

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAUROA**

Decision [2025] NZEnvC 138

IN THE MATTER OF appeals under clause 14 of the First
Schedule to the Resource Management Act
1991

BETWEEN TE TAIWHENUA O HERETAUNGA,
TE RUNANGANUI O HERETAUNGA,
TE MANAAKI TAIAO O
HERETAUNGA AND NGĀTI
KAHUNGUNU IWI INCORPORATED

(ENV-2021-AKL-104)

AND ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(ENV-2021-AKL-105)

AND THE MĀORI TRUSTEE

(ENV-2021-AKL-106)

Appellants

AND HAWKE'S BAY REGIONAL COUNCIL

Respondent

Court: Environment Judge MJL Dickey
Environment Commissioner RM Bartlett
Environment Commissioner KA Edmonds

Hearing: 12-14 March and 23-24 April 2024
Last case event: 29 July 2024 – Council's closing submissions

Appearances: Mr M Conway and Ms G Plank for Hawke's Bay Regional
Council
Mr N Tiuka for Te Taiwhenua O Heretaunga, Te Runanganui O
Heretaunga, Te Manaaki Taiao O Heretaunga and Ngāti
Kahungunu Iwi Incorporated
Mr A Parker and Mr T Williams for Royal Forest and Bird
Protection Society of New Zealand Incorporated
Ms V Brunton for Genesis Energy Limited



Date of Decision: 23 April 2025

Date of Issue: 23 April 2025

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DECISION OF THE ENVIRONMENT COURT

- A: The Hawke’s Bay Regional Council is directed to amend the Decision version of Plan Change 7 as shown in Annexure A.
- B: The Indicative location map, attached in Annexure B, shall be included as Part 3 of PC 7. It shall be updated to include any features of OWBs that are now included in Part 2 Table 1 of PC 7 as amended in this decision. Further HBRC is to propose suitable wording in Part 2 as to how the Indicative Map can be used in reading the plan change.
- C: The Map and wording are to be submitted to the Court for approval by 23 May 2025.
- D: To the extent that amendments to the Plan Change respond to the relief sought in the appeals, those appeals are allowed and the balance of relief sought is rejected.
- E: Costs are reserved but not encouraged.

REASONS

A. Introduction

[1] The appeals relate to decisions made by Hawkes Bay Council (**HBRC**) on Proposed Plan Change 7 (**PC7**) to the Hawkes Bay Regional Resource Management Plan (**RRMP**) – Outstanding Water Bodies (**OWB**).

[2] Appeals were brought by Te Taiwhenua O Heretaunga, Te Runanganui O Heretaunga, Te Manaaki Taiao O Heretaunga and Ngāti Kahungunu Iwi Incorporated (**TTOH and others** or **TTOH**), Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**) and the Māori Trustee.

[3] Genesis Energy Limited joined the appeal as a s 274 party and was represented at the hearing. Other s 274 parties Federated Farmers, Horticulture New Zealand, Silver Fern Farms and Hawkes Bay Winegrowers Association Incorporation and Pernod Ricard Winemakers New Zealand Limited did not appear at the hearing, neither did the Māori Trustee.

Background – PC7

[4] PC7 sets out objectives in relation to the integrated and sustainable management of freshwater and land use and development. That includes protecting the outstanding and significant values of OWB while recognising the many values and uses of the land and freshwater resources, some of which are competing, and integrating tangata whenua values into that management and development. It sets out policies that adopt a problem-solving approach to the identification and management of outstanding freshwater bodies, integrated catchment-based management, and methods to manage the appropriate balance between conflicting values and uses within the region's catchments.

[5] The Decision of the Independent Hearing Panel (**IHP**) was issued in June 2021. Having considered 38 water bodies put forward for consideration as OWBs the IHP selected 15. All the water bodies had already been through what they called an exhaustive process, using expert panels, input from tangata whenua and judgements made by HBRC. As part of its deliberations the IHP developed a set of

screening criteria which it used to establish whether a water body could be deemed outstanding. These became part of Schedule 25 to PC7, which provides the method for determining whether a water body is outstanding based on the definition of ‘outstanding’ and use of the screening criteria. The definition of outstanding is subject to appeal but the Decision version is as follows:

Outstanding for the purposes of an outstanding water body means conspicuous, eminent and/or remarkable in the context of the Hawke’s Bay Region.

[6] HBRC lodged its preferred version of PC7 after the Court’s hearing, on 25 July 2024.¹

[7] Some of the provisions sought were agreed by the parties, as listed in draft consent orders received by the Court on 1 November 2022 (policy amendments) and 29 January 2024 (inclusion of additional outstanding water bodies to Schedule 25 Part 2). We consider those matters in the decision as they arise. The Court’s finalised PC7 is provided in **Annexure A**.

B. Overview of PC7

[8] HBRC provided a useful overview of PC7. PC7 is intended to identify OWBs in the Hawke’s Bay region, in line with national direction. It includes a framework which enables higher order protection of the outstanding and significant values of water bodies in future plan making and provides a list of the identified OWBs.

[9] PC7 primarily amends Chapters 3.1A and 3.2 of the Regional Policy Statement (**RPS**). It adds two definitions (of ‘outstanding’ and ‘outstanding water body’) into the glossary that applies to all parts of the RRMP (the RPS and the regional plan).

[10] Those terms are defined in HBRC’s preferred version of PC7, in Glossary 9, as follows:

- (a) **Outstanding water body** means freshwater bodies and estuaries, or parts thereof, identified in Schedule 25 that have one or more outstanding

¹ HBRC’s closing submissions, dated 25 July 2024, at Appendix 2.

cultural, spiritual, recreation, landscape, natural form and character or ecology values(s), or those water bodies identified as having one or more outstanding values in a water conservation order.

- (b) **Outstanding** for the purpose of an outstanding water body means conspicuous, eminent, and/or remarkable in the context of the Hawke's Bay Region.

[11] The key directives for PC7 are contained in Objectives LW1.1 and LW1.11:

- (a) Objective LW1 (in Chapter 3.1A) provides for the integrated management of fresh water and land use and development, with clause 1 protecting the outstanding and significant values of outstanding water bodies identified in Schedule 25;²
- (b) Objective 11 (in Chapter 3.2) provides for the protection of the outstanding and significant values of outstanding water bodies identified in Schedule 25 that are within the Coastal Environment (estuaries).

[12] HBRC submitted that the inclusion of coastal resources (estuaries) ensures a consistent and integrated approach to the management of OWB occurs across the region and supports the National Policy Statement for Freshwater Management (NPSFM) 2020 approach of integrated management associated with the interconnected nature of water bodies.

[13] HBRC advised that rules implementing the protection of OWBs will be prepared through future plan-making. In the meantime, OWBs and the objectives and policies relating to them will be considered when making decisions on resource consent applications for future activities near OWBs.

² Note: The majority of Objective LW1 is operative and not part of PC7, with amendments restricted to Clause 1 which was updated to ensure consistency with the 2014 NPSFM wording which requires the protection of the significant values of OWBs.

[14] A new Schedule 25 has been added to the RRMP. As proposed by HBRC it outlines screening criteria used to identify water bodies (including estuaries) in the region that have one or more outstanding cultural and spiritual, recreation, landscape, natural form and character or ecology value(s). A water body must either meet the screening criteria for one or more of these values and the definition of ‘outstanding’ as set out in the RRMP or be identified as having one or more outstanding values in a water conservation order to meet the definition of ‘outstanding’.

[15] HBRC submitted that the definitions and the screening criteria set a clear scope as to what may or may not be outstanding for PC7 purposes.

C. Statutory Framework

[16] The statutory framework is not in dispute.

[17] As PC7 was notified on 31 August 2019, the RMA as it stood at that date is the version of the Act that applies to the appeals.³

[18] The relevant statutory provisions are set out in ss 30, 32, 32AA, and either ss 59-62 (for the RPS components) or ss 63-70 (for the regional plan components) of the RMA.

[19] The relevant statutory requirements include whether the PC7 provisions:

- (a) accord with and assist HBRC to carry out its functions,⁴
- (b) are in accordance with any regulations (including national environmental standards);⁵
- (c) give effect to a national policy statement or the New Zealand Coastal Policy

³ The Resource Management Amendment Act 2020 was incorporated into the RMA on 1 July 2020. This Amendment Act sets out that if a proposed regional plan or policy statement which is for the purpose of giving effect to any national policy statement for freshwater management or otherwise relates to freshwater, and was publicly notified before the commencement date, the RMA applies to the policy statement/regional plan as if the Resource Management Amendment Act 2020 had not been enacted. (Schedule 12, part 3, cl 19).

⁴ RMA, ss 63(1) and 66(1).

⁵ RMA s 66(1)(f).

Statement (**NZCPS**);⁶

- (d) give effect to the RPS (within the RRMP);⁷
- (e) have regard to any relevant management plans and strategies under other Acts to the extent their content has a bearing on the resource management issues of the region;⁸
- (f) take into account any relevant planning document recognised by an iwi authority;⁹
- (g) are not inconsistent with any other regional plan for the region.¹⁰

[20] Under s 32 of the RMA the matters to be addressed are whether:

- (a) the objectives are the most appropriate way to achieve the purpose of the RMA; and
- (b) the provisions are the most appropriate way to achieve the objectives by:
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objective, including:
 - a. identifying and assessing,¹¹ and if practicable quantifying,¹² the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated; and
 - b. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.¹³

⁶ RMA, s 67(3)(a) and (b).

⁷ RMA, s 67(3)(c).

⁸ RMA, s 66(2)(c).

⁹ RMA, s 66(2A)(a).

¹⁰ RMA, s 67(4).

¹¹ RMA, s 32(2)(a).

¹² RMA, s 32(2)(b).

¹³ RMA, s 32(2)(c).

[21] Under s 32AA, a further evaluation is required only for any changes that have been made to, or are proposed for, the proposal after the s 32 evaluation report was completed. This further evaluation must be undertaken in accordance with s 32.

[22] Section 290A of the RMA provides that, in determining an appeal the Environment Court must have regard to the decision that is the subject of the appeal.

The Natural and Built Environment Act

[23] The Natural and Built Environment Act (**NBEA**) received Royal Assent on 23 August 2023. The NBEA did not repeal or amend the plan-making process under Part 5 and Schedule 1 of the RMA, but in any event it has now been repealed and is not relevant to consideration of PC7.

Treaty Settlement legislation

[24] HBRC submitted, following its review of the relevant Treaty Settlement legislation, that none of the issues in dispute for this hearing turn on it or the documents prepared under it.

[25] HBRC must take into account any relevant planning document recognised by an iwi authority when preparing or changing a regional plan.¹⁴ In the Hawke's Bay Region the iwi management plans are as follows:

- (a) Ngāti Kahungunu Kaitiakitanga Mo Nga Taonga Tuku Iho 1992, which seeks among other things that the coastal ecological system's mauri is protected and preserved;¹⁵
- (b) Te Iwi o Rakaipaaka Hapū Environment and Resource Management Plan 2000, which seeks to build strong relationships with public authorities and highlights concern about increasing demand on water resources;¹⁶

¹⁴ RMA, s 66(2A)(a).

¹⁵ Ngati Kahungunu Kaitiakitanga Mo Nga Taonga Tuku Iho, December 1992, at page 26.

¹⁶ Te Iwi o Rakaipaaka Hapū Environment and Resource Management Plan, 2000, at page 3.

- (c) Ngāti Hori Freshwater Resources Management Plan ‘Operation Patiki’ 2009/2012, which is based on freshwater priorities for Karamū River such as improved water quality and protection and restoration of fish and fish habitat;¹⁷
- (d) Kahungunu Marine and Freshwater Fisheries – Strategic Plan 2013, which focused on improving fisheries such as the Ngaruroro River, which is affected by pollution, run-off and sedimentation;¹⁸
- (e) Management Plan – Mana Ake – Nga Hapū o Heretaunga 2015 (published by Te Taiwhenua o Heretaunga), which sought that aquifers are protected and that hapū are consulted on future takes from the Heretaunga Aquifer;¹⁹
- (f) Tūtaekurī Awa Management and Enhancement Plan 2014, which raised concern that the Waitangi Estuary cannot provide for kotuku, tūturiwhatu, and pūkeko when it is under such pressure;²⁰ and sought a formalised partnership with HBRC to restore and enhance the mauri of Tūtaekurī;²¹ and
- (g) Kaitiaki o Te Rakato Environment Resource Management Plan, which is focused on maintaining and upholding tikanga tiaki of the people of Te Rakato to prevent exploitation, degeneration and pollution of Papatūānuku.²²

[26] These documents informed the cultural and spiritual values set and the 38 OWBs in the notified version of PC7.

¹⁷ Ngāti Hori Freshwater Resources Management Plan “Operative Patiki” 2009/2012, December 2012, at page 2.

¹⁸ Kahungunu Marine and Freshwater Fisheries – Strategic Plan, 2013, at page 13.

¹⁹ Mana Ake Ngā Hapū o Heretaunga, 2015, at page 23.

²⁰ Tūtaekurī Awa Management and Enhancement Plan, 2014 at page 21.

²¹ Tūtaekurī Awa Management and Enhancement Plan, 2014 at page 38.

²² Kaitiaki o Te Rakato Environment Resource Management Plan, at page 4.

National policy statements

[27] HBRC submitted that there is no significant conflict between the provisions of higher order planning instruments that require reconciliation. There is some difference between the way in which the NPSFM 2020 and the NZCPS phrase their respective provisions dealing with high value areas. The NZCPS is more restrictive in some respects, requiring certain adverse effects to be avoided (as opposed to the NPSFM 2020 requirement to “protect”). As a result, Policies C1, C2 and C3 in PC7 require the avoidance of adverse effects when outstanding and significant values trigger the relevant parts of NZCPS policies 11, 13 and 15. In this way, PC7 is able to implement the NPSFM 2020 where it applies, and the NZCPS where it applies.

National Policy Statement for Freshwater Management 2020

[28] Under s 67(3)(a) of the RMA, regional plans must give effect to national policy statements.

[29] PC7 was prepared and publicly notified in August 2019 while the NPSFM 2014 with the 2017 update was in force. The NPSFM 2020 came into force on 3 September 2020 and superseded the NPSFM 2014. It is the current version of the NPSFM 2020 (i.e., as amended in January 2024) that applies to the determination of these appeals.

[30] The NPSFM 2020 retained the requirement that OWBs need to be protected and did not introduce any changes that required material alteration to PC7. One significant change was that Subpart 2 of the NPSFM 2020 requires regional councils to identify freshwater management units (**FMU**) and their values with the community. However, PC7 is a change focused on identifying and providing RPS-level direction on protecting outstanding water bodies, rather than having a broader purpose that would engage the remainder of the requirements set out in the NPSFM 2020. Further changes to the NPSFM 2020 were made in 2023²³ and then in January 2024²⁴ but none

²³ These changes were made to clarify the definition of a natural wetland, provide consent pathways for certain activities, make restoration and wetland maintenance easier to undertake.

²⁴ To reflect the Court of Appeal’s decision in *Muaūpoko Tribal Authority Incorporated v Minister for the Environment and Te Rūnanga o Raukawa Incorporated* [2023] NZCA 641, which quashed Clause 3.33 and Appendix 5 of the NPSFM (Specified vegetable

of these changes materially altered the policy direction of the NPSFM 2020 as it relates to PC7.

[31] The fundamental concept of the NPSFM 2020 is Te Mana o Te Wai:²⁵

Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.

[32] The NPSFM 2020 requires councils to implement it “as soon as reasonably practicable”.²⁶ Regional councils had until 31 December 2027 to notify freshwater planning instruments to give effect to the NPSFM 2020. The RMA now requires that councils do not notify a freshwater planning instrument that gives effect to the NPSFM before 31 December 2025 or the publication of a new NPSFM.²⁷

[33] HBRC is not required to give full effect to the NPSFM 2020 through PC7. Nor would this be possible, due to the limited scope of PC7 and appeals on PC7, the procedural requirements of the NPSFM 2020 and further technical work that is required before some matters can be included in the regional plan.

New Zealand Coastal Policy Statement

[34] The NZCPS applies to some of the water bodies dealt with in PC7, in particular the estuaries and lagoons that have an outstanding value spanning the freshwater and coastal environment. Where policies 11, 13 and 15 of the NZCPS apply, its directions have been applied by using wording for PC7 policies C1, C2 and C3 that more appropriately reflects the policy direction in the NZCPS rather than the policy direction in the NPSFM 2020 (although that wording will also inherently implement the NPSFM 2020 direction to protect those values).

growing areas).

²⁵ NPSFM 2020, at 1.3(1).

²⁶ NPSFM 2020, at 4.1.

²⁷ RMA, s 80A(4A)(b), and see Severe Weather Emergency Recovery (Resource Management – Time Extensions) Order 2023, cl 6(b).

D. Policy Amendments

[35] The parties entered mediation and then submitted a consent memorandum with accompanying policy amendments in the first draft consent order dated 12 February 2024, but provided little explanation of or reasons for the amendments in the documentation.

[36] In a Minute seeking a better indication of what issues were to be the focus of the hearing, the Court reminded the parties that the consent documentation amendments were still an issue before the Court regardless of the position of the parties. That Minute said:²⁸

The Court notes that notwithstanding whether or not an issue on the HBRC preferred version amendments is live for a party, or reflects the consent memoranda, the Court may need to ask questions of witnesses and parties. The Court needs to be satisfied that proposed amendments are appropriate (including their drafting and scope) for the Court to exercise its discretion and approve them.

[37] During the hearing the Court again referred to the decision on the policy amendments being a matter for the Court, with the Court needing to be satisfied as to their appropriateness. There was no written evidence explaining or justifying the amendments, and the Court then questioned counsel, and the planning witnesses in particular, about them.

[38] HBRC made much of the lack of attendance by two of the parties to the mediation. Those parties had withdrawn from further involvement in the Environment Court process. We reminded the parties that any party that withdrew from proceedings on the basis of consent order documentation not yet approved by the Court took a risk. It cannot be assumed that the Court will sign off on settlements reached by parties.

[39] We note that HBRC indicated it would consult with the parties that had withdrawn on amendments to the draft consent order agreed at mediation in a joint memorandum.²⁹ The parties sought the Court's direction as to whether HBRC's

²⁸ Minute of the Court, dated 12 February 2024, at [5].

²⁹ Joint Memorandum, dated 21 May 2024.

proposed changes to the policies should be provided to all signatories of the joint memorandum in support of the draft consent orders for comment. The Court did not make a direction on this.³⁰ It said that if HBRC wishes to confer with those who are no longer parties to the proceedings and adopt any feedback that is its decision to make. It is important the Court satisfy itself as to the appropriateness of amendments subsequently lodged with the Court in HBRC's closing, particularly given the role of policy in directing, informing and implementing related provisions such as resource consenting.

[40] We now look at policy issues raised by the Court early in the hearing and HBRC's response with modifications to its final closing version of the provisions:

- (a) to make it clear that Te Mana o te Wai applies to the protection of significant and outstanding values, and that outstanding values take precedence over significant values when they are within the same tier of the hierarchy;
- (b) to explicitly address cumulative effects;
- (c) to ensure values of OWBs that are relevant in local and regional circumstances are also taken into account when considering activities identified in Policy LW3A.1 and Policy LW3B.2.

Te Mana o te Wai and priority issues

Background

[41] The Decision version of PC7 (**Decision version**) did not refer to Te Mana o Te Wai or its elements and hierarchy.

[42] The draft consent order in its proposed amendments endeavoured to address priorities between protecting outstanding and significant values subject to the hierarchy of obligations in Te Mana o te Wai. It also proposed adding the hierarchy of obligations in Te Mana o te Wai to the assessment matters in Policy LW1.2(bA).

³⁰ Minute of the Court, dated 30 May 2024 at [7]-[8].

[43] The Court had a number of questions about how the proposed amendments would be interpreted and applied, and raised them with the parties early in the proceedings.

[44] HBRC's closing version of PC7 proposed the following:

Policy LW1 Problem-solving approach – Catchment-based integrated management

1.) Adopt an integrated management approach to fresh water and the effects of land use and development within each catchment area, that:

...

d) protects the outstanding and significant values of those outstanding water bodies identified in Schedule 25.

...

2.) When preparing regional plans:

...

v) Include regional plan provisions to manage any conflict between values in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising:

(a) first, the health and well-being of water bodies and freshwater ecosystems;

(b) second, the health needs of people (such as drinking water);

(c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future;

with priority given to outstanding values over significant values in cases where those values fall within the same Te Mana o te Wai category.

[45] HBRC's closing version also has the following as a footnote to LW1.1(d):

Any conflicts between values are to be managed in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising (a) first, the health and well-being of water bodies and freshwater ecosystems; (b) second, the health needs of people (such as drinking water); (c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future, with priority given to outstanding values over significant values in cases where those values fall within the same Te Mana o te Wai category.

[46] To our mind this is a substantive provision which should be in the policy and not in a footnote, and we have included it in Policy LW1.1(d).

[47] The approach is carried through into Resource Consent Decision-making Criteria – Outstanding Water Bodies identified in Schedule 25 (new activities) in Policy LW3A and for new activities in the coastal environment in Policy C2. The preface to both is: “The need to manage any conflicts in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising ...” thus carrying this intent through to resource consenting.

Redrafting and potential implications

[48] We note that in closing, TTOH and others supported the intent of providing clarity in the application of Te Mana o te Wai and the hierarchy of obligations policy, in that outstanding values take precedence over significant values when they are within the same tier of hierarchy. TTOH and others considered that this clarity would be better served and endure if Te Mana o te Wai and the hierarchy of obligations was explicitly stated within PC7 itself, rather than only in a reference to Objective 2.1 of the NPSFM 2020.

[49] Further, TTOH and others submitted that HBRC and the planners agree that the intent of PC7 is to be consistent with Te Mana o te Wai and the hierarchy of obligations and the intent of the NPSFM 2020. If Objective 2.1 of the NPSFM 2020 were to change, or subsequent statutes were to alter its implementation, then its clarity could be lost and its intent undermined. Also, having Te Mana o te Wai articulated in full speaks to the intent and clarity of priorities for which there seems to be agreement.

[50] In its closing submissions HBRC adopted TTOH and others’ wording, with no party understood to be disagreeing with it.

RMA (Freshwater and Other Matters) Amendment Act 2024

[51] The Court Minute issued on 15 November 2024 asked that the parties provide advice in relation to the RMA (Freshwater and Other Matters) Amendment Act 2024, and particularly how the 2024 Amendments may affect the proposed objective and policy framework.

[52] In response, HBRC submitted on 25 November 2024³¹ that:

The NPSFM 2020 is clear in its focus on environmental outcomes and giving effect to Te Mana o Te Wai. Even though Te Mana o te Wai hierarchy is disapplied in consenting aspects through the 2024 Amendments, there is no change to the relevance of Te Mana o te Wai (including its hierarchy) under the NPSFM for the purpose of the Court's decision on PC7. Te Mana o te Wai, in its totality, must still be considered when plan-making.

PC7 amends the Regional Policy Statement to include policies requiring "regional plan provisions to manage any conflicts between values in accordance with the hierarchy of obligations in Te Mana o te Wai" and then lists the hierarchy. PC7 also includes consenting-related policies that reproduce the hierarchy of obligations, and accordingly the application of these policies in a resource consent process is still possible without direct reliance on the NPSFM.

The direct replication of Te Mana o te Wai into PC7 is not precluded by any of the changes through the 2024 Amendments. The incorporation of the hierarchy of Te Mana o te Wai was agreed between all appeal parties to provide appropriate clarity to PC7. In the final version of PC7 provided by the Council with its closing submissions, all of the Te Mana o te Wai hierarchy was included where it was referred to, as that was the most straightforward way to clarify how conflicts should be managed.

[53] The other parties' submissions expanded on the points made in HBRC's submission.

[54] Genesis agreed with HBRC's reasons and position that the 2024 amendments do not affect the Court's decision on PC7 or mean that PC7 cannot function as intended.

[55] Forest and Bird submitted s 67(c) requires HBRC and the Court to give effect to the NPSFM and RPS in the usual way, with the s 104 amendments not changing that requirement. In terms of the operation of the plan, the key point is that the Act does not alter the requirement for consent authorities to have regard to provisions in an RPS or plan. The amendments to s 104 RMA only prevent a consent authority from having regard directly to the relevant clauses in the NPSFM 2020. This means that, to the extent that a plan already gives effect to the NPSFM 2020, the Act does not affect the consent authority's obligation to apply the relevant provisions in the plan.

³¹ Memorandum of the Council, dated 25 November 2024, at [16]-[18].

[56] Further, the amendments to s 104 which refer to clause 1.3(5) and clause 2.1 of the NPSFM 2020 and relate to the hierarchy of obligations only apply to the consideration of resource consent applications. There is nothing in the Act to preclude the inclusion of the hierarchy of obligations in plans.

[57] Forest and Bird then provided background to the concept of Te Mana o te Wai and its inclusion in the NPSFM 2014 and subsequent NPSFM versions. Forest and Bird referred to the NPSFM 2017 (in force at the time that PC7 was notified) as containing further explanation of the concept of Te Mana o te Wai. It submitted that the references to the health and well-being of freshwater bodies being at the forefront of decision-making is entirely consistent with the hierarchy of obligations that has been included in PC7. Also, that placing the health and well-being of freshwater bodies at the forefront of decision-making is especially appropriate in the context of outstanding water bodies.

[58] Forest and Bird further submitted that PC7 needs to include a way to address conflicts between competing values of the same water body, and the hierarchy of obligations is the most appropriate way to give effect to Policy 1 of the NPSFM in this context. The amendments do not change this.

