquatic ecosystems and species, and~~
b) ~~mahinga kai and access to mahinga kai, and~~
c) ~~indigenous biodiversity where it affects tangata whenua ability to carry out cultural and traditional activities, and~~
d) ~~wāhi tapu, and~~
e) ~~mapped Sites and Areas of Significance to Tangata Whenua.~~

44 Paragraph [255] - Rule C.5.1.5 condition (4)(b) – how will a person know that they meet this condition? Does it meet the criteria for PA conditions set out at [160]?

44.1 Conditions (2)(a) and (4)(b) of rule C.5.1.5 state: "the activity [must] not result in groundwater levels falling below one metre above mean sea level within 200 metres of the coastal marine area, ..."

44.2 As pointed out in the section 42A report,⁵ case law has established that permitted activity rules must:⁶

⁵ Northland Regional Council. 2018. Allocation and use of water: Recommendations in response to submissions on the Proposed Regional Plan for Northland – Section 42A hearing report. p. 43

⁶ Carter Holt Harvey vs Waikato Regional Council A123/08

- (a) Be comprehensible to a reasonably informed, but not necessarily expert, person;
- (b) Not reserve to the council the discretion to decide by subjective formulation whether an activity is permitted or not; and
- (c) Be sufficiently certain to be capable of objective ascertainment.

44.3 I consider that conditions (2)(a) and (4)(b) of rule C.5.1.5 will likely require expert assessment to assess likely compliance and may not be capable of objective ascertainment. Therefore, I recommend that conditions (2)(a) and (4)(b) should be deleted.

45	<i>Paragraph [259] - Are paras 259 to 261 in the right place?</i>
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45.1 The section 42A report contains two sections containing evaluation of recommended changes. This is an error; there should be one heading. In other words, paragraphs 259 – 261 of the section 42A report are should be read together with paragraphs 254 – 255.

46	<i>Paragraph [276] - The author acknowledges that the absence of evidence of any adverse effects on Tangata whenua values resulting from unauthorised takes, does not mean that there are no adverse effects. Yet it is recommended to delete these matters of control (C.5.1.7; 2b-e) on the basis of an absence of evidence and the relatively small volumes of water involved. Would the same circumstances not also apply to “aquatic ecosystems and species” which are to be retained as a matter of control (2a)? if so, what then is the rationale for retaining this measure, while deleting all others pertaining to Tangata whenua values?</i>
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46.1 To repeat, I am not aware of any evidence that unauthorised water takes (<50 m³/day) are having adverse effects on mahinga kai and access to mahinga kai, indigenous biological diversity where it affects tangata whenua ability to carry out cultural and traditional activities, and wahi tapu. This does not mean that adverse effects are occurring. However, I am not aware of any information on how the taking of relatively small volumes of water (<50 m³/day) from a river, lake or aquifer can adversely affect the listed values.

46.2 Lastly, I recommended in the section 42A track changes version of the Proposed Plan that “aquatic ecosystems and species” be deleted as a matter of control and matter of control (2) be replaced with:

The design, location and maintenance of the intake structure to minimise adverse effects on fish species

47 Paragraph [286] - What Plan provision is being referred to here?

47.1 I wrote the following in the section 42A report:⁷

Lastly, Horticulture New Zealand pointed out that “Clause 2) b) iii) ‘resource consents for unauthorised takes’ is confusing and should be reworded.” I agree with the organisation’s suggestion that it should be amended to state: “unauthorised takes that existed at the notification date of this plan, which are not authorised by resource consent.”

47.2 The first sentence of the paragraph should state: “Lastly, Horticulture New Zealand pointed out that “Clause 2) b) iii) of Policy D.4.16 [relocated to Appendix H.6]...” [My emphasis.]

48 Paragraph [309] - In respect of enabling the transfer of water permits between users – is there evidence to suggest that this encourages the practice of larger entities effectively being granted water use permits and then on-selling these to others for profit? Are there deterrents within Policy D.4.24 to discourage this practice?

48.1 Section 136 of the RMA provides for the transfer of water permits for the taking and use of water from a holder of a water permit to:

- (a) any owner or occupier of the site in respect of which the permit is granted; or
- (b) to another person on another site, or to another site, if both sites are in the same catchment (either upstream or downstream), aquifer, or geothermal field.

48.2 I am not aware of any evidence that the provision “encourages the practice of larger entities effectively being granted water permits and then on-selling these to others or profit.” That said, even if it were a ‘problem’ it is not apparent what the policy intervention would be to address it.

⁷ Northland Regional Council. 2018. Allocation and use of water: Recommendations in response to submissions on the Proposed Regional Plan for Northland – Section 42A hearing report. p. 72

48.3 That said, the transfer of water permits should improve the efficient allocation and use of water because it enables water to be allocated to the use with the highest economic value.

48.4 Policy D.4.24 of the Proposed Plan provides direction on how an application for transfer of a water permit should be determined. The policy does not address the potential for 'water banking'. Policies D.4.20 – D.4.22 provide direction on how reasonable and efficient use of water should be determined (that is, to ensure that the volumes of water sought are necessary for the use, not for 'water banking').

49 *Paragraph [322] - (D.4.22 – GBC Winstone) There's quite some difference between 'consideration of possible wastage' and 'demonstration that water will not be wasted'. Will the change fulfil the original intent of the rule to ensure permit holders have a plan to prevent water wastage? Can you explain your reasoning here please?*

49.1 Policy D.4.22, as notified, stated:

A resource consent application to take water for any other use of water must include an assessment of reasonable and efficient use by demonstrating that water will not be wasted and identify any opportunities for re-use or conservation.

49.2 GBC Winstone asked "what level of assessment will be required under Policy D.4.22 to demonstrate that water will not be wasted", and stated that "[i]t could be impossible to provide evidence of no wastage."⁸

49.3 I agreed with GBC Winstone that it would be impossible (or at least very difficult) to demonstrate that water will not be wasted. Water can be wasted due to technical or operational error. However, I tend to agree that "consideration of possible wastage" does not put a lot of emphasis on the applicant to minimise wastage. Nor is it clear what is to be considered in relation to possible wastage. The policy could be strengthened by amending it as follows:

~~A resource consent application~~ An application for a resource consent to take water for any other use of water must include an assessment of the reasonable and efficient use by taking into account the nature of the activity, and identifying potential water

⁸ GBC Winstone. p.11

~~wastage and demonstrating that water will not be wasted and identify and opportunities for re-use or conservation.~~

50 Paragraph [357] - (D.4.23 – Egg Producers Fed) How is ‘exceptional circumstances’ defined? Would the term “special circumstances” be more appropriate, as it could draw on the caselaw around s95A(9) of the RMA? The author states that this change should be made to both Policy clause 2 and 3 – has this been done?

- 50.1 The RMA uses the term “exceptional circumstances” and “special circumstances” in several places.
- 50.2 I understand that case law has defined ‘special circumstances’ (in the context of decisions on public notification of resource consent applications under section 95A or the RMA) as those “outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique.”⁹
- 50.3 The dictionary meaning of “exceptional” means “unusual” or out of the ordinary. While I am not qualified to comment on the legal issues associated with each term, I consider that the terms special circumstances and exceptional circumstances are synonymous. However, legal opinion can be sought if the Panel considers that it would be of assistance.
- 50.4 I stated in the second sentence of paragraph 357 of the section 42A report that clauses (2) and (3) should not apply if “exceptional circumstances” warrant otherwise. That was an error. The sentence should state: “I agree though that the directives in Clauses 2(a) and (b) of the policy may not be applicable to water permits ...”.

51 Paragraph [385] - Has the recommendation in bullet point two “The taking and use of geothermal water and associated heat and energy that is not permitted by Rule C.5.1.1 should be classified as a discretionary activity” been included in the plan?

- 51.1 Rule C.5.1.10 classifies the taking of fresh water that is not the subject of another rule in section C.5.1 of the Proposed Plan as a discretionary activity. The RMA defines fresh water as “all water except coastal water and geothermal water”.¹⁰

⁹ Far North DC v Te Runanga-iwi o Ngati Kahu [2013] NZCA 221 at [36].

¹⁰ RMA s2.

51.2 I recommended that the rule C.5.1.10 should apply to all water (including geothermal water) by replacing the first part of the rule with “The taking and use of water, or the taking and use of heat or energy from water...”. That is, Rule C.5.10 as amended now applies to the taking and use of geothermal water and associated heat and energy that is not permitted by rule C.5.1.1.

52 *A new note in Appendix H6 under Table 21 is recommended to read: The minimum flow a [sic] will be applied at the point of take and downstream reaches, including at a flow recorder site. Does this mean that a take will be subject to a minimum flow at the point of take, but also to the minimum flow at the bottom of the catchment? If so, the take will be restricted if either minimum flow is breached. That means that the minimum flow at the point of take might not be breached, but the take will still need to cease if the minimum flow at the bottom of the catchment is exceeded as a result of the cumulative effect of all takes above that point. Is that correct and is the Plan clear about that?*

52.1 The note added to the first page of Appendix H.6 clarifies the spatial resolution at which minimum flows for rivers will be applied. It states:

- 1) *The minimum flow a [sic] will be applied at the point of take and downstream reaches, including at a flow recorder site.*
- 2) *The seven-day mean annual low flow can be determined by gauging of river flows correlated with water level monitoring sites, rated flow recording sites or hydrological modelling,*

52.2 The reason for applying the minimum flow at the point of take and downstream reaches is to ensure the cumulative effects of multiple takes do not result in minimum flows being breached. In other words, takes should be restricted if the flow in a river at the point of take or below the point of take is at or below the minimum flow. However, in practice this approach may be difficult to apply if there are no flow gauging sites downstream of the point of take (for example, at the terminal reach of the catchment or at other water abstraction points).

52.3 I consider that the note should be amended to specify that the minimum flow will be applied at the point of take and/or any downstream flow recorder sites, as determined by the regional council. I also consider that the second point should be amended. Recommended changes are shown below.

- 1) The minimum flow will be applied at the point of take and downstream reaches, including at a flow recorder site and/or any downstream flow recorder sites, as determined by the regional council.
- 2) The seven-day mean annual low flow (MALF) can be determined by gauging of river flows correlated with water level monitoring sites, rated flow recording sites or hydrological modelling, at flow recorder sites will be determined using the lowest average river flow for any 7-consecutive-day period for each year of record.
- 3) The MALF for other sites for which no measured flow data exists will be determined through gauging of river flows correlated with water level monitoring sites or flow recorded sites. The regional council will have discretion over the location and method for the gauging.

53	<i>Should recommended new Note 1 in Appendix H6 under Table 23 refer to allocation limits and not minimum flows?</i>
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53.1 A similar guidance note on determining allocation limits has been inserted under Table 23 in Appendix H.6, however the first point in the note incorrectly refers to minimum flows rather than allocation limits. I consider that the note should be amended, consistent with the recommended changes to the note for the application of minimum flows, to state:

- 1) The ~~minimum flow~~ allocation limit will be applied at the point and downstream reaches, including at a flow recorder site of take and/or any downstream flow recorder sites, as determined by the regional council.
- 2) The seven-day mean annual low flow (MALF) can be determined by gauging of river flows correlated with water level monitoring sites, rated flow recording sites of hydrological modelling, at flow recorder sites will be determined using the lowest average river flow for any 7-consecutive-day period for each year of record.
- 3) The MALF for other sites for which no measured flow data exists will be determined through gauging of river flows correlated with water level monitoring sites or flow recorded sites. The regional council will have discretion over the location and method for the gauging.

54	<i>F.O.2 (6) – is this meant to read “...and land subsidence <u>are</u> avoided...”?</i>
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54.1 Part (6) of recommended objective F.0.2 should state:

*...adverse effects associated with saline intrusion and land subsidence are avoided,
and...*

55	<i>S42A Report Appendix A – page 98. Is Rule C.5.1.8 recommended to be RDA or DA? In the revised Plan it is still RDA.</i>
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55.1 I stated in the section 42A report:¹¹

Note that I recommended elsewhere in this report that Rule C.5.1.8, which classes supplementary (high flow) allocation as a restricted discretionary activity, should be changed to a discretionary activity. This will provide the council to consider any manner of effect that will or may result from a proposal to take water when the flow in a river is above its median flow. The regional council will have discretion over the location and method for the gauging.

55.2 The statement is incorrect; I did not recommend changing Rule C.5.1.8 from a restricted discretionary activity to a discretionary activity. I did however recommend deleting conditions (1) and (2) of the rule on the basis of Landcorp Farming Ltd.'s submission that "the flow and allocation methodologies are coarse, and difficult to interpret in terms of anticipated effects and fiscal impacts."¹²

56	<i>S42A Report Appendix A – page 103. Is the recommendation relating to the Oil Companies correct?</i>
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56.1 The Oil Companies asked for a note to be included under rule C.5.1.5 that states the associated discharge of groundwater can be permitted under rule C.6.9.5. I stated that the "request is constructive and will help people use the plan more efficiently."¹³ However, I incorrectly recommended that the Panel not grant the relief sought. The section 42A report should state: "To grant the relief sought."

¹¹ Northland Regional Council. 2018. Allocation and use of water: Recommendations in response to submissions on the Proposed Regional Plan for Northland – Section 42A hearing report. p.98

¹² Landcorp Farming Ltd. p.9

¹³ Northland Regional Council. 2018. Allocation and use of water: Recommendations in response to submissions on the Proposed Regional Plan for Northland – Section 42 hearing report. p.

Aquaculture

(Responses by Ben Lee)

57 *Appendix A page 29. In the new rule for oyster washing, is condition 3(f) a duplication error?*

57.1 Yes – condition 3(f) should be deleted.

58 *Appendix A page 30. Rule C.1.3.1 new matter of control (10) – are the effects on public facilities and infrastructure confined to facilities and infrastructure in the CMA? If not, which of NRC's s30 functions does the matter of control relate to?*

58.1 No - the intention was to consider effects on public facilities and infrastructure on land and in the CMA. The legal question of whether the land based effects are within Council's s30 functions are being considered in the legal advice being sought which is addressed in the response to question 129.

58.2 Similar wording regarding effects on public facilities and infrastructure is used for matters of discretion in rules C.1.3.2 – 4.

59 *Appendix A page 30. Rule C.1.3.2: Would matter of discretion (1) be clearer if it was worded as follows, with matter of discretion (10) and new matter of discretion (14) then being omitted:*

Effects on the characteristics, qualities or values of the mapped (refer I maps) Significant Ecological Area, Outstanding Natural Feature, Area of Outstanding Natural Character or Site of Significance to Tangata Whenua.

59.1 I agree with the suggestion of consolidating the matters of discretion, but I would recommend being more specific that it is the effects on the characteristics, qualities or values that make the area, feature or site significant or outstanding.

59.2 I will illustrate why I think this is important with an example. The key value of an area of outstanding natural character might be wilderness values and the absence of lights. The assessment of effects in respect to outstanding natural character therefore should only be limited to these matters. Otherwise an applicant for a marine farm may be required or asked to provide information (which comes at a cost) on the effects of the marine farm not only on wilderness values and lighting, but also

effects on the appreciation of the surrounding natural landforms (which may contribute to the natural character, but are not the reason why it is outstanding).

59.3 I suggest the following amendments:

1) *Effects on the characteristics, qualities or values ~~which make the outstanding values of mapped (refer I maps) areas of Significant Ecological Areas, areas of Outstanding Natural Character and Outstanding Natural Features, or Sites of Significance to Tangata Whenua, that make the area, feature or site significant or outstanding.~~*

...

~~10) Effects on Sites and Areas of Significance to Tangata Whenua.~~

...

