

Proposed Natural Resources Plan for the Wellington Region

**Supplementary Right of Reply
For Hearing Stream 6**

Report date: 7 August 2018

Topic: Management of the coastal marine area

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Contents

1.	Introduction and scope	2
2.	Joint conference with Mr le Marquand	2
3.	Provide amended Maps 30, 49, 50, and 51	3
3.1	Map 30 – Hutt Valley Aquifer Zone in Wellington Harbour (Port Nicolson)	3
3.2	Map 49 – Navigation Protection Areas in Wellington Harbour (Port Nicolson)	3
3.3	Map 50 – Wellington International Airport height restrictions	4
3.4	Map 51- Kapiti Coast Airport approach gradients	4
4.	What policy applies to existing seawalls?	4
5.	Does the proposed Plan require a definition of a seawall?	6
6.	Regionally significant infrastructure and renewable energy generation facilities	7
7.	An amended definition for property	10
	Appendix A: – Section 32AA Assessment	13
	Attachment A: Map 30.....	16
	Attachment B: Map 49.....	18
	Attachment C: Map 50.....	20
	Attachment D: Map 51.....	22

1. Introduction and scope

1. The Hearing Panel requested additional information during the Right of Reply hearing on 1 August 2018 for Management of the coastal marine area (CMA). That being:

- a) Joint Conference with Mr le Marquand over the rule structure for the management of the CMA rules.
- b) Provide amended Maps 30, 49, 50, and 51
- c) What policy applies to existing seawalls?
- d) Does the proposed Plan require a definition of a seawall?
- e) Why do policies refer to regionally significance infrastructure (RSI) and the renewable electricity generation (REG) yet the rules only refer to RSI?
- f) An amended definition for property.

2. At the time of writing this supplementary right of reply, the following matters remain outstanding:

- The Joint Conference with Mr le Marquand
- Confirmation from the Wellington Harbour Master and the Chief Pilot for Centreport on Map 49
- Confirmation from the Kapiti Coast Airport on Map 51.

2. Joint conference with Mr le Marquand

3. I refer to the Hearing Panel Minute # 54.

4. I will contact Mr le Marquand from the week beginning 19th August for a time to conference over the structure of the rules in the management of the coastal marine area and the rules for heritage structures in the coastal marine area.

5. A joint witness statement will be drawn between the parties before the Minute due date of 31 August 2018.

3. Provide amended Maps 30, 49, 50, and 51

3.1 Map 30 – Hutt Valley Aquifer Zone in Wellington Harbour (Port Nicolson)

6. I refer to my Right of Reply for the management of the coastal marine area page 25 for Map 30 and the Hutt Valley Aquifer Zone.
7. My recommendation to the Panel is to exclude the commercial port area and the Lambton Harbour Area and the Lambton Harbour Area (Northern Zone) from the Hutt Valley Aquifer Zone from the evidence of Dr Kneebone¹.
8. Greater Wellington senior groundwater scientist Dr Mzila agrees with the evidence of Dr Kneebone for this exclusion of the Hutt Valley Aquifer from the commercial port area and the Lambton Harbour Area and the Lambton Harbour Area (Northern Zone).
9. The amended Map 30 is in Attachment A.

3.2 Map 49 – Navigation Protection Areas in Wellington Harbour (Port Nicolson)

10. I refer to my Right of Reply for the management of the coastal marine area page 19 for Map 49 and the navigation protection areas.
11. My recommendation to the Panel was for further to consultation with the Wellington Harbour Master and the Chief Pilot Centreport over the Panel's question about the lines on Map 49.
12. The reason for the navigation protection area lines not connected to the commercial port Area in Map 49 was that the berthing manoeuvres of shipping cannot be exactly determined.
13. The result of this consultation is an agreement to amend Map 49.
14. The final amended map was not available at the time of writing this report and will be provided on 31 August 2018, at the same time at the JWS under section 2 of this report.

¹ Evidence of Dr Kneebone, Hearing Stream 6

3.3 Map 50 – Wellington International Airport height restrictions

15. I refer to my s42A report management of the coastal marine area page 112.
16. My recommendation to the Panel is to amend Map 50 and add the correct height gradients that are currently missing from the notified version of the map.
17. I have consulted with the Wellington International Airport over this matter.
18. The height gradients have not changed from the operative Regional Coastal Plan, Planning Map 7, and it appears the height gradients were inadvertently left off Map 50.
19. The height gradients have been reinstalled and are in amended Map 50 in Attachment 2.