[59] TTOH and others agreed with HBRC that the 2024 Amendment primarily affects consenting processes and the process of notifying freshwater planning instruments, and does not affect the inclusion of Te Mana o te Wai and the associated hierarchy of obligations in plans.

[60] We are satisfied that the new provisions, with the above amendments, are appropriate.

Cumulative effects explicitly addressed

[61] We note that Policy LW3A, LW3B and Policy C2 provisions are now amended to use “on its own or cumulatively” consistently, responding to the Court’s questioning.

Addition of reference to local and regional circumstances as consideration for value identification

[62] As recorded below, an addition has been made to Policy LW3A.1(b)(ii) and LW3B.2(d)(ii) in response to a question from the Court:

- ii. any relevant values identified in Appendix 1A and 1B of the NPSFM 2020 and any other values that are determined to be relevant taking into account local and regional circumstances, where there is evidence that such values are present in the particular water body, prior to the operative date of the relevant catchment based plan change;

[63] We note that this addition to the resource consent decision-making criteria for new and existing activities appropriately reflects the approach in Policy LW1.2(bA)(i), which refers to an assessment involving consideration of that matter when preparing regional plans in relation to any outstanding water bodies identified in Schedule 25.

Remaining policy issues

[64] We cover other issues between the parties in relation to some policy provisions, along with what HBRC identified as Remaining Issues in its final closing, later in the decision.

E. The Issues

[65] On 28 February 2024 the parties provided a Memorandum to the Court attaching an agreed list of issues and provisions which set out each party's position, capturing appeal points, the relief sought and HBRC's position on each. The agreed issues list was accompanied by annotated copies of the plan change setting out the amendments sought to the PC7 document and Schedule 25, which lists the Outstanding Water Bodies and the screening criteria used to determine that status.

[66] The issues list and provisions formed the basis for cross-examination and framed some of the closing submissions. We use it as a framework for our consideration of the matters, first setting out the issue and the parties' positions as stated in that list along with the relief sought (in italics).

Procedural issues

Issue 1: Procedural issues leading into the notification of PC7 and prior agreements between Ngāti Kahungunu Iwi Incorporated and HBRC.

TTOH and others seek that the Court consider the following issues:

- (a) *Procedural issues leading to the notification of PC7 and prior agreements between NKII Ngāti Kahungunu and HBRC.*
- *The relevance of RPS Objective LW3(a) ‘recognising the mana of hapū, whanau and iwi when establishing freshwater values’ to PC7.*
 - *The sections of the RRMP included by reference in RPS Objective LW3 c) including the Treaty principles that HBRC acknowledges and the values.*

TTOH and others now agree that the screening criteria are helpful and will provide rigour for future assessments of ‘candidate’ water bodies/ coastal water for potential inclusion in Schedule 25. TTOH retain its position in terms of substantial amendments.

[67] In opening submissions HBRC said it intended to respond to Issue 1 in closing once that issue and the reasons for it have been articulated further. In closing, HBRC’s understanding was that, rather than a specific amendment or procedural issue being sought or raised by TTOH and others, the request was “that the background and genesis [of PC7] be understood in context”. HBRC elaborated briefly, saying that that background had been covered in evidence, that highly experienced commissioners having “a good understanding of tikanga Māori, cultural and spiritual matters and perspectives of the local iwi or hapū” had been appointed to hear the case, and that meaningful engagement with the region’s post-Government settlement entities, regional iwi authorities and other interested groups had been carried out.

[68] The particular issue that remains for TTOH and others is set out in both their opening and closing submissions, namely the agreement made through Environment Court Consent Order of 26 September 2014 where, in Policy LW1A.1(c), it was recorded that “*in relation to Policy LW1A.1 the identification of outstanding freshwater bodies will be completed and an associated change to the Regional Policy Statement will be publicly notified prior to public notification of any further catchment-based plan changes prepared in accordance with Policy LW1*”. This was footnoted, enabling the regional plan change for the Mohaka catchment to proceed in the meantime, and to record that Plan Change 6 for the

Tukituki River predates this provision.

[69] TTOH and others said that the footnotes, and the words “may proceed in the meantime”, make it clear that subsequent catchment plans would give effect to the protection of the identified outstanding water bodies through objectives, policies, and rules. That means, they said, that any other catchment plan changes, including TANK (regarding the Tūtaekurī, Ahuriri, Ngaruroro and Karamū Rivers), should not proceed until the identification of outstanding freshwater bodies is complete.

[70] These matters were further explored during TTOH’s opening submissions, which expanded on the efforts made by Ngāti Kahungunu to have the outstanding water bodies identified in advance of catchment plan development, to avoid the risk of catchment plans potentially pre-empting the protection of outstanding water bodies not yet identified.³² In closing, TTOH and others argued that it is not unreasonable to expect that the intent with which that Consent Order was written would have resulted in progress on the complete identification of outstanding water bodies being further along than it is. Against that background, they said the ongoing issues with the iterations and tiers of water body screening criteria have been exhausting and a burden.

[71] We acknowledge the frustration with the lack of progress with the identification of OWB and use of screening criteria.

Definitions and their qualifiers

Issue 2: Should the definition of ‘outstanding water body’ include estuaries/coastal water or should ‘outstanding coastal waters’ be defined separately?

TTOH and others seek a separate definition for coastal water:

Outstanding coastal water means an expanse of coastal water identified in Schedule 25 that has one or more outstanding cultural, spiritual, recreational, landscape, ecological, natural form or natural character values.

They seek that the definition of “outstanding” be amended to add “or outstanding coastal waters”.

³² Notes of Evidence 12-14 March 2024 (NOE1), page 95 from line 15.

HBRC seeks a combined definition of outstanding water bodies that includes both freshwater bodies and estuaries as follows:

Outstanding water body means a freshwater body and estuary, or a part thereof, identified in Schedule 25 that has one or more outstanding cultural, spiritual, recreational, landscape, natural form and character or ecological value(s), or a water body identified as having one or more outstanding values in a water conservation order.

[72] HBRC summarised this issue in its opening submissions as follows:³³

6.3 TTOH et al’s appeal raised a concern about PC7 applying freshwater-related terminology and the NPS-FM 2020 to coastal water bodies, and requested that the definition of OWB introduce the term ‘outstanding coastal waters’ to create a “clear, succinct, and separate definition in PC7 for the coastal environment”. Mr Black for TTOH et al stated that an estuary should not constitute an OWB, as this would broaden the meaning of “water body” in the RMA. Mr Black’s evidence in chief for TTOH et al contends that “the extension into estuaries and coastal waters has complicated things both in law and in application”. TTOH et al’s appeal also included a concern about the scope of PC7 being different from that which was foreshadowed in Plan Change 5. Ms Harper’s evidence is that it is appropriate to have OWBs that extend into estuaries.

Footnotes omitted

[73] Both HBRC and TTOH and others agreed that the estuaries listed should be protected, and the issue relates mainly to whether it is acceptable under the RMA to call an estuary an “outstanding water body” given that the term “water body” would otherwise be limited to freshwater. HBRC considered this to be a matter of terminology rather than net effect.

[74] HBRC recognised the interconnectedness between freshwater bodies, estuaries and coastal lagoons in particular, that the wording was included in PC7 as notified, and HBRC’s view is that it was entitled to do that. In the absence of such wording there would be an arbitrary boundary across natural features, while including estuaries would be a straightforward way of ensuring their waters are protected as part of an OWB.

³³ Opening Submissions of HBRC, dated 11 March 2024.

[75] The planning witnesses agreed that consistent management of significant and outstanding values that span both freshwater and estuary environments was necessary.³⁴ Ms Harper, the planning witness called by HBRC, considered that PC7 does achieve that, and that the inclusion of estuaries aligns with Parts 1.5 and 3.6 of the NPSFM,³⁵ which recognises this interconnectedness. It recognises that some of the outstanding values, such as wildlife or fish habitat, can traverse both the freshwater and coastal environment. The NZCPS does not specifically include outstanding waterbodies, but recognises natural landscapes, character and features.

[76] The RMA defines ‘water body’ in a way that excludes coastal water; ‘water’ includes both fresh and coastal water:

water—

- (a) means water in all its physical forms whether flowing or not and whether over or under the ground
- (b) includes fresh water, coastal water, and geothermal water
- (c) does not include water in any form while in any pipe, tank, or cistern

water body means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area

coastal water means seawater within the outer limits of the territorial sea and includes –

- (a) seawater with a substantial fresh water component; and
- (b) seawater in estuaries, fiords, inlets, harbours or embayments.

[77] In opening submissions Mr Conway said he was “not aware of any legal reason why a plan change under the RMA is not able to define the term ‘outstanding water body’ in a way that encompasses the broader meaning of ‘water’ in order to enable integrated management under both the NPSFM 2020 and the NZCPS, rather than directly relying on the RMA’s definition of ‘water body’. If a separate defined term of ‘outstanding coastal water’ was to be introduced this could give the impression that

³⁴ Joint Witness Statement for Planning Experts, 16 October 2023, at 3.

³⁵ National Policy Statement for Freshwater Management 2020, February 2023, at cl 1.5 and cl 3.5.

all coastal waters were being included in the ambit of PC7, extending to 12 nautical miles from the coast and thereby including a range of marine coastal features.

[78] In his rebuttal evidence Mr Black, the planning and cultural advisor called by TTOH and others, found the inclusion of estuaries as part of Schedule 25 to be incompatible with the definition of ‘outstanding water body’ in the NPSFM. During the hearing he agreed with the concept of integration and inclusion of the estuaries, but had concerns that the higher level documents with their different terminology provide a level of protection and that this could be diminished if the PC7 terminology did not include coastal waters separately.³⁶

[79] The IHP recognised that the inclusion of estuaries and coastal lagoons implements requirements in both the NZCPS and the NPSFM 2020 and saw no reason why waters within the coastal environment should not be included as part of an outstanding river or stream.³⁷

[80] We accept part of HBRC’s version of the definition of outstanding water body, but we make changes for consistency with our revised wording of Schedule 25 (discussed later) and readability. We address the issues relating to water conservation orders later in the decision.

[81] We decline to require that PC7 include coastal water separately and accept the inclusion of estuaries and lagoons in Schedule 25. We are persuaded that this is a sensible way to enable the coastal – terrestrial interface of waterbodies to be dealt with under the same provisions without extending this into coastal waters. Having made this finding, we make no further reference to the relief sought by TTOH and others on coastal waters in this decision.

[82] The final definitions are below:

Outstanding water body means freshwater bodies, and estuaries and lagoons or parts thereof, that have outstanding cultural, spiritual, recreational,

³⁶ Notes of Evidence 23-24 April 2024 (**NOE2**) page 96, lines 11-17.

³⁷ Decision Report of the Independent Hearing Panel (**Decision Report**), June 2021, at [3.30].

landscape, natural form and character or ecological value(s) as identified in Schedule 25.

Outstanding for the purposes of an outstanding water body means conspicuous, eminent or remarkable in the context of the Hawkes Bay Region.

Issue 3: Should further definitions be added to the RRMP for specified cultural and spiritual terms?

TTOH and others seek the inclusion of additional definitions of certain Māori terms. These may, in whole or in part, necessitate consequential amendments to PC7.

HBRC considers these descriptions could potentially be used to describe outstanding and significant values for the purpose of Schedule 25 but does not consider they should be defined terms for the purpose of the RRMP.

Genesis supports the Council's position.

[83] TTOH and others' proposed additions to the Glossary in Chapter 9 RRMP are the following definitions:

Hauora o te wai means the cultural, spiritual and physical health of water – of rivers, lakes, wetlands and swamps, coastal water, and groundwater.

Kohanga ika means the cultural and spiritual value associated with fish spawning and fish nursery areas, shellfish areas/reefs, and includes associated cultural practices that assist with their preservation, enhancement and survival.

Mahinga kai means:

- a) the freshwater species of flora and fauna that have traditionally been used by tangata whenua as food, for tools, fibre, building materials or for rongoā (traditional medicine) purposes;
- b) Non-indigenous freshwater species that have become valued as taonga over time (e.g., water cress);
- c) The places those species in a) and b) are found; and
- d) The act of catching, harvesting, preparing or preserving them.

Mahinga mātaimai has an equivalent meaning to mahinga kai but is applicable to the coastal environment.

Mauri means the spiritual energy or life force that flows from io Matua Kore, to the Atua, and into all living things and natural resources. Universal soul, vitality.

Human activities have the capacity to diminish or harm mauri; natural events do not. Mauri can also be transferred, flowing outwards from its source into animate or inanimate things. Tangata whenua can enable the transfer of mauri into mauri stones/rocks, taonga, personal effects etc., the pathway typically enabled through appropriate karakia and tikanga processes/protocols.

Natural form and natural character has the same meaning as that contained in Appendix 1B(1) of the NPSFM 2020 for ‘Natural form and character’ in terms of Freshwater Management Units. For the Regional Policy Statement, it includes the natural form and natural character of the coastal environment.

Nohoanga/pāhi means an area or site located alongside or within a riverbed, stream, lake, wetland or coastal area, and the cultural value from activities and practices associated with such sites. Traditionally nohoanga/pāhi are used for temporary occupation to undertake seasonal harvesting, the collection of kai or natural resources, for wānanga, and for training and instruction associated with the area and the natural resources available there.

Punawai is the cultural and spiritual value associated with natural springs that flow from groundwater into surface water, and the cultural practices associated with them.

Wāhi taonga is both a value and a place/area that is highly valued by tangata whenua. Wāhi tapu, and wai tapu are different categories of wāhi taonga, and encompass the cultural and spiritual value(s) of a sacred sites or areas due to the relationship of tangata whenua with them. For wai tapu, the values are spiritual and relate to baptism, blessing, cleansing, and historical use.

Whakapapa o te wai means the ancestral, traditional, customary and contemporary connections and relationships between hapū/marae and the waters they have mana over within their rohe, in accordance with tikanga Māori and mātauranga Māori. Whakapapa o te wai encapsulates the spiritual and physical origins and connections within the water cycle, including the kaitiaki role of the Atua and taniwha relating to water, and connections between tangata whenua as kaimahi, their traditional water resources and the taonga species they contain.

[84] TTOH and others elaborated on this matter, making further suggested amendments to PC7 (“reinstatements and improvements”) that, combined with its proposed te reo Māori definitions for the Glossary they say would assist plan readers to understand how values relate to each water body. TTOH and others considered that without that further content, a plan user would find it difficult to understand how to give effect to the requirement to protect outstanding and significant values of OWBs. They said that the definitions proposed for the Glossary do not run contrary to or detract from their respective reference in any description, therefore the requirement of specific application for each water body or tailored descriptions is an unnecessary further step or burden delegated to tangata whenua at this stage. An update to the Glossary, and descriptions or tailored descriptions, need not be a matter of either/or as proposed by HBRC – all could be useful.

[85] TTOH and others requested that omissions of values in the descriptions of outstanding values in the notified version of PC7 be reinstated where relevant along with the relevant outstanding characteristics in Table 1, and if that is not agreed at least those values should be recognised as significant values.

[86] HBRC does not support these terms being added as definitions. The definitions would have application throughout the RRMP, with potential ramifications for other aspects of it. While recognising that TTOH and others want to see the updated definitions for the cultural and spiritual terms apply throughout the RRMP, HBRC noted in closing submissions the TTOH and others' appeal did not refer to their inclusion in the RRMP but in the descriptions of values and terms in Schedule 25. The wording for the specified terms was not provided until 19 February 2024. HBRC submitted that there is no scope for the inclusion of these terms in the RRMP.

[87] Ms Harper indicated that the definitions sought could be raised through a future plan-making process. Mr R Matthews, planner for Genesis Energy, concurred with her that the definitions are part of the RRMP not PC7, and thus it would be inappropriate to include them as part of the PC7 process.

[88] Mr A Coffin, HBRC's advisor on cultural and spiritual matters, was of the opinion that the definitions may be helpful in understanding the values of each OWB in Schedule 25. This is of importance to Issue 4 which we discuss next.

[89] In its final version of PC7 dated 25 July 2024 HBRC did not add the proposed definitions to the RRMP Glossary, and we agree that the definitions should not apply to the RRMP.

[90] HBRC did not add the terms or definitions to Schedule 25 Part 2, Column 3 which sets out the outstanding characteristics or values of the listed OWB's. We discuss that matter below.

Outstanding values

Issue 4: Should specific outstanding values be added to the water bodies recognised for cultural and spiritual values?

TTOH and others consider that specific outstanding values (as defined in Issue 2 above) should be added to column 3 (in Schedule 25) for Heretaunga Plains Aquifer System, Ruataniwha Plains Aquifer System, Waitangi Estuary, Te Karamū River, Tukituki River, Tukituki Estuary, Te Wanganui-a-Orotū Estuary.

TTOH also considers that separation and articulation in policy is required in terms of these values and their connections to either an outstanding water body or to outstanding coastal waters.

The word ‘including’ is added to indicate a degree of specificity for plan users as to the key values to take into account. This is not to say that other values cannot be added in future, but to leave the door open for further additions through catchment – based plan changes, similar to what would occur for other value sets that rely on a threshold being attained or exceeded, or a greater understanding of specific natural resources.

HBRC agrees with the inclusion of more specific detail or lists of outstanding values in principle, where there is an evidential basis that supports their inclusion (and experts have confirmed that the requested values are outstanding) and the outstanding values are described in clear terms, including being tailored to show how they connect with that water body. To assist plan users HBRC considers that the description of the outstanding values should describe how each outstanding value related to the OWB rather than relying on pre-defined terms. Therefore HBRC considers that requested outstanding value terms should be added in Column 2 of Table 1 – the description for each outstanding water body. HBRC supports the inclusion of outstanding values in Column 3 of Table 1, the list of outstanding values can be included as long as they are clearly described and related to the water body in Column 2.

HBRC considers use of the word ‘including’ for the list of outstanding values is not appropriate, as that suggests further outstanding values may be determined in future, which is uncertain for the plan user.

With the appellants having confirmed that they are not seeking to insert outstanding values for Lake Waikaremoana and the Wairetakeke River, Genesis is neutral on this issue and stated that it will abide the Court’s decision.

[91] The outstanding values TTOH and others has sought to be added (in column 2 of the issues list and provisions) are as follows. We have added the OWB identification number and have included values TTOH had listed under river estuaries in their separate table of outstanding coastal waters to the river and estuary combined values, as we have already dismissed that coastal waters separation.

- OWB 1A Heretaunga plains aquifer system. Cultural and spiritual values: whakapapa o te wai, wāhi taonga, waiora, mauri
- OWB 9 Ngaruroro River and Waitangi estuary. Cultural and spiritual values: wāhi taonga, kōhanga ika
- OWB 9A Ruataniwha plains aquifer system. Cultural and spiritual values: whakapapa o te wai, wāhi taonga, waiora, mauri
- OWB 12A Te Karamū River and tributaries. Cultural and spiritual values: whakapapa o te wai, wāhi taonga
- OWB 13 Te Whanganui-Orotū/Ahuriri estuary. Cultural and spiritual values: wāhi taonga, kōhanga ika
- OWB 14 Tukituki River to the sea including the estuary. Cultural and spiritual values: whakapapa o te wai, wāhi taonga, ki uta ki tai, kōhanga ika

[92] HBRC’s closing submissions on this matter were as follows: ³⁸

4.3 ...As a result of discussions at the hearing, the Council agrees that the outstanding cultural and spiritual values set out in the table below are present in the specified water bodies:

Table 1: Outstanding cultural and spiritual values of particular OWBs

OUTSTANDING WATER BODY	OUTSTANDING VALUE AS AGREED AT HEARING
Heretaunga Plains Aquifer System	Cultural/spiritual: whakapapa o te wai, wāhi taonga, waiora, mauri
Ruataniwha Plains Aquifer System	Cultural/spiritual: whakapapa o te wai
Karamū River	Cultural/spiritual: wāhi taonga Whakapapa o te wai, nohoanga/pāhi
Tukituki Estuary	Cultural/spiritual: wāhi taonga
Ahuriri Estuary	Cultural/spiritual: wāhi taonga
Waitangi Estuary	Cultural/spiritual: wāhi taonga, mauri

4.4 However, the Council remains of the view that, for the additional values

³⁸ Closing submissions of HBRC, at [4.3]-[4.5].

to be a useful inclusion in the Plan, the description of each value needs to be articulated to make it clear how it applies in each water body. The Council considers that this is best done by TTOH and others, who have proposed the values for inclusion. It invited TTOH and others on 3 May 2024 to provide these descriptions, and TTOH and others have proposed some limited descriptions based on the notified version of PC7.

- 4.5 The Council has considered the suggestions from TTOH and others and has included them where they are within scope of TTOH and others' appeal, and where they are relevant to the outstanding value agreed by the Council's expert and TTOH and others' experts. The version of PC7 provided in Appendix 2 to these submissions incorporates the changes the Council supports.

Footnotes omitted

[93] HBRC's closing submission then goes on below to refer to other water bodies outside of the list it provided in its Table 1 above, in response to TTOH and others' closing submissions and accompanying preferred version of 11 July 2024 that went through the list of remaining issues and changes proposed by HBRC since the hearing.³⁹

- 4.6 TOH & Ors have proposed changes to the descriptions for Lake Tūtira, Lake Whatumā and Porangahau estuary. These water bodies were not referred to in TTOH & Ors' notice of appeal, so the Council considers that modifying descriptions of these water bodies would be out of scope.
- 4.7 TTOH & Ors did refer to Lake Poukawa and Pekapeka Swamp in their notice of Appeal, but the Council prefers to retain the draft consent order description provided by the Māori Trustee (which has chosen not to appear in the hearing on that basis). Where TTOH & Ors sought to add two sub-values below the reference to cultural and spiritual values, the Council has not included those sub-values as it is concerned that doing so might have the effect of limiting the breadth of the outstanding cultural or spiritual values that would otherwise apply.
- 4.8 For Tukituki River and Estuary, the Council's expert only agreed that the Estuary had the outstanding value of wahi taonga. TTOH & Ors' wording relates to the river itself, which Mr Coffin did not agree with so the Council has not made any changes to this description. The Council has taken the same approach to the Ngaruroro River and Waitangi Estuary as the text proposed by TTOH & Ors relates only to the Ngaruroro River.
- 4.9 The Council has accepted the changes proposed in relation to the Te Karamū River where it clearly relates to the specific water body and its outstanding values. Where it is not clearly relevant the Council has not included TTOH & Ors' proposed wording in the descriptions.

³⁹ Closing submissions of HBRC, at [4.6]-[4.9].

[94] We note HBRC's concern, set out above, that including sub-values might have the effect of limiting the breadth or the outstanding cultural or spiritual values that would otherwise apply for Lake Poukawa and Pekapeka Swamp. Also, HBRC considers that use of the word 'including' for the list of outstanding values is not appropriate, as it suggests further outstanding values may be determined in future which might cause uncertainty for the plan user. However, it accepts in its closing the use of "Cultural and spiritual values" as outstanding characteristics or values in Column 3 of Schedule 25 Part 2.

[95] We see benefits for the users of the plan in adding the specific outstanding values (or sub-values) the Council refers to in its Table 1, but making it clear that these are not exclusive or other outstanding cultural or spiritual values. We note that OWB9 refers to "Habitat for native aquatic birds" in two reaches and then "(particularly whio)" and "(including banded dotterel, black fronted dotterel)".

[96] We understand that HBRC does not wish to include those cultural or spiritual values listed by TTOH without including the further information it considers necessary. While those Māori values are not specifically described in Column 2, the specific values TTOH and others wish to add in Column 3 have been carefully selected by their cultural experts and agreed to in HBRC's Table 1.

[97] We note that for the other outstanding water bodies for which additional values have been added in Column 3 by HBRC (that is, other than cultural or spiritual values) there is not necessarily a great deal of description (or any) in Column 1 to link the outstanding values that are listed in Column 3, contrary to what is being required of the Māori values by HBRC.

[98] We find it appropriate that those specific Māori characteristics or values in Table 1 that are within the proposed relief sought by TTOH and others are added to Column 3 by referring to cultural or spiritual values and then including the Māori term for the specific values.

[99] Further, we find it appropriate to add what we consider to be a description rather than a definition of each Māori term used in that column, as provided in the

proposed relief sought by TTOH and others and shown under Issue 3, separately below the table. We agree with Mr Coffin that the descriptions may be helpful to readers' understanding of the values of each OWB.

[100] Later, we conclude that the wording in the Part 2 Table should be changed from "Cultural and spiritual values" to "Cultural or spiritual values".

Significant values

Issue 5: should some values be recorded as significant values of outstanding water bodies in Schedule 25?

TTOH and others seek the inclusion of specific significant values in Column 4 [of Schedule 25] for the Heretaunga Plains Aquifer System, Ngaruroro River, Ruataniwha Plants Aquifer System, Te Karamū River, Tukituki River, Tukituki Estuary, Pōrangahau Estuary, Te Whanganui-a-Orotū Estuary.

Forest and Bird agrees with the inclusion of specific values recognised at notification.

HBRC agrees in principle with the inclusion of known and/or notified significant values where they are justified and there is an evidential basis, as that may be helpful for plan users. However, to usefully inform the remainder of the planning process, the significant values need to be more than just headings, which is a key reason why HBRC has not supported their inclusion to date. While HBRC would need to seek comments from their expert witnesses about values and wording proposals, HBRC considers significant values can be added where there is an evidential basis which supports their inclusion, and each significant value is described and defined in clear terms including how it connects with that water body.

