

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the proposed Regional Plan for Northland

**REPORT AND RECOMMENDATIONS  
OF THE  
HEARING COMMISSIONERS**

**April 2019**

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## **Section 1**

### **Introduction**

- [1] On 6 September 2017 the Northland Regional Council ('the Council' or 'NRC') notified the Proposed Regional Plan for Northland ('the Plan' or 'pRPFN'). The pRPFN replaces three existing regional plans<sup>1</sup> and it includes regulatory components from five catchment plans developed by local catchment groups.<sup>2</sup> The pRPFN contained definitions, rules, policies and (at the time of notification) a single objective.<sup>3</sup> It deliberately contained very little optional content such as issues, explanations, methods (other than rules) and assessment criteria.

#### ***Appointment of hearing commissioners***

- [2] The Council, acting under s34A of the RMA, appointed us the undersigned, as hearing commissioners to hear, consider and make recommendations to it on the submissions on the pRPFN. The Council delegated to us all its functions, powers and duties to hear and consider the submissions, including requiring and receiving reports under s42A and exercising powers conferred by ss41B and 41C of the RMA<sup>4</sup>.
- [3] For the avoidance of doubt, we affirm that throughout the performance of our duties we have been entirely independent and objective in considering and making recommendations on the submissions.<sup>5</sup>

#### ***Hearing of submissions***

- [4] A total of 316 submissions on the Plan were received. A Summary of Decisions Requested was notified on 10 March 2018 and 95 further submissions were eventually received.
- [5] We received reports under s42A on the pRPFN and the submissions on it. Expert evidence from submitters was circulated prior to the hearing. We conducted public hearings for the submitters who wished to be heard in Whangārei, Kerikeri, Kaitiāia and Otiria Marae (Moerewa). On 6 November 2018 we reconvened at the Council offices in Whangārei for the s42A authors to publicly deliver their reply to the matters presented by the submitters. In total the public hearings occupied 23 days.

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<sup>1</sup> Regional Air Quality Plan for Northland (operative March 2003), Regional Coastal Plan for Northland (operative 1 July 2004) and Regional Water and Soil Plan for Northland (operative 28 August 2004).

<sup>2</sup> Mangere, Doubtless Bay, Waitangi, Poutō and Whangārei.

<sup>3</sup> In response to submissions the Section 42A report authors recommended the inclusion of further objectives. We discuss this further in Section 5 of this Report.

<sup>4</sup> The exception was the hearing and considering of submissions requesting the inclusion of provisions for managing the use of genetically modified organisms. This function was retained by the Council and was addressed through a separate hearing process.

<sup>5</sup> Commissioner Yeoman played no role in the consideration of the submissions of Marsden Maritime Holdings and Northport Limited, given NRC's position of majority shareholder in Marsden Maritime Holdings.

- [6] Only 73 of the 152 submitters who requested speaking time actually attended the hearing. Disappointingly, a further 74 submitters who had requested speaking time did not attend the hearing and gave no prior notice of their non-attendance.<sup>6</sup>
- [7] During the hearings, we asked questions of submitters to enhance our understanding of their requests, the grounds for them, and advice given in the s42A reports. We endeavoured to conduct the hearings with a minimum of formality to an extent that allowed for fairness to all submitters. An audio recording of the proceedings was made available on the Council's webpage as the hearing proceeded. Following the completion of the public hearings, we deliberated on the matters raised in the submissions and formulated our recommendations to Council.
- [8] Many of the submissions requested amendments to the pRPFN and gave reasons for requesting those amendments. In addition, the authors of the s42A reports made successive detailed recommendations regarding wording improvements to the Plan's provisions, including in their reply report.
- [9] Some submitters questioned the pRPFN's style and layout, in particular the unorthodox ordering of the rules, policies and objective(s). We consider that the Plan's format is generally suitable for its purpose and so we have retained it as notified. We note that the format may need to be amended in the future to conform with National Planning Standards, but we do not consider that to be our responsibility. Also, reordering the layout of the Plan now could create confusion for submitters.
- [10] We are grateful for all the requests and suggestions by submitters and their witnesses and by the s42A report authors. We acknowledge that the requested and suggested amendments, including those we do not recommend, and the evidence relating to them, have substantially assisted us in our deliberations and in reaching our recommendations to Council. The submissions and reports have all contributed to an effective and fair process for which Part 1 of Schedule 1 of the RMA provides.

### ***This report***

- [11] In the main body of this report we firstly state, in narrative form, our findings about the law and superior instruments applicable to the process; tangata whenua values and interests; and about issues raised by submitters. Further, we consider the extent to which the pRPFN, amended as we recommend, would give effect to relevant directions of applicable higher

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<sup>6</sup>A further five submitters who had requested to be heard helpfully provided prior notice of their non-attendance.

order instruments. As directed by s32AA of the RMA, we also evaluate our recommended amendments to the Plan.

- [12] The decisions we recommend on the points raised in the submissions are set out in Appendix A to this report. In Appendix B we show the content of the pRPFN incorporating our recommended amendments to it.
- [13] To avoid unnecessary duplication and repetition we affirm that, except to the extent that we expressly address matters in this report and its Appendix A, we adopt the 'discussion' and 'recommendations' of the s42A authors as our 'reasons' and 'recommendations'. Consequently, the initial (July 2018) and Reply (November 2018) versions of the s42A reports should be read as forming part of this report. We discuss this in more detail in Section 4 of this report.

## Section 2

### The Resource Management Act

- [14] In this Section, we briefly discuss provisions of the RMA that are relevant to the pRPFN and our consideration of submissions.

#### ***The purpose and principles of the RMA***

- [15] First, we understand that we are to refer to the version of the RMA that was current at the time that the pRPFN was notified in September 2017, namely the RMA as it was after the April 2017 commencement of the Resource Legislation Amendment Act 2017.
- [16] Having said that, we note that the RMA now no longer establishes a mandate for Council to address the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances given the repeal of ss30(1)(c)(v) and 31(b)(ii). We have also had regard to the fact that the RMA now contains s6(h) relating to the management of significant risks from natural hazards.
- [17] Part 2 of the RMA states its purpose and principles. The overall objective of the Act,<sup>7</sup> and the cornerstone of Part 2, is s5(1), which states the purpose of the Act is “to promote the sustainable management of natural and physical resources.” Section 5(2) describes the meaning of the term ‘sustainable management’:

In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, and at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- [18] Section 5 contemplates environmental preservation and protection as an element of sustainable management of natural and physical resources;<sup>8</sup> and protecting the environment from adverse effects of use and development is an aspect (though not the only one) of sustainable management.<sup>9</sup> The other sections of Part 2 (ss6, 7 and 8) provide general principles elaborating on how s5 is to be applied.<sup>10</sup>
- [19] Section 6 of the RMA identifies matters of national importance and directs us to recognise and provide for them. All the matters listed in s6 are relevant to the pRPFN. Section 7 directs that, in achieving the purpose of the Act, we are to have particular regard to eleven matters, many

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<sup>7</sup> *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38 [151].

<sup>8</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [146].

<sup>9</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [148].

<sup>10</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [8], [149].

of which are relevant to the pRPFN. Section 8, the final section in Part 2 of the Act, directs us to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We understand that this does not extend to principles that are not consistent with the scheme of the RMA.

- [20] Important as Part 2 is, we understand that where specific, unqualified provisions are contained in a superior instrument<sup>11</sup> by which Part 2 is given effect (the lawfulness and the meaning of which are not in dispute, and which ‘cover the field’), we are not able to ‘refer back’ to Part 2 to diminish the effect of the superior instrument.<sup>12</sup>

### ***Functions of Northland Regional Council***

- [21] Section 30 of the RMA lists Council’s functions that are relevant to our consideration of the pRPFN. Specifically, s65(1) of the RMA explicitly specifies the functions for which a regional council may prepare a regional plan:

A regional council may prepare a regional plan for the whole or part of its region for any function specified in section 30(1)(c), (ca), (e), (f), (fa), (fb), (g), or (ga).

- [22] As the Plan addresses air, land and water, all of the parts of s30 referred to in s65(1) are relevant. Those parts state:

- (c) the control of the use of land for the purpose of—
  - (i) soil conservation:
  - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
  - (iii) the maintenance of the quantity of water in water bodies and coastal water:
  - (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
  - (iv) the avoidance or mitigation of natural hazards:
  - (v) [Repealed]
- (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
- (e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
  - (i) the setting of any maximum or minimum levels or flows of water:
  - (ii) the control of the range, or rate of change, of levels or flows of water:
  - (iii) the control of the taking or use of geothermal energy:
- (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
- (fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:
  - (i) the taking or use of water (other than open coastal water):
  - (ii) the taking or use of heat or energy from water (other than open coastal water):
  - (iii) the taking or use of heat or energy from the material surrounding geothermal water:
  - (iv) the capacity of air or water to assimilate a discharge of a contaminant:
- (fb) if appropriate, and in conjunction with the Minister of Conservation,—

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<sup>11</sup> Such as a national policy statement or water conservation order.

<sup>12</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [80] and [88].

- (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
- (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:
- (g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
  - (i) soil conservation:
  - (ii) the maintenance and enhancement of the quality of water in that water body:
  - (iii) the maintenance of the quantity of water in that water body:
  - (v) the avoidance or mitigation of natural hazards:
- (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

[23] As provided for in s64(2) of the RMA, the pRPFN also includes the regional coastal plan. The s30 functions of the NRC relevant to the regional coastal plan component of the pRPFN are:

- (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
  - (i) land and associated natural and physical resources:
  - (ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:
  - (ii) the taking, use, damming, and diversion of water:
  - (iii) discharges of contaminants into or onto land, air, or water and discharges of water into water:
  - (iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:
  - (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards:
  - (vi) the emission of noise and the mitigation of the effects of noise:
  - (vi) activities in relation to the surface of water:

[24] S68(1) enables the Council to include rules in the pRPFN as follows:

- (1) A regional council may, for the purpose of—
  - (a) carrying out its functions under this Act (other than those described in paragraphs (a) and (b) of section 30(1)); and
  - (b) achieving the objectives and policies of the plan,—
 include rules in a regional plan.

[25] As we noted in Minute 3<sup>13</sup> issued by the Panel, it came to our attention that the notified Plan contained provisions relating to certain matters (outside of the coastal marine area) and certain areas on the notified I Maps deriving from ss30(1)(a) and 30(1)(b) of the Act, rather than from those subsections of s30(1) under which a regional council may prepare a regional plan or include rules in a plan. We received advice on these matters from the s42A authors and we have generally accepted that advice. The result being that we have recommended the deletion of any regional rules that, outside of the coastal marine area, deal with *Historic Heritage Areas and Sites* and *Outstanding Natural Landscapes*. We have also endeavoured to ensure that rules dealing with *Outstanding Natural Features, Areas of Outstanding Natural Character, Areas of High Natural Character* and *Sites and Areas of Significance to Tangata*

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<sup>13</sup> Proposed Regional Plan for Northland, Minute and Request of the Hearing Panel, Minute 3, 5 March 2018.



*Whenua* squarely fall within the scope of Council's s30 functions as constrained by s68(1) of the RMA.

- [26] We were also cognisant that ss30 and 31 of the RMA establish potentially overlapping land use functions between the NRC and the region's territorial authorities. In that regard, we were guided by Section 1.6 of the Regional Policy Statement for Northland 2016 (RPS) which sets out the respective roles and responsibilities of the regional and district councils as required by s62(1)(i) of the RMA. Of most relevance to our deliberations on the issues raised by submitters the RPS specifies that outside of waterbodies, the beds of rivers and lakes, and the CMA, the responsibility for controlling the use of land (including rules) to maintain indigenous biological diversity rests with the region's territorial authorities. This means that the pRPFN cannot have general land use rules dealing with the management of terrestrial indigenous biodiversity. This includes indigenous vegetation in riparian areas adjacent to waterbodies, rivers and lakes but outside of the beds of those features. It also limits the ability of the NRC to control the clearance of terrestrial indigenous vegetation. We discuss this further in Sections 18 and 22 of this report.

#### ***Contents of the pRPFN***

- [27] Section 63(1) of the RMA states the purpose of a regional plan as being "to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act." Section 65(2) directs that the pRPFN is to be prepared in accordance with Schedule 1. Section 66(1) directs that the Council is to prepare the pRPFN in accordance with its functions under s30, the provisions of Part 2, its duties under s32, and any regulations. Section 66(2) stipulates that the Council is to have regard to any regional policy statement, management plans and strategies prepared under other Acts, to the extent that their content has a bearing on resource management issues of the region,<sup>14</sup> and the extent to which it needs to be consistent with regional policy statements and plans of adjacent regional councils.<sup>15</sup> Section 66(2A) directs that the Council is to take into account any relevant planning document recognised by an iwi authority, if lodged with the Council, to the extent that its content has a bearing on the resource management issues of the region.
- [28] Section 67(1) of the RMA requires that the pRPFN state the objectives for the region; the policies to implement the objectives; and the rules (if any) to implement the policies. The notified Plan contained only one objective (Objective F.0.1) and that attracted numerous submissions. In response the s42A authors recommended the inclusion of a suite of additional

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<sup>14</sup> RMA, s66(2)(c)(i).

<sup>15</sup> RMA, s66(2)(d).

objectives and policies, many of which were derived from the RPS. We return to this matter in Section 7 of this report.

- [29] Section 67(2) lists other matters that may be included in the pRPFN. Section 67(3) directs that the pRPFN is to give effect to any national policy statement, any New Zealand coastal policy statement; and any regional policy statement. Section 67(4) stipulates that the pRPFN is not to be inconsistent with a water conservation order, or any other regional plan for the region. In that regard, we consider that this does not extend to the Council's operative antecedent plans discussed in paragraph [1] above, because the pRPFN is intended to replace those plans.
- [30] Section 67(5) adds that if Council has allocated a natural resource under certain provisions of s30, the Plan is to record how it has done so.<sup>16</sup> Section 67(6) allows the pRPFN to incorporate material by reference under Part 3 of Schedule 1.
- [31] We discussed s68 of the RMA above, and we note that it prescribes that in making a rule, Council is to have regard to the actual or potential effects (particularly an adverse effect) on the environment of activities; and relevantly in relation to the pRPFN, contains specific prescriptions for rules relating to levels or flows or rates of use of water, and minimum standards of water quality. We note that s68(5) provides that a rule may apply to only part of a region and may make different provisions for different parts of the region. This is relevant for the five suites of catchment-specific provisions contained in the Plan. Section 68(9) precludes the Plan from making certain dumping and incineration activities in the CMA permitted activities. We note the pRPFN does not do this.
- [32] Section 68A states that no rule may be included in a regional coastal plan which authorises as a permitted activity any aquaculture activity in the coastal marine area. We note that the pRPFN does not contain any permitted activities for aquaculture. The most permissive rule is Rule C.1.3.1 relating to the consenting of aquaculture that does not involve fin fish.
- [33] Section 69 addresses provisions on water quality, including prohibiting standards that may result in a reduction of the quality of water unless it is consistent with the purpose of the Act to do so. Section 70 applies to rules about discharges. Section 70(1) applies to rules that allow discharges as a permitted activity; and s70(2) applies to rules that require adoption of the best practicable option.
- [34] We have carefully considered the application of the above sections of the RMA when assessing the submissions on the pRPFN.

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<sup>16</sup> The provisions of section 30 referred to in s67(5) are s30(1)(fa) or (fb), and s30(4).

### ***Procedure for preparing the pRPFN***

- [35] The procedure for preparing a regional plan is that prescribed in Schedule 1 to the RMA<sup>17</sup>. Clause 5(1) requires the Council to prepare an evaluation report in accordance with s32, and have particular regard to that report when deciding whether to proceed with the Plan. Clause 10 gives directions on decisions on the Plan's provisions and matters raised in submissions,<sup>18</sup> with reasons for accepting or rejecting them.<sup>19</sup> Subclause 10(2) provides for Council's decisions on submissions to make necessary consequential alterations arising from the submissions and any other relevant matters arising from them. Subclause 10(4) stipulates that Council's decision is to include a further evaluation in accordance with s32AA;<sup>20</sup> and it is to have particular regard to the further evaluation when making its decision.<sup>21</sup> Clause 16(2) enables the Council to make amendments to the pRPFN that "alter any information, where such an alteration is of minor effect" and to "correct any minor errors."
- [36] The Council must give its decisions on the matters raised in the submissions, however subclause 10(3) provides that it is not required to address each submission individually. So, in the main text of this report we address some of the more controversial issues arising from the submissions, including those where we have deviated from the recommendations of the s42A report authors; and in Appendix A we have grouped some submission points in the same manner as the s42A authors and according to specific provisions of the pRPFN. We discuss that in more detail in Section 4 of this report.
- [37] Although not expressly stated in the Act, we understand that our consideration of submissions is to proceed on the basis that there is no presumption in favour of the notified provisions of the pRPFN; nor is there any onus on submitters to show that the notified contents of the pRPFN are inappropriate.<sup>22</sup> Rather, our duty is to consider the submissions and evidence, and make recommendations as to what the most appropriate and suitable provisions of the pRPFN are; that is what we have done.

