

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2016-404-2343
[2017] NZHC 980**

BETWEEN ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED
Appellant

AND AUCKLAND COUNCIL
Respondent

(Continued next page)

Hearing: On the papers

Counsel: S Gepp and P Anderson for Appellant
M G Wakefield and CJ Brown for Respondent

Judgment: 15 May 2017

JUDGMENT OF WHATA J

*This judgment was delivered by me on 15 May 2017 at 2.30 pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Solicitors: Royal Forest and Bird Protection Society of New Zealand Inc
Auckland Council, Auckland
Buddle Findlay, Auckland

HOUSING NEW ZEALAND CORPORATION
INCORPORATED

FEDERATED FARMERS OF NEW ZEALAND
INCORPORATED

STEVENSON GROUP LIMITED

FULTON HOGAN LIMITED

BROOKBY QUARRIES LIMITED

NEW ZEALAND TRANSPORT AGENCY

WINSTONE AGGREGATES LIMITED

TE ARAI GROUP

TRANSPower NEW ZEALAND LIMITED

ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED

MAN O'WAR FARM LIMITED

COUNTIES MANUKAU DISTRICT HEALTH
BOARD

Section 301 Parties

Introduction

[1] This judgment addresses the request for a consent order in relation to the third alleged error of law contained in Royal Forest & Bird Protection Society of New Zealand Incorporated's (RFB) notice of appeal.

[2] I have assessed the request for a consent order on the following basis, namely whether:

- (a) The consent order reflects the proper resolution of issues of law raised by RFB;¹
- (b) The proposed amendments and the resolution of the appeal is consistent with the purposes and principles of the Resource Management Act 1991 (RMA), including in particular Part 2;
- (c) Approval of the proposed consent order would also be consistent with the purpose and intent of the Local Government (Auckland Transitional Provisions) Act 2010 (the Act), namely Part 4, which provides a streamlined process designed to enable the Auckland Unitary Plan (Unitary Plan) to become operative within a short period of time;
- (d) The order may be granted pursuant to r 20.19 of the High Court Rules 2016, ss 300-307 of the RMA and s 158 of the Act; and
- (e) The consent order is within the scope of the appeals.

¹ As Wylie J in *Man O'War Farm Limited v Auckland Council* [2017] NZHC 202 put it at [33], the Court must first be satisfied that the decision challenged on appeal was made pursuant to error of law. See also my decision in *North Canterbury Fish and Game Council v Canterbury Regional Council* [2013] NZHC 3196 at [2].

Procedural background

[3] This matter has a complex procedural history. The third error of law contained in RFB's notice of appeal was classified as a category 3 priority fixture in my Minute (No 19) (Second Case Management Conference – Category 3 Proceedings) dated 19 December 2016.

[4] On 10 February 2017 a joint memorandum recording settlement was filed. However, Man O'War Farm Limited (Man O'War) was one of the s 301 interested parties, and its approval was subject to its own settlement in relation to a separate appeal being approved. Wylie J did not approve the Man O'War settlement.² In a Minute dated 17 February 2017, Wylie J acknowledged that the RFB settlement was effectively conditional on the Man O'War settlement, and as a result of his judgment, Man O'War withdrew its consent.

[5] Man O'War has since, on 6 March 2017, consented to the RFB settlement, subject to the inclusion of an additional clarification which was the basis of its original settlement with Auckland Council (the Council). Another joint memorandum of counsel recording settlement (in relation to the third error of law) was filed on 6 March 2017.

[6] In a Minute dated 22 March 2017, I requested further submissions from the parties setting out with a greater level of particularity how the Independent Hearings Panel (IHP) recommendations are deficient in terms alleged, and how the additional clarification is within the scope of the present appeal. I thank the parties for their detailed submissions, which have helpfully provided context to this appeal and the matters at issue.

The submissions and IHP decision

[7] RFB is an incorporated society and a registered charity. Its purpose is to take all reasonable steps within its power to preserve and protect indigenous flora and fauna and the natural features of New Zealand. It made a submission and further submission on the notified Proposed Auckland Unitary Plan (PAUP) to the IHP

² *Man O'War Farm Limited v Auckland Council* [2017] NZHC 202.

which, inter alia, addressed various provisions relating to the coastal environment, biodiversity, vegetation management and Significant Ecological Areas (SEAs).

[8] During the hearings process, the Council proposed several changes to the provisions for SEAs and indigenous vegetation in order to “give effect” to Policy 11 of the New Zealand Coastal Policy Statement (NZCPS). This included amendments to Policy 16 and a new Policy 17 in B4.3.4 Biodiversity. RFB and other interested parties presented evidence and legal submissions on various hearings on Topics 010, 033/034 and 023 regarding how the Unitary Plan should give effect to the NZCPS and considering the Council’s proposals.

[9] The IHP’s recommendations broadly adopted the changes proposed by Council, and also included significant changes to the structure of biodiversity related provisions: the notified PAUP proposed a single suite of Regional Policy Statement (RPS), Regional Plan and regional coastal plan objectives and policies for biodiversity, but the IHP recommended separate RPS (B7), SEA overlay (D9), and Auckland-wide (E15) objectives and policies inside and out of the coastal marine area. The amended policy 16 and new policy 17 (which the Council proposed in relation to Chapter B4.3.4) were relocated by the IHP recommendations from the RPS into the Regional Plan Chapter E15 Vegetation Management and Biodiversity as policies E15.3(9) and (10). However, no equivalent to these policies was located in Chapter D9 SEAs overlay.

[10] The Council adopted the recommendations in its decisions version of the Unitary Plan on 19 August 2016.

Error of law

[11] The third error of law alleged by RFB, which this settlement concerns, is that the Council made an error by adopting a range of policies within the Unitary Plan for the management of SEAs, vegetation management and biodiversity, and activities within the coastal environment that are contradictory, and do not give effect to, the NZCPS or the RPS. More specifically, error of law is alleged on the basis that:³

³ For a full outline of the alleged errors of law and proposed amendments, see Appendix A

- (a) Subsections 67(3)(b) and (c) of the RMA requires that a Regional Plan give effect to the NZCPS and a RPS;
- (b) The policies contained in Chapters D9, E15 and F2 cannot be reconciled in a manner that gives effect to the NZCPS (specifically Policy 11) or the RPS (specifically Policy B7.2.2(5)); and thus
- (c) The Council, in adopting the suite of policies in the Unitary Plan relating to the protection of the coastal environment and activities in the coastal environment without a specific requirement to avoid adverse effects on indigenous biodiversity, failed to give effect to:
 - (i) The NZCPS, in particular Policy 11; and
 - (ii) The RPS, in particular Policy B7.2.2(5).

