

**Bay of Plenty Regional Council**

**Gap Analysis of Regional Coastal Environmental Plan  
against the NZCPS 2010**

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Table 1: Extent to which the RCEP gives effect to the NZCPS

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## **Executive Summary**

The Bay of Plenty Regional Council has commissioned a review of the Regional Coastal Environment Plan (RCEP) against the requirements of the NZ Coastal Policy Statement 2010 (NZCPS). The review concludes that the RCEP gives effect to the NZCPS in part and a range of new and amended policy provisions are required to give full effect to it. There is also an opportunity to make the RCEP more user friendly by re-ordering its chapters to better align with the NZCPS and removing provisions that are no longer required under s67(1) of the Resource Management Act 1991 (RMA).

Of fundamental importance is the need to identify and map the landward extent of the coastal environment.

A range of RCEP amendments are required to recognise and enable appropriate use and development, particularly that associated with energy generation and transmission, aquaculture, ports, walking access and vehicle access. On the other hand, the existing RCEP provisions that seek to control use and development; or avoid, remedy or mitigate the effects of use and development; generally require less extensive amendment.

Some further identification and mapping of specific management areas is required, including areas of outstanding and high natural character and indigenous biological diversity preservation and protection areas. New or amended policy is also required in relation to those areas.

## 1 Introduction

The recent gazettal of the NZ Coastal Policy Statement 2010 (NZCPS) has prompted the Bay of Plenty Regional Council (Council) to commission a review of the Operative Regional Coastal Environment Plan (RCEP) against the requirements of the NZCPS. In that regard s55 of the RMA requires local authorities to amend plans to give effect to any provision in the NZCPS that affects those documents as soon as practicable.

This review is not a full review of the RCEP. It is a gap analysis which identifies whether the RCEP gives effect to the NZCPS. In particular the review addresses:

- The objectives and policies<sup>1</sup> of the RCEP that guide decision-makers and any provisions that no longer give effect to the NZCPS, as well as any new provisions that may be required to give effect to the NZCPS.
- the structure and form of the RCEP.
- whether the existing chapters of the RCEP remain relevant and necessary and whether any new chapters are required.
- the data presented on the planning map overlays and whether any amendments or new information is required to better align with NZCPS requirements.
- any RPS provisions necessary to direct the RCEP.

## 2 The Objectives and Policies of the NZCPS

The objectives and policies of the RCEP are evaluated in the pages that follow. The format used is to repeat each NZCPS provision and then identify and evaluate the relevant provisions of the RCEP<sup>2</sup>. Not all of the RCEP objectives and policies have been evaluated as some of them (such as those relating to noise and hazardous substances) deal with matters which are not the subject of objectives or policies in the NZCPS. This does not mean that those provisions should be removed from the RCEP as they serve a useful resource management purpose, merely that they are not required by the NZCPS.

The need for any RCEP policy amendments is identified, but no attempt is made to draft the actual provisions as that would go beyond the brief for this review.

Table 1 below lists the NZCPS provisions and summarises the extent to which the RCEP gives effect to those provisions.

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<sup>1</sup> The rules are not examined in detail as the nature of the Plan is that the content of the rules is foreshadowed in the policies contained in Part II and Part III of the Plan.

<sup>2</sup> The evaluation for each NZCPS objective and policy is set out after the NZCPS wording, other than for NZCPS Policy 6 which is a long policy covering a wide range of matters related to activities in the coastal environment.

**Table 1: Extent to which the RCEP gives effect to the NZCPS**

NZCPS Policy		RCEP gives effects to the NZCPS provisions		
No	Title	Fully <sup>3</sup>	Partly	Not at all
1	Extent and characteristics of the coastal environment			✓
2	The Treaty of Waitangi, tangata whenua and Māori heritage		✓	
3	Precautionary approach		✓	
4	Integration	✓		
5	Land or waters managed or held under other Acts		✓	
6	Activities in the coastal environment		✓	
7	Strategic planning	✓		
8	Aquaculture			✓
9	Ports		✓	
10	Reclamation and de-reclamation		✓	
11	Indigenous biological diversity (biodiversity)		✓	
12	Harmful aquatic organisms		✓	
13	Preservation of natural character		✓	
14	Restoration of natural character		✓	
15	Natural features and natural landscapes		✓	
16	Surf breaks of national significance	Not applicable		
17	Historic heritage identification and protection		✓	
18	Public open space			✓
19	Walking Access		✓	
20	Vehicle access		✓	
21	Enhancement of water quality		✓	
22	Sedimentation	✓		
23	Discharge of contaminants		✓	
24	Identification of coastal hazards	✓		
25	Subdivision, use and development in areas of coastal hazard risk		✓	
26	Natural defences against coastal hazards		✓	
27	Strategies for protecting significant existing development from coastal hazard		✓	
28	Monitoring and reviewing the effectiveness of the NZCPS	Not applicable		
29	Restricted Coastal Activities	✓		

<sup>3</sup> In some cases the NZCPS provisions are given effect to by the RPS or the Regional Water and Land Plan.

### **NZCPS Objective 1**

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and
- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.

### **Evaluation**

See the discussion of NZCPS Policies 13, 14, 21 and 23.

### **NZCPS Objective 2**

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

- recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;
- identifying those areas where various forms of subdivision, use and development would be inappropriate and protecting them from such activities; and
- encouraging restoration of the coastal environment.

### **Evaluation**

See the discussion of NZCPS Policies 13, 14 and 15.

### **NZCPS Objective 3**

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

- recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;
- promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;
- incorporating mātauranga Māori into sustainable management practices; and
- recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

### **Evaluation**

See the discussion of NZCPS Policy 2.

### **NZCPS Objective 4**

To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:

- recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy;

- maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and
- recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.

## **Evaluation**

See the discussion of NZCPS Policy 18 on “public open space”.

The NZCPS does not have a specific Policy titled “recreation”, though references to recreation are scattered throughout the document.<sup>4</sup> The RCEP deals specifically with recreation in Chapter 19. Those provisions give effect to NZCPS Objective 4 and Policy 6(2)(b). Other parts of the RCEP deal with the remaining NZCPS recreational issues insofar as they relate to public open space, public access, vehicles on beaches and recreational boating sewage. The adequacy of those RCEP provisions is discussed elsewhere in this report.

### **NZCPS Objective 5**

To ensure that coastal hazard risks taking account of climate change, are managed by:

- locating new development away from areas prone to such risks;
- considering responses, including managed retreat, for existing development in this situation; and
- protecting or restoring natural defences to coastal hazards.

## **Evaluation**

See the discussion of NZCPS Policies 24, 25 and 26.

### **NZCPS Objective 6**

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;
- functionally some uses and developments can only be located on the coast or in the coastal marine area;
- the coastal environment contains renewable energy resources of significant value;
- the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;
- the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;
- the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected;
- historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.

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<sup>4</sup> NZCPS Objective 4, Policy 6(2)(b), 11(b)(iv), 18, 19(2)(c)(ii), 20(1)(f), 20(3), 21 and 23(5)(d).

## Evaluation

This NZCPS Objective is expanded upon in several of the NZCPS policies that follow. See the discussion on Policy 6 in particular.

### NZCPS Objective 7

To ensure that management of the coastal environment recognises and provides for New Zealand's international obligations regarding the coastal environment, including the coastal marine area.

## Evaluation

This NZCPS Objective is directed at central Government and is therefore not relevant to this review.

### NZCPS Policy 1 Extent and characteristics of the coastal environment

- (1) Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.
- (2) Recognise that the coastal environment includes:
  - (a) the coastal marine area;
  - (b) islands within the coastal marine area;
  - (c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;
  - (d) areas at risk from coastal hazards;
  - (e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;
  - (f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;
  - (g) items of cultural and historic heritage in the coastal marine area or on the coast;
  - (h) inter-related coastal marine and terrestrial systems, including the intertidal zone; and
  - (i) physical resources and built facilities, including infrastructure, that have modified the coastal environment.

## Evaluation

The RCEP does not give effect to NZCPS Policy 1.

This conclusion may seem odd given that the RCEP clearly applies to the “coastal environment”<sup>5</sup> and the RCEP first addresses the “coastal environment” in section 2.1.1<sup>6</sup>. However, the RCEP does not define the “coastal environment”, deferring instead to a case-by-case assessment on the ground. Section 2.1.3<sup>7</sup> then lists some “important values and issues” within the “coastal environment”. Some of these (such as natural character and landscapes) are referenced in NZCPS Policy 1, but the remainder are not. The majority of NZCPS Policy 1(2) elements of the “coastal environment” are not mentioned in the RCEP. To be clear, this means that some of the ‘important values and issues’ in the RCEP identify matters other than those listed in NZCPS Policy 1, and the RCEP does not address other elements listed in NZCPS Policy 1.

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<sup>5</sup> Section 2.1.3 on page 6

<sup>6</sup> Page 5

<sup>7</sup> Page 5

It is recommended that the “coastal environment” within the region be identified and mapped in Volume 2 of the RCEP. The elements listed in NZCPS Policy 1(2) should be used as a checklist to define and map the “coastal environment”.

### **NZCPS Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage**

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

- (a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;
- (b) involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;
- (c) with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;
- (d) provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;
- (e) take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and
  - i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and
  - ii) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans; and
- (f) provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:
  - i) bringing cultural understanding to monitoring of natural resources;
  - ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;
  - iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaitai or other non commercial Māori customary fishing; and
- (g) in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:
  - i) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and
  - ii) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

### **Evaluation**

The RCEP partly gives effect to NZCPS Policy 2.

NZCPS Policy 2 is a mix of process and outcome matters. In terms of providing useful guidance to plan users (including decision-makers) the RCEP provisions need only address the following NZCPS Policy 2 outcome matters:

- (a) – recognition of tangata whenua relationships with the coast
- (c) – mātauranga Māori
- (e) – iwi resource management plans
- (f) – kaitiakitanga
- (g)(ii) – identification of areas or sites of significance to Māori

The remaining elements of NZCPS Policy 2 are process matters germane to plan development, consent processing or environmental monitoring.