~~14) Effects on mapped (refer I Maps) Significant Ecological Areas~~

59.4 Similar wording is used in rules C.1.3.3. and C.1.3.4, and should be amended too.

60	<i>Appendix A page 30. Rule C.1.3.2: Why is matter of discretion (2) the only one to refer to “adverse effects”?</i>
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60.1 I cannot recall precisely why it was limited to *adverse* effects – I suspect it was because the matters of discretion in the [Proposed National Environmental Standard for Marine Aquaculture](#) refer to adverse effects and I referred to this document when forming my recommendations . For consistency, I recommend the word “adverse” be deleted so the matter of discretion would read:

2) *Adverse Effects on reefs and biogenic habitat.*

60.2 The same change should be made in rules C.1.3.3 and C.1.3.4

61	<i>Appendix A page 30. Rule C.1.3.2: Is “biogenic habitat” a commonly understood term? If not, should it be in the Definitions?</i>
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61.1 I accept it is unlikely to be a commonly understood term and a definition would be helpful. A footnote would be another option, but to avoid repetition (the term is used

five times in the Plan) the preference is for a definition rather than a footnote. I recommended the following definition¹⁴:

Biogenic habitat:

Either -

- Emergent three-dimensional structure, formed by living species, that separate areas in which it occurs from surrounding lower vertical dimension seafloor habitats; or
- Non-living structure generated by living organisms, such as infaunal tubes and burrows.

For the purpose of this Plan, biogenic habitat created by pest organisms is excluded.

Examples of biogenic habitats include:

- Areas of biogenic “reef” formed by rigid or semi-rigid organisms e.g. beds of shellfish (horse mussels, green-lipped mussel, dog cockle beds, shell hash); bryozoan fields, larger hydroids, maerl/rhodolith beds (red algae that form nodules of calcium carbonate)
- mangrove forests, kelp forest, other seaweed beds, beds of Caulerpa, a green alga, seagrass meadows, sponge gardens.
- the burrows created by crabs, tubeworm mounds.

62 Appendix A page 30. Rule C.1.3.2: Would matter of discretion (3) be better worded as follows:

Adverse effects on marine mammals and seabirds, including their entanglement in marine farm structures.

62.1 I prefer the wording I have recommended because it is more specific about the adverse effects of concern. If it was more broadly cast as suggested, then other adverse effects on marine mammals and seabirds could be considered (e.g. noise).

62.2 The recommended wording as per the S42A report is: “*Marine mammal and seabird interactions with the marine farm, including entanglement*”. This was a variation of the wording proposed by Aquaculture NZ: “*Management practices to minimise*

¹⁴ Recommended by James Griffin, and based on description in: “*Linking marine fisheries species to biogenic habitats in New Zealand: a review and synthesis of knowledge*” New Zealand Aquatic Environment and biodiversity Report No. 130 M.A. Morrison; E.G. Jones; M. Consalvey; K. Berkenbusch. May 2014.

marine mammal and seabird interactions with the marine farm, including entanglement”.

Catchments

(Response by Justin Murfitt)

63	<i>Paragraph [81] - What cross-references did the author have in mind?</i>
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63.1 Cross references between catchment specific rules and those that apply region-wide to the same activity would be beneficial for plan users. The activities in question that I consider would benefit from cross references are water takes and livestock exclusion.

63.2 In relation to water takes, I recommend the addition of cross a reference at the note at the start of Section C.5.1 identifying that catchment specific rules apply to water takes in the Doubtless Bay and Pouto catchments (namely Rule E.0.2 – *Water takes from Lake Waiporohita – discretionary activity* and Rule E.0.3 *Water takes from a lake in the Pouto Catchment – permitted activity*) and that these rules take precedence. Recommended text for these cross references is as follows:

Catchment specific rule E.0.2 - Water takes from Lake Waiporohita – discretionary activity applies to Section 14(3)(b) takes and prevails over the more permissive rules in this section.

Catchment specific rule E.0.3 Water takes from a lake in the Pouto Catchment – permitted activity applies to the taking and use of water and prevails over Rule C.5.1.1 Minor takes permitted activity.

63.3 On a related matter, I recommend a note be added to the Pouto Rule E.0.3 advising that where the permitted activity rule cannot be met it defaults to Rule C.5.1.10 *Other water takes – discretionary activity applies*”. This does not change the intent or effect of the rule, as discretionary activity status would apply in any case given section 87B(1) of the Resource Management Act 1991(a). Recommended text is as follows:

Where the conditions of this rule cannot be met C.5.1.10 Other water takes – discretionary activity applies

63.4 In relation to livestock exclusion rules, I recommend a note be added under the heading to Section C.8.1 Stock exclusion highlighting the fact that catchment specific livestock exclusion rules apply in both the Mangere and Whangarei Harbour and

catchments (Rules E.0.7 and E.0.9 respectively) and take precedence over region-wide permitted rules.

63.5 Recommend text for the cross referencing is as follows:

Catchment specific rules E.0.7 Access of livestock to the bed of a water body or permanently flowing artificial watercourse in the Mangere catchment – permitted activity and E.0.9 Access of livestock to the bed of a water body in the Whangarei Harbour catchment – permitted activity apply and take precedence over rule C.8.1.1 Access of livestock to the bed of a water body or permanently flowing artificial watercourse – permitted activity.

Coastal – Reclamations

(Responses by Michael Day)

64 *Paragraph [26] - Regarding recommended amendment to rule C.1.6.3 to consider mapped significant ecological areas, and mapped areas of outstanding natural features/character as part of a discretionary consent for reclamation in the CMA for regionally significant infrastructure, is there scope and merit for the inclusion of mapped significant historic heritage and Tangata whenua areas as well?*

64.1 Firstly, I consider that there would be scope to include mapped sites of significance to Tangata whenua and significant historic heritage areas within this rule, as the relief sought by CEP Services Matauwhi Limited is to *'add a further clause to this rule that the reclamation is not located in a special area...'*

64.2 This aside, I have deliberately recommended amending this rule to only apply to the three mapped 'significant' areas covered by Policies 11, 13 and 15 of the New Zealand Coastal Policy Statement, in recognition of the requirement to avoid adverse effects on the values and characteristics of these areas.

64.3 I do not consider this same 'avoid' adverse effects regime applies to Sites of significance to tangata whenua and Historic heritage areas, which is why I have not recommended to include them in this rule. The policy bar in the Proposed Plan for historic heritage is to avoid significant adverse effects (policy D.2.6) and for Sites of significance to tangata whenua is that adverse effects are no more than minor (policy D.1.4).

64.4 To conclude, while I consider there is scope, I do not consider there is merit in expanding the list of excluded mapped areas. However, I do note that even if a reclamation is proposed under rule C.1.6.3, the applicants will need to demonstrate that the reclamation is appropriate and consistent with requirements of policies D.1.4 and D.2.6.

Coastal – Structures

(Responses by Michael Day)

65 *Appendix A -page 31. Should new condition 5(g) in Rule C.1.1.7 in the revised Plan refer to land?*

65.1 Addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes.*

66 *Appendix A -page 32. Should the chapeau in Rule C.1.1.8 in the revised Plan refer to “existing hard protection structures”?*

66.1 No – I do not consider that the chapeau needs to refer to ‘existing’ hard protection structures because it is self-evident as the rule relates to maintenance, repair or removal of structures. Upon reflection, I accept my discussion in response to Hayes I is confusing. I consider that this rule should apply to hard protection structures above and below the line of mean high water springs and that those above mean high water springs may not have required consent for their initial placement (they may have lawfully established as a permitted activity). I recommended deleting reference to ‘authorised’ in the rule so that it applies to (existing) hard protection structures above mean high water springs. Consequently, the word ‘authorised’ should be deleted from condition 3) as follows:

‘the maintenance or repair is contained within the form of the existing ~~authorised~~ structure.

67 *Appendix A -page 38. Should the title of Rule C.1.1.13 in the revised Plan refer to “Existing authorised structures ...”?*

67.1 No – I had given further thought to the relief sought by Royal Forest and Bird Protection Society and decided that it was not necessary, as the actual rule already refers to ‘existing’ authorised structures. Retaining the rule as notified will ensure

consistency with the rest of the rules in the section that apply to 'existing' structures as no rules currently refer to 'authorised' in their titles.

68 *Paragraph [31] - Second line – incomplete sentence?*

68.1 Yes – the sentence should read:

This is primarily because during the 1990s, the council ...

69 *Appendix A (p31) – amendment in C.1.1.7 (5)b – should the additional 'cleaning' be removed?*

69.1 Yes – this is an error. The clause should read:

... the use of abrasive or high pressure cleaning ~~cleaning~~ methods...

70 *Appendix A (p40) – if the title of C.1.1.13 should include 'authorised', doesn't the title of C.1.1.15 also need to be amended as well? Has the title to C.1.1.13 been amended in the revised Plan?*

70.1 No – see response to question 67 above. The rule titles should not refer to 'authorised' structures.

71 *Appendix A -page 40. Why does clause 11 of Rule C.1.1.16 not include Significant Ecological Areas?*

71.1 The key reason why significant ecological areas (SEAs) have not been included within the list of mapped areas in clause 11 of rule C.1.1.16 is that in my opinion, the potential adverse effects of placing structures within SEAs are less than dredging, disturbance or reclamation activities (which are non-complying activities within mapped SEAs) and are therefore appropriate to be assessed as 'discretionary' activities.

71.2 Often, entire estuaries or harbours have been mapped as SEAs because of their overall values. The extract below is taken from the summary Assessment Sheet for Horahora Significant Ecological Marine Area:

Horahora estuary as a whole has been given a high ranking of ecological significance for marine values. It is an excellent example of an east coast small estuary... The clean sandy tidal flats have healthy cockle beds. Pipi can be found on some of the

channel edges and channel bottoms. Combined, these habitats perform important ecological roles as nursery and feeding areas for a wide variety of marine life.

71.3 In my opinion, the potential adverse effects associated with the placement of structures (such as disturbance of the foreshore and seabed during construction of the structure) on the values and characteristics of SEAs are less than other coastal activities such as capital dredging or reclamations. Therefore, I have not recommended that clause 11 of rule C.1.1.16 includes mapped SEAs. I consider that a discretionary activity status is the most appropriate for new structures in mapped SEAs, noting that applicants will still be required to demonstrate that their structures are not inconsistent with requirements of policy D.2.8 (Managing adverse effects on indigenous biodiversity).

72 *Appendix A -page 43. Is the recommendation on C.1.1.21 correct as the revised Plan deletes the words “operational need”?*

72.1 No – the recommendation is incorrect. This is because I have recommended to amend the definition of ‘functional need’ and to delete the definition of ‘operational need’.

73 *Appendix B – page 51. What is Condition C.1.8.23(e) supposed to be in the revised Plan?*

73.1 This condition is recommended to be replaced with the following two tables, which are taken from *New Zealand Standard 6803:1999 Acoustics – Construction Noise*.

Table 2 – Recommended upper limits for construction noise received in residential zones and dwellings in rural areas

Time of week	Time period	Duration of work					
		Typical duration (dBA)		Short-term duration (dBA)		Long-term duration (dBA)	
		<i>L_{eq}</i>	<i>L_{max}</i>	<i>L_{eq}</i>	<i>L_{max}</i>	<i>L_{eq}</i>	<i>L_{max}</i>
	0630- 0730	60	75	65	75	55	75

Weekdays	0730- 1800	75	90	80	95	70	85
	1800- 2000	70	85	75	90	65	80
	2000- 0630	45	75	45	75	45	75
Saturdays	0630- 0730	45	75	45	75	45	75
	0730- 1800	75	90	80	95	70	85
	1800- 2000	45	75	45	75	45	75
Sundays and public holidays	2000- 0630	45	75	45	75	45	75
	0730- 1800	55	85	55	85	55	85
	1800- 2000	45	75	45	75	45	75
	2000- 0630	45	75	45	75	45	75

Table 3- Recommended upper limits for construction noise received in industrial or commercial areas for all of the year

Time period	Duration of work		
	Typical duration	Short-term duration	Long-term duration
	<i>L_{eq}</i> (dBA)	<i>L_{eq}</i> (dBA)	<i>L_{eq}</i> (dBA)
0730- 1800	75	80	70
1800- 0730	80	85	75

74 *Appendix B (p51) – C.1.8.23 (1) and (2) currently refer to “Conditions 23(a)to and (b) “ however, (b) has been deleted and replaced with Table 3 – is this correct and does the text require amendment to reflect the change?*

74.1 Yes – there is an error in the numbering and this needs to be amended.

75 *Appendix B – page 54. Given that Policy D.5.25 is deleted in the revised Plan is the Discussion in relation to Bay of Islands Maritime Park Inc correct?*

75.1 I do believe that the discussion is correct in that it is unclear how the submitter wishes the Proposed Plan to recognise marinas as potential sources for pest species. However, for clarity, I do note that my colleague James Griffin has recommended that Policy D.5.25 be deleted and a new Pest Management policy (with essentially the same wording but applying to land and not just the coastal marine area) be included in policy section D.2

76 *Have all references in the revised Plan to “General Coastal Zone” been amended to “General Marine Zone”?*

76.1 Yes - addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes.*

77 *Have all references in the revised Plan to “Commercial Coastal Zone” been amended to “Coastal Commercial Zone”?*

77.1 No – amendments are required in the following places:

- Coastal Activities Index
- Rule C.1.1.12: cross-reference to C.1.1.2
- Rule C.1.1.13
- Rule .1.7.2
- Rule C.1.7.3

78 *Why is Rule C.1.1.11 the only Rule in Section C.1 to list as Matters of Control/Discretion effects on a list of ‘significant areas’?*

78.1 Because as notified, the other controlled activities specifically relate to structures in ‘development’ zones (such as Whangarei City Centre Marine Zone or the Coastal Commercial Zone) and these zones do not contain mapped significant areas. Rule C.1.1.11 applies anywhere in the coastal marine area. A similar example is the maintenance dredging rule in the Proposed Regional Plan - C.1.5.10. This is also a

controlled activity and includes effects on mapped significant areas as a matter of control.

79 *Why are activities covered by Rule C.1.1.11 excluded from Sites or Areas of Significance to Tangata Whenua?*

- 79.1 I sought advice from Keir Volkerling as he provided the original recommendation to include this restriction within the rule. Keir has responded with the following:
- 79.2 Policy D.1.4 requires that for Sites and Areas of Significance to Tangata Whenua, consents may only be granted if relevant adverse effects of the activity can be avoided, remedied or mitigated. If the activities of an application under C.1.1.11 may impact on the values of a Site / Area of Significance, then management can be ensured by either a condition that the activity is not within the Site / Area, in which case the default is the discretionary activity C.1.1.16; or by making Site / Areas a matter of control in C.1.1.11.
- 79.3 Policy D.1.5 is written to ensure that there is a robust process for determining significance, and it requires that the specific values and the locations where they can be affected are identified. In practice, this means managing effects should be achieved relatively simply - the effects of the activity are known, the values and location of the Site / Area are known, so management options can be identified (eg by minor relocations).
- 79.4 Unless the rule has a condition or a matter of control to ensure that the effects are considered, values which have been determined by implementing a thorough process could be compromised.

80 *Why does Rule C.1.1.18 not refer to Sites or Areas of Significance to Tangata Whenua, Historic Heritage Areas or Nationally Significant Surf Breaks?*

- 80.1 As outlined in the s42A report for coastal structures, I have recommended to amend this rule to exclude these activities (hard protection structures associated with regionally significant infrastructure or core local infrastructure) from establishing within mapped Outstanding natural character areas and Outstanding natural features in the coastal marine area. This is because, taking into account recent case law in

New Zealand (such as NZHC 3080 Royal Forest and Bird Protection Society Inc vs Bay of Plenty Regional Council), I consider that to be consistent with the New Zealand Coastal Policy Statement, these exclusions are required in order to give effect to the requirement to 'avoid' adverse effects.

