

**BEFORE THE HEARING COMMISSIONERS**

**IN THE MATTER OF** the Resource Management Act 1991

**AND** The Proposed Natural Resources  
Plan for the Wellington Region

**AND** **Hearing 3** – Water Allocation &  
Natural Form and Function

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PLANNING EVIDENCE OF **PHILLIP HARRY PERCY**

**Topic: Natural Form and Function**

on behalf of Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa

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Dated: 22 August 2017

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## **ABBREVIATIONS USED**

1. The primary abbreviations I have used in my evidence are:

**The Plan** or **PNRP** Proposed Natural Resources Plan for the Wellington Region

**The Council** Greater Wellington Region Council

**NPS-FM** The National Policy Statement for Freshwater Management 2014

**NZCPS** The New Zealand Coastal Policy Statement 2010

**RPS** The Regional Policy Statement for the Wellington Region

**The Act** The Resource Management Act 1991

**ONL** Outstanding Natural Landscape

**ONF** Outstanding Natural Feature

## QUALIFICATIONS AND EXPERIENCE

2. My name is Phillip Harry Percy. I hold the degree of Bachelor of Resource and Environmental Planning with Honours from Massey University with a specialisation in physical geography. I hold a current Making Good Decisions certificate.
3. I have been practicing as a planner since 1998 (approximately 19 years). This has included working as a Resource Advisor (Policy) for Greater Wellington Regional Council, a Senior Planner for Eliot Sinclair and Partners in Christchurch and as a Senior Planner for Beca in Wellington. I am currently a Director of Perception Planning Limited, a resource management planning consultancy established in 2007 and which employs 10 professional staff.
4. I have significant experience in the development of RMA planning documents, both at regional and district level. In the lower North Island, this includes involvement in the development of, hearings and appeals on the Horizon Regional Council's One Plan. In the case of the One Plan, I was engaged by Horizons as an expert planning witness for the topics of land management, natural hazards, and the s32 process during the council-level hearings. At the appeal stage, I was engaged as a planning witness by appellants (Andrew Day and Wellington Fish and Game, respectively) in relation to the water quality (specifically the management of primary production land use) and land management (management of erosion-prone land, stock access, vegetation clearance and land disturbance). I provided planning evidence on behalf of submitters on the Canterbury Land and Water Plan in 2013, primarily in relation to the management of water quality and quantity.
5. Related to regional plan development, I was engaged by submitters to give planning evidence to the Board of Enquiry on the resource consent applications for the Ruataniwha Water Storage Scheme in the Hawke's Bay. This was associated with Plan Change 6 (Tukituki Catchment) to the Hawke's Bay Natural Resources Plan, which was lodged and heard jointly with the resource consent applications for the Ruataniwha Water Storage Scheme.
6. I have also been involved in a number of district plan reviews and changes, either on behalf of local authorities or submitters. This has included changes to the

Palmerston North City District Plan, the Manawatu District Plan, the Ruapehu District Plan, the Rangitikei District Plan and the Horowhenua District Plan.

7. In 2016, I was the hearing commissioner for Plan Change 2016 to the Rangitikei District Plan, a plan change relating to advertising, historic heritage, natural hazards, building setbacks and re-zonings.
8. Since 2015 I have been engaged by Rangitāne Settlement Negotiation Trust, the entity with responsibility to negotiate on Treaty of Waitangi settlements on behalf of Rangitāne. My role in those negotiations was as an advisor on redress related to natural resources. That included natural redress that relates to Wairarapa Moana and the Ruamāhanga River catchment.
9. I presented evidence on behalf of Rangitāne Settlement Negotiation Trust to this panel in respect of Hearing Stream 1 – Overall Policy Framework and Hearing Stream 2 - Air Quality Management, Land use in riparian margins and stock access to water bodies, & Soil Conservation.
10. I have been involved in a professional capacity in a wide range of planning matters including applications for large-scale subdivision consents, land use consents for dwellings, commercial buildings, earthworks and infrastructure projects including in the Palmerston North, Kapiti Coast, Wairarapa, Wellington and Christchurch areas. I have experience in assessing proposals against both regional and district planning provisions and in both urban and rural environments. I have also been involved in resource consent applications for discharges to land, water and air and water take applications, including municipal wastewater discharges, winery waste discharges, and discharges of stormwater.
11. I have previously worked as a Planner in the United Kingdom including in consent processing, enforcement and monitoring roles.
12. I have previously undertaken consultancy work for Greater Wellington Regional Council in relation to the Proposed Natural Resources Plan. I set out a summary of that work in a memo to the Hearing Panel for Hearing 1, dated 19 June 2017.
13. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. I confirm that the issues

addressed in this brief of evidence are within my area of expertise. I have specified where my opinion is based on limited or partial information and identified any assumptions I have made in forming my opinions.

14. In preparing this evidence I have read:
  - a. The s32 Reports that relate to matters addressed in Hearing 3.
  - b. The submissions and further submissions on the Plan made by Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Incorporated.
  - c. The s42A Officer Report on Natural Form and Function for Hearing 3.
  - d. The draft cultural evidence of Jason Kerehi on behalf of Rangitāne.
  - e. The draft Hearing 3 evidence of Lucy Cooper (planning evidence on behalf of Fish and Game) in relation to natural form and function.

## **SCOPE AND STRUCTURE OF EVIDENCE**

15. I have been asked by Rangitāne Tū Mai Rā Trust to prepare evidence in relation to the submissions and further submissions made by Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Incorporated on the Proposed Natural Resource Plan for the Wellington Region. This brief of evidence is related to **Hearing 3** and specifically addresses the **Natural Form and Function** topic. I have also prepared a separate brief of evidence that addresses the Water Allocation topic associated with Hearing Stream 3.
16. This brief of evidence is set out in two sections. The first provides an overview of key issues that have overarching relevance to the management of natural form and function in the Plan, and the second sets out my analysis and recommendations on individual provisions.

## **LEGISLATIVE AND POLICY SETTING**

17. I have read the statutory context summarised in the s42A Reports provided for Hearing 3 and agree with that summary. Also relevant to this hearing is the broader statutory context set out in the s42A report of Amber Carter for Hearing 1.

I have not included a section on statutory context in this evidence and rely on the summary provided in the s42A reports.

## SUMMARY OF KEY ISSUES

### Assessment and recording of natural character, outstanding landscapes and natural features

18. In the section of the Rangitāne submission headed 'Submission points relating to the whole proposed plan', the following submission point was made:

*The Proposed Plan identifies some Outstanding Water Bodies, however it does not identify outstanding natural landscapes and features. Instead this is to be achieved at a later date by way of Method M24. The approach of not identifying those outstanding natural features and landscapes, and areas of high and outstanding natural character, in the Plan at this stage is not consistent with giving effect to the New Zealand Coastal Policy Statement and the Regional Policy Statement. The Regional Council should insert into this Plan maps, schedules and other necessary provisions that identify areas that are or have the potential to be outstanding natural features and landscapes, and areas of significant and outstanding natural character.*

19. The obligation in s67(3) of the Act to 'give effect' to the NZCPS and the RPS in a regional plan has immediate effect. Unlike a national policy statement, such as the NPS-FM, that includes an opportunity for staged implementation, neither the NZCPS or the RPS make provision for such an approach in relation to the directive policies applicable to natural character, landscapes and natural features. The direction established in policies within the NZCPS and the RPS should be implemented in the Plan now.

20. Reinforcing the expectation that giving effect to the NZCPS policies involves active implementation as part of the Proposed Plan, Policy 7 of the NZCPS explicitly states that the policy is to be implemented *in preparing plans*.

21. The obligation to undertake assessment and identification of natural character, natural features and landscapes as part of the Proposed Plan is established by the following directive policies of the NZCPS and the RPS.