Chapter 8<sup>8</sup> of the RCEP deals with “tangata whenua interests” but it does not address all of the matters listed in NZCPS Policy 2. The Chapter 8 provisions give effect to NZCPS Policy 2(a)<sup>9</sup>, 2(f)<sup>10</sup> and 2(g)(ii)<sup>11</sup>. Additional RCEP policy is required to give effect to NZCPS Policy 2(c) and 2(e). In terms of matter 2(e), the RCEP states:

“Iwi authority planning documents prepared to date have been considered in the preparation of this plan. These include the Ngati Pukenga Resource Management Plan, Ngaierangi Iwi Resource Management Plan, Tawharau o Nga Hapu o Whakatohea, and Nga Aukati Taonga of Tapuika me Waitaha. These documents describe tangata whenua policy on resource management issues.”<sup>12</sup>

However, there do not appear to be any RCEP policy provisions that then require decision-makers to take these documents into account. This should be rectified.

### **NZCPS Policy 3 Precautionary approach**

- (1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
- (2) In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:
  - (a) avoidable social and economic loss and harm to communities does not occur;
  - (b) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and
  - (c) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

### **Evaluation**

The RCEP partly gives effect to NZCPS Policy 3.

The RCEP provisions require a precautionary approach to be taken with regard to coastal hazard protection, mineral extraction, reclamations, the introduction of exotic species, and the

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<sup>8</sup> Commencing on page 39

<sup>9</sup> Policy 8.2.3(a) on page 40

<sup>10</sup> Policy 8.2.3(b) on page 40

<sup>11</sup> Policy 8.2.3(c) on page 40 and the Fourteenth Schedule

<sup>12</sup> Section 8.1 on page 34

storage and transportation of hazardous substances.<sup>13</sup> The precautionary approach is also defined in the RCEP's glossary.

However, additional specific policy guidance is required to apply the precautionary approach to the “use and management of coastal resources potentially vulnerable to effects from climate change” so as to give effect to NZCPS Policy 3(2). This additional policy guidance would best be located in Chapter 11 of the RCEP which deals with coastal hazards.

#### **NZCPS Policy 4 Integration**

Provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. This requires:

- (a) co-ordinated management or control of activities within the coastal environment, and which could cross administrative boundaries, particularly:
  - i) the local authority boundary between the coastal marine area and land;
  - ii) local authority boundaries within the coastal environment, both within the coastal marine area and on land; and
  - iii) where hapū or iwi boundaries or rohe cross local authority boundaries;
- (b) working collaboratively with other bodies and agencies with responsibilities and functions relevant to resource management, such as where land or waters are held or managed for conservation purposes; and
- (a) particular consideration of situations where:
  - i) subdivision, use or development and its effects above or below the line of mean high water springs will require, or is likely to result in, associated use or development that crosses the line of mean high water springs ; or
  - ii) public use and enjoyment of public space in the coastal environment is affected, or is likely to be affected; or
  - iii) development or land management practices may be affected by physical changes to the coastal environment or potential inundation from coastal hazards, including as a result of climate change; or
  - iv) land use activities affect, or are likely to affect, water quality in the coastal environment and marine ecosystems through increasing sedimentation; or
  - v) significant adverse cumulative effects are occurring, or can be anticipated.

#### **Evaluation**

The RCEP gives effect to NZCPS Policy 4.

The fact that the RCEP is a “coastal environment” plan greatly assists in that regard. Additionally, section 2.3<sup>14</sup> of the RCEP identifies other agencies with statutory roles in the management of the coastal marine area and the coastal environment. Numerous provisions refer to the role of the region’s district councils.<sup>15</sup> Policy 9.2.3(a) of the RCEP requires the integration of water quality management with the management of land use and fresh water.<sup>16</sup>

#### **NZCPS Policy 5 Land or waters managed or held under other Acts**

- (1) Consider effects on land or waters in the coastal environment held or managed under:
  - (a) the Conservation Act 1987 and any Act listed in the 1st Schedule to that Act; or

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<sup>13</sup> Policies 11.2.3(a), 14.2.3(i), 15.2.3(h), 16.2.3(g) and 17.2.3(d)

<sup>14</sup> Page 7

<sup>15</sup> See for example methods 7.2.4(d) and (e) on page 37

<sup>16</sup> Page 29

- (b) other Acts for conservation or protection purposes; and, having regard to the purposes for which the land or waters are held or managed;
  - (c) avoid adverse effects of activities that are significant in relation to those purposes; and
  - (d) otherwise avoid, remedy or mitigate adverse effects of activities in relation to those purposes.
- (2) Have regard to publicly notified proposals for statutory protection of land or waters in the coastal environment and the adverse effects of activities on the purposes of that proposed statutory protection.

## Evaluation

The RCEP partly gives effect to NZCPS Policy 5.

Chapter 22 of the RCEP deals with marine protected areas, but its sole policy direction is to advocate for a network of such areas.<sup>17</sup> The Third Schedule to the RCEP lists Areas of Significant Conservation Value (ASCV). These areas include land held under the Reserves Act and other Acts. Other provisions of the RCEP ensure that these areas are managed appropriately. However, those provisions should be examined to ensure that they give effect to NZCPS Policy 5(1)(c) and 5(1)(d).

### NZCPS Policy 6 Activities in the coastal environment

- (1) In relation to the coastal environment:
- (a) recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;

The RCEP deals with the extraction of minerals in Chapter 14 which is titled “Disturbance, Deposition and Extraction”. However, the provisions focus on the need to avoid, remedy or mitigate adverse effects.<sup>18</sup> The RCEP is silent on “the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity”. Additional policies are required to give effect to NZCPS Policy 6(1)(a).

- (b) consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;

As discussed below in relation to NZCPS Policy 7, these NZCPS matters are dealt with in chapters 17 and 17A of the Regional Policy Statement (RPS).

- (c) encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;

The RCEP encourages new subdivision, use and development to be located in areas already modified by development.<sup>19</sup> Policy 4.2.3(f) specifically refers to not adding to “sprawl or

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<sup>17</sup> Policy 22.2.3 on page 127

<sup>18</sup> Policy 14.2.3(f) on page 90

<sup>19</sup> Policy 4.2.3(f) page 25

sporadic development”. Policy 13.2.3(b) directs that mooring areas be concentrated.<sup>20</sup> Consequently the RCEP gives effect to NZCPS Policy 6(1)(c).

- (d) recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them;

The RCEP provides for papakainga housing in the coastal environment in a manner consistent with other relevant provisions of the RCEP<sup>21</sup>. However, the RCEP does not refer to marae. The wording of Policy 8.2.3(d) should be amended to refer to “marae and associated developments.” The policies in Part III dealing with activities and rules should be amended to make specific provision for papakāinga, marae and associated developments. This could include the use of permissive consent activity classifications.

- (e) consider where and how built development on land should be controlled so that it does not compromise activities of national or regional importance that have a functional need to locate and operate in the coastal marine area;

Section 4.1 of the RCEP advises that the harbour development and port zones are designed to enable and control vessel-related development that has a functional need for a coastal location. Section 11.1 advises that some facilities have a functional need to locate on coastal margins including ports, boat ramps, dunecare fences and surf rescue facilities. The RCEP then states “The details of regulation are, however, best left to the relevant district council to formulate ...”. Policy 11.2.3(d) requires that development in coastal hazard areas should demonstrate a functional need to be there.<sup>22</sup>

However, the RCEP is silent on “activities of national or regional importance that have a functional need to locate and operate in the coastal marine area”. Consequently, the RCEP does not give effect to NZCPS Policy 6(1)(e) and additional provisions are required in that regard.

- (f) consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

The RCEP does not refer to the “built environment”. Consequently, the RCEP does not give effect to NZCPS Policy 6(1)(f) and additional provisions are required in that regard.

- (g) take into account the potential of renewable resources in the coastal environment, such as energy from wind, waves, currents and tides, to meet the reasonably foreseeable needs of future generations;

The RCEP does not refer to “renewable resources”. The only reference to “energy” is to wave energy in terms of coastal hazard protection works<sup>23</sup>. Consequently, the RCEP does not give effect to NZCPS Policy 6(1)(g) and additional provisions are required in that regard.

- (h) consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;

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<sup>20</sup> Page 77

<sup>21</sup> Policy 8.2.3(d) on page 40.

<sup>22</sup> Page 64

<sup>23</sup> Section 11.1 on page 62

The Fifth Schedule of the RCEP contains natural character guidelines for headlands<sup>24</sup>, but makes no mention of ridgelines. The Fifth Schedule is referred to in Chapters 4 and 5 of the RCEP.<sup>25</sup> The Chapter 5 policies direct that the “visual quality, and the physical and ecological integrity of the outstanding and regionally significant natural features and landscapes of the coastal environment [be] maintained” and recognition of and provision for “... appropriate protection for natural features and landscapes of district or local significance in the coastal environment.”

The RCEP therefore goes some way towards giving effect to NZCPS Policy 6(1)(h) but the existing provisions should be amended to require adverse visual effects to be avoided in identified sensitive areas.

- (i) set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment;

The RCEP only refers to “set backs” in relation to natural hazards. Chapter 4 dealing with natural character does not direct that development should be set back as referred to in NZCPS Policy 6(1)(i). Consequently, if the RCEP does not give effect to NZCPS Policy 6(1)(i) and additional provisions are required in that regard.

- (j) where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value.

The RCEP refers to buffers in terms of natural hazards and for “buffering” estuaries from the cumulative effects of subdivisions<sup>26</sup>. Chapter 18 of the RCEP deals with historic heritage but it makes no mention of buffers around heritage sites. Consequently, the RCEP does not give effect to NZCPS Policy 6(1)(j) and additional provisions are required in that regard.

