

Background Working Document

Coastal Planning and the
National Planning Template –
A Preliminary Helicopter view

Draft Internal MfE Report
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Coastal Planning and the National Planning Template – A Preliminary Helicopter view

Introduction

The purpose of this report is to provide a helicopter view of the types of coastal management issues relevant to the proposed National Planning Template ('NPT' or 'the template'). The report presents several recommendations including areas where the template could provide content on particular issues, and proposes further discussions with councils to consider the role of the template in coastal planning¹.

The NPT is one of several reform proposals within the Resource Legislation Amendment Bill (RLAB) introduced to Parliament in December 2015 and has been proposed as a means of providing consistency across regional and district plans in New Zealand. The scope of the NPT is currently being determined; the Bill simply provides for the development of a template which could be limited to mandatory structure and format, or could be more directive in terms of specifying plan content.

The need for this specific piece of research emerged from earlier research on the structure and format of regional plans, a key finding of which was that there appeared to be variation in how councils approached regional coastal plans. That research was high level, and did not explore the content of these plans or the specific issues each plan dealt with.

Coastal planning is an area that may require special consideration in the Template given the particular management issues relating to the coast. Coastal issues relate to management of particular values and resources as well as managing the uses and activities that people may wish to carry out in the coastal environment. In order to manage these issues, there are specific requirements and tools in the regulatory space which councils must undertake. The New Zealand Coastal Policy Statement 2010 is a compulsory piece of national direction produced under the RMA, and councils are required to give effect to this in their policy statements and plans. There is also the obligation for regional and unitary councils to have a regional coastal plan. Local government also has specific functions in relation to coastal management (RMA sections 30 and 31). These legislative aspects are expanded on in the next section of this report.

Initial engagement with staff from the Department of Conservation (DOC) also highlighted that this was an area in need of some further research. The Minister of Conservation has direct responsibilities for the preparation, implementation and monitoring of the NZCPS and approves regional coastal plans. DOC supports the Minister in her role and has technical and operational expertise in coastal issues.

Study approach

The report has been prepared by MfE and DOC based on their own staff's experience and knowledge in RMA coastal planning and DOC's involvement with the New Zealand Coastal Policy Statement 2010. Other material is included where considered relevant.

¹ It should be noted that the recommendations in this report are based on these initial discussions and findings and in some cases the time and resources associated with taking a recommendation forward may necessitate its deferral to a future version of the template. Where this is likely to be the case, this is noted. However, with all recommendations it is important to note that these are not final decisions or government policy.

This report outlines the findings of research undertaken to primarily understand the extent to which the proposed National Planning Template could specify requirements for coastal plans prepared under the RMA. To answer this primary question, the research sought to understand the following points:

- What are the issues in relation to coastal planning?
- How are councils currently approaching coastal plans?
- What does the Resource Legislation Amendment Bill 2015 provide for in terms of the scope of the NPT?
- What (if any) further work or research is required regarding coastal planning?
- To what extent could the NPT improve current practice in coastal plans?

Each section of this report ends with a summary of the key points. This is accompanied by issues and ideas for further internal discussion to determine an agreed approach to take forward to stakeholder engagement. The outcome of these discussions will help focus decision-making on the approach to coastal plan matters in the NPT.

Part 1: Legislative Context & Jurisdictional Responsibilities

This section of the report provides an overview of the current legislative context in relation to coastal planning. In doing so it also sets out the roles and responsibilities of regional councils and territorial authorities.

The Resource Management Act 1991 ('the Act') sets out the roles and responsibilities in relation to the management of New Zealand's coastal resources.

Section 6 of the Act lists matters of national importance which must be recognised and provided for by those exercising functions and powers under the Act in relation to managing the use, development, and protection of natural and physical resources. While 6(a) specifically mentions 'the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development', the full list is of relevance in managing the coastal environment. These matters cover:

- the protection of outstanding natural landscapes (6(b));
- protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (6(c));
- the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers (6(d));
- the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (6(e));
- the protection of historic heritage from inappropriate subdivision, use, and development (6(h)); and
- the protection of protected customary rights (6(g)).

Section 7 of the Act outlines 'Other Matters' that those exercising functions and powers under the Act in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to:

- (a) Kaitiakitanga
 - (aa) the ethic of stewardship
- (b) The efficient use and development of natural and physical resources

- (ba) the efficiency of the end use of energy
- (c) the maintenance and enhancement of amenity values
- (d) intrinsic values of ecosystems
- (e) [Repealed]
- (f) Maintenance and enhancement of the quality of the environment
- (g) Any finite characteristics of natural and physical resources
- (h) The protection of the habitat of trout and salmon
- (i) The effects of climate change
- (j) The benefits to be derived from the use and development of renewable energy

Further, Section 8 relates specifically to the Treaty of Waitangi, specifically that those exercising functions and powers under the Act shall take into account the principles of the Treaty of Waitangi.

All the matters in Sections 6, 7 and 8 of the RMA are given substance through the New Zealand Coastal Policy Statement 2010 (NZCPS).

New Zealand Coastal Policy Statement

The Act also requires, the preparation of a New Zealand Coastal Policy Statement ('NZCPS') the purpose of which is to set out policies in order achieve the purpose of the Act in relation to the coastal environment (RMA sections 56 and 57). The NZCPS must be given effect to in the preparation of regional policy statements and regional and district plans (RMA sections 62, 67 and 75).

Section 58 of the Act also sets out matters which may be included in the NZCPS as objectives and policies including (amongst other things) national priorities for the preservation of the natural character of the coastal environment of New Zealand, the protection of the characteristics of the coastal environment of special values to the tangata whenua, and activities involving the subdivision, use, or development of areas of the coastal environment. The list in Section 58 is not exhaustive, and the NZCPS may also include 'any other matter relating to the purpose of a New Zealand Coastal Policy Statement'. The first NZCPS was made operative in 1994. As required under the Act, the NZCPS 1994 was reviewed in 2004 which resulted in the current NZCPS being made operative in 2010. The NZCPS 2010 is included as Appendix 1 of this report.

Upon Gazettal of the NZCPS 2010, local authorities were required to:

'...amend regional policy statements, proposed regional policy statements, plans, proposed plans, and variations to give effect to the NZCPS provisions that affect these documents as soon as practicable, using the process set out in Schedule 1 of the Act except where the NZCPS directs otherwise².

It is understood that in some cases this is yet to occur, however most councils are addressing the requirement for policy statements and plans to give effect to the NZCPS as they review their relevant planning documents. This requirement to give effect to the NZCPS 'as soon as practicable' differs to some other national policy statements which are more directive in specifying the date by which local authorities must give effect to the national direction in their policy statements and plans³.

² NZCPS 2010, 'Application of this policy statement', p.7.

³ For example, the National Policy Statement for Electricity Transmission Activities 2008 states that local authorities are required to give effect to its provisions in plans by initiating a plan change or review within four years of its approval. The National Policy Statement for Renewable Electricity Generation 2010 is different again and requires regional councils to give effect to its provisions by notifying changes to existing or proposed regional policy statements within 24 months of the date on which the NPS took effect. For District Plans, local authorities were required to give effect to its provisions by notifying changes either within 24 months of the date on which the NPS took effect where the regional policy statement or proposed regional policy statement already provides for the policies; or, where a change or variation to the regional policy statement or proposed regional policy statement is required, within 12 months of the date on which the change or variation becomes operative. However it is noted that in some cases councils have still been slow or are yet to make appropriate amendments to their plans

Although decision-makers on resource consents are still required to 'have regard to' national direction such as the NZCPS, the incorporation of appropriate provisions within regional policy statements, regional and district plans provides for stronger implementation and should result in more certainty for plan users.

The NZCPS 2010 sets out 7 objectives and 29 related policies as national direction for the management of the coastal environment which must be given effect to through subordinate policy statements and plans developed by regional, unitary and territorial authorities.

Policies 1-7 are about processes, approaches and directions to support coastal decision making⁴:

- Policy 1 – understanding the extent and characteristics of the coastal environment, including its dynamic nature.
- Policy 2 – taking account of the principles of the Treaty of Waitangi and kaitiakitanga in relation to the coastal environment and involving tangata whenua in coastal decision making.
- Policy 3 – applying a precautionary approach to managing activities in the coastal environment when the effects are uncertain but potentially significantly adverse, including climate change effects.
- Policy 4 – promoting integrated coastal management of both natural and physical resources in the coastal environment, and any activities that affect that environment. This includes having coordinated management of activities that cross administrative boundaries and a collaborative approach to management.
- Policy 5 – considering the effects on lands and waters in the coastal environment held or managed under other Acts such as the Conservation Act 1987.
- Policy 6 – direction for decision makers to consider, when managing activities in the coastal environment, including appropriateness, functional need to be in the coast, the needs of communities and future generations and promoting the efficient use of occupied space.
- Policy 7 – promoting strategic planning in the preparation of regional policy statements, regional plans and district plans.

The remaining policies of the NZCPS deal with specific issues or activities that occur in the coastal environment requiring careful management. These include matters such as aquaculture, indigenous biodiversity, preservation of natural character, natural features and landscapes, public access, water quality and hazards.