HBRC and Forest and Bird both consider that if significant values are included, an amendment to PC7 is required to indicate the list of significant values is incomplete and will be completed through a plan change in future. This amendment would be an asterisk to Table 1. As this amendment will acknowledge that the list of significant values is incomplete 'including' is not necessary.

With the appellants having confirmed they are not seeking to insert outstanding values for Lake Waikaremoana and Waikaretakeke River Genesis is neutral on this issue and will abide the Court's decision.

[101] As well as the features listed above for which TTOH and others proposed significant values to be added, Forest and Bird provided a further list of features with proposed significant values.

[102] TTOH and others have requested an additional column to Table 1: Outstanding Water Bodies in Hawke's Bay with the heading "Significant values" as

follows:

TTOH's Proposed Significant Values

OUTSTANDING WATER BODY		SIGNIFICANT VALUES
OWB 1A (inserted)	Heretaunga Plains Aquifer System	Cultural and spiritual values (personification of Muriwaihou) <ul style="list-style-type: none"> • Hauora o te wai
OWB 9	Ngaruroro River [words in dispute]	From its source to the coastal environment boundary Cultural and spiritual values <ul style="list-style-type: none"> • Nohoanga/pāhi • Hauora o te wai • Mauri
OWB 9A	Ruataniwha Plains Aquifer System	Cultural and spiritual values <ul style="list-style-type: none"> • Hauora o te wai
OWB 12A	Te Karamū River [words in dispute]	Cultural and spiritual values <ul style="list-style-type: none"> • Punawai • Mauri • Tauranga wātea
OUTSTANDING WATER BODY		SIGNIFICANT VALUES
OWB 14	Tukituki River downstream of SH50 bridge ... [words in dispute]	Cultural and spiritual values <ul style="list-style-type: none"> • Mauri • Nohoanga/pāhi

Forest and Bird's Proposed Significant Values

OUTSTANDING WATER BODY		SIGNIFICANT VALUES
OWB 12A	Karamū River	<ul style="list-style-type: none"> • Ecosystems • Indigenous populations, particularly patiki, tuna and whitebait, • Macroinvertebrate communities, Indigenous bird populations
OWB 1	Lake Rotoroa and Lake Rototuna (Kaweka Lakes)	<ul style="list-style-type: none"> • Indigenous fish populations • Indigenous bird populations • Indigenous plant populations

OUTSTANDING WATER BODY		SIGNIFICANT VALUES
OWB 1B	Lake Poukawa and Pekapeka Swamp	<ul style="list-style-type: none"> • Indigenous fish populations • Indigenous bird populations • Indigenous plant populations
OWB 8	Ngamatea East Swamp	<ul style="list-style-type: none"> • Indigenous fish populations • Indigenous bird populations • Indigenous plant populations
OWB 9	Ngaruroro River and Estuary	<p>Ecosystems</p> <ul style="list-style-type: none"> • Indigenous aquatic populations, particularly torrent fish, whitebait, macroinvertebrate communities • Indigenous bird populations • Natural character
OWB10	Taruarua River	<ul style="list-style-type: none"> • Indigenous aquatic populations particularly torrent fish, whitebait, macroinvertebrate communities • Indigenous bird populations • Natural character
OWB10	Tūtaikurī River	<ul style="list-style-type: none"> • Indigenous aquatic populations particularly torrent fish, whitebait, macroinvertebrate communities • Indigenous bird populations • Natural character

[103] HBRC’s opening submissions set out the issue as it saw it:⁴⁰

6.17 The requirement in policy 8 of the NPS-FM 2020 is to “protect the significant values of outstanding water bodies”. As noted in Ms Harper’s evidence in chief, eight of the 38 OWBs initially listed in the notified version of PC7 included simplistic listings of significant values, based on yet-to-be completed work carried out by a collaborative stakeholder group working on another plan change. There was no specific work carried out to identify significant values of OWBs as part of the preparation of PC7. TTOH et al seeks the inclusion of specific significant values, and Forest and Bird agrees with the inclusion of specific values recognised at notification.

[104] We are somewhat baffled by the above remarks as there must have been some

⁴⁰ Opening submissions of HBRC, at [6.17].

analysis carried out, including in terms of s 32 requirements, to justify the significant values that were included in the notified version of PC7. We are also aware of the large amount of background work in reports that already existed and were drawn to our attention as part of the hearing process.

[105] However, HBRC's opening submission went on to say the following:⁴¹

- 6.18 On the basis that a comprehensive assessment of significant values was best carried out at a later stage, the IHP decided to remove the listed significant values from PC7:

The Officers' advice to us was that it is intended to populate the "significant values" column of Schedule 25 in the upcoming Kotahi plan. We think this is an appropriate vehicle for dealing with significant values on a holistic basis and ensures that the identification of significant values occurs in a consistent manner across the region.

- 6.19 The planners agreed that the process for identifying significant values of OWBs requires a robust process of evaluation.

- 6.20 HBRC does not consider it critical to list specific significant values in PC7 through the current process, because PC7 will inherently provide protection of significant values before specific significant values are identified and included through future planning processes. It does this through Policies LW3A and LW3B, which will require consent authorities to assess an activity's effects on:

- (a) the identified outstanding values in Schedule 25, which should capture the most significant values of the relevant OWBs; and
- (b) the potential significant values identified in NPS-FM 2020 Appendices 1A and 1B.

- 6.21 However, on the basis that it would assist plan users in the interim, HBRC agrees in principle with the inclusion of a provisional list of significant values that were either listed in the notified version of PC7 or are otherwise known to exist where:

- (a) there is an evidential basis demonstrating that they are significant values of the relevant OWB; and
- (b) each significant value is described and defined in clear terms including how it connects with the relevant water body.

- 6.22 Further work would need to be done to establish each of the above points.

Footnotes omitted

⁴¹ Opening submissions of HBRC, at [6.18]-[6.22].

[106] In closing HBRC reiterated the above, noting that the PC7 process was not intended to identify significant values of waterbodies, and that the planners had agreed this had not been undertaken as part of HBRC's preparation of PC7. The Kotahi plan process (a separate plan change process to come) would determine a list of significant values for all OWBs in the region. The planners agreed, as they had for Issue 4 in relation to outstanding values, that the identification of significant values should be based on evidence and each significant value linked specifically to the relevant water body.

[107] Mr M Black's evidence for TTOH and others was that where significant values of outstanding water bodies are known it is appropriate to include them, as not doing so would mean they are not protected as required by the NPSFM. He considered that adverse effects that are more than minor could be enabled because parts of the RPS have not been amended.

[108] Dr A Hicks, ecologist for HBRC, was asked in questioning if it could be pragmatic to add some significant values to water bodies, referring to the relief sought by TTOH and Forest and Bird. His view was that, while the proposed significant values on that list were sensible, a structured process had been followed to determine outstanding values. He had a clear understanding of the policy intent and the process worked through to make the determination. The same could not be said of the significant values, and he was unsure as to whether there was a threshold to be passed or a structure to follow that provided the same sort of policy guidance.⁴²

[109] Dr Ryder, environmental scientist for HBRC, said the plan was "quite silent" on how significant values are to be assessed, compared to the detail regarding determination of outstanding values. He was not in favour of having some water bodies with significant values listed where others have none listed. He preferred the significant values to be determined under the next regional plan change (Kotahi), agreeing with Dr Hicks that what is proposed to be included now is quite broad and not determined on an evidential basis.⁴³

⁴² NOE1 page 282 from line 3.

⁴³ NOE1, page 282 from line 23.

[110] Mr J Cheyne, ecologist for Forest and Bird, was not of the same view, saying that listing the significant values as early as possible was worthwhile. He was of the view that waiting for that work to be done on a catchment basis meant it could be years before such information was available. If the information is available now he said it should be recorded; it could be fine-tuned if necessary during the catchment plan process.⁴⁴

[111] Several of the ecology witnesses were asked whether they agreed with the following:

- For significant values to be included in PC7 there needs to be an evidential basis demonstrating the values are significant values of the relevant outstanding water body. Dr Hicks, Dr Ryder and Mr Cheyne all agreed with that proposition.
- That each significant value needs to be described in clear and defined terms. Dr Hicks considered there would need to be some kind of structure about how to provide that, but agreed detail and description were necessary. Dr Ryder agreed that it may not be embedded in the plan document itself but could be via reference to the documentation that supports the significant value. Mr Cheyne agreed.
- That the description of significant values needs to outline how it connects with the relevant outstanding water body. All three agreed with this proposition.

[112] Using OWB 9 (the Ngaruroro River) as an example, Mr T Williams for Forest and Bird delved further into whether the witnesses considered that the detail in the above list made it clear how the values related to that river.⁴⁵ Dr Ryder did not think it did, as the words were in the nature of headings and were broad descriptors rather than being specific. In relation to the aquatic values, he again considered the wording to be too broad and non-specific. For example, for macroinvertebrate communities this could refer to a number of parameters such as their diversity or abundance, and

⁴⁴ NOE1, page 283 from line 5.

⁴⁵ NOE1, page 285, from line 1.

the specific detail is needed to make it clear what is valued. Dr Hicks said that there was a risk people would see these incomplete descriptors and use them incorrectly in (for example) an ecological impact assessment, and it would be better to have a complete assessment rather than a partial one to avoid a potentially inappropriate focus.

[113] Asked about whether some form of directive wording could be added so that the reader is aware the descriptions are incomplete could deal with those concerns, Dr Hicks agreed that was possible but has some concerns about the applicability of such an approach. Mr Cheyne considered that the whole list was of value and, while the supporting information for significant sites is a bit lacking, he would be pleased to see those values added to PC7.⁴⁶

[114] We heard during submissions and evidence from TTOH and others that the need for outstanding and significant values to be defined has been consistently promulgated by Ngāti Kahungunu through a range of planning processes over the past several years. We understand their concern that not including the significant values in some form as part of the current process will push the addition of such values further into the future. They consider that there are risks to the environment of not including at least the notified version of the list at this time.

[115] HBRC in closing addressed this concern, noting that PC7 directs the protection of significant values even if not listed. This means that an application for consent must address the listed outstanding values, the values within Appendices 1A and 1B of the NPSFM, and any other values that are relevant in the local and regional circumstances.

[116] Forest and Bird and HBRC both considered that if significant values are included there should be an amendment to PC7 by way of a note (asterisk) to Table 1.⁴⁷ This would acknowledge that the list of significant values is incomplete.

⁴⁶ NOE1, page 287, from line 5.

⁴⁷ Joint Memorandum, dated 28 February 2024, Appendix A, List of Issues, page 7.

[117] It is possible that even headings such as those proposed by Forest and Bird's list may provide initial guidance to topics that will require further investigation by an applicant.

[118] While TTOH and Forest and Bird argued for the inclusion of significant values for specific OWBs, as notified, other parties also sought significant values be added. Those values were also dismissed in the IHP's decision, and no other party sought specific inclusion of significant values in this hearing.

[119] Policy LW1.2(bA)(i) requires:

- bA) In relation to any relevant outstanding water bodies identified in Schedule 25:
 - i) Carry out an assessment which identifies the significant values of that outstanding water body. This assessment includes consideration of the values set out in Appendix 1A and Appendix 1B of NPSFM 2020, and any other values that are determined to be relevant taking into account local and/or regional circumstances;

[120] Appendix 1A lists the compulsory values that must be addressed in the following groupings:

1. Ecosystem health
2. Human contact
3. Threatened species
4. Mahinga kai

[121] Appendix 1B addresses other values that must be considered in the following groupings:

1. Natural form and character
2. Drinking water supply
3. Wai tapu
4. Transport and tauranga waka
5. Fishing
6. Hydroelectric power generation

7. Animal drinking water
8. Irrigation, cultivation, and production of food and beverages
9. Commercial and industrial use.

[122] We note the preparation of the notified version of PC7, which was adopted by HBRC on 31 July 2019, involved consideration of the NPSFM 2019. Appendix 1 of that version of the NPSFM covered national values and uses for freshwater. It had Compulsory National Values comprising Ecosystem Health and also Human Health for Recreation. It also had Other National Values:

Natural form and character

Mahinga kai – kai are safe to harvest and eat

Mahinga kai – kei te or ate mauri (the mauri of the place is intact)

Fishing

Irrigation, cultivation and food production

Animal drinking water

Wai tapu

Water supply

Commercial and industrial use

Hydro-electric power generation

[123] The notified plan listed a number of significant values relating to all of the above. As to “any other values included after taking into account local and/or regional circumstances”, we assume that in preparing the schedule HBRC factored in those matters.

[124] It has now been requested that we bring a limited number of these significant values through into Schedule 25. After examining this proposition carefully, we have concluded that this piecemeal approach is inappropriate and we decline to include the significant values. While we appreciate the work that has gone into pursuing their inclusion, it is appropriate that this be done by way of a future plan change or changes.

Issue 6: Can values that involve taking water out of a water body be capable of being recognised as a significant value of the water body?

TTOH considers that a value that relies on water being taken out of the water body or estuary, should not be recognised as a significant value of that water body or estuary. To attain value, whether outstanding or significant, is reliant on external factors and inputs (i.e., lease or purchase of land, infrastructure, other CAPEX and OPEX, processing, marketing, insurances, etc.). TTOH agrees with Genesis that hydro-REG is capable of being identified as a significant value because it is not a consumptive use, i.e., the water is returned to the river.

HBRC and Genesis consider that it should be left open whether consumptive or abstractive and economic use values could be identified through future plan changes as being significant values of the water body.

Note: *all parties agree that consumptive or abstractive or economic use values should not be outstanding values of a water body; hence the focus of this question on significant values.*

[125] TTOH and others did not agree that a significant value should be accorded to water once the water is removed from the water body. In relation to the capacity of a freshwater management unit to provide drinking water, Mr Black considered this could be a value of the freshwater management unit but is not a value as part of the actual water body. He differentiated the abstractive use values of water from the value of a water body itself.

[126] HBRC preferred that the decision as to whether an extractive or consumptive use could be considered significant should be undertaken as part of a future planning process rather than be pre-emptively excluded from consideration at this stage.

[127] We heard some further arguments on this matter, but following on from our finding under Issue 5 that the inclusion of significant values should be made following their assessment in a future plan change we decline to make any finding. Comprehensive evaluation of the significant values can be expected to take place then.

Issue 7: Should the objective and policies relating to water bodies specifically refer to water quality and significant values?

TTOH and others considers they should. The objective before it was amended included 'quality' of outstanding water bodies and the objective was integrated with other provisions in Chapter 3.1A. Removal of 'quality' changes the direction of the objective. There is no guarantee that the outstanding values or significant values will include 'quality' or 'water quality'.

HBRC and Genesis consider, and the experts agreed in the planning JWS, that water quality is one of many significant values and does not need to be specifically stated.

[128] A key reason for PC7 is to give effect to the NPSFM 2020 requirement to protect the significant values of OWBs. HBRC submitted it was not designed as a more general plan change addressing water quality and quantity specifically (although it is conceivable that the community may in future identify particular significant values of OWBs that relate to water quality and quantity). It said PC7 sits alongside other parts of the RRMP that seek to manage quality and quantity of water more broadly in the region.

[129] The planning experts agreed that Objective LW1 and Policy LW1.1(d) and (dA) in the 13 July 2023 version (replicated in the rebuttal version of PC7) are appropriate for both water quantity and water quality considerations.⁴⁸ A specific reference to protecting water quality and quantity is therefore not necessary. Such a reference could also introduce confusion as to why water quality and quantity are specifically referred to in the OWB provisions but other values are not.

[130] Even if not mentioned explicitly in the wording of the instruments as TTOH and others desire, it does not appear to us that there is any intention to diminish the need to protect water quality as part of the outstanding water body policy as TTOH and others appear to argue. The outstanding and significant values of the waterbodies listed in Part 2 to a very large degree rely on the maintenance and protection of their water quality and quantity as noted in TTOH's closing submissions, being akin to the glue that helps to uphold many of the other values of outstanding water bodies (ecological, cultural, spiritual, aquatic - for native fish, angling, native birds etc). Accordingly, we do not incorporate TTOH and others' proposed wording to Objective LW1, Policy LW3A, Policy LW3B, Policy C2 or Policy C3, as water quality and quantity are protected by other provisions.

⁴⁸ Joint Witness Statement of planning experts, 16 October 2023, Issue 4.

Issue 8: Should Policies LW3A, LW3B, C2 and C3 be stated to apply to restricted discretionary activities as well as discretionary and non-complying activities?

TTOH considers they should. Policies LW3A and LW3B infer that their ambit covers both renewal of existing activities and consents for new activities. The cumulative effects of some existing activities have been shown to produce adverse effects that are more than minor.

HBRC and Genesis consider the policies should not be amended as the discretion of the decision maker is restricted to the list of matters specified in the relevant rule. As these are new policies no rules in the RRMP currently refer to Policies LW3A and LW3B.

[131] Firstly, we note that the parties agreed in mediation to amendments meaning that the relevant provisions of these policies are triggered “Prior to the operative date of the relevant catchment based change” rather than as previously “once the relevant catchment based regional plan change is operative or after 31 December 2025, whichever is sooner”. This is logical and appropriate, particularly given PC7 is likely to be operative early in 2025 and a catchment-based plan change that provides for any identified outstanding water body is unlikely for some time.

[132] TTOH and others and Forest and Bird sought to add references to restricted discretionary activities into the above policies. HBRC and Genesis Energy opposed this, saying the relevant policy wording only applies prior to the operative date of a relevant catchment-based plan change. Their position was that at present no restricted discretionary rules in the RRMP include matters of discretion relating to OWBs or Policies LW3A and LW3B, so there is no mechanism for a current restricted discretionary activity to be assessed against these policies.

[133] Addition of a reference to restricted discretionary activities would therefore be futile. This proposition was the subject of competing submissions particularly from Forest and Bird and questioning of planning witnesses.

[134] In its closing HBRC remained of the view that it would be preferable not to refer to restricted discretionary activities in policies LW3A, LW3B, C2 and C3 unless and until a further plan change alters any restricted discretionary rules to make it clear which activities need to consider OWBs. HBRC expressed concern about the potential circuitous arguments related to OWBs via a matter of discretion referring to

specific but unrelated policies.

[135] Accordingly, in its final closing HBRC explained that it had removed the list of activity classifications and instead has these policies refer to “the following activities”. We approve that amendment as more appropriate than including restricted discretionary activities. We also make consequential amendments to explanatory material under the Principal reasons and explanation heading to delete incorrect explanations as to when Policy LW3A and C2 apply.

Issue 9: Should the introduction to the screening criteria (in Schedule 25) be changed to include ecological and geological values, and some minor grammatical changes?

TTOH and HBRC agree with these changes except that HBRC does not agree with the deletion of the words “Outstanding Water Body” as those words provide clarity about which screening criteria are being referred to. HBRC does not agree with the inclusion of “geological” as that value is now recognised under natural form and character.

Genesis supports the Council position.

TTOH believes the heading and sub-heading above both identify outstanding water bodies and if the Court sees fit, outstanding coastal water. Repeating either seems superfluous.

[136] HBRC considers it is appropriate to make changes to the screening criteria introduction to the extent set out in the issues list. We accept some of HBRC’s suggested changes and some of TTOH and others, but make some further changes to improve the readability of this important section of PC7. Issues 10, 11 and 12 also raise matters that pertain to the wording of Part 1 or the parties’ submissions on it. We will provide our conclusions after the discussion and findings on those issues.

[137] We are not satisfied with the logic of the explanation in Part 1. Under the heading “Assessing whether a value(s) meets the definition of ‘outstanding’”, the assessment is said to be a two-step exercise of judgement informed by the application of the screening criteria, information in documents, and evidence.

[138] As we understand it, the screening criteria will be applied during a plan change or other statutory process by experts who will use all the relevant information at their disposal, including any documents held by HBRC. The way this process is presented

in Schedule 25 Part 1 makes it appear that if the screening criteria are met, the decision maker then considers whether the water body meets the definition of outstanding, that is, whether the water body is conspicuous, eminent or remarkable in the context of the Hawkes Bay Region, that is, a two-step process.

[139] There is no method proposed to guide that consideration, but as worded it could be interpreted to mean there is a separate process to the hearing process during which the water body will be considered against the definition of outstanding. We do not consider that to be correct.

[140] The IHP addressed this issue in its Decision Report:⁴⁹

- a. ...To qualify as outstanding a water body must clearly and unambiguously meet at least one of the screening criteria that we have decided to adopt to determine what are truly OWB's in the Hawke's Bay Region.
- b. OWB's must be conspicuous, eminent and/or remarkable in the context of the Hawke's Bay Region. For this reason, the screening criteria must be applied strictly, and if there are any "grey" areas, we will take a conservative view and not declare that value and/or water body outstanding.

...

[141] That OWBs must have values that are 'conspicuous, eminent and/or remarkable' was added to Part 1 of Schedule 25. The IHP used the screening criteria to **determine** what water bodies are outstanding, saying that to do that and meet the definition of outstanding the **screening criteria must be applied strictly**, any grey areas in effect disqualifying them. That seems to us an integrated approach rather than what appears to be a two-step decision as provided in the 25 July 2024 version of PC7. It squarely refers to the screening criteria as the determinants of outstanding quality.

[142] The outstanding values are embodied to a large degree in the criteria. The evidence presented about the "level" at which the criteria were being set in this hearing was quite clear that there would be a high bar. If the water body values "pass" the required criteria, strictly applied, the water body must be outstanding. If there is an

⁴⁹ Decision Report, at [6.1].

exercise of judgement to be made, that seems likely to be at the point of uncertainty as to whether the water body values meet the criteria, in the context of the evidence presented at hearing.

[143] We find that a rewording of Part 1 is needed to make clear as to where the definition of outstanding comes into play in a decision-making context, as well as reformulating the text in relation to Issues 10, 11 and 12 below. We return to this after Issue 12 as the outcomes of Issues 10, 11 and 12 are pertinent to the final wording of Schedule 25 Part 1.

Issue 10: Does the requirement for each outstanding water body to “clearly and unambiguously” meet the relevant value set too high a standard of proof?

Forest and Bird considers that this requirement requires a standard of proof that is “beyond reasonable doubt” for the decision maker, and may be difficult to meet, particularly for the percentage thresholds in the ecology value sets. TTOH supports this view.

HBRC considers that “clearly and unambiguously” is an important threshold to ensure that the screening criterion is met and should remain as the decision maker needs to be confident that the water body meets the criterion considered to be outstanding.

[144] While the IHP used the term “clearly and unambiguously” descriptively in its Decision Report, it does not form part of its Part 1 preamble to the screening criteria. It also referred to the screening criteria as needing to be applied strictly, with any grey areas ruled out.

[145] Planners Mr Black, Ms Harper and Mr Matthews agreed that the water body must clearly and unambiguously meet the screening criteria and the definition of outstanding.

[146] A range of arguments was put forward by HBRC to justify the inclusion of these words, including, in opening submissions, that “the reason for this statement is to embed the approach the IHP applied in evaluating water bodies,⁵⁰ including making it clear that the screening criteria are used for screening water bodies, not as the only or ultimate test.”⁵¹ HBRC said that screening criteria must be used in this way, as it

⁵⁰ Decision Report, at [3.69].

⁵¹ Opening Submissions of HBRC, at [6.35].

has not always been possible to frame the criteria in a manner that would be suitable as a complete test for whether a water body is outstanding.

[147] In closing HBRC, citing Dr Hicks and Dr Ryder, said that if the screening criteria are not clearly and unambiguously met it would be difficult to conclude the water body is outstanding. That is, if it is not possible to clearly demonstrate that the threshold has been met the water body probably does not stand out.

[148] The IHP made reference to the objective screening criteria that can now be used to refine the water bodies listed in PC7 to those that are genuinely outstanding and ‘the best of the best’ in the region. It considered that the criteria are based on well-founded precedents, and that their use was a much better alternative than basing decisions on the judgements of expert panels.⁵²

[149] This does not chime with the notion of a further assessment against the definition of outstanding. The IHP’s approach to what is “outstanding” required strong corroboration in submissions, evidence and the use of screening criteria.⁵³ As noted under Issue 9 the criteria need to be strictly applied, which is as we would expect of a process to determine OWB.

[150] Forest and Bird’s closing submissions were that inclusion of “clearly and unambiguously” would risk water bodies that do meet the screening criteria being wrongly excluded due to an unrealistic expectation of numerical certainty. It said that the appropriate standard of proof under the RMA is the balance of probabilities, and the application of the standard should be left to the decision-maker having regard to the relevant circumstances. Further, that the requirement that water bodies must meet the definition of outstanding provides a sufficiently rigorous threshold, and that the proposed wording is out of scope.

[151] Forest and Bird addressed the scope issue in opening submissions. The Outstanding Water Body Identification Screening Criteria in Schedule 25 Part 1 of the

⁵² Decision Report, at [(4.6)].

⁵³ Decision Report, at [3.69].

Decision Report did not contain the words “clearly and unambiguously”. This text has been added anew to HBRC’s 25 July 2024 version – introducing, it says, a standard of proof equivalent to “beyond reasonable doubt” which it considers a more onerous standard than should be applied in the context of the RMA or the NPSFM. TTOH supported this view.

[152] We conclude that this PC7 process has resulted in closely considered criteria against which to test the values of the water bodies and determine whether they are outstanding or not. We decline to insert “clearly and unambiguously” into Part 1 of Schedule 25. We consider it would work against the achievement of the objectives and policies of the plan.

Issue 11: Should PC7 specifically state that information contained in documents retained by the regional council may be used to assess outstanding value?

TTOH considers that information from or retained by the regional council should be used to help identify outstanding values.