- (2) Additionally, in relation to the coastal marine area:
  - (a) recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations:

The RCEP contains very few policies aimed at recognising the social and economic wellbeing that results from the use and development of the coastal marine area. Mention is made of enabling the efficient use of the existing Port Zone<sup>27</sup> and the development of vessel related tourism and recreational activities in the Harbour Development Zone<sup>28</sup>. The only other policy reference to “social and economic” matters is the minimising of effects of dredging on social values.<sup>29</sup> The RCEP contains no policy references to the “energy needs of future generations.” Consequently, the RCEP does not give effect to NZCPS Policy 6(2)(a) and additional provisions are required in that regard.

- (b) recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;

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<sup>24</sup> S5.1.1 on page 193

<sup>25</sup> Policy 4.2.3(b) on page 24 and Policies 5.2.3(a) and (b) on page 28

<sup>26</sup> S5.3.2 on page 195

<sup>27</sup> Policy 3.2.2(b) on page 17

<sup>28</sup> Policy 3.3.2(c) on page 17

<sup>29</sup> Policy 14.2.3(q) on page 91

See discussion under NZCPS Policy 18.

- (c) recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;

The RCEP states that new development requiring a coastal marine area location should be located in the Port Zone or Harbour Development Zone in preference to other areas.<sup>30</sup> However, there is no general policy enabling activities that have a functional need to be located in the coastal marine area outside of those zones. Consequently, the RCEP does not give effect to NZCPS Policy 6(2)(c) and additional provisions are required in that regard.

- (d) recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there;

Section 4.2.3 of the RCEP provides some policy guidance that reflects the direction of NZCPS Policy 6(2)(d).<sup>31</sup> However, it would be beneficial if the RCEP provisions were amended to address that matter explicitly.

- (e) promote the efficient use of occupied space, including by:
  - i) requiring that structures be made available for public or multiple use wherever reasonable and practicable;
  - ii) requiring the removal of any abandoned or redundant structure that has no heritage, amenity or reuse value; and
  - iii) considering whether consent conditions should be applied to ensure that space occupied for an activity is used for that purpose effectively and without unreasonable delay.

RCEP Policy 7.2.3(d) directs that new facilities should be designed to maximise public use and access as well as private use. Rule 13.2.4(i) permits the removal of abandoned structures, however there is no policy direction requiring such structures to be removed. Chapter 12 of the RCEP addresses occupation of space; however it contains no policy direction requiring space occupied for an activity to be used for that purpose effectively and without unreasonable delay. Consequently, the RCEP does not give effect to NZCPS Policy 6(2)(e) and additional provisions are required in that regard.

### **NZCPS Policy 7 Strategic planning**

- (1) In preparing regional policy statements, and plans:
  - (a) consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment at a regional and district level, and;
  - (b) identify areas of the coastal environment where particular activities and forms of subdivision, use and development:
    - i) are inappropriate; and
    - ii) may be inappropriate without the consideration of effects through a resource consent application, notice of requirement for designation or Schedule 1 of the RMA process;and provide protection from inappropriate subdivision, use and development in these areas through objectives, policies and rules.

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<sup>30</sup> Policy 4.2.3(i) on page 25

<sup>31</sup> See in particular Policy 4.2.3(f) and 4.2.3(i) on page 25

- (2) Identify in regional policy statements, and plans, coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects. Include provisions in plans to manage these effects. Where practicable, in plans, set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects are to be avoided.

## **Evaluation**

Council has given effect to NZCPS Policy 7.

NZCPS Policy 7(1) envisages that the Council will proactively plan for future settlement and development. The Council has done this through the Regional Policy Statement (RPS)<sup>32</sup> which has in turn been given effect to by the region's district plans.

NZCPS Policy 7(2) addresses cumulative effects and lists zoning as one of the methods by which those effects could be managed. Section 3.3.2<sup>33</sup> of the RCEP explains how zoning is used for the Coastal Habitat Preservation Zone, Port Zone, Harbour Development Zone and Coastal Management Zone. The RCEP states that the zoning provides guidance on activities that are "generally not appropriate", "possible" and "generally appropriate". Many activities within the various zones require resource consents and the associated policies provide guidance on the types of conditions that should be imposed by decision-makers.

### **NZCPS Policy 8 Aquaculture**

Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:

- (a) including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:
  - i) the need for high water quality for aquaculture activities; and
  - ii) the need for land-based facilities associated with marine farming;
- (b) taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and
- (c) ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose.

## **Evaluation**

The RCEP does not give effect to NZCPS Policy 8.

The RCEP does not have a specific chapter on aquaculture. There are only three specific RCEP provisions that deal with aquaculture.<sup>34</sup>

Section 13 of the RCEP (Structures) discusses aquaculture in its "Explanation/Principle Reasons"<sup>35</sup>. However, that discussion is somewhat negative, focusing on the adverse effects of aquaculture in harbours and estuaries before opining "Environment Bay of Plenty is not convinced that all types of aquaculture at all scales at all locations would have such unavoidable adverse effects as to require a "blanket" prohibition".<sup>36</sup>

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<sup>32</sup> Chapters 17 and 17A introduced through Change 2 to the RPS (Growth Management)

<sup>33</sup> Pages 15 to 19

<sup>34</sup> Policy 12.2.3(b), Policy 14.2.3(b), S.9.2.4

<sup>35</sup> Page 75

<sup>36</sup> Ibid

Section 13 goes on to describe how the RCEP currently treats aquaculture:

“All applications for aquaculture will be processed with regard to all policies and methods contained within this plan which govern the constituent associated activities in particular those relating to structures and occupation of space.”<sup>37</sup>

In terms of objectives and policies the RCEP is silent on the social, economic and cultural benefits of aquaculture within the coastal marine area. In fact RCEP Policy 12.2.3(b) actively promotes land-based aquaculture outside of the coastal marine area.<sup>38</sup>

It is understood that the Council began an Aquaculture Management Area Project in 2002. The project's goal is to identify opportunities for Aquaculture Management Areas (AMAs) in the region. The project is made up of two parts - Coastal Use and Value Maps; and the Offshore Science Project. The project is designed to give the Council a good understanding of the region's marine area and assist with deciding where new AMAs might go.<sup>39</sup>

Regardless of the outcome of Council's Aquaculture Management Area Project a new chapter of the RCEP is required to give effect to NZCPS Policy 8. This new chapter could usefully bring together a suite of policies and rules that deal with the social and economic benefits of aquaculture and the policies and rules required to appropriately manage its effects.

#### **NZCPS Policy 9 Ports**

Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:

- (a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes;
- (b) considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.

#### **Evaluation**

The RCEP partly gives effect to NZCPS Policy 9.

The RCEP does not currently contain a specific chapter on Ports. However, it does contain a Port Zone for the Port of Tauranga which is first referred to in section 3.3.2(b)<sup>40</sup>. The Eighth Schedule also contains an “Outline Development Plan Port of Tauranga 1994-2004” and the Fifteen Schedule a “Whakatane Harbour Development Zone Outline Plan 1994 -2004”. These schedules indicate the development that each port authority proposed over the period 1994 to 2004. These development plans are now obviously out-dated and they should be amended accordingly.

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<sup>37</sup> Ibid

<sup>38</sup> Page 70

<sup>39</sup> <http://www.boprc.govt.nz/environment/coast/aquaculture/ama-project.aspx>

<sup>40</sup> Page 17

The RCEP additionally contains numerous provisions relevant to the Port Zone and the activities occurring within it.<sup>41</sup> These provisions reside in both Part II and Part III of the RCEP. The “Explanation/Principal Reasons” parts of those sections often contain discussion about the Port of Tauranga.

It may be that the RCEP provisions relating to the Port Zone collectively give effect to NZCPS Policy 9(a). NZCPS Policy 9(b) may also be given effect to as the RCEP already addresses NZCPS Policy 9(a), however it is not clear if the RCEP addresses all of the matters contained in NZCPS Policy 9(b) such as “the development of their capacity for shipping, and their connections with other transport modes”.

It would be beneficial if the RCEP contained a new chapter dealing explicitly with ports. This would cover the Port of Tauranga and other minor ports in the region.<sup>42</sup> The new chapter would contain a comprehensive description of the ports and discuss the social and economic benefits that they produce, together with the need to manage the adverse effects of their activities. In particular the new chapter would contain a suite of objectives and policies that reflect the current RCEP provisions together with the wording of NZCPS Policy 9.

All of the policies in Part III that relate to ports (see footnote 40) could then be cross-referenced in the new chapter. Another option would be to relocate those provisions into the new port chapter, but that would detract from the overall structure of the RCEP.

#### **NZCPS Policy 10 Reclamation and de-reclamation**

- (1) Avoid reclamation of land in the coastal marine area, unless:
  - (a) land outside the coastal marine area is not available for the proposed activity;
  - (b) the activity which requires reclamation can only occur in or adjacent to the coastal marine area;
  - (c) there are no practicable alternative methods of providing the activity; and
  - (d) the reclamation will provide significant regional or national benefit.
- (2) Where a reclamation is considered to be a suitable use of the coastal marine area, in considering its form and design have particular regard to:
  - (a) the potential effects on the site of climate change, including sea level rise, over no less than 100 years;
  - (b) the shape of the reclamation, and where appropriate, whether the materials used are visually and aesthetically compatible with the adjoining coast;
  - (c) the use of materials in the reclamation, including avoiding the use of contaminated materials that could significantly adversely affect water quality, aquatic ecosystems and indigenous biodiversity in the coastal marine area;
  - (d) providing public access, including providing access to and along the coastal marine area at high tide where practicable, unless a restriction on public access is appropriate as provided for in policy 19;
  - (e) the ability to remedy or mitigate adverse effects on the coastal environment;
  - (f) whether the proposed activity will affect cultural landscapes and sites of significance to tangata whenua; and
  - (g) the ability to avoid consequential erosion and accretion, and other natural hazards.

