

IN THE MATTER	of an appeal under Clause 14 of Schedule 1 of the Resource Management Act 1991
AND IN THE MATTER	Proposed Plan Change 7 (Outstanding Water Bodies) to the Hawke's Bay Regional Resource Management Plan (RRMP)
BETWEEN	Royal Forest and Bird Protection Society of New Zealand Inc Appellant
AND	Hawke's Bay Regional Council Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND
BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

Dated 5 August 2021

**To: The Registrar
Environment Court
Wellington**

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird'; 'the Society') appeals against Hawke's Bay Regional Council's / Independent Hearing Panel's decision on Proposed Plan Change 7 (Outstanding Water Bodies) to the Hawke's Bay Regional Resource Management Plan (RRMP).
2. Forest & Bird made a submission and further submission on the proposed plan change.
3. Forest & Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The decision was publicly notified on 26 June 2021. Forest & Bird received notice on the same date.
5. The decision was made by the Independent Hearing Panel on behalf of the Hawke's Bay Regional Council.
6. Forest & Bird is willing to participate in alternative dispute resolution.
7. Forest & Bird's appeal is on parts of the decision relating to the following matters:
 - a. The application of new 'screening criteria' to outstanding waterbodies listed in the notified version of PC7 and the inclusion of that criteria into PC7;
 - b. The removal of listed outstanding waterbodies from Schedule 25;
 - c. The removal of descriptions and values of outstanding water bodies listed in Schedule 25 and the implications of this in terms of context for an assessment of environmental effects and decision making.
 - d. The removal of Part 1 – Overview of categories of outstanding values and their sub-parts from Schedule 25
 - e. The exclusion of provisions for the identification and protection of additional waterbodies that may be outstanding beyond those listed in Schedule 25, which Forest & Bird's submission sought to include.

- f. The inclusion of policies that mean protection of Scheduled (in Schedule 25) outstanding waterbodies will not be effective until a relevant catchment-based plan change has come into effect or 2025.
- g. The exclusion of assessment criteria used by the experts that identified the notified PC7 outstanding water bodies, which Forest & Bird's submission sought to include.
- h. The inclusion of provision for existing activities and distinction from new activities, including in the coastal environment.
- i. The intent to give effect to the NZCPS to the extent it relates to outstanding water bodies, including the inclusion of references to specific policies of the NZCPS in provisions and the exclusion of aspect of those policies of the NZCPS.
- j. Failure to give proper effect to the NZCPS.

The reasons for appeal, and relief sought

8. In addition to the reasons set out in the table below, the general reasons for Forest & Bird's appeal are that the decision:
 - a. does not give effect to the National Policy Statement on Fresh water management (NPSFM);
 - b. That even if the 'new' screening OWB criteria were appropriate under the NPSFM, the decision to remove waterbodies from the plan change is inconsistent with how the decision considers the criteria are to be applied
 - c. does not give effect to the New Zealand Coastal Policy Statement (NZCPS);
 - d. is not consistent with Part 2 of the Resource Management Act ('the Act');
 - e. does not implement the Council's functions under s 30 of the Act;
 - f. does not represent best resource management practice.
9. Additional reasons for the appeal and the relief sought are set out in Table 1 below. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal.

Forest & Bird also seeks any consequential changes made necessary by the relief sought below.

Attachments

10. The following documents are attached to this notice of appeal:

- a. A copy of the relevant parts of the panel's decision;
- b. A list of names and addresses of persons to be served with a copy of this notice;
and
- c. A copy of Forest & Bird's submission and further submission to the Hawke's Bay Regional Council.

11. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the Appellant on request.

Dated: 5 August 2021



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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