[12] RFB submits that the RMA imposes a hierarchical, cascading scheme of policy documents with the NZCPS as the document at the top of this hierarchy.⁴ RFB contends that the requirement to give effect to the NZCPS was settled by the Supreme Court in *King Salmon* in the following terms:⁵

Essentially, the position since the *King Salmon* decision is that where there are relevant directive provisions in a higher order policy document, plan provisions are no longer framed by reference back to the provisions of Part 2 (except in cases of incomplete coverage, uncertainty of meaning or invalidity) but rather, the plan provisions must strictly implement the directive provisions. This does not necessarily mean that the plan provisions must mirror the higher order provisions. However, where the higher order provision mandates a particular management approach (“avoid adverse effects” or “avoid significant adverse effects” for example), plan provisions that provide for an alternative approach (“avoid, remedy or mitigate”, for example) will not give effect to the higher order document.

(attached). The specific policies in question are: Chapter D9 SEAs Overlay, policies D9.3(1), (6), (8), (9), (10), (11) and (12); Chapter E15 Vegetation Management and Biodiversity, policies E15.3(9) and (10) and the application of those policies as specified in the introduction to Chapter E15; and Chapter F2 Coastal – General Coastal and Marine Zone, policies F2.2.3(1), F2.3.3(4) and F2.16.3(6).

⁴ Citing *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38, [2014] 1 NZLR 717 at [152].

⁵ Citing also *Transpower New Zealand Limited v Auckland Council* [2017] NZHC 281 at [67]-[68].

[13] It says this has not occurred in the present matter as:

- (a) There is no clear direction to avoid adverse effects on SEA marine areas and other areas meeting Policy 11 criteria;
- (b) A range of differing standards are applied to such areas in different policies throughout the Unitary Plan; and
- (c) The Unitary Plan recognises that the coastal environment has not been comprehensively surveyed for the purpose of identifying SEAs, and incorporates specific policies E15(9) and (10) to give effect to Policy 11 values and sites, but those only apply outside coastal marine SEAs.

[14] The Council has clarified in a further memorandum that it agrees with this analysis to the extent it is specific to RFB's third error, but that it should not be regarded as a full or definitive statement of the law for purposes beyond the resolution of this error.

[15] Federated Farmers of New Zealand Incorporated (Federated Farmers) meanwhile notes that on its view, a party challenging the legality of provisions in plans that derive from Policy 11 will need to evaluate those provisions against Part 2 of the RMA and thereby demonstrate how those provisions do not meet the requirements therein. It also questions whether RFB's claim is that the current provisions at issue do not give effect to the NZCPS or RPS, or whether they do but the proposed changes will improve them. In particular, it notes that RFB refers to the proposed amendments "better giving effect" to the NZCPS and RPS, which indicate the latter interpretation. This, in its submission, is a matter of evaluative assessment for the IHP, and not an error per se.

[16] Finally, while agreeing that there has been an error of law, Federated Farmers submits that it prefers the position elaborated upon in *Transpower* at [70]-[75], that the current provisions represent a decision that the IHP and Council could not have reasonably come to on the evidence, the relevant evidence being the NZCPS and RPS which they impugn.

Proposed amendments

[17] The parties have reached agreement to amend Chapters D9, E15 and F2 of the Unitary Plan, and seek that the Court exercises its powers under r 20.19 of the High Court Rules 2016 to make the proposed amendments.

[18] This appeal is brought pursuant to s 158 of the Act, which allows appeals to the High Court on questions of law. Sections 300-307 of the RMA apply with all necessary modifications, such that this Court may make the orders sought under r 20.19 of the High Court Rules 2016.

[19] The amendments involve:

- (a) Insertion of policies equivalent to Policies 16 and 17, which the Council proposed at the hearings in relation to Chapter B4.3.4, in Chapter D9 SEAs. These directly implement Policy 11 of the NZCPS and are substantially the same as policies 9 and 10 of Chapter E15 of the decisions version of the Unitary Plan;
- (b) Changes to certain policies in D9 and F2 to clarify the application of the NZCPS related policies in relation to activities with effects on biodiversity within the coastal environment; and
- (c) Minor changes in D9 and E15 to ensure greater consistency between terminology used in those policies and in Policy 11 of the NZCPS.

[20] Specifically, RFB's concern regarding Chapter D9.3, which contains the objectives and policies for the SEA overlay, is that it does not contain clear policies requiring avoidance of adverse effects on Policy 11 values and sites. The amended wording, namely the inclusion of D9.3(1)(a), D9.3(9) and D9.3(10), is designed to explicitly require avoidance and also includes some specific effects-based sub-policies that were previously specified for non-significant sites in Chapter E15, but which also apply within SEAs under the proposed amendments. In particular the amendments:

- (a) Explicitly require avoidance of adverse affects in SEAs; and
- (b) Clarify the requirements of Policy 11 apply in relation to other provisions in the Chapter, namely D9.3(6) and the existing provisions D9.3(9), D9.3(11) and D9.3(12).

[21] The concern in relation to Chapter E15 is that as a result of the IHP's reordering of the Council's proposal at hearing to include specific provisions requiring compliance with Policy 11, the only Policy 11 specific policies are located in Chapter E15, and thus only apply outside scheduled SEAs. The changes to E15 are thus more technical in nature, ensuring consistency with the wording of Policy 11 of the NZCPS.

[22] The other key change to Chapter E15 is the clarification sought by Man O'War, which is addressed at [25] below.

[23] Finally, in relation to Chapter F2, RFB's concern is that under the current wording Policy F2.2.3(1) may be read as only requiring avoidance of adverse effects in two circumstances: on sites scheduled in the D17 Historic Heritage Overlay or D21 Sites and Places of Significance to Mana Whenua Overlay. It seeks deletion of these specific references, and instead insertion of a general reference back to the specific effects management regions set out in the overlay policies (which includes the amended D9). The other change to F2 is in Policy F2.16.3. RFB seeks deletion of a provision which it says conflicts with the D9.3 policies to the extent it specifies a different effects management scheme for Marine SEAs.

