

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED
CHANGE 1 TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

UNDER Schedule 1 of the Resource Management
Act 1991 (the Act)

IN THE MATTER OF Hearing Submissions and Further
Submissions on Proposed Change 1 to
the Regional Policy Statement for the
Wellington Region

**RIGHT OF REPLY EVIDENCE OF
DR IAIN NICHOLAS DAWE
ON BEHALF OF WELLINGTON REGIONAL COUNCIL
HEARING STREAM 7: SMALL TOPICS, WRAP-UP AND
VARIATION 1 – NATURAL CHARACTER**

30 MAY 2024

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INTRODUCTION

- 1 My full name is Iain Nicholas Dawe. I am a senior policy advisor (hazards and coasts) for Greater Wellington Regional Council (the Council) where I have been employed since 2006.
- 2 My qualifications and experience are set out in paragraphs 17-23 of the natural character Section 42A report for Hearing Stream 7, dated 11 March 2024¹.
- 3 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this hearing.

SCOPE OF REPLY

- 4 This Right of Reply follows Hearing Stream 7 held from Monday 15 April to Tuesday 16 April 2024. It addresses the following matters:
 - a) Responses to questions to officers from the Panels that were unable to be answered during the hearing;
 - b) Matters raised by the Panels during the hearing,
 - c) Matters raised by submitters during the hearing, and;
 - d) Questions raised in Minute 27 issued on 17 April 2024².
- 5 On 17 April 2024, the Hearing Panels (the Panels) issued Minute 27: *Hearing stream 7 (HS7) – Response to submitter correspondence, council's reply for HS7, and updated timetabling directions*, and requested that the natural character Right of Reply address a few matters that were raised during Hearing Stream 3.
- 6 In paragraph (i) of Minute 27 the Panels asked to be advised on:
 1. How or where other requirements of Policy 13 of the NZCPS are implemented in the RPS, and;

¹ <https://www.gw.govt.nz/assets/Documents/2024/03/S42A-Report-HS7-Natural-Character-110324.pdf>

² <https://www.gw.govt.nz/assets/Documents/2024/04/Minute-27-HS7-Response-to-Submitter-Correspondence-Councils-reply-for-HS7-and-updated-Timetabling-Directions-V2.pdf>

2. Whether any amendments would be appropriate to the explanation to Policy 3 to make it clear that it only implements Policy 13 in part.

7 During the hearing, similar questions were explored by the Panels that relate directly to the Minute points above. In particular, there was a discussion about the natural character policy hierarchy in the Regional Policy Statement for the Wellington Region (RPS) and how it gives effect to Policy 13 of the NZCPS for areas of the coastal environment that are considered to have an appreciable level of natural character, but not considered high or outstanding.

8 These questions are best answered together as they are closely related. I will begin by highlighting the salient points of Policy 13 of the NZCPS, followed by a short description of how natural character assessments are typically undertaken and then explain how this is addressed in the RPS.

9 In matters raised by submitters, I address relief sought by Ms Maggie Burns on behalf of Rangitāne o Wairarapa, that Policy 3 be supported with an amendment to Method 32 to specifically reference the need to partner with mana whenua/tangata whenua when assessing natural character.

10 Throughout this document wording changes are indicated with different colours as follows:

- Red strikeout and underline refers to s42A wording changes as of 11 March 2024.
- Blue strikeout and underline refers to rebuttal evidence wording changes as of 8 April 2024.
- Green strikeout and underline refers to right of reply evidence as of 30 May 2024 (this report).

11 A full marked up version with all the changes to the natural character provisions is provided in Appendix 1 of this report.

MATTERS RAISED IN MINUTE 27 AND RELATED QUESTIONS FROM THE PANELS DURING HEARING STREAM 7

12 One of the key issues identified in the preamble to the NZCPS is the loss of natural character, landscape values and wild or scenic areas along extensive areas of the

coast, particularly in areas closer to population centres or accessible for rural residential development.

