



Implications of the New Zealand Coastal Policy Statement 2010 for New Zealand communities

Issues & Options Paper

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EXECUTIVE SUMMARY

The recently released New Zealand Coastal Policy Statement (NZCPS) 2010 provides a mandate for action on a range of coastal issues and promotes improved national consistency in the design of responses. Local authorities are required to give effect to the NZCPS 2010 in their policies, plans, and selection of methods to address various issues. This paper considers how the new NZCPS might be implemented to achieve its objectives and how the different policies might work together.

Amongst the key policy changes are new policy topics and changes of emphasis from the previous NZCPS that introduce new priorities for coastal management. However much of the content has yet to be interpreted in practice and is highly dependent on its translation into management actions. Responses to the NZCPS 2010 including methods of engaging with and influencing the public have to work together to achieve the desired results. In addition the mix of approaches adopted needs to reflect the local context including the unique nature of the issues present and stakeholders involved.

In general the NZCPS 2010 highlights many matters for attention including greater integration of management responses whilst leaving room for local authorities to develop management responses to address these matters as they see fit. In comparison to the previous NZCPS 1994 there are fewer individual policies in the NZCPS 2010. However each policy contains greater detail with the effect that most issues addressed in the NZCPS 1994 are also addressed somewhere in the NZCPS 2010.

A notable difference is that the NZCPS 2010 includes a greater number of policies that make direct provisions for human use of the coastal environment. These policies set up a tension that may be difficult to resolve alongside the environmental protection requirements. Since both the 'pro-development' and the 'pro-protection' sections of the NZCPS 2010 contain ambiguities, local authorities have considerable leeway to interpret either way. The appropriateness of such interpretations will therefore be a key point of focus for participants in RMA processes.

The existence of stronger provisions than the status quo in addition to expectations over a greater number of policy topics also implies that the role of monitoring will be critical. However reviews of the previous NZCPS 1994 found the monitoring component to be an especially weak area of implementation to date. As a consequence local authorities will need to improve their monitoring performance markedly in the coastal environment and also apply this to a greater number of topics. This will be essential to enable all parties to assess the effectiveness of current and proposed management responses against the requirements of the NZCPS 2010 and make improvements where required.

These are some of the aspects of difference between the NZCPS 1994 and the new NZCPS 2010 that will result in changes to coastal management. It is important for interested parties to further consider these matters and participate in the implementation of NZCPS policies in their areas since regional and local level resource management process will add further interpretation to the NZCPS 2010 in the near future. These will be critical to the identification and development of appropriate implementation methods and consequently to the pattern of outcomes achieved.

PART 1: INTRODUCTION TO THE NEW ZEALAND COASTAL POLICY STATEMENT

1. Introduction

The New Zealand Coastal Policy Statement (NZCPS) is a document that would be of interest to most New Zealanders since it affects the way we manage our coastal environment. Recently, the NZ Government has issued a new NZCPS; only the second in our history. It contains significant differences from the earlier NZCPS 1994 and these will work their way into our resource management system over the coming months.

These changes will manifest themselves in new policies, plans and proposed methods throughout the country, particularly under the auspices of regional councils and territorial authorities. In developing and approving these changes there will be opportunities for public involvement and input. Consequently it is important that community groups and general public are well prepared to respond and participate.

Awareness of matters raised in the new NZCPS 2010, outstanding issues, and an understanding of the range of options that exist to address these issues will all assist in empowering community input. The objective of this paper is to contribute to that process by providing an overview of the NZCPS 2010 and its implications.

2. Background

2.1 Role of the NZCPS

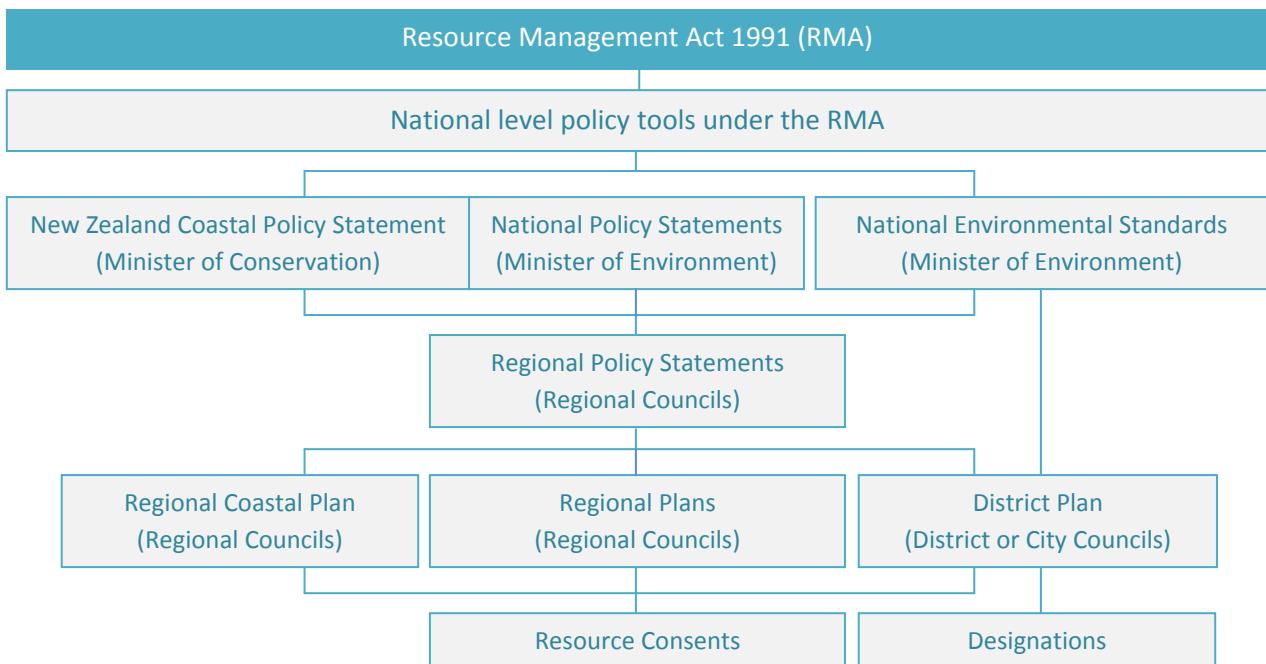
Production of a NZCPS is mandatory under the Resource Management Act 1991 (RMA). It is the key statement of national policy that guides planning and resource consent decisions for the coastal environment. New Zealand's first NZCPS was issued on 5 May 1994. The new NZCPS 2010 replaces that document and took effect on 3 December 2010.

The purpose of the NZCPS is identified in Section 56 of the RMA which states:

“The purpose of a New Zealand coastal policy statement is to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand”.

These policies provide essential guidance to local government, which under the RMA is empowered to provide key management functions for the coastal environment. Local authorities are obliged to give effect to the provisions in the NZCPS, which includes reviewing and amending their plans to be consistent with the NZCPS 2010 in the near future.

Figure 1: Key policy tools under the RMA



Adapted from Ministry for the Environment (2009).¹

2.2 Development of the NZCPS 2010

Development of the NZCPS 2010 began with a review of the former NZCPS 1994^{2, 3} followed by development of a new proposed NZCPS by the Minister of Conservation⁴. In 2008 this was released and a Board of Inquiry appointed to consider and report on its suitability. Following an extensive public consultation process and consideration of submissions, the Board of Inquiry made a number of recommendations including that

"... there is a need to adopt a different approach to that in the NZCPS 1994 and to make amendments to the PNZCPS 2008".

The Board of Inquiry's findings and recommendations were compiled into a 'recommended NZCPS (2009)' for the benefit of the Minister⁵. However the final NZCPS notified by the Minister⁶ differed considerably from that recommended by the Board of Inquiry.

¹ Ministry for the Environment (2009).

² Rosier (2004).

³ Jacobson (2004).

⁴ Department of Conservation (2008a).

⁵ Board of Inquiry (2009a).

⁶ Department of Conservation (2010a).

The changes appeared to have been the result of advice given to the Minister of Conservation, notably from the Minister for the Environment and other agencies involved in the draft NZCPS, although neither the Board of Inquiry members nor submitters were consulted in this process.

In comparing the final version of the NZCPS 2010 to the Recommended NZCPS 2009, some of the changes include:

- In the Objectives section, the Board of Inquiry's reference to "sustainable management" was replaced with "management" in all but one instance. This referred to incorporating mātauranga Māori into sustainable management practices.
- The wording of Objective 6 which deals with human use concepts, was adjusted to remove a direct reference to the limits within which such uses must operate. This had been specifically provided for in the Recommended NZCPS 2009 and might have helped reduce confusion.
- A recommended policy on cumulative effects was modified and incorporated into a policy on 'Strategic Planning'.
- A recommended policy on protection of active dune systems was deleted and all reference to active dunes of national significance removed.
- A new section was added to promote aquaculture including associated land based facilities (Policy 8).
- A new section was added to recognise and protect ports (Policy 9).

Other details of changes from the Board of Inquiry's recommendations and the possible reasons for them will not be analysed further in this paper. However, additional details can be found in the Board of Inquiry's Working Papers⁷ and in the Regulatory Impact Statement⁸ and Section 32 analysis⁹ of the final NZCPS 2010.

2.3 Matters covered by the NZCPS 2010

In general there are many issues affecting the coastal environment for which the best solutions have yet to be found¹⁰. A core purpose of the new NZCPS 2010 is to address these issues by providing guidance at the national level.

The new NZCPS 2010 identifies 7 different policy objectives as a national priorities.

These are

- To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems.
- To preserve the natural character of the coastal environment and protect natural features and landscape values.

⁷ Board of Inquiry (2009b).

⁸ Department of Conservation (2010b).

⁹ Department of Conservation (2010c).

¹⁰ Schofield & Johnston (2006).

- To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment.
- To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment.
- To ensure that coastal hazard risks taking account of climate change are managed through a range of activities.
- To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development.
- To ensure that management of the coastal environment recognises and provides for New Zealand's international obligations regarding the coastal environment, including the coastal marine area.

Some of the stated objectives may be in conflict with others, as is typical of planning documents under the RMA. The RMA operates under the principle of subsidiarity where interpretation and management of conflicting objectives are devolved to regional and local levels in order for the views of the stakeholders most affected to be best considered. Therefore final determination of many matters, including the conflicting demands of stakeholders, becomes the responsibility of local governments and the communities they represent.

The 29 policies set down in the NZCPS 2010 are not referenced directly to the stated objectives. In general there is a lack of detail in the document and supporting material to indicate how and why the chosen policies relate to the objectives, partly due to the changes made from the Board of Inquiry recommendations for which supporting documentation was provided¹¹. There is also a lack of information on how the policies might work together to achieve the objectives identified.

It will be important for participants in the resource management process to become familiar with the content of the individual policies in addition to the objectives. Important questions include how the policies could be implemented to generate desired outcomes, and how they might work together.

¹¹ Board of Inquiry (2009a).

2.4. Key changes from the NZCPS 1994

There are some significant differences between the NZCPS 1994 and the new NZCPS 2010 and these aspects in particular may result in changes to coastal management at the regional and local levels.