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<sup>41</sup> Including Policies 4.2.3(i), 7.2.3(e), 9.2.4(g) to (h), 12.2.4(b), 13.2.3(b) and (c), 13.2.4(b), (d), (o)(i), (p)(i) and (ii), (q), 14.2.3(k), (l) and (r), 15.2.4(a), 20.2.3(b) and 20.2.4(a) and (b).

<sup>42</sup> Including Whakatane and Ohiwa.

- (3) In considering proposed reclamations, have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, coastal roads, pipelines, electricity transmission, railways and ferry terminals, and of marinas and electricity generation.
- (4) De-reclamation of redundant reclaimed land is encouraged where it would:
  - (a) restore the natural character and resources of the coastal marine area; and
  - (b) provide for more public open space.

## Evaluation

The RCEP partly gives effect to NZCPS Policy 10.

The RCEP addresses reclamation in Chapter 15<sup>43</sup> and Section 14<sup>44</sup>. However, Chapter 15 does not give effect to NZCPS Policies 10(1), 10(3) or 10(4).

It is noted that RCEP Policy 15.2.4(a)<sup>45</sup> prohibits certain types of reclamation which could arguably be one means of giving effect to NZCPS Policy 10(1). Policy 15.2.4(a) may also be inconsistent with NZCPS Policy 10(3) which seeks to enable certain types of reclamations.

NZCPS Policy 10(2) is partly given effect to. RCEP provisions give effect to parts (b), (c)<sup>46</sup> and possibly (e) and (g)<sup>47</sup> of that policy.

RCEP Policy 15.2.3(i) requires both the benefits and adverse effects of removing reclamations to be considered (providing no useful guidance to decision makers) whilst RCEP policy 15.2.4(c) makes the removal of reclamations a discretionary activity<sup>48</sup>. That does not give effect to the enabling nature of NZCPS Policy 10(4).

The RCEP chapter on reclamation should be amended to fully give effect to NZCPS Policy 10, particularly Policy 10(1), 10(3) and 10(4).

## NZCPS Policy 11 Indigenous biological diversity (biodiversity)

To protect indigenous biological diversity in the coastal environment:

- (a) avoid adverse effects of activities on:
  - i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
  - ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
  - iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
  - iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
  - v) areas containing nationally significant examples of indigenous community types; and
  - vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

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<sup>43</sup> Page 99

<sup>44</sup> Plan Policy 14.2.4(d), (s) and (w)

<sup>45</sup> Page 101

<sup>46</sup> Plan Policy 15.2.3(g) on page 100 and Plan Policy 5.2.3(h) on page 28

<sup>47</sup> Plan Policy 15.2.3(b) on page 100

<sup>48</sup> Page 101

- i) areas of predominantly indigenous vegetation in the coastal environment;
- ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
- iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
- iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
- v) habitats, including areas and routes, important to migratory species; and
- vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

## **Evaluation**

The RCEP partly gives effect to NZCPS Policy 11.

As first described in section 3.3.3 of the RCEP, ecologically significant areas are identified and mapped in the Third, Fourth, Sixth and Seventh Schedules and the planning maps.

It is not clear if the RCEP gives effect to the criteria in NZCPS Policy 11(a) and 11(b) as the scheduled areas may or may not meet the six criteria listed in each of Policy 11(a) or 11(b). However, even if the scheduled areas do meet the NZCPS Policy 11 criteria, the RCEP does not give effect to NZCPS Policies 11(a) and 11(b) insofar as the RCEP provisions only seek to “avoid or remedy” adverse effects on the scheduled areas.<sup>49</sup>

The Coastal Habitat Preservation Zone and the Third, Fourth, Sixth and Seventh Schedules should be revisited, merged and grouped under two categories of “indigenous biological diversity”.

The first category would include areas of “indigenous biological diversity” that meet the criteria of NZCPS Policy 11(a) and where adverse effects are to be avoided. These areas could be called “indigenous biological diversity preservation zones”.

The second category would include areas of “indigenous biological diversity” that meet the criteria of NZCPS Policy 11(b) and where significant adverse effects are to be avoided and other effects are to be avoided, remedied or mitigated. These areas could be called “indigenous biological diversity protection zones”.

### **NZCPS Policy 12 Harmful aquatic organisms**

- (1) Provide in regional policy statements and in plans, as far as practicable, for the control of activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread, and include conditions in resource consents, where relevant, to assist with managing the risk of such effects occurring.
- (2) Recognise that activities relevant to (1) include:
  - (a) the introduction of structures likely to be contaminated with harmful aquatic organisms;

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<sup>49</sup> Policy 6.2.3(b) on page 32

- (b) the discharge or disposal of organic material from dredging, or from vessels and structures, whether during maintenance, cleaning or otherwise; and whether in the coastal marine area or on land;
- (c) the provision and ongoing maintenance of moorings, marina berths, jetties and wharves; and
- (d) the establishment and relocation of equipment and stock required for or associated with aquaculture.

## Evaluation

The RCEP partly gives effect to NZCPS Policy 12.

Chapter 16 of the RCEP deals with “exotic plants and animals”. Chapter 16 adopts a precautionary approach<sup>50</sup> to the introduction of new species which is appropriate and gives effect to NZCPS Policy 3. The RCEP also contains provisions requiring that the adverse effects of “the introduction of exotic plants and animals” be avoided, remedied or mitigated.<sup>51</sup> This partly gives effects to NZCPS Policy 12(1).

Chapter 9 of the RCEP deals with coastal discharges. NZCPS Policy 12(2)(b) is partly given effect to by RCEP Policy 9.2.3(i)<sup>52</sup> insofar as that RCEP policy relates to discharges from vessels. This is reinforced by RCEP Policy 9.2.4(f)<sup>53</sup> which makes hull cleaning a discretionary activity. However, RCEP Policies 9.2.3(i) and 9.2.4(f) only refer to some of the matters listed in NZCPS Policy 12(2).

It would be beneficial to rename Chapter 16 of the RCEP “Harmful aquatic organisms” and amend its provisions so that they fully give effect to NZCPS Policy 12. The relevant RCEP policies in Chapter 9 of the RCEP could also be relocated to this renamed Chapter.

### **NZCPS Policy 13 Preservation of natural character**

- (1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:
  - (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and
  - (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:
    - (c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and
    - (d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.
- (2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:
  - (a) natural elements, processes and patterns;
  - (b) biophysical, ecological, geological and geomorphological aspects;
  - (c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
  - (d) the natural movement of water and sediment;
  - (e) the natural darkness of the night sky;

<sup>50</sup> Plan Policy 16.2.3(g) on page 107

<sup>51</sup> Plan Policy 16.2.3(e0) and 16.2.3(f) on pages 106 and 107

<sup>52</sup> Page 50

<sup>53</sup> Page 51

- (f) places or areas that are wild or scenic;
- (g) a range of natural character from pristine to modified;
- (h) experiential attributes, including the sounds and smell of the sea; and their context or setting.

## **Evaluation**

The RCEP partly gives effect to NZCPS Policy 13.

The RCEP discusses natural character in Chapter 4.1. However, it focuses on “natural features and landscapes”, “areas of significant indigenous vegetation and significant habitats of indigenous fauna”, and “ecological and hydrological systems”. This does not give effect to NZCPS Policy 13(1)(c) and 13(2). NZCPS Policy 13(2) states that natural character “is not the same as natural features and landscapes or amenity values” and it lists a number of matters that comprise natural character.

The RCEP describes areas with “exceptional natural character” and states that these include the Coastal Habitat Protection Zone.<sup>54</sup> However, the RCEP does not map or otherwise identify areas that have “outstanding” or “high” natural character. To give effect to NZCPS Policies 13(1)(c) and 13(2) the RCEP should identify and map parts of the coastal environment that have either “outstanding” or “high” natural character, and include the matters listed in NZCPS Policy 13(2) when making that assessment.

The RCEP has some provisions that go towards giving effect to NZCPS Policy 13. For example RCEP Policy 5.2.3(f) directs that “wilderness values” should be protected. Policy 13.2.3(p) identifies areas where marinas are inappropriate.<sup>55</sup> The RCEP pays particular attention to the preservation of the ecological values in the Coastal Habitat Preservation Zone and the avoidance of adverse effects on those values.<sup>56</sup> The RCEP also seeks to “avoid or remedy adverse effects” on significant vegetation and significant habitats of indigenous fauna sites listed in the Third, Sixth and Seventh Schedules.<sup>57</sup> It seeks to encourage restoration and enhancement of those areas listed in the Sixth and Seventh Schedules.

However, amended RCEP objectives and policies are required to more fully give effect to NZCPS Policies 13(1)(a) and 13(1)(b). In particular, (all) adverse effects on natural character are to be avoided (not remedied or mitigated) in areas with “outstanding” natural character. In other parts of the coastal environment, namely those without “outstanding” natural character, (all) significant adverse effects are to be avoided (not remedied or mitigated).

### **NZCPS Policy 14 Restoration of natural character**

Promote restoration or rehabilitation of the natural character of the coastal environment, including by:

- (a) identifying areas and opportunities for restoration or rehabilitation
- (b) providing policies, rules and other methods directed at restoration or rehabilitation in regional policy statements, and plans;

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<sup>54</sup> Policy 4.2.3(a) page 24

<sup>55</sup> Page 77

<sup>56</sup> Policy 6.2.3(a) on page 32

<sup>57</sup> Policy 6.2.3(b) on page 32

- (c) where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:
- i) restoring indigenous habitats and ecosystems, using local genetic stock where practicable; or
  - ii) encouraging natural regeneration of indigenous species, recognising the need for effective weed and animal pest management; or
  - iii) creating or enhancing habitat for indigenous species; or
  - iv) rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarsh; or
  - v) restoring and protecting riparian and intertidal margins; or
  - vi) reducing or eliminating discharges of contaminants; or
  - vii) removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993; or
  - viii) restoring cultural landscape features; or
  - ix) redesign of structures that interfere with ecosystem processes; or
  - x) decommissioning or restoring historic landfill and other contaminated sites which are, or have the potential to, leach material into the coastal marine area.

