

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 008 Coastal
environment**

July 2016

Report to Auckland Council - Hearing topic 008 Coastal environment

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1. Hearing topic overview

1.1. Topic description

Topic 008 - addresses the regional policy statement provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
Coastal	B4 Natural Heritage - Coastal Environment B7 Sustainably Managing Our Coastal Environment	B8 Coastal environment

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

- i. The regional policy statement is a document in its own right, i.e. standalone. It no longer has coastal environment objectives and policies tagged as regional and district plan provisions. The coastal provisions are now contained in the regional policy statement, and in the following chapters of the Plan - D Overlays, E Auckland-wide and F Coastal (the regional coastal plan).
- ii. Section B4 (Natural Heritage - Coastal Environment) of the notified Plan, relating to the natural character of the coastal environment, has been relocated to the Chapter F Coastal of the Plan.
- iii. The Panel has clarified and simplified the wording of many of the provisions as they were overly complex given the tagging issue and a number of the provisions being written as 'subject to' or as suggested by the Panel – 'while achieving'.

- iv. Functional need has been retained as a separate matter from operational need. However a policy has been included to support activities that have an operational need and where a location outside of the coastal marine area is not practicable. Definitions of functional need and operational need have been included in the Plan.
- v. A new policy, as proposed by the Council, has been included regarding coastal setbacks and public access. This is to give effect to the New Zealand Coastal Policy Statement 2010.
- vi. Specific policies have been included regarding ports, reclamation, aquaculture and minerals to give effect to the New Zealand Coastal Policy Statement 2010.
- vii. The provisions relating to Managing the Hauraki Gulf/Te Moana Nui o Toi/Tīkapa Moana, have been retained, but have been consolidated, clarified and simplified.

1.3. Overview

There was extensive mediation and some expert conferencing in relation to this topic, and the provisions of the regional coastal plan. The outcome of this process was that many of the matters raised in submissions were agreed, or partially agreed or not pursued. While this report addresses all of the submissions on this topic, it focuses on the main issues that were outstanding or relate to changes to the Plan that need to be explained.

As noted above and explained in the Panel's report to Auckland Council – Overview of recommendations July 2016, the regional policy statement is a document in its own right – i.e. standalone. It no longer has objectives and policies tagged as regional and district plan provisions. As also explained, the structure of the regional policy statement has been amended and the topics covered in this report now all sit within Chapter F Coastal.

In making the regional policy statement stand alone, the Minister of Conservation was concerned to ensure that the coastal provisions in the Plan gave effect to the New Zealand Coastal Policy Statement 2010. The Panel considers that in terms of the structure of the Plan, the location of the relevant provisions, and the redrafting of a number of the objectives and policies, the New Zealand Coastal Policy Statement is given effect to as required by the Resource Management Act 1991.

There was also considerable discussion about how the coastal provisions had been constructed, where many were drafted as 'subject to' a range of other policies in this and other sections of the regional policy statement, particularly sections relating to natural character, natural landscapes and features, and biodiversity. The Panel also notes that as well as the regional policy statement, the entire Plan needs to be read as a whole rather than having complex and potentially confusing cross-referencing, particularly where the regional policy statement provisions were also tagged as plan matters (now no longer the case). For this and other reasons regarding the restructure of the regional policy statement and the plan provisions, addressed in more detail below, the policy construct has been changed and simplified.

The policy approach to 'functional need' has been retained as a separate matter and not bundled with 'operational need'. A policy on operational need for activities (including infrastructure) has been included into the regional policy statement. This is to recognise that

at times it will be more efficient and effective for activities to locate in the coastal marine area and where a location outside of the coastal marine area is not practicable. The provision of some infrastructure is likely to take advantage of this policy position. An operational need is also supported by the New Zealand Coastal Policy Statement provisions.

The Panel has also recommended a number of additional policies to give effect to the New Zealand Coastal Policy Statement. These include:

- i. coastal setbacks and public access;
- ii. ports;
- iii. reclamation;
- iv. aquaculture; and
- v. minerals.