Table 1 provides a comparison of the differences in terms of the subjects of individual policies included in each NZCPS. A distinction can be made between policies addressing resource use activities versus other socio-ecological aspects of coastal environments. Although there is a degree of overlap for some policies, the comparison illustrates that a greater number of policies make direct provisions for human uses in the NZCPS 2010.

Table 1: Comparison of the NZCPS 1994 and NZCPS 2010.

(a) NZCPS 1994

NZCPS 1994	Individual policies and topics covered (Policy number in brackets)	Total number of policies
Policies clarifying intent and interpretation issues	Protection of characteristics of special value to tangata whenua (2.1.1 – 2.1.3)	3
	Precautionary approach (3.3.1 – 3.3.2)	2
	Crown Interests (4.1.1 – 4.1.6)	6
	Treaty of Waitangi (4.2.1 - 4.2.2)	2
	Decisions to be made by the Minister of Conservation (5.3.1)	1
	Monitoring the effectiveness of the NZCPS (7.1.1 – 7.1.3)	3
	Total =17	
Policies targeting resource use activities in coastal environments	Subdivision, use and development (3.2.1 – 3.2.10)	10
	Public access (3.5.1 – 3.5.4)	4
	Discharges from vessels (5.2.1 – 5.2.5)	5
	Total =19	
Policies targeting aspects of coastal environments	Natural character – including Preservation of natural character (1.1.1); Significant indigenous vegetation and significant habitats of indigenous fauna (1.1.2); Important features (1.1.3); Integrity, functionality and resilience of the coastal environment (1.1.4); and Restoration and rehabilitation of natural character (1.1.5)	5
	Amenity values (3.1.3); Scenic, recreation, historic, spiritual and cultural areas (3.1.2); and Open space (3.1.3)	3
	Natural hazards (3.4.1 – 3.4.6)	6
	Water quality – including Maintenance and enhancement (5.1.1); Human sewerage (5.1.2); Mixing (5.1.3); and other Contamination issues (5.1.4 – 5.1.7)	7
		Total = 21
Total policies		57

(b) NZCPS 2010

NZCPS 2010	Individual policies and topics covered (Policy number in brackets)	Total number of policies
Policies clarifying intent and interpretation issues	Extent and characteristics of the coastal environment (1)	1
	The Treaty of Waitangi, tangata whenua and Māori heritage (2)	
	Precautionary approach (3)	1
	Integration (4)	1
	Land or waters managed or held under other Acts (5)	1
	Strategic planning (7)	1
	Monitoring and reviewing the effectiveness of the NZCPS (28)	1
	Restricted Coastal Activities (29)	1
	Total =8	
Policies targeting resource use activities in coastal environments	Activities in the coastal environment (6)	1
	Aquaculture (8)	1
	Ports (9)	1
	Reclamation and de-reclamation (10)	1
	Walking access (19)	1
	Vehicle access (20)	1
	Discharge of contaminants (23)	1
	Subdivision, use, and development in areas of coastal hazard risk (25)	1
	Strategies for protecting significant existing development from coastal hazard risk (27)	1
	Total =9	
Policies targeting aspects of coastal environments	Indigenous biological diversity (biodiversity) (11)	1
	Harmful aquatic organisms (12)	1
	Preservation of natural character (13)	1
	Restoration of natural character (14)	1
	Natural features and natural landscapes (15)	1
	Surf breaks of national significance (16)	1
	Historic heritage identification and protection (17)	1
	Public open space (18)	1
	Enhancement of water quality (21)	1
	Sedimentation (22)	1
	Identification of coastal hazards (23)	1
Natural defences against coastal hazards (26)	1	
	Total = 12	
Total policies		29

Table 1 also illustrates some of the new policy topics addressed in the NZCPS 2010. Although there are fewer individual policies in the NZCPS 2010, many contain considerable detail with the effect that most issues addressed in the NZCPS 1994 are also addressed somewhere in the NZCPS 2010.

Community groups and individuals participating in resource management processes should be looking for how their local councils respond to these changes. These will be seen in the next round of Regional Policy Statements, proposed plans or plan changes, and in the selection of methods proposed to address various issues.



Iconic New Zealand coastline on the South Island's West Coast.

PART 2: ISSUES & OPTIONS FOR IMPLEMENTING THE NZCPS 2010

3. Approach to Analysis

3.1 Objectives

The objective of this paper is to provide analysis of key issues and options for interested parties to consider further in responding to the NZCPS 2010 at regional and local levels. The intention is to highlight aspects of interpretation that are important to meeting the objectives of the NZCPS 2010.

3.2 Evaluation criteria and approach

The analysis provided is targeted at the individual policies and is based on an evaluation of the policies against the stated objectives of the NZCPS 2010. Evaluation criteria derived from the latter are given in Table 2.

It is assumed that local contexts demand slightly different interpretations of appropriate outcomes but should not result in situations where some NZCPS objectives are met at the expense of others.

The approach used does not question the suitability of the objectives themselves. In general the objectives of the NZCPS 2010 are consistent with the purposes of the RMA as can be expected. These purposes are set out in Section 5 of the Resource Management Act which states:

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, 'sustainable management' means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:

 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;*
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.**

A full interpretation of Section 5 also requires attention to other elements including Part II of the Act, Sections 6, 7, and 8.

Table 2: Objectives of the NZCPS 2010 and associated evaluation criteria.

Summary of NZCPS 2010 objectives	Evaluation criteria
(1) To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land.	<ul style="list-style-type: none"> ➤ integrity, form, functioning and resilience of the coastal environment are safeguarded. ➤ ecosystems of the coastal environment are sustained.
(2) To preserve the natural character of the coastal environment and protect natural features and landscape values.	<ul style="list-style-type: none"> ➤ natural character of the coastal environment is preserved. ➤ natural features and landscape values are protected.
(3) To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment.	<ul style="list-style-type: none"> ➤ principles of the Treaty of Waitangi are taken into account. ➤ the role of tangata whenua, as kaitiaki, is recognised. ➤ tangata whenua involvement in management of the coastal environment is provided for.
(4) To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment.	<ul style="list-style-type: none"> ➤ public open space qualities and recreation opportunities of the coastal environment are maintained and enhanced.
(5) To ensure that coastal hazard risks taking account of climate change, are managed.	<ul style="list-style-type: none"> ➤ coastal hazard risks taking account of climate change, are managed.
(6) To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development.	<ul style="list-style-type: none"> ➤ people and communities are able to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development of the coastal environment.
(7) To ensure that management of the coastal environment recognises and provides for New Zealand's international obligations regarding the coastal environment, including the coastal marine area.	<ul style="list-style-type: none"> ➤ New Zealand's international obligations regarding the coastal environment, including the coastal marine area, are recognised and provided for.

For convenience we present results for groups of policies in a similar manner to the analysis presented in the 'Summary of evaluation under Section 32 of the Resource Management Act 1991'¹², which is also recommended reading.

¹² Department of Conservation (2010c).

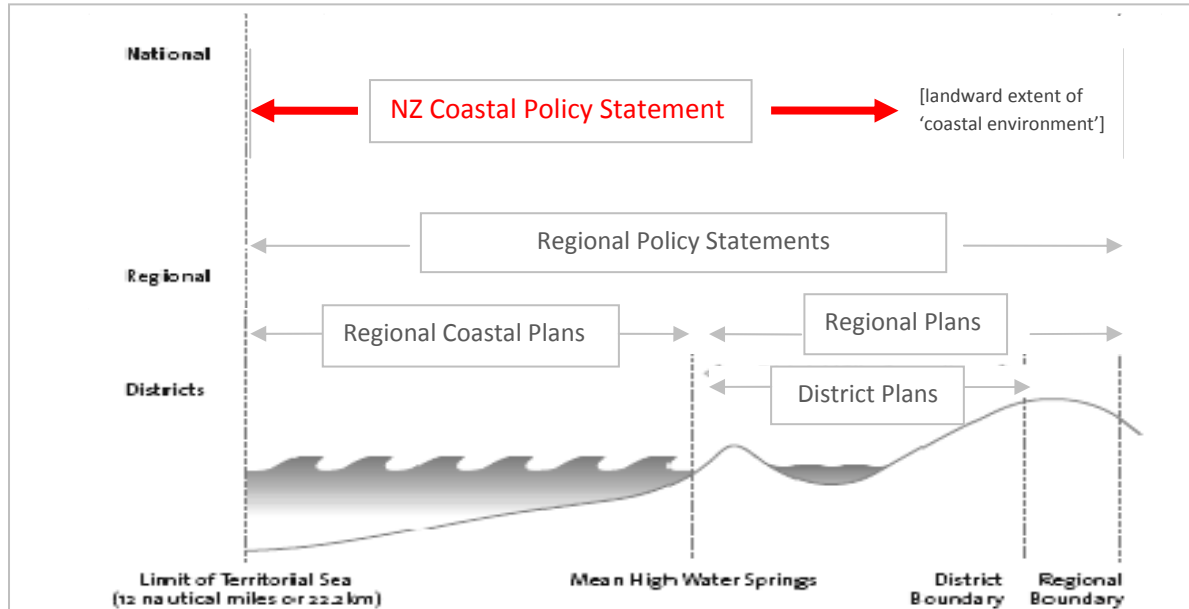
4. Analysis of policy topics

4.1 Extent and characteristics of the coastal environment

An aspect of the approach used by both the 1994 and 2010 NZCPS is that the exact boundaries of the 'coastal environment' are not defined. In general the coastal environment includes the Coastal Marine Area (which refers to the area between the line of Mean High Water Springs (MHWS) and the outer limits of the territorial sea) and the adjacent land. However, the landward extent of the coastal environment is deliberately not defined in spatial terms but rather by reference to the matters addressed by the policy statement itself (Figure 2). It is therefore subject to interpretation.

In the past these aspects have led to confusion. For example, lack of guidance on where and when NZCPS policies should be applied in urban versus rural settings has led to inconsistent approaches to its application in different regions; a situation which is also reflected in case law. In a survey of the views of local government staff¹³, the feedback indicated that different interpretations of the 'coastal environment' were also being applied by different agencies who might be involved in the same matters, and some respondents thought that the provision of guiding criteria would be beneficial.

Figure 2: Relationship between the NZCPS 'coastal environment' and related legislative boundaries.



Adapted from Ministry for the Environment 2006.¹⁴

¹³ Young (2003).

¹⁴ Ministry for the Environment (2006).

In considering these matters some of the important points noted by the Board of Inquiry¹⁵ include

- that the coastal environment cannot be defined by one set of criteria that would be able to be applied nationally, and it is more logical for local authorities to define the extent of the coastal environment at the regional and district level in a manner that takes into account the local settings, and that
- in considering those settings there is a range of nationally consistent matters that should be considered and on which guidance can be provided.

Consequently the NZCPS 2010 includes a policy on the extent and characteristics of the coastal environment to provide guidance on nationally consistent matters to local authorities. It identifies nine matters to be included in defining the coastal environment. However there is no guidance on whether local authorities need to provide further interpretation of these in their planning processes. Alternatively they could be considered on a case by case basis as has been the general approach taken to date.

Therefore the NZCPS 2010 itself has not directly resolved the matter of where and when NZCPS policies should be applied. Any further steps taken by local authorities to define the coastal environment will therefore be important and where this occurs interested parties should give particular attention to the locations where coastal policies may be applicable to sites and issues important to them.