The Preamble to the NZCPS highlights that the coastal environment has characteristics, qualities and uses that mean there are particular challenges in promoting sustainable management⁵. The coastal environment varies in nature and extent around the country, and with the natural and physical resources of the coast often important for supporting the economic and social wellbeing of communities. In addition, there is an increasing demand for the use of these resources by commercial operations and infrastructure providers as well as the importance of the coastal environment to tangata whenua. Added to this is the presence of particular natural values and other features and landscapes which have high or outstanding values within the coastal environment. Activities on land can affect coastal uses and values, and vice versa. As such, there are a range of competing uses and values in the coastal environment which the NZCPS seeks to manage.

with respect to the aforementioned NPSs despite the timeframes specified. As such, there is variation in national direction as to how and when local authorities must give effect to the provisions.

⁴ Quality Planning (no date) 'Introduction and the framework and principles for coastal management', <http://www.qualityplanning.org.nz/index.php/planning-tools/coastal-land-development/introduction-and-the-framework-and-principles-for-coastal-management>

⁵ New Zealand Coastal Policy Statement 2010, 'Preamble'.

To assist in the implementation of the NZCPS 2010, DOC has produced a set of guidance notes for each policy within the NZCPS. This guidance is aimed at assisting local authorities in the preparation of plan provisions relating to the coastal environment and is attached to this report as Appendix 2. The guidance has been found to be of use by councils in the early stages of plan-making, and is sometimes referred to in section 32 reports. However, it is also acknowledged that the guidance requires updating.

Functions of Regional Councils and Territorial Authorities

The RMA sets out the specific responsibilities of regional councils under Section 30. In summary, regional councils are responsible for⁶:

- the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region;
- the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance;
- Controlling the use of land for maintaining and enhancing water quality and quantity (including coastal water), avoidance or mitigation of natural hazards, and preventing or mitigating effects of the storage, use, disposal or transportation of hazardous substances;
- In the coastal marine area (and in conjunction with the Minister of Conservation) the control of:
 - land and associated natural and physical resources,
 - occupation of space (including extraction of sand, shingle, shell or other material),
 - taking use, damming and diversion of water,
 - discharges of contaminants into or onto land, air, or water and discharges of water into water,
 - the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations,
 - any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances,
 - the emission of noise and the mitigation of the effects of noise,
 - activities in relation to the surface of water.
- If appropriate, and in conjunction with the Minister of Conservation
 - the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:
- The establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:
- The strategic integration of infrastructure with land use through objectives, policies, and methods.

In order to give effect to these functions and responsibilities, regional councils are required to prepare a Regional Policy Statement under Section 60 of the Act, the purpose of which is to provide an overview of the resource management issues for the region and policies and methods to achieve the

⁶ Note this is not a comprehensive list, but is intended to provide an overview of the relevant functions as they relate to managing coastal issues.

integrated management of the natural and physical resources of the entire region. The Act specifies the matters that must be included in a RPS, and requires that a RPS must give effect to the NZCPS. The only mandatory regional planning document, other than the RPS, is the regional coastal plan. Section 64 of the Act requires that at all times there shall be a regional coastal plan for the entire coastal marine area ('CMA') of the region, but the plan may also form part of a regional plan where it is considered to promote the integrated management of a coastal marine area and any related part of the coastal environment. As such, regional councils may produce a plan that covers only the CMA or the council may widen the scope of its coastal plan to include the coastal environment where it deems it appropriate. Regional coastal plans (or coastal components of regional plans that cover a wider area than the CMA) require approval by the Minister of Conservation.

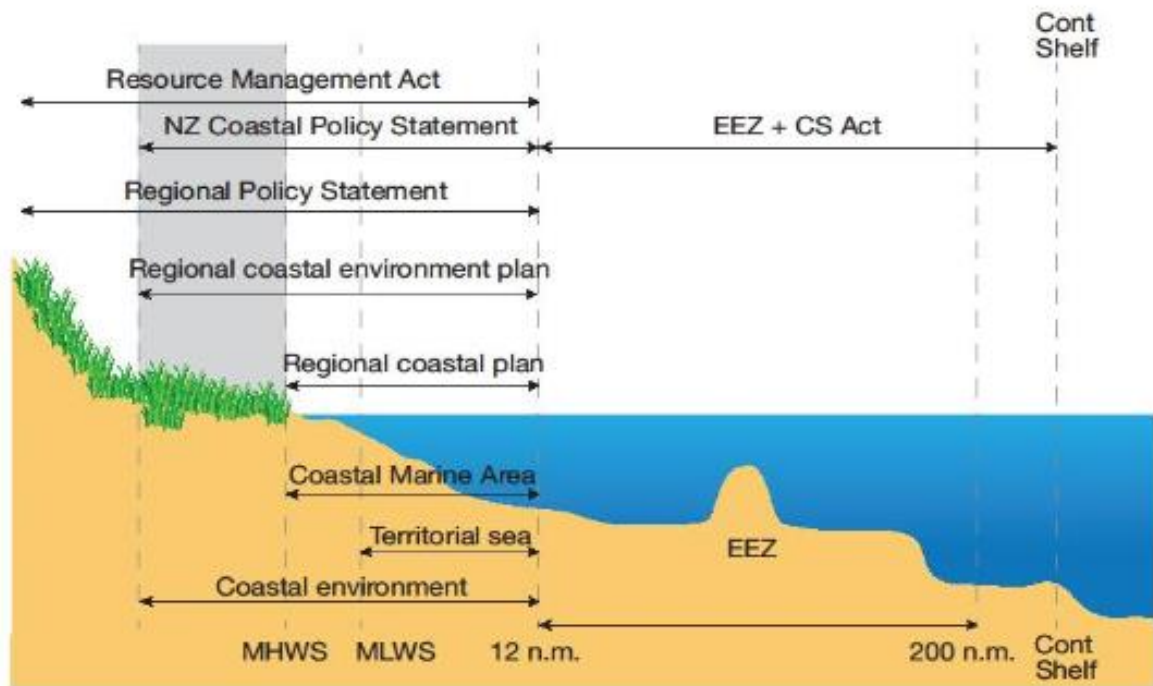
Territorial authorities (district councils) also have responsibilities and functions in relation to the coast under section 31 of the Act, as follows:

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
 - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
 - (i) the avoidance or mitigation of natural hazards; and
 - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
 - (iii) the maintenance of indigenous biological diversity:
 -
 - (d) the control of the emission of noise and the mitigation of the effects of noise:
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

Territorial authorities must give effect to the NZCPS, the RPS, the regional coastal plan and any other relevant regional plan in the preparation of District Plans, which are mandatory under the Act. In relation to the coast, territorial authorities are generally responsible for the landward components of the coastal marine area.

Figure 1 on the following page shows the jurisdictional boundaries in relation to the coast under the RMA.

RMA coastal management jurisdictions



MHWS = Mean High Water Springs

MLWS = Mean Low Water Springs

EEZ = Exclusive Economic Zone

Cont Shelf = Continental Shelf

EEZ + CS Act = Exclusive Economic Zone + Continental Shelf (Economic Effects) Act 2012

n.m. = nautical miles

Figure 1: RMA coastal management jurisdictions (Source: Quality Planning, 'Introduction and the framework and principles for coastal management,' <http://www.qualityplanning.org.nz/index.php/planning-tools/coastal-land-development/introduction-and-the-framework-and-principles-for-coastal-management>)

Other relevant legislation and policies

It is also important to acknowledge that the management of the coast in New Zealand occurs under other Acts of Parliament, policies and strategies aside from the RMA. These Acts include:

- Marine and Coastal Area Act 2011
- Reserves Act 1977
- Marine Reserves Act 1971
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- Fiordland (Te Moana o Atawhenua) Marine Management Act 2005
- Kaikoura (Te Tai o Marokura) Marine Management Act 2014
- Subantarctic Islands Marine Reserves Act 2014
- Sugarloaf Islands Marine Protected Area Act 1991
- Hauraki Gulf Marine Park Act 2000 (this has the same status as the NZCPS)
- Conservation Act 1987
- National Parks Act 1980
- Wildlife Act 1953
- Fisheries Act 1996
- Marine Mammal Protection Act 1978
- Conservation Management Strategies
- Marine Protected Areas Policy

This list is not exhaustive but highlights the range of policies and legislation that relate to the coast aside from the RMA. Policy 5 of the NZCPS provides an integrating mechanism to ensure that the effect on coastal lands and waters protected under other legislation are considered by decision-makers.

What does the Resource Management Legislation Amendment Bill 2015 provide for?

The Resource Legislation Amendment Bill 2015 (RLAB) sets out the scope of the NPT and the process for its preparation and approval. In terms of the contents of the NPT, Clauses 58C(1)-58C(6) set out the matters that the template may include, which can be summarised as follows:

- The structure and format of RPS and plans,
- Objectives, policies and methods of Regional policy statements and regional and district plans
- Rules for regional and district plans
- Provisions that apply generally or to specific regions or districts
- Provisions of a national policy statement, a NZCPS, or regulations (including a national environmental standard).