Interested parties

[24] There are eleven s 301 interested parties to this appeal. They were all consulted for feedback and have agreed to the proposed amendments. More specifically:

- (a) Transpower's agreement is on the basis that settlement is without prejudice to the extent to which the Unitary Plan, and its

implementation (through any consent process), gives effect to the National Policy Statement on Electricity Transmission;

- (b) Man O'War is prepared to agree to the amended provisions, provided that clarification is given in Chapter E15 that the existing rules of the section implement the policies and objectives of Chapters D9 and E15 and do not give rise to any requirement to fence areas of indigenous vegetation, including Terrestrial SEAs; and
- (c) The remaining s 301 parties were asked for feedback in relation to the 10 February 2017 settlement, which proposed the same amendments as the present settlement. They did not offer a view on the merits.

Man O'War Clarification

[25] The parties also seek the insertion of a clarification of what is meant by the requirement to “avoid adverse effects” in Chapters D9.3 and E15.9. RFB submits that this is a permissible way of particularising the NZCPS policies at the Auckland Plan level. The clarification is to be inserted directly above activity table E15.4.1.⁶

[26] In essence, RFB submits that the proposed insertion clarifies that in the context of SEAs within the coastal environment, “avoid adverse effects” does not mean “fence to exclude stock”. In this sense, it lies between the provisions of the Unitary Plan and the amendments sought, neither detracting from the NZCPS or RPS nor undermining the intent of the policies approved by the IHP.

[27] Man O'War submits that the proposed wording simply adds clarity as to the manner in which Policy 11 is now given effect to under the Unitary Plan, and thus is within the scope of the appeal and part of the package of the wider amendments sought by RFB. Federated Farmers likewise characterises the changes as a clarification on the manner in which Policy 11 is to be given effect to under the Unitary Plan.

⁶ See Appendix A for the full clarification.

[28] The Council considers that it is appropriate that the two appeals be resolved together, given that they both address the implementation of Policy 11 of the NZCPS in the Unitary Plan.

[29] The s 301 parties are all in agreement with RFB and Council that the clarification sought by Man O'War is appropriate as part of the settlement.

Caveat

[30] The parties clarify that the agreed amendments in this settlement do not relate to or affect a number of other issues in other appeals relating to the interpretation of and giving effect to the NZCPS:

- (a) The first or second alleged errors of law in RFB's appeal;
- (b) Parts A, C and D of the Man O'War appeal; and
- (c) The first and third alleged errors of law of the Federated Farmers appeal.

Assessment

[31] The issues of law arising are noted at [11]-[16].

[32] Since at least *King Salmon*, failure to give effect to directive policies of the NZCPS may be an appealable error. Whether or not there has been such a failure, however, must be shown and must ordinarily be linked to a discernible error in legal reasoning, including a decision which cannot be supported on the evidence. Conversely, it will not be enough to simply assert error of evaluation. In *King Salmon* for example, the Court identified error of law, namely erroneous application of Part 2 of the RMA to the evaluative exercise.

[33] In addition, the Court of Appeal in *Man O'War Station Ltd*⁷ emphasised the importance of interpreting the dicta in *King Salmon* in light of its facts. The Court

⁷ *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24.

highlighted the fact that the outcome in *King Salmon* was premised on a first instance finding that the effects of the proposal on the outstanding natural character of the area would be high, and there would be a very high adverse visual effect on an outstanding natural landscape.⁸ Therefore, the error was plainly material.

[34] The Court of Appeal also noted, with respect orthodoxically, that the requirement to “avoid” adverse effects is contextual, so that whether any new activity or development would amount to an adverse effect must be assessed in both in the factual and broader policy context.⁹

[35] These related propositions are important because they demonstrate that whether the IHP erred, the significance of the error and the nature and form of the remedy (if any), is context specific.

[36] In the present case, significantly, the parties agree that the IHP recommendations in relation to Chapters D9, E15 and F2 are deficient in terms of the NZCPS and the RPS. I agree also that there appears to be an error on the face of the recommendations.

[37] To elaborate, Policy 11 of the NZCPS states:

Policy 11 Indigenous biological diversity

To protect indigenous biological diversity in the coastal environment:

- a. avoid adverse effects of activities on:
 - i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
 - ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
 - iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
 - iv. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

⁸ At [65].

⁹ At [66]-[67].

- v. areas containing nationally significant examples of indigenous community types; and
 - vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:
- i. areas of predominantly indigenous vegetation in the coastal environment;
 - ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
 - iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
 - iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
 - v. habitats, including areas and routes, important to migratory species; and
 - vi. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

[38] RPS Policy B7.2.2(5) gives effect to this policy in the following way:

B7.2. Indigenous biodiversity

...

B7.2.2. Policies

...

- (5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.

[39] Yet the only provisions of the Unitary Plan that give effect to these policies are found in E15.3(9) and (10), provisions which the Council in its submissions to the IHP sought to have included in B4.3.4 of the PAUP. The effect of this is that there is no specific protection for indigenous biodiversity in coastal marine SEAS. As Chapter E15.1 – Background to the Unitary Plan currently states:

The objectives and policies that apply to scheduled significant ecological areas for both terrestrial and coastal marine areas are contained in D9 Significant Ecological Areas Overlay.

The rules that apply to the management of vegetation and biodiversity for areas both outside of and within scheduled significant ecological areas – terrestrial are contained in this chapter.

The rules that apply to vegetation management and biodiversity in the coastal marine area, including for areas identified as Significant Ecological Areas – Marine are contained in Chapter F Coastal.

[40] The absence, however, of any equivalent provisions in Chapters D9 and F2 means that compliance with Policy 11 is not achieved in relation to coastal marine SEAs.

[41] Annexed to this judgment is a table making a comparison between the status quo and the proposed amendments. This serves to highlight the absence of provisions explicitly giving effect to Policy 11 NZCPS and Policy B7.2.2 outside of Chapter E15.