What has been established in Policy 1 is a set of elements that are to be included as parts of the 'coastal environment'. Relative to the NZCPS 1994 this policy represents clear guidance that a wide range of matters and associated places needs to be considered as coastal matters for which provisions under the NZCPS 2010 would apply. An intriguing aspect yet to be debated concerns Policy 1 (2) (b) which states that the coastal environment includes "islands within the coastal marine area". Since all of New Zealand meets this criterion the policy seems to indicate that all of New Zealand needs to be considered as a coastal environment. Whether this will be reflected in implementation of the NZCPS 2010 remains to be seen.

4.2 Removal of Restricted Coastal Activity status and associated processes

Policy 29 in the NZCPS 2010 removes the concept of Restricted Coastal Activity (RCA) status and associated processes from the coastal management system. This previously meant that a separate process was applied in which the Minister of Conservation decided on resource consent applications. It was used for certain types of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area.

As a consequence those matters now have to be dealt with by other provisions within the policy statement, and by Councils who are charged with its implementation. Several of the new topics covered by NZCPS 2010 policies relate to this change. The effects on the management of these topics

¹⁵ Board of Inquiry (2009b).

will depend on the difference between the new responses developed by local authorities and previous controls under RCA status.

The thinking behind this was that the RCA process was a transitory measure that has now served its purpose. It was brought in to assist Councils with their task of developing coastal plans under the RMA by removing certain matters from the activities they needed to consider. Those matters must now be considered as an integral part of the next generation of plans.

4.3 The Treaty of Waitangi, tangata whenua and Māori heritage

Experience with the RMA has shown that many of the existing provisions have not always worked well to recognise and provide for Māori values. Provisions for Māori interests are important aspects of many policies and all objectives of the NZCPS 2010, and Policy 2 in particular aims to improve on these matters (Table 3).

Table 3: Māori interests - Key provisions and anticipated impacts¹⁶

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 2	4, 6, 7, 11, 15, 17, 18, 19, 20, 21,23	All	Increased uptake of good practice in incorporation of Treaty principles and Māori values in coastal resource management

Policy 2 builds on the previous NZCPS by introducing more specific requirements by which the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, are to be taken into account (Table 4).

¹⁶ Adapted from Department of Conservation (2010c)

Table 4: Methods identified by the NZCPS 2010 for taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment.

<i>Methods identified by the NZCPS 2010 for taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment.</i>	
(a)	Recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;
(b)	Involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;
(c)	With the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori ¹ in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;
(d)	Provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga ² , may have knowledge not otherwise available;
(e)	Take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and <ul style="list-style-type: none"> (i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and (ii) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;
(f)	Provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as: <ul style="list-style-type: none"> (i) bringing cultural understanding to monitoring of natural resources; (ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua; (iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaimai or other non commercial Māori customary fishing;
(g)	In consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value: <ul style="list-style-type: none"> (i) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and (ii) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

Although many of these methods are already in use the policy generates an expectation that tools such as iwi management plans and cultural impact assessments are to be recognised and used consistently nationwide. The policy also makes it clear that inclusion of Māori perspectives is important to many stages of resource management processes. For example, provisions for Māori to address both the assessment and protection of values are required.

4.4 Precautionary approach

Policy 3 represents a continuation of the previous NZCPS on this subject with the addition of a specific reference to adopting a precautionary approach for use and management of coastal resources potentially vulnerable to effects from climate change (Table 5).

Table 5: Precautionary approach - Key provisions and anticipated impacts¹⁷

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 3	All	All	Continued application of precautionary approach where relevant in coastal environment

In the past, criticism has been leveled at use of terms such as ‘precautionary approach’ in policy in the absence of further information to make the requirement more specific¹⁸. Certainly, in many areas of coastal management performance under the NZCPS 1994 there appears to have been a lack of precaution taken and adverse effects have resulted. The NZCPS 2010 does contain some additional references to what ‘precaution’ might mean, which represents a step forward (Table 6). It remains to be seen if these can be made operational at the implementation level, but they provide a point of focus for future submitters to consider.

Table 6: Aspects of a precautionary approach identified in the NZCPS 2010

<i>Aspects of a precautionary approach identified in the NZCPS 2010</i>	
(1)	Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
(2)	In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that: <ul style="list-style-type: none"> (a) avoidable social and economic loss and harm to communities does not occur; (b) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and (c) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

4.5 Integration

The need to improve integration between both policies and agencies was raised by many submitters to the Board of Inquiry process¹⁹. Consequently, more specific policies to address these matters are included in the NZCPS 2010 relative to the NZCPS 1994 (Table 7).

¹⁷ Adapted from Department of Conservation (2010c)

¹⁸ House of Commons Science and Technology Committee (2007).

¹⁹ Board of Inquiry (2009b).

Table 7: Integration - Key provisions and anticipated impacts²⁰

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 4 Policy 5	All	All	More consistent attention to cross-boundary issues for coastal resource management.

In earlier reviews²¹ suggestions for improving integration included

- The need for the national level of policy-making to provide greater clarification of responsibilities at all levels for environmental and planning outcome monitoring as well as with respect to need to identify which areas local government should manage.
- Greater funding being made available at all levels to encourage institutions to implement requirements. In addition responsibility for the funding implications of various resource management functions has often been blurred and could be made clearer.

In many respects the NZCPS makes a positive contribution to the first of these points, whilst the second lies outside of its scope and will depend on institutional arrangements.

In practice the ideal of integration can often be difficult to achieve. One of the most fruitful ways this might occur is through early identification of conflicting matters and provision of processes to resolve matters prior to their appearance in resource consent processes. Policy 4 (Integration) and Policy 5 (Land or waters managed or held under other Acts) may assist this by illustrating some of the aspects important to providing for integrated management at the planning stage.

Policies 4 and 5 provide a range of considerations for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. The approach taken is to invite practitioners to consider various situations where different areas of policy intersect.

4.6 Strategic and spatial planning

The NZCPS 2010 contains several policies relevant to strategic and planning issues (Table 8).

Table 8: Strategic and spatial planning - Key provisions and anticipated impacts²²

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 6 Policy 7	3, 4, 5, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27	All	More widespread and consistent application of basic principles for sustainable management of the coastal environment. More strategic and spatial content in statutory planning for coastal resource use and development.

²⁰ Adapted from Department of Conservation (2010c).

²¹ Rosier, (2004); Rosier (2005); Britton, (2005).

²² Adapted from Department of Conservation (2010c).

Relative to the Recommended NZCPS 2009, the Regulatory Impact Statement²³ states that the NZCPS 2010 would

“... promote more stringent controls on development with adverse effects on the natural values of coastal places and landscapes, balanced by more express recognition of the importance of development with national and regional benefits. It would support clearer spatial and strategic planning, providing more certainty to resource users and communities about where development is more and less likely to raise significant issues.”

Policy 6 (Activities in the coastal environment) and Policy 7 (Strategic planning) convey this intent together with other policies which target development activities in the coastal environment. Councils are required to include in their processes ‘recognition of the importance of development’ of various types. Policies 6 and 7 include a raft of fairly general statements about the role and placement of infrastructure and other built elements.

Both of these policies mark a departure from the Board of Inquiry recommendations²⁴ and the intent behind their inclusion is perhaps most evident in the Regulatory Impact Statement (RIS)²⁵. In practice these policies set up a tension that may be difficult for local authorities to resolve alongside the environmental protection aspects of the NZCPS 2010. Since both the ‘pro-development’ and the ‘pro-protection’ sections of the NZCPS 2010 contain ambiguities, it is likely that Councils will have considerable leeway to interpret either way, and the appropriateness of such interpretations will therefore be a key point of focus for participants in RMA processes.

The level of prescription provided in planning documents will also be important. Where a less prescriptive approach is taken, the development versus protection tensions within the NZCPS 2010 are perhaps more likely to be left for determination at the level of individual resource consents. Greater levels of prescription could improve certainty over the outcomes. For example, some authors have indicated that spatial planning approaches might produce practically useful frameworks to increase certainty for all²⁶. However greater levels of prescription which also provide effective environmental management in terms of outcomes can be difficult to design in the absence of solid information, particularly concerning the real and likely effects of different activities. Unfortunately there is often a lack of such information for New Zealand coastal environments²⁷.

Relative to the NZCPS 1994, there is a greater requirement on Councils to conduct mapping or other identification processes to identify high values areas and propose management objectives for them. Spatial approaches certainly have the advantage of providing more certainty over ‘what goes where’. However the choice of management interventions to be applied to a particular spatial unit is crucial to the operation of spatial planning approaches and their effectiveness as environmental management tools.

Issues such as the implementation, monitoring and adaptability of the management regimes envisaged for proposed spatial unit issues are all important aspects of their design. Environmental

²³ Department of Conservation (2010b).

²⁴ Board of Inquiry (2009a).

²⁵ Department of Conservation (2010b).

²⁶ Taylor (2011).

²⁷ Parliamentary Commissioner for the Environment (1999), Ministry for the Environment (2005), Environment Canterbury (2011).

controls based on spatial units should also ensure that the effects of activities supported or provided for within a particular type of unit are managed in comparable manner to other activities and areas to avoid preferential treatment²⁸.

Potential points of tension include the conceptualization and allocation of spatial units to be used. Difficulties include consideration of the many coastal activities that could be supported by spatial units, the issue of ‘picking winners’, whether a precautionary approach is reflected in spatial allocations, whether the system is vulnerable to the effects of climate change, and whether the system is consistent with an adaptive management philosophy where continual improvement is possible if required. Amongst the challenging concepts to consider is whether spatial boundaries would be subject to review at the expense of certainty.

4.7 Aquaculture and Ports

Policy 8 (Aquaculture) and Policy 9 (Ports) target two particular activities in the coastal environment. The intention appears to be to make special provision for these activities due to their importance (Table 9).

Table 9: Aquaculture and ports - Key provisions and anticipated impacts²⁹

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 8 Policy 9	6, 7	1, 2, 4, 6	More clarity and certainty in plans regarding aquaculture opportunities and limits. More effective long-term planning for development of ports and adjacent areas.

Of note is that both policies appear to be enabling for these activities and neither contains any mention of control over the impacts of these activities in the provisions set forth. There are therefore many different interpretations possible as to how Councils would provide for these policies alongside other policies in the NZCPS.

Aspects of the aquaculture policy of particular interest include a requirement for Councils to make “provision for aquaculture activities in appropriate places in the coastal environment”. This does not necessarily mean proceeding towards a mapping approach such as was the focus of the previously proposed ‘aquaculture management areas’ concept, but still leaves that option open to Councils.

Although the Government’s intention is obviously enabling, Councils are only required to make some ‘provisions’ for aquaculture in their RMA processes, which leaves it open to Councils as to the level of precaution they wish to take in accommodating aquaculture and dealing with its management.

An aspect to note is a provision for “ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose”. This has been an especially problematic area of the law to date and might open up further possibility for legal cases including reverse sensitivity claims by aquaculture operations against other users of the coastal

²⁸ Rennie (2009).

²⁹ Adapted from Department of Conservation (2010c)

environment including inter alia, Councils and the general public. Cases where this issue has been highlighted include those at Whangaroa Harbour and in the Bay of Islands³⁰. Issues around risk transfer and where the risk ought to lie are important to consider.

