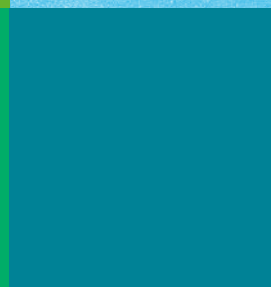
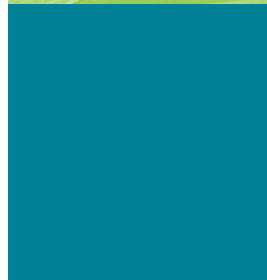


Appendix F (Criteria) User Guide

Regional Policy Statement

for the Bay of Plenty

Ngā Tikanga Whakahaere
i Ngā Rawa o Te Taiao





Bay of Plenty Regional Policy Statement Appendix F (Criteria)

User Guide

Resource Policy Publication 2008/05
ISSN: 1175-8546 (Print)
ISSN: 1174-2305 (Online)

December 2014

Bay of Plenty Regional Council
5 Quay Street
PO Box 364
Whakatāne 3158
NEW ZEALAND

Contents

Part 1: An introduction to criteria	1
1.1 Who should read this user guide?	1
1.2 What are criteria?	1
1.3 Why do we need criteria?	2
1.4 What does the Regional Policy Statement criteria address?	2
1.5 The scope of this user guide	3
Part 2: As an applicant for resource consent, when do I need to consider the criteria?	5
2.1 What will a specialist adviser do?	5
2.2 How do I know if I need to engage a specialist?	5
2.3 When don't you need to worry about the criteria?	6
Part 3: Interpreting the criteria	7
Part 4: Set 1 - Natural Character	9
4.1 Introduction	9
4.2 Regional Policy Statement policies and methods	10
4.3 Explanation of criteria	11
Part 5: Set 2 - Natural features and landscapes	13
5.1 Introduction	13
5.2 Regional Policy Statement policies and methods	14
5.3 Explanation of criteria	14
Part 6: Set 3 - Indigenous vegetation and habitats of indigenous fauna	27
6.1 Introduction	27
6.2 Regional Policy Statement policies and methods	28

6.3	Explanation of criteria	29
Part 7: Set 4 - Māori culture and traditions		37
7.1	Introduction	37
7.2	Identifying effects on Māori heritage through consultation	37
7.3	Recommendations for consultation	38
7.4	Regional Policy Statement policies and methods	39
7.5	Understanding the Criteria and what they mean	40
7.6	Identifying Māori heritage places and values	43
Part 8: Set 5 – Historic heritage		45
8.1	Introduction	45
8.2	Regional Policy Statement policies and methods	46
8.3	Explanation of criteria	47
Part 9: Set 6 – Public access		59
9.1	Introduction	59
9.2	Regional Policy Statement Policies and Methods	60
9.3	Explanation of Criteria	60
9.4	Reference guides	69
9.5	Relevant case law	69
Part 10: Set 7 – Geothermal features		73
10.1	Introduction	73
10.2	Assessments by experts using Criteria Set 7	73
10.3	Statutory framework	74
10.4	Management of geothermal resources	74
10.5	When to assess significance	75
10.6	Regional Policy Statement Policies and Methods	75
10.7	Advice for Expert Assessors	77

10.8	Explanation of Criteria	77
Part 11: When and how do Council officers need to take account of the criteria?		79
11.1	Plans and plan changes	79
11.2	Taking account of the Criteria when considering resource consent applications	79
11.3	Questions and answers for Council officers	80
Part 12: The resource consent checklist		81
Part 13: Relevant case law		83
Part 14: Background documents		85
Part 15: Endnotes		91

Part 1: An introduction to criteria

The Bay of Plenty Regional Policy Statement (RPS) Appendix F Criteria originated through Change No. 1 to the Bay of Plenty Regional Policy Statement (Criteria), which became operative on 19 June 2008. Change No. 1 introduced criteria to be applied in plan change and resource consents processes across the Bay of Plenty region. Method 15.3.1(c)(xvii) of the first generation RPS required Bay of Plenty Regional Council to maintain a user guide to illustrate and assist the interpretation and application of the Appendix F Criteria.

The 2014 Operative RPS introduced two new sets of criteria for assessing Matters of National Importance: Set 6: Public Access and Set 7: Geothermal Features. Several policies and methods in the 2014 Operative RPS refer to the Appendix F Criteria.

This document provides guidance for the appropriate use of the criteria. It is designed to assist people to understand the criteria - why we have them and how they should be used.

What is the Regional Policy Statement?

The Regional Policy Statement (RPS) is a document prepared by Bay of Plenty Regional Council under the Resource Management Act 1991. It does not contain specific rules but it does contain high level policy that district and regional plans must 'give effect to'. The criteria have been designed to influence resource consents and the development of district and regional plans.

Regional Policy Statement policies and methods of implementation, contained in Chapters 15 (natural features and landscapes and historic heritage) and Chapter 16 (Natural character and indigenous ecosystems), set out how the Appendix F Criteria sets should be used. Relevant policies and methods are listed prior to the explanations for each set.

1.1 Who should read this user guide?

The user guide is relevant to two groups of people.

First, the guide should be of interest to those in the Bay of Plenty community who participate in Resource Management Act (RMA) processes or who may require resource consent from either Bay of Plenty Regional Council or any of the city or district councils in the region. This includes developers, landowners, special interest groups, iwi and hapu.

Second, the guide will be relevant for agencies with protection responsibilities, particularly those which exercise functions under the RMA. It aims to assist local authorities and other agencies in the Bay of Plenty region to interpret and apply the provisions in a consistent way.

1.2 What are criteria?

Criteria are qualitative standards that form a basis for decision-making. They identify the principles for assessing the significance of particular places or resources and can help explain what makes them important. Criteria are useful for assessing priorities and, in the context of the RMA, for determining what resources and values warrant specific protection.

1.3 Why do we need criteria?

Criteria for identifying and assessing the importance of various resources have been around for many years. The RMA uses terms such as “important” and “significant” without defining what those terms mean. All agencies and individuals exercising functions under the RMA are required to make judgements about “importance” and “significance” and other qualitative terms used in this Act.

Those making such judgements currently use a range of criteria drawn from a variety of sources. Sometimes these criteria are identified in Resource Management Plans, often they are not. The inclusion of criteria in the RPS provides consistency and, just as importantly, transparency to decision-making. The criteria do not add a new obligation. Even if criteria were not included in the RPS, criteria would continue to be used around the region - they just would not be obvious to the community and may be different in different places and at different times.

Historic heritage management: Functions and responsibilities

There are a number of agencies with responsibilities for managing the region’s historic heritage. These include Bay of Plenty Regional Council, city and district councils, Heritage New Zealand, the Māori Heritage Council, the Department of Conservation, the Queen Elizabeth II National Trust, and Nga Whenua Rahui. These responsibilities are prescribed by various pieces of legislation, for example, the Conservation Act 1987 and the Historic Places Act 1993.

The historic heritage management functions and responsibilities of regional, city and district councils are derived from the RMA. The RMA does not prescribe “historic heritage management” as an explicit function for regional, city or district councils. However, the protection of historic heritage is a matter of national importance set out in Part 2 (Purpose and principles). All those exercising functions under the RMA must seek to promote the Act’s purpose. In that sense, managing effects on historic heritage is an implicit function of regional, city and district councils.

1.4 What does the Regional Policy Statement criteria address?

The primary sets of criteria are contained in Appendix F of the RPS. These criteria relate to the key dimensions described in section 6 of the RMA, namely:

- (a) Natural character.
- (b) Natural features and landscapes.
- (c) Indigenous vegetation and habitats of indigenous fauna.
- (d) Public access to and along the coastal marine area, lakes and rivers.
- (e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.
- (f) Historic heritage.

Specific criteria are provided for the assessment of each of the above matters. A further Set 7 is included specifically for the purpose of assessing and identifying geothermal features, being a combination of (b) and (c) above.

A second set of criteria are listed in Appendix G of the RPS. The criteria in Appendix G are triggered only after a matter specified in section 6 of the RMA has been assessed as warranting protection, using criteria not inconsistent with those in Appendix F. The Appendix G criteria then provide a framework for assessing whether subdivision, use or development proposals are inappropriate in relation to that specified matter.

1.5 **The scope of this user guide**

This guide provides explanations for the criteria contained in Appendix F only. A substantial body of knowledge, including case law, has developed concerning the interpretation of the matters specified in section 6 of the RMA. The primary purpose of the user guide is to draw on this accumulated knowledge to further explain the criteria in Appendix F, and to assist with their interpretation.

The criteria contained in Appendix G are less open to interpretation and have narrower applications than those in Appendix F. The criteria in Appendix G simply list the factors to be considered when a subdivision, resource use or development is likely to have an actual or potential adverse effect, on a matter assessed as warranting protection under section 6 of the Act.

Part 2: As an applicant for resource consent, when do I need to consider the criteria?

As a landowner or developer, whenever you need resource consent¹ to do something that requires a consent under the RMA or under a district or regional plan, you need to submit an Assessment of Environmental Effects (AEE).

In preparing an AEE, you or your adviser will need to ask:

- (a) whether any of the matters specified in section 6 of the RMA are associated with the site; and
- (b) whether what you propose to do might compromise those matters.

If you think that such matters might be affected but you don't know how significant they are, you may need to **engage one or more specialist advisers** to assist in completing the AEE.

2.1 What will a specialist adviser do?

Specialist advisers will apply their technical expertise and assess the site using the criteria explained in this guide. They might then provide advice on whether your proposed development should be modified. This is likely to assist you in convincing your local authority that any adverse effects on the specified section 6 matters can be avoided, remedied or mitigated as is required by the RMA.

Who is a specialist?

For the purpose of applying the criteria, a specialist is a person¹ with sound technical or cultural understanding of one or more of the matters specified in section 6 of the RMA:

- natural character;
- natural features and landscapes;
- indigenous vegetation or habitats of indigenous fauna;
- relationship of Māori with the place; or
- historic heritage.

Specialists could include landscape architects, landscape ecologists, ecologists, botanists, fauna specialists, geologists, conservation architects, archaeologists or Pūkenga (refer to 7.3).

2.2 How do I know if I need to engage a specialist?

Sometimes matters of national importance are obvious – an outstanding landscape, a pristine lake, significant tracts of native forest, an historic building or obvious signs of early settlement. But sometimes it can be difficult for a person to determine the importance of such places. Knowing when and which type of specialist should be employed is a matter of judgement. The following checklists should assist.

¹ There is a resource consent checklist in Chapter 10 of this guide.

Checklist for determining whether to engage a specialist

- 1 Consider whether any of these are present: natural character, natural features and landscapes, indigenous vegetation or habitats of indigenous fauna, relationship of Māori with the place, or historic heritage.
- 2 Check the district and regional plans and the RPS. Is your site identified as having special values? Note that the absence of a scheduled site does not mean that significant values are not present.
- 3 Speak to a planning officer at your relevant local authority. Ask whether the Council is likely to have concerns about values on your site. The Regional offices of the Heritage New Zealand and the Department of Conservation may also be able to provide advice.
- 4 Work through the five sets of criteria set out later in this guideline. Do any of the criteria apply to your site? Note that even some quite modified sites (e.g. small watercourses) may have significant values. Cultural values may not be easily evident (e.g. subsurface archaeological deposits).
- 5 Consult your neighbours and others in the community who you think might have an interest.
- 6 Consult Māori people with a relationship with the site or surrounding area.
- 7 Consult with specialist advisers such as experienced RMA planners and surveyors.

What activities typically bring these matters into consideration?

Although many different activities bring these matters into consideration, high risk activities include:

- 1 Earthworks (excavation and filling).
- 2 Drainage of wetlands and diversion of watercourses.
- 3 Subdivision or new buildings – particularly where they are located on ridgelines or in areas with little other development.
- 4 Removal or disturbance of indigenous vegetation.
- 5 Building structures on or over the coast, lakes or other water bodies.

2.3 When don't you need to worry about the criteria?

In some situations the district or regional plan will make it clear that the matters specified in section 6 of the RMA are not relevant. If the activity you want to undertake is identified as a permitted activity, or a controlled or restricted discretionary activity and the plan doesn't specify that these matters will be relevant, then you need not concern yourself with the criteria.

Make sure you consult the relevant district or regional plan and know the status of the activity you propose before you attempt an AEE. If it is described as a controlled or restricted discretionary activity, the criteria might not apply. If you are in doubt, discuss the plan requirements with your Council staff.

Part 3: Interpreting the criteria

The preceding sections explain what the criteria are and when they need to be applied by resource consent applicants. The following sections look at how to apply the criteria.

Many of the criteria may appear imprecise and vague - even esoteric for those not familiar with these issues. Each criterion is, however, designed to describe an aspect that all people, including those without expert knowledge, find important and which contributes to the “specialness” of peoples’ living and working environment.

The criteria need to be understood in simple terms even if they may, at times, require application by people with specialist technical expertise. The following sections provide a simple explanation of the criteria that enables members of the community, applicants, planners and decision-makers, to develop a shared understanding of the criteria.

Part 4: Set 1 - Natural Character

4.1 Introduction

The Natural Character Criteria are intended for application in the coastal environment² (including harbours and the coastal marine area), wetlands, lakes and rivers and their margins. This is consistent with section 6(a) of the RMA.

The RMA requires all those exercising functions and powers to recognise and provide for:

“The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.”

In contrast to some other subsections of section 6 of the RMA, the issue is not whether the natural character is “outstanding” or “significant” but whether natural character exists and the extent to which it exists.

Key points to remember about natural character:

- 1 Natural character is commonly described in relation to “natural elements; natural processes and natural patterns” and the interactions between these.
- 2 Natural character exists along a spectrum of “naturalness” from pristine to the highly modified.
- 3 The description of “naturalness” that has evolved through case law is:
 - The physical landform and relief.
 - The landscape being uncluttered by structures and/or obvious human influence.
 - The presence of water (lakes, rivers and sea).
 - The vegetation (especially indigenous vegetation) and other ecological patterns.

The absence or compromised presence of one or more of these does not mean that the character of an area is non-natural, just that it is less natural.^A

- 4 Where natural character exists, it should be preserved. This does not, however, mean that everything with natural character is to be preserved. There is a well-established distinction between preservation of a feature or landscape and preserving its natural character^B.

² The coastal environment is defined in the RPS as follows:

The coastal environment includes at least the coastal marine area, the water, plants, animals, and the atmosphere above it; and all tidal waters and foreshore whether above or below mean high water springs, dunes, beaches, areas of coastal vegetation and coastal associated animals, areas subject to coastal erosion or flooding, salt marshes, sea cliffs and coastal wetlands, including estuaries.

The Coastal Marine Area (CMA) is that area between Mean High Water Springs and 12 nautical miles off shore (i.e. the sea and inter-tidal zone). The boundaries of the CMA where it crosses a river are defined in the Regional Coastal Environment Plan. The CMA is more fully defined in the RMA and in the RPS.