HBRC considers that these documents do not need to be specifically referred to, as it is the evidence (which may include data sets held by the regional council) provided which is crucial to identify outstanding values.

[153] HBRC considered the determination of whether a water body is an OWB depends on the available evidence (which is already a requirement of PC7). While that evidence may include data sets held by the regional council, it is not necessary to state particular types or locations of evidence in the provisions.

[154] TTOH and others were firmly of the view that such a reference should be retained, particularly where provisions for tangata whenua are included, as these documents can be difficult to find – they remain dormant, connect to no rules or have been forgotten. TTOH and others wish to be able to locate and refer to the documents.

[155] Our understanding is that any such information held by HBRC is accessible to the public including for researching information to assist in determining the values and characteristics of water bodies, although it may be that the existence of some

documentation is not well known. We conclude that we can only refer persons seeking information from HBRC to use their website and to make direct contact with any other specific information requests.

Issue 12: Should the introduction to the screening criteria acknowledge that the cultural and spiritual criteria set a lower threshold compared to other value sets?

TTOH considers this part of the introduction should be removed. It was applicable when PC7 was notified as there was a lack of information on cultural and spiritual values relating to some of those water bodies and estuaries included in the notified plan change. In acknowledgement of this there was an extended submission period to allow for some tangata whenua parties to accumulate further evidence on outstanding or significant values for specific waters within their rōhe. Objective LW3(a) requires recognition of the mana of whānau/hapū/īwi when establishing freshwater values, while LW3(c) references a range of provisions that need to be recognised and provided for, including the Treaty principle of active protection. These provisions acknowledge both the mana for tangata whenua to decide what cultural and spiritual values exist for specific water bodies (this is also applicable for coastal waters), and the degree of importance they have for tangata whenua, whether outstanding or significant. Inclusion of this clause undermines the mana of whānau/hapū/īwi to decide for themselves what is outstanding and what is significant.

HBRC considers this reference is necessary as an accurate reflection of the different basis on which the cultural and screening criteria have been written and the implications of that for the subsequent step in the process.

Genesis supports the Council's position.

[156] Before addressing this issue we address a matter not identified as a listed issue that has nevertheless been an issue for TTOH and others, that being the use of the term 'cultural and spiritual' which is interpreted to mean that the values must be outstanding both culturally and spiritually, rather than 'cultural or spiritual' or cultural and/or spiritual'. The matter was of particular moment to TTOH and others.

[157] We agree that requiring 'cultural and spiritual' matters to be addressed requires that both values must be evidentially proven. It seems to us that such values should more accurately be described as 'cultural or spiritual' to avoid the more onerous task of including both in an evidential analysis. This also allows both terms to be considered together if that is appropriate, that is, where 'cultural or spiritual' is used, throughout, it should be read as meaning [something] could be cultural or spiritual or both.

[158] We amend the wording of Schedule 25 accordingly. We adopt ‘or’ rather than ‘and/or’ in any other statutory terminology in PC7 because ‘and/or’ may create unnecessary confusion.

[159] Following conferencing and evidence exchange, HBRC’s rebuttal version of PC7 contained amended screening criteria for the cultural and spiritual value set, removing the ability for an iwi or hapū effectively to veto the recognition of a water body for outstanding cultural and spiritual values nominated by another iwi or hapū. But HBRC said that, as a result, the screening threshold had been lowered because the amended cultural and spiritual screening criteria no longer required a consensus from local and wider iwi and hapū groups, and thus created the potential for a single Māori entity to enable a large number of water bodies to pass through the screening criteria for cultural and spiritual values. They considered that this would require more careful appraisal by the decision maker to ascertain whether the nominated water bodies truly are outstanding in a regional sense. They included such wording in Part 1 of Schedule 25.

[160] There was considerable discussion during the hearing about the merits of that wording in the Schedule 25 preamble and the wording in the Cultural or spiritual subvalues and Outstanding indicators list. The evidence of Mr Coffin was that removing the requirement to seek support from other iwi and hapū allows those with a close association with a water body to propose one as being outstanding. That may allow more waterbodies to be proposed, but he considered that the same evidential threshold would have to be met. He said that there are close associations between hapū groups and a water body, and it is an unreasonable and probably impractical threshold for such a group to have to convince other iwi or hapū of the value of a water body with which they are not involved and, we add, presumably to support it through the process.

[161] Mr Tiuka, in opening submissions for TTOH and others, said that the criteria in List A are in accordance with te ao Māori values, mātauranga Māori and tikanga, and that they are very high and significant. To say otherwise was demeaning to Māori and culturally inappropriate.

[162] The 25 July 2024 version of PC7 provided with HBRC's closing submissions changed the wording in the Schedule 25 Part 1 preamble, thereby agreeing that the screening criteria for all values have been set at a high threshold. We have amended that wording further in our revised wording at the end of Issue 12 below.

[163] In relation to the Cultural or spiritual criteria in the Subvalues and Outstanding indicators table in Schedule 25 Part 1, List A was changed to record "a) The feature is outstanding in accordance with te ao Māori values, mataūrangā Māori, and tikanga of a descendant group closely associated with the water body".

[164] The revised wording provides a second criterion, that the water body is of significance in a region-wide context, with a footnote that explicit support is not required for more than one iwi or hapū group within the region. A third criterion is that it be supported by evidence. These changes are reflected in the 25 July 2024 version of Schedule 25 Cultural and spiritual (tangata whenua), which we understand is acceptable to TTOH and others.

[165] With the exception of the second criterion, we agree that the criteria are appropriate for the determination of an outstanding water body with cultural or spiritual values. The second criterion is "*b) The feature is of significance in a region-wide context*" with a footnote "*explicit support is not required from more than one iwi and hapū group within the region for List A b) to be met*". Considering that Schedule 25 Part 1 sets out in the first paragraph the regional scope of the criteria, and that this is a test for outstanding features rather than significant features, this criterion is redundant and we do not accept it. Neither do we accept the footnote.

[166] The third criterion must appear as (a) in List B and require that evidence supports the outstanding features.

[167] We note here that all of the Value sets must contain a List B, even if it only includes a clause requiring evidence supporting "the outstanding features". Without that requirement some of the values present in the 25 July 2024 version of PC7 would not be required to be supported by evidence. We provide words to that effect in the Schedule 25 Part 1 preamble below.

Wording of Schedule 25: Outstanding Water Bodies Part 1

[168] Having now addressed the issues around Schedule 25 Part 1, we turn to its wording. We are concerned that the method of determining whether a water body is outstanding has morphed from being on the basis of screening criteria to one that then requires a separate step of assessment against the Glossary definition of outstanding after the assessment against the screening criteria has been carried out.

[169] The mechanism for a decision on an outstanding (or significant) water body must be via a plan change. The criteria in Schedule 25 have been devised to determine whether a water body is outstanding in accordance with the definition. In a plan change hearing it can be expected that the focus will be on whether the experts' analyses against the criteria for a particular water body are sufficiently robust. The decision-maker will determine whether the analysis has been strict or stringent or indeed clear and unambiguous. It is not necessary to instruct the decision-maker that this must be the case and we see no reason to include such wording. The outcome of screening will determine whether a feature is outstanding or not.

[170] The preamble in Part 1 should contain sufficient information for a reader to understand the process of determining which features are outstanding and we have added a little more to this introductory page to achieve that, including a list of the values and subvalues addressed by the screening criteria. The wording is set out below.

“Schedule 25: Outstanding water bodies

Part 1 Screening criteria for outstanding water bodies

Water bodies, and estuaries and lagoons (or parts thereof) must have outstanding values that are assessed as being conspicuous, eminent or remarkable in the Hawkes Bay Region to meet the definition of ‘outstanding’ set out in this plan, unless the water body, or part thereof is identified as having outstanding values in a water conservation order.⁵⁴

The values that are assessed are:

Ecology habitat for native aquatic birds

⁵⁴ We deal with the matter of water conservation orders later in this decision.

Ecology native fish habitat

Ecology habitat for indigenous plant communities

Ecology habitat for above-ground ecology values not otherwise provided for in the screening criteria.

Cultural or spiritual (tāngata whenua)

Recreation angling amenity (trout)

Recreation rafting

Recreation kayaking (including canoeing)

Recreation jet boating

Landscape wild and scenic

Karst system/subterranean waters

Natural form and character

Assessment of the values of each water body is carried out using screening criteria that include the thresholds the water body value(s) must meet to be accorded outstanding status. The screening criteria are set at a high threshold for all values.

The screening criteria contain a List A, of which the value must meet at least one criterion, and a List B, of which all the criteria must be met. List B always includes the requirement that evidence support the outstanding nature of the feature.

Both the values and screening criteria in PC7 have been developed via a plan change process.

Future assessment of water bodies that may be outstanding in the Hawkes Bay Region will also take place as part of a plan change or other statutory process. The assessment of the significant values of outstanding waterbodies will follow the same process.

Assessment against the screening criteria relies on evidence and information obtained from a range of sources, some of which are listed for each value in the table in Part 2. Sources may include published reports and information held by HBRC on its website www.hbrc.govt.nz along with other relevant information.”

Issue 13: Is it appropriate for the ecology value set to be worded in such a way that would allow the best two water bodies in the region for those values to pass through the screening criteria?

HBRC proposes that List A(a) and list A(b) (indigenous plants) are worded in a way that would allow the best two water bodies in the region for those values to pass through the screening criteria.

TTOH and others sought extension of the headings for each ecological value set to so as to include coastal waters – refer to findings under Issue 2

Genesis supports HBRC's position.

[171] Appellants raised concerns that the value sets for *Habitat for indigenous plant communities* and *Habitat for above ground ecology* set the bar too high and would inappropriately exclude a water body based on habitat if similar habitat values had been found in two other locations in the region. HBRC has made changes in response to these concerns, so that a water body in those circumstances could still pass through the reworded screening criteria.

[172] Mr T Williams for Forest and Bird, in opening submissions raised scope as a concern, noting that wording such as “unique” or “unsurpassed” has come into play since the Decisions’ version was issued and that this terminology was not the subject of any submissions or appeal points. None of the appeals were made on the grounds that the thresholds imposed by the original screening criteria were too permissive. Forest and Bird said the ‘TTOH and others’ appeal does not provide scope for the screening criteria to be more restrictive than those in the Decisions’ version.

[173] In contrast to “the two best” the IHP’s Decision Report used the term “one of the highest” in relation to outstanding ecological values, the term favoured by Forest and Bird. Forest and Bird submitted that the “one of the highest” terminology in the Decisions’ version should be retained in relation to the ecological values sets, and in combination with the definition of ‘outstanding’ in the Glossary this terminology represents an appropriate threshold for the identification of outstanding OWBs.

[174] In relation to the *Habitat for indigenous plant communities* and *Habitat for above ground ecology values*, the wording in the 25 July PC7 version in List A(a) is “...not found in more than two places in the region...” and (b) “...supports one of the two highest numbers in the region...”. We understand that in developing the criteria for all of the values HBRC’s intention has been to limit the selection of outstanding waterbodies to “the best of the best”. We have some concern that limiting the selection to the “two highest” or “two best” presumes that all outstanding waterbodies which might have similar values have already been identified in the region such that a comparative exercise can be

carried out. But under that criterion if another water body with similar outstanding qualities was to be discovered its identification as ‘outstanding’ would fail. “Among the highest” would not disqualify another similar very high quality water body from inclusion in Schedule 25. We are mindful of the disquiet expressed by the IHP at the notion that OWBs that have similar values to other OWBs should not be included in Schedule 25. It said:⁵⁵

this would be inconsistent with the screening criteria that we have adopted, and would involve taking a comparative approach to OWB’s that meet one or more of the criteria which we do not generally consider appropriate. Such an approach would also be highly inconsistent with the findings for National Water Conservation Orders where in two instances rivers with similar values are protected... .

[175] We consider it possible that the “two instances” referred to by the IHP may be what has led to the selection of “one of the two highest” as a criterion, but whether or not that was the case we do not consider it impossible that other rivers with similar values may be found. As we see it, there is no magic in the number two. The criteria are not intended to be comparative but to rely on individual testing against the criteria. We decline to include “one of the two highest” or similar wording in any of the criteria sets.

[176] In relation to the *Habitat for native aquatic birds* value set and the *Native fish habitat* value set, HBRC maintains its position that “unsurpassed” is the appropriate terminology. We are not satisfied that “unsurpassed” provides appropriate opportunity for a water body of outstanding value to qualify for inclusion in Schedule 25. As previously noted, the decision-making process for the inclusion of a new OWB in Schedule 25 is through a plan change or other statutory process. Given the robust screening criteria, the definition of outstanding, and the opportunity to hear evidence about the values and characteristics of a water body in such a process, we are confident that there will not be a flood of applications for waterbodies that do not possess the necessary outstanding values. We will not apply ‘unsurpassed’ to any of the criteria. We prefer to use ‘among the highest’ and ‘rarely found’.

⁵⁵ Decision Report, at [6.8].

[177] HBRC has also suggested further wording changes to include “in the region” in several of the value sets to make it clear that the threshold applies on a regional basis. As we noted under Issue 12 in relation to that proposed addition, it is clear from the preamble in Schedule 25 Part 1 that the screening criteria apply to the Hawkes Bay Region and we see no reason to add these words again throughout.

Issue 14: Should the Karst system/subterranean value set require international or national reputation and/or non-local usage to be recognised as an outstanding water body?

TTOH and others considers that the Karst system/subterranean value should not require international or significant non-local usage. The premise of the OWB is that the identified waters are outstanding on a regional basis.

HBRC considers that this is an important qualifier and should be retained.

[178] From the physical, geomorphological and ecological perspective karst and subterranean systems are physical features that exist of themselves and have intrinsic outstanding scientific and scenic values. Each cave and water body is unique according to Mr Rekker and Dr Ryder. International visitors may well recognise those values but under List A b) they must be features that “stand out” and are present in few other water bodies in the region.

[179] HBRC considered that there needs to be some level of recognition above being what it called “highly unique”, preferring that national or international use or recognition provide that extra layer by adding that to List B. We have difficulty with the descriptor “highly unique” as the term unique does not allow any type of ‘sliding scale’. We remove that term from List A and replace it with “distinctive”. We do not consider that international or national recognition is necessary for a karst or subterranean system to qualify as outstanding.

[180] However, if such a system is being assessed in relation to an outstanding experiential or recreational perspective, then some level of non-local, national or international recognition may well be appropriate. We would not have the values in List A b) and c) require “international or national and/or high non-local usage” values, but we agree that terminology is appropriate in assessing an outstanding recreational or experiential resource. We would add the wording in List B a) to List A a) which

deals with the experiential/recreational value. List A a) would read: “A specialised high-quality experience with international or national reputation or high non-local usage present in few other water bodies in the region”. List B a) requiring evidential support will be retained.

Issue 15: Should the karst system/subterranean value set include cultural and spiritual values?

TTOH considers that the karst system/subterranean waters value set is broad enough to include aquifers and should enable such water bodies to be recognised for cultural and spiritual values.

HBRC considers that aquifers, karst systems and subterranean waters may already be recognised for cultural and spiritual values under the cultural and spiritual values set and inclusion in this value set is not necessary.

[181] A water body of any type, including a karst system, can be recognised as outstanding for cultural or spiritual values under the cultural and spiritual values set. Including those values in the karst system and subterranean values set may lead to confusion as to how the thresholds are to be applied. If we were to include those values here, arguably they could be included under every value. The cultural or spiritual value set presents the best avenue for protecting water bodies of outstanding cultural or spiritual value under the approach taken by HBRC in PC7. To remain consistent with that approach we decline to include “cultural or spiritual” values in List A c) for the value *karst system/subterranean waters*.

Issue 16: Should the natural form and character value set specifically refer to aquifers, and the value of aquifer recharge?

TTOH considers that the natural form and character value set should be renamed to ‘natural form and natural character’. This would enable the natural character of outstanding coastal water bodies to be taken into account. [refer our previous finding not to separate coastal waters].

The criteria should include “aquifer recharge” as this is part of an aquifer’s natural character. In addition, numerous streams rely on groundwater to sustain them, while the need to protect the integrity of aquifer recharge is mentioned elsewhere in the RPS (policy LW1)(cA) in terms of integrated management .

HBRC considers that the natural form and character value set already contains hydrological values and so (bb) should not be added.

HBRC considers that in List B(b) the term “unsurpassed” should be added.

[182] HBRC considers that these changes are not necessary to enable appropriate recognition of aquifers, as they can qualify under the cultural and spiritual value set (as for the Heretaunga plains and Ruataniwha plains aquifer systems) and under List A a) of the natural form and character data set. HBRC's closing submissions cited Mr Rekker's view that specific reference to aquifers and aquifer recharge in the screening criteria is not necessary as those matters are included in the 'flow' and 'water quality' characteristics in the screening criteria.

[183] We consider there may be unintended consequences of singling out aquifer recharge under the Natural Form and Character value set. We see there is a risk that including that term could limit the interpretation and application of the criteria in other value sets in relation to 'flow' and 'water quality'.

[184] We are not satisfied that in List B b) the term 'unsurpassed', supported by HBRC, is necessary. This means that two waterbodies would have to be 'equal best' if a second water body with similar values was to qualify under the criteria. New water bodies assessed as being of higher quality than one already recognised as outstanding do not 'bump' that existing water body out of the category. A new water body that passes examination on the criteria should qualify (or not) on its own merits. We prefer the wording "The natural form and character values contain distinctive qualities that stand out among such water bodies in the region".

[185] We see no need to change the value name 'natural form and character' to 'natural form and natural character' as the adjective 'natural' applies to both form and character as we understand it.

Issue 17: Should the natural form and character value set remove the requirement that riparian margins of braided rivers have little to no modification?

Forest and Bird considers the value set should be altered to allow modified riparian margins.

TTOH supports the Forest and Bird amendment, as the morphology of braided rivers and the underlying aquifers help to improve the river's resilience.

HBRC does not agree, as significant modification can modify the geomorphology of the braided river.

[186] Forest and Bird would modify the criterion in List A a) of the natural form and character value set as follows:

The water body is highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna, within a largely indigenous landscape except for braided rivers which can still hold outstanding natural form and character values where riparian margins and the surrounding landscape are modified, provided the water body is highly natural with little or no human modification in all other respects.

(additional wording underlined)

[187] HBRC considers the criteria should require “little or no human modification” of riparian margins.

[188] The wording proposed by Forest and Bird is careful to ensure that the braided river’s form and function, that is of the water body itself including its bed, would not be modified. Mr T Kay, for Forest and Bird, said that if the braided river were to become confined or lost its braiding, or the gravel bars became vegetated, that would be a significant shift in its value, but the focus is on the geomorphology and while that will be influenced by what’s happening in the landscape and riparian margins those things do not define the river’s form. In that context, he said focussing on whether the riparian margins were pristine or not was “a bit of a red herring”. While Mr Rekker considered that riparian margins were an important contributor to the hydrological function of a river, he agreed that if the modifications to those margins were such that the braided riverbed was affected, that would be picked up in the assessment of form and function of the river, so that a separate focus on the riparian margin was not needed. Mr Black and Mr Kay agreed with this statement.

[189] Forest and Bird submitted that the riparian margins of the Rangitata River, which is covered by the Rangitata River Water Conservation Order, have some degree of modification and that it would be inconsistent to apply a different test in these criteria.

[190] We conclude that it is the form and function of the braided river that is the critical factor rather than the status of the riparian margins and surrounding landscape, and we adopt Forest and Bird’s proposed changes to List A a) of the natural form and

character value set.

Additional water bodies, values or extents sought to be added to Schedule 25

Issue 18: Should the Ngaruroro River from Maraekakaho to Fernhill be recognised for outstanding braided character under the natural form and character value set?

Forest and Bird considers that this part of the Ngaruroro River has outstanding braided character that should be recognised and the natural form and character screening criteria should be modified to ensure that its natural character can be identified as outstanding. This change is supported by TTOH and others.

HBRC considers that this part of the Ngaruroro River does not meet the natural form and character screening criteria and does not support outstanding natural character values, in particular due to the gravel extraction and flood protection measures on the riparian margin that change the underlying geomorphology of the river to a significant degree.

[191] In the reach between Maraekakaho and Fernhill the river has been modified by activities that include gravel extraction and flood protection. We heard evidence from Mr Rekker that the gravel extraction and flood protection measures on the riparian margins downstream of Maraekakaho have significantly modified the underlying geomorphology of the river.

[192] However, Mr T Kay's evidence for Forest and Bird was that while there had been increased human activity in the river below Maraekakaho it was still functioning as a braided river, and he provided historical aerial imagery to demonstrate this. He considered that the reach in question was no different to the reach above Maraekakaho in terms of its ability to continue to function as a braided river.

[193] We understood from Mr Williams' questioning of Ms Harper⁵⁶ that the resource consent for the gravel extraction activities contains a range of clauses intended to minimise the effects on the natural character of the river, and that it requires reinstatement to minimise the effects on natural character at the cessation of the gravel extraction activities. Further, that the section 42A report associated with the activities assessed the effect of gravel extraction as no more than minor. She had not been aware of those matters but had no difficulty in saying the information was

⁵⁶ NOE2 page 184.

logical and agreeing with it.

[194] In its closing *Forest and Bird* focussed on the longer-term potential of this reach of the river, beyond what it called the temporary effects of gravel extraction, when the river would be allowed to return to its natural state, saying Mr Rekker had agreed that the river would recover from any temporary loss of form and function caused by the activity.

[195] Mr Rekker also agreed⁵⁷ that it was plausible the river currently reaches a peak in braiding intensity and active width downstream of Maraekakaho, and that the active braid plain was particularly notable in the reaches to either side of Maraekakaho, such that it was difficult to draw a line at Maraekakaho, in relation to the braided nature of the river. When shown aerial imagery of the river, he said there was a very marked change in channel width at Fernhill Bridge where it went from “high to a low” width.

[196] In relation to the importance of this part of the river to the recharge of the Heretaunga aquifer, he agreed that this could be described as an outstanding function of the braided river although this would not be captured by the screening criteria.

[197] While we accept that the reach from Maraekakaho to Fernhill is subject to modification under existing resource consents we are satisfied by the evidence that it retains its form and function as a braided river, would recover from the effects of gravel extraction and other activities when they cease, and provides a recharge to the Heretaunga aquifer that Mr Rekker considered an outstanding function. We accept this reach is outstanding as it meets the necessary criteria, particularly in light of our acceptance of the changes to the wording of List A a) of the natural form and character value set (under Issue 17). This requires a change in Part 2 OWB9, Column 3.

Issue 19: Should a reference to dotterel be included in the description of native bird habitat for Ngaruroro River?

HBRC, TTOH and Forest and Bird agree that the wording ‘particularly’ should be replaced with ‘including’ to recognise that the aquatic bird habitat is not only outstanding for dotterels.

⁵⁷ NOE1, page 256, lines 31-33 and page 257, lines 1-3.

[198] The agreement between the parties changes the wording of the description for the Ngaruroro River in Part 2 OWB9 in Column 2 and in Column 3. We accept those changes, as it is clear from the evidence that the habitat is also important for other bird species.

Issue 20: Should Heretaunga plains aquifer system (or its associated aquifer recharge) be recognised for outstanding natural form and character values?

TTOH considers that Heretaunga Plains Aquifer System has outstanding natural form and character values because of the aquifer recharge values. This is a value inherent to the aquifer and is outstanding to TTOH. HBRC's own reports show that spring flows from the aquifer system contribute a major proportion of the base flow for Te Karamū River. This is similar to the WCO for Ngaruroro River whereby the whole of the lower Ngaruroro River is recognised as having outstanding habitat for indigenous aquatic birds and the waters that contribute to that outstanding habitat need to be protected, where the Karamū has outstanding cultural and spiritual values, the flows, including the inflows from groundwater and that contribute to upholding those cultural and spiritual values, should have a higher level of protection.

HBRC considers that because no evidence was provided from TTOH on this value and HBRC's expert does not consider there is outstanding natural form and character value, that Heretaunga Plains Aquifer System should not be recognised as an OWB for this value set.

[199] While the parties agree that the cultural and spiritual values of the Heretaunga plains aquifer system are outstanding, in opening submissions HBRC raised two issues in relation to it qualifying as outstanding under the Natural Form and Character Values set (in Part 1 of Schedule 25). The first was in relation to a lack of scope because the notified version of PC7 did not include natural character. Mr Conway explained in opening submissions that HBRC was no longer pursuing scope in relation to this issue as the value sets have changed since that time.⁵⁸ The second matter, which is still live, was that there is a lack of evidence that the aquifer meets the criteria for outstanding natural form and character.

[200] Mr Tuika in opening submissions for TTOH and others noted that in their appeal, under section 7d) TTOH sought as relief an amendment so that the following waterbodies (and others not relevant here) could be included in Schedule 25 as outstanding:

⁵⁸ Opening submissions of HBRC, at [7.4].

- the Heretaunga plains aquifer system;
- the Ruataniwha plains aquifer system;
- the Ngaruroro River below Whanawhana cableway site downstream to and including the Heretaunga plains aquifer recharge zone between Maraekakaho and Chesterhope Bridge;

and under section 7g), in relation to the screening criteria, to amend them such that 'natural character' is inclusive of 'natural functions and processes', 'integrity of aquifer recharge' and 'natural spring flows'.

[201] In closing HBRC said that Mr Rekker had assessed the values on the information available and concluded there were no outstanding natural form and character values for the Heretaunga plains aquifer system.

[202] Mr Tomoana, an expert in Ngāti Kahungunu mātauranga and culture for TTOH, took a different view. He considers that the Heretaunga Muriwaihou | aquifer is a unique and outstanding taonga for the iwi of Ngāti Kahungunu.