The Bill also provides for the ability for the Template to have the same status as a national policy statement as it may include any of the matters that may also be included in a national policy statement.

Of particular relevance to this report, the Bill requires that if the Template is to include provisions relating to the content or preparation of a regional coastal plan, then the Minister for the Environment must consult with the Minister of Conservation. There is also the provision for the Minister of Conservation to amend, withdraw, or approve the draft planning Template, to the extent that it includes provisions relating to the preparation or content of coastal plans.

As such, there is relatively wide scope within the Bill in terms of what the Template can include. However, this will need to be considered against what is necessary to achieve sustainable management, the timeframes to prepare and implement the Template, and the higher level consideration that it is a major change in plan preparation and implementation. It may be that certain

matters are deferred for inclusion in a later version or iteration of the Template, addressed through other means, or are considered low priority.

Part 2: Issue Identification

This part of the report outlines the topics and issues that have been identified through the research to date in relation to coastal planning.

Structure and Format of coastal plans

As the proposed NPT will likely specify the structure and format of planning documents, a key question posed was ‘what level of inconsistency or variation exists in the structure of coastal plans (including RPS documents)?’.

General structure of plans and combined plans

It appears that from the perspective of DOC staff, the structure and format of planning documents is not a major issue. The Regional Policy Statements tend to be structured around regionally significant issues, and subordinate plans typically reflect this same structure.

Staff also identified a trend towards combined regional planning documents or ‘all-in-one’ plans although this is more apparent in the North Island rather than South Island councils. Where these plans have been developed, it has been suggested that their success is dependent on variables other than the structure and format of the plan itself, such as the capabilities and resourcing of the particular council. Combined plans that include a separate coastal section have also been identified as plans that work particularly well as they provide more certainty for plan users.

DOC staff were also asked whether there are any plans they have come across where the structure works particularly well. It was identified that a major factor is the linkage between objectives, policies and rules. This is really important particularly with regard to later plan changes to avoid ‘orphan policies’. The Horizons One Plan was mentioned as a plan where this linkage is inherent and works very well. It was however pointed out that the Horizons region has a small coastal environment compared with other regions. Nevertheless, the general structure of the plan is of note, with the CMA chapter of the regional plan section grouping the objectives, policies and rules together by activity (e.g. ‘structures in the CMA’). In general, a cascade approach to the provisions is preferable, organising the plan in a logical order.

The Proposed Auckland Unitary Plan (PAUP) was identified as a plan where the linkages between sections could be better.

A point that was highlighted by staff was that councils are sometimes reluctant to change the structure of their plans when they come to review them. It was suggested that the reason for this is that people within a region are often used to a particular ‘look and feel’ of plans and may be resistant to change. A further suggestion is that there is limited interest in the structure of planning documents; generally Councils do not specifically consult on this aspect of the plan, the focus is more on content, so submitters’ attention is not necessarily focussed on (or drawn to) the structure of the plan.

Identification of values and activities

While the structure and format of plans is not necessarily a priority issue, staff did state that plans that are structured around both the values and the activities the council is seeking to protect or manage are those that seem to work well for coastal issues. Where the plan structure focuses solely on activities, or solely on the values, the navigation of the plan is much harder with a lack of integration. This is particularly so for users who have a coastal focus as it is harder to identify where the coastal provisions are located in the plan.

It is also considered crucial that RPS documents identify the values that are to be protected, particularly those of national significance. This approach ensures that the appropriate objectives, policies and rules to give effect to the RPS are then incorporated in subordinate planning documents, in this case the coastal plan. DOC notes that it is difficult to capture nationally significant issues (section 6 matters) in plan provisions that focus solely on the activities the plan seeks to manage. Rather, a hybrid approach of identifying both activities and values in the plan is preferable.

The Bay of Plenty Regional Coastal Environment Plan (RCEP) is an example of where such a hybrid approach has been taken. Part 3 of that plan covers the 'Resource management policies to achieve integrated management of the coastal environment' with policies grouped into 6 topics:

1. Natural heritage
2. Water quality
3. Iwi resource management
4. Historic heritage
5. Coastal hazards
6. Recreation, public access and open space.

Part 4 of the RCEP then covers the activity-based policies and rules such as structures and occupation of space and aquaculture.

Electronic delivery of plans

The issue of web-based plans and the emphasis in the proposed NPT on electronic delivery of plans was also raised. The group highlighted that in the Christchurch Replacement District Plan process, the Council has been referring users to the online version rather than the hard copy. However, this approach has raised workability issues for some submitters, including infrastructure providers, who would prefer to see the effect of the plan as a whole, rather than discrete sections of the plan. Therefore there remains a requirement for plan users to be able to assess the plan as a whole, while also providing the ability for individuals to view the most relevant sections of a plan.

In a similar vein, the group noted that having both a hard copy and electronic version of a plan raises the issue of which is the most 'legal' – i.e. which is most up-to-date and applicable? The group emphasised the importance of ensuring integration between both versions and that this be robust. Plans that are delivered electronically can be overly simplistic.

Scope of coastal plan vs Regional Coastal Environment Plan

As has previously been outlined in Part 1 of this report, the RMA requires regional councils to produce a regional plan that covers the coastal marine area (CMA), and provides the further option for councils to combine this with a plan that covers the wider coastal environment if the council deems it appropriate to do so. As such, it has been observed from the earlier research into the structure and format of regional plans, that regional councils approach their regional coastal plans differently.

Some councils have a regional coastal plan which covers just the CMA, while others have a regional coastal environment plan (RCEP) that extends landward of Mean High Water Spring (MHWS). A desktop scan reveals that:

- Of the 11 regional councils, five have operative first generation coastal plans which cover the CMA only.
- These are also all standalone coastal plans, except for the Horizons One Plan which is a combined regional plan.

- Of the five unitary councils, all contain the coastal provisions within their combined Unitary Plan, with the exception of Gisborne District Council where there is a separate proposed Coastal Environment Plan.
- The unitary councils also generally limit the coastal provisions to the CMA, with the exception of the PAUP which covers the wider coastal environment.
- Five councils have second generation plans at the proposed stage (including the PAUP). Four of these plans cover the wider coastal environment, with Greater Wellington's Proposed Natural Resources Plan limiting the scope of the coastal provisions to the CMA.

So this scan reveals that there is tendency to limit the scope of provisions to the CMA particularly in first generation plans. However as Councils review their first generation plans a possible trend may emerge whereby plans take a wider coastal environment approach. It is possibly too soon to determine whether most or all of the second generation coastal plans will take this approach. Nevertheless, of the councils that have second generation coastal plans, the majority are RCEPs (noting that only five councils have second generation plans and Horizons is the only one of these that is fully operative). It should be noted, however, that where the CMA approach has been taken, some councils do recognise that the effects of activities within the CMA can extend into the wider coastal environment. For example, in the case of the Southland Coastal Plan the plan states that while the scope of the rules is limited to activities in the CMA, the objectives and policies recognise the effects of activities on the wider coastal environment.

Staff advised that there is no one 'preferred' approach to this scope question, and essentially it is a decision made by the council depending on the circumstances. While this practice seems a little ad hoc, there was a suggestion that it is also dependent on the extent to which the regional council wants to 'direct' the territorial authorities and the desired level of collaboration. A regional coastal environment plan, generally speaking, encourages greater collaboration between the various councils within the region and also tends to result in better coastal management in relation to issues such as provision for certain land and water uses (e.g. Ports), natural hazards, indigenous biodiversity, the protection of sites of significance to iwi, and protection of heritage values. The Bay of Plenty Regional Coastal Environment Plan is thought to be a good example where collaboration and integration has worked well.

It was noted that the coastal environment approach also presents an opportunity to better deal with cross-boundary issues and ultimately better integrated management as the plan is not limited to issues within the coastal marine area. Environment Canterbury is an example of this in relation to sea level rise and in the Bay of Plenty, the Regional Policy Statement includes provisions for dealing with natural hazards. A further example is the management of indigenous vegetation in the Proposed Auckland Unitary Plan. However, it was noted that a consequential effect of matters such as natural hazards in coastal environment plans, is that existing use rights may be extinguished. Where a plan identifies a coastal hazard line, and then prohibits or restricts development seaward of the line, s10(4) and 30(1) of the RMA are at play meaning existing use rights cannot be relied upon⁷.

A potential issue the group noted was that with combined plans and/or RCEPs, there can be difficulty in determining which parts of the plan the Minister of Conservation has jurisdiction over and therefore has the ability to approve. This will need to be carefully considered in the development of the proposed NPT.

⁷ Section 10 of the RMA provides for existing use rights in certain circumstances. However, section 10(4) states that existing use rights do not apply where the land use is controlled under [section 30\(1\)\(c\)](#) (regional control of certain land uses). In this case, section 30(1)(c)(iv) is relevant, being the control of the use of land for the purpose of the avoidance or mitigation of natural hazards.