- 5 An area may display natural character even though it may be modified. Areas that include pasture and exotic trees for example may still be found to have natural character^C.
- 6 Inappropriate development will depend on the extent to which natural character is modified or affected by development.
- 7 It is necessary to assess the natural character and the degree of naturalness of the coastal and freshwater environments. Where the particular environment sits in the spectrum of naturalness, will be relevant to the test of what is “inappropriate development”.

4.2 Regional Policy Statement policies and methods

The Bay of Plenty Regional Policy Statement contains policies and methods, which promote the application of the Set 1: Natural Character Criteria. These policies and methods are listed as follows:

4.2.1 Policies

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:

- (a) Natural character, in relation to section 6(a) of the Act, on the extent to which criteria consistent with those in Appendix F Set 1: Natural Character are met.

4.2.2 Methods of implementation

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies ... MN 1B, MN 3B ... shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Appendix F states that “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”. For Set 1 the following additional policies and methods are also listed as triggers being Policies CE 2B, CE 8B, CE 10B, EI 5B, MN 1B, MN 2B, MN 3B, MN 7B and MN 8B and Methods 1, 2, 3, 11, 12 and 70.

4.3 **Explanation of criteria**

The Natural Character Criteria³ cover five matters.

Natural systems expressed

Natural systems are naturally occurring processes that involve the transfer and recycling of nutrients and energy, including the movement of sediments, water and air and the regular and seasonal movement of biota.

Natural systems are expressed when they remain as integrated ecological systems that promote and support the healthy functioning of the natural environment. This occurs when:

- (a) Natural systems are not compromised by permanent engineering works like seawalls, dams and channelling or piping of watercourses.
- (b) There remain areas of permanent or periodic naturally occurring interfaces between land and water, such as inter-tidal zones, sand dunes, salt or freshwater wetlands or riparian margins.

Landform

Landform refers to the geomorphological structure (surface features) of the landscape.

Landform retains its natural form and qualities where:

- (a) It has not been modified by earthworks associated with roading, drainage, quarrying, urbanisation or similar uses.
- (b) There is an absence of buildings, particularly buildings that obscure or interrupt the natural outline of ridges and other natural features.

Land cover

Land cover refers to the nature and pattern of vegetation that clothes the landform.

Land cover is unmodified from its natural state or is regenerating and contributes to a high degree of naturalness or, where managed, retains the qualities of naturalness where it comprises:

- (a) Areas of predominantly native vegetation that have never been cleared.
- (b) Areas of vegetation which have been cleared or partially cleared but which have regenerated or are in the process of regeneration.

Waterscape

Waterscape refers to the character of the water body.

Seascapes, harbours, estuaries, wetlands, geothermal surface features, lake or river water bodies are natural without obvious human structures or intervention where:

³ Change No. 1 gives effect to policies in the New Zealand Coastal Policy Statement (NZCPS) relating to natural character. The NZCPS provides further guidance on natural character and appropriate development.

- (a) Water bodies that have not been compromised by aquaculture, boat mooring or jetties, surface recreational facilities and infrastructure, or the like.
- (b) Dredging, sand and gravel removal or channelisation and similar activities have not removed the naturalness (including the spatial extent, movement and clarity) of water.

Fauna

Fauna refers to the animals that inhabit or occupy the land or aquatic environment.

Habitat for fauna is natural and functions without compromise by human influence or modification where:

- (a) There is an absence of evidence of introduced species.
- (b) Landforms and geographical features remain largely intact.
- (c) There is a high degree of natural vegetation remaining.

Wildlife habitat that is predominantly natural will almost certainly occur where other natural character criteria are met. The fauna that occupy this habitat would be those that naturally occur in the area (see: Set 3 - Indigenous vegetation and habitats of indigenous fauna).

The criteria are closely linked to the other matters of section 6 of the RMA. Natural features and landscapes and significant indigenous vegetation and significant habitats are core components of natural character. Therefore, the extent to which natural character may be said to remain, may be illustrated by the application of other criteria of the RPS.

Part 5: Set 2 - Natural features and landscapes

5.1 Introduction

The Natural Features and Landscapes Criteria link directly to section 6(b) of the RMA. That section requires all those exercising functions and powers under the RMA to recognise and provide for:

“The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.”

In essence, the section necessitates that local authorities distinguish between those natural features and landscapes that are “outstanding” and all other natural features and landscapes. The criteria in Set 2 are designed to assist with that task.

The RMA does not define “natural features”, “landscapes” or “outstanding”. A natural feature (for example a hill or ridge) is generally considered a subset of a wider landscape.

The Concise Oxford Dictionary defines “outstanding” as:

“Conspicuous, eminent, especially because of excellence remarkable in.”

Key points to remember about natural features and landscapes:

- 1 There have been several specific decisions on landscape issued by the Environment Court⁴.
- 2 The description of “naturalness” that has evolved through case law includes:
 - The physical landform and relief.
 - The presence of water (lakes, rivers and sea).
 - The vegetation cover (especially indigenous vegetation) and other ecological patterns^D.
 - The absence or lack of prominence of structures and/or obvious human influence.

The absence or compromised presence of one or more of the above does not mean that the landscape is non-natural, just that it is less natural.
- 3 Outstanding is a high threshold. A landscape may be rated very highly without necessarily being outstanding^E.
- 4 The wording of section 6(b) relates to “outstanding natural features” and “outstanding natural landscapes”^F.
- 5 It has been said that an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert witness^G.
- 6 Natural features and landscapes that may not be found to be outstanding may still be considered as having high visual amenity and may warrant protection under section 7 of the RMA.

⁴ The RPS Criteria and this guide draw heavily on case law. Relevant case law is referenced in Chapter 11 of this guide.

5.2 Regional Policy Statement policies and methods

The Bay of Plenty Regional Policy Statement contains policies and methods, which promote the application of the Set 2: Natural Features and Landscapes Criteria. These policies and methods are listed as follows:

5.2.1 Policies

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.

5.2.2 Methods of implementation

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies ... MN 1B, MN 3B... shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Appendix F states that “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”. For Set 1 the following additional policies and methods are also listed as triggers being Policies CE 2B, CE 8B, CE 10B, EI 5B, MN 1B, MN 2B, MN 3B, MN 7B and MN 8B and Methods 1, 2, 3, 11, 12 and 70.

5.3 Explanation of criteria

A natural feature or landscape should be regarded as **outstanding** where it succeeds in meeting the values advocated in one or more of the following criteria. The criteria should be applied in a manner consistent with the very high test applied by the Environment Court (see key points in 5.1 above). Decision makers and people applying the criteria (generally those with the necessary specialist or technical knowledge) must exercise judgement on the extent to which the criteria are met and whether a natural feature or landscape is ‘outstanding’.

At least eleven Natural Feature and Landscape Criteria are in common use. These can be presented in various ways – as unique criteria or as subsets of broader concepts. By grouping the criteria under seven headings, the RPS adopts the format given direction through key Environment Court decisions relevant to the provisions of section 6(b).

1 Natural science factors

Natural science factors include the criteria of representativeness, the value that a feature or landscape has for research and education, and rarity.

Representativeness

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;

Natural features in a good state of preservation are representative and characteristic of the natural geological processes and diversity of the region.

In short, these criteria refer to the degree to which the natural feature or landscape represents the distinctive character of the area, district or region. The natural feature or landscape may bring together and distil the important components of an area and provide a representative example of the wider area.

Representativeness is a natural science criterion because a representative natural feature or landscape will display the scientific values (geomorphology, ecology etc.) that are typical of the area.



Figure 1 Landscapes that encapsulate the characteristic qualities of a district or region are highly representative.

Research and education

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

Outstanding natural features and landscapes will include those that are very highly valued and important for their research and educational values. Such landscapes contribute to the body of knowledge and science locally, regionally, nationally and internationally. Where a natural feature or landscape is highly valued for its science, these values can contribute also to its status as an outstanding natural feature or landscape.



Figure 2 Surface geothermal features may contribute to knowledge of geothermal processes and systems.

Rarity

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

Landscapes or natural features that score highly against this criterion will be unique in the Bay of Plenty or in New Zealand. A good example of a unique landscape in the Bay of Plenty would be a distinctive geothermal landscape. Also scoring highly against the criterion would be naturally rare, special, uncommon landscapes or landscapes that have become fragile or threatened through human pressures.

An example would be an unmodified dune system where most dunes have been highly modified by earthworks or land use change.

2 Aesthetic values

Aesthetic criteria relate to the appearance or visual aspects of a natural feature or landscape. Four aesthetic criteria are identified: coherence, vividness, naturalness and intactness.

Coherence

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.

Landscapes are comprised of a range of individual components. These include landform, patterns of hydrology (such as rivers and streams), vegetation, land use and built elements such as roads, tracks, services, fences and buildings.

Coherence refers to the way in which all the various components of landscape “fit” together. A coherent landscape is one where the landscape components may be said to be in “harmony”. That is, where components respect and reinforce one another. Planting that follows the natural contours of the landform would contribute to a coherent landscape.



Figure 3 The pattern of land use, pasture and shrub lands or woodlots, reinforces the natural pattern of this low ridge and gully landscape.

Incoherent landscapes are typically created when land uses bear little relationship to the underlying landform. For example, when tracks are cut across the natural pattern of the land rather than following a natural contour.



Figure 4 The pattern of linear excavations/clearing in this landscape affect its visual coherence by running against the natural pattern of landform.

Vividness

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.

Highly vivid natural features and landscapes are strongly memorable – they remain in the memory long after first observation. Vivid landscapes comprise a key component of a person's mental image of a region or district. Such landscapes often tend to be striking due to their landform and relationship to water. Mauao (Mount Maunganui) is an example of a memorable/vivid landscape feature in the Bay of Plenty.

Naturalness

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

Naturalness is about the degree to which a natural feature or landscape is perceived as “natural”. This should not, however, be confused with being entirely unmodified or ‘pristine’. A landscape may retain a high degree of naturalness even though it may be highly modified. Conversely, a landscape may appear highly modified but retain high natural ecological values. A natural feature or landscape comprising natural systems that have been compromised in some way, but which retain the appearance of being healthy and functioning, will still score well against this criterion



Figure 5 Landscapes with some modification but which aesthetically maintain a predominant naturalness, score highly in terms of the criterion of naturalness.

Intactness

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.

This criterion refers to the degree of human modification that has occurred in the landscape. The criterion recognises the geological and ecological values as expressed in landscapes.

For the purposes of identifying what is outstanding, a highly intact landscape is unmodified and appears to comprise only natural systems that are fully functional and healthy.



Figure 6 Landscapes that are largely in their natural state score highly in relation to intactness.

1 Expressiveness (legibility)

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.

Expressiveness describes the degree to which the formative processes – including geomorphological, hydrological, weather (wind and rainfall) and coastal – are actively displayed in the natural feature or landscape. In other words, an expressive natural feature or landscape demonstrates the natural processes by which it was formed.



Figure 7 Landscapes that clearly demonstrate their processes of formation score highly in terms of expressiveness.



Figure 8 Natural features which display the processes of their formation score highly in relation to expressiveness.

2 Transient values

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.

Typically, transient values refer to the contribution that wildlife, seasonal variation and the atmosphere make to the landscape.

The transient value criterion recognises that a landscape may gain significance due to seasonal or habitual qualities. For example, migratory wildlife may use an area for part of the year or part of the day. Alternatively, the rising or setting of the sun or the consequences of seasonal weather change may add particular qualities to a landscape that elevate its significance.



Figure 9 Landscapes in which seasonal or habitual qualities add to the character and value of the landscape score highly in relation to transient values.

3 Shared and recognised values

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.

This criterion recognises the values of natural features and landscapes to the community. A natural feature or landscape may embody the cultural identity of the people or it may have philosophical or spiritual meanings that make it of significance to the community. Images of a natural feature or landscape that are frequently used to represent a place, such as in postcards, paintings or literature, reflect a value that is shared and recognised by the community.

Community association with a natural feature or landscape is often related to the values identified by other criteria.



Figure 10 Natural features or landscapes which are recognised or particularly appreciated by the community are important in relation to shared and recognised values.

4 Māori values

Natural features and landscapes are clearly special or widely known and influenced by their connection to the Māori values inherent in the place.

Some natural features or landscapes are of special significance to Māori, due to past and/or consistent use or meaning. They may relate to landscape features or places which were named and formed part of the “mapped” pre-European landscape. Similarly, they may be a site of a former pathway (connecting for example, the Tauranga area to the Waikato), a portage, a boundary between tribal interests, or a site of warfare between tribes. Frequently, these places continue to have meaning or a presence within the contemporary landscape and contribute to its significance.

A landscape with Māori significance will be one that has been visually influenced by a connection to Māori. It may include landscapes containing man-made structures, artefacts or natural features that are associated with Māori occupation or mythology.



Figure 11 Landscapes which are enriched by artefacts or associations of significance to Māori score highly in relation to Māori values.

5 Historical associations

Natural features and landscapes are clearly and widely known and influenced by their connection to the historical values inherent in the place.

The historical criterion refers to the presence of European history in the landscape. A landscape with historical qualities will be visibly influenced by its connection to the historical values inherent in the place.



Figure 12 Natural features and landscapes which are important, due to their contribution to the shared values of the community, score highly in terms of historical associations.

A landscape with historical significance to the community will be one that has been strongly influenced by a connection to the past. It may include landscapes containing physical evidence such as built structures, artefacts or natural features that are associated with past events, habitation and use over time.

Part 6: Set 3 - Indigenous vegetation and habitats of indigenous fauna

6.1 Introduction

Section 6(c) of the RMA requires all those exercising functions and powers under the Act to recognise and provide for:

“The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.”

In much the same way as with natural features and landscapes, this section requires local authorities to be able to distinguish between indigenous vegetation and habitats of indigenous fauna that are significant and those that are not. The criteria for indigenous vegetation and habitats of indigenous fauna are designed to assist with that task.

Indigenous vegetation includes forest and non-forest ecosystems. It also includes vegetation of all age classes, including regenerating vegetation. Habitats of indigenous fauna may include habitats comprised of introduced species. The RMA does not define “significant” and does not specify a requirement for the assessment of levels of significance. Furthermore, there are currently no formal national guidelines that provide assistance.

The Concise Oxford Dictionary defines “significant” as:

“Having a meaning, expressive, suggestive, inviting attention; noteworthy, of considerable amount or effect or importance.”