[203] He introduced his evidence by describing his learnings of ancient knowledge, including the contexts that successive generation have grown up in and adapted to. He talked of the relationships between the stars, the heavens, the earth and the underworld, the mountain streams to the sea and everything in between including groundwater and the aquifers which embody Muriwaihou. All are interconnected through whakapapa.

[204] The importance of the Heretaunga aquifer system | Muriwaihou to the cultural well-being of tangata whenua has been recognised as an outstanding value. This is separate to the recognition TTOH wants to see in relation to the natural character of the aquifers.

[205] In relation to the natural character of the aquifer | Muriwaihou, Mr Tomoana

said:⁵⁹

Mana and Rangatiratanga depicts the power and leadership of Ngāti Kahungunu to exercise kaitiakitanga over its groundwater resources and the cultural significance of the Heretaunga Muriwaihou to the iwi and local hapū. Arguably no other freshwater waterbody has provided for so many for so long and influenced settlement to such a degree, it must be outstanding in this regard.

[206] The above speaks not only of cultural and spiritual value to Māori but of the wider importance of the aquifer. TTOH and others say its natural form and character have outstanding characteristics that underpin the outstanding values of the Ngaruroro and other waterbodies of the region. Mr Tomoana said the diminishment of waimāori (water in its natural state and suitable for consumption) and the lack of regard for its value and importance has manifested in the lack of regard in the management of the Heretaunga Muriwaihou as a taonga tuku iho (heirloom) for tangata whenua.

[207] In relation to the outstanding features of the Heretaunga Muriwaihou aquifer Mr Tomoana spoke of the Koko, who is atua (guardian) over the aquifers which produce puna (springs) that manifest both on land and at sea. Springs were previously prolific but are fewer now, however they are still visible and are reminders that the prolific water body is still giving and does not stop giving. The springs that remain are strong, clear and pristine and need to be preserved. Although the aquifer cannot be seen it is present. When the iwi investigated its economic contribution to the region it had contributed more to economic development than had the rivers. From a taonga to the iwi it is also a taonga to the world.

[208] Mr Marei Apatu, for TTOH and others, also described those springs in an area known at Te Raupare, where some 16 springs are present, having pristine quality in terms of both their flow and course. He was familiar with the dancing or bubbling sands referred to by Mr Rekker, having visited them many times. He considered the springs to be of the highest quality and said they will be termed very outstanding. He considered the relationship of the aquifer and springs to be outstanding. He referred

⁵⁹ EIC Ngahiwi Tomoana, dated 22 August 2023, at [28].

to Ngapuna as a very significant outstanding spring.⁶⁰

[209] Mr Rekker agreed that recharge and the interaction between surface water and ground water could be considered as part of natural form and function, and could be an outstanding function, even though not visible. The Ngaruroro River provides the dominant contribution to the Heretaunga aquifer at some 78-85% (5000 litres/second). He was not aware of any other aquifer recharge in a regional context that was as great as that on the Heretaunga plains. Asked if he considered this an outstanding aquifer recharge, he could not go that far, and compared the Heretaunga situation to that of Waikoropupu Springs in Golden Bay, where the springs themselves are outstanding and the upstream aquifers that feed that spring were recognised as interrelated outstanding values. Mr Rekker recognised that, for the Heretaunga case, it is more that the source of most of the water, the Ngaruroro River, is outstanding and it feeds an aquifer that is important to the region. He did not consider that this met the criteria as then written. As we understand it, this is not quite what TTOH and others are focussed on, it is the hydrological qualities of the aquifer, including the springs and its sustained flow and water quality, along with its interconnectedness with the Ngaruroro and other waterways that makes it outstanding.

[210] We found under Issue 16 that there is no need to include “aquifer recharge” in the Natural Form and Character value set because such recognition can be found in the Cultural or spiritual value set. We are not convinced by the evidence of the TTOH and others’ witnesses that the Heretaunga aquifer, in its interconnectedness with a range of other outstanding hydrological features, is itself outstanding in its natural form and character and meets the screening criteria under List A a) and List B of the Natural Form and Character values set.

Issue 21: Should the tributaries of Te Karamū River be included as part of its outstanding cultural and spiritual values?

TTOH considers that to fully encompass the cultural and spiritual values in Te Karamū River, the tributaries should be included. Karamū catchment maps include the Lower Karamu-Clive. The

⁶⁰ Mr Apatu referred to springs in another location. The name of the springs was inaudible in the hearing’s transcript.

Geographic Board changed the name of this reach to Te Awa o Moko-tū-ā-raro. The cultural and spiritual evidence referring to the placing of mauri at the river-mouth by the tohunga Ruambaro so it could spread across the shoreline and upstream into the river as it was at that time, contributed to agreement that Te Karamū should be included in Schedule 25, and cultural and spiritual values at Te Awa o te Atua in the vicinity of Bridge Pa, Ngatarawa and Maraekakaho.

Colonisation has changed the name from Moko-tū-ā-raro ki Rangatira, to the Plassey, the Ngaruroro, the Clive and some documents over the last three decades refer to it as the Karamu-Clive. Some hapū called it Nga Ngaru o Nga Upokororo or Te Awa of te Atua. After the river above Omahu was diverted down the former bed of Waitio, the remaining tributaries and river became the Karamū catchment. The map from the IHP decision refers to it as a stream but Table 9 in the RRMP calls it a river. The allocations from the Karamū River, for the purposes of Table 9 include allocations from its tributaries.

The Karamū River was re-instated into Schedule 25 as it met the definition of outstanding in accordance with te ao Māori, matauranga and tikanga. Tikanga defines Te Karamū as being inclusive of its tributaries.

HBRC does not support this change. The tributaries of the Karamū River were not included in the notified version of PC7 and were not requested via submissions.

[211] HBRC submitted that no evidence has been filed stating that the tributaries to Te Karamū provided or supported the outstanding cultural and spiritual values of the river, and that they should also be included.

[212] Opening submissions for TTOH and others were that:

150 “Te Karamū River implies the whole river system, Te Karamū in particular. Te reo Māori doesn’t have an exclusive equivalent for ‘tributaries’ and ‘catchments’. HBRC document Te Karamū Enhancement – Management Strategy 2016-25 refers to the entire Te Karamū River catchment.

151 The cultural and spiritual evidence supplied and supported as outstanding in the relevant JWS applied to various parts of the Te Karamū River than detailed on the HBRC maps”.

[213] Mr Tuika said that was part of the iwi’s understanding of Te Karamū but that it did not match the map. He noted that the evidence for Te Karamū supported a culturally or spiritually outstanding [value] but the spatial mapping was not aware of its specific location. This should be seen as a correction that is needed to the maps. He said the different names accorded to Te Karamū [noted in the Issue preamble above], confused matters, and that an exhibit produced by Iwi illustrated that.⁶¹

⁶¹ See Iwi Exhibit 6.

[214] Mr Tuika drew our attention to the document “Outstanding Water Bodies Plan Change Candidate List of Outstanding Water Bodies in Hawke’s Bay – secondary Assessment for [Karamū River]”.⁶² This contains some information about the historical and contemporary significance of Te Karamū to Māori, in particular for Heretaunga Tamatea, one of six large natural groups negotiating the settlement of Ngāti Kahungunu Treaty of Waitangi claims, and Ngāti Hori, who have a registered hapū management plan for Te Karamū that covers the area from the river’s mouth to where the river flows past Kohupatiki up to Pākowhai, the beginning of the Ruapare stream. Ngāti Hori expressed concern about the destruction of cultural values in the stream, especially the customary fisheries, and that their cultural values depend on restoration of the minimum flow levels destroyed by river diversion.

[215] With reference to the document “Outstanding Water Bodies Plan Change Selecting a list of outstanding water bodies in Hawke’s Bay”⁶³ it is evident that the local expert panel charged with the assessment of Karamū Stream found that the stream needed further cultural assessment and that this had not been forthcoming from the iwi authorities at the time the report was produced. As far as we could ascertain the tributaries of Te Karamū were not given any particular attention.

[216] The rivers that are recognised as having outstanding value in Schedule 25 Part 2 are the Ngaruroro, with different outstanding characteristics recognised for different parts of the river, the Mohaka upstream of Willow Flat, the Taruarua, the Pōrangahau and estuary downstream of the Beach Road Bridge, the Te Hoe (which is a tributary of the Mohaka River), and the Tukituki River downstream of the SH50 Bridge to the sea. There is one water body for which the mainstem is specifically included in the name of the water body, that being the mainstem of the Tūtaekuri River upstream of the SH50 Bridge, and one stream which is noted as being a small tributary on the north bank of Te Hoe river, the Mangahouanga Stream, which achieved its outstanding status from being the only site in New Zealand where dinosaur fossils have been found to date.

⁶² HBRC Report No. RM19-252 June 2018.

⁶³ HBRC Report Number SD19-18.

[217] For none of the other named rivers is there a specific mention of its tributaries or their values, and TTOH and others have not explicitly included the tributaries of any of them in their appeal. We find against including the tributaries.

Schedule 25: Any Other Issues

Issue 22: Are spatial extent maps necessary as part of the plan change, or are indicative maps with a narrative description sufficient?

HBRC considers the inclusion of indicative maps is helpful but that spatially defined maps with more precise boundary definitions at a higher resolution are better done through Policy LW1.2bA at a later date. HBRC has updated the indicative OWB location map that was included in Part 3 of the decisions version to include the Ngaruroro River, Lake Poukawa and Poukawa Swamp, Ruataniwha aquifer system, Heretaunga aquifer system and Te Karamū, in the tracked provisions for PC7. In terms of the aquifer extents, the extents are based on information from the latest numerical groundwater model for the Heretaunga aquifer system and the numerical groundwater model used to inform Plan Change 6 to the Regional Resource Management Plan (Tukituki River Catchment). These maps differ from the older 2006 RRMP maps which cultural and spiritual experts referred to in their JWS. The parties have not yet had a chance to consider the map attached so it is being included as an HBRC position rather than being an agreed map.

TTOH considers that spatially definitive maps would provide better surety and guidance for plan users.

[218] While we agree with TTOH and others that maps help limit ambiguity and provide surety and guidance for plans users, and are crucial, too, in spatial assessment, HBRC does not consider the inclusion of more detailed maps to be possible at this stage.

[219] HBRC states that the situation with the aquifers illustrates the challenge in coming up with spatially definitive maps at this stage. The term “Heretaunga aquifer” or “Ruataniwha aquifer” is broadly used to describe the groundwater resources under the Heretaunga and Ruataniwha plains. As aquifers are extensive systems, it is not always clear where the boundaries of the system are. A map based on hydrogeology reports may provide a different outcome to one drawn up based on geology and groundwater flows. HBRC considers it is best to include more detailed maps when the spatial extents are updated through Policy LW1.2(bA).

[220] We find that an indicative spatial map, based on information from HBRC’s

science team, is more appropriate at this stage. We direct that the HBRC's Indicative location map attached as Part 3 to its preferred version of PC7 be updated to include any features of OWBs that are now included in Part 2 Table 1 of PC 7 as amended in this decision. Further HBRC is to propose suitable wording in Part 2 as to how the Indicative Map can be used in reading the plan change.

Issue 23: Are changes required to values that 'span' between freshwater and coastal water, recognising that some water bodies are outstanding and not connected to a freshwater body?

TTOH considers amendments to Objective 11 are required to recognise the separation of coastal and freshwater bodies in the regional planning regime and statute.

HBRC considers the wording of Objective 11 in the 17 January version to be appropriate, as Objective 11 in that version does not require the value to be connected, so the amendments are not required.

[221] TTOH's proposed changes relate back to Issue 2 where TTOH sought that outstanding freshwater bodies and outstanding coastal waters be defined separately and a range of other changes be made to PC7 to include reference to outstanding coastal waters. We declined to adopt those proposals. We see no need to alter Objective 11 or the Explanation and Reasons for Objective 11 at 3.2.8A and adopt the wording in the 25 July 2024 version of PC7 as it appropriately provides for integrated management of fresh and coastal water, including recognising that values may span the freshwater and coastal environments.

F. Remaining Issues

[222] We now look at what HBRC covered under the heading Remaining Issues in its closing submissions.

Policy LW1.2bA)

[223] HBRC's closing stated that TTOH and others proposed amendments to require an assessment of "any additional" significant values, and a specific reference to values "within the outstanding water body". HBRC did not consider that the reference to values within the water body is appropriate, because the wording already directs plan users to assess the values in the context of the NPSFM, and the NPSFM

recognises some values that involve water being taken out of the water body.

[224] We note that this clause relates to what is required when preparing regional plans. We see no need to make the amendments proposed by TTOH and others, whether or not we were to include the specific significant values of outstanding water bodies in Schedule 25 as sought by TTOH and others and Forest and Bird.

Principal reasons and explanations for Policy LW1

[225] We start by noting that the role of such explanatory material is not to extend the policy. HBRC's closing stated that TTOH and others sought amendments to note that "additional" significant values can be identified, "continue" to be protected in future plan changes, and that the outstanding and significant values comply with "relevant limits and environmental guidelines in regional plans". Its position is that this is no more than a statement of what will need to occur whether stated in the plan change or not. We do not accept the TTOH and others' amendments to the explanatory material.

Policy LW2 and principal reasons and explanation

[226] HBRC's closing stated that TTOH and others had proposed a number of amendments, all of which HBRC did not support.

[227] Firstly, to Policy LW2.1 to state that outstanding values and significant values are protected. HBRC considered this change unnecessary as protection of those values is already directed by Policy LW1.1(d). In addition, Policy LW2 is already subject to Policy LW1.2 and LW1.3. Policy LW1.2 contains provisions directing how protection of those values is to be achieved, and to ensure alignment with Te Mana o te Wai. We accept HBRC's position.

[228] Secondly to Policy LW2.1A(a) to require that Policy LW2.1 apply to developing policies as well. HBRC considers this unnecessary as Policy LW2.1 applies to regional plans, which will filter down into policies applying to each catchment. We concur with HBRC's position.

[229] Finally, TTOH proposes new wording to state that Policy LW1.2 provides clear guidance to “assessing resource consents”. HBRC considered that given this Policy has a focus on regional plan development and not resource consent assessment, the addition would make no sense. We agree with HBRC.

Policy LW3A

[230] HBRC’s closing stated that TTOH and others proposed that this policy read:⁶⁴

... any relevant values identified in Appendix 1A and 1B of the NPSFM 2020, where there is evidence that such values were present.”

[231] HBRC did not consider this change to be appropriate as the relevant clause is targeted at assessing values present at the time the clause is applied. If the values are no longer present at that point in time, then it is difficult to determine the effects of an activity on those values. We concur.

[232] Further, HBRC’s closing stated that TTOH and others proposed changes to require compliance with limits or targets. HBRC did not agree with these additions. It submitted that a consent authority would have to apply limits and targets whether set in the RMMP or a higher level planning document and that without a clear reference to what limits or targets need to be considered, it would be confusing for plan users and potentially duplicative for consent authorities. We accept HBRC’s point.

[233] Finally, HBRC stated that TTOH and others proposed that Policy LW3A.2 remove the exclusion of regional coastal environment plans. HBRC’s response is that Policy LW3A applies to specified rules in regional plans and Policy C2 to specified rules in regional coastal plans. This was added by the IHP for plan user clarity and should be retained. We concur with HBRC.

Policy LW3B and principal reasons and explanation

[234] HBRC’s final closing noted that TTOH and others proposed a new LW3B(bA)

⁶⁴ Closing Submissions of HBRC, at [12.4].

and d) iii) in a similar vein to Policy LW3A. We agree with HBRC that the reasons not to make the change equally apply to Policy LW3B.

[235] Further, TTOH and others proposed additional wording to LW3B.2(a) and b) Principal reasons and explanation to state:

“Policy LW3B recognises that activities occurring at or before 31 August 2019 were part of the existing environment at the time PC7 was publicly notified”.

[236] HBRC considered this unnecessary as the current text: “in which the outstanding value(s) set out in Schedule 25 were identified” has a similar meaning. We see no harm in the addition to the explanatory material proposed by TTOH and others.

Policy LW4 Anticipated Environmental Results Table

[237] HBRC’s final closing stated that, while it agreed with the intent of the change proposed by TTOH and others at ‘7’ of the Table that data sources include cultural monitoring, it submits that this change was not requested in TTOH and others’ submission or notice of appeal and there is a scope issue in the present proceeding. We encourage HBRC to progress suitable future provisions.

Policies C2 and C3

[238] HBRC’s final closing stated that TTOH and others proposed a new provision to require preferential protection of outstanding values where there is a conflict. HBRC’s response was that its preferred version better enables implementing the NPSFM in this context and ensures the outstanding values are able to be consistently managed and protected. We accept HBRC’s position.

[239] TTOH and others also proposed changes to require compliance with limits or targets. HBRC did not agree with these additions for the same reasons it gave for similar amendments sought to Policy LW3A. We accept HBRC’s reasons.

Can PC7 recognise water bodies protected by water conservation orders?

[240] HBRC presented an analysis of this matter in its opening submissions.

[241] The NPSFM 2020 was released after PC7 was notified. The NPSFM 2020's definition of OWB included water bodies identified in a water conservation order:⁶⁵

outstanding water body means a water body, or part of a water body, identified in a regional policy statement, a regional plan, or a water conservation order as having one or more outstanding values.

[242] Accordingly, for the purpose of the NPSFM 2020, water bodies that have been recognised in a WCO will qualify as OWB, and therefore there is an obligation on HBRC to protect their significant values (NPSFM 2020 policy 8).

[243] HBRC considers it appropriate to amend PC7 to give effect to this aspect of the NPSFM 2020. It would align the definitions in the NPSFM 2020 and the RRMP and reduce the prospect that there could be confusion about whether the RRMP is endeavouring to protect WCO water bodies. In terms of the particular impact of that change in Hawke's Bay, this includes Mohaka River (upstream of Willow Flat).

[244] Accordingly, the definition of 'outstanding' in PC7 was amended in the 13 July 2023 version, supported by Ms Harper's evidence, to include water bodies recognised with WCOs.⁶⁶

[245] However, as no parties requested this change in their submissions or notices of appeal, the change would need to be introduced through s 293 of the RMA.

[246] Under s 293 of the RMA, after hearing an appeal against the provisions of any proposed plan, the Environment Court may direct HBRC to:

prepare changes to the proposed plan to address any matters identified by the Court; consult the parties and other persons that the Court directs about the changes; and submit the changes to the Court for confirmation.

⁶⁵ NPSFM 2020 (amended February 2023), at page 7.

⁶⁶ HBRC preferred version of PC7 as at 13 July 2023, at page 20.

[247] Factors that may be considered by the Environment Court in determining whether or not to exercise the discretion under s 293 were usefully addressed in *Invercargill Airport Ltd v Invercargill City Council*⁶⁷ as follows:

[32] While the power conferred upon the Environment Court under s 293 of the Act may appear to be very broad, the relief sought must relate to the subject matter of the Proposed Plan. There must be a nexus (or a “rational connection”) between the appeal itself and the changed relief sought.

[33] There is no definitive list of factors as to circumstances in which the court might be influenced to exercise its discretion under s 293. However, some factors have been considered as contributing positively toward directions under s 293. These include:

- (a) where the application has been jointly made, particularly where it involves many or most of the main parties or the main landowner;
- (b) where there has already been a Council hearing, along with a submission process, and where the proposed changes address issues already raised at the Council hearing or in the Environment Court process and where it is unlikely there are interested parties who are not already involved in the proceedings;
- (c) where the amendments proposed relate to a discrete piece of land and not to rules affecting the whole district or district wide policies and objectives;
- (d) where there has already been consultation over what is being proposed;
- (e) where the amendments proposed are supported by evidence from witnesses for more than one set of parties, particularly where that evidence shows that the amendments may achieve the purpose of the Act or the objectives of the relevant plan; and
- (f) particularly where the delay has already been considerable, to avoid further delay.

[34] Some of the factors that might count against the court exercising its jurisdiction under s 293 include:

- (a) where two separate parties are the proponents of an application but they cannot agree on a fundamental issue;
- (b) where the application would result in an ad-hoc development which goes against a policy on comprehensive development;
- (c) where prejudice to a party exists; and
- (d) where there are potentially a large number of persons affected greater than the public generally.

⁶⁷ [2018] NZEnvC 009.

Also, broadly speaking, the larger scale and more complex the proposed amendments are the less likelihood the court will exercise its discretion.

[248] HBRC argued that it is appropriate to make this change so that waterbodies that are automatically outstanding water bodies for the purpose of the NPS-FM 2020 (such as the Ngaruroro River) are also recognised as such in PC7. In relation to the factors discussed in the *Invercargill* case, it submitted:

- (a) There is a rational connection between the relief sought in appeals (which squarely engages the threshold for a water body to be recognised as outstanding) and the change to the definition of OWB.
- (b) While the change to the definition of OWB is not being jointly sought, HBRC is not aware of any opposition to the change.
- (c) The WCOs themselves have gone through a public process with rights of submission.
- (d) Key parties with an interest in the definition are already involved in these appeals. However, an opportunity for other members of the public to express a view on the change would still be appropriate in line with usual s 293 practice.

[249] The change is a relatively simple one. It would enable PC7 to better align with and give effect to the NPSFM 2020 and would not significantly alter legal obligations that would apply in any event (because the NPSFM 2020 and its directive about WCO-recognised OWBs would be relevant to any future planning process and consent applications even if this change is not made). Prejudice is therefore unlikely. We accept the need for consistency with the NPSFM 2020, but given the length of time this plan change has been in process we do not accept this relief as it would require HBRC to embark on a s 293 process to amend PC7, leading to further delays in making it operative.

[250] The WCO for Mohaka is already referenced in the RRMP⁶⁸ so the only present

⁶⁸ At Table 2A Mohaka Catchment Area and in Part 2 of Schedule 25 “OWB 7” and “OWB 12”.

gap in the plan for WCOs relates to new WCOs. We also note that s 217 RMA places restrictions on the grant of certain water, coastal or discharge permits where a WCO is operative.

[251] Finally, we record that we have amended the text in Part 1 of Schedule 25 to include what had been a footnote saying, “Unless the water body or part thereof is identified as having one or more outstanding values in a water conservation order.”

G. Outcome

[252] The Hawke’s Bay Regional Council is directed to amend the Decision version of Plan Change 7 as shown in Annexure A.

[253] The Indicative location map, attached in Annexure B, shall be included as Part 3 of PC 7. It shall be updated to include any features of OWBs that are now included in Part 2 Table 1 of PC 7 as amended in this decision. Further HBRC is to propose suitable wording in Part 2 as to how the Indicative Map can be used in reading the plan change.

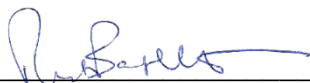
[254] The Map and wording are to be submitted to the Court for approval by 23 May 2025.

[255] To the extent the Plan Change responds to the relief sought in the appeals, those appeals are allowed and the balance of relief sought is rejected.

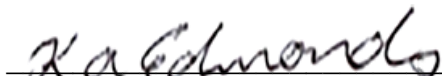
Costs are reserved but not encouraged.



MJL Dickey
Environment Judge



RM Bartlett
Environment Commissioner



KE Edmonds
Environment Commissioner



ANNEXURE A

Key

- Grey coloured text – these provisions are included for context only and are not part of PC7

Environment Court decision version

Proposed Plan Change 7 to the Hawke's Bay Regional Resource Management Plan - Outstanding Water Bodies

Amend Chapter 3.1A of HB Regional Resource Management Plan

3.1 A Integrated Land Use and Freshwater Management

ISSUES

ISS LW1A E kore Parawhenua e haere ki te kore a Rakahore

Parawhenua (Water) would not flow if it were not for Rakahore (Rock)

He huahua te kai pai! He wai te kai pai!

Huahua (preserved birds) are a treasured delicacy. However water is a necessity.

Explanation: These two proverbs encapsulate the interrelationship between two significant elements – land and water. The Māori world is formed on the interconnectedness and interdependency of people to all living creatures and to the environments in which they live. The well-being of the whole is dependent on the well-being of its constituent parts.

ISS LW1 Multiple and often competing values and uses of fresh water can create conflict in the absence of clear and certain resource management policy guidance.

ISS LW2 Integration of the management of land use and water quality and quantity increases the ability to promote sustainable management of the region's natural and physical resources.

OBJECTIVES

OBJ LW 1 Integrated management of fresh water and land use and development

Fresh water and the effects of land use and development are managed in an integrated and sustainable manner which includes:^{1A}

1. protecting the outstanding and significant values of outstanding water bodies identified in Schedule 25;
- 1A. protecting wetlands, including their significant values;^{1B}
2. the maintenance of the overall quality of freshwater within the Hawke's Bay region and the improvement of water quality in water bodies that have been degraded to the point that they are over-allocated;
- 2B. establishing where over-allocation exists, avoiding any further over-allocation of freshwater and phasing out existing over-allocation;

^{1A} The significant values and their associated descriptions for each outstanding water body will be included after a catchment-based regional plan change has been made operative for the catchment.

^{1B} While significant values of wetlands can include nutrient filtering, flood flow attenuation, sediment trapping and cultural, spiritual, recreational, aesthetic and educational values, their values as habitat to fish, invertebrate, plant and bird life is likely to be significant for wetlands across the region.

