

**IN THE ENVIRONMENT COURT
AT WELLINGTON**

ENV2008-WLG-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First
Schedule of the Resource Management Act 1991

BETWEEN **NAPIER CITY COUNCIL**

Appellant

AND **HAWKE'S BAY REGIONAL COUNCIL**

Respondent

NOTICE OF APPEAL

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1. Napier City Council (“Appellants”) make this appeal in respect of decisions on submissions lodged by the Appellants on the Proposed Hawke’s Bay Regional Coastal Environment Plan (“Proposed Plan”) A copy of the submissions is attached as **Annexure 1** and further submissions are attached as **Annexure 2**.
2. The authority which issued the Proposed Plan and made decisions on the submissions and further submissions received was the Hawke’s Bay Regional Council (“Respondent”). The full text of the decisions, to which this appeal relates and the reasons given for the decisions as conveyed to the Appellants by the Respondents, are attached as **Annexure 3**.
3. The Appellants received the decisions on 21 July 2008.
4. This reference relates to the Respondent’s decisions on submissions and further submissions on the Proposed Plan, and in particular those relating to those parts of the of the Proposed Plan which affect or have the potential to affect the Appellants operations, policies, work programmes and assets.
5. The specific aspects of the decisions to which this appeal relates and the provisions they address are set out below. The appeal also relates to all consequential and related aspects of the Proposed Plan, which may affect, or be affected by, this appeal.
6. The reasons for the appeal are as follows:
 - (a) The Respondent has ignored or failed to give adequate weight to the submissions of the Appellant.

- (b) The Respondent's decisions do not adequately and properly take into account the provisions of Part II of the Resource Management Act 1991 and therefore will not promote the sustainable management of resources.
- (c) The Respondents decisions will not enable the social and economic wellbeing of the community of Napier.
- (d) The Respondents decisions do not represent the most appropriate means of exercising the Respondents statutory functions having regard to the efficiency and effectiveness of the provisions relative to other means.
- (e) The Respondents decisions lack in many instances sufficient clarity to establish what, if any, consideration and reasoning has been given to the Appellants submissions.
- (f) The Respondents aggregation of multiple submissions on various topics into grouped decisions means the Appellants are unable in many instances to understand how proposed plan changes relate to specific submissions.
- (g) The Respondents decisions fail to include planning maps amended by decisions meaning the Respondent is unable to ascertain accurately what if any changes have resulted as result of decisions.
- (h) The Respondent's decisions are inappropriate, unreasonable and contrary to the proper principles and practice of resource management.

7. The Appellants seek the following relief:

- (a) Amend the proposed Objectives, Policies, Rules and Planning Maps to give effect to the Respondents submissions.
- (b) Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect is based.
- (c) The cancellation and withdrawal of the decisions on the submissions and the re-notification of the decisions with full supporting information including proper/sufficient:
 - Maps
 - Diagrams
 - Reasoning
 - Explanations
 - Identification of what points in the submission are being addressed
- (d) The clock to be stopped on the appeal process until the decisions are properly re-notified

Decision 29

8. The Appellants in their submission sought the following relief:

Review, clarify, consistently apply, and explain in sustainable management terms the extent of the 'coastal environment' within the Napier City area. In particular:

Explain why the fully serviced and developed residential area of Westshore (that is unaffected by the HBRC coastal hazard assessment) has been included in the 'coastal environment' shown in Volume II – Planning Maps and in particular why this appears to be the only the fully serviced and developed residential area in the whole of HB that has been included in the coastal environment.

Explain why the coastal residential strip of Bay View, the HB Airport, Landcorp farm, and a northern portion of Lagoon Farm have been included in the 'coastal environment' shown in Volume II – Planning Maps.

In the absence of satisfactory explanations and demonstrable evidence justifying why these parts of Napier should be included within the 'coastal environment' remove all of these areas from the coastal environment. Ensure that following the review of the extent of the 'coastal environment' that Volume II – Planning Maps are amended to accurately delineate the extent of the 'coastal environment'.

9. The Respondent rejected this submission but failed to provide a single reason for doing so or an adequate explanation as to why the submission should be disallowed.
10. It also noted that on the decision the coastal environment inland boundary along Hardinge Road and Breakwater Road, and Nelson Quay have been substantially moved landward from that shown in the Proposed Plan as notified. It is unclear exactly what submission authorises this particular realignment of the coastal environment boundary and the appellant argues that in addition to a lack of authorisation for doing so there does not seem to be any logical reasoning for such a move.
11. The relief sought is as per the (as yet unanswered) request in the submission.
12. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 110

13. The Appellants in their submission sought the following relief:

Objective 2-1 seeks to preserve and protect the natural character of the coastal environment from inappropriate subdivision, use and development, yet Policy 2-5 which should be a form of action that achieves the objective, seeks to enable the use and development of the port facilities as part of the coastal marine areas physical resources. Given that policy 2-5 is divorced in

nature and substance from Objective 2-1 it serves no relevant resource management purpose.

14. The Respondent rejected this submission but failed to provide a specific reason for doing so or an adequate explanation as to why the submission should be disallowed.
15. The relief sought is as per the request in the submission.
16. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 119

17. The Appellants in their submission sought the following relief:

Objective 3-1 seeks to protect outstanding natural features and landscapes within the coastal environment from inappropriate subdivision, use and development, yet no such actual outstanding natural features or landscapes are identified within the plan. In addition, most of the policies (excluding 3-3 and part of 3-1) do not seem to relate specifically to outstanding natural features and landscapes, but refer to 'significant landforms', 'geological features', 'ecological values', 'estuarine habitats', 'estuarine processes', 'biological integrity' etc without identifying the specific features.

Objective 3-1 and all its associated policies need to be reviewed, amended and/or deleted so that the method/s in which they are implemented and the features they are intended to relate to are made explicitly clear. As examples:

is the objective intended to encompass significant landscapes and features along with outstanding? (and if so what these features are and how they are identified need to be clarified)

policies 3-4 and 3-5 would appear to be actions more suited to achieving Objective 4-1, than Objective 3-1 and if so they should be deleted.

Relief Sought:

Amend, clarify and/or delete objective 3-1 and all associated policies so that the features they are intended to relate to and the method/s in which they are intended to be implemented are made explicitly clear.

18. The Respondent claims they have accepted this submission in part but the proposed amendments do not satisfactorily answer the issues raised in the submission.
19. The relief sought is as per the request in the submission.
20. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 195

21. The Appellants in their submission sought the following relief:

Policy 5-2 is consistent with Policy 3.5.2 of the NZCPS but it does not give effect to the policy as no areas are identified within the Plan where access to and along the coastal marine area should be formed or enhanced. Such action is specifically required under Section 67 of the RMA where subsection 3 states that a regional plan "must give effect to" the NZCPS. This statement requires some direct form of action by the HBRC rather than simply repeating it.