Key points to note about areas of indigenous vegetation and habitats of indigenous fauna:

- 1 The technical nature of the issues surrounding the implementation of section 6(c) means that there is a greater need for technical (rather than Environment Court) resolution of issues. The science and the technical support systems that need to apply that science are still developing. However, ecological districts subdivided into bioclimatic zones and landform units have been used widely for GIS-based evaluation in the Bay of Plenty.
- 2 Determining significance is a technical exercise that requires:
 - (a) detailed ecological, botanical and zoological knowledge; and
 - (b) comprehensive surveys and consistent assessment techniques, including the use of spatial frameworks and geographical information systems.
- 3 Those processing consents or preparing plans should consult the existing ecological survey information that exists within the region. This includes Sites of Special Wildlife Interest (SSWI) and the Protected Natural Area Programme (PNAP) surveys as well as specific district-wide studies that have been carried out in association with district plan preparation.

Previous ecological surveys

The concept of ecological evaluation is not new. Survey programmes and assessment methodologies have been around for many years. Perhaps the most notable of these is the Protected Natural Areas Programme (PNAP), which was designed in the early 1980s, to meet the conservation objectives of the Reserves Act 1977. Other nation-wide surveys included the National Forest Survey (1950s) and the Fauna Survey undertaken by the Wildlife Service in the 1980s, including a region-wide fauna survey of the Bay of Plenty. There are also many other survey reports on unprotected and protected natural areas in the region.

Ecological districts

Central to many surveys undertaken to date was the use of the ecological district framework. This framework divided New Zealand into 268 ecological districts where topographic, climatic, soil and biological features and the broad cultural patterns, have produced a characteristic landscape of biological communities. Ecological districts with closely related characteristics were grouped into 85 ecological regions.

The Bay of Plenty region has 25 ecological districts. These are mapped in McEwen (1987). For ecological evaluation processes, ecological districts have commonly been subdivided, spatially, into bioclimatic zones and landform units, to provide a more detailed level of analysis.

6.2 Regional Policy Statement policies and methods

The Bay of Plenty Regional Policy Statement contains policies and methods, which promote the application of the Set 3: Indigenous Vegetation and Habitats of Indigenous Fauna Criteria. These policies and methods are listed as follows:

6.2.1 Policies

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

- (a) Identify which natural and physical resource 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.
- (c) Recognise and provide for the protection of areas of significant indigenous vegetation and habitats of indigenous fauna identified in accordance with (a).

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:

- (c) Whether areas of indigenous vegetation and habitats of indigenous fauna are significant, in relation to section 6(c) of the Act, on the extent to which criteria consistent with those in Appendix F Set 3: Indigenous vegetation and habitats of indigenous fauna are met.

6.2.2 Methods of implementation

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies ... MN 1B, MN 3B... shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Appendix F states that “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”. For Set 3 the following additional policies and methods are also listed as triggers being Policies CE 9B, EI 5B, GR 1A, GR 4A, IW 2B, IW 5B, MN 2B, MN 7B and MN 8B and Methods 1, 2, 3, 11, 12 and 70.

6.3 Explanation of criteria

Indigenous vegetation or habitat of indigenous fauna should be regarded as significant, where it meets one or more of the criteria set out below. Decision makers and people applying the criteria (generally those with the necessary specialist or technical knowledge) must exercise judgement on the extent to which the criteria are met and whether indigenous vegetation or habitat of indigenous fauna is ‘significant’.

The criteria for indigenous vegetation and habitat of indigenous fauna are grouped according to nine headings. These are: representativeness, rarity or distinctive features, diversity and pattern, naturalness, ecological context, viability and sustainability, Māori, historical and community association. The following explanations address each of these subsets in turn.

Representativeness

Indigenous vegetation or habitat of indigenous fauna contains associations of indigenous species representative, typical or characteristic of the natural diversity of the region or any relevant ecological districts.

Representativeness (of the range of biological diversity) is generally considered to be the overriding criterion for ecological evaluation.

The criterion simply refers to the extent to which a site is important to achieving the representation of the range of ecological diversity. This includes the range of habitats and species but also the range of associations (such as ecological gradients).

The criterion recognises the value of retaining representative examples of the various different types of vegetation and habitat, preferably in proportion to what originally existed.

The following matters will be relevant when applying this criterion:

- (a) A key issue with assessing representativeness is the spatial scale at which the assessment of representativeness is undertaken. Most ecological surveys to date have recognised ecological district boundaries and these continue to provide a practical framework for the evaluation of this criterion. Land Environments of New Zealand (LENZ) is also useful for the assessment of representativeness at other (including national) scales and Bay of Plenty Regional Council will continue to investigate the use of LENZ within the region.

What is LENZ?

Land Environments of New Zealand (LENZ) is a classification of “environments” mapped across New Zealand’s landscape – a classification that is nationally consistent, works at a range of scales and comes complete with information about climate, soils and landforms. It aims to provide a tool that allows the environment to be better understood and better managed.

Land Environments of New Zealand allows local authorities to objectively divide their landscapes into units likely to have similar ecosystem character. This in turn plays a crucial role in, for example:

- assessing the biodiversity value (including likely rarity or representativeness) of surviving natural ecosystems;
- identifying the most efficient use of limited financial resources for biodiversity management, including management of protected natural areas and other areas of land with high biodiversity values;
- identifying sites where similar problems are likely to arise in response to human activities, or where similar management activities are likely to have a particular effect;
- providing a framework for regulatory activities and reporting on the state of the environment;
- Information can be found at:
www.landcareresearch.co.nz/services/informatics/lenz/.

- (b) A baseline date against which to compare ecosystem or habitat extent is also an important consideration. One baseline for assessing representativeness in the Bay of Plenty is 1840, as this predates large-scale European settlement and related land use change. Note: There had already been extensive burning prior to 1840.
- (c) Because representativeness is partly about whether a vegetation or habitat type is well represented in existing protected areas, assessment requires knowledge of other areas and their management and legal status.
- (d) Under this criterion, an area will score highly if it is a good example of vegetation and habitat not already well represented in the Protected Area Network (i.e. those areas protected by various means).

Rarity or distinctive features

Indigenous vegetation or habitat of indigenous fauna, supports an indigenous species or associations of indigenous species threatened or rare nationally, regionally or within the relevant ecological district;

Indigenous vegetation or habitat of indigenous fauna can contribute to the maintenance or recovery of a species threatened or rare nationally, regionally or within the relevant ecological district;

Indigenous vegetation or habitat of indigenous fauna is distinctive, of restricted occurrence, or at the limits of its natural distribution range, or has developed as a result of factors such as natural geothermal activity, historical cultural practices, altitude, water table, or soil type;

Indigenous vegetation or habitat of indigenous fauna is one of the largest remaining examples of its type within the region or any relevant ecological district;

Indigenous vegetation or habitat of indigenous fauna is significantly reduced in area and is degraded but retains key natural ecosystem functions (for example hydrology) and has a high potential for restoration.

These criteria recognise the importance of rare or threatened vegetation, habitats, and species. Meeting these criteria does not necessarily require the presence of predominantly indigenous habitat for ecological value, but it may require the presence of rare or distinctive species.

In other words, these criteria value species that are threatened or rare (uncommon) and the habitat that supports such species. They also value vegetation or habitats that are rare, threatened, or have other special attributes.

These criteria recognise that it is not only the “common” and “typical” features of our environment that contribute to ecosystem functions and health.

When applying the criteria, the following matters will be relevant:

- (a) Like representativeness, these criteria are scale dependent. That is, rarity depends on the scale at which it is considered. Species that are rare at a small spatial scale (for example within an ecological district) might be common when considered at a much larger (e.g. regional) scale, and vice versa. Not all species that are rare are necessarily threatened with extinction. Changes also occur over time as the number of particular species can fluctuate during the year or between years (due to seasonal or climatic factors or seasonal migrations).
- (b) It is also worth noting that knowledge of species taxonomy and distribution is incomplete. Many species have not been formally identified and the greater use of genetic analysis continues to identify “new” species and sub-species. For those reasons rarity, as a concept, is not as simple as it may appear.
- (c) Bay of Plenty Regional Council considers that rarity should be assessed within ecological districts, regionally, and nationally (using national lists of threatened plants and animals).
- (d) Two Department of Conservation publications represent the current authority on threatened species and rarity in New Zealand. These are:
 - Department of Conservation (2002) *2002 Classifying Species According to Threat of Extinction. A System for New Zealand*. Threatened Species Occasional Publication 22, Department of Conservation.
 - Department of Conservation (2002) *New Zealand Threat Classification System Lists*. Threatened Species Occasional Publication 23, Department of Conservation.

These papers are available from the Department of Conservation and Bay of Plenty Regional Council, and should be consulted in determining the rarity of species present in an area. A site would score highly against the rarity and special features criteria, if it contains species identified as acutely or chronically at risk, using the system promoted in these Department of Conservation publications.

- (e) The phrase ‘limits of its natural distribution range’ is commonly used to describe the limits of a particular species natural spatial distribution. For example, Ohiwa Harbour is considered to be the southern extent of mangrove communities.

Diversity and pattern

Indigenous vegetation or habitat of indigenous fauna contains a high diversity of indigenous ecosystem or habitat types, or changes in species composition, reflecting the existence of diverse natural features (for example landforms, soil types or hydrology), or communities along an ecological gradient.

This criterion refers to the diversity (number and range) of vegetation or habitat types, or species within an area.

Diverse communities usually have many species present that are abundant, while low diversity communities may have either very few species present or if many species are present only one or few are abundant.

Diverse ecosystem types are likely to be present in an area that incorporates a transition from one “type” of environment to another – along what is called an ecological or environmental gradient. For example, there is likely to be increased diversity of ecosystem types where an area encompasses a transition from aquatic (wetland, river or salt marsh) to terrestrial systems, altitudinal gradients or gradients associated with changing lithology.

When applying the criterion the following matters will be relevant:

- (a) As with other criteria, pattern and diversity should be assessed by someone with ecological expertise.
- (b) An area would score highly against this criterion if there is a highly diverse ecological pattern, such as a change in species composition, diverse natural features, or different communities along an ecological gradient.
- (c) Although high diversity may indicate high ecological value, low diversity does not mean that a site is any less important for natural heritage protection than a more diverse community. Some ecosystems (such as saltmarsh and mangroves) have low species diversity but are nevertheless important for the healthy functioning of other ecosystems.

Naturalness

Indigenous vegetation or habitat of indigenous fauna is in a natural state or healthy condition, or is in an original condition.

Naturalness relates to the degree of modification of an area or habitat. Natural areas are characterised by a lack of human disturbance or intervention. While many areas of indigenous vegetation now display some evidence of human related intervention (particularly from introduced species), a high degree of naturalness may still be evident. The naturalness criterion is closely linked to other criteria – especially representativeness.

When applying the criterion the following matters will be relevant:

- (a) Naturalness is assessed by ascertaining the degree of modification that has occurred. This involves determining what, if any, vegetation removal has taken place, the extent to which pests and weeds have modified the species composition and structure, and ecosystem health. This needs to be done by an experienced field ecologist.
- (b) Areas that score highly against this criterion will typically be those that have had a long history of good stewardship, are fenced to exclude stock, and are subject to pest and weed management.

Ecological context

Indigenous vegetation or habitat of indigenous fauna contributes to the ecological viability of adjoining natural areas and biological communities, by providing or contributing to an important ecological linkage or network, or providing a buffer from adjacent land uses;

Indigenous vegetation or habitat of indigenous fauna provides habitat for indigenous species at key stages of their life cycle.

Consideration of ecological context recognises the part, particular areas and habitats play in wider ecosystems. An area may not, in itself, meet other key criteria but could be important under these criteria because of its role in, for example, providing an important ecological corridor or linkage between other areas. Such connections can be at many scales and include various ecosystem types, for example, terrestrial or aquatic.

In short, ecological context refers to the position and role of a particular site in wider ecosystem functioning.

When applying these criteria, the following matters will be relevant:

- (a) There is no particular number, area or quality that can be set as a threshold for significance. The assessment must be made on a case by case basis by someone able to understand and interpret the ecological patterns within and around the area, and the ecological requirements of the individual species that are most likely to be affected by factors related to ecological context.
- (b) It is necessary to consider whether an area might have an actual or potential role in:
 - enhancing connectivity between habitats (either large tracts or remnants);
 - buffering, or other influences on a specific site; or
 - providing seasonal habitat for particular indigenous species.

Viability and sustainability

Indigenous vegetation or habitat of indigenous fauna is of sufficient size and compact shape and has the capacity to maintain its ecological viability over time;

Indigenous vegetation or habitat of indigenous fauna supports intact habitats and healthy functioning ecosystems;

Indigenous vegetation or habitat of indigenous fauna is of sufficient size and compact shape to resist changes initiated by external agents.

These criteria refer to the ability of an area or habitat to sustain its values over time. They are closely linked to other criteria – particularly the naturalness criterion.

Under the viability and sustainability criteria, the importance of a site is dependent on the likelihood of that site surviving into the future, with its ecological values intact.

When applying the criteria, the following matters will be relevant:

- (a) Assessment of sustainability requires a good understanding of the processes that are important, in sustaining the ecological values present in an area (e.g. successional patterns and processes, disturbance regimes, nutrient and energy cycling, pollination and dispersal mechanisms). It also requires an understanding of the current and likely management requirements of an area (e.g. pest control and fencing).
- (b) Factors that should be considered in assessing viability and sustainability include:
 - types of ecosystems, habitats, species present and their ecological requirements;
 - presence of disturbing or damaging influences – plant and animal pests, management activities (e.g. stock grazing, extent of fencing, water takes or discharges);
 - vulnerability to threats;
 - size of an area;
 - shape of an area;
 - ecological context – distance to other areas and habitats; and
 - conservation management needed to achieve self-sustainability.
- (c) A small isolated area of remnant vegetation that is prone to pest and weed infestation is unlikely to score highly against this criterion. However, areas that remain in a healthy functioning state, able to withstand pressures from external sources with minimal intervention, would tend to score highly.

Māori

Indigenous vegetation or habitat of indigenous fauna contributes to the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

Some areas and habitats may have special significance to Māori. An area may not have high ecological value when assessed using the above criteria but due to Māori history, mythology, or use for traditional purposes and products, an area may be recognised as important.

There is no existing database of sites of significance to Māori. Assessing Māori values must be done in association with specific advice from those Māori people with an association with the affected area and their Pūkenga (Pūkenga is explained in Set 4 – Māori culture and traditions).

Māori values may include rongoa (medicinal plants) and traditional harvest (e.g. harakeke, kiekie and pikopiko).

Historical

Indigenous vegetation or habitat of indigenous fauna is known and valued for its connection to the history of the place.

(See below for explanation of relevant matters when applying criterion.)

Community association

Indigenous vegetation or habitat of indigenous fauna is known and valued by the immediate and wider community, for its contribution to a sense of place leading to community association with, or public esteem for the place, or due to its value for recreation or education;

Indigenous vegetation or habitat of indigenous fauna is valued for the contribution it is making to research into the Bay of Plenty's or New Zealand's ecosystems.

