

CRPS Court Decisions and Legislative Changes:

**A review of court decisions and
changes to legislation relevant to the
Canterbury Regional Policy Statement
Review**

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July 2006

Executive Summary

Environment Canterbury must commence a review of its Regional Policy Statement (CRPS) by June 2008.

The most important change is that regional and district plans will need to “*give effect to*” the RPS after the review process is complete, whereas currently they only have to “*not be inconsistent with*” the CRPS which is a lower threshold.

The review process first involves considering whether any changes need to be made to the CRPS, or whether it needs to be replaced (RMA section 79). Changing or replacing the plan can then be carried out in accordance with the process set out in the First Schedule of the Act.

An RPS has a single purpose (RMA s59) which can be broken down into two parts —

1. To provide an overview of the resource management issues of the region, and
2. To provide a framework to achieve the integrated management of the natural and physical resources of the region.

The CRPS must include a suite of issues, objectives, policies and methods to achieve this purpose.

The changes to the CRPS must be in accordance with the council’s RMA functions, the purpose and principles of the Act, the duty to consider alternatives, assess benefits and costs *etc* and any regulations (Part II and sections 30 and 32). The CRPS must give effect to the New Zealand coastal policy statement; it must not be inconsistent with any of the three (possibly soon to be four) water conservation orders in place for Canterbury rivers; and it must take the relevant iwi documents into account.

Finally, there is now a significant body of case law interpreting the purpose and principles of the Act and relating to RPS’s. This can assist in determining the content, and ensuring the robustness, of any CRPS changes.

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1. Introduction

The purpose of this document is to contribute towards the review of the *Canterbury Regional Policy Statement* (“CRPS”). This document is prepared to inform Environment Canterbury’s consideration of changes in legislation and any relevant case law decisions made after the CRPS became operative on 26 June 1998.

The document first considers the provisions for regional policy statements in the Resource Management Act 1991 (“RMA”). This section also includes any relevant Environment Court decisions and case law informing how this has been applied. The report then considers the various functions of regional councils, together with any Environment Court decisions and case law of specific relevance to the current CRPS. Thirdly, it reviews Part II provisions of the RMA and relevant Environment Court decisions and case law. Finally, the provisions in the First Schedule of the RMA are briefly outlined.

2. Review of policy statements (RMA sections 79, 79A, 79B)

The RMA provides that regional councils shall commence a full review of its RPS no later than 10 years after the statement became operative (section 79(1)). In the case of the CRPS, this section requires that the Council commence a review no later than the 26th June 2008. The preparation of this report, together with other preliminary work currently being undertaken comprises “commencement”.

If, after reviewing its RPS the Council considers that the statement requires change or replacement, “it shall change or replace the statement or plan in the manner set out in the First Schedule” and Part 5. Alternatively, if the regional council considers that the policy statement does not require change or replacement, “it shall publicly notify that statement as if it were a proposed policy statement in the manner set out in the First Schedule” and Part 5 (section 79(3)).

The Resource Management Amendment Act 2005 (RMAA 05) added sections 79A and 79B. These sections require that an additional RPS review is required if any foreshore and seabed reserve is set apart and established within the region, where a management plan for that reserve is lodged with the regional council (79A(1)(b)). No such management plans have been lodged with the Council to date and accordingly these provisions are not relevant at this time.

3. RMA Part 5: regional policy statements

Provisions for regional policy statements are found in a separate section of the RMA entitled “Regional Policy Statements” within Part 5, comprising sections 59 to 62. Section 60 requires that there shall be one RPS in place for each region at all times prepared by the regional council in a manner set out in Schedule 1 of the RMA.

The Planning Tribunal (now Environment Court) determined that the separation of provisions for RPS’s from other plan provisions demonstrates their significance in the overall structure of plan provisions both regional and districtⁱ. The RPS is “*the heart of resource management*” in each region (*North Shore CC v Auckland RC (PT A70/94)*).

ⁱ *St Columba’s Environmental House Group v Hawke’s Bay Regional Council (PT W85/94)*

3.1 Role of regional policy statements with regard to regional plans (section 67) and district plans (section 75)

The RMAA 05 makes a significant change to the role of RPS's within the portfolio of RMA statutory documents. Whereas previously regional and district plans *"must not be inconsistent with"* an RPS, the requirement is now that they *"must give effect to"* any RPS. The change reinforces the role of the CRPS amongst planning documents, creating a positive rather than neutral relationship.

A previous Court of Appeal decision indicates that case law determined that RPS policies and methods *could* be worded in such a way that territorial authorities must include certain rules in order to *"not be inconsistent with"* an RPSⁱⁱ. It noted that *"a policy may be either flexible or inflexible, either broad or narrow."* and that a policy can include something highly specific. The Court noted that although an RPS cannot include rules, this cannot limit the scope of an RPS – *"Regional Policy Statements may contain rules in the ordinary sense of that term, but they are not rules within the special statutory definition and directly binding on individual citizens. Mainly they derive their impact from the stipulation of Parliament that district plans may not be inconsistent with them"*. The Environment Court decision related to this case noted that *"[t]he fact that to avoid inconsistency with the regional policy statement a district plan might need to contain rules implementing those provisions would not make the challenged provisions [in an RPS] rules"* and that *"the exercise of the regional council function must be able to impose some measure of restraint on management decisions made in exercise of the territorial authority function"*.ⁱⁱⁱ

However, in *Canterbury Regional Council v Waimakariri District Council (EnvC C9/2002)*, referred to throughout this report as *"the Scott decision"*, the Court found that the Canterbury CRPS did not include any such mandatory language —

"Accordingly the only methods in mandatory language that could qualify as a requirement use formulas such as avoiding, remedying or mitigating adverse effects. Such language in itself accepts that there may be various methods to achieve an outcome in terms of landuse."

In this case, although it was found that the Proposed Waimakariri District Plan did not necessarily implement the CRPS, it was still not inconsistent with it.

In *Shaw v Selwyn District Council (EnvC C67/2004)* the Court stated *"there is no requirement for an operative RPS or plan to be given effect to or taken into account or even to be had regard to. Instead a later section [fn63 Section 75(2)] provides merely that a district plan must not be inconsistent with—"*. They went on to say in specific reference to the CRPS that *"In our view the correct approach to the RPS is that most of its policies are not restrictive. They are general guides. If a territorial authority considers there are good reasons to apply the RPS policies then it may. The only obligation is to ensure a district plan is not inconsistent with the RPS"*.

Under the new RMA regime the district plans will be required to *"give effect to"* the CRPS, although how this effects the need for mandatory language remains in question. Ministry for the Environment guidance on the RMAA 05 advises that RPS's will need to provide clearer and stronger directions on how the environmental issues of the region are to be managed by local authorities.

ⁱⁱ *Auckland Regional Council v North Shore City Council (CoA CA29/95)*

ⁱⁱⁱ *An Application for North Shore City Council (EnvC A86/96)*

3.2 Purpose of regional policy statements (section 59)

Section 59 of the RMA sets out the purpose of an RPS to be;

“... to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.”

The overriding purpose of a regional policy statement is to achieve the purpose of the RMA (section 5). It is noted that there are two components to achieving this purpose. Firstly, a regional policy statement must provide an overview of resource management issues for the region. Secondly, a regional policy statement must provide policies and methods to achieve the integrated management of natural and physical resources of the whole region.

3.2.1 An overview of resource management issues

The first component of the purpose is to provide an overview of the resource management issues of the region. This overview must include all significant resource management issues of interest to the region. The Resource Management (Foreshore and Seabed) Amendment Act 2004 added that this must also include the resource management issues of significance to the board of a foreshore and seabed reserve in relation to that reserve (62(1)(b)(ii)).

3.2.2 Policies and methods to achieve integrated management

The second component of the purpose of the RPS is to provide policies and methods to achieve the integrated management of natural and physical resources of the whole region. In the *Application by North Shore City Council* the Environment Court noted that *“Although the integrated management of resources may not be able to be fully achieved under the Act, it is intended to be more than an empty slogan. Establishing and implementing objectives, policies and methods for its achievement are important functions of regional councils.”*

In *Carter Holt Harvey Forests Ltd v Tasman DC (EnvC W7/98)* the Environment Court noted that *“it is the objectives of the RPS where the integrated management of resources and the promotion of sustainable management should be most evident. This is because it is these that control the rest of the RMA policy framework”*.

The Environment Court in *Application by North Shore City Council* the court determined that in exercising this purpose, regional councils were only constrained by the definition of “natural and physical resources”^{iv}, that such matters must be of regional significance, that the RPS cannot include rules^v, and that such matters must serve the functions of regional councils^{vi}. When setting out policies and methods to achieve integrated management in an RPS, the regional council is not confined to effects and nor is it restricted to activities in relation to land and water surfaces. In achieving such integration, matters set out within an RPS may place constraint on the decisions made by territorial authorities.

In the related Court of Appeal case, *Auckland RC v North Shore CC* the Court noted that *“Even though the Auckland Regional Council ... is not the provider of services such as sewerage and transport, it has a regional planning role: a responsibility for evolving policies*

^{iv} “Natural and physical resources” is defined in section 2 of the Act as including *“land, water, air, soil, minerals and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures”*.

^v Clarified and explicitly stated by RMAA 03 changes to 62(1)(e).

^{vi} Section 30 of the RMA

and methods to achieve integrated management of the natural and physical resources of the whole region.”

3.3 Preparation and change of regional policy statements (section 60) and matters to be considered by regional council (section 61)

Change to an RPS may be instigated by a Minister of the Crown, the regional council, or any territorial authority within or partly within the region^{vii}. This is a more limited range of circumstances than for regional and district plans. The procedures for making a change to an RPS are set out in the First Schedule of the Act.

Section 61(1) requires changes to an RPS to be in accordance with the regional council's functions under section 30, the provisions of Part 2 - the purpose and principles of the Act, its duty under section 32 to consider alternatives, assess benefits and costs, etc., and any regulations.