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

***How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).

TABLE 1: ADDITIONAL REASONS FOR APPEAL, AND RELIEF SOUGHT TO THE HB REGIONAL RESOURCE MANAGEMENT PLAN

Specific provisions to the matters appealed	Reasons for appeal (in addition to those set out in paragraph 7 and 8 above)	Relief (Forest & Bird changes are shown in <u>underline</u> and strike through to the decision version of PC7)
Chapter 3.1A		
OBJ LW 1	<p>It is the identification of an outstanding value(s) that makes a water body or part of a water body outstanding, and it is the significant values of outstanding water bodies that are to be protected.</p> <p>The provision limits protection only to those water bodies “identified in Schedule 25” and does not provide protection to any water body that may meet the “outstanding” requirements/criteria but is not currently listed in Schedule 25.</p> <p>Forest & Bird therefore considers that the Plan must, in addition to listing known outstanding water bodies, include the outstanding values that would identify a water body is outstanding in the regional policy statement or regional plan. This will enable an assessment to be undertaken through a consent application or plan review processes determine whether a waterbody is identified in the RPS/RP as outstanding.</p> <p>Forest & Bird considers that greater certainty is needed in the plan as to the outstanding values that make a waterbody outstanding, and the significant values that will be protected.</p> <p>Explanation:</p> <p>This approach reflects the approach to “identification” in the meaning of significant natural area under the NES for Plantation Forestry, which is that “identified”, includes by a map, a schedule, or a description or by using criteria. Provision for identification to include by assessment as part of consent process even where areas have also been listed in a plan schedule or shown on maps is taken in many recent RPS’s and plans.</p>	<p>Amend OBJ LW 1 as follows: “protecting the outstanding and significant values of <u>outstanding</u> water bodies identified in Schedule 25 <u>in Hawke’s Bay</u>;”</p> <p>Add a new policy for the identification of outstanding water bodies that meet one or more of the criteria of outstanding values.</p> <p>Amend Policy POL LW1 2.bA to provide direction on the identification of significant values and their protection as set out below.</p>

	<p>This is a best practice approach to protection in Forest & Birds experience and should be applied to the protection of outstanding water bodies under the NPSFM.</p> <p>The NPS-FM requirement for “protecting the significant values of outstanding freshwater bodies” is not limited to those listed in a plan.</p> <p>The provision should protect any water body that may now or in future (through restoration efforts or regeneration) meet outstanding criteria, whether listed in the schedule or not.</p> <p>While the wording with respect to outstanding water bodies has changed very little between NPSFM updated in 2017 and the NPSFM 2020, there are other changes which will have implications for the protection of significant values of outstanding waterbodies. In particular, the objective which sets out priorities and the policy direction to give effect to Te Mana o te Wai.</p>	
POL LW1 1.cC	<p>Forest & Bird considers that clause cC should be reinstated with an amendment to ensure that protection is not limited to only those outstanding water bodies in Schedule 25, through the inclusion of outstanding value criteria.</p> <p>The addition of outstanding value criteria is appropriate to give effect to the NPSFM.</p> <p>There is no need to specify consideration of local or regional circumstances to determining significant values of outstanding water bodies as such matters would automatically be a consideration where relevant to the value contributing to an outstanding water body. However to ensure an integrated management approach with requirements for protection for other purposes, eg s6(c) and the NZCPS, policy direction should make it clear that protection may be required beyond that achieved through protecting significant values of outstanding water bodies.</p> <p>Having considered the amendments made in the decision we agree with the identification of significant values can sit under clause 2. bA of this policy.</p>	<p>Forest & Bird seeks to reinstate clause cC with amendments to read as follows:</p> <p><u>“cC assesses water bodies to determine outstanding water bodies where one or more of the outstanding values Criteria, Part 1 of Schedule 25, are met, and where they are outstanding, assess them to determine significant values of those water bodies under 2. bA below.</u></p> <p><u>Protection is not to be limited to significant values determined under Part 1A of Schedule 25 and must include protection for other purposes as necessary to achieve the purpose of the Act and give effect to higher order documents, as part of an integrated management approach to freshwater.</u></p>

		<p>Amend Schedule 25 Part 1 to provide Outstanding values Criteria:</p> <p>Add criteria for or of outstanding values that determine whether a part of or a water body is outstanding. The criteria that include the Expert Panel’s “OWB Assessment Criteria” and any additional matters supported through expert evidence that would determine an outstanding value in relation to any and all values that may be identified under the NPSFM including through the NOF process.</p> <p>Amend Policy POL LW1 2.bA to provide direction on the identification of significant values and their protection as set out below.</p>
POL LW1 1.d and dA)	<p>As above, we are concerned that this provision limits protection only to those water bodies “identified in Schedule 25”.</p> <p>Water quality and quantity are critical elements for protecting significant values and specific reference is supported with a small amendment to clarify this intent.</p> <p>The amendments better achieve the objective and policy 8 of the NPSFM</p>	<p>Amend d) as follows: “protects the outstanding and significant values of those outstanding water bodies identified <u>by applying the methodology in Part 1A of in-Schedule 25</u>”</p> <p>Amend dA) as follows: “maintains, and where necessary enhances, the water quality of those outstanding water bodies identified in Schedule 25, and where appropriate, protects the water quantity of those outstanding water bodies <u>in their protecting significant values ;</u>”</p>
POL LW1 2. bA)	<p>Outstanding water bodies should not be limited to those identified in Schedule 25</p> <p>The decision does is uncertain as to how significant values will be determined. Under Policy 8 of the NZCPS protection is to the significant values not the outstanding</p>	<p>bA) in relation to any relevant outstanding water bodies identified <u>in accordance with POL LW1 1.cC Schedule 25:</u></p>