## **Evaluation**

The RCEP partly gives effect to NZCPS Policy 14.

The RCEP does not give effect to NZCPS Policy 14(a) as it does not identify areas where the natural character should be restored or rehabilitated.

In terms of NZCPS Policy 14(b) the RCEP contains policy direction that natural character must be restored where it has been degraded.<sup>58</sup> Section 5.2<sup>59</sup> of the RCEP addresses the degradation of “natural features and landscapes”, but only seeks to “maintain” the “visual quality and physical and ecological integrity” of “outstanding and regionally significant” features and landscapes.<sup>60</sup> The RCEP also pays particular attention to the “ongoing loss and degradation of significant vegetation and significant habitats of indigenous fauna”.<sup>61</sup> It seeks to encourage restoration and enhancement of those areas where appropriate where they are listed in the Sixth and Seventh Schedules.<sup>62</sup>

However, Chapter 4 of the RCEP should be expanded to include new provisions relating to the identification of areas where the natural character requires restoration or rehabilitation (NZCPS Policy 14(a)) and the appropriate means by which that should occur (NZCPS Policy 14(b) and 14(c)).

### **NZCPS Policy 15 Natural features and natural landscapes**

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

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<sup>58</sup> Policy 4.2.3(g) page 25

<sup>59</sup> Page 28

<sup>60</sup> Policy 5.2.3(a) page 28

<sup>61</sup> Section 6.2 commencing on page 31

<sup>62</sup> Policy 6.2.3(a) on page 32

- (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and
- (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment; including by:
  - (c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:
    - i) natural science factors, including geological, topographical, ecological and dynamic components;
    - ii) the presence of water including in seas, lakes, rivers and streams;
    - iii) legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
    - iv) aesthetic values including memorability and naturalness;
    - v) vegetation (native and exotic);
    - vi) transient values, including presence of wildlife or other values at certain times of the day or year;
    - vii) whether the values are shared and recognised;
    - viii) cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;
    - ix) historical and heritage associations; and
    - x) wild or scenic values;
  - (d) ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules;
  - (e) including the objectives, policies and rules required by (d) in plans.

## Evaluation

The RCEP partly gives effect to NZCPS Policy 15.

Chapter 5 of the RCEP deals with natural features and landscapes. The chapter title could be amended to refer to “natural features and natural landscapes”.

The RCEP has identified “outstanding and regionally significant” natural features and landscapes<sup>63</sup> and these are listed in the Fourth Schedule of the RCEP. This appears to give effect to NZCPS Policy 15(c), however it is not clear if the identification process used all of the criteria listed in NZCPS Policy 15(c). This should be checked and if the identification process was not consistent with the NZCPS criteria then it should be revisited.

The ensuing policy direction in the RCEP does not however give effect to NZCPS Policies 15(a), 15(b) and 15(d). The RCEP provisions require the “visual quality, and the physical and ecological integrity” of the features and landscapes to be “maintained” and that adverse visual effects on those features and landscapes should be “avoided or remedied”.<sup>64</sup>

The provisions of Chapter 5 should be amended to give effect to NZCPS Policies 15(a), 15(b) and 15(d). The most significant amendment will be the need to identify those natural features and natural landscapes that require protection in accordance with NZCPS Policy 15(d). Restrictive policies and rules will be required to achieve that outcome. The management

<sup>63</sup> Chapter 5 on page 27

<sup>64</sup> Policy 5.2.3(a) and 5.2.3(c) on page 28

guidelines in the Fifth Schedule may provide a useful starting point for the necessary policies and rules, once the areas to be protected have been identified.

#### **NZCPS Policy 16 Surf breaks of national significance**

Protect the surf breaks of national significance for surfing listed in Schedule 1, by:

- (a) ensuring that activities in the coastal environment do not adversely affect the surf breaks; and
- (b) avoiding adverse effects of other activities on access to, and use and enjoyment of the surf breaks.

#### **Evaluation**

NZCPS Policy 16 is not applicable as none of the surf breaks listed in Schedule 1 occurs within the Bay of Plenty Region.

#### **NZCPS Policy 17 Historic heritage identification and protection**

Protect historic heritage in the coastal environment from inappropriate subdivision, use, and development by:

- (a) identification, assessment and recording of historic heritage, including archaeological sites;
- (b) providing for the integrated management of such sites in collaboration with relevant councils, heritage agencies, iwi authorities and kaitiaki;
- (c) initiating assessment and management of historic heritage in the context of historic landscapes;
- (d) recognising that heritage to be protected may need conservation;
- (e) facilitating and integrating management of historic heritage that spans the line of mean high water springs;
- (f) including policies, rules and other methods relating to (a) to (e) above in regional policy statements, and plans;
- (g) imposing or reviewing conditions on resource consents and designations, including for the continuation of activities;
- (h) requiring, where practicable, conservation conditions;
- (i) considering provision for methods that would enhance owners' opportunities for conservation of listed heritage structures, such as relief grants or rates relief.

#### **Evaluation**

The RCEP partly gives effect to NZCPS Policy 17.

Chapter 18 of the RCEP deals with "Historic and cultural heritage"<sup>65</sup> and the provisions of that chapter partly give effect to NZCPS Policy 17. The RCEP does not in itself identify historic heritage (NZCPS Policy 17(a)), rather it relies on the sites identified by specialist agencies<sup>66</sup> and the compilation of a "regional heritage inventory" of heritage sites, features or resources<sup>67</sup> which was completed in 2006.<sup>68</sup> The RCEP also refers to the conservation of heritage resources, which gives effect to NZCPS Policy 17(d) and 17(i).<sup>69</sup> However, the RCEP provisions do not appear to directly link to the regional heritage inventory.

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<sup>65</sup> Commencing on page 113.

<sup>66</sup> Policy 18.2.3(a) on page 114

<sup>67</sup> Method 18.2.5(c) on page 115

<sup>68</sup> Coastal Historic Heritage Review Project, Historic Heritage Inventory, Environment Bay of Plenty, Whakatane, 8 September 2006

<sup>69</sup> Policies 18.2.3(c) and 18.2.3(g) on page 114

### **NZCPS Policy 18 Public open space**

Recognise the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation, and provide for such public open space, including by:

- (a) ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;
- (b) taking account of future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements;
- (c) maintaining and enhancing walking access linkages between public open space areas in the coastal environment;
- (d) considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space; and
- (e) recognising the important role that esplanade reserves and strips can have in contributing to meeting public open space needs.

### **Evaluation**

The RCEP does not give effect to NZCPS Policy 18.

The only reference in the RCEP to “public open space” appears in Fifth Schedule where a guideline for subdivision reads:

“Give priority to the retention of public open space at, and public access to, the coastal edge and prominent landforms to maintain amenity values.”<sup>70</sup>

A new RCEP chapter on “public open space” is required. This can draw on existing Chapters 7 (public access) and 19 (Recreation).

### **NZCPS Policy 19 Walking Access**

- (1) Recognise the public expectation of and need for walking access to and along the coast that is practical, free of charge and safe for pedestrian use;
- (2) Maintain and enhance public walking access to, along and adjacent to the coastal marine area, including by:
  - (a) identifying how information on where the public have walking access will be made publicly available;
  - (b) avoiding, remedying or mitigating any loss of public walking access resulting from subdivision, use or development; and
  - (c) identifying opportunities to enhance or restore public walking access, for example where:
    - i) connections between existing public areas can be provided; or
    - ii) improving access would promote outdoor recreation; or
    - iii) physical access for people with disabilities is desirable; or
    - iv) the long-term availability of public access is threatened by erosion or sea level rise; or
    - v) access to areas or sites of historic or cultural significance is important; or

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<sup>70</sup> Schedule S5.9(g) on page 201

- vi) subdivision, use, or development of land adjacent to the coastal marine area has reduced public access, or has the potential to do so.
- (3) Only impose a restriction on public walking access to, along or adjacent to the coastal marine area where such a restriction is necessary:
- (a) to protect threatened indigenous species; or
  - (b) to protect dunes, estuaries and other sensitive natural areas or habitats; or
  - (c) to protect sites and activities of cultural value to Māori; or
  - (d) to protect historic heritage; or
  - (e) to protect public health or safety; or
  - (f) to avoid or reduce conflict between public uses of the coastal marine area and its margins; or
  - (g) for temporary activities or special events; or
  - (h) for defence purposes in accordance with the Defence Act 1990; or
  - (i) to ensure a level of security consistent with the purpose of a resource consent; or
  - (j) in other exceptional circumstances sufficient to justify the restriction.
- (4) Before imposing any restriction under (3), consider and where practicable provide for alternative routes that are available to the public free of charge at all times.

## Evaluation

The RCEP partly gives effect to NZCPS Policy 19.

Section 3.3.2(c)(c) describes one of the purposes of the Harbour Development Zone - the maintenance and enhancement public access to the waterfront<sup>71</sup>. Policy 6.2.3(h) requires district councils to take into account the adverse effects associated with cats and dogs when regulating public access.<sup>72</sup> Chapter 7 of the RCEP deals specifically with public access.<sup>73</sup> RCEP Objective 7.2.2<sup>74</sup> requires the “maintenance and enhancement” of public access to and along the coast.

Policy 7.2.3(a) and 7.2.3(e) of the RCEP identify circumstances where public access may be restricted.<sup>75</sup> However, the circumstances do not address all of the matters listed in NZCPS Policy 19(3). The RCEP provisions also do not contain the caveat stated in NZCPS Policy 19(4).