3. recognising that land uses, freshwater quality and surface water flows can impact on aquifer recharge and the coastal environment;
4. safeguarding the life-supporting capacity and ecosystem processes of fresh water, including indigenous species and their associated freshwater ecosystems;
5. recognising the regional value of fresh water for human and animal drinking purposes, and for municipal water supply;
6. recognising the significant regional and national value of fresh water use for production and processing of beverages, food and fibre;
7. recognising the potential national, regional and local benefits arising from the use of water for renewable electricity generation;
8. recognising the benefits of industry good practice to land and water management, including audited self-management programmes;
- 8A. recognising the role of afforestation in sustainable land use and improving water quality;
9. ensuring efficient allocation and use of water;
12. recognising and providing for river management and flood protection activities;
13. recognising and providing for the recreational and conservation values of fresh water bodies; and
14. promoting the preservation of the natural character of the coastal environment, and rivers, lakes and wetlands, and their protection from inappropriate subdivision, use and development.

OBJ LW2 Integrated management of freshwater and land use development

The management of land use and freshwater use that recognises and balances the multiple and competing values and uses of those resources within catchments. Where significant conflict between competing values or uses exists or is foreseeable, the regional policy statement and regional plans provide clear priorities for the protection and use of those freshwater resources.

OBJ LW3 Tangata whenua values in management of land use and development and freshwater

Tangata whenua values are integrated into the management of freshwater and land use and development including:

- a) recognising the mana of hapu, whanau and iwi when establishing freshwater values; and
- b) recognising the cumulative effects of land use on the coastal environment as recognised through the Ki uta ki Tai ('mountains to the sea') philosophy; and
- c) recognising and providing for wairuatanga and the mauri of fresh water bodies in accordance with the values and principles expressed in Chapter 1.6, Schedule 1 and the objectives and policies in Chapter 3.14 of this Plan; and
- d) recognising in particular the significance of indigenous aquatic flora and fauna to tangata whenua.

Principal reasons and explanation

Objectives LW1, LW2 and LW3 (and associated policies) assist HBRC to give effect to the National Policy Statement for Freshwater Management by setting out a broad overall framework (in parallel with other objectives in the RPS) for improving integrated management of the region's freshwater and land resources. These RPS provisions only partly implement the NPS for Freshwater Management. Regional plan policies and methods (including rules) also assist in giving effect to the NPS for Freshwater Management.

In Hawke's Bay, the issues and pressures on land and water resources vary throughout the region. As a result, the urgency for clarity around water allocation and to maintain or improve water quality also varies. For example, the food and wine production Hawke's Bay is renowned for is focussed mostly on the Heretaunga Plains, while for example plantation forestry and wool growing is typically located on hill country. These catchment differences have influenced HBRC's decision to prioritise catchments where the issues, pressures and conflicts are most pressing.

Objectives LW1, LW2 and LW3 are intended to outline the broad principles for policy-making and regional plan preparation to improve integrated decisions being made about the way the region's land and freshwater resources are used, developed or protected

across the region's varying catchments and sub-catchments. Objective LW1.1 is consistent with the NPSFM which requires the regional councils to protect the significant values of outstanding water bodies.

As well as different pressures in different catchments, freshwater values in Hawke's Bay also vary spatially. In addition to the national values of fresh water identified in the NPSFM's Preamble, HBRC has undertaken a process to assess freshwater values in Hawke's Bay. This included beginning with a Regional Water Symposium in 2010, followed by a process involving stakeholder representatives to develop the Hawke's Bay Regional Land and Water Management Strategy and a second Land and Water Symposium in 2011. This process helped HBRC to understand how to prioritise and strengthen policy options and management decisions for the different catchments. HBRC has also applied the River Values Assessment System (RiVAS)¹ to assess some of the values of rivers in the region. The results of the RiVAS assessments for Hawke's Bay reinforced the values identified at the symposiums and by the stakeholder reference group.

The predominant view of Māori in Hawke's Bay is that water is the essential ingredient of life: a priceless treasure left by ancestors for their descendants' life-sustaining use. This Plan sets out iwi environmental management principles (see Chapter 1.6), matters of significance to iwi/hapū (see Chapter 3.14) and commentary about the Māori dimension to resource management (see Schedule 1).

POLICIES

POL LW1A Problem solving approach – Wetlands and outstanding freshwater bodies

1. To work collaboratively with iwi, territorial authorities, stakeholders and the regional community:
 - a) to identify outstanding freshwater bodies at a regional level and include provisions in the Regional Policy Statement to list those waterbodies and guide the protection of the outstanding qualities of those water bodies; and
 - b) to prepare a Regional Biodiversity Strategy and thereafter include provisions in the Regional Policy Statement and/or regional plans to (amongst other things) guide the protection of significant wetland habitat values identified by the Strategy;
 - c) In relation to Policy LW1A.1, the identification of outstanding freshwater bodies will be completed and an associated change to the Regional Policy Statement will be publicly notified prior to public notification of any further² catchment-based plan changes³ prepared in accordance with Policy LW1.

POL LW1 Problem-solving approach - Catchment-based integrated management

1. Adopt an integrated management approach to fresh water and the effects of land use and development within each catchment area, that:
 - b) provides for *mātauranga a hapū* and local tikanga values and uses of the catchment;
 - c) provides for the inter-connected nature of natural resources within the catchment area, including the coastal environment;
 - cA) recognises and provides for the need to protect the integrity of aquifer recharge systems;
 - cB) recognises and manages the co-existing values of wetland habitat and agricultural production;
 - d) protects the outstanding and significant values of those outstanding water bodies identified in Schedule 25.⁴ Any conflicts between values are to be managed in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising (a) first, the health and well-being of water bodies and freshwater ecosystems; (b) second, the health needs of people (such as drinking water); (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future, with priority given to outstanding values over significant values in cases where those values fall within the same Te Mana o te Wai category;

¹ RiVAS, developed by Lincoln University, provides a standardised method that can be applied to multiple river values. It helps to identify which rivers are most highly rated for each value and has been applied in several regions throughout the country.

² Plan Change 6 for the Tukituki River catchment pre-dates this provision.

³ Notwithstanding Policy LW1A.2, a catchment-based regional plan change for the Mohaka River catchment may proceed in the meantime. For the avoidance of doubt, issue-specific regional plan changes (for example, urban stormwater or natural hazards and oil and gas resources) may also proceed in the meantime.

⁴ The significant values and their associated descriptions for each outstanding water body will be included after a catchment-based regional plan change has been made operative for the catchment.

- dA) maintains, and where necessary enhances, the water quality of those outstanding water bodies identified in Schedule 25, and where appropriate, protects the water quantity of those outstanding water bodies;
- e) promotes collaboration and information sharing between relevant management agencies, iwi, landowners and other stakeholders;
- f) takes a strategic long term planning outlook of at least 50 years to consider the future state, values and uses of water resources for future generations;
- g) aims to meet the differing demand and pressures on, and values and uses of, freshwater resources to the extent possible;
- gA) involves working collaboratively with the catchment communities and their nominated representatives;
- h) ensures the timely use and adaptation of statutory and non-statutory measures to respond to any significant changes in resource use activities or the state of the environment;
- iC) avoids development that limits the use or maintenance of existing electricity generating infrastructure or restricts the generation output of that infrastructure;
- iD) provides opportunities for new renewable electricity generation infrastructure where the adverse effects on the environment can be appropriately managed;
- iE) recognises and provides for existing use and investment;
- j) ensures efficient allocation and use of fresh water within limits to achieve freshwater objectives; and
- k) enables water storage infrastructure where it can provide increased water availability and security for water users while avoiding, remedying or mitigating adverse effects on freshwater values.

2. When preparing regional plans:

- a) use the catchment-wide integrated management approach set out in POL LW1.1; and
- b) identify the values for freshwater and wetlands and their spatial extent within each catchment and for catchments identified in Policy LW2.1:
 - i) the values must include those identified in Table 2A; and
 - ii) may include additional values; and
- bA) in relation to any relevant outstanding water bodies identified in Schedule 25:
 - i) Carry out an assessment which identifies the significant values of that outstanding water body. This assessment includes consideration of the values set out in Appendix 1a and Appendix 1b of the National Policy Statement for Freshwater Management 2020, and any other values that are determined to be relevant taking into account local and/or regional circumstances;
 - iA) Identify the spatial and the temporal extent of the outstanding values, and the significant values, where relevant;
 - ii) Establish how the outstanding and significant values of outstanding water bodies will be protected by regulatory methods and/or non-regulatory methods;

- iii) Include regional plan provisions to manage new activities in a manner which avoids adverse effects that are more than minor on the outstanding and significant values of outstanding water bodies;
- iv) Include regional plan provisions to manage existing activities in a manner which protects the outstanding and significant values of outstanding water bodies;
- v) Include regional plan provisions to manage any conflicts between values in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising:
 - (a) first, the health and well-being of water bodies and freshwater ecosystems;
 - (b) second, the health needs of people (such as drinking water);
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future;
 with priority given to outstanding values over significant values in cases where those values fall within the same Te Mana o te Wai category; and

- c) establish freshwater objectives for all freshwater bodies for the values identified in clause (b) and clause (bA) above; and
- d) so as to achieve the freshwater objectives identified under clause (c), set:
 - i) groundwater and surface water quality limits and targets; and
 - ii) groundwater and surface water quantity allocation limits and targets and minimum flow regimes; and
- e) set out how the groundwater and surface water quality and quantity limits and targets will be implemented through regulatory or non-regulatory methods including specifying timeframes for meeting water quality and allocation targets.

3. When setting the objectives referred to in Policy LW1.2, ensure:

- a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water are safeguarded; and
- b) adverse effects on water quantity and water quality that diminish mauri are avoided, remedied or mitigated; and
- c) the microbiological water quality in rivers and streams is safe for contact recreation where that has been identified as a value under Policy LW1.2 or Policy LW2 Table 2A.⁵

4. When identifying methods and timeframes in regional plans to achieve limits and targets required by Policy LW1.2(e) have regard to:

- a) allowing reasonable transition times and pathways to meet any new water quantity limits or new water quality limits included in regional plans. A reasonable transition time is informed by the environmental and socio-economic costs and benefits that will occur during that transition time, and should include recognition of the existing investment; and
- b) promoting and enabling the adoption and monitoring of industry-defined and Council approved good land and water management practices.

Principal reasons and explanation

Catchment-based resource management is promoted in Policy LW1 and is consistent with Objective C1 of the 2011 National Policy Statement for Freshwater Management. Policy LW1 provides a ‘default’ planning approach for all catchments and catchment areas

⁵ NOTE: Policy LW1.3(c) applies to any values and uses identified in Table 2A which refer to “amenity for contact recreation”, “amenity for water-based recreation” or “recreational trout angling.”

across the region, irrespective of the catchment area's values being identified in Policy LW2. Many of the principles and considerations for catchment-based planning have emerged from the 2011 Hawke's Bay Land and Water Management Strategy.

National values of freshwater have been listed in the NPSFM preamble and values have also been identified in the Hawke's Bay LAWMS. Those water bodies in the region with outstanding values have been identified in Schedule 25. The NPSFM provisions prescribe a high level of protection for those water bodies with outstanding values.

Policy LW1.1(d) and (dA) inform future catchment-based plan changes, and the respective community discussions, which water bodies have outstanding values and directs the protection of their respective significant and outstanding values. Policy LW1.2(bA) ensures that the significant values of each outstanding water body are identified during the plan development phase and that any future plan provisions protect the outstanding water bodies' significant and outstanding values. Policy LW1.2(bA) differentiates between existing and new activities. In particular, Policy LW1.2(bA)(iii) requires new activities to be managed in a way that avoids any adverse effects, that are more than minor, on an outstanding water body's significant and outstanding values, while Policy LW1.2(bA)(iv) requires existing activities to be managed in a way that protects an outstanding water body's significant and outstanding values. Policy LW1.2(bA)(iv) recognises that existing activities are part of the existing environment in which these outstanding and significant values currently exist and should be able to continue in their current form providing the activity is not diminishing the outstanding nature of the water body.

Approaches to issues, values and uses of catchments will vary so Policy LW1.1, Policy LW1.2, Policy LW1.3 and Policy LW1.4 do not prescribe a one-size-fits-all approach for all catchments in Hawke's Bay. Each catchment-based process will need to be tailored for what is the most appropriate approach for that catchment (or grouping of catchments). Regional plans and changes to regional plans will be the key planning instrument for implementing catchment-based approaches to land use and freshwater resource management.

POLICY LW2 Problem-solving approach - Prioritising values

Subject to achieving Policy LW1.2 and Policy LW1.3:

1. Give priority to maintaining, or enhancing where appropriate, the primary values and uses of freshwater bodies shown in Table 2A for the following catchment areas¹ in accordance with Policy LW2.3:
 - a) Greater Heretaunga / Ahuriri Catchment Area;
 - b) Mohaka Catchment Area; and
 - c) Tukituki Catchment Area.
- 1A. Policy LW2.1 applies:
 - a) when preparing regional plans for the catchments specified in Policy LW2.1; and
 - b) when considering resource consents for activities in the catchments specified in Policy LW2.1 when no catchment-based regional plan has been prepared for the relevant catchment.
2. In relation to catchments not specified in Policy LW2.1 above, the management approach set out in Policy LW1.1, Policy LW1.2, Policy LW1.3 and Policy LW1.4 will apply.
- 2A. In relation to values not specified in Table 2A, the management approach set out in Policy LW1.1, Policy LW1.2, Policy LW1.3 and Policy LW1.4 will apply.
3. When managing the freshwater bodies listed in Policy LW2.1:
 - a) recognise and provide for the primary values and uses identified in Table 2A; and
 - b) have particular regard to the secondary values and uses identified in Table 2A.
4. Evaluate and determine the appropriate balance between any conflicting values and uses within (not between) columns in Table 2A, using an integrated catchment-based process in accordance with Policy LW1.1, Policy LW1.2, Policy LW1.3 and Policy LW1.4 or when considering resource consent applications where no catchment-based regional plan has been prepared.

TABLE 2A:

Catchment Area	Primary Value(s) and Uses – in no priority order	Secondary Value(s) and Uses – in no priority order
<p>Greater Heretaunga / Ahuriri Catchment Area</p>	<ul style="list-style-type: none"> • any regionally significant native water bird populations and their habitats • Cultural values and uses for: <ul style="list-style-type: none"> ○ mahinga kai ○ nohoanga ○ taonga raranga ○ taonga rongoa • Fish passage • Individual domestic needs and stock drinking needs⁷ • Industrial & commercial water supply • Native fish habitat in the Ngaruroro River and Tutaekuri River catchments • Recreational trout angling and trout habitat in: <ul style="list-style-type: none"> ○ the Mangaone River ○ the Mangatutu Stream ○ the Ngaruroro River and tributaries upstream of Whanawhana cableway ○ the Ngaruroro River mainstem between the Whanawhana cableway and confluence with the Maraekakaho River ○ the Tutaekuri River mainstem above the Mangaone River confluence • The high natural character values of the Ngaruroro River and its margins upstream of Whanawhana cableway, including Taruarau River • The high natural character values of the Tutaekuri River and its margins above the confluence of, and including, the Mangatutu Stream • Trout spawning habitat • Urban water supply for cities, townships and settlements and water supply for key social infrastructure facilities • freshwater use for beverages, food and fibre production and processing and other land-based primary production 	<ul style="list-style-type: none"> • Aggregate supply and extraction in Ngaruroro River downstream of the confluence with the Mangatahi Stream • Amenity for contact recreation (including swimming) in lower Ngaruroro River, Tutaekuri River and Ahuriri Estuary • any locally significant native water bird populations and their habitats • Native fish habitat, notwithstanding native fish habitat as a primary value and use in the Tutaekuri River and Ngaruroro River catchments • Recreational trout angling, where not identified as a primary value and use • Trout habitat, where not identified as a primary value and use
<p>Mohaka Catchment Area</p>	<ul style="list-style-type: none"> • Amenity for water-based recreation between State Highway 5 bridge and Willow flat • any regionally significant native water bird populations and their habitats • Cultural values and uses for: <ul style="list-style-type: none"> ○ mahinga kai ○ nohoanga ○ taonga raranga ○ taonga rongoa • Fish passage • Individual domestic needs and stock drinking needs⁸ • Long-fin eel habitat and passage • Recreational trout angling and trout habitat in the Mohaka River and tributaries upstream of, and including, the Te Hoe River 	<ul style="list-style-type: none"> • Aggregate supply and extraction in Mohaka River below railway viaduct • any locally significant native water bird populations and their habitats • Native fish habitat below Willow flat • Recreational trout angling, where not identified as a primary value and use • Trout habitat, where not identified as a primary value and use • Water use associated with maintaining or enhancing land-based primary production • Water use for renewable electricity generation in areas not restricted by the Water Conservation Order

⁷ In line with s14(3)(b)(ii) of the RMA, it is recognised that drinking water for stock is allowed, provided that it does not have an adverse effect on the environment.

Catchment Area	Primary Value(s) and Uses – in no priority order	Secondary Value(s) and Uses – in no priority order
	<ul style="list-style-type: none"> • Scenic characteristics of Mokonui and Te Hoe gorges • The high natural character values of the Mohaka River and its margins • Trout spawning habitat 	
Tukituki Catchment Area	<ul style="list-style-type: none"> • any regionally significant native water bird populations and their habitats • Cultural values and uses for: <ul style="list-style-type: none"> ○ mahinga kai ○ nohoanga ○ taonga raranga ○ taonga rongoa • Fish passage • Individual domestic needs and stock drinking needs⁸ • Industrial & commercial water supply • Native fish and trout habitat • Recreational trout angling and trout habitat in: <ul style="list-style-type: none"> ○ the Mangaonuku Stream ○ the Tukipo River ○ the Tukituki River mainstem downstream to Red Bridge ○ the Waipawa River • The high natural character values of: <ul style="list-style-type: none"> ○ the Tukituki River upstream of the end of Tukituki Road; and ○ the Waipawa River above the confluence with the Makaroro River, including the Makaroro River • Trout spawning habitat • Urban water supply for cities, townships and settlements and water supply for key social infrastructure facilities • freshwater use for beverages, food and fibre production and processing and other land-based primary production 	<ul style="list-style-type: none"> • Aggregate supply and extraction in lower Tukituki River • Amenity for contact recreation (including swimming) in lower Tukituki River. • any locally significant native water bird populations and their habitats • Recreational trout angling, where not identified as a primary value and use • Trout habitat, where not identified as a primary value and use • Water use for renewable electricity generation in the Tukituki River (mainstem) and the Waipawa River above SH50 including the Mākaroro River.

Principal reasons and explanation

Policy LW2.1 and 2.3 prioritises values of freshwater in three Catchment Areas where significant conflict exists between competing values. Clearer prioritised values in 'hotspot' catchments where significant conflicts exist was an action arising from the 2011 Hawke's Bay Land and Water Management Strategy. Policy LW2 implements OBJ LW2 in particular insofar as explicit recognition is made of the differing demands and pressures on freshwater resources, particularly within the three nominated 'hotspot' catchment areas. In relation to the remaining catchment areas across the region, Policy LW2 does not pre-define any priorities, thus enabling catchment-based regional plan changes (refer Policy LW1) for those areas to assess values and prioritise those values accordingly. **Policy LW2 is subject to Policy LW1.2, which provides clear guidance that the outstanding and significant values of outstanding water bodies will need to be protected when developing future plans.**

The primary and secondary values in Table 2A are identified to apply to the catchment overall, or to sub-catchments or reaches where stated. Table 2A recognises that not all values are necessarily equal across every part of the catchment area, and that some values in parts of the catchment area can be managed in a way to ensure, overall, the water body's value(s) is appropriately managed. With catchment-based regional planning processes, it is potentially possible for objectives to be established that meet the primary values and uses at the same time as meeting the secondary values.

[Refer also:

- OBJ1, OBJ2 and OBJ3 in Chapter 2.3 (Plan objectives);
- Objectives and policies in Chapter 3.4 (Scarcity of indigenous vegetation and wetlands);
- Objectives and policies in Chapter 3.8 (Groundwater quality);
- Objectives and policies in Chapter 3.9 (Groundwater quantity);
- Objectives and policies in Chapter 3.10 (Surface water resources); and
- Objectives and policies in Chapter 3.14 (Recognition of matters of significance to iwi/hapū).

POL LW3 Problem solving approach – Managing the effects of land use

1. To manage the effects of the use of, and discharges from, land so that:
 - a) the loss of nitrogen from land to groundwater and surface water, does not cause catchment area or sub-catchment area limits for nitrogen set out in regional plans to be exceeded;
 - b) the discharge of faecal matter from livestock to land, and thereafter to groundwater and surface water, does not cause faecal indicator bacteria water quality limits for human consumption and irrigation purposes set out in regional plans to be exceeded;
 - c) the loss of phosphorus from production land into groundwater or surface water does not cause limits set out in regional plans to be exceeded.
- 1A. To provide for the use of audited self-management programmes to achieve good management of production land.
2. To review regional plans and prepare changes to regional plans to promote integrated management of land use and development and the region's water resources.

Principal reasons and explanation

Policy LW3 makes it clear that HBRC will manage the loss of contaminants (nitrogen, phosphorus and faecal indicator bacteria) from land use activities to groundwater and surface water in order to ensure that groundwater and surface water objectives and limits identified in specified catchment areas are achieved. Restrictions under section 15 of the RMA may also apply to land use activities. Phosphorus and nitrogen leaching and run-off will be managed by both regulatory and non-regulatory methods. This approach will be complemented by industries' implementation of good agricultural practices.

Most regional plan changes will be on a catchment-basis, although some changes may be prepared for specific issues that apply to more than one catchment. HBRC has prepared a NPSFM Implementation Programme that outlines key regional plan and policy statement change processes required to fully implement the NPSFM by 2030.

Policy LW3A Resource consent decision-making criteria – Outstanding water bodies identified in Schedule 25 (new activities)

- 1A. Policy LW3A applies where the activity does not meet Policy LW3B.1.
1. In relation to those types of activities identified in Policy LW3A.2 a consent authority must take into account:
 - a) the extent to which the activity may on its own or cumulatively adversely affect the outstanding value(s) identified in Schedule 25 of the relevant outstanding water body; and
 - b) the extent to which the activity may on its own or cumulatively adversely affect:
 - i. the significant values (if any) identified in Schedule 25 of the relevant outstanding water body; and/or
 - ii. any relevant values identified in Appendix 1A and 1B of the NPSFM 2020 and any other values that are determined to be relevant taking into account local and regional circumstances, where there is evidence that such values are present in the particular water body, prior to the operative date of the relevant catchment-based plan change; and
 - c) whether, in order to protect the water body's outstanding values and significant values:
 - i. the location of the proposed activity is appropriate;
 - ii. if time limits, including seasonal, or other limits on the activity may be appropriate; and

- d) The need to manage any conflicts between values in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising:
 - i) first, the health and well-being of water bodies and freshwater ecosystems;
 - ii) second, the health needs of people (such as drinking water);
 - iii) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the futurewith priority given to outstanding values over significant values in cases where those values fall within the same Te Mana o te Wai category.

- 2. Prior to the operative date of the relevant catchment-based plan change, Policy LW3A only applies to the following activities in a regional plan (but not a regional coastal environment plan):^{9a}
 - a) a take, use, damming, or diversion of water from an outstanding water body;
 - b) a discharge of a contaminant into an outstanding water body;
 - c) a discharge of a contaminant onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering an outstanding water body;
 - d) a land use consent for any new structure in, on, under or over the bed of an outstanding water body;
 - e) a land use consent for any new or increased disturbance of the bed of an outstanding water body that is not already authorised by a current land use consent.
- 3. Policy LW3A only applies in the following circumstances:
 - a. where the outstanding value(s) of the outstanding water body is identified in Part 2 of Schedule 25; or
 - b. where the significant value(s) of the outstanding water body is identified in Part 2 of Schedule 25.

Policy LW3B Resource consent decision-making criteria – Outstanding water bodies identified in Schedule 25 (existing activities)

- 1. Policy LW3B applies in the following circumstances:
 - a) The activity was a permitted activity in the regional plan as at 31 August 2019; or
 - b) The activity was authorised by a resource consent prior to 31 August 2019 and the holder of the consent applies for a new consent for the same activity or similar activity with effects that are the same or lesser in character, intensity, and scale to those arising from or associated with the existing activity.
- 2. In relation to those types of activities identified in Policy LW3B.3a consent authority must take into account:
 - a) The extent to which the outstanding value(s) of the relevant outstanding water body, identified in Schedule 25, are present in the same state as at 31 August 2019;

^{8A} In relation to a rule in a regional coastal plan, then Policy C3 applies.

- b) If the outstanding value(s) of the relevant outstanding water body, identified in Schedule 25, are present in the same state as at 31 August 2019, the extent to which the activity, and any conditions imposed on it, results in effects that are the same or similar in character, intensity, and scale to those arising from or associated with the existing activity;
 - c) If the outstanding value(s) of the relevant outstanding water body, identified in Schedule 25, are in a worse state than as at 31 August 2019:
 - (i) the extent to which the activity is adversely affecting the outstanding value(s) either on its own or cumulatively; and
 - (ii) the extent to which conditions can be imposed to limit the adverse effects of the activity (if any) on the outstanding values of the relevant outstanding water body, identified in Schedule 25;
 - d) The extent to which the activity may, on its own or cumulatively adversely affect:
 - (i) the significant values identified in Schedule 25 (if any) of the relevant outstanding water body, while recognising that the significant values have been identified with the activity in operation; or
 - (ii) any relevant values identified in Appendix 1A or 1B of the NPSFM 2020 and any other values that are determined to be relevant taking into account local and regional circumstances, where there is evidence that such values are present in the particular water body, prior to the operative date of the relevant catchment-based plan change.
3. Prior to the operative date of the relevant catchment-based plan change, Policy LW3B only applies to the following activities in a regional plan (but not a regional coastal environment plan):^{9b}
- a) a take, use, damming, or diversion of water from an outstanding water body;
 - b) a discharge of a contaminant into an outstanding water body;
 - c) a discharge of a contaminant onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering an outstanding water body;
 - d) a land use consent for a structure in, on, under or over the bed of an outstanding water body.