80.2 I consider that Nationally significant surf breaks should be added to the list of areas excluded from this rule because the requirement to 'avoid' adverse effects is the same as Outstanding natural character areas and Outstanding natural features.

80.3 However, I do not consider this same 'avoid' adverse effects regime applies to Sites of significance to tangata whenua and Historic heritage areas, which is why I have not recommended to include them in this rule. The policy bar in the Proposed Plan for historic heritage is to avoid significant adverse effects Policy D.2.6) and for sites of significance to tangata whenua is that adverse effects are no more than minor (Policy D.1.4).

80.4 To conclude, I consider the rule should be amended by adding a new condition 3) as follows:

...provided it is not located within a mapped (refer I 'Maps | Ngā mahere matawhenua'):

- 1) Outstanding Natural Feature in the coastal marine area, or
- 2) Area of Outstanding Natural Character in the coastal marine area, or
- 3) Nationally Significant Surfbreak.

Contaminated Land

(Responses by Michael Payne)

81 *Paragraph [37] - Is the new rule for re-consenting meant to read": ...the passive discharge of contaminants to into water..."? Is this missing 'and' 'or'?*

81.1 It should read:

...the passive discharge of contaminants ~~to~~ into water...

82 *Paragraph [54] - In the new rule, 'Contaminated land – remediation controlled activity' should matter of control 1 second c). have three points; i) managed; ii) monitored, including frequency and location of monitoring; and iii) reported on?*

1.1 Yes. It should be written as;

New rule - Contaminated land remediation - controlled activity

Remediation of contaminated land is a controlled activity.

Matters of control

1) *the adequacy of the detailed site investigation report including:*

- a) site sampling;*
- b) laboratory analysis*
- c) risk assessment*

~~2)a)~~ *the need for and adequacy of a site management plan (contaminated land);*

~~3)b)~~ *the need for and adequacy of a remedial action plan (contaminated land);*

~~4)e)~~ *how the discharge is to be:*

- ~~a)h)~~ *managed*
- ~~b)h)~~ *monitored, including frequency and location of monitoring ; and ~~reported on.~~*
- ~~c)~~ *reported on*

~~5)d)~~ *the physical constraints of the site and operational practicalities;*

~~6)e)~~ *the transport, disposal and tracking of soil and other materials taken away in the course of the activity; ...*

...

83	<i>Paragraph [90] - In the revised Plan, in Rule C.6.8.2 condition 9 (was 3), is “SQEP” a defined term? If not, should it be?</i>
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83.1 SQEP is not defined in the proposed plan. SQEP is an acronym for a suitably qualified and experienced practitioner. I believe it would be better practice to write the term out in full rather than using an acronym. I recommend the following changes to clause C.6.8.2 (9):

9) light non-aqueous phase liquids (LNAPLs) (730) must not have a LNAPL transmissivity of less than 0.001 square metres per day (731), or a ~~SQEP~~ suitably qualified and experienced practitioner certifies the LNAPL is unlikely to be mobile using a lines of evidence approach (732), and...

83.2 If the committee believe that the proposed plan should explain what a suitably qualified and experienced practitioner is, I would recommend inserting a foot note directing plan users to page 16 of *Ministry for the Environment. 2012. Users’ Guide: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. Wellington: Ministry for the Environment.*

84 Paragraph [95] - In the revised Plan, is Rule C.6.8.2 condition 10 (was 4) worded correctly?

84.1 Addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

85 Appendix A (p29) – Appendix H2 ‘Stormwater treatment plans’ has been deleted. Where has the definition of registered contaminated site been changed?

85.1 The term ‘registered contaminated site’ was only used in Appendix H2 ‘Stormwater treatment plans’. The decision was made to delete this appendix in its entirety. This decision made the earlier recommendation on p29 of Appendix A redundant. Regrettably, this later decision was not reflected on p29 of Appendix A.

86 New Policy (after D.4.10) – does clause 3)(d) duplicate the function of district councils under the NES:CS. Refer to [77] third bullet of the S42A report.

86.1 The activities listed in the clause are activities that are managed under the NES:CS. However, the NES:CS does not apply to regional council functions. The clause is intended to relate to s30 functions of regional councils, specifically discharges of contaminants to water or discharges of contaminants to land that may enter water.

Dredging - Disturbance and Disposal

(Responses by Michael Day)

87 Paragraph [22] - Do the district council's bylaw making powers extend below the line of MHWS?

87.1 Yes. Whangarei District Council's boundaries were formally changed via the Local Government Boundary Alteration Notice 1996. Far North District Council and Kaipara District Council were changed via the Local Government Boundary Alteration Notice 2011. Both notices extend the seaward boundaries of the districts to mean low water springs.

88 Paragraph [22] - Do the district council's bylaw making powers to manage vehicles on beaches include the use of quads and other motor bikes?

I note there is no definition for 'vehicle' in the Proposed Plan, do you think a definition is warranted in the context of the Plan?

88.1 In response to the first question, the answer is 'yes'. For example, the [Whangarei Control of Vehicles on Beaches Bylaw](#) - applies to vehicles and states that 'vehicle' has the same meaning as in section 2(1) of the Land Transport Act 1998. This Act defines a vehicle as:

vehicle—

(a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and

(b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but

(c) does not include—

(i) a perambulator or pushchair:

(ii) a shopping or sporting trundler not propelled by mechanical power:

(iii) a wheelbarrow or hand-trolley:

(iv) [Repealed]

(v) a pedestrian-controlled lawnmower:

(vi) a pedestrian-controlled agricultural machine not propelled by mechanical power:

(vii) an article of furniture:

(viii) a wheelchair not propelled by mechanical power:

(ix) any other contrivance specified by the rules not to be a vehicle for the purposes of this definition:

(x) any rail vehicle

88.2 In response to the second question, my view is that a definition for 'vehicle' in the Proposed Plan is not necessary because what constitutes a vehicle is self-evident and there have been no issues to date with any confusion about what is a vehicle in implementing the rules in the operative Regional Coastal Plan which refer to vehicles¹⁵. However, if the hearing panel is of a view that a definition is warranted, I suggest that the Land Transport definition is used because this is a commonly used definition.

¹⁵ Such as rule 31.4.2(a).

89 *Paragraphs [31] and [34] – how are the changes indicated reflected in the recommended amendments?*

89.1 The recommended amendment (to include a rule that does not comply with rule C.1.5.1) was incorporated into the Proposed Plan via the recommended change to rule C.1.5.12. This was specifically addressed on page 25 of the ‘Dredging, disturbance and disposal in the CMA Section 42A report. See below:

General submission – new rule	Kaipara District Council and Whangarei District Council requested a new rule to address the effects of vehicle use which does not comply with rule C.1.5.1.	I agree with the submitters that there is currently a gap in the Plan regarding activities that cannot comply with rule C.1.5.1. I therefore recommend adding this to the discretionary activity ‘catch all’ rule that is C.1.5.12.	Amend rule C.1.5.12 as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>
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90 *Appendix A – page 27. General submission from Te Runanga o Whaingaroa requesting a rule to manage human burials in their rohe moana and the scattering of human ashes at sea. The recommendation is not to grant the relief sought on the grounds that evidence has not been provided. Presumably, the reasons for this request are grounded in the cultural and spiritual values of tangata whenua rather than evidence-based information. What kind of evidence would the author consider appropriate to justify this submission?*

90.1 I have discussed this with Keir Volkerling as it is a tangata whenua/cultural submission.

90.2 Our reasons were not based on lack of or need for evidence, but because we consider that scattering of ashes would be unenforceable. Keir has previously addressed this issue with the Auckland Unitary Plan and the Hauraki Gulf Forum. In both those cases, it was decided that a non-statutory approach was the most practical option (information with funeral directors and crematoria etc as well as education).

91 *Appendix A – page 27. Regarding Heritage NZ, revised rule C.1.5.2 does not exclude the activity from a Site or Area of Significance to Tangata Whenua or a mapped Historic Heritage Area as the recommendation implies. Is the recommendation correct?*

91.1 The recommendation should refer to both Historic Heritage Areas and Sites or Areas of Significance to Tangata Whenua. This is because while the relief sought by Heritage NZ related to rule C.1.5.3 (as notified), in response to the submission by New Zealand Transport Agency, I have recommended to delete rule C.1.5.3 and amalgamate it with C.1.5.2. This is the reason why clause 1) of rule C.1.5.2 now refers to mapped Sites or Areas of Significance to Tangata Whenua and mapped Historic Heritage Areas.

92 *Should Rule C.1.5.2 condition 1 refer to a Historic Heritage Site?*

92.1 No – Historic Heritage ‘Area’ is correct. It should not refer to a Historic Heritage Site as these are buildings and structures.

93 *Should the exclusions in Rule C.1.5.12 include Regionally Significant Surf breaks?*

93.1 I do not consider so. The Section 32 analysis report for Surf Breaks for the Proposed Plan found that the preferred management option was Option ‘A’, which consisted of two policies (and no rules). In my opinion, this is still the most appropriate option, noting that if the activity being undertaken pursuant to rule C.1.5.12 is within a 1 kilometre radius of a regionally significant surf break, the applicant will need to include an assessment of environmental effects of the activity on the identified values of the surf break and avoid significant adverse effects on the regionally significant surf break. This is outlined in condition 1) of Policy D.5.26.

93.2 As an aside, I do not consider that there would even be scope to contemplate including regionally significant surf breaks in rule C.1.5.12 as I could not find a submission that has requested this relief. In any event, it would not affect my view that these areas should not be included within this rule.

Cultivation, earthworks, vegetation clearance and bores

(Responses by Ben Tait and Michael Day [where stated])

94 *Paragraph [21] - Regarding Rule C.8.2.1 condition 2 – is it practical to exclude cultivation (land preparation) from ephemeral streams given that those ‘streams’ could include numerous swales, depressions and gullies within actively farmed paddocks?*

94.1 Rule C.8.2.1 classifies cultivation (or 'land preparation' as per the recommended change) as a permitted activity subject to conditions, including that it is not done within an ephemeral stream. Given that an ephemeral stream is broadly defined to the extent that that it would capture "numerous swales, depressions and gullies within activity farmed paddocks", I consider that it is not practical to require people to obtain resource consents to cultivate land within them. Therefore, I recommend that the reference to an ephemeral stream be deleted from condition 2 of the rule.

95 *Paragraph [37] - Are any earthworks rules in the Plan more stringent than regulations in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017?*

95.1 There are two rules in the Proposed Plan that prevail over afforestation regulations in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF). The rules are E.0.4 (New plantation forestry in the Pouto Forestry Restriction Area) and E.0.5 (New plantation forestry within 20 metres of outstanding Pouto Lakes).

95.2 The council's position is that the NES-PF regulations prevail over of the other provisions in the Proposed Plan. To be clear, no other rule in the plan affects plantation forestry as defined in the NES-PF. I consider that the previous sentence should be inserted into the start of section *C Rules*, at the sub-section "National Environmental Standards".

96 *Paragraph [46] - In light of section 1.6 of the RPS cited at [34], is Rule C.8.4.1 (condition 1) appropriate?*

(Ben Tait and Michael Day)

96.1 Section 1.6 of the Regional Policy Statement for Northland (RPS) sets out the respective responsibilities of regional and district councils for the control of the use of land to maintain indigenous biological diversity and avoid, remedy of mitigate natural hazards or any group of hazards (as required by section 62(1)(i) of the RMA).

96.2 I reproduce section 1.6 of the RPS as follows:

Natural hazards – responsibilities for controlling the use of land to avoid or mitigate natural hazards or any group of hazards.

Parts of Northland	Responsibility for specifying objectives, policies, methods including rules	Refer to Policy/Method
<i>In the coastal marine area and beds of rivers, lakes and other water bodies</i>	<i>Regional council</i>	<i>7.2.2, 7.2.3, 7.2.4, 7.2.4(4), 7.2.4(5)</i>
<i>Where buildings have been materially damaged in a 10-year flood or a high risk coastal hazard area</i>	<i>Regional council</i>	<i>7.1.2, 7.1.3, 7.1.7(8)</i>
<i>All other land and surface [of] water in lakes and rivers</i>	<i>Regional and district council</i>	<i>Part 7</i>

Indigenous biological diversity – responsibilities for the control of the use of land to maintain indigenous biological diversity.

Parts of Northland	Responsibility for specifying objectives, policies and methods including rules	Refer to Policy/Method
<i>In water bodies (including wetlands); in, on, or under the beds of rivers and lakes; in the coastal marine area</i>	<i>Regional council</i>	<i>4.4, 4.7.1</i>
<i>All other land and surface [of] water in lakes and rivers</i>	<i>District council</i>	<i>4.1, 4.4.2, 4.4.3(2), 4.4.3(3), 4.4.4, 4.4.5, 4.7.1</i>

96.3 I understand that rule C.8.4.1 is for the purposes of (a) avoiding or mitigating natural hazards, and (b) maintaining and enhancing water quality, which are the responsibility of regional councils. To be clear, the rule was not issued for the purposes of maintain indigenous biological diversity.

96.4 Coastal dunes play a key role in providing protection to land behind them, acting as a buffer against eroding wave action. Therefore, it is important to maintain dune structural integrity so they perform this role. Integrity can be maintained by ensuring that existing native dune vegetation is not reduced or damaged. Therefore condition (1) is specific to native dune vegetation.

97	<i>Paragraph [50] - Why does the author consider that the definition of 'vegetation clearance' does not apply to new dams, ponds and network utility structures?</i>
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97.1 The section 42A track changes version of the Proposed Plan defines vegetation clearance as:

The cutting, burning, crushing or destruction of indigenous vegetation, but does not include clearing:

- 1) *hedges and amenity plants, or*
- 2) *vegetation along fences and around dams and ponds, or*
- 3) *vegetation around network utilities, or*
- 4) *vegetation for the maintenance of roads and tracks.*

97.2 As written, the definition applies to the clearance of vegetation along existing dams and ponds and network utility structures, not new dams, ponds, and network utility structures.

97.3 I understand that the exceptions listed in parts (1) – (4) of the definition were included through stakeholder and Council input. I recall that part (2) was included to ‘enable’ people to remove or trim vegetation growing along fences and around dams so that fences are not damaged or the structural integrity of dams compromised. Ponds were excluded in the definition because they are often water bodies that were constructed for animal drinking water supplies.

97.4 The third exception (vegetation around network utilities) stems from the definition of vegetation clearance in the Regional Water and Soil Plan, which excludes clearance around public utility networks.

98 *Paragraph [94] - 8.3.1, 8.3.2 and 8.3.3 amendment – is this meant to read “...outside of the bed-~~or~~of a river or lake...”?*

98.1 Rules C.8.3.1, C.8.3.2 and C.8.3.3 as amended begin with: “Earthworks outside of the bed or a river or lake, wetland and the coastal marine area...”. They should state:

“Earthworks outside of the bed of ~~or~~ a river or lake, wetland and the coastal marine area.”