In summary the NZCPS 2010 is supportive of aquaculture whilst avoiding a prescriptive approach to its management. Policy 9 is consistent with, and appears to invite, a fresh round of thinking on how aquaculture can best be managed.

Policy 9 on Ports provides for a version of spatial planning which picks a winner though perhaps justifiably so. It calls for “ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes”. Therefore activities associated with ports are afforded preferential treatment above other users of the coastal environment. The management of actual and potential impacts of activities associated with ports is not addressed within the policy on ports so must be interpreted against other policies. Managing the adverse effects of diffuse discharges resulting from activities related to Ports remains an issue likely to be of concern in practice.



The NZCPS makes special provisions for ports and port operations such as the Port of Lyttelton (pictured here) in recognition of their contribution to transport networks and the economy.

³⁰ Allen et al (2007); Greening & Lewis (2007); Northland Regional Council (2008).

4.8 Reclamation and de-reclamation

Previously this topic was covered the Restricted Coastal Activity (RCA) status which meant that a separate process was applied in which the Minister of Conservation decided on resource consent applications. The RCA process does now not exist and these matters are now considered in the policy statement itself. Policy 10 (Reclamation and de-reclamation) is therefore an important new policy in the NZCPS 2010 (Table 10).

Table 10: Reclamation and de-reclamation - Key provisions and anticipated impacts³¹

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 10	6, 7, 8, 9, 14, 18, 19	1, 2, 3, 4, 5, 6	Approval for reclamation only where robust case is made for national or regional good. De-reclamation of redundant reclaimed land to assist restoration of the natural character and resources of the coastal marine area; and provide for more public open space.

Policy 10 retains all of the recommendations made by the Board of Inquiry on this subject³². The provisions of Policy 10 are two-headed. They generally discourage reclamation in the coastal marine area whilst also identifying a range of situations where reclamation might be appropriate. These include any situation where “the reclamation will provide significant regional or national benefit”. Policy 10 (3) also requires decision makers to have particular regard to the extent to which the reclamation would provide for the efficient operation of infrastructure, including ports, airports, marinas, coastal roads, pipelines, renewable energy projects, railways and ferry terminals. Taken together these provide a better opportunity than existed under the NZCPS 1994 for industry to make a case for reclamations.

These aspects of Policy 10 are somewhat consistent with the direction of other policies within the NZCPS 2010 which make special provisions for select industry sectors and matters concerning infrastructure. As with these other activities-focused policies the tension between pro-development and environmental protection requirements is largely left unresolved in the design of the NZCPS 2010 and therefore resource management processes and decisions to come will be especially important. However the Board of Inquiry was mindful of these issues as evidenced in some of their findings including that

“ ... there is a need for a specific policy setting out the basis for the use and development of the coastal marine area. That includes the general principle that it is not a place for activities that do not have a functional need to locate there, a direction in the previous NZCPS”³³.

In the case of reclamation activities, Policy 10 does provide some guidance which will assist decision making processes for proposed reclamations. For example Policy 10 (1) requires that reclamations be avoided unless land outside the coastal marine area is not available for the activity and there are no practicable alternative methods of providing for the activity. Policy 10 (2) also identifies specific issues which decision makers must “have particular regard to” concerning potential adverse effects of reclamation activities. A notable point is the introduction of a planning horizon of no less than 100

³¹ Adapted from Department of Conservation (2010c)

³² Board of Inquiry (2009a).

³³ Board of Inquiry (2009a).

years in considering the potential effects of climate change, including sea level rise, in relation to reclamation sites.

These aspects of Policy 10 contrast with the policies on Aquaculture and Ports which do not discuss the management of the potential adverse effects of those activities, relying instead on other policies within the policy statement. It is also worth noting the work of other agencies contributing to the topic of reclaimed land and its management, including the recently released 'Draft interim standard for dealing with coastal reclaimed land'³⁴.

4.9 Biological resources

The NZCPS 2010 contains a greater level of detail on the management of biological resources than did the NZCPS 1994 (Table 11). This is consistent with the direction of other policy initiatives to provide clearer direction for managing biodiversity under the RMA, especially the recent development of a Proposed National Policy Statement (NPS) on Indigenous Biodiversity³⁵. The extent of the coastal environment is also partly defined by biological entities including "coastal vegetation and the habitat of indigenous coastal species including migratory birds" (see Section 4.1).

Table 11: Biological resources - Key provisions and anticipated impacts³⁶

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 11 Policy 12	10, 13, 14, 15, 21, 22, 23	All	Continued or enhanced protection for coastal indigenous biodiversity through RMA Mechanisms. More consistent use of RMA tools to contribute to biosecurity risk management.

Policy 11 is especially important to the management of biodiversity values in the coastal environment since coastal and marine areas are generally not within the scope of the Proposed NPS on Indigenous Biodiversity. Policy 11 contains provisions which are in some respects similar to the Proposed NPS on Indigenous Biodiversity but use a different range of criteria in identifying the most important biodiversity to protect and a different philosophy on which to assess the management of effects (Figure 3).

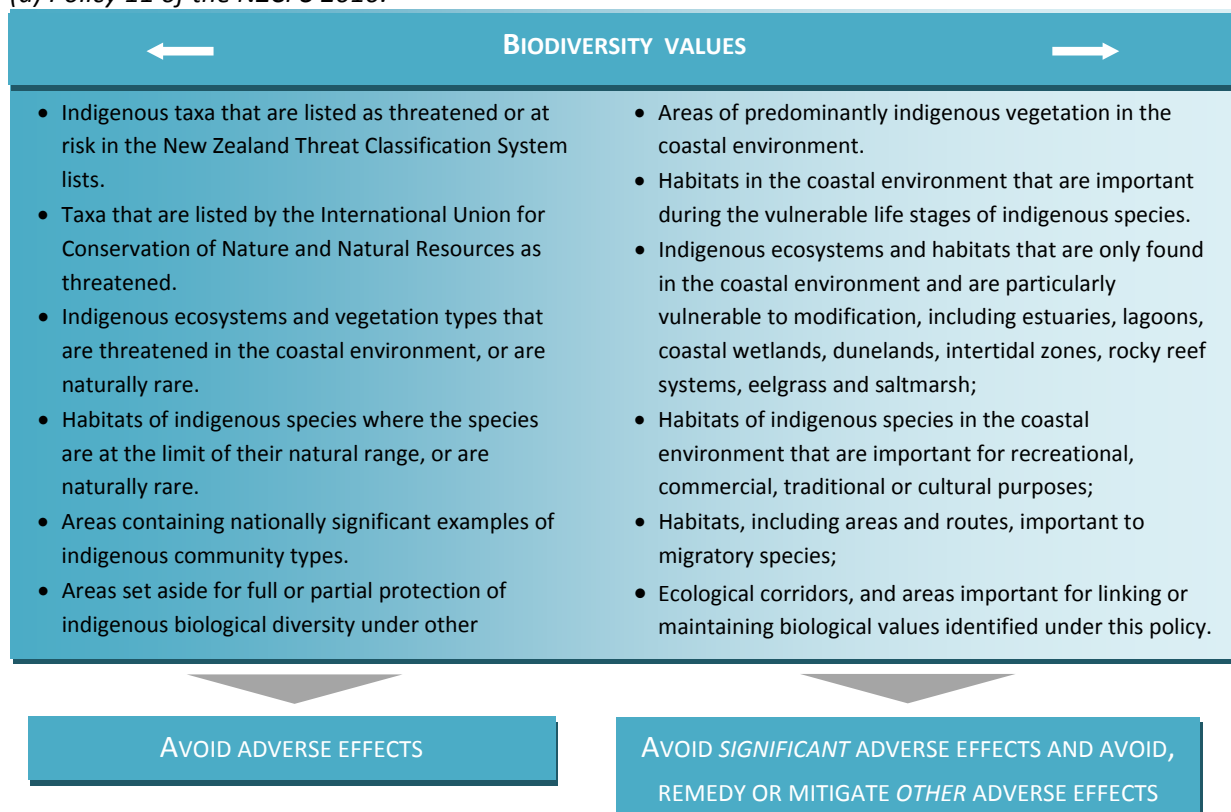
³⁴ Land Information New Zealand (2011).

³⁵ Ministry for the Environment (2011).

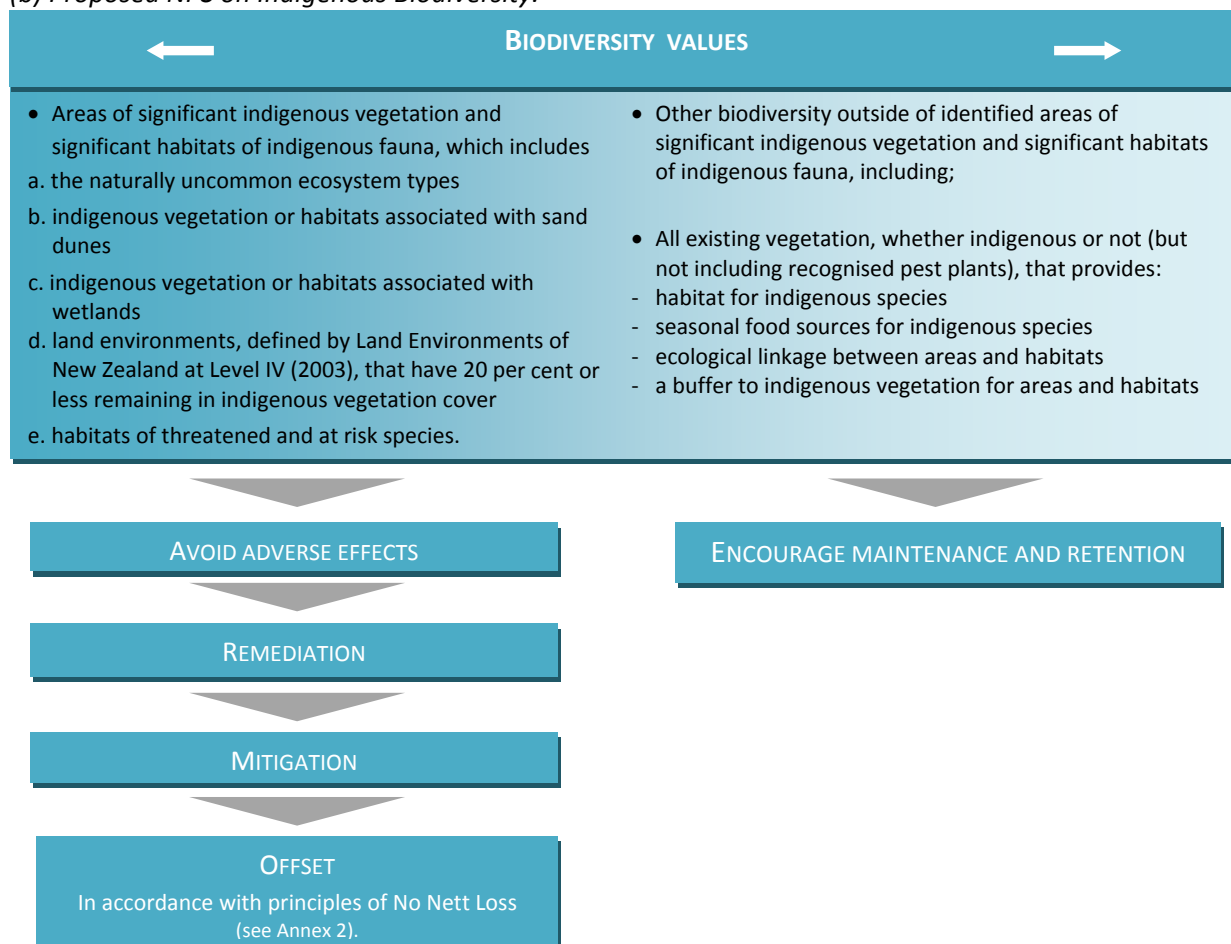
³⁶ Adapted from Department of Conservation (2010c).