Source document	Policy	Policy wording (emphasis added)	Obligations applies to rivers, lakes, wetlands and their margins	Obligations apply to coastal environment
NZCPS	Policy 7 Strategic planning	<p>(1) <b>In preparing</b> regional policy statements, and plans:</p> <p>a. [...]</p> <p>b. <b>identify</b> areas of the coastal environment where particular activities and forms of subdivision and development, use and development:</p> <p style="padding-left: 40px;">i. are inappropriate; and</p> <p style="padding-left: 40px;">ii. may be inappropriate [...];</p> <p>and <b>provide protection</b> from inappropriate subdivision, use and development in these areas <b>through objectives, policies and rules.</b></p> <p>(2) <b>Identify</b> in regional policy statements and plans, coastal processes, resources or values that are under threat or at significant risk of adverse cumulative effects. <b>Include provisions in plans to manage these effects.</b></p>	✓*	✓
NZCPS	Policy 13	<p>(c) <b>assessing the natural character</b> of the coastal environment of the region or district, <b>by mapping or otherwise identifying</b> at least areas of high natural character.</p> <p>(d) ensuring that regional policy statements, and</p>	✓*	✓

Source document	Policy	Policy wording (emphasis added)	Obligations applies to rivers, lakes, wetlands and their margins	Obligations apply to coastal environment
		plans, <b>identify areas</b> where preserving natural character requires objectives, policies and rules, <b>and include those provisions.</b>		
<b>NZCPS</b>	Policy 15	<p>(c) <b>identifying and assessing</b> the natural features and natural landscapes of the coastal environment of the region or district, <b>at minimum by land typing, soil characterisation and landscape characterisation</b> [...]</p> <p>(d) <b>ensuring that</b> regional policy statements, and plans, <b>map or otherwise identify</b> areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and</p> <p>(e) <b>including the objectives, policies and rules required by (d) in plans.</b></p>	✓*	✓
<b>RPS</b>	Policy 25	<p>District and <b>regional plans shall identify</b> outstanding natural features and landscapes having determined that the natural feature or landscape is:</p> <p>(a) Exceptional or out of the ordinary; and</p> <p>(b) That its natural components dominate over the influence of human activity</p> <p>after undertaking a landscape evaluation process, taking into account the factors listed below [...]</p>	✓	✓

Source document	Policy	Policy wording (emphasis added)	Obligations applies to rivers, lakes, wetlands and their margins	Obligations apply to coastal environment
RPS	Policy 27	District and regional plans <b>may identify</b> special amenity landscapes [...]	✓	✓
RPS	Policy 50	<b>When considering</b> an application for a resource consent, notice of requirement, <b>or change, variation or review of a district or regional plan, a determination shall be made</b> as to first, whether an activity may affect an outstanding natural feature and/or landscape, and second, whether or not an activity is inappropriate, having particular regard to [...]	✓	✓

\* Rivers, lakes and wetlands that are within the coastal environment but landward of the Coastal Marine Area.

22. While RPS Policy 25 is explicit that outstanding natural features and landscapes are to be identified in regional plans, Policy 50 also, by default, requires some form of identification process to occur. Policy 50 applies broadly to all key planning responsibilities of the Council (assessing resource consent applications, and considering a change, variation or review of a regional plan). In order for the second part of the active response in the policy to be applied (whether or not the activity is inappropriate) in the context of considering a change, variation or review of a regional plan, the Council would first need to understand if and where outstanding natural features and/or landscapes are and what their particular characteristics and qualities that require protection are.

23. In preparing the PNRP, the Council has deferred the process of giving effect to the NZCPS and RPS policies. This is explained in the s32 Report in the following way:

*For the proposed Plan, an assessment of natural character in areas of regional council jurisdiction (e.g. beds of lakes and rivers and in the CMA) had not yet been undertaken at the time of writing. Instead, Policies P24 and P25 along with other objectives and policies in the proposed Plan such as those on managing water quality, reclamation, significant surf breaks, geological features, recreational values and public open space will all contribute to protecting natural character in the CMA and in the beds of lakes and rivers. As shown in Method M24, it is the WRC's intention to carry out some identification of natural character in the CMA with territorial authorities in the near future which could be implemented as a change to the proposed Plan.<sup>1</sup>*

24. The Council has proposed Method 24, which is:

*Method M24: Outstanding natural features and landscapes and high natural character Wellington Regional Council will work with city and district councils and the community to:*

- (a) identify outstanding natural features and landscapes within the region, and*
- (b) identify areas with outstanding/high natural character in the coastal environment, and*
- (c) produce a regional list of these features, landscapes and areas by 2017 for inclusion in the Plan by plan change or variation.*

25. I note that the proposed method specifies that a regional list of the identified features, landscapes and areas will be produce by this year (2017). Ms Legarth provides a brief summary of some progress that is being made on implementing this method<sup>2</sup>, however her report does not provide an update on the Council's progress towards producing a regional list, nor the timeframe for notifying a plan change or variation. Based on the summary of assessment work completed to date, it would appear unlikely that the method will be completed within the prescribed timeframe.

26. Notwithstanding Method 24 in the PNRP, Method 2: Regional plan implementation in the RPS states that:

*The process to amend regional plans to implement policies [list of policies including 25, 26 and 29] will commence on, or before, the date on which Wellington Regional Council*

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<sup>1</sup> S32 Report: Natural Heritage, Section 6.1.2

<sup>2</sup> S42A Report, Natural Form and Function, paragraph 189.

*commences the ten year review of its regional plans, or provisions in a regional plan, pursuant to section 79 of the Resource Management Act 1991.*

27. On plain reading of Method 2 of the RPS, the intention was for the Council to undertake the assessment and identification process set out in the listed policies prior to the current PNRP process and to implement those RPS policies fully in the PNRP. In my opinion, the RPS sets up a clear direction that the PNRP should give full effect to the policies directing the identification and natural character areas and outstanding natural features and landscapes. Method 2 reinforces that the RPS policies are to be implemented in the next iteration of regional plans; which is the PNRP.
28. The question that arises from this analysis is whether the Hearing Panel can approve the PNRP where it does not give effect to the NZCPS and the RPS. In my opinion, the Plan as notified does not give effect to the NZCPS or the RPS policies and it is necessary for amendments to be made to the Plan before it can be approved. As Ms Legarth points out in her s42A report, there is not sufficient detail in submissions to insert detailed maps and schedules in the Plan, which leaves the primary solution to addressing the deficiency being for the Council to prepare and notify a variation.

***Who should undertake the identification and mapping?***

29. Rangitāne's submission asks variously that:

- a. *the Regional Council should insert into the current Proposed Plan (using an appropriate procedural mechanism) maps and other provisions to provide for the preservation of the natural character of the coastal environment [...]<sup>3</sup>*
- b. *Undertake an assessment and include maps and other details of all outstanding natural features and landscapes in the Proposed Plan<sup>4</sup>.*
- c. *[...] a thorough assessment of the outstanding natural features and landscapes of the Wellington Region be undertaken with particular consideration given to those natural features and landscapes with value to tangata whenua<sup>5</sup>.*
- d. *[...] work is required by the Council to provide a schedule of those landscapes considered to have significant amenity values<sup>6</sup>.*

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<sup>3</sup> Pg 8

<sup>4</sup> Relief sought for Objective O31

<sup>5</sup> Relief sought for Objective O32

30. Ms Legarth has recommended that the submission points requesting the above relief are rejected because the submission did not include sufficient information to enable consideration by potentially affected parties and, as a result, inserting such provisions is not appropriate. While agree with Ms Legarth's reasoning for why the requested maps and schedules should not be inserted into the Plan simply off the back of the Rangitāne submission, she has not provided her evaluation of the actual relief sought in the submission, which is that the necessary work is undertaken by the Council and then inserted into the Plan. It would be unreasonable, in my opinion, for a submitter to have to incur the cost of an exercise that is clearly the Council's responsibility.

31. I agree with the submitter's request that the Council should undertake the necessary identification and mapping work. As discussed earlier in my evidence, the Council has statutory obligations to undertake the work and, in my opinion, the Plan was deficient as notified because it did not meet those statutory obligations. Resolution of that deficiency is an obligation on the Council and, in my view, the Council should be providing advice to the Hearing Panel on the process it will follow to resolve that deficiency in order for the Hearing Panel to be able to progress to a decision.

***Is the interim management approach effective and efficient?***

32. Until the natural character and landscape assessment and mapping has been completed, management of natural character, ONLs and ONFs is only controlled where resource consents are required for other management purposes. This is confirmed by Ms Legarth who explains that *the objectives and policies will be used when consents are applied and areas that meet the criteria in the RPS will be assessed on a case by case basis*<sup>7</sup>.

33. That approach relies on several factors aligning:

- a. Activities that may adversely affect natural character, ONLs and ONFs require resource consent for other reasons (e.g water take, bed disturbance, occupation), and
- b. In the case of restricted discretionary and controlled activities, discretion/control is sufficiently broad to enable consideration of effects on natural character, ONLs and ONFs, and

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<sup>6</sup> Relief sought for Objective O38

<sup>7</sup> Para 196 S42A Report on Natural Form and Function.

- c. Decision-makers having an understanding that consideration of effects on natural character, ONLs and ONFs is an expected part of the resource consent assessment process, and
- d. Applicants provide sufficient information to enable a determination as to whether the activity will affect natural character, ONLs and ONFs (applying the criteria in Policy 36 of the RPS).

34. While there are a significant number of full discretionary activity rules in the Plan as notified, there are also a significant number of controlled and restricted discretionary activity rules. Many of the controlled and restricted discretionary activity rules have matters of control/discretion that potentially allow for the consideration of some matters relevant to natural character, ONLs and ONFs (such as effects on public open space and visual amenity, and effects on sites or habitats identified in Schedules C, F, J and K), however there are no express matters of discretion that refer to natural character, ONLs and ONFs. Without specific matters of control/discretion covering natural character, ONLs and ONFs, at best I would expect variable consideration of those matters by different application assessment staff and decision-makers. In my opinion, that lack of certainty of application and effectiveness is not consistent with giving effect to the NZCPS and the RPS.