The purpose of the Proposed Coastal Plan is to enable the HBRC to promote the sustainable management of the natural and physical resources of the Hawke's Bay coastal environment. It incorporates provisions which relate to both the coastal marine area and land that has a direct relationship with coastal marine area. The HBRC is the only local authority with jurisdiction that applies to both the land and sea areas of the regions coast and there may be reasons why public access should be provided to access parts of the coastal marine area that have no relevance for territorial authorities.

The HBRC should take a lead agency role in actively identifying the location and extent of places on a regional level where access to and along the coastal marine area should be formed or enhanced. Territorial authorities can themselves implement Policy 5-2 at a local level but without guidance on a regional level may not be able to give effect Policy 5-2 as it is intended.

Relief Sought:

Clarify how policy 5-2 is intended to be implemented and identify on a regional level the location and extent of places where access to and along the coastal marine area should be formed or enhanced.

22. The Respondent claims they have accepted this submission in part by adding a new policy but the proposed amendments do not satisfactorily answer the issues raised in the submission as they do not involve actually identifying the location and extent of places where access to and along the coastal marine area should be formed or enhanced.
23. The proposed amendment also only focuses on access to the coastal marine area for *“tangata whenua to access their traditional fishing grounds and other sites of significance in accordance with Tikanga Maori”*. It does not however address any other reasons for public access to the coastal marine area or identify specifically where these may be.
24. The relief sought is as per the request in the submission.
25. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 235

26. The Appellants in their submission sought the following relief:

Policy 6-2 only relates to the coastal marine area yet Objective 6-1 seeks the preservation of the characteristics of the coastal environment of special significance to tangata whenua. In order to give effect to the objective in its entirety Policy 6-2 needs to refer to the Coastal Environment.

Relief Sought:

Amend policy 6-2 by replacing the term coastal marine area with the term coastal environment.

27. The Respondent claims they have accepted this submission in part by adding a new policy. The proposed amendments do not satisfactorily answer the issues raised in the submission as they further confuse the issue by adding an additional term into the policies that is inconsistent with the objective. Objective 6-1

relates to the “coastal environment’ while policy 6-2 refers to the “coastal marine area” and the new policy 6-2A now refers to the “coastal margin”. The appellant wants the terminology used in the objectives and policies to be clarified so that they are consistent.

28. The relief sought is as requested in the submission.
29. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 252

30. The Appellants in their submission sought the following relief:

It is noted that there does not appear to be any specific sites of significance to Maori identified on the planning maps. The HBRC should identify the location and extent of known sites of significance to Maori where this is appropriate. Such action is required under Section 67 of the RMA where subsection 3 states that a regional plan “must give effect to” the NZCPS and in this instance policy 2.1.1 and 2.1.2 of the NZCPS. This statement requires some direct form of action by the HBRC rather than simply repeating it.

Relief Sought:

Identify the location and extent of known sites of significance to Maori throughout Hawke’s Bay (unless the sites are of a confidential nature).

31. The Respondent does not appear to have issued a decision with reasons in relation to this submission. The submission presumably is disallowed as no plan amendments appear to arise from the submission although in the absence of any planning maps amended by decisions it is impossible to tell.
32. The relief sought is as per the request in the submission.
33. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 253

34. The Appellants in their submission sought the following relief:

It would assist plan users if Schedule I was amended so as to include a map reference as to where the sites are along with more specific details as to the nature and exact location of the heritage sites so that their heritage features can be appropriately protected.

Relief Sought:

Amend schedule i so as to include a map reference as to where the sites are along with more specific details as to the nature and exact location of the heritage sites so that their heritage features can be appropriately protected.

35. The Respondent has apparently accepted the submission in part by adding reference numbers for each mapped historic heritage feature but has not produced copies of the planning maps as amended by decisions enabling the appellant to accurately determine whether the features are mapped accurately and in accordance with the request in the submission.
36. The relief sought is as per the request in the submission.
37. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 268

38. The Appellants in their submission sought the following relief:

The explanation and reasons on page 22 indicate that territorial authorities are responsible for historic heritage resources above mean high water springs. If this is the case the objective should be amended to only refer to the coastal marine area.

Relief Sought:

Amend objective 7-1 by replacing the term 'coastal environment' with the term 'coastal marine area'.

39. The Respondent has rejected the submission by claiming that amending objective 7-1 would fail to assist HBRC with its resource management functions and responsibilities.
40. The appellant maintains that the policies that accompany the objective are disjointed and will not ensure that the objective is achieved as the policies are limited to the coastal marine area.
41. The relief sought is as per the request in the submission.
42. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 306

43. The Appellants in their submission sought the following relief:

Rule 5 relating to feedlots and feedpads as a permitted activity includes a condition (b) that seeks to introduce provisions relating to land use activities rather than any functions authorised under section 30 of the RMA. Of particular concern is the fact that the separation distances in condition (b) differ markedly from those specified in the Proposed City of Napier District Plan for the same land resource. The HBRC should only address those areas for which they are authorised under Section 30 of the RMA and leave the issue of separation distances, to the proper function of territorial authorities so as to avoid inconsistencies and unnecessary duplication of consent processes.

Relief Sought:

Delete condition (b) in Rule 5 in its entirety.

44. The Respondent has rejected the submission by claiming that setback conditions are necessary and appropriate for the HBRC but fails to adequately explain how these setback distances relate to specific functions of the HBRC. The respondent also fails to justify the rationale for imposing a double layer of consenting processes for feedlots when the requirement to obtain resource consent in the RCEP is based on issues better left to the relevant territorial authority.

45. The relief sought is as per the request in the submission.
46. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 320

47. The Appellants in their submission sought the following relief:

Amendments should be made to the vegetation clearance exemption areas identified in Volume 2 of the plan so that they are based on a more rational pragmatic approach rather than the seemingly unjustifiable current situation. As an example there appears to be no rational basis for supporting the delineation of the vegetation clearance exemption areas within the Landcorp Farm / Airport area where the actual topography (flat) and land uses are identical yet are arbitrarily delineated by the vegetation clearance exemption areas.

Relief Sought:

Review the rationale and basis for determining the extent of all the vegetation clearance exemption areas so that they are based on a more rational and pragmatic basis that relates to existing land use activities and topography.

48. The Respondent has partly accepted the submission by adding a note indicating that vegetation clearance areas relate to land that is not flat to gently undulating slopes (i.e. 0° to 3°) and urbanised areas. The appellant contends that this does not give sufficient certainty for plan users and that the vegetation clearance areas need to be identified on the planning maps (of which none were available at the time of issuing decisions) in accordance with the request in the submission.
49. The relief sought is as per the request in the submission.
50. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 500

51. The Appellants in their submission sought the following relief:

Rule 56 permits stock to trample within river beds (and destroy their banks) despite these areas having valuable and often fragile natural ecosystems. Of particular concern to NCC is the fact that this rule will permit stock to disturb the riverbed in the upper reaches of the locally, regionally and nationally recognised Ahuriri Estuary (just north of its confluence with the Taipo stream and outside of the area identified as a SCA12) and in so doing threaten important ecological systems and values.

