

**BEFORE THE ENVIRONMENT COURT**

**Decision No. [2017] NZEnvC 147**

IN THE MATTER of the Resource Management Act 1991  
AND  
IN THE MATTER of an appeal pursuant to cl 14 of Schedule  
1 to the Act  
BETWEEN WESTERN BAY OF PLENTY DISTRICT  
COUNCIL  
(ENV-2015-AKL-000127)  
Appellant  
AND BAY OF PLENTY REGIONAL COUNCIL  
Respondent  
AND PORT BLAKELY LIMITED,  
CARRUS CORPORATION LIMITED,  
TKC HOLDINGS LIMITED,  
NGĀTI MAKINO HERITAGE TRUST and  
MATAKANA HAPŪ  
Section 274 parties

Court: Environment Judge D Kirkpatrick  
Māori Land Court Judge S Clark  
Environment Commissioner K Edmonds  
Environment Commissioner D Bunting

Hearing: at Tauranga on 15 – 19 May 2017

Appearances: J Caldwell and M Gribben for Western Bay of Plenty District  
Council  
M Hill for Bay of Plenty Regional Council  
T Fischer for Port Blakely Ltd  
V Hamm for Carrus Corporation Ltd  
R Bartlett QC for TKC Holdings Ltd  
A Neems for Ngāti Makino Heritage Trust  
R Enright for Matakana Hapū

Date of Decision: 7 September 2017

Date of Issue:

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**INTERIM DECISION OF THE ENVIRONMENT COURT**

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- A: The whole of the sand barrier of Matakana Island is an outstanding natural feature or landscape and should be so identified and provided for in the Bay of Plenty Regional Coastal Environment Plan.
- B: The description of the sand barrier and of its attributes and values should be drafted in light of the reasons for this decision.
- C: The respondent is directed to consult with other parties and report to the Court by within 20 working days of the date of issue of this decision on the most appropriate procedure for drafting the description of the sand barrier and its attributes and values.

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## REASONS

### Introduction

[1] The central issue in this case is whether an Outstanding Natural Feature and Landscape (**ONFL**) on the seaward edge of Matakana Island should be extended to include all that part of the island which is a forested sand barrier.

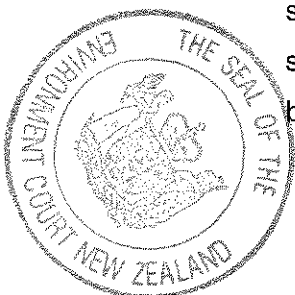
[2] The seaward edge of the forested sand barrier, together with that part of the coastal marine area (**CMA**) within 200 m of mean high water springs, is presently mapped and listed as ONFL 5 in the proposed Bay of Plenty Regional Coastal Environment Plan (**RCEP**) as amended by decisions on submissions. The appeal seeks that ONFL 5 be mapped as shown in the notified version of the RCEP where it covered almost all of the sand barrier except for the northern end which is ONFL 4. Consequential amendments are also sought to Schedule 3 of the RCEP to align the listing for ONFL 5 with such amended mapping.

[3] A number of associated issues arise from the central question about the appropriate geographical extent of ONFL 5. Some of these raise fundamental questions about the meaning of section 6(b) and other provisions in Part 2 of the Resource Management Act 1991 (**RMA**). They revolve around the question of the degree to which a feature or landscape which is covered by a plantation forest can properly be considered to be an outstanding natural feature or landscape within the meaning of s 6(b) RMA.

### Matakana Island

[4] Matakana Island is situated on the seaward side of Te Awanui / Tauranga Harbour, largely enclosing it. To the south of the island is the Tauranga entrance to the harbour and, across that entrance, Mauao / Mount Maunganui; to the north is the Katikati entrance and Bowentown Heads.

[5] The island has an area of approximately 6,000 ha. The landform has two distinct components: the sand barrier (called Te Ure Kotikoti) on the north-eastern seaward side and the south-western peninsula often referred to as "the bulge" or "the core". The sand barrier is the largest in New Zealand, being approximately 25 km long and between 1 and 3 km wide with an area of approximately 4,300 ha. It is fairly flat, mainly



planted in pine trees and has a small resident population of about 36 people in the Mill Village near its south-eastern end. The peninsula has an area of approximately 1,700 ha with more varied topography and is principally used for farming (mainly dairy and orchards with some other cropping) and associated residential activities. The peninsula has a population of about 200 people. There is also a nearby island to the south of Matakana called Rangiwaea with a population of about 18 people and a similar range of activities as on the peninsula. Almost all of the population of these islands identify themselves as being of Māori descent.

[6] This case is wholly concerned with the sand barrier and not with the peninsula or Rangiwaea.

[7] The sand barrier is listed in the New Zealand Geopreservation Inventory as follows:

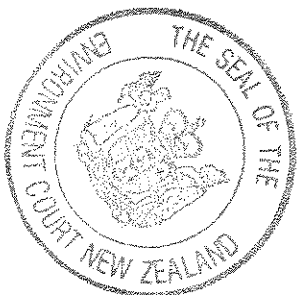
*Matakana foredune barrier island. Map: U14; Classification: B3. Significance: An example of a marine feature rare to New Zealand. Forms New Zealand's largest barrier island. Protects Tauranga Harbour.*

We understand from the evidence that the "B" classification indicates national importance ("A" being international and "C" regional) and the "3" means "probably not vulnerable to any likely human actions." The evidence includes references that suggest that the island is of an unusual formation in that it comprises a core (the peninsula) which formed in the late Pleistocene epoch (about 125,000 years ago) and the sand barrier which formed during the Holocene epoch (from about 11,700 years ago to the present).<sup>1</sup>

[8] The island and its surrounds have been occupied by tangata whenua since the earliest times of human settlement of Aotearoa / New Zealand. A number of the migration waka visited Tauranga, including Takitimu and Tainui. Sandbanks and rock outcrops near Rangiwaea and Matakana are named after persons and events associated with the Tainui waka.<sup>2</sup> There is a significant identified archaeological

<sup>1</sup> Shepherd, Betts, McFadgen & Sutton: (2000) *Geomorphological evidence for a Pleistocene barrier at Matakana Island*, NZ Journal of Geology and Geophysics, 43:4, 579-586; (1997) *Formation, landforms and palaeoenvironment of Matakana Island and implications for archaeology*, Dept of Conservation Science and Research Series No. 102.

<sup>2</sup> Coffin & Kawe: (2011) *An Assessment of Cultural Values and Identification of Potential Effects of Urbanisation and Land-use Change on Maori Communities of Matakana and Rangiwaea Islands*, agreed bundle, pp 377-378.



landscape evidencing human occupation and activity.<sup>3</sup> We heard evidence from a number of tangata whenua of their cultural and spiritual connections with the land, including the existence of wāhi tapu and the use of the forest for a range of cultural practices and we received a copy of a cultural values assessment which provided extensive detail of those connections.<sup>4</sup>

[9] 290,000 thousand acres of land in the Tauranga district was confiscated and customary title of tangata whenua to the island was ended by the process under the New Zealand Settlements Act 1863 (in particular an Order in Council made under that Act on 18 May 1865 and the subsequent Tauranga District Lands Acts of 1867 and 1868<sup>5</sup>), also known as raupatu. Matakana was later returned as Māori freehold land and much of it was subsequently transferred to non-Māori owners. Grievances about that and other dealings with the Crown were among the subjects of the Waitangi Tribunal Report *Te Raupatu o Tauranga Moana*.<sup>6</sup> This in turn led to the Ngāi Te Rangi Settlement Deed signed on 14 December 2013 which is presently the subject of a Bill before Parliament. But certain issues remain, as mentioned in evidence before us. These issues are beyond this Court's jurisdiction but form a part of the context of this case.

[10] During the last 100 years the sand barrier has been used almost entirely for production forestry. The evidence before us was that pine trees were originally planted in the 1920s and that tangata whenua living on the peninsula saw this as providing a source of work and income for the people. The sandy soil effectively limits any other form of primary production on the sand barrier.

[11] There are now four main landowners on the sand barrier together with four much smaller holdings. The four main holdings may be described<sup>7</sup> as follows:

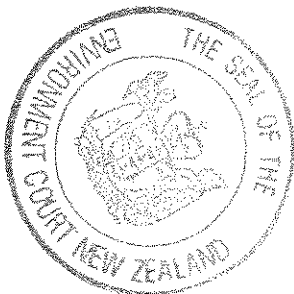
- i) TKC Holdings Ltd owns 1970 ha in ten titles, comprising the north-western

<sup>3</sup> Phillips & McCaffrey: (2016) *Archaeological Survey Compartments 2008 & 3010 Blakely Pacific Forests Matakana Island Bay of Plenty*; Phillips: (2011) *The Archaeological (sic) of Matakana Island*.

<sup>4</sup> Coffin & Kawe: (2011) *An Assessment of Cultural Values and Identification of Potential Effects of Urbanisation and Land-use Change on Maori Communities of Matakana and Rangiwaewa Islands*.  
<sup>5</sup> *Faulkner v Tauranga DC* [1996] 1 NZLR 357 (HC).

<sup>6</sup> *Te Raupatu o Tauranga Moana / The Tauranga Raupatu* (WAI 215) 2004.

<sup>7</sup> Using attachment 1 to the evidence of Philip Taylor, the managing director of Port Blakely Ltd, Table 1 of and Appendix 1 to the evidence of Bryce Holmes, the expert planning witness for TKC Holdings Ltd, annexure B to the evidence of Ngaraima Taingahue, the chairperson of the Rangiwaewa Marae Trust and of Te Whanau a Tauwhao ki nga Moutere, and the traditional place names for the blocks of land from Map 3 of the Matakana Island Hapū Management Plan (Edition 2, March 2017).



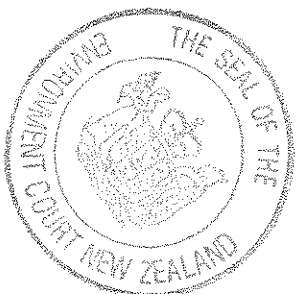
end at Waikoura and Oturoa, a block on the seaward side of Paretata, the central areas of Wairaka, Tuingara, Pukekahu, Okotara, part of Opou and much of Parakau;

- ii) Port Blakely Ltd owns 1925 ha in four titles, comprising the balance of Paretata, Omanuwhiri and Ohinetama;
- iii) Western Bay of Plenty District Council owns 178 ha in two titles, comprising Panepane at the south-eastern end and the adjacent portion of Parakau; and
- iv) The Faulkner interests own 168 ha in two titles, comprising a block in Opou and a block on the seaward side of Parakau.

[12] The current production forestry activity covers most of the sand barrier, excluding areas of wetland and the coastal edge where buffer areas are left to protect the plantation from the effects of the sea and also provide a degree of visual screening. The buffer on the seaward side varies in width from 50 – 150 m and on the harbour side is much narrower, in some places limited to a single row of trees. Most of the plantation is now on its third cycle, each cycle being 25 – 30 years long. Most of the trees planted are *Pinus radiata*, but there are stands of Eucalyptus and, to a lesser extent, *Macrocarpa*. These other species may be on a longer cycle than the pines. Pre-commercial thinning of trees occurs between 6 – 15 years into each cycle and further thinning, with the trees being removed for sale, may occur later in the cycle. Harvesting is done in areas ranging from 1 – 100 ha in size, depending on the age and type of trees in any area and the commercial requirements of the person exercising cutting rights. Cut trees are pulled to skids and sorted for transport. The sawmill ceased operations in 2006 and now logs are taken off the island on trucks by ferry from the ramp at Panepane. In any year there can be up to ten cutover areas operating or cleared. Cutover areas are cleared by pushing the forestry debris into line rakes and removing the slash from the area. A new crop of trees is then planted, taking 3 – 5 years to “green-up.” The result is a mosaic of forest stands of different ages and cleared areas over most of the sand barrier.

### Planning provisions

[13] For ease of reference, the full text of the most relevant planning provisions referred to below is set out in **Appendix 1** to this decision.



[14] The principal statutory provision in this case is s 6(b) of the RMA:

**6 Matters of National Importance**

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

...

*(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

[15] For the purposes of s 6(b) RMA, the respondent is a person exercising functions and powers under the Act in making the RCEP, and so is the Court in hearing and determining this appeal. We have the same power, duty, and discretion in respect of the respondent's decision which is appealed against as the respondent and may confirm, amend, or cancel its decision.<sup>8</sup>

[16] The requirement in s 6(b) is one of the bases for Objective 2 of the New Zealand Coastal Policy Statement (NZCPS) which directs that such protection in the coastal environment be by:

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- *encouraging restoration of the coastal environment.*

[17] Objective 2 of the NZCPS is to be pursued according to Policy 15, which should be read in full. That policy provides:

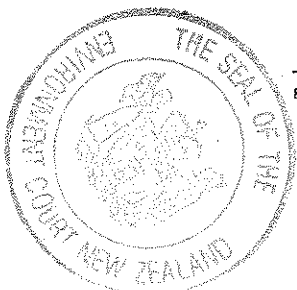
*To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:*

- (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
- (b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;*

*including by:*

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<sup>8</sup> Section 290 RMA.

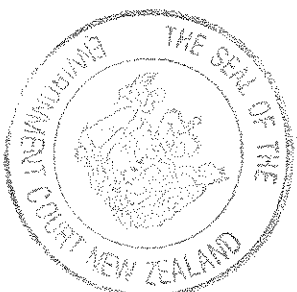


- (c) *identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:*
- (i) *natural science factors, including geological, topographical, ecological and dynamic components;*
  - (ii) *the presence of water including in seas, lakes, rivers and streams;*
  - (iii) *legibility or expressiveness—how obviously the feature or landscape demonstrates its formative processes;*
  - (iv) *aesthetic values including memorability and naturalness;*
  - (v) *vegetation (native and exotic);*
  - (vi) *transient values, including presence of wildlife or other values at certain times of the day or year;*
  - (vii) *whether the values are shared and recognised;*
  - (viii) *cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;*
  - (ix) *historical and heritage associations; and*
  - (x) *wild or scenic values;*
- (d) *ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and*
- (e) *including the objectives, policies and rules required by (d) in plans.*

[18] The Bay of Plenty Regional Policy Statement (RPS) (which became fully operative on 1 October 2014) contains a generalised objective 18 which effectively restates s 6(b) of the RMA. The supporting policies offer some substance to this objective, including:

- a) Policy MN 1B: Recognise and provide for matters of national importance;
- b) Policy MN 3B: Using criteria to assess values and relationships in regard to section 6 of the Act;
- c) Policy MN 7B: Using criteria to assist in assessing inappropriate development; and
- d) Policy MN 8B: Managing effects of subdivision, use and development.

[19] These policies are then supplemented by criteria for assessing matters of national importance in the Bay of Plenty region, set out in Appendix F to the RPS. Set 2 of those criteria relate specifically to natural features and landscapes and to the policies listed above (among others). Set 4 relate specifically to Māori culture and traditions. As with the related factors listed in Policy 15(c) of the NZCPS, detailed attention will be given to these criteria later in this decision.



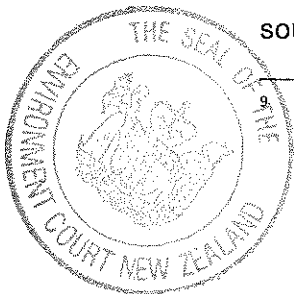


[20] RPS Policy MN 7B relating to the assessment of inappropriate development is also supplemented by criteria set out in Appendix G. These criteria summarise a general approach to the assessment of effects of modification, damage, loss or destruction, including its physical and temporal extent, whether the effects are irreversible or the resource is resilient to change, opportunities to remedy or mitigate effects where avoidance is not practicable, the probabilities of effects and cumulative effects.

[21] In the RCEP, the amended decisions version addresses these matters through, for the purposes of this case, Objective 2 and Natural Heritage Policies NH 4 and NH 6. Objective 2 introduces the concept of attributes and values as a means of describing outstanding natural features and landscapes of the coastal environment. Policy NH 4 then echoes Policy 15(a) of the NZCPS while Policy NH 6 echoes Policy 15(b). Associated policies NH 4A, NH 5 and NH11 give direction on assessing the extent and consequences of adverse effects on an area and allow certain activities to be considered as to their appropriateness in these areas. We note that some of these provisions are still subject to appeal and so may be amended or further amended through those processes. For present purposes we are satisfied that the arc of these policies is sufficiently clearly expressed that we can make a decision on the issue in this appeal without a substantial risk that a further change to a policy might be in conflict with our decision.

[22] For the purposes of those policies, the outstanding natural features and landscapes in the coastal environment of the region are listed and described in Schedule 3 to the RCEP. Schedule 3 to the RCEP commences with a section on the assessment of outstanding natural features and landscapes. This section echoes Policy 15(c) of the NZCPS and Set 2 of Appendix F to the RPS and will be discussed together with those provisions later in this decision.

[23] Schedule 3 to the RCEP then lists and describes 46 ONFLs. We were told that the descriptive content of this schedule was substantially added to by BOPRC's own submission on the RCEP resulting from the decision of the Supreme Court in *Environmental Defence Society v New Zealand King Salmon & ors*<sup>9</sup> and statements in that decision that highlight the importance of identifying what natural resources are sought to be protected by provisions in policy statements and plans.

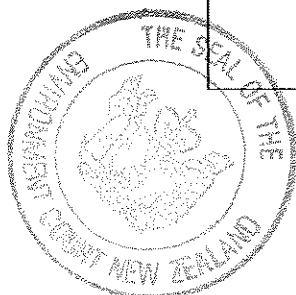


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*Environmental Defence Society v New Zealand King Salmon & ors* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442.

[24] The coastal edge of Matakana Island is identified in Schedule 3 to the amended decisions version of the RCEP as ONFL 5 in the following terms and format:

Matakana Island Coastal Edge – ONFL 5		Map Sheets 3a, 4a, 6a, 8a, 9a, 11a
<p><b>Description:</b> Matakana Island is the largest sand barrier island in New Zealand. The coastal extent of the island forms a large sand dune system that extends some 23 km between the northern and southern Tauranga harbour entrances. The harbour extent of the island comprises a raised landmass that supports a residential settlement and agricultural activities. The key attributes which drive the requirement for classification as ONFL, and require protection, relate to the high natural science values derived from the geomorphological and coastal processes which have formed this highly recognisable landform feature.</p>		
<p><b>Current uses:</b> Forestry dominates the immediate edge with an understorey of native vegetation within the dune system, vehicle tracks.</p>		
<b>Evaluation</b>		<b>Rating</b>
<i>Natural science factors</i>	Representativeness: The island's geology (classed as a nationally significant geological site) together with the frontal dune profiles (which remain intact) means that this feature forms a representative feature of coastal processes and geomorphology that is characteristic of the place.	M-H
	Research and education: The distinctive nature of the geomorphology and some of the native fauna has led to some organisations such as the Matakana Island Environment Group promoting research and education on the island.	M
	Rarity: The island's location, enclosing the Tauranga Harbour, together with it being the largest barrier island in New Zealand, is significantly unique.	H
<i>Aesthetic values</i>	Coherence: The exotic forestry land use which covers much of the island, and parts of the feature, results in a cohesive land cover, which accentuates the sand barrier. However, forestry land use is more fragmented along this coastal feature.	L
	Vividness: The scale of the island and its location as a barrier to Tauranga Harbour results in a highly recognisable and symbolic feature within the region.	H
	Naturalness: The open coastline (including parts of the fore dunes and shoreline) is unmodified and provides a valuable degree of naturalness.	H
	Intactness: The seaward coastal margin of the island includes dunes that feature high quality and diverse indigenous vegetation beneath the pine canopy, including threatened plant species. This provides a relatively undisturbed habitat for a wide range of threatened and uncommon shore birds, notably the New Zealand dotterel.	L-M



<i>Expressiveness (Legibility)</i>	A good example of natural systems with no modifications to the coastal processes across the majority of the island. However the dominant pine plantation limits the dune coastal processes and encourages accretion of the dune system.	H
<i>Transient values</i>	The transient features of the islands are not considered key in relation to the ONFL classification.	L
<i>Shared and recognised values</i>	Highly recognisable with large viewing audience.	
<i>Māori values</i>	The Matakana Island Hapū Management Plan records values and sites of significance. Ancient pa, kāinga, urupā, mahinga kai are recorded on the sand barrier island, sites of significance may be present in this feature.	
<i>Historical associations</i>	The wider sand barrier landscape contains many archaeological sites of Māori origin, recorded in the New Zealand Archaeological Association Site Recording Scheme, which comprise physical evidence of past human activity. However, this feature has not yet been surveyed.	

[25] It is pertinent to include the listing of Matakana Island in the notified RCEP, which covered all of the sand barrier (except the northern end in ONFL 4) and extended 200 m into the CMA along the seaward coast:

*ONFL 5 Matakana Island: The afforested portion of Matakana Island excluding the westerly (inner harbour) farmed area and northerly wetland area. Generic Landscape Policy for Duneland (see Schedule Four). Map Sheet 3a, 4a, 5a, 6a, 8a, 9a, 11a.*

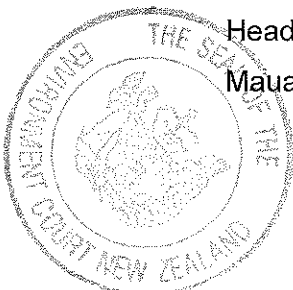
[26] The corresponding reference in the operative RCEP (Fourth Schedule, item S3 – Matakana Island) was in the same terms but the sand barrier was identified as regionally significant rather than outstanding.

[27] The northern tip of the sand barrier is identified in the RCEP as ONFL 4, being the North Matakana Island Wetlands. The schedule states:

*The key attributes which drive the requirement for classification as ONFL, and require protection, relate to the aesthetic qualities associated with the naturalness of the dune, wetland and the natural science values of the coastal processes.*

There is no issue raised in this case in relation to ONFL 4.