There was general agreement with respect to public access and open space. Public access to and along the coastal marine area is a matter of national importance (section 6) in the Resource Management Act 1991, with the provisions being similar to those in the operative regional policy statement.

The provisions relating to Managing the Hauraki Gulf/Te Moana Nui o Toi/Tikapa Moana, have been retained, but have been consolidated, clarified and simplified. This has been done having heard a number of submissions and evidence, but also in terms of the overall re-drafting of the regional policy statement.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in Section 7 Reference documents.

2. Structural changes to the coastal environment section of the regional policy statement

2.1. Statement of issue

As has already been addressed in other reports, the Panel recommends that the regional policy statement be a standalone document. The Panel has redrafted the regional policy statement accordingly, removing the tagging provisions from the entire statement, including those relating to the coastal environment. This has resulted in the notified regional policy statement coastal provisions being also located in the overlay, Auckland-wide and coastal sections of the Plan (see 1.2 i above).

Also as part of the structural changes to the regional policy statement, the Panel has sought to contain coastal environment provisions in one place as far as is possible. Accordingly the natural character provisions that were in the natural heritage section of the regional policy statement have been included in coastal environment section. An exception to this approach is water quality, where all water issues have been addressed together, and this is set out in the Panel's Report to Auckland Council - Hearing topic 006 Natural resources and 010 Biodiversity July 2016.

The Minister of Conservation was concerned to ensure that the restructured coastal provisions still gave effect to the New Zealand Coastal Policy Statement 2010. She set out which provisions she sought to remain in the regional policy statement.

2.2. Panel recommendation and reasons

Due to the restructure of the regional policy statement, the coastal provisions have been split across the regional policy statement, the regional coastal plan, the regional plan and district plan parts of the Unitary Plan.

The regional policy statement coastal provisions have similar objectives as the other value-based chapters:

- i. areas of the coastal environment with outstanding and high natural character are to be preserved and protected from inappropriate subdivision, use and development;
- ii. subdivision, use and development are designed, located and managed to preserve the characteristics that contribute to natural character; and
- iii. that where practicable, areas with degraded natural character are restored and rehabilitated.

In addressing the objectives the policies set out the identification and evaluation of these outstanding and high natural character areas, based on a range of factors. The areas that satisfy those factors are included in Schedule 8 Outstanding Natural Character and High Natural Character Overlay Schedule.

Those coastal environment provisions that were in the notified regional policy statement but tagged rps/rcp/rp/dp have been relocated to other parts of the plan addressing the regional coastal plan, the regional plan and district plan parts of the Unitary Plan.

A memorandum on behalf of the Minister of Conservation was received on 28 September 2015, identifying the provisions that in her opinion should remain in the regional policy statement. This was in response to the Panel's guidance that the regional policy statement would stand alone - and a number of provisions would be relocated from the regional policy statement to the regional and district provisions in the Plan.

Ms Crossen, legal counsel for the Minister, noted that some of the provisions that should remain at the regional policy statement level should also be duplicated within the other sections of the proposed Auckland Unitary Plan, and that this matter was addressed in the Minister's evidence (Mr Riddell - the expert planner).

In summary, Ms Crossen stated that the objectives and policies that meet one or more of the following criteria should remain in the regional policy statement:

- a) The objective or policy gives effect to the New Zealand Coastal Policy Statement (s 62(3) of the Resource Management Act 1991);
- b) The objective or policy addresses a significant resource management issue for the region (s 62(1) of the Resource Management Act 1991); or
- c) The objective or policy provides direction applicable to the other sections of the proposed Auckland Unitary Plan (Regional Coastal Plan, Regional Plan and District Plan) (s 67(3)(c) and 75(3)(c) of the Resource Management Act 1991).

The Minister identified those provisions that should remain in the regional policy statement based on the closing version for the council. The sections are:

B4.3.1 – Natural Character of the Coastal Environment, Wetlands, and Lakes and rivers and their margins (noting that the Natural Character of the Coastal Environment is now in Chapter B8 Coastal).

