

In the Environment Court
At Auckland

ENV-2021-AKL-000104
ENV-2021-AKL-000105
ENV-2021-AKL-000106

I te Kōti Taiao o Aotearoa
KiTāmaki Makaurau

Between

**TE TAIWHENUA O HERETAUNGA, TE RUNANGANUI O
HERETAUNGA, TE MANAAKI TAIAO O HERETAUNGA AND NGATI
KAHUNGUNU IWI INCORPORATED**

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED and**

THE MĀORI TRUSTEE

Appellants

And

HAWKE'S BAY REGIONAL COUNCIL

Respondent

**EVIDENCE IN CHIEF OF BELINDA HARPER ON BEHALF OF HAWKE'S BAY REGIONAL
COUNCIL**

Planning

11 August 2023

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Appendix A: Alternative plan provisions for ‘outstanding estuaries’.

1. INTRODUCTION

1.1 My full name is Belinda Harper, and I am a Senior Policy Planner at the Hawke's Bay Regional Council (**HBRC** or **Council**). I have been employed by HBRC in this capacity since September 2007. I hold a Bachelor of Resource Studies from Lincoln University and am in the final stages of completing a Master of Environmental Management through Massey University. I am an associate member of the New Zealand Planning Institute.

1.2 I have over 23 years' experience working on diverse range of resource management and planning matters. For 9 of these years I have focused on the topic of New Zealand's outstanding water bodies (OWB). During this time I led the Community Environment Fund Outstanding Freshwater Body Project which sought to confirm the intent of the OWB provisions within National Policy Statement for Freshwater Management (2014) and develop a set of criteria that could be used by regional councils to assist with the identifications of OWB across New Zealand. This project was run at a national level in conjunction with Hawke's Bay Regional Council, Ministry for the Environment, and Auckland Council. In more recent years I have been the project lead for the PC7 process which amends the Hawke's Bay Regional Resource Management Plan include a list of OWB in Hawke's Bay, together with a framework which prescribes a high level of protection for these water bodies in future plan making.

1.3 In 2022, I received the John Mawson Award of Merit for my outstanding contribution to the practice of freshwater planning in New Zealand. This recognition stemmed from the comprehensive review of over 30 decisions, including the Environment Court and Special Tribunals, on Water Conservation Orders to uncover common themes, factors, and characteristics of those water bodies with an outstanding status, and the subsequent development of an outstanding identification screening framework for use at a regional level.

1.4 I have prepared this statement of evidence in my capacity as an expert. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I agree to comply with it. I

confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. BACKGROUND

2.1 I have been asked by HBRC to provide planning evidence for these proceedings, considering the requests set out in the appeals of Te Taiwhenua o Heretaunga, Te Runanganui o Heretaunga, Te Manaaki Taiao o Heretaunga and Ngāti Kahungunu Iwi Incorporated, the Royal Forest and Bird Protection Society of New Zealand Incorporated, and the Māori Trustee.

2.2 In preparing this evidence, I have borne in mind the scope for relief set out in the notices of appeal, and in places I have identified relief sought in the appeals where I cannot find corresponding relief sought in the appellant's original or further submission. This matter will be addressed in the Council's legal submissions.

2.3 The key documents I have used, or referred to, when preparing my evidence are:

- (a) The notified version of Plan Change 7 (PC7) to the Hawke's Bay Regional Resource Management Plan (RRMP)
- (b) The PC7 Independent Hearing Panel's (IHP) decision and the decisions version of PC7.
- (c) The draft consent order lodged with the Court in November 2022 , resolving some aspects of the appeals.
- (d) Plan Change 7: Regional Resource Management Plan
Section 32 Evaluation Report Ngaruroro River and Estuary: Summary of Values For Proposed Plan Change 7: Hawke's Bay Regional Resource Management Plan (Outstanding Water Bodies Plan Change). 2020. HBRC Publication Number 5497.
- (e) *Lake Poukawa and Pekapeka Swamp: Summary of Values For Proposed Plan Change 7: Hawke's Bay Regional Resource Management Plan*

(Outstanding Water Bodies Plan Change). 2020. HBRC Publication Number 5485.

- (f) *Tukituki River and Estuary: Summary of Values For Proposed Plan Change 7: Hawke's Bay Regional Resource Management Plan (Outstanding Water Bodies Plan Change)*. 2020. HBRC Publication Number 5510
- (g) *Heretaunga Aquifer: Summary of Values For Proposed Plan Change 7: Hawke's Bay Regional Resource Management Plan (Outstanding Water Bodies Plan Change)*. 2020. HBRC Publication Number 5482.
- (h) *Karamū River. Summary of Values For Proposed Plan Change 7: Hawke's Bay Regional Resource Management Plan (Outstanding Water Bodies Plan Change)*. 2020. HBRC Publication Number 5480.
- (i) *Ruataniwha Aquifer: Summary of Values For Proposed Plan Change 7: Hawke's Bay Regional Resource Management Plan (Outstanding Water Bodies Plan Change)*. 2020. HBRC Publication Number 5504.
- (j) The original submissions, further submissions and appeals of Te Taiwhenua o Heretaunga, Te Runanganui o Heretaunga, Te Manaaki Taiao o Heretaunga and Ngāti Kahungunu Iwi Incorporated, the Royal Forest and Bird Protection Society of New Zealand Incorporated, and the Māori Trustee.

2.4 I have reviewed the evidence of the following experts filed alongside this planning evidence for the Council, and I rely on that evidence in relation to the matters covered in it:

- (a) Dr Andy Hicks, evidence in chief (ecology), dated 11/08/2023;
- (b) Dr Greg Ryder, evidence in chief (peer review), dated 11/08/2023;
- (c) Antoine Coffin, evidence in chief (spiritual and cultural values), dated 11/08/2023;
- (d) Rob Greenaway, evidence in chief (recreation), dated 11/08/2023; and
- (e) Jens Rekker, evidence in chief (geology), dated 11/08/2023.

2.5 I visited the following water bodies on 7 August 2023. This is the full set of water bodies that I understand to be subject to remaining points of appeal, with the exception of the Makaroro River, which was not accessible on 7 August due to a bridge having been washed out as a result of severe weather events impacting many parts of the Hawke’s Bay region in early 2023.

- (a) Heretaunga Aquifer;
- (b) Karamū River;
- (c) Lake Poukawa and Pekapeka Swamp;
- (d) Lower Ngaruroro River;
- (e) Ruataniwha Aquifer;
- (f) Tukituki Estuary;
- (g) Tukituki River; and
- (h) Waitangi Estuary.

3. SCOPE OF EVIDENCE

3.1 My evidence addresses the following matters:

- (a) The background and context to PC7.
- (b) The provisions in PC7.
- (c) My understanding of the relief sought by appellants that remain unresolved on PC7 after mediation and lodgement of a draft consent order that has been agreed to by all parties. That unresolved relief sought includes:
 - (i) **Issues of principle:** The issues of principle raised in TToH et al.’s appeal relating to PC7’s notification date, screening criteria, definition of outstanding water body (‘OWB’), and the deletion of water bodies from Schedule 25 in PC7.
 - (ii) **Temporal extent of outstanding and significant values:** the request in TToH et al.’s appeal to require the temporal extent of outstanding and significant values to be identified.
 - (iii) **Significant values - abstractive and land use values** - the request in TToH et al.’s appeal to prevent abstractive and land

use values having the ability to be attributed an outstanding or significant values status.

- (iv) **Specific references to water quality and water quantity:** The requests in TToH et al.'s appeal to:
- A. Specify the protection of water quality in Objective LW1 and Policy LW1.1.
 - B. Require sufficient water quantity to be retained in an OWB to protect its significant values, including fish passage.
- (v) **Engagement and consultation:** The requests in TToH et al.'s appeal to ensure iwi and hapū can be involved as 'affected parties' and 'submitters' on resource consent applications.
- (vi) **Definitions of 'outstanding' and 'outstanding water body':** The requests in TToH et al.'s appeal to amend:
- A. 'outstanding' to refer to "...regionally conspicuous, eminent...".
 - B. 'outstanding water body' to remove the reference to coastal waters.
- (vii) **Consistency with the New Zealand Coastal Policy Statement ('NZCPS'):** The request in Forest and Bird's appeal that PC7 give effect to the NZCPS.
- (viii) **Schedule 25:** The requests by appellants on one or more of the following matters that raises the following questions:
- A. **OWB Identification Screening Criteria:** should the screening criteria be retained, deleted, or amended.
 - B. **Significant values:** Should the list of significant values deleted in the PC7 decisions version be reinstated into Schedule 25.
 - C. **List of water bodies:** Should any of the following water bodies and/or associated values be listed in Schedule 25:
 - Heretaunga Aquifer (ecology, cultural and spiritual, geology, natural character)

- Ruataniwha Aquifer (ecology, cultural and spiritual, geology)
- Makaroro River (ecology, landscape, geology)
- Ngaruroro River and Waitangi Estuary (ecology, cultural and spiritual, landscape, recreation, geology, natural character)
- Lake Poukawa and Pekapeka Swamp (ecology, cultural and spiritual)
- Lake Rūnanga (ecology, cultural and spiritual)
- Lake Oingo (ecology, cultural and spiritual)
- Tukituki River and Estuary (ecology, cultural and spiritual, landscape)
- Karamu River (cultural and spiritual).

(ix) **Descriptions:** should any of the following descriptions be added or expanded in Schedule 25: ‘ecology’, ‘landscape’, ‘natural character’, ‘recreation’, ‘geology’, ‘outstanding tikanga Māori values’, ‘significant values’, ‘hauora o te wai, ‘Mana o te Wai’, ‘Ki uta ki Tai’, ‘mahinga kai area’, ‘mahinga kai site’ ‘whakapapa o te wai’, ‘kōhanga ika’.

4. EXECUTIVE SUMMARY

4.1 The key conclusions reached in my evidence are:

- (a) The provisions within the Council’s preferred version of PC7 filed with the Court on 13 July 2023 are generally appropriate for the purposes intended by the HBRC, which is to identify a list of the region’s outstanding water bodies, together with a framework which protects the outstanding and significant values of these water bodies in future decision-making on regional plans and relevant resource consent applications.

- (b) In my opinion it is clearer to define the term OWB in a way that includes freshwater bodies and estuaries in recognition that outstanding values regularly extend between the freshwater and coastal environments. This approach assists with plan clarity and ensures a consistent management regime can be established that effectively protects these values. Notwithstanding, should the Court instead prefer the reference to estuaries be deleted from the OWB definition and separate references be made in PC7 to 'outstanding estuaries', then I have provided some alternative provisions within PC7 (see Appendix A) that remain within the scope of PC7 and achieve this outcome.
- (c) The PC7 policy framework requires the protection of the outstanding and significant values of OWB, which will ensure sufficient water quantity is retained in OWBs to maintain and uphold their significant values, including fish passage when required. In my opinion, no additional amendments are necessary to provide for fish passage and water quantity since this is already provided for.
- (d) Objective LW1.1 aims to protect the outstanding and significant values of OWB. In my opinion it is not necessary to amend Objective LW1.1 to specify the protection of water quality, which is one of many potential significant values.
- (e) In my opinion, Policy LW1.2(iA) should be amended so both the spatial and temporal extent of outstanding and significant values of OWB are identified, where relevant. This will ensure there is a comprehensive understanding of the significant and outstanding values.
- (f) In my opinion, the significant values deleted from Schedule 25 in the decisions version of PC7 should not be reinstated at this stage. Comprehensive identification of significant values was not undertaken as part of PC7 and to date there has not been a robust process undertaken to determine the significant values of all OWB. I note eight of the 38 OWB listed in the notified version of PC7 had simplistic listings

of significant value(s), sourced from preliminary work by the 'TANK Collaborative Stakeholder Group,' assisting in preparing a plan change (PC9) for the Tutaekuri, Ahuriri, Ngaruroro, and Karamu catchments. PC9 has been appealed and what constitutes 'significant values' for water bodies in the TANK catchment currently remains unresolved.

- (g) The OWB identification screening criteria provides a more robust basis for assessing which water bodies in Hawke's Bay are genuinely outstanding and should be retained in Schedule 25. The screening framework reduces the potential for ad-hoc identification of OWB in future.
- (h) Lake Poukawa and Pekapeka Swamp should be added to Schedule 25 for outstanding cultural and spiritual values and outstanding ecology values (habitat for native aquatic birds).
- (i) Those water bodies, or parts thereof, identified in The Water Conservation (Mohaka River) Order 2004 as having one or more outstanding values, should be added to Schedule 25.
- (j) The Ngaruroro River, or parts thereof, identified in the Environment Court's interim decision on the Ngaruroro River Water Conservation Order application (2022), as having one or more outstanding values, should be added to Schedule 25. These aspects of the Environment Court's decision have not been appealed but I understand other parts are subject to appeal, and so no final Order has yet been made .

4.2 I attach the following appendix to my evidence:

- (a) Appendix A. Alternative plan provisions for 'outstanding estuaries' (see paragraph 7.6).

5. PC7 OVERVIEW & CONTEXT

Proposed Plan Change 7 – overview

5.1 PC7 is a change to the Hawke's Bay Regional Resource Management Plan (**RRMP**) - Council's combined regional plan and Regional Policy Statement (RPS) - to include a list of the region's outstanding water bodies (including estuaries), together with a framework which prescribes a high level of protection for the outstanding and significant values of these water bodies in future plan making under the RMA. PC7 predominantly changes Chapter 3.1A and 3.2 of the RPS sections of the RRMP to provide guidance and direction to:

- (a) Future RMA planning processes, and respective local community discussions, ensuring future rules for outstanding water bodies are developed in a manner which protects their outstanding and significant values.
- (b) HBRC and other decision makers when making decisions on resource consent applications for future activities near outstanding water bodies. PC7 is flexible insofar as it directs that the significant and outstanding values for each outstanding water body must be protected, but does not specify what provisions must be included in future plans to protect these values. This allows future plans to be developed in a manner that tailors a different set of provisions (non-regulatory, or regulatory or both) for each OWB which takes into account the particular location, development pressures, characteristics and community expectation for each OWB.

5.2 Under the PC7 framework, for a water body to qualify as outstanding, it must possess one or more outstanding cultural and spiritual, recreation, landscape, geology, natural character, or ecology values in its own right. PC7 proceeds on the basis that economic and consumptive use values cannot be identified as an outstanding value that warrants an OWB being scheduled, but they can be identified as a significant value that warrants protection alongside the other significant values (including the outstanding values).

5.3 The list of outstanding waterbodies in Schedule 25 of the decisions version of PC7 were identified by the PC7 IHP. The PC7 IHP considered the definition of ‘outstanding’, the Screening Criteria, information set out in submissions, as well as information provided as part of expert and lay evidence, to identify water bodies that qualified as outstanding. This process for identifying OWB is set out in Part 1 of Schedule 25 of the RRMP as amended by PC7.