These final criteria recognise that an area might have little ecological, or Māori value but remains widely known and valued by the wider community, for its connections to the history of the place, for its contribution to a strong sense of community identity, or for scenic, recreational or educational purposes.

When applying the historical and community association criteria, the following matters will be relevant:

- (a) Applying the historical and community association criteria is difficult in the absence of detailed local knowledge. Local authorities must rely on the public submission or plan making processes to identify sites with these values.
- (b) Consultation exercises should make clear that community views on these matters are invited.

Part 7: Set 4 - Māori culture and traditions

7.1 Introduction

Section 6(e) of the RMA requires that those persons exercising functions and powers under the Act, shall recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Māori people have important relationships with their culture and traditions, with their ancestral lands, water, sites, waahi tapu and other taonga. These relationships are very important to Māori people. The term “Māori heritage” used below, refers to these relationships with ancestral lands, water, sites, waahi tapu and other taonga.

A fundamental principle of the criteria is that *only Māori people that have a relationship with the affected area can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.*

Therefore, in preparing assessments of environmental effects or in developing plans, consultation with Māori people that have a relationship with the affected area is critical.

Who are “Māori people that have a relationship with the affected area”?

There are many different relationships that a Māori person might have with an area. Māori people may describe the relationship they have from the perspective of being ‘tangata whenua’ holding ‘mana whenua’ over the area. They may come from iwi, hapu and/or whanau, and can be Trustees and/or owners of multiple-owned land, or all of the above. They may be Māori people who live near the affected area now, or who live elsewhere but whose ancestors were associated with the affected area in the past. This guide uses the term *Māori people that have a relationship with the affected area* to refer to all those groups identified above.

Some iwi and hapu have staff or voluntary committees that act as facilitators of consultation, and identifiers of Māori people that have relationships with an affected area.

7.2 Identifying effects on Māori heritage through consultation

Sometimes it is hard to know if a place is significant to Māori people and whether their relationship with the place might be adversely affected by activities. At these times, Māori people that have a relationship with the affected area should be consulted to find out whether an activity will be appropriate.

Finding out whether significant Māori heritage values or places are present can take time, especially if the area is significant to many Māori people.

Consulting Māori people that have a relationship with the affected area will ensure that the appropriate people are describing those relationships, and identifying and assessing the values associated with the place.

Bay of Plenty Regional Council Māori Policy staff can assist with identifying Māori who have a relationship with a particular area. They can also identify any relevant iwi planning documents (recognised by iwi authorities) lodged with Council.

7.3 Recommendations for consultation

- 1 If you need to consult Māori for any reason such as, for example, an application for resource consent, be prepared to cover all or any reasonable costs of such consultation, be generous in the amount of time allowed for your consultation. Also be mindful that all Māori groups are dealing with many documents, submissions or consents requiring their input. Your request is therefore one of many.
- 2 Make sure you are consulting with all the Māori people with a relationship with the affected area, especially the tangata whenua that hold mana whenua over the area - ask each group being consulted whether there are any other Māori people that claim to have a relationship with the area.
- 3 Some places are significant to more than one group of Māori people. At such times it is necessary to focus on the values and places that each group identifies as being significant. This helps all parties to clarify what mitigation, avoidance or remediation methods are necessary, without placing the consent authority in a position where it has to make decisions about the relationship status of Māori groups.
- 4 Consider consulting Māori people on-site. This can help to identify and assess whether the proposed activity will have any effect on significant Māori heritage values and places.
- 5 Where there may be widespread interest, consider consulting on a marae. This can also ensure that many people can be gathered together to discuss the proposal and what it means to them.
- 6 Māori people often identify Pūkenga during consultation, so resource consent applicants should be aware that members of the group being consulted may include Pūkenga (in many instances Pūkenga themselves will have a relationship with the affected area).

Who are Pūkenga?

Māori people often choose people they can rely upon to help them identify and assess significant Māori heritage values and places. Long ago these people were called Pūkenga. Pūkenga were necessary in traditional Māori Environmental Management Systems as they were experts with specialist knowledge about matters of environmental importance. Each hapu and whanau had their own Pūkenga or tohunga (experts) who specialise in their respective fields. Some were expert in whakapapa (genealogy), others in whakairo (carving), rongoa (natural medicines), kaitiakitanga (land use, conservation etc.) and so on. Nowadays kaumatua (competent and knowledgeable people) often provide guidance on matters of significance to Māori people and it is the depth of their knowledge that identifies them to their people as Pūkenga today.

Pūkenga provide expertise in the various dimensions of Māori heritage, relationships, culture and traditions. Māori people that have a relationship with the affected area, including iwi, hapu and whanau, identify Pūkenga from their group to help them identify and assess the significance of their heritage values and places and the effects activities can have on those things. Pūkenga therefore help their group to clarify issues and make recommendations and suggestions, as to how resource consent applicants can avoid, remedy or mitigate the adverse effects of activities.

Sometimes an iwi or hapu will rely on information from Pūkenga that are not of their group but whom they consider to be capable of assisting them to identify and assess the relationship and values associated with the affected area. The important point to remember is that it is only Māori people with a relationship with the affected area, that will choose the Pūkenga they will rely upon to help them identify and assess significant Māori heritage values and places.

- 7 When consulting Māori people that have a relationship with the affected area, their Pūkenga (who may be the person you are consulting) are able to:
- (a) identify specific Māori heritage values and places associated with the area;
 - (b) comment on whether the proposed activity will adversely affect those heritage values and places, and their relationship;
 - (c) suggest things that can be done to avoid, remedy or mitigate adverse effects the proposed activity may have;
 - (d) ascertain whether there are any relevant planning documents recognised by the iwi authority to which the group affiliates, to which regard should be had; and
 - (e) identify any other matters relevant to the application that should be raised.

When Māori people use the criteria to help them identify and assess the significance of Māori heritage values and places, their assessment will be recognised in the consents decision-making process.

7.4 Regional Policy Statement policies and methods

The Bay of Plenty Regional Policy Statement contains policies and methods, which promote the application of the set 4: Māori Culture and Traditions Criteria. These policies and methods are listed as follows:

7.4.1 Policies

Policy MN1B: 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;
- (e) Recognise and provide for the relationship of Māori and their culture and traditions identified in accordance with (a) and Policy IW 2B.

Policy MN3B: 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:

- (e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, in relation to section 6(e) of the Act, on the extent to which criteria consistent with those in Appendix F Set 4: Māori culture and traditions are met.

7.4.2 Methods of implementation

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies...MN 1B, MN 3B ...shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Appendix F states that “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”. For Set 4 the following additional policies and methods are also listed as triggers being Policies EI 5B, IW 2B, IW 5B, MN 2B, MN 7B and MN 8B and Methods 1, 2, 3, 11, 12 and 70.

7.5 Understanding the Criteria and what they mean

The criteria for Māori culture and traditions are grouped according to six headings. These are: mauri, waahi tapu, korero tuturu/historical, rawa tuturu/customary resources, hiahiatanga tuturu/customary needs, and whakaaronui o te wa/contemporary esteem. Below is an explanation of the criteria that broadly describes a common set of values that are important to all Māori people. Some examples of concepts, features and values associated with each criterion are also provided. These examples are illustrative of the kinds of things that are significant to Māori people.

Mauri

Mauri is an intangible quality which inhabits natural, physical and spiritual elements. It is the life force or inner energy which is essential to the well-being or indeed the continual existence of water, air, soil and living creatures. Māori environmental practices (kaitiakitanga) were developed over time to protect the mauri of a resource, therefore ensuring sustainability for future generations.

Mauri is a concept that Māori people accept unequivocally but not so by many non-Māori members of Aotearoa/New Zealand society, many of whom, possibly the majority, are the descendants of people from the British Isles and other parts of Europe. For those persons it may be useful to consider the following passage written by a humble weaver in England called Bamford, about a vision he saw in May 1821, while he was tramping home from prison with his wife across Hathersage Moor in Derbyshire.

““I can see the wind,” I said...

“See the wind! And what’s it like?” asked she, looking up and laughing.

“It’s the most beautiful thing I ever saw... look over the top of the brown heath with a steady eye, and see if thou canst discern a remarkably bright substance, brighter than glass or pearly water, deeply clear and lucid, swimming, not like a stream, but like a quick spirit, up and down, and forward, as if hurrying to be gone.”

“Nonsense!” she said, “there is not anything.”

“Look again, steady, for a moment.”

“There is,’ she said, ‘there is; I see it! Oh! What a beautiful thing...”

“That is the wind of heaven,” I said, “now sweeping over the earth, and visible. It is the great element of vitality, water quickened by fire, the spirit of life!”

So mauri may be described, as it is in this most erudite passage, as “*the great element of vitality, water quickened by fire, the spirit of life!*”

Or more simply, *‘the spirit of life’*.

Waahi tapu

Waahi tapu are sacred sites or resources with cultural or spiritual importance for Māori. They are those sites or resources that are important not just for their historical value but because they serve as reference points for direction and growth and ensure a stable cultural development. Removal, destruction, inappropriate development, modification and damage of waahi tapu cause great concern for iwi and threaten the integrity of the tribal identity, mana and growth.

Examples of waahi tapu

- (a) A tuahu or altar.
- (b) Burial places.
- (c) Caverns and underwater burial places.
- (d) Rua koiwi – places where skeletal remains are kept, rock overhangs, caves, hollow trees.
- (e) Sites where skeletal remains were removed.
- (f) Burial places of placenta.
- (g) Places where baptismal rites were performed.
- (h) Traditional habitat of taniwha (spiritual super-beings).
- (i) Traditional habitat of patupaiarehe (mythical forest fairy folk).
- (j) A place used by tohunga (traditional priest) for ritual or cultural practices.
- (k) Battle grounds where blood was spilled.
- (l) A place of worship and prayer.
- (m) A place that has special historical, spiritual, emotional, cultural, ritual or religious significance for tangata whenua.
- (n) The place has symbolic commemorative, or genealogical significance for tangata whenua.
- (o) A place that is associated with mana, or tapu.
- (p) The place is a dwelling place for kaitiaki.
- (q) Waiora springs or sources of water for healing.
- (r) Sources of water for death rites.
- (s) Ara purahorua– sacred pathways for messengers.
- (t) Marae.

Korero tuturu/historical

Kōrero tuturu refer to places that are important due to particular historical associations (in pre-European history).

Examples of korero tuturu

- (a) Pa (fortified villages) and kainga (dwelling places) that were occupied in former times.
- (b) Landscape features such as rocks, cliffs, rivers, mountains, escarpments and hilltop ridgelines, including those that determined the boundaries of iwi or hapu.
- (c) Ahi karoa – sites associated with claiming title of land, air and sea.
- (d) The range of sites that embody the parcel of tradition that is the unique cultural heritage of each tribal group.
- (e) Battle sites (where tapu has been removed).
- (f) A place that is a tauranga waka (canoe landing site).
- (g) Taunga ika – fishing grounds and any associated rocks or landscape features, including places where food was prepared for preservation.
- (h) Waahi whakamahara – sites recognised as memorials to events.
- (i) Ara – pathways connecting tribal and hapu areas and resource sites.
- (j) Mythological sites.
- (k) Historic sites.
- (l) A place used as a whare wananga (place of higher learning).
- (m) A place used for meeting or congregation.
- (n) The place provides the context for iwi and hapu identity (takiwa) whereby people relate to land and to those who have gone before.

Rawa tuturu/customary resources

This criterion recognises the cultural value of places that provide, or once provided, important customary resources to tangata whenua. Customary resources might include food and materials necessary to sustain life and culture in pre-European and post-European times.

Examples of rawa tuturu

- (a) A food gathering place.
- (b) A rongoa (natural medicines) gathering place.
- (c) Waiora – springs or sources of water for healing and customary practices.
- (d) Mahinga kai – birding, cultivation, fishing, forest and mineral resource sites.
- (e) Waahi taonga mahi a ringa – resource sites for Māori art material.
- (f) Taunga ika – fishing grounds and any associated rocks or landscape features.
- (g) Wetlands, lakes, rivers, streams, punawai (oases), the sea, harbours, inlets, aquifers, ngawha (geysers), waiariki (hot springs), lagoons and other water bodies.

Hiahiatanga tuturu/customary needs

This criterion recognises those parts of the landscape that are important for the exercise of tikanga – the principles and practices to maintain the mauri of parts of the natural world. This might be a place where a particular ritual is performed or a particular feature that is noted for its ability to identify the boundaries of ancestral tribal lands is acknowledged in iwi or hapu oratory.

Examples of hiahiatanga tuturu

- (a) A venue for healing.
- (b) A repository used by tohunga.
- (c) Marae.
- (d) Landscape features such as mountains, cliffs, rocks, islands, volcanoes, trees and rivers.

Whakaaronui o te Wa/Contemporary esteem

This refers to the contemporary relationships tangata whenua have with Māori heritage places. Appreciation of features for their beauty, pleasantness, and aesthetic values is important to tangata whenua. Recreational values attributed to features are also important to tangata whenua, as they illustrate the relationship that individuals and groups can have with the environment.

Examples of whakaaronui o te wa

- (a) A place that illustrates continuity between past, present and future.
- (b) A place with potential for educational use.
- (c) A place that demonstrates technical accomplishment, value or design.
- (d) A place that has amenity value.
- (e) A place that has architectural value.
- (f) A place with some other identifiable value to tangata whenua.

7.6 Identifying Māori heritage places and values

Although the criteria are nominated as the Māori Culture and Traditions Criteria, Māori people should also refer to the other criteria sets relating to natural character, natural features and landscapes, indigenous vegetation and habitats of indigenous fauna, and historic heritage. These dimensions are also important to Māori people and specific criteria relating to Māori heritage values are included in those criteria sets.

There are many different Māori groups in the region and each group may assess the significance of the values they identify differently. The criteria accommodate this diversity by providing for Māori people with a relationship with the affected area, to assess the significance of each value according to their own group's culture and traditions.

Māori people that have a relationship with the affected area, together with their Pūkenga, are the only people that can assess the significance of those values and places by using the Māori Criteria. They are not compelled to use the criteria but there is an advantage to them if they do so.

Resource consent applicants and consent officers can use the criteria to familiarise themselves with values that are significant to Māori people but they cannot assess how significant those values are to Māori people. That task can only be done by Māori people with the relationship with the affected area, who have sought and received guidance from Pūkenga.

The criteria help resource consent applicants to be aware of the kinds of things they may need to provide for in their assessment of environmental effects. If a place of significance has been identified, then a consent applicant might consider changing the activity in ways that would avoid, mitigate or remedy the effect of the activity on that place and the values associated with it.

Once an assessment has been provided, resource consent officers can refer to identified values and places and provide for them in their recommendation reports to Council, by developing conditions and/or advice notes where necessary or appropriate. Council, through its delegated decision maker, can then make its decision based on an informed assessment and impose any conditions (things the applicant must do) to avoid, remedy or mitigate adverse effects.