3.4 Map 51- Kapiti Coast Airport approach gradients

20. I refer to my s42A report management of the coastal marine area page 112.
21. My recommendation to the Panel is to amend Map 51 and correct the runway approaches. Also, I recommended that Kapiti be referred to as Kāpiti in Map 51. The reference to Kāpiti is not correct and this word should refer to the notified version of the map title.
22. I have consulted with the Kapiti Coast Airport and their agents over this matter.
23. A corrected Map 51 has been produced and at the time of writing awaiting confirmation from the Kapiti Coast Airport.
24. I will provide confirmation or alternatively an updated map on 31August 2018, at the same time as the JWS under section 2 of this report.
25. The amendment Map 51 (unconfirmed) is in Attachment 3.

4. What policy applies to existing seawalls?

26. I refer to my Right of Reply report for the management of the coastal marine area, page 34.

27. In my report I state that the amended version of Policy P28 from Mr Sheild's evidence provided for existing seawalls.
28. During the Right of Reply hearing, the 'red-line' version erroneously has the word 'existing' crossed out, when in Mr Sheild's version, this word is not crossed out.
29. Therefore, taking the corrected version of the amended policy P28, I consider the policy manages existing seawalls in the coastal marine area.
30. I noted to the Panel that Policy P132(c) would also suffice to manage existing seawalls. The Panel considered that a plan user might find this difficult to understand, that this would be the correct policy to use.
31. The section 32 report for the management of the coastal marine area, Section 6.5 Seawalls, page 26 notes that Policies P27, P28, P26 and P139 are all applicable to the management of seawalls. The section 32 report refers to Policy P26 for natural processes, however, after the amendments made during Hearing 6, Policy P28 is the correct policy to use for the management of existing seawalls.
32. The Panel questioned if existing seawalls require an occupancy consent if they are located in the coastal marine area.
33. Policy P139 manages new seawalls in the coastal marine area. Rules R165, R166, and R167 all provide for the use and occupation of space for a seawall.
34. The Resource Management Act 1991 does not provide for existing use rights in the coastal marine area.
35. Existing structures in the coastal marine area are permitted by Rule 11 in the operative Regional Coastal Plan provided the condition is met.
36. For all existing structures including existing seawalls, occupation is provided through Rule R149(a) in the proposed Plan, which provides for the occupation of all structures in the common marine and coastal area. The policy framework

for existing structures in the CMA is Policy P132(c), which gives effect to the NZCPS Policy 6, 26, 27 for the management of structures in the CMA.

37. Any new, additions or alterations, or replacement of a seawall, occupation is specifically provided for through the seawall (R165, R166, and R167) rule framework.

5. Does the proposed Plan require a definition of a seawall?

38. I refer to my Right of Reply report for the management of the coastal marine area, page 33.

39. In my report I state that there is no need for a new definition of seawall. The evidence of Ms Cooper on behalf of the Minister of Conservation agreed with my s42A assessment that the notified version of ‘hard engineering’ was effective and efficient for the management of seawalls.

40. The Panel however did not agree that the use of the term ‘hard engineering’ was clear to plan users for the policies and rules that control seawalls.

41. The Panel has subsequently requested that I examine whether a new definition is required or that hard engineering replaces seawall.

42. After consulting with Council Officers on this question and investigating the submissions on the definition of seawall², I have concluded that a new definition for seawall would clear provide greater effectiveness and efficiency for the management of seawalls.

43. The proposed new definition of seawalls is as follows:

<u>Seawall</u>	<u>A hard inflexible edge between the land-water interface along river mouths, shorelines, or lake edges made up of structural materials including concrete, steel, timber or rock. A seawall includes rock revetment, groyne or bulkhead.</u>
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44. This new definition of seawall is assessed in the s32AA in Appendix A.

² s42A report management of the CMA, Issue 8.1, page 152

6. Regionally significant infrastructure and renewable energy generation facilities

45. The Panel questioned why in the policies such as Policy P138 there is a reference to RSI while in Section 4.2, Beneficial use and development policies there is a reference to both RSI and the REG. A similar situation occurs with the rules, in Rule R197(d) references maintenance, upgrade and operation of RSI but does not provide for the maintenance or operation of REG. The Panel also questioned whether the NPS-REG was being given appropriate effect by the proposed Plan.

46. The NPS-REG defines the following terms:

***Renewable electricity generation** means generation of electricity from solar, wind, hydro-electricity, geothermal, biomass, tidal, wave, or ocean current energy sources.*

***Renewable electricity generation activities** means the construction, operation and maintenance of structures associated with renewable electricity generation. This includes small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity.*

***Small and community-scale distributed electricity generation** means renewable electricity generation for the purpose of using electricity on a particular site, or supplying an immediate community, or connecting into the distribution network.*

47. The NPS-REG objective is to recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities.

48. Policy 7 of the RPS requires district and regional plans to include policies and/or methods that recognise the benefits of regionally significant infrastructure and energy generated from renewable energy resources. Policy 11 of the RPS requires district plans to include policies and/or rules and other methods to promote energy efficient design and small scale renewable energy generation.