5.4 The definitions of ‘outstanding’ and ‘outstanding water body’ in the decisions version of PC7 are:

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

***Outstanding water body** means freshwater bodies and estuaries, or parts thereof, identified in Schedule 25 that have one or more outstanding cultural, spiritual, recreation, landscape, geology, natural character or ecology value(s).*

5.5 The definition of OWB adopted for use in the decisions version of PC7 aligns with, but is not completely identical to, the NPSFM’s definition of outstanding. From both PC7 and the NPSFM, it is clear to me that an OWB must support at least one outstanding value in its own right. For clarification, water bodies that help maintain an outstanding feature in another water body but do not support the outstanding value themselves would not qualify as OWB for PC7 purposes.

5.6 When read together, the definitions of ‘outstanding’ and ‘outstanding water body’ indicates an OWB must be truly exceptional in some way, with a value(s) that stands out from the rest in a regional context. In my opinion, the definitions and the screening criteria set a clear scope as to what may or may not be outstanding for PC7 purposes.

5.7 The background to PC7 and the PC7 provisions are discussed in further detail below. I traverse a previous plan change (Plan Change 5 to the RRMP) for context as it is relevant to one of the preliminary points raised in the TToH appeal.

NPSFM outstanding water body provisions

5.8 The NPSFM was first proposed in 2008, taking effect in July 2011. The NPSFM was replaced in 2014 (then further amended in 2017), and most recently replaced in September 2020. PC7 was prepared and notified under the amended 2014 NPSFM (updated 2017). The IHP’s decision was made under the 2020 NPSFM.

5.9 The 2014/17 and 2020 NPSFM OWBs provisions are set out below in Table 1.

Table 1: 2014-17 & 2020 NPSFM outstanding water body provisions

NPSFM OWB PROVISION	NPSFM 2014 (UPDATED 2017)	NPSFM 2020
Interpretation	Outstanding freshwater bodies are those water bodies identified in a regional policy statement or regional plan as having outstanding values, including ecological, landscape, recreational and spiritual values.	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

NPSFM OWB PROVISION	NPSFM 2014 (UPDATED 2017)	NPSFM 2020
Objective	<p>Objective A2: "The overall quality of fresh water within a freshwater management unit is maintained or improved while:</p> <ul style="list-style-type: none"> i. protecting the significant values of outstanding freshwater bodies; ii. protecting the significant values of wetlands; and iii." <p>Objective B4: "To protect significant values of wetlands and of outstanding freshwater bodies"</p>	<p>NPSFM Objective: "The objective of this National Policy Statement is to ensure that resources are managed in a way that prioritises:</p> <ul style="list-style-type: none"> a) first, the health and wellbeing of water bodies and freshwater ecosystems; and b) second, the essential health needs of people; and c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future."
Policies	N/A	Policy 8: The significant values of outstanding water bodies are protected.
National objectives framework	N/A	<p>3.8 Identifying FMUs and special sites and features:</p> <p>"... (3) Every regional council must also identify the following (if present) within each FMU:</p> <p>".... outstanding water bodies.."</p>

5.10 Across each of the editions of the NPSFM, the NPSFM OWB provisions stop short of stipulating exactly what constitutes an outstanding value, how the assessment and identification of OWBs should be undertaken, and whether the term ‘outstanding’ should be applied in a regional or national context.

5.11 The definition of OWB is amended in the 2020 NPSFM to make it clear that an OWB can be part of a water body and that those features identified as nationally outstanding in a water conservation order (WCO) are automatically OWB. The decisions version of PC7's definition is not completely identical to the amended NPSFM's definitions. Notwithstanding, the Regional Council's preferred version of PC7 (as circulated on 13 July 2023) does add a new sentence relating to WCOs to reflect this new approach. I note that as no appellants have specifically requested these changes, they would need to be introduced through Section 293 of the RMA. This will be discussed further in the Council's legal submissions.

Identification of OWBs as per the 2020 version of the NPSFM

5.12 The amendments to the 2020 NPSFM created the following two distinct pathways for identifying OWB in Hawke's Bay:

- (a) Those water bodies identified as having an outstanding value(s) or features in a WCO.
- (b) Those water bodies that meet the PC7 screening criteria and the definition of outstanding in PC7.

5.13 These two pathways have some key differences. Notably, WCOs include water bodies that are nationally outstanding, as well as those that contribute to a nationally outstanding feature in another water body, even if they don't possess the outstanding value themselves. Conversely, the second pathway, in accordance with the definition of OWB in the NPSFM, only identifies those water bodies that have regionally outstanding values in their own right, with any contributions other water bodies make to an outstanding value are identified and protected through other planning processes.

5.14 Importantly, water bodies identified as OWBs through the WCO pathway:

- (a) May, but do not need to, meet the OWB identified screening criteria within PC7, given this pathway also includes water bodies that may not support an outstanding value in their own right.
- (b) Do not need to be identified in a regional plan or regional policy statement to fall within the NPSFM's meaning of outstanding water body.
- (c) Are identified as OWBs as soon as the WCO is made. This meant that, on 3 September 2020, at the same time as the NPSFM 2020 took effect, all water bodies listed in an existing WCO as having one or more outstanding values became outstanding water bodies.

5.15 In Hawke's Bay, there is currently one WCO that has been made. That is the Water Conservation (Mohaka River) Order 2004. Section 4 of that WCO sets out the outstanding characteristics and features as:

“The Mohaka River and its tributaries include the following outstanding characteristics and features:

- (a) an outstanding trout fishery in the mainstream upstream of the State Highway 5 bridge and in the tributaries; and
- (b) outstanding scenic characteristics of the Mokonui Gorge; and
- (c) outstanding scenic characteristics of the Te Hoe Gorge; and
- (d) an outstanding amenity for water-based recreation from the State Highway 5 bridge to Willow Flat.”

5.16 Given what I have said in paragraph 5.14(b) above, I consider it would improve plan implementation if Schedule 25 was amended to list those parts of waterbodies as identified in Section 4 of the Mohaka WCO. I consider that is a relatively minor, but useful, amendment for enhanced plan user clarity, and that it is of a type that could ultimately (if needed) be executed in reliance on

Clause 16(2) of Schedule 1 in the RMA¹. This amendment has been proposed in the Council's preferred version of PC7 filed with the Court on 13 July 2023.

Relevant provisions of the New Zealand Coastal Policy Statement 2010 (NZCPS)

5.17 The New Zealand Coastal Policy Statement 2010 contains specific direction with respect to indigenous biological diversity (biodiversity), natural features, 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 the following circumstances, Policies 11, 13 and 15 of NZCPS contain direction which is more stringent than that set out in the OWB provisions within the NPSFM:

- (a) For outstanding and significant indigenous biological diversity (biodiversity) values of an OWB - adverse effects must be avoided when the outstanding and significant values meet the description(s) set out in Policy 11(a) of the NZCPS.
- (b) For outstanding natural character, outstanding natural features and outstanding natural landscape values of an OWB - adverse effects must be avoided in accordance to Policies 13.1(a) and 15(a) of the NZCPS.

Plan Change 5 to the Hawke's Bay Regional Resource Management Plan (PC5)

5.18 In response to the Government's release of the original version of the NPSFM in July 2011, the Council prepared a draft plan change (**PC5**) which included provisions relating to the integrated management of water and land, a list of outstanding freshwater bodies (**OFWB**) and outstanding areas within the coastal environment (termed outstanding coastal areas (**OCA**)), and a 'placeholder' for a set of criteria to assess which water bodies were outstanding.

5.19 Public feedback was requested on draft PC5 in mid-2012. Comments received on draft PC5 indicated that while there was a high level of support for the

¹ Or Clause 20A of RMA Schedule 1 in relation to an operative policy statement or operative regional plan.

identification of OFWBs and OCAs in Hawke's Bay there were concerns around the subjective nature of outstanding and the associated list of OFWBs and OCA.

5.20 After carefully considering the written feedback, it is my understanding that the Council agreed a more considered and better informed approach was warranted in terms of assessing and identifying OWB in Hawke's Bay. In 2012, the Council decided to proceed with a standalone OWB plan change (**PC7**) in a process separate to PC5.

5.21 PC5 was publicly notified on 2 October 2012. Decisions were issued on 5 June 2013. Four appeals were lodged against those decisions. Several appellants expressed concern at the removal of the listed OWB from the notified version of PC5 and subsequently lodged appeals on that matter with the Environment Court, citing concerns that identification of outstanding waterbodies in Hawke's Bay would not be progressed. These concerns were resolved during Court-assisted mediation and a Consent Order was issued by the Environment Court on 26 September 2014 which added a new policy (Policy LW1A) to PC5. Policy LW1A required an OWB plan change to be notified prior to public notification of any further catchment based plan changes.

5.22 Policy LW1A in the operative RRMP is set out below:

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 waterbodies; 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.

2. 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.

5.23 I understand that since gazettal of the 2020 NPSFM and amendments to the RMA⁴, the Council has reconfigured its future resource management planning programme. The Council is no longer proceeding with any further catchment based plan changes⁵. I understand that the Council's reconfigured resource management policy work programme features a single planning document known as the 'Kotahi Plan' that will combine the Regional Policy Statement, Resource Management Plan, and Coastal Environment Plan."

5.24 Following the issuing of the consent order in 2014, the majority of PC5 was treated as beyond challenge, except for the few remaining matters that were unresolved by mediation which related to groundwater policies and wetlands. Court hearings were required for these matters and the Court issued the following two decisions with respect to these matters:

- (a) *2015 NZEnvCO50* on 27th March 2015 re. part of an appeal by Ngāti Kahungunu Iwi Incorporated relating to groundwater policies; and
- (b) *2019 NZEnvC102* on 7th June 2019 re. part of an appeal by Hawke's Bay Fish and Game Council relating to provisions for wetlands and mapping of several wetlands in the Hawke's Bay region.

5.25 I note that almost 5 years passed between the 2014 consent order and settlement of the final PC5 appeal point relating to wetlands in 2019. During this time, in reliance on Policy LW1A as finalised by the Court's 26 September 2014

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 In particular, the shortened implementation timeframes than had existed under previous NPSFM editions.

5 Except the PC9 TANK catchment plan change which has already been notified and is currently subject to Environment Court appeal proceedings.

consent order, the Council progressed the development of PC7, to a point where PC7 was ready to be publicly notified and that happened just one week after PC5 in its entirety became operative. Policy LW1A (as part of PC5) was successfully implemented as PC7 was notified on 31 August 2019 – prior to the next catchment-based plan change, which was proposed plan change 9 for the ‘TANK catchments.’⁶

PC7 development process

- 5.26** PC7 emerged out of the PC5 preparation process (see paragraphs 5.18 to 5.21 above) and was added as a standalone plan change to the Council’s work programme in 2014 following a decision by the Council that a separate plan change process was warranted for assessing and identifying outstanding freshwater bodies in Hawke’s Bay.
- 5.27** HBRC began preparatory work on PC7 in 2014. As part of this work, HBRC partnered with the Ministry for the Environment and Auckland Council to further investigate the intent of the outstanding freshwater body provisions in the NPSFM and develop a set of criteria that could be used to identify OWB across New Zealand.
- 5.28** In 2017 the Council began developing an OWB plan change process for Hawke’s Bay. That work programme became known as ‘PC7’. The approach used by HBRC to identify OWB in Hawke’s Bay followed a six step process that began with a high level review documenting the values associated with 130 water bodies across the region. The Council directed that the identification of OWB be based on existing evidence and past publications, meaning no new studies or investigations were carried out.

6 Proposed plan change 9 (the TANK Plan for the Tutaekuri, Ahuriri, Ngaruroro and Karamu catchments area) was publicly notified on 2nd May 2020.

OWB identification process

5.29 The six step process used by HBRC to identify OWB in Hawke's Bay is set out below:

- (a) Phase 1 involved a thorough review of over 90 documents including deeds of settlements, statutory acknowledgements, customary use reports, Waitangi Tribunal reports, and several other documents produced in a national and regional context between 1979 and 2018.
- (b) Phase 2 involved the preparation of two literature review reports⁷ based on the review carried out in Phase 1. Those reports summarised key values associated with 130 of the region's water bodies. Prior to completion, input was sought from iwi authorities across the region. Phase 2's work built a clear picture of values associated with a wide range of water bodies across the region and their potential for being classified as outstanding, and was used to inform Phase 3.
- (c) Phase 3 was carried out by the Council's Regional Planning Committee (RPC)⁸, who selected a short list of 22 potential OWBs. During Phase 3 a more focused description and assessment of these 22 water bodies was carried out to see if any contained values that were clearly superior to other water bodies in Hawke's Bay.
- (d) Phase 4 involved wider input from the public, iwi authorities, key stakeholders and territorial authorities toward the list of candidate OWBs identified by the Council. An additional 20 candidate OWBs were

7 HBRC Publication Number 4978: Summary of cultural values associated with water bodies in Hawke's Bay; 2018 & HBRC Publication Number 4979: Summary of recreation, landscape and ecology values associated with water bodies in Hawke's Bay; 2018.

8 The Hawke's Bay Regional Planning Committee Act 2015 establishes a permanent joint Regional Planning Committee (RPC) with the key function of overseeing preparation and review of the regional policy statement and regional plans in the Hawke's Bay region. Membership of the RPC comprises equal numbers of up to ten appointees by the Regional Council and up to ten appointees from nine Post-Treaty Settlement Entities with key interests in the Hawke's Bay region. The RPC operated on an interim basis from 2011 until the Hawke's Bay Regional Planning Committee Act came into effect in 2015.

nominated during Phase 4, and a local expert panel was engaged to identify any outstanding characteristics of the combined total of 42 water bodies, or parts thereof, nominated during Phases 3 and 4. As a result of their work, the local expert panel found a total of 16 clusters of water bodies (22 individual water bodies) to have an outstanding cultural and spiritual, recreation, landscape, natural character or ecology value.

- (e) Phase 5 involved a final evaluation being carried out, with a particular focus on the water bodies nominated during Phases 3 and 4. This work set out the findings from the secondary assessments, the local expert panel, and feedback received during engagement.
- (f) Phase 6 was carried out by the RPC who used the following selection methods to identify a list of 38 water bodies considered to be outstanding for NPSFM purposes, and subsequent inclusion in the proposed version of PC7:
 - (i) Outstanding for cultural and spiritual value set: those water bodies clearly supported as containing cultural or spiritual values which 'stand out' when compared to the other water bodies, based on the traditional knowledge of the RPC tāngata whenua representatives; information in Table C1: Cultural Values Table, information in the secondary assessments, feedback from iwi authorities, preliminary findings of the local expert panel.
 - (ii) Outstanding for recreation, landscape, geology, natural character and ecology value sets: those water bodies which contain values which clearly 'stand out' and are 'superior' when compared to the other water bodies and/or are of excellent quality, despite being similar to one or more water bodies in the region and are identified as 'outstanding' in published literature.