Once a decision has been reached, Māori people will be able to see how their significant values and places have been taken into account in decision-making. If they are dissatisfied with the decision, they can pursue the matter by appeal to the Environment Court if they made a submission on notified applications, or request a judicial review of the decision in non-notified situations.

Policy and plan makers can use the criteria framework, including consultation with Māori people that have a relationship with the affected area, to clarify how Māori heritage values and places will be taken into account in their plans and consents processes.

Part 8: Set 5 – Historic heritage

8.1 Introduction

Section 6(f) of the RMA requires local authorities to recognise and provide for:

“The protection of historic heritage from inappropriate subdivision, use, and development.”

Rather like the way the RMA provides for the preservation of natural character, section 6(f) does not require local authorities to distinguish between significant and other forms of historic heritage. The first step is to establish whether historic heritage values exist. This enables decisions to be made about whether subdivision, use and development is inappropriate in relation to those values. The RMA assists in this process by providing a definition of historic heritage that identifies six qualities:

“Historic heritage”

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:
 - (i) archaeological;
 - (ii) architectural;
 - (iii) cultural;
 - (iv) historic;
 - (v) scientific;
 - (vi) technological; and
- (b) includes:
 - (i) historic sites, structures, places, and areas; and
 - (ii) archaeological sites; and
 - (iii) sites of significance to Māori, including wāhi tapu; and
 - (iv) surroundings associated with natural and physical resources.”

Section 6(f) and the definition of historic heritage were inserted into the RMA by the Resource Management Amendment Act 2003. At the time of developing this user guide, there was not yet any relevant case law. Case law on historic heritage in the RMA will develop over time as cases are brought before the courts.

The criteria in the RPS are structured to assist with assessing each of the six qualities of historic heritage. The RPS Historic Criteria also include a set of generic values which should be applied in all assessments of historic heritage.

When applying the criteria, the following matters will be relevant:

- (a) The historic heritage value of a place will exist on a spectrum from those places where one or more of the qualities exist strongly, to those places where historic heritage qualities are weak.

- (b) It is necessary for local authorities to determine the historic heritage values and the degree to which various qualities are present. Where the particular place or area sits in the spectrum of heritage value will be relevant to the test of what is “inappropriate development”.
- (c) Also relevant will be the present condition of the resource and whether a particular development can occur, while protecting those qualities identified as establishing heritage value.
- (d) The historic heritage resource is being added to by recent events. Recent sites are the least likely to have “value” assigned to them by the community. However, something does not have to be old to have significance.
- (e) The majority of the archaeological heritage in the region is of Māori origin (based on length of occupation and the existing inventory knowledge). Therefore, most archaeological heritage has very close links to the Māori Culture and Traditions Criteria, and any other significance measure might be outweighed by the Māori heritage value of a place.
- (f) The ability to assess an historic heritage resource may be limited by the availability of information or state of knowledge at a particular time.
- (g) The Historic Places Act 1993 requires Heritage New Zealand to maintain a register of historic places, historic areas, waahi tapu and waahi tapu areas. Some places or areas on the Heritage New Zealand register are also scheduled in district plans. However, many more historic places or areas exist than are currently registered under the provisions of the Historic Places Act 1993 and the criteria should be applied in such a way as to recognise a wider range of places or areas than those registered.
- (h) The Historic Places Act 1993 requires that an authority be obtained from Heritage New Zealand before any archaeological site is destroyed, damaged or modified. Any assessment of the historic heritage values of an archaeological site does not limit this requirement.
- (i) Heritage New Zealand should be consulted and independent specialists (such as archaeologists or conservation architects) should be engaged, whenever a development is proposed and there is evidence of features or characteristics that indicate historic occupation or use.
- (j) Community value criteria should only be applied in consultation with the community. The “specialist” in the case of community values is the community. It is important to recognise the legitimacy of strong community values even when they don’t align with more “technical” evaluation systems.

8.2 Regional Policy Statement policies and methods

The Bay of Plenty Regional Policy Statement contains policies and methods, which promote the application of the Set 5: Historic Criteria. These policies and methods are listed as follows:

8.2.1 Policies

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

- (a) Identify which natural and physical resource 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:

- (f) Historic heritage, in relation to section 6(f) of the Act, on the extent to which criteria consistent with those in Appendix F set 5: Historic heritage are met.

8.2.2 Methods of implementation

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies ... MN 1B, MN 3B... shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Appendix F states that “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”. For Set 5 the following additional policies and methods are also listed as triggers being Policies EI 5B, IW 2B, IW 5B, MN 2B, MN 7B and MN 8B and Methods 1, 2, 3, 11, 12 and 70.

8.3 Explanation of criteria

Generic values

The RPS Historic Criteria commence with seven generic values. They are: period, rarity or special features, integrity, representativeness, context or group value, diversity (form and features), and fragility or vulnerability. These generic values relate to key aspects of the historic heritage place or area which are important to consider when assessing significance. They provide information about the nature, condition and context of the place, which forms part of the assessment. They should be considered for all places, as a precursor to using the criteria for each quality (archaeological, architectural, cultural, historic, scientific and technological) specified in the RMA.

Period

The development sequence of a place or area, the likely age, duration of use or chronology of a place or area.

The assessment should establish when the place or area was created or constructed and for how long it was occupied or used. For example, the approximate time period an archaeological site was used/occupied or the dates of construction and periods of use for a building.

Rarity or special features

The unique, uncommon or rare features of a place or area. This may be as a result of the cultural context of the place or area. This may include the technical interest of

all or any part of the place or area. The previous existence and nature of lost or obliterated components or aspects. The function of the place and its parts and the relationship of the place and its parts with its setting.

The assessment should establish any unusual features of the place or area from a regional or national perspective. To be able to comment on rarity or uniqueness requires some degree of familiarity with the overall heritage resource of the region.



Figure 13 Stone faced terraces on the summit of Mauao are a rare form of terrace facing on mainland pā in the Bay of Plenty.

Integrity

The condition, quality and state of original features of a place or area. Comparison with other examples of its class. The quality of any restoration, addition or modification of the place or area.

The assessment should consider the state of the place or area throughout its lifetime, and comment on how its condition today relates to earlier periods in its history. Heritage value may not just be ascribed to places that are in “original” condition. The passage of time as reflected in changes to the place may be of considerable value. For example, a domestic building with additions may reflect a growing family and the need for more space.



Figure 14 Shalfoon Brother's Store and Warehouses in Opotiki. Part of the store was originally a house, purchased by the brothers in 1899 and extended in 1906. The buildings, including their interiors and collections, date from this period.

Representativeness

The characteristics and relationship of the place or area to other places or areas in its class, for example in respect of design, type, features, technology, use, activity, location or origin.

The assessment should consider the extent to which the place or area is a good example of its class, as found in the region. Places and areas can be grouped in a variety of different classes. For example, "class" could relate to buildings from a similar era or by the same designer, archaeological sites of a particular type e.g. shell middens or places that perform a similar function, e.g. bridges.



Figure 15 Opotiki Drill Hall is representative of drill halls built in towns around New Zealand immediately prior to World War One.

Context or group value

Association with other places, areas or elements of its context. Association with and illustration of broad patterns of history. Places or areas in which evidence of the association or event survives in situ, or in which the settings are substantially intact.

The assessment should consider if the place is part of a group of places or a landscape or setting which taken together as a whole, contribute to the heritage values of the place or group.



Figure 16 The corner of Church and Elliot Streets in Opotiki is an example of a streetscape containing heritage buildings that remains substantially intact.

Diversity (form and features)

The characteristics, diversity and pattern of a place or area. The cultural influences which have affected the form and components of the place or area. Form, scale, colour, texture and materials. The historical content of the place or area with particular reference to the ways in which it has been influenced by historical forces or has itself influenced the course of history.

The assessment should consider the range of different characteristics or elements of the place or area. This value can also relate to the complexity of the place or area.

Fragility or vulnerability

The components, form and structure of the place or area and the effect of this on its survival. Its vulnerability to deterioration or destruction. The degree to which it is threatened and its context in terms of protection and services.

The assessment should consider the current state of the place or area and its stability or vulnerability to changes to its physical fabric.



Figure 17 Midden eroding from face of cutting for a farm track.



Figure 18 Living and gardening terraces, Mauao.

The following table illustrates the use of the set of generic values to be included in assessments of historic heritage value, as applied to the living and gardening terraces on Mauao. It is provided as an example only, and is not a comprehensive assessment.

Generic value	Assessment
Period	Occupation and use of the terraces on Mauao dates from before European contact through to the early historic period.
Rarity/special features	Terraces on Mauao are notable for the frequent use of large quantities of shell midden to construct artificial living surfaces. Stone-faced terraces are also an unusual feature in the Bay of Plenty.
Integrity	There has been little modification of the terrace surfaces. The integrity of the physical features has not been significantly compromised.
Representativeness	The terraces are highly representative of the form and function of this class of feature (terrace) throughout the region.
Context/group value	The terraces are an integral component of the complex of archaeological features on the pā, which are the physical expression of a past way of life at Mauao.
Diversity	The terraces display diversity of size, shape and function. Terraces were used for living surfaces, gardens and crop storage, and/or defence. The terraces also illustrate a diverse range of construction techniques, including cutting into the slope, creating artificial surfaces by the addition of new material and the use of stones to retain faces.
Fragility/vulnerability	The terraces are vulnerable to damage or destruction from a range of natural processes e.g. land slips, and human induced change.

In addition to the preceding generic criteria, the RPS provides specific criteria for each of the six qualities of historic heritage identified in the RMA. These criteria must also be considered in any assessment of historic heritage values. They are: archaeological, architectural, cultural, historic, scientific and technological.

Archaeological qualities

Information

The potential of the place or area to define or expand knowledge of earlier human occupation, activities or events through investigation using archaeological methods.

This criterion relates to the potential of a place or area to contribute to the body of knowledge about the history of human occupation in the region. This criterion is particularly relevant where archaeological research is the primary means of recovering information about the period of occupation, for example, when no written or oral record of the historic place or area exists.



Figure 19 Archaeological investigation of in-filled kumara storage pits at Waihi Beach.

Research

The potential of the place or area to provide evidence to address archaeological research questions.

This criterion relates more specifically to current archaeological research in the region and should be used to assess the potential of a place or area, to provide answers to specific questions of importance to archaeological science in the region and New Zealand.

Recognition or protection

The place or area is registered by Heritage New Zealand for its archaeological values, or is recorded by the New Zealand Archaeological Association Site Recording Scheme, or is an 'archaeological site' as defined by the Historic Places Act 1993.

This criterion requires identification in the assessment of whether the site:

- is registered by Heritage New Zealand;
- is recorded in the New Zealand Archaeological Site Recording Scheme; and/or
- meets the definition of an archaeological site under the Historic Places Act 1993. If the place either was associated with human activity that occurred before 1900; or is the site of the wreck of any vessel where that wreck occurred before 1900; and is or may be able through investigation by archaeological methods, to provide evidence relating to the history of New Zealand, then the provisions of the HPA apply. These provisions set out an authority process for anyone intending to do work that may modify, damage or destroy that site.

It is also important to note that a site may not necessarily meet this criterion but it may still have qualities when assessed, according to the other historic criteria.

Architectural qualities

Style or type

The style of the building or structure is representative of a significant development period in the region or the nation. The building or structure is associated with a significant activity (for example institutional, industrial, commercial or transportation).

The assessment should identify the architectural style and function of any building and any notable features.



Figure 20 Whakatāne Hotel is an example of an Art Deco building.

Design

The building or structure has distinctive or special attributes of an aesthetic or functional nature. These may include massing, proportion, materials, detail, fenestration, ornamentation, artwork, functional layout, landmark status or symbolic value.

The assessment should consider if the building or structure is particularly attractive or significant, because of its excellence, artistic merit, or the uniqueness of the design or craft.



Figure 21 The former Whakatāne Plunket Rooms has a distinctive layout, being a triangular building, designed by a notable local architect to fit the shape of the site.

Construction

The building or structure uses unique or uncommon building materials, or demonstrates an innovative method of construction, or is an early example of the use of a particular building technique.

The assessment should include consideration of any unusual or notable construction techniques, materials or features.

Designer or builder

The building or structure's architect, designer, engineer or builder was a notable practitioner or made a significant contribution to the region or nation.

The assessment should identify if the building or structure was designed by a person who has made a significant contribution in design to the region or nation.

Cultural qualities

These four criteria recognize that historic places or areas may act as a focus or repository of cultural or community memories. They may be the only tangible reminders of events, people or groups that defined the special qualities of the place or area.

Sentiment

The place or area is important as a focus of spiritual, political, national or other cultural sentiment.

This criterion relates to the feelings that a community, local or national, may have about the place, for example, war memorials are an important focus of commemoration.

Identity

The place or area is a context for community identity or sense of place, and provides evidence of cultural or historical continuity.



Figure 22 This modern statue of Wairaka acknowledges cultural and historical associations with the Whakatāne River mouth.

Amenity or education

The place or area has symbolic or commemorative significance to people who use or have used it, or to the descendants of such people. The interpretative capacity of the place or area and its potential to increase understanding of past lifestyles or events.

Historic qualities

Associative value

The place or area has a direct association with, or relationship to, a person, group, institution, event or activity that is of historical significance to Bay of Plenty or the nation.

This criterion relates to the direct links between the place and important historical figures, groups or events. For example, a place or area may have value because of its association with an historic figure, event, style, phase or activity. Places or areas in which evidence of the association or event survives (or substantially survives) *in situ*, are of greater significance than those which are much changed or in which evidence does not survive. However, some events or association may be so important that the place or area retains its significance, regardless of subsequent treatment.

Historical pattern

The place or area is associated with broad patterns of local or national history, including development and settlement patterns, early or important transportation routes, social or economic trends and activities.

The criterion relates to broader historical trends and the relationship between these and the heritage place or area.



Figure 23 Monmouth Redoubt, Tauranga, was constructed by British forces in 1864, immediately prior to the battle of Gate Pā. This engagement was part of the Waikato campaign of the New Zealand Wars.

Scientific qualities

These criteria relate to the potential of a place or area to contribute to the body of knowledge about the history of human occupation in the region. They correspond closely to the criterion listed under archaeological qualities, but include research techniques, other than archaeological investigation (e.g. archival research and oral history).

Information

The potential for the place or area to contribute information about an historic figure, event, phase or activity.

Potential – scientific research

The degree to which the place or area may contribute further information and the importance of the data involved, its rarity, quality or representativeness.

Technological qualities

Technical achievement

The place or area shows a high degree of creative or technical achievement at a particular time or is associated with scientific or technical innovations or achievements.

This criterion includes places or areas that display technical innovation or achievements, or demonstrate the evolution of techniques through time. Examples may include industrial sites or those associated with military innovation such as pā, stockades and redoubts. Other notable examples of technical achievement in New Zealand, include transport infrastructure such as bridges, wharves and viaducts displaying engineering solutions to the particular challenges posed by the country's topography.