The IHP decision

[42] I have reviewed the IHP recommendation to discern whether the apparent omission is explained. I could find none. Moreover, the reverse is true. Explicit provision for protection of specified elements of indigenous biodiversity was contemplated. In its report on Hearing Topics 006 and 010, the IHP states that its proposed changes to the objectives and policies include:¹⁰

- (i) A number of amendments to give better effect to the NZCPS and the National Policy Statement – Fresh Water Management 2014; and
- (ii) A number of amendments to objectives and policies to provide stronger support for the RPS policies.

¹⁰ Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing Topics 010 and 006 Natural Resources* (22 July 2016) at 5.

[43] The IHP goes on to specifically address biodiversity, stating:¹¹

The Panel recommends that the regional policy statement be a standalone document. In doing so the biodiversity provisions which were tagged regional coastal plan (rcp), regional (rp) and/or district plan (dp) have been relocated to new sections created in the overlay and Auckland-wide sections of the Plan.

This has resulted in a much simplified regional policy statement addressing biodiversity, with much of the detail being relocated to the regional and district plan portion of the Unitary Plan. The recommendations of the Panel in relation to those provisions is to retain the policy direction of identifying and protecting significant ecological areas, and managing, by avoiding, remedying or mitigating, significant adverse effects on those areas not identified as significant ecological areas. Offsetting adverse effects is also retained, but redrafted to enable offsetting to be considered where there are significant residual adverse effects.

[44] Part 7 of the IHP's report deals with the structure of the biodiversity provisions, stating:¹²

As has already addressed, the Panel recommends that the regional policy statement be a standalone document. The Panel has redrafted the regional policy statement accordingly, removing the tagging provisions from the entire regional policy statement, including those relating to biodiversity. This has resulted in the notified regional policy statement biodiversity provisions being located in the regional policy statement as well as new sections created in the overlay and Auckland-wide sections of the Plan.

[45] Significantly for present purposes the IHP observes:¹³

...the biodiversity objectives set out that significant indigenous biodiversity values in terrestrial, freshwater and the coastal marine area are protected from the adverse effects of subdivision, use and development. Also that indigenous biodiversity is maintained through protection, restoration and enhancement where those values are degraded or where development is occurring.

The policies, in addressing the objectives, set out how areas containing such values are to be identified and evaluated based on a range of factors, and those that satisfy those factors are included in the schedules of significant ecological areas - either in Schedule 3 Significant Ecological Areas - Terrestrial Schedule or Schedule 4 Significant Ecological Areas - Marine Schedule.

All of the other biodiversity provisions that were in the notified regional policy statement have been relocated to the Plan section of the Unitary Plan, either in D Overlays or E Auckland-wide. Those recommended to go to the

¹¹ At 7.

¹² At 14.

¹³ At 15.

overlay section are generally those relating to identified significant ecological areas, as they relate to Part 2 matters of the Resource Management Act 1991. Those provisions that relate to areas other than significant ecological areas, are contained in the Auckland-wide provisions. Some provisions relating to the coastal marine area are in the regional coastal plan section of the Plan.

Given the changes to the structure of the Plan as recommended by the Panel, and the range of submissions and evidence received, **the Panel considers that all of the key policy directions relating to indigenous biodiversity in the notified plan have been retained.** While a number of the provisions have been re-cast, redrafted, deleted or added to (in light of the submissions and evidence) the Panel is satisfied the provisions give effect to the New Zealand Coastal Policy Statement 2010 (in relation to the coastal environment) and the New National Policy Statement for Freshwater Management 2014.

In changing the structure of the regional policy statement, and relocating the provisions that were tagged regional plan (rp), regional coastal plan (rcp) and/or district plan (dp) to the regional and district plan, the Panel is satisfied in terms of section 32 and 32AA that the provisions and where they are placed is the most appropriate.

(emphasis added)

[46] In its report on Hearing Topic 023, the IHP also states:¹⁴

The Plan identifies (maps) significant ecological areas and provides **a management regime protecting these areas by seeking to avoid the adverse effects of subdivision use and development.** Other areas not identified as significant ecological areas, but having significant biodiversity and ecological values, are also important. The Plan seeks to manage these areas....

(emphasis added)

[47] With respect to the care taken by the IHP, I could find no explicit policies in Chapter D, the overlays section of the Unitary Plan, to secure the outcome foreshadowed in the above passages. In particular, the overlays relating to SEAs, found in Chapter D9, contain no explicit policy to secure protection of significant indigenous biodiversity as envisaged above or in terms of the NZCPS or to “avoid” the adverse effects of subdivision, use and development in SEAs.

[48] Accordingly, given that all the parties agree, a proper basis for allowing the appeal has been made out. It is unnecessary to adopt or reject the RFB submission

¹⁴ Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing Topic 023 Significant ecological areas and vegetation management* (22 July 2016) at 4.

noted at [12] to reach this conclusion. Indeed on the limited argument before me, it would not be appropriate for me to provide a fully reasoned decision on these submissions, particularly as there is no right of appeal from my decision to grant the consent order. Nor am I able to adopt the basis as put by Federated Farmers as I have not undertaken the review exercise needed, with the assistance of the parties, to reach that conclusion.

[49] Rather, I proceed on the basis that there is an error on the face of the record, there being no explicit recognition of Policy 11 NZCPS in those parts of the Unitary Plan where recognition would be expected and indeed is foreshadowed in the IHP's report and in other parts of the Plan (see [39]). This should not be taken to give rise to a new independent error of law in future cases. I have reached that conclusion given the unanimity of the parties on this particular point.

[50] Finally, I agree that this appeal provides a proper vehicle to incorporate the relief sought by Man O'War as set out at [25] above. It forms part of the wider relief necessary to give effect to the Policy 11 of the NZCPS, as does the further consequential relief sought by the parties.

Relief

[51] The question of relief is however more difficult to resolve in this case. Recently, in *Ancona Properties Ltd v Auckland Council*, I observed:¹⁵

[4] A curious feature of the Unitary Plan process is that the Council may accept or reject an IHP recommendation. A decision to accept an IHP recommendation may be appealed to this Court on a question of law, while a decision to reject an IHP recommendation triggers a right of appeal to the Environment Court. A decision of this Court to substantively amend the Unitary Plan must usually trigger a statutory right of appeal to the Environment Court because the effect of the amendment is to reject the IHP recommendation. Subject to futility, this statutory right of appeal should be activated. By futility I mean situations where:

- (a) There are no other submitters on the relevant part(s) of the Proposed Auckland Unitary Plan (PAUP);
- (b) Any submitters consent to the changes; or

¹⁵ *Ancona Properties Ltd v Auckland Council* [2017] NZHC 594 at [4]-[5], citing Local Government (Auckland Transitional Provisions) Act 2010, ss 148, 156 and 158.