	<p>values.</p> <p>Non-regulatory methods alone will not be sufficient to protect OWBs. This wording also conflicts with POL LW4 of the plan which makes it clear that non-regulatory methods are used “in support of regulatory methods”.</p> <p>The distinction between new and existing activities is inappropriate and inconsistent with the NPSFM and NZCPS. The explanation of this would build the permitted baseline test into plans rather than it being a consideration in consent processes where relevant. Degradation can be a gradual process and just because an activity is “existing” does not mean it should be treated differently to other activities. Setting such an approach out at the RPS level would embed an adverse effects that may be contrary to the NPSFM.</p>	<p>i) Carry out an assessment which identifies the significant values of that outstanding water body. This assessment includes <u>the significant values identified in Part 2 of Schedule 25 and the identification of additional significant values to the outstanding water body by applying the methodology in Part 1A of Schedule 25: consideration of the values set out in Appendix 1a and Appendix 1b of the National Policy Statement for Freshwater Management 2020, and any other values that are determined to be relevant taking into account local and/or regional circumstances.</u></p> <p>iA) Identify the spatial extent of the outstanding <u>waterbody</u> values, and the significant values, where relevant.</p> <p>ii) Establish how the outstanding and significant values of outstanding water bodies will be protected <u>including</u> by regulatory methods and/or non-regulatory methods.</p> <p>iii) Include regional plan provisions to manage new activities in a manner which avoids adverse effects that are more than minor on the outstanding and significant values of an outstanding water bodies; and</p> <p>iv) Include regional plan provisions to manage existing activities in a manner which protects the outstanding and significant values of outstanding water bodies.</p> <p>Delete the explanation relating to new and existing activities.</p> <p>Add new Part 1A to Schedule 25, setting out:</p>
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		<p>The following methodology applies when identifying significant values of outstanding water bodies:</p> <ul style="list-style-type: none"> <u>i) a significant value is a value that contributes to the waterbody being outstanding; and</u> <u>ii) a significant value is not necessarily the same as the outstanding value for which the waterbody is identified as outstanding.</u> <u>iii) that a value set out in Appendix 1A of the National Policy Statement for Freshwater Management 2020 that contributes to or supports an outstanding value for which the water body is identified as outstanding, is to be identified as a significant value;</u> <u>iii) that a value set out in Appendix 1B of the National Policy Statement for Freshwater Management 2020 that supports an outstanding value for which the water body is identified as outstanding is significant value;</u> <u>iv) any other value necessary to the wellbeing of the waterbody may also be a significant value of an outstanding water body where clause i) is met.</u>
Footnotes 4 and 5 (and in relation to other repeats of this footnote)	All significant values must be protected. No prioritisation should occur as the NPS-FM doesn't provide for this. If, for some reason, one significant value's protection was to conflict with another value's protection, prioritisation should occur as per the objective of the NPSFM and to give effect to Te Mana o te Wai.	Delete footnotes 4 and 5 and make any consequential changes
Policy LW3A	The distinction between new and existing activities fails to protect significant values of outstanding water bodies.	Amend Policy LW3A as follows"