Structure and Format of Coastal Plans Summary & Discussion Points

Summary

The key findings in relation to the structure and format of coastal planning documents are as follows:

- The structure of plans is not a major issue in relation to coastal planning, although where regional councils develop a combined regional plan a separate coastal planning chapter or section tends to work well.
- There is an identified trend towards combined regional plans.
- Plans that are structured around values as well as the activities they seek to manage are easier to integrate and it is easier to locate the relevant coastal provisions.
- Councils are reluctant to change the structure of their plans, and the structure of planning documents is not a particular focus of the community in submissions when plans are reviewed.
- Links between objectives, policies and rules are fundamental to a plan that works well – Horizons One Plan is a good example which has topic based chapters. Each section within the chapter relates to a particular activity and the objectives, policies and rules that relate to that activity are grouped in this section (rather than grouping all the objectives together, followed by policies and then all the rules as some other plans do). From a purely structural perspective, the One Plan approach seems to be user-friendly.
- There is variation in the spatial scope of coastal plans. That is, some only cover the CMA while others cover the wider coastal environment. DOC finds that the RCEP format typically fosters greater collaboration between the regional and district councils about coastal management. However, this is a matter largely left up to councils, is often a question of the relationship between the regional and district councils, as well as how directive the regional council wishes to be.
- An RCEP also assists in dealing with cross-boundary issues, more so than a plan that is limited to the CMA.
- Combined regional plans, or even RCEPs, need to clearly identify which aspects the Minister of Conservation is required to approve – this is an aspect that has not always been done well (e.g. PAUP). Clear identification of the coastal plan provisions also adds clarity to plans for plan users.
- The electronic delivery of plans needs to consider that different plan users will be looking at the plan at different scales – i.e. those that are looking at a discrete place and/or provisions(s) and those that need to assess the plan as whole. The NPT needs to consider how the web-based plans will assist plan users in this regard.
- The NPT needs to consider the legal implications of having an online version.

Discussion points

- Consideration could be given to the NPT specifying that, where a regional council or unitary authority is preparing a combined planning document which incorporates the coastal plan, that this be a discrete section of the combined plan. This would go some way to assisting plan users in easily identifying the coastal provisions compared with the current confusion that is being experienced with some plans.
- The potential of specifying that objectives, policies and rules are visibly linked in the plan – there are different methods of doing this. Plans could group the provisions by activity (as in

the Horizons One Plan) or possibly use a table to identify how the provisions are linked. The former option may be preferable; the latter option could add unnecessary text to a plan and there is a risk that as the plan is updated or changed the table is not updated or provisions are missed.

- In relation to the e-delivery workstream, the different users' needs and how the web-based version can cater for all users.
- That MfE and DOC consider how the Template manages the different approaches to the scope of coastal plans (i.e. Coastal Marine Area only or wider coastal environment). While the Template could not *require* that councils produce a coastal environment plan (as the Act still provides the option) the project could consider alternatives in the NPT to *encourage* councils to produce a coastal environment plan. At a minimum, the NPT project will need to consider whether there is a need to provide a structure and format for both types of coastal plan (i.e. CMA and coastal environment). This discussion should include regional council practitioners to better understand the reasons behind the varied approach, and what they consider to be appropriate in the Template.
- Consideration of how the NPT could specify how coastal provisions within plans are to be flagged, so that it is clear to the Minister of Conservation which provisions he/she is required to approve.

Content and Current Coastal Planning Practice

DOC staff advised that while it is largely dependent on the particular plan, they commonly submit on provisions in coastal plans in relation to the following:

- Section 5 of the RMA – 'life supporting capacity' provision
- Section 6(a), (b),(c) and (d) matters relating to aquatic, terrestrial and freshwater values in the coastal environment
- Implementation of NZCPS objectives and policies
- Coastal hazards
- Land/water interface issues and ways to achieve better integration
- NZCPS Policy 12 matters (Harmful aquatic organisms)
- Crown lands and waters administered by the Department of Conservation

DOC's submissions in relation to landscapes are largely at a high level and relate to the outstanding qualities of Crown land. This highlights DOC's responsibilities beyond implementation of the NZCPS as the Government agency that manages Crown land.

Other common topics that DOC submits on include sediment discharges and effects on habitats on the sea floor, and coastal water quality. Wider topics that are not specific to coastal plans include nature reserves, Kauri die-back and forestry.

Some of the common submission topics mentioned above are explained further in the following paragraphs.

NZCPS Policy 12 & Biosecurity matters

It was suggested that greater consistency could be achieved in relation to marine biosecurity. The requirements of NZCPS Policy 12 Harmful aquatic organisms are as follows:

- (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;
 - 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.

A significant biosecurity matter that could be dealt with more consistently in coastal plans is that of discharges from vessel hull bio-fouling and maintenance. Bio-fouling is the build-up of marine plant and animal organisms (some of which may be harmful, as in invasive) on the hull of a vessel. Biofouling can be an issue where a vessel has travelled from outside New Zealand waters and carries species that are exotic to New Zealand, or where a New Zealand vessel travels within domestic waters and further spreads exotic organisms that are already established here⁸. Management of vessel biofouling (in addition to the use of anti-fouling coatings) is essentially the removal of these organisms either through in-water cleaning, through passive discharge due to reproductive processes of the organisms, or by water sheering during vessel movement⁹. All of this may occur within the CMA, and can be a risk to the native ecology or marine industry, amongst other effects¹⁰. Coastal plan policies and rules are therefore required to manage this risk.

In developing first generation coastal plans, councils relied on the *ANZECC Code of practice for anti-fouling and in-water cleaning* (1997). The *Code of practice* considered in-water cleaning of vessel hulls to be harmful by introducing invasive species and also discharging contaminants from anti-fouling coatings. Recently thinking has changed, and the focus is now on preventing vessels getting into a heavily fouled state in the first place and in certain circumstances (i.e. whether the anti-fouling coating is toxic) cleaning off locally sourced fouling is allowed.

This change in approach is reflected in the International Maritime Organisation's *Guidelines for the Control and Management of Ship's Biofouling to Minimize the Transfer of Invasive Aquatic species* (the IMO Guidelines), which were adopted in 2011¹¹. The IMO is the United Nations' specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships.

In light of this, the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) and MPI developed the Australian/New Zealand *Anti-fouling and In-water Cleaning Guidelines 2013* (the DAFF/MPI Guidelines) together to replace the ANZECC Code of Practice that councils relied on when preparing their first generation coastal plans.

⁸ Auckland Council (2013), Proposed Auckland Unitary Plan - Section 5.1.12 Discharges from bio-fouling and vessel maintenance.

⁹ Ibid

¹⁰ Ibid

¹¹ <http://www.imo.org/en/OurWork/Environment/Biofouling/Pages/default.aspx>

In New Zealand, MPI developed regulation for border control of vessel biofouling: the *Craft Risk Management Standard – biofouling* released in May 2014 (CRMS)¹² which sets controls for vessels coming to NZ from overseas waters. The CRMS and the DAFF/MPI Guidelines are consistent with, and give effect to, the IMO Guidelines.

DOC and the Ministry for Primary Industries (MPI) have been working collaboratively by engaging in draft coastal plan provisions, submissions and where necessary hearings and appeals to seek the inclusion of the recommendations of the Australian/New Zealand *Anti-fouling and In-water Cleaning Guidelines* 2013¹³ in Council plans.

Writing plan provisions to reflect the recommendations in the DAFF/MPI Guidelines 2013 will:

- give effect to NZCPS Policy 12 in terms of the discharge or disposal of organic material from vessels and structures, whether during maintenance or cleaning;
- be consistent with International direction (the IMO Guidelines); and
- be consistent with MPIs domestic direction (the CRMS and the DAFF/NZ Guidelines).

Writing such provisions as a template will provide consistency between the regions for both international vessels coming to NZ and domestic vessels. To date DOC and MPI have been trying to achieve this consistency by engaging in the planning processes of Auckland, Wellington, Southland and Northland.

For example, DOC has been involved in the PAUP hearings process in relation to Topics 033 and 034. DOC worked with MPI and the New Zealand Defence Force (NZDF) to establish an agreed set of amended objectives, policies and rules for inclusion in the plan (with the exception of a Permitted Activity rule and associated standard which is not supported by NZDF). Council officers have also supported these provisions through mediation and in evidence. While no decisions have been made on the PAUP at this stage, it is suggested that these provisions will be applicable in a wider New Zealand planning context - DOC and MPI have been using these provisions as the model to engage in other coastal plan review processes. Benefits could be gained from their inclusion in the Template.

Coastal Occupation Charging

An area of RMA coastal implementation that has been particularly challenging for councils concerns coastal occupation charging. Under present law, occupation charging (or the decision not to have such charges) must be set out in a regional coastal plan via a RMA schedule one process including resolution of any appeals (RMA s64A). The revenue earned is retained by the regional council and “(5)*must be used only for the purpose of promoting the sustainable management of the coastal marine area*”¹⁴.