[28] Other scheduled ONFLs in the vicinity of the sand barrier are the Bowentown Heads (ONFL 2), Tauranga Harbour (ONFL 3), Rangiwaia Island (ONFL 3A) and Mauao / Mt Maungau (ONFL 10) which effectively surround Matakana Island except



for its coastal (north-eastern) side. We were told that there are no issues arising from any of those ONFLs.

[29] The operative Regional Water and Land Plan includes rules applicable to the sand barrier (which is identified as Sand Dune Country and therefore also as an Erosion Hazard Zone) which we briefly summarise here. The plan has rules which control land disturbance by earthworks in terms of the slope of the land and the volume or area of the earthworks.<sup>10</sup> This plan also includes rules which control land disturbance by vegetation clearance, including forestry.<sup>11</sup> The plan has separate rules which control both forest harvesting and forestry earthworks by accredited forestry operators.<sup>12</sup> All of these rules are subject to specific conditions for the management of stormwater and erosion.

[30] Under the operative Western Bay of Plenty District Plan as modified by Plan Change 46 relating to Matakana Island (which had operative effect from 19 December 2015), the whole island is zoned Rural. A wide range of activities are permitted, including production forestry, conservation forestry and one dwelling per lot.<sup>13</sup> There is also extensive provision for other activities pursuant to resource consents, including a range of dwelling and subdivision provisions, some of which are specific to Matakana Island.<sup>14</sup>

[31] In relation to restrictions on use and development, the most pertinent district plan controls for the purposes of this case are the landscape management areas introduced by Plan Change 46 to the RCEP which are identified on the planning maps as:

- i) S9 – Matakana Island Landscape Management Area - all along the Tauranga Harbour coastal edge from 50m from mean high water springs (MHWS) to 300m from MHWS;
- ii) S9a – Matakana Island Landscape Management Area - all along the Tauranga Harbour coastal edge from MHWS to 50m from MHWS, where more restrictive controls than those applicable in S9 are imposed; and
- iii) S25 – Matakana Island Open Coast - all along the seaward coastal edge as shown on the planning maps, where production forestry is permitted but

<sup>10</sup> Part 9.2.1 BOP Regional Water and Land Plan.

<sup>11</sup> Part 9.2.3 BOP Regional Water and Land Plan.

<sup>12</sup> Part 9.2.4 BOP Regional Water and Land Plan.

<sup>13</sup> Rule 18.3.1 WBOP District Plan.

<sup>14</sup> Rules 18.3.2 – 18.3.4 WBOP District Plan.



dwellings, buildings, structures and subdivision are non-complying activities.

[32] Under s 66(2A)(a) we received a copy of the Matakana and Rangiwaea Islands Hapū Management Plan, Edition 2 March 2017, as a relevant planning document recognised by an iwi authority. This is a comprehensive document setting out a planning framework for both islands which has assisted us in understanding the broader issues in this environment.

[33] As part of the existing environment for planning purposes, it is pertinent to note that there are current certificates of compliance issued by WBOPDC to TKC for single dwellings on six of TKC's lots, four as at 9 December 2015, one as at 21 January 2016 and one as at 29 February 2016. We did not receive any evidence as to the likelihood that these deemed resource consents will be implemented.<sup>15</sup> As far as we can tell, the houses would be located in areas which are presently in the production forest. We expect that building houses in such locations would raise a number of practical issues around access, fire risk, safety during harvesting and so on. We also note the comments of the Court in *Blakely Pacific Ltd v Western Bay of Plenty DC*<sup>16</sup> about the consequences of extensive removal of forestry given restrictions under the emissions trading regime.<sup>17</sup>

#### **Positions and evidence of the parties**

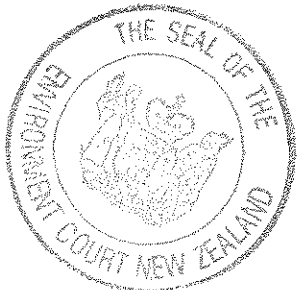
[34] The respondent, the Bay of Plenty Regional Council (**BOPRC**) adopted a neutral position in this case. Having notified the RCEP with ONFL 5 covering the whole of the sand barrier and then having made (through its Hearings Panel) decisions on submissions which reduced ONFL 5 to the open coast margin, BOPRC resolved on its position after seeking further advice from independent experts which it described as equivocal and not clearly supporting the Council's decision. Counsel for BOPRC acknowledged that in relation to Plan Change 46 to the District Plan BOPRC had supported WBOPDC's position and that of tangata whenua that the whole of the sand barrier was an ONFL.

[35] Counsel submitted that BOPRC's approach was consistent with case law, having been transparent in its approach, provided reasons at an early opportunity and making

<sup>15</sup> *Queenstown-Lakes DC v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [84].

<sup>16</sup> *Blakely Pacific Ltd v Western Bay of Plenty DC* [2011] NZEnvC 354 at [20] – [22].

<sup>17</sup> Under the Climate Change Response Act 2002.

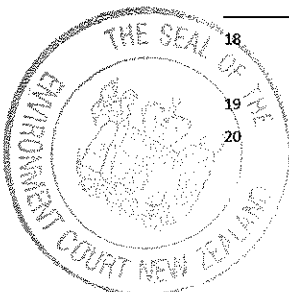


available the author(s) of any reports provided to the hearing of submissions.<sup>18</sup> While it is somewhat surprising and perhaps regrettable that the council responsible for the preparation,<sup>19</sup> observation and enforcement<sup>20</sup> of the RCEP would declare itself to be neutral about its own statutory planning document, we acknowledge that its counsel nonetheless assisted us wherever she could, consistent with her instructions, while the other parties presented full cases, for and against, to enable us to evaluate the provision sought in this appeal.

[36] The submissions for BOPRC noted that the attributes and values of ONFLs need to be accurately identified for the purposes of the natural heritage objectives and policies. Counsel conceded that further work was required to better define the Māori cultural values and attributes comprising the elements of ONFLs and noted that BOPRC had included a method 2A in the RCEP relating to this.

[37] Counsel's submissions helpfully provided detail on the background to the central issue in this case, including the statutory planning history from the development of the operative RCEP in 1993 through the submission and hearing process for the proposed RCEP and the BOPRC Hearings Panel's decision on submissions. She also offered submissions as to the options available to the Court.

[38] BOPRC called Rebecca Ryder and Dave Mansergh as expert witnesses. Ms Ryder is a senior principal landscape architect with extensive involvement in assessing the landscape of the region. She had been involved in the landscape reviews undertaken in preparing the RCEP, which concluded that the whole of Matakana Island should be identified as an ONFL. Her evidence set out the sequence of events leading to the decision of BOPRC which is the subject of this appeal. She also produced relevant reports containing such assessments. Mr Mansergh is a landscape architect and recreation planner also with extensive experience in landscape assessment. He was engaged by BOPRC to provide his opinion on the landscape issues in this appeal and his evidence produced his report to BOPRC. Mr Mansergh concluded that the reduction of the extent of the ONFL applicable to Matakana Island "*can be supported*" but also considered that if the wider harbour had been identified as a single ONL, this would not be the case recognising the important role that the island plays in the wider



<sup>18</sup> Citing *Canterbury RC v Christchurch CC* Decision C 113/2000 at [34], *Staufenberg Family Trust No 2 v Queenstown-Lakes DC* [2011] NZEnvC 383 and *J B Farms Ltd v Dunedin CC* Decision C 006/06.  
<sup>19</sup> Section 30(1)(b) RMA.  
<sup>20</sup> Section 84(1) RMA.

landscape.

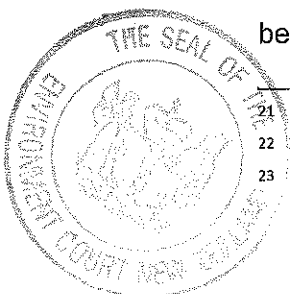
[39] The appellant, the Western Bay of Plenty District Council (**WBOPDC**), sought in its notice of appeal *That ONFL 5 Matakana Island is extended to include the entire Matakana Island forested sand barrier as contained in the Notified version of the Coastal Environment Plan and That Schedule 3 of the Coastal Environment Plan be amended to align with the amended mapping*. WBOPDC had made a submission on the notified RCEP seeking the retention of the spatial extent of ONFL 5 as shown in the notified maps.

[40] WBOPDC argued that the decision of BOPRC reducing the area of ONFL 5 to the seaward coastal strip was a significant departure from the previous planning approach of the BOPRC and created inconsistency with the District Plan. While the RMA requires a district plan not to be inconsistent with a regional plan in respect of the regional council's functions,<sup>21</sup> there is no corresponding requirement that a regional plan not be inconsistent with any relevant district plan. Nonetheless, WBOPDC presented a case that it was the RCEP that was now diverging from what had been a settled position, rather than the District Plan. Counsel prayed in aid two decisions which were submitted to support that position:

- a) *Blakely Pacific Ltd v Western Bay of Plenty DC*,<sup>22</sup> where the Court cancelled a subdivision consent and directed parties to work together on a "whole of island plan" to guide future subdivision, use and development of the island; and
- b) *TKC Holdings Ltd v Western Bay of Plenty DC*,<sup>23</sup> where the Court considered appeals against decisions on Plan Change 46 to the District Plan and upheld provisions which constrained development to protect a range of important geological, ecological, archaeological and cultural values.

[41] Counsel acknowledged that neither of those decisions directly addressed the issues that arise in this case.

[42] Counsel produced, by consent, the Matakana Island Plan (May 2013) which had been foreshadowed in the *Blakely Pacific* case. That plan was adopted by WBOPDC



<sup>21</sup> Section 75(4)(b) RMA.

<sup>22</sup> *Blakely Pacific Ltd v Western Bay of Plenty DC* [2011] NZEnvC 354.

<sup>23</sup> *TKC Holdings Ltd v Western Bay of Plenty DC* [2015] NZEnvC 100.

under the Local Government Act 2002 rather than the RMA, but the Court was advised that it had been through the special consultative procedure.<sup>24</sup> The plan is mostly descriptive but does propose a vision that land use and subdivision complements the uniqueness of Matakana Island, its location, the environment, the landscape, its people and community, and sets out principles for future land use and subdivision. Specifically in relation to the landscape, it states that the beach, frontal dune system and tree line (20 to 30 metres high pine plantation) have significant landscape value and that the District Plan confirms the importance of the land within 100 and 300 m of MHWS along the open coast and harbour edge respectively by classifying them as “outstanding landscape features” and restricting development within those areas.

[43] Referring to a number of well known cases that we will discuss in detail later in this decision, counsel submitted that the generally accepted approach to indentifying outstanding natural landscapes and features could be stated to involve three distinct steps:

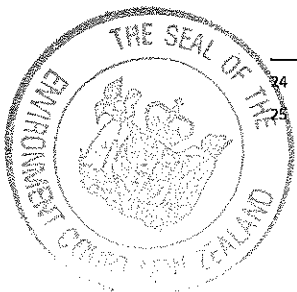
- a) To identify the extent of the landscape or feature;
- b) To consider whether the landscape or feature is sufficiently natural; and
- c) To assess whether the landscape or feature is outstanding against suitable criteria.

[44] Counsel then warned that previous case law should be treated with caution given the presence of three elements in this context which may not have been previously considered:

- i) The direction of Policy 15 NZCPS;
- ii) The application of existing criteria in a relevant plan or regional policy statement; and
- iii) The use of a “composite” ONFL category which combines the treatment of features and landscapes.

[45] Counsel referred to the decision in *Opoitere Ratepayers and Residents v Waikato RC*<sup>25</sup> as offering guidance on these three elements.

[46] Relying on the planning evidence of Peter Reaburn and the landscape evidence




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Sections 82 – 87 Local Government Act 2002.  
*Opoitere Ratepayers and Residents v Waikato RC* [2015] NZEnvC 105



of John Hudson, WBOPDC submitted that the evidence showed that the whole of the sand barrier had sufficient merits, on a range of considerations, to warrant being included in Schedule 3 to the RCEP as an outstanding natural landscape. Alternatively, counsel argued that it could be assessed as a feature and be included in the composite category of ONFL on that basis.

[47] Ngā Hapū o Te Moutere o Matakana (**the hapū**) and the Ngāti Makino Heritage Trust (**the Trust**) are parties under s 274 RMA who appeared in support of the WBOPDC position. The Trust had lodged further submissions in opposition to the submissions seeking deletion or limitation of ONFLs 4 and 5 on the sand barrier and seeking involvement in the development of tikanga and matauranga factors to be included in the attributes in Schedule 3 to the RCEP.

[48] Counsel for the hapū focussed on the cultural and spiritual values of tangata whenua and their relationship with the land and its associated taonga. His submissions highlighted the presence of cultural considerations in Policy 15(c) NZCPS and the matters listed in Part 2 of Appendix F to the RPS and then contrasted the absence of assessment of those matters by the witnesses called by parties opposing the appeal. He acknowledged the utilitarian, quasi-industrial and homogenous character of production forestry but stressed the evidence, principally from witnesses called for the hapū, on the degree to which forestry enabled hunting and gathering as well as cultural praxis such as karakia and visiting wāhi tapu. He submitted that the difference between the sides to the case were matters of weight and that the cultural interests of his clients which could be raised under s6(e), 7(a) and 8 RMA were equally relevant and deserving of consideration within the scope of s6(b) given the common ground among the expert witnesses that the concept of landscape is a cultural construct rather than an objectively verifiable fact.

[49] There were seven witnesses called for the hapū: five tangata whenua and two experts (shared with the Trust). We found the evidence of Dr Hauata Palmer, Ngaraima Taingahue, Paora Stanley, Brendon Taingahue and Jason Murray to be sincere and credible, offering us views into how tangata whenua continue to have relationships with the land even while it is being used for production forestry.

[50] We will discuss the evidence of the planning witness, Graeme Lawrence and the landscape witness, Di Lucas, together with the corresponding evidence of other experts on landscape matters later in this decision.

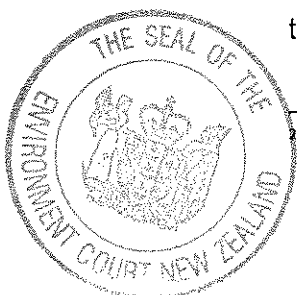


[51] There was also a statement presented for Robbie Rolleston who was unable to attend. We have admitted that evidence subject to an objection as to his unavailability for cross-examination and accordingly we have considered that this evidence may carry less weight than the evidence of those who were present to be cross-examined. As the case has unfolded, we do not consider that the degree of weight should be substantially less, as the content of this statement of evidence was not contested by other evidence.

[52] Counsel for the Trust supported the aspirations of the hapū as well as the position of WBOPDC. Her submissions complemented those of counsel for the hapū. She referred to the Court's decision in *Ngāti Makino Heritage Trust v Bay of Plenty RC*<sup>26</sup> relating to the Okurei reef where the assessment of whether the reef was outstanding, very high or high in natural character was characterised by the Court as being made up of relatively fine judgments involving different elements and attributes identified as a result of appropriate studies. Ultimately the Court held that the Okurei reef and surrounds should be identified as outstanding given the further information supplied, the discussions between the parties and the ways that the range of attributes were to be listed.

[53] Piatahi Bennett was called to give evidence for the Trust. She is an employee of the Trust with qualifications in, among other things, environmental science and Māori leadership as well as holding a certificate of accreditation for the purposes of s 39B of the RMA. Ms Bennett's evidence provided background to the Trust's involvement in coastal planning in the region and discussed the criteria in Appendix F to the RPS in terms of the consideration of Māori values.

[54] Carrus Corporation Ltd (**Carrus**) was a submitter on the RCEP opposing ONFL 5 as notified and seeking its removal or its limitation to the coastal edge. Carrus is the development manager of the land identified as the Faulkner blocks. It opposed WBOPDC's appeal on the grounds that while the sand barrier was significant as a feature, it was not an outstanding natural feature and the production forestry meant it was not sufficiently natural or outstanding to be an outstanding natural landscape. Counsel for Carrus emphasised the destructive impact of production forestry and submitted that those who supported the WBOPDC appeal gave scant acknowledgment to this.



<sup>26</sup> *Ngāti Makino Heritage Trust v Bay of Plenty RC* [2014] NZEnvC 238

[55] In relation to cultural and spiritual values for tangata whenua, Carrus relied on the opinions of three of the expert landscape architects (Frank Boffa, Stephen Brown and Brad Coombs) that although those values rated highly, the sand barrier still did not reach the threshold of being an outstanding natural landscape. Counsel submitted that the purpose of identification of the island for cultural or spiritual values was properly a matter to be considered under s 6(e) RMA and Policy 2(g) NZCPS, not s 6(b) and Policy 15.

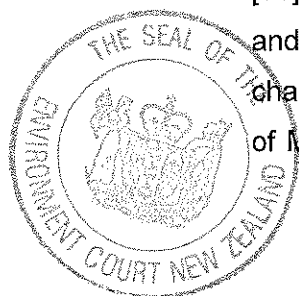
[56] Counsel for Carrus advanced options including extending ONFL 5 around the perimeter of the sand barrier or leaving it as is but identifying the remainder of the sand barrier as a regionally significant feature, or some combination of those two.

[57] Carrus called an expert landscape architect, Stephen Brown, to give evidence. Mr Brown was also called by Port Blakely Ltd. His evidence is addressed later in this decision.

[58] Port Blakely Ltd (**Port Blakely**) (formerly called Blakely Pacific Ltd) was a submitter on the RCEP opposing both ONFLs 4 and 5 and seeking their removal or limitation of them to non-forested parts of the sand barrier. As well as the 1925 ha it owns, Port Blakely also holds forestry rights over 800 ha of the 1970 ha owned by TKC Holdings Ltd. It opposed WBOPDC's appeal on the bases that there was no suitably qualified and experienced evidential basis on which the Court could make a sound decision on the merits of whether the sand barrier is an outstanding natural feature and that the extent of obvious human influence and modification, rather than just the use of the land for production forestry, disqualified the sand barrier from consideration as an outstanding natural landscape.

[59] Philip Taylor, the managing director of Port Blakely, gave clear and succinct evidence about the company's operations and forestry methods generally. Also called for Port Blakely were an expert planner, James Danby, and the landscape architect Stephen Brown (also called by Carrus). Their evidence will be addressed later in this decision.

[60] TKC Holdings Ltd (**TKC**) was a submitter on the RCEP seeking that ONFLs 4 and 5 be defined more accurately and, in any event, removed from its land. It challenged the approach taken by BOPRC in this process, submitting that the evidence of Mr Mansergh was far from equivocal and that its approach to the appeal trivialised



the hearing process at Council level. Counsel argued that Councils should not be encouraged to vacillate on important provisions in the plans for which they are responsible.

[61] Counsel submitted that the correct approach to the analysis of the issues relating to ONFLs is by dealing with the elements separately rather than in a conflated way, in order to give effect to the NZCPS. On that basis he adopted the submissions of counsel for Carrus and submitted that the expert evidence called by the parties opposing the appeal should be preferred.

[62] TKC called Bryce Holmes, an expert planner, and Brad Coombs and Frank Boffa, expert landscape architects. Their evidence will be addressed later in this decision.

### **Expert analysis**

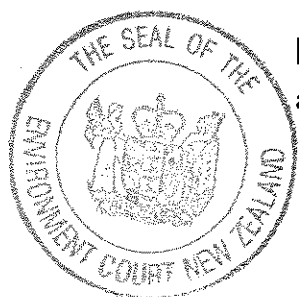
[63] The expert planning witnesses (Messrs Reaburn, Lawrence, Danby and Holmes) referred to an agreed statement of relevant planning provisions, including most of the provisions set out in Appendix 1 to this decision as well as the text in Schedule 3 to the RCEP for Matakana Island Coastal Edge – ONFL 5 quoted above at [24].

[64] Reference was also made to the Matakana and Rangiwaia Islands Hapū Management Plan, being accepted by all parties as a relevant planning document recognised by an iwi authority for the purposes of s 66(2A)(a) RMA.

[65] We consider that there was not a great deal of difference among these planning experts as to the approach to be taken to the relevant statutory considerations and planning issues except where their assessments and opinions were based on the opinions of the landscape architects. We deal with the evidence of those opinions below.

[66] We also received from Mr Lawrence two redrafted versions of the entry for ONFL 5 in Schedule 3 to the RCEP, prepared in order to demonstrate how that entry might read should we decide that the whole of the sand barrier ought to be included in that schedule.

[67] The expert landscape architects (Mr Hudson, Ms Lucas, Mr Brown, Mr Coombs and Mr Boffa) submitted a joint witness statement dated 8 March 2017, after Court-



assisted facilitation. Neither Ms Ryder nor Mr Mansergh participated in this, with counsel citing the neutral role adopted by BOPRC. We think, however, that as expert witnesses and in accordance with the Code of Conduct for Expert Witnesses they should have conferred with their peers in order to assist the Court.