Figure 24 Tauranga Bridge in the Waioeka Gorge is a variation on conventional suspension bridges, which originated in early 19th century England. The 'harp' bridge is rare in New Zealand.

Part 9: Set 6 – Public access

9.1 Introduction

The Public Access Criteria link directly to section 6(d) of the RMA. That section requires all persons exercising functions and powers to recognise and provide for:

“The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers”.

The Oxford English Dictionary defines “enhance” as: *“To raise or increase in price, value, importance, attractiveness, etc.”*

As a matter of national importance local authorities should seek to protect public access where it currently exists, and increase public access available to the Coastal Marine Area (CMA), lakes and rivers.

The RPS promotes Set 6: Public Access Criteria to help achieve the intent of Section 6(d). The criteria are also provided to give effect to Policy 19 of the New Zealand Coastal Policy Statement (NZCPS) and partly give effect to Policies 18 and 20.

Other key documents prepared by regional, city and district councils are referenced in this user guide as providing guidance only, such as Reserve Management Plans and walking and cycling strategies. It is not intended that consents officers are required to give effect to these other documents. Council bylaws may also apply, in particular for vehicle/horse access.

The Public Access Criteria should be applied during the development and consideration of proposals for subdivision, use or development where public access to the Coastal Marine Area, lakes and rivers is a relevant consideration. The criteria can assist with identifying areas or sites that have a high level of value for the community, and where the provision or enhancement of public access is consistent with Section 6(d) of the RMA.

Key points to remember about public access:

- 1 Public access may be by foot, cycle, vehicle, watercraft or horse.
- 2 Some district and city plans identify waterways where the acquisition of reserves for public access and recreation purposes is a priority.
- 3 Guiding documents may not identify every opportunity for public access. Other opportunities identified through resource consent applications or plan changes, will require consideration of the Set 6 criteria.
- 4 Many waterways in the region have statutory acknowledgements recognising their cultural significance to specific iwi. In cases where a statutory acknowledgement exists and public access is being considered consultation with the relevant iwi is recommended.

9.2 Regional Policy Statement Policies and Methods

The Bay of Plenty Regional Policy Statement contains a number of policies and methods where public access is a matter for consideration. The key policies and method which promote the application of Set 6 – Public Access Criteria are:

9.2.1 Policies

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;
- (d) Recognise and provide for enhancing and maintaining public access to and along those areas identified in accordance with (a).

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:

- (d) Public access to and along the coastal marine area, lakes and rivers in relation to section 6(d) of the Act, on the extent to which the criteria consistent with those in Appendix F Set 6: Public access are met.

9.2.2 Methods of implementation

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies ... MN 1B, MN 3B ... shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Appendix F states that “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”. For Set 6 the following additional policies and methods are also listed as triggers being Policies CE 8B, CE 12B, EI 5B, IW 2B, IW 5B, MN 5B, MN 6B, MN 7B and MN 8B and Methods 1, 2, 11, 12, 60 and 70.

9.3 Explanation of Criteria

The Set 6 Public Access Criteria provide a framework for assessing public access to the CMA, rivers and lakes. The criteria can be applied in regional and district plan processes and on a case by case basis when assessing resource consents. The criteria are intended to assist with identifying the range of values, any threats or risks associated with public access and options for managing access. There are several criteria to be taken into account as follows:

9.3.1 Connectivity

Connectivity is about whether public access can be provided or improved to create a link between existing or planning public areas, including existing or planned access ways.

As a starting point, local authorities (LAs) may have identified areas where connections are wanted, through City and District Plans, Reserve Management Plans, Open Space Strategies or Reserve Acquisition Plans. There is currently no regional level plan that identifies where public access connections are desired.

The nature and scale of the access should be compatible with what the use of the connected public areas is. For example, is it connecting to a high use area, or a highly sensitive area? In addition to the documents above, LAs may have walking and cycling policies or walkway plans which may define what scale of access is appropriate in various zones (a wide concrete pathway vs a gravelled strip, for example).

Policy MN5B gives priority to public access rights where physical access for people with disabilities is desirable. Again, LAs may have Reserve Management Plans and/or walking and cycling strategies that identify where access is desirable. Some of these documents may be non-statutory, however they reflect public desire and Council's intentions to provide access in certain areas, and can be drawn on to support decision-making under the RMA.



Figure 25 This lakeside pathway is in proportion to the amount and type of use it would receive, and is suitable for use by people with disabilities.

9.3.2 Public enjoyment

Policy 19 of the NZCPS specifically promotes identifying opportunities to enhance or restore public walking access to and along the coast where:

- Improving access would promote outdoor recreation, and
- Access to areas or sites of historic or cultural significance is important.

LAs may have identified areas or features with a high level of public interest and enjoyment that would be enhanced by providing or improving public access. These are likely to be identified through Reserve Management Plans, district/city plans or Open Space Strategies. Examples include outstanding natural features and landscapes, historic sites or buildings, or significant biodiversity sites. Public access to these areas for public enjoyment purposes should be promoted (noting that access may need to be managed and restricted at times e.g. to breeding grounds during the breeding season).



Figure 26 Enhanced public access to an area of high public interest and enjoyment.

9.3.3 Proportionality

As with connectivity, the form of access that is proposed should be compatible in nature and scale with the likely level and type of use. There are two points to consider: Firstly is the access going to be in a high use area, or a highly sensitive area where the scale proposed may be inappropriate? And secondly, what is the intended use of the access way itself? For example, if it is intended for walkers only in a remote area, a narrow shelled path may be appropriate. If it is intended as an access for vehicles and cycles, then a wider more robust pathway may be called for. LAs may have Reserve Management Plans, walking and cycling policies or walkway plans that define what type of access is appropriate in various zones.



Figure 27 This boardwalk is an area of high public use in a sensitive environment.



Figure 28 The river walkway is more natural in state and proportional to the level of use.

9.3.4 Practicality

There may be areas with a difficult topography that may make public access difficult, in particular for walking access – however keep in mind public access can also be from the water to the shore, e.g. boat or kayak access. There doesn't necessarily need to be walking access to a site to achieve public access. This is particularly the case on lakes, rivers and islands.

Under Policy 19 of the NZCPS any restrictions on public access should be accompanied by consideration of, and where possible provision of, alternative routes. This is relevant where direct access may be impractical to provide, but an alternative may be available.



Figure 29 The lake topography in this location makes public access difficult.

9.3.5 Co-benefits

Reserving land for public access may also have the benefit of protecting conservation values and mitigating natural hazards. A good example of this is esplanade reserve policies, which often refer to both recreation values and natural hazard management such as erosion and sea level change.

Providing benefits wider than just public access is an important consideration when looking at opportunities.



Figure 30 This cycleway in Whakatāne is built on the river stopbank which also protects the town from flooding.

9.3.6 Environmental risk

In some circumstances there is a need to restrict public access to protect sensitive ecosystems and sites of cultural significance, to reduce risks of accelerated erosion and similar matters. A good example of this is the fencing of dune planting through the Coast Care Programme.

Policy MN 6B 'Restricting public access to and along the coast, lakes and rivers' sets out some specific matters for which public access may be restricted.

While restrictions may be necessary, public access may not need to be prevented entirely. Fenced dune areas, for example, have walkways provided through them. Access is directed to these points, enabling users to experience the dunes and sensitive dune plants without causing damage to them. Public access is maintained along with an opportunity to educate the public about dune systems.



Figure 31 Coastal ecosystems are protected by directing public access to sand ladders.



Figure 32 This sensitive lake environment is protected by restricting public access.

9.3.7 Safety

In some cases public access may lead to an unacceptable risk of injury or harm. This may be in areas with a high level of erosion and landslips, or where the adjacent land-use makes public access dangerous, such as in port zones. The NZCPS specifically refers to ports as an area where public access may need to be restricted for safety reasons.

Policy MN 6B sets out some specific instances where public access may be restricted. It refers to protecting public health and safety, including consideration of conflict between users. Conflict is most likely to occur where vehicle access is provided for. Vehicle access therefore requires special consideration, and is managed through various processes including bylaws.

Other instances where public access may be restricted includes for temporary activities, activities for defence purposes or special events within the coastal environment.

In cases where public safety is an ongoing issue, consideration should be given to alternative routes or means to maintain a level of public access.



Figure 33 Port activity by its nature requires public access to be restricted.



Figure 34 Erosion on a river bank illustrates how public access in this area would be a safety issue.

9.3.8 Security

There may be instances where public access places private property or public infrastructure at an unacceptable security risk, in terms of damage to the property. With regards to the CMA, it should be recognised that public use and access is permitted unless there is an express restriction. Any level of security risk should be considered on a case-by-case basis. The level of security provided for should be consistent with the purposes of a resource consent.

Consideration should be given to alternative routes or restricting access rather than removing access rights altogether.



Figure 35 Public access may sometimes be restricted because of security risks to private property.

9.4 Reference guides

[EDS Coastal Guide 2012/Protecting Public Access Chapter](#)

[NZ Coastal Policy Statement - Policy 19 Guidance Note](#)

9.5 Relevant case law

Doves Bay Society vs Northland Regional Council – provision of alternative public access to the coast

In this case it was noted that *“there is no particular mandate as to what form that access might take. In certain circumstances that access may involve access by boat, in others foot traffic.”*

Hume vs Auckland Regional Council – public access to a jetty where a coastal permit is in force

The consent enables the holder to occupy a part of the CMA, and that area is recognised as of national importance in terms of the RMA. *Interference with public rights must be kept to a minimum and that people cannot be prevented from exercising their normal rights to access the part of the CMA covered by the structure.*

Note – public access was maintained, the Council could, as a condition of consent, exclude “a class of persons’ (in this case, namely those in vehicles), to prevent damage to the jetty.

So, while the consent holder, via their coastal permit has the exclusive right to *occupy* part of the CMA, it does not authorise the consent holder to exclude members of the public from the structure.

GL Wolfe vs Tairua Environment Society, Environmental Defence Society Inc – reduction of width of esplanade reserve.

Thames Coromandel District Council granted consent for a subdivision in Hot Water Beach, that included a reduction in the width of the esplanade reserve adjoining Taiwawe Stream, from 20 metres to 10 metres and in some areas down to 7 metres, in exchange for ecological enhancement works and construction of a walkway.

The Court found the wider 20 metre width would better protect the conservation values of the stream and would better provide for access and recreational use.

9.5.1 Mechanisms for providing public access under the RMA (taken from Protecting Public Access chapter of the Coastal Guide 2012, Environmental Defence Society)

Esplanade reserves and strips as conditions on resource consents

Esplanade reserves or strips are considered to be financial contributions under section 108(9) of the RMA and can be imposed as conditions on resource consents under section 108(2)(a) provided they are imposed in accordance with the purposes specified in the plan and the level of contribution is determined in the manner described in the plan.

In the case of subdivision consents, the RMA enables conditions of consent to be imposed including that an esplanade strip or an esplanade reserve be set aside or that the requirement be waived, or the width of an esplanade reserve or esplanade strip be reduced from that otherwise required (section 220). If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104(1), consider whether an esplanade reserve or esplanade strip is appropriate and if so, impose a condition under section 108(2)(g) on the resource consent.

Access strips

An additional way the RMA protects public access to and along the coast is through providing for the creation of access strips. The RMA defines an access strip as:

“A strip of land created by the registration of an easement in accordance with section 237B for the purpose of allowing public access to or along any river, or lake, or the coast, or to any esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown (but excluding all land held for a public work except land held, administered, or managed under the Conservation Act 1987 and the Acts named in Schedule 1 to that Act)”.

Access strips can be created at any time on agreement between the local authority and the registered proprietor of the land. Ownership of the strip remains with the land owner and the easement is registered against the title to the land.

As with esplanade strips, the easement creating the access strip is required to specify that any person shall have the right, at any time, to pass and repass over and along the land over which the strip has been created. This is subject to any other provisions of the easement which may specify times during which the access strip may be closed. In addition, a local authority may close an access strip during periods of emergency or public risk likely to cause loss of life, injury, or serious damage to property.

In both cases the local authority must ensure, where practicable, that the closure is adequately notified to the public by signs erected at all entry points to the strip, unless the easement provides that another person is responsible for such notification. Unlike esplanade strips, however, an access strip may be varied or cancelled by agreement between the land owner and the local authority without complying with the provisions of section 127 to 132 relating to the review of consent conditions.

Part 10: Set 7 – Geothermal features

10.1 Introduction

There are many different types of geothermal features in the Bay of Plenty region as described in Table 15⁵ below. The Regional Policy Statement requires that when planning or proposing activities affecting geothermal features, Set 7 criteria are used when assessing the significance of geothermal features, geothermal vegetation and habitats of indigenous geothermal fauna.

Table 15 Geothermal features: Main types and associated habitats.

Geothermal features : main types and associated habitats					
Discharge energy	High	1 Geysers	4 Intermittent or active hydrothermal eruption craters	7 Mud geysers	10 Fumaroles
	↑ ↓	2 Flowing springs	5 Mixed springs	8 Ejecting mud pots	11 Steaming ground
		Low	3 Non flowing pools	6 Mixed pools	9 Mud pools
		<i>Primary geothermal fluid</i>	<i>Mixed/diluted geothermal fluid</i>	<i>Mixed/diluted steam heated fluid</i>	<i>Steam fed</i>
Geothermally influenced aquatic habitat					
Geothermal habitat on heated/acid dry ground					

Habitat dependent on geothermally-altered atmosphere overlays all types (warm air, frost-free).

Geothermal features are present on land, on some lakebeds and the sea bed. Geothermal features can be habitats for significant indigenous vegetation and indigenous fauna.

Geothermal features indicate that a geothermal system lies below. The nature of what lies below may involve a wide range of physical variables with tangible and intangible values. All of these must be carefully considered when assessing the significance of a geothermal feature, its vegetation and habitat of indigenous fauna.

Geothermal values - Intrinsic, biological, ecological, cultural, social, historic, scientific and economic are all attributable to geothermal features, vegetation and habitats of indigenous fauna by local, regional and national communities.

10.2 Assessments by experts using Criteria Set 7

An assessment of the significance of a geothermal geological feature relies on careful appraisal by a qualified, experienced geothermal specialist familiar with the:

- Geothermal resources in the region;
- Regulatory regime under which geothermal resources are managed; and

⁵ Table 15 is extracted from the Operative Bay of Plenty Regional Policy Statement, 1 October 2014.

- RPS Appendix F Set 7 criteria.

An assessment of the significance of geothermal vegetation or habitat of indigenous fauna in a geothermal feature relies on careful appraisal by a qualified, experienced specialist familiar with:

- Geothermal vegetation;
- Geothermal habitats and indigenous fauna, including marine species;
- The RPS Appendix F Set 7 criteria.