(c) The changes are of a technical nature only.

[5] A corollary of this is that a consent order granting substantive amendments will ordinarily trigger the notice and appeal procedures of s 156 as if the consent order is a decision of the Council to reject an IHP recommendation. However, as I explain in relation to each appeal, on the facts of the settlements before me I am satisfied that in all cases referral to the Environment Court would be futile and unnecessary.

[52] In the present case, all interested parties have been given an opportunity to contest the relief sought. Notably also a broad cross-section of affected persons are represented by the parties to this appeal and were consulted about the proposed changes. This satisfies me that the amendments sought have been subject to oversight by the persons most interested in the outcome.

[53] I have also examined the amendments in terms of the IHP recommendation report and in light of Policy 11 of NZCPS. I am satisfied, like the parties, that the amendments accord with, in a proportionate way, the purposes and principles of Part 2 and give effect to Policy 11 of the NZCPS.

[54] One residual concern is that, notwithstanding the consensus reached, and given the very broad potential application of the policies under appeal, all submitters on this part of the Unitary Plan should be given the opportunity to appeal to the Environment Court. Had the correction been anything more than giving effect to the outcomes foreshadowed by the IHP in its reports, I would have been minded to require a further opportunity for appeal to the Environment Court. But the correction logically follows from the IHP's reasoning. I therefore see no substantive unfairness to submitters who were not involved in this appeal process.

Outcome

[55] The consent order sought by the parties in this matter is granted.

[56] The decision of the Council on 19 August 2016 is amended as per Appendix A.

[57] The Council's decisions are final.

Costs

[58] There is no issue as to costs.

Appendix A: Royal Forest & Bird Protection Society Incorporated v Auckland Council – Proposed Amendments

<i>New Zealand Coastal Policy Statement</i>	<i>Regional Policy Statement – as found in the current Auckland Unitary Plan</i>	<i>Auckland Unitary Plan – Decisions Version</i>	<i>Auckland Unitary Plan – Proposed Amendments (additions underlined)</i>
<p>Policy 11: Indigenous biological diversity (biodiversity)</p> <p>To protect indigenous biological diversity in the coastal environment:</p> <p>a. avoid adverse effects of activities on:</p> <p>i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;</p> <p>ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;</p> <p>iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;</p> <p>iv. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;</p> <p>v. areas containing nationally significant examples of indigenous community types; and</p> <p>vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and</p> <p>b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:</p> <p>i. areas of predominantly indigenous vegetation in the coastal environment;</p> <p>ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;</p> <p>iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;</p> <p>iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;</p> <p>v. habitats, including areas and routes, important to migratory species; and</p> <p>vi. ecological corridors, and areas important for linking or maintaining biological</p>	<p>B7. Toitū te whenua, toitū te taiao – Natural resources</p> <p>...</p> <p>B7.2. Indigenous biodiversity</p> <p>...</p> <p>B7.2.2. Policies</p> <p>...</p> <p>(5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.</p>	<p>D9. Significant Ecological Areas Overlay</p> <p>...</p> <p>D9.3. Policies</p> <p><i>Managing effects on significant ecological areas – terrestrial and marine</i></p> <p>(1) Manage the effects of activities on the indigenous biodiversity values of areas identified as significant ecological areas by:</p> <p>(a) avoiding adverse effects as far as practicable, and where avoidance is not practicable, minimising adverse effects on the identified values;</p> <p>(b) remedying adverse effects on the identified values where they cannot be avoided;</p> <p>(c) mitigating adverse effects on the identified values where they cannot be avoided or remediated; and</p> <p>(d) considering the appropriateness of offsetting any residual adverse effects that are significant and where they have not been able to be mitigated, through protection, restoration and enhancement measures, having regard to Appendix 8 Biodiversity offsetting.</p> <p>...</p> <p><i>Vegetation management</i></p> <p>...</p> <p>(6) Avoid as far as practicable the removal of vegetation and loss of biodiversity in significant ecological areas from the construction of building platforms, access ways or infrastructure, through:</p> <p>(a) using any existing cleared areas on a site to accommodate new development in the first instance;</p> <p>(b) assessing any practicable alternative locations and/or methods that would reduce the need for vegetation removal or land disturbance;</p> <p>(c) retaining indigenous vegetation and natural features which contribute to the ecological significance of a site, taking into account any loss that may be unavoidable to create a single building platform for a dwelling and associated services, access and car parking on a site;</p> <p>(d) designing and locating dwellings and other structures to reduce future demands to clear or damage areas of significant indigenous biodiversity, for example to provide sunlight or protect property;</p>	<p>D9. Significant Ecological Areas Overlay</p> <p>...</p> <p>D9.3. Policies</p> <p><i>Managing effects on significant ecological areas – terrestrial and marine</i></p> <p>(1) Manage the effects of activities on the indigenous biodiversity values of areas identified as significant ecological areas by:</p> <p>(a) <u>Avoiding adverse effects on indigenous biodiversity in the coastal environment to the extent stated in Policies D9.3(9) and (10);</u></p> <p>(b) avoiding <u>other</u> adverse effects as far as practicable, and where avoidance is not practicable, minimising adverse effects on the identified values;</p> <p>(c) remedying adverse effects on the identified values where they cannot be avoided;</p> <p>(d) mitigating adverse effects on the identified values where they cannot be avoided or remediated; and</p> <p>(e) considering the appropriateness of offsetting any residual adverse effects that are significant and where they have not been able to be mitigated, through protection, restoration and enhancement measures, having regard to Appendix 8 Biodiversity offsetting.</p> <p>...</p> <p><i>Vegetation management</i></p> <p>...</p> <p>(6) <u>While also applying Policies D9.3(9) and (10) in the coastal environment, avoid as far as practicable the removal of vegetation and loss of biodiversity in significant ecological areas from the construction of building platforms, access ways or infrastructure, through:</u></p> <p>...</p> <p><u>[NOTE: (9) & (10) ARE NEW]</u></p> <p>(9) <u>Avoid activities in the coastal environment where they will result in any of the following:</u></p> <p>(a) <u>non-transitory or more than minor adverse effects on:</u></p> <p>(i) <u>threatened or at risk indigenous species (including Maui’s Dolphin and Bryde’s Whale);</u></p> <p>(ii) <u>the habitats of indigenous species that are at the limit of their natural range or which are naturally rare;</u></p> <p>(iii) <u>threatened or rare indigenous ecosystems and vegetation types, including naturally rare ecosystems and vegetation types;</u></p> <p>(iv) <u>areas containing nationally significant examples of indigenous ecosystems or indigenous community types; or</u></p> <p>(v) <u>areas set aside for full or partial protection of indigenous biodiversity under other legislation, including the West Coast North Island Marine Mammal Sanctuary.</u></p> <p>(b) <u>any regular or sustained disturbance of migratory bird roosting,</u></p>

