

**REPORT OF THE
DISTRICT PLAN HEARING
PANEL**

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TOPIC

Preliminary Matters & Statutory Requirements

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1. Introduction

1.1 Purpose and Responsibilities of the Hearing Panel

1.1.1 We were appointed as Hearing Panel members by Council resolution dated 29 July 2021 to hear and make recommendations on all submissions made to the Proposed Central Hawke's Bay District Plan (PDP), noting that the final approval power rests with the full District Council.

1.1.2 The Terms of Reference for the Hearing Panel, which were approved by the same Council resolution on 29 July 2021 (and amended on 10 February 2022), outline the role and responsibilities of the Hearing Panel:

- (a) *Conducting a hearing, and considering all submissions received, on the Plan, including verbal presentations and written evidence from submitters wishing to be heard;*
- (b) *Conducting a hearing on and considering any requirements for designations included in the Plan; and*
- (c) *Reporting to the Council as to whether the Plan provisions are retained or amended from the notified version and the reasons why, including any requirements for reporting under Section 32AA Resource Management Act 1991 (RMA);*
- (d) *Reporting to the Council under clause 9, First Schedule RMA on recommended decisions on Council designations under Section 168A RMA and recommendations to the requiring authority under Section 171 RMA, including reasons for the recommendation.*

1.1.3 Our delegated authority under section 34 of the RMA included all of the Council's functions, powers and duties under the RMA necessary for the Panel to carry out our responsibilities set out above, including:

- (a) *The power to waive or extend any timeframe, including the acceptance of late submissions, in accordance with sections 37 and 37A RMA.*
- (b) *In accordance with Sections 39 and 39AA RMA, the power to conduct a hearing under Clause 8B, First Schedule RMA, for the purpose of considering all submissions, on the Plan and any requirements notified under Clause 4.*
- (c) *The power to regulate the hearing, including as provided for by Sections 40 – 42 RMA, this includes:*
 - *evidence filing*
 - *directions before or at hearings e.g., provision of more info etc*
 - *striking out submissions*
 - *protection of sensitive information which may be required especially for Wahi tapu issues.*

1.1.4 We were able to use our various delegated authorities to ensure an efficient and effective hearing process, to obtain additional information to inform our deliberations, and to seek the resolution of issues in contention where there was an apparent potential for a common agreement to be reached

among parties. Each Panel Report outlines the processes used to promote an effective hearing process.

1.2 Purpose of this Report

- 1.2.1 This is the first of reports prepared by the Hearing Panel appointed to hear submissions on the PDP. It is a generic overarching report that is common and relevant to all decision reports. It should be read in conjunction with each subsequent decision report.
- 1.2.2 The purpose of this report and the subsequent Panel Reports relating to each hearing stream is to satisfy the Council's various decision-making obligations in relation to Proposed District Plans and associated reporting requirements under the RMA. While our reports to the Council have been prepared as individual reports for ease of publication and use, all of our reports should be read as an integrated whole.
- 1.2.3 This preliminary report does not include any recommended decisions of the Hearing Panel in relation to the PDP. Rather it:
- records several background and procedural matters of relevance to our decisions;
 - establishes the statutory context for our decision-making;
 - provides a guide to the format and approach adopted for each of the subsequent decision reports;
 - records some preliminary comments from us about the proposed Plan and key issues we have identified that span across the PDP as a whole, and
 - records a number of recommendations for Council consideration for matters that fall outside the scope of the PDP to implement.
- 1.2.4 The material in this report is largely factual and provides context that each of the subsequent decision reports draw upon. Our aim in centralising these contextual matters within this introductory report is to avoid duplication of the same common material in the subsequent decision reports. To that same end, readers of the subsequent Panel Reports on each topic should have regard to this report.
- 1.2.5 We are very grateful for the opening legal submissions provided by the Council's legal counsel for the Hearings, Ms Asher Davidson, on Day 1 of the hearings. Much of this report draws on her advice.

2. Overview of the Proposed District Plan Process

2.1 Development of the Central Hawke's Bay PDP

- 2.1.1 The current Central Hawke's Bay District Plan (ODP) was made operative on 1 May 2003.
- 2.1.2 Under s79 RMA, a local authority must commence a review of the provisions of an operative Plan if they have not been reviewed for ten years.
- 2.1.3 The Council commenced a review of the ODP in 2012, releasing a Draft District Plan for consultation in 2019. A range of studies, research, mapping exercises, analyses, and background reports were commissioned by the District Council to inform the preparation of the PDP. These included the following:
- *Future Residential Development in Central Hawke's Bay District*, report by Economic Solutions Ltd Economic Solutions Regarding Economic Growth Report, April 2015;
 - Central Hawke's Bay District Long Term Planning: Demographic and Economic Growth Directions 2018-2048, report by Economic Solutions Ltd, August 2017;
 - Assessment on the Need for a New Rural Zone for Subdivision in the Central Hawkes Bay District, report and maps by LandVision Ltd, January 2018;
 - *Revision of Noise Rules*, report by Marshall Day Acoustics, July 2018;
 - Natural Character Assessment of the Central Hawke's Bay Coastal Environment, report by Hudson Associates Landscape Architects, January 2019;
 - *Central Hawke's Bay District Outstanding Natural Landscape Assessment*, report and maps by Hudson Associates Landscape Architects, May 2019;
 - Assessment of Natural Heritage for the Review of the CHB District Plan, report and maps by Kessels Ecology, 2018;
 - CHBDC District Plan Final Desktop SNA Review – Methodology, report by Tonkin & Taylor, March 2019, and
 - District Plan Significant Natural Area Review, report by Bluewattle Ecology May 2020.
- 2.1.4 The Council held meetings where members of the public and interested parties were invited to provide feedback on the Draft Plan, and held informal hearings for submitters who wished to present to the District Plan Committee in February 2020. The Committee then reported back to Council.
- 2.1.5 Council officers took the feedback received through that detailed consultation process into account in preparing the PDP, as well as the background research, technical advice and mapping done in the assessments listed in paragraph 2.1.3 above. In conjunction, a series of s32 evaluations were prepared and issued at the time the PDP was notified: 11 topic reports on the provisions of the PDP, and an Overview s32 Evaluation report.
- 2.1.6 In the interim, the National Planning Standards came into effect (November 2019), and the requirements of those standards were also implemented. These standards have largely dictated the structure and terminology of the PDP. The National Planning Standards seek to standardise the basic elements of RMA Plans, and are largely mandatory: for example, the zoning used in a District Plan must use the Zone names set out in Part 8 of the Standards, while many commonly used terms in District Plans must use the definitions for those terms set out in Part 14 of the Standards.

- 2.1.7 The PDP was notified on 29 May 2021. A number of NoR for new designations were also lodged and notified with the PDP. The period for submissions closed on 6 August 2021. A summary of submissions was notified on 11 October 2021, with the period for further submissions closing on 29 October 2021.
- 2.1.8 In total, the Council received 123 submissions and 29 further submissions, which contained over 2,500 individual submission points.