### ***Evaluation report***

- [38] Section 32 of the RMA sets out the requirements for preparing and publishing evaluation reports. The Council has prepared a report under s32<sup>23</sup> and we have read that report. Under s32AA, a further evaluation is required for any recommended amendments to the pRPFN since

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<sup>17</sup> RMA, s 65(3).

<sup>18</sup> RMA, Sched 1, cl 10(1).

<sup>19</sup> RMA, Sched 1, cl 10(2).

<sup>20</sup> RMA, Sched 1, cl 10(2)(ab).

<sup>21</sup> RMA, Sched 1, cl 10(4)(aaa).

<sup>22</sup> *Wellington Club v Carson* [1972] NZLR 698 (SC); applied to the RMA in *Leith v Auckland City Council* [1995] NZRMA 400.

<sup>23</sup> Section 32 analysis report Proposed Regional Plan for Northland, September 2017.

the original evaluation report was completed. We discuss this further in Section 26 of this report.

### **Section 3**

#### **Higher Order and other Relevant Instruments**

##### ***National policy statements and national regulations***

[39] We understand that the following national policy statements and regulations are potentially relevant to our consideration of the submissions on the pRPFN:

- National Policy Statement on Urban Development Capacity 2016 [NPSUDC]
- National Policy Statement for Freshwater Management 2014 (Updated in 2017) [NPSFM]
- National Policy Statement for Renewable Electricity Generation 2011 [NPSREG]
- New Zealand Coastal Policy Statement 2010 [NZCPS]
- National Policy Statement on Electricity Transmission 2008 [NPSET]
- Resource Management (National Environmental Standards for Air Quality) Regulations 2004
- Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007
- Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (came into effect on 1 May 2018)
- Resource Management (Marine Pollution) Regulations 1998
- Resource Management (Measurement and Reporting of Water Takes) Regulations 2010
- Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011
- Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009
- Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016

[40] We do not repeat the contents of those national documents here. We record that we have sought to give effect to the national policy statements and have had regard to the regulations, particularly where submitters addressed the contents of those documents. We refer to specific provisions of those documents in subsequent sections of this report where appropriate.

##### ***Regional Policy Statement for Northland 2016***

[41] The Regional Policy Statement for Northland (RPS) was made operative on 9 May 2016. It contains objectives on 15 matters and policies on 8 matters. All its provisions are relevant to the contents of the pRPFN to a greater or lesser degree. Rather than listing the numerous objectives and policies of the RPS at length here, we simply record that we have ensured that our recommendations on the submissions give effect to the provisions of the RPS.

- [42] In elaboration of this approach, in the narrative sections of this report we refer to specific provisions of the RPS where it is appropriate to do so. We note that the s42A authors also did that and we have in many cases adopted the 'discussion' and 'recommendations' of those authors, including therefore their conclusions on giving effect to the RPS.

#### ***Water conservation orders***

- [43] There are no water conservation orders in Northland.

#### ***Iwi authority recognised plans***

- [44] We discuss the relevant planning documents recognised by the Northland iwi authorities in Section 6 of this report. We record here that we have dealt with those planning documents to the extent that their content has a bearing on the resource management issues of the region.

#### ***Management plans under other Acts***

- [45] We must also have regard to management plans under other Acts. Accordingly, we have had regard to the Northland Fish and Game Council Sportsfish and Game Management Plan. That plan establishes a framework which provides direction for Fish and Game to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters. We have also had regard to the objectives and policies of the Northland Conservation Management Strategy 2014 – 2024 (NCMS) prepared under the Conservation Act 1987. That Strategy sets out how the Department of Conservation (DOC) proposes to manage the natural, historical and cultural heritage values and recreational opportunities within the Northland Conservancy. We note the objectives and policies of the NCMS, where relevant and not relating to the management of conservation estate or to DOC advocacy actions, do not in our view provide substantial policy guidance over and above that contained in the NPSFM and NZCPS.

#### ***Instruments of adjacent regional councils***

- [46] Under s66(2)(d) of the RMA, we must have regard to the extent to which the pRPFN needs to be consistent with the Auckland Unitary Plan promulgated by the Auckland Council. That Council helpfully made a submission on the pRPFN and we have paid particular attention to issues of inter-regional consistency raised by that submission. We also note that in many instances, when assessing submissions, the s42A authors referred to comparable provisions in the Auckland Unitary Plan. We are satisfied that the pRPFN is appropriately consistent with the Auckland Unitary Plan where it needs to be.

## Section 4

### Our Recommendation Report Format

- [47] In subsequent sections of this report we only discuss substantive matters, and then only where we either depart from the ‘discussions’ and ‘recommendations’ of the s42A authors regarding the wording of the pRPFN’s Objectives, Policies and Rules;<sup>24</sup> or where we wish to specifically address key matters raised by submitters.
- [48] We had no substantial disagreement with the ‘discussion’ and ‘recommendations’ of the s42A authors for the remaining matters raised in the submissions and nor do we wish to highlight any key matters raised by submitters regarding those matters.
- [49] In our Appendix A we state our Reasons and Recommendations on some specific submission points. We have used what we colloquially call an ‘exception-based’ approach where we only address submission points where we disagree with the s42A authors. Explaining what we mean by that, we note that most of the topic-based s42A reports included both an assessment in narrative form of key issues raised in submissions and an appendix where the respective authors provided, in tabular form for certain relevant provisions, a ‘Summary of main submission points’, a ‘Discussion’ of them and a ‘Recommendation’. We have adopted that same approach in our Appendix A.
- [50] However, in our Appendix A we also only address submission points where we disagree with the s42A author’s tabulated ‘Recommendation’ and where we make a different ‘Recommendation’ with an accompanying ‘Reason’ written by us, provided of course that the s42A author did not change their original recommendation to us. In that regard, we note that in some cases the detailed recommendations made in the initial S42A reports were changed in the s42A authors’ answers to our written questions;<sup>25</sup> in the Staff Reply Report dated 26 October 2018; or in the “Errata to staff reply report, November 2018” and “Supplementary to staff reply report, November 2018” documents (both of those latter documents were tabled at our Reply hearing). We have generally adopted those changed Recommendations.
- [51] If we have not included a ‘Summary of main submission points’ in our Appendix A that is because, either:
- (i) other than as discussed in subsequent topic-based sections of this report, we agree with and adopt the tabulated Discussion and Recommendations of the s42A authors as set out

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<sup>24</sup> Other minor matters are dealt with in Section 25 of this report or in the ‘reasons’ we include in Appendix A.

<sup>25</sup> Including Hearing Panel S42A questions and council staff responses, Hearings for the Proposed Regional Plan for Northland, 17 August 2018; Legal advice from Wynn Williams Lawyers titled “Proposed Regional Plan for Northland – Ability to Address Effects on Land-Based Values” dated 23 August 2018; and Staff opening statements August 2018, Hearings for the Proposed Regional Plan for Northland, 23 August 2018.

in the appendices of their respective s42A reports<sup>26</sup> or in the Staff Reply Report. We note that in those cases the author's 'Discussion' is to be read as our 'Reason'. The s42A report topics where this is the case are:

- Aquaculture;
- Coastal – Reclamations;
- Coastal Works – General Conditions;
- Coastal – Policies;
- Land Drainage and Flood Control;
- Managing the Access of Livestock Access to Waterways and the Coastal Marine Area;
- Other Discharges of Contaminants to Land and Water;
- Solid Waste;
- Stormwater Discharges;
- Wastewater Discharges; and
- Water Quality Management – General Matters; or

(ii) the initial s42A report for a topic did not include a tabulated appendix. Those s42A report topics are:

- Acid Sulphate Soils; Catchments; Re-building of Materially Damaged or Destroyed Buildings (these topics are not addressed in our report as we agree with all of the s42A authors' recommendations);
- General Approach (see Sections 5 and 7 of our report);
- Mangrove Management (see Section 8 of our report); and
- Regionally Significant Infrastructure, Renewable Energy, and Economic Wellbeing (see Section 9 of our report).

[52] For the sake of certainty, we have also listed in our Appendix A the 34 submissions that, in our view, were unclear as to the relief being sought. These submissions are all rejected.

[53] Due to the 'exception-based' approach outlined above, our Appendix A (comprising only eight pages) is relatively short compared to similar schedules contained in other recent regional plan recommendation reports that we are familiar with.<sup>27</sup>

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<sup>26</sup> Including the undated document titled "Errata to Proposed Regional Plan for Northland – S42A recommended changes" issued in July 2018.

<sup>27</sup> Including those in Canterbury and Southland.



[54] Importantly, we record that if the narrative reasoning and recommendations contained in Sections 5 to 25 of this report differ in principle or substance from the s42A authors' discussion of any matter (whether it be in the body of an initial s42A report, an initial s42A report's appendix, answers to our written questions, or in the Staff Reply Report), then the reasoning in our report should be read as superseding and replacing the respective 'discussion' in the respective s42A material.

## **Section 5**

### **Council's Approach to the Plan**

- [55] The Council's approach to the format and content of the pRPFN is described in the Section 32 Report.<sup>28</sup> It notes that NRC considers the purpose of the Plan to be a rule book and a set of policies to guide resource consent processes. The Plan consequently contains very little optional content such as issues, explanations, methods (other than rules) and assessment criteria. We are comfortable with this approach and have generally recommended declining submissions seeking the inclusion of 'optional' content such as issues, non-regulatory methods, explanations, environmental results anticipated, monitoring policies and methods, and information to be included in resource consent applications.
- [56] We conclude that much of that optional material<sup>29</sup> is best included in documents external to the Plan, so that it can be more easily adapted and changed as circumstances demand. We also note that the Plan is already very long and it would not benefit from being 'padded out' with optional material that is of no real benefit to resource users or the decision-makers implementing it.
- [57] The exception is the need to include additional objectives in the Plan, together with additional policies to implement those objectives, and we discuss that in Section 7 of this report.

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<sup>28</sup> Section 1.5 titled "Structure and content of the Proposed Regional Plan".

<sup>29</sup> Noting that the 'issues' the Plan addresses are well set out in the Section 32 Report.

## Section 6

### Tangata whenua

[58] In this section, we discuss matters of relevance to the tangata whenua provisions in the pRPFN. A total of 34 submitters made submissions on these provisions, including a number of tangata whenua groups represented by the following entities:<sup>30</sup>

- Ngati Ruamahue;
- Haititaimarangai Marae;
- Patuharakeke Te Iwi Trust;
- Te Hiku Iwi Collective;
- Te Rarawa Anga Mua; and
- Tinopai RMU.

[59] The final hearing for submitters to present their views on the pRPFN (prior to Council's Reply hearing) took place on 11 October 2018, at Otiria Marae, in Moerewa. This hearing provided the opportunity for iwi and hapū to present their submissions on the marae, in a culturally appropriate location, and in a context where tikanga māori prevailed. We consider the marae venue for the hearing was of mutual benefit to both the submitters and the Panel, and wish to extend our appreciation to Ngati Hine for their manaakitanga throughout our visit to Otiria Marae.

[60] Part 2 of the RMA imposes the following obligations on all people exercising powers and functions under the Act in relation to Māori values and interests:

- to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (s6(e));
- to have particular regard to kaitiakitanga (s7(a)); and
- to take into account the principles of the Treaty of Waitangi (s8).

[61] Protected customary rights are identified and provided legal status under the Marine and Coastal Area Takutai Moana Act 2011. However, s6(g) of the RMA also requires that customary rights are "recognised and provided for" as a matter of national importance. At the time of writing this decision, there have been no protected customary rights orders granted in Northland although a number of applications have been lodged by iwi or hapū and, if successful, will become a relevant RMA consideration in future planning and consenting processes.

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<sup>30</sup> Section 42A Hearing Report, Tangata Whenua Provisions; page 5.

[62] Statutory acknowledgements are legal instruments that can enhance the ability of tangata whenua to exercise kaitiakitanga over their ancestral land, water, sites, wāhi tapu and other taonga. They usually take the form of statements in Treaty of Waitangi settlements between the Crown and tangata whenua (generally iwi) which are intended to recognise the mana of tangata whenua groups in relation to identified sites or areas in Crown ownership or control.<sup>31</sup> Statutory acknowledgements have been included within Treaty of Waitangi Settlement legislation for several iwi and hapū within the Northland region.<sup>32</sup> In terms of RMA processes, statutory acknowledgements have implications for resource consent applications and planning processes, including the preparation of regional plans. Accordingly, Council has developed a single companion document recording all statutory acknowledgement areas titled “Te Ture Whakamana nga Iwi o Te Taitokerau; Statutory Acknowledgements in Northland” which can be found on the Council’s website.

[63] When preparing regional plans, regional councils are also required to “...take into account any relevant planning document recognised by an iwi authority and lodged with council” under s66(2A)(a) of the RMA. Iwi or hapū management plans provide a vision of how the management and protection of natural and physical resources can be achieved based on the cultural and spiritual values of tangata whenua. We understand that the following iwi or hapū management plans have been formally lodged with the Council and were taken into account in the development of the pRPFN:

- Te Iwi o Ngatiwai Iwi Environmental Policy Document 2007;
- Ngatiwai Aquaculture Plan 2005;
- Ngati Rehia Environmental Management Plan 2007;
- Patuharakeke Te Iwi Trust Board Hapu Environmental Management Plan 2015;
- Nga Tikanga mo te Taiao o Ngati Hine 2008;
- Kororareka Marae Environmental Hapū Management Plan 2009;
- Te Uri o Hau Kaitiakitanga o Te Taiao 2012;
- Whakatakoto Kaupapa Mo Te Hapu o Ngati Kuta ki Te Rawhiti 2014;
- (Ngati Korokoro, Ngati Wharara, Te Pouka) Hapū Environmental Management Plan 2008;
- Kia Matau, Kia Mohia e ora ana Te U Kaipo 2011;
- Ngati Hau Environmental Management Plan 2016; and
- Whatitiri Resource Management Plan 2016.
- Te Iwi O NgaiTakoto Environmental Plan 2017

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<sup>31</sup> Section 32 Analysis Report, Volume 1; page 24.

<sup>32</sup> These iwi and hapu include Te Uri o Hau, Te Roroa, Ngati Manuhiri, Ngati Kuri, Te Aupouri, Ngai Takoto and Te Rarawa.

- [64] We note that a suite of tangata whenua provisions was developed on the basis of advice sought from iwi authorities during the initial development phase of the pRPFN.<sup>33</sup> The provisions also respond to issues identified by tangata whenua in the RPS and iwi or hapū planning documents lodged with the council.<sup>34</sup> The key provisions of the Plan of relevance to tangata whenua values and interests are:
- Policy D.1.1 Criteria determining when an analysis of effects on tangata whenua and their taonga is required;
  - Policy D.1.2 Requirements of an analysis of effects on tangata whenua and their taonga;
  - Policy D.1.3 Affected persons;
  - Policy D.1.4 Managing effects on Places of Significance to Tangata Whenua; and
  - Policy D.1.5 Places of Significance to Tangata Whenua.
- [65] We understand that these policies are intended to provide a Northland-specific context to Schedule 4 of the RMA which requires an assessment of cultural effects as part of any application for resource consent. Without a clearly defined process for the engagement of tangata whenua and assessment of cultural effects, priority resources and activities of concern to tangata whenua can easily be overlooked, resulting in the potential for adverse cultural effects and the risk of challenges and delays during the consent process. Policies D.1.1 and D.1.2, in particular, are intended to refine the need for cultural analysis to assist applicants and decision-makers to determine what types of effects on tangata whenua and their taonga are most relevant and how the effects should be assessed.<sup>35</sup>
- [66] Submissions from iwi and hapū in relation to the tangata whenua provisions were generally supportive. However, there were a number of key matters raised in submissions both by iwi and hapu and others, including the Oil Companies and Transpower, requesting that the tangata whenua policies be changed into other types of provisions (for example, information requirements or methods) and that the policies be amended so that they required consideration of only 'significant' and not all effects on tangata whenua values. We reject such submissions because they would unjustifiably weaken the pRPFN and reduce its effectiveness in achieving the purpose of the Act and for giving effect to the superior instruments, including the RPS.
- [67] In response to submissions and the evidence presented by iwi and hapū submitters at Otiria Marae, the s42A authors (both initially and in Reply) provided a thorough analysis of the key matters raised and recommended several changes to the tangata whenua policies. We have adopted the recommendations and reasons of the s42A authors.

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<sup>33</sup> Section 32 Analysis Report, Volume 1; page 12.

<sup>34</sup> Ibid; page 12.

<sup>35</sup> Section 42A Hearing Report; page 6, para 19.