<p>values identified under this policy.</p>		<p>(e) avoiding as far as practicable any changes in hydrology which could adversely affect indigenous biodiversity values;</p> <p>(f) implementing measures to maintain existing water quality and not increase the amount of sediment entering natural waterways, wetlands and groundwater; and</p> <p>(g) using techniques that minimise the effects of construction and development on vegetation and biodiversity and the introduction and spread of animal and plant pests.</p> <p>...</p> <p>(8) Manage the adverse effects from the use, maintenance, upgrade and development of infrastructure in accordance with the policies above, recognising that it is not always practicable to locate and design infrastructure to avoid significant ecological areas.</p> <p><i>Protecting significant ecological areas in the coastal environment</i></p> <p>(9) Avoid, subdivision, use and development in the coastal environment where it will result in any of the following:</p> <p>(a) the permanent use or occupation of the foreshore and seabed to the extent that the values, function or processes associated with any Significant Ecological Area – Marine is significantly reduced;</p> <p>(b) any change to physical processes that would destroy, modify, or damage any natural feature or values identified for a Significant Ecological Area – Marine in more than a minor way; or</p> <p>(c) fragmentation of the values of a Significant Ecological Area – Marine to the extent that its physical integrity is lost.</p> <p>(10) Manage the adverse effects of use and development on the values of Significant Ecological Areas – Marine, in addition to the policies above, taking into account all of the following:</p> <p>(a) the extent to which existing use and development already, and in combination with any proposal, impacts on the habitat, or impedes the operation of ecological and physical processes;</p> <p>(b) the extent to which there are similar habitat types within other Significant Ecological Areas – Marine in the same harbour or estuary or, where the significant ecological area -marine is located on open coast, within the same vicinity; and</p> <p>(c) whether the viability of habitats of regionally or nationally threatened plants or animals is adversely affected,</p>	<p><u>nesting and feeding areas that is likely to noticeably reduce the level of use of an area for these purposes; or</u></p> <p>(c) <u>the deposition of material at levels which would adversely affect the natural ecological functioning of the area.</u></p> <p>(10) <u>Avoid (while giving effect to Policy D9.3(9) above) activities in the coastal environment which result in significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities, on:</u></p> <p>(a) <u>areas of predominantly indigenous vegetation;</u></p> <p>(b) <u>habitats that are important during the vulnerable life stages of indigenous species;</u></p> <p>(c) <u>indigenous ecosystems and habitats that are found only in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;</u></p> <p>(d) <u>habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes including fish spawning, pupping and nursery areas;</u></p> <p>(e) <u>habitats, including areas and routes, important to migratory species;</u></p> <p>(f) <u>ecological corridors, and areas important for linking or maintaining biological values; or</u></p> <p>(g) <u>water quality such that the natural ecological functioning of the area is adversely affected.</u></p> <p>[CONSEQUENTIALLY RENUMBER EXISTING POLICY (9) AS (11) AND SO FORTH]</p> <p>(11) <u>In addition to Policies D9.3(9) and (10), avoid, subdivision, use and development in the coastal environment where it will result in any of the following:</u></p> <p>(a) the permanent use or occupation of the foreshore and seabed to the extent that the values, function or processes associated with any Significant Ecological Area – Marine is significantly reduced;</p> <p>(b) any change to physical processes that would destroy, modify, or damage any natural feature or values identified for a Significant Ecological Area – Marine in more than a minor way; or</p> <p>(c) fragmentation of the values of a Significant Ecological Area – Marine to the extent that its physical integrity is lost.</p> <p>...</p> <p>[NOTE: FORMERLY (11)]</p> <p>(13) <u>In addition to Policies D9.3(9) and (10), avoid structures in Significant Ecological Areas – Marine 1 (SEA-M1) except where a structure is necessary for any of the following purposes:</u></p> <p>(a) scientific and research purposes, or for public education, and will enhance the understanding and long-term protection of the significant ecological area;</p> <p>(b) navigation and safety;</p> <p>(c) habitat maintenance and enhancement; or</p> <p>(d) to benefit the regional and national community, including structures</p>
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		<p>including the impact on the species population and location.</p> <p>(11) Avoid structures in Significant Ecological Areas – Marine 1 (SEA-M1) except where a structure is necessary for any of the following purposes:</p> <ul style="list-style-type: none"> (a) scientific and research purposes, or for public education, and will enhance the understanding and long-term protection of the significant ecological area; (b) navigation and safety; (c) habitat maintenance and enhancement; or (d) to benefit the regional and national community, including structures for significant infrastructure where there is no reasonable or practicable alternative location on land, or elsewhere in the coastal marine area outside of a Significant Ecological Area – Marine 1(SEA-M1). <p>(12) Avoid the extension to, or alteration of, any existing lawful structure in Significant (12)Ecological Areas – Marine 1 (SEA-M1) unless all of the following can be demonstrated:</p> <ul style="list-style-type: none"> (a) that the existing structure has no significant adverse effects on the values and ecological and physical processes operating in the significant ecological area; (b) that the extension or alteration will not involve significant disturbance of foreshore or seabed, clearance of indigenous vegetation, or significantly increase the need to dredge in order to obtain access to the structure; and (c) that the purpose of the extension cannot practicably be met by a land-based alternative. 	<p>for significant infrastructure where there is no reasonable or practicable alternative location on land, or elsewhere in the coastal marine area outside of a Significant Ecological Area – Marine 1(SEA-M1).</p> <p>[NOTE: FORMERLY (12)]</p> <p>(14) In addition to Policies D9.3(9) and (10), avoid the extension to, or alteration of, any existing lawful structure in Significant Ecological Areas – Marine 1 (SEA-M1) unless all of the following can be demonstrated:</p> <ul style="list-style-type: none"> (a) that the existing structure has no significant adverse effects on the values and ecological and physical processes operating in the significant ecological area; (b) that the extension or alteration will not involve significant disturbance of foreshore or seabed, clearance of indigenous vegetation, or significantly increase the need to dredge in order to obtain access to the structure; and (c) that the purpose of the extension cannot practicably be met by a land-based alternative.
<p>Policy 11: Indigenous biological diversity (biodiversity)</p> <p>To protect indigenous biological diversity in the coastal environment:</p> <ul style="list-style-type: none"> a. avoid adverse effects of activities on: <ul style="list-style-type: none"> i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened; iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; iv. habitats of indigenous species where the species are at the limit of their natural 	<p>B7. Toitū te whenua, toitū te taiao – Natural resources</p> <p>...</p> <p>B7.2. Indigenous biodiversity</p> <p>...</p> <p>B7.2.2. Policies</p> <p>...</p> <p>(5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.</p>	<p>E15. Vegetation management and biodiversity</p> <p>...</p> <p>E15.3. Policies</p> <p>...</p> <p>(9) Avoid activities in the coastal environment where they will result in any of the following:</p> <ul style="list-style-type: none"> (a) non-transitory or more than minor adverse effects on: <ul style="list-style-type: none"> (i) threatened or at risk indigenous species (including Maui’s Dolphin and Bryde’s Whale); (ii) the habitats of species that are at the limit of their natural range or which are naturally rare; (iii) threatened or rare ecosystems, including naturally rare ecosystems; (iv) areas containing nationally significant examples of indigenous ecosystems or indigenous community 	<p>E15. Vegetation management and biodiversity</p> <p>...</p> <p>E15.3 Policies</p> <p>...</p> <p>(9) Avoid activities in the coastal environment where they will result in any of the following:</p> <ul style="list-style-type: none"> (a) non-transitory or more than minor adverse effects on: <ul style="list-style-type: none"> (i) threatened or at risk indigenous species (including Maui’s Dolphin and Bryde’s Whale); (ii) the habitats of <u>indigenous</u> species that are at the limit of their natural range or which are naturally rare; (iii) threatened or rare <u>indigenous</u> ecosystems <u>and vegetation types</u>, including naturally rare ecosystems <u>and vegetation types</u>; <p>...</p>