2.2 Hearing of Submissions on the PDP

- 2.2.1 The hearings of these submissions were organised according to seven Hearing Streams (HS1 – HS7), under seven broad topic headings:
1. Natural and Coastal Environment;
 2. Urban Environment, Sustainability and General District Wide Matters;
 3. Rural Environment;
 4. Tangata Whenua and Historic Heritage;
 5. Hazards and Risks and Subdivision;
 6. Miscellaneous, Introduction and Rezoning; and
 7. Energy, Infrastructure and Transport.
- 2.2.2 Each of these topics contained a series of subtopics, on which s42A reports were prepared to evaluate submissions and make recommendations to the Hearing Panel:

Table 1 - Hearing Streams

Hearing Stream 1	<p>Natural and Coastal Environment</p> <p>Ecosystems & Indigenous Biodiversity, Natural Features & Landscapes / NFL-SCHED6, Open Space & Recreation, Public Access, Activities on the Surface of Water, Coastal Environment / CE-SCHED7, and Large Lot Residential.</p>
Hearing Stream 2	<p>Urban Environment, Sustainability, and General District Wide Matters</p> <p>Urban Form & Development, General Residential Zone, Commercial Zone, General Industrial Zone, Settlement Zone, Subdivision - Urban, Sustainable Subdivision & Building, Light, Noise, Signs, Temporary Activities.</p>
Hearing Stream 3	<p>Rural Environment</p> <p>Rural Land Resource, General Rural Zone, Rural Production Zone, Rural Lifestyle Zone, and Subdivision - Rural.</p>
Hearing Stream 4	<p>Tangata Whenua and Historic Heritage</p> <p>Tangata Whenua / Mana Whenua, Ngā Tangata Whenua O Tamatea, Sites and Areas of Significance to Māori, Papakāinga and Kaumātua Housing and associated Marae-based Development, Historic Heritage, Notable Trees.</p>
Hearing Stream 5	<p>Hazards & Risks, and Subdivision</p> <p>Contaminated Land, Hazardous Substances, Natural Hazards, Earthworks, Mining & Quarrying, and General Subdivision.</p>

Hearing Stream 6	Miscellaneous, Introduction, Rezoning Rezoning Requests, ECO-SCHED5 and Mapping of Significant Natural Areas, General Mapping, Part 1 Introduction and General Provisions, Miscellaneous and other matters.
Hearing Stream 7	Energy, Infrastructure, and Transport Network Utilities, Noise (Network Utilities), Signs (Network Utilities), Renewable Energy, Transport, and Designations.

- 2.2.3 It should be noted that, for the reasons set out in section 2.3 of this report, the hearing on Tangata Whenua matters was divided into two stages: a first stage held as part of Hearing Stream 4, to hear and discuss overarching issues, and a second final stage hearing, held as part of Hearing Stream 6, to address specific Tangata Whenua provisions in the PDP.
- 2.2.4 A schedule of the attendances at each hearing is provided with each Panel Report. The hearings have been held in a ‘hybrid’ form, allowing persons to attend either in person, or virtually via Zoom.
- 2.2.5 All information provided to the Hearing Panel – prior to the hearings, during the hearings and following the hearings – has been made available publicly on the District Council’s Hearings Portal (<https://www.chbdc.govt.nz/services/district-plan/proposed-district-plan/hearings/>), as well as being held on record at the Central Hawke’s Bay District Council. The Zoom sessions were recorded, and written minutes of the hearings were also taken.

2.3 Tangata whenua

- 2.3.1 After the conclusion of Hearing Stream 1, at which the Panel heard submissions on the PDP provisions for the natural and coastal environment, it became apparent to the Panel that a different approach to hearing submissions from mana whenua was required, in part because the scope of relief being sought by some Tangata whenua submitters could not be readily addressed through the standard District Plan evaluation and hearing process and in part because the issues raised by Tangata whenua did not solely relate to the provisions contained in the Tangata Whenua sections of the PDP but related to a range of interrelated provisions across the PDP, making the hearing of all Tangata Whenua matters across the PDP complex.
- 2.3.2 Given this, following engagement between Tangata Whenua submitters and representatives of the Council, the Panel determined that a bespoke hearing process for these matters would be appropriate, one that could fully address the issues raised by Tangata Whenua while being consistent with the principles of natural justice. In particular, the Panel was concerned to ensure that all submitters with a particular interest in PDP provisions of concern to Tangata Whenua were fully informed and had an opportunity to be involved with the process.
- 2.3.3 A three-step process was thereby undertaken:
1. First, an initial hearing was held on 11 August 2022 where overarching issues and key concerns were discussed and matters to be addressed through a wānanga, run outside the hearing process, were identified;
 2. Second, a facilitated informal Wānanga was held with submitters on 5 and 6 September 2022 to discuss and work through issues identified during the preliminary hearing; and finally

3. Third, a final hearing was held on 14 November 2022, at which the outcomes of the wānanga were circulated and specific submission points were addressed through the s42 evaluation and through evidence and presentations to the Panel.
- 2.3.4 To support the first stage hearing held in August 2022, the reporting planner for the Tangata Whenua topic prepared a report in which:
- The submissions to be heard as part of this hearing stream were identified;
 - The issues raised were described in broad terms, including whether the relief sought by submitters were within the scope of the PDP to address, or may require a separate process to address outside the PDP process;
 - Further information the submitters could usefully provide in order to allow for understanding and assessment of the relief sought was identified, and
 - No assessment of the merits of the submission points was provided, nor any recommendations as to relief sought.
- 2.3.5 The purpose of this report was to outline the background to the development of the Tangata Whenua provisions in the PDP, and the nature of the submissions on these provisions, but not to make any recommendations at that time.
- 2.3.6 At the initial hearing on 10 August 2022, all submitters within the topic were invited to:
- Speak to their submission;
 - Provide any further information in response to the initial report and to provide any specific information as to how they see their submission being reflected in the PDP, and
 - Answer questions from the Panel as to their submission and to the draft process for the second stage hearing.
- 2.3.7 Following the initial hearing, a two-day Wānanga was held with all submitters invited to discuss how concerns of the submitters could be resolved and, where appropriate, be reflected through changes to the PDP. The Wānanga was held outside the PDP hearing process, and the Hearings Panel was not involved in any aspect other than to issue a minute following the initial hearing to guide submitters on which particular planning issues it would like to be addressed through the Wānanga process. The Panel directed that the discussion at the Wānanga was to focus on what changes to the PDP could be made to address the issues, and to record submitters' positions in relation to these matters. The Panel also directed that non-PDP matters be recorded separately for submitters and Council's information.
- 2.3.8 The Wānanga was facilitated by an external facilitator, Dave Milner from Kahui Environmental, and all submitters on the identified PDP provisions were invited to attend. A record was made of the agreement reached between some or all submitters, or of the narrowing of issues.
- 2.3.9 The second and final Tangata Whenua hearing was held on 14 November 2022. As with all other Hearings, a s42A Report was prepared by the reporting planner and circulated to all relevant submitters prior to the final Tangata Whenua hearing. The s42A evaluation took into account the record of agreement reached during the Wānanga, and made recommendations on all submission points seeking particular relief. Evidence and legal submissions were invited to be filed in advance in accordance with the usual timeframes.
- 2.3.10 Further detail on this process and its outcomes is provided in Panel Report 4A, Tangata Whenua, in which the Panel has evaluated the evidence and information provided to the Hearing and made

recommendations on the decisions on submission points. In that report, the Panel has also made a number of broader recommendations which require resolution outside the PDP process.

2.4 The Role of the Hearing Panel

- 2.4.1 The Hearings Panel has been delegated the task, under clause 8B, Schedule 1, RMA, of hearing submissions on the PDP, as well as requirements for designations that have been included in the PDP.
- 2.4.2 Under clause 10, the Panel is required to make recommendations to the Council as to decisions on the provisions and matters raised in submissions, including reasons for its decisions. The Panel may address submissions in groups, in a similar way to how the reporting officers have approached their assessments in the s 42A reports. The Panel is not required to give a decision that addresses each individual submission¹.
- 2.4.3 As is discussed further below, the Panel’s recommended decisions must include a further evaluation of the PDP under section 32AA RMA, and the Council will be required to have particular regard to that further evaluation when making its decision². The Panel may recommend consequential alterations necessary to the PDP arising from submissions³.
- 2.4.4 The Council is required to give its decisions on submissions on the PDP must be given no later than two years after notification of the PDP, which is 28 May 2023⁴.
- 2.4.5 The PDP also includes requirements for designations which have a different statutory test, and which the Panel need to consider under cl 9, Schedule 1, RMA. These requirements are set out in the Panel Report on HS7.