Other matters which the council “*shall have regard to*” in changing its RPS are set out in section 61(2). Importantly, as a result of the RMAA03 a different emphasis is to be placed on planning documents recognised by an iwi authority. It is now required that a regional council “*must take into account*” any such documents when changing an RPS (section 61(2A)). This wording places greater emphasis on iwi documents than other matters set out for consideration in section 61(2) and therefore a greater obligation on the Council in relation to addressing iwi documents within the RPS.

The Resource Management (Foreshore and Seabed) Amendment Act 2004 added a further matter to section 61(2A) that must be taken into account – any management plan for a foreshore and seabed reserve. As noted above, no such management plans have been lodged with the council to date.

3.4 Contents of regional policy statements (section 62)

Section 62 was repealed by the RMAA 03 and substituted with a new section 62 to clarify the matters that *must* be included in a RPS. An additional matter has been added by the Resource Management (Foreshore and Seabed) Amendment Act 2004, that being the management issues of significance to the board of a foreshore and seabed reserve. RMAA 03 clarified in section 62(1)(e) that an RPS cannot include rules, although this had already been determined in practice by case law.

In terms of case law, *Auckland RC v North Shore CC*, the Court of Appeal declared that the RPS could define the location of urban settlement through lines on maps, and associated policies and methods.

In *St Columba's* the Planning Tribunal found that a “vision” for the region, promoting principles of sustainable management, did not meet the purpose of an RPS and was not provided for in the RMA. As all parts of an RPS have legal effect, it was considered inappropriate to include a vision, although it was noted that such a chapter could provide an otherwise welcome expression of “*the region's community for the region's environmental wellbeing*”.

^{vii} Section 60(2) of the RMA

Environment Court decisions indicate that an RPS is not generally the appropriate vehicle to include reference to international agreements, such as the GATT/World Trade Organisation rules^{viii} and the principles of the Rio Declaration^{ix}. In both cases, the Court determined that it did not have the jurisdiction to have these matters incorporated into an RPS. However, this depends on the status of the agreement.

3.4.1 Issues, objectives, policies, methods and reasons (subsections 62(1)(a)-(f))

Following amendments to section 62 by the RMAA 03, once an issue has been defined, a suite of objectives, policies, methods, reasons and anticipated results must necessarily follow^x. In essence, the CRPS *must* identify all significant resource management issues for the region, and then must address each of these in turn. Accordingly, the importance of identifying and setting out the issues at the outset cannot be overstated as these will dictate almost the entire policy framework for the region. In *Carter Holt Harvey Forests Ltd.*, the Court noted that the whole approach of the RMA is issue driven, “so issues need to be carefully and appropriately defined”. Recent amendments to the RMA have made this even more important.

“Issues”, “objectives”, “policies” and “methods” are set out within the Act as distinct categories. However, as noted in *Application by North Shore City Council*, it is not always easy to distinguish between them in practice, particularly policies and methods. The terms are not defined within the Act and Courts have used dictionary definitions to establish their meaning. “Policy” has been defined as the way in which an objective is to be attained^{xi}, or a “course of action”, which could be either flexible or inflexible, broad or narrow^{xii}. “Method” has been defined as a measure by which something is to be done to give effect to a policy. It is accepted that there is some overlap between the two. Methods are only allowed to be used in achieving some of the functions of regional councils, as set out in 4.1 below.

The Courts have determined that both policies and methods can be highly specific, including making a mandatory direction to territorial authorities^{xiii}. However, it was noted that use of words such as “shall” or “must” would be more in the nature of methods than policies.

The Courts have also determined that the language of section 62(1)(e) does not preclude the stating of methods of implementation under other legislation by reference. An example of this is in *Royal Forest & Bird Protection Society of New Zealand v Northland Regional Council (EnvC A33/98)* which considered the issue of pest management. In this case, an RPS method included reference to management strategies prepared under the Biosecurity Act 1993, not the RMA. It was accepted that the RPS method could include reference to these management strategies as pest management was an issue of regional significance, and that methods can refer to planning instruments which were not prepared under the RMA.

^{viii} *Proutist Universal v Nelson City Council (EnvC W121/96)*

^{ix} *St Columba’s*

^x The first part of Section 62 would apply as follows: An RPS *must* state —

- (a) and (b) significant resource management issues;
- (c) objectives to be achieved by the RPS;
- (d) policies (and explanations) for (a)(b)&(c);
- (e) methods to implement (d);
- (f) reasons for (c)(d)&(e);
- (g) environmental results from (d)&(e).

^{xi} *Application by North Shore CC*

^{xii} *Auckland Regional Council v North Shore City Council (CoA CA29/95)*

^{xiii} *Auckland RC v North Shore CC* regarding policies and *Application by North Shore DC* regarding methods.

3.4.2 Responsibility for natural hazards, hazardous substances and biological diversity (subsections 62(1)(i) and 62(2))

Subsection 62(1)(i) requires the RPS to state the local authority responsible in whole or in part for setting objectives, policies and methods for the control of the use of land in relation to natural hazards, hazardous substances and biodiversity.

Subsection 62(2) goes on to state that unless otherwise stated in the RPS, responsibility for natural hazards lies with the regional authority and responsibility for hazardous substances lies with the territorial authorities. No default is given for biodiversity.

3.4.3 Monitoring (subsection 62(j))

The Courts have found that an RPS cannot require a territorial authority to carry out monitoring and assessments on whether the territorial authorities' policies and programmes give effect to the RPS^{xiv}.

3.4.4 Other information (subsection 62(1)(k))

Other information can only be included where it is required for the purpose of the regional council's functions, powers, and duties under the Act (Part II). In *St Columba's*, the Planning Tribunal accepted the submission that the word "information" meant "objectively verifiable fact rather than separate objectives or policies". They found that the principles of the Rio Declaration were broad concepts, having broad implications and were not "objectively identifiable fact" as required by the term "information".

3.4.5 Consistency with other documents (subsection 62(3))

Section 62(3) states that an RPS "*must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement*". RMAA 03 strengthened the relationship between RPS's and any NPS and NZCPS. The effect of this change is to eliminate any discretion in applying those documents at a regional and local level.

The Minister of Conservation made a New Zealand Coastal Policy Statement operative in 1994. The Ministry for the Environment (on behalf of the Minister) is working on the preparation of a national policy statement on biodiversity, although this does not exist yet. There are three water conservation orders in place:- Rakaia River (1988), Lake Ellesmere (1990) and the Ahuriri River (1990). A further order for the Rangitata River is pending. The Environment Court has recommended the order be accepted, and the Minister for the Environment will now decide whether to recommend to the Governor General that the order be made.

A list of documents with a legislative relationship with the CRPS is set out in Appendix 2.

^{xiv} *Application by North Shore CC*

4. Functions of regional councils (RMA Section 30)

Section 30 sets out the functions of regional councils for the purposes of giving effect to the Act. These functions are important in any review of the CRPS as RPS provisions are only allowed to the extent that they related to matters of regional significance and serve the functions of regional councils^{xv}. A number of functions have been added or amended through the various RMA amendments. Additionally, the Courts have commented specifically on various sections of the CRPS. This section will look at these functions in turn.

4.1 Objectives, policies and methods (subsection 30(1)(a) and (b))

In *Application by North Shore City Council* the Court noted that although methods may be used by regional councils to achieve the integrated management of the natural and physical resources of a region (section 30(1)(a)), methods could not be used by regional councils in exercising their functions in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance (section 30(1)(b)). Therefore, any methods within the CRPS must be included to achieve integrated management of resources, not in relation to the effects of use, development or protection of land.

4.2 Soil conservation (subsection 30(1)(c)(i))

Chapter 7 policy 6 of the CRPS relates to soils conservation in relation to controlling the location of settlements to avoid foreclosing options for the future use of high quality soils for agricultural purposes. A number of Environment Court cases relate to this policy.

In *Suburban Estates Ltd v Christchurch City Council (C217/2001)* the Court found that Chapter 7 Policy 6 of the CRPS was “badly-worded”, “obscure” and possibly unlawful. They considered that the policy did not fulfil the council’s duties as it appeared to defer responsibility for relevant policy guidance back to the RMA, and that it was self-referential. In *the Scott decision*, the Court again had difficulty interpreting this policy and reiterated the criticisms set out above. They noted that it appeared to defer responsibility back to the Court to consider alternative locations for development on less versatile soils, which the Court felt was the responsibility of policy documents rather than ad hoc analysis on a case-by-case basis.

With respect to the application of this policy, the Court has taken differing views. The Court for *Garguillo v Christchurch City Council (C137/2000)* took the view that fragmentation of large areas of highly versatile farmland of high quality soil is undesirable. It noted that such fragmentation through rural-residential subdivision would foreclose future options for that land for food, fuel and fibre production, which requires larger tracts of high quality land. The Court for *Suburban Estates* instead relied on section 5(2)(b) of the RMA (safeguarding the life-supporting capacity of soils) and noted that, while houses and driveways may irreversibly harm soils, the remaining land comprising gardens, verges etc would not be ruined. It also pointed out that the soils could be removed to another location.

The Franklin District Council was successful in a number of cases where subdivision was held to have an unacceptable effect on the fragmentation of areas of high quality soil^{xvi}. In

^{xv} *Application by North Shore CC*

^{xvi} *Baker v Franklin DC (EnvC A70/98); Peters v Franklin DC (EnvC A49/93); Pickmere v Franklin DC (EnvC A46/93)*

these cases, the scarcity of high quality soil throughout New Zealand was noted; the definition of “environment” as including social and economic conditions which affect natural resources (section 2(1)) was determined to include the effect of subdivision on the use of high quality soil; and both the district plan and the relevant RPS took a firm stance against rural land fragmentation. The Courts held in each case that “*Subdivision of land having high potential for food production to produce rural residential lots would not sustain that potential to meet reasonably foreseeable needs of future generations, nor would it safeguard the life-supporting capacity of soil, nor would it be an efficient use of natural resource.*”

Brookers commentary on finite resources directly addresses the question of versatile soils around Christchurch. It notes that “*The hypothetical loss of the 2 percent of the versatile soil resources of Canterbury in the vicinity of Christchurch, would have a negligible impact on the ability of the city, the region and the world to feed itself, but would allow 200,000 people to be housed at current (low) densities.*”

4.3 Integration of infrastructure with land use (subsection 30(1)(gb))

This additional function added by RMAA 05 requires objectives, policies and methods to achieve the strategic integration of infrastructure with land use. However, there are also decisions previous to this amendment which are relevant.