The requirement to follow a Schedule 1 process is generally considered by regional councils to be unworkable. While many regions support the concept of charging, they are concerned about opposition from coastal occupiers and uncertain outcomes, for example, the cost of defending their decisions may exceed revenue. Southland is the only region to have occupation charging provisions in their coastal plan (having rolled over Harbours Act charges in the early 90s). A point for consideration is whether there is scope for the NPT to include standard provisions to introduce coastal occupation charging. This could entail a national schedule of charges for adoption by regional

¹² <http://www.biosecurity.govt.nz/files/regs/ships/crms-biofouling-standard.pdf>

¹³ http://www.agriculture.gov.au/Style%20Library/Images/DAFF/___data/assets/pdffile/0020/2330570/antifouling-guidelines-june-2013.pdf

¹⁴ Prior to the provisions under s64A, the Act set out an obligation to pay rent as a deemed condition of consent for any occupation of Crown land in the CMA (s112). Regulations set out how much rent was required and the circumstances for when it was to be paid. The rent was then to be collected by regional councils and paid into the Crown Bank Account. These rentals were, however, not collected and a review was undertaken in light of issues raised with the system. This resulted in the 1997 amendment to the Act to introduce section 64A.

councils. Alternatively, and noting this is out of scope of the NPT project, is an amendment the Act to enable charges to be set through ordinary Local Government Act 2002 processes.

Including coastal occupation charges in plans ensures a fair price is charged for the private occupation of public land in the CMA, unless it is considered that there is a good reason not to do so. That is, the loss of public benefit is adequately compensated by those receiving a private gain. Such a regime also acts as an incentive to private interests to avoid occupying the coastal marine area where they can do so.

Funds raised from COCs can be used in many ways to not only mitigate immediate effects of the activities occurring in that area, but in the wider environment for the public's benefit. In this way, COCs can provide occupiers with a 'social licence' to operate in the CMA. Funds raised through charging for coastal occupation can also be used to manage any cumulative or ethereal effects of activities occupying the CMA which may not be dealt with otherwise.

The Proposed NZCPS 2008 included a policy in relation to coastal occupation charges which would have required regional councils to establish a coastal occupation charging regime taking account of the criteria set out in Schedule II of the Proposed NZCPS. This also required regional councils to amend their coastal plans to give effect to the policy within 12 months of the gazettal of the NZCPS using the Act's Schedule 1 process.

The Board subsequently recommended that this policy be deleted from the NZCPS. The reasons for this relate to issues raised by submitters, which in summary include¹⁵:

- There was no presumption to pay
- There was no definition of an occupation charge
- Coastal occupation charges are administrative property management
- There is no definition of a methodology for setting coastal occupation charges
- Questions around what a public gain or loss, and what is a private gain, and how these values are applied by local authorities
- Section 384A equity issues – the ability for councils to levy coastal occupation charges against those holding transitional permits (s384A RMA, for port occupation) had previously been challenged and if not resolved before imposition of charges for other occupiers, would perpetuate a significant charging inequity;
- First schedule requirements impose significant costs on regional councils to implement what is arguably not an RMA matter (it is argued to be more of a matter under the Local Government Act processes)
- Implementation timing

Including COC provisions in the NPT would need to be carefully considered taking into account the above issues, alongside the benefits of COCs. A key part of this will be engaging with regional councils and stakeholders who commonly occupy the coastal marine area.

Land and Water Plans and the NZCPS

A 'mountains to the sea' approach to plan-making and decision-making is best practice, however in some cases land and water plans exclude coastal provisions which are required to give effect to the NZCPS. It was therefore highlighted that the NZCPS must be considered in relation to land and water plans, not just coastal plans. This is because there is an inevitable overlap geographically where freshwater systems meet the coast. Activities in higher catchments can have consequential effects (e.g. sedimentation) on downstream coastal function including hydrology and coastal water quality. For example, Policy 21 of the NZCPS, 'Enhancement of Water Quality' stipulates that:

¹⁵ Board of Inquiry Report on NZCPS (2008), Volume 2: Working Papers, Policy 24 Coastal Occupation Charging, p.148

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, waahi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.*

It is also noted that NZCPS Policy 1 (c) states that the extent of the coastal environment in any given region may include areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these.

Many land and water plans also take the 'mountains to the sea' approach which encapsulates the integrated nature of the environment. As such, these plans recognise that the effects of activities in one part of the catchment or region have a subsequent impact elsewhere.

Mapping the Coastal Environment

Many regional and district councils also seem very keen to map the coastal environment as a hard line. However, while NZCPS Policy 1 directs that the diversity of the coastal environment be recognised, it does not stipulate that this be mapped or otherwise identified.

A common reason for councils preferring a mapped landward boundary of the coastal environment is to provide certainty as they assess and map key coastal resources such as Outstanding Natural Landscapes (ONLs), Outstanding Natural Character Areas (ONCAs) and significant biodiversity areas. Mapping also provides certainty for implementation including clarity about what provisions apply where. However, the coastal environment is very difficult to map and does not conform to a single line. As such, staff emphasised that a coastal environment 'line' is a management line rather than a biophysical line and seeks provisions within plans to reflect this.

It was also highlighted that the plan needs to be clear in terms of what the line is for – is it a rule trigger or a jurisdictional boundary? Further, it was highlighted that the use of a line is most logical when used by regional councils, rather than District Councils. District plans often include coastal zones which may extend beyond the coastal environment line.

The Proposed Northland Regional Policy Statement is an example of where the council has mapped the coastal environment but with associated policies recognising that these maps are a starting point for subsequent development and application of planning provisions in subordinate planning documents. Of note is that the proposed RPS policies (specifically Section 4.5) provide for refinement of the maps when applied in regional and district plans, and also provides specific criteria that must

be followed in doing so¹⁶. As such, while the council has mapped the coastal environment, flexibility has been provided to recognise that the boundaries of this area may vary when applied in finer detail. Policy 4.5.1 of the proposed RPS:

'...contemplates refinement of the maps in accordance with Method 4.5.4, following further detailed assessment, provided the change is undertaken using the attributes and criteria listed in Appendix 1. This is to ensure a consistent approach is adopted where such changes are proposed'.¹⁷

Including appropriate provisions in the RPS to support this high level mapping and stipulate that more detailed investigations and mapping shall prevail over the higher level RPS mapping reduces debates over which maps prevail. However, it was also noted that some district councils face challenges with more detailed investigations and mapping if they do not have the necessary expertise or knowledge available. The level of detail that is required is also uncertain.

NZ King Salmon decision

The group were asked to consider the impact of the 2014 decision of the Supreme Court in Environmental Defence Society Incorporated v the New Zealand King Salmon Company Limited ('King Salmon' or 'the King Salmon decision') on coastal plan making and submissions and/or decisions on policy wording.

The decision has brought into focus policy wording in plans and is likely to have a number of consequences for plan making such as:

- it is possible to be specific and directive in RMA policies.
- focusing more attention on areas identified as outstanding and the qualities and characteristics that make them outstanding

In the South Island, there appears to be little effect in terms of how plans are being drafted – it is occasionally raised as a theoretical impact but has led DOC staff to be more aware of how the word 'avoid' is used in policies and how they use the term in their submissions. More generally in the South, staff have observed that the decision is forcing people to think about the values they are including in plans more closely and the provisions that apply to them. For example, what does – 'avoid' mean for the outstanding areas identified in the regional or district context? It was suggested that the effect of the decision is still being worked through.

In contrast, the PAUP Independent Hearings Panel is looking closely at the wording of policies although decisions are yet to be released.

The NZKS decision has highlighted the challenges in providing certainty on issues. NPT may face a similar problem where it seeks to specify content.

At a philosophical level, it was noted that the NZKS decision goes to the heart of the RMA and the tensions within it, it is not simply a question of the mechanics of the plans themselves. The NPT is likely to face this issue. In particular the direction contained within it, and its relationship to Part 2 of the RMA. At a practical level, the NPT will need to carefully consider the impact this case may have and how a template could assist in terms of policy language.

¹⁶ Northland Regional Council (2015) 'Proposed Regional Policy Statement for Northland – Consolidated version with changes as a result of appeals', <http://resources.nrc.govt.nz/upload/22576/Proposed%20Regional%20Policy%20Statement%20for%20Northland%20-%20Tracked%20changes%20-%20Consolidated%20version%20with%20changes%20as%20a%20result%20of%20appeals.pdf>

¹⁷ Ibid, p.78-79

Lands and water administered under other Acts

A further point that was highlighted by staff is that there is a crossover between regional plans and plans that relate to lands and waters managed by DOC and Conservation Management Strategies (also produced by DOC). In particular, there is concern about the level of integration between these regional planning documents and conservation management strategies and protected area management plans. While CMSs and park plans are prepared under their own legislation, they are documents that need to be considered as part of regional planning processes under the RMA. As mentioned in Part 1 of this report, Policy 5 of the NZCPS requires decision-makers and plan-makers to consider effects on land or waters managed or held under other Acts. In relation to the coast, this is relevant where there are sustainable management issues for these areas. An example of this is the unique underwater environment beside Fiordland National Park and the need to manage development activities in this area. A further example is the Westhaven (Whanganui Inlet) Wildlife Management Reserve and the Westhaven (Te Taitapu) Marine Reserve in the Nelson/Tasman region where vessel access needs to be managed and marine mammals and wilderness values need to be protected.

Regional/District Crossover and Direction for Integrated Planning

Given the nature of the coastal environment and the obligations of both regional and district councils under the RMA in relation to the coast, it is important to consider crossover issues spanning regional coastal plans, other regional plans and district plans, and the potential role of the NPT in achieving good integration between these documents.