Figure 3: Comparison between approaches to biodiversity management used by Policy 11 of the NZCPS 2010 and the Proposed NPS on Indigenous Biodiversity.

(a) Policy 11 of the NZCPS 2010.



(b) Proposed NPS on Indigenous Biodiversity.



Policy 11 specifically requires the avoidance of adverse effects for some elements of biodiversity. This represents a stronger requirement for protection than the provisions of the Proposed NPS on Indigenous Biodiversity and will require monitoring. Because these elements include “areas set aside for full or partial protection of indigenous biological diversity under other legislation” there is some interaction between the two policy statements and also other biodiversity provisions, for example in other policies and plans.

Overall Policy 11 represents an improvement upon the NZCPS 1994 with respect to guidance on values requiring protection and the level of protection required. Some ecosystem types which had previously been targeted such as ‘active dunes of national significance’ no longer receive specific provisions. In this case the level of protection afforded now depends on whether those areas qualify for attention under the various criteria provided, for example as an indigenous ecosystem or vegetation type that is threatened in the coastal environment. Consequently further interpretation of the meaning of these terms, including attention to their assessment in practice, will be important matters to address in implementation.

Policy 12 (Harmful aquatic organisms) addresses a topic previously dealt with under the RCA status and processes. Its main focus is to address and provide for “the control of activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread”. Some guidance on the types of activities that pose risks is included. However mechanisms by which local authorities might control those risks is left open to interpretation, and the expectation set down is to do this “as far as practicable”.

There is a notable overlap in functions between agencies in the biosecurity field, and the separation of functions and associated cost implications is one element that still requires considerable work between government agencies. This should be borne in mind by both local authorities and persons submitting on this subject, and also indicates that a continuing role for central government will be necessary to effectively address biosecurity issues³⁷.

Other policies in the NZCPS 2010 are also relevant to biodiversity management. Policy 21 (Enhancement of water quality) and Policy 23 (Discharge of contaminants) are of particular note since the outcomes sought by those policies specifically relate to adverse affects on ecosystems, habitats and / or species of value. Policy 22 (Sedimentation) is important since sedimentation is one of the biggest threats to many ecological values in the coastal marine area. Policies 13, 14 and 15 also address matters which are complementary to the protection of indigenous biological resources due to their focus on ‘natural’ character, landscapes and features. Although the degree of protection these policies will result in depends much on interpretation, as is discussed below, it has been previously established by the Courts that aspects of naturalness include ecological and biotic systems and unmodified and predominantly indigenous systems in particular³⁸. Though other factors are also important to these policies, the presence of biological components will be one of the factors to be considered in their implementation.

³⁷ For further reading see <http://www.biosecurity.govt.nz/biosec/sys>

³⁸ Environment Waikato (n.d.). For further reading see www.qualityplanning.org.nz

There are also feedbacks between some of these policy targets; for example the sedimentation levels may affect biodiversity outcomes, while protection of biodiversity in appropriate places can help control sedimentation. The integration of these policies will be important to the overall level of control over biological degradation pathways and attainment of the key biological objectives of the NZCPS 2010 including “to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems”. Taken together these policies place considerable emphasis on the protection of natural environments and their values and provide a strong mandate for improved environmental outcomes relative to the status quo.



The NZCPS 2010 provides more specific guidance on the indigenous biodiversity elements requiring protection than did the NZCPS 1994. This represents an improved position for coastal biodiversity values through attention to a wider range of species and habitats. Values identified for protection include taxa listed as threatened or at risk, a range of indigenous ecosystems, community types, and vegetation types, and consideration of indigenous species' habitats including migratory routes and ecological corridors. Here a NZ fur seal / Kekeno is seen enjoying a sunny day in pristine surroundings on the South Westland coastline.

4.10 Natural character, features and landscapes

The NZCPS 2010 builds on the previous concepts of preservation and / or protection for natural character, features and landscapes in the coastal environment (Table 12). It also contains a new policy to protect surf breaks of national significance which are identified and listed.

Table 12: Natural character, features and landscapes - Key provisions and anticipated impacts³⁹

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 13 Policy 14 Policy 15	17, 18	1, 2, 3, 4, 6	More transparent and effective plan provisions for preservation (including through restoration) of coastal natural character; more consistent approach to assessing natural character. More transparent and effective plan provisions for identification and protection of outstanding coastal landscapes and natural features; more consistent approach to assessing landscape values.

Natural character is addressed in Policy 13 (Preservation of natural character) and Policy 14 (Restoration of natural character). Policy 14 is designed to generate positive impacts over and above the provisions of Policy 13 and is therefore complementary to Policy 13 although less onerous. The approach taken is to encourage a range of active management initiatives.

Policy 13 (2) establishes that natural character is not the same as natural features and landscapes or amenity values, and may include a wide range of matters all of which relate to naturalness but which include experiential attributes, such as the sounds and smell of the sea. Other aspects pertaining to the definition of natural character remain in the realm of evolving case law. There is considerable debate on what constitutes natural character and many different interpretations have been proposed⁴⁰.

A point raised in the Section 32 report on the Proposed NZCPS 2008 was

“By not improving on this level of knowledge and providing for its management, there is a risk of natural character being degraded further over time, from the cumulative effects of subdivision, use and development.”

The Board of Inquiry process considered both the definition and assessment requirements for natural character in some detail⁴¹ and were of the view that

“A robust and consistent methodology would assist in informing this work and reducing challenges to it”.

³⁹ Adapted from Department of Conservation (2010c).

⁴⁰ Environment Waikato (n.d.), Froude et al. (2010).

⁴¹ Board of Inquiry (2009b).

However in addition to this background regarding the definition of natural character, NZCPS policies now require an assessment of the degree of natural character. Policy 13 (1) specifies the preservation and protection actions required which differ depending on whether the location in question involves 'outstanding' natural character. It is therefore difficult to evaluate the impact Policy 13 will have in practice, especially until the meaning of 'outstanding' status is better known.

Local authorities are required to map or otherwise identify "at least areas of high natural character". However there is no direct obligation for local government to provide an *a priori* determination of locations having 'outstanding' natural character, which leaves Councils free to defer such determination to a case by case basis instead of via a more strategic process. It will therefore be interesting to see the level of guidance and/or determination Councils choose to provide against the 'outstanding' natural character test. The options available appear to range from a hands-on definitive approach, to a hands-off ad hoc approach in which such determinations might be largely reliant on individual cases which are often the subject of litigious proceedings.

Policy 15 (Natural features and natural landscapes) introduces a further obligation to assess elements of the coastal environment, although the criteria differ from Policy 13. As with Policy 13 the results form the basis for determining the degree of protection necessary, and the test to be applied is again based on effects. Adverse effects are to be *avoided* where 'outstanding' status is involved whereas some degree of adverse effects is permissible otherwise.

Policies 13 and 15 are both effects based in their operation and rely on an understanding of adverse effects in particular. These are to be *avoided* where outstanding natural character is involved, whereas some degree of adverse effects is permissible otherwise. In RMA process to date the nature of adverse effects has been an evolving concept that has largely drawn upon the results of previous decisions made in respect of individual cases which become enshrined as 'case law'. However there is every opportunity for local authorities to provide further interpretation and / or specific requirements related to these concepts in their planning documents. This is especially relevant in respect of these policies which have introduced new concepts to the resource management system. In simple terms the changes in wording and meaning relative to the NZCPS 1994 create a situation where the existing case law that evolved under the earlier provisions is no longer directly relevant. Instead, new understandings must be developed to address the new ideas contained in the NZCPS 2010.

Consequently there are several steps in processes yet to come which will be critical in determining how Policy 13 and 15 will be implemented in practice, and what their impact on outcomes will be. They include determination of outstanding status, development of the new concepts of 'adverse effects' to apply to areas with outstanding status, and perhaps a fresh look at the concepts of 'significant adverse effects' and 'other adverse effects' to be applied to other areas.

Policies 15 (d) and (e) require that where the achievement of protection requires objectives, policies and rules then local government is required to map or otherwise identify the natural features and natural landscapes involved and include those objectives, policies and rules in their plans. It seems likely that interpretation and responses to these provisions will hinge on an understanding of what sort of protection is required. As discussed above, this is no simple matter since it requires consideration of the nature of threats to the natural features and natural landscapes present.

However these provisions create an expectation that some of these matters will be addressed in the next round of local government policy and plan development. This will also provides a point of focus for interested parties to address the nature of protection required to give effect to the NZCPS 2010 in the near future.

Protecting Ngunguru Sandspit



Photo
to courtesy of Adrian Gilbert

Ngunguru Sandspit is an example of a site which has generated intense interest in the ability of the RMA to protect existing values from inappropriate development. The values present include cultural, spiritual, historical, ecological and landscape values, many of which are intertwined. Development proposals over the years have met with strong resistance from the local community for whom the existing values of the spit are real and tangible. Ngunguru Sandspit is also a dynamic and erosion prone natural feature at considerable risk from coastal hazards.

In a recent decision the Department of Conservation bought Ngunguru Sandspit thus ending a long history of discussion on whether any residential development should be permitted at the site. Sites like Ngunguru have proven useful test cases to consider whether the contemporary policy setting is, or would be effective in producing desirable patterns of development. Although in this case the decision was not left to the Courts, work completed at Ngunguru and elsewhere has illustrated how key issues might be argued. It was notable that several submitters referred to work completed at Ngunguru in submissions to the Board of Inquiry during development of the NZCPS 2010⁴².

⁴² Board of Inquiry (2009b).

4.11 Surf breaks of National Significance.

Policy 16 (Surf breaks of national significance) is a new policy which makes provisions for surf break protection, although there also exists a mandate for the protection of other surf breaks under Policies 13, 14 and 15 which are inclusive of surf breaks (Table 13). Policy 16 applies to Schedule 1, Surf breaks of National Significance (Annex 1).

Table 13: Surf breaks of National Significance - Key provisions and anticipated impacts⁴³

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 16	13, 14, 15	1, 2, 3, 4, 6	More protection and consistency in plan provisions and through consent processes for surf breaks of national value for recreation.

The NZCPS 2010 defines ‘surf break’ in its glossary (see Appendix 1) and utilizes the term in several places. The definition indicates that a range of elements comprise a surf break and when taken together these constitute a recognizable part of the coastal environment. These elements include swell, currents, water levels, seabed morphology, wind, and the hydrodynamic character of the ocean including aspects of the ‘swell corridor’ and the creation and shape of breaking waves.