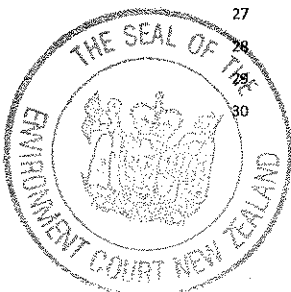
[68] The joint witness statement includes as part of the background to this appeal a reference by the Hearings Committee of BOPRC to the issue of 'naturalness' that had underpinned its evaluation, relying on the Court's dictum in *West Coast Environmental Network Inc v West Coast RC and Buller DC*:<sup>27</sup>

*It is now well understood that, for a landscape to require protection from inappropriate development under s6(b), it must be both 'natural' and 'outstanding'.*

[69] The joint witness statement then set out the following agreed matters:

- a) As preliminary points of agreement:
  - i) That their purpose was to address the question whether the sand barrier is an ONFL at regional level;
  - ii) That while the RCEP considers ONL and ONF collectively, they acknowledge that features and landscapes are or can be different and assessed accordingly;
  - iii) That the North Matakana Wetlands ONFL 4 and the ocean coastal strip ONFL 5 are ONLF and that the island is alongside the harbour (ONFL 3) and Mauao (ONFL 10);
  - iv) That they should be guided by the criteria in Appendix F of the RCEP (sic<sup>28</sup>) and ensure general consistency (sic<sup>29</sup>) with Policy 15 NZCPS;
- b) They undertook their assessment using their own knowledge and expertise;
- c) They had read the agreed summary of planning provisions and the Hapū Management Plan for the islands;
- d) They noted the decision of the Court of Appeal in *Man o'War Station Ltd v Auckland Council*<sup>30</sup> which states the identification of ONFLS should be separated from the planning provisions associated with them;
- e) That the relevant criteria/factors to be used by them were those in

<sup>27</sup> *West Coast Environmental Network Inc v West Coast RC and Buller DC* [2013] NZEnvC 47  
<sup>28</sup> Appendix F is part of the RPS, to which the RCEP must give effect under s 67(3)(c) RMA.  
<sup>29</sup> The RCEP must give effect to the NZCPS under s 67(3)(b) RMA.  
<sup>30</sup> *Man o'War Station Ltd v Auckland Council* [2017] NZCA 24.



Appendix F, which generally address Policy 15(c) NZCPS; and

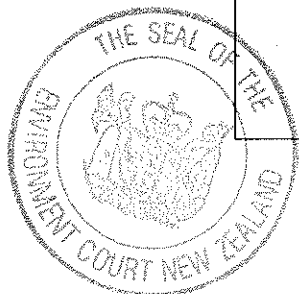
- f) Their assessment was done using a seven point scale from Very High (VH) to High (H), Moderately High (MH), Moderate (M), Moderately Low (ML), Low (L) and down to Very Low (VL).

[70] At this point the opinions of the landscape experts split into two groups, with Ms Lucas and Mr Hudson in one group and Messrs Brown, Boffa and Coombs in the other.

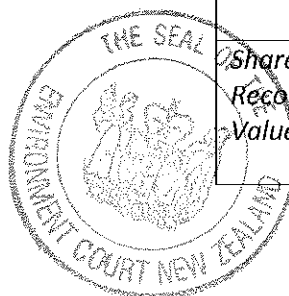
[71] In assessing the sand barrier, Ms Lucas and Mr Hudson considered that the whole should be addressed as one, while accepting that its characteristics do vary within it. Messrs Brown, Boffa and Coombs considered that the ONFL boundary needed to reflect those differing characteristics and values, so that the coastal strip (which they consider is an ONFL) could be assessed separately from the rest of the sand barrier.

[72] The assessment is then set out as follows, with the first two columns, while headed "evaluation," largely repeating the text of the "assessment criteria" for landscape values in the first part of Schedule 3 to the RCEP and the last two columns setting out the ratings for each item by the experts:

<i>Evaluation</i>		<i>Explanation</i>	<i>Lucas &amp; Hudson</i>	<i>Brown, Boffa &amp; Coombs</i>
<i>Natural science factors</i>	<i>Representativeness: Natural features and landscapes that are clearly and recognisably characteristic of the area, district or region. The key components of the landscape will be present in a way that more generally defines the character of the pale, but which distils this character in essence.</i>	<i>The experts considered this as addressing the <u>biotic</u> components of the barrier</i>	<i>M</i>	<i>M/L</i>
	<i>Representativeness: Natural features are in a good state of preservation and are representative and characteristic of the natural geological processes and diversity of the region.</i>	<i>The experts considered this as addressing the <u>abiotic</u> components of the barrier</i>	<i>VH</i>	<i>M/L or M</i>
	<i>Research and education: Natural features and landscapes are valued for the contribution they make to research and education.</i>	<i>The experts do not consider this to be relevant to their assessments</i>	<i>Not applicable</i>	
	<i>Rarity: Natural features that are unique or rare in the region or</i>	<i>This considered geomorphic</i>	<i>VH</i>	<i>H</i>



	<i>nationally and few comparable examples exist.</i>	<i>considerations</i>		
Aesthetic values	<i>Coherence: The patterns of land cover and land use that are largely in harmony with the underlying natural pattern of the landform of the area and there are no significant discordant elements of land cover or land use.</i>		H	L
	<i>Vividness: Natural features and landscapes that are widely recognised across the community and beyond the local area and remain clearly in the memory; striking landscapes that are symbolic of an area due to their recognisable and memorable qualities.</i>		H	M/L
	<i>Naturalness: Natural features and landscapes that appear largely uncompromised by modification and appear to comprise natural systems that are functional and healthy.</i>		M/H	L
	<i>Intactness: Natural systems that are intact and aesthetically coherent and do not display significant visual signs of human modification, intervention or manipulation. These are visually intact and highly aesthetic natural landscapes.</i>		L	L
Expressive-ness (Legibility)	<i>Natural features and landscapes that clearly demonstrate the natural processes that formed them. Examples of natural processes in a landscape exemplify the particular processes that formed that landscape or feature.</i>		VH	M
Transient values	<i>The consistent occurrence of transient features (for example the seasonal flowering of pohutukawa, intertidal movement and changes in landform) contributes to the character, qualities and values of the landscape. Landscapes that are widely recognised for their transient features and the contribution these features have to identify this feature or landscape.</i>		M	Brown: L Boffa: L Coombs : M/L
Shared and Recognised Values	<i>Natural features and landscapes that are widely known and valued by the immediate and wider community for their contribution to a sense of place,</i>	<i>These comments are based on generic</i>		<i>M for the regional and wider community and higher for the local</i>



	<i>leading to a strong community association with or high public esteem for the place.</i>	<i>knowledge rather than detailed understanding</i>	<i>community</i>
<i>Māori Values</i>	<i>Natural features and landscapes that are clearly special or widely known and influenced by their connection to the Māori values inherent in the place.</i>	<i>All experts appreciate that the sand barrier has very high values to Tangata Whenua (VH)</i>	
<i>Historical Associations</i>	<i>Natural features and landscapes that are clearly and widely known and influenced by their connection to the historical values inherent in the place.</i>	<i>The experts did not have sufficient knowledge of these values at the conference to attribute ratings for them.</i>	

[73] The experts then say that these differences in rating reflect the different approaches explained in [71] above. As a result, Ms Lucas and Mr Hudson consider that the ONFL 5 classification should be extended across the entire sand barrier as in the notified version of the RCEP while Messrs Brown, Boffa and Coombs identify a significant change in landscape character and values inland of the ocean edge and support the decisions version of the RCEP.

[74] In relation to production forestry, Messrs Brown, Boffa and Coombs regard the production forestry and related activities as the major factor that contributes to their lower ratings while Ms Lucas and Mr Hudson consider production forestry to be less of a detractor.

[75] In their evidence before us and under cross-examination, these experts remained firm in their views. Mr Mansergh, who had provided advice to BOPRC after it made its decision but had not participated in the conferencing, essentially agreed with the conclusion of Messrs Brown, Boffa and Coombs that the production forestry resulted in the sand barrier being insufficiently natural to warrant recognition as an ONFL. These witnesses all emphasised the industrial nature of the forestry activity, especially at harvest but also in the way in which the planted tree cover had been imposed on the land rather than being a natural process and how the activity altered the surface of the land even while leaving the landform intact at a regional scale. They did acknowledge that there are examples of planted areas within ONFLs elsewhere in New Zealand, noting that context is very important to any assessment.

[76] Ms Lucas and Mr Hudson stated that they had attended a hui with island residents and now considered that the attributes of the sand barrier that were highly valued by tangata whenua (and not fully identified in the *Pigeon Bay* factors) resulted in





the status of the sand barrier being even higher. The other landscape experts, acknowledging that their expertise did not extend far into the assessment of tangata whenua values, did not challenge this. A further difference arose in that while Ms Lucas and Mr Hudson regarded the tangata whenua values as falling squarely within the assessment framework of an ONFL in terms of the factors listed in Policy 15 NZCPS and Appendix F Set 2 of the RPS, the other experts tended to point to those matters being more properly matters for assessment and possible protection under s 6(e) RMA.

[77] It also emerged that all of the landscape experts accepted that much of any assessment depended on the point of view: both physically, whether close or distant, within the forest or at its edge or from a height or at ground level; and temporally, whether on a single view (or by a photograph) or over time (including epochs or generations as well as through seasons or years).

#### Review of Case Law

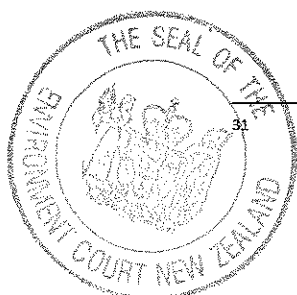
[78] Neither the phrase “outstanding natural features and landscapes” nor any of its elements is defined in the Act. There is a substantial body of case law in relation to the interpretation of these words and the scope of the requirement to recognise and provide for the protection of the things to which they apply. This case presents as its central issue the apparently binary choice of whether the sand barrier of Matakana Island is or is not an outstanding natural feature or landscape. We will review the relevant case law to assist us in considering that choice. We have identified nearly twenty relevant decisions and some of our citations are lengthy making this part of our decision relatively long, but we think it is important that the full reasoning be set out rather than simply the conclusions, bearing in mind that case law is not any kind of legislation but instead demonstrates how legislation is to be interpreted and applied. We refer to the decisions in roughly chronological order, which may assist in understanding the evolution of the case law and the jurisprudence that can be gleaned from it.

[79] We start with the guidance of the High Court in *NZ Rail Ltd v Marlborough DC*<sup>31</sup> as to the approach that ought to be taken to interpreting and applying Part 2 of the Act:

*This part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules and principles of statutory construction which aim to*

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<sup>31</sup> *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70, 85-86.

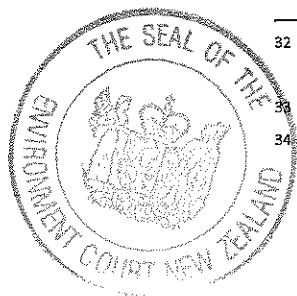


*extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way. Indeed, it is for that purpose that the Planning Tribunal, with special expertise and skills, is established and appointed to oversee and to promote the objectives and the policies and the principles under the Act.*

[80] We note that the approach taken by the High Court in *NZ Rail* was the subject of specific discussion by the Supreme Court in *Environmental Defence Society v New Zealand King Salmon & ors*.<sup>32</sup> The Supreme Court noted that s 5 RMA is not intended to be an operative provision, in the sense that it is not a section under which particular planning decisions are made. It also held that the legislation provides for a hierarchy of planning documents the purpose of which is to flesh out the principles in s 5 and the remainder of Part 2 in a manner that is increasingly detailed both as to content and location.

[81] Section 6(b) is one item in a list of eight matters identified as being of national importance. It is apparent from the mandatory nature of section 6 as well as the status of national importance that Parliament intends these matters all to be given careful attention. We therefore infer that failing to recognise and provide for any of these matters would not promote the sustainable management of natural and physical resources.

[82] Approaching the text of s 6(b) with the RMA's purpose and the guidance of the High Court and the Supreme Court in mind, we note that features and landscapes are not the same thing. In broad terms and in the context of the RMA we think one may generally speak of a feature as a single element of natural and physical resources while a landscape is usually a collection of such elements. The Environment Court has previously held, relying on a dictionary definition, that a feature is a distinctive or characteristic part of a landscape<sup>33</sup> and therefore that an outstanding natural feature is a distinctive part of a larger landscape which is an outstanding natural landscape.<sup>34</sup> But with respect, that cannot be a fixed relationship: the scale of elements is necessarily relative and a feature may be so large, as in the case of a mountain or an island, that it can encompass one or more landscapes while retaining its overall integrity as a feature. A feature may also be relatively small, such as a particular



<sup>32</sup> *Environmental Defence Society v New Zealand King Salmon & ors* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442 at [147] – [151].

<sup>33</sup> *Wakatipu Environmental Society v Queenstown-Lakes DC* Decision No. C 129/2001 at [33].

<sup>34</sup> *Queenstown Bungy Ltd v Queenstown-Lakes DC* Decision No. C 35/2002 at [18].

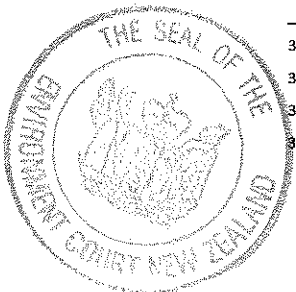
geological formation, whereas one would ordinarily not characterise a similarly small area as being a landscape. In some cases, an outstanding natural feature may exist in splendid isolation without an outstanding natural landscape around it, while in others it may be outstanding because of its relationship to other features or the landscape, whether those other things are outstanding or not. It follows that we think that the text of s 6(b) should be considered in terms of principles rather than rules or definitions.

[83] There was some debate before us about the structure of the RCEP which addresses features and landscapes together in its policies, rules and schedules. Some parties suggested that this approach was less desirable than that of other councils which differentiate between features and landscapes in their plans. We doubt that there is much to be gained in attempting to resolve that issue in this case, particularly as the sand barrier of Matakana Island could reasonably be described as either or both a feature (given its special geological attributes) or a landscape.

[84] There has also been some debate about the correct application of the adjectives to the nouns in s 6(b), but we respectfully agree with what was said in *Wakatipu Environmental Society Inc v Queenstown-Lakes DC*<sup>35</sup> that “outstanding” and “natural” qualify both “features” and “landscapes.” This is consistent with the High Court’s guidance in *NZ Rail* as to the open texture of the language of Part 2 and with the ordinary way in which we think most readers would parse the words as constituting a single noun phrase with four co-ordinate elements (whether they knew it or not).

[85] In the *Wakatipu Environmental Soc Inc* decision the Court held that “outstanding” means “conspicuous, eminent, especially because of excellence; remarkable” and observed that a landscape may be beautiful or picturesque without necessarily being outstanding.<sup>36</sup> The context in which those inherently comparative judgments are to be made was held to be the planning document in which the landscape is identified.<sup>37</sup>

[86] The Court in that case also held<sup>38</sup> that “natural” is defined as “existing in or caused by nature; not artificial; uncultivated; wild.” But the Court also cautioned that more landscape has been affected by human activity than is commonly understood, so that “natural” is not to be equated with endemic or with pristine and it can include



<sup>35</sup>

*Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at para. 81.

<sup>36</sup>

Citing *Munro v Waitaki DC* Decision C 98/97.

<sup>37</sup>

*Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at para. 85.

<sup>38</sup>

*Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at paras 87 – 89.

pasture, exotic tree species (including pine), wildlife and things of that ilk as opposed to structures, roads and machinery.<sup>39</sup> The Court identified what it termed the *criteria of naturalness* to include:

- *the physical landform and relief*
- *the landscape being uncluttered by structures and/or 'obvious' human influence*
- *the presence of water (lakes, rivers, sea)*
- *the vegetation (especially native vegetation) and other ecological patterns.*

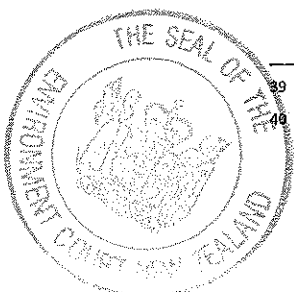
The Court went on in the same passage to note that the absence or compromised presence of one of these does not mean the landscape is non-natural, just that it is less natural because there is a spectrum from pristine to cityscape.

[87] We note that in the same decision, the Court also expressed<sup>40</sup> some caution about the use of dictionary definitions and quoted the same guidance from the *NZ Rail* decision which we have quoted above. We share that caution and observe that sometimes it is better to try and understand the meaning of a word according to the context of its use rather than according to an abstract definition. The Court noted that the definitions of *environment* and *amenity values* in s 2 RMA are comprehensive and cross-refer to each other and went on to observe that "landscape" is a large subset of "environment" linking individual resources and the wider environment in two ways: by grouping the resources themselves and by emphasising the human attitudes that are affected by relevant social, economic, aesthetic and cultural conditions.

[88] In a concluding paragraph in this discussion, the Court said this:

[99] ... Further, it seems to us that the attitude of the parties opposing WESI demonstrates a lack of understanding of what the RMA requires: ascertaining an area of outstanding natural landscape should not (normally) require experts. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis. The question of what is appropriate development is another issue, and one which might require an expert's opinion. Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate.

[89] The Court's decision in *Wakatipu Environmental Society Inc* does not put forward a definition of "landscape", instead setting out a list of what it terms *criteria*,



Citing *Harrison v Tasman DC* [1994] NZRMA 193 at 197.

*Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at paras 74 – 76.

based on an earlier decision in *Pigeon Bay Aquaculture v Canterbury RC*<sup>41</sup> but with modifications:<sup>42</sup>

- (a) *the natural science factors – the geological, topographical and dynamic aspects of the landscape;*
- (b) *its aesthetic values including memorability and naturalness;*
- (c) *its expressiveness how obviously the landscape demonstrates the formative processes leading to it;*
- (d) *transient values occasional presence of wildlife; or its values at certain times of the day or of the year;*
- (e) *whether the values are shared or recognised;*
- (f) *its value to tangata whenua;*
- (g) *its historical associations.*

The Court clearly stated that its list of matters is not to be regarded as frozen and that other issues may arise.

[90] This list appears to be the source of the list in Policy 15(c) NZCPS 2010 (there being nothing comparable in the NZCPS 1994). There are some differences between the two lists, notably the addition in Policy 15(c) of references to the presence of water and to vegetation (including exotic vegetation), which appear to have their source in the Court's criteria of naturalness,<sup>43</sup> to wild and scenic values, to cultural values being identified in accordance with tikanga Māori and to the expression of cultural and spiritual values as cultural and landscape features. This list is also the apparent source for the criteria for the assessment of natural features and landscapes in Set 2 of Appendix F to the RPS either directly or via Policy 15(c).

[91] It is also pertinent to recall that the initial discussion of these things in the *Pigeon Bay* decision expressly acknowledged how subjective they are, with the potential difficulty that evidence on them can turn into a treatise on landscape aesthetics and become a hearsay survey of affected peoples' attitudes to a proposal. In seeking to move back from subjective aesthetic assessment to an assessment of 'naturalness,' the Court quoted from its decision in *Browning v Marlborough DC*:<sup>44</sup>

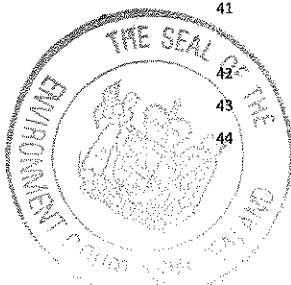
*The experiential recognition of what is natural character and a landscape worthy of protection goes not to the matter of tasteful subjective judgment but to a*

<sup>41</sup> *Pigeon Bay Aquaculture v Canterbury RC* [1999] NZRMA 209 at paras 56-58, with the sources set out in a footnote.

<sup>42</sup> *Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at para 80.

<sup>43</sup> *Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at para 89.

<sup>44</sup> *Browning v Marlborough DC* Decision W 20/97 at page 7.



*recognition that the dominant land patterns on the landform consist of scrub and regenerating forest uncluttered by buildings or jarring colours, and an unencumbered land/sea interface.*

[92] In *Long Bay – Okura Great Park Society v North Shore City Council*<sup>45</sup> the Court referred with apparent approval to citations of studies<sup>46</sup> which were claimed by Mr Brown, a witness in that case and also in this one, to provide “a verifiable foundation for the identification of outstanding natural features and landscapes” as defined by two key factors:

- (a) *The degree of naturalness and endemic character of a locality - related to its sense of place, both as part of New Zealand and as a distinctive location within this country; and*
- (b) *The visual structuring and patterning of the landscape - its compositional character that, in turn, affects the degree of visual coherence, diversity and stimulation / excitement elicited by the landscape in two dimensions and three dimensions.*

Based on these factors, the research identified two main paradigms that help to explain most New Zealanders’ responses to landscape and their assignment of values to different types of landscape:

*The ‘wild nature’ paradigm, repeatedly identified in the research, is strongly correlated with the native endemic character of landscape scenes and the predominance of natural elements and patterns within them.*

*The ‘cultured nature’ paradigm is more accepting of exotic vegetation and productive rural uses, but again shows a strong aversion to obvious signs of development and buildings in the landscape.*

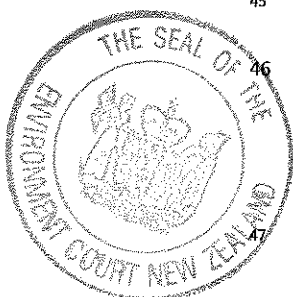
The Court considered this research is consistent with the discussion of naturalness in landscapes in the case law and with the dictum in *Harrison v Tasman District Council* adopted in *Wakatipu* and referred to above in para. [86].

[93] Interestingly, a differently constituted Court had delivered a decision a short time before which cast doubt on the methodology on which these studies were based, called the “Q-Sort”, saying (with emphasis in the original text):<sup>47</sup>

<sup>45</sup> *Long Bay – Okura Great Park Society v North Shore CC* Decision No. A078/2008 at paras [124] – [140].