The HBRC is a joint signatory to the Ahuriri Estuary Management Plan and in so doing has committed itself to a role of preserving the natural and ecological values of the Ahuriri Estuary. Specific objectives and policies are identified within that Management plan and it is difficult to see how an activity that potentially destroys fish feeding and spawning areas of the some 29 known species that occur within the estuary can be seen to be either consistent with those objectives and policies or in fact the HBRC own objectives and policies in Chapters 4 and 13 of the Proposed Coastal Plan.

Greater recognition of the potential damage that livestock can cause to river and lake beds needs to be given in the Coastal Plan and more emphasis provided to a holistic approach to riparian management of such waterways. Areas should be identified where the disturbance of riverbeds is not permitted or if it is permitted then ensuring that it is only for temporary crossing purposes and at defined crossing places. This seems to be particularly the case given that livestock are actually prohibited within that portion of the Ahuriri Estuary identified as SCA12 but permitted outside of it despite the boundary of SCA12 being arbitrary in terms of the natural values of the fragile ecosystems making up the Ahuriri Estuary.

Relief Sought:

Review and amend Rule 56 in its entirety so that the permitted activity status only applies to those portions of rivers and lakes that are determined not to have important ecological and environmental values and give consideration to identifying specific locations where stock may only temporarily disturb the riverbeds for crossing purposes. At the very least prohibit stock disturbing the beds of rivers and lakes within the Ahuriri estuary catchment that falls within the jurisdiction of Napier City Council.

52. The Respondent has rejected this submission stating that S.13 does not apply to wetlands therefore Chapter 27.4 only applies to riverbeds and lakebeds, not wetlands.

53. The appellant contends that it is the RCEP that applies to the Ahuriri Estuary and that the respondent has within their planning

maps identified a river mouth within the estuary system. It is contended that there appears to be a lack of consistent logic within the RCEP and the decisions the Respondent has issued. In the absence of a satisfactory explanation the appellant still retains concerns about stock trampling part of an internationally recognised estuary system as a permitted activity.

54. The relief sought is as per the request in the submission.
55. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 701(Xsub) & 713

56. The Appellants in their submission (and further submission) sought the following relief:

Rule 155 seems to replace Rule 11.4.4 in the Regional Coastal Plan which previously assessed the diversion and discharge of stormwater as a controlled activity. There appears to have been no previous problems with the administration of this rule and therefore no justification in terms of section 32 to amend the activity status to restricted discretionary. Indeed all the change of activity status does is add more constraints, costs and a greater degree of difficulty in implementation for the NCC in undertaking its statutory functions for no discernable benefit.

Relief Sought:

Amend the activity status of Rule 155 from restricted discretionary to controlled activity.

57. The Respondent has rejected this submission and includes a reason for decision as being that it is unnecessary to amend rules in Chapter 27.12 to apply a greater degree of control through more stringent classifications. No further benefits in terms of controlling effects would be obtained if the activity classifications were made more stringent, but it would result in an onerous amount of consent processing and costs for activities discharging contaminants in the coastal marine area.

- 58. The appellant finds this reasoning ironic given that this is the exact reasoning given within the original submission by the appellant and for which no satisfactory explanation has yet been provided as to why the diversion and discharge of stormwater has moved from a controlled activity to a restricted discretionary activity.
- 59. The relief sought is as requested in the submission.
- 60. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 714

- 61. The Appellants in their submission sought the following relief:

It is unclear exactly how Rule 157 will be interpreted and therefore applied.

Relief Sought:

Clarify how Rule 157 will be interpreted and applied and if it relates to activities undertaken by NCC amend the activity status to a controlled activity.

- 62. The Respondent has rejected this submission without giving any explanation or reasoning specific to the appellant's submission. In the absence of such explanation the appellant remains concerned about the potential implications of the Rule.
- 63. The relief sought is as requested in the submission.
- 64. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 888 (Xsub) 910 & 911

- 65. The Appellants in their submission sought the following relief:

The rules create significant uncertainty as to the activity status and decision making authority that should be applied to a hard engineering solution mitigating the effects of coastal hazard. Such hard engineering solutions may have both positive and negative effects on sediment movement particularly in relation to existing areas of land that may be subject to the effects of coastal hazard and the local benefits potentially derived from coastal protection structures need to be evaluated in a local decision making framework. In this regard recognition needs to be given to solid structures for the purposes of coastal protection works as opposed to all other solid structures.

Relief Sought:

Amend the activity status of Rules 114 and 115 by deleting reference to them being a Restricted Coastal Activity when they are for the purpose of a Coastal Protection Structure.

66. The Respondent has rejected this submission with no specific reasoning or explanation.
67. One generic reason indicates that it is only the NZCPS that can specify those activities that are not restricted coastal activities. While this point is not disputed it is argued by the appellant that greater recognition should have been given to the appellants submission so that the rules governing coastal protection structures could have been amended in a manner consistent with Rule 95 of the RCEP so that the (b) component of S1.3 and S1.4 of the NZCPS could, and should, have been adopted as the appropriate means of relief arising from the appellants submission.
68. The relief sought is as requested in the submission and as identified more specifically above.
69. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 982

70. The Appellant in their submission sought the following relief:

The location of the aquaculture management areas should be provided on a map similar to the scale of the Map Index to aid in interpretation and location.

Relief Sought:

Amend Volume II – Planning Maps to address all of the concerns raised above and incorporate the suggested amendments.

- 71. The Respondent has apparently accepted this submission but has failed to produce planning maps as amended by decisions leaving the appellant in the position of having to lodge an appeal in order to find out whether the relief is in accordance with the intent of the submission.
- 72. The relief sought is as requested in the submission.
- 73. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1124, 1125, 1126, 1127, 1130, 1131

- 74. The Appellant in their submission sought the following amendments to the planning maps:

Napier City Council supports the use of planning maps to spatially identify areas subject to provisions within Volume I of the plan. While there has been a significant improvement in the legibility of the maps since the draft plan the Council still have concerns in a number of areas.

The use of black and white aerial photography has aided interpretation however the legend used for such things as the “Parade Gravel Extraction site” and the “Westshore Renourishment Area” makes it difficult to distinguish exactly where these locations are and whether they are correctly identified. Choice of a different legend style is necessary along with more accurate spatial identification of the “Parade Gravel Extraction site” and the “Westshore Renourishment Area” to avoid unnecessary confusion and potential mistakes in delimiting their locations. The Westshore renourishment site in particular appears to be located too far seaward and not extended far enough landward.

The scale of many of the maps is still too high to accurately determine what provisions apply to individual properties. This is especially so for the Coastal Hazard Zones where different classes of activity apply for each individual zone. The individual zones need to be able to be clearly distinguished on an individual property basis given the different rules that apply to each of the three zones. In order to accurately determine how these zones affect landowners in built up areas a scale of no greater than 1:5000 should be used. Ideally the maps and plans should be available on the HBRC website and able to be scaled up to provide detailed information to property owners that may be affected.