- [68] Additionally, we recommend further amendments including corrections to errors in both the introductory karakia and mihi, as well as minor changes to improve the wording of the tangata whenua policies. We also recommend that Policy D.1.2(3) is amended to include a requirement for the relevant tangata whenua to be requested, in the first instance, to undertake the assessment of cultural effects. In circumstances where the tangata whenua may lack the capacity or capability to complete cultural assessments themselves, the applicant will retain the ability to engage a suitably qualified cultural expert to undertake this work in consultation with tangata whenua.
- [69] Patuharakeke Te Iwi Trust Board requested additional sites or areas of significance in the CMA be added to the pRPFN maps and provided supporting information as appendices to their statement of evidence presented at Otiria Marae. The Trust Board assessed each additional proposed site against the criteria set out in Policy D.1.5. We were impressed with the level of detail and quality of the information provided in support of the assessment, and accept their submission as meeting the standards required in Policy D.1.5 for sites to be included as “Places of significance to Tangata whenua” in the Plan. We recommend the inclusion of the four Patuharakeke Mahinga Mataitai areas for inclusion in the I Maps<sup>36</sup>. Unfortunately, the Te Poupouwhenua Cultural Area and the Tahuna Tohora site are located on land<sup>37</sup> and so cannot be included in the pRPFN.
- [70] Two other submitters sought the inclusion of sites of cultural significance in the Plan under Policy D.1.5.<sup>38</sup> These sites were assessed against the relevant criteria by s42A author Keir Volkerling. Unfortunately, the information provided in relation to these sites was not sufficient to meet the criteria outlined in Policy D.1.5 and therefore they cannot be included at this time. However, we understand that the Council intends to work closely with tangata whenua to identify sites of cultural significance for inclusion in the Plan, which we understand will be by way of a future plan change.
- [71] Overall, we are satisfied that the tangata whenua provisions, as amended following our adoption of the s42A author’s recommendations and our additional recommended amendments, are appropriate as they are consistent with Part 2 requirements of the RMA and they give effect to the RPS and national policy statements. Furthermore, we find the provisions explicitly take into account iwi and hapū management plans, as well as giving clear direction for implementation of Schedule 4 and providing a framework for protection of tangata whenua values.

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<sup>36</sup> Mangawhati, Te Poupouwhenua (Mair and Marsden Bank), Ruakaka Estuary and Takahiwai Mahinga Mataitai areas.

<sup>37</sup> Outside the CMA or the bed of a river, lake or wetland.

<sup>38</sup> Te Runanga o Whaingaroa and Trina Upperton.

[72] Proportionate to the scale and significance of the matter of including tangata whenua provisions in the pRPFN, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to include the amended policies or not; and we have identified that including them is reasonably practicable and within the scope of submissions; and that including them would better assist with achieving the purpose of the Act and for giving effect to s67(1) of the RMA.

## Section 7

### Additional Objectives and Policies (General Approach)

- [73] As we have already observed, as notified the Plan contained only one objective F.0.1 which read:

F.0.1 Objective

Manage the use, development, and protection of Northland's natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:

- 1) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and
- 2) safeguarding the life-supporting capacity of air, water, soil, and ecosystems, and
- 3) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- [74] The 'one objective' approach was criticised by numerous submitters. We note that under s67(1)(a) of the RMA there is a need for the Plan to explicitly state the objectives for the region. In our view Objective F.0.1 of the Plan as notified did not do that. It simply parroted s5 of the RMA in a way that was not particular to the Northland Region. However, we note that the RPS already clearly states resource management objectives for the region, a fact that was also highlighted by some submitters.
- [75] In response to submissions, the s42A authors recommended including thirteen additional objectives dealing with freshwater quantity; freshwater quality; indigenous ecosystems and biodiversity; enabling economic wellbeing; regionally significant infrastructure; security of energy supply; use and development of the coastal marine area; tangata whenua role in decision-making; natural hazards risk; improving Northland's natural and physical resources; natural character, outstanding natural features, historic heritage and places of significance to tangata whenua; air quality; and hazardous substances and contaminated land.
- [76] The s42A authors advised that the additional objectives were for the most part based on, or were a copy of, the RPS objectives, except for the objectives for water quality. The authors noted that the notified Plan provisions (arguably) already implemented the RPS objectives (in other words, there is no need to change the Plan provisions because of the additional objectives); the objectives now recommended for inclusion in the Plan have been tested through the RPS's Schedule 1 process; they are specific to the region; and they cover most of the matters addressed by the Plan (other than air quality which is not a significant issue addressed by the RPS).<sup>39</sup>

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<sup>39</sup> General approach, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report, Ben lee, 22/06/2018, paragraph 84.



- [77] We acknowledge the practical and administrative advantages of the s42A authors' recommendation to base additional Plan objectives on those already contained in the RPS.
- [78] Consequently, we somewhat reluctantly accept the s42A authors' recommendations to include the additional objectives. We say 'reluctantly' because we are loathe to include additional provisions that simply parrot higher order instruments without adding any specificity to guide resource users or decision-makers. Nevertheless, we do not consider it our role to conjure up objectives different to those now recommended to us. We have however carefully considered the wording of the additional objectives, both in light of Council's functions under s30 of the RMA and by having regard to alternative suggestions from submitters.
- [79] We have reflected on recommendations regarding additional policies to implement the objectives as required by s67(1)(b) of the RMA. We have included several new policies that were recommended to us by either the s42A authors or by submitters. We have done so subject to the same caveats outlined in the paragraph above.
- [80] A number of submitters; including for example the Minister of Conservation, Northport, Ravensdown, Royal Forest and Bird Protection Society, and Refining NZ; considered that the Plan did not give effect to the provisions of higher order national instruments such as the NZCPS or NPSFM as is required by s67(3) of the RMA.
- [81] Having considered the evidence on these matters we are of the view that the Plan does not need to parrot the national higher order instruments in order to give effect to them. Instead, the Plan can (and has) spatially delineated areas (as shown in the Plan's accompanying I Maps) where use and development is appropriate and areas where the protection or maintenance of a range of matters (including biodiversity, natural character, natural features and water quality) is warranted. We note that the I Maps (which form part of the Plan) helpfully include a description of the values or attributes underpinning each delineated area.
- [82] We note that in the CMA, this approach is one way of giving effect to Policy 7 of the NZCPS.
- [83] Numerous rules and accompanying policies in the Plan then give effect to the resource protection, use, and development outcomes sought to be achieved in each of the spatially delineated areas. We consider that in this way the Plan provisions appropriately give effect to both the RPS and the higher order national instruments. Indeed, the Plan does so in a concise and an easily comprehensible manner that we consider would be of assistance to Plan users and decision-makers.
- [84] It also appears to us that some submitters (including those listed above) have failed to consider that under s104(1)(b) of the RMA decision-makers on resource consent applications

must have regard to the provisions of the relevant higher order statutory instruments. The need for decision-makers to do so has been recently and clearly stated by the High Court.<sup>40</sup> Including additional objectives and policies in the Plan that merely parrot the higher order national instruments will not, in our view, assist decision-makers. In fact, doing so could hinder decision-making by adding a further unnecessary layer of objectives and policies that may differ, even albeit slightly or inadvertently, from the provisions of the higher order national instruments. We instead view the provisions of the Plan as a consolidated whole, and so we have taken the approach of considering whether or not the Plan, when read as a whole (including the additional objectives and policies referred to in paragraphs [78] and [79] above, the I Maps, and external codes and standards that are referred to by way of cross-reference) gives effect to those instruments. Subject to the amendments that we recommend to the Plan's notified provisions, we are satisfied that it does.

- [85] Additionally, upon examination of the higher order national instrument's provisions commonly referred to by submitters, it appears to us that many of them apply to plan development, namely they would have, in our view, guided the spatial delineation of the I Map areas discussed above. The higher order instruments' provisions have therefore already largely achieved their purpose; they have been given effect to, they do not need to be parroted in the Plan, and indeed doing so would serve no useful resource management purpose.
- [86] Having said that, we have been conscious of the need to carefully examine the wording of the provisions that were included in the Plan as notified (together with additional or amended provisions recommended to us by the s42A authors), to ensure that they deliver on the requirements of the higher order instruments (and Part 2 of the Act) and that the intent of those provisions 'is not lost in the telling'. We affirm that we did not close our mind to assessing whether additional Plan provisions were required in that regard, particularly when additional specific wording was suggested to us by submitters, and we have in fact recommended some of that additional wording.
- [87] Proportionate to the scale and significance of the matter of including additional objectives in the pRPFN together with additional policies to implement them, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to include additional objectives and policies or not; and we have identified that including additional objectives and policies is reasonably practicable and within the scope of submissions; and have assessed that including additional objectives and policies would better assist with achieving the purpose of the Act and for giving effect to s67(1) of the RMA.

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<sup>40</sup>CIV-2017-470-000057 [2017] NZHC 3080 *Royal Forest and Bird Protection Society of New Zealand Incorporated vs Bay of Plenty Regional Council*.

## **Section 8**

### **Mangroves**

- [88] The management of mangroves is a controversial subject and it is obvious that submitters have polarised views on the value of mangroves. Some submitters sought their outright protection while others sought amendments to the Plan to more easily allow for their removal. Mangrove removal is addressed primarily under Policies D.5.22 and D.5.24<sup>41</sup> and Rules C.1.4.1 to C.1.4.5.
- [89] Having considered the evidence presented to us, we find that the provisions recommended to us in Reply strike an appropriate balance between the polarised and competing submitter views referred to above. In that regard, we largely adopt the recommendations and reasons of the s42A authors on the submissions dealing with these provisions.
- [90] In particular, we consider that mangrove removal around existing structures and infrastructure needs to be enabled so that the use of those facilities is not unduly impeded. In that regard, we find it necessary to exclude mangroves being pruned or removed for one of the purposes listed in Policy D.5.22 from the coastal environment, indigenous biodiversity 'protection' Policy D.2.7(1A)(b)(i).
- [91] We note that the Mangawhai Harbour Restoration Society (MHRS) sought extensive amendments to the mangrove management and removal provisions for Mangawhai Harbour and presented comprehensive evidence in support of their requests. The amendments sought were generally intended to facilitate ongoing mangrove clearance in the harbour. We understand that the harbour areas that have been recently cleared of mangroves were authorised through a contested resource consent process. Our site inspection revealed that some of those areas appeared to be recovering well (the central Sand Island area) while others (such as the embayment bordered by Insley Street and Black Swamp Road) appeared to be in a very poor condition (due to what we understand to be limited tidal flushing) and we question whether mangroves should have been removed from them. Consequently, we find that the existing mangrove removal provisions, as we recommend they be amended, are appropriate because under them any future mangrove removal proposal of a scale similar to that previously undertaken in Mangawhai would be thoroughly tested and assessed on its merits through a Rule C.1.4.5 discretionary activity resource consent process.
- [92] Having said that, we note that such a process would be guided by Policies D.5.22 and D.5.24. In acknowledgement of the submissions and evidence of the MHRS, among others, regarding the spread of mangroves into habitats where they did not previously exist, we have recommended amending Policy D.5.22 to refer to maintaining, restoring or improving habitats that have been

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<sup>41</sup> Notified Policy D.5.23 is recommended to be deleted.

displaced or colonised by mangroves (including rush marsh, salt marsh and intertidal flats) and areas within which mangroves have previously been lawfully pruned or removed.

- [93] In response to the submissions of conservation interests, we have also recommended amending Policy D.5.4 to refer to adverse effects from disturbing or displacing birds classified as Threatened or At Risk under the New Zealand Threat Classification System (which would of course include the endangered New Zealand Fairy Tern), particularly within Significant Bird Areas; and to adverse effects arising from changes to natural character. We have also recommended the deletion of clauses (1)(c) and (d) of Policy D.5.24 which contained unnecessary duplication.<sup>42</sup>
- [94] Proportionate to the scale and significance of the matters raised by submitters on the mangrove removal provisions, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the purpose of the Act, would better mitigate adverse environmental, social and economic effects, while still giving effect to the higher order instruments.

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<sup>42</sup> For example, clause (1)(c) appeared to duplicate clause (1)(b) and clause (1)(d) would duplicate recommended new clause (1)(aa).

## Section 9

### Regionally Significant Infrastructure

- [95] A number of submissions requested the inclusion of additional objectives and policies to recognise the benefits of regionally significant infrastructure and renewable energy and to promote economic wellbeing. In response, the s42A authors recommended three additional objectives<sup>43</sup> and an additional policy requiring decision-makers to have particular regard to the benefits of national, regionally and locally significant infrastructure.<sup>44</sup>
- [96] The s42A authors also recommended a new policy<sup>45</sup> allowing minor adverse effects arising from the establishment and operation of regionally significant infrastructure to be managed; a new policy<sup>46</sup> allowing adverse effects arising from the maintenance and upgrading of regionally significant infrastructure; a new policy<sup>47</sup> providing direction on the appropriateness of regionally significant infrastructure if adverse effects specified in the preceding two policies are exceeded; a new policy<sup>48</sup> regarding new use and development activities that could adversely affect the ongoing operation, maintenance, upgrade or development of regionally significant infrastructure; and including reference to the operation, maintenance, upgrade or development of regionally significant infrastructure in new and amended policies dealing with the benefits of dredging, disturbance and deposition activities,<sup>49</sup> dumping of dredge spoil,<sup>50</sup> underwater noise,<sup>51</sup> and the appropriateness of hard protection structures in the CMA.<sup>52</sup>
- [97] We find that the additional objective and policy provisions appropriately respond to the need for the Plan to enable the effective development, operation, maintenance, repair, upgrading and removal of regionally significant infrastructure and renewable energy generation facilities, thereby giving effect to s5(2) of the RMA and the NPSET 2008 and NPSREG 2011. The new and amended provisions also appropriately address the issues raised by infrastructure submitters including Transpower, Northpower, First Gas Limited, NZTA and Refining New Zealand, among others. Given the breadth of the additional provisions, we are not persuaded that further amendments referring to specific types of infrastructure, such as the national power grid (as was sought by Transpower), are necessary. Having said that, we have recommended additional

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<sup>43</sup> Objective F.1.5 regarding regionally significant infrastructure, Objective F.1.6 regarding security of energy supply and Objective F.1.4 regarding enabling economic wellbeing.

<sup>44</sup> Policy D.2.2C.

<sup>45</sup> D.2.2D.

<sup>46</sup> D.2.2DA.

<sup>47</sup> Policy 2.2.DB.

<sup>48</sup> Policy D.2.2.E.

<sup>49</sup> Policy D.5.18A.

<sup>50</sup> Policy D.5.19.

<sup>51</sup> Policy D.5.21.

<sup>52</sup> Policy D.6.1.

explanatory notes for rules C.1.1.9 and 2.1.4 regarding increases in voltage for transmission lines being covered by the NESETA.

- [98] Also, in addition to the s42A recommendations, and in light of the legal submissions<sup>53</sup> from Transpower, we consider that Policy D.2.2DA(1) should allow for adverse effects arising from the maintenance and upgrading of established regionally significant infrastructure if those effects are temporary or transitory.
- [99] In order to give effect to the new objectives and policies, and in response to submissions, the s42A authors recommended amendments to a number of the Plan's rules and the insertion of several new rules.<sup>54</sup> We have considered each of those recommended amendments and we find them to be appropriate, efficient and effective in terms of either enabling the ongoing operation, maintenance, upgrade or development of regionally significant infrastructure or for ensuring that decision-makers are able to consider the potential adverse effects of other activities (such as earthworks) on regionally significant infrastructure.
- [100] Proportionate to the scale and significance of the provisions relating to regionally significant infrastructure, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act, would better provide opportunities for economic growth and employment, and would give better effect to the higher order instruments.

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<sup>53</sup> Paragraph 20 and its associated footnote.

<sup>54</sup> Including C.1.1.3(6), C.1.1.18, C.1.3.1, C.1.3.2, C.1.3.3, C.1.3.4, C.1.8, C.2.2.2, C.7.2.6, C.7.2.6A, C.7.2.6B and C.8.3.2.

## **Section 10**

### **Water quality guidelines and standards**

- [101] The NPSFM requires Council to set freshwater objectives for freshwater management units by 2025, or by 2030 if certain circumstances apply. Part CA (National Objectives Framework) of the NPSFM sets out the approach that Council must follow when establishing freshwater objectives for national values and any other water quality dependent values identified in the region's waterbodies. In March 2018, the Council published a Progressive Implementation Programme indicating that a plan change will be promulgated in 2021 to give effect to the water quality requirements of the NPSFM.
- [102] As notified the pRPFN contained numeric water quality standards for ammonia and nitrate toxicity in rivers; and chlorophyll a (a measure of phytoplankton biomass), total nitrogen, total phosphorus and ammonia toxicity for two lake management units. These 'standards' were not water quality limits as defined by the NPSFM. However, the pRPFN was generally silent on the management of diffuse discharges, because Council considered that the management of diffuse sources of nutrients, sediment and faecal microbes in Northland was best done within a NPSFM freshwater quality objectives and limits-based planning framework, to be developed as part of the 2021 plan change. This reflects the fact that, in the absence of appropriate monitoring and research data, it would be difficult to accurately account for sources of nutrients and, in particular, fine sediments and faecal microbes at a property or sub-catchment scale, and to understand how those contaminants are attenuated within catchments or within waterbodies.<sup>55</sup>
- [103] We note that water quality data collected by the Council shows that over the period January 2007 to December 2016 there were more improving trends in river water quality than decreasing trends. Similarly, water quality data from Council's Coastal Water Quality Monitoring Network showed that over the five-year period until 2014 water quality improved at most of the sites monitored.<sup>56</sup>
- [104] The above paragraphs set out the context for our consideration of the submissions on water quality matters.
- [105] As with other topics addressed by the pRPFN, in response to numerous submissions the s42A authors recommended the insertion of an additional objective<sup>57</sup> (noting that it was not a NPSFM compliant water quality objective) and several new or amended policies<sup>58</sup> dealing with freshwater quality management. We find those recommended provisions to be appropriate in terms of giving

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<sup>55</sup> Water quality management – General matters, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report, paragraphs 52 to 54.