- (g) During Phase 6, the RPC provisionally identified a number of water bodies as ‘outstanding’ for cultural and spiritual values, despite a lack of evidence in published material supporting the outstanding cultural and spiritual values. In making this decision, the RPC noted that Māori history is recorded orally, and much of the information and knowledge is held with local marae and hapū, rather than in those documents reviewed to inform Change 7.

Notification of PC7

5.30 The Regional Council publicly notified PC7 on 31 August 2019 following a recommendation from the RPC to do so. The deadline for submissions was 28 February 2020 – a six month submission period.

5.31 The notified version of PC7 contained a list of 38 OWB in Schedule 25, some of which were included on a provisional basis following a recommendation from the RPC to do so. The Council acknowledged there were significant information gaps and a need for further evidence to support the outstanding classification for a number of the water bodies set out in Schedule 25.

5.32 In recognition of these information gaps, the Council agreed with the RPC’s recommendation to publicly notify PC7 with an extended six month submission period. The extended submission period was intended to enable potential submitters to gather further evidence in support of the proposed outstanding status of water bodies. Also during the submission period, resourcing was offered to Heretaunga Tamatea Settlement Trust, Ngāti Hineuru, Ngāti Ruapani and Tātau Tātau o Te Wairoa, to assist with their information gathering. Those submissions and their accompanying evidence could then be evaluated through PC7’s hearing process.

5.33 I am aware that it is not a conventional process to propose a plan change with known evidential deficiencies and then use the submission process to fill those known information gaps. The PC7 Section 32 Evaluation Report sets out the

Council's reasons for following that approach. In particular, the Council concluded that the risks of notifying PC7 with insufficient information outweighed not notifying PC7 at all.

- 5.34** To ensure clarity for plan readers, notations were included in the notified version of Schedule 25, advising which water bodies tāngata whenua have identified as containing outstanding cultural and spiritual values, noting the associated outstanding descriptions will be updated as further information becomes available.
- 5.35** A total 41 submissions and 18 further submissions were received on the notified version of PC7.

PC7 hearing process

- 5.36** The Council followed the Plan Change process set out in Schedule 1 of the Resource Management Act 1991 (**RMA**). As part of this process, an Independent Hearing Panel (IHP)⁹ was engaged to hear and decide on submissions made to PC7.
- 5.37** I understand that selection of the IHP commissioners was endorsed by the RPC after considering commissioners' collective extensive experiences in values assessments, the identification of OWB in an RMA setting, and a good understanding of Tikanga Maori, cultural and spiritual values, and the perspectives of local iwi or hapū.
- 5.38** The IHP conducted a 3 day hearing and subsequent deliberations where they considered all the information provided, including submissions (written and verbal) and any supporting evidence presented at the hearings.

9 Dr Roger Maaka, Dr Brent Cowie, Christine Scott.

5.39 In June 2021, the IHP released its decision on PC7 which in summary:

- (a) Retained the definition of 'outstanding water body' which encompasses freshwater bodies and estuary areas.
- (b) Included a new Policy LW3B and C3 to provide guidance to resource consent applicants and decision-makers when assessing existing activities in or around outstanding water bodies. Policies LW3B and C3 provide for existing activities to continue in their current form, provided the activity is not diminishing the outstanding nature of the water body.
- (c) Amended Policies C1, C2, and C3 to give effect to the Objectives and Policies in the NZCPS 2010 that direct Councils to protect specified conservation values in the coastal environment. In particular, the amendments gave effect to the specific direction in the NZCPS 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.
- (d) Added a set of OWB identification screening criteria into Schedule 25.
- (e) Found insufficient evidence for a number of water bodies listed in Schedule 25 of the notified version of PC7 to have regionally outstanding values. These water bodies were deleted from Schedule 25.
- (f) Deleted the list of significant values for those OWB located within the Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments.

6. APPEALS

6.1 Appeals were filed by the following three parties:

- (a) Te Taiwhenua o Heretaunga, Te Runanganui o Heretaunga, Te Manaaki Taiao o Heretaunga and Ngāti Kahungunu Iwi Incorporated;
- (b) The Royal Forest and Bird Protection Society of New Zealand Incorporated; and
- (c) The Māori Trustee – Te Tumu Paeroa.

6.2 A draft consent order was lodged with the Court in November 2022, recording agreement between parties resolving a number of the appealed provisions (subject to the Court’s agreement).

6.3 The remainder of my evidence focuses on aspects of the appeals that I understand remain unresolved on PC7.

7. ISSUES OF PRINCIPLE

7.1 As part of their appeal TToH raised the following issues of principle as set out in the Council’s issues list lodged with the Court on 4 November 2022.

Issue 1: Can a regional policy statement lawfully define “outstanding water body” in a way that encompasses coastal water?

Issue 2: Is it open to regional councils to identify both outstanding freshwater bodies and outstanding coastal water bodies in a regional policy statement? If so, does operative Regional Policy

Statement (RPS) Policy LW1A¹⁰ prevent such an approach?

Issue 3: Is it open to a regional council, in response to submissions on a proposed regional policy statement, to remove scheduled items that were contained in the notified version of the proposed regional policy statement? If so, does operative RPS Policy LW1A prevent such an approach in relation to water bodies that were listed as outstanding water bodies in the notified version of proposed Change 7 to the RPS?

Issue 4: Is undue prejudice created by amending Regional Policy Statement provisions that were part of prior Environment Court agreements and consent orders, one week after those provisions became operative?

7.2 The legal aspects of these issues will be discussed in the Council's legal submissions. However, I have provided some comments and context below insofar as these issues relate to my planning evidence.

Issues 1 and 2: outstanding water bodies and coastal waters

7.3 TToH et al. have requested the definition of OWB be amended to 'outstanding freshwater bodies', and a new term be included titled 'outstanding coastal waters'.¹¹

7.4 The decisions version of PC7 deliberately extends the definition of OWB (see paragraph 5.4) to include estuaries for the purposes of integrated management. In making this decision, the IHP noted (at paragraphs 3.30 and 5.9 of the Decisions report) "*Rivers and streams do not stop being "water bodies" when they enter the coastal environment. Their estuaries, lagoons and other water bodies*

¹⁰ 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.

¹¹ At Paragraph 7(e).

within the coastal environment remain intrinsically linked to those rivers and streams”.

7.5 I agree with the IHP’s reasoning and approach. Freshwater and coastal systems are interconnected, and outstanding values regularly extend between the freshwater and coastal environment. So, while there is a technical argument that outstanding water bodies may only be freshwater bodies outside of the coastal marine area (CMA), in my opinion the approach in PC7 is appropriate for the following reasons:

- (a) To the extent that a coastal water body is affected by freshwater, the NPSFM 2020 makes it clear that the NPS applies to that coastal water body in part 1.5, which reads *“This National Policy Statement applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving environments (which may include estuaries and the wider coastal marine area)”*.
- (b) Both the NPSFM and existing RPS policies expressly require the integrated management of freshwater and coastal waters. For example, NPSFM Policies 1, 3 and 4; and RPS Policies LW1, LW2 and LW3.
- (c) The identification, management and protection of outstanding water bodies is complex, and needs to be integrated between the two environments, to ensure adequate protection of all outstanding water bodies.
- (d) An integrated approach, where the term 'OWB' is defined to encompass those parts of the water body where both the NPSFM and NZCPS apply, reduces confusion for plan readers.
- (e) The inclusion of estuaries in the definition of OWB ensures a consistent framework is in place to identify and protect estuaries with outstanding values, in the same manner as outstanding freshwater bodies.

- (f) The NZCPS applies more broadly than just the CMA, with many of its policies applying to the coastal environment (for example, Policies 11, 13 and 15). As such, regardless of the definition of OWB the spatial overlap between the NPSFM and the NZCPS will still exist.
- (g) The term OWB is consistent with terminology within the NPSFM which is the primary driver of PC7.

7.6 In the course of evaluating the appropriateness of the relief sought, I have considered what mechanism might be used to implement this relief. For example, one approach would be to amend the definition of OWB by deleting the reference to 'estuaries' and include a new term titled 'outstanding estuaries.' **Appendix A** to my evidence sets out some alternative PC7 provisions that seek to achieve the same outcomes but treat the coastal waters separately. However, in my opinion this approach is not as appropriate as including freshwater and estuaries under the one term OWB, which will provide a greater level of clarity for plan users by recognising the interconnectedness of these areas rather than separating them into distinct categories. For example, ambiguity for plan users is likely to arise due to two similar terms and concepts being introduced (rather than one) which have virtually identical policy directives; and lay-plan users are unlikely to have awareness of a technicality in the RMA about what is and is not 'water' or a 'water body.'

7.7 I note that the scope of PC7 as notified and in the decisions version includes 'estuaries'¹², but not all coastal waters. Broadening the definition to include all coastal waters (i.e. from the line of mean high water springs to 12 nautical miles off the coast) would result in the PC7 policy framework potentially being applied to reefs, beaches, fishing areas, and diving spots etc.

7.8 Consequently there has been no rigour or evaluation to date if and how PC7 would apply policy direction to offshore or open coastal water spaces and places, unlike estuaries which are connected to freshwater bodies. I understand this

12 Which by definition includes lagoons.

would be beyond the scope of PC7 as notified. PC7 is a targeted plan change undertaken primarily to give effect to the NPSFM OWB provisions, while including a framework to manage those outstanding values that extend between freshwater/estuarine environments in a consistent manner. In my view, amending PC7 at this late stage of appeals to develop a framework for managing other coastal areas such as reefs, beaches, and diving spots risks inconsistency and a total lack of prior community input. I consider developing such a framework is more appropriately done as part of broader plan review process such as that intended by the Council (the Kotahi Plan), where tangata whenua, key stakeholders, and the wider community can all have opportunities to participate.

7.9 When I refer to PC7 including a framework to manage those outstanding values that extend between freshwater and estuarine environments in a consistent manner, I am particularly focussing on Policies LW1 and C1; Policies LW3A and C2; and Policies LW3B and C3 respectively.

7.10 In any event, based on my understanding of the TToH et al appeal, the particular coastal water bodies that they seek to include in PC7 are limited to the Ahuriri Estuary, the Tukituki Estuary and the Waitangi Estuary. I address the request to add these water bodies below.

Issue 3: deletion of waterbodies

7.11 TToH et al.¹³ have questioned the deletion of some water bodies from Schedule 25 of the decisions version of PC7 given that those water bodies had previously been recorded in the notified version of PC7 as having one or more outstanding values.

7.12 It is my understanding from the notices of appeal that the relief sought does not request that all water bodies removed in the decisions version of PC7 be reinstated, and that the relief is focused on those water bodies listed in Table A of

13 At Paragraph 5(f).

their appeal. As such, I have restricted my comments on Issue 3 to the following water bodies and/or associated values that TToH et al. has requested to be added or reinstated into Schedule 25:

- (a) The Lower Ngaruroro River, Lake Poukawa and Pekapeka Swamp, Tukituki River and Estuary. These water bodies, or parts thereof, are listed within Schedule 25 of the Council's preferred version of PC7, and the reasons for listing them are addressed below and in the evidence of the Council's other experts.
- (b) The Waitangi Estuary, Heretaunga Aquifer, Ruataniwha Aquifer, Karamu River. These water bodies, or parts thereof, were removed from Schedule 25 in the decisions version of PC7. The IHP's reasons for their removal and the reasons why I do not consider they warrant inclusion, are addressed in my evidence.
- (c) The Makaroro River. This water body was not in the notified version of PC7 or included in the decisions version of PC7. The IHP's reasons for not adding the Makaroro to Schedule 25 and the reasons why I do not consider it warrants inclusion, are addressed in part 19 of my evidence.
- (d) Lake Oingo and Lake Runanga. These water bodies were not listed in the notified version of PC7 or referred to in TTOH et al.'s original submission.

Issue 4: Timing of PC7's notification in relation to timing of PC5 becoming operative

7.13 As discussed in paragraph 5.25, almost 5 years passed between the 2014 consent order and settlement of the final PC5 appeal point relating to wetlands in 2019. During this time, the Council progressed the development of PC7, to a point where PC7 was ready to be publicly notified just one week after PC5 in its entirety became operative.

7.14 This timing was coincidental, and I note that the key PC5 procedural provision that informed sequencing of PC7’s preparation and notification relative to other plan changes in the Council’s [then] work programme (i.e. Policy LW1A) had been settled as between the parties and approved by way of a Court consent order on 26 September 2014. I do not consider the timing of notification of PC7 to be inappropriate in this context; rather, it was important in my view that PC7 had been progressed when it did, in parallel with the completion of the appeals process for PC5. If work on preparing PC7 was constrained to only commencing once PC5 had become operative (i.e. after 29 August 2019), then PC7 certainly would not now be at this advanced stage of the Schedule 1 RMA process and closer to having stronger policies in place for protection of OWBs’ outstanding and significant values in the Hawke’s Bay region.

8. APPEAL POINTS RELATING TO THE PC7 PROVISIONS

8.1 The Council’s understanding of the relief sought by appellants that remain unresolved on PC7 after mediation are discussed below.

Specific references to water quality and water quantity

8.2 TToH et al. have requested the following amendments relating to water quality and water quantity:

Objective LW1.1	<i>“..protecting the outstanding and significant values <u>and water quality</u> of outstanding <u>freshwater</u> bodies identified in Schedule 25”.¹⁴</i>
PC7	Amend to ensure sufficient water quantity is retained in OWBs to maintain and uphold their significant values, including fish passage. ¹⁵

14 At Paragraph 7(o)

15 At Paragraph 7(q).

- 8.3** I note that the PC7 policy framework provides high level guidance and direction which requires the protection of the outstanding and significant values of OWB. It does not stipulate how the outstanding or significant values for each OWB should be managed and is instead guided by overall principles and is deliberately flexible to enable a set of provisions to be tailored for each OWB individually in future RMA plan making process.
- 8.4** In my opinion, Objective LW1.1 is consistent with Policy 8 of the 2020 NPSFM, which requires the protection of the significant values of OWB. None of the 2020 NPSFM's objectives specifically refer to "protecting water quality" of OWBs. In my opinion it is not necessary to amend Objective LW1.1 to specify the protection of water quality, which is one of many potential significant values. Notwithstanding, if 'water quality' was to be identified as an outstanding (or even significant) value/feature of a particular OWB, then it would follow that the OWB's outstanding water quality value would need protecting (alongside any other outstanding and significant values that OWB may have).
- 8.5** I note that Policy LW1.1(dA) specifically relates to water quality and quantity, ensuring these aspects of an OWB are assessed, and protected where appropriate. In my opinion, PC7 therefore already provides appropriate guidance about water quality and quantity, such that no further amendments to Objective LW1.1 are necessary. The requirements of Policy LW1.1(dA) when combined with high level direction within PC7 which requires the protection of significant values of OWB, already provide appropriate direction about ensuring sufficient water quantity, including fish passage is maintained or improved using all relevant information at the time.