The Maintenance Dredging Sites (i.e. the Port of Napier and Inner Harbour) and the Historic Heritage Areas are not notated on the maps despite being referred to in the legend and plan provisions. These areas need to be (clearly and accurately) identified so that the rules and policies in the plan actually relate to something.

The boundary limits of other local territorial authorities should be depicted on the planning maps. Dialogue on potential cross boundary issues could therefore be more readily anticipated and considered.

The location of the aquaculture management areas should perhaps be provided on a map similar to the scale of the Map Index to aid in interpretation and location.

The Legend for all three Coastal Hazard Zones appears to be 90 degrees out on all the portrait maps. Choice of a different legend style would avoid such issues and aid certainty and clarity for plan users.

The plethora of road names along a number of roads on most maps clutter the underlying features for no apparent benefit.

The keys for the maps are confusing, where the maps have been orientated away from north which makes the overlays on the maps different from the keys.

Relief Sought:

Amend Volume II – Planning Maps to address all of the concerns raised above and incorporate the suggested amendments.

75. The Respondent has apparently accepted these submissions but has failed to produce planning maps as amended by decisions leaving the appellant in the position of having to lodge an appeal in order to find out whether the relief is in accordance with the intent of the submission.

76. The relief sought is as per the request in the submission.

77. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1137, 1138 & 1142(XSub)

78. The Appellant in their submissions sought the following relief:

Retain Rule 127 but amend planning map 28 by extending the Harbour Management Area (HMA) so that it extends out through the fairway to at least the 4 metre seabed contour (which would generally fill in the gap between the Class CR (HB) Water overlay to the west and the Class CR (HB) Water overlay to the east at the mouth of the inner harbour shown on planning map 28).

Relief Sought:

As above.

79. The Respondent has apparently accepted these submissions but has failed to produce planning maps as amended by decisions leaving the appellant in the position of having to lodge an appeal in order to find out whether the relief is in accordance with the intent of the submission.
80. The figures accompanying the decision/s are of such poor quality and small scale that it fails to assist the appellant in its efforts at determining whether the relief has been accepted as per the submission.
81. The appellant finds it incredible that in this day and age where computer based GIS systems are the norm rather than the exception, an organisation such as the HBRC cannot in over two calendar years produce legible planning maps as part of its decision making process, particularly when concerns with the illegibility of the maps were raised through the submission process.
82. The relief sought is as requested in the submission.

83. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1386, 1392 & 1393

84. The Appellant in their submissions sought the following relief:

Napier City Council supports the Tonkin & Taylor coastal hazard assessment insofar that it represents a rapid overview assessment of coastal hazard risk over the Regions coast. However the Council considers that the use of such an assessment as a means to manage land use and development within the CHZ's to be inappropriate. In order to introduce a regulatory framework as the basis for plan provisions managing use and development within the CHZ's a more thorough and accurate assessment of hazard risk needs to be commissioned (such as that conducted by Dr Jeremy Gibb over the north Napier coast).

Napier City Council therefore considers therefore that whilst the Regional Council taking a regional approach to the coastal hazard issue is commendable, the proposed regional coastal hazard zones are not the most efficient and effective means to manage coastal hazard within the Napier City boundary and do not best achieve sustainable management as required by the Resource Management Act 1991.

Given the overview approach taken by Tonkin & Taylor to coastal hazard assessment, Napier City Council is opposed to the proposed hazard zones over the coastline south of the Port of Napier to the Tutaekuri River (i.e. the District boundary). Napier City Council asserts that there is a long-term trend of accretion along the south Napier coast, particularly along the portion north of Awatoto evidenced by the requirement of Napier City Council to extend the stormwater outfalls along the coast to keep pace with such accretion. For example outfalls at Browning Street and Sale Street have been extended several times since 1931 with the total length of extensions being 57m for Browning Street and 58m for Sale Street respectively. Indeed Council has signalled further expenditure in its 10 year capital plan for further extensions to the Marine Parade outfalls due to continuing accretion.

Napier City Council considers therefore that there is strong rationale for a more in depth assessment of coastal hazard along the south Napier coast to ascertain whether this stretch of coast is in fact likely to be subject to coastal erosion in the next 100 year planning period. Until certainty can be given as to the erosion risk along the south Napier coast through a thorough assessment of coastal hazard, Napier City Council opposes the

coastal hazard zones along the south Napier coast on its land and request they be removed.

The Council also contends that there has been no information provided to it that identifies the coast from Perfume Point and along Hardinge Road to the Port of Napier (although for no apparent reason not the Port itself) as being subject to erosion. Indeed it is noted that the Draft Regional Coastal Environment Plan (2005) did not include any CHZ's along Hardinge Road and neither does the Tonkin & Taylor Regional Coastal Hazard Assessment (2004) upon which the CHZ's have been derived. It is therefore unclear how any CHZ for this area of Napier can be justified in terms of a Section 32 analysis and the Council requests that it be removed.

Of particular concern is the fact that the Port of Napier does not have any CHZ's applied to it yet the breakwater of the port is exposed to the highest wave energy of anywhere in HB and the same breakwater acts as a significant barrier dissipating virtually all wave energy experienced at Hardinge Road in even the most extreme conditions. Napier City Council has no records of any erosion being experienced along Hardinge Road. There is little factual evidence demonstrating that all of the reserve along Hardinge Road and half of the road itself is likely to be eroded within a 10 year time frame. The CHZ's in this location lack supporting data and cannot be relied upon as a mechanism to introduce a regulatory framework.

Notwithstanding this aspect of the submission the plethora of road names along Hardinge Road on Maps 28 and 29 obscure any chance of interpreting the extent of the coastal environment and the location of the Coastal Hazard Zones. A map of greater scale would assist in interpretation and clarity for other plan users.

Relief Sought:

Delete all the Coastal Hazard Zones identified for Hardinge Road from Perfume Point to the Port of Napier.

Delete all the Coastal Hazard Zones identified from the Port of Napier south along Marine Parade to the end of Napier City Council owned Foreshore Reserve at Awatoto (620 State Highway 2).

Clarify why the Port of Napier is the only portion of the Napier coastline has no CHZ yet experiences the highest energy wave environment.

85. The Respondent has rejected these submissions in substance but has failed to produce planning maps as amended by decisions, instead circulating what are described as coastal hazard zones as amended by decisions on 'stylised' maps on a

cadastral background although not a copy of the actual planning maps themselves, which the appellant understands are still being constructed despite decisions having been issued.