49. The proposed Plan defines the following terms:

<p>Regionally significant infrastructure*</p>	<p>Regionally significant infrastructure includes:</p> <ul style="list-style-type: none"> • pipelines for the distribution or transmission of natural or manufactured gas or petroleum • strategic facilities to the telecommunication network, as defined in section 5 of the Telecommunications Act 2001 • strategic facilities to the radio communications network, as defined in section 2(1) of the Radio Communications Act 1989 • the national electricity grid • facilities for the generation and transmission of electricity where it is supplied to the electricity distribution network, including the national grid • the local authority water supply network and water treatments plants • the local authority wastewater and stormwater networks, systems and wastewater treatment plants • the Strategic Transport Network • Wellington City bus terminal and Wellington Railway Station terminus • Wellington International Airport • Masterton Hood Aerodrome • Paraparaumu Airport • Commercial Port Area within Wellington Harbour (Port Nicholson) and adjacent land used in association with the movement of cargo and passengers and including bulk fuel supply infrastructure, and storage tanks for bulk liquids, and associated wharflines.
<p>Renewable energy generation activities</p>	<p>The construction, operation and maintenance of structures associated with renewable energy generation, including small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity.</p>

50. The proposed Plan definition of RSI includes “facilities for the generation and transmission of electricity where it is supplied to the electricity distribution network, including the national grid”. The definition of RSI does not include domestic or community scale renewable energy generation facilities that are not connected to the distribution network.

51. There are two rules in the coastal management section that have a specific reference to RSI. Rule R197 permits driving on beaches for the maintenance, upgrade and operation of RSI and Rule R214 states that reclamation associated with RSI is a discretionary activity outside of sites of significance. I note that the beds of lakes and rivers rules as notified make not specific reference to RSI.

52. RSI is coupled with renewable energy generation activities in policies P12, P13 and P14. There other policies that set specific direction for RSI alone. These are policies P102 (reclamation in the beds of lakes and rivers), P138 (structures in sites with significant values in the CMA), P139 (new seawalls), P143

(deposition in a site of significance), P144 (dumping in a site with significant values), P145 (reclamation, drainage and destruction in the CMA), P147 (motor vehicles on the foreshore), P148, (motor vehicles in sites with significant value), P150 (protection of the Titahi Bay fossil forest). These policies effectively present a more lenient policy position for RSI when compared to other activities.

53. The policy and rule framework for RSI and renewable energy generation activities has been developed alongside the policy and rule framework for the management of natural resources, such as aquatic ecosystem health and mahinga kai and sites with significant values.
54. There is a balance required within the proposed Plan between; the enabling policy direction set by the NPS-REG and the RPS for RSI and renewable energy generation activities, and the safeguarding and protectionist policy direction for aquatic ecosystem health and mahinga kai and sites with significant values which is also set by higher order planning documents such as s6 of the RMA, NZCPS, NPS-FM and the RPS.
55. The policy and rule framework sets a policy direction and rule activity status that gives effect to both policy directions. This manifests in subtleties within the policies and rules with some including RSI alone and others including renewable energy generation facilities. This distinction primarily occurs because there are known benefits to the region from RSI (including renewable energy generation facilities that fall within the definition) activities.
56. The smaller scale renewable energy generation activities are not coupled with RSI in some of the policies and rules this is because these activities are likely to be permitted by the proposed Plan and/or have minor effect. Additionally, the benefits from smaller scale renewable energy generation activities are recognised in policies P12, P13 and P14.
57. In regards to the direction set in the NPS-REG that regional plans must 'provide for' renewable energy generation facilities. Legal submissions on the meaning of 'provide for' were included in Hearing Stream 4 (paragraph 123 onwards). In summary; to 'provide for' something, some actual provision

needs to be made. However, to ‘provide for’ an activity does not necessarily mean that the activity should be permitted across the entire region, it means that some provision for those activities must be made in the proposed Plan (i.e., so they are able to occur, but not necessarily without a resource consent). The dictionary definition quoted in the legal submissions only requires ‘adequate arrangements’ For example, if all REG was non-complying, this would not be providing for the REG. However, having some REG requiring resource consent can be considered ‘providing for’ REG, as long as there is a supporting policy reason for that approach.