In *Christchurch Regional Council v Waimakariri District Council (C5/2002)*, referred to throughout this report as “*the Pegasus decision*”, the Court stated that the CRPS was “*a document almost totally lacking in meaningful directives to district councils in respect of the location of settlements and/or the expansion of existing settlements in and about Christchurch and within the Canterbury region*”.

In relation to transport infrastructure, the Court for *the Scott decision* considered that the CRPS failed to provide any clear policies or methods to assist the preparation of district plans in relation to the use of fossil fuels or the location of residential areas. In *Shaw*, the Court considered that the CRPS transport policies only worked as intended in relation to the flow of residents out of Christchurch City into the districts. They considered that the policies were unhelpful in giving policy direction where the changes would induce people to move in the opposite direction – from the districts into the city.

In relation to protection of the activities of Christchurch Airport, the Court determined in the case of *Robinsons Bay Trust v Christchurch City Council (C60/2004)* that, although both a 55dBA contour and a 50dBA contour would both be consistent with the CRPS, a 50dBA contour would be better for inclusion in the City of Christchurch District Plan.

4.4 Coastal marine areas (subsections 30(1)(d)(ii) and (iva)) and fisheries (subsections 30(2) and (3))

Additional functions have been assigned to regional councils in conjunction with the Minister of Conservation regarding the occupation of space within a coastal marine area, and the extraction of natural materials from that land; and the dumping and incineration of waste or other matter within a coastal marine area.

The regional council (in conjunction with the Minister of Conservation) may use these functions to control the harvesting or enhancement of aquatic organisms to address any effects that occupation of a coastal marine area for aquaculture activities, or the effects of

aquaculture activities in themselves, may have on fishing or fisheries resources (section 30(2)). However, this is restricted in relation to some of the coastal marine area functions^{xvii} to exclude matters “where the purpose of that control is to conserve, enhance, protect, allocate, or manage any fishery controlled by the Fisheries Act 1983” (section 30(3)).

Section 30(1)(a) emphasises the achievement of the integrated management of natural and physical resources which may also include fisheries resources and related marine farming structures. However, section 30(2) limits this in that the integrated management of specific fisheries is to be dealt with under the fisheries legislation (*Golden Bay Marine Farmers v Tasman District Council EnvC W42/2001*).

4.5 Ecosystems (subsections 30(1)(c)(iia)) and biodiversity (subsection 30(1)(ga))

The RMAA 03 added the control of land use for the purpose of maintaining and enhancing ecosystems in water bodies and coastal water as a regional council function. This is in addition to its other functions in relation to water quality and quantity.

The RMAA 03 also added the regional council function of maintaining indigenous biological diversity through the establishment, implementation, and review of objectives, policies, and methods. However, it is noted that, as set out in paragraph 3.4.2 above, the RPS should assign responsibilities for this function in relation to the regional council and local authorities.

A definition of “biological diversity” was added to section 2, however “indigenous” is not defined. The New Zealand Biodiversity Strategy 2000 defines indigenous species as “a species whose presence or absence is indicative of a particular habitat, community or set of environmental conditions”, and this may include regenerated native bush. Nonetheless, it may not always be easy to determine whether or not a species is indigenous, particularly in the cases of migrating birds or interbreeding plants.

4.6 Natural hazards (subsection 30(1)(c)(iv))

In *Canterbury Regional Council v Banks Peninsula District Council (CoA CA99/95)*, the Court of Appeal held that this function requires regional councils to avoid or mitigate the effect of a natural hazard, not to control its occurrence. In that case it was held to be consistent with a regional council’s functions for it to investigate flood plain hazards and institute appropriate controls on a regional basis, rather than through individual territorial authorities. The Court observed that there will be occasions where such matters need to be dealt with on a regional basis, and others where that is not necessary, or where interim or additional steps need to be taken by a territorial authority. It is noted that, as set out in paragraph 3.4.2 above, the RPS should assign responsibilities for this function in relation to the regional council and local authorities.

4.7 Other functions

The regional council also has the function of investigating land to identify and monitor contamination (subsection 30(1)(ca)), added by RMAA 05. It is noted that this an investigative function, rather than a policy function.

^{xvii} Control is restricted in relation to subsections 30(1)(d)(i) land and associated natural and physical resources; 30(1)(d)(ii) occupation of the coastal marine area; and 30(1)(d)(vii) activities relating to the water surface.

Two further functions added by RMAA 05 relate to establishing rules in regional plans or a regional coastal plan (subsections 30(1)(fa), (fb) and 30(4)) however these are not of direct relevance to the CRPS review as they relate to rules.

5. Duties to consider alternatives, assess benefits and costs, etc. (RMA Section 32)

Section 32 was repealed and substituted with new sections 32 and 32A by the RMAA 03. The new section 32A limits the opportunity to challenge the adequacy or existence of a section 32 evaluation.

The most important change to section 32 in relation to the CRPS review is that the council is no longer required to be satisfied that any objective, policy or method is *necessary* to achieve the purpose of the Act. Rather the council must now provide a two-part evaluation. The first part is the extent to which each objective is the most appropriate way to achieve the purpose of the Act: The second part relates to whether the policies and methods are most appropriate for achieving those objectives having regard to their efficiency and effectiveness. This examination must “take into account” the benefits and costs of policies and methods, and the risks of acting or not acting where there is uncertain or insufficient information. The section 32 evaluation must be carried out before the CRPS is publicly notified.

Previous decisions of the Environment Court, which remain relevant, found that a section 32 evaluation must be carried out for an RPS^{xviii}, and that this evaluation can only be carried out by the regional council within the scope of the council’s functions set out in section 30^{xix}.

The council’s consideration of the possible contents of the CRPS may be constrained by other instruments, such as the need to “*not be inconsistent with*” and water conservation order, the need to “*give effect to*” a national policy statement or New Zealand Coastal Policy Statement, and other matters set out in section 62 of the RMA (Contents of regional policy statements).

6. RMA Part II: purpose and principles

6.1 RMA Amendments

The purpose of the RMA contained in section 5 remains unchanged by later amendments.

Two new matters of national importance have been added to section 6 relating to historic heritage and recognised customary activities. Both these terms are defined in section 2 of the RMA.

The protection of historic heritage from inappropriate subdivision, use and development has been upgraded from section 7 Other matters by RMAA 03. Historic heritage is defined in section 2 of the RMA. This moves it from a matter to be had *particular regard to* to a matter to *recognise and provide for*. This provides some further direction to the possible content of a regional policy statement.

^{xviii} *Royal Forest & Bird Protection Soc.*

^{xix} *Application by North Shore CC*

The protection of recognised customary activities has been added by the Resource Management (Foreshore and Seabed) Amendment Act 2004 as subsection 6(g). This new matter of national importance relates to customer rights orders made in terms of the Foreshore and Seabed Act 2004. No such orders are currently in place in Canterbury.

A number of other matters have been added to section 7. In addition to 7(a) Kaitiakitanga, 7(aa) the ethic of stewardship has been added. The new provision extends the ethic of stewardship beyond the concept of kaitiakitanga

Three further matters were added by the *Resource Management (Energy and Climate Change) Amendment Act 2004*. These are (ba) the efficiency of the end use of energy; (i) the effects of climate change, and; (j) the benefits to be derived from the use and development of renewable energy. Context is provided to these new matters by the purpose of the *Resource Management (Energy and Climate Change) Amendment Act 2004* as set out in Section 3 of that Act:

- The purpose of this Act is to amend the principal Act—*
- (a) to make explicit provision for all persons exercising functions and powers under the principal Act to have particular regard to—*
 - (i) the efficiency of the end use of energy; and*
 - (ii) the effects of climate change; and*
 - (iii) the benefits to be derived from the use and development of renewable energy; and*
 - (b) to require local authorities—*
 - (i) to plan for the effects of climate change; but*
 - (ii) not to consider the effects on climate change of discharges into air of greenhouse gases.*

It is noted that the wording of the new section 7(i) only relates to the *effects* of climate change, such as resulting from increased natural hazards, not the cause of climate change by the discharge of greenhouse gases.

The implications of the new section 7(ba) have not been tested by the courts yet. Energy might include the energy used to move people from one location to another. However, by focussing on end use, energy generation and transport (including reticulation) appear to be excluded.

6.2 Interpretation of Part II by the Courts

A considerable body of Environment Court decisions and case law exists regarding the interpretation and application of Part II. Key points are set out below. For the purpose of legibility, all case references and legislative references (other than the RMA) have been included as endnotes in Appendix 3 to this report.