99 *C.8.2.1 (3) a. should this read “...stream; ~~or~~and”?*

99.1 Condition (3)(a) of rule C.8.2.1 should state:

“the activity does not occur within:

a) *five metres of a natural wetland, the bed of a lake or a permanently flowing or intermittently flowing river or stream, and or...*"

100 *Paragraph [107] - Fourth line. Considering section 1.6 of the RPS cited at [34], did the author mean to refer to indigenous vegetation?*

101 *Paragraph [110] - First line. Considering section 1.6 of the RPS cited at [34], did the author mean to refer to indigenous vegetation?*

101.1 As highlighted above, the RPS sets out the responsibilities of the regional council and district councils for the control of the use of land for the purposes of maintaining indigenous biological diversity.

101.2 In paragraphs 107 – 110 of the section 42A report on the management of cultivation, earthworks, vegetation clearance and bores I discuss regional and district rules for the clearance of terrestrial indigenous vegetation. District councils issue such rules mainly for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna and the maintenance of terrestrial indigenous biological diversity.

101.3 To be clear, rules C.8.4.2 and C.8.4.3 in the Proposed Plan are for the purposes of maintaining and enhancing the quality of water and ecosystems in water bodies and coastal water and maintaining aquatic biodiversity. Riparian vegetation plays an important role, for example by: attenuating nutrients and sediment loads from catchments; regulating light climate and water temperature; and providing a source of food for invertebrates and fish.

101.4 The proposed rules, as amended in the section 42A track changes version of the plan, are specific to indigenous riparian vegetation because it is considered beneficial for aquatic ecosystem health and its extent has been significantly reduced.

102 *Appendix A – page 34. Regarding the discussion on Rule C.8.3.2 and whether an additional matter of control should be added to address potential adverse effects on the ability of tangata whenua to carry out cultural and traditional activities, is it reasonable to expect submitters to provide evidence of adverse cultural effects from earthworks at all the locations identified in table 9? Would that level of assessment not be more appropriately undertaken at the time of processing the resource*

consent? Where there is the potential for adverse effects on cultural and traditional activities from earthworks in the vicinity of water bodies or the CMA (i.e. where these activities are known to occur), does the author see any merit in adding the proposed matters of control?

102.1 Rule C.8.3.2 provides for earthworks outside of the bed or a river or lake, wetlands and the coastal marine area that are not permitted by rule C.8.3.1 as a controlled activity. The rule is for the purposes of maintaining and enhancing water quality and aquatic ecosystems.

102.2 Rowan Tautari and Patuharakeke Te Iwi Trust Board Inc. submitted that the matters of control in rule C.8.3.2 should include mahinga kai and access to mahinga kai, and indigenous biodiversity where it affects tangata whenua ability to carry out cultural and traditional activities.¹⁶

102.3 I stated in the section 42A report that:

The submitters did not explain why the additional matters of control should be included in the rule. That is, they did not provide any information that shows earthworks on land have or are having adverse effects on mahinga kai and access to mahinga kai or aquatic indigenous biodiversity where it affects the ability of tangata whenua to carry out cultural and traditional activities.

102.4 The Panel questioned if “it is reasonable to expect submitters to provide evidence of cultural adverse effects from earthworks at all the locations identified in table 9?”. I consider that evidence is needed to justify inclusion of the sought matters of control in rule C.8.3.2.

102.5 The Panel also asked: “Where there is the potential for adverse effects on cultural and traditional activities from earthworks in the vicinity of water bodies or the CMA (i.e. where these activities are known to occur), does the author see any merit in adding the proposed matters of control?”

102.6 It is important to note that the council does not have the jurisdiction (because of section 1.6 of the RPS) to issue rules for the maintenance of terrestrial indigenous

¹⁶ Rowan Tautari, p.16., Patuharakeke Te Iwi Trust Board Inc. p.16

biological diversity or the management of mahinga kai or access to mahinga kai on land (outside of water bodies and coastal waters).

102.7 If evidence exists that earthworks activities within the scope of rule C.8.3.2 have the potential to cause adverse effects on mahinga kai and access to mahinga kai water bodies or aquatic indigenous biodiversity where it affects the ability of tangata whenua to carry out cultural and traditional activities then consideration should be had to amending the conditions of the rule (for example, tightening the earthworks thresholds or requiring more stringent erosion and sediment control measures), or including the proposed matters of control.

102.8 With respect to the second option, I consider that the sought matters of control are too broad to be matters of control. For example, the term biological diversity is defined in the RMA as “the variability among living organisms, and the ecological complexes of which they are part, including diversity within species, between species, and of ecosystems.” It would be difficult for an applicant and decision-makers to assess the actual and potential effects of an activity on biological diversity.

102.9 Keir Volkerling added:

The activity subject to this rule [C.8.3.2] is earthworks. Impacts on resources relevant to mahinga kai, such as indigenous biodiversity or clearance of indigenous vegetation, require consents under other rules (some with District Councils). The rule does not apply in the proximity of water bodies. It is therefore difficult to envisage an instance where mahinga kai or cultural activities would be affected.

103	<i>Appendix A – page 35, first paragraph. Are some words missing from the discussion?</i>
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103.1 The first paragraph in the ‘discussion’ column on page 35 of the section 42A report should state:

Policy 1 in the New Zealand Coastal Policy Statement provides criteria by which the coastal environment is to be defined. One criterion is that the coastal environment includes the coastal marine area. It is important to reiterate – because there is some confusion around the scope of rules for land disturbing activities – that the rules only apply to the clearance of terrestrial vegetation. Not vegetation in water bodies or the coastal marine area. GBC Winstone suggested that this could be made clear by changing the title of rule C.8.4.1 to “Vegetation clearance outside rivers, lakes,

wetlands, the coastal hazard management area and the coastal marine area.” I endorse this suggestion. [My emphasis.]

104 Rules C.8.2.1 condition 5 and C.8.3.1 condition 7 – the recommendation is to amend the conditions to refer to the “zone of reasonable mixing”. Is clause (1)(c) of the revised definition of that term appropriate for use in a permitted activity condition? Note this query would apply to every permitted activity rule in the Plan that is recommended to refer to the “zone of reasonable mixing”.

104.1 I recommended that the following definition for the zone of reasonable mixing be included in the Proposed Plan:

For the purpose of a discharge of contaminants permitted by a rule in this plan, means:

- 1) *in relation to flowing surface water bodies, a distance downstream of the discharge that is the lesser of:*
 - a) *200 metres of the bed width of the surface water body [if the width] is greater than 30 metres at the point of discharge, or*
 - b) *[a] distance equal to seven times the bed width of the surface water body, but which must not be less than 50 metres from the point of discharge, or*
 - c) *a distance at which mixing of contaminants has occurred across the full width of the surface water body, but which must not be less than 50 metres from the point of discharge, or*
- 2) *in relation to a lake, wetland or coastal water, a distance 20 metres from the point of discharge.*

For the purpose of a discharge of a tracer permitted by C.6.9.2 'Discharge of tracers – permitted activity', the zone of reasonable is the extent of the waters for which the tracer is used to define.

For the purpose of activities that require resource consent, the zone of reasonable mixing will be determined on a case-by-case basis in accordance with D.4.8 'Zone of reasonable mixing'.

104.2 The Panel asked if clause (1)(c) of the definition is appropriate for use in permitted activity conditions. As highlighted earlier, case law has established that permitted activity rules must:¹⁷

- (a) Be comprehensible to a reasonably informed, but not necessarily expert, person;
- (b) Not reserve to the council the discretion to decide by subjective formulation whether an activity is permitted or not; and
- (c) Be sufficiently certain to be capable of objective ascertainment.

104.3 Clause (1)(c) of the definition requires a person responsible for a discharge to understand the distance at which mixing of contaminants has occurred across the full width of a surface water body. I consider that mixing zone models will be required to determine the extent of 'mixing' across the full width of the water body and such determinations will not always be (a) clear and certain, or (b) capable of consistent interpretation and implementation. What is more, there is potential that the clause will allow discretion to council officers.

105 I consider that clause (1)(c) of the definition should be deleted.

106 <i>Should references to "native vegetation" (for example C.8.4.1 condition 3) be amended to refer to "indigenous vegetation"?</i>

(Michael Day)

107 I do not consider that references to 'native dune vegetation' should be amended to 'indigenous vegetation'. This is because the proposed definition of 'indigenous vegetation' is very broad ("vegetation that occurs naturally in New Zealand or that has arrived in New Zealand without human assistance").

108 Because condition (1) of rule C.8.4.1 states that no native dune vegetation is cleared or removed, I consider that amending this to 'indigenous vegetation' will have unforeseen consequences and become too broad. The definition is for the purposes of ensuring that no native dune vegetation is removed and I consider this should remain.

¹⁷ Carter Holt Harvey vs Waikato Regional Council A123/08

109 *Should plantation forestry be excluded from Rules C.8.4.2 and C.8.4.3?*

109.1 Rules C.8.4.2 and C.8.4.3 do not apply to plantation forestry (as defined in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017). Only two rules (E.0.4 and E.0.5) in the plan prevail over the regulations in the NES.

Land drainage and flood control

(Response by Michael Day)

110 *Should Rule C.4.6 refer to the new rule for the “Repair, maintenance and clearance of a drain”?*

110.1 Yes, it should.

Managing the access of livestock access to waterways and the coastal marine area

No questions

Mangrove management

(Responses by James Griffin)

111 *Paragraph [103] - Should all of Policy D.5.23 be deleted in the revised Plan (not just the heading)?*

111.1 Yes, this was an error, Policy D.5.23 should be deleted as recommended in the S42A report: Mangrove management, paragraph's 103 and 115.

Marine pests

No questions

Moorings and Anchorage

(Responses by Michael Payne)

112 *Paragraph [30] - Are “Recognised Anchorages” (NRC) and “Recognised Recreational Anchorages” (YNZ) the same thing?*

112.1 Yes.

113 *Paragraph [51-54] - Concerns from iwi/hapu have been raised both in the context of submissions and iwi environmental management plans lodged with Council, in respect of discharges of untreated sewage from vessels into the CMA. Can the author clarify how the Proposed Plan, with recommended changes, seeks to address these concerns?*

In your opinion, based on the cultural and spiritual concerns of iwi/hapu regarding the discharge of untreated sewage into the CMA raised through submissions and iwi environmental management plans (which must be considered in the preparation of the Proposed Plan), is there justification and scope for the exclusion of vessels anchoring in Areas of Significance to Tangata whenua?

(Response by Kier Volkerling)

113.1 The Marine Pollution Regulations along with the Plan only allow untreated sewage discharge in areas seaward of the proposed Marine Pollution Limit¹⁸ shown in the Plan. Currently there are no Sites or Areas of Significance in the CMA in the PRP, and creating one will require a plan change. In such a plan change the values of the site / area need to be identified (using Policy D.1.5). Where relevant that plan change could include prohibition of mooring or sewage discharge within the site / area.

114 *Is it correct that Yachting NZ have not supplied any maps of their “Recognised Recreational Anchorages”?*

¹⁸ The Marine Pollution Limit consists of the minimum standards set in the Marine Pollution Regulations with proposed extensions to the minimum standards in several east coast harbors and the Bay of Islands.

114.1 Yes, that is correct. Yachting New Zealand, boating club representatives and Northland Regional Council worked together to identify anchorages as part of the preparation of the Plan. It is my understanding that Yachting New Zealand are of the opinion that the maps in the proposed plan need further work to make them accurate. However, they have not yet provided an alternative set of maps or provided detail on the amendments they believe are required.

115 *Should Rule C.1.2.6 refer to a Marina Zone and a Historic Site or Area?*

115.1 Yes. I believe there would be value in adding these areas to the list. Requiring resource consent will allow the risk to these areas to be assessed and managed. Without these amendments, there is a risk the value of these areas will be compromised. The revised text should be shown as;

The relocation of a mooring as directed by the regional council's Harbourmaster for navigation safety purposes and the efficient use of available space is a permitted activity, provided the mooring is not relocated into the following mapped areas (refer I 'Maps | Ngā mahere matawhenua'):

- 1) *Outstanding Natural Feature, or*
- 2) *Area of Outstanding Natural Character, or*
- 3) *Significant ecological areas, or (111)*
- 4) *Regionally Significant Anchorage, or*
- 5) *Site or Area of Significance to Tangata Whenua-or*
- 6) *Marina Zone, or*
- 7) *Historic Heritage area or Historic Heritage Site*

116 *Should Rule C.1.2.11 refer to a Historic Heritage Site?*

116.1 Yes. The revised text should be shown as;

New moorings in significant areas – non-complying activity
A new mooring and vessel using the mooring in the following areas (refer I 'Maps | Ngā mahere matawhenua');

- 1) Outstanding Natural Feature, or
- 2) Area of Outstanding Natural Character, or
- 3) Regionally Significant Anchorage, or
- 4) Areas of significance to Tangata Whenua
- 5) Historic Heritage area or Historic Heritage Site

117 *Appendix A – Policy D.5.9 – should clause (3) be shown as strikeout in the Revised Plan?*

118 *Revised Plan Rule C.1.2.9 – why is condition (7) shown as underlined and deleted when it was not included in the notified Plan?*

118.1 Addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

119 *Appendix A – Policy D.5.10 – Should 2) b. read “...dinghy storage from are provided...”?*

119.1 No. This is a typographical error. D.5.10 (2)(b) should read;

adequate parking, toilet facilities, refuse disposal and dinghy storage ~~from~~ are provided at all times of....

Other discharges of contaminants to land and water

No questions

Re-building of materially damaged or destroyed buildings

No questions

Regionally significant infrastructure, renewable energy and economic wellbeing

No questions

Significant Natural and Historic Heritage

(Responses by Jon Trewin)

120 *Paragraph [17] - Should F.0.5 read “...Northland’ s natural and physical resources are managed in a way...”?*

120.1 Yes, this is an error and it should say ‘managed’.

121 *Paragraph [22] - Are bullets points two and three correct because Significant Bird Areas and Significant Marine Mammal and Seabird Areas are listed in what is now*

Policy D.2.8(1)(b) and (c) and given the wording of that Policy they will be treated as RMA s6(c) matters?

121.1 The intent is that both Significant Bird Areas and Significant Marine Mammal and Seabird Areas have the same status as Significant Ecological Areas in that they have been identified using Appendix 5 significance criteria. They are therefore subject to the same policy (Policy D.2.8) but in a sense are 'information layers' as they do not drive rules but are relevant matters for consideration for consent processing (no specific rules were developed for these values given their dispersed nature and the thus the uncertainty that using them as the trigger for rules may cause). I agree that the S42A is a little unclear in this respect and underserves their significance and to clarify, these areas are to be treated as RMA s6(c) matters.

122 *Paragraph [74] - New Objective F.0.12 does not refer to "outstanding natural landscapes." Is the text in paragraph 74 therefore correct?*

122.1 The text of the S42A is correct as 'outstanding natural landscapes' are intended to be included in the wording of the objective however this has not carried through to the actual wording in the Proposed Plan. It is noted that outstanding landscapes are present in the coastal marine area (as seascapes) however they are unmapped due to the practicalities of accurately delineating these areas. I also note that 'outstanding landscapes' are absent from the wording of Policy D.2.7 which is a new policy managing effects on natural character and outstanding natural features.

122.2 I therefore recommend that 'outstanding natural landscapes are included into the wording of Objective F.012 and Policy D.2.7. In relation to Policy D.2.7. the wording should be a standalone clause requiring the avoidance of adverse effects on the characteristics and qualities which make up the outstanding values of outstanding landscapes in the coastal marine area (this language is consistent with language used in RPS Policy 4.6.1).

122.3 The wording change recommended is as follows (underlines clauses are those proposing to be added in response to this question).

Objective F.012

Natural character, outstanding natural features, outstanding natural landscapes historic heritage and places of significance to tangata whenua.

Protect from inappropriate use and development;

1) *The qualities and characteristics that make up:*

...