Policy 16 clearly identifies two major aspects as being important to protection of these surf breaks, being physical aspects of surf break environments, and aspects important to users of those environments. However the policy does not specify that these users need be surfers. Users of surf breaks for purposes other than surfing appear may also be considered and this could include the full range of users who gain enjoyment and value from surf breaks including spectators who participate from a distance.

Under Policy 16 the degree of protection required is again effects-based and effective protection mechanisms for implementing Policy 16 are likely to be methods which address and control sources of adverse effects. Being a new policy topic the definition of adverse effects in this context is not well established though it is critical to the implementation of the policy. This is therefore an evolving subject for interested parties to consider. Work completed to date with stakeholder groups suggests that collaborative and community based approaches may offer the best methods for establishing the nature of adverse effects as is needed to give effect to Policy 16⁴⁴. The same approaches may also be useful to the implementation of the other NZCPS 2010 policies which are relevant to surf breaks.

⁴³ Adapted from Department of Conservation (2010c)

⁴⁴ Peryman & Skellern (2011).



Characteristic natural features including surf breaks are afforded increased recognition under the new NZCPS 2010. Mangamaunu Bay in Kaikoura (pictured here) is one of the surf breaks of national significance⁴⁵ identified in the NZCPS 2010 for which special provisions exist under Policy 16.

4.12 Water quality

The most recent national state of the environment report clearly identified ongoing coastal water quality concerns especially regarding non-point source pollution⁴⁶. Degradation of water quality was also identified by the Board of Inquiry as one of the key coastal issues. The Board of Inquiry⁴⁷ noted that

“ ... in many parts of the coastline water quality has been significantly degraded by both point source and non-point source discharges. Sedimentation is a particular problem, stemming from urban as well as rural land use. This degradation has widespread adverse effects on economic, social, cultural and environmental wellbeing”.

The current trend towards further intensification of land-use is likely to generate additional difficulties for the enhancement or maintenance of water quality⁴⁸ and must also be addressed.

Under the NZCPS 1994 the specific water quality issues that received the most attention were treatment of human sewerage and discharges from vessels. In review of the NZCPS 1994 progress in addressing these matters at the regional level was noted, indicating that the NZCPS had been effective⁴⁹. Arguably, other issues important to water quality were the subject of weaker provisions in the NZCPS 1994 and the level of pressure related to those issues has since increased.

The following three NZCPS 1994 policies are examples of topics for which improved outcomes are still required today, indicating these policies may have been ineffective at influencing resource management practice to the required degree.

⁴⁵ See Appendix 1: Surf breaks of national significance

⁴⁶ Ministry for the Environment (2007).

⁴⁷ Board of Inquiry (2009a).

⁴⁸ Davies-Colley et al. (2003.)

⁴⁹ Rosier (2004).

Policy 5.1.5

Consideration should be given to reducing any contamination of natural water in the coastal environment caused by the discharge of trade wastes.

Policy 5.1.6

Consideration should be given to reducing contamination of natural water in the coastal environment from non-point sources.

Policy 5.1.7

Provision should be made to ensure that the public is adequately warned when the degradation of water in the coastal environment has rendered the water unsafe for swimming, shell-fish gathering or other activities.

The NZCPS 2010 has tackled water quality issues through three separate policies; Policy 21 (Enhancement of water quality), Policy 22 (Sedimentation) and Policy 23 (Discharge of contaminants) (Table 14).

Table 14: Water quality - Key provisions and anticipated impacts⁵⁰

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 21 Policy 22 Policy 23	11, 13, 14, 15, 16	1, 2, 3, 4, 6	More identification in plans of key areas for improving coastal water quality and increased application of relevant controls and conditions. More consistent application of plan controls to address sediment release, and monitoring conditions on consents. More consistent minimisation of mixing zones; continued retreat from discharge of raw sewage; increased use of plan controls and consent conditions to manage stormwater discharges; continued control of discharges from port and marine service sites.

One of the most important developments is that under Policy 21 local authorities are required to identify and include in plans, such areas of coastal water and water bodies “where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities”. Additional provisions require the water quality of those areas to be enhanced, which will need to be monitored against appropriate criteria in order to demonstrate implementation. These provisions could apply to considerable areas of the coastal environment and the method of their assessment will be important.

Both the initial assessment and outcomes monitoring will be of intense interest to tangata whenua. A notable interaction exists between the provisions for effects on cultural activities in Policy 21, and the provisions of Policy 2 including the need to bring “cultural understanding to monitoring of

⁵⁰ Adapted from Department of Conservation (2010c).

natural resources” and provide “appropriate methods for the management, maintenance and protection of the taonga of tangata whenua”. Since water is a taonga, tangata whenua can expect to play a key role in the implementation of Policy 21, particularly in the assessment processes it requires.

The Board of Inquiry also paid particular attention to the need for a defined baseline in water quality policy⁵¹. This is clearly seen in Policy 22 (Sedimentation) which calls for a present day baseline to be established and effective control measures to be put in place by local authorities to ensure no significant increase in sedimentation. Implementation of Policy 22 is therefore also relies on assessments and monitoring of relevant environmental parameters. These specific requirements for sedimentation did not exist in the NZCPS 1994 and were introduced to address an issue perceived by many as one of the most serious threats to the health of coastal ecosystems⁵².

Policy 23 (Discharge of contaminants) continues the previous strong focus on controlling human sewage and makes other specific provisions for stormwater and discharges from ports and other marine facilities. Relative to the NZCPS 1994 the policy takes a stronger stance against the discharge of human sewage direct to water. Discharges without at least some treatment are to be avoided and treated sewerage discharges are discouraged⁵³.

The Board of Inquiry considered detailed submissions on the different threshold tests and concepts that may be used to demonstrate compliance and paid particular attention to policy guidance on mixing zones⁵⁴. The approach adopted in Policy 23 requires consideration of both the sensitivity and assimilative capacity of receiving environments whilst making allowance for the use of mixing zones within which reduced water quality may be acceptable. Guidance on use of mixing zones requires that adverse effects on the life-supporting capacity of water within a mixing zone are minimized, and use of the smallest mixing zone necessary to achieve the required water quality in the receiving environment. Both requirements are partially dependent on the end-of-pipe standard applied to the discharge. Consequently the policy also requires particular regard to the nature of the contaminants to be discharged amongst an integrated set of controls. Successful implementation of the policy requires these controls to work together to achieve the appropriate water quality at each step of the contaminant management process.

The NZCPS 2010 also provides more guidance on other contaminant issues than in the previous NZCPS including more attention to sources of contaminants. Attention to stormwater is a new policy direction which represents a change of focus relative to the NZCPS 1994 in which the equivalent policy focused on reducing contamination of natural water. The new requirement is to “take steps to avoid adverse effects” associated with stormwater discharges. This is inclusive of the previous policy approach with its emphasis on effects whilst also directing attention to contaminant sources.

When considering implementation this may be a more proactive way to guide management responses to contaminant issues and non-point source pollution in particular. The stormwater focus directs attention to water that becomes surface run-off and specifically asks for a catchment by

⁵¹ Board of Inquiry (2009b).

⁵² Board of Inquiry (2009b), Peart (2007), Robertson & Stevens (2007).

⁵³ Further guidance on Policy 23 is available from the Department of Conservation; see Department of Conservation (2011a).

⁵⁴ Board of Inquiry (2009b).

catchment approach. When applied to the policy's effects based requirement this conveys an expectation that monitoring will be important and that the results will be considered at a range of scales including catchment scale. The new approach successfully conveys attention to both spatial and temporal aspects since recognised management issues for stormwater include the sources of potential contaminants and attention to the volume, timing and context of discharge events.

Under Policy 23 (4) local authorities are directed to take steps towards treating problems at their source and where possible to integrate their management responses to various issues. Controls on land use activities that may generate contaminants including sediment are among the management responses identified for implementation of the policy.

Policy 23 (5) concentrates on discharges from ports and other marine facilities. The previous focus on limiting adverse effects from vessel waste disposal is maintained and extended to a wider range of activities associated with ports and marine traffic. The scope specifically targets the operators of ports and other marine facilities. The activities to be managed include disturbance or relocation of contaminated seabed material and the dumping or storage of dredged material in addition to the control of contaminants from all sources, including the area of overlap with stormwater and human sewerage provisions elsewhere in the policy.

4.13 Public access

Several topics related to public access were considered in depth in the proposed NZCPS 2008⁵⁵ and in the Board of Inquiry process which followed. All recommendations of the Board of Inquiry were carried through to final NZCPS 2010 and the analysis provided by the Board provides considerable detail on the nature of the issues and options involved⁵⁶.

The Board of Inquiry reported that

“The majority of access issues reported through the review process relate to threats to walking access to and along the coastal marine area, and the risk of reduced walking access in some cases and missed opportunities for enhancement in others”.

Many submitters were also in favour of strengthened provisions for walking access, with an exception being regional and district councils who submitted that walking access issues were beyond the scope of the RMA. However the Board of Inquiry found walking access and other public access issues to be well within the scope of the RMA since Section 6(d) states that as a matter of national importance decision makers are to recognise and provide for “the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers”. Public access issues are also relevant to other sections of the RMA including under section 7(c) which concerns the maintenance and enhancement of amenity values.

Consequently the NZCPS 2010 identifies walking access as a fundamental consideration for those exercising functions and powers under the RMA. It also provides further guidance on the

⁵⁵ Department of Conservation (2008a).

⁵⁶ Board of Inquiry (2009b).

management of vehicles on beaches and wider issues concerning community needs for open space in coastal environments (Table 15).

Table 15: Public access - Key provisions and anticipated impacts⁵⁷

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 18 Policy 19 Policy 20	7	1, 2, 3, 4, 6	More strategic statutory planning for maintenance and enhancement of public open space in the coastal environment. More substantial and consistent provision in plans and through the consent process for public walking access and a continued cautious approach to access restrictions. More widespread application of plan provisions as part of broader approach to managing effects of vehicle use on the coast, especially beaches.

The Board of Inquiry regarded that other legislation which addresses public access such as the Walking Access Act 2008 did not remove the need to make provisions under the RMA. Processes under the RMA were seen as providing important opportunities for better and more integrated public access planning. Policy tools prepared by councils under other legislation including the Local Government Act were seen as being complementary measures that should contribute to the implementation of public access requirements made under the RMA.

The focus on walking access introduces a new policy topic for the NZCPS. The reasoning for its inclusion relates to the need to distinguish public walking access from other forms of access in policies and plans, and to provide more certainty concerning its future management including potential conflicts with other uses⁵⁸. The intention is to maintain walking access to and along the coastal marine area as a national priority. Similar needs had also been identified in an earlier review of public access provisions in the NZCPS 1994⁵⁹.

The NZCPS 2010 also recognises both direct and indirect threats to public access. One group of direct threats involves the dynamic nature of processes affecting esplanade reserves and strips along coastal boundaries. Issues include the effects of coastal erosion on marginal strips particularly those provided on subdivision and development where private land is in close proximity to the landward edge of the coastal marine area. These situations have resulted in considerable public concern about maintenance of access to the coast⁶⁰.

The previous NZCPS 1994 identified the enhancement of public access as a matter of national importance in Policy 3.5.3 including through the creation of esplanade reserves, esplanade or access strips. However subsequent reviews found that this policy had been not consistently implemented in resource consent and plan development decisions⁶¹. Guidance on the location of public access

⁵⁷ Adapted from Department of Conservation (2010c).