Principal reason and explanation

Policy LW3A provides guidance to resource consent applicants and decision-makers when assessing new activities which can potentially cause adverse effects, including cumulative adverse effects, on outstanding water bodies. In some cases the proposed activity may be inappropriate at that location or at certain times of the year. Those types of factors shall be taken into account by the Consent Authority when assessing resource consent applications to ensure the outstanding water body's significant and outstanding values are appropriately protected.

Policy LW3B provides guidance to resource consent applicants and decision-makers when assessing existing activities in or around outstanding water bodies. Policy LW3B provides for existing activities to continue in their current form providing the activity is not diminishing the outstanding nature of the water body. Policy LW3B recognises that activities occurring at or before 31 August 2019 were part of the existing environment at the time PC7 was publicly notified.-

⁸⁸ In relation to a rule in a regional coastal plan, then Policy C2 applies.

POL LW4 Role of non-regulatory methods

To use non-regulatory methods, as set out in Chapter 4, in support of regulatory methods, for managing fresh water and land use and development in an integrated manner, including:

- a) **research, investigation and provision of information and services** – HBRC has in place a programme of research, monitoring and assessment of the state and trends of Hawke's Bay's natural resources. That programme will continue to be enhanced to assist HBRC implement the NPSFM and Hawke's Bay Land and Water Management Strategy;
- b) **advocacy, liaison and collaboration** – HBRC will promote a collaborative approach to the integrated management of land use and development and the region's freshwater resources;
- c) **land and water strategies** – the 2011 Hawke's Bay Land and Water Management Strategy contains a variety of policies and actions. A range of agencies and partnerships will be necessary to implement the actions and policies in the Strategy;
- e) **industry good practice** – HBRC will strongly encourage industry and/or catchment-based good practices for production land uses along with audited self-management programmes as a key mechanism for achieving freshwater objectives at a catchment or sub-catchment level.

Principal reasons and explanation

Policy LW4 sets out the role of HBRC's non-regulatory methods in supporting regional rules and other regulatory methods to assist management of freshwater and land use and development in an integrated manner. This policy (and Policy LW1) recognises the need for a collaborative approach as an important means of minimising conflict and managing often competing pressures for the use and values of fresh water.

Anticipated Environmental Results

[Refer also anticipated environmental results in Chapters 3.3; 3.4; 3.7; 3.8; 3.9; 3.10; and 3.11]

Anticipated Environmental Results	Indicator(s)	Data Source(s)
1. Land and water management is tailored and prioritised to address the key values and pressures of each catchment	Freshwater objectives, targets and limits for catchments and/or groups of catchments are identified in regional plans for catchments Physical and biological parameters Social, cultural and economic indices	Regional plans and changes to regional plans HBRC's NPSFM Implementation Programme SOE monitoring and reporting Local authority records User surveys Catchment-specific monitoring programmes
2. Regional economic prosperity is enhanced	Regional GDP trends and unemployment trends for primary sector and associated manufacturing and processing	Statistics NZ Economic activity surveys Employment records by sector
3. Water is efficiently allocated	Level of allocation Catchment contaminant load modelling and monitoring Water use restriction timings and durations	SOE monitoring HBRC Consents records Compliance records Catchment-specific monitoring reports Water-supply management plans
4. Quality of fresh water in region overall is maintained or improved.	Catchment targets are met and limits in regional plans are not exceeded Catchment contaminant load modelling and monitoring	SOE monitoring Compliance records Catchment-specific monitoring reports

5. Water storage is developed to provide increased water availability and security for water users	Consents issued for water storage projects Improved security of supply of water for users in times and places of water scarcity	HBRC consent records Building consent authority records
6. Tikanga Māori and tangata whenua values are taken into account when managing freshwater	Cultural indices developed through cultural monitoring frameworks	Cultural health monitoring records
7. Outstanding and significant values of outstanding water bodies are protected	The outstanding and significant values for each outstanding water body identified in Schedule 25 are protected	Regional plans and changes to regional plans HBRC's NPSFM Implementation Programme SOE monitoring and reporting Specific monitoring programmes

3.2 The Sustainable Management of Coastal Resources

ISSUE

- 3.2.1 *Integrated management of the region's coastal resources across a wide range of natural and physical conditions, administrative responsibilities cultural considerations, and matters of social and economic well being.*

OBJECTIVES

- OBJ 4** Promotion of the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development.
- OBJ 5** The maintenance and where practicable and in the public interest, the enhancement of public access to and along the coast.
- OBJ 6** The management of coastal water quality to achieve appropriate standards, taking into account spatial variations in existing water quality, actual and potential public uses, and the sensitivity of the receiving environment.
- OBJ 7** The promotion of the protection of coastal characteristics of special significance to iwi, including waahi tapu, tauranga waka, taonga raranga, mahinga kai and mahinga mataitai.
- OBJ 8** The avoidance of further permanent development in areas prone to coastal erosion or inundation, taking into account the risk associated with global sea level rise and any protection afforded by natural coastal features.
- OBJ 9** Appropriate provision for economic development within the coastal environment, including the maintenance and enhancement of infrastructure, network utilities, industry and commerce, and aquaculture.
- OBJ 10** Enabling safe and efficient navigation.
- OBJ 11** Protection of the outstanding and significant values of those outstanding water bodies within the Coastal Environment identified in Schedule 25.

Explanation and Reasons

- 3.2.2 The coastal environment includes the coastal marine area (the area from mean high water springs to the outer limits of the territorial sea) and the adjacent land that is affected by maritime influences, the air above it, and coastal water.
- 3.2.3 People and communities in the region are aware of, and have concerns about, the sustainable management of the coastline.
- 3.2.4 The environment of the coastline contributes to the characteristics which give Hawke's Bay its unique identity. This environment provides a social, recreational, cultural and economic resource for the regional community and for visitors. Public use and enjoyment of the coastline are, in turn, dependent on the protection and maintenance of its physical and biological diversity, health and well-being. Areas of wildlife habitat, marine and land-based vegetation, and geomorphological features also have value. These contribute to the distinctive natural identity of New Zealand in general, and the region in particular.
- 3.2.5 Among the significant features of the region's coastline are the spiritual and cultural significance of the sea to tangata whenua, the recreational amenities of coastal areas, and the importance of the coastal waters as a way of transporting goods.
- 3.2.6 Integrated management of the coast requires special effort as the regional council and the territorial authorities in the region jointly manage the coastal environment area landward of the "Coastal Marine Area". This is achieved through district and (as appropriate) regional plans. However, the "Coastal Marine Area" is primarily the responsibility of the Hawke's Bay Regional Council, which must prepare a Regional Coastal Plan. HBRC has combined its regional coastal plan with other regional planning provisions applicable to the coastal environment into the Regional Coastal Environment Plan. The coastal environment includes the coastal marine area and an area of land immediately adjacent to the coast. The Minister of Conservation also retains some specific responsibilities over the coastal marine area.
- 3.2.7 The New Zealand Coastal Policy Statement (NZCPS) provides principles for, and guidance to, regional and territorial authorities in managing coastal resources. The NZCPS links matters of national importance, as set out in the Act, with the objectives, policies, rules and other provisions of regional and district plans, including the Regional Coastal Environment Plan. The Regional Coastal Environment Plan thus contains a greater level of detail for areas and activities within the coastal environment than the broad regional policy framework for coastal resources included in the Regional Policy Statement.

- 3.2.8 The preservation of the natural character of the coastal environment is specified as a matter of national importance in the Act. The natural character of the coast embraces ecological, physical, spiritual, cultural, intrinsic and aesthetic values. While it is a matter of national importance to preserve those values, the Act does not preclude appropriate use and development, particularly where natural character has already been compromised.
- 3.2.8A Objective 11 aligns with provisions relating to outstanding freshwater bodies (Chapter 3.1A of the RRMP), and ensures a consistent framework is in place to protect outstanding water bodies (such as estuaries) in coastal areas, in the same manner as outstanding freshwater bodies. The NPSFM specifically provides for the integrated management of the effects of use and development of land and freshwater on coastal water. Objective 11 assists in achieving integrated management between coastal and freshwater resources ensuring that outstanding and significant values that span both the freshwater and coastal environments are protected.
- 3.2.8 B Objective 11 assists in giving effect to Objectives 1 and 2 and Policies 11, 13, 15 and 17 of the NZ Coastal Policy Statement, which requires the protection of significant natural ecosystems, indigenous biodiversity, sites of biological importance, natural features, historic heritage, natural character and landscape values, which are some of the many significant values which can be associated with water bodies in the coastal environment. In some instances Policies 11, 13 and 15 of the NZCPS contain direction that is more stringent than that set out in the NPSFM. In those cases, the direction set out in the NZCPS applies (see Policies C1, C2 and C3). Objective 11 allows the national direction contained in the respective NZCPS and NPSFM documents to be taken into account in decision making.
- 3.2.9 Public access to and along the coast is an important issue for the residents of Hawke's Bay. It is also a matter of national importance in the RMA. In planning for the use, development and protection of the natural and physical resources in the coast, public access as far as possible should be maintained. In certain circumstances it may be desirable to enhance public access to and along the coast.
- 3.2.10 Good water quality is important for the sustainable management of natural and physical resources in the coastal environment and is an issue of prime concern to the residents of Hawke's Bay. However, water quality may vary over time and in different areas. An appropriate management framework includes achieving standards through management of discharge including point and non-point source discharges from land and to sea.
- 3.2.11 Tangata whenua of Hawke's Bay have strong traditional and cultural relationships with the sea. The identification and protection of coastal characteristics of special significance to iwi recognises the special relationships that iwi have with coastal resources.
- 3.2.12 Avoiding permanent development in areas prone to coastal erosion or inundation and taking into account the risk associated with global sea level rise is necessary to achieve the purpose of the Act. This approach enables people to provide for their safety and recognises the reasonably foreseeable needs of future generations. It also gives a clear indication to resource users that development in these areas is inappropriate and indicates that local authorities are accountable for any development that does occur in these areas.
- 3.2.13 The provisions of the Act do not relate solely to the control of environmental effects. Providing for economic development in the coastal environment within the region is necessary to achieve the purpose of the Act because the Act requires the Council to promote the sustainable management of both natural and physical resources. Physical resources include land and structures and includes the structures in the region which add to the present and future economic well-being of the region. The responsibility for providing for the social, economic, cultural, health and safety needs of the community lies in part with the Regional Council. The economic well-being of the people and communities of the region requires the continuation of an economic infrastructure.
- 3.2.14 There are a number of existing surface water activities in Hawke's Bay ranging from passive recreation to recreational use of boats, yachts and pleasure craft, to commercial fishing and port related shipping. New activities may occupy coastal marine space and may have the potential to enhance or conflict with navigational needs. Promoting safe and efficient navigation is necessary to promote the purpose of the Act because it enables people and communities to provide for their social, cultural and economic well-being and for their health and safety.

POLICIES

POLICY C1 Problem-solving approach – Outstanding water bodies in the coastal environment

1. When preparing regional plans, in relation to any relevant outstanding water bodies identified in Schedule 25:
 - a) Apply Policy LW1.2(bA)(i), (iA) and (ii);
 - b) Include provisions to manage new activities in a manner which:
 - (i) avoids adverse effects on the outstanding and significant indigenous biological diversity (biodiversity) values of an outstanding water body, that are identified in Schedule 25 and meet the description(s) set out in Policy 11(a), of the New Zealand Coastal Policy Statement 2010; and
 - (ii) avoids adverse effects on outstanding natural character, outstanding natural features and outstanding natural landscape values of an outstanding water body identified in

Schedule 25 to give effect to Policies 13.1(a) and 15(a) of the New Zealand Coastal Policy Statement 2010; and

- (iii) avoids adverse effects that are more than minor on any other outstanding and significant values identified in Schedule 25;
- c) Include provisions to manage existing activities in a manner which:
 - (i) avoids adverse effects on the outstanding and significant indigenous biological diversity (biodiversity) values of an outstanding water body, that are identified in Schedule 25 and meet the description(s) set out in Policy 11(a), of the New Zealand Coastal Policy Statement 2010; and
 - (ii) avoids adverse effects on outstanding natural character, outstanding natural features and outstanding natural landscape values of an outstanding water body identified in Schedule 25 to give effect to Policies 13.1(a) and 15(a) of the New Zealand Coastal Policy Statement 2010; and
 - (iii) protects any other outstanding and significant values of outstanding water bodies identified in Schedule 25.

Policy C2 Resource consent decision-making criteria – Outstanding water bodies identified in Schedule 25 in the coastal environment (new activities)

1A. Policy C2 applies where the activity does not meet Policy C3.

1. In relation to those types of activities identified in Policy C2.2, a consent authority must take into account:

- a) the extent to which the activity may on its own or cumulatively adversely affect outstanding value(s) identified in Schedule 25 of the relevant outstanding water body;
- b) the extent to which the activity may on its own or cumulatively adversely affect the significant values (if any) identified in Schedule 25 of the relevant outstanding water body;
- c) whether, in order to protect the water body's outstanding values and significant values:
 - i. the location of the proposed activity is appropriate; and
 - ii. time limits, including seasonable or other limits on the activity may be appropriate;
- d) the need to manage any conflicts between values in accordance with the hierarchy of obligations in Te Mana o te Wai, prioritising:
 - i. first, the health and well-being of water bodies and freshwater ecosystems;
 - ii. second, the health needs of people (such as drinking water);
 - iii. third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future

with priority given to outstanding values over significant values in cases where those values fall within the same Te Mana o te Wai category;

- e) If adverse effects from the activity on the outstanding and significant value(s), of the relevant outstanding water body, can be avoided pursuant to Policies 11(a), 13.1(a) and 15(a) of the New Zealand Coastal Policy Statement 2010 in the following instances:

- i) where the outstanding and/or significant values, identified in Schedule 25, meet the indigenous biological diversity (biodiversity) values description(s) set out in Policy 11(a) of the New Zealand Coastal Policy Statement 2010; and/or
 - ii) where the outstanding values, identified in Schedule 25, are outstanding natural character, outstanding natural features or outstanding natural landscape values.
- 2. Prior to the operative date of the relevant catchment-based plan change, Policy C2 only applies to the following activities in a regional coastal environment plan:
 - a) a take, use, damming, or diversion of water from an outstanding water body;
 - b) a discharge of a contaminant into an outstanding water body;
 - c) a discharge of a contaminant onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering an outstanding water body;
 - d) a land use consent for any new structure in, on, under or over the bed of an outstanding water body;
 - e) a land use consent for any new or increased disturbance of the bed of an outstanding water body that is not already authorised by a current land use consent.
- 3. Policy C2 only applies in the following circumstances:
 - a) where the outstanding value(s) of the outstanding water body is identified in Part 2 of Schedule 25; and/or
 - b) where the significant value(s) of the outstanding water body is identified in Part 2 of Schedule 25.

Policy C3 - Resource consent decision-making criteria – Outstanding water bodies identified in Schedule 25 in the coastal environment (existing activities)

- 1. Policy C3 applies in the following circumstances:
 - a) The activity was a permitted activity in the Regional Coastal Environment Plan as at 31 August 2019, or
 - b) The activity was authorised by a resource consent prior to 31 August 2019 and the holder of the consent applies for a new consent for the same activity or similar activity with effects that are the same or lesser in character, intensity, and scale to those arising from or associated with the existing activity.
- 2. In relation to those types of activities identified in Policy C3.3 a consent authority must take into account:
 - a) The extent to which the outstanding value(s) of the relevant outstanding water body, identified in Schedule 25, are present in the same state as at 31 August 2019;
 - b) If the outstanding value(s) of the relevant outstanding water body, identified in Schedule 25, are present in the same state as at 31 August 2019 the extent to which the activity, and any conditions imposed on it, results in effects that are the same or similar in character, intensity, and scale to those arising from or associated with the existing activity, except in the case of Policy C3.2(d);

- c) If the outstanding value(s) of the relevant outstanding water body, identified in Schedule 25, are in a worse state than as at 31 August 2019:
 - i) the extent to which the activity is adversely affecting the outstanding value(s) either on its own or cumulatively; and
 - ii) the extent to which conditions can be imposed to limit the adverse effects of the activity (if any) on the outstanding values of the relevant outstanding water body, identified in Schedule 25, except in the case of Policy C3.2(d);
 - d) If adverse effects from the activity on the outstanding and significant value(s), of the relevant outstanding water body, can be avoided pursuant to Policies 11(a), 13.1(a) and 15(a) of the New Zealand Coastal Policy Statement 2010 in the following instances:
 - i) where the outstanding and significant values, described in Schedule 25, meet the indigenous biological diversity (biodiversity) values description(s) set out in Policy 11(a) of the New Zealand Coastal Policy Statement 2010; and/or
 - ii) where the values, described in Schedule 25, are outstanding natural character, outstanding natural features or outstanding natural landscape values.
3. Prior to the operative date of the relevant catchment based plan change, Policy C3 only applies to the following activities in a regional coastal environment plan:
- a) a take, use, damming, or diversion of water from an outstanding water body;
 - b) a discharge of a contaminant into an outstanding water body;
 - c) a discharge of a contaminant onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering an outstanding water body;
 - d) a land use consent for a structure in, on, under or over the bed of an outstanding water body.

Principal reasons and explanation

- 3.2.15 Policy C1, C2 and C3 are the only policies relating to the coastal environment part of this Plan. However, many of the other provisions within the Regional Policy Statement parts of this Plan apply within the coastal environment. Specific regional plan provisions (including policies) for the coastal environment are contained within the Regional Coastal Environment Plan.
- 3.2.16 The Hawke's Bay Regional Coastal Environment Plan is a combined Plan, incorporating the regional coastal plan that HBRC is required to prepare. It sets out in some detail objectives, policies and methods including rules which are the basis for management of the coastal environment. Thus the Regional Policy Statement of this Plan does not repeat or elaborate on the above objectives, and the Regional Coastal Environment Plan should be referred to for further detail.
- 3.2.17 Under the Act, HBRC has shared responsibility with the territorial authorities for management of activities and effects of activities within the coastal environment.
- 3.2.18 Some aspects of those activities are the sole responsibility of district councils – particularly managing the effects of land uses, development and subdivision in terms of the Act and in ways which are not inconsistent with this Regional Policy Statement or regional plans. District Plans should also be referred to as these may set out specific objectives, policies, methods and rules for the landward side of the coastal environment.
- 3.2.18A Policy C1 aligns with provisions relating to outstanding freshwater bodies (i.e. Policy LW1) in Chapter 3.1A of the RRMP, and ensures a consistent framework is in place to protect outstanding water bodies in coastal areas (such as estuaries) in the same manner as outstanding freshwater bodies. This is consistent with the NPSFM which specifically provides for the integrated management of the effects of use and development of land and freshwater on coastal water. Policy C1 informs future catchment-based plan changes, the respective community discussions, which water bodies have outstanding values, and directs the protection of their respective significant values. Policy C1.1(a) cross references Policy LW1.2(bA)(i) (iA) and (ii) to ensure that the significant values of each outstanding water body are identified during the plan development phase and that any future plan provisions protect the outstanding water bodies' outstanding and significant values.
- 3.2.18B Policy C2 and C3 aligns with Policies LW3A and LW3B, respectively, of the RRMP albeit applicable to decision making for activities affecting outstanding water bodies located in the coastal environment. Policy C2 provides guidance to resource consent applicants and decision-makers when assessing new activities which can potentially cause adverse effects including cumulative adverse effects, on outstanding water bodies. In some cases the proposed activity may be inappropriate at that location or at certain times of the year. Those types of factors shall be taken into account by the Consent Authority when assessing resource consent applications to ensure the outstanding water body's significant and outstanding values are appropriately protected. Policy C3 provides guidance to resource consent applicants

and decision-makers when assessing existing activities in or around outstanding water bodies. Policy C3 provides for existing activities to continue in their current form providing the activity is not diminishing the outstanding nature of the water body. Policy C3 recognises that activities occurring at or before 31 August 2019 were part of the existing environment at the time in which the outstanding value(s) set out in Schedule 25 were identified.

- 3.2.18C The New Zealand Coastal Policy Statement 2010 contains specific direction with respect to significant natural ecosystems, indigenous biodiversity, sites of biological importance, natural features, historic heritage, natural character and landscape values. These are some of the many significant values which can be associated with water bodies in the coastal environment. In some instances, Policies 11, 13 and 15 of NZCPS contain direction which is more stringent than that set out in the NPSFM. In those cases, Policies C1, C2 and C3 reflect the direction set out in the NZCPS.

Amendments to Chapter 9 (Glossary) of Hawke's Bay Regional Resource Management Plan

Amend Glossary by adding new definitions to read:

Outstanding water body means freshwater bodies, and estuaries and lagoons (or parts thereof), that have outstanding cultural, spiritual, recreational, landscape, natural form and character or ecological value(s) as identified in Schedule 25.

Outstanding for the purposes of an outstanding water body means conspicuous, eminent, or remarkable in the context of the Hawke's Bay Region.

And make any other consequential amendments to the Hawke's Bay Regional Resource Management Plan.

Schedule 25: Outstanding Water Bodies

Part 1 Screening criteria for outstanding water bodies

Water bodies, and estuaries and lagoons (or parts thereof), must have outstanding values that are assessed as being conspicuous, eminent or remarkable in the Hawkes Bay Region to meet the definition of ‘outstanding’ set out in this plan, unless the water body, or part thereof is identified as having outstanding values in a water conservation order.

The values that are assessed are:

Ecology	habitat for native aquatic birds
Ecology	native fish habitat
Ecology	habitat for indigenous plant communities
Ecology	habitat for above-ground ecology values not otherwise provided for in the screening criteria.
Cultural or spiritual (tāngata whenua)	
Recreation	angling amenity (trout)
Recreation	rafting
Recreation	kayaking (including canoeing)
Recreation	jet boating
Landscape	wild and scenic
Karst system / subterranean waters	
Natural form and character	

Assessment of the values of each water body is carried out using **screening criteria** that include the thresholds the water body value(s) must meet to be accorded outstanding status. The screening criteria are set at a high threshold for all values.

The screening criteria contain a List A, of which the value must meet at least one criterion, and a List B, of which all the criteria must be met. List B always includes the requirement that evidence support the outstanding nature of the feature.

Both the values and screening criteria in PC7 have been developed via a plan change process.

Future assessment of water bodies that may be outstanding in the Hawkes Bay Region will also take place as part of a plan change or other statutory process. The assessment of the significant values of outstanding water bodies will follow the same process.

Assessment against the screening criteria relies on evidence and information obtained from a range of sources, some of which are listed for each value. Sources may include published reports and information held by HBRC on its website www.hbrc.govt.nz along with other relevant information.”