13 There are two main policies in the NZCPS that address the management of coastal natural character; Policy 13 - Preservation of natural character and; Policy 14 - Restoration of natural character. Policy 3 addresses Policy 13 of the NZCPS and is the focus of this discussion. For context, other policies in the RPS address Policy 14 of the NZCPS and restoration of natural character.

14 Policy 13(1) of the NZCPS is as follows:

“(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.”

15 Policy 13 requires councils to; *“preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development”*. To achieve this, it suggests a two-step process. First, to assess the natural character of the coastal environment by mapping or identifying, at a *minimum*, areas of *high natural character*.

16 Typically, this assessment will identify areas that have low to moderate natural character values as well. In other words, in order to identify areas that have high or

outstanding natural character, it is necessary to identify the areas that do not meet this criteria.

- 17 The second step in NZCPS Policy 13 involves taking this natural character assessment and determining whether objectives, policies and rules are required to; *“preserve the natural character”* of the coastal environment.
- 18 The role of the RPS is to provide appropriate direction to regional and district plans to undertake this process. Policy 3 of the RPS is specifically worded to address the protection of areas identified as having ‘high’ natural character. It directs district and regional plans to include policies, rules and/or methods to protect high natural character in the coastal environment from inappropriate subdivision, development and/or use. It gives partial effect to Policy 13 of the NZCPS by focussing on the protection of areas with the highest natural character.
- 19 Policy 36 of the RPS, a regulatory consideration policy, directs the management of all (other) areas of the coastal environment for natural character, including those considered to have low or moderate natural character values. Policy 36 also applies in situations where natural character has not yet been assessed under Policy 3. Policy 36 is as follows:

“Policy 36: Managing effects on natural character in the coastal environment – consideration

When considering an application for a resource consent, notice of requirement or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may affect natural character in the coastal environment, and in determining whether an activity is inappropriate particular regard shall be given to:

(a) the nature and intensity of the proposed activity including:

(i) the functional need or operational requirement to locate within the coastal environment

(ii) the opportunity to mitigate anticipated adverse effects of the activity

(b) the degree to which the natural character will be modified, damaged or destroyed including:

- (i) the duration and frequency of any effect, and/or*
 - (ii) the magnitude or scale of any effect;*
 - (iii) the irreversibility of adverse effects on natural character values;*
 - (iv) whether the activity will lead to cumulative adverse effects on the natural character of the site/area.*
- (c) the resilience of the site or area to change;*
- (d) the opportunities to remedy or mitigate previous damage to the natural character;*
- (e) the existing land uses on the site.”*

20 In this way, a policy hierarchy and pathway has been set up in the RPS to direct the protection of natural character in the coastal environment. First, with a regulatory policy (P3) providing direction to district and regional plans, with a particular emphasis on ensuring the protection of high natural areas. Second, with a supporting regulatory consideration policy of natural character (P36) for all areas in the coast. Policy 36 can be seen as a general or ‘backstop’ policy that can be used for situations where coastal natural character is considered less than high, has not been assessed, mapped, identified or otherwise included in regional or district plans. Policy 36 gives overall effect to the protection element of Policy 13 of the NZCPS, with Policy 3 focussed on ensuring that areas with the highest coastal natural character are protected with a full suite of provisions in regional and district plans.

21 Closely related to Policy 36 is Policy 35 that addresses the ‘preservation’ element of NZCPS Policy 13. Policy 35 is also a regulatory consideration policy and is as follows:

“Policy 35: Preserving the natural character of the coastal environment – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, particular regard shall be given to preserving the natural character of the coastal environment by:

- (a) minimising any adverse effects from point source and non-point source discharges, so that aquatic ecosystem health is safeguarded;*

(b) protecting the values associated with estuaries and bays, beaches and dune systems, including the unique physical processes that occur within and between them from inappropriate subdivision, use and development, so that healthy ecosystems are maintained;

(c) maintaining or enhancing amenity – such as, open space and scenic values – and opportunities for recreation and the enjoyment of the coast by the public;

(d) minimising any significant adverse effects from use and enjoyment of the coast by the public;

(e) safeguarding the life supporting capacity of coastal and marine ecosystems;

(f) maintaining or enhancing biodiversity and the functioning of ecosystems; and

(g) protecting scientific and geological features from inappropriate subdivision, use and development.”