58. In my view the proposed Plan approach of recognising RSI (which includes that REG which is of regional benefit), along with a permissive approach for small scale REG is sufficient to ‘provide for’ those activities.
59. In summary, whilst at the policy level RSI and REG are together, this is not portrayed into the rule level of the proposed Plan because of the inherent difference between these two areas. I consider this is the most effective and efficient way to give effect to higher order documents in the proposed Plan for RSI and REG.
60. I also note; there are no submissions seeking any specific provision for additional methods (including rules) to provide for renewable energy generation.

7. An amended definition for property

61. As a background, the definition of property was amended in Hearing Stream 2 to take into account submissions that the notified version of the definition of ‘property’ is limited as it only refers to land in freehold title. Submitters said that this limitation leads to uncertainty for those areas not in freehold title and this would in turn cause confusion for permitted activity rules in Section 5.1 of the proposed Plan that exclusively use the word ‘property’.
62. In the s42A report: Air Quality Management (paragraphs 257-261) the definition of ‘property’ was changed to a new definition to remove this uncertainty and ensure permitted activity rules where this word is used, can be made effective and efficient.

63. The following recommendation was made in the s42A report air quality management for the definition of property.

Property	Any contiguous area of land or freehold title in one ownership. Property means any contiguous area of land, including land separated by a road or river, held in one or more than one ownership that is utilised as a single operating unit, and may include one or more certificates of title³.
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64. Since Hearing 2, the amended definition of property has not worked with other parts of the proposed Plan. In Hearing 3 Right of Reply Ms Hammond recommends that the definition of property needs to be amended⁴ to ensure the water allocation provisions work for their intended purpose. A similar situation was encountered in Hearing 5 for discharges to land provisions and more recently in the Right of Reply for Hearing 5 and the beds of rivers and lake provisions and Ms Guests Right of Reply.

65. Officers have examined the definition of property for the purpose of ensuring that it can work between all of the provisions of the proposed Plan, including where it is primarily used in the discharges into air, and then discharges to land, water allocation and in the rules for the beds of lakes and rivers.

66. Officers, have concluded that the following definition will be more effective and efficient across the provisions of proposed Plan.

Property	Any contiguous area of land or freehold title in one ownership. Property means Any contiguous area of land, including adjacent land separated by a road or river, held in one or more than one ownership that is utilised as a single operating unit, and may include one or more certificates of title ⁵ .
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67. The s32AA for this amended definition is provided in Appendix A.

³ S42A report air quality management page 73

⁴ Right of reply, Water allocation, paragraph 98

⁵ S42A report air quality management page 73

Appendix A: – Section 32AA Assessment

This table sets out only the provisions of the notified proposed Plan on this topic **for which submissions were specifically received**. Recommended additions to the notified text are in underline and deletions are ~~strike through~~ text. The section 32AA assessment follows alongside for each of the provisions where amendments have been recommended by the officer. If the officer does not recommend any changes, the provision appears in grey.

Red text amendments = recommendations from the officer's s42A report

Blue text amendments = updated recommendations from the officer's Right of Reply

Note that requests for **new** provisions are not included in these tables.

