

Decision No. [2012] NZEnvC 174

IN THE MATTER of an appeal pursuant to clause 14 of the
First Schedule of the Resource
Management Act 1991 (**the Act**)

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND INC
(ENV-2006-AKL-000956)

Appellant

AND AUCKLAND COUNCIL (as successor to
FRANKLIN DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Hearing Dates: 19, 20 June 2012; site visit 21 June 2012

Held: Auckland

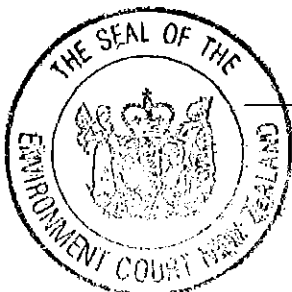
Court: Environment Judge M Harland
Environment Commissioner A C E Leijnen
Environment Commissioner H-A McConachy

Participants: Mr Gardner for Federated Farmers
Ms Hartley and Ms Faesenkloet for Auckland Council

Decision date: 17 August 2012

Issued:

INTERIM DECISION



- A. Subject to the assessment criteria being amended, and subject to further consideration and acceptance of them by the Court, the Court indicates its view that the appeal should be dismissed.

Introduction

[1] This appeal is part of a suite of appeals concerning Rural Plan Change 14 to the Franklin District Plan (“PC14”). The overall issue in this appeal is the activity status of production forestry in the Awhitu Peninsula Policy Area (“the APPA”)¹. The APPA falls within the Coastal Zone and the Tasman Coast Management Area introduced by PC14 and comprises land that is predominantly pastoral farmland. It is also part of a coastal landscape that enjoys particular value because of its relationship with the Tasman Sea and the Manukau Harbour entrance.² The land in the APPA is said to have the highest landscape values in the Coastal Zone, and it has been identified as part of a regionally outstanding natural landscape (“ONL”). Because of this, the Council contended that production forestry greater than 2 hectares in the APPA should be assessed as a restricted discretionary activity requiring resource consent. Federated Farmers contended that production forestry of any size should be a permitted activity allowed as of right anywhere in the Coastal Zone.³ If we accept the argument for Federated Farmers, this would obviate the need for the APPA, as its sole purpose is to delineate the area in which the Council’s proposed rule would apply.

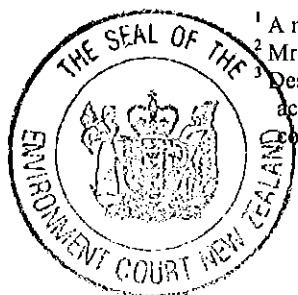
The appeal

[2] The theme for Federated Farmers throughout the appeal was that it is unreasonable to require farmers farming production land in the APPA to apply for resource consent for an activity that is essentially a primary production activity. Thus Federated Farmers emphasised the private property rights of the farmer to farm his or

¹ A map showing the proposed APPA is set out in Mr Tollemache’s evidence-in-chief, Attachment 5.

² Mr Brown, evidence-in-chief, paragraph [37]

³ Despite the notified and Council decisions version of PC14 identifying production forestry as a discretionary activity in the Coastal Zone, the parties have now agreed that it should be a permitted activity subject to compliance with certain performance standards



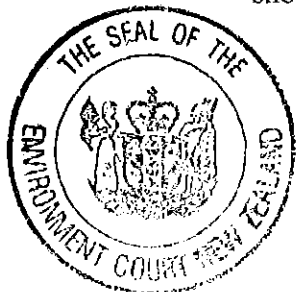
her productive land in the way that best suited his or her farming business, without the uncertainty and additional cost that an application for resource consent might entail.

[3] Federated Farmers mounted three arguments on appeal:

- (a) The Council does not have sufficient evidence to justify the approach it is taking to production forestry on the Awhitu Peninsula;
- (b) The Council's evidence ignores high level strategy documents which support primary production activities taking place on production land;
- (c) The restricted discretionary activity status will not work and is easily circumvented.

[4] The Council contended that in the APPA, production forestry larger than 2 hectares in area per site has the potential to generate significant adverse effects on the natural character, landscape and visual amenity values of the western and northern Awhitu Peninsula. It relied on the fact that the APPA contains land that has been identified as an ONL. For this reason it maintained that the proposed restricted discretionary activity status and matters of discretion represent a more targeted approach which will enable the consideration of the potential effects of production forestry on a case-by-case basis. The Council contended that the provisions it now proposes will enable a range of rural activities to occur within the APPA as of right, while avoiding, remedying and mitigating the adverse visual effects of production forestry greater than 2 hectares in the area, thereby achieving the sustainable management purpose of the RMA. Thus the theme for the Council throughout the appeal was that there was a public benefit to be obtained from the imposition of the APPA and the proposed rule for production forestry over 2 hectares within it, which outweighed the private interest of the landowner not having to apply for resource consent for that activity.