<sup>56</sup> Ibid, paragraphs 40 and 41.

<sup>57</sup> Objectives F.1.2,

<sup>58</sup> Policies D.4.5, D.4.7, D.4.7A, and D.4.8.

effect to the NPSFM and RPS and for addressing the water quality issues raised by submitters, while also having regard to Council's NPSFM Progressive Implementation Programme.

- [106] As notified, the Plan contained Policies D.4.1 to D.4.4 which set out, respectively, water quality standards for rivers, water quality standards for lakes, coastal water quality standards and coastal sediment quality standards that were not to be exceeded because of discharges of contaminants. The standards for lakes and rivers were derived from Appendix 2 of the NPSFM prior to its amendment in August 2017. The standards for coastal waters were based on an independent technical assessment.<sup>59</sup>
- [107] A number of submitters were concerned that the 'standards' were expressed as policy.<sup>60</sup> In response, the s42A authors recommended deleting Policies D.4.1 to D.4.4 and moving the 'standards' tables into a new Appendix H.5. We find that relocating the provisions into an Appendix is appropriate and is consistent with the approach taken in regional plans in other parts of New Zealand that we are familiar with.<sup>61</sup>
- [108] Some submitters (including the Minister of Conservation) wanted the 'standards' to be expressed as 'limits', but we are not persuaded of the appropriateness of that because, as outlined above, Council will be undertaking its water quality limit setting process as part of the development of the plan change signalled for 2021. In that regard, we also agree with the S42A authors that a 'freshwater objective' describes the water quality conditions (expressed in relation to specified NPSFM attribute states) necessary to support water quality dependent values within a freshwater management unit, whereas a 'limit' states the maximum amount of resource use that can occur that will allow that state to be achieved. The notified water quality 'standards' are clearly not those type of 'limits'.
- [109] In response to submissions, the initial s42A report recommended that, given the August 2017 changes to the NPSFM and the absence of water quality limits and controls on diffuse sources in the pRPFN, the ammonia and nitrate toxicity standards for rivers and TN, TP, chlorophyll a and ammonia toxicity standards for lakes should be deleted. That recommendation was strongly opposed by several submitters at the hearing, including the Minister of Conservation and Northland Fish and Game in particular. We were similarly concerned with the initial recommendation and so we were heartened when the s42A authors recommended the reinstatement of those 'standards' in their Reply report.
- [110] We agree that the notified 'standards' should be retained and be included in Appendix H.5. We also recommend that it be clarified that the freshwater provisions apply to Northland's continually

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<sup>59</sup> Richard Griffiths. 2016. Recommended Coastal Water Quality Standards for Northland. Northland Regional Council.

<sup>60</sup> Including Bay of Islands Maritime Park Inc., New Zealand Transport Agency, GBC Winstone, the Oil Companies and the Egg Producers Federation of New Zealand.

<sup>61</sup> Including those in Canterbury, Southland, Manawatu-Wanganui and the Bay of Plenty.



or intermittently flowing rivers, and to lakes, and that they apply after allowing for reasonable mixing. We are satisfied that the freshwater provisions should continue to be expressed as 'standards', noting this avoids confusion regarding the future 'freshwater objectives', 'limits' and perhaps 'targets' that will be set via the 2021 plan change.

- [111] With regard to the coastal 'standards', and noting that the NPSFM does not apply to coastal waters, we are also satisfied that the water quality provisions should continue to be expressed as 'standards' to be met after allowing for reasonable mixing. However, in response to submissions,<sup>62</sup> and recognising that the coastal sediment 'standards' derive from the ANZECC guidelines<sup>63</sup> and Canadian Environmental Quality Guidelines (CCQG) guidelines, we consider it more correct to express the coastal sediment provisions as 'guidelines' and we recommend accordingly. We note this was also the recommendation of the s42A authors in Reply.
- [112] Returning to the matter of expressing the water and sediment quality 'standards' and 'guidelines' in policy as opposed to rules, we have no qualms about doing so. We agree with the s42A authors that the 'standards' or 'guidelines' should not apply to permitted activity discharges (as they do not meet the tests of certainty required for permitted activity conditions) and they should instead be used to guide resource consent decision-makers exercising their discretion under s104 of the RMA. This is the role of policy and we note that a policy can be directive and either flexible or inflexible or broad or narrow. Accordingly, we accept the s42A authors' Reply recommendation that the subcomponents of new Appendix H.5 should be explicitly expressed as policies.
- [113] A number of submitters, including the Minister of Conservation and Northland Fish and Game in particular, sought the inclusion of additional water and sediment quality 'standards'. In Reply the s42A authors undertook a very detailed and comprehensive assessment of the submitter requests.<sup>64</sup> In conclusion, the authors recommended the inclusion of additional river water quality standards for temperature, dissolved oxygen and pH. We agree this is the most appropriate way to achieve the new water quality objective F.1.2 at this point in time, again having regard to Council's NPSFM Progressive Implementation Programme.
- [114] Regarding other water quality parameters sought by submitters, having carefully considered and weighed the respective technical evidence of the submitters<sup>65</sup> and the S42A authors, we generally prefer the authors' advice and recommend rejecting submissions seeking the insertion of additional 'standards'. In particular we find that:

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<sup>62</sup> Including Refining New Zealand and GBC Winstone.

<sup>63</sup> For the Hātea River, which has sediment metal contaminant levels exceeding the CCQG values.

<sup>64</sup> Staff reply report, Hearings for the Proposed Regional Plan for Northland, November 2018, pages 102 to 134.

<sup>65</sup> Primarily that of Dr Adam Canning and Kathryn McArthur.

- the s42A authors have more relevant knowledge and experience with the state and flow regimes of Northland's fresh and coastal waterbodies and the environmental monitoring data pertaining to them;
- catchment geology and topography are strong drivers of water quality variation in Northland;<sup>66</sup>
- Council had insufficient periphyton data in 2017 to grade its periphyton monitoring sites, and in turn robustly set numeric periphyton objectives for the region's rivers;<sup>67</sup>
- it is more appropriate to set numeric freshwater quality objectives for periphyton, DIN and DRP via the 2021 plan change as it will take time to analyse the periphyton and water quality data collected by the Council to date;<sup>68</sup>
- ANZECC default values for DIN and DRP are not related to periphyton abundance or thresholds and they instead represent general reference conditions in a small number of mainly South Island lowland rivers;<sup>69</sup>
- in any case most of Northland's rivers have fine substrates (i.e., soft-bottoms), which will not support conspicuous amounts of periphyton and the NPSFM periphyton attribute was developed using scientific information derived exclusively from hard-bottom streams and rivers;<sup>70</sup>
- Macroinvertebrate Community Index (MCI) is affected by a wide range of variables, not just water quality, and for that reason setting MCI 'standards' is inappropriate;<sup>71</sup>
- macrophyte cover and biomass are influenced by multiple factors (including river bed substrates, nutrients, light availability, and hydrological disturbance parameters) and the relationships between nutrient concentrations and macrophyte growth in Northland are complicated so it is not appropriate to include macrophyte 'standards' in the Plan;<sup>72</sup>
- Ms McArthur's recommended 'numeric water clarity goals for Northland Rivers' do not appear to be relevant to Northland's rivers and nor do they appear to be achievable based on Council's River Water Quality Monitoring Network data;<sup>73</sup>
- Government has announced that it will likely amend the NPSFM in 2020 by including attributes for sediment, of which deposited sediment is likely to be one, and so setting deposited sediment standards in the Plan at this stage would be premature;<sup>74</sup>
- numeric freshwater quality objectives for cyanobacteria using the attribute states (expressed as mm<sup>3</sup>/L biovolume of cyanobacteria) will be included in Council's 2021 plan change; and

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<sup>66</sup> Staff reply report, Hearings for the Proposed Regional Plan for Northland, November 2018, paragraph 426.

<sup>67</sup> Ibid, paragraph 429.

<sup>68</sup> Ibid, paragraphs 434 and 451.

<sup>69</sup> Ibid, paragraph 475.

<sup>70</sup> Ibid, paragraph 471.

<sup>71</sup> Ibid, paragraph 492.

<sup>72</sup> Ibid, paragraphs 499 and 501.

<sup>73</sup> Ibid, paragraph 516.

<sup>74</sup> Ibid, paragraph 518.

- Ms McArthur's recommended 'goals' for *E.coli* appear to be based on the NPSFM attribute states. We understand that the 'goals' are unlikely to be achieved without potentially changing land uses at significant cost.<sup>75</sup> Consequently, the inclusion of *E.coli* provisions is best achieved as part of the 2021 plan change.

[115] Proportionate to the scale and significance of the matters addressed by the water quality provisions of the pRPFN, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act and for giving effect to the higher order instruments, in particular the NPSFM.

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<sup>75</sup> Ibid, paragraphs 526 and 527.

## Section 11

### Public water supply takes

- [116] Under the pRPFN water takes associated with public drinking water supplies in overallocated freshwater management units that require rates or volumes of take above those already consented are treated as non-complying activities under rules C.5.1.11<sup>76</sup> and C.5.1.12<sup>77</sup>. The Far North District Council and Whangarei District Council were concerned this would potentially affect their ability to fulfil their obligations under s130 of the LGA to maintain potable water supplies to communities.
- [117] In response to our questions, the territorial authorities advised<sup>78</sup> that, while they accepted that the broad criteria for establishing allocation and flow limits in Appendix H.6 were appropriate at a regional scale, given the uncertainty associated with what they termed “these hydrological rules-of-thumb”, at the scale of individual reaches or catchments they considered that it would be appropriate for the pRPFN to include scope within its policy framework to allow for alternative allocation limits, provided it could be demonstrated that any such limits were not likely to affect instream values or other water takes.
- [118] We have carefully considered this suggestion, particularly because public water supplies are essential to the health and wellbeing of people and communities. However, we are not persuaded that such an approach is the most appropriate way of achieving Objective F.1.1 of the Plan, nor for giving effect to the NPSFM. Instead, if a territorial authority, after considering all possible alternative water supply and demand management options, considers it necessary to exceed an allocation limit in a river, then we find it would be more appropriate for that to be achieved by way of a privately initiated plan change that sought to establish, based on sound evidence of acceptable effects, an alternative allocation limit.
- [119] We say this because we do not think that the directive nature of the NPSFM Objective B2 and Policy B5, requiring the avoidance of any further over-allocation of fresh water, enables the approach suggested by the territorial authorities. In that regard we agree with the evidence of Gerard Willis<sup>79</sup> who stated that “...Council cannot set allocable flows and then create “exceptions” to them. By definition, that involves “over-allocating” which is contrary to NPSFM Policy B5.”

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<sup>76</sup> Water takes below a minimum flow or water level.

<sup>77</sup> Water takes that will exceed an allocation limit.

<sup>78</sup> Supplementary Evidence of Ruben Wylie and Jessica Crawford, Response to Panel Questions, 2 October 2018, paragraphs 83 to 97.

<sup>79</sup> Statement of Primary Evidence of Gerard Mathew Willis for Fonterra Co-operative Group Limited. Planning. 10 August 2018. Paragraphs 7.11-7.12, page 13.

- [120] In saying this, we note that NPSFM Policy B8 directs us to enable communities to provide for their economic well-being, including productive economic opportunities, but that is to occur while managing within limits.
- [121] However, we consider that there should be some flexibility for decision-makers to set alternative minimum flow take cessation thresholds for public water supply takes solely for the purpose of ensuring the health of people as part of a registered drinking water supply, as was provided for by Policy D.4.19 as notified. We understand that limiting the take in that way will necessitate the territorial authorities instituting water conservation measures to avoid the abstracted water being used for other urban purposes; including for aesthetic, recreational or commercial purposes.
- [122] Proportionate to the scale and significance of enabling public water supply takes to exceed the Plan's allocation limits and flows, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to allow allocation limits to be exceeded as sought by the territorial authorities; and we have identified that doing so would not give effect to the NPSFM. However, we also record that allowing a public water supply take to continue below a minimum flow threshold for the sole purpose of providing for the health of people appropriately reflects s5(2) of the RMA.

## **Section 12**

### **Water allocation limits and minimum flows**

- [123] The NPSFM requires Council to establish freshwater objectives and to set freshwater quantity flows and/or levels for all freshwater management units in its region. As we have noted previously, in response to submissions the s42A authors recommended a range of new objectives, including Objective F.1.1 for water quantity. This new objective was based on notified Policy D.4.13 (which was consequently recommended for deletion), but included amendments in response to submissions from conservation interests, iwi and resource users. We find that the version of Objective F.1.1 recommended to us in Reply appropriately gives effect to Part B of the NPSFM and the issues raised by submitters.
- [124] The pRPFN as notified contained several policies setting minimum flows for rivers, minimum levels for lakes and wetlands, allocation limits for rivers, and allocation limits for aquifers.<sup>80</sup> Consistent with the approach taken to water quality, the s42A authors recommended deleting these policies and relocating the provisions into a new Appendix H.6. We agree with this approach and again we find it to be consistent with the approach taken in other regional plans that we are familiar with and have referred to previously.
- [125] As we did for water quality, we find that the Appendix H.6 water quantity provisions should be expressed as policies.
- [126] Several submitters queried whether the allocation limits included s14(3)(b) takes. The s42A authors advised that they did,<sup>81</sup> but that those takes were not materially significant. Nevertheless, we recommend that in Appendix H.6, Policies H.6.3 and H.6.4 explicitly state that the allocation limits include s14(3)(b) takes. We also consider that, as was sought by several submitters (including Fonterra), the allocation limits for rivers and aquifers should explicitly not apply to non-consumptive takes as they do not impact on water quantity.
- [127] The initial s42A report advised that the minimum flows and allocation limits in the notified Plan were based on information specific to Northland's rivers and an assessment of different combinations of limits using a computer model called Environmental Flows Strategic Allocation Platform (EFSAP). Minimum flows and allocation limits were then selected by Council based on an analysis of trade-offs between protecting in-stream values and enabling resource use.
- [128] The minimum flows and allocation limits for rivers are based on a percentage of the mean annual 7-day low flow. The selected percentages were set out in tabular form on page 122 of the Section 32 Report and are now included in Appendix H.6 of the pRPFN. The Plan also established allocation

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<sup>80</sup> Policies D.4.14 to D.4.17.

<sup>81</sup> Allocation and use of water, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report Paragraphs 87, 89 and 201.

limits for coastal aquifers comprising 10 percent of the average annual recharge of the aquifer, and 35 percent of the average annual recharge of other (non-coastal) aquifers. We note that the percentages outlined above are generally consistent with those set out in the draft NES on Ecological Flows and Water Levels.<sup>82</sup>

- [129] We are satisfied that the ‘percentage’ approach is appropriate in the circumstances of the Northland region. For example, we received no credible evidence that it was either necessary or practical to set river-specific minimum flows and allocation limits for the over 1,500 source-to-sea surface water catchments in Northland.
- [130] Somewhat predictably, submitters sought either more conservative percentages (conservation interests<sup>83</sup>) or less conservative percentages (resource users<sup>84</sup>). The s42A author considered that, while the values advocated for by these submitters were valid alternatives, the Plan’s notified limits struck an appropriate balance between enabling resource use and protecting in-stream ecological values, and by default other related values like natural character and mahinga kai.<sup>85</sup> We agree and observe that the competing alternative percentages sought by the respective submitters indicates that the notified percentages (being generally in the middle of the sectorial interest groups’ advocated alternatives) supports a finding that the notified provisions strike an appropriate balance.
- [131] As an exception to the above general approach, allocation limits for the Aupōuri aquifer management unit were based on a specific technical assessment undertaken in 2015. In response to submissions,<sup>86</sup> the s42A author recommended that the Aupōuri limits be amended to 15% of mean annual recharge, where mean annual recharge is 38% of mean annual rainfall, provided that minimum groundwater levels along the coastal margin are maintained to prevent adverse effects associated with saline intrusion. We find this to be appropriate and recommend accordingly.
- [132] In response to submissions, including those of the Oil Companies and TEL, the s42A author also recommended that aquifer limits should not apply to the taking of water for temporary dewatering (as the water is generally returned to the environment) nor to the take and use of geothermal water and associated heat and energy (as that is not fresh water as defined in the RMA). We also agree and recommend accordingly.