86. The Respondent has also aggregated a large number of submissions from various submitters on a variety of issues within the decision, making interpretation of the reasoning behind the decision for the appellants' specific submissions difficult to decipher if not impossible.
87. The appellant maintains that in order to introduce a regulatory framework as the basis for plan provisions managing use and development within the CHZ's for the Napier City area a more thorough and accurate assessment of hazard risk needs to be commissioned (such as that conducted by Dr Jeremy Gibb over the north Napier coast).
88. Napier City Council therefore considers therefore that whilst the Regional Council taking a regional approach to the coastal hazard issue is commendable, the proposed regional coastal hazard zones are not the most efficient and effective means to manage coastal hazard within the Napier City boundary and do not best achieve sustainable management as required by the Resource Management Act 1991.
89. The appellant also contends that there still has been no information provided to it (despite requests for such information) that identifies the methodology used to determine the coastal hazard assessment from Perfume Point to the Port of Napier (although for no apparent reason not the Port itself) and the rationale of such a hazard assessment concluding that there will be erosion occurring.
90. One reason within the decision given by the Respondent that may relate to a submission of the appellant is that it would be inappropriate to define CHZ's for the Port using the same soft

shore erosion risk methodology as other CHZ's across the region. The appellant argues that a request of this specific nature was never made but the reason does raise further questions as to the methodology used for determining the CHZ's along Hardinge Road.

91. The relief sought is as requested in the submission.
92. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1416, 1432, 1441, 1442, 1443, 1459 (Xsub), 1486, 1487 & 1501 (Xsub)

93. The Appellant in their submissions sought the following relief:

The Proposed Regional Coastal Environment Plan identifies 3 separate coastal hazard zones based around risk within varying timeframes. Different rules controlling activities are then applied to these various coastal hazard zones. Objective 15-2 and Policy 15-1 do not however provide any policy guidelines as to the differences and distinctions that should be made for the various coastal hazard zones. They would be suitable for a management regime that has only a single hazard zone but are unsuitable for one that incorporates three.

In order to provide clear guidance for plan users there needs to be a more logical and consistent linkage between the objective and policy and rules that actually apply to the various hazard zones. As it is the HBRC who have determined the rationale for determining the different hazard zones (and the different rules that apply within each one) more clarity and distinction needs to be provided within a policy framework as to why these differences exist and how the policy framework should be applied to each individual hazard zone. Otherwise, a risk exists that a 'one size fits all' policy approach will not be appropriate for any of the 3 hazard zones.

Notwithstanding the previous submission point the intent of the environmental guidelines that accompany Policy 15-1 on page 41 and 42 are generally supported subject to the following amendments:

Hazard mitigation works

Environmental guideline 9 (hazard mitigation works) provides for local authorities to carry out hazard mitigation works but states a

series of qualities and processes that they must not adversely affect. While the proposal that local authorities may carry out hazard mitigation works is supported, unfortunately hazard mitigation works by their very nature and in order to be effective may need to impact on the stated qualities and processes. Recognition therefore needs to be given within the policy as to some degree of flexibility (rather than the mandatory statement of 'must not') in terms of undertaking mitigation works that impact on the stated qualities and processes. Wording similar to that used in Environmental Guideline 10. Coastal protection structures iii) is therefore requested (i.e. "avoid adverse environmental effects to the greatest extent practicable", rather than 'must not').

While the intent of the environmental guideline is supported (subject to the amended wording) it is noted that there is no actual rule which supports the stated policy. In order for the environmental guideline and therefore policy to be effective some regulatory provision needs to be added to the plan which actually provides local authorities the authority to undertake hazard mitigation works.

Network utility operations

Environmental guideline 11 (network utility operations) fails to recognise the fact that network utilities may for any number of reasons be required to locate within areas identified as being subject to coastal erosion or inundation. Attempting to restrict network utility operations from locating within coastal hazard areas is unlikely to allow people to provide for their health and safety along with their social and economic well being.

If development exists within, or adjacent to, a coastal hazard area (and bearing in mind that the hazard identification has only just been notified for residential areas that have long been established) then network utility operations have specific locational needs to service those areas. All development inherently requires network utility operations to service them. One (of many) examples may be the situation of a stormwater outlet servicing a residential area requiring to traverse through the hazard zones so as to discharge into the ocean. The environmental guideline fails to recognise the essential nature of network utility operations and in so doing is unnecessarily restrictive and as such fails to satisfy section 32 requirements.

The HBRC should concentrate on avoiding any new development within hazard areas (as per guidelines 7 & 8) but if development exists essential network utility operations that are required to adequately service such development should not be restricted.

The wording used in a) "where no reasonable alternative location or service delivery option exists" also does not assist plan users as it fails to recognise existing use rights for existing structures and services. There is no mechanism that the HBRC can require network utility operators to consider alternative locations or

service delivery options for existing network utility operations and therefore the phrase should be deleted.

Relief Sought:

Amend Objective 15-2 and Policy 15-1 (along with its accompanying environmental guidelines) so as to provide a more logical and consistent linkage between the objective and policy and the different rules that actually apply to the various hazard zones.

Amend Environmental Guideline 9 that accompanies Policy 15-1 by deleting the phrase 'must not' and replacing it with "avoid adverse environmental effects to the greatest extent practicable".

Add a rule to the Plan which allows local authorities to implement Environmental Guideline 9 (i.e. a rule that allows local authorities to undertake hazard mitigation works).

Amend Environmental Guideline 11 that accompanies Policy 15-1 by deleting the phrase in a) "where no reasonable alternative location or service delivery option exists".

Amend Environmental Guideline 11 that accompanies Policy 15-1 by deleting b) in its entirety and replacing it with the following: "Network utility operations provide essential services necessary for people's health and safety along with their social and economic wellbeing. Provision will be made for network utility operations undertaken by a local authority to establish within the coastal hazard zones"

OR (as a second preference)

"Network utility operations provide essential services necessary for people's health and safety along with their social and economic wellbeing. Provision will be made for network utility operations to establish within the coastal hazard zones but in order to ensure the effects of the natural hazards and the utility on one another are appropriately managed a resource consent will be required".

94. The Respondent has accepted, accepted in part and rejected these submissions.
95. The appellant is concerned that the policy framework adopted within the RCEP needs to provide clear and logical linkages with the rules of the plan. The appellant has number of concerns with both the policy framework and the rules and in particular the lack of recognition provided to the appellant as a local authority obliged to undertake statutory functions in accordance with

legislation and for which the respondent seems intent on adding additional regulation for no net benefit and for which no rigorous Section 32 analysis has been undertaken.

96. The appellant reserves the right to ensure both the policy framework and accompanying rules are able to be amended in accordance with the concerns of the appellant as raised by its submissions. In this regard the decisions appealed here need to also be considered in light of the rules which the appellant have appealed.
97. The relief sought is as per the request in the submission and/or as required as consequential amendments arising from other points of appeal.
98. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1530(XSub) 1541

99. The Appellant in their submissions sought the following relief:

It appears that CHZ 3 has been identified solely to regulate the location of network utility structures (Rule 83) and Non-Reticulated Wastewater Systems (Rule 80) but explicit clarification is also necessary that external building work in CHZ3 is a permitted activity to avoid any unnecessary confusion.

Relief Sought:

Add a new rule clarifying that external building work in CHZ 3 is a permitted activity.