A crossover area identified in relation to values that span land and sea, are provisions relating to outstanding natural character areas in the coastal environment. Sometimes these areas extend landward of the coastal marine area. In the case of a Regional Coastal Environment Plan the wider ambit of the plan provides greater direction to territorial authorities in terms of the content of their district plans. By contrast, this crossover of policy direction would not be apparent in the case of a regional coastal plan which only covers the CMA. Although this issue is not a major issue where outstanding values are identified in the regional policy statement (e.g. Northland), or management is directed through a unitary plan (e.g. Auckland and Marlborough).

A further matter of crossover is natural hazards where these hazards cross the jurisdictional boundaries of regional and district councils. It is noted that the issue of natural hazards and the responsibility for their management is an issue which is not limited to coastal planning. In some places good integrated planning has occurred. For example, the Southland Regional and district Councils have worked together to identify a range of hazards including coastal inundation and liquefaction and managing the risks to the community. However, more generally there is variation in how councils approach this, in some cases regional councils will take the lead and coordinate the regional approach, while in other cases individual district councils deal with the natural hazards issues.

The group also highlighted indigenous biodiversity as a matter for which there is sometimes difficulty in determining jurisdictional responsibility. Policy 11 of the NZCPS relates to indigenous biological diversity (biodiversity) and sets out the requirements for its protection within the coastal environment. More broadly the RMA sections 5-8 contain specific directions in relation to indigenous biodiversity, and sections 30 and 31 set out the responsibilities of regional and territorial authorities. Section 62 (1)(i)(iii) sets out the requirements of the RPS in relation to specifying local authority responsibilities in the area of biodiversity.

However, there remains uncertainty in terms of national direction as to what specific responsibilities each council has in the realm of biodiversity. A major issue for coastal management is the lack of

information on indigenous biodiversity and ecological carrying capacity, due to the high survey cost especially for offshore areas. Carrying capacity issues can also be complex.

It was suggested that defining councils' biodiversity responsibilities in plans is a good first step, and potentially an area where the NPT could provide clarity. The guidance provided by the New Zealand Planning Institute on this matter through the Quality Planning website describes the requirements on regional councils to lead a discussion with their districts about roles and responsibilities for biodiversity:

*'Section 62(1)(i)(iii) of the RMA requires a regional policy statement to state the local authority responsible, in the whole or any part of the region, for specifying the objectives, policies and methods for the control of the use of land to maintain indigenous biodiversity. This is an important matter that requires discussion and negotiation between a regional council and its respective territorial local authorities. This discussion should result in a clear allocation of roles and unambiguous accountabilities in the context that territorial authorities are required to give effect to regional policy statements through their district plans (s75(3)(c)).'*¹⁸

It should be noted that central government has signalled in its forward agenda the progression of national direction for biodiversity and for natural hazards management. It is therefore important that any provisions of the NPT that relate to these matters are consistent and consider national policy statements under development. It may be more appropriate to await the outcome of these processes and integrate the results into the NPT at a later stage if required.

In the past, specific issues have also raised these crossover concerns. Examples are the Chatham Rock Phosphate/TTR proposal in the Exclusive Economic Zone. This proposal had effects that straddled the arbitrary EEZ/CMA line.

Summary and Discussion Points: Content and Current Coastal Planning Practice

Summary

- There is a common set of matters DOC submits on in RPS and coastal plan-making processes. These matters include RMA Section 6(a) and (c) matters, implementation of the NZCPS policies, natural character provisions, biodiversity offsetting, hazards, land/water interface issues, and marine biosecurity matters (NZCPS Policy 12).
- The issue of coastal occupation charging has been difficult to progress in regional coastal plans due to cost and uncertainty.
- Good progress has been made by DOC and other agencies in formulating plan provisions for the implementation of Policy 12 in relation to biofouling activities. These provisions have been pursued in the PAUP as well as regional coastal plans in Wellington, Southland and Northland. These provisions give effect to NZCPS Policy 12, are consistent with International direction (IMO guidelines) and are consistent with MPI's domestic direction (CRMS and DAFF/NZ Guidelines). The provisions represent an opportunity for the Template to provide greater consistency on regulation in this area.
- It is important to recognise that the NZCPS applies to other RMA plans that affect the coastal environment, not just regional coastal plans.
- Councils are looking to provide certainty in their coastal plans by mapping the coastal

¹⁸ New Zealand Planning Institute (no date) 'Quality Planning – Indigenous Biodiversity and the Resource Management Act 1991', <http://www.qualityplanning.org.nz/index.php/planning-tools/indigenous-biodiversity/indigenous-biodiversity-and-the-resource-management-act-1991>, Accessed 12 January 2016.

environment; however there is no requirement to do so and DOC emphasises that the coastal environment 'line' is a management line not a biophysical one (it is a line to manage the biophysical elements beyond it) – the attributes of the coastal environment and effects of activities within and around it are fluid and not easily defined by a boundary line on a map. Provisions are required within plans to provide for this flexibility.

- The NZKS decision is likely to influence the careful use of policy wording – councils will likely use more directive wording in their policies. It will be important that, in light of the Supreme Court's decision, the NPT considers the question of certainty – While certainty is desirable it can generate an undesirable result to particular parties and they may prefer less certainty if there is a degree of flexibility to consider their proposals on a case by case basis.
- There are several areas of spatial or jurisdictional crossover in relation to coastal planning, where decisions made by one authority can impact on the resources administered by another, or managed through another RMA plan. These areas include natural character areas in the coastal environment (particularly seaward of MHWS) where covered by a regional coastal environment plan, natural hazards that cross jurisdictional boundaries, biodiversity, some proposals that straddle the coastal marine area and Exclusive Economic Zone boundary, and also between regional planning documents and DOC's conservation management strategies and plans. Crossovers with DOC's plans are not always dealt with particularly well, and there may be some uncertainty or lack of knowledge on the part of some council staff as to the relevance of the latter.

Discussion Points

- MfE and DOC could consider whether there is scope to include some 'model provisions' in the Template in relation to particular matters, including those that are commonly submitted on. Suggested areas include approaches to the management of harmful aquatic organisms and coastal occupation charging. Other options include approaches to indigenous biodiversity, natural character and landscape.
- Occupation charging could be considered in the NPT and weighed against other options e.g. amending the RMA to enable occupation fee setting through the ordinary Local Government Act processes.
- Provisions in relation to biofouling activities could be considered for inclusion in the NPT to provide consistency between regions on the implementation of Policy 12 and other guidelines. DOC has already developed some standard provisions which are currently being pursued in several plans across the country. A guidance note for implementation of NZCPS Policy 12 is also currently being drafted.
- NPT provisions would need to consider the discretion, if any, required for application at a local level, given there may be different issues between regions (e.g. natural character and landscapes vary from region to region). For some topics, there may be some benefit in setting a standard within the template for these provisions. It is suggested that some content may be more appropriately included in a later iteration of the NPT, rather than the first version given the work involved and the short timeframe for development of the first NPT.
- The NPT regional modules could include some content that prompts councils to consider planning documents that are related but do not sit under the RMA, in particular DOC's CMSs and CMPs and similar documents. This may need to also include a prompt to councils to ensure that they are giving effect to the NZCPS, where relevant, through plans other than the regional coastal plan (such as land and water plans).

- That consideration be given to a standard policy or other provision in the NPT that relates to mapping the known coastal environment. This policy could apply where councils have mapped the known coastal environment, and highlight that this is a management line. The approach taken in recent NZCPS implementation, such as the Northland and Waikato RPSs, may provide examples that could be drawn on.
- That in engaging with stakeholders and councils on content, the NPT project discusses the issue of policy wording and the opportunities that may exist in the NPT to improve it, and that the implications for providing 'certainty' are adequately considered.
- That the NPT project considers the relationship with other planned national direction projects, such as natural hazards and biodiversity NPS work. These areas may be more appropriately addressed in a later iteration of the template rather than the first.

Outstanding Natural Features, landscapes and natural character areas

Background

Natural character and outstanding natural features and landscapes, and the protection of them from inappropriate use and development, are identified in RMA section 6 as matters of national importance to be recognised and provided for. The NZCPS 2010 provides further recognition including the direction that areas of outstanding natural character (ONC), natural features (ONF) and landscapes (ONL) be identified in RMA plans. Provisions in relation to natural character, and natural features and landscapes in the coastal environment are important considerations in regional coastal plan development and implementation.

Natural character comprises the living and non-living elements, patterns and processes that are natural to our coast and includes biophysical and geological aspects, natural landforms, and wild and scenic areas. Natural features and landscapes are another important resource of the coastal environment. Relevant matters include geology, aesthetic values, expressiveness and associative values.

Historically there has been a reduction in progressive degradation of natural character, natural features and natural landscapes in the coastal environment, particularly from continued incremental loss over time. For example, cumulative adverse effects on natural character have arisen from the effects of plant and animal pests, and coastal discharges including increased sedimentation. The NZCPS 2010 policies promote strategic planning to identify high value areas and ensure appropriate management.