⁵⁸ Board of Inquiry (2009b).

⁵⁹ See NZCPS review *Scoping Paper for Public Access* (March 2006)

⁶⁰ Peart (2009).

⁶¹ Board of Inquiry (2009b).

provisions has been one area of weakness⁶² and another area of difficulty concerns the choice of mechanism which should be used to provide certainty over such access. Under the RMA councils are able to employ esplanade reserves and strips and other access strips though there is no requirement that one instrument be given priority over others. This choice of mechanisms also relates to implementation of the Queen's chain concept and in particular the question of whether it should be reaffirmed and further embraced in relevant policies⁶³.

The previous position on these matters is maintained in the NZCPS 2010 which again leaves the choice of mechanism to local government discretion. However there is a much stronger requirement to actively deal with public access issues in some way, and walking access issues in particular. This may require councils to be more proactive in utilising the opportunities available under the RMA when dealing with subdivision, use and development decisions.

The ability to provide assurance of walking access includes decisions on where the risk should lie in instances of coastal erosion and sea level rise, which it turn may influence property development decisions. The choice of mechanisms will be an important aspect of finding solutions. For example a problem with esplanade reserves is that by definition their location relates to a fixed survey position with no ability to move with accretion or erosion of the coastline⁶⁴. Provisions in the RMA and elsewhere in New Zealand history also make it clear that such access should be provided and maintained over the full length of the coastal marine area except where special circumstances exist such as the presence of sensitive sites. Implementation options therefore require attention to integration between policies and to the longevity of results in order to be effective.

Policy 18 (Public open space) identifies that similar matters also apply to the issue of public open space including the "future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements". The focus on public open space represents a continuation of provisions in the NZCPS 1994 where the topic was related to the maintenance and enhancement of amenity values. However the NZPS 2010 provides more guidance on the matters to be considered in managing public open space including the expectation of future proofing against the likely impact of coastal processes and climate change, and the integration of public open space areas with walking access provisions.

Policy 20 (Vehicle access) is another important addition which was included to give specific guidance on an issue where public access may be in conflict with other values and objectives. Though no such policy existed in the NZCPS 1994 some local authorities have already developed management responses to the relevant issues using a range of existing policy tools including non-statutory measures. In the Board of Inquiry process many councils submitted that RMA tools were not well suited to dealing with vehicle access issues. However there are also many examples of councils having difficulty attracting buy-in from local communities for restricted access proposals. The Board of Inquiry recommendations reflected the philosophy that a national policy might assist councils engaging with communities on the management of vehicle access in coastal environments⁶⁵.

⁶² Rosier (2004).

⁶³ Land Access Ministerial Reference Group (2003).

⁶⁴ Quality Planning (2010).

⁶⁵ Board of inquiry (2009b).

The approach used in the NZCPS 2010 begins with a clear separation of vehicle access issues from other public access issues such as walking access. Policy 20 then centres on providing control to prevent adverse effects. It is notable that in many districts the jurisdiction of the territorial authority now includes the area down to the line of mean low water springs. This provides territorial authorities with better opportunities to address control of vehicle access on beaches by enabling Local Government Act provisions such as bylaws, or alternatively, use of the Land Transport Act 1998 which defines all beaches as roads. These are all means by which local authorities may give effect to the vehicle access expectations in the NZCPS 2010. A further practical measure contained in Policy 20 is the requirement that councils identify the locations and in some cases times where vehicular access is required and may be permitted.



The NZCPS 2010 considers a range of public access issues and makes a distinction between walking access and other forms of access. Clear direction is provided on public walking access to, along and adjacent to the coastal marine area, and local authorities are required to recognise the public expectation of, and need for, walking access to and along the coast that is practical, free of charge and safe for pedestrian use. This puts the onus on Councils to deal with public access issues in a proactive manner which is good news for many coastal user groups including recreational fishing interests. Here whitebaiters are seen enjoying an early morning on the South Island's West Coast.

4.14 Coastal hazard risks

The management of coastal hazards has been an important coastal planning subject for some time and was the subject of six policies in the NZCPS 1994. Effective and proactive risk management requires a good information base and attention to important implementation issues including the choice of appropriate planning horizons and levels of precaution to apply.

In the review of the effectiveness of the NZCPS 1994 recommendations included the need to strengthen NZCPS policies to encourage more effective research and monitoring of coastal processes as is required to underpin the development of sound management responses⁶⁶. The coastal hazard provisions in the NZCPS 1994 were also the subject of a specific review which highlighted the need to reduce risks to property assets using techniques capable of addressing natural dynamic coastal processes and also the requirements of other NZCPS policy topics such as the management of coastal habitats, natural features, public access and amenity values⁶⁷. The implications include that the suitability of hard protection works such as seawalls for coastal hazard management may be questionable in some cases due to the adverse effects they may produce on other policy objectives.

These findings set the scene for a move towards better integration of coastal hazard management provisions and other NZCPS policies. The better understanding of the likely effects of climate change that has emerged since 1994 is another important component of this picture and relates to the size and urgency of the responses now required.

Although Policy 3.4.5 in the NZCPS 1994 required that “new subdivision, use and development should be so located and designed that the need for hazard protection works is avoided”, its implementation is clearly dependant on the availability of robust predictive models or alternatively a very precautionary approach. Under Policy 3.4.6 which required that “where existing subdivision, use or development is threatened by a coastal hazard, coastal protection works should be permitted only where they are the best practicable option for the future”, similar matters were also relevant to decisions made. Consideration of best practicable options for the future has proved problematic since interpretation has also depended on the fast moving field of climate change science. Meanwhile the size of potential risk issues has escalated rapidly given the pronounced expansion in coastal property development in recent years.

These matters were considered in development of the proposed NZCPS 2008 and in the Board of Inquiry process. Both concluded that more specific direction to local authorities and decision makers on managing coastal hazard risks was required. In considering the scope of coastal hazard provisions to include in the NZCPS 2010 the Board of Inquiry noted that the interrelationship between regional policy statements, regional plans and district plans is particularly important to coastal hazard management since these issues are characteristic of coastal margins⁶⁸. Section 62 of the RMA which deals with the content of regional policy statements states that “regional policy statements (RPS) provide a major policy framework role for stating which local authority is responsible for managing natural hazards.” Consequently the Board regarded the NZCPS 2010 to be one of the important tools

⁶⁶ Rosier (2004).

⁶⁷ Jacobson (2004).

⁶⁸ Board of Inquiry (2009b).

available to guide responses to coastal hazard risks due to its influence on regional policy statements, and made recommendations accordingly.

All of the Board of Inquiry recommended policies on coastal hazards were carried through to the final NZCPS 2010 with minor changes (Table 16).

Table 16: Coastal hazard risks - Key provisions and anticipated impacts⁶⁹

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 24 Policy 25 Policy 26 Policy 27	3, 6, 7	1, 2, 5, 6	Continued development of hazard zone identification in plans, with more consistent use of longer time horizon and regard to climate change impacts. Continued shift from predominant focus on protection works to 'portfolio' of strategies for reducing hazard risk for both new development and existing assets at risk.

Policy 24 (Identification of coastal hazards) addresses the fundamental step of identifying areas of risk as is necessary before consideration is given to controls on land use activities. Requests made by submitters to the Board of Inquiry included calls for further guidance on appropriate risk methodologies and timeframes for evaluating coastal hazard risk. Despite there being some problems establishing methodology capable of making reliable longer term projections⁷⁰ the Board concluded that a planning horizon of at least 100 years is required when assessing risk. Use of the most current national and international climate change information was seen as the best practical option for the problem of the increased uncertainty when making calculations over longer time periods.

Key aspects of Policy 25 (Subdivision, use, and development in areas of coastal hazard risk) include the requirement to avoid increasing the risk of harm or loss from hazards using a range of approaches. These are also to be assessed against a planning horizon of at least 100 years and consider a wide range of coastal hazards including tsunami and other inundation events. The concept of risk is defined and is taken to mean a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence. Consistent with the recommendations of earlier reviews⁷¹, Policy 25 also contains specific guidance to encourage the location of infrastructure away from areas of hazard risk where practicable and to discourage the use of hard protection structures.

Implementation aspects include substantial onus on councils to acquire hazard risk data and also address the issue of uncertainty when identifying at-risk locations. The development of relevant plan provisions to apply to these locations will also be critical. A strong mandate to make better use of opportunities for retreat exists for dealing with both new and existing coastal development and should be reflected in the suite of strategies chosen.

⁶⁹ Adapted from Department of Conservation (2010c).

⁷⁰ Ministry for the Environment (2008).

⁷¹ Jacobson (2004), Rosier (2004).

Policy 26 represents a continuation of similar provisions in the NZCPS 1994. The intention is that local authorities consider the protection for built environments that can be provided through the protection or restoration of natural features. A notable change involves the omission of mangroves which were previously one of the natural features to be considered for these purposes. Mangroves were omitted due to concerns over the undesirable expansion of mangroves in some areas⁷².

The possible role of esplanade strips and reserves as natural defences was also considered by the Board of Inquiry in response to suggestions that these areas may provide buffering functions. The Board concluded that councils do not have responsibility to protect or restore these areas as a means of protecting private property despite that they may become eroded by natural processes. Thus they are not identified amongst the natural features to be considered under Policy 26⁷³. The natural features that are recognised by the policy include “beaches, dunes, wetlands, intertidal areas, estuaries, coastal vegetation and barrier islands”, none of which are defined in the glossary. This leaves some room for councils to interpret as appropriate.

Policy 27 (Strategies for protecting significant existing development from coastal hazard risk) provides guidance on a range of options for reducing coastal hazard risk that should be considered. Many of the points raised relate to the importance of managing public perceptions and expectations as a component of coastal hazard management. The distinction between hazard and risk management is important since many coastal hazards may not be amenable to successful human manipulation. This would seem to be especially relevant to management of periodic events including tsunami inundation risks which are specifically included in the NZCPS 2010.

The focus is purposely on risk throughout the provisions made for coastal hazard management in the NZCPS 2010 including Policy 24 (Identification of coastal hazards) which requires the assessment of “hazard risks”. The subject of risk transfer may become increasingly important, especially in relation to sea level rise and appropriate locations for coastal development. This may be one aspect of a broadening of risk management strategies away from reliance on engineered approaches to known or expected hazard profiles, and is a relevant consideration for dealing with uncertainty.

Policy 27 strikes a balance between discouraging the use of hard protection structures and recognizing instances in which they may be required. It invites local authorities to consider the environmental and social costs that may result from permitting hard protection structures and focuses on reducing the need for hard protection structures. Long-term sustainable risk reduction approaches which might include soft engineering methods and managed retreat are identified as preferable strategic options. The policy conveys an expectation that alternatives to hard protection structures should be employed where possible as appropriate versus the option of ‘do-nothing’. The timeliness of initiating such measures is one of the considerations for their successful implementation. This is specifically mentioned in terms of guidance to identify and plan for “transition mechanisms and timeframes for moving to more sustainable approaches”.

The idea of “long term sustainable risk reduction approaches” is not defined though would include approaches which are consistent with other NZCPS policy objectives. This illustrates that local authorities require an integrated approach to the successful management of coastal hazard risks. For example risks to coastal property can be influenced by upstream human interventions due to the

⁷² Morrisey et al (2007).