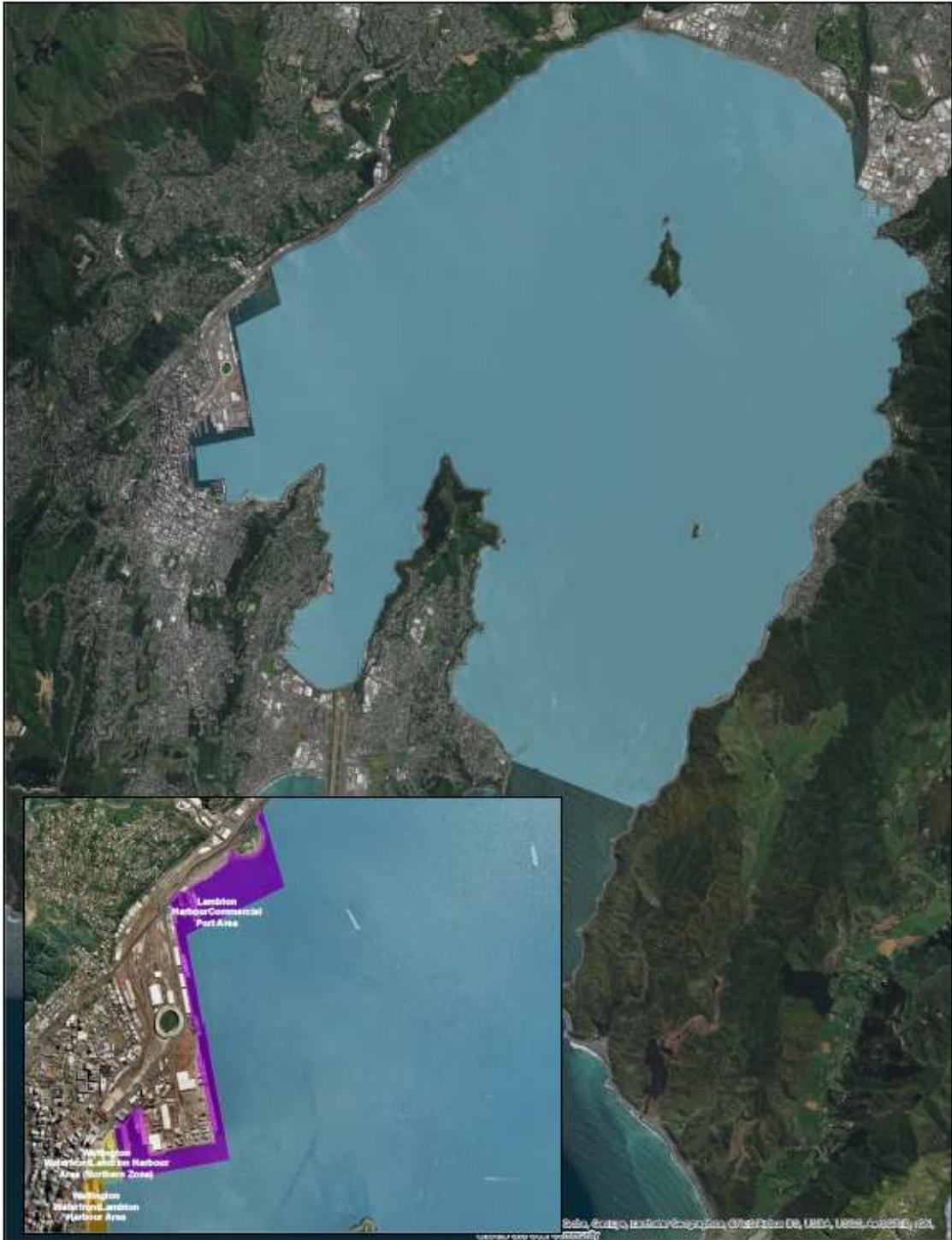
Submission no.	Chapter	Provision	Text of provision with any recommended amendments	Evaluation of amendment (section 32AA assessment)
S286/039, S85/005, S352/041, S81/010, S163/029	2 Interpretation	Property	<p>Any contiguous area of land or freehold title in one ownership. Property means <u>Any contiguous area of land, including adjacent land separated by a road or river, held in one or more than one ownership that is utilised as a single operating unit, and may include one or more certificates of title⁶.</u></p>	<p><u>Effectiveness and efficiency</u></p> <p>The definition of property was amended for the discharges into air provisions to take account of multiple properties. The amendments however, were not acceptable to other provisions of the proposed Plan for discharges into land, water allocation or in the beds of lakes and rivers. Officers have proposed a new amendment to the definition of property to ensure the definition is effective and efficient across all of the provisions of the proposed Plan. This new amended definition removes the multiple ownership and the single operating unit which refers to a farm scale property models.</p> <p><u>Costs: (numerical and potential costs)</u></p> <p>No specific costs have been assessed for the amendment to this</p>

⁶ S42A report air quality management page 73

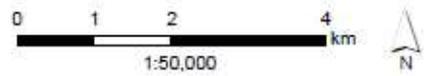
				<p>definition. There are unlikely to be increased costs to the community from this amendment in the proposed Plan.</p> <p><u>Benefits: (environmental, cultural, economic and social)</u></p> <p>There is potentially an increased benefit by improving the effectiveness of this definition for the multiple times it is referenced in the proposed Plan.</p> <p><u>Risk of acting or not acting</u></p> <p>There is a high risk of not acting.</p> <p><u>Decision about most appropriate option</u></p> <p>This is an important matter that requires recognition by the proposed Plan and provides useful clarification for plan users.</p> <p>In my opinion the proposed amendment is the most appropriate way to achieve the purpose of the RMA and the objectives of the proposed Plan, will have cultural, social, environmental and economic benefits, and will not reduce opportunities for economic growth or have a negative effect on employment.</p>
S85/058, S146/032	2 Interpretation	Seawall	<p>A hard inflexible edge between the land-water interface along river mouths, shorelines, or lake edges made up of structural materials including concrete, steel, timber or rock. A seawall includes rock revetment, groyne or bulkhead.</p>	<p><u>Effectiveness and efficiency</u></p> <p>The proposed Plan includes a definition of hard engineering and this definition includes seawalls. However, the proposed Plan refers directly to seawalls in the rules (R165, R166, R167) and policy (P139) and not hard engineering. There is a point of confusion here where the direct provisions may not be effective. To overcome this issue, I have proposed a new definition of seawall. This is a hard inflexible edge between the land and water. A seawall includes a rock revetment, bulkhead or groyne.</p> <p>This new definition of seawall will provide increased effectiveness and remove potential misunderstanding that may have occurred from the use of this term in the management of the CMA provisions in the proposed Plan.</p> <p><u>Costs: (numerical and potential costs)</u></p> <p>No specific costs have been assessed for the amendment to this</p>