Temporal extent of outstanding and significant values

8.6 TToH et al. have requested the following amendments:

Policy LW1.2(iA) "Identify the spatial extent and temporal extent, where relevant, of the outstanding values and ~~the~~ significant values, ~~where relevant~~." ¹⁶

8.7 Policy LW1.2(iA) requires the spatial extent of an OWB's outstanding and significant values to be identified, where relevant, when preparing future plans. Considering the temporal extent means acknowledging the timeframes and variability over time which the value is significant or plays a crucial role. For example when considering aquatic bird habitat, this could include seasonal migrations, breeding patterns, or specific life stages that are vital for their survival and reproduction.

8.8 I consider that taking both the spatial and temporal aspects into account would ensure a comprehensive understanding of a particular value and relationship with the water body. In my opinion Policy LW1.2(iA) should be amended to refer to both the spatial and temporal extent of outstanding and significant values to be identified, where relevant. This change is additional to the changes shown in the revised provisions filed with the Court on 13 July 2023.

Significant values - abstractive and land use values

8.9 TToH et al. have requested PC7 be amended to exclude abstractive and land use values having the ability to be attributed a significant values status. ¹⁷

8.10 Policy LW1.2(bA) does not include an exhaustive list of values which can or cannot be classed as 'significant', instead referring to Appendix 1a and Appendix 1b of

¹⁶ At Paragraph 7(t).

¹⁷ At Paragraph 7(c), 7(m).

the NPSFM 2020, and any other values that are deemed relevant taking into account local circumstances. I note that Appendix 1b of the NPSFM 2020 expressly includes some abstractive or use values as other values that must be considered in relation to each FMU, such as:

- (a) Drinking water supply;
- (b) Transport and Tauranga waka;
- (c) Hydro-electric power generation;
- (d) Irrigation, cultivation, and production of food and beverages;
- (e) Commercial and industrial use.

8.11 Not all of these values would necessarily be identified as significant values in relation to a particular water body, but in my opinion if the NPSFM has expressly identified these as types of values that may need to be provided for in general under the NPSFM, it follows that it may be appropriate in some cases to identify them as significant in relation to an OWB.

8.12 Policy LW1.2(bA) enables future planning processes to identify a range of significant values while taking into account local circumstances. In my opinion the identification of significant values is best placed to occur during the future planning processes where all relevant parties, including iwi authorities, key stakeholders, and the wider community can participate in the decision as to which values should be identified and listed as significant values once a water body is found to be outstanding and the unique circumstances of each OWB can be taken into account.

8.13 As a result, in my opinion it is not appropriate to specify in PC7 which values could and could not be identified as significant values of outstanding water bodies.

Engagement and consultation

8.14 TToH et al. have requested the following amendments to PC7:

- (a) Amend policies that restrict iwi and hapū from being consulted on new and existing activities.¹⁸
- (b) Enable iwi and hapu to be involved as "affected parties" and submitters for resource consent applications.¹⁹

8.15 Although these requests have been included in the notice of appeal, I have been unable to locate the provisions these requests relate to in the appellant's original submission and further submission. This will be discussed further in the Council's legal submissions.

8.16 Neither the RMA nor national policy statements (such as the NPSFM and NZCPS) prescribe persons that consent authorities must consider to be 'affected parties' in relation to resource consent applications. Similarly, there are no prescribed requirements for consultation in relation to resource consent applications. PC7 does not include any new rules. PC7 did not propose to amend any existing rules in the RRMP or RCEP. In my opinion, it would be unusual for provisions in a regional policy statement (being those in scope of PC7) to prescribe mandatory consultation requirements and/or prescribe who consent authorities must involve in resource consent applications as 'affected parties.'

9. DEFINITIONS – 'OUTSTANDING' & 'OUTSTANDING WATER BODY'

9.1 TToH et al. has requested the definitions of 'outstanding' and 'outstanding water body' be amended to delete the reference to coastal waters and inclusion of the word 'regionally'. These are the only amendments sought in relation to these definitions , limiting the scope of potential changes to these specific requests.

18 At Paragraph 7(q).

19 At Paragraph 7(o).

9.2 Notwithstanding, in light of the changes to the OWB definition in the 2020 edition, where all water bodies identified in a WCO as outstanding are automatically OWB (see paragraph 5.11), in my opinion, it is appropriate to amend the definition to reflect this approach. Given no appellants have specifically requested these changes, they would need to be introduced through section 293 of the RMA. This will be further discussed in the Council's legal submissions.

Regional context

9.3 TToH et al. has requested the definition of 'outstanding' be amended to refer to "*....means regionally conspicuous, eminent, or remarkable in Hawke's Bay.*"²⁰

9.4 In my opinion, the definition of 'outstanding' in the decision version of PC7 is clear that an OWB must be conspicuous, eminent, or remarkable in a regional context by referring to 'Hawke's Bay'. Adding 'regionally' is unnecessary and could lead to confusion about whether the additional reference to 'regionally' introduces an additional qualifier that modifies the application of the definition or not.

Coastal waters

9.5 TToH et al. has requested the definitions of 'outstanding' and 'outstanding water body' be amended so they do not relate to estuaries²¹.

9.6 These amendments relate to a wider question of principle which is discussed in Paragraphs 7.3 - 7.10 and will be addressed in the Council's legal submission.

20 At Paragraph 7(k).

21 At Paragraph 7(o).

10. CONSISTENCY WITH THE NZCPS

10.1 Forest and Bird have requested that PC7 give proper effect to the New Zealand Coastal Policy Statement (**NZCPS**).

10.2 The NZCPS sets out objectives and policies to manage the coastal environment. The NZCPS is relevant to PC7 as it applies to those estuaries and lagoons that have an outstanding value which spans between the freshwater and coastal environment.

10.3 As discussed in paragraph 5.17, Policies 11, 13, and 15 of the NZCPS set out a number of provisions which relate to natural ecosystems, indigenous biodiversity, sites of biological importance, natural features, natural character and landscape values. These are just a few of the many significant values which can be associated with water bodies in the coastal environment.

10.4 In recognition that the national policy direction from the NZCPS is more restrictive than the NPSFM when it comes to managing these types of values, The IHP amended Policies C1, C2 and new Policy C3 to more closely reflect the direction set out in the NZCPS, by ensuring:

(a) When considering outstanding and significant indigenous biological diversity (biodiversity) values of an outstanding water body identified in Schedule 25, adverse effects are avoided when the outstanding and significant values meet the description(s) set out in Policy 11(a) of the NZCPS.

(b) When considering outstanding natural character, outstanding natural features and outstanding natural landscape values of an outstanding water body identified in Schedule 25, adverse effects are avoided in accordance to Policies 13.1(a) and 15(a) of the NZCPS.

10.5 In my opinion PC7 gives effect to the NZCPS in an appropriate way and to the extent that it is able to, given the scope of PC7.

11. SCHEDULE 25: DESCRIPTIONS

11.1 The IHP deleted Table 1 from Schedule 25 in the notified version of PC7 replacing it with the OWB identification screening criteria²².

11.2 Table 1 in the notified version provided an overview of the categories of outstanding values listed in the definition of OWB with a list of key sub values to help describe the outstanding value. The list of sub values were not all inclusive.

11.3 At Paragraph 7(f) of its notice of appeal, TToH et al. has requested Table 1 in Schedule 25 be reinstated and the contents in the first two columns headed "Outstanding Values" and "Descriptions" be expanded to include more content and detail on the outstanding cultural/spiritual values. I understand this request to be related to Paragraph 7(y) where the appellant requests Schedule 25 be amended to:

Include new descriptions for: 'Hauora o te wai'; 'Mana o te Wai'; 'Ki Uta ki Tai'; 'Mahinga kai area'; 'Mahinga kai site'; 'Whakapapa o te wai'; 'Kōhanga ika'; and "outstanding tikanga Māori values and significant values, where they are not already included".

11.4 I have been unable to locate the proposed new and expanded wording for each of these descriptions as requested by the Appellant. However, I agree with the IHP's deletion of Table 1 as an amendment consequential on the inclusion of the screening criteria. In my view, there is no need to have a list and description of the values anymore, because the values are addressed in the screening criteria. The descriptions of any particular outstanding value can be tailored to the specific values that are found to be present, following consideration against the screening criteria.

22 See Paragraph 3.54 of the IHP Decision.

12. SCHEDULE 25: OWB IDENTIFICATION SCREENING CRITERIA

Screening criteria – context

- 12.1** Several submitters to PC7 sought a more robust and transparent approach to identifying OWBs in the region²³, noting the selection process carried out for the 38 OWBs listed in PC7 lacked clarity, and requested the inclusion of clear and transparent criteria to assess outstandingness.
- 12.2** The IHP considered a number of alternatives to address these requests ranging from the evaluation of the 38 water bodies with no screening criteria and/or based on submissions, to the use of the screening criteria on its own, or together with expert and lay evidence.
- 12.3** After evaluating the alternatives to ensure consistency across all value sets and transparency in their decision making²⁴, the IHP adopted a set of OWB identification screening criteria, based on established tests for ‘outstandingness’ as set out in Water Conservation Order decisions and their own expertise, to inform their decisions as to which water bodies in Hawke’s Bay are genuinely outstanding. At the same time the IHP confirmed they would use the screening criteria, plus submissions, expert and lay evidence to determine OWB in Hawke’s Bay²⁵.
- 12.4** The OWB identification screening criteria adopted for use by the IHP were predominantly based on a Water Conservation Order Review component of the Community Environment Fund Outstanding Fresh Water Body Project undertaken in conjunction with Ministry for the Environment, Auckland Council, and Hawke’s Bay Regional Council²⁶. I note for the natural character value and geology value

23 See Paragraphs 3.59 & 3.72 of the IHP’s decision on PC7.

24 See Paragraph 3.61 of the IHP’s decision report.

25 See Paragraph 4.19 of the IHP’s decision.

26 See Page 59 of the WCO review report - <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/CEF-OFWB-Project-WCO-Review.pdf>

sets, the IHP relied on the criteria used by the local expert panel²⁷ and the description of the geology value set out in Table 1, respectively together with relevant parts of the 'outstanding' definition. Dr Greg Ryder has provided detailed comments on the PC7 OWB identification screening criteria and their consistency with WCO in his evidence.

12.5 I note at paragraph 3.55 of the PC7 decision the IHP advises *“we have slightly modified these criteria for inclusion into PC7 by changing the stem of the first sentence of each description to refer directly to outstanding water bodies, and by putting the criteria to determine if cultural and spiritual values are outstanding into a regional context”*.

12.6 The screening criteria replaced Table 1 in the notified version of PC7²⁸ which provided an overview of the outstanding values and their sub-values.

12.7 I refer to paragraph 3.60 of the PC7 decision where the IHP notes submitters at the hearing had no significant criticism of the screening criteria with those who commented generally supported the screening criteria being included in PC7 including experts for Director General of Conservation, Pernod Ricard Winegrowers, and Horticulture New Zealand²⁹.

12.8 The IHP then went on to test each water body against the screening criteria, and considered the definition of 'outstanding', plus information set out in submissions, and information provided as part of expert and lay evidence to determine those water bodies that clearly qualified as OWB for inclusion in Schedule 25³⁰. Through the process the IHP found the following 15 water bodies have outstanding values. Table 1 (of my evidence) lists the outstanding values and corresponding OWB set out in Schedule 25 of the decisions version of PC7. The inclusion of these water bodies in Schedule 25 has not been challenged in appeals.

27 See Page 9 of the Local Expert Panel's report - <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/1.-Other-supporting-information/Local-Expert-Panel-Report.pdf>

28 See Paragraph 3.54 of the IHP Decision.

29 See Paragraph 3.60.

30 See Paragraph 6.1 of IHP Decision.

Table 1 - Outstanding values and corresponding OWB listed in Schedule 25 of PC7 (decisions version)

Outstanding value	Outstanding water body
Ecology	<ul style="list-style-type: none"> • Lake Waikaremoana • Lake Whakakī – Te Paeroa Lagoon – Wairau Lagoon and Wetlands • Lakes Rotoroa and Rototuna (Kaweka Lakes) • Lake Whatumā • Ngamatea East Swamp • Ngaruroro River upstream of the Whanawhana cableway • Pōrangahau River and Estuary downstream of the Beach Road Bridge • Te Hoe River • Te Whanganui-a-Orotū (Ahuriri Estuary) • Tukituki River downstream of SH50 bridge to the sea, including the estuary
Cultural & spiritual	<ul style="list-style-type: none"> • Lake Tūtira (including Lake Waikōpiro) • Lake Whatumā • Pōrangahau River and Estuary downstream of the Beach Road Bridge • Te Whanganui-a-Orotū (Ahuriri Estuary) • Tukituki River downstream of SH50 bridge to the sea, including the estuary • Mainstem of the Tūtaekurī River upstream of the SH50 Bridge
Recreation	<ul style="list-style-type: none"> • Lake Waikaremoana • The Mohaka River Mainstem upstream of Willow Flat • Ngaruroro River upstream of the Whanawhana cableway • Taruarau River
Landscape	<ul style="list-style-type: none"> • Lake Waikaremoana • The Mohaka River Mainstem upstream of Willow Flat • Ngaruroro River upstream of the Whanawhana cableway • Te Hoe River
Geology	<ul style="list-style-type: none"> • Mangahouanga Stream
Natural character	<ul style="list-style-type: none"> • Lakes Rotoroa and Rototuna (the Kaweka Lakes), Lake Waikaremoana • The Mohaka River Mainstem upstream of Willow Flat • Ngamatea East Swamp • Ngaruroro River upstream of the Whanawhana cableway • Taruarau River

Screening criteria – key amendments within Council’s preferred version of PC7

12.9 TToH et al. and Forest and Bird have requested amendments to the screening criteria (this is discussed below). To assist with these requests, the Council engaged five experts: Rob Greenaway, Jens Rekker, Antoine Coffin, Dr Greg Ryder, and Dr Andrew Hicks to provide comments. The screening criteria have been amended in accordance with expert input and included in the Council’s preferred version of the screening criteria filed with the Court on 13 July 2023. I

refer to the evidence of Dr Andrew Hicks, Rob Greenaway, Dr Greg Ryder, Antoine Coffin³¹ and Jens Rekker who discuss these amendments.

12.10 In my opinion the screening criteria provide clarity and certainty to plan users around which water bodies are likely to qualify as OWBs.