35. It is also my opinion that the approach of requiring a case-by-case assessment of whether a particular activity is within, and has adverse effects on, areas of natural character, ONLs and ONFs, is likely to be onerous and impose a significant cost on resource consent applicants. In order for an assessment of effects to be completed, consideration must be given to the objectives and policies of the Plan, the RPS and other higher order policy documents. Where the Plan does not assist in identifying the circumstances under which an assessment on natural character, ONLs and ONFs is necessary, it will technically oblige applicants to undertake that assessment to determine whether, and the degree to which, the objectives and policies relating to natural character, ONLs and ONFs apply. That is likely to impose a high cost on applicants.

36. In my opinion, relying on a case-by-case identification and assessment of natural character, ONLs and ONFs is unlikely to be effective or efficient, in comparison to the Council undertaking the identification and characterisation exercise prescribed by the NZCPS and the RPS.

## Relationship of natural form and function provisions to other management areas

37. Outcomes for natural character, natural form and function and outstanding natural features and landscapes are influenced by the management of a number of contributing resources, including management of the use and development of those resources.

38. Of particular relevance to Rangitāne is their relationship with natural and physical resources and taonga. That includes concepts such as mahinga kai, cultural use, and mauri. The evidence of Jason Kerehi for Hearing 3 explains how the variations and dynamic processes of natural systems, including rivers and the coastal environment, are a fundamental indicator of the health of Papatuanuku. The ebb and flow of energy and life force within the environment is critical to Papatuanuku being able to provide the resources for people and other species to sustain themselves<sup>8</sup>. Mr Kerehi explains in his evidence the role that natural seasonal patterns were traditionally relied upon by Rangitāne to gather food essential to their cultural and spiritual wellbeing, but also to their physical health<sup>9</sup>.

39. The section of the Rangitāne submission titled 'Submission points relating to the whole proposed plan' provides several succinct statements that summarise the connection between natural form and processes, and Māori relationships and values.

*"To achieve this [s6(e)] matter of national importance, the Plan should focus on achieving a resource state that provides for Maori relationships, rather than simply including objectives and policies that focus on the relationship itself."*

*"Rangitāne o Wairarapa cultural and traditional relationships with the coastal environment are strongly linked to natural features and processes, and therefore the natural character of the coastal environment. As part of recognising and providing for the relationship Rangitāne o Wairarapa, and our culture and traditions, have with the coastal environment, the Regional Plan should preserve natural character and protect it from inappropriate subdivision, use and development."*

40. Mr Kerehi also explains the inherent connection that individuals, whanau, hapu and iwi have with natural resources. This is most apparent in Mr Kerehi's pepeha in which he identifies himself by his connection to rivers, mountains and other natural features. Those natural features that are emphasised in korero such as pepeha are, by default,

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<sup>8</sup> Please refer to the evidence of Mr Jason Kerehi.

<sup>9</sup> Please refer to the evidence of Mr Jason Kerehi.

significant because they are readily identifiable and are recognised for their importance, including in terms of continued customary use, occupation and ahi kaa roa, that make them landmarks. I understand from Mr Kerehi's evidence that the state of such features has an influence on the mana of people who are exercising kaitiakitanga in respect of those features. If the awa that a person identifies with has not been well looked after, it could be seen as a reflection on the management ability and the level of respect that kaitaki of that resource have paid to their ancestor Papatuanuku.

41. Adding further weight to the direct relationship between natural character and relationships is Policy 3 of the RPS, which sets out relevant aspects of natural character. In particular, clause (c) of the policy refers to associational aspects of natural character:

*(c) Social values: the place, site or area has meaning for a particular community or communities, including:*

- 1. (i) sentimental: the natural character of a place, site or area has a strong or special association with a particular community; and/or*
- 2. (ii) recognition: the place, site or area is held in high public esteem for its natural character value, or its contribution to the sense of identity of a particular community. (my emphasis)*

42. Policy 13 of the NZCPS refers to 'experiential attributes' as potentially contributing a natural character. Policy 15 of the NZCPS specifies that when identifying and assessing natural features and natural landscapes in the coastal environment, *transient values, including presence of wildlife or other values at certain times of the day or year and cultural and spiritual values for tangata whenua, [...] including their expression as cultural landscapes and features* are to be considered. Mr Kerehi gives an example of that seasonal relationship in the form of harvesting tuna during periods when the mouth of Lake Onoke is closed coincide with the migration of tuna<sup>10</sup>.

43. The relationships of Rangitāne with the natural and physical resources of their rohe are referenced throughout the objectives of the Plan. That begins with Objective O1, which references the interconnected nature of resources from the mountains to the sea. Objective O2 refers to the contribution of land and water to the wellbeing of people (including cultural wellbeing), and Objective O3 has the strong outcome that mauri is

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<sup>10</sup> Please refer to the evidence of Mr Jason Kerehi.

sustained and enhanced. Other objectives of the Plan relate to outcomes for mahinga kai, Māori customary use and the relationships of mana whenua with natural and physical resources.

44. In my opinion, an important function of the Plan is to draw the threads together between inter-related management responses. The more clearly that is done, the higher the probability that integrated management will be achieved. The evaluation approach to the various topics within the Plan that has been adopted by the s42A reporting structure limits the level of analysis across the Plan that is necessary to ensure an integrated outcome. The topic of natural form and function is a good example, where interconnected issues such as mana whenua values (Hearing 1) and outstanding water bodies (Hearing 5), and water allocation and natural form and function (Hearing 3) are dealt with separately even though individual provisions of the Plan relate to all of those topic areas (and others).
45. The assumption in a number of the s42A reports is that the necessary analysis of individual provisions is dealt with once at a single hearing. An example is the evaluation of Objective O3 (Mauri), which was addressed in Hearing 1 however it is intrinsically related to natural form and function. The relief sought in Rangitāne's submission in relation to Objective O3 is that the objective should be made more specific, including reference to the desired state to be achieved. The suggested wording in the Rangitāne submission explicitly refers to 'natural resources and processes'. In my evidence for Hearing 1, I recommended that Objective O3 be amended to include key physical outcomes that reflect the state of mauri. However, Objective O3 is not mentioned at all in the s42A report on natural form and function and the term 'mauri' is mentioned once<sup>11</sup>. The achievement of Objective O3, either as notified or as amended as per my recommendations, is contingent on other provisions of the Plan working collectively towards a consistent outcome. It is difficult to see how that can be assured if the respective s42A reports do not include analysis of the inter-related provisions.
46. The outcomes that Rangitāne seek in their submission in respect of the natural form and function provisions that are the subject of Hearing 3 are influenced by the outcomes they seek across other provisions of the Plan. In my opinion, the relief sought in terms of requesting the Council to identify areas with significant natural character, outstanding natural landscapes and features, significant amenity landscapes, and outstanding waterbodies, is consistent with achieving objectives such as O31, O32 and O36-O38,

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<sup>11</sup> In para 38 S42A Report on Natural Form and Function.

but is also consistent with achieving other objectives such as O1, O2, O3, O4, O5, and O14-O16. Drawing again on the example of Mr Kerehi's pepeha, identification and appropriate management of natural features and landscapes that are referenced in the identity of mana whenua is, in my opinion, an important component of recognising and maintaining Maori relationships with air, land, water, wāhi tapu and other taonga consistent with achieving Objective O14 and s6(e) of the Act.

## ANALYSIS OF PROVISIONS

## ANALYSIS OF DEFINITIONS

### ***Add new definition for 'natural character'***

*s.42A Report Paras 113 – 117*

Submission reference	Relief sought
<i>FS74/106 on s308/007 Fish and Game</i>	<i>Allow</i>

47. Rangitāne supported Fish and Game's submission point S308/007 which sought the addition of a definition of 'natural character'. The relief sought in Fish and Game's submission included suggested wording that referred to natural character in the context of rivers, lakes and wetlands. Ms Legarth is of the opinion that natural character is sufficiently well defined in caselaw and the NZCPS also sets out what the components of natural character are<sup>12</sup>.

48. I have read the evidence of Lucy Cooper (representing Fish and Game) for Hearing 3 on this matter and agree with her analysis.

49. While I agree with Ms Legarth that there is reference to the meaning of natural character in caselaw and in higher order policy documents like the NZCPS, it would provide significant assistance to Plan users, including decision-makers, for the Plan to be clear about what 'natural character' comprises, particularly in the context of rivers, lakes and wetlands. It considerably improves the efficiency of the Plan if plan users can readily understand how the provisions are intended to be interpreted and applied without having to revert to a caselaw research exercise.

<sup>12</sup> Para 116 S42A Report on Natural Form and Function.

50. The definition proposed in the Fish and Game submission, and subsequently modified slightly by Ms Cooper, is an ‘inclusive’ definition that does not say precisely what natural character is, but rather what it may include. While that may not be ideal for a definition in theory, it is appropriate in this case given that the definition will be to assist in the interpretation and application of objectives and policies rather than rules.