	<p>Protection of outstanding and significant values of outstanding water bodies should not be delayed until “the relevant catchment based regional plan change is operative or after 31 December 2025”.</p> <p>The decision wording fails to provide for the protection of significant values of outstanding water bodies by limiting consideration to identified values in Schedule 25.</p> <p>The reliance on future plan change could also mean that consent applications will not need to take into account Policy LW3B 2, where a controlled or restricted discretionary rule is provided by the plan change.</p> <p>It is the protection of significant values which is required and therefore there is no conflict with outstanding values.</p> <p>The change in wording from “would protect” to “may adversely affect” is an improvement, however the terminology of “may” could result in an adverse effect being disregarded where there is uncertainty. The word “effect” is defined to capture potential effects as well as cumulative effects and would provide certainty.</p> <p>The removal of consideration for consents which would seek a change to an activity should not be removed from clause 2 a) , b) and c) and this clarifies that a change the scale of an activity will also be captured.</p>	<p>“Policy LW3A Resource Consent Decision Making Criteria – Outstanding Water Bodies identified in Schedule 25 (new activities)”</p> <p>1A. Policy LW3A applies where the activity does not meet Policy LW3B.1.</p> <p>1. In relation to those types of activities identified in Policy LW3A.2, once the relevant catchment based regional plan change is operative or after 31 December 2025, whichever is sooner, a consent authority must take into account:</p> <p>a) the extent to which the activity may adversely affect the outstanding value(s) identified described in Schedule 25 of the relevant outstanding water body; and</p> <p>b) the extent to which the activity <u>has adverse effects on</u> may adversely affect the significant values (if any) identified in <u>Part 2 of Schedule 25 or identified through the consenting process by applying the methodology in Part 1A of Schedule 25</u> of the relevant outstanding water body; and</p> <p>c) whether, in order to protect the water body’s outstanding values and significant values:</p> <p>i. the location of the proposed activity is appropriate, and</p> <p>ii. if time limits, including seasonal, or other limits on</p>
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		<p>the activity may be appropriate.</p> <p>d) If there is a conflict between protecting an outstanding and a <u>How significant values</u> of the same water body <u>will be protected</u>, protection of the outstanding value must be given preference.</p> <p>2. Policy LW3A only applies to the following activities classified as a discretionary activity or a noncomplying activity by a rule in a regional plan (but not a regional coastal environment plan):</p> <p>a) a take, use, damming, or diversion of water from an outstanding water body <u>or a change to any existing take, use, damming or diversion of water from an outstanding waterbody.</u></p> <p>b) a discharge <u>or a change or increase in any discharge</u> of a contaminant into an outstanding water body.</p> <p>c) a discharge <u>or a change or increase in any discharge</u> 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.</p> <p>d) a land use consent for any new structure in, on, under or over the bed of an outstanding water body.</p> <p>e) a land use consent for any new or increased disturbance of the bed of an outstanding water body</p>
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		<p>that is not already authorised by a current land use consent.</p> <p>3. Policy LW3A.. 25.”</p> <p>Delete Policy LW3A.3</p> <p>We note these amendments should apply to all policies where this limitation has been inserted (we have tried to capture all occurrences in this table).</p>
<p>New Policy LW3B</p>	<p>For the reasons explained on Policy LW3A above.</p> <p>In addition, it is inappropriate to decide on a consent on the following basis:</p> <ul style="list-style-type: none"> • the extent to which outstanding values have changed or are the same • whether results of effects are the same or similar • if the outstanding values are in a worse state <p>This policy fails to protect significant values of outstanding water bodies.</p>	<p>Delete new Policy LW3B and its explanation</p>
<p>Anticipated Environmental Results</p> <p>7. Outstanding and significant values of outstanding water bodies</p>	<p>Consistent with changes sought the objective and policies, the anticipated results should include protection of significant values beyond those listed in Schedule 25, of outstanding waterbodies in Schedule 25 and of an outstanding waterbody determined by the Criteria for outstanding values to be set out in new Schedule 25 Part 1A Outstanding value Criteria.</p>	<p>Amend the indicator(s) for AER 7 as follows:</p> <p>“The outstanding and significant values for each outstanding water body identified in Schedule 25 are protected. <u>Provision is given to protect the significant values of outstanding water bodies that are not included in Schedule 25.</u>”</p>

are protected		
Chapter 3.2 The Sustainable Management of Coastal Resources		
OBJ 11	<p>As above, our concern relates to protection being limited only to water bodies identified in Schedule 25, that protection is required for the significant values of outstanding water bodies and as such that there is no conflict with outstanding values to which they relate.</p>	<p>Amend OBJ 11 as follows: “Protection of the outstanding and significant values of those outstanding water bodies within the Coastal Environment identified in Schedule 25.”</p> <p>Make a consequential amendment to the last sentence of the explanation 3.2. 8A as follows: “Objective 11 assists in achieving integrated management between coastal and freshwater resources ensuring that outstanding and significant values <u>of outstanding water bodies</u> that span both the freshwater and coastal environments are protected”</p>
POLICY C1 Problem solving approach	<p>In addition to the reasons and amendments sought in relation to Policy LW1.2, Policy LW3A and Policy LW3B:</p> <p>This policy does not give effect to the NZCPS and creates potential conflicts and confusion in applying its directive policies for avoidance of adverse effects</p> <p>It is inappropriate to refer to schedule 25 as identifying significant indigenous biodiversity values or that the significant values in schedule 25 would provide for the protection required by Policy 11 of the NZCPS. The full matters listed in Policy 11 of the NZCPS must be addressed.</p> <p>Setting the level of protection of significant values of outstanding water bodies at avoidance of adverse effects will give effect to the NPSFM and provides for integration and consistency with the NZCPS within the coastal environment.</p>	<p>Amend Policy C1 as follows: POLICY C1 Problem solving approach – outstanding water bodies in the coastal environment</p> <p>1. When preparing regional plans, in relation to any relevant outstanding water bodies identified in Schedule 25 <u>or through resource consent application process:</u></p> <p>a) Apply Policy LW1.2(bA)(i), (iA) and (ii). b) include provisions to manage new activities in a manner which:</p> <p>(i) avoids adverse effects on the outstanding and significant <u>values of outstanding water bodies and on indigenous biological diversity (biodiversity) values</u> of an outstanding water body, that are identified in</p>