Methods

Generally identification and policy for management of these areas is led at the regional policy statement level. DOC staff suggested that this approach has been the trend over the last five years. However, there remain a few councils (such as Southland, Otago and Wellington) who are yet to give effect to the provisions of the NZCPS 2010 and undertake the necessary landscape assessments. Where there has been a delay, a common reason from councils is that they are prioritising their RPS review and/or freshwater planning over development of the 2nd generation coastal plan.

Robust assessments are required to inform the framework for landscape protection, but it was suggested by the group that there is uncertainty amongst some Councils and plan users about the best or recommended methodologies to use when identifying outstanding natural features and landscapes and natural character. This uncertainty occurs particularly where there are resource

constraints and competing resource management priorities and existing knowledge is limited and/or dated.

It is unclear whether all experts are using the same threshold for defining 'outstanding'. This is an area where there has been case law, and the NPT could provide clarity around this in some form, perhaps through policy wording or guidance material. It is also important to note that what is significant or outstanding in one region may well be quite different in another. For example, the Marlborough Sounds are considered a nationally significant landscape feature and natural character area, whereas modified grasslands in Southland may be regionally significant but not nationally significant. This is an example of where the context is important and flexibility still needs to be provided in order to recognise local context.

The variation in assessment methodologies, however, leads to questions about options for a more standardised approach. The Marlborough Natural Character Pilot provided an example of an integrated natural character assessment method covering marine, freshwater and terrestrial values¹⁹. DOC has also run 3 national workshops on natural character definitions and methodologies²⁰. At the most recent workshop in November 2015 DOC found strong practitioner interest in confirming a consistent natural character methodology.

The experience with ONL and ONF identification is similar although there is more experience and case law given the provisions have been in place since enactment of the RMA in 1991 and references in earlier planning law. Recent discussions with the NZILA and member practitioners identify a similar interest in developing an agreed consistent methodology to assess and identify ONLs and ONFs.

The question was posed as to whether the NPT could provide some additional guidance in this space, such as specifying categories (i.e. outstanding, very high, high) that would subsequently structure methodology. Such an approach would need to include recognition of scale. In the United Kingdom, there is a prescribed methodology for landscape assessments, however the advantage is that there is extensive mapping available and better data in relation to marine areas in the UK. By comparison, New Zealand currently lacks a nationally consistent set of robust and reliable data. Discussions with NZILA are expected to cover this topic.

Plan provisions

Planning for natural character and landscape in the coastal environment can be a challenging area given the range of uses and values in the coast and the often competing interests. Practice is also still emerging. Arguably this experience is not necessarily limited to coastal planning; however the requirements of the RMA and NZCPS direction for coastal planning require a council response in RMA policy statements and plans.

The group identified policy language as a significant issue in relation to natural character and outstanding landscapes. Of particular concern is how well councils understand the difference between 'natural character' and 'natural landscape'. Policy 13 of the NZCPS highlights the difference between these two matters. It was suggested that identifying the characteristics to consider within particular mapped areas may assist. Nevertheless, 'natural character' as outlined in the NZCPS Policy 13, is not the same as natural features and landscapes or amenity values and may include:

- Natural elements, processes and patterns;
- Biophysical, ecological, geological and geomorphological aspects;

¹⁹ Marlborough DC, Boffa Miskell Ltd, DOC et al, 2014

²⁰ Department of Conservation (2012) 'Natural Character and the NZCPS 2010: National Workshop – Summary of Discussions and Outcomes'.

- Natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
- The natural movement of water and sediment;
- The natural darkness of the night sky;
- Places of areas that are wild or scenic;
- A range of natural character from pristine to modified; and
- Experiential attributes, including the sounds and smell of the sea; and their context or setting.

DOC has also provided further guidance on this policy in its NZCPS Guidance Note series, drawing on workshops held in 2011. In lieu of an RMA definition of 'natural character', a working definition was developed at these workshops, and is included in the guidance note as follows:

Natural character is the term used to describe the natural elements of all coastal environments. The degree or level of natural character within an environment depends on:

1. *The extent to which the natural elements, patterns and processes* occur;*
2. *The nature and extent of modification to the ecosystems and landscape/seascape;*
3. *The degree of natural character is highest where there is least modification;*
4. *The effect of different types of modification upon natural character varies with the context and may be perceived differently by different parts of the community.*

**For the purposes of interpreting the NZCS 2010 Policy 13.2, 'elements, patterns and processes' means: biophysical, ecological, geological and geomorphological aspects; natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks; and the natural movement of water and sediment.²¹*

By contrast, natural features and landscapes (Policy 15 of the NZCPS), while incorporating biophysical and experiential matters, relates to how societies have associated with a place (e.g. heritage aspects)²². Natural character does not include such 'associative aspects'²³. The guidance note in relation to Policy 15 of the NZCPS provides more information on how natural features and landscapes differ from natural character, however of note is the following:

'A positive implementation of Policy 15 would see local authorities use the assessment of natural features and natural landscapes (including seascapes) to identify the areas and provisions necessary to give effect to Policy 15 and to achieve the purpose of the RMA.'

The guidance note also provides further advice on assessment and mapping including consultation, collaboration, peer review, methodologies, and 'outstanding' natural features and natural landscapes. There is also substantial guidance provided on objectives, policies and rules for natural features and landscapes. While noting that the appropriate provisions in an RPS or plan will be dependent on several variables, including the local context, the guidance note does suggest that these planning documents can provide a threshold of significance to provide certainty to decision-makers, including²⁴:

²¹ Department of Conservation (2013) 'NZCPS 2010 Guidance Note – Policy 13: Preservation of natural character', p11, <http://www.doc.govt.nz/Documents/conservation/marine-and-coastal/coastal-management/guidance/policy-13.pdf>

²² Department of Conservation (2013) 'NZCPS 2010 Guidance note – Policy 15: Natural features and natural landscapes', <http://www.doc.govt.nz/Documents/conservation/marine-and-coastal/coastal-management/guidance/policy-15.pdf>, Accessed 12 January 2016.

²³ Ibid, p.12.

²⁴ Ibid, p.16-17

- *'Identification of known important natural features and natural landscapes through mapping overlays, schedules and/or criteria*
- *Criteria to assess outstanding natural features and landscapes*
- *Direction through objectives and policies including the specification of areas and/or attributes that are required to be recognised and provided for in the course of resource management decision-making*
- *Other regulatory provisions such as the identification of zones, management areas, and/or overlays including rules setting out:*
 - *Consent status for particular activities*
 - *Performance standards for particular categories of activities*
 - *Matters to guide the assessment of applications*
 - *The information to be provided by consent applications including proposed actions to avoid, remedy and mitigate adverse environmental effects*
- *Reference to external documents that explain assessment methodologies and results including a description of the process for peer review*
- *Other methods'*

A further point made in terms of policy wording is the issue of providing for existing uses in plans. The group emphasised that where plans provide for existing uses in natural character and landscape areas, the policies need to be clear about what the effects of existing uses are and the values being protected clearly identified in schedules to the plan. It is also important to note that there will be emerging practices in relation to existing uses as a result of the NZKS Supreme Court decision.

An increasing challenge will be the re-consenting of existing uses in the coastal environment. An example is aquaculture activities. It is unclear as to how the NPT can assist with this, and it is noted that aquaculture is the subject of possible national direction. However, it is possible that by specifying policy language and provision of guidance within the NPT could go some way to providing more certainty in the consenting process. Timing of delivery of this guidance would also need to be carefully considered.

Specifically in relation to existing uses in the coastal marine area (which may be subject to natural character/landscape provisions), the point was made that much of this issue centres on the question of certainty. RMA coastal permits are different to those permits on land. Coastal permits, like all regional permits, have an expiry date and consent holders must reapply to continue operating. As such, there is automatically less certainty. Furthermore, values associated with the use of the coastal marine area can change over time. Plan provisions may change also.

Summary and Discussion Points – Outstanding Natural Features, Landscapes & Natural Character Areas

Summary

- There are different methodologies in use to assess landscape and natural character and to identify outstanding areas. There is practitioner and user interest in developing greater national consistency in approaches. Policy direction for assessment and protection of ONFs, ONLs, and natural character areas which is led by the regional policy statement provides a good framework for objectives and policies in subordinate planning documents. This approach has improved over the last five years or so, however a few regional councils are still yet to give effect to the NZCPS 2010. A measure of progress at the district level is not readily available. Some regions (e.g., Northland and Otago) have collaborated with the district councils to jointly fund assessment work.

- A good methodology led at the regional council level can result in a good framework for landscape and natural character identification and protection.
- It is uncertain whether assessment experts have a shared understanding of what constitutes an 'outstanding' landscape or natural feature or ONC.
- There is a case for developing a consistent methodology for the assessment of landscapes that can be applied by councils. The UK has a prescribed methodology in place.
- Some councils confuse the terminology and concepts between 'natural character' and 'natural landscape'.
- DOC's guidance note material provides assistance in the implementation of the NZCPS policies, in particular what an RPS or plan can include to provide more certainty to plan users in the management of natural features and landscapes and natural character, and the evidence base for this.
- Providing for existing uses and re-consenting in plans is a potential challenge and an area requiring more work, particularly in light of the EDS v NZKS Supreme Court decision. Assessments and Policies will need to be clear about how they provide for these existing uses and what the environmental effects are that they seek to manage. There is also increasing competition for space and subsequent cumulative effects which need to be managed.
- Providing certainty in plans is desirable, however there are cases where discretion may be preferable e.g., to enable consideration of the particular facts. Information in the marine environment is often limited.