<sup>46</sup> Including *Public Perceptions of Outstanding Natural Landscapes In The Auckland Region, Research Report No. 273*, John R Fairweather, Simon R Swaffield, David G Simmons. 2004. We were supplied with an earlier article: *Public Perceptions of Natural Character in New Zealand: Wild Nature Versus Cultured Nature*, Bronwyn M Newton, John R Fairweather, Simon R Swaffield, *New Zealand Geographer* 58 (2) 2002: 17

<sup>47</sup> *Pita Whanau v Far North DC* Decision A 14/2008 at [83]



... the Q-sort method is one addressing public **visual** landscape perception, but we tend to think that visual issues are not so much needing investigation by survey of public attitudes, as to be subjected to expert advice as happened in this case. An important aspect is peoples' understanding of the **meaning and values** of landscapes having regard to significance of places through recollection of events, significance of associated features and people, and the like. This information is not readily understood by outsiders looking at graphic materials. The Q-sort method not only appears to gloss over cultural aspects of landscape as just discussed, but also matters ecological.

[94] The Court in the *Long Bay-Okura* decision also revisited the criteria of "naturalness" (quoted above at para. [86]) and modified and extended them as follows.<sup>48</sup>

- *relatively unmodified and legible physical landform and relief;*
- *the landscape being uncluttered by structures and/or obvious human influence;*
- *the presence of water (lake, river, sea);*
- *the presence of vegetation (especially native vegetation) and other ecological patterns.*

The Court then observed:

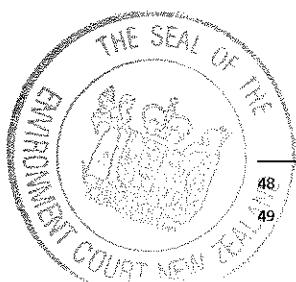
*The absence or compromised presence of one or more of these criteria does not mean that the landscape or coastal environment is non-natural, just that it is less natural. There is a spectrum of naturalness from a pristine natural landscape to a cityscape, and a 'cultured nature' landscape may still be an outstanding natural landscape.*

[95] The Court returned again to the *Pigeon Bay / Wakatipu* list in *Maniototo Environmental Soc Inc v Central Otago DC*<sup>49</sup> (often referred to as the *Lammermoor* case) and set out its views in a comprehensive manner which we quote in full:

[201] ... We now pull together the threads from those cases and state what we understand a landscape to be under the RMA by re-categorising the amended Pigeon Bay criteria in an attempt to parcel them into three sets with the more objective factors in (1) and the more value laden factors in (2) and (3). This comes with a sense of caution about reducing discussion of any landscape to its elements. There is always a danger of not seeing a landscape for the tussocks.

[202] In our view a landscape is four-dimensional in space and time within the given environment - often focussed on a smaller relevant space such as an application site which is the sum of the following:

- (1) *a reasonably comprehensive (but proportionate to the issues) description of the characteristics of the space such as:*



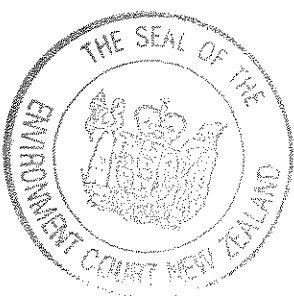
<sup>48</sup> *Long Bay – Okura Great Park Society v North Shore CC* Decision No. A078/2008 at para. [135].  
<sup>49</sup> *Maniototo Environmental Soc Inc v Central Otago DC* Decision C103/2009

- *the geological, topographical, ecological and dynamic components of the wider space (the natural science factors);*
  - *the number, location, size and quality of buildings and structures;*
  - *the history of the area;*
  - *the the past, present and likely future (permitted or consented) activities in the relevant parts of the environment; and*
- (2) *a description of the values of the candidate landscape including:*
- *an initial assessment of the naturalness of the space (to the extent this is more than the sum of the elements described under (1) above);*
  - *its legibility - how obviously the landscape demonstrates the formative processes described under (1);*
  - *its transient values;*
  - *people and communities' shared and recognised values including the memories and associations it raises;*
  - *its memorability;*
  - *its values to tangata whenua;*
  - *any other aesthetic values; and*
  - *any further values expressed in a relevant plan under the RMA; and*
- (3) *a reasonably representative selection of perceptions - direct or indirect, remembered or even imagined – of the space, usually the sub-sets of:*
- (a) *the more expansive views of the proposed landscape; and*
- (b) *the views, experiences and associations of persons who may be affected by the landscape.*

[203] *There is some repetition within the sets. For example the objective characteristics of the landscape go a long way towards determining its naturalness. More widely, the matters in the third set influence the perceptions in the second.*

[204] *To describe and delimit a landscape a consent authority needs at least to consider the matters in set (1) and, to the extent necessary and proportionate to the case, those in sets (2) and (3) also, After delimiting the landscape, the consent authority must assess its naturalness. The criteria for 'naturalness' were stated by the Environment Court in Long Bay-Okura Great Park Society Incorporated & ors v North Shore City Council to include:*

- *relatively unmodified and legible physical landform and relief;*
- *the landscape being uncluttered by structures and/or obvious human influence;*
- *the presence of water (lake, river, sea);*





- *the presence of vegetation (especially native vegetation) and other ecological patterns.*

[205] *There is sometimes criticism of Part 2 of the RMA for the extent of subjectivity it is said to introduce. Some of this may be inevitable if Parliament maintains the role of the RMA in reconciling different cultural attitudes to resources as in sections 6(e), 7(a) and 8 of the Act. But the test of naturalness in section 6(b) is an important qualification of the word 'landscape' and introduces a considerable degree of objectivity to the concept of a natural landscape. ...*

[206] *There are no invariable criteria for outstandingness - it depends on the specific characteristics of the 'natural landscape' being considered.*

[96] in several other decisions delivered at around the same time, the Court (differently constituted) addressed the *Pigeon Bay / Wakatipu* approach. These decisions expressed caution about treating that approach in an overly formulaic way.

[97] In *Unison Networks v Hastings DC*,<sup>50</sup> the Court referred to expert evidence before it which presented alternative approaches to the *Pigeon Bay* scheme:

[94] *We consider that a balanced appraisal of the value of Dr Steven's research to the present point was contained in the evidence of Mr G C Lister, a landscape architect with considerable experience of Hawkes Bay, called for the landscape Societies. Mr Lister stated:*

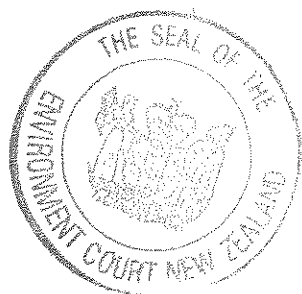
I agree in principle with an alternative re-organisation of the *Pigeon Bay* factors, such as Dr Steven's suggested organisation into three primary factors: natural science factors + aesthetic values + community held values. Such a framework in my view would be robust and could more readily accommodate other factors that are not listed in the *Pigeon Bay* factors ...

... While some of Dr Steven's critiques of the structure of the *Pigeon Bay* criteria are valid, the aspects to which they refer are still relevant one way or another to assessing the landscape.

[95] *For present purposes we will attempt to analyse the landscape under the three heads agreed by Dr Steven and Mr Lister. We note that one of Dr Steven's concerns was that the use of the Pigeon Bay factors may cause some aspects or attributes of landscape to be factored into the assessment process more than once. That may be so if some sort of mathematical or mechanistic approach to assessment is adopted, but we note the comments of Mr Lister that-*

It needs to be remembered that the *Pigeon Bay* criteria are nothing more than factors to take into account when assessing landscape. Every factor may not be relevant in each case, and they do not need to be given equal weight. There is no formula. In my opinion an overall assessment is required, taking the factors into account.

[96] *We agree. While the range of principal factors would be reduced by the adoption of the more condensed approach of Dr Steven, it is important to avoid settling upon a mere formulaic framework that could simply be 'fed through' in a*



<sup>50</sup>

*Unison Networks v Hastings DC* Decision W11/2009

*computerised fashion. Ultimately each case must be considered in the light of dependable and recognised pointers or guiding criteria to assist the making of an overall appraisal and judgment, without the risk of professional landscape architects failing to see the wood for the trees.*

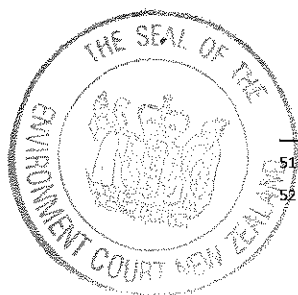
[98] In *Bayswater Marina Holdings Ltd v North Shore CC*<sup>51</sup> the Court's decision included this general discussion of the issues:

[121] *How we assess and address landscape issues depends on how landscape is defined. Although landscape used to be (and sometimes is still) regarded in visual or visibility terms only, the RMA and the New Zealand Coastal Policy Statement make it clear landscape is more than that, although it specifically includes the visual aspect of landscape. Neither is it simply a total of biophysical elements, patterns and processes occurring over time, even though these are regarded as formative landscape factors. And while the natural formative factors are relevant, the landscape is also more than the natural landscape. There are many definitions of landscape, and although the RMA does not specifically define landscape it leads us to include both specific features of land and water, as physical objects which are to be qualitatively considered, and people's values and perceptions of landscape. This in turn indicates a strong cultural basis to the definition of landscape.*

[122] *Different cultures hold different values about landscape and values may change over time and according to context. A landscape may convey different memories or meanings to the same or different people. Considerations of economic and material aspects of landscape are significant values in the case of BML. So while landscape is a cultural construct (as is justice and language), it is a construct which in terms of the RMA is assigned with certain properties which must be considered. The landscape is not simply what is out there, the open space, reclamation, the coastline and harbour or the townscape. It is not simply what people see (although it includes this) but is what people perceive it to be and how they value the landscape. This in turn is influenced by people's relationship with the landscape: be it owner, leaseholder, resident, recreational user, or visitor.*

[99] in *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor*<sup>52</sup> the points made in the *Unison Networks* decision were repeated:

[135] *In considering whether or not landscapes or features are outstanding, it has been customary over the past decade for landscape architects and the Court to consider various elements of the landscape under a series of heads identified in *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*, and sometimes referred to as the modified Pigeon Bay criteria or factors. We indicate that we consider the term factors much more appropriate. They are a series of elements which help to ensure a full understanding of the landscape the Court is dealing with, not a series of criteria according to which some rating in*



<sup>51</sup> *Bayswater Marina Holdings Ltd v North Shore CC* Decision A 018/2009

<sup>52</sup> *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor* Decision C 058/2009

*one or more results in a landscape becoming outstanding. It is still necessary to stand back and ask the question "does this landscape or feature stand out among the other landscapes and features of the district?" We refer to the salutary comments of the Court in Unison v Hastings District Council, warning against a mathematical or mechanical approach to applying the modified Pigeon Bay factors. This appeared to be the view of all the landscape architects in this case.*

[100] In *Upper Clutha Tracks Trust & ors v Queenstown Lakes DC*<sup>53</sup> the Court reviewed its previous decisions and returned to address the meanings of "landscape", "natural" and "outstanding" in the context of contemporary landscape practice. It observed that the description of the elements of "landscape" in the *Lammermoor* decision could be summarised as having three sets of components:

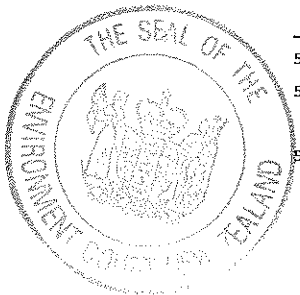
- *the biogeographical elements, patterns and processes;*
- *the associative or relationship contributions; and*
- *the perceptual aspects.*

[101] After characterising the word "natural" as "*rather treacherous*" when describing biogeographical characteristics of a landscape, the Court pointed out that there is a spectrum of landscapes from pristine through highly natural to "*highly modified but looks natural*" or "*apparently natural*" and on to urban. It reiterated that it is the extent and nature of human or cultural modification, notably the presence and use of buildings and infrastructure, on a continuum that determines whether a landscape is natural or not. It said that a simple natural/cultural dichotomy is not useful under the RMA and was wary of scales of "naturalness" or "natural character", going so far as to say that for practical purposes a pure "natural landscape" is an oxymoron.

[102] In relation to "outstanding", the Court pointed out that an averagely natural landscape might be an outstanding natural landscape by reason of its landform, even if in pasture rather than other vegetation, or because of its experiential or associative relationship character, such as the value to tangata whenua where the values recognised under s 6(e) RMA might make the landscape outstanding.<sup>54</sup> It cautioned against searching for "outstandingly natural landscapes" when the RMA requires recognition of natural landscapes which are outstanding.

[103] In *Mainpower NZ Ltd v Hurunui DC*,<sup>55</sup> after quoting the *Maniototo / Lammermoor*

<sup>53</sup> *Upper Clutha Tracks Trust & ors v Queenstown-Lakes DC* [2010] NZEnvC 432 at [51] – [62]  
<sup>54</sup> Citing *Unison Networks v Hastings DC* Decision No. W11/2009 and *Outstanding Landscape Protection Soc Inc v Hastings DC* Decision No. 24/2007.  
<sup>55</sup> *Mainpower NZ Ltd v Hurunui DC* [2011] NZEnvC 384.



list and referring to the *Upper Clutha Tracks* case, the Court concisely summarised the position, to that point, as follows:

[298] *The natural and physical attributes of a landscape can be both objectively and subjectively analysed. The natural environment including the land, water, air, flora and fauna can be described and assessed both quantitatively and qualitatively. Likewise, change to the natural environment which results from human endeavour through, for example, the presence of physical structures, buildings and roads or modification to landform or vegetation can be described and assessed.*

[299] *It is important to keep in mind that when considering what are loosely termed landscape or natural 'values', we take into account people's values, rather than assessing the landscape values as aspects apart from people.*

Conclusion on landscape definition and description

[300] *In attempting to respond in a way that may assist our decision-making, having discussed the matter with witnesses, we offer the following definition:*

*Landscape means the natural and physical attributes of land together with air and water which change overtime and which is made known by people's evolving perceptions and associations.*

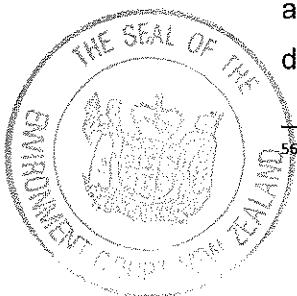
[301] *In keeping with the Act such a definition enables the development of landscape assessment which takes account of:*

- *natural and physical environment; and*
- *perceptual; and*
- *associative aspects (beliefs, uses, values and relationships)*

*which may change overtime.*

[302] *The definition responds, through reference to associative aspects, to our sense of, or attachment to, place. Thus we commence our evaluation of the landscape evidence with a working definition of landscape. In this case our assessment was informed by experts who understand the effects of change on the natural and physical landscape (and also consider people's response to this), visitors to the area and local people who have an attachment to the place.*

[104] At about the same time as the *Mainpower* decision, the Court also delivered its decision in *High Country Rosehip Orchards v Mackenzie DC*.<sup>56</sup> This decision again adopted the *Maniototo / Lammermoor* list but also indicated approval for a seven point scale of naturalness similar to that used by the landscape experts in their joint statement in this case. The expert who advanced this scale in that case (not one of the witnesses in this case) opined that the degree of "natural" for the purpose of a threshold for an ONFL lay at the boundary between Moderate-High and High, but acknowledged that this was a "fuzzy zone of transition" rather than a sharp line of demarcation. The Court gave "provisional approval" to this approach, subject to a



<sup>56</sup> *High Country Rosehip Orchards v Mackenzie DC* [2011] NZEnvC 387 at [93] – [101].

caveat about naturalness being a cultural construct and the apparent problem of distinguishing between “high” and “moderate-high”.

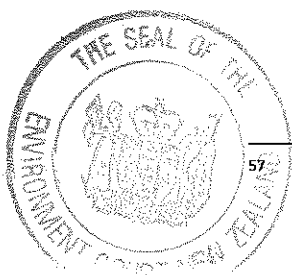
[105] The Court also said:

*[97] We accept that the introduced trees change the ecology of the landscape, but it is important to realise that they do not, in many eyes, make it less natural or less beautiful. Several witnesses drew our attention to how many photographs of the Mackenzie Basin feature introduced conifers. The appreciation of trees shows how important memory and expectations are in assessment of landscape.*

[106] The most recent authority relevant to this case is the decision of the Court of Appeal in *Man o’War Station Ltd v Auckland Council*.<sup>57</sup> That case concerned a change to the Auckland Regional Policy Statement which introduced new policy provisions for Outstanding Natural Landscapes in the Auckland Region. The appellant owned substantial areas of land on the eastern end of Waiheke Island and neighbouring Ponui Island subject to such identification and policy provisions which it was concerned would inhibit the ongoing use and development of its land for pastoral farming and other activities.

[107] The Court of Appeal made a number of declarations which are of importance to the issue presently before this Court, which may be re-stated as follows:

- (1) *The identification (including mapping) of an outstanding natural landscape in a planning instrument prepared under the Resource Management Act 1991 for the purpose of s 6(b) of that Act is not informed by (or dependent upon) the protection afforded to that landscape under the Act and/or the planning instrument.*
- (2) *The test or threshold to be applied in deciding whether a landscape is outstanding for the purpose of s 6(b) of the Resource Management Act 1991 has not changed as a result of the degree of protection required for an outstanding natural landscape (particularly in the coastal environment) by reason of the Supreme Court’s decision in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*.*
- ...
- (4) *It is not relevant to the identification of an outstanding natural landscape (particularly in the coastal environment) that is a working farm, that the applicable policy framework would prohibit or severely constrain its future use for farming, such that the determination of whether a landscape is an outstanding natural landscape should take account of the fourth dimension*



— that is, future changes over time by reason of that landscape’s character as a working farm.

- (5) *In assessing whether or not a landscape is an outstanding natural landscape a regional council should consider whether the landscape in question is outstanding in regional terms.*

[108] The relevant passage from the Court of Appeal’s decision is from paragraph [61] to [67] which we quote in full:

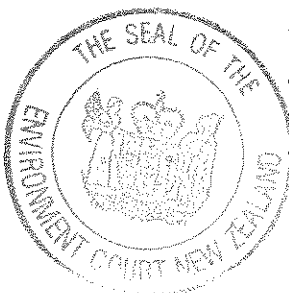
[61] *However, the issue of whether land has attributes sufficient to make it an outstanding landscape within the ambit of s 6(b) of the Act requires an essentially factual assessment based upon the inherent quality of the landscape itself. The direction in s 6(b) of the Act (that persons acting under the Act must recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development) clearly intends that such landscapes be protected. Although that was underlined in King Salmon, the Court was simply reflecting an important legislative requirement established when the Act was enacted. The same is true in respect of areas identified as having outstanding natural character in the coastal environment, in accordance with policies 13(1)(a) and 15(a)–(b) of the NZCPS.*

[62] *The questions of what restrictions apply to land that is identified as an outstanding natural landscape and what criteria might be applied when assessing whether or not consent should be granted to carry out an activity within an ONL arise once the ONL has been identified. Those are questions that do not relate to the quality of the landscape at the time the necessary assessment is made; rather, they relate to subsequent actions that might or might not be appropriate within the ONL so identified. It would be illogical and ultimately contrary to the intent of s 6(a) and (b) to conclude that the outstanding area should only be so classified if it were not suitable for a range of other activities.*

[63] *The result of this approach may mean that, in some cases, restrictions of an onerous nature are imposed on the owners of the land affected. In a dissenting judgment in King Salmon William Young J drew attention to the potentially wide reach of the restrictions resulting from the decision having regard to the broad definition of effect in s 3 of the Act (the definition embraces, amongst other things, any positive or adverse effect, whether temporary or permanent).*

[64] *William Young J considered that the effect of the majority’s judgment was that regional councils would be obliged to make rules that specify activities as prohibited if they have “any perceptible adverse effect, even temporary, on areas of outstanding natural character”. He raised the possibility of significantly disproportionate outcomes as a result of the strict approach inherent in the majority judgment.*

[65] *As the majority judgment indicates, however, much turns on what is sought to be protected. And it must be remembered that the decision in King Salmon took as its starting point the finding by the Board that the effects of the*



*proposal on the outstanding natural character of the area would be high, and there would be a very high adverse visual effect on an ONL.*

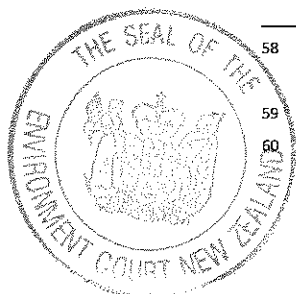
[66] *In the present case, as the Environment Court noted, it was agreed that the areas to which the ONLs were applied are sufficiently natural for the purposes of s 6(b) of the Act. It is also clear that there are a number of different elements currently forming part of the ONLs. Thus significant areas of native vegetation and pastoral land are both elements of ONL 78 together with buildings (albeit said to be subservient to other elements) and vineyard and olive grove activities. Although natural, it is not pristine or remote. As Mr O'Callahan acknowledged on behalf of Auckland Council, it is in that setting the question of whether any new activity or development would amount to an adverse effect would need to be assessed.*

[67] *Mr Casey [for Man o'War Station] endeavoured to persuade us that a more restrictive regime will be in place under the new Auckland Unitary Plan. However, that is not an appropriate matter for us to assess in the context of a second appeal on questions of law arising from a decision on a different planning instrument, and we decline to do so. Relevantly, as Mr Casey's submissions tended to demonstrate, the policy content of the Hearings version of the ARPS provided a context that means the ONLs would not be inimical to the ongoing use of MOWS's land for its current uses.*

[109] This passage, with its attention to identifying what is sought to be protected,<sup>58</sup> brings our attention back to the remaining essential word in s 6(b): "inappropriate", being the descriptor of the things from which an outstanding natural feature or landscape is to be protected. This was considered in *New Zealand Rail v Marlborough DC*<sup>59</sup> in the following terms:

*"Inappropriate" subdivision, use and development has, I think, a wider connotation than the former adjective "unnecessary". In the Environmental Defence Society v Mangonui County Council<sup>60</sup> case that expression was construed by considering "necessary" and the test therefore was whether the proposal was reasonably necessary, although that was no light one: see Cooke P at p 260 and Somers J at p 280 when he said that preservation, declared to be of national importance, is only to give way to necessary subdivision and development and to achieve that standard it must attain that level when viewed in the context of national needs.*

*"Inappropriate" has a wider connotation in the sense that in the overall scale there is likely to be a broader range of things, including developments which can be said to be inappropriate, compared to those which are said to be reasonably necessary. It is, however, a question of inappropriateness to be decided on a case by case basis in the circumstances of the particular case. It is*



<sup>58</sup> Referring to *Environmental Defence Society v New Zealand King Salmon & ors* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442 at [101] and [105]

<sup>59</sup> *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70, 85-86.