2.5 Statutory Requirements for Preparing a District Plan

- 2.5.1 The preparation of a district plan occurs within a complex statutory framework. Fortunately, there are a number of cases where the Environment Court has helpfully summarised the relevant tests; probably the most comprehensive is one set out by the Court in *Long Bay-Okura Great Park Society Inc v North Shore City Council*⁵ which has subsequently been updated in a series of cases to provide for progressive amendments to the RMA. The most recent guidance is provided in *Colonial Vineyard Ltd v Marlborough District Council*⁶, in 2014, and this is set out in full in Appendix A, with some updates to reflect changes to the RMA since then.
- 2.5.2 Council’s legal counsel usefully provided us with a more concise version of the fuller test that is set out in *Edens v Thames-Coromandel District Council*⁷, as follows:

A *An objective in a district plan is to be evaluated by the extent to which:*

1. *it is the most appropriate way to achieve the purpose of the Act (s 32(1)(a));*
and

¹ Schedule 1, cl 10(3) RMA

² Schedule 1, cl 10(4)(aaa) RMA

³ Schedule 1, cl 10(2)(b)(i) RMA

⁴ Schedule 1, cl 10(4)(a) RMA

⁵ Environment Court A078/08, 16 July 2008

⁶ ENV-2012-CHC-108, [2014] NZEnvC 55

⁷ [2020] NZEnvC 13

2. *it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s 72); and*
 3. *it is in accordance with the Council's functions under s 31 and the provisions of Part 2 (s 74(1)).*
- B. *A policy, rule, or other method in a district plan is to be evaluated by whether:*
1. *it is the most appropriate way to achieve the objectives of the plan (s 32(1)(b)) by*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives by identifying and assessing (quantitatively if practicable) the benefits and costs of the effects anticipated from its implementation together with the risk of acting or not acting if there is uncertain or insufficient information about the matter; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
 2. *it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s 72);*
 3. *it is in accordance with the Council's functions under s 31 and the provisions of Part 2 (s 74(1)); and*
 4. *(if a rule) it achieves the objectives and policies of the plan (s 76(1)(b))."*

2.6 Section 32 Evaluation

- 2.6.1 Council's legal counsel advised us at the commencement of the hearings that s32 "requires an evaluation report to be prepared which considers whether the objectives proposed are the most appropriate way to achieve the purpose of the RMA, and whether the other provisions – primarily policies and rules – are the most appropriate way to achieve the objectives." She advised that the latter requires:
- (a) identifying other reasonably practicable options for achieving the objectives; and
 - (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (c) summarising the reasons for deciding on the provisions.⁸
- 2.6.2 The s32 report must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal⁹.
- 2.6.3 The assessment of the efficiency and effectiveness of the provisions in achieving the objectives must:

⁸ s32(1)(b) RMA

⁹ s32(1)(c) RMA

- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- 2.6.4 When considering objectives under the s 32 test, every objective needs to be examined, but they cannot be looked at in isolation, because the objectives may have overlapping ways of achieving sustainable management of natural and physical resources - the purpose of the Act.¹⁰
- 2.6.5 As outlined above in paragraph 2.1.5, a number of s32 evaluation reports were released when the PDP was notified. They have been a useful resource for the Panel and submitters in understanding the rationale behind, and planning justification for, what has been proposed.
- 2.6.6 As submissions on particular aspects of the PDP are considered through hearing reports, officers are required to consider any alternative provisions put forward in the context of what s 32 requires, and when changes are recommended, a further assessment under s 32AA will be provided if the change is a material departure from what was notified. That same obligation to make a further assessment under s 32AA also applies to the Panel if it decides to recommend changes as a result of submissions which materially depart from the notified version. Through Minute #4, the Panel urged submitters to provide the hearings with a further assessment under s 32AA for any changes to the PDP they were seeking.
- 2.6.7 In addition to guidance provided by the Ministry for the Environment, there are a number of terms used in s 32 which the Courts have considered and provided further guidance on, as follows:
- (a) “Most appropriate”, this means the most “suitable” and does not require it to be the objective or method to be the most “superior”¹¹. This requires a value judgment.
 - (b) “Effectiveness” assesses the “contribution new provisions make towards achieving the objective, and how successful they are likely to be in solving the problem they were designed to address.”¹²
 - (c) “Efficiency” measures whether the provisions will be likely to achieve the objectives at the lowest total cost to all members of society, or achieves the highest net benefit to all of society. The assessment of efficiency under the RMA involves the inclusion of a broad range of costs and benefits, many intangible and non-monetary¹³. One measure of efficiency is where the purpose of the Act and the objectives of the plan can be met by a less restrictive regime, then that regime should be adopted.¹⁴
 - (d) “Benefits” or positive effect can be described as a consequence of an action (e.g., a plan provision) that enhances well-being within the context of the RMA, and includes monetary

¹⁰ Rational Transport Society Inc v New Zealand Transport Agency [2012] NZRMA 298 at [46]

¹¹ Rational Transport Society Inc v New Zealand Transport Agency [2012] NZRMA 298 at [45]

¹² Ministry for the Environment, ‘A Guide to Section 32 of the Resource Management Act 1991’, p18

¹³ Ministry for the Environment, ‘A Guide to Section 32 of the Resource Management Act 1991’, p18

¹⁴ Royal Forest and Bird Protection Soc of New Zealand Inc v Whakatane District Council [2017] NZEnvC 51 at [59] confirming Wakatipu Environment Society Inc v Queenstown Lakes District Council EnvC C153/04 at 56

and non-monetary benefits associated with environmental, economic, social and cultural effects.¹⁵

- (e) "Costs" or negative effect can be described as what society has to sacrifice to obtain a desired benefit and includes monetary and non-monetary costs associated with environmental, economic, social and cultural effects.¹⁶

2.7 The King Salmon Decision

- 2.7.1 In 2014, the Supreme Court issued its decision in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*¹⁷ (generally referred to as *King Salmon*), and this decision has had important ramifications for plan-making which the Panel have had to consider.
- 2.7.2 The first is the way, or the extent to which, it is appropriate to refer back to Part 2 of the RMA when making decisions as to the content of the PDP. Part 2 of the Act is sections 5 (the purpose of the Act), 6 (Matters of national importance), 7 (other matters) and 8 (Treaty of Waitangi).
- 2.7.3 The Supreme Court's decision essentially holds that where a higher order statutory planning document has interpreted what is required by Part 2 and made provisions to give effect to that, it is not necessary to go 'higher up the chain' and apply Part 2 directly. For instance, in relation to the Coastal Environment section, the New Zealand Coastal Policy Statement (NZCPS) has already considered, at a national level, what is required under Part 2 for the coastal resource and set this out through a series of policies. As a result, when considering appropriate objectives, policies and rules for the Coastal Environment section of the PDP, the Panel has not needed to separately consider what Part 2 requires, but only needs to consider whether the PDP provisions give effect to the NZCPS.
- 2.7.4 The Supreme Court held that this approach applies unless there is "invalidity, incomplete coverage or uncertainty of meaning" in the relevant higher order statutory planning documents. If one or more of these three caveats apply, reference to Part 2 may be justified and it may be appropriate to apply an "overall balancing exercise".
- 2.7.5 An important higher order planning document for the PDP is the Hawke's Bay Regional Policy Statement, which forms part of the Hawke's Bay Regional Resource Management Plan (RRMP). We were informed that the RRMP was prepared some time ago, prior to King Salmon, and prior to a number of national policy statements. Because of those factors, we have borne in mind that it is possible that one of the caveats – particularly incomplete coverage – might apply and recourse to Part 2 may be required. Plans that were prepared before King Salmon generally proceeded on a different understanding of how they would be applied, and therefore the language used may not have been as careful as it now needs to be.
- 2.7.6 This brings us to the second major implication of King Salmon, which is where a planning instrument – in that case, the NZCPS - uses directive terminology, that is to be strictly interpreted. In that case, the word "avoid" in relation to adverse effects on the coastal environment was considered a directive term that should be applied. If a proposal is going to have adverse effects which an objective or policy requires to be "avoided", as opposed to being remedied or mitigated, it will have

¹⁵ Summarised from Ministry for the Environment, 'A Guide to section 32 of the Resource Management Act 1991', p18 -20

¹⁶ Summarised from Ministry for the Environment, 'A Guide to section 32 of the Resource Management Act 1991', p18 -20

¹⁷ [2014] NZSC 38

a high chance of being declined, even if those effects can be mitigated, for instance by an environmental off-set being provided elsewhere.