Discussion Points

- That the NPT Project team raises with the NPT Think Tank²⁵ the issue of the methodologies used for the assessment and identification of outstanding natural landscapes, features and natural character areas. The purpose of this would be to gauge an initial indication of their experience in dealing with this matter, and also in the preparation of plans that incorporate such assessments²⁶. It may be useful to share with the Think Tank the forthcoming DOC guidance following the recent expert workshop. Note also the work happening as part of the Aquaculture work programme (MPI).
- That DOC and the NPT project team consider whether (and how) the NPT could effectively provide more consistency in the assessment, identification, and protection of landscapes and natural features. This may be a matter for further consideration when the report on the recent natural character workshop has been finalised. This recommendation may also by its complex nature, emerging body of case law and evolving practise need to be a consideration in a later iteration of the template.
- The NPT project team engages with regional councils and unitary authorities (and possibly district councils) to gauge the appetite for content in the NPT in relation to this issue.

²⁵ The NPT Think Tank is a group of 9 practitioners who provide feedback on options for the Template from a practitioner perspective. The group is made up of council planning managers, planning consultants, a resource management solicitor and a representative from Local Government New Zealand.

²⁶ It should be noted, however, that this is simply a starting point and that given the Think Tank does not include a representative from any regional council or a landscape expert there will need to be wider engagement with regional councils and possibly landscape practitioners on this. This could be a topic-specific engagement or could be included in the consultation the NPT Project team will undertake with regional councils more generally on the NPT.

- That the NPT project investigate and review the UK prescribed landscape assessment methodology, and any other international examples, to better understand this approach, perhaps with consideration for a future version of the template.
- That the NPT project consider how the NPT could standardise terminology and policy wording in the area of landscapes and natural features and natural character. There is currently some discussion at an agency level about the use of 'outstanding' and it may be useful for the NPT project to draw on these discussions.
- Whether the NPT should incorporate definitions of 'natural features', 'natural landscapes' and 'natural character' so that these are standardised in plans.
- That the NPT project gives consideration to the minimum requirements for RPS and subordinate plans in terms of what should be included in the document to support the policy framework for landscape and natural character provisions. This assessment could inform possible content on this topic, however careful consideration will need to be given to the merits of including this in the first template given its complex nature, emerging body of case law and evolving practise.
- That the NPT project and DOC staff work together to identify where there may be benefit in incorporating the existing guidance note material into the NPT either as specified content or guidance material.

Interactions between national direction instruments

A question that has arisen for some agencies and organisations that operate at a national scale is clarification of the relationship between different national direction instruments, or national policy statements and the role of the Template. One example of this is the NZCPS and the National Policy Statement for Electricity Transmission (NPSET) where some policies appear to 'pull in different directions'.

For example, the NZCPS requires that plans include provisions to avoid adverse effects on outstanding natural character and outstanding natural features and landscapes in the coastal environment (Policies 13 and 15). The objective of the NPSET is to enable the ongoing maintenance, development and upgrade of the National Grid and Policy 8 NPSET specifies that planning and development of the transmission system should, in rural environments 'seek to avoid' adverse effects on outstanding natural landscapes and areas of high natural character. In these situations, the 'avoid' requirement of the NZCPS may conflict with the 'seek to avoid' direction of the NPSET and careful plan drafting is required to provide direction for a potential resolution while giving effect to both National Policy Statements and recognising that conflicts should be resolved with reference to Part 2, RMA.

In the case of the Auckland Unitary Plan, Transpower and the Department agreed on a policy to address this in a way that recognises the regional issues that are particular to the layout, structure and wording of the Unitary Plan.

The template will need to carefully consider the relationship with the existing national direction instruments.

Summary and Discussion Points – Interactions between national direction instruments

Summary

- Overlaps between NPSs require careful drafting in a manner that gives effect to all applicable NPSs while recognising the regional context of the affected issues and values.

Discussion Points

- Further discussions with DOC to understand the extent of this issue in the context of the NZCPS.
- This is a wider consideration than simply the NZCPS – DOC manages the implementation of the NZCPS, but all other national direction is the responsibility of MfE. Tensions between the NPSET and NZCPS is only one example, are there other NPS where this is an issue? E.g. NPS-REG, NPSFM?
- NPT Project team to determine how national direction will be incorporated into the NPT
- NPT project to consider whether policy wording could be used within the template to provide more certainty where there are conflicting national direction policies

Mapping

An important aspect of the NPT will be specifying how planning maps are presented and conventions for the underlying data and layers to be used. An area of practice where the NPT seeks to create more certainty and consistency is the use of zones and overlays in district and regional plans.²⁷

In terms of coastal planning, this is most relevant to the identification of overlay areas, such as significant ecological areas, navigation routes, pipelines and cables, and areas of outstanding natural character and natural features and landscapes. It was noted by DOC staff that overlays are often opposed by property owners whose property may be included. It is important that plan users are clear about the extent and effect of the provisions. It was also noted that the use of many overlays or simply the approach to mapping generally can make the planning maps too complex and difficult for plan users to navigate. Bay of Plenty Regional Council has used a simple approach of three different layers to display the pertinent information. This was compared with more complex approaches in Christchurch and Auckland where it is difficult to determine what rules apply.

Summary and Discussion Points – Mapping

Summary

- The identification of significant uses and values on planning maps is necessary but can result in owner disagreement when applied over private property in the coastal environment and where the methodology behind identification is called into question.
- Too many layers on planning maps, particularly overlays can make the plan complex and difficult to determine which rules apply to a property.
- Bay of Plenty Regional Council's Regional Coastal Environment Plan is a good example of a simple approach which works well.

²⁷ a spatial planning tool that can place additional restrictions on land or enable certain uses

Discussion Points

- That the NPT specify the criteria to decide when to use overlays and other spatial planning tools (this is part of a procurement process which is currently in its early stages)
- That the NPT specify the criteria for map layers relating to significant areas in the CMA such as outstanding natural features and landscapes and natural character areas. Research of how councils are currently approaching this should be undertaken.
- That the NPT looks closely at the Bay of Plenty RCEP as a good example of coastal plan mapping, and whether there are any lessons to be learned and utilised in the NPT.

Conclusion

The national planning template is a proposal under the Resource Legislation Amendment Bill that aims to provide greater consistency across district and regional plans and policy statements with a view to making these documents easier to use and implement. The New Zealand Coastal Policy Statement (NZCPS) 2010 is a compulsory piece of national direction that regional and district councils must give effect to under the Resource Management Act 1991. The NPT project therefore needs to consider how the NZCPS and the requirements under the Act in relation to coastal planning will interact with the Template and whether there is a case for mandatory content on coastal planning matters.

To this end, this report has presented an initial helicopter view on options, based on discussions with staff at the Department of Conservation who are involved in coastal planning processes and other research. A number of issues from DOC's experience that are inherent in regional coastal plan-making have been outlined. How the NZCPS is given effect to by councils varies and there is an opportunity for the proposed National Planning Template to provide standard content that will create more certainty for plan users and plan-makers. The extent of this content, particularly in relation to significant areas, such as outstanding natural character and landscapes, will need to be determined through further work, but that the template could provide assistance in policy wording, structure and format of coastal plans (or regional plans generally) and in the area of outstanding natural character, features and landscapes.

Mapping is also shown to be an area where there is benefit in the template providing standard layers or conventions. A general comment is that this work has highlighted lessons from recent plan-making processes in Christchurch and Auckland, particularly in the area of electronic delivery of plans and mapping.

There is also a need to work more closely with the National Direction teams at MfE to ensure the template does not conflict with the Government's forward agenda and the range of topics for which national direction is being developed. Topics include natural hazards, biodiversity and aquaculture. This will be important during the development of the Template if there is to be mandatory content on any of these matters.

It is noted that in some cases due to time and resource constraints, it may not be appropriate for the first NPT to include certain content. This is particularly the case where further work is required to better understand the extent of the issue. There may also be other ways to make these improvements, outside of the NPT.

It is recommended that MfE and DOC progress discussions with regional councils and practitioners more generally on this issue, as soon as possible. Furthermore, MfE should continue to work with DOC in progressing any aspects of the NPT that relate to coastal plan matters, and other areas of mutual interest for which there may be benefit of having a joined up approach. This is particularly

important given the Minister of Conservation's role in approving the coastal plan aspects of the template.

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Appendix 1: New Zealand Coastal Policy Statement 2010

<http://doc.org.nz/Documents/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement-2010.pdf>

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Appendix 2: NZCPS 2010 Guidance Note

<http://doc.org.nz/about-us/science-publications/conservation-publications/marine-and-coastal/new-zealand-coastal-policy-statement/policy-statement-and-guidance/>

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