22 In order to clarify the links between these policies, I recommend highlighting the connection in the Policy 3 explanation as follows (~~green strikeout and/or underline~~):

“Explanation

~~Section 6(a) of the Resource Management Act 1991 requires that the preservation of the natural character of the coastal environment and the protection of it from inappropriate use and development is recognised and provided for.~~

~~Although it is a matter of national importance to preserve the natural character of the coastal environment, ~~However, the Resource Management Act it does not preclude appropriate use and development in the coastal environment.~~~~

~~The New Zealand Coastal Policy Statement further establishes a requirement to define what form of subdivision, use, development or occupation would be appropriate in the coastal environment and where it would be appropriate. Policy 3 supports these requirements, along with policies 55 and 56, which promote a compact, well designed and sustainable regional form.~~

~~Policy 3 ~~implements in part~~ ~~Policy 13 of~~ the New Zealand Coastal Policy Statement by ~~requiring~~ ~~requires~~ district and regional plans to protect areas considered to have ‘high’ natural character from inappropriate subdivision,~~

use and development. Councils must assess land in the coastal environment to ascertain which areas have high natural character, in order to protect these areas, and to determine what would be inappropriate activities on this land, depending on the attributes associated with an area's high natural character.

The policy lists the matters to be considered when assessing natural character. Policy 3 (a) contains factors which contribute 'natural' attributes to an area, while the factors within clause (b) are about people's influence in or upon the area, which can compromise, modify, or otherwise diminish the natural character of the area.

Case law⁷ has established that '*natural character*'. *Natural Character does not necessarily mean pristine or completely unmodified character. Natural character occurs on a continuum, from pristine to totally modified. Most of the coastal environment has some element of natural character and, conversely, some degree or element of modification.*

The Department of Conservation guidance note to Policy 13 of the New Zealand Coastal Policy Statement describes coastal natural character as including patterns and processes that are the products of nature, both living and non-living, but not those that are human-made. Natural character also includes the perception of these elements but does not specifically consider social and cultural values. Social and cultural values are considered within Policy 25 - identifying outstanding natural features and landscapes, of which natural character values are a component.

When making a determination as to whether the degree of natural character is high in a particular location, an area of high natural character is likely to be dominated by natural elements rather than by the influence of human activities, and/or the natural elements will be out of the ordinary or otherwise regarded as important in terms of one or more of the factors outlined within policy 36(a) and (c). Alternatively, an area of high natural character may be regarded as having qualities which are relatively uncompromised by human activities and influence, as specified within 36(b):

Policy 36 will need to be considered alongside policy 3 when changing, varying or reviewing a district or regional plan:

Related policies within this Regional Policy Statement direct regional and district plans to identify and protect historic heritage places, sites and areas (policies 21 and 22), ecosystems with significant biodiversity value (policies 23 and 24), outstanding natural features and landscapes (policies 25 and 26), and special amenity landscape values (policies 27 and 28) – using the criteria outlined in each policy, and guidance that will be developed to assist with implementation of the Regional Policy Statement (method 7).”

In situations where coastal natural character is considered less than high, has not been assessed, mapped, identified or otherwise included in regional or district plans, Policy 36 is used to assess and manage the effects of activities for resources consents, notices of requirement or regional or district plan changes, variations or reviews to avoid, remedy or mitigate adverse effects of activities on natural character in the coastal environment.

Policies 3 and 36 address management of activities that may have effects on coastal natural character. Related to these two provisions is Policy 35 that gives effect to the preservation of natural character elements of Policy 13 of the New Zealand Coastal Policy Statement. Policy 35 is used when considering resources consents, notices of requirement or regional or district plan changes, variations or reviews.