- 2.7.7 As such, plan makers since King Salmon have needed to be more conscious about terminology used. Previously, it was assumed that Part 2 would apply to all resource consent assessments required under the plan, under the "overall broad judgment" approach. This meant that, while objectives and policies of a plan were a factor to be considered, a decision-maker would tend to make an overall judgement as to the merits of a particular proposal, sometimes, for instance, with reference to the social or economic benefits a proposal would have to an applicant, even if this was not expressed as an important factor within the plan.
- 2.7.8 As the RRMP was mostly prepared before King Salmon, it was not prepared with that focus, and therefore, it will not always be appropriate for the Panel to apply that policy statement without also considering Part 2.
- 2.7.9 The importance now placed on terminology, and the much-reduced ability to rely on an overall balancing exercise at resource consent stage, means that the Panel has had to be very aware of the wording they choose to employ when considering objectives and policies. King Salmon emphasises the importance of planning instruments as a reflection of the community's aspirations, and the specific words used will be critical in determining future applications under this plan.

2.8 Relevance of National Instruments

- 2.8.1 The emphasis placed by King Salmon on higher order planning documents is consistent with the RMA's requirement that a district plan must give effect to any national policy statement and New Zealand Coastal Policy Statement and a national planning standard¹⁸. Relevant documents for the PDP are the:
- (a) New Zealand Coastal Policy Statement 2010 (NZCPS);
 - (b) National Policy Statement for Freshwater Management 2020 (NPS-FM);
 - (c) National Policy Statement for Renewable Electricity Generation 2011 (NPS-REG);
 - (d) National Policy Statement on Electricity Transmission 2008 (NPS-ET), and
 - (e) National Planning Standards 2019 (Standards).
- 2.8.2 The Council's s42A reporting officers addressed the relevance and implication of the **national policy instruments** as they applied to the topics they addressed. Where there is a clear requirement to give effect to a higher order instrument, the Panel has been aware that this has limited the degree to which we can consider alternative forms of relief.
- 2.8.3 Council's legal counsel advised the Panel that the PDP did not need to give effect to the **National Policy Statement on Urban Development 2020** (NPS-UD), as this NPS applies to urban environments, which is defined in such a way as to exclude Central Hawke's Bay (although we were advised that the NPS-UD may still provide some useful guidance). We were also advised that Central Hawke's Bay is similarly not captured by the recent Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.
- 2.8.4 We were also advised at the beginning of the Hearing process that we were not required to consider or give effect to either the Draft **National Policy Statement on Highly Productive Land** (NPS-HPL) or the Draft **National Policy Statement for Indigenous Biodiversity** (NPS-IB), drafts of which were circulated in 2019 for public comment. This advice was based on the fact that the RMA

¹⁸ s75(3) RMA

- does not require us to consider, or give effect to, any draft NPS. We were advised that the Environment Court in *Mainpower NZ Limited v Hurunui District Council* held that, while draft national policy statements can be considered in the context of relevant matters, no weight should be given to them as they may yet change¹⁹.
- 2.8.5 Nevertheless, notwithstanding that strict legal position, we were advised through the opening legal submissions that the NPS-HPL was expected to come into effect in the first half of 2022, and was therefore likely to become operative part way through the hearings process. Based on the draft NPS-HPL, we were advised that the PDP is likely to be generally consistent with the direction under the NPS, which will seek to improve the way that highly productive land is managed under the RMA by recognising the full range of values and benefits associated with primary production, by maintaining the availability of highly productive land for primary production, and to protect it from inappropriate subdivision, use and development.
- 2.8.6 Consequently, the Government did release the NPS-HPL in September 2022, which came into effect on 17 October 2022, part way through the hearings on submissions to the PDP. By this point, the Panel had heard from submitters on five Hearing Stream topics, including the rural environment (HS3). In response, the Hearing Panel issued a Minute, directing the provision of legal advice on the implications of the NPS-HPL on the hearing process and decisions emanating from it. This advice was provided to the Panel through a memorandum (dated 9 November 2022) to Hearing Stream 6 from Council's RMA legal adviser, Ms Davidson.
- 2.8.7 Fortunately, we were advised that "the Council's approach of having regard to the draft NPS in its drafting has meant that there is a very high degree of consistency between the NPS-HPL and the PDP". Our evaluation of the NPS-HPL drew a similar conclusion, finding the PDP, strategically consistent with the NPS-HPL, in that the District's highly productive land is defined as Land Use Classifications 1 to 3, which is zoned as Rural Production, and with limitations imposed on subdivision and land use that is not consistent with enabling and protecting the land's primary production potential.
- 2.8.8 In terms of the specific provisions of the PDP, we were advised that our scope to amend the PDP to address any potential inconsistency with the NPS-HPL was confined by the scope of the relief sought by submitters. In other words, the Panel could only recommend an amendment to bring the PDP more in line with the NPS-HPL where a submission had sought such an amendment. In reviewing submissions, the Panel found only a small number of provisions, all relating to the management of land uses in the rural environment, that we recommend should be tightened in line with the NPS-HPL²⁰.
- 2.8.9 We note that the introduction of the NPS-HPL had important implications for considering a number of rezoning requests, which were heard in Hearing Stream 6, many of which affected land classified as LUC 1, 2 and 3. The Panel assessed the implications of the NPS-HPL for rezoning requests in Panel Report 6.
- 2.8.10 Our more detailed evaluation of the NPS-HPL implications for the PDP is provided in Panel Report 3A.
- 2.8.11 In the case of the **National Planning Standards**, the Panel was very aware that the way the PDP is structured is prescribed by this document, as well as much of the terminology used. For instance, where a term is defined in the Standards, the Council cannot amend the definition within the PDP, although it can provide a definition of a term that is a sub-category or have a narrower

¹⁹ [2011] NZEnvC 384 at [27]

²⁰ Reference which provisions in which report section

interpretation of a term defined in the Standards. The Standards also provide zone names which are mandatory to use and no different zone names can be used. For example, the National Planning Standards do not provide for a Coastal Settlement Zone, and thus the Council has had to use the nearest comparable zoning of Large-Lot Residential.

- 2.8.12 There are a number of National Environmental Standards (NES) that we have had to take into account, including (most relevantly) the:
- (a) National Environmental Standards for Plantation Forestry 2017 (NES-PF);
 - (b) National Environmental Standards for Telecommunications Facilities 2016 (NES-TF);
 - (c) National Environmental Standards for Electricity Transmission Activities 2009 (NES-ET); and
 - (d) National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011(NES-CS).
- 2.8.13 NES's generally provide a national set of planning rules for a particular activity. For instance, the NES-ETA provides a set of rules for transmission lines, conductors and ancillary equipment and activities within New Zealand's National Grid for transmitting electricity. Thus, each Council does not need to determine its own rules for activities covered by an NES unless an NES specifies otherwise.
- 2.8.14 Section 43B RMA sets out the requirements for whether rules can be more stringent or more lenient than what is provided for in the standard. This largely depends on how the NES is drafted, and its coverage. In particular, in Hearing Stream 1, the Panel had to consider the NESPF, and the extent to which it covers activities in SNAs. The s42A report set out the relevant aspects of the NESPF and how it relates to rules in the PDP, and this was carefully considered by the Panel following post-hearing dialogue between the Council's reporting officer and legal counsel and several submitters from the forestry sector.