	<p>The reference to aspects of Policy LW1.2 is appropriate with the amendments sought to the policy as set out above.</p>	<p>Schedule 25 and meet the description(s) set out in Policy 11(a), of the New Zealand Coastal Policy Statement 2010, <u>and avoids significant adverse effects of an outstanding water body on biodiversity that meets the descriptions in Policy 11(b) of the NZCPS</u>; and</p> <p>(ii) avoids adverse effects on outstanding natural character, outstanding natural features and outstanding natural landscape values of an outstanding water body identified in Schedule 25 to give effect to Policies 13.1(a) and 15(a) of the New Zealand Coastal Policy Statement 2010; and</p> <p>(iii) avoids adverse effects that are more than minor on any other outstanding and significant values identified in Schedule 25.</p> <p>c) Include provisions to manage existing activities in a manner which:</p> <p>(i) avoids adverse effects on the outstanding and significant indigenous biological diversity (biodiversity) values of an outstanding water body, that are identified in Schedule 25 and meet the description(s) set out in Policy 11(a), of the New Zealand Coastal Policy Statement 2010; and</p> <p>(ii) avoids adverse effects on outstanding natural character, outstanding natural features and outstanding natural landscape values of an outstanding water body identified in Schedule 25 to give effect to Policies 13.1(a) and 15(a) of the New Zealand Coastal Policy Statement 2010; and</p> <p>(iii) protects any other outstanding and significant values of outstanding water bodies identified in Schedule 25.</p>
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<p>Policy C2</p>	<p>In addition to the reasons and amendments sought in relation to Policy LW1.2, Policy LW3A and Policy LW3B and for Policy C1 above:</p> <p>Restricting councils from considering the listed activities where they are a controlled or restricted discretionary activity does not give effect to the NPSM or the NZCPS.</p> <p>Given that these policies are intended to provide direction for consenting under future plan provisions (and as Forest & Bird seeks under current plan provision) vegetation clearance within water bodies and riparian areas should also be included.</p> <p>It is inappropriate to rely on Schedule 25 as identifying significant indigenous biodiversity values or that the significant values in schedule 25 would provide for the protection required by Policy 11, 13 and 15 of the NZCPS on that basis. The policy must direct avoidance of adverse effects for the full matters listed in Policy 11 as well as avoidance on the outstanding natural character or natural landscape/features in accordance with Polices 13(a) and 15(a) of the NZCPS on the outstanding water body.</p> <p>The avoidance of adverse effects on significant values of outstanding waterbodies in the coastal environment will assist in integrated management and consistency with the NZCPS and this aspect should be retained and clarified.</p> <p>Should apply to all consents in the coastal environment</p> <p>Should include any consent for vegetation clearance within a water body and in riparian areas.</p> <p>The policy should apply to 'changes' to resource consents/activities</p>	<p>Amend Policy C2 as follows:</p> <p>Policy C2 Resource Consent Decision Making Criteria – Outstanding Water Bodies Identified in Schedule 25 in the coastal environment (new activities)</p> <p>1A. Policy C2 applies where the activity does not meet Policy C3.</p> <p>1. In relation to those types of activities identified in Policy C2.2, once the relevant catchment based regional plan change is operative or after 31 December 2025, whichever is sooner, a consent authority must take into account</p> <p>a) the extent to which the activity may adversely affect outstanding value(s) identified in Schedule 25 of the relevant outstanding water body.</p> <p>b) the extent to which the activity has adverse effects on <u>may adversely affect</u> the significant values (if any) <u>identified in Schedule 25 or identified through the consenting process by applying the methodology in Part 1A of Schedule 25,</u> of the relevant outstanding water body.</p> <p>c) whether, in order to protect the water body's outstanding values and significant values:</p> <p>i. the location of the proposed activity is appropriate; and</p> <p>ii. time limits, including seasonable or other limits on the activity may be appropriate.</p> <p>d) If there is a conflict between protecting an outstanding and a How significant value of the same water body will be protected, <u>protection of the outstanding value must be given preferential protection.</u></p>
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New Policy C3	<p>For the reasons above C2, LW3A and LW3B and because:</p> <ul style="list-style-type: none"> • The RPS/plan has already failed to give effect to the NZCPS for many years any further delay is unacceptable. • The NZCPS does not set out to treat activities or adverse effects differently on this basis. • The policy would provide for activities having adverse effects even where those effects are inconsistent with the NZCPS. • The determination of existing would capture activities permitted by the plan, without a requirement for the activity to be “existing” at 31 August 2019 which would allow new activities meeting those plan provisions, to be considered as “existing”. 	Delete Policy C3