51. I also consider certainty around terms in directive objectives and policies is important. An objective that requires the *preservation* of natural character and *protection* of it sets a high level of attainment. Improving certainty around what is to be preserved and protected is, in my opinion, helpful in providing a degree of clarity around what the intended outcome of such a directive objective is.

52. An alternative to including a definition of the term is to do so via a policy. Given that the term applies predominantly to objectives and policies only, it could be ‘defined’ in either an objective or policy so that the definition sits directly in the provisions to which it relates. That is the way natural character is defined in the NZCPS and I would be comfortable with the same approach being applied in the Plan. However from an efficiency and effectiveness perspective, I consider that there would be little, if any, difference between adding a glossary term or including it within a relevant objective or policy. For that reason, I am comfortable with the Fish and Game relief sought.

**Recommendation**

53. Amend the Plan by adding a definition of natural character that is consistent with the relief sought by Fish and Game.

**ANALYSIS OF OBJECTIVES**

**Objective O17 – Natural Character and Objective O19 – Natural processes**

*s.42A Report Paras 118 – 179*

Submission reference	Relief sought
S279/028	<i>Retain the objective [O17] and undertake a full natural character assessment of the Region’s coastal environment to ensure the appropriate natural character values of the coastal environment are preserved and protected. Strengthen objective to give effect to higher order policy documents</i>

<i>FS74/034 on s352/068 Federated Farmers</i>	<i>Disallow</i>
<i>FS74/184 on s75/018 Minister of Conservation</i>	<i>Allow</i>
<i>S279/030</i>	<i>Amend the objective [O19] to ensure: The natural processes referred to in the objective are clearly identified; and That it is adverse effects from use and development not interference that needs to be managed. Or Objective O19 should be deleted in its entirety (the outcome is achieved by O17)</i>

54. Objective O17 relates to natural character and Objective O19 relates to natural processes. Rangitāne sought to retain Objective O17, and that Council undertake a full natural character assessment of the Region's coastal environment to ensure the appropriate natural character values of the coastal environment are preserved and protected. This relief sought was specifically in relation to the natural character of the coastal environment, however my opinion is that it should extend to rivers, lakes and wetlands to cover the full scope of the objective. The submission also sought either amendments to Objective O19 or its deletion, the latter relief being based on natural processes being a component of natural character and therefore covered already by O17.

55. Ms Legarth's opinion on the request to combine O17 and O19 is that: *Combining Objective O17 and O19 would remove the distinction in the proposed plan for managing adverse effects on natural character, and managing activities that may interfere with the natural functioning of natural physical and biological processes; to the extent reasonably practicable.*

56. In my opinion, natural processes are a contributor to and component of natural character. Examining the various definitions and descriptions of natural character in higher order policy documents, that relationship is evident. For example, NZCPS Policy 13 says that natural character may include matters such as *(a) natural elements, processes and patterns, (d) the natural movement of water and sediment and (h) experiential attributes, including the sounds and smells of the sea.* Natural processes also contribute to other outcomes such as mauri, mahinga kai, customary use, biodiversity and so on, as does natural character. My understanding of natural character is that it is more than a classification of environmental state; it embodies dynamic aspects as well.

57. I am of the opinion that there is conflict between the outcomes expressed in O17 and O19, in that the management outcome for natural processes ('minimise interference') is significantly less than what is required to achieve the management outcome for O17 ('preserve and protect from inappropriate use and development'). In practice, the outcome of O17 would 'trump' the outcome of O19 where natural process effects/interference would cause natural character to not be preserved. If O17 and O19 are combined, with the outcomes currently specified in O17 remaining, then activities potentially affecting natural processes would be evaluated as to their effect on natural character. If natural character was found to be preserved, then the relevant level of interference with natural processes would be considered appropriate – essentially the same analysis outcome that would result if the two objectives remained as proposed. Combining the two objectives removes the redundancy that is currently present in O19.

58. I have considered Ms Cooper's analysis of this issue and agree with her recommendations in terms of combining Objectives O17 and O19. I also agree with her recommended wording changes to Objective O17. Combined with her recommended definition of natural character, which incorporates reference to natural processes, the revised objectives O17 appropriately reflects the relevant outcomes.

### **Recommendation**

59. Delete Objective O19 and amend Objective O17 as recommended by Ms Cooper to read:

### **Objective O17**

The natural character of the coastal marine area, natural wetlands, and rivers, lakes and their margins ~~and natural wetlands~~ is preserved and protected from inappropriate use and development, and restored and rehabilitated where it is degraded.

### ~~Objective O19~~

~~The interference from use and development on natural processes is minimised.~~

### ***New provision – protect high naturalness and natural character***

*s.42a Report: Appendix 1 page 35 of 45*

Submission reference	Relief sought
<i>FS74/152 on s308/147 Fish and Game</i>	<i>Allow</i>

60. Rangitāne support the primary submission from Fish and Game (S308/147) which seeks to include provisions to protect site with high naturalness and natural character. This was supported as it is consistent with giving effect to the NPSFM, the objectives of the Plan and s.5 of the RMA. I understand that this submission point is to be addressed in Hearing 5 in relation to Objective O31. For that reason, I do not address it here.

### ***Objective O32 – Outstanding Natural Features and Landscapes***

*s.42a Report Paras 348 – 372*

Submission reference	Relief sought
<i>S279/043</i>	<i>That the objective be retained, but that a thorough assessment of the outstanding natural features and landscapes of the Wellington Region be undertaken with particular consideration given to those natural features and landscapes with value to tangata whenua. Alternatively, significant natural features and landscapes and areas of at least high natural character in the coastal environment should be derived from the existing studies and provided with sufficient interim protection.</i>

61. Rangitāne sought in their submission that Objective O32 be retained, but that a thorough assessment of the outstanding natural features and landscapes of the Wellington Region be undertaken with particular consideration given to those natural features and landscapes with value to tangata whenua. Alternatively, Rangitāne sought that significant natural features and landscapes, and areas of at least high natural character in the coastal environment should be derived from the existing studies and provided with sufficient interim protection.

62. As discussed above, natural landscapes and natural features play an important role in Maori culture and traditions. Implementing the objectives of the Plan and the RPS in

relation to recognising and providing for those relationships and values in my view necessitates an exercise of spatial definition of key landscapes and features. The Council has undertaken some work in that regard in terms of sites listed in Schedule C (sites with significant mana whenua values) and Schedule B (Nga Taonga Nui a Kiwa), however the identification of those sites has not been done in the context of their classification as natural landscapes and natural features. The definition of Nga Taonga Nui a Kiwa in the Plan has apparent similarities to the definitions applicable to natural features and natural landscapes (and natural character):

*Those large freshwater and coastal entities from which **mana whenua** derive cultural and spiritual identity, their status as **mana whenua** and the associated responsibilities that come with that including those of kaitiaki. These places are the larger rivers and harbours that have a long history of multiple and complex resource use associated with large populations. **Ngā Taonga Nui a Kiwa** emphasises the importance of **mana whenua** relationships with rivers, lakes, harbours and estuaries.*

63. The Rangitāne submission specifically sought the inclusion of Lake Wairarapa in a schedule of Outstanding Natural Features and Landscapes. Ms Legarth explains in her s42A report that *Wairarapa Moana is identified in the definition of “Ngā Taonga Nui a Kiwa Huanga (tohu/attributes)”, as Te Mana o te Wai; included in Schedule B: Ngā Taonga Nui a Kiwa; and is addressed in Method M9<sup>13</sup>.*

64. However the outcomes the Plan specifies for Nga Taonga Nui a Kiwa are significantly different to the outcomes for areas with outstanding natural character, outstanding natural features and natural landscapes, and significant amenity landscapes. The table below summarises the management outcomes for the different sites/areas.

Type of site/area	Management response	Applicable provisions
<b>Nga Taonga Nui a Kiwa</b>	Relationship recognised and provided for	O16
	Values recognised and provided for	P18
	Maintenance and enhancement of mana whenua relationships	P20

<sup>13</sup> Para 197 S42A Report on Natural Form and Function.

Type of site/area	Management response	Applicable provisions
<b>Outstanding natural character</b>	Preserved and protected from inappropriate use and development  Avoid adverse effects	O17  P24
<b>Natural character (other than outstanding)</b>	Preserved and protected from inappropriate use and development  Avoid significant adverse effects and avoid, remedy and mitigate other adverse effects	O17  P25
<b>Outstanding water bodies</b>	Protected  Avoid adverse effects	O31  P39
<b>Natural features and landscapes (outstanding)</b>	Protected from inappropriate use and development  Avoid adverse effects	O32  P48
<b>Natural features and landscapes</b>	Avoid significant adverse effects and avoid, remedy and mitigate other adverse effects	P48
<b>Sites with significant mana whenua values<sup>14</sup></b>	Protected and restored	O33  P44 (Schedule C only)
<b>Significant geological features in the coastal marine area</b>	Protected  Avoid significant adverse effects	O36  P50
<b>Significant surf breaks</b>	Protected from inappropriate use and development  Minimise adverse effects	O37  P51

<sup>14</sup> In my Hearing 1 evidence I presented the argument that Objective O33 encompasses sites identified in both Schedule B and C and therefore relates to Nga Taonga Nui a Kiwa.