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<sup>82</sup> Ministry for the Environment. 2008. Proposed National Environmental Standard on Ecological Flows and Water Levels: Discussion Document.

<sup>83</sup> Including the Minister of Conservation, Royal Forest and Bird Protection Society of New Zealand and Northland Fish and Game.

<sup>84</sup> Including Dairy NZ and Federated Farmers.

<sup>85</sup> Ibid, paragraph 74.

<sup>86</sup> Including Hayward Family Trust, Horticulture New Zealand, Honeytree Farms Ltd, and Motutangi Waiharara Water User Group.

[133] Proportionate to the scale and significance of the matters addressed by the water quantity provisions of the pRPFN, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act and for giving effect to the higher order instruments, in particular the NPSFM.



## Section 13

### Northport SEA

- [134] Northport intends to extend its existing reclamation to the west. It first began discussing this proposal in 2015 and included it in the 'Vision for Growth' consultation document released publicly in October 2017. To facilitate this, Northport has sought an extension of the Marsden Point Port Zone (MPPZ) and removal of the Significant Ecological Area (SEA), Significant Bird Area (SBA), and Significant Marine Mammal and Sea Bird Area (SMMSBA) overlays from the extended MPPZ. Under the Plan as we now recommend it, should the SEA not be uplifted as sought, under Rule C.1.6.3 the proposed extension of the Northport reclamation would be a non-complying activity, as would any dredging of that area under Rule C.1.5.14. Granting the relief sought by Northport would mean that reclamations and dredging would be discretionary activities under Rules C.1.6.4 and C.1.5.12 respectively.
- [135] The assessment sheet for the One Tree Point to Marsden Bay SEA notes that it contains scallops in most years and regenerating seagrass beds. However, Mr Hood (planning consultant for Northport) advised us that investigations carried out by Mark Poynter in 2018 demonstrated that there is no 'eelgrass' (seagrass) within or even particularly close to the proposed western extension to the MPPZ.
- [136] As also noted in the evidence of Brett Hood there is already a 60-65m strip running parallel to the western edge of the existing reclamation which is not proposed as either a SEA or SBA. Mr Hood advised that extending the MPPZ to the west as proposed (given its triangular shape) would only reduce the 198ha One Tree Point to Marsden Bay SEA by approximately 5.1ha. This equates to approximately 2.6% of that particular SEA and around 0.01% of all the SEAs in Whangārei Harbour.
- [137] Northport, including the adjoining land used for the movement and storage of cargo, is defined in Appendix 3 of the RPS as regionally significant infrastructure. We observe that the future of the upper North Island ports, including whether Ports of Auckland should be relocated to Northport, will be considered as part of a wider transport and logistics strategy, announced by the Associate Minister of Transport Shane Jones in early 2018. In that regard, Northport is undoubtably also nationally significant infrastructure.
- [138] We also note Policy 9 of the NZCPS is to "Recognise that a sustainable national transport system requires an efficient national network of safe ports .... including by .... considering where, how and when to provide in ... plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes."<sup>87</sup>

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<sup>87</sup> NZCPS Policy 9(a) and (b), page 15.

- [139] Accordingly, we find that categorising the proposed expansion of Northport as a non-complying activity would be disproportionately onerous when weighed against uplifting a very small portion of the One Tree Point to Marsden Bay SEA. We consider that providing for the Northport proposal to be assessed instead as a discretionary activity<sup>88</sup> is a more appropriate means of promoting the sustainable management of the regionally (and probably nationally) significant Northport physical resource.
- [140] In saying this, we acknowledge and respect the opposition of Patuharakeke Te Iwi Trust Board to the relief sought by Northport. Patuharakeke stated in evidence that the extension to the MPPZ sought by Northport would likely further impact on significant ecological and cultural values in that general area. We observe that such matters can and should be thoroughly assessed in a discretionary activity consent process.
- [141] We are not persuaded that the SBAs need to be similarly uplifted because Rules C.1.6.4 and C.1.5.12 do not list SBAs as areas within which the discretionary activity reclamation and dredging rules do not apply. Therefore, we envisage that potential adverse effects on any seabirds classified as Threatened or At Risk under the New Zealand Threat Classification System will similarly be considered through a discretionary activity consent process. We discuss the issues of the SMMBA in section 14 of this recommendation report.

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<sup>88</sup> By uplifting the very small portion of the One Tree Point to Marsden Bay SEA and extending the MPPZ as sought.

## Section 14

### NZ Refining Company

- [142] The New Zealand Refining Company (NZRC) submitted on numerous provisions of the Plan. In general, we have adopted the s42A authors' recommendations and reasons on those submissions. However, there are three specific matters that we wish to address, and we do so below. At the outset we acknowledge that NZRC's Marsden Point Oil refinery is regionally and nationally significant infrastructure.
- [143] Firstly, NZRC sought that the pRPFN include an 'Outline Plan' for activities undertaken at its Marsden Point site, thereby introducing specific provisions into the pRPFN to recognise and provide for activities at the refinery through a detailed policy and rule framework tailored to the on-going and proposed operations of the refinery. We understand the motivation behind this request but consider that a more appropriate way of achieving new Objective F.1.5 (regionally significant infrastructure) is to ensure that the policy and rule provisions of the pRPFN are appropriately enabling of all regionally significant infrastructure. This is what our recommended amendments to the Plan seek to achieve, as informed by the submissions of various infrastructure providers.
- [144] Having said that, we support the s42A authors' recommendations to include a Marsden Point Port Zone that recognises that new regionally significant infrastructure therein, associated with either NZRC or Northport, will generally be considered appropriate. We do not however consider that the Marsden Point Port Zone should be extended landward, as was advocated for by Bridgette Munro for NZR.<sup>89</sup> Ms Munro referred to similar land-based zones in Gisborne and Auckland, but we observe that both of those locations are serviced by unitary authorities whereas in Northland the land-based components of both NZRC and Northport are regulated by the Whangarei District Council.
- [145] Secondly, NZRC sought the removal of the SEA status from Mair Bank. NZRC's evidence was that, while Mair Bank continued to have avifauna and natural character values, due largely to a relatively recent decrease in the extent of a large pipi bed, Mair Bank no longer contained ecological values that warranted its inclusion within a SEA overlay. We are not persuaded by this evidence. We prefer the evidence of the Patuharakeke Te Iwi Trust Board<sup>90</sup> who informed us that although the pipi population was currently in a fragile state, they did not consider it required less protection. Indeed, Patuharakeke considered that the site has never been more in need of protection than at present. Patuharakeke advised that up until the recent collapse of Mair and Marsden Banks those mahinga kai were the "last bastion" – providing an easily accessible, plentiful and clean supply of kaimoana. As kaitiaki, Patuharakeke considered that their ability to

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<sup>89</sup> Statement of Evidence of Bridgette Munro, 10 August 2018, paragraph 6.20.

<sup>90</sup> Statement of Evidence of Julianne Chetham, On Behalf of Patuharakeke Te Iwi Trust Board, 10th August 2018.

turn the banks' degradation around was paramount. In that regard, with the recent establishment of a rāhui on shellfish collection, Patuharakeke had started to see those mahinga kai beginning to replenish over the last 12 months. Their 2017 survey programme showed an encouraging trend in the juvenile recruitment of pipi on both Mair and Marsden Banks.

- [146] We conclude that removing the SEA status from Mair Bank as sought by NZRC would not assist in achieving Objectives F.1.4, F.1.8 and F.1.11 of the Plan.
- [147] Thirdly, NZRC sought to remove the Significant Marine Mammal and Seabird Area (SMMSA) overlay from the Plan. The SMMSA is referenced in Policy D.2.7(1) but it does not feature in any of the rules. Nevertheless, the implication of Policy 2.7(1) is that all areas within the SMMSA are to be considered RMA s6(c) areas. Section 6(c) requires those areas to be protected. Importantly, s6(c) does not refer to protection only from inappropriate development, as do ss6(a),(b) and (f), for example. We are cognisant that the SMMSA covers the entire Northland coastal marine area, in contrast to the SEA overlay which refers to discrete areas, albeit sometimes large ones. We are therefore concerned that Policy D.2.7(1) as recommended to us by the s42A authors in Reply could have the unintended consequence of imposing a veto on any use and development in the entire Northland coastal marine area. Consequently, in response to the issue raised by the NZRC we recommend that Policy D.2.7(1) not refer to Significant Marine Mammal and Seabird Areas.
- [148] However, we are satisfied that the SMMSA overlay can remain in the Plan's I maps to serve as an information source for future resource consent decision-makers. As noted in the s42A Reply report, the assessment sheets that are referenced to this overlay provide easy access to useful lists of Threatened and At Risk species.
- [149] Proportionate to the scale and significance of the matters raised by NZRC, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that the amendments we recommend are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act and for giving effect to the higher order instruments, in particular the NZCPS.

## Section 15

### Dust from roads

- [150] The issue of particulate matter (dust) from rural unsealed roads and the adverse health effects it can have on people residing close<sup>91</sup> to those roads was raised by several submitters including the Pipiwai Titoki Advocacy for Community Health and Safety Group and the Public and Population Health Unit of Northland District Health Board.
- [151] The relevant pRPFN provision is Rule C.7.2.5 which, as notified, permitted the discharge of dust from public roads provided the relevant road controlling authority had a current programme in place that set out the priority sites in the district for mitigating the effects of dust on dust sensitive areas. Submitters concerned about the effects of the dust sought that the rule be amended to refer to the NESAQ<sup>92</sup> and to effectively require consent for activities resulting in more than 20 to 50 heavy vehicles (specifically logging trucks) per day on an unsealed road.<sup>93</sup> The submitters sought that the rule be amended to require “activities” to “avoid, remedy or mitigate any adverse effects on dust sensitive areas where people may reasonably be exposed.”
- [152] The territorial authorities, while acknowledging the issue, sought the deletion of rule C.7.2.5 as they considered that the management of dust from unsealed roads was a Land Transport Act and Local Government Act issue, not a Resource Management Act issue.<sup>94</sup> We reject that submission and find that rule C.7.2.5 should be retained.
- [153] The territorial authorities also advised that in terms of avoiding or mitigating the adverse effect (of dust) there were only two options available, as they could not stop vehicles using public roads. The first was chemical treatment<sup>95</sup> and the second was sealing.<sup>96</sup> Road sealing is considered to be the most cost-effective option in the long term, however it is very expensive and simply cannot occur without NZTA funding assistance. We were advised that very few Northland roads meet the NZ Transport Agency (NZTA) funding criteria set out in NZTA General Circular – Investment 16/04.
- [154] Addressing this issue is therefore problematic. In response to our questions, the territorial authorities suggested that Rule C.7.2.5 be amended to require information to be provided to NRC on request regarding the NZTA funding criteria applicable to the mitigation of dust as well as a list of sites where such funding had been sought. In Reply, the s42A authors endorsed that approach

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<sup>91</sup> Less than 50 metres from the road.

<sup>92</sup> Specifically, the ambient air quality standard for particulate matter less than 10 micrometres in diameter (PM<sub>10</sub>) in Schedule 1 of the NESAQ.

<sup>93</sup> Statement of Evidence of Louise Wickham, Air Quality Specialist, on Behalf of Public and Population Health, Northland District Health Board, 22 August 2018, paragraph 4.18. The number of logging trucks targeted would vary depending on vehicle speed and whether or not the road was watered regularly.

<sup>94</sup> Statement of Jeffrey Thomas Devine (CMEngNZ) on behalf of the Whangarei District Council and the Far North District Council, 14 August 2018.

<sup>95</sup> Ibid. Costing up to \$50,000 per kilometre and lasting up to two months.

<sup>96</sup> Costing up to \$450,000 per kilometre.

but recommended that rule C.7.2.5 also include a full list of roads which have been assessed for dust against NZTA criteria and that this list be publicly available and up-to-date (i.e. published on district council websites). We agree with those suggestions and recommend accordingly.

[155] We appreciate that amended rule C.7.2.5 will likely not satisfy the submitters' concerns regarding dust from unsealed rural roads, but given the very high cost of road sealing and the ineffectiveness of other road treatment alternatives, we see no other practicable option.

[156] Proportionate to the scale and significance of the matters raised by submitters concerned about dust from unsealed roads and the territorial authorities in their capacity as road controlling authorities, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to rule C.7.2.5 outlined above or not; and we have identified that the amendments we recommend are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act and for giving effect to the higher order instruments, in particular the NESAQ.

## Section 16

### Aquaculture

- [157] The management of aquaculture is a significant issue in Northland. Submitter interest in this topic was heightened by Council's relatively recent promulgation of Plan Change 4 to the Regional Coastal Plan relating to aquaculture, which was made operative in May 2016 following the final Environment Court decision on it in June 2015.
- [158] As noted in the initial s42A report,<sup>97</sup> the aquaculture provisions attracting the greatest attention related to the extent of the coastal marine area within which new aquaculture was prohibited by virtue of rule C.1.3.14. The section 42A author noted that the Environment Court in its interim decisions on Plan Change 4 accepted that prohibition was an acceptable planning response and the author accordingly recommended that the activity status for rule C.1.3.14 remain as prohibited. We agree and note that no submitter evidence persuaded us otherwise. Nor were we persuaded that the areas within which rule C.1.3.14 applies should be altered, by either including additional areas or removing some of the areas presently listed in the rule. With regard to the former, we were not persuaded on the evidence that any additional areas met the requisite threshold of 'outstanding' in relation to natural character, landscape, features or intrinsic and amenity values.<sup>98</sup>
- [159] We note that the pRPFN contains exceptions to the prohibition on new aquaculture, namely those relating to realignments and extensions,<sup>99</sup> and small-scale and short duration aquaculture.<sup>100</sup> We are satisfied that those exceptions should be retained. However, to address the concerns expressed to us by submitters, we recommend that the matters of discretion in Rule C.1.3.3 are amended to refer to the qualities that make the areas listed in rule C.1.3.14 either outstanding or significant. Regarding rule C.1.3.12, we are satisfied that its continued status as a non-complying activity will ensure that any new aquaculture enabled by it will be rigorously scrutinised.
- [160] In response to submitter evidence<sup>101</sup> the s42A Reply report recommended that the relocation of aquaculture in the Waikare Inlet and Parengarenga (originally rule C.1.3.11) be amended from non-complying to discretionary. We have reviewed the submitter evidence and agree with the s42A author. For example, we note the evidence of James Dollimore<sup>102</sup> was that while the industry accepted the need to prevent further extensions of existing marine farming in the Waikare Inlet, it was desirable to ensure the best productivity was achieved while retaining the same total

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<sup>97</sup> Aquaculture, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report, paragraph 29.

<sup>98</sup> Ibid, paragraph 33.

<sup>99</sup> Rules C.1.3.3 and C.1.3.9

<sup>100</sup> Rule C.1.3.12.

<sup>101</sup> Aquaculture NZ Ltd, The NZ Oyster Industry Association and Moana NZ Ltd.

<sup>102</sup> Paragraph 11.

consented area. It therefore made sense to enable existing farms to be moved to more productive locations, subject to an assessment of effects.

- [161] With regard to submissions on the aquaculture policies, we generally adopt the recommendations and reasoning of the s42A author. However, based on the evidence of Richard Turner,<sup>103</sup> we recommend the inclusion of new Policy D.5.1A providing support for the continued operation of existing aquaculture activities (including their realignment and extension) and for aquaculture research trials and experimental aquaculture activities. We find that this new policy will be of assistance to future resource consent decision-makers.
- [162] Proportionate to the scale and significance of the provisions relating to aquaculture, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act, would better provide opportunities for economic growth and employment, and would give better effect to the higher order instruments, particularly Policy 8 of the NZCPS.

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<sup>103</sup> Statement of Evidence of Richard Jonathon Turner on Behalf of Aquaculture New Zealand Limited, New Zealand Oyster Industry Association and Moana New Zealand Limited, Dated this 10th day of August 2018, paragraphs 45 to 53.