Part II is a framework within which all the functions, powers, and duties under the Act are to be exercised. The provisions of Part II (particularly section 5) are a mandatory consideration for the preparation and review of regional policy statements, in accordance with section 61(1). There are no qualifications or exceptions, and any exercise of discretion must still promote the statutory purpose set out in section 5.¹

The Court has held that Part II should not:

“be subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings, and its connotations which I think is intended to allow the application of policy in a general and broad way.”²

6.2.1 Section 5: Purpose

There is only one purpose of the Act and that purpose is paramount in any decision-making. The application of the purpose requires affirmative action.³ Sections 6-8 qualify or inform section 5 more specifically.⁴ The weight given by decision makers to different elements of sections 6-8 and other provisions will contribute to the integrated assessment required under section 5.⁵

Applying section 5 involves an overall broad judgement of whether a proposal would promote the sustainable management of natural and physical resources. That approach allows for a comparison of conflicting considerations, their scale or degree, and their relative significance.⁶

In cases where the purpose of the Act would be best achieved at a national scale by a proposal, the Act allows this to override other Part II sections such as the natural character of the coastal environment 6(a) and outstanding natural features and landscapes 6(b).⁷ However, national interest still has to be weighed against other provisions of Part II, or more particularly section 5 itself.⁸

In circumstances where a proposal promotes one or more of the aspects of sustainable management, but where some aspects of a proposal do not attain, or do not attain fully, one or more of the aspects set out in section 5(a)-(c), decision-makers can still exercise judgement in relation to scale and proportion to reach a decision.⁹

Subsection 5(1)

- This subsection requires “sustainable management” not just management, “ensuring that resources are not used up at a rate greater than their recuperative properties allow”.¹⁰
- The purpose is to promote the sustainable management of resources, not the environment.¹¹
- “Natural and physical resources” are not limited to those with actual or potential economic value.¹²
- Existing structures are a physical resource which are required to be sustained, in this case the baches at Taylors Mistake.¹³

Subsection 5(2)

- “Protection” of natural and physical resources is interpreted as meaning “to keep safe from harm and injury” as opposed to the prevention of harm or the maintenance of the existing state in perpetuity.¹⁴ “
- “At a rate” does not condone stagnation or paralysis.¹⁵
- “Economic wellbeing” does not mean narrow considerations of financial viability, the effects of trade competition on trade competitors, the applicant’s wellbeing, or the effects on the expectations of investors based on past cases.¹⁶ The effects are only to be considered to the extent that they affect the community at large.¹⁷ Consequential and indirect effects of trade competition can be considered, although trade competition itself cannot.¹⁸
- Beliefs can be considered as part of cultural and social wellbeing, but not natural and physical resources.¹⁹

- While the council must actively promote sustainable management, its role in terms of people and communities providing for their well-being is essentially a passive one. However, regulatory control is authorised where: a) there are concerns under sections 5-8; b) proposed objectives, policies or methods pass the tests in section 32; c) regulatory control would better achieve sustainable management than other methods of implementation.²⁰ The balance of “enabling” and “managing” are of equal importance and the circumstances of each case determines the level of management appropriate.²¹

Subsections 5(a)(b) and (c) do not simply express “environmental bottom lines”, but should be afforded full significance and applied according to the circumstances of the particular case.²²

Subsection 5(2)(a)

- The exclusion of minerals from this subsection requires that the use of minerals, especially their extraction, is to be managed sustainably in every way **except** by controlling the rate at which the supplies are exhausted.²³
- Although the Court has determined that fossil fuels are specifically excluded from the ambit of this subsection, another case distinguished between petroleum which is a mineral, and refined petroleum products which are not.²⁴

Subsection 5(2)(b)

- This subsection does not place an absolute prohibition on the use of air, soil, water and ecosystems. Decisions relating to use of these resources must balance other resource management considerations.
- The protection of high-quality soil is relevant, but the protection of “versatile lands” may not be.²⁵
- This section cannot be taken as meaning that all high-quality soil is proscribed from uses other than horticulture/agriculture, irrespective of the size, location and features of that land.²⁶ The proximity to a major urban centre is an important factor for consideration.
- Conservation of soil resources can in some cases relate to the provision of housing (a physical resource).²⁷
- The bunding of soil in order to protect its life-supporting capacity in the long term is nonetheless considered to fail to safeguard the soil’s life-supporting capacity.²⁸
- With regard to artesian water, sustainable management allows for extraction to a point where the water flow could be lost for some users, providing there was still sufficient storage capacity and sufficient water to recharge the aquifer.²⁹

Subsection 5(2)(c)

- The words “avoid, remedy or mitigate” are of equal importance, not steps on a continuum.³⁰
- Section 5 is not about achieving a balance between the benefits and adverse effects occurring from an activity. Adverse effects must be avoided, remedied or mitigated, irrespective of any benefits.³¹
- The reference to mitigation accepts that some adverse effects may be considered acceptable, but this is a question of fact and degree.³² Compensatory action can be taken into account as part of mitigation³³, although positive effects cannot.³⁴

6.2.2 Section 6: Matters of national importance

There is a hierarchy between sections 6-8 which has been applied to give preference to section 6 above the others.³⁵ However, it is still accepted that in some cases where there is less evidence for section 6 matters, lower-order matters can outweigh section 6, all subject

to achieving the purpose of section 5.³⁶ Matters in section 6 cannot of themselves form a veto over consideration under section 5.³⁷

- Because matters of national importance must be recognised and provided for, they are not just an equal part of a general weighing of considerations.³⁸
- Other matters of national importance, national value and national interest (such as large infrastructure projects) must also play their part in considerations, but only in the context of section 5 – they are not afforded section 6 status.³⁹
- The term “protection”, as in section 5 above, means keeping safe from injury or harm, not absolute protection, prevention or prohibition.⁴⁰
- National importance relates to the matter, not the value. For example, a landscape, wetland *etc* which is regionally outstanding is of national importance when it is considered at a regional level, such as in an RPS. It does not have to be nationally outstanding when being considered at a regional level to be a matter of national importance.⁴¹

Subsection 6(a)

- In this subsection, “protection” is restricted to inappropriate subdivision, use and development. This does not include matters such as the wash of a boat.⁴²
- “Inappropriate” does not mean that whatever the existing level of modification, areas cannot be modified further. However the higher the existing level of modification, the more appropriate development will be, particularly where this avoids modification of another area of higher natural character.⁴³
- “Natural character” is not necessarily “pristine” and may include modified environments such as pasture, or elements of nature such as exotic trees and wildlife.⁴⁴ The absence of certain vegetation, landforms or water features might make a landscape less natural, but not necessarily non-natural.⁴⁵ Natural character should be retained for its own sake⁴⁶, however this section does not require currently degraded environments to be reinstated.⁴⁷
- The courts have found that because wetlands are rapidly diminishing, even a relatively insignificant and small-scale wetland can be of national importance within the meaning of section 6(a).⁴⁸
- This subsection also implies protection of ecosystems, in addition to the more specific reference in section 7(d). The extent to which these ecosystems can be modified by development is limited.⁴⁹

Subsection 6(b)

- The term “natural” within this subsection should be applied similarly to that of “natural character” referred to in 6(a) above.⁵⁰
- “Feature” means a distinctive or characteristic part of a landscape.⁵¹
- “Landscape” does not require precise definition but includes both physical and aesthetic or perceptual qualities, and may include the build aspect of an historic landscape in an area where a significant event in human history has taken place.⁵²
- What is “outstanding” is a subjective matter but identification can be assisted by specific criteria^{xx}.⁵³
- The court has been critical of the view that buildings are inherently unattractive.⁵⁴
- This section applies not only to nationally outstanding landscapes⁵⁵.

^{xx} Landscape criteria include but are not limited to: (a) The natural science factors — geological, topographical, ecological, and dynamic components of the landscape; (b) Its aesthetic values, including memorability and naturalness; (c) Its expressiveness (legibility) — how obviously the landscape demonstrates the formative processes leading to it; (d) Transient values — occasional presence of wildlife or its values at certain times of the day or year; (e) Whether the values are shared and recognised; (f) Its value to tangata whenua; (g) Its historical associations.

Subsection 6(b)

- “Protection” is required under this section which creates a statutory obligation to take appropriate measures. In some cases this may rely on the voluntary sector but intervention would be required if the voluntary sector failed to adequately protect⁵⁶. This protection should also include enhancement by adding additional sites where appropriate⁵⁷.
- The Court has also set out criteria for the evaluation of “significant” vegetation and habitats^{xxi 58}.

Subsection 6(d)

- “Public access” can include the navigation of craft in waterways, or boats travelling up rivers to reaches that cannot otherwise be accessed from the banks.⁵⁹
- Development that prevents free access effectively alienates public space, and must be weighed against other considerations to ensure that the nature and level of access is appropriate in all cases⁶⁰.

Subsection 6(e)

- The reference in this subsection is to “Maori” and is not restricted to those holding mana whenua status.⁶¹ Additionally, plan provisions (or by implication, any RPS) should not identify particular iwi as having customary use status.⁶²
- “Taonga” can include intangible cultural and spiritual taonga.⁶³ Subsection 6(e) can also apply to mythical, spiritual, symbolic or metaphysical qualities, such as taniwha.⁶⁴
- “Ancestral land” is land that has been owned by ancestors and is not confined to land remaining in Maori ownership as Maori freehold or customary land.⁶⁵
- “Waahi tapu” can be defined as “a place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense”⁶⁶ and may originate from pre-contact history or from post European history to the present day.⁶⁷ Waahi tapu do not need to be registered to be relevant, however the courts have held that places which were used for purely secular activity may be ancestral land but are not necessarily waahi tapu.⁶⁸
- Unlike section 8, subsection 6(e) is specific in its scope.⁶⁹ This provision requires active protection for those matters regarded as taonga by Maori, including the protection in use of lands and waters to the “fullest extent practicable”.⁷⁰ This protection includes the consideration of alternatives, and is not the same as maintaining the status quo.⁷¹
- The Court has determined that once the relationship of Maori with their ancestral lands is recognised, the decision maker must then consider how to provide for that relationship.⁷²
- This subsection does not entitle Maori to exercise sovereignty, control, or shared management to the extent that they could prevent an owner from obtaining a designation or exercising any authorisation to use and develop that land.⁷³

Subsection 6(f)

- The courts have determined that subsection 6(f) does not mean that every historic listed building has individually become a building of national importance⁷⁴.