100. The Respondent has apparently accepted in part this submission but indicates substantive changes to the rules of the RCEP and in particular building work within CHZ3 (new Rule 78A which replaces Rule 79) that appears unconnected and therefore unauthorised by any submission, let alone the Appellant's. It also appears at odds with the submission of the

HBRC's own submission 63/26 although this is not referred to in decisions 1540-1543 so it is unclear how the plan changes have been authorised, what basis the decisions have been grouped and what decisions impact on others. Decisions 1520-1535, which includes the HBRC's submission 63/26 among others, fails to shed any light on where the submission authorising new Rule 78A arises either.

101. The relief sought is as requested in the submission.
102. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1549, 1551 (Xsub)

103. The Appellant in their submissions sought the following relief:

The National Aquarium appears to fall within CHZ2 which creates a level of uncertainty as to whether any further development of the site is possible in the future. Consideration is being given towards adding a boat shed and workshop but these may be unnecessarily compromised through the uncertainty associated with obtaining restricted discretionary resource consent. As there appears to be no overwhelming necessity or benefits in restricting NCC owned and operated facilities on Council land and that these facilities will not create any future potential burden on the HBRC, such facilities should be exempt from this particular provision.

Relief Sought:

Exempt external building work undertaken by local authorities (or companies/trusts under their direct control) from Rule 82 and make such work a permitted activity.

104. The Respondent has indicated it has accepted in part this submission (insofar as rules in Chapter 27.6 have been amended but not all building work undertaken by local authorities is permitted).

105. The appellant argues that the wording of the decision indicating that the submission has been allowed in part masks the fact that the submission has been rejected in full.
106. The appellant continues to state that it owns and administers a vast tract of beachfront reserve on behalf of the community of Napier. Use of the land is strictly limited in terms of both the zoning applying within the District Plan and Reserve Plans administered under the Reserves Act. The identification of significant regulatory control based on hazard zones determined through a broad brush desk top study fails to give adequate recognition to local authorities assets, activities and statutory functions undertaken on behalf of the community. The adoption of the rules have also failed to give proper consideration to a cost/benefit assessment as required under Section 32 of the RMA.
107. The relief sought is as per the request in the submission.
108. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 1550

109. The Appellant in their submissions sought the following relief:

Rule 87 provides an exception to Rule 85 in determining the activity class of new building within CHZ1. Presumably this is a typo as existing Rule 85 also requires a non complying activity consent and therefore achieves no practicable purpose. It would appear that the rule should actually apply an exception to Rule 83 which does recognise that new utilities may need to be located within CHZ1 and as such currently has a an activity class of restricted discretionary activity.

Relief Sought:

Amend Rule 87 by substituting the exception for Rule 85 with Rule 83.

110. The Respondent has indicated it has accepted in part this submission but not exactly as requested by the submitter.
111. As per the previous decision the appellant argues that the wording of the decision indicating that the submission has been allowed in part masks the fact that the intent of the submission has actually been rejected. Indeed in this instance the Rule has been changed in substance without there being any obvious submission authorising the changes.
112. The appellant has serious misgivings as to the potential impacts of the Rules as amended by decisions on the appellants assets and operations and argues that any substantial policy changes impacting on property rights that are not authorised by a specific submission should only be introduced by way of a variation where affected parties are given meaningful opportunities for participation and comment.
113. The relief sought is as per the request in the submission and any consequential changes necessary to address the issues raised above and/or that are necessary to give effect to the intent of the appellants submissions.
114. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 1565

115. The Appellant in their submissions sought the following relief:

Rule 86 is a blunt all encompassing rule that fails to differentiate between normal coastal processes (i.e. gradual coastal retreat arising from erosion) and catastrophic one off events such as Tsunami. Given that the coastal hazard zones are not based on catastrophic one off events provision should be made within the rule so that replacement structures are permitted where structures are damaged by sea action of an unforeseen nature i.e. outside of the parameters used in the formulation of the coastal hazard zones (such as Tsunami).

Rule 86 also creates an element of uncertainty in that it refers to structures that are damaged whereas it appears the intent of the rule is for those structures that are destroyed. It makes no sense why a structure that has suffered only minor or superficial damage should not be entitled to undertake repairs as a permitted activity and therefore creates uncertainty as to when Rule 79 applies and when Rule 86 applies. This may also conflict with Section 330 of the RMA.

Relief Sought:

Amend Rule 86 so that replacement structures are permitted where structures are damaged by sea action of an unforeseen nature i.e. outside of the parameters used in the formulation of the coastal hazard zones (such as Tsunami).

Amend Rule 86 so that it only applies to structures destroyed by the action of the sea rather than merely damaged or clarify the extent of damage to structures required so that Rule 86 applies rather than Rule 79.

116. The Respondent has indicated it has accepted in part this submission but not exactly as requested by the submitter.
117. The appellant agrees that the respondent has taken into account the first point raised in the submission but has totally failed to address the other concerns the appellant has with Rule 86, that of differentiating between damaged and destroyed structures.
118. The appellant is a local authority obliged in many instances to have structures that by necessity must be located within close proximity of the coast or due to historical reasons are now in a fixed location. There are simply no other practicable options for locating many of these assets with stormwater outlets being one obvious example. Rule 86 fails to recognise these facts and as a result may unnecessarily restrict the appellant from undertaking operations that are essential to protect both infrastructure and peoples health and safety or to maintain existing features and structures valued by the community at large.
119. The relief sought is as per the request in the submission.

120. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1571 (Xsub), 1573, 1575 (Xsub)

121. The Appellant in their submissions sought the following relief:

Rule 83 fails to recognise that network utilities by their very nature may have an operational requirement to locate in the coastal environment including areas identified as being subject to hazard (e.g. navigational aids, stormwater disposal structures etc) yet in most instances those utility services would be below ground and therefore have no effect on coastal processes. Making such activities restricted discretionary activities in all of the CHZ's would not acknowledge the important function that such utilities provide or their locational requirements. It also fails to recognise that network utility structures are essential for providing for peoples health and safety along with their social and economic wellbeing. If development is located within any of the coastal hazard zones then it necessarily follows that utility services are also required to service that development. The logical approach for the regional council to follow therefore is to develop rules which focus on the appropriateness of private developments within coastal hazard zones rather than unnecessarily adding another layer of regulation that focuses on network utilities, when those utilities are a necessary adjunct that is vital to service such development. Rule 83 in its current form is ineffective, unnecessarily restrictive and fails to promote sustainable management of resources. As a consequence it fails to satisfy S.32 requirements of the Act.

Rule 83 also fails to recognise local authorities are statutorily required in many instances to provide utility services within what the regional council, has only now, identified as being subject to hazard and to create significant uncertainty through a restricted discretionary resource consent may result in unnecessary costs, delays and undue hardship for legitimately established development for no discernable benefit. As an example Rule 83 in its current form may prevent Council (through uncertainty and costs) from providing a new reticulated sewerage service to an un-serviced coastal settlement despite the benefits such a service may provide. This seems anomalous given that Rule 80 permits non reticulated wastewater systems within the hazard zones, albeit subject to conditions.