<p>v. range, or are naturally rare; areas containing nationally significant examples of indigenous community types; and</p> <p>vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and</p> <p>b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:</p> <p>i. areas of predominantly indigenous vegetation in the coastal environment;</p> <p>ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;</p> <p>iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;</p> <p>iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;</p> <p>v. habitats, including areas and routes, important to migratory species; and</p> <p>vi. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.</p>		<p>types; or</p> <p>(v) areas set aside for full or partial protection of indigenous biodiversity under other legislation, including the West Coast North Island Marine Mammal Sanctuary.</p> <p>(b) any regular or sustained disturbance of migratory bird roosting, nesting and feeding areas that is likely to noticeably reduce the level of use of an area for these purposes, or result in permanent abandonment of an area;</p> <p>(c) the deposition of material at levels which would adversely affect the natural ecological functioning of the area; or</p> <p>(d) fragmentation of the values of the area to the extent that its physical integrity is lost.</p> <p>(10) Avoid (while giving effect to Policy E15(8) above) activities in the coastal environment which result in significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities, on:</p> <p>(a) areas of predominantly indigenous vegetation;</p> <p>(b) habitats that are important during the vulnerable life stages of indigenous species;</p> <p>(c) indigenous ecosystems and habitats that are found only in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, intertidal zones, rocky reef systems and saltmarsh;</p> <p>(d) habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes including fish spawning, pupping and nursery areas;</p> <p>(e) habitats, including areas and routes, important to migratory species;</p> <p>(f) ecological corridors, and areas important for linking or maintaining biological values; or</p> <p>(g) water quality such that the natural ecological functioning of the area is adversely affected.</p> <p>E15.4. Activity table Table E15.4.1 Activity table specifies the activity status of vegetation management activities in all zones, other than:</p> <ul style="list-style-type: none"> • vegetation removal in the coastal marine area where the rules in Chapter F Coastal apply; • vegetation removal in the beds of lakes, rivers, streams and wetlands where the rules in E3 Lakes, rivers, streams and wetlands apply; • use and development for infrastructure where the rules in E26 Infrastructure apply; and • the Hauraki Gulf Islands that are subject to the Auckland 	<p>(b) any regular or sustained disturbance of migratory bird roosting, nesting and feeding areas that is likely to noticeably reduce the level of use of an area for these purposes, or result in permanent abandonment of an area;</p> <p>...</p> <p>(10) Avoid (while giving effect to Policy E15(89) above) activities in the coastal environment which result in significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities, on:</p> <p>...</p> <p>(c) indigenous ecosystems and habitats that are found only in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, <u>dunelands</u>, intertidal zones, rocky reef systems, <u>eelgrass</u> and saltmarsh;</p> <p>...</p> <p>[INSERT THE FOLLOWING TEXT DIRECTLY ABOVE ACTIVITY TABLE E15.4.1]:</p> <p><u>The rules in Tables E15.4.1 and E15.4.2 implement the policies in D9.3 and E15.3. The plan does not include rules (either regional or district) that require areas of vegetation (whether identified as a Significant Ecological Area-Terrestrial or otherwise) to be fenced in order to implement the policies in D9.3 and E15.3. Fencing requirements may arise though in the following circumstances:</u></p> <p><u>(a) Fencing being required to avoid, remedy, or mitigate or proposed to offset an effect on the environment related to a particular proposal, including as a condition of resource consent or a condition of subdivision consent;</u></p> <p><u>(b) The operation of rules regarding livestock access in the coastal marine area (Table F2.19.4 Activity Table A38, A39 and A40); or</u></p> <p><u>(c) The operation of rules regarding livestock access to a lake, river or stream, or wetland (Table E3.4.1 Activity Table A51 and A52).</u></p>
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		<p>Council District Plan – Hauraki Gulf Islands section where the rules of that district plan apply.</p> <p>Table E15.4.1 Activity table specifies the activity status of vegetation management pursuant to section 9(2) for all land not held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991.</p> <p>Table E15.4.1 Activity table also specifies the activity status of vegetation management pursuant to section 9(3) for land held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991.</p> <p>Table E15.4.2 Activity table specifies the activity status of vegetation management pursuant to section 9(2) for SEA – T and section 9(3) for ONF, HNC, ONC, ONL for all land not held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991.</p> <p>Table E15.4.2 Activity table also specifies the activity status of vegetation management pursuant to section 9(3) for land held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991.</p> <p>For the purposes of these rules, all distances from water bodies must be measured in a horizontal plane from the edge of the bed of the river or stream, permanent or intermittent, or lake water body.</p> <p>Table E15.4.1 Activity table - Auckland-wide vegetation and biodiversity management rules</p> <p>[TABLE]</p> <p>...</p>	
<p>Policy 11: Indigenous biological diversity (biodiversity)</p> <p>To protect indigenous biological diversity in the coastal environment:</p> <p>a. avoid adverse effects of activities on:</p> <ol style="list-style-type: none"> i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened; iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; iv. habitats of indigenous species where the 	<p>B7. Toitū te whenua, toitū te taiao – Natural resources</p> <p>...</p> <p>B7.2. Indigenous biodiversity</p> <p>...</p> <p>B7.2.2. Policies</p> <p>...</p> <p>(5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.</p>	<p>F2. Coastal – General Coastal Marine Zone</p> <p>...</p> <p>F2.2. Drainage, reclamation and declamation</p> <p>...</p> <p>F2.2.3. Policies</p> <p>(1) Avoid reclamation and drainage in the coastal marine area except where all of the following apply:</p> <ol style="list-style-type: none"> (a) the reclamation will provide significant regional or national benefit; (b) there are no practicable alternative ways of providing for the activity, including locating it on land outside the coastal marine area; (c) efficient use will be made of the coastal marine area by using the minimum area necessary to provide for the 	<p>F2. Coastal – General Coastal Marine Zone</p> <p>...</p> <p>F2.2. Drainage, reclamation and declamation</p> <p>...</p> <p>F2.2.3. Policies</p> <p>(1) Avoid reclamation and drainage in the coastal marine area except where all of the following apply:</p> <ol style="list-style-type: none"> (a) the reclamation will provide significant regional or national benefit; (b) there are no practicable alternative ways of providing for the activity, including locating it on land outside the coastal marine area; (c) efficient use will be made of the coastal marine area by using the minimum area necessary to provide for the proposed use, or to enable drainage; and