	<ul style="list-style-type: none"> It is uncertain as to the extent that existing captures consented activities and re-newel of consents able for the same scale of activity. Re-newel consents are to be treated as a new application under the Act. The “same activity” does not mean the same scale or effects. Nor does it make the effects undertaken through a previous consent appropriate to achieving protection. 	
Glossary		
Outstanding water body	It should also be expanded to include water bodies that may be identified through resource consenting or other processes (using clear criteria that we have suggested be included in PC7), to ensure that HBRC meets its NPSFM requirements to protect outstanding water bodies that may become known following the operative date of the plan.	Outstanding water body means freshwater bodies and estuaries, or parts thereof, identified <u>by applying the Schedule 25 Part 1: Outstanding values Criteria, and includes those water bodies listed in Schedule 25₂</u> , that have one or more outstanding cultural, spiritual, recreation, landscape, geology, natural character or ecology value(s).
Schedule 25: Outstanding Water Bodies		
Schedule 25 Part 1 Overview of categories of outstanding values and their sub-parts	<p>Forest & Bird accept that in the context of the rest of the plan, the usefulness of the Part 1 of Schedule 25 as notified was limited.</p> <p>We consider it should be replaced with a provision outlining clearly how outstanding and significant values are to be identified and managed through the plan.</p>	<p>Replace with a new Part 1A (to sit following new Part 1), setting out the method for identifying significant values, as follows:</p> <p><u>The following methodology applies when identifying significant values of outstanding water bodies:</u></p> <p><u>i) a significant value is a value that contributes to the waterbody being outstanding; and</u></p>

		<p><u>ii) a significant value is not necessarily the same as the outstanding value for which the waterbody is identified as outstanding.</u></p> <p><u>iii) that a value set out in Appendix 1A of the National Policy Statement for Freshwater Management 2020 that contributes to or supports an outstanding value for which the water body is identified as outstanding, is to be identified as a significant value;</u></p> <p><u>iii) that a value set out in Appendix 1B of the National Policy Statement for Freshwater Management 2020 that supports an outstanding value for which the water body is identified as outstanding is significant value;</u></p> <p><u>iv) any other value necessary to the wellbeing of the waterbody may also be a significant value of an outstanding water body where clause i) is met.</u></p>
<p>Schedule 25</p> <p>New Part 1 Outstanding Water Body identification Screening Criteria</p>	<p>Forest & Bird’s submission sought the inclusion of the criteria used by experts to identify the outstanding water bodies listed in Schedule 25, as originally notified in PC7.</p> <p>The new “screening criteria”, as explained in the Decision¹ and in the s42A,² has been developed from summarising criteria used for national water conservation orders.</p> <p>Forest & Bird consider the purpose and process to determine outstanding values for a WCO to be markedly different than that for a regional plan. Relying on WCO considerations fails to achieve the purpose of the Act and does not give effect to the</p>	<p>Amend Part 1 “screening criteria” to provide an appropriate ‘Outstanding values Criteria’. This would include the criteria for or of outstanding values that determine whether a part of or a water body is outstanding, the Expert Panel’s “OWB Assessment Criteria”, and any additional matters supported through expert evidence that would determine an outstanding value in relation to any and all values that may be identified under the NPSFM including through the NOF process. This may include some or</p>