<sup>60</sup> *Environmental Defence Society v Mangonui County Council* [1989] 3 NZLR 257; (1989) 13 NZTPA 197.

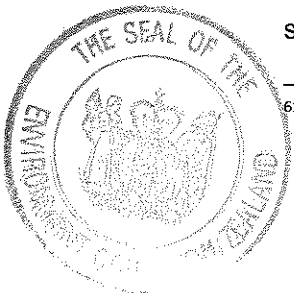
*“inappropriate” from the point of view of the preservation of natural character in order to achieve the promotion of sustainable management as a matter of national importance. It is, however, only one of the matters of national importance, and indeed other matters have to be taken into account. It is certainly not the case that preservation of the natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decision.*

[110] This interpretation of “inappropriate” must now be read in light of the Supreme Court’s approach in *Environmental Defence Society v NZ King Salmon*.<sup>61</sup> In that case the Supreme Court was considering the appropriateness of a plan change which would enable intensive fish farming in an existing ONL. The Supreme Court held that the correct approach is to interpret the word “inappropriate” in its context by reference to what it is that is sought to be protected. The Supreme Court also held that in doing so it is no longer lawful to adopt a “broad overall judgment” to the application of any relevant statutory planning document to which effect must be given (such as the NZCPS or the RPS) where the relevant terms of that document are directive, unless it is found that the document or the relevant part of it is invalid, incomplete or uncertain. As we understand the Supreme Court’s decision, if there is no relevant policy in directive terms, then the approach to be taken to the application of Part 2 RMA in assessing a plan provision is still as set out in the passages from *New Zealand Rail v Marlborough DC* quoted in [79] and [109] above.

[111] Our task in this case is to decide whether all or part of Matakana Island is an ONFL. We are not concerned with the terms of any restriction that may apply to it if it is, although if it is identified as an ONFL then we should be concerned to ensure that its attributes as such, and those things that would be inappropriate given those attributes, are clearly identified in the RCEP. This is necessary so that the attributes can be protected from inappropriate subdivision, use and development.

### **Discussion of issues about outstanding natural features and landscapes**

[112] In reviewing the relevant case law on the interpretation and application of s 6(b) RMA, one may discern some tension between two apparent approaches: a relatively schematic approach of using the list of *Pigeon Bay / Wakatipu* or *Maniototo* factors as



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*Environmental Defence Society v New Zealand King Salmon & ors* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442 at [98] – [105].



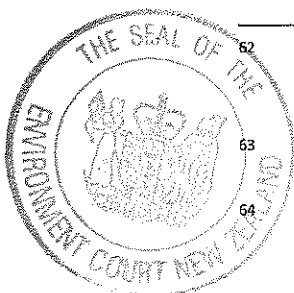
quasi-criteria; and a more generalised approach of seeing those factors in the round and then standing back to form an overall judgment on the evidence.

[113] We think that the tension may be reduced, if not fully resolved, by observing that both approaches are part of the whole exercise required by s 6(b). Even in the cases which are based squarely on a list of factors, there is ample guidance to bring the overall context back to the forefront of the decision-making process. This is assisted by identifying a conceptual framework common to the more recent cases (although sometimes expressed in slightly different terms)<sup>62</sup> which gathers the list of factors into the broad areas of:

- a) The natural and physical resources of the landscape (including the scientific understanding of those resources);
- b) How the attributes of those resources and their values can be perceived (including aesthetic assessment of those attributes and values); and
- c) The associations that people and communities make with and among the resources and their attributes and values (including those associations based on their social, economic, aesthetic, and cultural conditions).

[114] This grouping might be described as the dimensions of the assessment of features and landscapes. It may help both the analyst and the decision-maker always to remain aware that by describing these groupings as dimensions it is necessary to regard them all as essential to a full understanding of landscape. Analysis of a thing which is limited to fewer than the full set of dimensions of that thing will lead to the cognitive errors or biases that have been warned of since at least Plato's allegory of the cave.<sup>63</sup> Even so, it is probably not realistic to expect that all potential fallacies of cognition can be avoided. As the Court noted in *Briggs v Christchurch CC*:<sup>64</sup>

[84] ... One of the unfortunate consequences of being a member of the Court is that repeated analysis of landscapes leads to a critical evaluation of landscapes that many take for granted. For the general population there appears to be a conceit of the mind which occurs when it views pleasant landscapes. This appears to subtract from the view the incongruent elements such as large square forestry blocks up to and including ridges, prominent buildings situated on high points,



<sup>62</sup> *Unison Networks v Hastings DC* W11/2009 at [94]-[96]; *Upper Clutha Tracks Trust & ors v Queenstown Lakes DC* [2010] NZEnvC 432 at [51] and *Mainpower NZ Ltd v Hurunui DC* [2011] NZEnvC 384 at [301];

<sup>63</sup> Plato, *The Republic*, Book VII, 514 – 520, c. 380 BCE. See also Edwin Abbott, *Flatland: A Romance of Many Dimensions*, 1884.

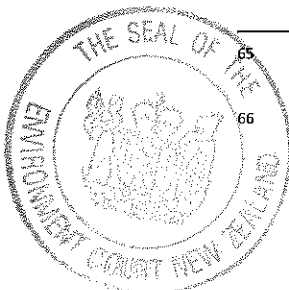
<sup>64</sup> *Briggs v Christchurch CC* C45/2008

*roads, telephone poles and trees and other clear indications of extensive modification with the result that the individual reads the environment as natural.*

[115] Of course, if the point of the exercise is to assess what the general population of a district or region may consider to be outstanding natural features and landscapes which are worthy of protection from inappropriate subdivision, use and development, then it may be that the incongruent elements, rather than being subtracted, should simply be regarded as not being so incongruent, whether in character, scale or degree, as to take the landscape or feature out of consideration as an ONFL. The presence of a hut, or even the Chateau, may not diminish the quality of a national park; a lighthouse may be appropriate on a notable headland; and perhaps a track or lookout which facilitates people's access to and appreciation of an ONFL may serve in that way to enhance the landscape. On the other hand, urban development or intensive farming is likely to result in adverse effects that cannot be regarded as appropriate in an outstanding natural landscape. As always, context is everything.<sup>65</sup>

[116] The grouping of factors into broad areas does not mean that the factors themselves should be discarded. The structure of the general framework is based on them. That structure clearly assists in developing the reasoning for any detailed assessment. It is of course essential to any rational analysis both that the boundaries of the thing being analysed are properly identified and that the process of analysis is clearly set out: a substantial part of solving any problem lies in accurately defining it and ordering the solution in a manner which is consistent with that definition. The identification of factors for consideration assists in both the definition of the problem's boundaries and in breaking the problem down into manageable components.

[117] It is important to be clear about the terms being used. We repeat with emphasis what has previously been said by the Court on more than one occasion,<sup>66</sup> that the term *factor* is usually much more appropriate than *criterion* in assessing a thing based on its qualities rather than its quantities. Factors are a series of elements of a thing which help to ensure that a full understanding of that thing may be gained, as quite distinct from criteria which are tests or standards according to which some rating or score of a thing may be given.



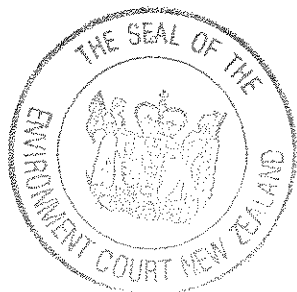
<sup>65</sup> *McGuire v Hastings DC* [2001] NZRMA 557 at para. 9 *per* Lord Cooke, citing *R (Daly) v Secretary of State for the Home Department* [2001] 2 WLR 1622 at 1636 *per* Lord Steyn.  
<sup>66</sup> *Outstanding Landscape Protection Society Inc v Hastings DC* Decision W 24/2007 at [105]; *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor* Decision C 058/2009 at [135].

[118] If there is a factor which can be used as a criterion (in the true sense of being a test or standard), then that obviously assists in an objective assessment, but mistaking factors for criteria is apt to lead to an assessment which is closer to a check-box exercise than a reasoned judgment. So in addressing the list of factors, it is important to treat that list as establishing a foundation for the assessment rather than as the outcome of it. In undertaking the sorts of qualitative assessments which must be made in a wide variety of circumstances under the RMA, the range of relevant factors and the complexity of their interactions may drive a person to seek what appears to be the safety of ticking (or crossing off) a list of things and then totting up the score, but that is usually a mistaken approach. Nowhere is that more likely than in relation to the matters of national importance set out in section 6 of the RMA.

[119] The pinnacle of that approach can perhaps be seen in the aesthetic elements of the list of factors applicable to an assessment of a feature or landscape for the purposes of section 6(b). These aesthetic elements include, and sometimes appear to be subsumed into, the concept of “naturalness”. They may then be determined according to a binary distinction between what is natural and what is not, using a strict separation between what exists in nature without human intervention and what is created by people. But that binary approach fails to engage in an integrated way with the purpose and principles of the RMA in Part 2, the planning structure it enacts in Parts 4 and 5 and the development and application of policy envisaged by the High Court in *New Zealand Rail v Marlborough DC* and the Supreme Court in *Environmental Defence Society v NZ King Salmon*. There have been criticisms that this involves the legislation of values with inherent subjectivity,<sup>67</sup> but we are not persuaded that this is necessarily inappropriate. The making of value judgments is inherent in making laws, whether by Parliament in enacting the RMA or by a council in making a plan under that Act. The real issue lies in the extent to which the values of the law as implemented at the plan level are truly shared, on the basis that the subjectivity of people’s individually held values can attain a level of objectivity where the extent to which those values are shared is able to be clearly demonstrated. An important purpose of the analytical process required by s 32 RMA is to demonstrate that through the consideration of alternatives and the assessment of a provision’s efficiency and effectiveness. For the specific purposes of plan provisions included to recognise and provide for the values in s 6(b) and combining the approaches taken before in several cases, that shared basis might be encapsulated in the broad question of whether a particular feature or

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<sup>67</sup> *Maniototo Environmental Soc Inc v Central Otago DC* Decision C103/2009 at [105].

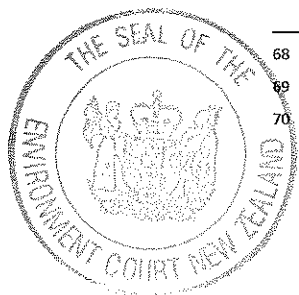


landscape, when all its attributes are considered, stands out so obviously from others in the district or region that there is no need for expert debate about its status.

[120] In the coastal environment (as identified in Policy 1(2) NZCPS, and which plainly includes the whole of Matakana island and all of its surrounding area) that broad question then may serve as a basis on which Policy 15 NZCPS should be given effect to in the RPS<sup>68</sup> and plans.<sup>69</sup> Policy 15 is addressed to natural features and natural landscapes of the coastal environment. It commences with a statement of objective which substantially incorporates s 6(b) into the policy. It then sets out particular policies in sub-paragraphs (a) and (b) for managing adverse effects on natural features and landscapes, cascading from avoidance of adverse effects where the natural features and landscapes are outstanding, through avoiding significant adverse effects on other natural features and landscapes, to avoiding, remedying or mitigating other adverse effects on features and landscapes. There are then the words “including by” preceding sub-paragraph (c) which contains guidance on how natural features and landscapes should be identified and assessed, followed by (d) which requires regional policy statements and plans to identify areas where natural features and landscapes require provisions for their protection and (e) which requires plans to include such provisions.

[121] It can be seen that Policy 15(c) NZCPS follows an orthodox approach for evidence-based policy development. The first step is to identify and assess a natural feature or landscape, with minimum requirements of a foundational kind (land typing and characterisation of soil and landscape). There are further requirements to have regard to a list of factors which largely mirror the Court’s *Pigeon Bay / Wakatipu* list with the addition of some of the elements on naturalness and also wild and scenic values.<sup>70</sup> As well, and importantly for this case, item (viii) includes the expression of cultural and spiritual values for tangata whenua as cultural landscapes and features. The use of the phrase “having regard to” confirms that these are factors to be considered rather than criteria against which to score the feature or landscape. It is pertinent in this case to note that exotic as well as native vegetation is listed as a factor.

[122] Policy 15(d) then requires the identification, by maps or otherwise, of areas



<sup>68</sup> Section 62(3) RMA.

<sup>69</sup> Section 67(3)(b) RMA for regional plans and s 75(3)(b) for district plans.

<sup>70</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes DC* [2000] NZRMA 59 at paras 80 and 89.

where the protection of natural features and landscapes requires provisions in the regional policy statement and plans. Policy 15(e) requires such provisions to be included in plans. This process of primary identification, assessment or evaluation using specific factors, mapping to define the area or other means to adequately describe it, and then the inclusion of plan provisions appropriate for its protection, is a complete cycle all of which needs to be undertaken to give effect to Policy 15(c).

[123] For any feature or landscape in the coastal environment, the list in Policy 15(c) displaces the lists in the case law, given its statutory nature and effect.<sup>71</sup> The application of Policy 15 to other policy statements and plans must now be done according to the statutory principles of interpretation, fundamentally according to the text of the Policy and in light of its purpose.<sup>72</sup> It can of course be helpful to understand the origin of the Policy by tracing its evolution in the case law, and the case law is likely to be useful in elucidating the text and purpose of the policy, but ultimately the assessment must be according to the Policy itself.

[124] In giving effect to Policy 15, it is clear that the policies following the introductory objective provide more directive guidance than s 6(b) RMA. As the Supreme Court has noted, these policies “provide something in the nature of a bottom line” consistent with the definition of sustainable management in s 5(2) RMA which contemplates protection as well as use and development.<sup>73</sup> We apprehend that the Supreme Court’s careful wording indicates that the policies do not in fact state a bottom line in any absolute sense. It is important to bear in mind that the NZCPS, like regional policy statements under the RMA,<sup>74</sup> does not have direct regulatory effect: its role in the statutory scheme, as noted above, is to be given effect to through lower order policy statements and plans. As well, the NZCPS also must be had regard to in considering applications for resource consent.<sup>75</sup>

[125] Of course, if the regional policy statement and plan provisions required by Policy 15(d) and (e) do no more than repeat Policy 15(a), then it would follow that all adverse effects ought to be avoided in outstanding coastal landscapes and consequently no

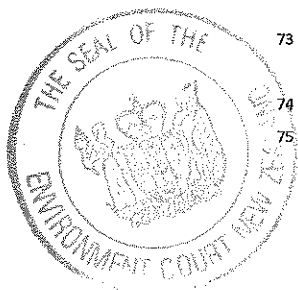
<sup>71</sup> Sections 56-58, 62(3), 67(3)(b) and 75(3)(b) RMA.

<sup>72</sup> Section 5 Interpretation Act 1999, on the basis that the NZCPS comes within the extensive definition of “regulations” in s 29 of that Act.

<sup>73</sup> *Environmental Defence Society v New Zealand King Salmon & ors* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442 at [132].

<sup>74</sup> *Auckland RC v North Shore CC & anor* [1995] NZRMA 424 (CA).

<sup>75</sup> Section 104(1)(b)(iv) RMA.



activities could be provided for: not even navigation aids otherwise consistent with Policy 9(b) NZCPS.<sup>76</sup> Effectively, on that approach, any human activity might be regarded as necessarily causing adverse effects on the environment. Such an approach, which implicitly treats people as separate from nature, appears to be inconsistent with the inclusive definitions of “environment” and “natural and physical resources” in s 2 RMA. While “natural” on its own means “of nature”, when applied to qualify the human construct of “landscape” with all its inherent perceptual and associational elements, such a strict meaning can result in a nonsense, an oxymoron as the Court has previously alluded to.<sup>77</sup> But it is unnecessary for us to embark on that lengthy and well-trodden philosophical road. We can reach our destination more quickly, as the Court of Appeal has since explained, by appreciating that much turns on what is sought to be protected.<sup>78</sup>

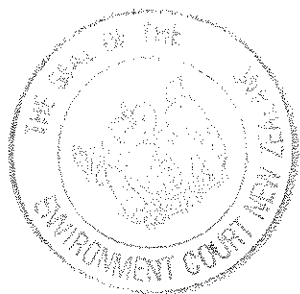
[126] We note in that regard the substantive response of BOPRC to the reasoning in *Environmental Defence Society v NZ King Salmon* by fleshing out the attributes and values in Schedule 3 to the RCEP to provide some greater detail about what is sought to be protected by the RCEP. As well, the text expands the statement of the “current uses” which appears to be a means of identifying the existing elements that are recognised as forming part of each ONFL and which might be incongruent or create adverse effects or otherwise be considered inappropriate in that ONFL. This approach does provide the kind of identification of values needed to give effect to Policy 15 to a greater extent than the version of the schedule as notified, although we are not certain that the text now proposed is sufficient for this purpose. We address this further in our conclusion.

[127] It is pertinent here to observe, by way of example, that most of Tauranga Harbour is identified in the RCEP as ONFL 3 without any apparent controversy. A part of the harbour which includes the Tauranga entrance and broad channels from the entrance to the Port at Sulphur Point and Whareroa Point are excluded. But within the area of ONFL 3 there are numerous navigational signs. The charts for the harbour also indicate beacons on Mauao, which is in ONFL 10. These navigational signs, markers and lights are mentioned in the “current uses” for these ONFLs in Schedule 3 to the

<sup>76</sup> As set out by William Young J, dissenting, in *Environmental Defence Society v New Zealand King Salmon & ors* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442 at [175] - [203] and in particular at [201].

<sup>77</sup> *Upper Clutha Tracks Trust & ors v Queenstown Lakes DC* [2010] NZEnvC 432 at [60], citing Dr Geoff Park, *Theatre Country: Essays on landscape & whenua*, 2006 at p. 9.

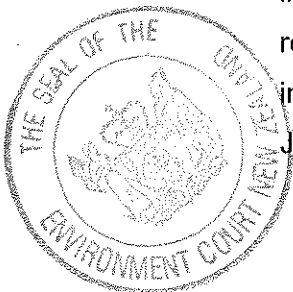
<sup>78</sup> *Man o'War Station Ltd v Auckland Council* [2017] NZCA 24 at [63] - [65].



RCEP. There may also be at least one beacon on the seaward side at Panepane on the sand barrier within the current boundary of ONFL 5 which is not mentioned. We would not be surprised if there were also aids to navigation within ONFL 2 at Bowentown Heads or in the Katikati entrance, although these are not mentioned. None of these current uses attracted any mention in the cases presented to us. No-one appeared before us to suggest that such uses might be incompatible with the character of these ONFLs.

[128] Our own reading of Policy 15 in light of the guidance from higher Courts is that there is no absolute policy of avoidance of all adverse effects in Policy 15(a): rather, Policy 15(a), read together with the rest of that policy, requires that regional policy statements and regional and district plans identify what is to be protected in order to avoid inappropriate subdivision use and development which could adversely affect whatever is protected. This may include the identification of what may be an “adverse” effect or otherwise be “inappropriate” in the context of a particular feature or landscape or a specific element of that feature or within that landscape. As noted earlier in this discussion, there may well be elements in a landscape which are incongruent but nonetheless do not disqualify that landscape from being either natural or outstanding. Whether because of a conceit of the mind or a conscious choice, these elements may co-exist with and not detract from the natural elements that make the feature or landscape stand out from the rest in the district or region.

[129] Notwithstanding the content of Schedule 3 which addresses those aspects of Policy 15 NZCPS, we must express a concern here that the relevant provisions of the RCEP do not appear to develop policy further at a regional level. The RCEP provisions generally repeat s 6 RMA and Policy 15 NZCPS. There is some more detailed assistance provided by Policies NH 4A, NH 5 and NH 11, but these are largely limited to existing uses and network infrastructure. The same comment can be made about the corresponding policy provisions of the RPS, although we acknowledge that the *criteria* (sic) in Set 2 of Appendix F to the RPS do add to the factors in Policy 15(c) NZCPS by stating a basis for the application of them. Whether those additions extend or clarify the factors for implementation in the context of Bay of Plenty Region or merely describe them in general terms might be the subject of debate. Neither document appears to include greater detail about how the higher order policies are to be implemented at a regional level. The gradient of the policy cascade is therefore relatively flat, with little increase in the degree of guidance as one proceeds through the statutory framework. Just as Schedule 3 has been amended to make it more detailed, we think that when



the objectives and policies of the RPS and the RCEP are next reviewed, there should be careful consideration given to how these provisions can provide more detailed guidance at a regional and local level.

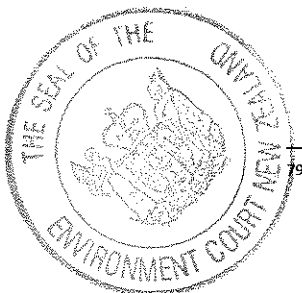
[130] We also express a concern about an approach taken by some parties and witnesses in this proceeding to recognising and providing for the matters in s 6(b) RMA which treats that provision in isolation from the other elements of that section and the other sections in Part 2 RMA. Following the guidance in *NZ Rail*, we think that the matters listed in s 6 are not discrete items to be approached on a compartmentalised approach or as being inside separate silos which do not affect one another. In this case, on the evidence before us, we can see how most if not all of the matters listed in s 6 might potentially be engaged somewhere or other on Matakana Island. In particular, we think that as well as the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development, the evidence supports consideration of the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.