2.9 Issues of Scope and Minor Errors

- 2.9.1 In considering the relief sought by submitters, the Panel has had to take into account matters of scope. We were advised that much of the case law has been on whether the relief sought by submitters on plan changes is "on" the plan change – that is, whether the relief sought is within the scope of the plan change to give effect to (for example, whether a submitter can lawfully seek to have additional land rezoned over and beyond that proposed in a plan change). We were advised that case law indicates that, for a full plan review such as the PDP, almost everything is open for challenge through the current submission process, provided the submission is sufficiently clear and the relief sought it is something that can properly be managed in a district plan under the RMA²¹.
- 2.9.2 In the High Court in *Countdown Properties (Northlands) Limited v Dunedin City Council* held that an amendment made to a proposed plan as notified must be "reasonably and fairly raised in submissions" on the proposed plan.²² This is to be approached "in a realistic and workable fashion, rather than from the perspective of legal nicety". Where the Panel has had some doubt as to the nature of the relief sought by a submitter (and often this was highlighted by the s42A report), we have sought clarification.
- 2.9.3 A bigger issue for the Panel in terms of scope has been where submissions have sought relief that is clearly outside the jurisdiction of the RMA – for instance, matters such as funding of infrastructure or seeing rates relief are not possible to implement through the PDP. However,

²¹ *Albany North Landowners v Auckland Council*, [2017] NZHC 138 at [129]

²² [1994] NZRMA 145 at 166

where we have considered there is a valid concern or potential action that the Council could pursue outside the RMA District Plan process, we have highlighted these in our reports.

- 2.9.4 Similarly, some matters, such as air discharges and wetland protection, are within the jurisdiction of the HBRC, and cannot be controlled under the PDP.
- 2.9.5 In terms of the correction of clear errors in the PDP, the Panel has the authority under clause 16(2) of Schedule 1 to direct either alterations that are of minor effect, or the correction of any minor errors. Usually, we have had such issues identified through the s42A reports, and thus have simply agreed that such changes are appropriate to make without formal recommendations from the Panel. However, we have been very cognisant of case law on the application of cl 16 corrections, and were grateful to Council's legal counsel for highlighting the case of *Re Christchurch City Council to us*²³. This case was a useful touchstone in considering proposed error corrections.

2.10 Panel's Approach to Evaluating Submissions and PDP Provisions

- 2.10.1 Section 32AA(1)(d)(ii) of the RMA enables our further evaluation of changes to the proposed Plan to be incorporated into our reports as part of the decision-making record. To this end, our evaluation of issues and associated amendments made to the provisions have been structured to satisfy the evaluation report requirements of section 32AA.
- 2.10.2 We have often referred to a set of provisions or a provision as being the 'most appropriate' - that is our shorthand for concluding the Plan changes tests set out at 3.3 above are met (including the relevant section 32 assessments).
- 2.10.3 Where we have made amendments to the PDP that are consistent with the recommendations contained within Council officers' section 42A and / or right-of-reply reports (and where there are relevant joint witness statements) we have adopted the section 32AA analysis contained within those reports (unless expressly stated otherwise). Those reports are part of the public record and are available on the CHBDC website.
- 2.10.4 Where we have made amendments to the PDP that are not contained within Council officers' recommendations, we have undertaken the required section 32AA analysis and have incorporated it into the body of our reports. Given the approach we have taken, there are no separate section 32AA headings or tables within or attached to our decision reports, instead the assessment forms part of our reasoning. While the specific language of section 32AA may not be used or referred to, we are satisfied that the required substantive assessment has been undertaken.
- 2.10.5 The approach we adopted in reporting on the submissions received and the subsequent hearing streams has been to focus on key issues in contention. Broadly, where contested matters have been resolved through the course of proceedings, or where particular matters / provisions were not in contention, we have generally adopted officers' recommendations in those instances. In doing so, our evaluation of those particular non-contentious matters / provisions is intentionally brief as it relies on the reasons for the officers' recommendations as recorded in the relevant section 42A report and / or right-of-reply. Those reports are part of the public record and are available on the CHBDC website.
- 2.10.6 There are some exceptions to this less extensive approach which we describe in the context of each topic decision where relevant.

²³ Re an Application by Christchurch City Council (1996) 2 ELRNZ 431

3. User Guide to Panel Reports

3.1.1 The evaluation of submissions and recommended decisions of the CHBD Plan Hearings Panel are presented in 25 reports as listed in the table below, organised according to the Hearing Stream topics that structured the hearing schedule. Our reports include the Panel’s recommended decisions on submissions and the reasons for those decisions and incorporate the requirements under s32AA as relevant.

Table 2 - Schedule of Hearing Panel Reports on the Proposed District Plan

HEARING STREAM	PANEL REPORTS
1. Natural & Coastal Environment	1A. Natural Features and Landscapes 1B. Ecosystems and Indigenous Biodiversity 1C. Coastal Environment, including Coastal Settlements 1D. Open Space & Recreation, Public Access, Activities on the Surface of Water
2. Urban Environment, Sustainability, & General District Wide Matters	2A. Urban Environment 2B. Strategic Direction – Sustainable Subdivision & Building 2C. Noise and Signs 2D. Light and Temporary Activities
3. Rural Environment	3A. Rural Environment: Strategic Direction & General Matters 3B. Rural Environment: Rural Zones, Rural Noise, Rural Subdivision 3C. Rural Environment: Rural Activities 3D. Rural Environment: Other Activities within the Rural Zones
4. Tangata Whenua & Historic Heritage	4A. Tangata Whenua 4B. Historic Heritage & Notable Trees
5. Hazards & Risks, Earthworks, & Subdivision	5A. Contaminated Land & Hazardous Substances 5B. Earthworks, Mining & Quarrying 5C. Natural Hazards and Climate Change 5D. Subdivision: General
6. Rezoning, Mapping & Miscellaneous	6A. Mapping and rezoning 6B. SNA Mapping 6C. Miscellaneous
7. Energy, Infrastructure, Transport & Designations	7A. Network Utilities 7B. Renewable Energy 7C. Transport 7D. Designations

3.1.2 At the end of each report, a tracked changes version of the relevant PDP provisions as they would be amended by the decisions, and a table outlining the recommended decisions on specific submission points.

3.2 Structure of Panel Reports

3.2.1 Given the number, nature and extent of the submissions and further submissions received, we have structured the Panel’s reports according to the key issues identified in the section 42A report, rather than present a submission point by submission point evaluation. Many of the submissions addressed the same or related issues and thus a key issue approach avoids undue repetition.

- 3.2.2 Within in each report, we structured our evaluation and recommended decisions on a hierarchical basis, firstly reviewing the overarching issues relating to the topic and those submissions that made general points about the topic, including those seeking a binary relief such as complete withdrawal of relevant plan provisions. This includes definitions.
- 3.2.3 We then turn our evaluation to the higher-level provisions of the PDP relating to the topic: the objectives and policies and associated matters.
- 3.2.4 We then turn to considering the associated rules and standards, and finally any associated supporting provisions.
- 3.2.5 Finally, we consider minor errors or consequential changes.

3.3 Marked-up Version of the Notified District Plan

- 3.3.1 The decisions include a marked-up version of the notified provisions, which shows the amendments made to the notified plan in ~~strike-through~~ and underline. Each amendment has a submission point reference(s) or a reference to 'cl.16' if the amendment has been made in accordance with Schedule 1, cl16(2) of the RMA. Schedule 1, cl16(2), allows minor and inconsequential amendments to be made to the Plan.
- 3.3.2 Amendments to the Schedules below are not marked up as in other sections of the plan as they are drawn from a different source. Any changes to Schedules are detailed in the decision report for the relevant section.
- 3.3.3 Some very minor cl16 changes such as typographical errors or missing punctuation have not been marked up with underline or strikethrough. More significant cl16 changes (such as where provisions have been moved) are explained using footnotes, and in some cases are also discussed in the decision.