¹ PC7 Decision Report, page 28

² Section 42a Hearing report, para. 413

	<p>NPSFM (2020). WCO decisions and values are established at a national level, whereas the NPSFM applies at a regional level, and includes consideration of s6. Solely relying on criteria developed for water conservation orders under s199 of the Act does not recognise and provide for s6 when carrying out council’s responsibilities and functions with respect to waterbodies. Nor does it give effect to the NPSFM (2020) requirements for protection of significant values of outstanding water bodies which is to be applied at a regional level.</p> <p>There is a potential precedent-setting decision in these criteria (as other regions may take them on to determine their OWBs). They therefore need to be robust and clear, with suitable, but not unnecessarily high, tests.</p> <p>Forest & Bird is not opposed to considering the criteria (or amendments to the criteria) per se, but is opposed to the application of the criteria and exclusion of other considerations by the decision makers. Of particular concern is the exclusion of the original criteria and expert advice which informed the identification of notified outstanding waterbodies. This is problematic. We also note exceedingly high tests to qualify as ‘outstanding’ (discussed below) and apparent inconsistent application of the new criteria to deciding on which water bodies should be scheduled (also discussed below in the next section re. the listed waterbodies).</p> <p>Examples of tests that are too high include:</p> <ul style="list-style-type: none">• The ‘outstanding habitat’ tests are reflective of WCO decisions that have used a species presence or threat threshold to determine whether habitat is outstanding. This is limited in that it only allows for the assessment of species and not their actual physical habitats – i.e. if a population of river birds such as whio went regionally extinct because of a stoat outbreak and predation, the habitat would no longer be outstanding, despite nothing physically having changed about the habitat. These criteria also focus on birds and fish, and plants, and fail to account for invertebrates or macroinvertebrates, which are vital parts of the ecosystems and also have many threatened/at-risk species.	<p>all of the screening criteria where it is appropriate to give effect to the NPSFM.</p>
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	<ul style="list-style-type: none"> • In regard to ‘whitewater rafting’ and ‘kayaking’, the requirement that there be “High non-local usage (high numbers of participants come from outside of the area).” is an unreasonably high test for something that is meant to be <i>regionally</i> outstanding, as it infers a degree of <i>national</i> outstanding-ness is required (to draw people in from other parts of the country). It also ignores the fact that some outstanding sections of river might be rarely paddled but would likely still be considered outstanding for whitewater recreation. • Similarly, the requirement that “<i>The water body provides an outstanding kayaking experience which is reliable and predictable for most of the year under normal flows (i.e. the experience is not reliant on dam release water or high flows, or subject to low flows).</i>” rules out rivers such as the Tongariro or Whakapapa, which run on dam releases, being outstanding in their regions for this value, when they undoubtedly are. Likewise requiring a ‘variety’ of experiences (e.g. for jetboating, kayaking, rafting) rules out places where a single outstanding experience can be had. • In relation to natural character, the requirement that something be “highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna, within a largely indigenous landscape.” Is much too high a test for a regionally outstanding water body. As noted by the decision panel on PC7, the Rangitata River was afforded a WCO to protect the braided planform of the river, which is ‘degraded’ when compared to its historical planform and sits in a largely modified agricultural landscape. Under the criteria listed in PC7 it is hard to know if even the Rangitata could be afforded a WCO. 	
<p>Schedule 25</p> <p>Part 2</p> <p>Outstanding Water Bodies in Hawke’s Bay and their outstanding and significant value(s)</p>	<p>The removal of the lists of 'significant values' from the schedule of waterbodies is inappropriate. Given 'significant values' have to be protected under the NPSFM, not listing them means there is nothing to be protected and the NPS is therefore not given effect to. We note the s42a version of PC7 retained these lists of values. We also note listing these values would ensure consistency with the NZCPS.</p> <p>The removal of many waterbodies from the schedule of outstanding waterbodies was inappropriate. In part the decisions panel seems to have applied the ‘new’ criteria overly strictly or arbitrarily (e.g. for the Waiau River, as below; or the Ngaruroro, also</p>	<p>Reinstate lists of significant values for all waterbodies in Table 1 where they were removed, except where those values were extractive/economic values.</p> <p>Reinstate all waterbodies that were removed by the decision.</p>

below), and in other places the 'new' criteria are simply inappropriate for assessment against when considering whether something is regionally outstanding under the NPSFM (as discussed above). This also went against the recommendations of the expert panel in terms of which water bodies are outstanding. Even if the 'new' criteria were appropriate, we note the s42a report assessed proposed OWBs against these criteria and did not remove any from the schedule. Expert evidence from DOC (evidence of Matthew Brady) also supported the retention of many of these waterbodies in the plan for ecological values in particular.