12.11 The key aspects of the screening criteria filed with the Court on 13 July 2023 are discussed in turn.

Schedule 25 - initial introduction paragraph

12.12 The Council's preferred version of PC7 amends the initial introduction paragraph in Schedule 25 to read:

"The Outstanding Water Body Screening Criteria enables are used to assist with the identification of water bodies and/or estuaries, or parts thereof, in Hawke's Bay, that have one or more outstanding cultural and spiritual, recreation, landscape, geology, natural character or ecology value(s) that are conspicuous, eminent and/or remarkable in the context of the Hawke's Bay Region (see Part 2 of Schedule 25). To qualify as outstanding, a water body must at least clearly and unambiguously meet the screening criteria for the relevant value set and the definition of 'outstanding' set out in this Plan³²."

12.13 On page 55 of their decision, the IHP confirmed that "to qualify as outstanding a water body must clearly and unambiguously meet at least one of the screening criteria" and "OWBs must be conspicuous, eminent and/or remarkable in the context of the Hawke's Bay Region".

12.14 The amendments set out above reflect the process undertaken by the IHP to identify OWB in Hawke's Bay and ensure plan users understand how the framework guides the identification of OWBs within the context of Plan Change 7.

³¹ See Paragraph 5.7 – evidence of Antoine Coffin.

³² Unless the water body, or part thereof, is identified as having one or more outstanding values in a water conservation order.

In particular, I consider it worthwhile to include the last sentence to ensure it is clear that the screening criteria are not the only aspect of the test, and that a water body must also meet the definition of OWB.

Ecology (native aquatic birds, native fish, indigenous plant communities, other ecology values)

12.15 The screening criteria for this value category has been amended significantly in accordance with expert input. In addition, a new value set titled “*habitat for above ground ecology values not otherwise provided for in the screening criteria*” has been added to the screening criteria.

12.16 I refer to the evidence of Dr Andrew Hicks who discusses these amendments in detail and Dr Greg Ryder who discusses their alignment with WCOs.

Cultural and spiritual (tāngata whenua)

12.17 The screening criteria for this value category has been amended significantly in accordance with expert input. In particular, List A(a) has been amended to ensure the values are consistent with the definition of ‘outstanding’ within PC7, and List A(b) has been amended to ensure the features are outstanding, in accordance with te ao Māori values, mātauranga Māori, and tikanga by the descendant groups most closely associated with the water body.

12.18 I refer to the evidence of Antoine Coffin who discusses these amendments in detail and Dr Greg Ryder who discusses their alignment with WCOs.

Recreation (angling amenity, rafting, kayaking, jet boating)

12.19 The screening criteria for this value category have been revised slightly based on expert input. Specifically, the evidential sources have been updated, and the angling amenity screening criteria have been restructured for improved plan readability, while still retaining the original criteria.

12.20 I refer to the evidence of Rob Greenaway who discusses these criteria and any associated amendments and Dr Greg Ryder who discusses their alignment with WCOs.

Landscape (wild and scenic)

12.21 The screening criteria for this value category have been largely retained as per the decisions version of PC7. I refer to the evidence of Dr Greg Ryder who discusses these criteria and their alignment with WCOs.

Karst system / subterranean waters

12.22 The screening criteria for this value category have been largely retained as per the decisions version of PC7. I refer to the evidence of Jens Rekker who discusses these criteria and Dr Greg Ryder who discusses their alignment with WCOs.

Natural Character

12.23 The screening criteria for this value category have been largely retained as per the decisions version of PC7. I refer to the evidence of Jens Rekker who discusses these criteria and Dr Greg Ryder who discusses their alignment with WCOs.

Geology

12.24 The screening criteria for this value category have been largely retained as per the decisions version of PC7. I refer to the evidence of Jens Rekker who discusses these criteria and Dr Greg Ryder who discusses their alignment with WCOs.

13. SCREENING CRITERIA – TToH et al. REQUESTS

13.1 TToH et al. have requested the screening criteria be deleted or amended as discussed below. I note that TToH et al. has not specifically sought amendments to ecology, recreation, karst system / subterranean waters, and geology value categories.

Delete OWB identification screening criteria

- 13.2** The IHP adopted the screening criteria on the basis that it "...provides a more robust basis for assessing which water bodies in Hawke's Bay are genuinely outstanding"³³. It assists with the identification of truly outstanding water bodies in Hawke's Bay.
- 13.3** Removing the screening criteria from PC7 would lead to the identification of OWBs in Hawke's Bay solely based on the definitions of "outstanding" and "outstanding water body." This approach would introduce a high degree of subjectivity and inconsistency and be reliant on a comparative type of approach to determine which water bodies have outstanding values.
- 13.4** Deleting the screening criteria impacts on plan clarity by removing the direction for decision makers and the community in terms of when a water body is potentially outstanding. In my opinion, this would likely lead to more debates and discussions about what exactly constitutes an OWB, particularly as different groups often have a range of varying opinions. That very same challenge was identified in the drafting preparation of PC5 mid-2012 and was one of the drivers for PC7 – a focussed plan change on OWBs – being prepared and notified as part of the Council's overall programme to implement the NPSFM (and NZCPS to the extent that is relevant to the scope of PC7).
- 13.5** Deleting the screening criteria is likely to require increased judgement with less guidance and make it harder and more time consuming to distinguish OWBs within the region. This increases costs and ultimately will delay the process of protecting water bodies which are outstanding. It is my opinion that the screening criteria should be retained in Schedule 25.

33 See Paragraph 3.61.

Amend the screening criteria – natural character

- 13.6** TToH et al. have requested the natural character value category be amended to specifically refer to "natural functions and processes", "integrity of aquifer recharge" and "natural spring flows".
- 13.7** I refer to the evidence of Jens Rekker³⁴ and, in reliance on his evidence, I conclude that the value category already includes these factors so no amendments are necessary.

Amend the screening criteria – cultural and spiritual values set

- 13.8** TToH et al. have requested that content of List A be deleted from the cultural and spiritual value category.
- 13.9** I refer to the evidence of Antoine Coffin³⁵ and, in reliance on his evidence, I conclude that the deletion of List A would make the screening criteria less clear by removing direction around what makes a water body outstanding for cultural and spiritual values in terms of the Hawke's Bay region.
- 13.10** The inclusion of List A also helps to make it clear that water bodies need to be recognised as outstanding in the context of the region. Deleting this requirement would reduce clarity and make the cultural and spiritual values assessment inconsistent with other value sets, as other water bodies have screening criteria and are required to be outstanding in the regional context.

Amend the screening criteria – provision of evidence

- 13.11** TToH et al. have requested that the screening criteria be amended so the provision of evidence is not a requirement for matters raised in submissions to be taken into account.

34 See Paragraph 7.4 – evidence of Jens Rekker.

35 See Paragraph 5.7 – evidence of Antoine Coffin.

13.12 In my opinion, decision makers need evidence before them in order to determine if a value is outstanding. There are numerous evidence types which can be considered, such as expert and lay evidence, studies, and investigations. I note that evidence can be delivered in a variety of ways, such as orally at a hearing, via affidavit, or written documents.

13.13 In my opinion the provision of evidence in support of claimed outstanding features is an important part of the planning process and the current evidence requirements set out in the screening framework should be retained.

Amend the screening criteria – one regionally outstanding value

13.14 TToH et al. have requested that the screening criteria be amended so one regionally outstanding value can qualify as outstanding.

13.15 Part 1 of Schedule 25 confirms that the screening criteria are used to assist with the identification of water bodies that have one or more outstanding values within the context of the Hawke's Bay region. Referring to the definition of OWB set out in paragraph 5.4, in my opinion the PC7 planning framework already allows for water bodies with one regionally outstanding value to qualify as OWB.

Amend the screening criteria – multiple criteria in different lists

13.16 TToH et al. have requested that the screening criteria be amended so the requirement to meet multiple criteria in different lists is not a prerequisite for a water body to qualify as outstanding.

13.17 In order for a water body to qualify as outstanding for the ecology, recreation, or karst system / subterranean waters value sets, the water body must meet at least one matter in List A and all matters in List B within the relevant value set. The screening framework assists with the identification of OWB in Hawke's Bay and in some cases this requires the matters in two lists to be met in order to properly test the values that are present.

13.18 While it is conceivable that the criteria could be constructed in different ways to achieve the same outcome, in my view the way they are organised in lists is appropriate and clear. In particular, the requirements in List B (in particular to provide evidence in support of any matters met in List A) are all requirements that I consider genuinely need to be met.

Amend the screening criteria – national or international values

13.19 TToH et al. have requested that the screening criteria be amended so regionally outstanding values are not subservient to national or international values in terms of a water body being included in Schedule 25.

13.20 For the purposes of PC7, all water bodies are considered within a regional context in accordance with the definition of OWB. While some water bodies within Hawke’s Bay may have national or international prominence, these water bodies are still part of the overall pool of water bodies being considered within the region.

14. SCREENING CRITERIA – FOREST AND BIRD REQUESTS

14.1 Forest and Bird have requested that the screening criteria be amended to include any additional matters supported through expert evidence.

14.2 I note that the screening criteria have been amended in accordance with expert input and included in the Council’s preferred version of the screening criteria filed with the Court on 13 July 2023. I refer to the evidence of Dr Andrew Hicks, Rob Greenaway, Dr Greg Ryder, Antoine Coffin and Jens Rekker who discuss these amendments.

15. SCHEDULE 25: LISTING OF SIGNIFICANT VALUES FOR OUTSTANDING WATER BODIES

15.1 TToH et al., Forest and Bird, and the Māori Trustee³⁶ have requested the significant values deleted from Schedule 25 in the decisions version of PC7 be reinstated into Schedule 25.

15.2 In the notified version of PC7, Schedule 25 featured a [then proposed] list of 38 outstanding water bodies and identified their corresponding outstanding value(s). Of those 38 proposed OWBs, only eight also had simplistic listings of significant value(s). I understand that the significant values listed for those eight proposed OWBs were sourced at that time from yet-to-be-finalised work by the ‘TANK Collaborative Stakeholder Group’ as part of its work assisting the Council to prepare a plan change (PC9) for the Tutaekuri, Ahuriri, Ngaruroro and Karamu catchment area (the TANK catchments). There are currently sixteen appeals lodged with the Environment Court on PC9 decisions. The varied values and importance of freshwater resources in the TANK catchment area is central to many points in those appeals. The identification of what might be ‘significant values’ of water bodies in the TANK catchment remains unsolved in PC9 proceedings. In my opinion, the degree of challenge over importance of wide-ranging values of water in the TANK catchments means that the ‘significant values’ as previously included in Schedule 25 of PC7’s notified version should not be “reinstated” as requested by the appellants.

15.3 The identification of significant values was not undertaken as part of PC7. During preparation of PC7, it is my understanding that the Council had to prioritise its resources and so PC7 remained focussed on assessing and identifying values of water bodies that might be outstanding. Assessment and identification of potentially ‘significant values’ of the region’s water bodies (or assessing significant values of at least the region’s outstanding water bodies), was deemed out of scope in early 2017³⁷.

36 Māori Trustee’s request relates to Lake Poukawa.

37 See Paragraph 74 of Section 32 report.

- 15.4** To date, there has been no comprehensive nor robust process by the Council in consultation with mana whenua and communities about what are (or aren't) significant values of all of the region's waterways. Nor has there been any similar robust process identifying the significant values of all OWBs. I understand that it is the Council's intention to populate the "significant values" column of Schedule 25 in the upcoming Kotahi plan programme. At Paragraph 3.9 of the PC7 decisions report, the IHP stated *"we think this [the Kotahi Plan] 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"*.
- 15.5** I agree with the IHP's findings in this regard. As the Kotahi Plan would be a combined policy statement and regional plan prepared under the RMA, that means mana whenua, stakeholders, communities and all other persons with an interest in water resources in the Hawke's Bay region will have an opportunity to influence Council's identification of significant values of those OWBs identified in Schedule 25 (whatever those OWBs may be after PC7's appeal proceedings are resolved).
- 15.6** I further note the significant values are titles only and lack descriptions which specify precisely what the significant value(s) relates to. For example, the title 'hydrological' is a common significant value but it lacks further detail, context and meaning in all cases.
- 15.7** As I note above, PC9 has now been appealed. I understand no further information or detail has been provided from the TANK Group around the significant values associated with OWB in the TANK catchments.
- 15.8** I do not consider that the absence of any significant values being listed or otherwise identified in Schedule 25 at this time is a fatal flaw in PC7's policy approach. PC7 was notified with 'blanks' to filled in via a future RMA Schedule 1 process as thirty of those 38 waterbodies provisionally included in the notified version of Schedule 25 did not have any significant values listed. In my opinion, PC7 does not preclude decision-makers (e.g. consent authorities) from

considering a wide variety of freshwater values in their decision-making, whether or not those values are outstanding, or important, or prompted by requirements of the NPSFM, or something else. In time, I expect Schedule 25 would be fully populated with outstanding values and also significant values of the respective OWBs, but that should only occur after an open public consultation process is followed such as that intended by the Council's Kotahi Plan programme (or at least as per Schedule 1 of the RMA and what would be necessary to give full effect to the NPSFM).

15.9 While the Kotahi Plan is being developed, significant values of OWB will still be protected. First, the NPSFM directs that this occur, through Policy 8. The NPSFM also includes provisions protecting values such as ecosystem health, human contact, threatened species and mahinga kai.

15.10 Secondly, the policies within PC7 include requirements to protect significant values of OWB, and specifically address how this is to occur in the period before significant values are included in the RRMP. In particular:

(a) Policies LW3A and LW3B require the protection of the named outstanding values, which will inherently protect the most significant values associated with the particular water body.

(b) Before the significant values of OWB are identified, Policy LW3B requires consideration of the extent to which the activity may adversely affect any relevant values identified in Appendix 1A or 1B of the NPSFM 2020, where there is evidence that such values are present in the particular water body.

15.11 Accordingly, in my view the provisions appropriately ensure the protection of significant values despite the significant values (other than outstanding values) not being listed at this stage.

16. SCHEDULE 25: LIST OF OUTSTANDING WATER BODIES

16.1 As discussed above, the IHP:

- (a) tested each water body against the screening criteria, and considered the definition of ‘outstanding’, plus information set out in submissions, and information provided as part of expert and lay evidence to determine those water bodies that clearly qualified as OWB for inclusion in Schedule 35³⁸.
- (b) confirmed *“to qualify as outstanding a water body must clearly and unambiguously meet at least one of the screening criteria”* and *“OWB’s must be conspicuous, eminent and/or remarkable in the context of the Hawke’s Bay Region”*.

16.2 The amendments, as per the Council’s preferred version of PC7, to the initial introduction paragraph in Part 1 of Schedule 25 clarify this process.