B4.3.2 – Landscape and Natural Features, Volcanic Viewshafts and Height Sensitive Areas (now Chapter B4 Natural heritage).

B4.3.4 – Biodiversity (noting that this is now in Chapter B7 Natural resources).

The Panel has considered the Minister's request and is confident that the redrafting as summarised above and the relocation of some of the provisions, results in the Plan giving effect to the New Zealand Coastal Policy Statement 2010. While the Panel has not duplicated provisions it has, more appropriately in the Panel's view, redrafted the regional policy statement provisions to be clear and directive, focusing on those matters that need to be in the regional policy statement. The evaluative policies (i.e. those that are to be used to assess resource consent applications) that were contained in the regional policy statement have been relocated to more appropriate sections of the Plan

Given the changes to the structure of the Plan as recommended by the Panel, and the range of submissions and evidence received, the Panel considers that all of the key policy directions relating to the coastal environment in the notified Plan have been retained, and in some cases strengthened. While a number of the provisions have been re-cast, redrafted, deleted or added to (in light of the submissions and evidence) the Panel is satisfied the provisions give effect to the New Zealand Coastal Policy Statement 2010 (in relation to the

coastal environment) and the New National Policy Statement for Freshwater Management 2014.

The Panel is clearly of the view that in a unitary plan context, the structure and location of provisions, as proposed by the Panel, gives better effect to the purpose of the Resource Management Act 1991 and gives effect to the national policy documents. The Panel is satisfied in terms of section 32 and 32AA that the provisions and where they are placed is the most appropriate.

3. Functional and operational need

3.1. Statement of issue

Whether the terms functional need and operational need should be treated the same or differently.

3.2. Panel recommendation and reasons

During the hearing there was substantial discussion about the scope of the term 'functional need' and what activities might be contemplated by that phrase. The legal submissions for the New Zealand Transport Agency described functional need as activities that require 'wet feet'.

Ms Coombes for the Council considered that the two matters were distinctly different, and there was specific objective and policy support in the New Zealand Coastal Policy 2010 for activities that have a functional need to be in the coastal marine area:

- i. Objective 6 - fourth bullet point, - functionally some uses and developments can only be located on the coast or in the coastal marine area;
- ii. Policy 6 (2) (c) which states - recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate locations; and
- iii. Policy 6 (2) (d) which states - recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there.

The New Zealand Coastal Policy Statement places a clear emphasis on providing for activities in the coastal marine area that have a functional need to locate there, and generally not providing for activities that do not. In contrast, the National Policy Statement on Electricity Transmission 2008 (policy 3) refers to "the technical and operational requirements of the network".

Transpower had sought to amend policy 3 of B7.1, to provide for all infrastructure which had a technical, operational or functional need to be located in the coastal marine area. The Council considered that this unduly conflated the functional need test in the New Zealand Coastal Policy Statement with the technical and operational test in the National Policy Statement on electricity transmission. However, in order to give effect to the National Policy Statement on electricity transmission, Ms Coombes in her rebuttal evidence, proposed the inclusion of a new policy to recognise and provide for the effective operation, maintenance,

upgrading and development of the components of the electricity transmission network that have a technical, operational or functional need to locate in the coastal marine area; in appropriate areas.

The Panel expressed concern at any implication that some infrastructure, including roads, cables and pipelines, might have to be routed for considerable extra distances to go around inlets or harbours when they could more efficiently cross the coastal marine area. While these activities did not have a functional need to be in the coastal marine area, there may be very good operational and/or efficiency reasons why it would be appropriate to enable these activities to be in the coastal marine area. The Panel also notes there is policy support in the New Zealand Coastal Policy Statement for this type of activity. Policy 6 (1) (a) states:

recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities.