<p>species are at the limit of their natural range, or are naturally rare;</p> <p>v. areas containing nationally significant examples of indigenous community types; and</p> <p>vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and</p> <p>b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:</p> <p>i. areas of predominantly indigenous vegetation in the coastal environment;</p> <p>ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;</p> <p>iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;</p> <p>iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;</p> <p>v. habitats, including areas and routes, important to migratory species; and</p> <p>vi. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.</p>		<p>proposed use, or to enable drainage; and</p> <p>(d) significant adverse effects on sites scheduled in the D17 Historic Heritage Overlay or D21 Sites and Places of Significance to Mana Whenua Overlay are avoided or mitigated.</p> <p>...</p> <p>F2.3. Depositing and disposal of material</p> <p>...</p> <p>F2.3.3 Policies</p> <p>...</p> <p>(4) Avoid the disposal of material in the coastal marine area where it will have significant adverse effects on any of the following:</p> <p>(a) sites scheduled in the D17 Historic Heritage Overlay or scheduled in the D21 Sites and Places of Significance to Mana Whenua Overlay; or</p> <p>(b) significant surf breaks identified in Appendix 4 Surf breaks.</p> <p>...</p> <p>F2.16. Structures</p> <p>...</p> <p>F2.16.3. Policies</p> <p>...</p> <p><i>Ensuring structures are appropriately located and designed</i></p> <p>(6) Require structures to be located to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the values of areas identified as:</p> <p>(a) D9 Significant Ecological Areas Overlay – Marine 1 and 2;</p> <p>(b) D17 Historic Heritage Overlay;</p> <p>(c) D21 Sites and Places of Significance to Mana Whenua Overlay;</p> <p>(d) D11 Outstanding Natural Character and High Natural Character overlays;</p> <p>(e) D10 Outstanding Natural Features Overlay; and Outstanding Natural Landscapes Overlay; and</p> <p>(f) significant surf breaks identified in Appendix 4 Surf breaks, including the recreation, amenity and economic values, and taking into account any effects on coastal processes, currents, water levels, seabed morphology and swell corridors that contribute to significant surf breaks.</p>	<p>(d) significant adverse effects on sites scheduled in the D17 Historic Heritage Overlay or D21 Sites and Places of Significance to Mana Whenua Overlay are avoided or mitigated.</p> <p>[NOTE: (2) IS NEW]</p> <p>(2) <u>Where reclamation or drainage is proposed that affects an overlay, manage effects in accordance with the overlay policies.</u></p> <p>[CONSEQUENTIALLY RENUMBER EXISTING POLICY (2) AS (3) AND SO FORTH]</p> <p>...</p> <p>F2.16. Structures</p> <p>...</p> <p>F2.16.3. Policies</p> <p>...</p> <p><i>Ensuring structures are appropriately located and designed</i></p> <p>(6) Require structures to be located to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the values of areas identified as:</p> <p>(a) D9 Significant Ecological Areas Overlay – Marine 1 and 2;</p> <p>(a) D17 Historic Heritage Overlay;</p> <p>(b) D21 Sites and Places of Significance to Mana Whenua Overlay;</p> <p>(c) D11 Outstanding Natural Character and High Natural Character overlays;</p> <p>(d) D10 Outstanding Natural Features Overlay; and Outstanding Natural Landscapes Overlay; and</p> <p>(e) significant surf breaks identified in Appendix 4 Surf breaks, including the recreation, amenity and economic values, and taking into account any effects on coastal processes, currents, water levels, seabed morphology and swell corridors that contribute to significant surf breaks.</p>
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