[131] In considering the application of this highest level of statutory policy in a general and broad way, as Grieg J suggested decision-makers under the Act should, we also accept that our approach must be informed by more detailed analysis which, consistent with conventional analytical techniques, needs to examine details which may be wholly within the scope of only one of the matters of national importance. But we must still keep the wood in our mind's eye as we examine particular trees. This is especially so where the matter of landscape, as repeatedly stated by the Court, axiomatically involves associative matters such as cultural heritage and therefore must be seen as connected to the relationship of tangata whenua to their ancestral lands and other taonga.

[132] It was suggested before us that this general approach ran the risk of double counting the factors that may be common to two or more of the matters of national importance, especially in this case because of the overlap between matters relevant to ss 6(b) and 6(e). We do not see that risk as being so great as to inhibit the general approach. We share the broader view expressed previously by the Court:<sup>79</sup>

*It is wrong, in the end, to be overly concerned with 'double-counting', that is, whether the values identified in section 7 should also be taken into account under section 6. That is to adopt an over-schematic approach to sections 5 to 8 which is*

<sup>79</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes DC* [2000] NZRMA 59 at para. 79.



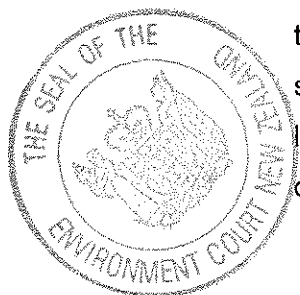


*not justified. Those sections do not deal with issues once and once only, but raise issues in different forms or more aptly in this context, from different perspectives, and in different combinations. In the end all aspects go into the evaluation as to whether any issue being considered achieves the purpose of the Act.*

[133] The RMA has a single purpose and the clear intention behind s 6 is to ensure that matters of national importance are recognised and provided for in pursuing that purpose, within the element of s 5 which includes managing the protection of natural and physical resources as well as their use and development. The alternative compartmentalised or silo approach runs the much greater risk that something of national importance may fall between two stools, which would be wholly inconsistent with the functions of regional and district councils to establish and implement objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region or district as required by ss 30 and 31 RMA

[134] We note that some of the landscape experts giving evidence before us appropriately acknowledged their lack of expertise in the relationship of Māori with their ancestral land and other taonga and so did not venture into giving evidence about those matters, consistent with their adherence to the code of conduct for expert witnesses. Consequently they initially left blank the spaces relating to such matters in their assessment of the landscape of Matakana Island as they did not rely on the evidence of anyone else who was an expert in those matters. Ultimately they accepted high ratings for these matters based on their understanding of the evidence presented by the hapū.

[135] The landscape experts also adopted an approach to the assessment factors which characterised some as “technical” and others as “non-technical”, the distinction apparently arising from whether the factors fell within the categories of the biogeographical aspects or the perceptual aspects as being “technical” on the one hand or into the associative or relationship aspects as being “non-technical” on the other. We do not consider that such a division is either warranted or appropriate. It is not consistent with the case law which has developed the list of factors and its grouping of components and which treats all of these matters as being within a single framework for assessment. We have some concern that these terms may import a distinction in the standard of evidence being presented by expert witnesses. The Court must be satisfied that all of the evidence on which we rely for the assessment of a feature or landscape is relevant to proving or disproving anything of consequence to our determination and, in relation to evidence of expert opinion, that we are likely to obtain



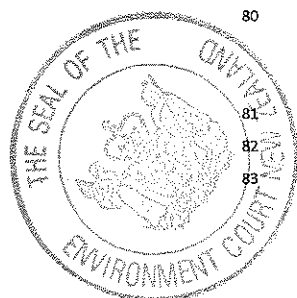
substantial help in understanding other evidence or in ascertaining any fact that is of consequence to the determination of the proceeding.<sup>80</sup> To that extent, at least, all of the expert evidence is “technical”. Mere personal impression or preference is usually unlikely to reach that standard or to assist the Court in any other way.

[136] For those reasons we find it difficult to avoid the impression that the distinction connotes a ranking with “technical” being higher than “non-technical”. This is also inconsistent with the case law which clearly states that any of the range of factors may be so significant in relation to a particular landscape or feature as to justify a finding that it is outstanding<sup>81</sup> and that an ONFL should be so obvious (in general terms) that there is no need for expert analysis.<sup>82</sup> This is plainly the basis for the approach in a number of the cases of standing back, looking at the whole landscape or feature and asking: *does this landscape or feature stand out among the other landscapes and features of the district or region?*<sup>83</sup>

[137] The admonition to stand back begs the question of the most appropriate point of view. This is an issue not only of a viewpoint in space but also in time or over a period of time, given the four-dimensional existence of a landscape. Just as a viewer can see a landscape from close up, or in the fore- or middle ground or from a long distance, so the time dimension may be fleeting, or last for few years, or the life of the relevant plan, or for a generation, or over a much longer term: the process elements of a landscape or feature may be appropriately considered over geological epochs. It seems unlikely that there will ever be a single viewpoint or viewing time: that would simply be to adopt a snapshot approach which we understand is not supported by expert opinion (although it seems to be integral to the analysis of preferences using the Q-Sort methodology). So one must stand back conceptually and bring together in one’s mind the full range of views, along with whatever one may know of relevant processes and associations which can inform one’s understanding of those views.

### **Our assessment of the Matakana Island sand barrier**

[138] In this case, the issue of whether Matakana Island is an outstanding natural



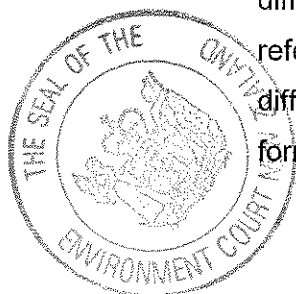
<sup>80</sup> Sections 7 and 25(1) Evidence Act 2006. While the Court is not bound by the rules of law about evidence that apply to judicial proceedings (s 276(2) RMA), that is to enable the Court to receive anything it considers appropriate rather than to lower the standards for expert evidence. *Upper Clutha Tracks Trust & ors v Queenstown Lakes DC* [2010] NZEnvC 432 at [64].  
<sup>81</sup> *Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at para 99.  
<sup>82</sup>  
<sup>83</sup> *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor* Decision C 058/2009 at [135].

feature or landscape was presented in arguments that might be distilled into several sub-issues:

- a) Whether the sand barrier is properly a feature or a landscape;
- b) Whether a landscape largely covered in plantation forestry and subject to regular harvesting activities could be either sufficiently outstanding or sufficiently natural to come within the scope of s 6(b);
- c) Whether the relationship of the tangata whenua to the island should be considered as part of the assessment for the purposes of s 6(b) or whether it should be excluded from such consideration because it could be considered under either s 6(e) or s 6(f) or both;
- d) Whether the extension of ONFL 5 to include the whole of the sand barrier is the most appropriate way to achieve the objectives of the RCEP; and
- e) If the whole of the sand barrier is an ONFL, how its attributes should be listed in Schedule 3.

[139] The issue of whether the sand barrier is a feature or a landscape is, we think, of limited significance. The RMA, in s 6(b), treats them both in the same way. As the case law makes clear, the important thing is that they must be identified: this requires definition of the land (whether it is a feature or a landscape) and of its attributes. The sand barrier can be readily defined spatially. It is identifiable as a geological feature. It also appears as a landscape component of a similar scale as Mauao, the Bowentown Heads and Tauranga Harbour, which are each separately identified as ONFLs. It is not necessary for the purposes of resolving this appeal for us to restructure Schedule 3 to the RCEP.

[140] The evidence is that it is the largest formation of its type in New Zealand and that the process of its formation may be unique. In relation to the natural science factors there was disagreement between the groups of landscape experts as to the rating of its abiotic component of representativeness, perhaps because of their disagreement about the degree of effect of forestry and associated earthworks on its form. The same difference of opinion was evident in their ratings for expressiveness or legibility with reference to a demonstration of natural processes which also appears to evidence different approaches between the surficial aspects of the landscape and its underlying form.



[141] They did however agree on a higher level rating for its rarity. This is consistent with the geological evidence referred to by Mr Reaburn and the listing of the sand barrier in the New Zealand Geopreservation Inventory, referred to above at [7].

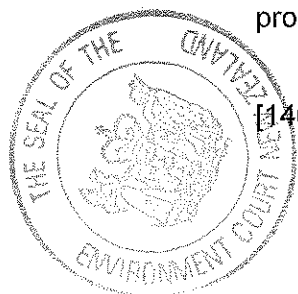
[142] There was also general agreement on the medium to low rating for biotic representativeness, a low rating for the intactness of natural systems and medium to low ratings for the transient values associated with flora and fauna. To the extent that these factors are principally based on the botany and, to a lesser extent, the zoology of the sand barrier, we heard no evidence that would dispute these ratings.

[143] The landscape witnesses disagreed about the aesthetic values comprising the coherence of the cover and use of the land with its underlying form, the vividness of the landscape and its naturalness. These disparate ratings all flowed from the issue between the experts as to how to assess the pine plantation.

[144] We have already described the nature of the current plantation forestry activity on the sand barrier. This activity was regarded by Messrs Boffa, Brown and Coombs as effectively determinative of the central issue of whether the whole of the sand barrier could be listed as an ONFL in the RCEP. All three regarded the activity as antithetical to the concept of naturalness, characterising it as industrial. Ms Lucas and Mr Hudson were less categorical: while acknowledging the effects that forestry has, especially during the harvest, they considered that a longer view enabled the activity to be seen in a way which did not dismiss the quality of the landscape solely on the basis of the forestry activity.

[145] The case law does not support a categorical approach that the presence of human activities disentitles a feature or landscape from being identified as outstanding or natural. The acceptance of features and landscapes that are not pristine as being still natural and the concept of cultured nature are based on recognition not only that the impact of human activity is pervasive but also that the presence of such activity may be congruent with nature. Obviously it is a matter of degree. But in the same way that pasture or other farmed areas can be part of an ONFL, there is no categorical basis on which a plantation forest cannot. Policy 15 NZCPS expressly includes exotic as well as native vegetation in its list of factors in terms that suggest that the provenance of vegetation is not a determinative criterion.

[146] When we visited the island we saw several recently harvested areas and drove

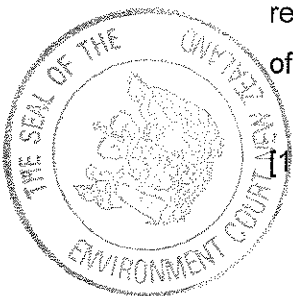


close to a working skid. A forestry skid is certainly an industrial site – there are no permanent buildings but the use of heavy machinery, the noise and the visual impact are all intensive features. But an equally striking aspect was that beyond the vicinity of that intensive activity the forest was quiet and the environment was pleasant. From our tour of viewing points, from further away on Mauao or at the Bowentown Heads, the felled areas might be able to be discerned in the midst of the growing or mature forest but the harvesting activity was not visible. That might well depend on where harvesting is occurring but equally it is in the nature of the harvesting that it occurs in one location one year and in another the next, so any view of a skid is limited in its duration. From certain angles or elevations the rows of planted trees are apparent; from other angles or closer to sea level the rows merge into a mass. From further away, such as at the Minden Lookout or at Macmillan Reserve, the bulk of the sand barrier tends to outweigh the details. Indeed, the size of the sand barrier is probably an important factor in allowing a viewer to perceive the whole without being distracted by the harvest activities.

[147] It is of course true that informed observers would be aware of the nature of the forestry activity and so their perception of the landscape could be affected by that, including that the vegetation is exotic and that harvesting of it is an industrial activity. On the other hand, if such notional observers were fully informed about all human influences on the island, then they would also know about the ancestral relationship of the island with its people and the history which has led to the present activities. The presence of the forest then arguably becomes a contribution to the landscape rather than a detraction from it.

[148] Such considerations must form part of any assessment for the purposes of s 6(b). While they may also be part of any assessment in terms of s 6(e) or (f), for the reasons given above we are satisfied that the correct application of s 6 in the RCEP must be integrated rather than compartmentalised. It is well settled that the values of a place to tangata whenua form a central part of the shared and recognised values, including memories and associations, which are at the heart of the cultural conception of a landscape. It is of course possible that there may be more than one method of recognising and providing for the protection of an ONFL at the same time as the relationship of tangata whenua with that land, but that is an issue of method rather than of identification.

[149] That discussion is obviously also relevant to the consideration of shared and

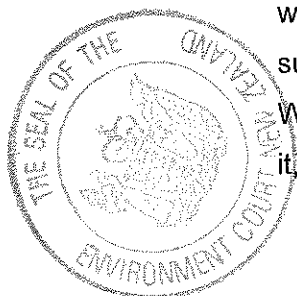


recognised values, Māori values and historical associations. The landscape experts accepted that the sand barrier has very high values to tangata whenua but discounted those to medium for others and professed insufficient knowledge to attribute ratings for historical matters. These three factors can be closely entwined, and we think they are here. In other cases the distinctions between them may be greater. In this case the evidence of the hapū strongly demonstrates very longstanding connections which make the shared historical associations of tangata whenua a significant component of the way in which the sand barrier is perceived.

[150] We note that items 2.12 (Māori values) and 2.13 (Historical associations) expressly cross-refer to Set 4 - Māori Culture and Traditions criteria and Set 5 - Historic heritage criteria, respectively, in Appendix F to the RPS. We are satisfied that these factors must form part of any assessment for the purposes of s 6(b) RMA. It may well be the case that the same or a similar assessment for the purposes of s 6(e) of 6(f) might result in the conclusion that the sand barrier warrants recognition and provision in other parts of the RCEP which are designed specifically to address those matters of national importance, but even if that were the present situation it ought not to impede whatever provision is justified as appropriate under another element of s 6.

[151] We have also taken into account the relevant provisions of the regional water and land plan and the district plan in relation to the rural zone which apply to this land. We have also noted the current certificates of compliance held by TKC to put dwellings on six of the titles owned by it. We assume this indicates what could occur on each of the 22 existing titles to land on the sand barrier. As we have already observed, the likelihood of clearance without replanting of all or any substantial part of the production forest is uncertain. Our judgement as to whether the whole of the sand barrier should be identified as an ONFL is not contingent on those possibilities. In our view, a real challenge to the status of the sand barrier would be caused by much more extensive built development, beyond the scope presently permitted under the applicable regional and district rules.

[152] In terms of the other matters listed in Policy 15(c) NZCPS but not included in Set 2 of Appendix F to the RPS, those appear to be limited to the presence of water and wild or scenic values. In this case the sea and the harbour link the sand barrier with surrounding features and landscapes, providing a consistent setting for all of them. While the north-eastern coastal edge of the sand barrier has a certain wildness about it, in overall terms the scenic attributes also derive from the location of the sand barrier



among the other features and landscapes which have been identified as ONFLs.

### **The Council's decision**

[153] We are required by s 290A RMA to have regard to the decision that is the subject of the appeal. BOPRC's decision, released on 1 September 2015, adopted the report and recommendations of its hearings committee dated 12 August 2015 (**the report**). The relevant parts of the report are in section 5.2 relating to outstanding natural features and landscapes where the committee recommended amendments to ONFLs that were contrary to the recommendations of officers in their s 42A RMA reports and in particular in section 5.2.2 relating to ONFL 5 Matakana Island.

[154] The report refers to landscape assessments which led to the identification of ONFLs in 2006. Those were largely carried over into the proposed RCEP. The committee noted the issue, also raised in this case, about dealing with features and landscapes in the same provisions and stated a preference for separation to reflect Policy 15 NZCPS but decided it had neither the scope nor the evidence to do that.

[155] The report specifically recorded evidence from Mr Brown, citing a decision of the Court,<sup>84</sup> that the sufficiency of a landscape's naturalness is a key matter. The report also referred to Ms Ryder's supplementary s 42A report and to her advice that she agreed with Mr Brown that for an area to qualify as an ONFL it first had to pass the test of being sufficiently natural. The committee then stated that this issue of '*naturalness*' underpinned their evaluations.

[156] In relation to ONFL 5 Matakana Island, the officers, including Ms Ryder, recommended the retention of ONFL 4 over the northern tip and ONFL 5 over the remainder of the sand barrier. As noted above in introducing the s 274 parties to this appeal, Carrus, Port Blakely and TKC opposed this. The Committee readily agreed to retain ONFL 4 given its high aesthetic values. In relation to ONFL 5 it referred to Mr Boffa's evidence that the sand barrier is clearly an ONF but equally clearly not an ONL, based on the extensive production forestry and the resulting lack of naturalness. Ms Ryder, assisting the committee, agreed with that and so did Mr Brown who was asked about this when he appeared in relation to ONFL 3 Te Awanui / Tauranga Harbour. The committee accepted this evidence except in relation to the north-western coastal



edge which was identified as having high natural character in the RPS and recommended that

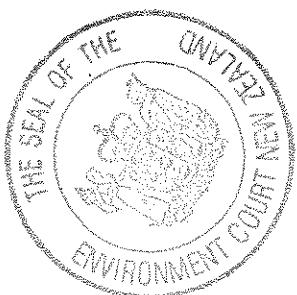
[157] The committee concluded by stating that amending ONFL 5 in this way was an appropriate way to achieve Objective 2 RCEP, considering that existing and ongoing forestry was an appropriate use and development, with future opportunities for economic growth and employment not being unnecessarily precluded, while retaining the ONFL over the forested area would be inefficient and impose unnecessary costs.

### **Conclusion**

[158] In our consideration of all of the evidence, for the reasons set out in the sections of this decision discussing ONFL issues and assessing the sand barrier we have come to the conclusion that lower aesthetic value ratings for the whole of the sand barrier in respect of coherence, vividness and naturalness based on the presence of the forest plantation and associated forestry activity are not fully justified. Those lower ratings effectively elevate one consideration above a number of others. In the context of the wider landscape, the result is to diminish the significance of the sand barrier in relation to the neighbouring areas of the harbour, Mauao, Bowentown Heads and Rangiwaea, all of which are scheduled as ONFLs. In our judgment the sand barrier is at least the equal of those features and landscapes both when taken individually and when considered in the context of the regional coastal environment in and around Te Awanui / Tauranga Harbour. We also consider that the associational elements of the landscape are very high, especially for Māori values. These elements support the overall assessment.

[159] We reach a different conclusion from BOPRC essentially because we do not consider that the natural values of the sand barrier are as diminished by the presence of production forestry as it did, for the reasons we have set out above. To use the hearings committee's phrase without necessarily adopting it, we consider that the sand barrier passes "the test of being sufficiently natural" and so we have proceeded to consider its attributes and values beyond that threshold.

[160] We observe that the hearings committee's consideration of potential restrictions on land use predated the Court of Appeal's decision in *Man o'War Station Ltd v Auckland Council* and note that those reasons for the decision have now been held to be irrelevant to the primary decision of whether a feature or landscape should be





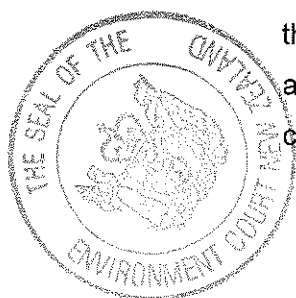
identified as an ONFL or not. As we have discussed, the extent and degree of any potential restrictions may be addressed by clearly stating what values and attributes of an ONFL are sought to be protected, or by other methods.

[161] On that basis we are satisfied that the whole of the sand barrier merits identification as an ONFL in the RCEP. Given the unchallenged inclusion of the wetlands at the northern tip of the sand barrier as ONFL 4, it is practical for us simply to address the remainder of the sand barrier for the purposes of considering the most appropriate provisions to be included in the RCEP.

[162] In terms of any alternative or more effective and efficient method for addressing the requirement of s 6(b), we are satisfied that inclusion in Schedule 3 is the most appropriate method. We were presented with some submissions from the parties with forestry interests that identifying the sand barrier as an ONFL would have serious consequences for those existing operations. Perhaps mindful of the clear direction now provided by the Court of Appeal that the identification of an ONFL is not informed by or dependent upon the protection afforded to that landscape under the planning instrument, those submissions were not presented in categorical terms. We are aware from those submissions and from the earlier decisions referred to at [40] above that the future uses of the sand barrier may not always be based on forestry. But the issue to be determined in this appeal does not include the identification of any particular land use rules.

[163] We note that RCEP Policy NH 4A(a) requires recognition of existing activities occurring at the time an area is assessed as being an ONFL. This policy is given effect by the inclusion of "current activities" in the description of each ONFL. As we note below, we think that these references could be improved by focussing attention on those aspects of the current activities which create adverse effects on the attributes and values of the ONFL and those which do not.

[164] In order to complete the tasks which arise on this appeal, we must consider the most appropriate terms on which the sand barrier ought to be included in Schedule 3 to the RCEP. From the evidence we are satisfied that this should be done by expanding the boundaries of ONFL 5 to include the whole of the sand barrier (except the area already identified as ONFL 4) rather than by maintaining a distinction between the coastal edge area in the decisions version and adding a new ONFL behind it.