^{xxi} Evaluation criteria include: a) Representativeness (extent of range of genetic and ecological diversity); b) Diversity and pattern (in relation to ecosystems, species and land forms); c) Rarity factors and/or special features; (d) Naturalness/intactness; size and shape (affecting the long-term viability of species; Communities and ecosystems, and amount of diversity); (e) Inherent ecological viability/long-term sustainability; (f) Relationship between natural areas and other areas of mere modified character; (g) Vulnerability of site; management input required to maintain or enhance an area’s significance.

6.2.3 Section 7: Other matters

- The requirement to “have particular regard to” imposes a high test and these matters must be given genuine consideration and carefully weighed in coming to a decision, but are not requirements or tests which must be fully met.⁷⁵
- In relation to 7(a) kaitiakitanga, there is a requirement that the views of Maori are not just heard and understood, but also that those views influence decision making. However, this does not mean Maori have a right of veto.⁷⁶ Exercise of kaitiakitanga requires on-going involvement and cannot be taken up or put down at will.⁷⁷
- The new subsection 7(aa) ethic of stewardship extends beyond the concept of kaitiakitanga. However, it cannot be interpreted as placing an obligation on the council to purchase a heritage item which is no longer of use to the owner. Nor does it require a landowner to maintain all heritage items in all circumstances.⁷⁸
- “Efficiency” in 7(b) has three aspects: a) productive efficiency (output at lower cost); b) allocative efficiency (resource allocation to make the best use of those resources); and dynamic or innovative efficiency (technological change).⁷⁹ Efficiency must compare the effect of change with the existing situation, and in appropriate cases, a comparison with other developments.⁸⁰ However, consent authorities do not need to determine the relative efficiency of the use of resources compared to other possible resource uses, or consider how those resources might have been used instead.⁸¹
- The Courts have applied subsection 7(b) to determine that;
 - protection of land of high or potential agricultural value adjoining residential areas falls within the ambit of 7(b), together with 7(d) and 7(g) and a plan change rezoning pockets of rural land to rural/residential would not be an efficient use of land.⁸² This has been used to support the concept of a defined rural-urban boundary around Christchurch in terms of rural character and landscape⁸³, although it was considered that the CRPS was at too coarse a grain to have a significant impact on the decision⁸⁴.
 - viability of a CBD is not a valid consideration if it amounts to “rent seeking” or is an aspect of trade competition.⁸⁵
 - that even if there is appropriately zoned land elsewhere, the ability for a development to outbid rival uses indicates this is the most efficient use of the land.⁸⁶
 - overall efficiency measures could only be implemented if a cautious approach to CO₂ emissions was taken.⁸⁷
 - this section is relevant to assessing the efficiency of methods and therefore has a relationship with section 32.⁸⁸
- Section 7(c) does not require that amenity values are both maintained and enhanced, only that they are maintained or enhanced.⁸⁹ In this case “maintain means “protection” within the meaning given for section 5 above.⁹⁰
- Section 7(g) “finite characteristics of natural and physical resources” is not limited to circumstances where a finite resource is threatened with being totally used up.⁹¹ It may apply to limit the use of a particular resource, or require incentives to develop other under-used resources.⁹² An airport can be considered as a finite physical resource as a consideration regarding airport noise and sensitive uses.⁹³
- Section 7(i) is restricted to the *effects* of climate change. The Environment Court has questioned the inclusion of CO₂ emissions as a regional resource management issue as it considered they should be more appropriately addressed within a national policy statement, although in another case it has accepted that it is appropriate to consider greenhouse gases in the CRPS⁹⁴.

6.2.4 Section 8: Treaty of Waitangi

Sections 6(e) and 7(a) actively incorporate the substantive or active protection elements of the Treaty principles which are most relevant to natural and physical resources.⁹⁵

- The duty arising under section 8 is to weigh the principles of the Treaty with all other matters being considered and, in coming to a decision, effect a balance, and be able to show that that has been done⁹⁶
- The principles that have been relied on in exercising this section are derived from decisions relating to the State-Owned Enterprises Act 1986^{xxii}. Although there are dangers inherent in applying principles derived for this legislative process to the RMA, they are useful as a guide.⁹⁷
- The principles cannot extend to principles that are inconsistent with the RMA and section 8 does not give jurisdiction over matters such as the allocation of resources to Maori, constitutional matters such as tribal sovereignty and the legitimacy of the NZ government, determining whether the Treaty has been breached by Treaty partners, taking account of past wrongs or redress.⁹⁸ Instead, this generic “Treaty” provision of the Act has been characterised as the clause which recognises the relationship of tangata whenua with natural and physical resources and encourages active participation and consultation with tangata whenua.⁹⁹
- This duty does not give effect to the Treaty as though it were a higher law and neither does it amount to a right of veto.¹⁰⁰
- The duty of a territorial authority is not a transfer of the obligations of the Crown as a Treaty partner.¹⁰¹ However, there has been some blurring of this in another case where poor relations between a landowner and iwi were blamed on the local council who, as successor to the Crown (or NZ Government) had responsibility for delivering on the Treaty promise which, through the RMA, had been delegated to the council.¹⁰²
- The requirement section 8 applies on the local authorities is to properly investigate or consult, be seen to do this, and take the Treaty principles into account.
- Section 8 is not always a protective role by the council, but can also be positive by supporting the exercise of mana whenua.¹⁰³
- Consultation is not a Treaty principle or an obligation in itself. Rather it is borne out of the need to a) recognise the close binding relationship between Treaty partners and the need for “continuing bilateral commitment”, and; b) make informed decisions based on all relevant information regard effects on Maori. Therefore consultation is typically a prudent course of action.¹⁰⁴
- Consultation must be conducted in a spirit of goodwill and open-mindedness, over a reasonable span of time, and to a degree that enables the territorial authority to be informed, and has set out what this consultation should include^{xxiii}.¹⁰⁵
- Consultation is a two-way process which both parties must enter into, and information must be provided shared between parties to the fullest extent possible (e.g. monitoring data obtained by the council).¹⁰⁶
- Consultation means taking Maori interests and preferences into consideration, not having discussions and abandoning such discussions if they do not appear to be fruitful.¹⁰⁷
- Consultation does not require full agreement between parties, and neither does it require full agreement within iwi or hapu.¹⁰⁸

^{xxii} (a) There is a duty on the two parties to the Treaty to act reasonably towards each other and in utmost good faith; (b) The Crown must make informed decisions (which will often require consultation, but not invariably so); (c) The Crown must not impede its capacity to provide redress for proven grievances; and (d) There is a duty on the Crown actively to protect Maori interests.

^{xxiii} The steps set out in this case were evidence that the decision-maker: included tangata whenua in its preliminary working party investigations or in site visits; engaged in mediation with tangata whenua; instructed independent investigators to consider options proposed by tangata whenua; and modified its proposal in significant ways to accommodate tangata whenua concerns as part of a genuine effort to respond as far as the decision-maker considered practicable.

- As noted above, it is not for the territorial authority to determine who holds kaitiakitanga or rangatiratanga, and where there are overlapping interests it may be appropriate to ensure that all interests are met.¹⁰⁹

7. First Schedule

The First Schedule sets out the procedural requirements for an RPS review. These were helpfully summarised in *Petersen v Napier City Council (EnvC C124/2000)* as follows;

(1) Review of operative plan	Section 79(1) and (2)
(2) Decision to change, replace or continue	Section 79(3)
(3) Preparation of proposed plan	Clauses 2, 3, 4 (and Section 32)
(4) Notification of, submissions and hearing on proposed plan	Clauses 5 to 11
(5) References ^{xxiv} to the Environment Court	Clauses 14 to 17
(6) Variations (if any) to the proposed plan	Clauses 16A and 16B
(7) Notification that the new (or amended) plan is operative	Clause 20
— after which the local authority returns to step (1) at intervals of not more than 10 years.	

7.1 Consultation

The principles of consultation set out in 6.2.4 above in relation to consultation with Maori also apply to broader consultation:- it is not necessary to reach agreement or consensus, however it must be undertaken in “a spirit of goodwill and open-mindedness”, over a reasonable span of time, and sufficient for the local authority to be adequately informed to reach a judgement (*Ngati Kahu v Tauranga District Council (PT A72/94)*).

It is mandatory to consult with the Minister for the Environment and other Ministers of the Crown who may be affected, local authorities who may be affected and tangata whenua who may be affected. There is no guidance relating to the term “who may be so affected” and it would be advisable to err on the side of caution. The Council may also consult whomever else they choose.

The RMAA 05 resulted in three new sections relating to RPS consultation. The first (3A) relates specifically to policy statements, and requires a triennial agreement to be entered into to agree a consultation process for affected local authorities^{xxv}. It also includes provisions if such an agreement cannot be reached. The second section (3B) sets out the requirements for consulting with iwi authorities. In meeting its obligations in this CRPS review, the Council will need to demonstrate that it has fulfilled the five requirements set out in this section. The third section (3C) provides that the Council does not have to carry out this consultation if it has already done so within the last 12 months, and advised those parties that that consultation would apply to this latter process.

7.2 Public notice

The Council must publicly notify the proposed policy statement. This notice should not refer to a “review” of the RPS as this may imply that the notification of the revised document will be done at a later date (see *Petersen*).

^{xxiv} This has been amended to refer to “appeals” rather than “references”

^{xxv} Under section 15 of the Local Government Act 2002

7.3 Submissions

Any person can make a submission on a proposed plan. In *Campbell v Christchurch CC (EnvC C164/2003)*, the Court found that (1) the submission must identify what issue is involved and some change sought in the proposed plan; (2) the local authority must be able to summarise it accurately and fairly; and (3) the submission should inform others what it is seeking, but it will not be automatically invalid if unclear.

Further submissions, or cross-submissions cannot extend the scope of the earlier submission (*Offenberger v Masterton DC (PT W53/96)*).

7.4 Decisions

In *Queenstown Lakes DC v Marcam Grand Lakes Ltd (EnvC C156/02)*, the Court set out what a decision should identify:

- (a) What change is to be made to one or more provisions in the proposed plan; or
- (b) What provision is to be deleted; or
- (c) What new provision is to be made to the proposed plan.