New clause: outstanding natural landscapes in the coastal marine area

Policy D.2.7

Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

Manage the adverse effects of activities on natural character, outstanding natural landscapes and outstanding natural features by:

...

New clause: Within the coastal environment, avoiding adverse effects of use and development on the characteristics and qualities which make up the outstanding values of outstanding natural landscapes

123	<i>Paragraph [75] - Regarding new Objective F.0.4, are the terms “ecological integrity” and “ecological complexes” ones that would be commonly and consistently understood by readers of the Plan? If not should they be in the Definitions?</i>
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123.1 Agree that ‘ecological complexes’ should be defined. This is recommended to be defined in the plan definition chapter as per the Royal Forest and Bird submission. ‘Ecological integrity’ is defined in the Regional Policy Statement for Northland 2016. As the definition is quite lengthy, it is recommended that a reference to the RPS definition be included in the plan.

<u>Ecological complexes</u> (new wording as proposed in S42A changes)	<u>Interaction of species with their physical and chemical environment at densities that result in ecological functioning, including biogeochemical processes and habitat provision, that is necessary for safeguarding the life-supporting capacity of an ecosystem.</u>
Ecological integrity (RPS definition to include a link to)	The full potential of indigenous biotic and abiotic features, and natural processes, functioning in sustainable communities, habitats, and landscapes. Ecological integrity would be achieved when all the indigenous organisms (plants, animals, fungi, etc.) typical of a region are present, together with the key processes that sustain functional relationships between all these components, across all of the ecosystems represented in Northland. At larger

	<p>scales, ecological integrity is achieved when ecosystems occupy their full environmental range. Components of ecological integrity are:</p> <ol style="list-style-type: none"> 1. Species occupancy (to avoid extinctions) – Are the indigenous species present that you would expect? 2. Indigenous dominance (to maintain natural ecological processes) – Are the key ecological processes maintained by native biota? 3. Ecosystem representation (to maintain ‘a full range of ecosystems’) – Are the full range of ecosystems in Northland protected somewhere?
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124 Paragraph [77] - Why is new Policy D.2.7 silent on natural character (namely areas that do not have outstanding or high natural character) in the coastal environment, whereas outside the coastal environment it requires significant adverse effects on natural character to be avoided.

124.1 The policy should require that significant adverse effects on ‘natural character’ (less than outstanding) in the coastal environment are to be avoided rather than just ‘high natural character’. Although we have mapped high natural character, the requirement (as per NZCPS Policy 13) is actually to avoid significant adverse effects on all ‘natural character’ (less than outstanding) in the coastal environment. The wording of the policy should reflect this and it is recommended to be changed as follows:

Policy D.2.7

2) *Within the coastal environment, avoiding significant adverse effects of use and development on ~~high~~ natural character less than outstanding in waterbodies, and*

125 Why does D.2.7 (1) refer to “freshwater” whereas (2) and (3) refer to “waterbodies”?

125.1 Agree this is a little confusing and for consistency recommend the terms ‘coastal marine area’ and ‘freshwater’ are used when referring to waterbodies.

Policy D.2.7

2) *Within the coastal environment, avoiding significant adverse effects of use and development on high natural character in ~~waterbodies~~ the coastal marine area and freshwater, and*

126 *What is now Policy D.2.8 is very long and complicated. The first new section paraphrases NZCPS Policy 11(a). The second part paraphrases NZCPS Policy 11(b). Neither new section particularises the paraphrased text to Northland or provides “extra guidance and depth”. Why not just say “In the coastal environment give effect to NZCPS Policy 11 in resource consent decision-making”? That admittedly adds no real value to what is required under s104 RMA, but then neither does simply parroting the NZCPS in a paraphrased manner.*

126.1 The policy wording paraphrases to some extent Policy 4.4.1 of the Regional Policy Statement for Northland 2016 which itself adds extra depth to Policy 11 of the NZCPS. The question then becomes should we paraphrase the RPS and can we add extra depth in the regional plan? We have attempted to develop policies that are specific to the functions of the regional council so, for example, Policy D.2.8 paraphrases Policy 4.4.1 of the RPS but only to the extent that it draws on coastal and freshwater biodiversity and avoids mentioning terrestrial biodiversity. An alternative approach would be to reference Policy 4.4.1 of the RPS in relation to part 1 of the policy (avoiding adverse/significant adverse effects etc...) whilst retaining the rest of the policy. Another alternative would be split the policy into two with the first part dealing with the avoidance of effects and the second with the identification and management of these effects. I do not have a firm view on which of these three options is preferential.

127 *What is now Policy D.2.8 has two new sections dealing with matters “outside the coastal environment”. The first requires adverse effects to be no more than minor. The second requires adverse effects to be not significant. Is the “not significant” threshold in the second section consistent with s5(2)(c) of the RMA?*

127.1 The ‘not significant’ threshold is present in Policy 4.4.1 (3) of the RPS and the policy essentially repeats this. I believe it is consistent with the approach taken in other elements of the policy with setting effects thresholds and therefore ‘not significant’ is consistent with RMA s5(2)(c). The policy is essentially a sliding scale of effects management from ‘avoiding adverse effects’ on S6(c) RMA indigenous biodiversity in the coastal environment (as per direction in NZCPS Policy 11) to avoiding, remedying or mitigating significant effects on indigenous biodiversity that falls outside of S6(c) and in freshwater outside of the coastal environment (and therefore not subject to the more restrictive provisions in the NZCPS).

128 *Are the “likely adverse effects” in D.2.8(2) “minor” or “significant” or “not significant”?*

128.1 The range of effects could be minor to significant depending on the sensitivity of the area of indigenous biodiversity and the scale of the proposal. The policy simply highlights that damage, disturbance or loss to these matters is likely to cause an adverse effect. It is important to highlight these effects so that they are properly assessed. Whether this adverse effect is appropriately avoided or otherwise remedied or mitigated is dealt with in clauses 3-6 of the policy.

129 *Paragraph [86] - In terms of new Policy D.2.9, is there case-law that supports a decision-maker for a coastal permit (for example) being able to have regard to potential adverse effects of the coastal activity on areas outside the CMA that fall within the RMA functions of a district council?*

129.1 Under S104 (1) RMA through the resource consent process, there is a reasonably wide latitude to consider a variety of plans and matters. However, under S65 (1) RMA, provisions in regional plans can only relate to matters specified in 30(1)(c), (ca), (e), (f), (fa), (fb), (g), or (ga). Council has sought legal advice as this raises a number of issues as several policies and rules reference land based values and activities. At the time of writing this legal advice has not been finalised and therefore will be tabled as part of the council staff’s opening statements

130 *Paragraph [82] (sic) page 37 Is the recommendation to the Council or to the Panel?*

130.1 This is an error and the recommendation is intended to be for the Hearings Panel.

131 *Appendix A – p47 – is the acronym ICOMOS expanded in full somewhere?*

131.1 ICOMOS stands for the International Council on Monument and Sites. This wording is present in Clause 5 (new sub-clause) 7 of Policy D.2.6 shortly after the acronym is first used.

132 *Appendix A page 49 states “Additionally, the level of protection required outside of the coastal environment is lower (only ‘significant’ adverse effects are to be avoided) ... “. What is the statutory authority for that statement?*

132.1 Policy 4.6.1 (2) of the RPS requires that significant adverse effects on natural character in freshwater bodies are to be avoided.

Solid waste

(Responses by Michael Payne)

133 *Paragraph [23] - The report notes that compliance with a condition to report an on-site landfill would see "...compliance with a condition of this nature is likely to be low and would result in widespread technical breaches of the rule." However, C.6.7.3 (10) states "the location of the disposal site is recorded and provided to the regional council on request," – given the nature of the discussion in [23], is this correct?*

133.1 Retaining condition C.6.7.3 (10) was intentional. However, upon reflection, I believe the clause could be written more accurately to reflect council's intention that resource users only record and provide information when they are asked to do so by council staff.

133.2 Monitoring and enforcement staff have re-evaluated the need for C.6.7.3 (10). They have decided that it is unnecessary as they can adequately monitor compliance and take action regarding non-compliance under the powers delegated to them under Part 12 of the RMA.

133.3 I recommend that clause C.6.7.3 (10) is deleted.

~~the location of the disposal site is recorded and provided to the regional council on request, and~~

134 *Paragraph [35] - Is Rule C.6.7.3 condition (4) shown correctly in the revised Plan?*

134.1 No, it was not shown correctly. This error has been addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

135 *Appendix A – page 13. Is the recommend new definition for "primary production" consistent with the RMA definition of "production land"? if not, which definition prevails? Will this cause confusion for users of the Plan?*

135.1 In my opinion, "production land" and "primary production" are two different things. "Production land" focuses on the type of land and what it is used for. Whereas,

“primary production” focuses on the activity that is occurring. I believe the rule C.6.7.3 reads better and makes more sense if it focuses on the activity.

135.2 I have recently become aware that the draft National Planning Standards include a definition of “primary production”. When these standards come into effect Council will be required to amend regional plans to include the definitions prescribed in the National Planning Standards. I believe this definition is suitable for use in the Plan and that including it would provide a degree of future proofing.

135.3 I recommend that the committee adopts the definition of “primary production” used in the draft National Planning Standards. The draft National Planning Standard definition is:

Primary production:

a) means any agricultural, pastoral, horticultural, forestry or aquaculture activities for the purpose of commercial gain or exchange; and

b) includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but

c) does not include processing of those products

136 *Appendix A – page 15. Should all of Rule C.6.7.6 condition 1 be deleted in the revised Plan?*

136.1 Yes. This error has been addressed in *Errata to Proposed Regional Plan for Northland – S42A recommended changes*.

Stormwater discharges

(Responses by Ben Tait)

137 *Paragraph [22] - Should the reference be to Table 5?*

137.1 The section 42A report for the management of stormwater discharges refers to table 5. The correct reference should be table 6.

138 *To provide additional clarity and certainty, would it be useful if Rule C.6.4.3 explicitly referred to discharges of stormwater from public stormwater networks within areas listed in Table 6 of Rule C.6.4.1?*

138.1 Condition (1)(a) of rule C.6.4.1 states that the discharge of stormwater from a public stormwater network into water is a permitted activity provided the discharge is not from a public stormwater network servicing an urban area listed in Table 6 'Urban areas.

138.2 As shown in the section 42A track changes version of the Proposed Plan, the diversion and discharge of stormwater from a public stormwater network servicing an urban area in table 6 is a controlled activity (C.6.4.3).

138.3 The Panel has asked if it "would be useful if Rule C.6.4.3 explicitly referred to discharges of stormwater from public stormwater networks within areas listed in Table [6] of Rule C.6.4.1?".

138.4 It is not clear to me where reference should be made.

139 *Paragraph [54] - Would it be clearer to Plan readers if the definition of "secondary containment system" read:*

A system that is specifically designed and capable of containing deliberate or accidental releases (spills) of hazardous substances or other contaminants used on the site and preventing those contaminants from being entrained in stormwater discharges.

139.1 The Proposed Plan, as amended in the section 42A track changes version, contains the following definition for a secondary containment system:

A system that is specifically designed and capable of containing deliberate or accidental releases (spills) of hazardous substances or other contaminants used on site from stormwater discharges.

139.2 The Panel asked if the definition should be extended in the interests of clarity. I consider the suggested definition is clearer and should be included in the plan.

140 *Would it be clearer to Plan users if the definition of "stormwater treatment system" read:*

A system that is specifically designed to reduce concentrations of contaminants in stormwater prior to its discharge, to levels that will not result in contamination of either water or sediments that is likely to result in adverse effects on aquatic life or affect the suitability of the receiving waters for specific defined purposes.

140.1 The Proposed Plan, as amended in the section 42A track changes version, contains the following definition for a stormwater treatment system:

A system that is specifically designed to reduce concentrations of such substances in the stormwater prior to discharge, to levels that will not result in contamination of either water or sediments that is likely to result in adverse effects on aquatic life or to affect the suitability of the waters for specific defined purposes.

140.2 The Panel asked if the definition should be changed in the interests of clarity. I consider the suggested definition is clearer and should be included in the plan.

141 *Paragraph [106] - What would the stormwater attenuation standards be and is there scope within submissions to introduce them?*

141.1 I stated at paragraph 106 of the section 42A report on stormwater management that:

It is clear to me that the regional and district councils have overlapping responsibilities with respect to the avoidance or mitigation of natural hazards. While the regional council is responsible for managing the diversion and discharge of stormwater, including for the management of significant risks from natural hazards⁴⁵, I consider that on balance the district councils should be responsible for determining the appropriate level of flood protection service. That is, condition 2 of rule C.6.4.1 should be deleted. However, please note that my colleague Stuart Savill (Consents Manager, Northland Regional Council) believes that the Proposed Plan should specify stormwater attenuation standards.

141.2 The Panel asked what the stormwater attenuation standards would be. The standards I refer to in the last line are those set out in condition (2) of rule C.6.4.1 (shown as struck through). The standards were in the notified version of the Proposed Plan.

142 *Paragraph [106] - Regarding the recommendation to delete clause (2) from C.6.4.1 and C.6.4.2 and given the contribution of stormwater to localised flooding – is there a way to amend the rule to ensure flood risk from stormwater systems is minimised/mitigated?*

142.1 The council can include regional rules to manage the diversion and discharge of stormwater and the use of land for the purposes of the maintenance and enhancement of the quantity of water in water bodies and for avoiding or mitigating natural hazards. Natural hazards are defined in the RMA as:

...any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment". [My emphasis]

142.2 The notified rules contain conditions on mitigating flooding from stormwater diversions and discharges. I consider that there is scope within submissions to retain or amend the stormwater attenuation conditions for the purposes of mitigating flooding.

143 *Appendix A – page 28. Referring to the definition of “stormwater collection system”, what is the difference between a “open drainage system” and a “channelled drainage system”?*

143.1 A stormwater collection system is defined in the section 42A track changes version of the Proposed Plan as:

Any system designed to capture rainfall and to reticulate it within or beyond the site. This includes both open and channelled drainage systems. It does not include land drainage systems.

143.2 The Panel asked what the difference is between an open drainage system and a channelled drainage system. I consider that there is no difference. Technically an open drainage system could be unchanneled, but that is not material to the definition. There is scope within submissions¹⁹ to amend the definition of a stormwater collection system. I consider that the term “channelled drainage” system should be deleted from the definition so the definition states (with my response to the following question in mind):

Any system designed to capture rainfall and to reticulate it within or beyond a site. ~~This includes both open and channelled drainage systems.~~ This includes stormwater pipes, open channels, devices and associated ancillary structures used for the purpose of conveying, diverting, storing, treating, or discharging stormwater. It does not include land drainage (as defined).

¹⁹ Horticulture New Zealand.

143.3 The definition is largely consistent with the Auckland Unitary Plan definition of a stormwater network.

144 *Do “land drainage systems” in Northland capture rainfall and to reticulate it within or beyond a site?*

144.1 The term “land drainage” is defined in the Proposed Plan as:

“...the activity of lowering the water level in the soil to achieve productive land use, to facilitate the stability of land or structures.”

144.2 The plan also defines the term “land drainage scheme” as:

“...all drainage channels or land drainage works relating to a particular land drainage system vested in a council or a group of landowners who have assumed control of the scheme pursuant to Section 517Z of the Local Government Act 1974.”

144.3 Rules for land drainage (including land drainage schemes) are located in part C.4 of the plan.

144.4 Land drainage and land drainage schemes capture rainfall and reticulate it within and beyond sites. The second sentence of the definition for a stormwater collection excludes land drainage (as defined), however the term “land drainage system” is confusing and I recommend the final word “system” should be deleted as follows:

Any system designed to capture rainfall and to reticulate it within or beyond a site. This includes both open and channelled drainage systems. It does not include land drainage [as defined] systems.