				<p>definition. There are unlikely to be increased costs to the community from this amendment in the proposed Plan.</p> <p><u>Benefits: (environmental, cultural, economic and social)</u></p> <p>There is potentially an increased benefit by improving the effectiveness of this new provisions for the management of the CMA.</p> <p><u>Risk of acting or not acting</u></p> <p>There is a high risk of not acting.</p> <p><u>Decision about most appropriate option</u></p> <p>This is an important matter that requires recognition by the proposed Plan and provides useful clarification for plan users.</p> <p>In my opinion the proposed amendment is the most appropriate way to achieve the purpose of the RMA and the objectives of the proposed Plan, will have cultural, social, environmental and economic benefits, and will not reduce opportunities for economic growth or have a negative effect on employment.</p>
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Attachment A: Map 30



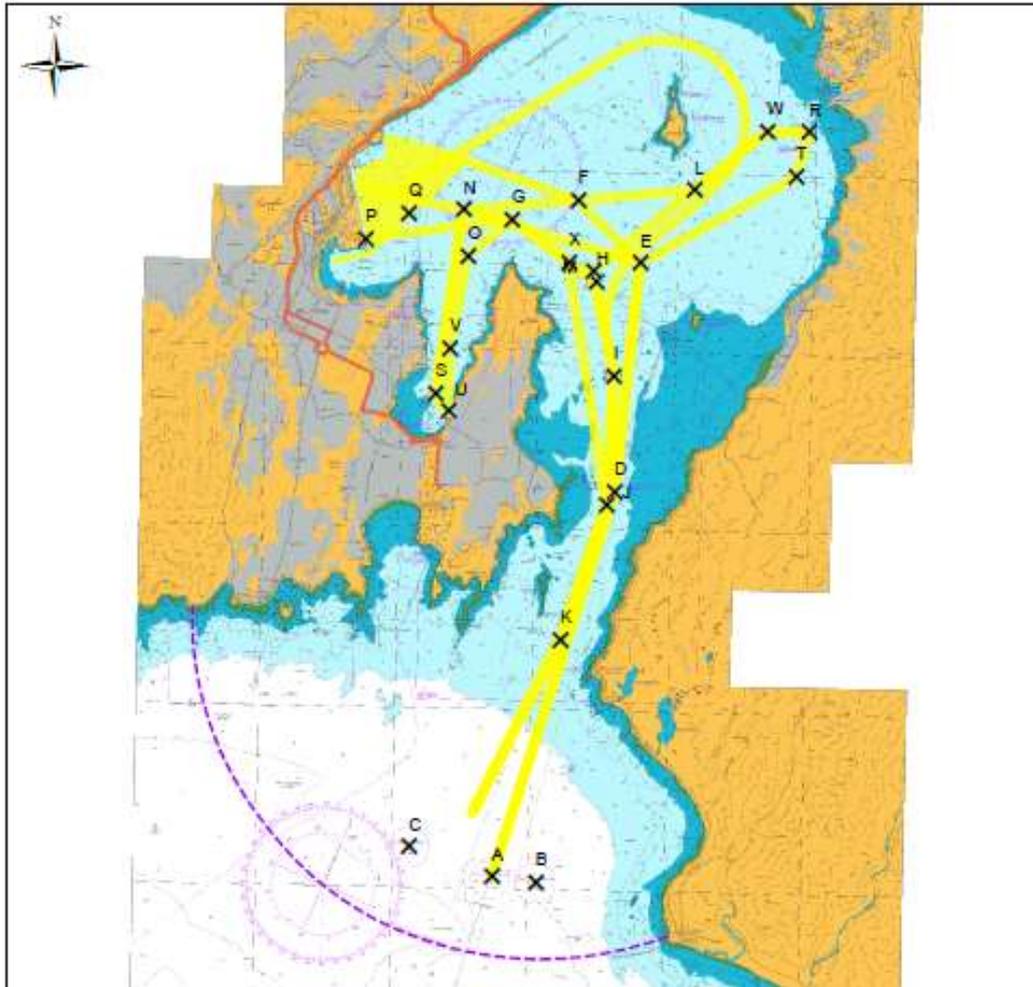
**Hutt Valley aquifer zone
Wellington Harbour (map 30)**