Rule 83 also fails to recognise the reality that Napier City Council has over the last 75 years had to extend its stormwater outfalls along Marine Parade several times and indeed is budgeting for further extensions simply in response to the accretion that is occurring along this beach (e.g. the discharge pipe for the National Aquarium is programmed for extension around 2008/09).

Relief Sought:

As a first preference exempt local authorities from Rule 83 (as it stands) and make new utilities undertaken by a local authority a permitted activity. OR

Amend Rule 83 with added text shown in bold italics and deleted text shown as struck through so that all new utilities be a controlled activity within CHZ1 and CHZ2 (but not CHZ3) the specific matters for control as shown below:

Rule	Activity	Classification	Conditions/Standards/Terms	Matters for Control/Discretion	Non-notification
83 New Utilities within CHZ1, CHZ2 and CHZ3	Except as provided for in rule 79 and Rule 85, construction of a new structure for the purposes of a network utility operation within any of the following: Coastal Hazard Zone 1 Coastal Hazard Zone 2 Coastal Hazard Zone 3	Restricted Discretionary Controlled	<i>a) The avoidance, remediation or mitigation of the effects of coastal erosion and inundation on the network utility operation.</i> <i>b) The avoidance, remediation, or mitigation of the effects of the network utility operation on coastal erosion and inundation.</i>	a) Intended purpose or use of the structure b) Effects on people's health and safety b) Effects of structure on natural coastal processes c) Effects of natural coastal processes on structure and network utility operation. d) Probability and magnitude of erosion and inundation e) Methods to avoid or mitigate effects of coastal hazard to structure and network utility operation f) Degree to which any protection works to the property or structure have been carried out g) Matters in Chapter 26.4	<i>Except where an applicant requests or where special circumstances exist, an application will not be publicly notified.</i>

AND

Make network utilities a permitted activity within CHZ3.

122. The Respondent has indicated it has accepted in part this submission but not exactly as requested by the submitter.

123. The appellant agrees that the respondent has gone some way to addressing the concerns of the appellant by making some provision for specific network utility structures (i.e. those within road reserve). The appellant contends however, that insufficient recognition has been given for those network utility structures undertaken by a local authority that cannot be located within road reserve, with an obvious example being stormwater outlets.
124. The appellant continues to have concerns with the wording of Rule 83 as it appears to remain inflexible and unnecessarily restrictive of operations that the appellant is statutorily obliged to undertake on behalf of its community and for which there is no demonstrable issues that require managing.
125. The relief sought is as per the request in the submission.
126. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1593 & 1609

127. The Appellant in their submissions sought the following relief:

Rule 85 covers coastal protection structures (where they are not restricted coastal activities) as a non-complying activity within the coastal marine area, CHZ 1 or CHZ 2. However these areas by their very nature would be the exact (and indeed only) location where such coastal protection structures may be both necessary and the most effective practicable option. The HBRC has only now identified CHZ's despite the prevalence of long established communities and substantial development along the coastline. These communities and development have been legitimately established and represent physical resources in terms of the Act that need to be sustainably managed. In certain instances coastal protection structures may be the only practicable solution for managing such resources. To make coastal protection structures a non complying activity creates a presumption against the activity and in so doing creates an unnecessarily high hurdle for those areas of the coastline where a coastal protection structure is the only practicable solution. The non-complying status for these structures therefore seems excessive particularly as the plan recognises that such structures may be necessary when it is the best practicable option. In any case these

structures may also be approved and financed by local authorities as public works and are controlled by the public works procedures.

Amending the classification of coastal protection structures from a non complying activity to a discretionary activity will still give the HBRC full discretion to consider any relevant issues and to refuse consent for those structures where they are not the best practicable solution. It does however give greater recognition that the coastal marine area and CHZ1 & 2 zones may be an appropriate location in certain circumstances for a coastal protection structure. A discretionary activity status with specific assessment criteria for resource consents (at least along those portions of the coast that have been identified as being at risk from coastal hazards) would be therefore the most appropriate method for managing coastal protection structures in those portions of the coast where potential coastal hazards exist.

Rule 85 also fails to differentiate between the effects of certain activities associated with coastal protection structures. The maintenance and repair of a coastal protection structure should not be subject to the same rigorous assessment as an entirely new structure as the effects of that structure on coastal processes are already known. Similarly the removal of a failed coastal protection structure is likely to have significant positive benefits and should not be subject to the classification as a new one as it is likely to discourage any attempt to remove such failed structures. A more thorough and justifiable section 32 assessment needs to be given to the various components of Rule 85 prior to introducing the restrictive activity class of non complying activity.

Relief Sought:

Amend the activity status of Rule 85 for the erection, placement, construction of a coastal protection structure from a Non Complying Activity to a Discretionary Activity (at least along those portions of the coast that have been identified as being at risk from coastal hazards) and include appropriate assessment criteria for assessing resource consents.

Amend the activity status of Rule 85 for the replacement, maintenance, repair, demolition or removal of a coastal protection structure from a Non Complying Activity to a Permitted Activity where such work is undertaken by a local authority.

128. The Respondent has indicated it has accepted in part one of these submissions and rejected the other.
129. The appellant contends that the plan provisions as amended by decisions do not address the concerns of the appellant.

130. The appellant is a local authority with extensive experience in coastal hazards and for many years has been involved in a beach renourishment scheme for the Westshore coastline. Monitoring of the renourishment scheme has demonstrated that it is very effective in protecting the natural and physical resources of the Westshore community in all but a small portion of the coastline along Whakaririe Avenue. In this particular location extensive research has determined that a coastal protection structure is necessary and the only practicable solution to managing the effects of coastal erosion.
131. The appellant remains concerned about the categorisation of such a structure as a non complying activity when quite clearly such a structure can only reasonably be located within the coastal marine area. The use of a coastal protection structure is also recognised within the RPS, RCEP and NZCPS as an appropriate means of mitigation in certain circumstances. The appellant continues to maintain that provided these circumstances are met and in particular when the structure is erected by a local authority the appropriate activity status for such a coastal protection structure should be a discretionary activity.
132. Similarly the appellant continues to maintain that the appropriate activity status for the replacement, maintenance, repair, demolition or removal of a coastal protection structure where such work is undertaken by a local authority should be a permitted activity rather than a Restricted Discretionary Activity (Rule 83A) or a Non Complying Activity (Rule 85). Such classification enables local authorities to maintain and preserve the structural integrity of coastal protection structures in the face of one off coastal events in a timely fashion without fundamentally changing the actual and potential effects of the structure. The activity classifications contained in the RCEP

may unnecessarily threaten the structural integrity of any legitimately established coastal protection structure by preventing necessary remedial work due to consenting delays.

133. The relief sought is as per the request in the submission.
134. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 1608

135. The Appellant in their submissions sought the following relief:

Environmental guideline 9 (hazard mitigation works) provides for local authorities to carry out hazard mitigation works but states a series of qualities and processes that they must not adversely affect. While the proposal that local authorities may carry out hazard mitigation works is supported, unfortunately hazard mitigation works by their very nature and in order to be effective may need to impact on the stated qualities and processes. Recognition therefore needs to be given within the policy as to some degree of flexibility (rather than the mandatory statement of 'must not') in terms of undertaking mitigation works that impact on the stated qualities and processes. Wording similar to that used in Environmental Guideline 10. Coastal protection structures iii) is therefore requested (i.e. "avoid adverse environmental effects to the greatest extent practicable", rather than 'must not').