16.3 I have made my comments below within this context based on the modified screening criteria set out in the Council’s preferred version of PC7 filed with the Court on 13 July 2023.

Appellants’ requests

16.4 TToH et al., Forest and Bird, and the Māori Trustee have requested one or more water bodies and/or values be included in Schedule 25. Each are discussed below under the relevant titles.

16.5 I note for each of these water bodies a summary of values report which sets out all information collected to 2020. The Council’s other expert witnesses have noted their reliance on these reports and have also identified where they have obtained additional information or evidence since those reports were prepared.

38 See Paragraph 6.1 of IHP Decision.

17. HERETAUNGA AQUIFER

17.1 The Heretaunga Aquifer was listed in Schedule 25 of the notified version of PC7 as having outstanding geology values and outstanding cultural and spiritual values as set out below:

Table 2: Heretaunga Aquifer - outstanding values listed in the notified version of PC7

Outstanding value	Description of outstanding value
Geology	The Heretaunga aquifer system consists of interconnected layers of water bearing gravels, sands, silts, clays and shells located beneath the Heretaunga Plains
Cultural and spiritual	The Heretaunga aquifer system is a taonga of Ngāti Kahungunu, who know the aquifer system as the “Heretaunga Ararau Haukūnui”, being a large water resource, represented in the many rivers, creeks, the small tributaries fed by underground springs, springs of water, swampy ground, swimming holes, rock pools and quick sands.

17.2 After considering the information set out in the Heretaunga Aquifer - Summary of Values (2020)³⁹, along with the information contained in TToH et al.’s original submission, written evidence from Maurice Black and Marei Apatu on behalf of TToH et al., and other relevant submissions and further submissions, the PC7 IHP⁴⁰ issued decisions and removed the Heretaunga Aquifer from Schedule 25 noting:

“We had no substantive evidence that it has outstanding cultural and spiritual values on a region wide basis, and we do not consider its

39 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Heretaunga-Aquifer-ID2-Summary-of-Values-Aug-2020-5482.pdf>

40 Dr Brent Cowie, Dr Roger Maaka, and Christine Scott.

geology to be conspicuous, eminent and/or remarkable in the region”.

17.3 TToH et al. have appealed the IHP’s decision and requested the Heretaunga Aquifer be included in Schedule 25 for outstanding ecology, cultural and spiritual, geology, and natural character values. Each of these value sets are discussed below.

17.4 To date, the Council has not received any additional information in support of TToH et al.’s request since the PC7 decision was released.

Ecology

17.5 TToH et al. have requested that the groundwater dependent ecosystems of the Heretaunga Aquifer be recognised as an outstanding ecology value. I have been unable to confirm the scope for this request given groundwater dependent ecosystems were not an outstanding value in the notified version of PC7, and this request was not raised in TToH et al.’s original submission. This will be discussed further in the Council’s legal submissions.

17.6 In any event, I refer to the evidence of Jens Rekker who has considered this request. Mr Rekker states that he has not seen any information that identifies outstanding ecology values that would enable those particular values to meet the threshold. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Heretaunga Aquifer is not regionally outstanding for ecology values even if there was scope for this aspect.

Cultural and Spiritual

17.7 TToH et al. have requested that the cultural and spiritual values of the Heretaunga Aquifer be recognised as an outstanding value, particularly noting Whakapapa o te Wai, Wahi Taonga, Waiora, Mauri.

17.8 I refer to the evidence of Antoine Coffin⁴¹ where he agrees with the IHP findings, noting there is insufficient evidence the Heretaunga Aquifer meets the modified screening criteria set out in Council's preferred version of PC7. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Heretaunga Aquifer is not regionally outstanding for cultural and spiritual values.

Geology

17.9 TToH et al. have requested that the Heretaunga Aquifer be recognised as having outstanding geology values for its hydrological connections.

17.10 I refer to the evidence of Jens Rekker⁴², where he explains that the Geology Screening Criteria and Karst criteria are not met by the Heretaunga Aquifer. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Heretaunga Aquifer is not regionally outstanding for geology values.

Natural character

17.11 TToH et al. have requested that the Heretaunga Aquifer be recognised as having outstanding natural character values for its integrity of aquifer recharge. I note have been unable to confirm the scope for this request given natural character was not an outstanding value in the notified version of PC7, and this request was not raised in TToH et al.'s original submission. This will be discussed further in the Council's legal submissions.

17.12 In any event, I refer to the evidence of Jens Rekker⁴³, who has considered this request. He finds the Heretaunga Aquifer does not meet the natural character screening criteria. Therefore, on the basis of the PC7 planning framework and

41 See Paragraph 7.13 – evidence of Antoine Coffin.

42 See Paragraph 9.23 – evidence of Jens Rekker.

43 See Paragraph 9.23 – evidence of Jens Rekker.

that evidence, I conclude that the Heretaunga Aquifer is not regionally outstanding for natural character values even if there was scope for this aspect.

18. RUATANIWHA AQUIFER

18.1 The Ruataniwha Aquifer was listed in Schedule 25 of the notified version of PC7 as having outstanding geology values and outstanding cultural and spiritual values as set out below:

Table 3: Ruataniwha Aquifer - outstanding values listed in the notified version of PC7

Outstanding value	Description of outstanding value
Geology	The Ruataniwha aquifer system consists of interconnected layers of water bearing gravels, sands, silts, clays and shells located beneath the Ruataniwha Plains.
Cultural and spiritual	The Ruataniwha aquifer system is part of Heretaunga Tamatea’s traditional rohe.

18.2 After considering the information set out in the Ruataniwha Aquifer - Summary of Values (2020)⁴⁴, along with the information contained in TToH et al.’s original submission, written evidence from Maurice Black and Marei Apatu on behalf of TToH et al., and other relevant submissions and further submissions, the PC7 IHP⁴⁵ issued decisions and removed the Ruataniwha Aquifer from Schedule 25 noting:

“We find it does not have any outstanding values as its geology is not conspicuous, eminent and/or remarkable in the region, and we had no evidence that it met the screening criteria for having outstanding cultural or spiritual values”.

⁴⁴ <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Ruataniwha-Aquifer-ID25-Summary-of-Values-Aug-2020-5504.pdf>

⁴⁵ Dr Brent Cowie, Dr Roger Maaka, and Christine Scott.

18.3 TToH et al. have appealed the IHP's decision and requested the Ruataniwha Aquifer be included in Schedule 25 for outstanding ecology, cultural and spiritual, and geology values. Each of these value sets are discussed below.

18.4 To date, the Council has not received any additional information in support of TToH et al.'s request since the PC7 decision was released.

Ecology

18.5 TToH et al. have requested that the groundwater dependent ecosystems of the Ruataniwha Aquifer be recognised as an outstanding value. I have been unable to confirm the scope for this request given groundwater dependent ecosystems were not an outstanding value in the notified version of PC7, and this request was not raised in TToH et al.'s original submission. This will be discussed further in the Council's legal submissions.

18.6 In any event, I refer to the evidence of Jens Rekker who has considered this request. Mr Rekker states that he has not seen any information that identifies outstanding ecology values that would enable those particular values to meet the threshold. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Ruataniwha Aquifer is not regionally outstanding for ecology values even if there was scope for this aspect.

Cultural and Spiritual

18.7 TToH et al. has requested that the cultural and spiritual values of the Ruataniwha Aquifer be recognised as an outstanding value noting Waiora, Wāhi taonga, Mauri, Whakapapa o te Wai.

18.8 I refer to the evidence of Antoine Coffin⁴⁶ where he agrees with the IHP findings, noting there is insufficient evidence the Ruataniwha Aquifer meets the modified screening criteria set out in Council's preferred version of PC7.

18.9 Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Ruataniwha Aquifer is not regionally outstanding for cultural and spiritual values.

Geology

18.10 TToH et al. have requested that the Ruataniwha Aquifer be recognised as having outstanding geology values for its hydrology.

18.11 I refer to the evidence of Jens Rekker⁴⁷, where he highlights that the Geology Screening Criteria and Karst criteria are not met by the Ruataniwha Aquifer. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude the Ruataniwha Aquifer is not regionally outstanding for geology values.

19. MAKARORO RIVER

19.1 The Makaroro River was not included in the notified version of Proposed Plan Change 7 (PC7). Its inclusion as an outstanding water body was requested in a submission by Kathryn Bayliss, which was supported 'in part' in a further submission by Te Taiwhenua o Heretaunga et al (TToH et al.).

46 See Paragraph 7.23 – evidence of Antoine Coffin.

47 See Paragraph 9.38 – evidence of Jens Rekker.

19.2 After considering submissions from Dan Elderkamp, Adrienne Tully, Kathryn Bayliss, and Gerard Pain, and other relevant submissions and further submissions, the PC7 IHP⁴⁸ issued decisions and concluded that the Makaroro River did not support any outstanding values, noting:

“The river was not one of the 42 water bodies considered by the expert panel, so it was not assessed for cultural and spiritual values. In our view the submissions did not substantiate that such values exist on the Makaroro River, and none of the submitters appeared at the hearing. Similarly, no substantive evidence was provided in submissions that other values associated with the Makaroro River are outstanding. The only criteria that it could possibly meet would be for outstanding natural character and/or ecological values. However we agree with officers’ conclusion that it met none of the screening criteria”.

19.3 TToH et al. in their appeal have requested the Makaroro River be included in Schedule 25 for outstanding ecology, landscape, and geology values. Each of these value sets are discussed below.

19.4 To date the Council has not received any additional information in support of TToH et al.’s request since the PC7 decision was released.

Ecology

19.5 TToH et al. have requested that the Makaroro River be recognised as having outstanding ecology values, noting indigenous plant habitat, and indigenous habitat.

19.6 The IHP did not find the ecology values of the Makaroro River to be outstanding noting no substantive evidence was provided in submissions⁴⁹.

48 Dr Brent Cowie, Dr Roger Maaka, and Christine Scott.

49 See Paragraph 4.12.

19.7 I refer to the evidence of Dr Andrew Hicks⁵⁰ where he notes there is insufficient evidence the Makaroro River meets the modified screening criteria set out in Council's preferred version of PC7. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Makaroro River is not regionally outstanding for ecology values.

Landscape

19.8 TToH et al. have requested that the Makaroro River be recognised as having outstanding landscape (scenic) values.

19.9 The IHP did not find the landscapes values of the Makaroro River to be outstanding noting no substantive evidence was provided in submissions⁵¹. I note that the screening criteria for the landscape value set within the decisions version of PC7 has been largely retained. Therefore, on the basis of the PC7 planning framework and the absence of evidence contrary to the IHP's findings, I conclude that the Makaroro River is not regionally outstanding for landscape values.

Geology

19.10 TToH et al. have requested that the Makaroro River be recognised as having outstanding geology values, noting 'hydrological'.

19.11 The IHP did not find the geology values of the Makaroro River to be outstanding noting no substantive evidence was provided in submissions⁵².

19.12 I refer to the evidence of Jens Rekker⁵³, where he highlights that the Geology Screening Criteria are not met by the Makaroro River. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Makaroro River is not regionally outstanding for geology values.

50 See Paragraph 9.78 – evidence of Andrew Hicks.

51 See Paragraph 4.12.

52 See Paragraph 4.12.

53 See Paragraph 9.64 – evidence of Jens Rekker.

20. NGARURORO RIVER & WAITANGI ESTUARY

20.1 The Ngaruroro River and Waitangi Estuary were listed in Schedule 25 of the notified version of PC7 as having outstanding cultural and spiritual, recreation, ecology, natural character, landscape, and geology values as set out below:

Table 4: Ngaruroro River & Waitangi Estuary - Outstanding values listed in the notified version of PC7

Outstanding values	Description of outstanding value
Cultural and spiritual, recreation, ecology, natural character, landscape, and geology	<p>The Ngaruroro River is the largest river flowing across the Heretaunga Plains.</p> <p>The full name of the Ngaruroro River is Ngaru-o-nga-upokororo-mai-i-mokotuararo-ki-Rangatira, with the river taking its name from an incident in which a dog belonging to the ancient deity Mahu startled some small fish known as upokororo. As the shoal of fish dashed away they caused ngaru or ripples in the water</p> <p>The Ngaruroro River flows through a variety of landscapes along its length. In its upper parts the Ngaruroro River is in a near natural state with impressive scenery flowing through indigenous forest, tussock and scrubland and spectacular narrow rocky gorges with vertical schist walls. The Ngaruroro River gorge is one of the best two gorges in Hawke’s Bay. From Whanawhana, the Ngaruroro River opens to wide braided channel which is the best example in the region, and highly valued for jet boating and as a bird habitat supporting high numbers of banded dotterel and pied stilt.</p> <p>Upstream of Kuripapango, the Ngaruroro River is in excellent ecological condition, with pristine water quality and one of</p>

	<p>the healthiest macroinvertebrate communities in the region.</p> <p>The upper Ngaruroro River contains a high quality habitat for both native fish and salmonid trout, being largely natural with good water quality. The upper river is particularly renowned for its salmonid angling, whitewater boating opportunities and its impressive scenery.</p> <p>The lower river and estuary area support a high diversity of native birds, some of which are classified as at risk or declining or globally endangered, including the black-billed gull, black fronted tern and Australasian bittern.</p> <p>The Ngaruroro River supports a high diversity of fish in its lower river and estuary areas, including a number of native fish which are classified as at risk or declining. In its upper parts the Ngaruroro River contains a high quality habitat for both native fish and salmonid trout, being largely natural with good water quality.</p> <p>The Ngaruroro River is a taonga of Heretaunga Tamatea, Mana Ahuriri, and Ngāti Tūwharetoa. The headwaters are commonly expressed as being at the heart of the Kaimanawa Ranges, the River forms a natural highway from coast to mountains and there are many settlements and sites of significance along its banks, including the presence of Pā, Kāinga, urupā, Wāhi Tapu, wāhi taonga and wai tapu.</p> <p>The Ngaruroro River has significance as a mahinga kai and has been a significant marker of land interests from ancient times. A pou once stood at Whanawhana which represents an important political demarcation between hapū.</p>
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20.2 After considering the information set out in the Ngaruroro River & Waitangi Estuary- Summary of Values (2020)⁵⁴, along with the information contained in

54 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Ngaruroro-River-ID18-Summary-of-Values-Aug-2020-5497.pdf>

TToH et al.'s original submission, written evidence from Maurice Black and Marei Apatu on behalf of TToH et al., written evidence from Matthew Brady on behalf of the Department of Conservation, and other relevant submissions and further submissions, the PC7 IHP⁵⁵ issued decisions and:

- (a) Confirmed the Ngaruroro River upstream of the Whanawhana cableway has outstanding natural character, landscape values, rainbow trout habitat, and recreation (trout fishery, whitewater rafting, kayaking) values.
- (b) Removed the Waitangi Estuary and remaining sections and/or values of the Ngaruroro River from Schedule 25, noting:

“While the upper catchment does have very high water quality, so do other, largely unmodified headwater catchments in Hawke’s Bay (and indeed throughout much of the nation). High water quality is nothing outstanding. Nor is the presence of low numbers of blue duck (5% of the regional population), nor are the presence of native fish such as long finned eels and koaro, which are widespread (but often uncommon) throughout headwater catchments in both Hawke’s Bay and the nation as a whole. We are not aware of any outstanding geological features. None of these characteristics or values are conspicuous, eminent and/or remarkable in the context of the Hawke’s Bay Region.