Tangata whenua provisions

(Responses by Keir Volkerling)

145 *Paragraph [21] - There are no recommendations for changes to policies in response to submissions, although the author notes that guidance documents (outside the plan) could more fully set out expectations and implementation details. Can the author elaborate on what these guidance documents are, how they are intended to be used in conjunction with the Proposed Plan and what improvements he is suggesting could be made to them to clarify processes for tangata whenua, applicants and council staff?*

145.1 Council has not committed to the guidance documents nor considered their content.
The details as follows are my views on the proposed guidance documents.

145.2 The overall purpose of the guideline:

- Set out the rationale for the policies (drawn in part from the s32 reports)
- Describe the nature of the triggers in Policy D.1.1 so they can be readily recognised in practice
- Provide statutory references and identify taiāpure and mātaihai in the region
- Provide statutory reference for protected customary rights and describe the processes for their determination, and their current status in the region
- List iwi planning documents lodged with NRC and how to locate them
- Provide a schedule of statutory acknowledgements in enacted Treaty settlements in the region
- Describe the process for analysis of effects on tangata whenua and their taonga, clarifying where responsibilities lie for resourcing, endorsement, and skills required
- Provide statutory references for Marae Committees and Tangata Kaitiaki and a schedule of Tangata Kaitiaki in the region
- Interpret and describe Policy D.1.5 for managing effects on Sites and Areas of Significance to Tangata Whenua
- Interpret and describe Policy D.1.6 for identification of Sites and Areas of Significance to Tangata Whenua. This will clarify: the status and effect of those Sites and Areas scheduled and those not scheduled in the Plan; the relevant plan change processes for their inclusion in the Plan; the nature of the endorsement process required

145.3 The content of the **Council Staff / Consent Officers** guideline should:

- Identify specific staff responsibilities within the Council
- Provide a checklist for assessing the adequacy of an analysis of effects on tangata whenua and their taonga
- Set out the details for assessing the analysis to inform s88 decision making
- Provide a template for s92 requests
- Give guidance on notification and limited notification decisions
- Give guidance for s42A reporting
- Provide examples of relevant consent conditions

- Include a checklist of controlled and restricted discretionary activities which require a Policy D.1.1 analysis

145.4 The content of the **applicant's** guideline should be a brief guideline for applicants which:

- Clarifies the contexts in which there is a need for an analysis of effects on tangata whenua and their taonga
- Clarifies the roles of the applicant, council and tangata whenua and identifies specific staff roles within the Council for support and assistance
- Sets out the necessary skills required to undertake an analysis
- Provides a checklist for assessing the adequacy of an analysis
- Provides reference to where details of scheduled Areas and Sites of Significance to Tangata Whenua can be found
- A checklist of controlled and restricted discretionary activities which require a Policy D.1.1 analysis

145.5 A brief guideline for **tangata whenua** which:

- Explains the overall RMA context and relevance of the policies
- Clarifies the contexts in which there is a need for an analysis of effects on tangata whenua and their taonga
- Clarifies the roles of the applicant, council and tangata whenua and identifies specific staff roles within the Council for support and assistance
- Clarifies the different possible tangata whenua roles – e.g providing evidence, assisting an expert, advocacy etc
- Describes the practical details of identification of Sites and Areas of Significance to Tangata Whenua
- Describes the nature of protection provided for Sites and Areas which are scheduled, and protection for those non-scheduled Sites and Areas which have been identified using the Plan's processes in the context of a consent application.
- A checklist of controlled and restricted discretionary activities which require a Policy D.1.1 analysis

145.6 Consideration should also be given to monitoring, and information should be included about:

- Criteria for s35(2)(b) and s35(2A) reporting
- Checklists with time frames and methods for updating for new –
 - Taiāpure and mātaītai
 - Iwi planning documents
 - Protected customary rights
 - Statutory acknowledgements
 - Tangata Kaitiaki

146 *Appendix 4 – Implications of jurisdiction issues beyond the Proposed Plan. What are the implications of this jurisdictional error for Policy D.1.5 and, more specifically, which of the mapped Sites and Areas of Significance to Tangata whenua are affected by this oversight? How does the council intend to address any issues arising from this jurisdictional error?*

146.1 The jurisdiction issues can mean there are potentially sites and areas in the freshwater environment which can currently be unregulated in the Northland Region. These could be freshwater sites which have, for instance, heritage values but are not regulated in regional planning within the s30 jurisdiction. However, resolution of this is beyond the scope of the Plan.

146.2 The mapped areas included in the Plan have been established consistent with the s30 jurisdiction.

147 *I note the Council's intention to attach Statutory Acknowledgements to the Proposed Plan, as is required under the RMA. However, SA's can also be used to inform plan preparation as they provide a clear statement of the interests of tangata whenua. To what extent, if any, have SA's been used in the preparation the Proposed Plan?*

147.1 The SAs and their accompanying information were considered in the preparation of tangata whenua provisions. In general, they provided context rather than directly informing content.

148 *There are approximately 10 iwi management plans that have been formally lodged with the Regional Council under s66 2(A)(a) of RMA. These were listed in Chapters 2 and 3.2.6 of the Section 32 Report, but can the author please clarify how the Council has taken these into account in preparing the Proposed Plan?*

- 148.1 The early stage of preparation for the Proposed Plan included a [Tangata Whenua Issues and Options paper](#). This included an analysis of issues to be taken into account in iwi planning documents which had been lodged with NRC. A draft of this document was sent to the tangata whenua entities with lodged iwi planning documents (eleven at that stage) to provide the opportunity to identify errors and omissions in the analysis from the perspective of their documents. No requests for amendments resulted.
- 148.2 The issues identified were then used as a checklist for ensuring that the iwi planning documents were taken into account during the development of the Plan. There were no submissions from tangata whenua entities with iwi planning documents lodged identifying ways in which they believed that they had not been taken into account. Planners have discussed with me details of iwi planning documents being taken into account during the plan preparation process.
- 148.3 After the closing of submissions to the PRP an iwi planning document was received from Ngati Kuri. This was analysed for issues to be taken into account in the PRP and a copy of the analysis sent to Ngati Kuri for their comment and feedback. No reply had been received at the date of writing.

149	<i>Can the author clarify whether there are any rules that manage the potential adverse effects from livestock accessing waterbodies on “tangata whenua and their taonga”?</i>
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149.1 There are three rules²⁰ for livestock access to waterbodies in C.1.8:

- C.8.1.1 *Access of livestock to the bed of a water body or permanently flowing artificial watercourse – permitted activity*
- C.8.1.2 *Access of livestock to rivers, lakes, and wetlands – discretionary activity*
- C.8.1.3 *Access of livestock to an outstanding freshwater body, or the coastal marine area – non-complying activity*

149.2 There are also two rules in *E Catchments*:

²⁰ The rules are as per the *Proposed Regional Plan for Northland – S42A recommended changes*.

- E.0.7 *Access of livestock to the bed of a water body or permanently flowing watercourse in the Mangere catchment – permitted activity*
- E.0.9 *Access of livestock to the bed of a water body in the Whangārei Harbour catchment – permitted activity*

149.3 The permitted activity rules only allow for crossing a water body at specific points no more than once a week; and the stock must be actively driven (ie it would not be possible for the stock to linger at the crossing). Given those constraints there would be no likely impacts on tangata whenua values.

149.4 The discretionary (C.8.1.2) and non-complying (C.8.1.3) rules mean any adverse effects (including those on tangata whenua and their taonga) can be considered - and therefore managed.

150 *The Section 32 Analysis Report, Volume 1, sets out on page 35 an analysis of the management options considered for assessing resource consents. Option 2 has been identified as the Council's preferred option which provides guidance on how to assess effects on tangata whenua values, over a requirement for a full analysis for all consents. However, method 8.1.5 of the RPS requires a full analysis of effects on tangata whenua and their taonga in respect of all consents. Does option 2 create problems for the Proposed Plan in giving effect to the RPS?*

150.1 In the RPS Method 8.1.5 requires an “analysis”, and does not use the term “full analysis”. Further, the method requires councils, not applicants, to undertake the analysis. This can be implemented by either:

- A consent officer, having checked potential impacts and the matters set out in D.1.1, determining that there are no impacts on tangata whenua values from the activity requiring a management response. This would need to be recorded, with evidence or reasons as appropriate, in the s42 report.

Or:

- A consent officer determines that an analysis is required and should be included in the applicant's AEE as set out in D.1.1 and following the processes in D.1.2. This information can be provided at pre-lodgement, or in a s88 decision.

151 *In evaluating the management options (page 39 of the Section 32 Report), has any cost analysis been done based on actual figures to support the conclusion that option 3 (all consents have full analysis) will result in unacceptably higher costs?*

151.1 With option 3 deleted from the s32 analysis, then the options become “no guidance”, “guidance”, and “comprehensive mapping”. The cost differences between option 1 and 2 are in the s32 report. Option 4 (which should now be Option 3) is “comprehensive mapping” which would require a major project with high costs and uncertainty of sufficiency. While it is clear the cost would be significantly greater, no numerical quantification of cost has been undertaken.

152 *In relation to Policy D.1.3 Affected persons, “community” has been inserted after “Tangata whenua” (i.e. Tangata whenua community) which seems inconsistent with all other references to just “Tangata whenua” in relation to Policy D.1.1 “when an analysis of effects on Tangata whenua and their taonga is required”. What is the reason for this and how do the two terms differ in meaning? Does this use of two different terms in reference to “tangata whenua” create inconsistencies for the implementation of Policies D.1.3 and D.1.1?*

152.1 “Tangata whenua” in D.1.1 is used in a generic sense. In D.1.2 and D.1.3 “tangata whenua community” is used to ensure, as stated in the s32 report on page 34, that a “collective and consensual” position is determined, and the guidance of D.1.2 ensures that appropriate processes are used. This can be further clarified in the non-statutory guidelines. A “tangata whenua community” may be identified in terms of a whanau, a hapū, a marae, or by other relevant considerations. A prescriptive definition would likely be unnecessarily restricted.

153 *There is no definition of “Tangata whenua” (nor “Tangata whenua community”) in the Proposed Plan - do you think such a definition(s) should be included?*

153.1 Tangata whenua is defined in s2 of the RMA:

“tangata whenua, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area”.

153.2 For “tangata whenua community” see above.

Wastewater discharges

(Responses by Ben Tait)

154 *Is Rule C.6.2.4 presented correctly in the revised Plan?*

154.1 The activity status (prohibited activity) within rule C.6.2.1 should not be struck through.

155 *Should “farm wastewater” be deleted from the chapeau of Rule C.6.3.6?*

155.1 The term ‘farm wastewater in rule C.6.3.6 is struck through in the title of the rule but not in the body of the rule. This is an error; the rule, as amended, should only apply to horticulture wastewater discharges to water. Discharges of treated farm wastewater to water are covered by a recommend new non-complying activity rule.

156 *Paragraph [45] - Is the table numbering in the revised plan correct? It doesn't align with the numbers quoted in the report.*

156.1 Paragraph 45 of the section 42A report for wastewater discharges refers to tables 6 and 7 in the track changes version of the Proposed Plan. It should, instead, refer to tables 4 and 5.

157 *Appendix A – page 41. In relation to the discussion on the submission from Haititaimarangai Marae, can the author specify which policies in the Proposed Plan (including recommended additions and changes) will ensure that any adverse effects on areas identified with outstanding values and attributes are avoided?*

157.1 Policy D.2.7 in the section 42A track changes version of the Proposed Plan provides direction on managing adverse effects on natural character and outstanding natural features. Policy D.2.9 provides direction on managing adverse effects on areas of outstanding and high natural character, outstanding natural landscapes, outstanding natural features. Objective F.0.3 states the use of land and discharges of contaminants are to be managed so that the significant values of outstanding water bodies and significant wetlands are protected.

158 *Appendix A – page 42. Should there be a Discussion and Recommendation for Foy and King?*

158.1 Foy, F., and King, K & F submitted that rule C.6.3.1 is not practical for farmers. In error, I did not discuss or make recommendations on their submissions. I consider that their submission point is too broad to respond to. What is more, it is not clear to me what relief they are seeking.

159 *Appendix A – page 42. Rule C.6.3.1. Can you please clarify the Discussion? For example, shouldn't the first line of condition 4 refer to "farm wastewater storage facilities"?*

159.1 I attempted to argue in the section 42A report that the term 'wastewater' within the body of rule C.6.3.1 is 'coloured, by the term 'farm wastewater' in the first part of the rule. That is, the term 'wastewater' within the conditions of the rule should be read together with 'farm wastewater' in the title and first sentence of the rule. However, in the interests of consistency all references to wastewater in the rule should be replaced with farm wastewater, as sought by the Royal Forest and Bird Protection Society of New Zealand.

160 *Appendix A – page 43. Rule C.6.6.1 -should the recommendation refer to condition 3 not condition 2 in rule C.6.4.1?*

160.1 The final recommendation in Appendix A of the section 42A report for wastewater discharges should refer to condition 3 of rule C.6.4.1, not condition 2.

Water quality management – General matters

(Responses by Ben Tait)

161 *Paragraph [90] - Can the author clarify how an assessment of effects of an activity on cultural and other values associated with individual waterbodies/catchments (as specified at para 90) should be undertaken as part of a resource consent process, where those values have not been identified in the Plan?*

161.1 As discussed in paragraph 90 of the section 42A report ("Water quality management – General matters") Schedule 4 of the RMA sets out in detail the information required in applications for resource consents, these include effects on social, economic and

cultural values and ecosystems and species. The values and effects will be determined on a case-by-case basis having regard to the nature of the receiving environment and the sensitivity of the environment (in the broad sense of the term) to the proposal. Section 92 of the RMA provides for councils to request further information on the effects of the application.

161.2 I also understand that policies D.1.1 – D.1.3 and policy D.1.5 provide direction on identifying and considering tangata whenua values associated with fresh and coastal waters.

162 *Paragraph [97] - Should Policy C.4.8 be amended so that it is clear it only applies to the last paragraph of the recommended definition of “zone of reasonable mixing”?*

162.1 Policy D.4.8 provides direction on how to determine the zone of reasonable mixing when preparing and considering an application for a resource consent to discharge contaminants into water. It does not provide for the zone of reasonable mixing for permitted discharges. It may be useful to clarify this within the policy or by way of a footnote to the policy.

163 *Paragraph [97] - Definition – zone of reasonable mixing; in discharge of a tracer paragraph, is it meant to read “...the zone of reasonable mixing is the extent of...”?*

163.1 The definition of a zone of reasonable mixing should state:

...

For the purpose of a discharge of a tracer permitted by C.6.9.2 'Discharge of tracers – permitted activity', the zone of reasonable mixing is the extent of the waters for which the tracer is used to define.

164 *Appendix A – page 62. In response to the Minister of Conservation and Policy D.4 the author has recommended not to grant the relief sought on the basis that this matter is covered in Policy D1 of the NPS-FM. Can the author explain how the Regional Council intends to give effect to this policy through the provisions of the Proposed Plan?*

164.1 Policy D1 of the NPS-FM states:

Local authorities shall take reasonable steps to:

- a) *involve iwi and hapu in the management of fresh water and freshwater ecosystems in the region;*
- b) *work with iwi and hapu to identify tangata whenua values and interests in fresh water and freshwater ecosystems in the region; and*
- c) *reflect tangata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.*

164.2 The policy is specific to the management of fresh water under the NPS-FM 2017. The council has taken a number of steps to involve tangata whenua in the formulation of freshwater quality and quantity management provisions, including targeted consultation, collaboration through catchment groups, participation of hapu/iwi on the council's planning working party, engagement with the Te Taitokerau Maori and Council Working Party, and hui around the region. The council also sought technical advice on plan provisions (reflected in specific tangata whenua policies and conditions of rules). The council, in a joint venture with the Ministry for Primary Industries and the Ministry for the Environment commissioned reports on Northland tangata whenua freshwater values,²¹ which informed the content of the plan.