RCEP Policies 7.2.3(b) to 7.2.3(d) contain some policy direction on providing for public access. This partly gives effect to NZCPS Policy 19(2). However, the RCEP provisions do not go on to give effect to NZCPS Policy 19(2)(b) which requires “avoiding, remedying or mitigating” any loss of public walking access or NZCPS Policy 19(2)(c) which requires the identification of “opportunities to enhance or restore public walking access”.

Other chapters of the RCEP also deal with public access. For example Policy 12.2.3(a) refers to the benefits of public access to the coastal marine area.<sup>76</sup> Policy 13.2.4(b) makes structures which have the specific purpose of providing for public access a discretionary activity.<sup>77</sup> Policy 13.2.4(f) enables the maintenance of structures as a permitted activity provided there is no adverse effect on public access (amongst other things). Policy 19.2.3(c) seeks to discourage

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<sup>71</sup> Page 17

<sup>72</sup> Page 32

<sup>73</sup> Commencing on page 35

<sup>74</sup> Page 36

<sup>75</sup> Page 36

<sup>76</sup> Page 70

<sup>77</sup> Page 78

“commercial, recreational or tourist” activities where they would “unduly interfere with public access”<sup>78</sup>.

The various public access provisions within the RCEP should be grouped and amended so that they give better effect to NZCPS Policy 19.

#### **NZCPS Policy 20 Vehicle access**

- (1) Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:
  - (a) damage to dune or other geological systems and processes; or
  - (b) harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or
  - (c) danger to other beach users; or
  - (d) disturbance of the peaceful enjoyment of the beach environment; or
  - (e) damage to historic heritage; or
  - (f) damage to the habitats of fisheries resources of significance to customary, commercial or recreational users; or
  - (g) damage to sites of significance to tangata whenua;might result.
- (2) Identify the locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access.
- (3) Identify any areas where and times when recreational vehicular use on beaches, foreshore and seabed may be permitted, with or without restriction as to type of vehicle, without a likelihood of any of (1) (a) to (g) occurring.

#### **Evaluation**

The RCEP partly gives effect to NZCPS Policy 20.

Chapter 7 of the RCEP deals with Public Access. Policy 7.4.2(d) directs district councils to restrict vehicle from beaches and dunes and other sensitive coastal sites. This is mirrored in Policy 19.2.3(f).<sup>79</sup> Policy 14.2.3(c) limits the use of vehicles on the foreshore and seabed.<sup>80</sup> Policy 14.2.4(f) lists vehicle use activities that are permitted<sup>81</sup> whereas Policy 14.2.4(l) excludes vehicles being used for driftwood collection.<sup>82</sup> These provisions collectively give effect to NZCPS Policy 20(1) in part.

However, the RCEP appears to be silent on identifying locations where vehicle access is either required or appropriate and making provision for it as required by NZCPS Policy 20(2) and 20(3).

A new chapter of the RCEP titled “Vehicle Access” is required that gives effect to NZCPS Policy 20.

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<sup>78</sup> Page 118

<sup>79</sup> Page 118

<sup>80</sup> Page 90

<sup>81</sup> Page 92

<sup>82</sup> Ibid

### **NZCPS Policy 21 Enhancement of water quality**

Where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities, give priority to improving that quality by:

- (a) identifying such areas of coastal water and water bodies and including them in plans;
- (b) including provisions in plans to address improving water quality in the areas identified above;
- (c) where practicable, restoring water quality to at least a state that can support such activities and ecosystems and natural habitats;
- (d) requiring that stock are excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment, within a prescribed time frame; and
- (e) engaging with tangata whenua to identify areas of coastal waters where they have particular interest, for example in cultural sites, wāhi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.

### **Evaluation**

The RCEP does not give effect to NZCPS Policy 21(a), 21(b) and 21(c). It does give effect to NZCPS Policy 21(d).

The RCEP has numerous policies that refer to water quality but it does not identify areas where water quality has deteriorated to the extent described in NZCPS Policy 21. The closest the RCEP comes to that appears to be in section 9.1 where it states that “The coastal marine area in the vicinity of the Tarawera River is an example where coastal water quality may at times not meet the standards of the plan.”<sup>83</sup> The standards referred to are those set the Thirteenth Schedule of the RCEP.

It may be that the Bay of Plenty region does not contain any water in the coastal environment that has deteriorated to the extent described by NZCPS Policy 21. If that is the case then the RCEP should be amended to state that. If that is not the case then the RCEP should be amended to give effect to NZCPS Policy 21(a), 21(b) and 21(c). In doing so the engagement process with tangata whenua required under NZCPS Policy 21(e) would need to be followed.

In terms of NZCPS Policy 21(d), the RCEP discusses the adverse effects that stock grazing can have in estuarine areas.<sup>84</sup> The RCEP then prohibits stock grazing in the coastal marine area.<sup>85</sup> This gives effect to NZCPS Policy 21(d).

### **NZCPS Policy 22 Sedimentation**

- (1) Assess and monitor sedimentation levels and impacts on the coastal environment.
- (2) Require that subdivision, use or development will not result in a significant increase in sedimentation in the coastal marine area, or other coastal water.
- (3) Control the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry.
- (4) Reduce sediment loadings in runoff and in stormwater systems through controls on land use activities.

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<sup>83</sup> Page 48

<sup>84</sup> Section 14.1 on page 87

<sup>85</sup> Policy 14.2.4(k) on page 93

## Evaluation

The Council has given effect to NZCPS Policy 22.

The RCEP makes reference to sedimentation in Chapter 14.1 in relation to the effects of dredging and mineral extraction. However, none of the objectives or policies refers to sedimentation. This is surprising given that the Anticipated Environmental Results<sup>86</sup> for the RCEP include “Reduction in human induced sedimentation within harbours and estuaries”.

However, the Bay of Plenty Regional Water and Land Plan deals with the NZCPS Policy 22 issues in a comprehensive manner. Chapter 3 of the Plan is titled “The Integrated Management of Land and Water” and it deals with soil erosion and the sedimentation of water bodies, estuaries and harbours. It would therefore be useful to cross-reference the Regional Water and Land Plan where the RCEP raises the issue of sedimentation.

### NZCPS Policy 23 Discharge of contaminants

- (1) In managing discharges to water in the coastal environment have particular regard to:
  - (a) the sensitivity of the receiving environment;
  - (b) the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and
  - (c) the capacity of the receiving environment to assimilate the contaminants;and:
  - (d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;
  - (e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and
  - (f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.
- (2) In managing discharge of human sewage do not allow:
  - (a) discharge of human sewage directly to water in the coastal environment without treatment; and
  - (b) the discharge of treated human sewage to water in the coastal environment, unless:
    - i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and
    - ii) informed by an understanding of tangata whenua values and the effects on them.
- (3) Objectives, policies and rules in plans which provide for the discharge of treated human sewage into waters of the coastal environment must have been subject to early and meaningful consultation with tangata whenua.
- (4) In managing discharges of stormwater take steps to avoid adverse effects of stormwater discharge to water in the coastal environment, on a catchment by catchment basis, by:
  - (a) avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems;
  - (b) reducing contaminant and sediment loadings in stormwater at source, through contaminant treatment and by controls on land use activities;
  - (c) promoting integrated management of catchments and stormwater networks; and
  - (d) promoting design options that reduce flows to stormwater reticulation systems at source.
- (5) In managing discharges from ports and other marine facilities:
  - (a) require operators of ports and other marine facilities to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats that is more than minor;

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<sup>86</sup> Page 132

- (b) require that the disturbance or relocation of contaminated seabed material, other than by the movement of vessels, and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed, substrate, ecosystems or habitats;
- (c) require operators of ports, marinas and other relevant marine facilities to provide for the collection of sewage and waste from vessels, and for residues from vessel maintenance to be safely contained and disposed of; and
- (d) consider the need for facilities for the collection of sewage and other wastes for recreational and commercial boating.

## Evaluation

The RCEP does not give effect to NZCPS Policy 23(1), 23(2) and 23(5). It does give effect to NZCPS Policy 23(3) and 23(4).

Chapter 9 of the RCEP deals with Coastal Discharges.<sup>87</sup> Objective 9.2.2 requires the “maintenance and enhancement” of water quality.<sup>88</sup> This does not give effect to the more specific requirements of NZCPS Policy 23(1)(d) to (f). RCEP Objective 9.2.2 should be amended accordingly. Additional RCEP policy is also required to give effect to NZCPS Policies 23(1)(a) to (c).

While RCEP Policy 9.2.3(b)<sup>89</sup> and 9.2.3(f)<sup>90</sup> do partly give effect to NZCPS Policy 23(1)(d) to (f), the RCEP policy should be amended to additionally refer to “after reasonable mixing” (NZCPS Policy 23(1)(d)) and to minimising adverse effects on life-supporting capacity within a mixing zone (NZCPS Policy 23(1)(f)). RCEP Policy 9.2.3(f) should be amended to refer to the need to have the smallest mixing zone necessary to achieve the Schedule Thirteen water quality standards (NZCPS Policy 23(1)(e)).

RCEP Policy 9.2.3(g)<sup>91</sup> gives effect to NZCPS Policy 23(2) in part. It should be amended to give effect to NZCPS Policy 23(2)(a) and 23(2)(b)(i).

RCEP Policy 9.2.3(g)<sup>92</sup> gives effect to NZCPS Policy 23(3).

RCEP Policy 9.2.3(d)<sup>93</sup> gives effect to NZCPS Policy 23(4). This is further enhanced by Policy 9.2.4(a).

The RCEP does not give effect to NZCPS Policy 23(5). Additional RCEP policy guidance specific to the Port Zone is required in that regard. This was also discussed under NZCPS Policy 9. NZCPS Policy 23(5)(d) is partly given effect to by RCEP Policy 9.2.3(k)<sup>94</sup> and Method of Implementation 9.2.6(c)<sup>95</sup>. However, the RCEP does not identify where boat sewage and waste disposal facilities are required and it should do so.