23 For completeness and to ensure that Policy 13 of the NZCPS is being given full effect to, I have undertaken a review of the framework within the RPS for the management of coastal natural character. In the hearing, the Panels requested this be undertaken to help understand how the RPS deals with natural character as a whole. This is presented in Table 1 below, that shows every reference to natural character in the RPS as it pertains to the coastal environment. Together, Objectives 4 and 5, Policies 3, 35 and 36 and Methods 7 and 8 implement Policy 13 of the NZCPS.

Table 1: Provisions in the RPS that contain the term ‘natural character’ as it relates to the coastal environment.

| RPS provision | Text or clauses where term ‘natural character’ appears in the RPS | Commentary |
|--|---|---|
| Objective 4 | The <i>natural character</i> of the coastal environment is protected from the adverse effects of inappropriate subdivision, use and development. | Relates to all 3 natural character policies: Policy 3 - Protecting high natural character in the coastal environment Policy 35 - Preserving the natural character of the coastal environment Policy 36 - Managing effects on natural character in the coastal environment |
| Objective 5 | Areas of the coastal environment where <i>natural character</i> has been degraded are restored and rehabilitated | Relates to Policy 64 that promotes a whole of catchment approach to environment restoration including coastal features, ecosystems and habitats that are part of the natural character of these environments |
| Policy 4: Identifying the landward extent of the coastal environment – district plans | District plans shall include policies and/or rules to identify the landward extent of the coastal environment using the following criteria: (c) any | Relates directly to natural character identification and characterisation in the coastal environment. |

| | | |
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| | landscapes or features, including coastal escarpments, that contribute to the <i>natural character</i> , visual quality or amenity value of the coast. | |
| Policy 35: Preserving the natural character of the coastal environment – consideration | When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, particular regard shall be given to preserving the <i>natural character</i> of the coastal environment by: | Gives effect to RMA S6(a) and NZCPS Policy 13 and implements objective 4 of the RPS |
| Policy 36: Managing effects on natural character in the coastal environment – consideration | When considering an application for a resource consent, notice of requirement or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may affect natural character in the coastal environment, and in determining whether an activity is inappropriate particular regard shall be given to: (b) the degree to which the <i>natural character</i> will be modified, damaged or destroyed including (iii-iv) and (d). | Gives effect to RMA S6(a) and NZCPS Policy 13 and implements objective 4 of the RPS |
| Policy 38: Identifying the landward extent of the coastal environment – consideration | 38(c) any landscapes or features, including coastal escarpments, that contribute to the <i>natural character</i> , visual quality or amenity value of the coast. | Elements of natural character are considered an important way to identify the coastal environment. |
| Policy 53: Public access to and along the coastal marine area, lakes and rivers – consideration | 53(a)(v) places, sites and areas with high <i>natural character</i> identified in accordance with policy 36. | Links to RPS policy 36 that addresses effects on natural character in the coastal environment. |
| Method 7: Information about high natural character in the coastal environment | Disseminate information held by Wellington Regional Council about places, sites and areas with high <i>natural</i> | Links to Policies 3, 35 and 36. |

| | | |
|--|--|--|
| | <i>character</i> in the coastal environment. | |
| Method 8: Information about restoration and enhancement of degraded water bodies and the natural character of the coastal environment | Prepare and disseminate information about the restoration and enhancement of degraded water bodies and the <i>natural character</i> of the coastal environment, including about ecosourcing | Links to Policy 64 - Supporting a whole of catchment approach – non-regulatory |
| Coastal environment [Definition] | Includes the coastal marine area and the adjacent landward environment, to the extent it has the following characteristics or attributes, (in accordance with policies 5 and 38): (c) any landscapes or features, including coastal escarpments, that contribute to the <i>natural character</i> , visual quality or amenity value of the coast. | |