The criteria in Set 7 are the assessment factors to be used in the Bay of Plenty region, all of which must be applied in aggregate, to reach an overall judgement about the significance of a geothermal feature, geothermal vegetation or habitat of indigenous geothermal fauna associated with a feature.

10.3 Statutory framework⁶

The principal statute by which geothermal resources are managed is the RMA. Regional Councils are required to exercise functions and powers in achieving sustainable management of geothermal resources.

Section 6(b) of the RMA requires all those exercising functions and powers under the Act to recognise and provide for:

“The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development”.

Section 6(c) of the RMA requires:

“The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”.

10.4 Management of geothermal resources

The sustainable management of the region’s geothermal resources involves a variety of instruments including:

- Policies, objectives and methods of implementation in the RPS including classifications of geothermal systems, definitions, and descriptors of geothermal feature types and assessment criteria;
- A regulatory framework and rules for the region, excluding Rotorua, in the Bay of Plenty Regional Water and Land Plan; and
- A specific regulatory framework and rules for geothermal areas in Rotorua are contained in the Operative Rotorua Geothermal Regional Plan.

NB: A regional plan change process has commenced to integrate all geothermal rules into one section of the Bay of Plenty Regional Water and Land Plan.

Criteria Set 7 is therefore an important component of this management regime because it contributes a consistent set of standards. These standards are to be

used by experts to assess the significance of geothermal features, geothermal vegetation or habitats and indigenous geothermal fauna in the region.

10.5 When to assess significance

Assessment of geothermal features will be required of regional, city and district councils when preparing, changing, varying or reviewing a regional plan or a district plan. Assessment is also required when seeking a resource consent, to meet the need *‘to have regard’* when considering a resource consent or notice of requirement.

The RMA does not define “significant” and does not specify a requirement for the assessment of levels of significance. There are currently no formal national guidelines that provide assistance.

The Concise Oxford Dictionary defines ‘significant’ as:

“Having a meaning, inviting attention; noteworthy, of considerable amount or effect or importance”.

Assessments must be carried out by suitably qualified and experienced experts in a plan change or plan review processes or for a resource consent applicant seeking to undertake activities that may affect a geothermal feature in a Geothermal Management Group 2, 3 or 4 system.

The Regional Council is re-surveying all geothermal surface features and will carry out an assessment of all features to determine whether they are Significant.

10.6 Regional Policy Statement Policies and Methods

The RPS contains a number of policies and methods where establishing the significance of geothermal features is a matter for consideration.

The key policies and methods which require the application of Set 7 – Geothermal Features criteria are **Policies GR 1A, GR 3A, GR 4A, GR 5B, GR 7B, GR 9B, GR 10B** and **Methods 2, 3 and 22**.

Policy GR 9B: Assessing and managing effects on significant geothermal features

- (a) Assess geothermal features to determine which are significant, using Appendix F Set 7 “Geothermal features”.

Note: “Geothermal features” includes vegetation, habitats and fauna.

- (b) Manage effects on SGFs in accordance with the management purpose of the geothermal group in which they are classified, shown in Table 12, as follows:
 - (i) Protect SGFs, by protecting natural flows of geothermal water to the surface from deep within the system, and by requiring maintenance of the conditions that maintain system pressure and temperature within group 1 and 2 systems (see Table 12) as required to support those features.
 - (ii) Avoid, remedy or mitigate significant adverse effects on SGFs in group 3 systems.

- (iii) Remedy or mitigate significant adverse effects on SGFs in group 4 systems.
 - (iv) Provide for new takes and discharges in group 1 or group 6 systems, only for scientific investigation or to remedy or mitigate existing adverse effects.
- (c) In circumstances where mitigation is required under Policy GR 9B(b), it should be proportionate to the nature and scale of adverse effects.
- (d) Mitigation of adverse effects on SGFs or geothermal resources can occur within the wider Taupō Volcanic Zone rather than being restricted to the Bay of Plenty region.

Method 2: Regional plan implementation

Regional plans shall give effect to Policies GR 9B and where this is not provided for '*... then Bay of Plenty Regional Council shall notify a variation or change*' within 2 years of the operative BOP Regional Policy Statement, '*to give effect to them as required by the Resource Management Act 1991*'.

Implementation responsibility: Regional council.

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policy GR 9B shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

Method 22: Assessment of significant geothermal features

Identify geothermal features using Appendix A 'Definitions' Annex A and, where required, assess the significance of those features in accordance with Policy GR 9B by applying the criteria in Appendix F Set 7 of this Policy Statement.

This assessment shall be undertaken by suitably qualified and experienced experts on behalf of either the Regional Council (in the context of a plan change_or plan review) or an applicant that is seeking to undertake activities that may adversely affect any geothermal feature, in any management group 2, 3 or 4 geothermal system.

The methodology used to assess the significance of a geothermal feature in any system shall be clearly explained at the time that the assessment is provided (whether as part of a plan change or resource consent process) so that the assessment rationale is clear and able to be peer reviewed.

The methodology shall provide for an overall judgement to be made as to the significance of any given geothermal feature(s) having regard to an evaluation against the criteria that are set out in Set 7 of Appendix F.

The overall judgement required shall be made initially by the experts undertaking the evaluation, as part of an application_for resource consent or as part of a plan change process, and by the final decision-maker.

Features identified as being significant as a result of this process will be mapped into the Council's GIS and database and may be included by way of a plan change in a regional or district plan, if that has not already occurred.

Implementation responsibility: Regional council, district council and/or applicants and/or resource users.

10.7 Advice for Expert Assessors

Prior to undertaking an assessment, expert assessors are encouraged to ask Regional Council consents and planning staff for advice about the assessment and management regime required within the Bay of Plenty region. The assessment rationale and process must be clear and able to be peer reviewed.

Expert assessors will be required to identify geothermal features using Appendix A 'Definitions' Annex A in the RPS, and, as required, assess the significance of those features by applying the criteria in Set 7.

This assessment method promotes development of an overall judgement of the significance of any given geothermal feature(s), initially by the experts undertaking the assessment and, by the final decision-maker.

Any new features assessed as significant will be included in Council's Geographic Information System and information database and regional and district plans by way of a plan change, over time.

10.8 Explanation of Criteria

There are 23 criteria in Criteria Set 7 that are divided into two groups, being Geothermal Geological Features (criteria 7.1 to 7.11) and Geothermal Vegetation or Habitats and Indigenous Fauna (criteria 7.12 -7.23).

Criteria 7.1 to 7.4 assess **Natural Science Factors relating to Geothermal Geological Features**, including representativeness, diversity and pattern, rarity, distinctiveness and resilience.

Criteria 7.5 to 7.9 assess **Aesthetic Values relating to Geothermal Geological Features**, including memorability, naturalness and transient values.

Criteria 7.10 and 7.11 assess **Associative Values relating to Geothermal Geological Features** including shared and recognised values and Māori values.

Criteria 7.12 to 7.20 assess **Natural Science Factors relating to Geothermal Vegetation or Habitat and Indigenous Fauna**, including representativeness, diversity and pattern, rarity, distinctiveness ('as one of the largest remaining examples of its type within the Taupō Volcanic Zone' or 'significantly reduced in area and is degraded but retains key natural ecological functions'), ecological context, viability and sustainability.

Criteria 7.21 assess **Aesthetic Values relating to Geothermal Vegetation or Habitat and Indigenous Fauna** including naturalness.

Criteria 7.22 and 7.23 assess **Associative Values relating to Geothermal Vegetation or Habitats and Indigenous Fauna**, including shared and recognised values and Māori values.

Part 11: When and how do Council officers need to take account of the criteria?

The criteria are intended to apply to both policy making (plan development) and in the consideration of resource consent applications.

11.1 Plans and plan changes

Bay of Plenty Regional Council may include in any regional plan, including any regional plan dealing with land use, policies in relation to section 6 Matters of National Importance. It may also set rules in regional plans controlling water use, discharges, use of the Coastal Marine Area or the maintenance of indigenous biodiversity in relation to these matters.

District and city councils can include in their district plans policies and rules, in relation to the effects of subdivision and land use (including the beds of lakes and rivers) on section 6 matters.

Does the introduction of criteria mean that all regional and district plans must be changed?

Not necessarily. The test set out in the RMA is that regional and district plans must “give effect to” the RPS. This means that a regional or district plan must be amended to give effect to the change, if the change contains a provision to which the plan does not give effect and the change is operative. The Council responsible for such a plan must amend it as soon as reasonably practicable.

11.2 Taking account of the Criteria when considering resource consent applications

All those considering resource consent applications (whether for regional or district consents) must consider effects on those aspects of the environment referred to in section 6 when processing and making decisions. Decision-makers may only disregard those matters (and the criteria of the RPS) when the resource consent applications in question are specified as controlled or restricted discretionary activity applications and the relevant plan does not identify those matters as a matter of discretion or of control.

Why regional involvement is crucial

The matters referred to in section 6 can be adversely affected by discharges to air, water, land and geothermal systems, by earthworks, activities in the beds of lakes and rivers, water management (abstraction, damming diversion etc.) and by activities in the Coastal Marine Area. District and city councils do not always control the effects of these activities. If section 6 matters are to be recognised and provided for, Bay of Plenty Regional Council needs to be involved, and the application of plan provisions needs to be consistent across the region.

11.3 Questions and answers for Council officers

Must I consider section 6 matters if the resource consent is required for reasons other than a concern for those matters?

Yes, unless the application is for a controlled or restricted discretionary activity, and the matters to which Council's discretion are restricted do not include section 6 matters. Otherwise, whether it is a regional, city or district council you must consider Part 2 matters (and therefore section 6) even if a resource consent is required because of a concern about, for example, soil erosion or general amenity^H. Your requirement to consider Part 2 matters in the context of a consent application is not limited by your functions.

What if the application is only discretionary or non-complying because of a breach of one aspect of a development unrelated to section 6 matters?

Notwithstanding that an activity may be discretionary or non-complying because of non-compliance with one specific standard or term of the plan, the Courts have determined that the entire activity is open for debate. Decision-makers must consider all matters under section 104 of the activity including any effects on section 6 matters^I.

Must those assessing consent applications really look at all Part 2 matters - can't they rely on the objectives and policies of the plan to have adequately applied these matters?

No. Although it would not be efficient to re-examine policy issues each time a resource consent application is assessed, those processing consent applications cannot close their minds to the question of whether Part 2 matters are appropriately reflected in policies^J. From a practical point of view, the degree to which objectives and policies need to be re-litigated will depend on their clarity and the rigour with which they have been developed.

How do you give effect to criteria when making decisions on resource consents?

Put simply, the criteria should assist in identifying what it is about the site that is important – an important input into deciding whether the effects will be more than minor. The criteria will also assist in determining whether and how the effects can be avoided, remedied or mitigated.

Ultimately there is an element of judgement to be exercised by those processing consents. First, there is judgement to be exercised over whether there are section 6 matters at stake. Second, judgement must be exercised over whether specialist advice is required to ensure the values are properly considered. The quality of that judgement is a question of professional competency and experience. Relevant considerations will be the consent category of the proposed activity, the size or scale of the proposed activity, the quality of the AEE and the views expressed by those consulted.

Some elements of the environment addressed in section 6 do not warrant protection under that section. Nevertheless, any adverse effect of an activity on such elements needs to be addressed in an AEE in such detail as corresponds with the scale and significance of the effect. This too is a matter of judgement for applicants and decision makers. The criteria can assist in identifying effects and how they can be managed.

Part 12: The resource consent checklist

Applying the criteria of the RPS in the context of a resource consent involves the following steps:

- 1 Consult the relevant district and regional plans.
- 2 Check whether:
 - (a) The applicant site has identified section 6 values? Which values?
 - (b) The plan has mapped all section 6 matters (i.e. whether matters are addressed by the plan or left to the scrutiny of individual resource consent applications).
 - (c) Those elements of section 6 that have been mapped have been identified using criteria not inconsistent with those of the RPS?
- 3 Determine which section 6 matters need to be scrutinised through the consent process? These will likely be:
 - (a) those mapped in a relevant plan using criteria not inconsistent with the RPS, and where the applicant site is within one of these defined areas;
 - (b) those represented by areas mapped in a relevant plan using criteria inconsistent with the RPS, and where the applicant site is within one of these defined areas; or
 - (c) those not represented by sites mapped in a relevant plan (i.e. where the plan specifically anticipates individual assessment through resource consent processes).
- 4 Review the AEE. What has the applicant said about effects on section 6 matters? Have all the dimensions been adequately addressed by the AEE? Is there any record of those consulted expressing concern about effects on section 6 matters?
- 5 Undertake a site visit and apply the appropriate criteria yourself to determine if aspects that require scrutiny through the consent process might be at risk from the application.
- 6 Engage a specialist, or seek further specialist information from the applicant, if:
 - (a) the activity is within an area identified by a plan as having section 6 values and there is doubt about whether the measures proposed by the applicant will adequately avoid, remedy or mitigate the adverse effect on those values; or
 - (b) your assessment using the RPS criteria suggests that a section 6 matter could be at risk from the activity.

Part 13: Relevant case law

Natural Character

- Arrigato Investments Limited versus Rodney District Council ([1999] NZRMA 241 A115/99).
- Harrison versus Tasman District Council (W42/93).
- Hooker versus Waitemata City Council (7 NZTPA 38).
- Browning versus Marlborough District Council (W20/97 2 NZED 179).

Natural features and landscapes

- Wilkinson versus Hurunui District Council (C50/2000).
- Munro versus Waitaki District Council (C98/97).
- Pigeon Bay Aquaculture Limited versus Canterbury Regional Council (C32/99).
- Wakatipu Environmental Society Incorporated versus Queenstown-Lakes District Council (C180/99).

Indigenous vegetation and habitats of indigenous fauna

- Royal Forest and Bird Protection Society of New Zealand Incorporated versus Manawatu-Wanganui Regional Council ([1996] NZRMA 241 A86/95).
- Minister of Conservation versus Whangarei District Council (A19/94).
- Royal Forest and Bird Protection Society of New Zealand Incorporated versus Marlborough District Council (W13/96 and W43/96).
- J Crooks and Sons Limited versus Invercargill City Council (C81/97).
- Minister of Conservation versus Gisborne District Council (A16/2000).
- Minister of Conservation versus Western Bay of Plenty District Council (A71/2001).

Māori culture and traditions

- Royal Forest and Bird Protection Society Incorporated versus WA Habgood (12 NZTPA 760).
- Haddon versus Auckland Regional Council (A077/93 1 and 2 NZTPD 814 [1994] NZRMA 449).
- Worldwide Leisure Limited versus Symphony Group Limited (M1128/94).
- Otaraua Hapu of Te Atiawa versus Taranaki Regional Council (W129/96).
- Luxton versus Bay of Plenty Regional Council (A49/94).
- Tawa versus Bay of Plenty Regional Council (A18/95 4 NZPTD 272).
- Mason-Riseborough versus Matamata-Piako District Council (A143/97).