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<sup>87</sup> Commencing on page 45

<sup>88</sup> Page 48

<sup>89</sup> Page 49

<sup>90</sup> Page 50

<sup>91</sup> Page 50

<sup>92</sup> Page 50

<sup>93</sup> Page 49

<sup>94</sup> Page 50

<sup>95</sup> Page 53

### **NZCPS Policy 24 Identification of coastal hazards**

- (1) Identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed having regard to:
  - (a) physical drivers and processes that cause coastal change including sea level rise;
  - (b) short term and long term natural dynamic fluctuations of erosion and accretion;
  - (c) geomorphological character;
  - (d) the potential for inundation of the coastal environment, taking into account potential sources, inundation pathways and overland extent;
  - (e) cumulative effects of sea level rise, storm surge and wave height under storm conditions;
  - (f) influences that humans have had or are having on the coast;
  - (g) the extent and permanence of built development; and
  - (h) the effects of climate change on:
    - i) matters (a) to (g) above;
    - ii) storm frequency, intensity and surges; and
    - iii) coastal sediment dynamics;taking into account national guidance and the best available information on the likely effects of climate change on the region or district.

### **Evaluation**

The RCEP gives effect to NZCPS Policy 24.

The RCEP notes that areas sensitive to coastal hazards (ASCH) are identified in Volume Two of the RCEP (planning maps). It is understood that the regional scale scientific work required to identify coastal hazard areas has been undertaken by the BOPRC and this has been refined by the region's territorial local authorities at a local scale. The delineation of coastal hazard zones occurs in the region's district plans prepared by the territorial local authorities.<sup>96</sup>

It is also understood that all of the factors listed in NZCPS Policy 24 were utilised in the BOPRC and territorial local authority coastal erosion hazard studies. This is reinforced by RCEP Policy 11.2.3(f)<sup>97</sup>.

### **NZCPS Policy 25 Subdivision, use and development in areas of coastal hazard risk**

In areas potentially affected by coastal hazards over at least the next 100 years:

- (a) avoid increasing the risk of social, environmental and economic harm from coastal hazards;
- (b) avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;
- (c) encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;
- (d) encourage the location of infrastructure away from areas of hazard risk where practicable;
- (e) discourage hard protection structures and promote the use of alternatives to them, including natural defences; and
- (f) consider the potential effects of tsunami and how to avoid or mitigate them.

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<sup>96</sup> The author was a commissioner on the Whakatane District Council's plan change process for its coastal hazard zone and associated plan provisions.

<sup>97</sup> Page 65

## Evaluation

The RCEP partly gives effect to NZCPS Policy 25.

See the commentary under Policy 24. It is understood that the region's district plans give effect to NZCPS Policy 25. Additionally:

- NZCPS Policy 25(a) is given effect to by RCEP Objective 11.2.2<sup>98</sup>
- NZCPS Policy 25(c) to (d) is given effect to by RCEP Policy 11.2.2<sup>99</sup>

However, additional RCEP policy is required in relation to:

- the discouragement of “hard protection structures” to give effect to NZCPS Policy 25(e), and
- tsunamis, to give effect to NZCPS policy 25(f).

### **NZCPS Policy 26 Natural defences against coastal hazards**

- (1) Provide where appropriate for the protection, restoration or enhancement of natural defences that protect coastal land uses, or sites of significant biodiversity, cultural or historic heritage or geological value, from coastal hazards.
- (2) Recognise that such natural defences include beaches, estuaries, wetlands, intertidal areas, coastal vegetation, dunes and barrier islands.

## Evaluation

The RCEP partly gives effect to NZCPS Policy 26.

RCEP Policies 11.2.3(j) and 11.2.3(k)<sup>100</sup> require natural features that provide hazard protection to themselves be protected. However, the RCEP provisions should be amended to refer to the “restoration and enhancement” of natural defences as and when development opportunities enable that to occur (NZCPS Policy 26(1)). The RCEP provisions could also refer to the full range of natural defences listed in NZCPS Policy 26(2).

### **NZCPS Policy 27 Strategies for protecting significant existing development from coastal hazard risk**

- (1) In areas of significant existing development likely to be affected by coastal hazards, the range of options for reducing coastal hazard risk that should be assessed includes:
  - (a) promoting and identifying long-term sustainable risk reduction approaches including the relocation or removal of existing development or structures at risk;
  - (b) identifying the consequences of potential strategic options relative to the option of ‘do-nothing’;
  - (c) recognising that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations;
  - (d) recognising and considering the environmental and social costs of permitting hard protection structures to protect private property; and
  - (e) identifying and planning for transition mechanisms and timeframes for moving to more sustainable approaches;
- (2) In evaluating options under (1):

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<sup>98</sup> Page 63

<sup>99</sup> Page 64

<sup>100</sup> Page 66

- (a) focus on approaches to risk management that reduce the need for hard protection structures and similar engineering interventions;
  - (b) take into account the nature of the coastal hazard risk and how it might change over at least a 100 year timeframe, including the expected effects of climate change; and
  - (c) evaluate the likely costs and benefits of any proposed coastal hazard risk reduction options.
- (3) Where hard protection structures are considered to be necessary, ensure that the form and location of any structures are designed to minimise adverse affects on the coastal environment.
  - (4) Hard protection structures, where considered necessary to protect private assets, should not be located on public land if there is no significant public or environmental benefit in doing so.

### **Evaluation**

The RCEP partly gives effect to NZCPS Policy 27.

RCEP Policies 11.2.3(a)<sup>101</sup> and 11.2.3(e)<sup>102</sup> respectively require a precautionary approach to the installation of coastal hazard works and that subdivision, use and development in areas sensitive to coastal hazards are supported by coastal hazard analysis. This is given further effect to by the coastal hazard provisions of the region's district plans.

However, additional RCEP policy relating to "hard protection measures" is required to give effect to NZCPS Policies 27(1)(c) to (d) and Policies 27(2) to 27(4).

### **NZCPS Policy 28 Monitoring and reviewing the effectiveness of the NZCPS**

- (1) To monitor and review the effectiveness of the NZCPS in achieving the purpose of the Act, the Minister of Conservation should :
  - (a) in collaboration with local authorities collect data for, and, as far as practicable, incorporate district and regional monitoring information into a nationally consistent monitoring and reporting programme;
  - (b) undertake other information gathering or monitoring that assists in providing a national perspective on coastal resource management trends, emerging issues and outcomes;
  - (c) within six years of its gazettal, assess the effect of the NZCPS on regional policy statements, plans, and resource consents, and other decision making; and
  - (d) publish a report and conclusions on matters (a) to (c) above.

### **Evaluation**

This Policy is not relevant as it applies to the Minister of Conservation.

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<sup>101</sup> Page 63

<sup>102</sup> Page 64

### **NZCPS Policy 29 Restricted Coastal Activities**

- (1) The Minister of Conservation does not require any activity to be specified as a restricted coastal activity in a regional coastal plan.
- (2) Local authorities are directed under section 55 and 57 RMA to amend documents as necessary to give effect to this policy as soon as practicable, without using the process in Schedule 1 RMA, with the effect that:
  - (a) any activity specified as a discretionary activity and a restricted coastal activity becomes a discretionary activity only;
  - (b) any activity specified as a non-complying activity and a restricted coastal activity becomes a non-complying activity only.
- (3) Any application for a coastal permit for an activity specified as a restricted coastal activity that has been publicly notified before the date the amendments in clause (2) are made shall continue to be treated as an application for a restricted coastal activity for the purposes of section 117 RMA.
- (4) Any other application for an activity specified as a restricted coastal activity made before the date of the amendments in clause (2), shall be considered as a discretionary or non-complying activity in accordance with the regional coastal plan or proposed regional coastal plan's classification and section 117 does not apply.

### **Evaluation**

This Policy was given effect to by the Council on 22 March 2011.

### **3 RCEP Glossary**

The following terms appear in the NZCPS Glossary but not in the RCEP Glossary. :

- Hard protection structure
- Harmful aquatic organisms
- Infrastructure
- Land typing
- Landscape characterisation
- Marine facilities
- Mātauranga Māori
- Mixing zone
- Naturally rare
- Papakāinga development
- Predictive modelling
- Pūkenga
- Risk
- Substrate
- Taxa

It is suggested that the list of terms above be cross-referenced in the RCEP Glossary, namely the RCEP Glossary should note that these terms are identified in the NZCPS and that those same definitions apply to the terms if they are used in the RCEP.

The following term is defined differently in the RCEP and the NZCPS. The RCEP definition should be amended to give effect to the NZCPS definition:

- Intertidal zone or area

#### **4 Structure and form of the RCEP**

The RCEP is currently comprised of eight Parts.

Part I sets out the RCEP framework. Part II addresses “matters of national importance” which are presumably derived from s6 of the RMA. Part III addresses “activities and effects” with the discrete chapter titles presumably derived from Part 3 of the RMA. Part IV addresses “advocacy” and Part V addresses “environmental results”. Part VI contains the rules and Part VII the RCEP Schedules.

The basic framework of the RCEP is sound and plan users will have become accustomed to it. Therefore the existing framework should generally be retained and any amendments made should be either those required to give effect to the NZCPS or to remove unnecessary provisions. In that regard s67(1) of the RMA now states that there are only three mandatory requirements for regional plans:

- (a) the objectives for the region; and
- (b) the policies to implement the objectives; and
- (c) the rules (if any) to implement the policies.

The truncated nature of the mandatory RMA s67(1) requirements reflects the fact that the main purpose of regional plans is to guide decision-makers considering resource consent applications.<sup>103</sup> More general information on coastal environment management can and should be contained in Council’s other non-statutory documents and reports.

It is recommended that Part II of the RCEP be amended so that it addresses the key policy topics of the NZCPS and that the sequence of the chapters within Part II mirrors that of the NZCPS. Part III of the RCEP should retain its focus on activities and effects but some amendments to its contents should be made to give effect to the NZCPS (see section 2 of this report) and also to reflect changes suggested for the chapters in Part II of the RCEP (see Table 2 below).