Some (non-exhaustive) justification for retention of waterbodies for their natural values is provided below, as an example of the inappropriateness of the decision. This includes examples of where criteria seem to have been inappropriately/inconsistently applied or were too high. This is supplemented by the expert panel recommendation report and the s42a report, as well as expert evidence presented during the hearing (e.g. that of DOC).

Re. Lake Poukawa and Pekapeka Swamp

As per the previous version of PC7:

The wetland area contains swamp nettle (Urtica linearifolia) and the acutely threatened aquatic liverwort (Ricciocarpos natans) which is nationally endangered...

The Lake has been declared a non-commercial eel fishery, one of only a few lakes in New Zealand to have this designation...

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...

HBRC's website³ states:

Pekapeka is one of the few remaining large wetlands of its type (palustrine, a

³ <https://www.hbrc.govt.nz/hawkes-bay/regional-parks/pekapeka-regional-park/>

swamp) in Hawke's Bay. It has a high biodiversity value and was ranked by the Department of Conservation as the second most valuable wetland, ecologically, in Hawke's Bay. The wetland has substantial cultural significance and since 1997, Pekapeka Wetland has had waahi tapu status under the Historic Places Act 1993.

The decision report stated:

"Pekapeka Swamp is the only large swamp remaining in lowland Hawke's Bay, and is maintained by the outflow from Lake Poukawa (Poukawa Stream)."

Re. Lake Waikareiti

As per the decision report: "It is in an unmodified state, and has high natural character."

Re. Whakakī Lake - Te Paeroa Lagoon - Wairau Lagoon and wetlands,

Lake Whatumā, and

Mangahouanga Stream

Refer to expert panel recommendations on OWBs and s42a report assessment.

Re. Maungawhio Lagoon, lower Kopouawhara River, Pukenui Dune Wetlands

The decision report states:

Maungawhio Lagoon ...is a gazetted Wildlife Management Reserve which supports around 25 different species of waterbirds, including a high number of threatened species such the Australasian bittern, shore plover, black billed gull, reef heron, Caspian tern, and the lesser knot.

The Maungawhio Lagoon is listed as a Significant Conversation Area in the Regional Coastal Environment Plan, where it is identified as containing a nationally significant wildlife habitat.

The decision by the tribunal that they "do not find ... that it is has outstanding

ecological values, as it is not conspicuous, eminent and/or remarkable in terms of coastal lagoons in the region.” was incorrect, particularly when read against its status as a nationally significant wildlife habitat.

Re. the Ripia River

This should be included as it is explicitly noted in the Mohaka WCO as having outstanding values. In fact, all tributaries to the Mohaka upstream of SH5 are included in the WCO as nationally outstanding for trout therefore must be regionally outstanding and should be explicitly noted and included in PC7.

Re. the Ngaruroro River

The EPA Special Tribunal recommendation report considering a WCO for the river found the lower Ngaruroro nationally outstanding in terms of its habitat for avifauna⁴.

There are also regionally outstanding values for natural character (the braided river character, particularly around Whanawhana, is largely unchanged since the 1930s/1940s and possibly earlier, and is the widest riverbed in Hawke’s Bay), and habitat for native fish and birds.

Re. Ruakituri River

Excluding the Ruakituri on the basis only a portion of the river is in the region was not appropriate. Particularly, it is not consistent with the NPSFM direction on integrated management and ki uta ki tai. The values of the Ruakituri were clearly articulated in the s42a and the expert panel recommendation report on OWBs in the region.

Te Hoe River

Refer to expert panel recommendations on OWBs and s42a report assessment.

Re. the Waiau River:

⁴ <https://www.epa.govt.nz/public-consultations/decided/water-conservation-order-ngaruroro-and-clive-rivers/special-tribunals-recommendation-report/>

	<p>The decision report notes the outstanding values of the Waiau River: “The upper reaches of the river support one of the two largest populations of blue duck (whio) in the region, with 18% of the regional population (which totals an estimated 220 birds) recorded there. Blue duck are listed as nationally threatened in the NZCTS, with only about 1,000 breeding pairs thought to remain in the country.” However it then notes: “However as the Waiau River is not known to support high numbers of other aquatic native birds, we have not included it in Schedule 25.” This is not sufficient justification to exclude the Waiau from PC7. The panel acknowledge that the river meets the threshold they’ve used in screening OWBs (that is ‘One of the highest regional populations of a native aquatic bird species which is endangered, threatened or distinctive’) therefore it should be included.</p> <p>Waipunga River</p> <p>Refer to expert panel recommendations on OWBs and s42a report assessment.</p>	
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