In the Panel's view, a clear distinction needs to be made between providing for activities which have a functional need to locate in the coastal marine area, and for other activities (including those which may have an operational need to do so). The Panel has incorporated policy supporting those activities that have a functional need which require the use of natural and physical resources of the coastal marine area. The Panel has also included a policy to support those activities that have an operational need to locate in the coastal marine area where that activity cannot practicably be located outside of the coastal marine area.

No submitters or witnesses were able to give the Panel a comprehensive explanation or useful example of the difference between technical and operational need. The Panel has concluded that operational need and technical need are one in the same. The definition of operational need has been amended to include technical need.

4. Coastal setbacks and public access

4.1. Statement of issue

Whether to include a specific policy in the regional policy statement regarding coastal setbacks and public access.

4.2. Panel recommendation and reasons

In order to give effect to the New Zealand Coastal Policy Statement 2010 (policy 6(1)(i)), the evidence of Ms Coombes was to include a new policy as follows:

Set back development from the coastal marine area, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment.

Ms Coombes noted that the wording used in the policy she was recommending is the same as the equivalent policy in the New Zealand Coastal Policy Statement and that the inclusion of public access refers to protection of the potential for future public access, so that the land

is maintained free of development, should an esplanade reserve or strip be established in future.

Ms Coombes and the Council supported amending the policy to reflect that the purpose of the coastal setback is to, where practicable and reasonable, protect the natural character, open space, public access and amenity values of the coastal environment, and to protect the opportunity for future development of public access along the coastal marine area.

The Panel agrees, but has not included open space or public access in the policy. Those matters are already addressed in Chapter B8.4 – Coastal Environment dealing with public access.

5. Provisions for ports, reclamation, aquaculture and minerals

5.1. Statement of issue

The extent to which particular activities including ports, reclamations, aquaculture and minerals should be specifically identified and provided for in the regional policy statement

5.2. Panel recommendation and reasons

As outlined in Council's opening legal submissions, the Council submitted that in light of the King Salmon decision the fundamental requirement of the regional policy statement in relation to the coastal environment is the requirement to give effect to the New Zealand Coastal Policy Statement 2010. The Panel agrees.

Ms Coombes outlined in her evidence that following the release of that decision the Council undertook an audit of the regional policy statement provisions to identify any failure to give effect to the New Zealand Coastal Policy Statement.

The Council identified one gap in relation to mineral extraction. As a result Ms Coombes proposed including a new policy:

Recognise that the extraction of minerals and renewable marine energy generation can have social and economic benefits and can be appropriate activities in the coastal environment, while avoiding significant adverse effects to the extent practicable, and avoiding, remedying or mitigating other adverse effects, subject to:

- a. policies 1, 4 and 8 of B4.3.1 (natural character)
- b. policies 2 and 5 of B4.3.2 (landscape and natural features)
- c. policies 17 and 18 of B4.3.4 (biodiversity)

While the Panel understands this was discussed and agreed by all attendees at the mediation, Winstone Aggregates and other industry submitters lodged a memorandum with the Panel, dated 31 October 2014 objecting to the insertion of this policy and asserted that this amounted to "policy creation by stealth".

The concern appears to be not with the intent of the policy but the use of 'subject to'. As already addressed the Panel has removed this language (see section 1.3 above). The policy that the Panel is recommending recognises that the extraction of minerals and renewable marine energy generation can have social and economic benefits and can be appropriate activities in the coastal environment. This is consistent with Policy 6 (a) of the New Zealand Coastal Policy Statement 2010.

Ports of Auckland Limited and Bayswater Marina Limited, the Aquaculture industry in particular sought specific provisions relating to ports, reclamations and aquaculture.

Ports of Auckland Limited and Bayswater Marina Limited sought the inclusion of new policies on reclamation, dredging and disposal of dredged material, and noted that these were in the operative regional policy statement.

In evidence for Ports of Auckland Limited Mr Arbuthnot at paragraph 7.44 considers that without the reclamation policy, there is a strategic policy gap between the New Zealand Coastal Policy Statement and the lower order planning provisions. Mr Arbuthnot (at paragraph 7.51) also notes that Ms Coombes' primary evidence supports increased recognition of reclamation, dredging and disposal in both the explanation to the regional policy statement and the introduction.