MATTERS RAISED BY SUBMITTERS

- 24 One matter was raised by a submitter in the hearing. Ms Burns on behalf of Rangitāne o Wairarapa, sought that Policy 3 be supported with an amendment to Method 32 to specifically reference the need to partner with mana whenua/tangata whenua when assessing natural character. Ms Burns argued that referencing partnership in Policy 3 and in Method 32 would be consistent with other provisions in the RPS and pointed to the connection between new Policy IE.1 and Method 32.
- 25 In her submission on Change 1, Ms Burns sought an amendment to Policy 3 to specifically state that mana whenua should be partnered with in the assessment of coastal natural character. In my natural character rebuttal evidence of for hearing stream 7, dated 8 April 2024, I agreed with Ms Burns and recommended the Policy be amended to include reference to partnership with mana whenua. This can be seen in Appendix 1 (blue text).
- 26 Thus, as it stands, Policy 3 is self-contained as it explicitly directs councils to partner with mana whenua/tangata whenua in the process of identifying coastal natural character.
- 27 Method 32 is a non-regulatory integration method in the operative RPS that links to a range of regulatory, consideration and non-regulatory policies that deal with

managing amenity and recreational values, indigenous biodiversity and ecosystems, historic heritage, outstanding natural features and landscapes, managing effects on natural character and enhancing the involvement of tangata whenua in resource management decision-making (Policies 4, 19, 21, 22, 23, 24, 25, 26, 27, 28, 36 and 66). None of these policies make reference to partnering with mana whenua/tangata whenua and the Method is designed to encourage this to approach.

28 Method 32 in the Operative RPS is as follows:

“Method 32: Engagement with tangata whenua, stakeholders, landowners and the community in the identification and protection of significant values

Involve iwi, hapū, marae or whānau, stakeholders, landowners and the community in the:

(a) identification and protection of significant places, sites and areas with significant historic heritage values;

(b) identification and protection of outstanding natural features and landscapes, and managing the values of special amenity landscapes;

(c) identification and protection of indigenous ecosystems and habitats with significant biodiversity values; and

(d) protection of the values associated with the rivers and lakes identified in Appendix 1.

Implementation: Wellington Regional Council and city and district councils”

29 In Change 1, the chapeau to the Method has been amended to require *partnership* with mana whenua/tangata whenua, as opposed to *engagement*, in the identification and protection of significant values. Additionally, a new policy has been added in Change 1 (IE.1) that directs district and regional plans to give effect to mana whenua/tangata whenua roles and values when managing indigenous biodiversity. Ms Burns references the connection between Policy IE.1 and Method 32 and argues that it should also connect to Policy 3 for consistency.

30 Policy IE.1 is a wide-ranging policy to connects to a number of provisions across the RPS and to regional and district plan processes. It states that district and regional

plans shall include objectives, policies, methods and/or rules to partner with mana whenua / tangata whenua to:

“(a) apply mātauranga Māori frameworks, and support mana whenua / tangata whenua to exercise their kaitiakitanga, in managing and monitoring indigenous biodiversity;

(b) identify and protect taonga species;

(c) support mana whenua / tangata whenua to access and exercise sustainable customary use of indigenous biodiversity, including for mahinga kai and taonga, in accordance with tikanga.”

- 31 I consider that that it is appropriate for Policy IE.1 to connect with Method 32 to help implement the related elements of the provision. However, as pointed out above, Policy 3 is a self-contained policy that sets out all the elements required to undertake a natural character assessment. It does not require Method 32 to be amended to ensure its implementation as regional and district plans have to give effect to it as a regulatory policy. Therefore, I recommend no change to Method 32 to accommodate coastal natural character assessments.

RECOMMENDATIONS

- 32 I recommend that Change 1 is amended as detailed in paragraph 21 and Appendix 1 (indicated with green text).

SECTION 32AA EVALUATION

- 33 In accordance with Section 32AA, I consider that the proposed amendments to the explanation clarify and highlight the policy hierarchy for the better management of effects on coastal natural character within the RPS. It is not expected that there will be any significant costs associated with this amendment as it is not introducing any change to the actual policy. I consider the revised wording is the most appropriate response as it improves understanding of the of the Policy. This will improve the efficiency and effectiveness of its implementation and which better achieve the purpose of the RMA and NZCPS. This evaluation is set out in Appendix 2.

DATE:

30 May 2024

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Greater Wellington Regional Council