Attachment B: Map 49

Navigation protection areas in Wellington Harbour (Port Nicholson)

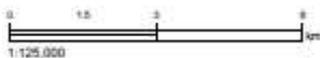
Map 49



This version of the map is not complete. The version of this map available online through the online web map viewer shows the complete, detailed information on a GIS overlay that is not shown on this hard copy. The online version is available on the Council's website at <http://mapping.gw.govt.nz/gwrc/> (select theme **Proposed Natural Resources Plan 2015**) and can be accessed from the Council offices or public library.

Wellington pilotage waypoints recommended for inbound and outbound commercial vessels. Contact Wellington Regional Council, Harbours department for further information. Caution: Map not to be used for navigation.

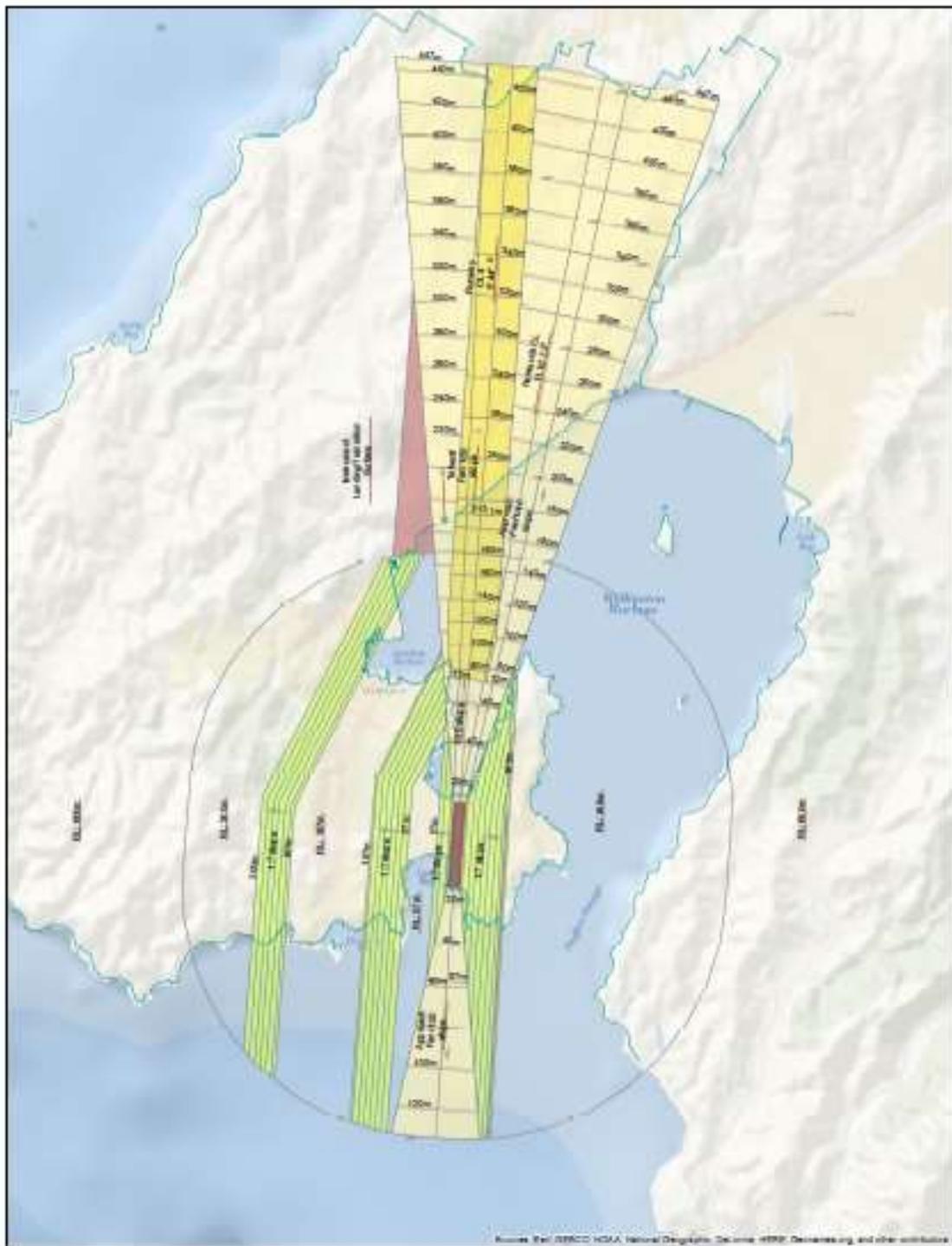
- ✕ Pilotage waypoints
- State Highway
- - - Harbour and pilotage limit
- Navigation protection areas