The lower Ngaruroro River downstream of Whanawhana is a highly modified braided river that flows between stop banks designed to prevent flooding of Hastings and other local townships, and extensive tracts of farmland. The lower reaches of the river share the Waitangi Estuary, its outlet to the sea, with the Clive and Tūtaekurī Rivers.

55 Dr Brent Cowie, Dr Roger Maaka, and Christine Scott.

The Waitangi Estuary can have seasonal algal blooms, which affect habitat quality. Despite this the estuary, including the Clive River, is listed as a Significant Conservation Area in the Regional Coastal Environment Plan, where it is recognised as containing a nationally significant fisheries habitat. The lower river and estuary support 22 species of fish, and there are native bird populations within the estuary. Many estuaries however support fish and native bird populations, and the Waitangi Estuary has significantly lower natural values than does the Ahuriri Estuary.

The lower river is used extensively for jet boating, but is a Class 1 (easy) river, which in our view means it cannot qualify as outstanding as it is not conspicuous, eminent and/or remarkable in the context of the Hawke's Bay Region.

In his evidence for the Director General of Conservation, Mr Brady discussed the wildlife values of the Ngaruroro River from Whanawhana to State Highway 2. Surveys he and the Regional Council undertook in 2018 and 2019 respectively found 1193 and 916 banded dotterels on this reach of the river, with the Council also recording 1112 banded dotterels on the Tukituki River and its tributaries. The Ngaruroro River supports the third largest single river population of banded dotterels in the country, and bird numbers per km of river are also high. However banded dotterels are only listed as nationally vulnerable on the NZCTS, and we do not consider a substantial population of banded dotterel alone makes a river reach an OWB"⁵⁶.

- 20.3** TToH et al. and Forest and Bird appealed the IHP's decision and requested the Ngaruroro River and Waitangi Estuary be reinstated into Schedule 25 for the values discussed below.

56 IHP Decision Report at 6.91 – 6.95.

20.4 I note that since the PC7 decision was released, the Environment Court has issued an interim decision which discusses the aquatic bird habitat values provided by the Ngaruroro River.⁵⁷

Ecology

20.5 TToH et al.⁵⁸ and Forest and Bird have requested Ngaruroro River and Waitangi Estuary be recognised as outstanding for its indigenous fish and bird habitat. The IHP did not find either of these values to be outstanding.

20.6 I note that in 2022, the Environment Court issued an interim decision on the Ngaruroro River Water Conservation Order application, which found:

(a) Both the upper and lower sections of the Ngaruroro River to support nationally outstanding avifauna habitat. In particular, the interim decision found:

(i) The upper waters to support an outstanding whio habitat.

(ii) The mainstem of the lower river has outstanding values for avifauna based on the following factors:

A. The populations of black fronted dotterel and banded dotterel being more than 5% of the national population.

B. The diversity of threatened or at risk and other native bird species.

C. The quality of habitat, including braided river habitat.

(b) The case was not made for identifying indigenous fish habitat (or fish passage) as an outstanding value in either the upper or lower Ngaruroro River.

57 Interim Report of the Environment Court re Ngaruroro Clive Water Conservation Order [2022] NZEnvC 227. <https://owhaoko.com/app/uploads/2022-NZEnvC-227-Nga-Kaitiaki-O-Te-Awa-O-Ngaruroro.pdf>

58 Lower river only.

- 20.7** Given the NPSFM’s definition of ‘outstanding water body’ includes a **water body, or part thereof, identified in a WCO having one or more outstanding values**, the upper and lower Ngaruroro River will automatically be recognised as an ‘outstanding water body’ for its avifauna habitat values once the WCO is finalised. On this basis I conclude that the Ngaruroro River should be included in Schedule 25. This is reflected in the Council’s preferred version of PC7 filed with the Court.
- 20.8** With respect to the native fish habitat, I refer to the evidence of Dr Andrew Hicks⁵⁹ where he highlights that the ecology Screening Criteria for native fish habitat are not met by the Ngaruroro River. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Ngaruroro River is not regionally outstanding for geology values.

Cultural/Spiritual

- 20.9** TToH et al. have requested lower Ngaruroro River and Waitangi Estuary be recognised as having outstanding cultural and spiritual values for Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai, and Wahi taonga, Kōhanga ika respectively.
- 20.10** The IHP did not find these values to be outstanding.
- 20.11** I refer to the evidence of Antoine Coffin⁶⁰ where he agrees with the IHP findings, noting there is insufficient evidence the lower Ngaruroro River and Waitangi Estuary meet the modified screening criteria set out in Council’s preferred version of PC7. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the lower Ngaruroro River and Waitangi Estuary are not regionally outstanding for cultural and spiritual values.

59 See Paragraph 9.16 – evidence of Andrew Hicks.

60 See Paragraphs 7.5 and 7.9 – evidence of Antoine Coffin.

Landscape

20.12 Forest and Bird have requested that the lower Ngaruroro River be recognised as having outstanding landscape values. The IHP found the Ngaruroro River upstream of the Whanawhana cableway to have outstanding landscape (wild and scenic) values.⁶¹ However, the IHP did not find those values to be present in the lower Ngaruroro River. In paragraph 6.92 the IHP noted:

“The lower Ngaruroro River downstream of Whanawhana is a highly modified braided river that flows between stop banks designed to prevent flooding of Hastings and other local townships, and extensive tracts of farmland. The lower reaches of the river share the Waitangi Estuary, its outlet to the sea, with the Clive and Tūtaekurī Rivers.”

20.13 I note that the screening criteria for the landscape value set within the decisions version of PC7 has been largely retained. Therefore, on the basis of the PC7 planning framework and given there is no evidence I am aware of to suggest the IHP’s findings were incorrect, I conclude that the lower Ngaruroro River is not regionally outstanding for landscape values.

Recreation

20.14 TToH et al. have requested the lower Ngaruroro River be recognised as outstanding for its jetboating values. The IHP did not find this value to be outstanding.

20.15 I refer to the evidence of Rob Greenaway where he agrees with the IHP conclusion, noting there is insufficient evidence the lower Ngaruroro River meets the modified screening criteria set out in Council’s preferred version of PC7. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the lower Ngaruroro River is not regionally outstanding for jetboating values.

61 See paragraph 6.88.

Geology

- 20.16** TToH et al. have requested the lower Ngaruroro River be recognised as outstanding for its geology values, specifically hydrology.
- 20.17** I refer to the evidence of Jens Rekker⁶², where he highlights that the Geology Screening Criteria are not met by the lower Ngaruroro River. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the lower Ngaruroro River is not regionally outstanding for geology values.

Natural character

- 20.18** TToH et al. have requested the lower Ngaruroro River be recognised as having outstanding natural character values for its hydrological functions and processes, and integrity of aquifer recharge. Forest and Bird have requested the lower Ngaruroro River be recognised as having outstanding natural character values for its braided river character.
- 20.19** The IHP found the Ngaruroro River upstream of the Whanawhana cableway to have outstanding natural character values but did not find the lower Ngaruroro River to be outstanding.
- 20.20** I refer to the evidence of Jens Rekker⁶³, where he finds the lower Ngaruroro River does not meet the natural character screening criteria. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the lower Ngaruroro River does not have regionally outstanding natural character values.

62 See Paragraph 9.77 – evidence of Jens Rekker.

63 See Paragraph 9.77 – evidence of Jens Rekker.

21. LAKE POUKAWA AND PEKAPEKA SWAMP

21.1 The Lake Poukawa and Pekapeka Swamp was listed in Schedule 25 of the notified version of PC7 as having outstanding cultural and spiritual values as set out below:

Table 5: Lake Poukawa and Pekapeka Swamp - outstanding values listed in the notified version of PC7

Outstanding value	Description of outstanding value
Cultural and spiritual	<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 arose as a result of a disagreement between two local chiefs Te Rangihirawea and Te Rangikawhiua over fishing</p>

	rights in the lake. 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.
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21.2 After considering the information set out in the Lake Poukawa and Pekapeka Swamp - Summary of Values (2020)⁶⁴, along with the information contained in written evidence from Maurice Black on behalf of TToH et al. and Matthew Brady on behalf of the Department of Conservation, and other relevant submissions and further submissions, the PC7 IHP⁶⁵ issued decisions and removed Lake Poukawa and Pekapeka Swamp from Schedule 25 noting:

“We do not have sufficient evidence that Lake Poukawa and the Pekapeka Swamp meet the tests for having outstanding cultural or spiritual values”.

21.3 TToH et al., Forest and Bird, and the Māori Trustee appealed the IHP’s decision and requested Lake Poukawa and Pekapeka Swamp be included into Schedule 25 for outstanding ecology and cultural and spiritual values. Each of these value sets are discussed below.

21.4 The Council has received additional information from the Māori Trustee and Forest and Bird in support of their requests since the PC7 decision was released.

Ecology

21.5 The Māori Trustee, TToH et al. and Forest and Bird have requested that Lake Poukawa and Pekapeka Swamp be recognised as having outstanding ecology values.

64 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Lake-Poukawa-Pekapeka-ID6-Summary-of-Values-Aug-2020-5485.pdf>

65 Dr Brent Cowie, Dr Roger Maaka, and Christine Scott.

21.6 Forest and Bird have provided additional information in support of their request that the aquatic bird habitat provided by Lake Poukawa and Pekapeka Swamp be recognised as outstanding.

21.7 I refer to the evidence of Dr Andrew Hicks⁶⁶. Dr Hicks has assessed all the evidence provided to date. His conclusions and my resulting conclusions are set out below.

(a) Dr Hicks concludes that the aquatic bird habitat provided by Lake Poukawa and Pekapeka Swamp meets the modified screening criteria and is outstanding in a regional context. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that Lake Poukawa and Pekapeka Swamp are regionally outstanding for ecology values (aquatic bird habitat). This is reflected in the Council's preferred version of PC7 filed with the Court.

(b) Dr Hicks concludes that the indigenous plant community at Lake Poukawa and Pekapeka Swamp does not meet the screening criteria. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that Lake Poukawa and Pekapeka Swamp are not regionally outstanding for indigenous plant communities.

Cultural and spiritual

21.8 The Māori Trustee and TToH et al. have requested that Lake Poukawa and Pekapeka Swamp be recognised as having outstanding cultural and spiritual values. TToH has specifically referred to Waiora, Wāhi taonga, Mauri, Whakapapa o te Wai.

21.9 The Māori Trustee have provided additional information in support of their request since the PC7 decision was released.

66 See Paragraphs 9.58 and 9.67 – evidence of Andrew Hicks.

21.10 I refer to the evidence of Antoine Coffin⁶⁷. Mr Coffin has assessed all the evidence provided to date and concludes the cultural and spiritual values of Lake Poukawa and Pekapeka Swamp meets the modified screening criteria and are outstanding in a regional context. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that Lake Poukawa and Pekapeka Swamp are regionally outstanding for cultural and spiritual values. This is reflected in the Council's preferred version of PC7 filed with the Court.

22. LAKE RŪNANGA

22.1 TToH et al. have requested Lake Rūnanga be included in Schedule 25 for the outstanding ecology values (bird habitat) and outstanding cultural and spiritual values (wahi taonga).

22.2 Lake Rūnanga was not included in the notified version of PC7 and TToH et al.'s original submission did not request its inclusion as an OWB. As such, I have been unable to confirm the scope for this request. This will be discussed further in the Council's legal submissions.

23. LAKE OINGO

23.1 TToH et al. have requested Lake Oingo be included in Schedule 25 for the outstanding ecology values (bird habitat) and outstanding cultural and spiritual values (wāhi taonga).

23.2 Lake Oingo was not included in the notified version of PC7 and TToH et al.'s original submission did not request its inclusion as an OWB. As such, I have been unable to confirm the scope for this request. This will be discussed further in the Council's legal submissions.

67 See Paragraph 7.36 – evidence of Antoine Coffin.

24. TUKITUKI RIVER AND ESTUARY

24.1 The Tukituki River and Estuary were listed in Schedule 25 of the notified version of PC7 as having outstanding cultural and spiritual, ecology, landscape & geology values as set out below:

Table 6: Tukituki River and Estuary - Outstanding values listed in the notified version of PC7

Outstanding values	Description of outstanding value
Cultural and spiritual, ecology, landscape & geology	<p>The Tukituki River and Estuary area is a large, 145km long braided river system in central Hawke’s Bay. It is a tupuna awa (ancestral river) and has significant cultural values. Legend tells of how the Tukituki River came into existence. Two taniwha lived in a large lake situated on what is now the Ruataniwha Plains. They fought for possession of a boy who accidentally fell into the lake and their struggles formed the Waipawa and Tukituki Rivers which drained the lake.</p> <p>The Tukituki River is part of an iconic Hawke’s Bay landscape where it passes by Te Mata Peak.</p> <p>The Tukituki River has significant wildlife values with a high diversity of native birds. The Lower Tukituki River and Estuary area supports the largest population of wading birds in Hawke’s Bay, and has significant regional populations of black fronted tern, banded dotterel and pied stilt. The Tukituki River is a taonga of Heretaunga Tamatea. There is evidence of at least 7-8 centuries of occupation by Maori, making this area one of the earliest settled. The river was traditionally the main transport route through Heretaunga. Historically, the Tukituki catchment had an abundance of mahinga kai and natural resources. In particular, the river mouth and estuary was renowned for the abundance of fish species. The estuary area continues to</p>

	<p>support important traditional fisheries.</p> <p>On the lower section of river, there are a number of sites that relate to the actions of the ancient tīpuna, Māhu. On the north bank is a white rock, Papaotihi. It is said the rock was once a man who was fishing in the river, but he was turned to stone by Māhu. A little further on is another rock, Tauhou, where Māhu turned another man to stone. Down river near Te Kauhanga pā is another spot touched by Māhu. Here he put a curse on the paepae and people died. Kahuranaki maunga, a site upstream of Kaiwaka on the rivers eastern bank, is of special significance to all hapū of Heretaunga Tamatea. After the arrival of the Ngāti Kahungunu tīpuna to Heretaunga, the Tukituki River was established as the first boundary between Taraia and Te Aomatarahi.</p>
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24.2 After considering the information set out in the Tukituki River and Estuary - Summary of Values (2020)⁶⁸, along with the information contained in TToH et al.'s original submission, written evidence from Maurice Black and Marei Apatu on behalf of TToH et al., written evidence from Matthew Brady on behalf of the Department of Conservation, and other relevant submissions and further submissions, the PC7 IHP⁶⁹ issued decisions and:

- (a) Confirmed the Tukituki River downstream of SH50 bridge to the sea has outstanding cultural and spiritual and ecology values (habitat for native aquatic birds).
- (b) Removed the remaining sections and/or values of the Tukituki River and estuary from Schedule 25 noting:

68 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Tukituki-River-ID31-Summary-of-Values-Aug-2020-5510.pdf>

69 Dr Brent Cowie, Dr Roger Maaka, and Christine Scott.

“We do not find the Tukituki River to have outstanding landscape or geological values. While some of the landscape in the upper catchment is impressive, it is not conspicuous, eminent and/or remarkable in the context of the Hawke’s Bay Region”.