Mr Arbuthnot considers that it follows that there is a need to provide strategic policy guidance in the regional policy statement. Mr Priestley, in his evidence at paragraphs 3.1 to 3.17 demonstrates the need for dredging and disposal activities in Auckland and the effectiveness of the operative regional policy statement policies. The Panel notes that the requests of Ports of Auckland Limited and Bayswater Marina Limited were opposed by the New Zealand Transport Agency.

It was Ms Coombes' opinion that the inclusion of the requested policies would duplicate the policies from the regional coastal plan provisions. She considered that they should only be included once, and that the most appropriate place is in the Coastal - General Coastal Marine Zone. She further considered that the regional policy statement should be set at a more strategic level and cover a range of activities rather than giving policy guidance on particular activities that are also addressed to the same degree in a zone provision.

The Panel agrees to an extent with Ms Coombes and the experts for Ports of Auckland Limited and Bayswater Marina limited. Policies 9 and 10 of the New Zealand Coastal Policy Statement are specific to ports and reclamation and de-reclamation. The Panel considers that specific policy needs to be made for them. While the Panel accepts the need to provide for dredging and disposal activities, there is no specific policy direction in the New Zealand Coastal Policy Statement for these activities. The other more generic subdivision, use and development policies provided sufficient recognition for these activities.

In evidence for Western Firth Marine Farming Consortium and Aquaculture NZ, Mr Turner, at paragraph 8.5 sought a new specific policy on aquaculture. Ms Coombes accepted that the policy proposed by Mr Turner would give effect to policy 8 of the New Zealand Coastal Policy Statement which requires that regional policy statements and plans recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities. Notwithstanding the New Zealand Coastal Policy Statement directive Ms Coombes considered that aquaculture was adequately

provided for through the existing provisions, being explicitly recognised several times in the introduction and explanation.

The Panel agrees with Mr Turner. As the New Zealand Coastal Policy Statement has a specific policy on aquaculture, and to recognise the importance of this activity, the Panel has recommended a specific aquaculture policy.

6. Consequential changes

6.1. Changes to other parts of the plan

There are no consequential changes to other parts of the Plan as a result of the Panel's recommendations on this topic.

6.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

7. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

7.1. General topic documents

Panel documents

[008-Submission Point Pathway Report - 11 Sept 2014](#) (17 October 2014)

[008-Parties and Issues Report - 1 Oct 2014](#) (06 March 2015)

[008-Mediation Record - 14 Oct 2014](#) (17 October 2014)

[008-Mediation Attendance Record - 10 Oct 2014](#) (17 October 2014)

[008-DRAFT regional policy statement Coastal Mediation Statement - 14 Oct 2014](#) (17 October 2014)

[008- FINAL Mediation Statement 2014-10-17](#) (03 November 2014)

[RPS General - PAUP Chapter B - Regional Policy Statement \(PDF 378KB\)](#) (9 March 2015)

7.2. Specific evidence

Minister of Conservation

[Hearing Evidence - Legal Submissions](#) (5 November 2014)

Auckland Council

[Hearing evidence - Kathryn Coombes](#) (29 October 2014)

[008-Auckland Council- closing statement](#) (12 November 2014)

Bayswater Marina Limited

[Hearing Evidence](#) (29 October 2014)

Ports of Auckland Limited

[Hearing evidence - Mark Arbuthnot](#) (30 October 2014)

[Rebuttal Hearing Evidence - Mark Arbuthnot](#) (30 October 2014)

[Hearing evidence - Stephen Priestley](#) (30 October 2014)

Western Firth Marine Farming Consortium

[Hearing Evidence](#) (30 October 2014)

Aquaculture New Zealand

[Hearing Evidence](#) (30 October 2014)

[Hearing Evidence - Legal Submissions](#) (05 November 2014)