## **Section 17**

### **Contaminated land**

- [163] The management of contaminated land was addressed by rules C.6.8.1 to C.6.8.4 in the Plan as notified. In response to submissions, including from the Oil Companies, the s42A authors recommended the insertion of new Policy D.4.10A dealing with discharges from contaminated land. That new policy would allow contaminants to remain in the ground provided they would not pose an unacceptable risk to human health and adverse effects on potable water supplies and aquatic ecosystem health were respectively mitigated or avoided, remedied or mitigated. We find that to be an appropriate means of achieving the objectives of the Plan.
- [164] Submitters, particularly the Oil Companies, provided extensive submissions and evidence on the issue of contaminated land remediation and the content of rules C.6.8.1 to C.6.8.4. In response to submissions the s42A authors recommended new rules to enable the remediation of contaminated land<sup>104</sup> and the re-consenting of passive discharges from contaminated land.<sup>105</sup> The Oil Companies then provided evidence on how those new rules could be simplified in light of their extensive experience in dealing with contaminated sites. In Reply, the Council provided further advice from Simon Hunt on these and other contaminated land matters.
- [165] We found the submissions and evidence to be helpful.
- [166] We have adopted the relief sought to omit explicit references to perfluoroalkyl substances (PFAS) perfluorooctane sulfonate acid (PFOS), perflurohexane sulfonate (PFHxS), and perfluorooctanoic acid (PFOA) from rule C.6.8.2 given that we understand that the Government is soon to issue guidance on the management of those substances. We understand, as advised by the s42A authors in Reply,<sup>106</sup> that this amendment will result in passive discharges of these substances from up to nine sites in Northland requiring resource consent under rule C.6.8.4. We do not consider that to be an overly onerous requirement.
- [167] We agree that the Plan should contain definitions of ‘contaminant of concern’ and ‘suitably qualified and experienced practitioner’ as sought respectively by Horticulture NZ and the Oil Companies and we recommend accordingly.
- [168] However, we do not consider it necessary to insert a new policy dealing with identifying and recording the details of land containing elevated levels of contaminants in a public register as was sought by some submitters, as that relates more to the executive functions of the Council. Nor have we amended rule C.6.8.2 to rely on an expert based ‘lines of evidence approach’ (apart from light and dense non-aqueous phase liquids in certain circumstances) because, while a ‘lines of

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<sup>104</sup> Rule C.6.8.3A, a controlled activity.

<sup>105</sup> Rule C.6.8.3B, also a controlled activity.

<sup>106</sup> Ibid, paragraph 218.

evidence' approach is suitable for consented activities, for permitted activities more certainty is generally required in the form of objective and measurable standards. For that reason, we recommend the retention of references in rule C.6.8.2 to the Drinking Water Standards for New Zealand 2005 (revised 2008) and Table 3.4.1 Trigger Values for toxicants at alternate levels of protection in the Australian and New Zealand Guidelines for Fresh and Marine Waters (ANZECC 2000) for fresh and marine water. We have however recommended simplifying those provisions based on the evidence presented.

- [169] Proportionate to the scale and significance of the provisions relating to the management of contaminated land, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act, and would give better effect to the higher order instruments.

## Section 18

### Cultivation, Earthworks and Vegetation Clearance

- [170] The pRPFN contains rules relating to cultivation<sup>107</sup> (now to be termed 'land preparation'), earthworks<sup>108</sup> and vegetation clearance.<sup>109</sup> Policy D.4.3.1 addresses all three of these activities and it assists with achieving new Objective F.1.2 Water Quality which in turn addresses the management of the use of land and discharges to land and water.
- [171] As we discussed in section 2 of this report, the Council is restricted in the matters it can address in the pRPFN by ss30(1), 65(1) and 68(1) of the RMA. We accept that under s30(1)(ga) the Council could, on the face of it, include objectives, policies and methods in the Plan for maintaining terrestrial indigenous biological diversity. However, section 1.6 of the operative RPS states regional and district responsibilities where there is potential overlap between the functions of the councils under ss30 and 31 of the Act.
- [172] The RPS very clearly states that for all land outside of water bodies, the beds of lakes and rivers, and the coastal marine area, the responsibility for specifying objectives, policies, methods and rules on indigenous biological diversity resides with the region's district councils. We therefore reject all submissions (including for example those of the Royal Forest and Bird Protection Society and the Whangarei District Council) seeking that rules in the pRPFN promulgated under s9(2) of the RMA (particularly those relating to stock exclusion, cultivation, earthworks and vegetation clearance) or the policies in Section D be amended to address effects on terrestrial indigenous biological diversity.
- [173] We accept that the rules can and should address the matters listed in s30(1)(c) as appropriate (soil conservation, water quality and quantity, and aquatic ecosystems) and aquatic indigenous biological diversity (an element of s30(1)(ga)). However, we recommend deleting references to 'avoiding significant adverse effects on aquatic life' (or similar) from the permitted activity rules. We find that requirement to be too subjective for a permitted activity condition. We are also satisfied that other elements of the rules, for example, the specification of buffer distances from water bodies<sup>110</sup> and the need to undertake activities in accordance with, or with reference to, industry guidelines<sup>111</sup> will achieve that outcome for aquatic life.
- [174] We have carefully considered the application of the rules in relation to ephemeral rivers. Applying the rules to ephemeral rivers would in most cases be impractical and unnecessary. We have therefore generally limited the application of the rules to continually or intermittently flowing

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<sup>107</sup> Rules C.8.2.1 and C.8.2.2.

<sup>108</sup> Rules C.8.3.1 to C.8.3.3.

<sup>109</sup> Rules C.8.4.1 to C.8.4.3.

<sup>110</sup> For example, five metres from waterbodies including natural wetlands in rule C.8.2.1.

<sup>111</sup> For example, the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand) and the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (GD05).

rivers. We note that ‘intermittently flowing river’ is appropriately a defined term in the Plan whereas a ‘continually flowing river’ is clearly understandable upon its plain reading in the absence of a definition.

- [175] With regard to other matters raised in submissions and wording amendments sought by submitters, we have adopted the recommendations and reasons of the s42A authors, observing that many of the amendments they recommend improve the clarity and certainty of the provisions. In particular, we accept the s42A reply recommendation that the definition of vegetation clearance and the associated rules for that activity should apply to all forms of vegetation excluding grasses, scattered trees, shrubs, agricultural and horticultural crops, and certain other excluded activities.<sup>112</sup> We say this because the purpose of the vegetation clearance provisions are solely to maintain and enhance water quality, noting that achieving that outcome will also protect aquatic ecosystem health.
- [176] We also accept the s42A authors’ Reply recommendation<sup>113</sup> that Condition 2 of Rule C.8.2.1, which does not permit land preparation within the catchments of outstanding lakes, should be amended to refer to all dune lakes with outstanding and high ecological value,<sup>114</sup> because dune lakes are sensitive to phosphorus which is strongly correlated with sediment runoff. As a consequence of this recommendation, we also find that the Plan should include a list of these dune lakes in the Definitions section. Doing so will provide certainty for Plan users and decision-makers.
- [177] Proportionate to the scale and significance of the matters addressed in the land preparation, earthworks and vegetation clearance provisions of the Plan, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that the amendments we recommend are reasonably practicable; would better provide opportunities for economic growth and employment; and have assessed that making them would better assist with achieving the purpose and principles of the Act and for giving effect to the higher order instruments.

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<sup>112</sup> Ibid, paragraph 236.

<sup>113</sup> Ibid, paragraph 239.

<sup>114</sup> As sought by Dairy NZ.

## **Section 19**

### **Chimney heights**

- [178] The Plan as notified contained Appendix H.3 specifying requirements for chimney heights. We understand Appendix H.3 was simply ‘rolled over’ from the antecedent Air Quality Plan 2004. Appendix H.3 is only referred to in Policy D.3.1 and permitted activity rule C.7.1.6. That rule is for burning coal, oil, natural gas, biogas, liquid petroleum gas or untreated wood in a device of more than 40KW for energy generation. Two submitters<sup>115</sup> sought that Appendix H.3 be amended to take an approach that was more simple and consistent with that used in other regions, such as Nelson and Canterbury, removing unnecessary aspects that would result in very high chimney heights.
- [179] In response, the s42A authors commissioned Pattle Delamore Partners Ltd (PDP) to develop a tabular set of chimney heights for the burning devices to which rule C.7.1.6 applies. PDP undertook dispersion modelling to test potential air quality effects of various burning appliances and fuel types. On that basis they recommended a two-pronged approach, firstly a simple table of chimney heights, or alternatively a height determined by expert dispersion modelling.
- [180] The s42A authors endorsed the PDP recommendation but noted that its application would result in higher chimneys than the notified version of Appendix H.3. Given the apparent low environmental impact of existing burning devices and the potential cost to upgrade them to comply with the new version of Appendix H.3, the authors recommended that existing chimney heights could be retained provided there was no increase in the scale or change to the type of discharge.<sup>116</sup> We find this to be a sensible approach.
- [181] Accordingly, we adopt the s42A authors’ recommendation with regard to the amendment of Appendix H.3 and the wording of rule C.7.1.6. Given the limited application of Appendix H.3, we also consequently recommend that clause 2) of Policy D.3.1 is amended to provide more specific guidance to decision-makers.
- [182] Proportionate to the scale and significance of specifying chimney heights for fuel burning devices exceeding 40KW capacity, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that the amendments we recommend are reasonably practicable; would better provide opportunities for economic growth and employment; and have assessed that making them would better assist with achieving the purpose and principles of the Act.

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<sup>115</sup> Bioenergy Association and Fonterra.

<sup>116</sup> Supplementary to staff Reply report, November 2018, pages 3 to 6.

## Section 20

### Livestock exclusion

- [183] As with most contemporary regional plans, the pRPFN as notified contained provisions requiring the exclusion of stock from water bodies. The Plan contained region-wide stock exclusion rules in section C.8.1<sup>117</sup> and additionally contained catchment-specific rules for the Mangere catchment<sup>118</sup> and the Whangārei Harbour catchment.<sup>119</sup> Policy D.4.32 set out exceptions to the mandatory provisions of the rules, including where a farm environment plan had been prepared or other mitigation measures, such as constructed wetlands, were being implemented.
- [184] We note that prior to the notification of the pRPFN the Government released its Clean Water consultation document<sup>120</sup>, which included draft national regulations to exclude dairy and beef cattle, farmed deer, and farmed pigs from water bodies in a staged manner. While Council was not required to act in accordance with the draft regulations,<sup>121</sup> it sensibly, in our view, framed the Plan's rules around the content and format of the draft regulations. Unfortunately, Government has not yet progressed the draft regulations.
- [185] The pRPFN's livestock exclusion rules are framed around excluding stock from water bodies by certain dates based on the livestock type and the slope category of the land on which they are grazed.<sup>122</sup> Importantly, rule C.8.1.3 makes the access of livestock to outstanding freshwater bodies and the coastal marine area a non-complying activity.
- [186] There were numerous submissions on the stock exclusion provisions, with submitters querying (among other things) the types of animals the rules applied to, the types of water bodies covered by the rules, the timeframes for exclusion, and whether or not the rules should require riparian buffers or setbacks.
- [187] The livestock exclusion rules apply to dairy cattle (cows and dairy support), beef cattle, deer and pigs, consistent with the Land and Water Forum's recommendations.<sup>123</sup> We find this to be appropriate as we understand that those are the main types of stock that cause significant damage to water bodies. We reject submissions seeking the inclusion of other stock types such as sheep and goats as we received no persuasive evidence that those stock were significant contributors to

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<sup>117</sup> Permitted activity rule C.8.1.1, restricted discretionary rule C.8.1.2 and non-complying activity rule C.8.1.3.

<sup>118</sup> Permitted activity rule E.3.4.1.

<sup>119</sup> Permitted activity rule E.3.5.1.

<sup>120</sup> Clean Water, 90% of rivers swimmable by 2040, New Zealand Government, February 2017.

<sup>121</sup> Compared to operative regulations. Under section 66(1)(f) of the RMA a regional plan must be prepared in accordance with regulations.

<sup>122</sup> Beef cattle, dairy support and deer are not required to be excluded from continually flowing waterbodies or natural wetlands in hill country areas (land with a slope greater than 15 degrees, as mapped in the New Zealand Land Resource Inventory database).

<sup>123</sup> Land and Water Forum, 2015. The Fourth Report of the Land and Water Forum. p.48.

water quality degradation in Northland. In making this finding we also note the increased costs of fencing required to exclude sheep and goats compared to cattle.

- [188] The provisions apply to natural wetlands, lakes and continually flowing water bodies. We find this to be a sensible and practical approach. We reject submissions seeking that the provisions additionally apply to ephemeral and intermittently flowing water bodies. It would be impractical and prohibitively expensive to exclude livestock from those water bodies, given the large areas of productive farmland that would arguably be captured by such an approach. Our finding on that matter leads us to conclude that the Plan should be very explicit about the livestock provisions not applying to ephemeral or intermittently flowing water bodies. We therefore adopt the s42A authors' Reply recommendation to insert new rule C.8.1.1A into the Plan.
- [189] In response to submissions<sup>124</sup> the s42A authors recommended that the requirement to exclude livestock from significant wetlands be replaced with a minimum size criterion (2,000m<sup>2</sup>) for natural wetlands. The authors advised that this would capture all significant wetlands except fens, ephemeral wetlands and seepages greater than 0.05 hectares (all of which are not as sensitive to disturbance). The authors also advised, based on technical advice, that it was not necessary nor practical to exclude stock from smaller wetlands and that wetlands in hill country areas are generally not sensitive to extensively farmed animals.<sup>125</sup> We find those recommendations to be sensible and pragmatic and we adopt them.
- [190] In making this finding we note that we queried some conservation interest witnesses<sup>126</sup> about the practicality of fencing wetlands smaller than 2000m<sup>2</sup>, particularly in Northland's hill country, and record that none of those witnesses appeared to have given that much in-depth thought.
- [191] In response to the submissions and evidence<sup>127</sup> of the territorial authorities we recommend that rule C.8.1.1 is amended to exclude livestock from water bodies for a distance of 1,000 metres upstream of a public water supply intake servicing more than 25 people. The reason being that livestock access can degrade the water quality and increase the potable water treatment costs for those authorities.
- [192] In response to the submissions and evidence<sup>128</sup> of the Minister of Conservation we recommend that rule C.8.1.1 is amended to exclude livestock from inanga spawning sites, noting similar requirements have been adopted in other regions, including Canterbury. In making this

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<sup>124</sup> Including Federated Farmers.

<sup>125</sup> Managing the access of livestock access to waterways and the coastal marine area, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report, July 2018, paragraph 46.

<sup>126</sup> Including Natascha Petrove for the Minister of Conservation and Shona Myers for Northland Fish and Game.

<sup>127</sup> Supplementary Evidence of Ruben Wylie and Jessica Crawford. Response to Panel Questions. 2 October 2018, paragraph 60, page 12

<sup>128</sup> Statement of evidence of Natasha Katherine Petrove on behalf of the Minister of Conservation. 10 August 2018.

recommendation we anticipate that the Council will identify inanga spawning sites as part of its 2021 plan change process, which we referred to earlier in this report.

- [193] The pRPFN rules do not require fences to be set back from water bodies and nor do they require vegetated riparian buffers. We understand this approach is based on the very high costs of creating riparian buffers, coupled with their ineffectiveness in reducing *E.coli* and nitrogen runoff to water bodies in Northland.<sup>129</sup> We were not persuaded by submissions seeking setbacks or riparian buffers at this point in time and note that none of the submitters requesting such relief had quantified the opportunity cost of lost production land that would result. We consider that achieving livestock exclusion is a practical first step and that the need for vegetated riparian setbacks from specific water bodies can also be considered as part of Council's 2021 plan change.
- [194] In terms of the timeframes for livestock exclusion, rather predictably some conservation interest group submitters sought shorter timeframes while other farming sector submitters sought longer timeframes. We have considered those various submissions and the evidence presented in support of them. On balance, we find the notified timeframes to be appropriate.
- [195] We recommend that the catchment-specific livestock exclusion provisions are amended to be consistent with the provisions in section C.8.1.
- [196] Proportionate to the scale and significance of the pRPFN's livestock exclusion provisions, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; they implement the Plan's objectives while taking into account the nature of Northland's extensively grazed areas of land (particularly its extensive hill country); and so we assess that making them would more fully serve the provisions of the Act and its subordinate instruments than not making them.

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<sup>129</sup> Ibid, paragraph 67.



## **Section 21**

### **Marine pests**

- [197] The issue of marine pests was dealt with in the pRPFN under rules C.1.7.1 to C.1.7.7. The Plan did not initially contain any policies on this matter.
- [198] There were a number of submissions on the marine pest provisions. Boating interest groups generally sought less stringent controls while comprehensive submissions from the Minister of Conservation and the Ministry of Primary Industries respectively made requests seeking numerous new rules and changes to align with the Australian/New Zealand Anti-fouling and in-water cleaning guidelines April 2015 and greater alignment with the Craft Risk Management Standard: Biofouling on Vessels Arriving to New Zealand May 2014.
- [199] As noted by the s42A author, controls on the level of fouling and movement between designated pathways places are replicated between the pRPFN and the Northland Regional Pest and Marine Pathway Management Plan 2017-2027 (promulgated under the Biosecurity Act 1993). The primary reason for this was to give Council the ability to issue infringement notices (fines) under the RMA.<sup>130</sup>
- [200] We were impressed with level of expertise and depth of analysis provided in the evidence of the ministry officials. Consequently, we have recommended the adoption of much of the relief they seek, including the deletion of rules C.1.7.1 and C.1.7.6, for the reasons stated by them. However, we do not recommend amending rule C.1.7.2 to require the anti-foul coating on the vessel, niche area or moveable structure to not exceed its planned in-service life, as specified by the manufacturer, with that to be demonstrated by the provision of a receipt showing the date of anti-foul coating application. Instead, we prefer the evidence of the s42A authors. They advised in Reply that such an approach was not practical in Northland, because not all vessels (and few structures) have an anti-foul coating, and when monitoring the activity of 'in-water cleaning', Council officers were focused on marine pest or hazardous substance release and seeking proof of an anti-foul application date would be problematic.<sup>131</sup>
- [201] We also have not amended the rules to limit in-water cleaning to only slime layers or goose barnacles as was sought by the ministries. We accept the advice of the s42A authors in Reply that barnacles can colonise hulls in the Bay of Islands in three weeks and mud or sediment can be present on boat hulls within one month in the Mangonui Harbour. Consequently, as Council

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<sup>130</sup> Marine pests, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report, July 2018, paragraph 19.