It is recommended that Parts IV and V of the RCEP be removed. The “advocacy” provisions (Part IV) provide little if any useful guidance to decision-makers. The policy direction that those chapters provide can be contained in non-statutory documents or the Council’s Long Term Plan (LTP) prepared under the Local Government Act 2002. The “environmental results” section (Part V) provides little if any useful additional guidance to decision-makers. Any policy direction that they contain should already be reflected in the RCEP’s objectives.

The Third (Areas of Significant Conservation Value), Sixth (Significant Marshbird Habitat Areas) and Seventh (Significant Indigenous Vegetation Areas) Schedules should be merged and grouped under two new headings:

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<sup>103</sup> And to establish permitted activities where appropriate.

- “indigenous biological diversity preservation zones”.
- “indigenous biological diversity protection zones”.

This was discussed above under NZCPS Policy 11.

The Eleventh (Cross-Boundary Issues) and Twelfth (Plan Monitoring and Review) Schedules could be removed from the RCEP. The “cross-boundary” process contained in the Eleventh Schedule is not unique to the coastal environment and it would be more appropriately contained in the Council’s LTP. The Twelfth Schedule deals with monitoring and review matters. Monitoring matters would be more appropriately dealt with in a non-statutory monitoring strategy or in the LTP. Having a monitoring programme embedded in a regional plan is inefficient as it requires a RMA First Schedule process to amend it.

## **5 Chapters of the RCEP**

Following on from the above discussion a recommended new chapter layout is shown in Table 2. The relevant NZCPS policy is listed for each chapter and the table identifies whether the new chapter is comprised of existing RCEP chapters or if it is entirely new.

It should be noted, however, that the final decision on the schedules and maps to be included in the RCEP will depend on what schedules and maps are finally included in the Regional Policy Statement.

As discussed above, the following chapters and schedules would not be retained in the RCEP and hence they are not listed in Table 2:

- Chapter 21 (Fishing)
- Chapter 22 (Marine Protected Areas)
- Chapter 23 (Anticipated Environmental Results)
- Eleventh Schedule (Cross-Boundary Issues)
- Twelfth Schedule (Plan Monitoring and Review)

In terms of chapter content, each existing chapter in both Part II and Part III of the RCEP generally comprises the following sections:

- Explanations/Principal reasons
- Key issue
- Objective
- Policies
- Rules (Part III only)

**Table 2: Recommended New Chapter and Schedule Layout**

Part	Recommended Chapter Layout		Current RCEP		NZCPS Policy	
	No	Suggested Title	No	Comment		
I	1	Preamble	1	Amendments required	-	
	2	NZCPS and RPS	-	New	7	
	3	Plan coverage (include Integration)	2	Amendments required	4	
	4	Plan structure	3	Amendments required	-	
II	5	Coastal environment	2.1.3	Amendments required	1	
	6	Tangata whenua values	8	Amendments required	2	
	7	Aquaculture	-	New	8	
	8	Ports	-	New	9	
	9	Reclamation and de-reclamation	15	Amendments required	10	
	10	Indigenous biological diversity	6	Amendments required	11, 5	
	11	Harmful aquatic organisms	16	Amendments required	12	
	12	Preservation of natural character	4, 6	Amendments required	13	
	13	Restoration of natural character	-	New	14	
	14	Natural features and landscapes	5	Amendments required	15	
	15	Historic heritage	18		17	
	16	Public open space	19	Amendments required	18	
	17	Walking and vehicle access	7, 19	Amendments required	19, 20	
	18	Water quality standards	9	Amendments required	23	
	19	Enhancement of water quality	-	New	21	
	20	Coastal hazards	11	Amendments required	24, 25, 26, 27	
	III	21	Occupation of space	12		-
		22	Discharges	9	Amendments required	23
		23	Taking, using and damming of water	10		6
24		Structures	13	Amendments required	6	
25		Disturbance, deposition and extraction	14	Amendments required	6	
26		Hazardous substances	17		6	
27		Noise	20		6	
IV		Rules	VI			
V	S1	River mouths		S2		
	S2	Indigenous biological diversity		Merge S3, S6, S7		
	S3	Natural features and natural landscapes		S4		
	S4	Water quality standards		S13		
	S5	Tangata whenua values		Merge S14, S16		
	S6	Port development plans		Update S8 and S15		
	S7	Permit information		S9		
	S8	Financial contributions		S10		

The chapters then have a range of different “methods of implementation” including:

- Methods of implementation – services
- Methods of implementation – facilitation and coordination
- Methods of implementation – information
- Methods of implementation – integrated management
- Methods of implementation – advocacy
- Methods of implementation – education

In contrast the NZCPS uses a much greater economy of expression. It contains only a brief list of “challenges” and “issues” in its Preamble and it contains no “explanations and reasons” or “methods of implementation”. Consequently it is a slim line and easy to access policy document. It is suggested that Council takes a lead from Government’s approach when considering the revised format of the RCEP.

In light of that, and also given the very limited range of mandatory matters now listed in s67(1) of the RMA, it is recommended that each of the chapters in Parts II and III of the RCEP only contain sections as follows:

- Issue(s)
- Objective
- Policies
- Rules to implement the policies (if applicable)

These are the key provisions that will guide decision-makers considering resource consent applications. Adopting this more focused structure will also assist with ensuring that the policy direction of the NZCPS is efficiently and effectively given effect to.

In making this recommendation it is considered that the current RCEP “explanations and principal reasons” sections should be largely redundant if the “issues” are expressed fully and clearly. There is also some duplication between the various “explanations and principal reasons” sections in the current RCEP. For example port related issues are repeatedly discussed in several of the chapters.

If necessary “advice notes” could be used to provide interpretive assistance to decision-makers, although that in itself would demonstrate that the provisions had not been clearly expressed.

The existing RCEP’s “methods of implementation” relating to services, advocacy and education and so on could be contained in non-statutory documents or the Council’s LTP. This makes it easier to amend those provisions (no First Schedule process required) and that in turn provides the Council with greater flexibility to respond to changing environmental and financial circumstances.

It is recommended that the rules of the RCEP be retained in tabular form as currently occurs in Part VI the RCEP. As discussed earlier, the wording of the current rules has not been evaluated. This should occur once the revised suite of RCEP objectives and policies has been decided.

There are several administrative matters that require amendment. Section 2.4<sup>104</sup> of the RCEP refers to the NZCPS 2004 and requires updating to refer to the NZCPS 2010. Section 3.2.6<sup>105</sup> of the RCEP refers to resource consent activity classes. The wording in the RCEP is not consistent with the wording in sections 77A and 87A of the Act and it needs to be updated. There may be other similar amendments that should be made once the RCEP is fully reviewed.

## 6 RCEP Maps

It is recommended that the Volume 2 RCEP maps be amended to implement the changes discussed above. Additional features that should be included on the maps are:

- Lands within the coastal environment managed under other Acts
- Indigenous biological diversity preservation areas
- Indigenous biological diversity protection areas
- Heritage sites
- Areas where Public access should be restored
- Vehicle access areas
- Areas where water quality should be restored

The following series of maps should be included in the RPS, as they will also usefully guide the region's territorial authorities as discussed below.

- Landward boundary of the coastal environment
- Outstanding natural character areas
- High natural character areas
- Areas where natural character should be restored

## 7 RPS Provisions

The brief for this review included:

“With respect to the above amendments, highlight any RPS provisions necessary to direct the RCEP.”

It is difficult to address this matter in the absence of the new and amended provisions that will be contained in the RCEP. Until those provisions are drafted, and compared to what is in the proposed RPS, the existence of any gaps or overlaps will not be apparent.

However, as a general principle, any duplication of policy guidance or detailed wording between the NZCPS, the RPS and the RCEP should be avoided.

Support for this proposition can be found in a recent Environment Court decision (*Wairoa River Canal Partnership v Auckland Regional Council [2010] NZEnvC 309*). There the Court observed that “*to be of most benefit, an RPS (or plan) should not repeat or paraphrase the requirements of higher order documents but should interpret them into the regional (or local)*”

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<sup>104</sup> Page 8  
<sup>105</sup> Page 14

*context. They should provide definition and clarification of phrases such as inappropriate subdivision, use and development thought an explicit spatial and/or descriptive planning framework within which such areas can be identified and informed judgement can be made as to which policies should be applied to which areas and activities.*” In that case, the Court was considering a submission that subsidiary planning documents should parrot the exact words of superior documents, including the RMA (and section 6(a) in particular).

Regarding where the provisions relating to the coastal environment and areas of outstanding natural character within that environment should sit, namely the RCEP or the RPS, the RMA requires that the following documents to give effect to the NZCPS:

- Regional policy statements (s 62(3));
- Regional plans (which include regional coastal plans: s 43AA) (s 67(3)(c)); and
- District plans (s 75(3)(b)), which must also give effect to any regional policy statement (s 75(3)(c)).

Given the requirement that district plans give effect to a regional policy statement, there is general merit in having provisions relating to the coastal environment (as opposed to the coastal marine area) that are intended to provide direction or guidance to the territorial authorities in the RPS, while matters relating to the coastal marine area remain in the RCEP. The reason for that is while district plans must not be inconsistent with regional plans for matters included in section 30(1), the requirement “not to be inconsistent” is not as strong as a requirement “to give effect to” a superior planning document.

On balance then, the “coastal environment” should be delineated (defined and mapped) in the RPS first, then the RCEP could refer to that delineation. Other spatial planning provisions looking to manage urban growth should also sit in the RPS as they currently do (Chapters 17 and 17A dealing with growth management).

However, regardless of where the “coastal environment” delineation provisions sit, the duplication of policy guidance and detailed wording amongst the various documents should be avoided, consistent with the case law guidance above.