Wetlands, beds of lakes and rivers, and damming and diverting water

(Responses by James Griffin unless otherwise stated)

165 *Paragraph [25] - Can a high-resolution version of the new diagram from H.8 please be provided – the one on the low resolution electronic version of the plan is impossible to read.*

165.1 Please see Appendix 1 - *Improved resolution version of the 'PRP Appendix H.8. Wetland definitions relationships'*. Amendment is purely to resolution and not content.

²¹ Northland Regional Council. 2015. Northland tangata whenua freshwater values: A literature review. Northland Regional Council. Prepared for Northland Regional Council, Ministry for Primary Industries and Ministry for the Environment.; 2015. Northland Tangata Whenua freshwater values: A framework to guide decision-making. Prepared for Northland Regional Council, Ministry for Primary Industries and Ministry for the Environment.

166 *Appendix A – page 18. In relation to the discussion of the submission of KDC and WDC where the author refers to ‘channel’ does he mean the “actively flowing channel”?*

(Response by Michael Day)

166.1 No – I do consider that ‘channel’ should be amended to ‘actively flowing channel’. In coming to this view, I sought the views of Stuart Savill (NRC Consents Manager). In our view, amending the rule ‘actively flowing channel’ would lead to less certainty for both the regional council and people using this rule to undertake works because, for example, the river might be an intermittently flowing river and therefore not have an actively flowing channel (at the time of proposed works). We consider that the rule should remain as proposed.

167 *Appendix A – page 19. In response to the Minister of Conservation, what “general conditions” is the author referring to because Rule C.2.3 is not referred to in Rules C.2.1.1, C.2.1.2 or C.2.1.3?*

(Response by Michael Day)

167.1 This was an error in the s42A report, as this activity does not require compliance with section C.2.3 - General conditions. This aside, I remain of the opinion that this rule would not benefit from the inclusion of a condition relating to ‘*providing for fish passage*’. This is because the rule enables people to maintain the free flow of water in rivers and to clear debris blockages etc. These are activities that I consider would actually be beneficial to fish passage and this rule is not associated with structures that could potentially be fish passage barriers (such as culverts or floodgates).

168 *Appendix A – page 21. In response to NZTA and Rule C.2.1.5 is the author correct as Rule C.2.1.11 also explicitly refers to “maintenance” and is recommended to refer to “repair”? Can the author please develop wording that removes any duplication between these two rules or alternatively clarifies that they address different activities?*

(Response by Michael Day)

168.1 Rule C.2.1.11 does refer to ‘maintenance’ and is recommended to refer to ‘repair’ of river bank protection structures. I therefore confirm that it is not restricted to ‘new’ bank protection works.

168.2 This intention is for the two rules (C.2.1.5 and C.2.1.11) to manage different activities. Rule C.2.1.5 is solely focused on the maintenance and repair of authorised flood defences. Rule C.2.1.11 is for river bank protection purposes (i.e. to protect against scour and erosion) and does not address flood defences – new flood defences are covered by rules C.2.1.14 and C.2.1.17.

168.3 However, for clarity, I recommend a note at the end of rule C.2.1.11 stating the following:

This rule solely applies to river bank protection works (such as to protect the bank against scour and erosion). Any maintenance or repair of authorised flood defences is covered by rule C.2.1.5.

169 Appendix A – page 21. In response to RFBPS and Rule C.2.1.7 could the author please identify which 'significant areas' new moorings should be precluded from to provide consistency with Rule C.1.2.5 (and other Rules such as C.2.1.10) as it is now recommended to be amended?

169.1 Rule C.2.1.7 does not apply to new moorings. The relevant rule for new moorings is C.2.1.13 *Activities in the beds of lakes and rivers - discretionary activity*, but if it is in a significant area then it is caught by rule C.2.1.15 *Structures in a significant area - non-complying activity*. The significant areas in C.2.1.15 are:

- Significant wetlands
- Outstanding freshwater bodies,
- Outstanding Natural Character Areas;
- Outstanding Natural Features; or
- Sites or Areas of Significance to Tangata Whenua.

169.2 The identified 'significant areas' listed above are consistent with other freshwater rules (such as C.2.1.10).

169.3 Both Rule C.1.2.5 and C.2.1.7 include an authorisation of all previously unauthorised moorings that existed when the PRP was notified, however Rule C.1.2.5 precludes moorings in a mapped Site or Area of Significance to Tangata Whenua, whereas C.2.1.7 does not. This is an inconsistency, however there are currently no moorings in any mapped Site or Area of Significance to Tangata Whenua.

170 *Appendix A – page 22. In response to the Minister of Conservation and Rule C.2.1.8 the author has recommended a Note. However, the Note does not indicate what outcome is to be achieved by the party contemplating a fish passage structure. Can the author please consider wording for a condition that would avoid the adverse effect on indigenous fish identified by the Minister, having regard to the text in notified General Condition 21(a) that is now recommended for deletion?*

170.1 General condition 21(a) still exists – I have just recommended it be incorporated into general condition 22.

170.2 The Minister of Conservation request sought avoidance of adverse effects on upstream vulnerable indigenous fish populations (i.e. through release of pest fish or native fish predators being prevented from migrating upstream of a structure).

170.3 My understanding is that the circumstances where such adverse effects would occur are a small fraction of fish barrier removal scenarios i.e. in most instances improving fish passage has beneficial effects on indigenous fish.

170.4 Fish barriers are widely accepted as being one of the key pressures impacting threatened indigenous fish. I believe if the majority of Rule C.2.1.8 and Rule C.2.1.9 activities are not permitted, activities that beneficial fish passage will be deterred.

170.5 Below, I have included additional conditions to Rule C.2.1.8 and Rule C.2.1.9 aimed at avoiding adverse effects on vulnerable indigenous fish species upstream of these activities:

C.2.1.8 Fish passage structures – permitted activity

The placement, use and repair of a fish passage structure (including placement of rocks) in, on, under or over the bed of a lake or river, is a permitted activity, provided:

- 1) the sole purpose of the structure is to provide fish passage, and
- 2) before the start of works, the person doing the activity obtains written advice from council, that there are no known populations of indigenous fish upstream, that would be vulnerable if the obstacle to fish passage is removed, and
- ~~3) the activity complies with C.2.3 'General conditions'.~~

C.2.1.9 Demolition and removal of existing structures – permitted activity

The demolition or removal of existing structures in, on, under or over the bed of a lake or river, is a permitted activity, provided:

...

5) the activity complies with C.2.3 'General conditions', and

6) where the activity will result in improved fish passage:

a) before the start of works, the person doing the activity obtains written advice from council, that there are no known populations of indigenous fish upstream, that would be vulnerable if the obstacle to fish passage is removed, and

...

170.6 I recommend that the advice note is no longer needed for either Rule C.2.1.8 or C.2.1.9:

~~Note: Advice on the potential pest and indigenous fish populations located up and downstream of the structure, can be obtained from regional council and the Department of Conservation.~~

171 *Appendix A – page 23. In response to KiwiRail Rule C.2.1.10, would the words “or railway line” be clearer than the word “rail”?*

171.1 Yes, the words “or railway line” would be clearer than the word “rail” in C.2.1.10 clause 3) e) iii) as follows:

iii) below the river bank level unless it is necessary for a road or railway line, and

172 *Appendix A – page 25. In response to Labonte’ A & R and Rule C.2.1.11, does s330 RMA apply to private works or to people who are not a local authority or a network utility operator? If not, does the author consider there is merit in amending condition (5) where urgent works are required? If so, would this apply to any other rules?*

(Response by Michael Day)

172.1 My understanding is that s330 RMA (Emergency works) does not apply to private works. Section 330 allows emergency works to be undertaken by:

- any person who has financial responsibility for public works,
- councils,
- network utility operators, and
- lifeline utilities.

172.2 I do not consider there is merit in amending condition (5) because if urgent works were required (such as to repair a bank protection structure that has suffered flood damage) the works could be undertaken by a council under s330. I consider that 'opening the door' to allowing works to be undertaken without prior council notification could lead to the rule being abused and people taking different interpretations over what constitutes 'emergency' works. My recommendation is for the rule to remain as outlined in the s42A recommendations document.

173 *Appendix A – page 29. In response to Northland F&G and Rule C.2.2.1, how can adherence to permitted activity conditions be considered “case by case” because there is no discretion in condition (4)(b) and people undertaking PA’s should be able to do so without reference to a Council officer?*

173.1 Reference to “assessment” on a case by case basis was unclear in my S42A report. It would have been clearer to have explained that the Northland Fish and Game request for exceptions from notifying council of works was not supported. This is because council staff wish to be able to decide on a case-by-case basis, when to monitor these permitted activities, including some Northland Fish and Game activities.

174 *Appendix A – page 43. In response to Northland F&G can the author please identify the other policies that refer to the matters listed by the submitter?*

174.1 Additional functions and values requested by Northland F&G (bullet points below) are of relevance to activities affecting wetlands and are not specifically listed in other policy. My S42A response should have provided a better explanation.

- *food gathering including as a fisheries resource;*
- *for recreation including but not limited to walking, fishing, bird watching, game bird hunting and boating;*
- *for education and scientific research; and*
- *for their amenity and natural character; and*
- *for ecological connectivity linking surrounding habitat.*

174.2 The purpose of the four functions and values listed in D.4.27, was to place emphasis on key matters identified in the RPS as benefits wetlands provide, for example:

- a) water purification: RPS Method 4.2.2– Statutory plans and strategies *(i) Providing for the protection of the significant value of wetlands in maintaining and improving water quality; and*
- b) contribution to maintaining stream flows during dry periods and c) peak stream flow reduction: RPS Method 4.3.5 – Statutory plans and strategies, point (5): *The regional council will include policies and methods in the relevant regional plans to protect the significant **values of wetlands in buffering storm flows, and recharging aquifers.*** (my emphasis)
- d) habitat for indigenous flora and fauna: RPS Method 4.4.1 Policy – Maintaining and protecting significant ecological areas and habitats.

174.3 The matters that Northland F&G refer to are relevant but I believe that the longer this list of matters referred to in the policy, the less clear the policy becomes. Points a) to d) listed in the policy are also associated with most wetlands, whereas the additional matters requested by Northland F&G, typically apply only to a portion of wetlands. On reflection however, I believe both ‘natural character’ and ‘ecological connectivity linking surrounding habitat’, apply to most wetlands and therefore I recommend their inclusion, as below:

D.4.27 Wetlands – requirements

Activities affecting a natural wetland must should:

1) maintain the following important functions and values of wetlands:

- a) water purification, and
 - b) contribution to maintaining stream flows during dry periods, and
 - c) peak stream flow reduction, and
 - d) habitat for indigenous flora and fauna, including ecological connectivity linking surrounding habitat, and
 - e) natural character, and
- 2) must avoid, remedy, or mitigate effects, or provide biodiversity offsetting or environmental biodiversity compensation, so that residual adverse effects are no more than minor.

175 *Rule C.2.1.4 – to be consistent with s13 of the RMA should this Rule refer to “in, on, under, or over the bed”? Are there any other rules where this phrasing would be beneficial?*

175.1 Yes, Rule C.2.1.4 should be consistent with RMA s13 and it was an error to omit 'in', therefore I recommend the following additional text:

C.2.1.4 Existing authorised structures – permitted activity

The use, repair, replacement, maintenance and reconstruction of a structure, in, on, under or over the bed of a lake or river is a permitted activity, provided: ...

175.2 The RMA activities Rule C.2.1.4 covers, should be similarly amended:

Excavation or disturbance of the bed of a river or lake incidental to the repair, maintenance and reconstruction of a structure, in, on, under or over the bed of a lake or river (s13(1)(b))

175.3 With regard to other rules where this phrasing would be beneficial, I have reviewed all the rules and listed RMA activities each rule covers in this section and recommend the following amendments:

Rule C.2.1.12 Freshwater structures – controlled activity

The construction or installation of a structure in, on, under or over the bed of a lake or river, that is not a permitted activity...

175.4 Also for clarity, the RMA activities covered by Rules C.2.1.5 to C.2.1.12; C.2.1.14; C.2.1.15 and C.2.1.17, as they relate to s13, should include "in".

176	<i>Rule C.2.1.8 – would C.2.3 General Condition (6)(a) render Rule C.2.1.8 unusable? Can the author please undertake a detailed assessment of Rules C.2.1.1 through to C.2.2.5 and advise if any of the activities they cover would inadvertently be nullified by any of the C.2.3 General Conditions?</i>
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176.1 On review, I believe C.2.3 General Condition (6)(a) is somewhat of a duplication to conditions in rules dealing with activities with potential to alter river gradient, and therefore I recommend its deletion and consequential numbering changes to remaining points b), c) and d):

C.2.3 General Condition (6)

~~a) alter the natural gradient of the river or physical characteristics of the bed or the alignment beyond the bed of the river, or~~

176.2 The review of Rules C.2.1.1 through to C.2.2.5 by myself and Michael Day (regarding Rules C.2.1.2; C.2.1.3 and C.2.1.5) has not found any rule inadvertently nullified by any of the C.2.3 General Conditions.

177 *Can the author please undertake a detailed examination of Rules C.2.1.1 through to C.2.2.5 and identify all conditions in the body of the rules that duplicate (or are similar to but are worded differently than) the General Conditions in Rule C.2.3? There may be an opportunity to simplify the body of the rules and improve the Plan's internal consistency by placing more reliance on the General Conditions.*

177.1 I have undertaken a detailed examination of rules that C.2.3 General Conditions apply to and have provided comments and recommendations in Appendix 2, where potential duplication or opportunity for improved consistency was found.

177.2 There is currently inconsistency around the position in each relevant rule where it refers to the General conditions. While it is usually the first or last condition for each rule, this is not always the case and there is opportunity to be consistent. I would suggest that by placing this reference at the beginning of each rule, it would reduce potential to overlook the General conditions.

178 *Rule C.2.2.3 – if a wetland is constructed in the bed of an ephemeral or intermittent river would the RMA activities also fall under s13?*

178.1 The omission of s13 was intended, so that the rule applies to the areas of constructed wetland that fall outside the beds of rivers. Rule C.2.2.3 is very permissive, with the intention to encourage wetland creation, by allowing on-going maintenance, however, this approach is limited to the areas outside the beds of rivers.

179 *Rule C.2.3 General Condition 22(b) (as recommended to be amended) – are the exceptions (i) to (iii) listed under (b) meant to apply only to (b) or to (a) as well?*

179.1 The exceptions were meant to apply to both a) and b), as indicated below:

22) The upstream and downstream passage of fish in rivers must:

a) be provided for and be effective under a wide range of flow conditions, and

b) excluding soft bottom rivers, river bed material must be maintained throughout the full length of culvert, ford and bridge structures, ~~except:~~

except:

- i) where the statutory fisheries manager provides written advice confirming that providing for passage of fish would have an adverse effect on the fish population upstream of the structure, or
- ii) during permitted temporary activities such as works to enable structure repair and replacement, or
- iii) when otherwise provided for by an existing design and authorisation.