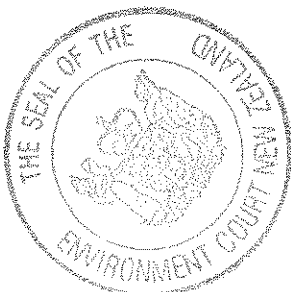


[165] On that basis we have considered the draft Attributes and Values as initially presented to us as an attachment to the evidence of Mr Lawrence, the expert planner called by counsel for the hapū (Exhibit 1) and then presented in two subsequent versions, one being an amended version presented by Mr Lawrence (Exhibit 1A) and the other being a version submitted with the closing submissions of counsel for TKC. We have transcribed the last version and **attach** it as **Appendix 2** for reference. We do not present this text as our determination of what it should contain but its tracked changes indicate at least some of the issues between the opposing groups of parties that need to be addressed. This draft is consistent with the form and style of the other listings in Schedule 3. We note that it is generally written in a descriptive, sometimes discursive, style which may be the result of it largely following the overall assessment of the ONFL using the factors in Set 2 of Appendix 4 to the RPS. In that sense it consists of evidence in support of the scheduling rather than the policy conclusions which result from being scheduled. In our view, it would be more appropriate for these provisions to be written in a way that guides future planning decisions rather than simply as a record of why the ONFL is scheduled.

[166] We think that the statement of attributes and values could provide better guidance for users of the RCEP if the listing in the schedule were focussed more on the particular attributes and values of the ONFL which make it outstanding and are sought to be protected. In setting out these matters, we think that the text should break down the elements so that the particular adverse effects which are to be avoided can be readily identified. These elements could be described in terms of their landscape capacity and resilience, so that issues of vulnerability and sensitivity can be identified. If done in a consistent way, we think that such descriptions would be more useful than a description of the landscape itself.

[167] The listing could also be more specific about the character, intensity and scale of the effects of current activities, to provide some sort of baseline against which ongoing activities can be assessed in relation to the attributes and values to be protected. This approach should attempt to distinguish between:

- a) those effects which create no real detraction from the values and attributes for which the ONFL is scheduled and so may be regarded as not being adverse; and
- b) those effects which may be tolerated as existing uses but ought not to be allowed to continue otherwise or be allowed to be replicated by any new



activity.

[168] This approach to the description of the sand barrier as an ONFL and its scheduling will therefore require careful consideration. We do not consider that we should attempt to do that at this stage as we did not hear detailed evidence or submissions from all parties about particular wording. It is more appropriate, having set out our reasons why the whole of the sand barrier should be recognised and provided for as an ONFL, that the parties should be given an opportunity to reconsider this text and propose any amendments that they consider would be appropriate.

### Directions

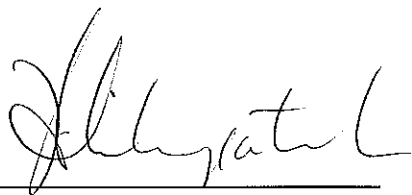
[169] We direct BOPRC to consult with the other parties about how best to proceed with this review of the text for inclusion as ONFL 5 in Schedule 3 to the RCEP: whether it can be done by negotiation among the parties, or Court-assisted mediation or whether it requires a further hearing.

[170] Within 20 days of the date of this decision, we direct BOPRC to report to us as to whether there is agreement on the way forward or not.

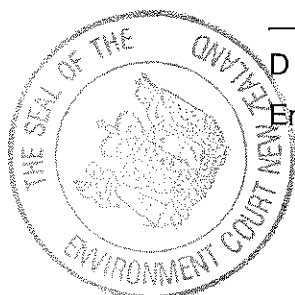
[171] If there is no agreement on this process, then the presiding judge will convene a conference, either in Court or by telephone, to canvass the various options which may include some form of conferencing or other ADR method. In that case, further directions will be made to prepare for that conference.

Dated at Auckland this 7th day of September 2017

For the Court:



D A Kirkpatrick  
Environment Judge



## Appendix 1

### Relevant planning provisions

#### i. Objective 2 and Policy 15 of the NZ Coastal Policy Statement

##### **Objective 2**

*To preserve the natural character of the coastal environment and protect natural features and landscape values through:*

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- *encouraging restoration of the coastal environment.*

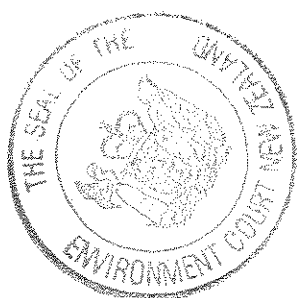
##### **Policy 15      Natural features and natural landscapes**

*To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:*

- (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
- (b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;*

*including by:*

- (c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:*
  - (i) natural science factors, including geological, topographical, ecological and dynamic components;*
  - (ii) the presence of water including in seas, lakes, rivers and streams;*
  - (iii) legibility or expressiveness—how obviously the feature or landscape demonstrates its formative processes;*
  - (iv) aesthetic values including memorability and naturalness;*
  - (v) vegetation (native and exotic);*
  - (vi) transient values, including presence of wildlife or other values at certain times of the day or year;*
  - (vii) whether the values are shared and recognised;*
  - (viii) cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;*
  - (ix) historical and heritage associations; and*
  - (x) wild or scenic values;*



- (d) ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and
- (e) including the objectives, policies and rules required by (d) in plans.

**ii. Relevant Regional Policy Statement provisions**

**Objective 18**

*The protection of historic heritage and outstanding natural features and landscapes from inappropriate subdivision, use and development*

**Policy MN 1B: Recognise and provide for matters of national importance**

- (a) *Identify which natural and physical resources warrant recognition and provision for as matters of national importance under section 6 of the Act using criteria consistent with those contained in Appendix F of this Statement;*
- (b) *Recognise and provide for the protection from inappropriate subdivision, use and development of those areas, places, features or values identified in accordance with (a) in terms of natural character, outstanding natural features and landscapes, and historic heritage;*

**Policy MN 3B: Using criteria to assess values and relationships in regard to section 6 of the Act**

*Include in any assessment required under Policy MN 1B, an assessment of:*

...

- (b) *Whether natural features and landscapes are outstanding, in relation to section 6(b) of the Act, on the extent to which criteria consistent with those in Appendix F set 2: Natural features and landscapes are met;*

**Policy MN 7B: Using criteria to assist in assessing inappropriate development**

*Assess, whether subdivision, use and development is inappropriate using criteria consistent with those in Appendix G, for areas considered to warrant protection under section 6 of the Act due to:*

...

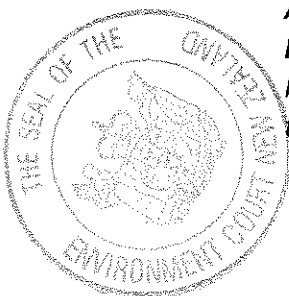
- (b) *Outstanding natural features and landscapes;*

**Policy MN 8B: Managing effects of subdivision, use and development**

*Avoid and, where avoidance is not practicable, remedy or mitigate any adverse effects of subdivision, use and development on matters of national importance assessed in accordance with Policy MN 1B as warranting protection under section 6 of the Act.*

**Appendix F – Criteria for assessing matters of national importance in the Bay of Plenty region**

*For the avoidance of doubt the criteria sets that apply will only be triggered by the relevant policies and methods listed under each criteria set heading*



**Set 2 Natural features and landscapes.**

*Policies EI 5B, GR 1A, GR 4A, IW 2B, IW 5B, MN 1B, MN 3B, MN 7B and MN 8B*  
*Methods 1, 2, 3, 11, 12 and 70*

**Natural science factors**

## Representativeness

- 2.1 *Natural features and landscapes are clearly and recognisably characteristic of the area, district or region. The key components of the landscape will be present in a way that more generally defines the character of the place, but which distils this character in essence.*
- 2.2 *Natural features in a good state of preservation are representative and characteristic of the natural geological processes and diversity of the region.*

## Research and Education

- 2.3 *Natural features and landscapes are exceptionally valued for the contribution they make to research and education.*

## Rarity

- 2.4 *Natural features are unique or rare in the region or nationally, and few comparable examples exist.*

**Aesthetic values**

## Coherence

- 2.5 *The patterns of land cover and land use are largely in harmony with the underlying natural pattern of the landform of the area and there are no significant discordant elements of land cover or land use.*

## Vividness

- 2.6 *Natural features and landscapes are widely recognised across the community and beyond the local area and remain clearly in the memory; striking landscapes are symbolic of an area due to their recognisable and memorable qualities.*

## Naturalness

- 2.7 *Natural features and landscapes appear largely uncompromised by modification and appear to comprise natural systems that are functional and healthy.*

## Intactness

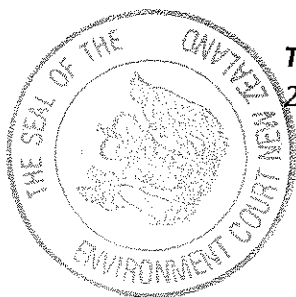
- 2.8 *Natural systems are intact and aesthetically coherent and do not display significant visual signs of human modification, intervention or manipulation; visually intact and highly aesthetic natural landscapes.*

**Expressiveness (Legibility)**

- 2.9 *Natural features and landscapes clearly demonstrate the natural processes that formed them. Exceptional examples of natural process in landscape exemplify the particular processes that formed that landscape.*

**Transient values**

- 2.10 *The consistent occurrence of transient features (for example the seasonal flowering of pohutukawa) contributes to the character, qualities and values*



*of the landscape; landscapes are widely recognised for their transient features and the contribution these make to the landscape.*

**Shared and recognised values**

2.11 *Natural features and landscapes are widely known and valued by the immediate and wider community for their contribution to a sense of place leading to a strong community association with or high public esteem for the place.*

**Māori values**

2.12 *Natural features and landscapes are clearly special or widely known and influenced by their connection to the Māori values inherent in the place. (Refer also to set 4 - Māori Culture and Traditions criteria).*

**Historical associations**

2.13 *Natural features and landscapes are clearly and widely known and influenced by their connection to the historical values inherent in the place. (Refer also to set 5 - Historic heritage criteria)*

**Set 4 Māori culture and traditions<sup>8</sup>**

*Policies EI 5B, IW 2B, IW 5B, MN 1B, MN 3B, MN 7B and MN 8B*

*Methods 1, 2, 3, 11, 12 and 70*

**Mauri**

4.1 *Ko te mauri me te mana o te waahi, te taonga rānei, e ngākaunuitia ana e te Māori.*

*The mauri (for example life force and life supporting capacity) and mana (for example integrity) of the place or resource holds special significance to Māori.*

**Waahi Tapu**

4.2 *Ko tērā waahi, taonga rānei he waahi tapu, arā, he tino whakahirahira ki ngā tikanga Māori, ki ngā puri mahara, me ngā wairua ā te Māori.*

*The place or resource is a waahi tapu of special, cultural, historic and or spiritual importance to Māori.*

**Kōrero Tūturu/Historical**

4.3 *Ko tērā waahi e ngākaunuitia ana e te Māori ki roto i ōna kōrero tūturu. The place has special historical and cultural significance to Māori.*

**Rawa Tūturu/Customary resources**

4.4 *He waahi tērā e kawea ai ngā rawa tūturu ā te Māori. The place provides important customary resources for Māori.*

**Hiahiatanga Tūturu/Customary needs**

4.5 *He waahi tērā e eke ai ngā hiahia hinengaro tuturu a te Māori.*



*The place or resource is a venue or repository for Māori cultural and spiritual values.*

**Whakaaronui o te Wa/Contemporary Esteem**

4.6 *He waahi rongonui tērā ki ngā Māori, arā, he whakāhuru, he whakawaihanga, me te tuku mātauranga.*

*The place has special amenity, architectural or educational significance to Māori.*

<sup>8</sup> *In the event of any conflict in meaning between the Māori and the English versions of the Māori culture and traditions criteria, the Māori version shall prevail.*

**Appendix G – Criteria applicable to Policy MN 7B**

Policy MN 7B

Methods 1, 2, 3 and 11

- 1 *Character and degree of modification, damage, loss or destruction;*
- 2 *Duration and frequency of effect (for example long-term or recurring effects);*
- 3 *Magnitude or scale of effect (for example number of sites affected, spatial distribution, landscape context);*
- 4 *Irreversibility of effect (for example loss of unique or rare features, limited opportunity for remediation, the costs and technical feasibility of remediation or mitigation);*
- 5 *Resilience of heritage value or place to change (for example ability of feature to assimilate change, vulnerability of feature to external effects);*
- 6 *Opportunities to remedy or mitigate pre-existing or potential adverse effects (for example restoration, enhancement), where avoidance is not practicable;*
- 7 *Probability of effect (for example likelihood of unforeseen effects, ability to take precautionary approach);*
- 8 *Cumulative effects (for example loss of multiple locally significant features).*

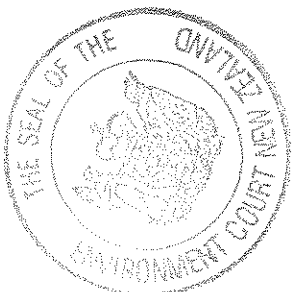
**iii. Proposed Regional Coastal Environment Plan provisions  
(\* denotes a provision which is still subject to change on appeal)**

**2.2 Objective 2**

*Protect the attributes and values of:*

- (a) *Outstanding natural features and landscapes of the coastal environment;*  
*and*
- (b) *Areas of high, very high and outstanding natural character in the coastal environment;*

*from inappropriate subdivision, use, and development, and restore or rehabilitate the natural character of the coastal environment where appropriate.*





## **1 Natural Heritage (NH)**

### **Advisory note**

The following terms are used in the natural heritage policies and in other policies and rules contained in this Plan: ...

**Outstanding Natural Features and Landscapes (ONFL)** – An area assessed as being an outstanding natural feature and landscape using the criteria contained in Policy 15(c) of the NZCPS and Appendix F set 2 to the RPS. NZCPS Policy 15 directs the avoidance of adverse effects on outstanding natural features and outstanding natural landscapes. These areas are identified on the Regional Coastal Environment Plan maps and summary information on why each area is identified is included in Schedule 3.

### **1.1 Policies**

#### **1.1.1 Appropriate use and development**

...

*\*Policy NH 4 Adverse effects must be avoided on the values and attributes of the following areas: ...*

*(b) Outstanding Natural Features and Landscapes (as identified in Schedule 3); ...*

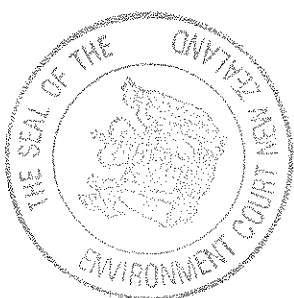
*... Values and attributes for Indigenous Biological Diversity Area A and Outstanding Natural Features and Landscapes are set out in Schedules 2 and 3 to this Plan respectively.*

*Policy NH 4A When assessing the extent and consequence of any adverse effects on the values and attributes of the areas listed in Policy NH 4 and identified in Schedules 2 and 3 to this Plan and Appendix I to the RPS:*

- (a) Recognise the existing activities that were occurring at the time that an area was assessed as having Outstanding Natural Character, being an Outstanding Natural Feature and Landscape or an Indigenous Biological Diversity Area A;*
- (b) Recognise that a minor or transitory effect may not be an unacceptable adverse effect;*
- (c) Recognise the potential for cumulative effects that are more than minor; and*
- (d) Have regard to any restoration and enhancement of the affected attributes and values.*

*\*Policy NH 5 Consider providing for subdivision, use and development proposals that will adversely affect the values and attributes associated with the areas listed in Policy NH 4 only may be considered appropriate where:*

- (aa) After an assessment of a proposal in accordance with Policy NH 4A, transient or minor adverse effects are found to be acceptable; or*
- (a) The proposal:*



- (i) *Relates to the construction, maintenance or upgrading of regionally significant infrastructure that is consistent with Policy SO 4(b); or*
- (ii) *Relates to the provision of access to offshore islands, or use and development, as set out in Schedule 15 to this Plan; or*
- (iii) *Relates to the operation, maintenance and protection of an existing River Scheme or Land Drainage Scheme; or*
- (iv) *Relates to the continuation of a use that was lawfully established on or before 22 June 2014, provided there has been no change to the scale and significance of effects associated with an activity; or*
- (v) *Provides for the restoration or rehabilitation of indigenous biodiversity, natural features and landscapes or the natural character of the coastal environment in a manner that maintains or enhances the values and attributes associated with the areas listed in Policy NH 4; or*
- (vi) *Provides for public walking, cycling or boating access to and along the coastal marine area in a manner that maintains or enhances the values and attributes associated with the areas listed in Policy NH 4.*

*\*Policy NH 11 An application for a proposal listed in Policy NH 5(a) must demonstrate that:*

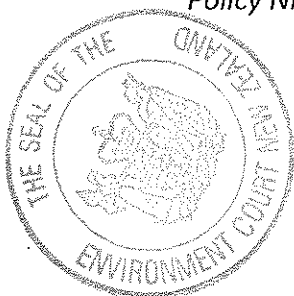
- (aa) *There are no practical alternative locations available outside the areas listed in Policy NH 4; and*
- (ab) *The avoidance of effects required by Policy NH 4 is not possible; and*
- (a) *Route or site selection has considered the avoidance of significant natural heritage areas listed in Policy NH 4 or, where avoidance is not practicable, it has considered utilising the more modified parts of these areas;*
- (b) *Adverse effects are avoided to the extent practicable, having regard to the activity's technical and operational requirements;*
- (c) *Adverse effects which cannot be avoided are remedied or mitigated to the extent practicable.*

...  
Policy NH 6

*Significant adverse effects must be avoided, and other adverse effects avoided, remedied or mitigated, on the values and attributes of: ...*

- (b) *Natural features and natural landscapes in the coastal environment that are not listed as outstanding in Schedule 3.*

...



- Policy NH 9A Recognise and provide for Māori cultural values and traditions when assessing the effects of a proposal on natural heritage, including by:*
- (a) Avoiding significant adverse effects, and avoiding, remedying, mitigating or offsetting other effects, on habitats of indigenous species that are important for traditional or cultural purposes; and on cultural and spiritual values associated with natural features and natural landscapes;*
  - (b) Avoiding, remedying or mitigating cumulative adverse effects on the cultural landscape;*
  - (c) Assessing whether restoration of cultural landscape features can be enabled; and*
  - (d) Applying the relevant Iwi Resource Management policies from this Plan and the RPS.*

...

*Policy NH 13 The guidelines contained in Schedule 4 Management Guidelines for Natural Features and Landscapes should be considered during the development of a proposal to undertake an activity in the coastal environment unless more specific provisions apply in a relevant district or city plan. These guidelines will be taken into account during the consideration of resource consent applications to undertake activities in the coastal marine area.*

### **Schedule 3 – Outstanding Natural Features and Landscapes in the Coastal Environment**

#### **Assessment of Outstanding Natural Features and Landscapes**

##### **Introduction:**

*Bay of Plenty Regional Council engaged Boffa Miskell Ltd to review the existing Outstanding Natural Features and Landscapes and Regionally Significant Features and Landscapes. As part of the review current case law was considered against the criteria set out under Set 2 of the Regional Policy Statement. These criteria were considered consistent with the current case law and Section 6(b) of the Resource Management Act 1991. 46 Outstanding Natural Features and Landscapes were identified as meeting the status of Outstanding at a Regional Level. The methodology adopted uses the Pigeon Bay Criteria (WESI vs. WLDC (2000) NZRMA 59).*

##### **Selection process:**

*The identification of outstanding natural features and landscapes was based on an evaluation system of low, medium to high for each factor, value and association. The scoring system is not additive or numerical and does not require a predetermined benchmark to become 'outstanding'. Some criteria will score highly within a feature with some scoring lower resulting in the feature still being*

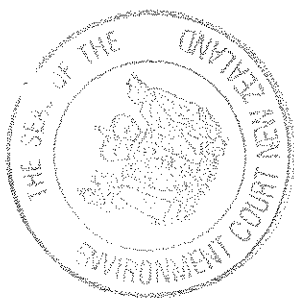


considered outstanding. This is a complex process requiring significant component of judgement by the expert team. Landscape is a multi-dimensional concept with the term landscape attributing to the value humans place on their surroundings or a feature. Scale of a feature or landscape can vary across the region with some areas identified as a large landscape feature (for example a harbour), with areas of the feature having lesser value and the feature having a higher rating resulting from its function as an entire feature. ONFL's can comprise modified landscapes that are influenced by cultural land use, whether that be historical or modern. The assessment considers the natural science factors along with the 'value' people place on the landscape through their use, relationships and spiritual association with a place.

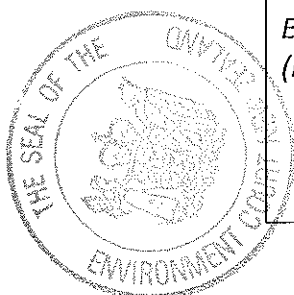
### **Landscape values:**

Identification of landscape values comprise subjective judgement as landscape and their features are valued differently by different people for a range of reasons. Experiences of a landscape can vary from long-term management of a landscape to short visits. An individual's background and understanding of the local, regional and national landscapes contribute to the evaluation of landscape. Memories, cultural associations, heritage and individual interpretation of what is 'beautiful' are some of the contributing factors as to why people see landscapes differently.