3.4 Hearing Codes and Submission Point References

- 3.4.1 As part of the requirement of the RMA to summarise all original submissions, all submission points were given a submission point reference, these references started with 'S'. Further submissions were also summarised and given a submission point that started with 'FS'.
- 3.4.2 The submission points are made up of two numbers the first is the submitter number, which is followed by a full stop, the second part is the submission point number for that submitter. For example, S113.01 is the first submission point of submitter 113.
- 3.4.3 It should be noted that in some cases where several submitters sought a similar change, the submission point reference may not include all of these submission points but rather include only one or say, for instance, "S59.07 and others".

3.5 Master Summary Table of all Decisions

- 3.5.1 In addition to the summary table at the end of each decision report there is a master summary table that lists all decisions on provisions (Plan text), across all hearing topics, including details of the section(s) of the decision report in which that decision is discussed, and the relevant section(s) of the s42A reports. The s42A report sections will be helpful for appellants needing to identify which other parties have submitted on that provision, as notices of the appeal must be served on every person who made a submission on the provision or matter to which the appeal relates. The master summary table of decisions can be found on the decisions webpage of the PDP website (<https://www.chbdc.govt.nz/services/district-plan/proposed-district-plan/decisions>).

3.6 Terminology in the Reports

3.6.1 Throughout this report, we use the following abbreviations:

Term	Acronym/Abbreviation
Biosecurity Act 1993	Biosecurity Act
Construction Environmental Management Plan	CEMP
Central Hawkes Bay District Council	CHBDC
Central Hawkes Bay District	CHBD
Central Hawke's Bay Three Towns' Integrated Spatial Plan	ISP
Conservation Act 1987	Conservation Act
Crown Minerals Act 1991	Crown Minerals Act
Earthworks	EW
Environment Act 1986	Environment Act
Fire and Emergency New Zealand Act 2017	FENZ Act
Hazardous Substances and New Organisms Act 1996	HSNO
Hawke's Bay Regional Coastal Environment Plan (2014)	HBRCP
Hawkes Bay Regional Council	HBRC
Hawke's Bay Regional Land Transport Plan	RLTP
Hawkes Bay Regional Plan	HBRP
Hawke's Bay Regional Resource Management Plan	HBRMP
Health & Safety at Work Act 2015	HSW Act
Heritage New Zealand Pouhere Taonga Act 2014	HNZPT Act
High Natural Character	HNC
High Natural Character Area	HNCA
Land Use Class	LUC
Large Lot Residential Zone	LLRZ
Māori Affairs Amendment Act 1967	MAAA
Mean High Water Springs	MHWS
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011	NES-CS
National Environmental Standards for Electricity Transmission Activities 2009	NES-ET
National Environmental Standards for Freshwater 2020	NES-FW
National Environmental Standards for Plantation Forestry 2017	NES-PF
National Environmental Standards for Telecommunications Facilities 2016	NES-TF
National Planning Standards 2019	NPS
National Policy Statement for Indigenous Biodiversity (Draft)	NPS-IB
National Policy Statement for Freshwater Management 2020	NPS-FM

National Policy Statement on Highly Productive Land	NPS-HPL
National Policy Statement for Renewable Electricity Generation 2011	NPS-REG
National Policy Statement on Electricity Transmission 2008	NPS-ET
National Policy Statement on Urban Development 2020	NPS-UD
Network Utilities	NU
New Zealand Coastal Policy Statement 2010	NZCPS
New Zealand Fire Service Firefighting Water Supplies Code of Practice	Water Supplies Code of Practice
Ngāti Kahungunu Iwi Incorporated	NKII
Notice of Requirement	NoR
One Network Framework	ONF
One Network Road Classification	ONRC
Operative District Plan	ODP
Outstanding Natural Features and Landscape	ONFL
Outstanding Natural Landscape	ONL
Outstanding Natural Feature	ONF
Papakāinga and Kaumātua Housing, and Associated Marae-based Development	PKH
Proposed District Plan	PDP
Public Works Act 1981	PWA
Regional Coastal Environment Plan	RCEP
Regional Policy Statement	RPS
Regional Resource Management Plan	RRMP
Reserves Act 1977	Reserves Act
Resource Management Act 1994	RMA
Ruataniwha Water Storage Scheme	RWSS
Significant Amenity Feature	SAF
Significant Amenity Landscape	SAL
Significant Natural Area	SNA
Sites and Areas of Significance to Māori	SASM
Temporary Military Training Activities	TMTA
Te Ture Whenua Māori Act 1993	TTWMA
Transport	TRAN

3.6.2 Abbreviations of submitter names are included in the table at the beginning of each report.

4. Other Matters

4.1 Unnecessarily Wide Further Submissions

- 4.1.1 Further submission FS9 from the Royal Forest and Bird Protection Society (Forest & Bird) included blanket opposition to all of the submissions from Federated Farmers and Powerco Limited for the reason that “the amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.” This reasoning was despite the fact that many of the submission points being opposed had little or no relevance to the management of indigenous biodiversity in the District.
- 4.1.2 The Panel found that this ‘blanket’ form of opposition created unnecessary complexity to the evaluation and hearing processes, creating additional work for both those evaluating submission points and in making recommendations on those submission points. Many of the points made in the submissions from Federated Farmers and Powerco had little or no relationship to indigenous biodiversity or matters in the RPS, NZCPS or NPSFM, and there was little or no explanation for the opposition by Forest & Bird to many of the submission points.
- 4.1.3 Significantly for the Hearing Panel, many of the points opposed by Forest & Bird were not followed through in terms of the evidence before us. Accordingly, we could provide little or no weight to the further submission by Forest & Bird on many of the matters caught up by its blanket position.
- 4.1.4 We found this approach to making further submissions ultimately unhelpful and we would recommend to all potential submitters to avoid such blanket approaches to making further submissions in other plan-making processes.

4.2 Conflicts of interest

- 4.2.1 Throughout the Hearing process, the Hearing Panel maintained a register of interests for each Panel member to provide transparency about any actual or potential interests that they may have with any of the submitters. This register was kept ‘live’ during the process in case new interests became apparent during the course of the hearings. The declarations of interests for each Panel member were available online in the Hearings Portal.
- 4.2.2 For the majority of interests identified, the interest was recorded and no further action was required. Two identified interests required two Commissioners to recuse themselves as follows:
- (a) Commissioner Tim Aitken recused himself from hearing and deliberating on the submission from the Central Hawke's Bay Aero Club (S80), as he is a member of that club and a good friend with the club's principal representative at the hearings.
 - (b) Commissioner Robert Schofield recused himself from hearing and deliberating on the submission from Transpower (S79/FS18), for which he is actively engaged on a range of projects around New Zealand, although none are in Central Hawke's Bay.
- 4.2.3 It should be noted that Commissioner Schofield had initially recused himself from hearing and deliberating on the submission from Ara Poutama Aotearoa Department of Corrections (S97/FS20), but that submitter withdrew from the hearing process.

4.3 Panel Quorum

- 4.3.1 The Council's Terms of Reference for the Hearing Panel required that a quorum of at least four Panel members shall be at any meeting, with the casting vote to be with the Chair.
- 4.3.2 This is to record that a quorum of at least four members was maintained throughout all hearings, whether for hearings or for deliberations. The Chair was not required to use his casting vote for any of the deliberations.
- 4.3.3 The Panel would like to acknowledge and thank Dr Roger Maaka for his contribution as a Hearing Commissioner to the Hearing Process in the first half of 2022. While Dr Maaka was unable to continue to be on the Panel from June onwards, he was available to the Panel in regard to matters of tikanga. Ngā mihi maioha e te Rangatira.