Historic heritage

- Gill versus Rotorua District Council (W29/93).
- Wakatipu Environmental Society Incorporated versus Queenstown Lakes District Council (C180/99).

Part 14: Background documents

Natural character

Boffa Miskell Limited (1998) *Definitions of Natural Character*, prepared for New Zealand Forest Research Institute, Auckland: Boffa Miskell Limited.

Natural features and landscapes

Boffa Miskell Limited (1993) *A Landscape Assessment of the Bay of Plenty Coastal Environment for Environment Bay of Plenty, (the Bay of Plenty Regional Council)*, Auckland: Boffa Miskell Limited.

Boffa Miskell Limited (1995) *Whakatāne District Landscape Evaluation*, Auckland: Boffa Miskell Limited.

Boffa Miskell Limited (1997) *Bay of Plenty Heritage Sites: Outstanding Natural Features and Landscapes*, Auckland: Boffa Miskell Limited.

Boffa Miskell Limited (1998) *Opotiki District Landscape Assessment*, Auckland: Boffa Miskell Limited.

Boffa Miskell Ltd (2000) *Environment Bay of Plenty Heritage Criteria: Landscape and Natural Character Criteria: a discussion report to expand upon the landscape values set for incorporation within the Bay of Plenty Regional Policy Statement*, Auckland: Boffa Miskell Limited.

Boffa Miskell Limited (2006) *Outstanding Natural Features and Landscapes Bay of Plenty Coastal Environment*: Boffa Miskell Limited, prepared for Environment Bay of Plenty.

Boffa Miskell Limited (2006) *Outstanding Natural Features and Landscapes Bay of Plenty Coastal Environment: Maps*, Boffa Miskell Limited, prepared for Environment Bay of Plenty.

Kenny, J.A., and Hayward, B.W. (eds) (1996) *Inventory and Maps of Important Geological Sites and Landforms in the Bay of Plenty Region*, Geological Society of New Zealand Miscellaneous Publication 86, Lower Hutt: Geological Society of New Zealand.

Wallace, I. (1998) *Rotorua Lakes Landscape Assessment Lakes Management Strategy*, Rotorua: Rotorua District Council.

Indigenous vegetation and habitats of indigenous fauna

Beadel, S.M. (1994) *Significant Indigenous Vegetation of the Bay of Plenty Coastal Zone*, prepared for the Bay of Plenty Regional Council by Wildlands Consultants Limited.

Beadel, S.M. (2006) *Otanewainuku Ecological District: Survey Report for the Protected Natural Areas Programme*, Rotorua: Department of Conservation.

Beadel, S.M. and Shaw W.B. (1996) *Indigenous Ecosystems and Natural Heritage of the Kawerau District*, Wildlands Consultants Limited Contract Report No. 153, prepared for Kawerau District Council.

- Beadel, S.M., Mackinnon, S.M. and Shaw, W.B. (1996) *Geothermal Vegetation of the Bay of Plenty Region*, Wildlands Consultants Limited Contract Report No. 155, prepared for Environment Bay of Plenty.
- Beadel, S.M., Shaw, W.B. and Gosling, D.S. (In press) *Te Teko Ecological District: Survey Report for the Protected Natural Areas Programme*, Rotorua: Department of Conservation.
- Beadel, S.M., Shaw, W.B. and Gosling, D.S. (1999) *Taneatua Ecological District: Survey Report for the Protected Natural Areas Programme*, New Zealand Protected Natural Areas Programme Series, Rotorua: Department of Conservation.
- Beadel, S.M., Shaw, W.B. and Nicholls, J.L. (1998) *Rotorua Lakes Ecological District Natural Area Survey*, Wildlands Consultants Limited Contract Report No. 175, prepared for Rotorua District Council and Environment Bay of Plenty.
- Beadel, S.M., Townsend, A.J. and Shaw, W.B. (1996) *Natural Heritage of the Whakatāne District*, Wildlands Consultants Limited Contract Report No. 140, prepared for Whakatāne District Council.
- Clarkson, B.D., Daniel L.J., Overmars, F.B. and Courtney S.P. (1986) *Motu Ecological District: Survey Report for the Protected Natural Areas Programme*, New Zealand Protected Natural Areas Programme Series No. 6, Wellington: Department of Lands and Survey.
- Jones, D. (2006) *Mapping of Category One Natural Heritage Sites in the Tauranga Ecological District and Te Aroha and Waihi Ecological Districts in the Bay of Plenty Region*, prepared for Environment Bay of Plenty.
- McEwen, W.M. (ed.) (1987) *Ecological Regions and Districts of New Zealand Sheet 2*. New Zealand Biological Resources Centre. Wellington: Department of Conservation.
- New Zealand Protected Natural Areas Programme Technical Advisory Group (1986) *Protected Natural Areas Programme: A Scientific Focus*, Biological Resources Centre Publication No. 4, Wellington: New Zealand Department of Scientific and Industrial Research.
- Rasch, G. (1989a) *SSWI Wildlife and Wildlife Habitat in the Bay of Plenty Region*, Regional Report Series No. 11, Rotorua: Department of Conservation.
- Rasch, G. (1989b) *SSWI Wildlife and Wildlife Habitat in the East Coast Region*, Regional Report Series No. 12, Rotorua: Department of Conservation.
- Shaw, W.B. (1994) *Botanical Rankings for Native Conservation*, Science and Research Series No. 72. Department of Conservation, Wellington.
- Shaw, W.B. and Beadel, S.M. (1998) *Natural Heritage of Rotorua District*, Wildlands Consultants Limited Contract Report No. 176, prepared for Rotorua District Council.
- Walls, G. (1991) *The Opotiki Coast: Ecological Assessment of the Coastline of Opotiki Ecological District*. Napier: Department of Conservation.
- Whaley, K.J., Clarkson, B.D. and J.R. Leathwick (1995) *Assessment of Criteria Used to Determine "Significance" of Natural Areas in Relation to Section 6(c) of the Resource Management Act (1991)*, Hamilton: Landcare Research.

- Wildland Consultants Limited (1999) *Natural Heritage of Opotiki District*, Wildland Consultants Limited Contract Report No. 185, prepared for Opotiki District Council.
- Wildland Consultants Limited (2000) *Indigenous Biodiversity of Tauranga District - State of the Environment Reporting*, Wildland Consultants Limited Contract Report No. 309, prepared for Tauranga District Council.
- Wildland Consultants Limited (2003) *Tauranga Ecological District Phase 1 Protected Natural Areas Programme Report*, Wildland Consultants Limited Contract Report No 751, prepared for Environment Bay of Plenty.
- Wildland Consultants Limited (2005) *A Review of Selected Natural Areas for Potential Inclusion in the Western Bay of Plenty District Plan*, Wildland Consultants Limited Contract Report No. 858, prepared for Western Bay of Plenty District Council.
- Wildland Consultants Limited (2005) *Digital Map of Significant Natural Areas Identified in 1996 in the Whakatāne District*, Wildland Consultants Limited Contract Report No. 1198, prepared for Environment Bay of Plenty.
- Wildland Consultants Limited (2005) *Indigenous Biodiversity of Tauranga City - State of the Environment Reporting 2005*, Wildland Consultants Limited Contract Report No. 309, prepared for Tauranga City Council.
- Wildland Consultants Limited (2006) *Bay of Plenty Coastal Environment - Significant Vegetation and Habitat Zone. Volume 2 Maps*, Wildland Consultants Limited Contract Report No. 1345, prepared for Environment Bay of Plenty.
- Wildland Consultants Limited (2006) *Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Coastal Environment of the Bay of Plenty*, Wildland Consultants Limited Contract Report No 1345, prepared for Environment Bay of Plenty.
- Wildland Consultants Limited (2007) *Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Coastal Environment*, Wildland Consultants Limited Contract Report No 1742, prepared for Environment Bay of Plenty.
- Young, K. (2003) *Bay of Plenty Conservancy Schedule of Sites of Significant Conservation Value: Western Bay of Plenty: Volume 1 General Information*, Department of Conservation.
- Young, K. (2003) *Bay of Plenty Conservancy Schedule of Sites of Significant Conservation Value: Western Bay of Plenty Volume 2a U13/1-U14/109*, Department of Conservation.

Māori culture and traditions

- Environment Bay of Plenty (Undated) *Draft Background Paper: Cultural Assessments*, Whakatāne: Environment Bay of Plenty.
- Environment Bay of Plenty (1999a) *Māori Heritage Criteria: Background Report*, Whakatāne: Environment Bay of Plenty.
- Environment Bay of Plenty (1999b) *Māori Heritage Criteria: A Framework for Significance: A Discussion Document*, Whakatāne: Environment Bay of Plenty.

- Environment Bay of Plenty (2000) *Draft Guidelines for Resource Consent Consultation with Tangata Whenua in the Bay of Plenty Region*, Whakatāne: Environment Bay of Plenty.
- Hughes, B. (1999) *Consultant's Report on Māori Heritage Criteria Hui Held in May 1999*, Whakatāne: Beverley Hughes Associates.
- Love, M.T. (1993) *Ngaa Tikanga Tiaki I Te Taiao: Māori Environmental Management in the Bay of Plenty*, Whakatāne: Environment Bay of Plenty.
- Ministry for the Environment (1997) *Analysis of Māori Heritage Provisions in Plans and Policies*, an unpublished report by the Ministry for the Environment.
- Parliamentary Commissioner for the Environment (1998) *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management*, Wellington: Parliamentary Commissioner for the Environment.

Historic Heritage

- Bowers, L. (2000) *Historic Heritage Criteria: A Report for the Bay of Plenty Regional Policy Statement*, Rotorua: Archaeological Services (BOP).
- Matthews & Matthews Architects Limited (2006) *Opotiki Town Centre Historic Heritage Study: Part One*, Matthews & Matthews Architects Limited (2006), prepared for Opotiki District Council, New Zealand Historic Places Trust & Environment Bay of Plenty.
- Matthews & Matthews Architects Limited (2006) *Opotiki Town Centre Historic Heritage Study : Part Two Inventory and Record Forms*, Matthews & Matthews Architects Limited (2006), prepared for Opotiki District Council, New Zealand Historic Places Trust & Environment Bay of Plenty.
- Matthews & Matthews Architects Limited (2006) *Rotorua Central Area Built Heritage Study Part One: Historic Summary*, Matthews & Matthews Architects Limited (2006), Prepared for Rotorua District Council, New Zealand Historic Places Trust, Environment Bay of Plenty.
- Matthews & Matthews Architects Limited (2006) *Rotorua Central Area Built Heritage Study Part One A: Review and Consideration of Management Options*, Matthews & Matthews Architects Limited, Prepared for Rotorua District Council, New Zealand Historic Places Trust, Environment Bay of Plenty.
- Matthews & Matthews Architects Limited (2006) *Rotorua Central Area Built Heritage Study Part Two: Research Record Forms*, Matthews & Matthews Architects Limited, Prepared for Rotorua District Council, New Zealand Historic Places Trust, Environment Bay of Plenty.
- Walter, L. (2006) *Coastal Historic Heritage Review Project: Historic Heritage Inventory*, Insitu Heritage Limited, prepared for Environment Bay of Plenty.
- Walton, T. (1999) *Assessing the Archaeological Values of Historic Places: Procedures, Methods and Field Techniques, Science & Research Internal Report No. 167*, Wellington: Department of Conservation.
- Whakatāne and District Historical Society (2006) *Whakatāne Township Historic Heritage Resource Study*, Whakatāne and District Historical Society, prepared for Environment Bay of Plenty.

Note:

In the preparation of this user guide, Bay of Plenty Regional Council has drawn heavily on previous work (mostly unpublished) used in the process of the development of the RPS Appendix F criteria or in other projects. In order to keep the guide simple, the work of others has not been specifically referenced. However, Bay of Plenty Regional Council does wish to acknowledge the contributions of Gerard Willis, Rachael de Lambert, Beverley Hughes, Willie Shaw, Lynda Walter, Jeremy Salmond, as well as Dr David A Norton and Dr Judith Roper-Lindsay and the Māori Focus Group consisting of Mr Kei Merito, Mr Hohepa Kereopa, Mr Robert McGowan, Ms Rangireremoana Wetini, Ms Dayle Fenton, Ms Colleen Skerrett-White and Mr Albert Stewart.

Part 15: Endnotes

^A Wakatipu Environmental Society Inc versus Queenstown Lakes District Council (C180/99).

^B See for example, Minister of Conservation versus Kapiti Coast District Council where the Environment Court said:

“... the protection is as part of the preservation of natural character. It is not the protection of the things in themselves but insofar as they have a natural character.”

^C See, for example, Arrigato Investments Limited versus Rodney District Council where the Environment Court stated:

“The fact that the land has been considerably modified by human habitation and is therefore no longer in its pristine state, does not necessarily deny it of a natural character.”

Similarly, in Harrison versus Tasman District Council the Planning Tribunal noted that:

“the word natural does not necessarily equate with the word ‘pristine’. It is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlifeand many other things of that ilk as opposed to man-made structures, roads, machinery etc.”

^D Wakatipu Environmental Society Incorporated versus Queenstown Lakes District Council (C180/99).

^E See for example Munro versus Waitaki District Council where the Court accepted that a landscape could be “magnificent” without being outstanding in terms of the RMA.

^F In Wakatipu Environmental Society Inc versus Queenstown Lakes District Council (C180/99), the Environment Court noted:

“... it was common ground between counsel that the words “outstanding (and) natural” qualify “landscapes” as well as “features”. That is consistent with the way qualifying adjectives have been applied in the Act.”

^G See in particular Wakatipu Environmental Society Inc versus Queenstown-Lakes District Council, where the Court said:

“[A]scertaining 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.”

^H Environment Court in Royal Forest and Bird Protection Society of New Zealand Incorporated versus Manawatu-Wanganui Regional Council (A086/95). In that case the Court found that a regional council’s function to hear and decide resource consents is not limited by the purposes stated in s30(1)(c). If a regional council is considering a land use consent, it must have regard to all the matters listed in section 104 not just those that relate to the functions set out in section 30.

^I This long-standing principle was first established in Locke v Avon Motor Lodge (1973) and confirmed under the RMA in Rudolph Steiner School versus Auckland City Council (A34/97) [1997]. In that case conditions were imposed on the hours of operation of the school even though the school only required a discretionary consent, because part of the building’s roof exceeded the maximum height limit. The principle was entrenched further by the High Court in Aley versus North Shore City M251/98.

^J See for example, Kaikaiawaro Fishing Company Limited versus Marlborough District Council where the Environment Court said:

“We do not accept that if witnesses consider that all Part II Matters have been dealt with in the objectives and policies in the plan provisions, that they are exempt in assessing the Part II provisions”.