⁷³ Board of Inquiry (2009b).

connectivity of catchments and coasts. Sedimentation mechanisms and their interaction with dynamic coastal processes is one such topic to consider. Although interpretation of the best management options to address such interrelated issues remains with local authorities, the NZCPS 2010 encourages such integration by guiding local authorities towards use of a suite of measures when considering coastal hazard risk and its management.



The interplay between different values and sources of risk is especially evident in some coastal environments. River mouths provide one example where catchment level effects and dynamic coastal processes combine to influence a wide range of human values and their management. As is typical of many New Zealand river mouths, the Hurunui River mouth (pictured here) provides for many values. It is an important site for its cultural, recreational, biodiversity and landscape values, and is host to a small settlement of coastal properties.

4.15 Monitoring and review

Under Policy 28 (Monitoring and reviewing the effectiveness of the NZCPS) the Minister of Conservation is responsible for monitoring and reviewing the NZCPS (Table 17). This includes evaluating the effect of the NZCPS on regional policy statements, plans, resource consents, and other decision making, as was required under the previous NZCPS. It appears that the opportunity to extend this to considering the effect on environmental outcomes has been missed. This would require more specific direction for local authorities to collect and evaluate information pertaining to their management activities.

Table 17: Monitoring and review - Key provisions and anticipated impacts⁷⁴

Key provisions	Related Policies	Relevant Objectives	Anticipated Impact
Policy 28	All	All	Collation of data on policy impact to inform future policy development.

Review of the previous NZCPS found that the monitoring of environmental outcomes was an area of poor performance⁷⁵. Assessment of the level of influence achieved by plans and policy statements on real results in the environment was also found to be a related area of weakness. Unfortunately these weaknesses have not been specifically addressed in the NZCPS 2010 monitoring policy. There are no requirements directing local authorities to improve their monitoring programmes. However many of the NZCPS 2010 policies are reliant on effective monitoring to inform their successful implementation.

The monitoring provisions that are present in the NZCPS 2010 are directed at the Minister of Conservation and require that the Minister should “in collaboration with local authorities collect data for, and, as far as practicable, incorporate district and regional monitoring information into a nationally consistent monitoring and reporting programme”. Policy 28 falls well short of the recommendation of the previous review⁷⁶ that “action is needed at a national level of planning to clarify responsibilities for environmental monitoring”. It is possible this could happen in a parallel or related process though there have been no moves to do so to date. Consequently both the responsibilities for, and the funding of, essential monitoring components remain areas of concern for effective implementation of the NZCPS 2010.

Funding aspects are notable and in particular questions of where the costs should lie remain unresolved. The Section 32 evaluation provided by the Department of Conservation is informative on these matters and illustrates some of the costs inherent in the design of the NZCPS 2010 as well as the benefits⁷⁷. Considerable implementation costs including data acquisition and other plan development and transitional costs are expected to fall on local government. The options available to councils include a range of cost recovery measures which may need to be employed in order to

⁷⁴ Adapted from Department of Conservation (2010c).

⁷⁵ Rosier (2004).

⁷⁶ Rosier (2004).

⁷⁷ Department of Conservation (2010c).

produce an appropriate level of data collection and monitoring to inform decision making. Given the general weakness in monitoring performance nationwide these challenges may apply to both new and existing policy topics. There is considerable variance in the level of additional investment required by different local authorities related to the state of their current monitoring capacity and data resources in particular.

It appears that the NZCPS 2010 alone will not be sufficient to ensure the implementation of effective monitoring programmes despite their key role in the design of successful management actions. In the absence of any additional arrangements councils may be faced with difficult decisions on funding these activities above and beyond their current workload. Solutions to these matters can be expected to be critical to the breadth and depth of the monitoring functions they take on.



Attention to information gaps, and also to the effects of ongoing change, is important for the implementation of many NZCPS 2010 policies. Monitoring and review activities have been an area of weakness in the past and will generally need to be improved in respect of many coastal management topics. They are likely to be especially important where human resource use is intensifying, and at existing high use sites such as Milford Sound / Piopiotahi (pictured here).

5. Transition from the NZCPS 1994 to NZCPS 2010

The NZCPS 2010 contains clear statements as to its application and these require it to be given effect to 'as soon as practicable'⁷⁸. The way in which local authorities will amend policy statements and plans including proposed plans and variations to give effect to the NZCPS 2010 is yet to be seen, though opportunities for public input can be expected.

An aspect to note (and a subject for case law), is a provision which indicates that *all* resource consent applications are to have regard to the relevant provisions of the NZCPS 2010. Applications pre-dating gazettal of the NZCPS 2010 appear to fall under this provision, a situation which is likely to affect the outcome of some current applications.

The Department of Conservation has produced further information on transitional arrangements and is recommended reading⁷⁹.

6. Conclusions

The test for the NZCPS 2010 will be the extent to which it has a real impact on planning and decision making under the RMA. Ultimately the way that it is interpreted and applied by all participants in RMA processes will be important. In the immediate future the requirement is for local government to both interpret and give effect to the NZCPS objectives and policies in regional and district planning documents. These provisions will embody the next round of thinking in New Zealand coastal management. In addition all resource consent process are required to have regard to the relevant provisions of the NZCPS 2010.

When compared to the NZCPS 1994, the NZCPS 2010 contains new policies, changes of emphasis and some additional detail especially regarding the treatment of certain activities. In evaluating these changes against the target objectives it is apparent that the NZCPS 2010 will create both opportunities and challenges for the management of coastal environments. A major challenge will be the achievement of integration across the relevant policies and objectives. This seems likely to be a problematic area in practice since the NZCPS 2010 provides both stronger environmental protection measures and new policies favouring activities which are potential sources of adverse effects compared to the previous policy setting.

The design of regional and local responses must take these tensions into account. It can be expected that the views of interested parties will play an important role since further interpretation and contextualisation of the national guidance is required. These processes will establish the detail required to give effect to the NZCPS and will strongly influence on the pattern of outcomes achieved in New Zealand's coastal environments.

⁷⁸ NZCPS (2010) page 5.

⁷⁹ Department of Conservation (2011b).

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Appendix 1: Surf Breaks of National Significance⁸⁰**Northland**

Peaks – Shipwreck Bay

Peaks – Super tubes – Mukie 2 – Mukie 1

Waikato

Manu Bay – Raglan

Whale Bay – Raglan

Indicators – Raglan

Taranaki

Waiwhakaiho

Stent Road – Backdoor Stent – Farmhouse Stent

Gisborne

Makorori Point – Centres

Wainui – Stock Route – Pines – Whales

The Island

Coromandel

Whangamata Bar

Kaikoura

Mangamaunu

Meatworks

Otago

The Spit

Karitane

Whareakeake

Papatowai

⁸⁰ From NZCPS (2010).

Appendix 2: Principles to be applied when considering a biodiversity offset⁸¹

1. **No net loss:** A biodiversity offset should be designed and implemented to achieve in situ, measurable conservation outcomes which can reasonably be expected to result in no net loss and preferably a net gain of biodiversity.

The offset design will demonstrate that:

- a. the key biodiversity components affected by the activity are identified, and an explanation provided as to how this was done, the basis for doing so, and how the key biodiversity components have been included in the offset design
 - b. the anticipated losses of biodiversity at the site of the activity and the anticipated gains at the offset site have been calculated to determine "no net loss" and preferably "net gain" and documented
 - c. appropriate measures/metrics that address the quality and quantity of biodiversity have been identified and used in the loss-gain calculations
 - d. a suitable basis for assessing a 'like-for-like-or-better' approach to equivalence has been identified and used for the offset design
 - e. any temporal loss of biodiversity between the time of the project's impact and the time the offset will mature has been considered and addressed
 - f. intended conservation outcomes for biodiversity components within the offset are explicitly described
 - g. uncertainty and risk is explicitly built into the loss-gain calculations.
2. **Additional conservation outcomes:** A biodiversity offset should achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations.

The offset design will demonstrate that:

- a. conservation gains have been predicted without the offset project ("without-offset") and with the offset, and on this basis, evidence is provided to show that the anticipated conservation outcomes would not have occurred without the offset.

3. **Adherence to the mitigation hierarchy:** A biodiversity offset is a commitment to compensate for significant residual adverse impacts on biodiversity identified after appropriate avoidance, minimisation and on-site rehabilitation measures have been taken according to the mitigation hierarchy.

The offset design must demonstrate:

- a. how the activity addresses direct and indirect effects on specific components of biodiversity by:
 - i. avoidance measures
 - ii. minimisation measures
 - iii. on-site rehabilitation measures
 - b. that the biodiversity offset only addresses the residual effects of the activity, namely those effects left after all the appropriate avoidance, minimisation and rehabilitation actions have been taken.
4. **Limits to what can be offset:** There are situations where residual effects cannot be fully compensated for by a biodiversity offset because the biodiversity affected is vulnerable or irreplaceable.

⁸¹ From Ministry for the Environment (2011).

These situations will be demonstrated when:

- a. A comprehensive assessment has been undertaken to determine whether, and if so which, highly vulnerable and irreplaceable biodiversity components are present and are affected by the activity. In determining when offsetting is not appropriate local authorities should have regard to whether the vegetation or habitat:
 - i. represents a non-negligible proportion of what remains of its type
 - ii. is now so rare or reduced that there are few options or opportunities for delivering the offset
 - iii. is securely protected and in good condition so there is little opportunity to offset the biodiversity components in a reciprocal manner
 - iv. is threatened by factors that cannot be addressed by the available expertise.

If there are residual effects on biodiversity that are not, or seem likely not, to be capable of being offset, any measures taken to address them, by way of environmental compensation or otherwise, should not be considered to be a biodiversity offset for the purposes of Policy 3.

5. **Landscape context:** A biodiversity offset should be designed and implemented in a landscape context to achieve the expected measurable conservation outcomes taking into account available information on the full range of biological, social and cultural values of biodiversity and supporting an ecosystem approach.

The offset design will demonstrate that:

- a. it contributes to and complements biodiversity conservation priorities/goals at the landscape and national level.

6. **Long-term outcomes:** The design and implementation of a biodiversity offset should be based on an adaptive management approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the project's impacts and preferably in perpetuity.

The offset design will demonstrate that:

- a. management arrangements, legal arrangements (eg, covenants) and financial arrangements (eg, bonds) are in place that allow the offset to endure as long as the effects of the activity, and preferably in perpetuity
- b. a biodiversity offset management plan is prepared and implemented which:
 - i. contains specific, measurable and time-bound targets for the biodiversity offset
 - ii. predicts when no net loss/net gain will be achieved
 - iii. provides mechanisms for adaptive management of the offset, using the results of periodic monitoring and evaluation against identified milestones to determine whether the offset is on track and rectify if necessary
 - iv. establishes roles and responsibilities for managing, governing, monitoring and enforcing the offset
- c. where milestones are not achieved, an analysis is undertaken to identify the causes of non-achievement and to revise the offset management plan to avoid similar occurrences
- d. a decision-making process has been established to correct problems that arise and enable adaptive management of the biodiversity offset for the timeframe over which the offset's measurable conservation outcomes will be achieved and maintained.

7. **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.