<sup>131</sup> Ibid, paragraph 279 and 280.

wishes boat owners to keep their vessels clean to prevent biofouling reaching a threshold where marine pest species could be present, we accept that this needs to remain as 'light fouling'.<sup>132</sup>

[202] In response to the submissions and evidence of the boating interests<sup>133</sup> we have recommended that rule C.1.7.2 be amended to allow the in-water cleaning of vessels or structures in a Coastal Commercial Zone, a Marina Zone, a Mooring Zone, a consented grid (inter-tidal poles), or within 50 metres of a Mooring Zone. However, we find that rules C.1.7.2 and C.1.7.3 should both preclude in-water cleaning within 50m of a SEA in order to protect the values of those areas.

[203] Finally, we accept the s42A authors' recommendation that, primarily in response to the submissions of the Minister of Conservation, new Policy D.2.2G is inserted into the Plan. We consider this additional policy will provide appropriate guidance to decision-makers exercising their discretion under rules C.1.7.3 to C.1.7.5 and C.1.7.7.

[204] Proportionate to the scale and significance of the pRPFN's provisions dealing with the management of marine pests, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that the amendments we recommend are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act and the superior instruments, including the NZCPS.

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<sup>132</sup> Ibid, paragraph 283.

<sup>133</sup> Including the Mangouni Cruising Club.

## Section 22

### Wetlands

- [205] As is the case in all regions within NZ, the management of wetlands is an important issue in Northland. Historically there has been a dramatic decline in the extent of natural wetlands throughout the country and we understand that Northland is no exception.
- [206] Wetland management is primarily dealt with in the Plan in rules C.2.2.1 to C.2.2.5 and explicitly in Policies D.4.27 (specifying requirements for activities in wetlands) and D.4.28 (detailing wetland values). The pRPFN defines six different types of wetland; namely 'wetland', 'constructed wetland', 'induced wetland', 'reverted wetland', 'natural wetland' and 'significant wetland'. The different types of wetland are treated differently in the Plan's rules.
- [207] The definitions listed above were of concern to some submitters<sup>134</sup> who found them potentially confusing. We considered rationalising the definitions but noting the advice of the s42A authors<sup>135</sup> that the ability to amend them was very limited as they are incorporated into the RPS, we have instead recommended (in light of submissions and the s42A authors' advice) a number of amendments to them so that it is clear and certain what each definition includes and excludes.
- [208] Additionally, we have adopted the s42A authors' recommendation to include a new appendix H.8 titled "wetland definitions relationships" which further explains the relationships between the various types of wetlands. This includes a 'Venn diagram' showing those relationships in graphical form.
- [209] In response to submissions we have recommended a number of improvements to the rules, including clarifying that a number of the more restrictive rules should apply only to natural wetlands. On the other hand, we recommend that rule C.2.2.2 is amended to be more permissive of the construction, maintenance and use of regionally significant infrastructure, maimai and game bird shooting structures within wetlands. Similarly, we recommend that rule C.2.2.3 more explicitly allows the erection, placement and use of a structure to form a constructed wetland, in recognition of the water quality and aquatic biodiversity benefits of such wetlands that were identified by many submitters.
- [210] Some submitters<sup>136</sup> sought that significant wetlands be mapped and that those maps be included in the Plan. We understand the rationale for that request but observe that submitters generally did not provide any such maps in support of their requests and we cannot ourselves develop

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<sup>134</sup> Including NZTA, Horticulture NZ and Federated Farmers.

<sup>135</sup> Wetlands, beds of lakes and rivers, and damming and diverting water, Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report, July 2018, paragraph 25.

<sup>136</sup> Including Fonterra, Northland Fish and Game, and Top Energy.

them.<sup>137</sup> We also note it would be more appropriate to include such maps by way of a further plan change, as we anticipate there would be a wide degree of community interest in such an exercise.

[211] Proportionate to the scale and significance of the pRPFN's provisions dealing with the management of wetlands, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the provisions outlined above or not; and we have identified that the amendments we recommend are reasonably practicable; and have assessed that making them would better assist with achieving the purpose and principles of the Act and the superior instruments, including the NPSFM.

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<sup>137</sup> We note Ngāwhā Generation Ltd to be an exception to that and in response the I Maps have been recommended to be amended as sought by that submitter.

## **Section 23**

### **Definitions**

- [212] Some submissions sought that words or terms defined in the RMA be repeated in the pRPFN. That serves no useful purpose and amounts to unnecessary duplication. It also risks the provisions in the pRPFN having limited 'shelf life' should the definitions in the RMA be amended. We support the inclusion of a note at the start of the Glossary that specifies that words or terms defined in the RMA have the same meaning when used in the pRPFN.
- [213] In response to submissions the s42A authors recommended the insertion of a number of additional definitions and the amendment of others. We have carefully considered each of those recommendations and record that we find them to be appropriate.
- [214] We have additionally recommended that part of the definition of 'marae-based aquaculture' be recast as a note.

## Section 24

### RMA Activities

- [215] As stated in the Section 32 Report,<sup>138</sup> the notified Plan uses rule bundling to combine several permissions which may be required under s9 and ss12 to 15C of the RMA into one rule. This approach was supported by a number of submitters.<sup>139</sup> Often, but not always, the chapeau of the rule specified the bundled activities. Additionally, each rule contained a list of the relevant sections of Part 3 of the RMA invoked by the rule under a title that read “The RMA activities this rule covers:”. The intention was to make it clear what RMA permissions each rule covered. There were several submissions on this general approach and the relevant parts of particular rules.<sup>140</sup>
- [216] These parts of the rules are important as they define in legal terms the range of activities that each rule covers. Because the Plan uses ‘rule bundling’, these parts of each rule<sup>141</sup> also define the range of activities that are associated with, or are incidental to, the primary activity. For example:
- the primary activity might be the discharge of contaminants onto or into land from compost (s15(1) if an ‘industrial or trade premise’ and s15(2A) otherwise) but there is also an associated ongoing discharge or odour and dust to air (also s15(1) if an ‘industrial or trade premise’ or s15(2A) otherwise); or
  - the primary activity may involve the excavation of the bed of a river (s13(1)) but the rule also authorises the incidental discharge of sediment to water caused by that bed excavation (s15(1)).
- [217] An unintended consequence of errors or omissions in these parts of the rules is that resource users may need to apply for additional consents to authorise associated or incidental activities that the Plan always intended to authorise.
- [218] We wish to retain the Council’s approach to making the Plan as simple and concise as possible (to aid its ease of use) and so we have carefully examined each rule and recommended that:
- the chapeau of each rule refers to the primary activity and any associated ongoing activities using relevant language from Part 3 of the RMA, whereas the bullet point list

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<sup>138</sup> Ibid, section 1.5 Structure and content of the Proposed Regional Plan.

<sup>139</sup> Including Bay of Islands Planning Limited, Carrington Resort Jade LP and Broadspectrum NZ Ltd.

<sup>140</sup> Including New Zealand Defence Force, Moana NZ, NZ Oyster Industry Association, Minister of Conservation, Bay of Islands Planning Limited, Broadspectrum NZ Ltd, Carrington Resort Jade LP, Top Energy, Northpower and KiwiRail.

<sup>141</sup> We understand that the text under each of the headings “The RMA activities this rule covers:” is intended to form part of the rule and not simply an advisory note.

of 'RMA activities' captures all the relevant<sup>142</sup> incidental activities, which are often temporary construction related activities;

- when activities are mentioned in the chapeau of the rule, they are also covered within the bullet point list of 'RMA activities' to ensure that the rule can lawfully cover those particular activities;
- the headings "The RMA activities this rule covers:" are amended to read "For the avoidance of doubt this rule covers the following RMA activities:" to make it clear that the bullet point list of incidental activities forms part of each rule;
- the relevant primary RMA Part 3 clause is referred to in each bullet point, but references are not made to sub-clauses. For example, reference would be made to s12(1) but not to s12(1)(c));
- where a condition of a permitted activity rule refers to 'General Conditions' (such as 'C.2.3 General Conditions') the condition reads, for example, "... complies with all relevant conditions of C.2.3 General Conditions" in acknowledgment of the fact that not all of the general conditions will apply to each permitted activity. We appreciate that this creates some uncertainty (limited by the fact that the 'general conditions' are often grouped under activity-specific hearings<sup>143</sup>) but consider this is preferable to the risk of imposing unnecessary constraints on permitted activities, which in practice have relatively benign adverse effects; and
- catchall activity rules (such as rule 'C.1.5.12 Dredging, deposition and disturbance activities') are amended to include the words "... that is not the subject of any other rule in this Plan ..." to avoid the unintended outcome of a catchall rule over-riding (or generating uncertainty about) the authorisation of 'incidental activities' cited in the bullet point lists of 'RMA activities' in activity specific rules.

[219] The version of the Plan contained in Appendix B includes the amendments that implement our recommendations on these matters.

[220] In addition, we recommend that the Plan includes an explanation at the beginning of the rules section explaining how the rules are drafted and clarifying that the bullet points under the amended headings reading "For the avoidance of doubt this rule covers the following RMA activities:" form part of the rules.

[221] We are satisfied that the amendments to the Plan that we recommend fall within the scope of the general issues raised by submissions<sup>144</sup> seeking clarification of the bunding approach or

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<sup>142</sup> We have sought to ensure that the rules do not inadvertently regulate a wider set of activities, such as disturbance of the seabed that is not incidental to the erection of a structure.

<sup>143</sup> For example, 'C.1.8 Coastal works general conditions' contains the headings 'Structures and disturbance' and 'Mangrove removal and pruning'.

<sup>144</sup> Including Northpower, NZ Defence Force, Moana NZ, NZ Oyster Industry Association, and the Minister of Conservation.

corrections to the lists of bullet point RMA activities in the rules, or otherwise fall within the ambit of Clause 16(2) of Part 1 of Schedule 1 to the RMA.

- [222] Proportionate to the scale and significance of the matters discussed above regarding the RMA Part 3 activities covered by each rule in the Plan, for the purpose of s32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to those parts of each rule or not; and we have identified that the amendments we recommend are reasonably practicable; and have assessed that making them is the most appropriate way to achieve the objectives of the Plan, and that the amended provisions are more effective and efficient than the provisions that were either notified or recommended to us in the Staff Reply Report. Making the amendments will avoid unintended costs for resource users that might otherwise arise should they be required to seek additional consents for activities that are associated with or incidental to the primary activities covered by each rule. We consider there is a real and significant risk of that occurring if we do not recommend the amendments.



## Section 25

### Minor Amendments

- [223] Under Clause 10(2)(b) of Part 1 of Schedule 1 to the RMA our recommendations may include matters relating to any consequential alterations necessary to the pRPFN arising from the submissions. Under Clause 16(2) of Part 1 of Schedule 1 to the RMA our recommendations may include amendments to the pRPFN to alter any information, where such an alteration is of minor effect, or may correct any minor errors.
- [224] Under those Schedule 1 provisions we have recommended numerous amendments to the pRPFN including, among other things:
- (i) making consequential amendments to policies to give effect to the recommended new objectives;
  - (ii) making consequential amendments to rules to give effect to the recommended new policies;
  - (iii) correcting incorrect terms or references within definitions;
  - (iv) recasting the wording of some definitions as 'Notes' as the wording did not properly form part of the definition;
  - (v) omitting definitions (or parts thereof) that are either redundant, unnecessary<sup>145</sup> or are not actually used in the Plan;
  - (vi) making consequential amendments to definitions or including new definitions because of changes to other definitions or provisions in the Plan;
  - (vii) updating the tables containing the index and guide to the rules of each section of the Plan so that the tables refer to the amended rules' titles and rule numbers;
  - (viii) inserting the transitional policy required under Policy B7 of the NPSFM,
  - (ix) inserting new rules to explicitly provide for activities that were intended to be covered by 'catch all' rules, but the wording of the 'catch all' rule does not cover the activity;<sup>146</sup>
  - (x) amending the wording of 'catch all' rules to clarify that if the activity is explicitly covered by another rule then it is not captured by the 'catch all' rule;<sup>147</sup>
  - (xi) clarifying the nature of the activities covered by a rule;
  - (xii) amending the chapeau of a rule so that the activities identified in the chapeau reflect the notified conditions in the rule;

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<sup>145</sup> For example, the definition of "deep lake" as the depth of the lake is always stated where that term is used.

<sup>146</sup> This relates to new Rule C.1.2.7A to permit the removal of moorings because the rules in section C.1.1 of the Plan do not apply to moorings; and new text at the start of C.1.3 Aquaculture which has the effect of Rules C.1.1.7 (reconstruction, replacement, maintenance etc) and C.1.1.10 (removal and demolition etc) applying to aquaculture when they did not previously do so.

<sup>147</sup> This applies to the chapeau in Rules C.1.1.14, C.1.1.15, C.1.1.16, C.1.1.22, C.1.2.9, C.1.2.10, C.1.3.6, C.1.3.8, C.1.3.14, C.1.4.3, C.1.4.4, C.1.4.5, C.1.5.12, C.1.7.5, C.2.1.13, C.2.1.15, C.2.2.4, C.2.2.5, C.3.1.6, C.3.1.7, C.1.3.9, C.4.1.6, C.5.1.8, C.5.1.10, C.5.1.11, C.5.1.12, C.6.1.5, C.6.3.5, C.6.4.3, C.6.5.5, C.6.6.3, C.6.7.7, C.6.8.4 AND C.7.1.8.

- (xiii) omitting the requirement to comply with General Conditions (for example, Rule C.1.8 ‘Coastal works general conditions’) as a prerequisite for activities requiring resource consent (for example, Rule C.1.2.8). It is inevitable that activities requiring consent will fail to comply with one or more of the suite of General Conditions, thereby nullifying the respective rule. Compliance with the General Conditions is only appropriate for permitted activity rules;
- (xiv) referring to the “identified values” of mapped Sites and Areas of Significance to Tangata Whenua where those areas are listed in rules;
- (xv) using the phrase “effects on the characteristics, qualities and values that contribute to make any of the following mapped (refer ‘I Maps | Ngā mahere matawhenua’) places outstanding or significant” in rules requiring resource consent decision-makers to have regard to effects on those mapped ‘special areas’. The amended phrase provides more appropriate direction to those decision-makers, which was noted as being desirable by several submitters;<sup>148</sup>
- (xvi) ensuring consistency of permitted activity conditions;<sup>149</sup>
- (xvii) ensuring consistency in the matters of discretion for restricted discretionary activity rules within the same topic-based section of the Plan;<sup>150</sup>
- (xviii) deleting conditions in rules that essentially duplicated other conditions in the same rule<sup>151</sup> or that are covered by other rules;<sup>152</sup>
- (xix) making consequential amendments to conditions of rules because of amendments to other parts of rules (including Tables);
- (xx) making consequential amendments to rules so that they are consistent with related rules;
- (xxi) omitting references to adverse effects on aquatic life from permitted activity rules as that wording is too subjective for a permitted activity condition;
- (xxii) including new Notes beneath some rules to clarify their relationship with other rules;
- (xxiii) amending Notes and provisions so that they are more specific about relevant sections of the RMA and other statutes;
- (xxiv) correcting spelling;
- (xxv) correcting grammar;
- (xxvi) correcting formatting;
- (xxvii) changing the numbering format of rules C.3.1 and C.4.1. to match the rest of the Plan;<sup>153</sup>
- (xxviii) using macrons on Māori words;
- (xxix) correcting punctuation, including the use of commas, colons, semicolons, brackets and hyphens;

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<sup>148</sup> Including CEP Services Matauwhi Limited.

<sup>149</sup> For example, Rule C.6.5.1 Table 6.

<sup>150</sup> Such as Rule C.1.2.8.

<sup>151</sup> For examples conditions 3)a) and 3)b) of Rule C.6.3.1.

<sup>152</sup> For example, Rule C.3.4 condition 4).

<sup>153</sup> For example, C.3.3 becomes C.3.1.3.