Screening criteria for outstanding values of water bodies in the Hawkes Bay Region

Value	Sub values / Outstanding indicators	Evidential sources (can include but are not limited to the following)
Ecology	Habitat for native aquatic birds	
	<p>An outstanding habitat for native aquatic birds:</p> <p>List A</p> <ul style="list-style-type: none"> a) contains a native aquatic bird assemblage that is among the highest in terms of diversity, abundance, or distinctiveness. b) supports 15% or more of the regional population and 2% or more of the national population of a particular native aquatic bird species listed as Nationally Critical, Nationally Endangered or Nationally Vulnerable on the New Zealand Threat Classification List. c) is an outstanding customary fishery. <p>List B</p> <ul style="list-style-type: none"> a) is reliant on the water body's flows or levels, other aquatic characteristics, or is an integral part of the water body. b) is supported by evidence. 	<p>International Union for Conservation of Nature (IUCN) criteria. RAMSAR site criteria reports. New Zealand threat classification system. IUCN red list. Expert evidence.</p>
Ecology	Native fish habitat	
	<p>An outstanding habitat for native fish:</p> <p>List A</p> <ul style="list-style-type: none"> a) contains a native fish assemblage that is among the highest in terms of diversity, abundance or distinctiveness. b) supports 15% or more of the regional population and 2% or more of the national population of a particular native fish species listed as Nationally Critical, Nationally Endangered or Nationally Vulnerable on the New Zealand Threat Classification List. c) is an outstanding customary fishery. <p>List B</p> <ul style="list-style-type: none"> a) is supported by evidence. 	<p>Waters of National Importance. New Zealand threat classification system. Expert evidence.</p>
Ecology	Habitat of indigenous plant communities	
	<p>An outstanding habitat for an indigenous plant community:</p> <p>List A</p> <ul style="list-style-type: none"> a) contains special features rarely found. b) supports among the highest numbers of a national population of a particular indigenous plant species listed as Nationally Critical, Nationally Endangered or Nationally Vulnerable on the New Zealand Threat Classification List. <p>List B</p> <ul style="list-style-type: none"> a) is reliant on the river flows, other aquatic characteristics, or is an integral part of the water body. b) Is supported by evidence. 	<p>New Zealand Geopreservation Inventory. Protected Natural Area (PNA) surveys. New Zealand threat classification system. Expert evidence.</p>

Value	Sub values / Outstanding indicators	Evidential sources (can include but are not limited to the following)
Ecology	Habitat for above ground ecology values not otherwise provided for in the screening criteria	
	<p>An outstanding habitat for above ground ecology not otherwise provided for:</p> <p>List A</p> <ul style="list-style-type: none"> a) contains distinctive features rarely found. b) supports among the highest numbers of a national population of a particular indigenous taxa listed as Nationally Critical Nationally Endangered or Nationally Vulnerable on the New Zealand Threat Classification List. <p>List B</p> <ul style="list-style-type: none"> a) is reliant on the water body's flows or levels, other aquatic characteristics, or is an integral part of the water body. b) Is supported by evidence. 	<p>New Zealand threat classification system. Expert evidence.</p>
Cultural or spiritual	Cultural or spiritual (tangata whenua)	
	<p>A water body that has outstanding cultural or spiritual values:</p> <p>List A</p> <ul style="list-style-type: none"> a) is outstanding in accordance with te ao Māori values, mātauranga Māori and tikanga of a descendant group closely associated with the water body. <p>List B</p> <ul style="list-style-type: none"> a) is supported by evidence. 	<p>Waitangi Tribunal Reports. Statutory acknowledgements. Iwi members. Deeds of settlement. Customary use reports. Court cases. Expert evidence</p>
Recreation	Angling amenity (trout and salmon)	
	<p>Outstanding angling amenity (trout and salmon):</p> <p>List A</p> <ul style="list-style-type: none"> a) supports among the highest numbers of trophy-sized trout (over 4 kilograms). b) supports among the highest numbers of large trout. <p>List B -</p> <ul style="list-style-type: none"> a) has a variety of high-quality angling experiences OR a specialised high quality angling experience. b) supports a wild trout population that is self-sustaining through natural replacement i.e., the fish population is not periodically restocked. c) is accessible to anglers and is suitable to fish (in high water quality and at suitable flows). d) has a regional, national or international reputation as an exceptional trout fishery or high non-local usage (high numbers of anglers come from outside of the area). e) is supported by evidence. 	<p>National Angling Survey. Published activity guides. User surveys. Headwater trout fisheries (NIWA). Testimonies from anglers. National Inventory of Wild and Scenic River. Expert evidence</p>

Value	Sub values / Outstanding indicators	Evidential sources (can include but are not limited to the following)
Recreation	Rafting	
	<p>An outstanding rafting experience (amenity):</p> <p>List A</p> <ul style="list-style-type: none"> a) supports a variety of high-quality rafting experiences found in few other water bodies. b) is a specialised high quality rafting experience found in few other water bodies. <p>List B</p> <ul style="list-style-type: none"> a) provides a rafting experience which is reliable and predictable for most of the year under normal flows (i.e., the experience is not reliant on dam release water or high flows, or subject to low flows). b) has regional, national or international significance as an exceptional rafting experience. c) has high non-local usage (high numbers of participants come from outside of the area). d) is supported by evidence. 	<p>Published activity guides. User surveys. Testimonies from rafters and their local or national associations. Expert evidence.</p>
Recreation	Kayaking (including canoes)	
	<p>An outstanding kayaking experience (amenity):</p> <p>List A</p> <ul style="list-style-type: none"> a) supports a variety of high-quality kayaking experiences found in few other water bodies. b) provides a specialised high quality kayaking experience found in few other water bodies. <p>List B</p> <ul style="list-style-type: none"> a) provides an outstanding kayaking experience which is reliable and predictable for most of the year under normal flows (i.e., the experience is not reliant on dam release water or high flows, or subject to low flows). b) has regional, national or international significance as an exceptional kayaking experience. c) has high non-local usage (high numbers of participants come from outside of the area). d) is supported by evidence. 	<p>Published activity guides. User surveys. Testimonies from kayakers and their local or national associations. Expert evidence.</p>

Value	Sub values / Outstanding indicators	Evidential sources (can include but are not limited to the following)
Recreation	Jet boating	
	<p>An outstanding jet-boating experience (amenity):</p> <p>List A</p> <ul style="list-style-type: none"> a) supports a variety of high-quality jet boating experiences found in few other water bodies. b) provides a specialised high-quality jet boating experience found in few other water bodies. <p>List B</p> <ul style="list-style-type: none"> a) provides an outstanding jet boating experience which is reliable and predictable for most of the year under normal flows (i.e., the experience is not reliant on high flows or subject to low flows). b) has regional, national or international significance as an exceptional jet boating experience. c) has high non-local usage (high numbers of participants come from outside of the area). d) Is supported by evidence. 	<p>Published activity guides. User surveys. Testimonies from jet boaters and their local or national associations. Expert evidence.</p>
Landscape	Wild and scenic	
	<p>A water body with outstanding wild and scenic values:</p> <p>List A</p> <ul style="list-style-type: none"> a) is an essential component of the landscape. b) has distinctive wild or scenic qualities which 'stand out' and are present in few other water bodies. <p>List B</p> <ul style="list-style-type: none"> a) Is supported by evidence. 	<p>A National Inventory of Wild and Scenic Rivers. A list of rivers and lakes deserving protection in a schedule of protected waters. 64 New Zealand Rivers: a scenic evaluation. New Zealand Recreational survey and the National Inventory of Wild and Scenic Rivers. Expert evidence.</p>
Karst system or subterranean waters	Karst system or subterranean waters	
	<p>An outstanding karst system or subterranean waters:</p> <p>List A</p> <ul style="list-style-type: none"> a) provides a specialized, high-quality experience with international or national reputation or high non-local usage present in few other water bodies. b) displays distinctive wild and/or scenic qualities which 'stand out' and are present in few other water bodies. c) has distinctive scientific or ecological values present in few other water bodies. <p>List B</p> <ul style="list-style-type: none"> a) Is supported by evidence. 	<p>New Zealand Geopreservation Inventory. Expert evidence.</p>

Value	Sub values / Outstanding indicators	Evidential sources (can include but are not limited to the following)
Natural form and character	Natural form and character	
	<p>A water body that has outstanding natural form and character values:</p> <p>List A</p> <ul style="list-style-type: none"> a) is highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna, within a largely indigenous landscape, except for braided rivers which can still hold outstanding natural form and character values where riparian margins and the surrounding landscape are modified, provided the water body is highly natural with no human modification in all other respects. b) is a braided river that is highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna. c) is classified as Class A in the New Zealand Geopreservation Inventory. <p>List B</p> <ul style="list-style-type: none"> a) has values that are dependent on the water body's condition and functioning. b) contains distinctive qualities that stand out among such water bodies. c) Is supported by evidence. 	Expert evidence.

Part 2 – Outstanding Water Bodies in Hawke’s Bay and their outstanding and significant value(s)

The following water bodies, (or parts thereof), have been identified as having outstanding value(s).

* The significant values, and their associated descriptions, for each outstanding water body will be included after a catchment based regional plan change has been made operative for the relevant catchment (see Objective LW1, Policy LW1 and Policy C1).

Table 1: Outstanding Water Bodies in Hawke’s Bay

Column 1	Column 2	Column 3	Column 4
ID #	Outstanding water body	Outstanding characteristics or values	Significant values
OWB 1A	<p>Heretaunga Plains Aquifer System</p> <p>The Heretaunga Aquifer is the personification of Muriwaihou known as Heretaunga Muriwaihou – the womb and amniotic fluid of Papatūānuku. It is considered by iwi and hapū to be a unique and outstanding taonga. It is also referred to as Haukunui (the life-giving water) that manifests as mists, fogs and dew that contributes to an abundance and wealth in the soils, water bodies and people.</p>	<p>Cultural or spiritual values</p> <p>Whakapapa o te wai, wāhi taonga, wairoa, mauri</p>	
OWB 1B	<p>Lake Poukawa and Pekapeka Swamp</p> <p>Lake Poukawa, also known as Te Wai-nui-a-Tara, is a small shallow lake with a surface area of 89 hectares. The lake has an adjoining margin of wetland vegetation which is intermittently covered in water depending on the time of year. The wetland area contains swamp nettle (<i>Urtica linearifolia</i>) and the acutely threatened aquatic liverwort (<i>Ricciocarpos natans</i>) which is nationally endangered.</p> <p>The Lake has been declared a non-commercial eel fishery, one of only a few lakes in New Zealand to have this designation.</p> <p>Lake Poukawa is a taonga of Heretaunga Tamatea, traditionally used for food gathering. The Lake is well known for its eel fishery which is of considerable cultural importance to the people of Te Hauke and their hapū Ngai Te Rangikoianake. The history of Lake Poukawa is directly related to the eels of the lake. The mana of each chief of Te Wheao is related to control of Lake Poukawa and its resources.</p> <p>Lake Poukawa has been the scene of many battles, with a number of wāhi tapu and wāhi taonga sites in the area. The origin of the name ‘Poukawa’ is said to have arisen because of a disagreement between two local chiefs Te Rangihirawea and Te Rangikawhiua over-fishing rights in the lake.</p>	<p>Cultural or spiritual values</p> <p>Ecology (habitat for aquatic native birds)</p>	

Column 1	Column 2	Column 3	Column 4
ID #	Outstanding water body	Outstanding characteristics or values	Significant values
	Lake Poukawa supports a high diversity of bird species, with notably high numbers of the Australasian bittern, New Zealand dabchick, pied stilt, and shoveler ducks.		
OWB 1	Lakes Rotoroa and Rototuna (the Kaweka Lakes) These lakes are situated in the Kaweka Forest Park, with no sign of human modification and surrounded by indigenous vegetation.	Natural character (Lake Rotoroa and Lake Rototuna) Habitat for indigenous aquatic plant community (Lake Rototuna) Habitat for native fish community (Lake Rotoroa)	
OWB 2	Lake Tūtira (including Lake Waikōpiro) Lake Tūtira is located beside SH2 north of Napier. Water quality in the lake is degraded, and various attempts have been made to improve it. Two fortified pā stood beside the lake, which was a taonga, a highly valued source of kai and the scene of many battles.	Cultural or spiritual values	
OWB 3	Lake Waikaremoana Lake Waikaremoana is a debris-dammed lake located in Te Urewera. It is the deepest lake in the North Island, and the largest in the region. It has exceptional water quality, a high diversity of native aquatic plant species, is popular for recreational activities including angling and boating, and forms the focus of one of New Zealand's great walks.	Ecology, specifically habitat for aquatic native plant communities Landscape (wild and scenic) values Natural character Recreation (central focus of a Great Walk)	
OWB 4	Lake Whakakī – Te Paeroa Lagoon – Wairau Lagoon and Wetlands Whakakī Lake and its associated wetlands are located to the north of Wairoa township near the coast. Whakakī Lake is an intermittently closed and open lake (ICOLL) which is a rare habitat type. These water bodies support a significant number of threatened native aquatic birds.	Ecology (habitat for high natural diversity of aquatic native birds)	
OWB 5	Lake Whatumā Lake Whatumā is located southwest of Waipukurau. It covers about 160ha, with an adjacent wetland margin of around 75ha. It is a taonga to hapū of Heretaunga Tamatea, providing a major source of kai for those who resided nearby. The lake supports several threatened bird species, including the greatest numbers of Australasian bittern in the region.	Cultural or spiritual values Ecology (habitat for aquatic native birds, particularly Australasian bittern)	

Column 1	Column 2	Column 3	Column 4
ID #	Outstanding water body	Outstanding characteristics or values	Significant values
OWB 6	<p>Mangahouanga Stream</p> <p>The Mangahouanga Stream is a small tributary on the north bank of Te Hoe River. It is the only site in New Zealand where dinosaur fossils have been found to date.</p>	Geology (presence of dinosaur fossils)	
OWB 7	<p>The Mohaka River upstream of Willow Flat</p> <p>The Mohaka River is 175km long and is in northern Hawke's Bay. The upper reaches of the river are in a near natural state with pristine water quality, and an impressive waterscape comprising deep gorges and fast flowing rapids. The river is already protected by a National Water Conservation Order for the following outstanding values:</p> <ol style="list-style-type: none"> an outstanding trout fishery in the mainstem upstream of the State Highway 5 bridge and in the tributaries; and outstanding scenic characteristics in the Mokonui Gorge outstanding amenity for water-based recreation from the State Highway 5 bridge to Willow Flat. 	<p>Natural character</p> <p>Landscape (wild and scenic) values</p> <p>Recreation, including trout angling, kayaking and rafting</p> <p>Trout fishery (Mohaka River mainstem and in the tributaries upstream of State Highway 5 bridge)</p>	
OWB 8	<p>Ngamatea East Swamp</p> <p>The Ngamatea East Swamp is a 300ha largely unmodified wetland located in the headwaters of the Taruarau River. It is the largest intact wetland in Hawke's Bay, and contains high numbers of threatened indigenous plant species.</p>	<p>Natural character</p> <p>Ecology (habitat for indigenous plant populations)</p>	
OWB 9	<p>Ngaruroro River and Waitangi Estuary</p> <p>The Ngaruroro River is the largest river flowing across the Heretaunga Plains, rising on slopes of the Kaimanawa and Kaweka Ranges and flowing into the sea 160 km later.</p> <p>The upper reaches of the Ngaruroro River are surrounded largely by native vegetation and are highly valued for their scenic and recreational qualities; the latter include trout angling and whitewater boating.</p> <p>The Ngaruroro River provides an outstanding habitat for aquatic birds including the banded dotterel, black fronted dotterel, and whio.</p> <p>The Waitangi Estuary has outstanding cultural or spiritual values. Ngāti Kahungunu iwi and hapū traditions refer to Te Ūenukutanga, the ritual planting and placing of mauri on the Waitangi Estuary. Ruawharo, the high priest of the Takitimu waka married Hinewairakaia who had three sons: Matiu, Makoro, and Mokotuararo. To extend and establish the feeding grounds of the whales and</p>	<p>Upstream of the Whanawhana cableway</p> <ul style="list-style-type: none"> Natural character Landscape (wild and scenic) values Rainbow trout habitat Recreation (trout angling, whitewater rafting, kayaking) Habitat for native aquatic birds (particularly whio) <p>Downstream of the Whanawhana cableway</p> <ul style="list-style-type: none"> Habitat for native aquatic birds (including banded dotterel, black fronted dotterel) <p>Downstream of the Whanawhana cableway to Fernhill</p> <ul style="list-style-type: none"> Natural form and character (braided river) 	

Column 1	Column 2	Column 3	Column 4
ID #	Outstanding water body	Outstanding characteristics or values	Significant values
	<p>all kinds of fish, he planted his children along the coastline to generate and protect the mauri. Setting out in his waka, he placed Matiu near Waikokopu Harbour, then proceeding south he left Makoro at Aropaoanui and on reaching the mouth of Ngā Ngaru o ngā Upokororo at the Waitangi Estuary, he placed his last son Mokotuararo. All of them were turned into rocks, to project their mauri over these areas.</p>	<p>Waitangi Estuary</p> <ul style="list-style-type: none"> Cultural or spiritual values including wāhi taonga, mauri 	
OWB 9A	<p>Ruataniwha Plains Aquifer System</p> <p>The Ruataniwha Aquifer was, according to Ngāti Kahungunu iwi and hapū traditions, created from the outflow from a lake north of Takapau following a fight between two taniwha, Te Umu o Pua and Awarua o Porirua. They gouged the land and created a number of new flow paths for the water including the Tukituki and Waipawa.</p>	Cultural or spiritual values including whakapapa o te wai	
OWB 10	<p>Taruarau River</p> <p>The Taruarau River rises in the Kaimanawa Ranges flowing south across rolling tussock country for around 70 km before it drops into an enclosed gorge before flowing into the Ngaruroro River around 20 km upstream of Whanawhana.</p> <p>The river is in a near natural state, with some extensive pastoralism in the catchment. It has outstanding natural character and outstanding whitewater recreation opportunities.</p>	Natural character, especially the gorge Recreation (whitewater rafting and kayaking)	
OWB 11	<p>Pōrangahau River and Estuary downstream of the Beach Road Bridge</p> <p>The Pōrangahau River runs 35 km through southern Hawke's Bay. The river winds through rugged hill country reaching the sea close to the township of Pōrangahau.</p> <p>The Pōrangahau Estuary covers about 750ha and is one of the few large estuaries in Hawke's Bay. It is a long, narrow estuary formed behind a low, sandy longshore bar which runs for around 14 km. It is the largest and least modified estuary in Hawke's Bay and is listed as a Significant Conservation Area in the RCEP for its nationally significant wildlife habitat, and supports six threatened species.</p> <p>There is extensive evidence of early habitation of the estuary by tāngata whenua, and it would have been a major source of kai.</p>	Cultural or spiritual values Ecology (habitat for native aquatic birds)	

Column 1	Column 2	Column 3	Column 4
ID #	Outstanding water body	Outstanding characteristics or values	Significant values
OWB 12	<p>Te Hoe River</p> <p>Te Hoe River is a tributary of the Mohaka River. The gorge is already protected by the Mohaka Water Conservation Order for its scenic characteristics. It carries the second largest population of whio in the region.</p>	<p>Landscape (wild and scenic) values</p> <p>Habitat for aquatic native birds (particularly whio)</p>	
OWB 12A	<p>Te Karamū River</p> <p>Te Karamū is an iconic waterbody, the source of ancient stories and traditions. Ngāti Hori, Ngāti Hawea, Ngāti Hinemoa hapū traditions reference an iconic species of fish, the ūpokororo, a transparent small fish associated with Te Karamū. “Ngā-ngāru-o-ngā-ūpoko-roro” was one of the names given to the Ngaruroro River which previously flowed down through what we commonly call the Karamū today. Ngā-Ngaru-Ūpokororo o Te Ūenukutanga-o-Mokotuararo ki Rangatira – the splashing of waves of upokororo going up-river overseen by Ruawharo’s son Mokotuararo is the fullness of the saying. There are many important settlements along the banks of the river including Tanenuiarangi Pā associated with Whatonga and ancestors of the Kurahaupō waka. Te Karamū is associated with the travels of important Takitimu waka ancestors, Tamatea, Kahungunu and others during their exploration and harvesting expeditions, when they named places on the river and inland areas. There has been continuous occupation of the lands around Te Karamū and it is associated with important ancestors, places and events.</p>	<p>Cultural or spiritual values including wāhi taonga, whakapapa o te wai, nohoanga/pāhi</p>	
OWB 13	<p>Te Whanganui-a-Orotū (Ahuriri Estuary)</p> <p>Te Whanganui-a-Orotū, which lies between Napier Airport and Tamatea, is a large tidal estuary close to the city. In historical times it used to be the mouth of the Esk and Tūtaekurī Rivers, and about 1,300 ha of the estuary was lifted 1-2 metres by the 1931 Napier earthquake.</p> <p>Te Whanganui-a-Orotū has outstanding cultural or spiritual values to tāngata whenua, and provides diverse habitats that support the best aquatic bird habitat, and the best estuarine fish habitat and nursery in the region.</p>	<p>Cultural or spiritual values including wāhi taonga</p> <p>Aquatic bird habitat</p> <p>Native fish habitat</p>	

Column 1	Column 2	Column 3	Column 4
ID #	Outstanding water body	Outstanding characteristics or values	Significant values
OWB 14	<p>Tukituki River downstream of SH50 bridge to the sea, including the estuary</p> <p>The Tukituki River is 145km long, rising in the Ruahine Ranges and entering the sea at Haumoana. It is a tipuana awa, and there is evidence of 7-8 centuries of occupation by Māori. The lower river and estuary support the largest population of wading birds in the region.</p>	<p>Cultural or spiritual values including wāhi taonga for the estuary</p> <p>Ecology (habitat for native aquatic birds, particularly in the lower river)</p>	
OWB 15	<p>Mainstem of the Tūtaekurī River upstream of the SH50 Bridge</p> <p>The Tūtaekurī River rises in the Kaweka Ranges, around 50 kilometres northeast of Taihape. It is about 100 kilometres long and flows over the Heretaunga Plains where it now joins the Ngaruroro River and flows out to sea through the Waitangi Estuary. The reach upstream of the SH50 bridge has outstanding cultural or spiritual values, which include the presence of the “gateway” pā Otatara, and as passage between the volcanic plateau and the Hawke’s Bay coast.</p>	<p>Cultural or spiritual values</p>	

Descriptions

The following descriptions are provided to assist readers with understanding specific outstanding cultural or spiritual values in Table 1.

Mauri means the spiritual energy or life force that flows from io Matua Kore, to the Atua, and into all living things and natural resources. Universal soul, vitality.

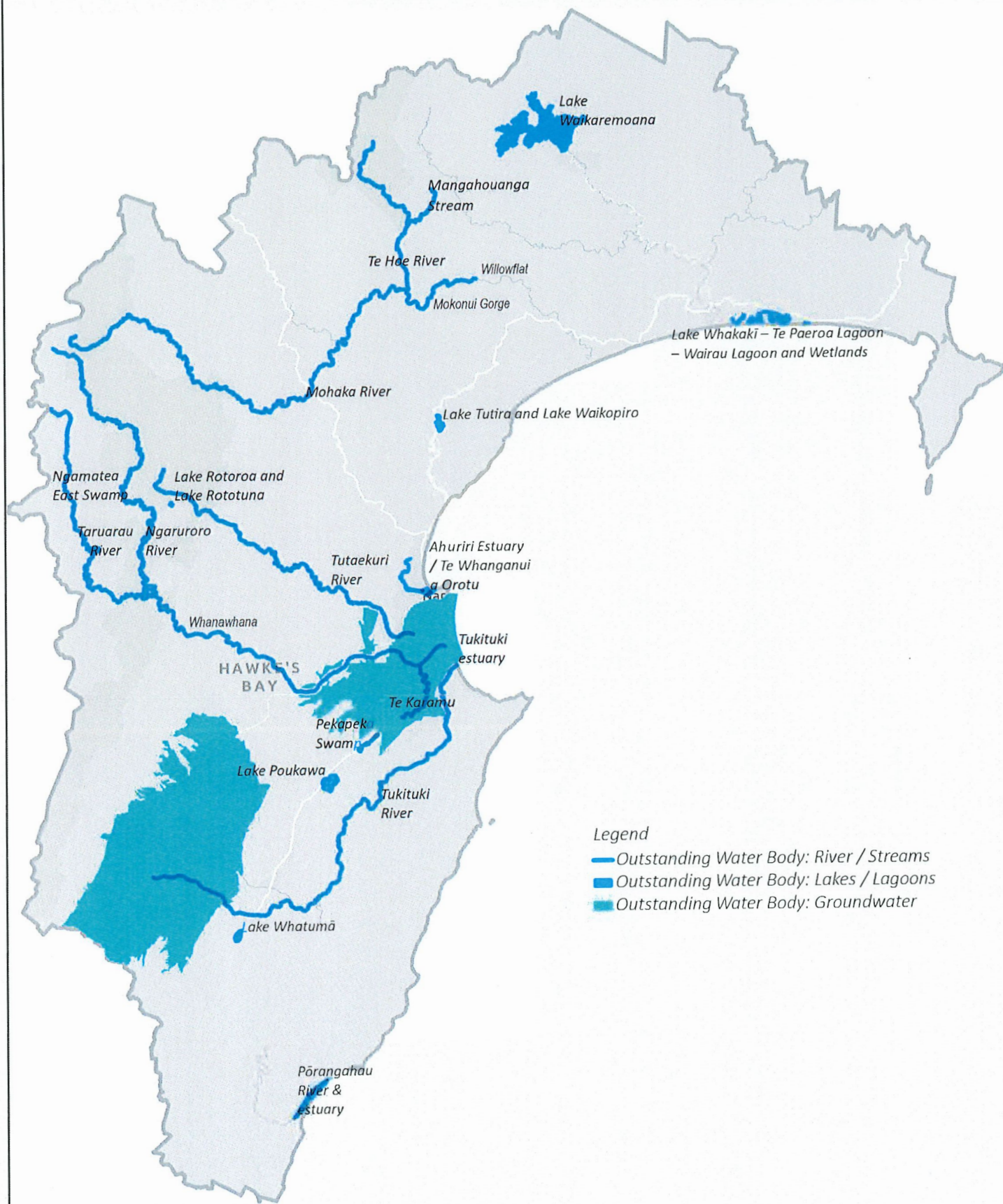
Human activities have the capacity to diminish or harm mauri; natural events do not. Mauri can also be transferred, flowing outwards from its source into animate or inanimate things. Tangata whenua can enable the transfer of mauri into mauri stones/rocks, taonga, personal effects etc., the pathway typically enabled through appropriate karakia and tikanga processes/protocols.

Nohoanga / pāhi means an area or site located alongside or within a riverbed, stream, lake, wetland or coastal area, and the cultural value from activities and practices associated with such sites. Traditionally nohoanga/pāhi are used for temporary occupation to undertake seasonal harvesting, the collection of kai or natural resources, for wānanga, and for training and instruction associated with the area and the natural resources available there.

Wāhi taonga is both a value and a place/area that is highly valued by tangata whenua. Wāhi tapu, and wai tapu are different categories of wāhi taonga, and encompass the cultural and spiritual value(s) of a sacred sites or areas due to the relationship of tangata whenua with them. For wai tapu, the values are spiritual and relate to baptism, blessing, cleansing, and historical use.

Whakapapa o te wai means the ancestral, traditional, customary and contemporary connections and relationships between hapū/marae and the waters they have mana over within their rohe, in accordance with tikanga Māori and mātauranga Māori. Whakapapa o te wai encapsulates the spiritual and physical origins and connections within the water cycle, including the kaitiaki role of the Atua and taniwha relating to water, and connections between tangata whenua as kaimahi, their traditional water resources and the taonga species they contain.

Part 3: Outstanding Water Bodies in Hawke's Bay – Indicative location map



Legend

- Outstanding Water Body: River / Streams
- Outstanding Water Body: Lakes / Lagoons
- Outstanding Water Body: Groundwater

Outstanding Water Bodies