<b>Assessment criteria</b>		<b>Method</b>
<i>Natural science factors</i>	<i>Representativeness: Natural features and landscapes that are clearly and recognisably characteristic of the area, district or region. The key components of the landscape will be present in a way that more generally defines the character of the pale, but which distils this character and its essence. Natural features are in a good state of preservation and are representative and characteristic of the natural geological processes and diversity of the region.</i>	<i>Data sets including contour data, vegetation patterns, ecological significance, conservation zones and geology were analysed.</i>
	<i>Research and education: Natural features and landscapes are valued for the contribution they make to research and education.</i>	<i>Publications, community group initiatives and site educational material was reviewed.</i>
	<i>Rarity: Natural features that</i>	<i>Data sets including contour</i>



	<i>are unique or rare in the region or nationally and few comparable examples exist.</i>	<i>data, vegetation patterns, ecological significance, conservation zones and geology were analysed. Geo -preservation site data was considered.</i>
Aesthetic values	<i>Coherence: The patterns of land cover and land use that are largely in harmony with the underlying natural pattern of the landform of the area and there are no significant discordant elements of land cover or land use.</i>	<i>Vegetation patterns were reviewed using high resolution aerial data, along with field assessment.</i>
	<i>Vividness: Natural features and landscapes that are widely recognised across the community and beyond the local area and remain clearly in the memory; striking landscapes that are symbolic of an area due to their recognisable and memorable qualities.</i>	<i>The prominence of a landscape and the analysis of a landscapes features were undertaken through field work, contour mapping, registered sites of ecological and geopreservation significance. Scale and context were key in the evaluation of this attribute.</i>
	<i>Naturalness: Natural features and landscapes that appear largely uncompromised by modification and appear to comprise natural systems that are functional and healthy.</i>	<i>Natural features and landscapes that appear largely uncompromised by modification and appear to comprise natural systems that are functional and healthy.</i>
	<i>Intactness: Natural systems that are intact and aesthetically coherent and do not display significant visual signs of human modification, intervention or manipulation. These are visually intact and highly aesthetic natural landscapes.</i>	<i>The absence of human modification and disruption to the natural systems that occur on the feature or landscape. This includes coastal processes, natural river systems and hydrology, modification to margins and extent of landform change.</i>
Expressiveness (Legibility)	<i>Natural features and landscapes that clearly demonstrate the natural processes that formed them. Examples of natural processes in a landscape exemplify the particular processes that formed that landscape or</i>	<i>Geomorphological processes were reviewed with the assistance of topographical and hydrological mapping combined with field assessment.</i>

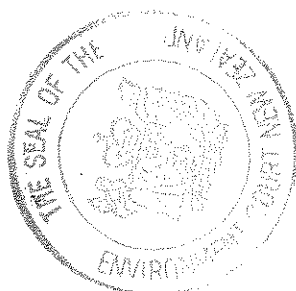


	<i>feature.</i>	
<i>Transient values</i>	<i>The consistent occurrence of transient features (for example the seasonal flowering of pohutukawa, intertidal movement and changes in landform) contributes to the character, qualities and values of the landscape. Landscapes that are widely recognised for their transient features and the contribution these features have to identify this feature or landscape.</i>	<i>Observation and anecdotal information on seasonal and constant change of the elements within this landscape or feature.</i>
<i>Shared and Recognised Values</i>	<i>Natural features and landscapes that are widely known and valued by the immediate and wider community for their contribution to a sense of place, leading to a strong community association with or high public esteem for the place.</i>	<i>Publications including Reserve Management Plans, regional, District and city plans, non-statutory strategies and site educational material were reviewed.</i>
<i>Māori Values</i>	<i>Natural features and landscapes that are clearly special or widely known and influenced by their connection to the Māori values inherent in the place.</i>	<i>Review of information collated from iwi and hapū management plans, Treaty Settlement documents, customary fishing recognitions provided under the Fisheries Act.</i>
<i>Historical Associations</i>	<i>Natural features and landscapes that are clearly and widely known and influenced by their connection to the historical values inherent in the place.</i>	<i>Information is taken from the Coastal Historic Heritage Review Project: Historic Heritage Inventory 2006 and a review of other relevant publications.</i>

#### iv. Relevant District Plan provisions

##### 6.2.1 Objective

*The unique visual quality and character of the District's outstanding natural features, landscapes and viewshafts are protected from inappropriate subdivision, use and development.*



### 6.2.2 Policies

1. Within areas identified as being outstanding natural features and landscapes, landscape character should be protected and enhanced by managing the adverse effects of inappropriate land use and development activities.
2. Identified outstanding viewshafts throughout the District should be maintained through the avoidance of inappropriate development.

### 6.4.1 Permitted Activities

In addition to those activities listed as Permitted in the respective zone (or in Rule 10.3) but excluding those listed as Restricted Discretionary, Discretionary or Non-Complying in 6.4.3 - 6.4.5 below, the following are Permitted Activities:

#### 6.4.1.1 Within Identified Natural Features and Landscapes

- (a) Production forestry within the Matakana Island Open Coast (S25).
- (b) Native forest logging under the Forest Amendment Act 1993.

#### 6.4.1.2 Within 50m inland from MHWS ... within 50m from MHWS in the Matakana Island Landscape Management Area (S9)

- (a) Where ancillary to a permitted activity in the Rural Zone – earthworks (cut or fill) not exceeding a maximum cumulative volume of 200m<sup>3</sup> per lot or resulting in a maximum cumulative vertical face of greater than 1.5m. Provided that any face shall be grassed or mass planted.
- (b) Production forestry within the Matakana Island Landscape Management Area (S9)

#### 6.4.1.3 Between 50m and 300m inland from MHWS ... between 50m and 300m inland from MHWS in the Matakana Island Landscape Management Area (S9)

- (a) Where ancillary to a permitted activity in the Rural Zone or associated with a building/structure – earthworks (cut or fill) not exceeding a maximum cumulative volume of 500m<sup>3</sup> per lot or resulting in a maximum cumulative vertical face of greater than 1.5m. Provided that any face shall be grassed or mass planted.
- (b) Buildings/structures subject to compliance with all of the following Permitted Activity performance standards;
  - (i) Height 6m (restriction applies only between 50m and 150m inland from MHWS and from the river bank);

**Note:**

Rural Zone height of 9m applies between 150m and 300m inland from MHWS and from the river bank.

- (ii) All external surfaces of buildings/structures (excluding glazing) shall comply with the following reflectivity standards:
  - Walls = no greater than 35%;
  - Roofs = no greater than 25%;
- (iii) No mirrored glass shall be used;



- (iv) *No native vegetation greater than 3m in height shall be removed as a result of any new building/structure and/or access way.*
- (c) *Production forestry within the Matakana Island Landscape Management Area (S9)*

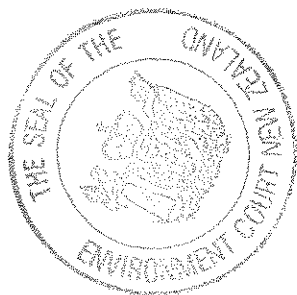
**Appendix 2 - Schedule of Identified Outstanding Landscape Features - Natural Features and Landscapes**

**S9 - Matakana Island Landscape Management Area**

*The area identified as visually significant includes all Rural Zoned land between MHWS and 300m above MHWS adjoining the Tauranga Harbour. This landscape feature is divided into two distinct areas. The area within 50m of MHWS (shown as S9a on the Planning Maps) is deemed to be more significant and thus greater restrictions apply.*

**S25 – Matakana Island Open Coast**

*Matakana Island is the largest sand barrier island in New Zealand. The open coastline extends 23km between the northern and southern entrances to the Tauranga Harbour. This part of the feature follows the landform's natural dune systems and native vegetation cover. A dynamic dune system extends inland partway into the edge of the plantation forestry with varying areas of native under storey. The area displays a high level of natural character and is part of the coastal environment where coastal processes are dominant. The sand spits that extend at either end of the Island are included for their display of the dynamic coastal processes of the Harbour and open coast. These areas also include habitat for threatened bird species including New Zealand Dotterel.*





## Appendix 2

### DRAFT ATTRIBUTES AND VALUES

Submitted by TKC in reply based on Exhibit 1A produced by Graeme Lawrence on 17 May 2017

With additions underlined and deletions ~~struck through~~.

#### Te Ure Kotikoti (Matakana Island sand barrier)

#### ~~Outstanding Natural Feature and Landscape~~

##### Description:

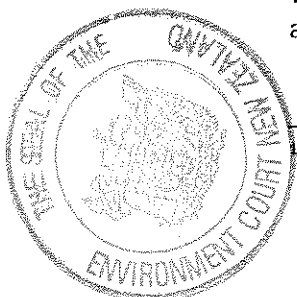
Matakana Island is a Dunelands landform sand barrier is the largest barrier island in New Zealand. It extends in a northwest-southeast direction for approximately 24km between the northern and southern entrances of Te Awanui. Its formation, together with that of the tombolos adjoining Mauāo (Mount Maunganui) to the south and Te Kura a Maia (Bowentown Heads) to the north, influence perceptions and relationships of the island barrier with Tauranga Harbour and open ocean, and, the balance of Matakana island and Rangiwaea island .

The barrier island is low lying (0-25m ASL) and is largely comprised of an extensive Holocene sand barrier made up of a largely intact primary dune along the coastal edge, backed by a series of windblown dunes and ridges. These areas have been affected by forest production, including forestry roading and skid sites. The barrier formed as a result of southeasterly spit extension, accretion of successive foredune ridges along the ocean shoreline, and progradation along the harbour shoreline.<sup>1</sup>

The natural dune ecosystem adjoining the ocean and the wetland ecosystems along the harbour margins retain high natural biotic value and ~~provide habitat for taonga species.~~ Ecological corridors across and along the barrier have largely been overlain by pine forestry for near a century. Several crops have been grown and harvested in stages rotation across the barrier.

Te Ure Kotikoti is the name given to the sand barrier by Māori. Te Ure Kotikoti provides a landscape rich in natural cultural and spiritual resources. The southern area of Panepane and ~~Purakau~~ and immediately adjoining the Panepane land contains a waahi tapu where the bones of ancestors have been interred, emphasising their strong ancestral relationship with Mauao and strengthening the relationship with Te Ure Kotikoti in the contemporary world. ~~The forest cover, Although privately owned, and access is at the goodwill of these owners,~~ coastal lakes and wetlands, ocean and harbour provide kai, rongoa and materials for traditional and contemporary mats, kete, hats and nets. Habitats of indigenous flora and fauna sustain taonga species. The forest cover is valued as a place of nature providing a sense of well being, protecting the land from erosion and the intrusion of buildings.

The key attributes of the sand barrier which require protection relate to the very high natural science values derived from the geomorphological and coastal processes and ecosystems which have formed this highly recognisable landform feature in a unique and prominent location; very high cultural and spiritual values for tangata whenua; and, the high perceptual/sensory and associative values inherent in the landscape feature.



<sup>1</sup> Formation, landforms and palaeo-environment of Matakana Island and implications for archaeology, Department of Conservation, 1997.

**Current uses and activities:**

Predominantly privately owned production forestry, with associated activities including formed and unformed roads, skid sites and associated harvesting activities, storage sheds and firefighting infrastructure.

Vehicle roads and tracks.

~~One wharf, one barge ramp and navigation structures.~~

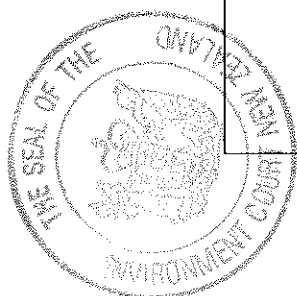
Former forest mill village settlement remnant structures.

Private lands and Maori Land Trusts, Mahinga kai, Habitat & Biodiversity Enhancement, Pest Control, Conservation/Restoration Projects, Plant

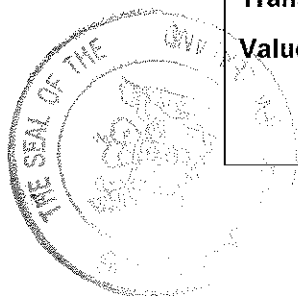
Nursery areas, Wananga/Education, Karakia, Urupa.

Dwellings – 12 at the Mill area, 3 existing private homes and an additional 10 permitted on all existing titles.

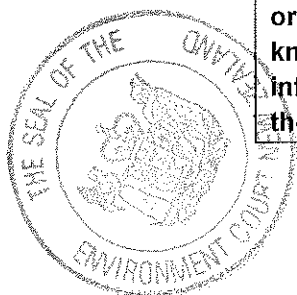
Factor	Evaluation	Rating
Natural Science Factors	<p><b>Representativeness:</b> As the largest sand barrier island in New Zealand and a nationally significant geological site it is a defining feature of Tauranga Harbour. Its geological formation, together with the tomboles adjoining Mauao (Mount Maunganui) and Te Kura a Maia (Bowentown Heads), highlight the contextual relationship and visual significance of the Matakana Island sand barrier in its wider Tauranga Harbour setting.</p> <p><u>The barrier as a whole is a natural dunelands feature that, while affected in part by forestry activities, is in a good state of preservation. The barrier consists of shore-parallel relict foredunes up to 9m in height with up to 70 parallel dunes 2m-4m in height and spaced by 40m – 80m that have migrated inland from both the ocean and harbour sides.</u></p>	<p>Abiotic <u>VHM/L</u></p> <p>Biotic <u>HM/L</u></p>
	<p><b>Research and Education:</b> The distinctive nature of the geomorphology and coastal processes provide opportunities for research and education. Several ecological, geological, geomorphological and archaeological studies on the island have been published.</p> <p>The characteristic nature of the indigenous biodiversity and the historic and cultural associations provide further opportunities for research and education. More research into these purakau/legends will add clarity and highlight the special place that the barrier holds for nga hapū. Archaeological record needs updating for the whole island – see Philips 2011.]</p>	<u>VHN/A</u>
	<p><b>Rarity:</b> Matakana Island is the largest sand barrier island in New Zealand, uniquely located prominently at the entrance to Tauranga Harbour. This type and size of barrier island is extremely rare on both a regional and national basis.</p>	<u>VH</u>



<b>Aesthetic Values</b>	<p><b>Coherence:</b> Plantation pines provide a coherent <u>uniform</u> land cover pattern, colour, form and texture. <del>The continuous tree cover provides a multisensory bush experience and valued wildness.</del> Although the current land cover and land use of tree harvesting operations and associated forestry activities have <u>extensively</u> modified the underlying natural pattern of the dune landform surface created by wind and waves, the dunes remain legible.</p>	VHL
	<p><b>Vividness:</b> The scale of the barrier island and its location in relation to Tauranga Harbour results in a highly recognisable and symbolic feature within the region.</p> <p>The tall, dark pine forest which overlays the sand barrier juxtaposes the lower lying, open beach/low estuarine and harbour <u>water</u> edge lands, <del>resulting in a vivid and memorable transition from the harbour edge to the island's hinterland and the ocean beyond.</del></p>	VHM/L
	<p><b>Naturalness:</b> The barrier soils, drainage and vegetation patterns have been modified by exotic production forestry, resulting in a moderate <u>to high</u> level of landscape modification. <del>However, there is minimal built form and the barrier island retains a vegetated canopy across the natural feature. The form and definition in terms of natural coastal processes provide for enduring Maori connections with the nature of the place.</del></p>	MHL
	<p><b>Intactness:</b> Although the majority of the barrier island has been modified by production forestry, the natural systems and processes relative to the geophysical form of the sand barrier are largely intact and coherent.</p> <p>Some areas of indigenous vegetation are relatively intact. This includes areas along the harbourside of the island where there is relatively unmodified vegetation and large wetland areas.</p>	ML
<b>Expressiveness (Legibility)</b>	<p>The form and context of the barrier island <u>coastal margins</u> as a natural feature is clearly legible and illustrative of the natural processes that have formed this significant coastal feature. <del>The bush cover and non-built character enable highly valued multi-sensory outdoor natural experiences which provide the opportunity for transferring traditional knowledge and relationships in a contemporary manner.</del></p>	VHM
<b>Transient Values</b>	<p>Ephemeral factors which may influence the perceptions and values associated with this ONFL, but are not constantly present include tidal patterns, erosion and sand drift (changes which involve a constant, quick rate of change). The dynamic interplay of wind and waves constantly form and reform the barrier interface with harbour and ocean.</p> <p>Seasonal variation and ephemeral effects add to the</p>	ML



	<p>transient values of the barrier, rhythms cue to birds, fish and the fruiting of kai species. Pohutukawa flowering cues to kaimoana ready for harvest and trigger seasonal hikoī.</p> <p>The shrouding of Mauao with mist cues to imminent rain on Te Ure Kotikoti.</p> <p>The storm brewing, the sound of storm waves arriving cues to the best fishing.</p>	
<p><b>Shared and Recognised Values</b></p>	<p>A local and regional landmark, highly recognisable with a large viewing audience (Tauranga City, Omokoroa, Katikati, Bowentown and other settlements to the west of the island). Mauao (Mount Maunganui) and Bowentown Heads allow for expansive views over and <u>for a short distance</u> into the island.</p> <p>Its island location and its accessibility (by boat only) with no public roads and predominantly private ownership help create a sense of remoteness and isolation, contributing to the rarity and attractiveness of this ONFL and ability for tangata whenua to maintain kaitiakitanga.</p> <p>There has been continued Maori occupation from the arrival of the ancient voyagers from Hawaiki. While most islanders live on the Farmlands, there are a few residences located towards the southern end of the sand barrier arm in a small cluster on the site of the former mill village. Most residents are of Maori descent who whakapapa to this place.</p> <p>Organisations active on the <u>Matakana Island (but not necessarily to the barrier area)</u> include: the Matakana Island Environmental Group, the Matakana Island Pig Hunting Club, Te Awanui Hauora, Matakana Island Sports &amp; Recreation Club, Te Akakura Native Nursery, Matakana Island Marine Club; Kura and Kohanga Reo; Marae Committees for each of the marae, Hapū entities for each of the Hapū;</p> <p>All the sand barrier, with the exception of a small cluster of buildings on and associated with the former mill village on the harbour shore edge remains unmodified by built development.</p>	<p>HM/H</p>
<p><b>Maori Values</b></p> <p><b>RPS assessment criteria: natural features and landscapes are clearly special or widely known and influenced by their</b></p>	<p>Large number of archaeological sites including ancient pa, kainga, urupā, mahinga kai. The Matakana Island Hapū Management Plan records values and sites of significance. Maori occupation from at least 500 years ago<sup>2</sup>.</p> <p>Cultural sites (including wāhi tapu and archaeological sites) are inadequately/incompletely identified or recognised.</p> <p>Matakana Island <u>Core or pasture land area</u> holds the largest number of iwi Māori per capita of pakeha in the rohe of Tauranga Moana. Matakana Island and its people are the whakaruruhau (shelter or guardian) for Tauranga Moana.</p> <p>This part of Matakana has history dating back hundreds of</p>	<p>Outstanding VH</p>



**connection to the Māori values inherent in the place.**

years through the occupation and ownership of tangata whenua. Therefore, from a tangata whenua perspective, the whole of Te Ure Kotikoti exists as an outstanding natural landscape. The barrier is named by Maori – Te Ure Koktikoti – and is regarded by them as a cultural landscape.

The barrier core is a work, harvesting, hunting area in a working forest valued for its food, fibre (including wood) and medicinal resources as well as its cultural and historic associations.

The forested core contributes to well-being for hapū given an absence of structures, the limited access and habitat for taonga species. This enables kaitiakitanga and cultural praxis including hunting, gathering and access to kai moana according to tikanga. It includes cultural features and cultural landscapes that are significant to tangata whenua.

The assessment criteria are:

- **Mauri**

The Matakana island environment including the Matakana island barrier is intrinsically connected to tangata whenua, in particular access to wāhi tupuna (ancestral areas), mahinga kai (food harvesting areas), wāhi nohonga (temporary settlement areas) and wāhi wananga (research and knowledge areas). The health and wellbeing of Matakana Island tangata whenua is connected to the wellbeing of the environment.

- **Wāhi tapu**

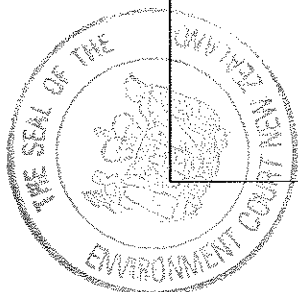
The island barrier contains a number of wāhi tapu areas including pa, urupā burial sites (known and unknown), and battle sites. Wāhi tapu are supported by traditional narratives recently documented for Treaty of Waitangi claims and archaeological assessments and evidence.

- **Kōrero Tūturu/Historical**

Ancestors such as Raumati and Tupaea are significant figures in the historical narratives associated with Matakana Island and in particular the island barrier. The feats and demise of these ancestors are memorialised in the narratives and place names of the island. Land parcel names such as Panepane, Purakau, and Waikoura refer to historical narratives.

- **Rawa Tūturu/Customary resources**

The Matakana island barrier is characterised by the large number of shell midden exposed during forestry clearance and harvesting. The archaeological evidence suggests temporary settlements for cultural harvesting activities. Access to, and use of the marine, wetland and forest environments for harvesting by the hapū of Matakana island, including for rongoa and pig hunting, continue today. This



	<p><u>access is at the goodwill of the current landowners.</u></p> <ul style="list-style-type: none"> <li>• <b>Hiahiatanga Tūturu/Customary needs</b></li> </ul> <p>The Matakana island barrier was/is significant as a repository for transferring cultural harvesting traditions and practices, and associated hapū narratives.</p> <ul style="list-style-type: none"> <li>• <b>Whakaaronui o te Wa/Contemporary Esteem</b></li> </ul> <p>While the island barrier is owned by non-Maori, this hasn't inhibited tangata whenua from continuing to practice their traditions. The island barrier is considered a significant cultural landscape that contains the traditions, practices and narratives of tangata whenua.</p> <p>Additional text to be added that reflects the RPS Appendix F Set 4 Assessment criteria Māori culture</p>	
<p><b>Historical Associations</b></p>	<p>Matakana Island was extensively occupied in pre-European times. The landscape contains many archaeological sites of Maori origin, recorded in the New Zealand Archaeological Association Site Recording Scheme, which comprise physical evidence of past human activity.</p> <p>Very large single species shell midden are a particular feature of the archaeological landscape.</p> <p>The majority of the island <u>barrier</u> has <u>primarily</u> been used for production forestry since the 1920s, <u>although in 1869 the majority of the barrier was sold from Māori to European ownership. For the majority of the barrier area Māori occupation ceased in 1869.</u></p>	<p>VHMH</p>