Type of site/area	Management response	Applicable provisions
<b>Identified special amenity landscapes</b>	Maintained and enhanced	O38

65. As is apparent from the table, the management outcomes for Nga Taonga Nui a Kiwa are lower than for other sites and areas. In my opinion, if the intention is for Nga Taonga Nui a Kiwa to have the equivalent status of outstanding natural features or landscapes, then a consistent management response in the Plan should be applied.

66. In my opinion, the management regime for Nga Taonga Nui a Kiwa in the Plan does not provide protection for those sites and features, as the management response is largely non-regulatory. Where consideration of effects on Nga Taonga Nui a Kiwa is a potential consideration as part of resource consent applications, there is little policy direction on how those sites are to be managed. Certainly the policy direction to decision-makers is not as specific as it is for other types of natural features and areas.

67. While I agree with Ms Legarth that Nga Taonga Nui a Kiwa are sites of significance to mana whenua, the process for identifying them and ascribing a management response for them in the Plan has not been driven by the direction for identification and management of natural character areas, natural features and landscapes set out in the higher order policy documents such as the NZCPS and the RPS. However, the cultural values and associational aspects of Nga Taonga Nui a Kiwa would seem to align well with those sites/areas of significance.

68. With respect to Rangitāne's alternative relief to insert schedules and maps derived from existing information, I note that natural character and landscape assessments were undertaken as part of the development of the 2004 Wairarapa Coastal Strategy<sup>15</sup> in the form of a technical report<sup>16</sup>. This included identification of coastal environment areas (units) and classification of their natural character and landscape significance. The study concluded that:

- a. Of the 54 units assessed for natural character, 12 were classified as having high natural character and 35 as having moderate/high natural character.

<sup>15</sup> <http://www.gw.govt.nz/Wairarapa-Coastal-Strategy/>.

<sup>16</sup> Wairarapa Coastal Strategy Technical Report – Landscape ([http://www.gw.govt.nz/assets/Plans--Publications/Wairarapa-Coastal-Strategy/905\\_landscape\\_text\\_s1700.pdf](http://www.gw.govt.nz/assets/Plans--Publications/Wairarapa-Coastal-Strategy/905_landscape_text_s1700.pdf)).

- b. Of the 54 coastal units, 27 were identified as being significant coastal landscapes and a further 4 units were identified in part as being significant.
- c. Within the study area 10 significant landscape features have been identified. Of these, 8 are natural features.

69. I also note that significant work has been completed on the Wairarapa Landscape Study, a three step landscape identification and classification project initiated jointly by Masterton, Carterton and South Wairarapa District Councils and the Regional Council. The second stage of the project was the preparation of a landscape character description report<sup>17</sup>. The third stage of the project was to recommend outstanding natural landscapes, outstanding natural features and significant amenity landscapes. The report indicates<sup>18</sup> that stage 3 work had been commissioned by the three Wairarapa district councils at the time of writing (2010) however I understand the work has not been completed.

70. It would appear that there has been significant progress made on the identification and classification of natural character and natural landscapes and features between 2004 and 2010, and that the Regional Council could reasonably have progressed that work to inform the PNRP.

### **Recommendations**

71. That the objective be retained and that the Council undertake a comprehensive identification and assessment process to identify outstanding natural features and landscapes and insert those identified sites and areas into the Plan with associated policies and methods.

### **Objective O38: Special amenity landscapes**

*s.42A Report paras 509 – 524*

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<sup>17</sup> Boffa Miskell, 2010, *Wairarapa Landscape Study 2010: Landscape Character Description August 2010*. (<http://www.gw.govt.nz/assets/council-publications/Wairarapa%20Character%20Study%20August%202010.pdf>).

<sup>18</sup> Flow diagram on Page 9.

Submission reference	Relief sought
S279/048	<i>Provide a schedule of special amenity landscapes.</i>

72. Rangitāne’s submission in relation to O38 is that a schedule of special amenity landscapes should be included within the Plan. This was on the basis that the objective refers to *identified* special amenity landscapes, however the Plan does not identify any.

73. My analysis above of the need for the Council to undertake assessments of natural character, ONLs and ONFs and include maps and provisions in the Plan is largely relevant to special amenity landscapes. However the instructional policies in the RPS and NZCPS that relate to special amenity landscapes are not as directive as the policies relating to natural character, ONLs and ONFs. In relation to special amenity landscapes, Policy 27 of the RPS says that district and regional plans *may* identify special amenity landscapes.

74. Notwithstanding the lesser onus in the RPS, Objective O38 implies that special amenity landscapes do, or are likely to, exist. If that was not the case, then such an objective would obviously be redundant. Despite the Plan not including a list of special amenity landscapes, there is no method which says that the Council will undertake an assessment to identify such landscapes. Furthermore, Policy P49, which is the only Policy in the Plan that directly relates to special amenity landscapes, only applies to special amenity landscapes that are identified in district plans. The policy, on plain reading, would not apply to special amenity landscapes that might be identified in the PNRP.

75. I acknowledge that, as part of an integrated management approach, that special amenity landscapes may be identified in district plans and then managed through objectives, policies and methods in both district and regional plans. However it is not clear from reading the PNRP that that is the intended approach that is being adopted for the Region. It would be significantly clearer if Policy P49 (or another policy) set out the process by which special amenity landscapes are to be identified and managed. To assist in that clarity, Objective O38 could be amended to refer to special amenity landscapes identified in district plans. If the intention is that special amenity landscapes will be identified through district plans only, the relief sought by Rangitāne in terms of including a schedule in the Plan would not be necessary.

## Recommendation

Amend Objective O38 to read

### Objective O38

The landscape values of ~~Identified~~ special amenity landscapes identified in district plans values are maintained or enhanced.

## ANALYSIS OF POLICIES

### Policy P24 – Outstanding Natural Character and P25 – Natural Character

s.42A report paras 182 – 213

Submission reference	Relief sought
S279/089	<p>Amend Policy P24 as follows:</p> <p>Areas of outstanding natural character in the coastal marine area will be preserved <u>and protected</u> by:</p> <p>(a) ...</p> <p><u>(b) where adverse effects cannot be avoided as described in (a), by not allowing activities that may cause adverse effects on areas of outstanding natural character</u></p> <p>(c) requiring <u>any</u> use and development to be of a type, scale and intensity that will <del>maintain</del><u>protect</u> the natural character values of the area, and</p> <p><del>(e) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and</del></p> <p><u>(d) maintaining the high levels of naturalness of these areas, and</u></p> <p>(e) avoiding the adverse effects of activities, including those located outside the <u>coastal marine area</u>, that individually or cumulatively detract from the natural character values of the outstanding natural character area.</p> <p>Add a new Schedule for areas of outstanding natural character including Wairarapa Moana.</p>
S279/090	<p>Amend Policy P25 as:</p>

	<p><i>Use and development <del>shall</del> <u>must be managed to</u> avoid significant adverse effects on natural character ...</i></p> <p><i><del>(d) whether it is practicable to protect natural character from inappropriate use and development through:</del></i></p> <p><i><del>(i) using an alternative location, or form of development that would be more appropriate to that location, and</del></i></p> <p><i><del>(ii) the extent to which functional need or existing use limits location and development options.</del></i></p> <p><i>In addition, map areas of high natural character in the coastal environment.</i></p>
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76. Rangitāne sought amendments to both P24 and P25. These amendments were sought to better align the policies with the NZCPS and s6 of the RMA.

77. I agree in part with the relief sought in the Rangitāne submission, but consider that more refined amendments are necessary to achieve the relief. In general, Policy P24 is consistent with the direction in the NZCPS and the RPS, however clauses (b) (c) and (d) are, in my view, matters that assist decision-makers in determining whether an activity is likely to be appropriate. The core outcome of the policy – to avoid adverse effects on areas of outstanding natural character – is clearly set out in clause (a) and (d). The subsequent clauses therefore provide assistance in determining whether (a) and (d) are achieved. Given that the direction in Objective O17, Policy 3 of the RPS, Policy 13 of the NZCPS and s6(a) of the Act is to protect natural character from inappropriate use and development, Policy P24 could usefully provide guidance in what constitutes ‘inappropriate’.

78. Ms Legarth does not consider that the amendments are necessary to Policy P24. In particular her recommendation is that removal or modification to clauses (c) and (d) is unnecessary because *they provide additional detail that will assist decision makers in managing the effects of activities*<sup>19</sup>. I agree with Ms Legarth’s observation that the provisions will assist decision-makers, however they could, in my opinion, be modified to improve clarity as to how they are to be applied in that purpose.