180 *Rule C.3.8 – is the placement of a structure on a river bed controlled under RMA s9 or s13?*

(Response by Michael Day)

180.1 The placement of structures on a river bed is controlled by RMA s13(1)(a). However, the purpose of rule C.3.8 is not to regulate the placement of structures in rivers, which is controlled by section C.2.1 (Activities in the beds of rivers and lakes) of the Proposed Plan. The purpose of rule C.3.8 is essentially to regulate obstructions (including structures) that divert water onto other property. The key factor is this rule is the diversion of water onto other property, which is regulated by s14(2)(a) of the RMA. To conclude, I do not consider that this rule needs to explicitly refer to s13 of the RMA.

General queries

(Responses by Ben Lee)

181 *Is it correct that there are no freshwater Significant Ecological Areas?*

181.1 Correct – there are no freshwater Significant Ecological Areas in the Plan maps. An explanation for why significant freshwater ecological areas were not included in the Plan is provided on page 60 of the S42A report: *Significant natural and historic heritage*.

182 *Does the Definition section contain any terms that are already defined in the RMA? If so which ones?*

182.1 Yes. The following are terms defined in the Plan and in the RMA:

Term	Reason for their inclusion in Plan
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<p>“Hazardous substance”</p>	<p>The RMA definition is:</p> <p><i>includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.</i></p> <p>The Plan definition is:</p> <p><i>Has the same meaning as defined in section 2 of the Hazardous Substances and New Organisms Act 1996.</i></p> <p>The difference is the inclusion of the words” <i>includes, but is not limited to...</i>” in the RMA definition. The RMA definition, as we understand it, has been applied in some instances to include substances with a high BOD (for example) - such as the discharge of milk and farm dairy effluent. We wanted to be clear that these types of substances are not captured by the definition, as the rules in the Plan relating to hazardous substances are not relevant to them.</p>
<p>“Mataitai” (Plan)</p> <p>“Maataitai” (RMA)</p>	<p>The Plan definition is:</p> <p><i>As defined in the Fisheries Act 1996</i></p> <p>The RMA defines it as:</p> <p><i>means food resources from the sea and mahinga maataitai means the areas from which these resources are gathered.</i></p> <p>In the course of looking into the definition, I found that the Fisheries Act 1996 does not actually have a definition for mataitai. I have spoken with Keir Volkerling, and he agrees that the Plan definition should be:</p> <p><i>As defined in the Fisheries (Kaimoana Customary Fishing) Regulations 1998.</i></p> <p>The definition in the Fisheries (Kaimoana Customary Fishing) Regulations 1998 is:</p> <p><i>mātaimitai reserve means an identified traditional fishing ground established under regulation 23</i></p> <p>We recommend this definition because it refers to mataitai which have been through a statutory process, in contrast to the RMA definition which does not.</p>
<p>“Structure (in rules relating to the coastal marine area)” (Plan)</p>	<p>The RMA definition is:</p> <p><i>means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft.</i></p> <p>The Plan definition is</p> <p><i>A building, equipment, device, pipeline or other facility which is fixed to land. It includes which is fixed to another structure, which is fixed to land.</i></p>

<p>“Structure” (RMA)</p>	<p>The Plan definition includes an additional element for structures attached to another structure (for example a building on a wharf).</p> <p>The RMA definition includes ‘rafts’, while the Plan definition does not. This is because the Plan defines a raft as a type of vessel (see definition of vessel).</p>
<p>“Tikanga” (Plan)</p> <p>“Tikanga Maori” (RMA)</p>	<p>The RMA definition is:</p> <p style="text-align: center;"><i>Māori customary values and practices</i></p> <p>The Plan definition is:</p> <p style="text-align: center;"><i>Can be described as lore, custom, practice or common-sense thoughts that are based on the Māori belief system. The application of tikanga is diverse and can vary depending upon when and where an event takes place. Tikanga provides a framework for rules that govern harvesting, the care and respect for customary resources and the environment.</i></p> <p>Having conferred with Keir Volkerling, his advice is to amend the Plan definition to include the RMA definition but retain the broader explanation in the Plan:</p> <p style="text-align: center;"><u>Tikanga is defined in the RMA as “Māori customary values and practices”.</u> <u>Tikanga</u> can be described as lore, custom, practice or common-sense thoughts that are based on the Māori belief system. The application of tikanga is diverse and can vary depending upon when and where an event takes place. Tikanga provides a framework for rules that govern harvesting, the care and respect for customary resources and the environment.</p>
<p><i>Wetland</i></p>	<p>The definition is the same but with the addition of notes in the Plan definition to assist in application of the definition. The definition is included in the Plan because there are re definitions for different wetland types and therefore we think it is more helpful for plan users to have the complete suite of wetland related definitions in the Plan.</p>

183 *Wherever possible, are the definitions in the plan the same as other plans in Northland and nationally? If not, why not?*

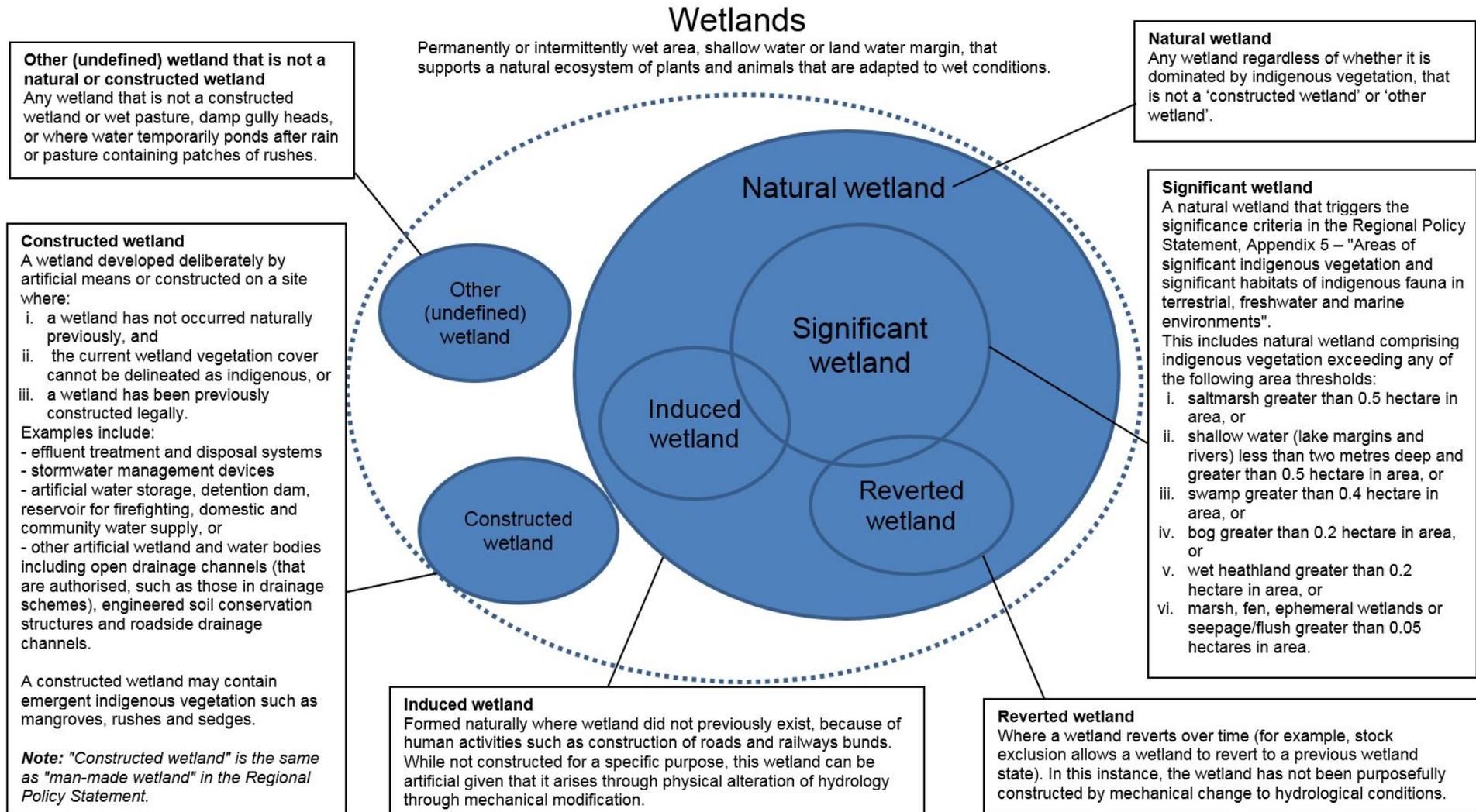
183.1 The definitions are not necessarily the same as in other plans in Northland and nationally. Other plans were consulted for drafting definitions, but no effort has been made to achieve consistency with plans (local district plans or other regional plans). In most cases, there is no nationally consistent definition for a term unless defined in the RMA.

183.2 Other national instruments (e.g. policy statements and environmental standards) contain definitions. I have not done a comparison between the Plan definitions and national instrument definitions. I would anticipate there would be a mix of those that are the same and those that are not. If a Plan definition is different, it is most likely because the context is different. For example, the NPSFM²² has a definition for “pest” as does the Plan. The Plan definition is broader than the NPSFM version, because the Plan also addresses pests in the coastal marine area.

183.3 On a related note, the Ministry for the Environment is preparing National Planning Standards that will prescribe a suite of terms and definitions that must be used in plans. It is likely we will have until 2026 to implement these requirements in the Plan and Regional Policy Statement.

²² National Policy Statement for Freshwater Management

Appendix 1 – Improved resolution version of the ‘PRP Appendix H.8. Wetland definitions relationships’



Appendix 2 – Review for consistency and duplication between C.2.3 General conditions and rules from the C.2 Activities in the beds of lakes and rivers and in wetlands, and C.3 Damming and diverting water

Recommended changes to conditions to address consistency or duplication are shown as underlined and ~~strikethrough~~.

Rule	Rule conditions	General condition	Comment on any duplication and recommended action
C.2.1.1	2) the existing vegetation and the bed of the water body is not disturbed to a depth or extent greater than that required to undertake the activity, and <u>2a) Any indigenous vegetation disturbance or removal is limited to the minimum extent necessary to give effect to the permitted activity.</u>	9) Any indigenous vegetation disturbance or removal is limited to the minimum extent necessary to give effect to the permitted activity.	There are three similar conditions that represent some opportunity for greater consistency, see shown by recommended changes. The rule could refer to these specific general conditions, however as this rule does not refer to any other General conditions, I believe the reader will find it easier for these conditions to appear in the rule.
	4) there is no erosion of the bed or banks of the river or lake as a result of the planting, and	6) The activity must not: ... b) cause more than minor bed or bank erosion, scouring or undercutting immediately upstream or downstream, or	
	5) the activity does not cause adverse flooding effects on upstream, downstream or adjacent properties, and	6) The activity must not: ... d) dam or divert water in a way that causes flooding or ponding on any other property.	
C.2.1.9	1) the bed is restored to a profile that does not inhibit water flow or prevent the upstream and downstream passage of fish, and	6) The activity must not: a) alter the natural gradient of the river or physical characteristics of the bed or the alignment beyond the bed of the river, or	As recommended above (paragraph 177.1), I recommend deletion of general condition 6) a).

Rule	Rule conditions	General condition	Comment on any duplication and recommended action
	<p>4) prior to demolition: a) impounded sediment is removed from behind the structure, as far as is reasonably practicable, and b) removed sediment is placed in a position where it cannot re-enter the water body, and</p>	<p>2) <u>Organic matter, excavated sediment or soil must not be placed in a position where it could readily enter or be carried into a water body.</u></p>	<p>I recommend consolidation between condition 4) and General condition 2).</p>
C.2.2.3	<p>3) it does not cause flooding or ponding on any other property, and</p>	<p>6) The activity must not: ... d) dam or divert water in a way that causes flooding or ponding on any other property.</p>	<p>While these conditions are similar, condition 3 text is intended to limit potential flooding effects that might result for removal of flood water storage. Therefore, no change is recommended.</p>
C.3.1	<p>5) the activity does not change the natural seasonal water levels of any natural wetland that would result in the net loss or degradation of indigenous wetland vegetation, and <u>5) The activity must not cause change to the seasonal or annual range in water level of any natural wetland to an extent that may adversely affect the wetland's natural ecosystem, and</u></p>	<p>7) <u>The activity must not cause change to the seasonal or annual range in water level of any natural wetland to an extent that may adversely affect the wetland's natural ecosystem, and</u></p>	<p>This rule is concerned with off-stream activities and falls beyond RMA s.13 controls that most General conditions relate to. Therefore, general conditions are not referred to.</p> <p>Recommended text shows where conditions are similar and represent an opportunity for greater consistency.</p>

Rule	Rule conditions	General condition	Comment on any duplication and recommended action
	<p>7) <u>the structure must be maintained in a sound condition, and functioning for the purpose it was designed, and at all times and capable of withstanding a one percent annual exceedance probability (AEP) flood without structural failure or risk to people or other property, and</u></p> <p>8) <u>The one percent AEP annual exceedance probability flood must be accommodated by the structure and/or by an overland flow path without increasing flood levels on other property upstream or downstream of the structure without increasing flood levels upstream or downstream of the structure, beyond the land or structures owned or controlled by the person undertaking the activity, and</u></p>	<p>14) <u>The structure must be maintained in a sound condition, and functioning for the purpose it was designed, and at all times and capable of withstanding a one percent annual exceedance probability (AEP) flood without structural failure or risk to people or other property, and</u></p> <p>15) <u>The one percent AEP flood must be accommodated by the structure and/or by an overland flow path without increasing flood levels upstream or downstream of the structure, beyond the land or structures owned or controlled by the person undertaking the activity, and</u></p>	
C.3.2	<p>6) the dammed water does not raise sub-surface or surface water levels to the extent that drainage of other property is adversely impeded, and</p>	<p><u>6a) the dammed water does not raise sub-surface or surface water levels to the extent that drainage of other property is adversely impeded, and</u></p>	<p>I recommend condition 6) is relocated into the general conditions (after condition 6) and condition 7 duplication is removed as shown.</p>

Rule	Rule conditions	General condition	Comment on any duplication and recommended action
	7) the activity does not change the natural seasonal water levels of any natural wetland that would result in the net loss or degradation of indigenous wetland vegetation, and	7) The activity must not cause change to the seasonal or annual range in water level of any natural wetland to an extent that may adversely affect the wetland's natural ecosystem, and	
C.3.3	4) the dammed water does not raise sub-surface or surface water levels to the extent that drainage of other property is adversely impeded, and	<u>6a) the dammed water does not raise sub-surface or surface water levels to the extent that drainage of other property is adversely impeded, and</u>	I recommend condition 4) is relocated into the general conditions and condition 5 duplication is removed as shown.
	5) the activity does not change the natural seasonal water levels of any natural wetland that would result in the net loss or degradation of indigenous wetland vegetation, and	7) The activity must not cause change to the seasonal or annual range in water level of any natural wetland to an extent that may adversely affect the wetland's natural ecosystem, and	
C.3.5	2) the dammed water does not raise sub-surface or surface water levels to the extent that drainage of other property is adversely impeded, and	<u>6a) the dammed water does not raise sub-surface or surface water levels to the extent that drainage of other property is adversely impeded, and</u>	I recommend condition 2) is relocated into the general conditions and condition 3 duplication is removed as shown.
	3) the activity does not change the natural seasonal water levels of any natural wetland that would result in the net loss or degradation of indigenous wetland vegetation, and	7) The activity must not cause change to the seasonal or annual range in water level of any natural wetland to an extent that may adversely affect the wetland's natural ecosystem, and	