24.3 TToH et al.’s appeal has requested the Tukituki River in its entirety be included in Schedule 25 for the value sets are discussed below.

24.4 To date, the Council has not received any additional information in support of TToH et al.’s request since the PC7 decision was released.

Ecology

24.5 TToH et al. have requested the native fish habitat and native bird habitat values of the Tukituki River in its entirety be identified as outstanding.

24.6 I note the IHP found the Tukituki River downstream of SH50 bridge to the sea to have outstanding ecology values (habitat for native aquatic birds).

24.7 I refer to the evidence of Dr Andrew Hicks⁷⁰ where he highlights that the ecology Screening Criteria for native fish and aquatic bird habitat are not met by the Tukituki River above SH50. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Tukituki River above SH50 bridge is not regionally outstanding for ecology values.

Cultural/Spiritual

24.8 TToH et al. have requested the Tukituki River in its entirety be recognised as having outstanding cultural and spiritual values noting Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai.

70 See Paragraph 9.46 – evidence of Andrew Hicks.

24.1 I note the IHP found the Tukituki River downstream of SH50 bridge to the sea to have outstanding cultural and spiritual values.

24.2 I refer to the evidence of Antoine Coffin⁷¹ where he notes there is insufficient evidence the Tukituki River above the SH50 bridge meet the modified screening criteria set out in Council's preferred version of PC7. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Tukituki River above the SH50 bridge is not regionally outstanding for cultural and spiritual values.

25. KARAMŪ RIVER

25.1 The Karamū River was listed in Schedule 25 of the notified version of PC7 as having outstanding cultural and spiritual values as set out below:

Table 7: Karamū River - outstanding values listed in the notified version of PC7

Outstanding value	Description of outstanding value
Cultural and spiritual	<p>The Karamū River begins at lake Poukawa, flowing through Havelock North and the Karamū area to join the Clive River at Pakowhai. It was once the main channel of the Ngaruroro River, but following a major flood in 1867 the Ngaruroro River changed its course to its current course, leaving behind a smaller flow, named the Karamū in reference to the Karamū trees which grew in abundance in this area.</p> <p>The Karamū River is taonga of Ngāti Hori, an important freshwater fishery for hapū. Maori have a long history of occupation and travel on and around the Karamū River.</p>

71 See Paragraph 7.19 – evidence of Antoine Coffin.

- 25.2** After considering the information set out in the Karamū River - Summary of Values (2020), along with the information contained in TToH et al.'s original submission, written evidence from Maurice Black and Marei Apatu on behalf of TToH et al., and other relevant submissions and further submissions, the PC7 IHP issued decisions and removed the Karamū River from Schedule 25 noting:

“The Karamū River was listed in Proposed PC7 as having outstanding cultural and spiritual values. 7.4 The river begins at Poukawa, and travels through Havelock North to join the Clive River at Pakowhai. It was once the main channel of the Ngaruroro River, but following a major flood in 1867 the Ngaruroro changed its course, leaving behind a smaller flow, named the Karamū in reference to the Karamū trees which grew in abundance in this area.

Today the Karamū River is a very modified watercourse which is constrained by stop banks that aim to prevent inundation of the floodplain. The river is a taonga of Ngāti Hori, and we acknowledge their efforts and achievements in improving and restoring the riparian margins of the river, and helping restore its mauri.

There was insufficient evidence that the Karamū River met the screening criteria.”

- 25.3** TToH et al. have appealed the IHP's decision and requested the Karamū River be included in Schedule 25 for outstanding cultural and spiritual, geology, and natural character values. Each of these value sets are discussed below.

- 25.4** To date, the Council has not received any additional information in support of TToH et al.'s request since the PC7 decision was released.

Cultural and Spiritual

- 25.5** TToH et al. have requested the Karamū River be recognised as having outstanding cultural and spiritual values noting Wāhi Taonga, and Whakapapa o te Wai.

25.6 I refer to the evidence of Antoine Coffin⁷² where he notes there is insufficient evidence the Karamū River meets the modified screening criteria set out in Council's preferred version of PC7. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Karamū River is not regionally outstanding for cultural and spiritual values.

Geology

25.7 TToH et al. have requested the Karamū River be recognised as having outstanding geology values noting hydrological.

25.8 I refer to the evidence of Jens Rekker⁷³, where he finds the Karamū River does not meet the geology or karst/ subterranean waters screening criteria. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Karamū River is not regionally outstanding for geology values.

Natural character

25.9 TToH et al. have requested the Karamū River be recognised as having outstanding natural character values, noting its natural spring flow.

25.10 I refer to the evidence of Jens Rekker⁷⁴, where he finds the Karamū River does not meet the natural character or the karst/ subterranean waters screening criteria. Therefore, on the basis of the PC7 planning framework the Karamū River does not have regionally outstanding natural character values.

26. CONCLUSION

26.1 My key conclusions are set out in paragraph 4.1.

72 See Paragraph 7.27 – evidence of Antoine Coffin.

73 See Paragraph 9.54 – evidence of Jens Rekker.

74 See Paragraph 9.54 – evidence of Jens Rekker.

Belinda Harper

Date: 11 August 2023

Appendix A - Alternative plan provisions for 'outstanding estuaries'

Key

- The draft consent order changes are shown in ~~black strikethrough~~ and black underline
- The additional changes HBRC prefers post the PC7 decision are shown in ~~red strikethrough~~ and red underline (as previously circulated to the Court and parties on 13 July 2023).
- The amendments that would be necessary if the Court prefers to distinguish between outstanding fresh water bodies and outstanding estuaries are shown in ~~blue strikethrough~~ and blue underline. These are **not** HBRC's preferred changes, but provided to assist the Court.

Note 1: The base document is the PC7 decision version, and the marked up changes are limited to those that have been put forward since the PC7 decision was released.

Note 2: The draft consent order changes were agreed by all parties and lodged with the Court in November 2022.

1. Insert new sub-clause into Policy LW1.2(bA) to read:

“(x) include regional plan provisions to manage outstanding and significant values that span between outstanding water bodies and outstanding estuaries in an integrated and consistent way.”

2. Amend Objective 11 (in RRMP Chapter 3.2 – the sustainable management of coastal resources) to read:

“OBJ 11 Protection of the outstanding and significant values of ~~those~~ outstanding ~~water bodies within the Coastal Environment~~ estuaries identified in Schedule 25.”

3. Amend explanation and reasons following RRMP Chapter 3.2's objectives so paragraphs 3.2.8A and 3.2.8B read:

“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~~ values that span between the freshwater and coastal environments. 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 in an integrated and consistent way.

3.2.8B 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~~ estuaries. 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.~~

4. Amend Policy C1 (in RRMP Chapter 3.2 – the sustainable management of coastal resources) to read:

“POL C1 Problem solving approach – outstanding ~~water bodies in the coastal environment~~ estuaries

1. When preparing regional plans, in relation to any relevant outstanding ~~water bodies~~ estuaries identified in Schedule 25:

~~a) Apply Policy LW1.2(bA)(i), (iA and (ii).~~

aa) Carry out an assessment which identifies the significant values of that outstanding estuary which are shared with the connected outstanding water body.

ab) Where relevant, identify the spatial extent of the outstanding values and significant values which span between the outstanding estuary and connected outstanding water body.

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~~ estuary, 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~~ estuary 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~~ estuary, 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~~ estuary 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 body~~ estuaries identified in Schedule 25.”

5. Amend Policy C2 (in RRMP Chapter 3.2 – the sustainable management of coastal resources) to read:

“POL C2 Resource Consent Decision Making Criteria – Outstanding ~~Water Bodies~~ Estuaries 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, ~~once the relevant catchment based regional plan change⁷⁵ is operative or after 31 December 2025, whichever is sooner~~, a consent authority must take into account:
- a) the extent to which the activity may adversely affect outstanding value(s) identified in Schedule 25 of the relevant outstanding ~~water body~~ estuary.
 - b) the extent to which the activity may adversely affect the significant values (if any) identified in Schedule 25 of the relevant outstanding ~~water body~~ estuary.
 - c) whether, in order to protect the ~~water body's~~ estuary's outstanding values and significant values:
 - i. the location of the proposed activity is appropriate; and
 - ii. time limits, including reasonable or other limits on the activity may be appropriate.
 - d) If there is a conflict between protecting an outstanding and a significant value of the same ~~water body~~ estuary, protection of the outstanding value must be given ~~preferential protection~~ priority, subject to the hierarchy of obligations in Te Mana o te Wai, as set out in Objective 2.1 of the NPSFM 2020.
 - e) If adverse effects from the activity on the outstanding and significant value(s), of the relevant outstanding ~~water body~~ estuary, 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 classified as a discretionary activity or a non-complying activity by a rule in a regional coastal environment plan:

⁷⁵ A catchment based plan change which provides for any identified outstanding water body

- a) a take, use, damming, or diversion of water from an outstanding ~~water body~~ estuary.
 - b) a discharge of a contaminant into an outstanding ~~water body~~ estuary.
 - 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~~ estuary.
 - d) a land use consent for any new structure in, on, under or over the bed of an outstanding ~~water body~~ estuary.
 - e) a land use consent for any new or increased disturbance of the bed of an outstanding ~~water body~~ estuary 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~~ estuary is identified in Part 2 of Schedule 25; and/or
 - b) where the significant value(s) of the outstanding ~~water body~~ estuary is identified in Part 2 of Schedule 25.”

6. Amend Policy C3 (in RRMP Chapter 3.2 – the sustainable management of coastal resources) to read:

“POL C3 Resource Consent Decision Making Criteria – Outstanding ~~Water Bodies~~ Estuaries 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, ~~once the relevant catchment based regional plan change⁷⁶ is operative or after 31 December 2025, whichever is sooner~~, a consent authority must take into account:
- a) The extent to which the outstanding value(s) of the relevant outstanding ~~water body~~ estuary, 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~~ estuary, identified in Schedule 25, are present in the same state as

⁷⁶ A catchment-based plan change which provides for any identified outstanding ~~water body~~.

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~~ estuary, 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~~ estuary, 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~~ estuary, 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 classified as a discretionary activity or a non-complying activity by a rule in a regional coastal environment plan:

a) a take, use, damming, or diversion of water from an outstanding ~~water body~~ estuary.

b) a discharge of a contaminant into an outstanding ~~water body~~ estuary.

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~~ estuary.

d) a land use consent for a structure in, on, under or over the bed of an outstanding ~~water body~~ estuary.”

7. Amend Principal reasons and explanations following RRMP Chapter 3.2’s policies so paragraphs 3.2.18A, 3.2.18B and 3.2.18C read:

“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 (such as estuaries) in coastal areas, in the same manner as outstanding freshwater bodies~~ values that span between the freshwater and coastal environments. 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, and 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 estuary~~ are identified during the plan development phase, and that any future plan provisions protect the outstanding ~~water bodies' and~~ significant values that span between outstanding water bodies and outstanding estuaries in an integrated and consistent way.

- 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~~ estuaries. 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~~ estuaries. 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 estuary's~~ significant and outstanding values are appropriately protected. Policy C2 takes effect after new provisions have been included in the Hawke's Bay Regional Coastal Environment Plan giving effect to the New Zealand Coastal Policy Statement. Policy C3 provides guidance to resource consent applicants and decision-makers when assessing existing activities in or around outstanding ~~water bodies~~ estuaries. 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 estuary~~. 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~~ estuaries. 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."

8. Amend definition of 'Outstanding' to read:

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

9. Amend definition of 'Outstanding water body' to read:

*“**Outstanding water body** means freshwater bodies ~~and estuaries~~, or parts thereof, identified in Schedule 25 that have one or more outstanding cultural, spiritual, recreation, landscape, geology, natural character or ecology value(s), or those water bodies identified as having one or more outstanding values in a water conservation order.”*

10. Add new definition of 'Outstanding estuary' to read:

*“**Outstanding estuary** means an estuary, or part thereof, that:*
a) has one or more outstanding cultural, spiritual, recreation, landscape, geology, natural character or ecology value(s) and
b) is connected to an outstanding waterbody and
c) is identified in Schedule 25.”

11. Amend heading of Schedule 25 so it reads:

“Schedule 25: Outstanding Water Bodies and Outstanding Estuaries”

12. Amend Part 1 of Schedule 25 so it reads:

*“**Part 1 – Outstanding Water Body and Outstanding Estuary Identification Screening Criteria***

The Outstanding Water Body and Outstanding Estuary Screening Criteria ~~enables~~ are used to assist with the identification of water bodies and/or estuaries, or parts thereof, in Hawke’s Bay, that have one or more outstanding cultural and spiritual, recreation, landscape, geology, natural character or ecology value(s) that are conspicuous, eminent and/or remarkable in the context of the Hawke’s Bay Region (see Part 2 of Schedule 25). To qualify as outstanding, a water body or connected estuary must at least clearly and unambiguously meet the screening criteria for the relevant value set and the definition of ‘outstanding’ set out in this Plan⁷⁷.

~~The Outstanding Water Body Screening Criteria is used to identify outstanding water bodies in Hawke’s Bay (see Part 2 of Schedule 25).~~ Information held by HBRC on the outstanding and significant values of ‘outstanding water bodies’ and ‘outstanding estuaries’ is available on the HBRC website, www.hbrc.govt.nz under #OWB.

...”

⁷⁷ Unless the water body, or part thereof, is identified as having one or more outstanding values in a water conservation order.

13. Amend Part 2 of Schedule 25 so it reads:

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

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

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

Table 1: Outstanding Water Bodies and Outstanding Estuaries in Hawke’s Bay

...”

14. Amend heading of Column 2 in Table 1, Part 2 of Schedule 25 so it reads:

“Outstanding water body /outstanding estuary”

15. Amend heading of Part 4 of Schedule 25 so it reads:

“Outstanding Water Bodies and Outstanding Estuaries in Hawke’s Bay – Indicative location map”