Finally, each decision must contain its reasons, and these reasons must be adequate.

The decision must be then publicly notified in sufficient detail so that it is possible to determine which parts of the plan relate to the decision (*Moody v Wellington CC (EnvC W31/98)*). Any amendments should not go beyond what was raised in the advertised submissions. However, the amendments do not have to be those which were specifically requested by the submissions. It is only required that an informed and reasonable member of the public, having studied all the submissions, should have appreciated that the local authority might make the amendment had those submissions been accepted (*Nelson Pine Forest Ltd v Waimea CC (HC W73/91)*).

8. Summary

In carrying out this review, the Council first needs to decide whether the CRPS requires change or replacement. It will then need to advise which sections will remain intact, and which sections, if any, will be changed.

The following is a summary of the key changes to legislation that affect RPS's:

- Additional matters of national importance in section 6 relating to:
 - historic places (moved from section 7)
 - recognised customary activities
- Additional other matters in section 7 relating to:
 - the ethic of stewardship
 - recognised customary activities
 - the efficiency of the end use of energy
 - effects of climate change
 - renewable energy
- Additional regional council functions in section 30 relating to:
 - ecosystems in water bodies and coastal water

- contaminated land
- occupation of space and extraction of natural materials, and dumping and incineration of waste within the coastal marine area
- indigenous biological diversity
- integration of infrastructure with landuse
- aquaculture
- Additional matters to be considered in an RPS in section 61 relating to:
 - documents recognised by iwi authorities
 - trade competition
- Changes to the s32 duty to consider alternatives, assess benefits and costs etc.
- Changes to sections 67 and 75 requiring regional and district plans to “give effect to” the RPS.

The following is a summary of the key findings of the courts with regard to RPS matters generally:

- Establishing and implementing objectives, policies and methods for the achievement of the integrated management of natural and physical resources are important functions of regional councils, and it is in the objectives of an RPS that these should be most evident, in order to control the rest of the RMA framework.
- Issues need to be carefully defined within the RPS.
- Responsibility for natural hazards, hazardous substances and biodiversity must be assigned in the RPS.
- Section 5, the purpose of the RMA, does not express environmental bottom lines, but must be afforded full significance. It is not about weighing the benefits and adverse effects, as all adverse effects must be avoided, remedied or mitigated.
- A matter of national importance in section 6 terms includes regionally significant matters as provided for at a regional level (such as an RPS).
- Guidance as to what consultation should include has been set out by the courts for cases relating to the State Owned Enterprises Act, and these are broadly applicable in an RMA context.

The following is a summary of the key findings of the courts with specific regard to the CRPS:

- The Environment Court has expressed concern about wording and meaning of CRPS Chapter 7 policy 6 which relates to the protection of versatile soils.
- The Environment Court has also been concerned that the CRPS does not give sufficient guidance in relation to the location of new settlement.
- The Environment Court has expressed concern about the application of transport policies in terms of giving meaningful guidance about traffic flows into Christchurch as a result of new development.
- The Environment Court has upheld the protection of the 50dBA contour around Christchurch Airport.
- The Environment Court has supported the concept of a defined urban-rural boundary around Christchurch.

The following is a summary of information throughout this report about the required contents of an RPS.

- The *issues* in the RPS must provide a comprehensive overview of all of the resource management issues of the region (including those of significance to iwi).

- The RPS must set out the *objectives* that are sought to be achieved.
- There must be *policies* in the RPS for those issues and objectives, **and** to achieve the integrated management of the natural and physical resources of the region. These must serve the functions of regional councils (section 30) and relate to matters of regional significance.
- There must be *methods* for the implementation of those policies, **and** methods adequate to achieve the integrated management of the natural and physical resources of the region. These *methods* must serve the functions of regional councils (section 30), relate to matters of regional significance, and should include all appropriate actions, including those of territorial authorities and non-RMA projects (e.g. the Clean Air Project, pest management under the Biosecurity Act 1993)
- *Reasons, anticipated environmental results and procedures for monitoring* the efficiency and effectiveness of all of the policies and methods must also be included.
- Where there is discretion in the degree to which the territorial authority is responsible for the control and the use of land (natural hazards, hazardous substances, indigenous biological diversity), the RPS must assign responsibility.
- The RPS must give clear and strong directions as to how the RPS should be given effect to in regional and district plans.
- The RPS must give effect to the New Zealand coastal policy statement, and “not inconsistent with” any water conservation order.
- Any relevant iwi documents must be taken into account when preparing the RPS.
- In preparing the RPS, regard must be had to any management plans and strategies prepared under other acts, the Historic Places Register, regulations relating to ensuring sustainability, regulations relating to conservation management, regulations relating to the sustainability of fisheries resources, and the extent to which the RPS needs to be consistent with neighbouring regional councils’ RPS’s and plans.

Appendix 1: Relevant provisions of the Resource Management Act 1991

PART II

PURPOSE AND PRINCIPLES

5. Purpose—

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

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

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6. Matters of national importance—

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) 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:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

[(f) The protection of historic heritage from inappropriate subdivision, use, and development.]

[(g) The protection of recognised customary activities.]

7. Other matters—

In achieving the purpose of this Act, all persons exercising functions and powers under it, 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.]

8. Treaty of Waitangi—

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

PART IV

FUNCTIONS, POWERS, AND DUTIES OF CENTRAL AND LOCAL GOVERNMENT

...

Functions, Powers, and Duties of Local Authorities

30. Functions of regional councils under this Act—

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
- (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
 - (b) 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:
 - (c) The control of the use of land for the purpose of—
 - (i) Soil conservation:
 - (ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:
 - (iii) The maintenance of the quantity of water in water bodies and coastal water:
 - [(iia) The maintenance and enhancement of ecosystems in water bodies and coastal water:]
 - (iv) The avoidance or mitigation of natural hazards:
 - (v) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - [(ca) The investigation of land for the purposes of identifying and monitoring contaminated land:]
 - (d) In respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
 - (i) Land and associated natural and physical resources:
 - [(ii) The occupation of space on land of the Crown or land vested in the regional council, that is foreshore or seabed, and the extraction of sand, shingle, shell, or other natural material from that land:]
 - (iii) The taking, use, damming, and diversion of water:
 - (iv) Discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - [(iva) The dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:]
 - (v) Any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - (vi) The emission of noise and the mitigation of the effects of noise:
 - (vii) Activities in relation to the surface of water:
 - (e) The control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
 - (i) The setting of any maximum or minimum levels or flows of water:
 - (ii) The control of the range, or rate of change, of levels or flows of water:

- (iii) The control of the taking or use of geothermal energy:
- (f) The control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - [(fa) If appropriate, the establishment of rules in a regional plan to allocate any of the following:
 - (i) The taking or use of water (other than open coastal water):
 - (ii) The taking or use of heat or energy from water (other than open coastal water):
 - (iii) The taking or use of heat or energy from the material surrounding geothermal water:
 - (iv) The capacity of air or water to assimilate a discharge of a contaminant:]
 - [(fb) If appropriate, and in conjunction with the Minister of Conservation,—
 - (i) The establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - (ii) The establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:]
- (g) In relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
 - (i) Soil conservation:
 - (ii) The maintenance and enhancement of the quality of water in that water body:
 - (iii) The maintenance of the quantity of water in that water body:
 - (iv) The avoidance or mitigation of natural hazards:
- [(ga) The establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:]
- [(gb) The strategic integration of infrastructure with land use through objectives, policies, and methods:]
- (h) Any other functions specified in this Act.
- [(2) A regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate—
 - (a) The effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities:
 - (b) The effects on fishing and fisheries resources of aquaculture activities.]
- [(3) However, a regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), or (vii) to control the harvesting or enhancement of aquatic organisms for the purpose of conserving, using, enhancing, or developing any fisheries resources controlled under the Fisheries Act 1996.]
- [(4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:
 - (a) The rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and
 - (b) Nothing in paragraph (a) affects section 68(7); and
 - (c) The rule may allocate the resource in anticipation of the expiry of existing consents; and
 - (d) In allocating the resource in anticipation of the expiry of existing consents, the rule may—
 - (i) Allocate all of the resource used for an activity to the same type of activity; or
 - (ii) Allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and
 - (e) The rule may allocate the resource among competing types of activities; and
 - (f) The rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).]

[32. Consideration of alternatives, benefits, and costs

- (1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—
- (a) the Minister, for a national policy statement or [a national environmental standard]; or
 - (b) the Minister of Conservation, for the New Zealand coastal policy statement; or
 - (c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1); or
 - (d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of the Schedule 1.
- (2) A further evaluation must also be made by—
- (a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; and
 - (b) the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.
- (3) An evaluation must examine—
- (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- (3A) This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.]
- (4) For the purposes of [the examinations referred to in subsections (3) and (3A)], an evaluation must take into account—
- (a) the benefits and costs of policies, rules, or other methods; and
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.]

[32A. Failure to carry out evaluation

- (1) A challenge to an objective, policy, rule, or other method on the ground that section 32 has not been complied with may be made only in a submission under Schedule 1 or a submission under section 49.
- (2) Subsection (1) does not preclude a person who is hearing a submission or an appeal on a proposed plan, proposed policy statement, change, or variation, or a submission on a national policy statement or New Zealand coastal policy statement, from taking into account the matters stated in section 32.]

PART V

STANDARDS, POLICY STATEMENTS, AND PLANS

...

Regional Policy Statements

59. Purpose of regional policy statements—

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

60. Preparation and change of regional policy statements—

(1) There shall at all times be for each region one regional policy statement prepared by the regional council in the manner set out in Schedule 1.

(2) A regional policy statement may be changed in the manner set out in Schedule 1, at the instigation of a Minister of the Crown, the regional council, or any territorial authority within or partly within the region.

61. Matters to be considered by regional council [(policy statements)]—

(1) A regional council shall prepare and change its regional policy statement in accordance with its functions under section 30, the provisions of Part 2, and its duty under section 32 and any regulations.