- (xxx) using abbreviations for some commonly used terms;
- (xxxi) modernising language, including for example by replacing “shall” with “must”;
- (xxxii) ensuring the words “and” and “or” are used correctly in the provisions;
- (xxxiii) making consequential amendments to Plan Appendices because of changes to provisions in the Plan;
- (xxxiv) merging Rules C.1.2.6 and C.1.2.7 into Rule C.1.2.4;
- (xxxv) clarifications required to ensure that provisions are within the scope of Council’s s30 RMA functions, for example, deletion of Rule C.2.1.3 condition 11 because it controlled the alteration, damage or destruction of any mapped Historic Heritage Site; whereas the management of these activities falls outside Council’s functions.

[225] In the version of the pRPFN contained in Appendix B to this report we have shown these amendments using the conventional strikeout and underlining, except where the change is very minor (for example, where a lower case letter is replaced with an upper case letter). However, we have not assigned endnotes to these amendments as they are not attributable to particular submission points.

## Section 26

### Evaluation and Recommendations

- [226] As we have noted previously, in compliance with s32 and clause 5 of Schedule 1 of the RMA, the Council prepared and publicly notified a pRPFN evaluation report dated September 2017 ('the Section 32 Report'). We have had particular regard to the Section 32 Report.<sup>154</sup> Section 32AA of the RMA requires a further evaluation of any changes made to the pRPFN after the initial evaluation report is completed. The further evaluation can be the subject of a separate report, or it can be referred to in the decision-making record.<sup>155</sup> If it is referred to in the decision-making record, it should contain sufficient detail to demonstrate that a further evaluation has been duly undertaken.<sup>156</sup>
- [227] If our recommendations in this report are adopted by the Council, this report (including Appendices A and B) is intended to form part of the Council's decision-making record. Therefore, in compliance with Schedule 1,<sup>157</sup> and electing the second option in s32AA(1)(d), we have included in this report a further evaluation of the amendments to the pRPFN that we are recommending.
- [228] In the initial s42A reports each of the authors included an evaluation under s32AA of the RMA of the amendments they recommended in response to submissions. Where we have adopted the authors' recommendations and their reasons, we also adopt their accompanying evaluation under s32AA.
- [229] Where we have departed from the s42A report author's recommendations we have undertaken our own evaluation of the amendments we recommend. In doing so we have, to the extent practicable and applicable, applied the criteria contained in s32. We note that many of the submission points on the pRPFN related to provisions that do not stand alone, but are part of an integrated body of provisions that is intended to be understood, and to be implemented, as a coherent whole. To the extent that they do, we have also evaluated the whole by reference to the s32 criteria.
- [230] An assessment of the efficiency and effectiveness of amendments to the pRPFN must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment.<sup>158</sup> If practicable, the assessment should quantify those benefits and costs,<sup>159</sup> and assess the risk of acting or not acting if there is uncertain or insufficient information about the subject-matter.<sup>160</sup> We note that, without expert

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<sup>154</sup> RMA, s66(1)(e).

<sup>155</sup> RMA, s 32AA(1)(d) and (2).

<sup>156</sup> RMA, s 32AA(1)(d)(ii).

<sup>157</sup> RMA, Schedule 1, cl 10(2)(ab).

<sup>158</sup> RMA, s 32(2)(a).

<sup>159</sup> RMA, s 32(2)(b).

<sup>160</sup> RMA, s 32(2)(c).

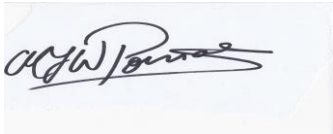
evidence, it would be generally problematic for us to attempt to quantify benefits and costs of amendments to the pRPFN provisions in money's worth. Accordingly, we have made assessments that are more broad and conceptual, rather than analytical and calculated.

[231] We have considered and deliberated on the pRPFN; the submissions lodged on it; and the reports, evidence and submissions made and given at our public hearings. In reaching our recommendations we have sought to comply with all applicable provisions of the RMA. We have had particular regard to the further evaluation of the amendments to the pRPFN we are recommending. The relevant matters we have considered, and our reasons for them, are summarised in the main body of this report and in Appendix A. We are satisfied that the amendments we recommend are the most appropriate for achieving the purpose of the RMA and for giving effect to the higher-order instruments, including in particular the NPSFM and the NZCPS.

**We therefore recommend the amendments to the Proposed Regional Plan for Northland contained in Appendix B for the reasons set out in the main body of the report and in Appendix A.**

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Joce Yeoman

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Miria Pomare

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Robert van Voorthuysen (Chair)

## Appendix A

### Recommended Decisions on Submissions

See section 4 of the main body of this Recommendation Report for an explanation of Appendix A.

<b>Agrichemicals</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Definition of ground-based spraying	Horticulture New Zealand seeks amendments to the definition of ground-based spray.	We agree that the requested amendment to the definition would assist understanding of the intended meaning of the term and we recommend accordingly, subject to some minor wording improvements.	Accept in part.
Rule C.6.5.1(1)(f)	A and R LaBonte are seeking an exemption to public notification where a landowner is spraying the road corridor outside their own property.	In response to this submission we recommend an amendment to Rule C.6.5.1(1)(f)(ii), for the reasons in the original submission and advanced in the submitter's evidence.	Accept in part.
Rule C.6.5.1	Royal Forest and Bird seek new conditions 2) x) and 3)x) "The discharge is not undertaken where it can affect a significant ecological area".	We were not persuaded that the use of agrichemicals within or in close proximity to a SEA should be precluded. However, in response to submissions we recommend new clause 2A where the activity is undertaken within 100 meters of a spray sensitive area.	Accept in part.
Rule C.6.5.2	Northland Fish and Game Council have requested that the words 'excluding pest species' are deleted from 2) h).	For the reasons set out in the body of this Report, we recommend the deletion of rule C.6.5.2(2)(h).	Accept in part.

<b>Air Quality</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Definition of ambient air quality	Fonterra, GBC Winstone and Horticulture NZ are seeking a minor change to the definition of ambient air quality.	We agree that the requested amendment to the definition would assist understanding of the intended meaning of the term and we recommend accordingly, however, we do not agree with the s42A author that the word 'activities' should be replaced with 'sources'.	Accept in part.

<b>Air Quality</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Definition of community controlled organisations	Johnston J is seeking an amendment to the definition of “community controlled organisations”	We recommend the deletion of this term as it is not used in the Plan.	Reject.
New definition	First Gas is seeking a definition of flaring (combustion method to dispose of gas).	While we recommend that a new rule relating the flaring of gas is inserted in the Plan, we do not consider the term ‘flaring’ requires definition.	Reject.
New definition	The Egg Producers New Zealand and Tegel Foods Ltd are seeking a definition of poultry hatchery.	We consider that Rule C.7.2.4 should be amended to refer to poultry hatcheries and so we agree that this term should be defined.	Accept.
New rule	New Zealand Transport Agency and Kiwi Rail are seeking additional rules permitting the discharge of contaminants from rail tunnels.	While we are not persuaded that new rules are required, in response to this submission we recommend that discharges from motor vehicles, aircraft, trains, or vessels are excluded from the requirement in rule C.7.2.6(1) to avoid noxious, dangerous, offensive or objectionable odour, smoke emissions.	Accept in part.
New rules and C.7.2.4	Tegel Foods Ltd are seeking several new rules and definitions relating to poultry farming.	In response to this submission, and for the reasons therein and the evidence produced in support of it, we recommend that Rule C.7.2.4 is amended to include a poultry hatchery or poultry feed mill.	Accept in part.
Rule C.7.1.6	Tegel Food Limited seeks the deletion of condition 4 which relates to chimney height.	We recommend that Rule C.7.1.6(4) is amended to refer more specifically to amended Appendix H.3. See also the section of this Report titled ‘Chimney heights’.	Accept in part.
Rule C.7.2.4	Balance Agri-Nutrients Limited and Ravensdown Limited are seeking amendments to rule C.7.2.4 to make mixing fertiliser a permitted activity.	In response to evidence provided in support of this submission, we recommend that Rule C.7.2.4(22) is amended to include the ‘mixing’ of fertiliser.	Accept.
Policy D.3.1	Balance Agri-Nutrients Limited and Refining NZ seek the deletion of clause 8.	The amendments requested would unjustifiably weaken the Plan and reduce its effectiveness in	Reject.



<b>Air Quality</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
		achieving the purpose of the Act or giving effect to the superior instruments.	
Policy D.3.4	The Minister of Conservation seeks the following addition; “The activity is for significant environmental and biodiversity protection”.	We are not persuaded that the requested amendment would assist understanding of the policy.	Reject.

<b>Allocation and use of Water</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
New definition	Horticulture New Zealand requested a definition be included for directly or highly connected aquifers.	Recommended new Appendix H.7 addresses these matters.	Accept in part.
Rule C.5.1.5	The Oil Companies requested a note under Rule C.5.1.5 that the associate discharge of groundwater can be permitted under C.6.9.5.	The request is constructive and will help people use the Plan more efficiently.	Accept.

<b>Coastal – Structures</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Rule C.1.1.7	Fonterra, GBC Winstone and Refining NZ requested changes to conditions 2 and 3 to allow for minor percentage, non-material increases or minor upgrades.	In response to evidence in support of these submissions, we recommend amending Rule C.1.1.7 by providing an exception in condition (2) for dimension increases resulting from routine maintenance or repair activities.	Accept in part.
Rule C.1.1.8	Hayes I requested to amend the rule to refer to existing structures (as opposed to authorised) and to remove the requirement for giving 10 working days notice.	The requested amendment is disproportionately onerous. Future structures will also require maintenance and repair.	Reject.

Rule C.1.1.11	Heritage NZ requested that the rule refer to historic heritage.	In response to evidence in support of this submission, we recommend inserting a new matter of control (4A) regarding a historic area or site.	Accept.
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<b>Contaminated Land</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Definition of sensitive groundwater	The Oil Companies are seeking amendments to the definition of sensitive groundwater.	We agree that the third part of the definition should be amended to address the matters raised by this submission.	Accept in part.
Definition of potentially contaminated land	Horticulture New Zealand sought an amendment to the definition.	We agree that the requested amendment to the definition would assist understanding of the intended meaning of the term and we recommend accordingly.	Accept in part.
Definition of registered contaminated site	The Oil Companies seek amendments to the appendix to remove potential confusions around the term registered contaminated site.	In response to other submissions, we recommend the deletion of Appendix H.2.	Reject.
Rule C.6.8.1	Balance Agri-Nutrients Limited is seeking that C.6.8.2 is deleted entirety.	In response to the evidence presented, we recommend deleting condition (4) and making consequential amendments to condition (1).	Accept in part.
Rule C.6.8.3	Top Energy and Refining NZ sought clarification of the rule or amendments to it.	In response to the evidence presented, we recommend deleting Rule C.6.8.3.	Accept in part.

<b>Dredging, Disturbance and Disposal</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Rules C.1.5.6 and C.1.5.8	Kaipara District Council and Whangarei District Council requested the deletion of condition 3) and 5) respectively relating to bird nesting sites.	In response to these submissions, we recommend deleting the conditions, noting that bird nesting sites are covered in C.1.8 Coastal Works - General Conditions.	Accept.
Rule C.1.5.11	Heritage NZ has requested an additional matter of discretion relating to historic heritage.	In response to the evidence of the submitter, we recommend an additional matter of discretion (7) dealing with historic heritage.	Accept.

<b>Earthworks, Cultivation (Land Preparation), Vegetation Clearance, and Bores</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Rule C.8.3.1	Bay of Islands Planning Ltd, Broadspectrum NZ Ltd, Carrington Resort Jade LP and GBC Winstone opposed the requirement in rule C.8.3.1 that erosion and sediment control measures must be implemented in accordance with the Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region 2016.	In response to the submissions and evidence presented in support of them, we recommend that condition 2) is amended to refer to measures “equivalent to those set out in” the Auckland guidelines.	Accept in part.

<b>Marine Pests</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Definition of “vessel”	Yachting NZ requests the definition of “Vessel” is deleted, and instead adopt a definition of “Ship” Section 2 of the Maritime Transport Act 1994.	In response to this submission, we recommend deleting part of clause (3) which referred; “or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates” as we agree that it is too uncertain.	Accept in part.

<b>Moorings and Anchorages</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Rule C.1.2.8	Far North District Council and Kaipara District Council seek an additional matter of discretion relating to the integrated management of any associated land use effects outside the CMA and the effects on community uses.	In response to this submission and the evidence of the KDC, we recommend amending matter of discretion (1) to refer to effects “on land-based facilities associated with a mooring” as we agree those are relevant effects to consider.	Accept in part.

<b>Significant Natural and Historic Heritage</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Policy D.2.7	Bay of Islands Planning Limited sought an amendment to clause 2 to refer to “potential” adverse effects.	We agree that the policy should be amended as sought, so as to be consistent with clause (3).	Accept in part.

<b>Tangata Whenua Provisions</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Policy D.1.4	Transpower requested that the following words are deleted: “Resource consents will only be granted”. Kaipara District Council and Whangarei District Council sought that the policy be clarified.	In response to these submissions, we recommend that the word “generally” is inserted before the words “only be granted”. This provides discretion to decision-makers to consider exceptions to the policy in appropriate circumstances.	Accept in part.

<b>Wetlands, Beds of Lakes and Rivers, Damming and Diverting Water</b>			
<b>Provision</b>	<b>Summary of main submission points</b>	<b>Reason</b>	<b>Recommendation</b>
Rule C.2.1.1	Federated Farmers requests Condition 4 amendment, to delete ‘no’ and introduce a lesser standard of ‘minimal’ erosion (as a result of planting).	In response to this submission, we recommend that Condition (4) of this rule is amended to refer to “no more than minor bed or bank erosion, scouring or undercutting immediately upstream or downstream”, as this wording is more capable of practical implementation and is consistent with other provisions.	Accept in part.
Rule C.2.1.3	Kaipara District Council and Whangarei District Council have requested to remove the contradiction between conditions 6), which enables channels to be widened by up to 20% and 7), which states that modification must be within the bank full edge.	While we adopt the ‘Discussion’ in Appendix A of the S42A report, we have also recommended a minor amendment to Condition (7) to clarify that the restriction applies to the bank full edge of the river bed.	Accept in part.

<b>Wetlands, Beds of Lakes and Rivers, Damming and Diverting Water</b>			
Rule C.2.1.11	Northland Fish and Game has requested to amend the rule to refer to maintaining public access.	Notwithstanding our adoption of a recommended similar amendment to rule C.2.1.3, in this case an amendment is not necessary because Rule C.2.1.11 is subject to General Condition (17) which refers to public access.	Reject.
C.2.3 New Condition	The Minister of Conservation requested a new condition stating that “the activity does not occur in identified Inanga spawning areas or threatened species habitat”.	While we adopt the ‘Discussion’ in Appendix A of the S42A report regarding C.2.3, we have recommended that the livestock exclusion rules refer to inanga spawning sites (see the main body of this Report) as we understand stock grazing to be the main threat to those sites.	Accept in part.
C.2.3(10) and (11).	Northland Fish and Game request additional controls on erosion and scour.	In response to this submission, and noting the S42A recommendation, we recommend amending Condition (12) to be consistent with Condition (6(b)) as the amended wording is more certain and capable of practical implementation.	Accept in part.
C.2.3(21)	The Minister of Conservation requested deletion of 21 b).	We note the S42A recommendation, which we have adopted, is to delete Condition (21) and include an amended Condition (22).	Accept in part.
Policy D.4.27	Northland Fish and Game requested the listing of additional values.	In response to the evidence of this submitter (Wilson paragraph 28) we recommend adding recreation and amenity values to new clause (1)(e).	Accept in part.

<b>Unclear submissions</b>	<b>Reason</b>	<b>Recommendation</b>
Alan Agnew Alan Perkinson C Kelly Carol Wagener Chris Carpenter Christian Simon Darcy Thorburn	These submissions did not provide precise details of any specific amendments to the pRPFN provisions, as is required by RMA Schedule 1, subclause 6(3) and Form 5 prescribed in the Resource Management (Forms, Fees and Procedures) Regulations 2003.	Reject.

Unclear submissions	Reason	Recommendation
<p>Deborah Stone  Dr Mere Kepa  Frances Goulton  Glenys Bean  Graeme and Christine Jones  Heeni Hoterene  Jeff Wagener  John Sanderson (for spray drift submission point)  Karyn Nikora-Kerr  Kitty Mahanga  Lesley Agnew  Maiki Marks  Mark Vincent  Mira Norris  Myra Larcombe  Noel Josephsons  Norm Bryan  Robert Syron  Roberta Jones  Rodney Harris  Ronald MacMillan  Ross Clark  Rueben Taipari  Rui Valadares  Shane Clarkson  Stephen Rush  Zelka Grammar (for non-GMO submission points)</p>	<p>Some of these submissions were stated in such general terms that it was not evident whether a specific amendment to the pRPFN was being asked for at all, or if it was, what form any such amendment should take.</p>	

**Appendix B**  
**Proposed Regional Plan For Northland Incorporating Recommended**  
**Amendments**