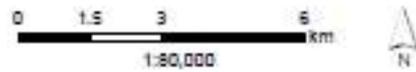
Basemap: World Oceans Base
Projection: NZTM 2000


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and other contributors
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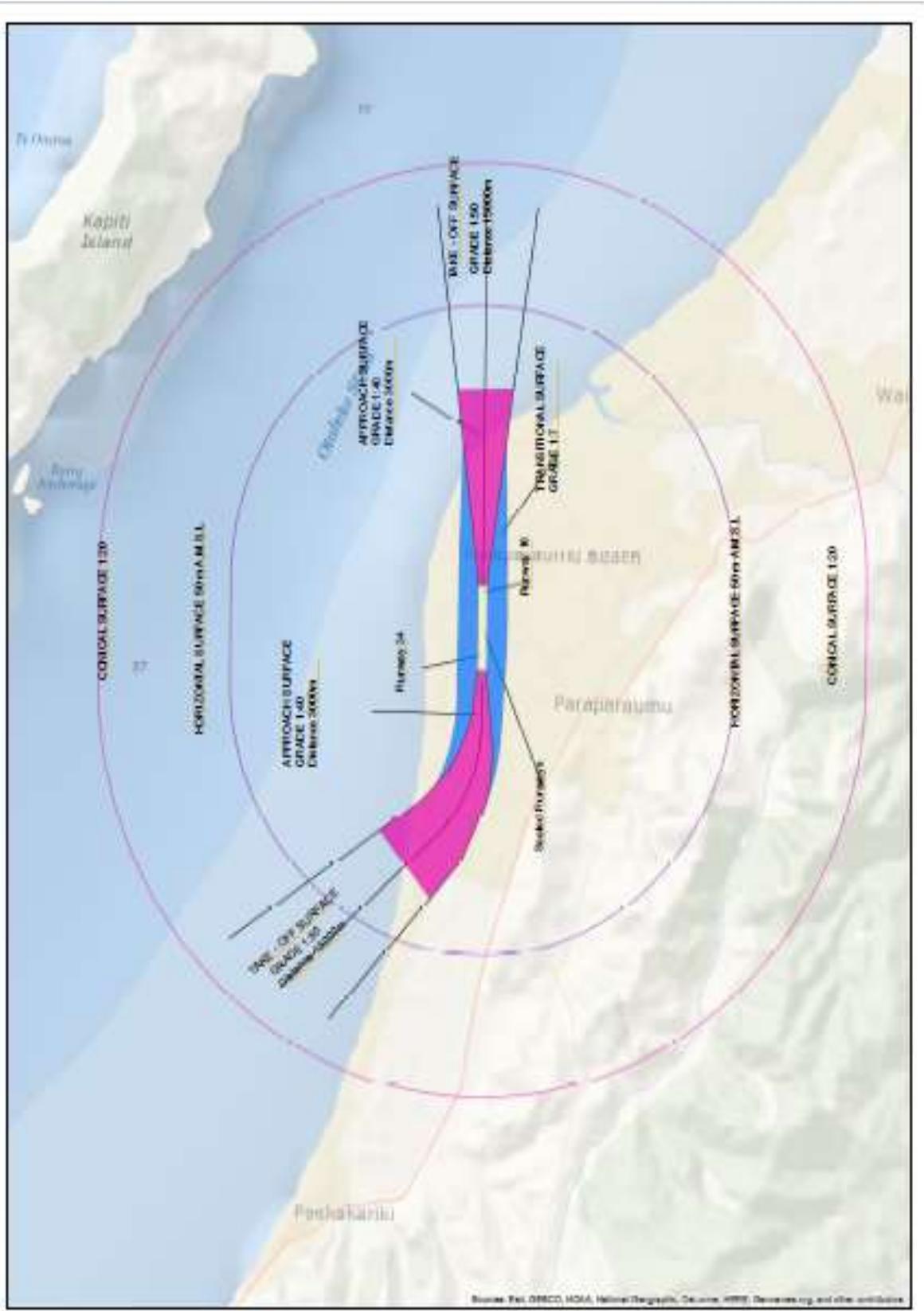
Attachment C: Map 50



Wellington International
Airport height restrictions (map 50)



Attachment D: Map 51



**Kapiti Coast Airport
height restrictions (map 51)**