(2) In addition to the requirements of section 62(2), when preparing or changing a regional policy statement, the regional council shall have regard to—

(a) Any—

(i) Management plans and strategies prepared under other Acts; and

(ii) Repealed.

[(iiia) Relevant entry in the Historic Places Register; and]

[(iiib) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing); and]

(iv) Repealed.

to the extent that their content has a bearing on resource management issues of the region; and

(b) The extent to which the regional policy statement needs to be consistent with the policy statements and plans of adjacent regional councils.

[(2A) A regional council, when preparing or changing a regional policy statement, must—

(a) Take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region; and

(b) Recognise and provide for the management plan for a foreshore and seabed reserve located in whole or in part within its region, once the management plan has been lodged with the council.]

[(3) In preparing or changing any regional policy statement, a regional council must not have regard to trade competition.]

[62. Contents of regional policy statements—

(1) A regional policy statement must state—

(a) The significant resource management issues for the region; and

- [[(b) The resource management issues of significance to—
 - (i) Iwi authorities in the region; and
 - (ii) The board of a foreshore and seabed reserve, to the extent that those issues relate to that reserve; and]]
 - (c) The objectives sought to be achieved by the statement; and
 - (d) The policies for those issues and objectives and an explanation of those policies; and
 - (e) The methods (excluding rules) used, or to be used, to implement the policies; and
 - (f) The principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and
 - (g) The environmental results anticipated from implementation of those policies and methods; and
 - (h) The processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and
 - (i) 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—
 - (i) To avoid or mitigate natural hazards or any group of hazards; and
 - (ii) To prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - (iii) To maintain indigenous biological diversity; and
 - (j) the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and
 - (k) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.

(2) If no responsibilities are specified in the regional policy statement for functions described in subsection (1)(i)(i) or (ii), the regional council retains primary responsibility for the function in subsection (1)(i)(i) and the territorial authorities of the region retain primary responsibility for the function in subsection (1)(i)(ii).

(3) A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement.]

...

Miscellaneous Provisions

79. Review of policy statements and plans—

- (1) Every regional council shall commence a full review of its regional policy statement, and each of its regional plans, not later than 10 years after the statement or plan became operative.
- (2) Every territorial authority shall commence a full review of its district plan not later than 10 years after the plan became operative.
- (3) If, after reviewing a policy statement or plan under this section, a regional council or territorial authority considers—
 - (a) That the statement or plan requires change or replacement, it shall change or replace the statement or plan in the manner set out in Schedule 1 and this Part:
 - (b) That the statement or plan can remain without change or replacement, it shall publicly notify that statement or plan as if it were a proposed policy statement or plan in the manner set out in Schedule 1 and this Part.
- (4) When a regional council or territorial authority is reviewing a policy statement or plan, it shall review all sections of, and all changes to, the policy statement or plan regardless of when those sections or changes became operative.
- (5) A policy statement or plan shall not cease to be operative by virtue of being due for review or while it is being reviewed.

(6) The obligations of each regional council and territorial authority under this section are in addition to its duty to monitor under section 35.

[79A. Circumstance when further review required—

(1) Section 79B applies if, after a foreshore and seabed reserve has been set apart and established under section 43 of the Foreshore and Seabed Act 2004, a management plan for the foreshore and seabed reserve is—

- (a) prepared and approved by the board of the foreshore and seabed reserve in accordance with section 44 of the Foreshore and Seabed Act 2004; and
- (b) lodged with the regional council.

[[2) The regional council that has responsibility for the area where the reserve is located must review its regional policy statement and each regional plan to the extent necessary to ensure that they recognise and provide for the management plan. It must start the review within 6 months of the management plan being lodged under subsection (1)(b).]]

(3) Section 79(4), (5), and (6) applies to a review required by this section.]

[79B. Consequence of review under section 79A—

If a regional council, after reviewing a policy statement or plan under section 79A, considers that the policy statement or plan—

- (a) requires change in order to recognise and provide for all or part of a management plan for a foreshore and seabed reserve, it must change the policy statement or plan in the manner set out in Schedule 1 and this Part:
- (b) can remain without change, it must give public notice of that decision.]

Appendix 2: Statements, plans, strategies and other documents of relevance to RPS review

Legislation

Resource Management Act 1991 (Ministry for the Environment)
Resource Management (Waitaki Catchment) Amendment Act 2004 (Ministry for the Environment)
Aquaculture Reform 2004 (Ministry for the Environment)
The Foreshore and Seabed Act 2004 (Ministry for the Environment)
Ngāi Tahu Claims Settlement Act 1998 (Government of New Zealand)
Hazardous Substances and New Organisms Act 1996 (Ministry for the Environment)
Biosecurity Act 1993 (Ministry of Agriculture and Fisheries)

Other National Documents

New Zealand Coastal Policy Statement 1994 (Ministry for the Environment)
National Environmental Standards for Clean Water, Air and Land (Ministry for the Environment)
The New Zealand Biodiversity Strategy 2000 (Ministry for the Environment)
Port and Harbour Marine Safety Code 2004 (Maritime Safety Authority of New Zealand)

Regional Documents (Canterbury)

National Water Conservation (Rangitata River) Order 2006 (Ministry for the Environment)
National Water Conservation (Ahuriri River) Order 1990 (Ministry for the Environment)
National Water Conservation (Lake Ellesmere) Order 1990 (Ministry for the Environment)
National Water Conservation (Rakaia River) Order 1988 (Ministry for the Environment)
Regional Coastal Environment Plan 2005 (Environment Canterbury)
Proposed Natural Resources Regional Plan (Environment Canterbury)
Waitaki Catchment Water Allocation Regional Plan 2005 (Environment Canterbury)
Waimakariri River Regional Plan 2004 (Environment Canterbury)
Opihi River Regional Plan 2000 (Environment Canterbury)
Regional Energy Strategy 2004 (Environment Canterbury)
Regional Pest Management Strategy 2005 (Environment Canterbury)
Canterbury Regional Land Transport Strategy 2005-2015 (Environment Canterbury)
Canterbury Hazardous Waste Management Strategy 1999 -2005 (Environment Canterbury)

Iwi Documents (Canterbury)

Te Whakatau Kaupapa - Ngāi Tahu Resource Management Strategy for the Canterbury Region 1990 (Te Rūnanga o Ngāi Tahu)
Te Poha o Tohu Raumati – Te Rūnanga o Kaikoura Environmental Management Plan 2005 (Te Rūnanga o Kaikoura)
Te Taumutu Rūnanga Natural Resource Management Plan 2003 (Te Rūnanga o Taumutu)
Te Waihora Joint Management Plan Mahere Tukutahi o Te Waihora 2006 (Te Rūnanga o Ngāi Tahu and Department of Conservation)
Te Rūnanga o Ngāi Tahu Freshwater Policy (Te Rūnanga o Ngāi Tahu)

Regional Documents

Marlborough Regional Policy Statement 1995 (Marlborough District Council)
Tasman Regional Policy Statement 2001 (Tasman District Council)
West Coast Regional Policy Statement 2000 (West Coast Regional Council)
Otago Regional Policy Statement 1998 (Otago Regional Council)

District Documents

Ashburton District Council District Plan 2001 (Ashburton District Council)

Christchurch City District Plan 2005 (The "City Plan") - a few appeals remain unresolved (Christchurch City Council)
Hurunui District Plan 2003 (Hurunui District Council)
Kaikoura District Plan 2005 (Kaikoura District Council)
MacKenzie District Plan 2004 (MacKenzie District Council)
Proposed Selwyn District Plan – decisions released in 2004 but some appeals remain unresolved (Selwyn District Council)
Timaru District Plan 2005 (Timaru District Council)
Waimakariri District Plan 2005 (Waimakariri District Council)
Waimate District Plan 2001 (Waimate District Council)
Waitaki District Plan 2004 (Waitaki District Council)

Appendix 3: Endnote case and legislation (other than RMA) references for Paragraph 6.2