4.4 Wider Recommendations

- 4.4.1 During the course of the hearings, a number of matters were raised by submitters where the relief they sought could not be given within the scope of the PDP process. Such situations occurred where, for example –
- Engagement between parties and, in some instances, negotiations were required before matters could be included in a future plan change;
 - Further investigations, surveys or other information gathering processes would be required, needing resourcing and programming into Council's other planning processes;
 - New provisions would be needed to be developed, requiring research, consultation and careful analysis as required under the RMA (section 32);
 - The relief could not be met by introducing provisions in the PDP but through other statutory processes (for example, rates' relief, bylaws, road controlling authorities), and
 - Other methods would be required to be used that would not form part of the PDP, such as new information layers in the Council's GIS system.
- 4.4.2 While such matters were outside our ability to address through our recommendations on the PDP provisions, they were nevertheless a number of valid and valuable points that the Panel believed should be raised for consideration by the Council in some manner. Importantly, the Panel did not want these points to be lost or overlooked among the myriad of detailed decisions, particularly where such actions were likely to lead to improvements in the long-term effectiveness of the Plan in managing the District's environment.
- 4.4.3 We discuss the matters below.

Tangata whenua/Mana whenua

- 4.4.4 Tangata whenua submitters all sought engagement and relationships with Council which will require time and effort to develop. Mana Whakahono a Rohe arrangements are possible and promoted under the RMA, but, in addition to or as part of such arrangements, Tangata Whenua sought acknowledgement of their tikanga and waahi tapu, their aspirations (environmental and economic), and the reduction of barriers to their development of their resources and their full participation in the District's economy.

Tangata whenua environmental aspirations

- 4.4.5 During the hearings, Tangata Whenua sought to ensure that their tikanga with respect to te Taiao was acknowledged and included in the PDP. A core tenet of their submissions was the provision for Te Mana o te Wai within the PDP: it was submitted that the Wai is a tipuna and has mana that must be protected.
- 4.4.6 It was also clearly stated that the definition of Te Mana o te Wai sat with Tangata Whenua of the District and was not for parties external to the District to determine or impose. That mahi would be developed as part of the broader work that Tangata Whenua would undertake with Council together with the assessment of whether the District and Councils were meeting or giving effect to Te Mana o te Wai as expected under the NPS-FM.

Recommendation

The Panel recommends that the Council considers developing a Mana Whakahono a Rohe for Tamatea to establish an enduring relationship framework for the Council and tangata whenua under the RMA.

The Panel acknowledges the desire of Tangata Whenua to ensure that Te Taiao is protected within the CHBD. While the administration of planning rules with respect to Te Mana o te Wai under the NPSFM is largely a regional council responsibility, there is still a need for the CHBDC to build its understanding of how its management of land use and development affects the District's water resources and environment. We therefore recommend that, as part of its long-term engagement with Tangata Whenua, the Council support them in articulating their aspirations for Te Taiao and for Te Mana o te Wai.

We note that this mahi will draw on both Tangata Whenua time and resources and we suggest the Council support Tangata Whenua to meet those costs in some manner. We understand that costs could be shared with both central government and regional council for that purpose.

Providing for Māori development aspirations

- 4.4.7 Tangata whenua submitters identified the historic and ongoing systemic disadvantage that Māori landowners face in the development of their land, including for the housing of their people. Those barriers still remain and are reflected in planning processes such as the requirement that they pay development contributions or that they lose more of their all too scarce whenua to create public reserves to facilitate consents in relation to papakāinga.
- 4.4.8 Submitters observed that they did not wish to transfer their land (including land received through Treaty settlement) to Māori Freehold title, and to have the oversight of the Māori Land Court – oversight that non-Māori were not required to defer to with respect to their land. They noted that for them this form of land ownership was a trap for generations of homeowners who could not then receive the full capital value of their investment to build their future, capital value which again non-Māori neighbours could gain and utilise in full.
- 4.4.9 They therefore did not support aspects of the PDP which reinforced these barriers, both within and outside the PDP.
- 4.4.10 One District Plan tool for supporting the aspirations of tangata whenua that could be considered in future was establishing a Māori Purpose Zone for appropriate areas within the District. Under the

National Planning Standards, a Māori Purpose Zone may be used to manage and support development in areas used predominantly for a range of activities that specifically meet Māori cultural needs, including but not limited to residential and commercial activities. This zoning was not contained within the PDP, but its potential for future use to support tangata whenua development aspirations was raised during hearings.

Recommendation:

The Panel recommends that Council work with tangata whenua to remove barriers within its planning processes to enable Tangata Whenua to effectively participate within the District, and to provide mechanisms to advocate and partner with Tangata Whenua to co-design policy and solutions that benefit hapū and marae (the Tamatea Housing Taskforce being a good example).

In the long term, the Panel recommend the Council consider developing in partnership with tangata whenua a Māori Purpose Zone in the future.

Cultural heritage and landscape overlays

- 4.4.11 The Panel heard multiple submitters highlight the importance of having the CHBDC work with Tangata Whenua to identify, map and protect and map Sites and Areas of Significance to Māori (SASM) more comprehensively than is currently possible under the PDP. This work would benefit both Tangata Whenua wishing to protect and secure access to such sites and landowners who wish to have certainty and to be able to understand what and where these sites are to ensure that they are not damaged when undertaking their daily activities.
- 4.4.12 While the current mapping of SASMs is less than ideal, we have not recommended removing the existing information because of its poor quality/accuracy (many have been retained on the ODP for 20 years or more) or because of the omission of many other sites. Some information is better than no information. However, the Panel recognises that there will be many SASMs not currently recorded that could be damaged unintentionally. The difficulty is that the full investigation and identification of SASMs in the District would be a lengthy process, with the Council working closely with Tangata Whenua and landowner's over long period. Implementation would be an ongoing process for CHBDC and Tangata Whenua to progress.
- 4.4.13 One suggestion by a submitter was to establish a GIS overlay that sat outside the formal District Plan to record areas of interest (including a potential section for silent files) be developed. This method could be achieved by identifying areas or particular landscapes in which there is a known or strong possibility of containing SASM. The reporting planner for the Tangata Whenua provisions suggested a coastal overlay and another for key inland areas could be possible. Any subdivision or land development within such areas would trigger consideration of any likely sites that may be adversely affected.
- 4.4.14 On this issue, HNZPT representative Annemarie Gillies submitted that there was a need for more alignment with sites (both historic heritage and SASM) between HNZPT and CHBDC. It is possible that as with the HNZPT classifications it might be possible to further refine and categorise SASM as further information comes to hand, enabling better protection and clarity when required: for example, old battle fields with no visual or physical remnants, versus an urupā or historic trees.

Recommendations

Council has the opportunity to lead the process of bringing tangata whenua and landowners together to ground truth SASMs and develop a more comprehensive and robust information base to enable their recognition and protection. It will be critical to enable landowners as partners in the process, providing clarity and certainty for them of their responsibilities. Enabling iwi to protect their wāhi tapu and history would foster the Council's Treaty partnership, and further Māori engagement under Tūhono mai tūhono ātu. The Panel recommends that Council pursue this work as part of its workplans after the PDP, reporting to the appropriate Council Committee.

Again, submitters noted the cost in time and resources of participating both in the identification of SASM and in writing and developing cultural assessments. Council has the opportunity to work with Tangata Whenua to support them to develop capacity and resources to enable them to more effectively and meaningfully participate in the identification and protection of wāhi tapu.