79. I have read Ms Legarth’s analysis and recommendations in relation to Policy P25 and generally agree with her recommended amendments to the policy. The changes

<sup>19</sup> Para 194 S42A Report on Natural Form and Function.

address the underlying concerns apparent in the Rangitāne submission. Ms Legarth hasn't accepted the requested amendment to the first line of Policy P25, which was to replace *shall* with *must be managed to*. In my opinion, the requested amendment is appropriate because the policy, as currently worded, presumes that use and development *will* occur. The purpose of the policy is to assist decision-makers in determining whether or not use and development is appropriate in a particular circumstance. The amended wording proposed by Rangitāne would remove the presumption but retain the directive nature of the policy.

### **Recommendations**

80. Amend Policies 24 and 25 as follows:

#### **Policy P24: Outstanding natural character**

Areas of outstanding natural character in the coastal marine area will be preserved and protected from inappropriate use and development by:

- (a) avoiding adverse effects of activities on natural character in areas of the coastal marine area with outstanding natural character, and
- (b) avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from adversely affect the natural character values of the outstanding natural character area, and
- (c) when determining the appropriateness of use and development, having regard to whether:
  - (i) requiring the use and development ~~to be~~ is of a type, scale and intensity that will maintain the natural character values of the area, and
  - (ii) requiring built elements ~~to will~~ be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and
  - (iii) maintaining the high levels of naturalness of these areas will be maintained, ~~and~~
- ~~(d) — avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.~~

**Policy P25: Natural character**

Use and development shall be managed to avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine area) and ~~in the beds~~ of natural wetlands, lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities, taking into account:

- (a) the extent of human-made changes to landforms, vegetation, biophysical elements, **natural processes** and patterns, and the movement of water, and
- (b) the presence or absence of structures and buildings, and
- (c) the particular elements, features and experiential values that contribute significantly to the natural character value of the area, and the extent to which they are affected, and
- ~~(d) whether it is practicable to protect natural character from inappropriate use and development through:
  - ~~(i) using an alternative location, or form of development that would be more appropriate to that location, and~~
  - ~~(ii) considering the extent to which functional need or existing use limits location and development options.~~~~
- (d) alternative locations, design or form of development that have less adverse effects, and
- (e) the extent to which the activity has a functional need to be located in the coastal marine area that limits location and development options, and
- (f) the ecosystems, natural flow characteristics and hydrodynamic processes, and the natural pattern and range of water level fluctuations in natural wetlands, rivers and lake and their margins.

**Policies P26 Natural Processes**

s.42A report paras 309 – 343

Submission reference	Relief sought
S279/091	<i>Use and development will be managed to <del>minimise</del> avoid, remedy or mitigate adverse effects on the integrity and functioning of natural processes.</i>

81. Rangitāne's submission requested that P26 be amended to strengthen the policy and ensure that it closely aligns with the purpose of the RMA under s5 which seeks to avoid, remedy or mitigate adverse effects on the environment.
82. As discussed in my Hearing 1 evidence, it is my opinion that use of the term *minimise* is inappropriate in a policy, particularly where the interpretation of the term is unclear. My understanding is that the intention of the Council was that reference would be made to Policy P4, however I have set out previously my reservations with the effectiveness and applicability of that policy to different circumstances. In the case of Policy P26, its implementation influences outcomes of other policies; most obviously policies P24, P25 (that relate to natural character), but also other policies that relate to the management of resources such as mauri (P17), aquatic ecosystem health and mahinga kai (P31 and P32), wetlands (P37), outstanding water bodies (P39), sites with significant mana whenua values (P44 and P45). Natural processes contribute to the values and outcomes addressed by those other policies.
83. I do not agree with Ms Legarth that retaining the cross-reference to Policy P4 is appropriate. Nor do I agree with Ms Legarth's alternative approach, which is to draw from Policy P4 the potentially applicable clauses and insert them into Policy P26. Simply adding the P4 clauses to the policy constrain the application of P26 in the same way as would be the case if the term *minimise* was retained. In the examples of related policies that P26 interacts with, constraining the scope of the policy undermines the policy's effectiveness. For example, where the policy is applied in the context of an area of outstanding natural character where Policy P24 directs the avoidance of adverse effects. If the Policy P4 'minimise' approach is applied, the outcome is not to avoid adverse effects, but to reduce them so that their scale or footprint is as small as practicable. That sets up a situation of 'mixed messages' in the policies.
84. Policy P26 should be interpreted to require adverse effects on natural processes that form part of that outstanding natural character to also be avoided. In my opinion, replacing the term *minimise* with *avoid, remedy or mitigate* retains the wide scope of the policy necessary to allow the policy to be applied appropriately in conjunction with related policies; it enables the appropriate of the three response options to be selected depending on the circumstances.
85. Looking more broadly at Policy P26, it provides little actual benefit to decision-makers in terms of implementing the objectives of the Plan, particularly given it is essentially a

repetition of Objective O19 as notified. While there is limited scope in the Rangitāne submission on this specific provision, there would be benefit in amending Policy P26 to be more instructional to decision-makers to guide them in how to achieve the objectives of the Plan.

**Recommendation**

86. That Policy P26 is amended by replacing ‘minimise’ with ‘avoid, remedy or mitigate’.

**Policy P26: Natural processes**

Use and development will be managed to ~~minimise~~ avoid, remedy or mitigate adverse effects on the integrity and functioning of natural processes.

**Policy P48 – Protection of outstanding natural features and landscapes and Policy P49 – Use and Development adjacent to outstanding natural features and landscapes and special amenity areas**

*s.42A report paras 367 - 387*

Submission reference	Relief sought
<i>S279/109</i>	<i>Undertake an assessment to identify the outstanding natural features and landscapes in the Region and include them in the Proposed Plan, along with appropriate policies, rules and other methods.</i>
<i>FS74/315 on s75/078 Minister of Conservation</i>	<i>Disallow</i>
<i>S279/110</i>	<i>The Council undertake an assessment and identification of sites considered to be outstanding natural features and landscapes (including the areas within the coastal environment near existing mapped ONF and ONL where activities may affect those landscapes and features) and to develop a suite of objectives and policies to appropriately manage activities in these areas.</i>

87. In relation to Policy P48, Rangitāne seeks that the Council undertake an assessment to identify the outstanding natural features and landscapes in the Region and include them in the Plan along with appropriate policies, rules and other methods.

88. The relief sought by Rangitāne in relation to P49 is that the Council undertake assessment and identification of site considered to be outstanding natural features and landscapes (including areas within the coastal environment near existing mapped ONF and ONL where activities may affect those landscapes and features) and to develop a suite of objectives and policies to appropriately manage activities in these areas.

89. Rangitāne supported in part the submission of the Minister of Conservation in S75/078 in relation to P48. The Minister's submission sought an amendment to the policy to the characteristics and qualities of the landscapes and features. Rangitāne agreed with this approach but recommended that reference should be "the characteristics and qualities that contribute to the landscapes or features being outstanding". The reference to 'values' was considered to be confusing.

### **Policy P48**

90. As discussed previously in my evidence, it is my opinion that an assessment and identification of natural features and landscapes, and inclusion of them in the Plan, is necessary for the Plan to give effect to the NZCPS and the RPS. I will not repeat that analysis here.

91. In relation to the Minister of Conservation's requested amendments, I agree with the relief sought by the Minister along with the minor refinement proposed in the Rangitāne submissions. Ms Legarth does not analyse the requested changes in any detail but concludes that no changes should be made to Policy P48 while identification of outstanding natural features is still being undertaken<sup>20</sup>.

92. Ms Legarth's response to the relief sought is not consistent with the stated intention that management of outstanding natural features and landscapes will be managed on a case-by-case basis (through resource consent decisions) despite such sites not being identified in the Plan. Whether or not the sites have been identified in the Plan at this time, the policy needs to be drafted in order to be effective in achieving the objective whenever it is applied.

93. Referring to the characteristics and qualities that contribute to the outstanding natural landscapes/features being outstanding ensures the policy targets the environmental aspects that are subject to effects from use and development proposals. The values associated with the landscapes and features are associated with their respective

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<sup>20</sup> Para 383 S42A Report on Natural Form and Function.

characteristics and qualities of those landscapes/features. Reference to values is appropriate at an objectives level, whereas the policies that implement the objectives should focus on the contributing components (i.e. the characteristics and qualities).