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- ¹ *RFBPS v Manawatu-Wanganui RC (PT A86/95)*
- ² *NZ Rail Ltd v Marlborough DC (HC AP169/93)*
- ³ *Marlborough DC v Southern Ocean Seafoods Ltd (PT W6/95)*
- ⁴ *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC (EnvC W25/2002)*
- ⁵ *Pigeon Bay Aquaculture Ltd v Canterbury RC (EnvC C179/2003)*
- ⁶ *Ngati Rangī Trust v Manawatu-Wanganui RC (EnvC 67/2004) following Aquamarine Ltd v Southland RC (EnvC C126/97) and Independent News Auckland Ltd v Manakau CC (EnvC A103/2003); and Trio Holdings v Marlborough DC (PT W103A/96)*
- ⁷ *Auckland Volcanic Cones Soc Inc v Transit NZ Ltd (EnvC A203/2002) and Independent News*
- ⁸ *McGuire v Hastings DC (PrivyC 43/2000)*
- ⁹ see *North Shore CC v Auckland RC*
- ¹⁰ see *Marlborough DC v Southern Ocean Seafoods*
- ¹¹ *Wakatipu Environmental Soc Inc v Queenstown Lakes DC (EnvC C129/2001)*
- ¹² *Campbell v Southland DC (PT W114/94)*
- ¹³ *Save the Bay v ChCh CC (EnvC C50/2002)*
- ¹⁴ *Port Otago v Dunedin CC (HC AP201/94; 11/95)*
- ¹⁵ see *Kennedys Bush*
- ¹⁶ *NZ Rail Ltd v Marlborough DC; Campbell v Southland DC and Imrie Family Trust v Whangarei DC (PT A57/94)*
- ¹⁷ see *Imrie*
- ¹⁸ *National Trading Co of NZ Ltd v North Shore CC (EnvC A182/2002)*
- ¹⁹ *Te Runanga O Taumarere v Northland RC (PT A108/95); Friends and Community of Ngawha Inc v Minister of Corrections (HC AP110/02) and Takamore Trustees v Kapati Coast DC (HC AP191/02 AP192/02)*
- ²⁰ *Terrace Tower (NZ) Pty Ltd c Queenstown Lakes DC (EnvC C111/2000)*
- ²¹ *Kiwi Property Management Ltd v Hamilton CC (EnvC A045/2003)*
- ²² *RFBPS and Mangakahia Maori Komiti v Northland RC (PT A107/95)*
- ²³ see *Save the Bay*
- ²⁴ see *Terrace Tower* which determined that petroleum products fall within the ambit of section 5(2)(a) and as contrast see *the Scott decision* which determined that fossil fuels were excluded as minerals.
- ²⁵ See *Garguillo; Suburban Estates; Baker, Peters; Pickmere*
- ²⁶ *Canterbury RC v Selwyn DC (EnvC W142/96) and Pokeno Farm Family Trust v Franklin DC (EnvC A37/97)*
- ²⁷ see *Canterbury RC v Selwyn DC; Te Runanga O Taumarere*
- ²⁸ see *the Scott decision*
- ²⁹ *Opiki Water Action Group Inc v Manawatu Wanganui RC (EnvC W064/2004)*
- ³⁰ *Winstone Aggregates Ltd. v Papakura District Council (EnvC A049/2002); Adams Landscapes Ltd v Auckland CC (EnvC A108/2002)*
- ³¹ *Morris v Christchurch CC (PT C27/93) and see Campbell v Southland DC*
- ³² see *Trio Holdings*
- ³³ *Nelson Intermediate School v Transit NZ (EnvC C35/204)* where transit agreed to the equivalent quantity of air pollutants to be removed from the environment equivalent to what would be added by the proposed road
- ³⁴ see *Kuku Mara*
- ³⁵ *Minister of Conservation v Otago Regional Council (EnvC C71/2002); Doves Bay Society Inc v Northland Regional Council (EnvC C126/2002)*
- ³⁶ *Ngati Maru Iwi Authority Inc v Auckland City Council (HC AP18-SW01); and see Ngati Rangī*
- ³⁷ see *Pigeon Bay*
- ³⁸ *Harrison v Tasman District Council (PT W42/93)*
- ³⁹ see *Aquamarine and Takamore*
- ⁴⁰ *Environmental Defence Soc v Mangonui County Council (CoA CA56/88, 57/88)*
- ⁴¹ *Mighty River Power Ltd v Waikato RC (EnvC A146/2001) following Minister of Conservation & Anor v Western Bay of Plenty*
- ⁴² see *Auckland Volcanic Cones*
- ⁴³ see *Doves Bay* with reference to Policy 1.1.1 of the NZCPS.
- ⁴⁴ see *Harrison; Trio Holdings; Thompson v Queenstown Lakes DC (EnvC C103/97) and Arrigato Investments Ltd v Rodney DC (EnvC A004/2004)*
- ⁴⁵ *Eyres Eco-Park Ltd v Rodney DC (EnvC A147/04)*

- ⁴⁶ see *Kuku Mara*
- ⁴⁷ see *Auckland Volcanic Cones*
- ⁴⁸ *Te Runanga O Ati Awa ki Whakarongotai Inc v Kapiti DC (EnvC W23/2002)*
- ⁴⁹ *Gill v Rotorua District Council (PT W51/94)*
- ⁵⁰ see *Harrison; Trio Holdings; Thompson v Queenstown Lakes DC (EnvC C103/97)* and *Arrigato*
- ⁵¹ see *Pigeon Bay*
- ⁵² *Marine Hatcheries (Marlborough) Ltd v Marlborough DC (EnvC W129/97)* and *Pigeon Bay*
- ⁵³ see *Pigeon Bay*
- ⁵⁴ see *Arrigato*
- ⁵⁵ *Walker v Manukau DC (EnvC C213/99)*
- ⁵⁶ *Minister of Conservation v Hutt CC (EnvC W13/2003)* and *Royal Forest & Bird Protection Society of New Zealand v Central Otago DC (EnvC A128/2004)*
- ⁵⁷ *Nugent Consultants Ltd v Auckland CC (PT A33/96)*
- ⁵⁸ *Minister of Conservation v Western Bay of Plenty District Council (EnvC A71/2001).*
- ⁵⁹ *Thomas v Marlborough DC (PT W16/95)* and *Kemp v Queenstown Lakes DC (EnvC C229/99)*
- ⁶⁰ see *Doves Bay*
- ⁶¹ *Golden Bay Marine Farmers v Tasman District Council (EnvC W19/2003)*
- ⁶² *Ngati Hokopu ki Hokowhitu v Whakatane DC (EnvC C168/2002)*
- ⁶³ *McGechan and Goddard JJ*
- ⁶⁴ see *Ngawha*
- ⁶⁵ see *RFBPS*
- ⁶⁶ Section 2 Historic Places Act 1993
- ⁶⁷ *Land Air Water Assn v Waikato RC (EnvC A110/01)*
- ⁶⁸ *Te kupengo o Ngati Hako v Hauraki DC (EnvC A010/2001)* and *Ngati Potiki Resource Management Unit v NZ Historic Places Trust (EnvC A121/2004)*
- ⁶⁹ *Winstone Aggregates Ltd. v Franklin District Council (EnvC A80/02)*
- ⁷⁰ *NZ Maori Council v Attorney – General (CA CA54/87)*
- ⁷¹ see *Te Runanga O Taumarere; Beadle v Minister of Corrections (EnvC A74/02)*
- ⁷² *Haddon v Auckland Regional Council (PT A77/93)*
- ⁷³ *Minhinnick v Minister of Corrections (EnvC A043/2004)*
- ⁷⁴ *NZ Historic Places Trust v Manawatu DC (EnvC W081/2004)*
- ⁷⁵ *Marlborough Ridge Ltd. v Marlborough District Council (EnvC C111/97)*
- ⁷⁶ see *Takamore*
- ⁷⁷ *Tautari v Northland Regional Council (PT A55/96)*
- ⁷⁸ Brookers comment on section 7, paragraph A7.06
- ⁷⁹ Brookers comment on section 7, paragraph A7.06
- ⁸⁰ see *Nelson Intermediate School*
- ⁸¹ *Swindley v Waipa DC (PT A75/94)* and *Cullen v Kaipara DC (EnvC A15/99)*
- ⁸² *McMillan v Waimakariri DC (EnvC C87/98)* and *Precious v Western Bay of Plenty DC (PT W74/94)*
- ⁸³ *McFarlane Group Developments Ltd v Selwyn District Council (EnvC C38/2005)* for rezoning of rural land near Prebbleton, and *Kennedys Bush Developments Ltd v ChCh City Council (EnvC C55/2004)* for rezoning land on the Port Hills near Halswell.
- ⁸⁴ *McFarlane Group*
- ⁸⁵ *Queenstown Property Holdings Ltd v Queenstown-Lakes DC (EnvC C58/98)*
- ⁸⁶ see *Marlborough Ridge*
- ⁸⁷ *Environmental Defence Soc (Inc) v Taranaki RC (EnvC A184/2002)*
- ⁸⁸ *Marlborough Ridge*
- ⁸⁹ *Ruru v Gisborne DC (PT W100/93)*
- ⁹⁰ *Port Otago Ltd. v Dunedin City Council (EnvC C4/2002)*
- ⁹¹ *McDonald v Auckland Regional Council (EnvC A204/2002)*
- ⁹² *Cash v Queenstown-Lakes District Council (PT A3/93)*
- ⁹³ *Ardmore Airfield Tenants and Users Committee v Ardmore Airport Ltd (EnvC A023/05)*
- ⁹⁴ The *Pegasus* decision considered that the inclusion of provisions relating to CO₂ emissions may be *vires*, while the *Suburban Estates* decision it was accepted that it is appropriate to consider greenhouse gases in the CRPS
- ⁹⁵ see *Ngati Hokopu ki Hokowhitu*
- ⁹⁶ *Haddon v Auckland RC (PT A77/93)*
- ⁹⁷ see *Haddon*

⁹⁸ *Hanton v Auckland City Council (PT A7/94)*; *Minhinnick, Ngati Rangī; Te Ohu o Nga Taonga gati Manu v Stratford DC (EnvC W74/99)*; *Waikanae Christian Holiday Park v Kapiti Coast DC (HC CIV 2003-485-1764, 1774, 1805)*

⁹⁹ see *Winstone v Franklin*

¹⁰⁰ *Sea-Tow Ltd. v Auckland Regional Council (PT A129/93)* and *Mason-Risborough v Matamata-Piako DC (EnvC A143/97)*

¹⁰¹ see *Hanton*

¹⁰² *Ngati Maru ki Hauraki Inc v Kruithof (HC CIV 2004-485-330)*

¹⁰³ *Buchanan v Northland RC (EnvC A66/2002)*

¹⁰⁴ *Aqua King Ltd and Fleetwing Farms Ltd v Marlborough DC (PT W101/97)*; *Greensill v Waikato RC (PT W17/95)*; *Ngati Hokopu ki Hokowhitu v Whakatane DC (EnvC C168/02)*; *Te Pairi v Gisborne DC (EnvC W093/04)*; *Winstone Aggregates Ltd. v Franklin District Council (EnvC A80/02)*

¹⁰⁵ *Ngati Kahu v Tauranga District Council (PT A72/94)*

¹⁰⁶ *Rural Management Ltd v Banks Peninsula DC (PT W34/94)* and *Walker v Hawkes Bay RC (EnvC C123/2002)*

¹⁰⁷ *Greensill v Waikato RC (PT W17/95)*

¹⁰⁸ see *McDonald; Ngati Kahu and Te Pairi v Gisborne DC (EnvC W093/04)*

¹⁰⁹ *Tawa v Bay of Plenty RC (PT A18/95)* and *Fulton Hogan v Bay of Plenty RC (EnvC A106/2002)*