While the intent of the environmental guideline is supported (subject to the amended wording) it is noted that there is no actual rule which supports the stated policy. In order for the environmental guideline and therefore policy to be effective some regulatory provision needs to be added to the plan which actually provides local authorities the authority to undertake hazard mitigation works.

Relief Sought:

Add a rule to the Plan which allows local authorities to implement Environmental Guideline 9 (i.e. a rule that allows local authorities to undertake hazard mitigation works).

136. The Respondent has indicated it has rejected this submission but failed to satisfactorily explain why.

137. The appellant contends that the plan provisions as amended by decisions continue to lack a satisfactory linkage between the policies and the rules and that in particular they fail to recognise the statutory responsibilities of local authorities who are obliged to act on behalf of their constituent communities in order to protect their health and safety and social and economic wellbeing.
138. The relief sought is as per the request in the submission.
139. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decisions 1619, 1621, 1622, 1623

140. The Appellant in their submissions sought the following relief:

Rule 88 requires a resource consent for the deposition of sediment on Westshore Beach for the purposes of the Westshore renourishment scheme. The Westshore renourishment scheme has been successfully operating since 1987 and has been demonstrated to mitigate the effects of coastal erosion at Westshore with no adverse effects. The scheme is undertaken by contractors on behalf of both the Napier City Council and the HBRC for the collective benefit of the Napier community and without such action Westshore is likely to become vulnerable once again to wave attack.

The Proposed City of Napier District Plan provides for the renourishment scheme as a permitted activity and this rule is now effectively operative pursuant to Section 19 as it is beyond challenge. Similarly Rule 8.4.3 of the Regional Coastal Plan permits the Westshore renourishment scheme and there appears to have been no problems with implementation of this rule over the life of that plan. The RCEP should also provide for this activity as a permitted activity, the same as in the Proposed City of Napier District Plan, to avoid any unnecessary restriction and inconsistencies especially given that there appears to be no reasoning in terms of a Section 32 analysis to justify the need for the HBRC to reserve control over an operation that since 1987 has exhibited no adverse effects that are more than minor, and indeed exhibit only positive effects. The need for this layer of regulation is particularly questionable given that many of the Regional Council's own activities and functions in the coastal margin and CMA with no long standing established history and

potentially far greater environmental effects are themselves classified as permitted activities (e.g. Rule 53).

One standard and term that accompanies Rule 88 also differs from the rules in the Proposed City of Napier District Plan by requiring a specified particle size (condition c). Condition c may be unnecessarily restrictive given that the source of sediment for the renourishment scheme is already being obtained from a site exhibiting the most compatible characteristics with material located on the Westshore beach, i.e. from the Marine Parade Gravel Extraction Site specifically identified within the RCEP. It is conceivable that it may be impracticable at any one point in time (depending on the nature of the sediment present at that point in time) to obtain material that meets condition c despite the material at the Marine Parade already having been identified as the most suitable and compatible with the material at Westshore. Strict adherence with Condition c) may indeed result in significantly more adverse effects and costs due to the need for additional transportation, processing and double handling for no discernable benefit.

Similarly in terms of Rule 90 the reference to “Except as provided for in Rule 88” appears to be an incorrect reference as Rule 88 provides for the deposition of sediment on Westshore Beach and has nothing to do with the removal of sediment. For the same reasons as identified in the submission above (i.e. concerning the deposition of sediment for the Westshore renourishment scheme pursuant to Rule 88) the RCEP should provide for this activity as a permitted activity to avoid any unnecessary restriction. Refer to Reasons above.

Relief Sought:

Amend the Activity Status of Rule 88 to a Permitted Activity where it is undertaken by a local authority or a duly authorised person thereof.

Delete Condition c) of Rule 88 in its entirety.

Amend Rule 90 by deleting the phrase “Except as provided for in Rule 88”.

Amend the Activity Status of Rule 90 to a Permitted Activity.

141. The Respondent has indicated it has rejected most of these submissions but failed to satisfactorily explain in terms of a Section 32 assessment why. The Respondent has indicated it has partly accepted one submission by moving the sediment particle size from a condition to a matter of discretion.

142. The appellant maintains that the relief provided within the decisions do not satisfactorily meet the concerns of the appellant and for the reasons given above continue to request the relief sought in the submission.
143. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.

Decision 1617

144. The Appellant in their submissions sought the following relief:

Napier City Council supports the use of planning maps to spatially identify areas subject to provisions within Volume I of the plan. While there has been a significant improvement in the legibility of the maps since the draft plan the Council still have concerns in a number of areas.

The use of black and white aerial photography has aided interpretation however the legend used for such things as the "Parade Gravel Extraction site" and the "Westshore Renourishment Area" makes it difficult to distinguish exactly where these locations are and whether they are correctly identified. Choice of a different legend style is necessary along with more accurate spatial identification of the "Parade Gravel Extraction site" and the "Westshore Renourishment Area" to avoid unnecessary confusion and potential mistakes in delimiting their locations. The Westshore renourishment site in particular appears to be located too far seaward and not extended far enough landward.

Relief Sought:

Amend Volume II – Planning Maps to address the concerns raised above and incorporate the suggested amendments.

145. The Respondent has apparently accepted this submission but has failed to produce planning maps as amended by decisions leaving the appellant in the position of having to lodge an appeal in order to find out whether the relief is in accordance with the intent of the submission.
146. The figure accompanying the decision is of such poor quality and small scale that it fails to assist the appellant in its efforts at

determining whether the relief has been accepted as per the submission.

147. The appellant finds it incredible that in this day and age where computer based GIS systems are the norm rather than the exception, an organisation such as the HBRC cannot in over two calendar years produce legible planning maps as part of its decision making process, particularly when concerns with the illegibility of the maps were raised through the submission process.
148. The relief sought is as per the request in the submission.
149. Such further or consequential relief as may be necessary to fully give effect to the relief sought either in this appeal or in the submissions on which each aspect of the appeal is based.
150. Attached as **Annexure 4** is the names and addresses of persons to be served with a copy of the notice.

M B Lawson

Solicitor for Appellant

Date: 29 August 2008

THIS Notice of Appeal is filed by **MATTHEW BRUCE LAWSON**, Solicitor for the abovenamed Appellant of the firm of Willis Toomey Robinson. The address for service of the abovenamed Appellant is at the offices of Willis Toomey Robinson, 116 Vautier Street, Napier. Documents for service on the abovenamed Appellant may be left at that address for service or may be:-

- (a) Posted to the solicitor at Private Bag 6018, Napier; or
- (b) Transmitted to the solicitor by facsimile (06) 835-1430.

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to be a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Ministry of Justice in Auckland, Wellington or Christchurch.