Significant Natural Areas

- 4.4.15 The Hearing Panel considered that many of the submissions from landowners with SNAs identified on their property indicated a general lack of awareness about the implications of the provisions of the PDP for land use activities. For example, many ongoing farm operations could continue to occur within identified SNAs under either existing use rights or the permitted activity standards of the PDP for SNAs. Submitters sought to understand what they were allowed to and the reasons for any limitations.
- 4.4.16 One of the policies of the PDP is to promote awareness and understanding about SNAs (ECO-P8) for landowners who were unclear about what the PDP provisions were and their impact upon their activities in SNAs. We support the development of educational material to help landowners to understand and confidently use and manage their land to SNAs appropriately under the regulatory framework of the PDP. Such information could also refer to any incentives to support the protection of SNAs: for example, the Government is working on developing incentive schemes to support the proposed NPS-IB.
- 4.4.17 Some submitters sought to have the CHBDC consider rates relief of some form on land that has indigenous flora and fauna protected by SNAs, similar to that offered for land under QEII National Trust covenants. While this relief is clearly outside the scope of the PDP to give effect, we consider that Council should include this as part of its future investigations. SNA landowners face similar requirements to those with QEII covenants and would benefit from similar relief. This might also incentivise some to move towards extending protected flora and fauna to further land holdings adjacent to existing SNAs.
- 4.4.18 The Panel considered it important that the Council look towards maintaining the database that was developed to support the policies and provisions of the PDP on SNAs in the District. Where new information is received such as through resource consent applications for example, the database should be updated. In particular, the Panel is aware of the limitations that the minimum threshold of 0.5 ha that was used for mapping SNAs has for ensuring small pockets of indigenous biodiversity are appropriately recognised and protected.

Recommendations

The Panel recommends that Council develop educational material and engage with landowners with SNAs both to effectively inform them of their responsibilities under the PDP and the activities they can continue to undertake without consent. We also

recommend that Council investigate options to incentivise landowners to undertake further activities on their land intended to both protect and extend flora and fauna within existing SNAs and new ones: this could include rates relief.

The Panel recommends that the Council should look towards improving its mapping database over time as further information comes to hand. In particular, the Council should seek to maintain a record of areas of Significant Natural Areas that were too small to meet the 0.5ha threshold for mapping SNAs.

Other issues

- 4.4.19 The Panel received a number of other suggestions that, although falling outside the PDP to apply, were considered sufficiently worthwhile to record for the Council to consider as appropriate:

Contractor Training

- 4.4.20 The Panel heard from a Tangata Whenua submitter who suggested that, as one method for protecting SASM's, Council should employ earthworks contractors who have had sufficient training or a certain level of competency in recognising potential SASM. This could be built into the Council's procurement strategies, just like employing locals.

Building Relocation

- 4.4.21 The Panel heard from the NZ Heavy Haulage Association (NZHAA) who submitted on the proposed standards for relocated buildings in the District. The PDP is recommended to include performance standards to ensure relocated buildings are appropriately reinstated within a specified timeframe. This method is to address issues that the Council has historically had with poorly reinstated relocated buildings. We were informed by the representative from the NZHAA that such poor examples would have been by contractors who were not members of the Association, and that "the minority ruins it for the rest". The NZHAA suggested the use of reinstatement report templates as an alternative to complying with the performance standards.

Township Boundaries

- 4.4.22 The Hearing Panel has recommended rejecting the submission that sought to rezone part of Tikokino from Rural to Settlement as sought by the Surveying Company in Hearing 6. The part of Tikokino that was sought to be rezoned was a 'paper' part of the township, in that the original subdivision of the township is still shown on the property titles although the land is used for farming and is physically not part of the township itself. While the Panel has recommended rejecting this submission (primarily due to the productive nature of the land as well as the absence of wider consultation about the possible rezoning), we did see some logic in better recognising the original town boundaries in the PDP: currently the town boundaries as indicated by the Settlement Zone include paddocks as well as residences. In any future growth or community planning exercise, the Panel saw merit in revisiting the township boundaries.

Appendix A – Plan Preparation Checklist

Adapted checklist from [Colonial Vineyard Ltd v Marlborough District Council](#) [2014] NZEnvC 55 and incorporating recent amendments to the RMA as applicable to the PDP.

A. General requirements

1. A territorial authority must prepare and change its district plan in accordance with²⁴ — and assist the territorial authority to carry out²⁵ — its functions²⁶ so as to achieve the purpose of the Act.²⁷
2. The district plan must also be prepared in accordance with any national policy statement, New Zealand coastal policy statement, a national²⁸ planning standard, regulation(s)²⁹ and any direction given by the Minister for the Environment.³⁰
3. When preparing its district plan (change) the territorial authority must give effect to³¹ any national policy statement and New Zealand Coastal Policy Statement and a national planning standard.
4. When preparing its district plan the territorial authority shall:
 - (a) have regard to any proposed regional policy statement;³²
 - (b) give effect to any operative regional policy statement.³³
5. When preparing its district plan the territorial authority must also:
 - (a) have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the *Heritage List/Rarangi Korero* and to various fisheries regulations³⁴ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities;³⁵
 - (b) take into account any relevant planning document recognised by an iwi authority;³⁶ and
 - (c) not have regard to trade competition or the effects of trade competition.³⁷
6. The formal requirement that a district plan must also state its objectives, policies and the rules (if any)³⁸ and may state other matters.³⁹

B. Objectives [the section 32 test for objectives]

7. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.⁴⁰

²⁴ Section 74(1) RMA

²⁵ Section 72 RMA

²⁶ Section 31 RMA

²⁷ Section 72 and 74(1) RMA

²⁸ Section 74(1)(ea) RMA

²⁹ Section 74(1)(f) RMA

³⁰ Section 74(1)(f) RMA

³¹ Section 75(3) RMA.

³² Section 74(2)(a)(i) RMA

³³ Section 75(3)(c) RMA

³⁴ Section 74(2)(b) RMA

³⁵ Section 74(2)(c) RMA

³⁶ Section 74(2A) RMA

³⁷ Section 74(3) RMA

³⁸ Section 74(2)(c) RMA

³⁹ Section 74(2A) RMA

⁴⁰ Section 74(3) RMA.

C. Policies and methods (including rules) [the section 32 test for policies and rules]

8. The policies are to implement the objectives, and the rules (if any) are to implement the policies;⁴¹
9. Each proposed policy or method (including each rule) is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan by:⁴²
 - Identifying other reasonably practicable options for achieving the objectives;⁴³ and
 - Assessing the efficiency and effectiveness of the provisions in achieving the objectives by;⁴⁴
 - Identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed policies and methods (including rules), including the opportunities for:
 - (i) economic growth that are anticipated to be provided or reduced;⁴⁵ and
 - (ii) employment that are anticipated to be provided or reduced.⁴⁶
 - If practicable, quantify the benefits in costs referred to above.⁴⁷
 - Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods;⁴⁸
 - Summarising the reasons for deciding on the provisions;⁴⁹
 - If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.⁵⁰

D. Rules

10. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.⁵¹
11. Rules have the force of regulations.⁵²

⁴¹ Section 75(1) RMA.

⁴² Section 75(2) RMA

⁴³ Section 74(1) and 32(1)(a) RMA

⁴⁴ Section 75(1)(b) and (c) RMA

⁴⁵ Section 32(1)(b) RMA.

⁴⁶ Section 32(1)(b)(i) RMA

⁴⁷ Section 32(1)(b)(ii) RMA

⁴⁸ Section 32(2)(a)(i)

⁴⁹ Section 32(2)(a)(ii) RMA

⁵⁰ Section 32(2)(b) RMA.

⁵¹ Section 32(2)(c) RMA

⁵² Section 32(1)(b)(iii) RMA

12. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004.⁵³
13. There are special provisions for rules about contaminated land.⁵⁴
14. There must be no blanket rules about felling trees in any urban environment.⁵⁵

E. Other statutes:

15. Finally territorial authorities may be required to comply with other statutes.

⁵³ Section 32(4) RMA

⁵⁴ Section 76(3) RMA

⁵⁵ Section 6(2) RMA