### **Policy P49**

94. Ms Legarth helpfully explains the intended different purposes of Policies P48 and P49. She explains that for Policy P49 *the intention is for district plan to address outstanding natural features and landscapes and special amenity areas that are located above MHWS; and for the regional plan to address outstanding natural features and landscapes located in the CMA*<sup>21</sup>. In the case of Policy P49, I agree with Ms Legarth's recommendation that a further assessment and mapping exercise is not required. It would be useful to have areas within a sensitive proximity of identified areas and sites to be mapped, however because the extent of mapped areas is readily determined from maps, a reasonable filtering exercise can be applied to applications that are proposed near those sites – activities that have small effects or that are a long way distant from identified sites/areas would need a lower degree of effects assessment than activities occurring closer to the identified areas/sites.
95. The Rangitāne submission raises the issue that Policy P49 applies only to the CMA. My understanding of the reason for the limited geographic scope of the policy from Ms Legarth's s42A report is that the management of activities within the CMA is within the Regional Council's jurisdiction, whereas management of effects on land is within the jurisdiction of district councils. On that basis, I consider that Policy P49 should be broadened out to cover activities within wetlands, lakes, rivers and their margins, as these are also areas that are within the Regional Council's jurisdiction.
96. Policy P48 applies to natural features and landscapes of the coastal marine area, rivers, lakes and their margins and natural wetlands, and has effect over adjacent activities that might affect the identified sites/areas. However there is no inverse management for activities within rivers, lakes and wetlands that are within or adjacent to land-based sites/areas identified in district plans (e.g an ONF landform identified in a district plan that includes or is bounded by waterbodies). There is also potential for the management of water takes to adversely affect land-based sites/areas, for example where lowering groundwater levels affects an area of indigenous vegetation that contributes to an outstanding natural landscape. Similarly, an activity such as damming water could have adverse effects as a result of inundating sites or areas within an ONL or ONF.

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<sup>21</sup> Para 409 S42A Report on Natural Form and Function.

97. Rangitāne’s submission also sought that Policy P49 include scope to address effects on cultural and associational values. At present, the scope of the policy would only extend to such matters where they fell within the classification of *adverse cumulative effects*. While it is arguable that this would capture direct effects as well, in my opinion the policy would be clearer if it referred to all types of adverse effects (direct and cumulative, potential and actual). If this amendment was made, clause (b) would apply to all values, including cultural and associational values.

### **Recommendation**

98. Amend clauses Policy P48 to:

#### **Policy P48: Protection of outstanding natural features and landscapes**

The natural features and landscapes (including seascapes) of the coastal marine area, rivers, lakes and their margins and **natural wetlands** shall be protected from inappropriate use and development by:

(a) avoiding adverse effects of activities on the characteristics and qualities of outstanding natural features and landscapes that contribute to the ~~of outstanding~~ natural features and landscapes being outstanding, and

(b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on the characteristics and qualities of other natural features and landscapes.

99. Amend Policy P49 to:

#### **Policy P49: Use and development adjacent to outstanding natural features and landscapes and special amenity landscapes**

Use and development in the coastal marine area, natural wetlands, and rivers, lakes and their margins on sites adjacent to an outstanding natural feature or landscape or special amenity landscape identified in a district plan shall be managed by:

(a) protecting visual and biophysical linkages between the site and the outstanding natural feature or landscape, and

(b) avoiding adverse effects, including cumulative effects, on the **values**

characteristics and qualities of an outstanding natural feature or landscape.

### **Policy P50 – Significant geological features**

s.42A report Paras 443 – 456

Submission reference	Relief sought
S279/111	<i>Amend the policy to direct the avoidance of all adverse effects on significant geological features rather than just significant adverse effects.</i>

100. The relief sought by Rangitāne in relation to P50 is that the policy be amended to direct the avoidance of all adverse effects on significant geological features rather than just those adverse effects considered significant.

101. Ms Legarth’s recommendation in relation to Objective O36 (which requires significant geological features in the coastal environment to be protected) is that the requirement for protection should not be fettered by a consideration of the appropriateness of development<sup>22</sup>. Her recommendation in relation to amending Policy P50 to refer to only significant adverse effects appears at odds with her earlier recommendation. The significant geological features are a subset of outstanding natural features and landscapes, and the natural character of the CMA<sup>23</sup>. On that basis, applying the same level of effects management applied in policies related to those features would be consistent. Policy P24 (outstanding natural character) requires all adverse effects to be avoided. Policy P48 (outstanding natural features and landscapes) requires all adverse effects to be avoided. In my opinion, it is consistent for Policy P50 to align with those other policies and also avoid adverse effects.

### **Recommendation**

102. Amend Policy P50 in the following way:

#### **Policy P50: Significant geological features**

The significant adverse effects of use and development on the significant geological features identified in Schedule J (geological features) shall be avoided.

<sup>22</sup> Para 437 – 439 S42A Report on Natural Form and Function.

<sup>23</sup> Para 436 of S42A Report on Natural Form and Function.

## ANALYSIS OF METHODS

### ***M24 – Outstanding natural features and landscapes and high natural character***

[s.42A report Topic: paras 527 – 533]

Submission reference	Relief sought
<i>FS74/090 on s352/252 Federated Farmers</i>	<i>Disallow</i>

103. Rangitāne opposed the relief sought by Federated Farmers (S352/252) in relation to M24, which sought to delete the requirement to identify areas with outstanding/high natural character in the coastal environment but supported in part that consultation on outstanding natural features and landscapes is undertaken with the community as a whole including Rangitāne.

104. As discussed previously in my evidence, it is my opinion that the Council should undertake the necessary work set out in Method 24 as soon as possible and introduce it into the current Schedule 1 process. That approach is necessary for the Plan to give effect to the NZCPS and the RPS. In my opinion, putting in place a method that may or may not be implemented is not a surrogate for giving effect to the directive policies of the higher order documents. As a case in point, the method as notified was to be implemented by this year, however it appears unlikely that that timeframe will be achieved.

105. In my opinion, the Method will become redundant should the Council address the deficiency in the Plan as notified. However I do not recommend that it is deleted until such time as an alternative resolution is in place.

### ***Recommendation***

106. Retain the method as notified.

## Schedules and Maps

### ***New schedules and maps – Outstanding Natural Features and Landscapes and Outstanding and High Natural Character***

*s.42A report Paras 180 – 212, 457 – 470 and 525 - 533*

Submission reference	Relief sought
S279/226	<i>Add a new schedule for Outstanding Natural Features and Outstanding Natural landscapes. These should be identified and included in a new schedule, with associated maps. As a minimum, Wairarapa Moana should be identified.</i>
S279/225	<i>Add a new schedule of areas of outstanding and high natural character. Include objectives, policies, rules and other methods that ensure that the natural character of the areas within the schedule is preserved and protected from inappropriate use and development. Wairarapa Moana should be identified as an area of outstanding natural character and included in the Schedule.</i>
S279/004	<i>Add provisions including maps identifying areas of high and outstanding natural landscapes and features</i>
S279/003	<i>Add provisions including maps identifying areas of high and outstanding natural character</i>
FS74/090 on S352/252 from Federated Farmers	

107. Currently the Plan does not identify outstanding natural features and landscapes or areas considered to have outstanding or high natural character. Rangitāne submitted that these areas should be identified and included in the Plan as schedules and with accompanying maps. As a minimum Rangitāne have submitted that Wairarapa Moana should be identified.

108. As discussed previously, the obligation to undertake the assessment and identification of these areas falls to the Council. The Rangitāne submission requested that the Council undertake the necessary work. In my opinion, that is an exercise that needs to occur as part of the current PNRP process in order for the Plan to give effect to the NZCPS, the RPs and to meet the Council's obligations in terms of s6 of the Act. I

consider that it is a matter for the Council to provide advice to the Hearing Panel on in terms of how the issue will be addressed effectively and efficiently.

**Recommendation**

109. That the Council provide advice to the Hearing Panel on an appropriate process and timeframe by which the necessary work will be undertaken.

A handwritten signature in black ink, appearing to read 'P. Percy', written in a cursive style.

Phillip Percy

## **APPENDIX 1 – SUBMISSION POINT SUMMARY**



## Appendix 1

### Hearing Stream 3 Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa: Natural Form and Function

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
FS74/107 on s308/008 Fish and Game	Entire Plan	Support	Allow	Accept in part	Paragraphs 18 – 45  <b>Recommendation</b>  <i>Undertake an assessment of natural character, natural features and natural landscapes and introduce maps and associated provisions.</i>
FS74/106 on s308/007 Fish and Game	2.1.6 Definitions, schedules and maps	Support	Allow	Reject  <i>s.42A Report Topic: Natural Form and Function Paras 113 – 117</i>	Paragraphs 46 – 52.  <b>Recommendation</b>  Amend the Plan by adding a definition of natural character that is consistent with the relief sought by Fish and Game.
FS74/003 on s300/009 Kahungunu ki Wairarapa	3.4 Natural character, form and function	Support	Allow	Reject	Paragraphs 18 – 35  <b>Recommendation</b>  <i>Undertake an assessment of natural character, natural features and natural landscapes and introduce maps and associated provisions.</i>
FS74/207 on s78/003 South Wairarapa Biodiversity Group Incorporated	3.4 Natural character, form and function	Support	Allow	Accept in part	Paragraphs 18 – 35  <b>Recommendation</b>  <i>Undertake an assessment of natural character, natural features and natural landscapes and introduce maps and associated provisions.</i>
S279/028	Objective O17: Natural character	Support	Retain the objective and undertake a full natural character assessment of the Region's coastal environment to ensure the appropriate natural character values of the	Accept  <i>s.42A Report Topic: Paras 118 – 179</i>	Paragraphs 53-58  Delete Objective O19 and amend Objective O17 as recommended by Ms Cooper to read:

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
			coastal environment are preserved and protected. Strengthen objective to give effect to higher order policy documents		<b>Objective O17</b> The natural character of the coastal marine area, <u>natural wetlands, and</u> rivers, lakes and their margins <del>and natural wetlands</del> is preserved and protected from inappropriate use and development, <u>and restored and rehabilitated where it is degraded.</u>
FS74/034 on s352/068 Federated Farmers	Objective O17: Natural character	Oppose	Disallow	Reject <i>s.42A Report Topic: Paras 118 – 179]</i>	Paragraphs 53 – 58. Relief as above.
FS74/184 on s75/018 Minister of Conservation	Objective O17: Natural character	Support	Allow	Accept <i>s.42A Report Topic: Paras 118 – 179]</i>	Paragraphs 53 – 58. Relief as above.
S279/030	Objective O19: Natural processes	Amend	Amend the objective to ensure: The natural processes referred to in the objective are clearly identified; and That it is adverse effects from use and development not interference that needs to be managed. Or Objective O19 should be deleted in its entirety (the outcome is achieved by O17	Accept in part <i>s.42A Report Topic: Paras 118 – 179]</i>	Paragraphs 53 – 58. Relief as above.
FS74/152 on s308/147 Fish and Game	3.7 Sites with significant values				To be addressed in Hearing 5
S279/043	Objective O32: Outstanding natural features and landscapes	Amend	That the objective be retained, but that a thorough assessment of the outstanding natural features and landscapes of the Wellington Region be undertaken with particular consideration given to those natural features and landscapes with value to tangata whenua. Alternatively, significant natural features and landscapes	Reject <i>s.42A Report Topic: Paras 348 - 372</i>	Paragraphs 62 – 72 <b>Recommendations</b> That the objective be retained and that the Council undertake a comprehensive identification and assessment process to identify outstanding natural features and landscapes and insert those identified sites and areas into the Plan with associated policies and methods.

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
			and areas of at least high natural character in the coastal environment should be derived from the existing studies and provided with sufficient interim protection		
S279/047	Objective O36: Significant geological features	Support	Retain as notified	Accept <i>s.42A Report Topic: Paras 423 - 442</i>	Paragraphs 102 – 103.
S279/048	Objective O38: Special amenity landscapes	Amend	Provide a schedule of special amenity landscapes.	Reject <i>s.42A Report Topic: paras 509 - 524</i>	Paragraphs 73 – 76 <b>Recommendation</b> Amend Objective O38 to read <u>The landscape values of special amenity landscapes identified in district plans shall be maintained or enhanced.</u>
S279/089	Policy P24: Outstanding natural character	Amend	Amend Policy P24 as follows: Areas of outstanding natural character in the coastal marine area will be preserved and protected by:(a) ...(b) where adverse effects cannot be avoided as described in (a), by not allowing activities that may cause adverse effects on areas of outstanding natural character (c) requiring any use and development to be of a type, scale and intensity that will maintain protect the natural character values of the area, and (c) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and d) maintaining the high levels of naturalness of these areas, and (e) avoiding the adverse effects of activities, including those located outside the <u>coastal marine area, that individually or cumulatively detract from the natural character values of the outstanding	Reject <i>s.42A report Topic: paras 182 – 213</i>	Paragraphs 77 – 81 Recommendations: Amend Policies 24 and 25 as follows: Policy P24: Outstanding natural character Areas of outstanding natural character in the coastal marine area will be preserved <u>and protected from inappropriate use and development</u> by: (a) avoiding adverse effects of activities on natural character in areas of the coastal marine area with outstanding natural character, and (b) <u>avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from adversely affect the natural character values of the outstanding natural character area, and</u> (c) <u>when determining the appropriateness of use and development, having regard to</u>

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
			natural character area. Add a new Schedule for areas of outstanding natural character including Wairarapa Moana.		<p><u>whether:</u></p> <p>(i) <del>requiring the</del> use and development <del>to be is</del> of a type, scale and intensity that will maintain the natural character values of the area, and</p> <p>(ii) <del>requiring</del> built elements <del>to will</del> be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and</p> <p>(iii) <del>maintaining</del> the high levels of naturalness of these areas <u>will be maintained</u>, <del>and</del></p> <p><del>(d) avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.</del></p> <p>Policy P25: Natural character Use and development shall <u>be managed to</u> avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine area) and <del>in the beds</del> of <u>natural wetlands</u>, lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities, taking into account:</p> <p>(a) the extent of human-made changes to landforms, vegetation, biophysical elements, <b>natural processes</b> and patterns, and the movement of water, and</p> <p>(b) the presence or absence of structures and buildings, and</p> <p>(c) the particular elements, features and experiential values that contribute significantly to the natural character value of the area, and the extent to which they are affected, and</p> <p><del>(d) whether it is practicable to protect natural character from inappropriate use and development through:</del></p> <p><del>(i) using an alternative location, or form of development that would be more appropriate to that location, and</del></p> <p><del>(ii) considering the extent to which functional need or existing use limits location and</del></p>

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
					<p><del>development options.</del></p> <p><u>(d) alternative locations, design or form of development that have less adverse effects, and</u>  <u>(e) the extent to which the activity has a functional need to be located in the coastal marine area that limits location and development options, and</u>  <u>(f) the ecosystems, natural flow characteristics and hydrodynamic processes, and the natural pattern and range of water level fluctuations in natural wetlands, rivers and lake and their margins.</u></p>
S279/090	Policy P25: Natural character	Amend	Amend policy as: Use and development must be managed to avoid significant adverse effects on natural character whether it is practicable to protect natural character from inappropriate use and development through using an alternative location, or form of development that would be more appropriate to that location, and considering the extent to which functional need or existing use limits location and development options In addition, map areas of high natural character in the coastal environment.	Reject  s.42A report Topic: paras 182 – 213	As above
S279/091	Policy P26: Natural processes	Amend	Use and development will be managed to avoid, remedy or mitigate adverse effects on the integrity and functioning of natural processes.	Reject  s.42A report Topic: paras 309 – 343	<p>Paragraphs 82 – 87</p> <p><b>Recommendation</b></p> <p>That Policy P26 is amended by replacing ‘minimise’ with ‘avoid, remedy or mitigate’.</p> <p><b>Policy P26: Natural processes</b></p> <p>Use and development will be managed to <del>minimise-avoid, remedy or mitigate adverse</del> effects on the integrity and functioning of natural processes.</p>
S279/109	Policy P48: Protection of outstanding natural	Amend	Undertake an assessment to identify the outstanding natural features and landscapes in the Region and include them in the Proposed Plan, along with appropriate	Accept in part  s.42A report Topic: Natural form and function Paras	<p>Paragraphs 88 – 90</p> <p>Amend clauses (a) and (b) of Policy P48 to:</p>

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
	features and landscapes		policies, rules and other methods.	367 - 387	<p>(a) avoiding adverse effects of activities on <u>the characteristics and qualities of outstanding natural features and landscapes that contribute to the <del>of outstanding</del></u> natural features and landscapes <u>being outstanding</u>, and</p> <p>(b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on <u>the characteristics and qualities</u> of other natural features and landscapes.</p> <p>Amend Policy P49 to:</p> <p>a. apply also to beds of lakes, rivers, natural wetlands, and their margins, the take, use, damming or diversion of water, and the discharge of contaminants.</p> <p>b. Amend clause (b) to refer to <u>adverse effects, including cumulative effects</u>, [...]</p>
FS74/315 on s75/078 Minister of Conservation	Policy P48: Protection of outstanding natural features and landscapes	Support in part	Disallow	Reject  s.42A report Topic: Natural form and function Paras 367 - 387	As above
S279/110	Policy P49: Use and development adjacent to outstanding natural features and landscapes and special amenity landscapes	Amend	The Council undertake an assessment and identification of sites considered to be outstanding natural features and landscapes (including the areas within the coastal environment near existing mapped ONF and ONL where activities may affect those landscapes and features) and to develop a suite of objectives and policies to appropriately manage activities in these areas.	Accept in part  s.42A report Topic: Natural form and function Paras 367 - 387	As above
S279/111	Policy P50: Significant	Amend	Amend the policy to direct the avoidance of all adverse effects on significant geological	Reject	Paragraphs 101 – 103

Submission Ref.	Provision	Submission is that:	Relief Sought	Recommendation of Reporting Officer	Reference to Relief Sought in Evidence
	geological features		features rather than just significant adverse effects.	<i>s.42A report Topic: Paras 443 – 456</i>	<p><b>Recommendation</b></p> <p>Amend Policy P50 in the following way:</p> <p><b>Policy P50: Significant geological features</b></p> <p>The <del>significant</del> adverse effects of use and development on the significant geological features identified in Schedule J (geological features) shall be avoided.</p>