[5] Not surprisingly given the different values espoused by the parties, they each emphasised different statutory and planning provisions to support their respective cases. These types of competing arguments are the daily bread of the Environment Court. They come into particular focus in cases such as these, where the rules that should apply to the resource in issue are the subject of the appeal.



[6] We intend to first set out the Council's proposed provisions and then analyse them against the well-settled statutory and legal principles that apply.

What are the Council's proposed provisions?⁴

What is production forestry?

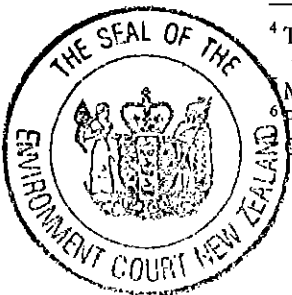
[7] It is now proposed that a woodlot up to 2 hectares per site should be permitted as of right within the APPA⁵. Any woodlot over 2 hectares in the APPA is referred to as "*production forestry*". "*Production forestry*" is an activity that is provided for not only in the Coastal Zone of the former Franklin planning district, but elsewhere in the district as well. It is defined in PC14 as:

The ongoing management of trees or areas for the production of timber as defined under Forestry⁶

Forestry is defined in the operative plan as:

FORESTRY, including PRODUCTION FORESTRY and CONSERVATION FORESTRY, means the ongoing management of trees or areas for the production of timber, for soil conservation or water control or waste water disposal or purification purposes, or for aesthetic or scientific purposes, and includes planting, pruning, felling and removal from the SITE of trees, ANCILLARY RURAL EARTHWORKS, and may be carried out in conjunction with other FARMING, and may include

- non-commercial recreation activities that make use of or in some way rely on trees;
- informal or passive recreation activities not involving any vehicle or equipment that generates any noise;
- but does not include
- the processing of timber unless specifically provide for in the Zone;
- any activity that is excluded from FARMING.⁷



⁴ The Councils' proposed provisions that should apply to production forestry in the APPA have been the subject of various amendments, but they are of historical interest only and not relevant to this decision. Mr Tollemache, evidence-in-chief, paragraph [9.3]; Mr Brown, evidence-in-chief, paragraph [66] PC14 Page 50-3 Chapter 50 of the Operative Franklin District Plan, Definitions, at page 50-7

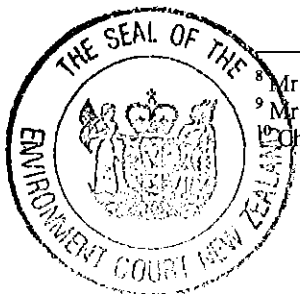
[8] Production forestry can be a legitimate form of land use. We heard from Mr Williams (the sole witness for Federated Farmers) that forestry is a long term investment of some 25-30 years, but to be properly worthwhile a forestry block needs to be at least 20 hectares in size. Not only is income achieved from the milling of the logs, which can then be replanted, but income can now be obtained if the forest is registered for the Emissions Trading Scheme (“ETS”).⁸ Production forestry is a viable alternative to livestock farming on steep land. Mr Williams told us that the Awhitu area grows very good quality radiata, with the logs being sought after because of the density of the timber and its height, making it suitable for poles⁹. Despite the fact that Mr Williams’ 70 hectare forestry block is at Orua Bay (outside the proposed APPA but in the Coastal Zone on the Awhitu Peninsula), we found his evidence on these matters very helpful.

[9] Another type of forestry that is referred to in the proposed plan is “*conservation forestry*,” which is a permitted activity in the Coastal Zone. We heard that it could be registered for ETS purposes as well. We accept, however, that as this forestry is not production forestry it is not milled, with the result that, whilst it could provide income from ETS, there would be no income gained from the farming of it. Conservation forestry is defined in the operative plan as:

CONSERVATION FORESTRY as defined under FORESTRY means the management of exotic or native forests primarily for soil CONSERVATION or water control or waste water disposal or purification purposes or aesthetic or scientific purposes including:

- (i) Landscape preservation or enhancement
- (ii) Preservation for particular historic or archaeological value
- (iii) CONSERVATION for scientific or ecological value
- (iv) Other non-logging purposes.

Where, on any holding containing a conservation forest, logging of timber from that forest shall be for the sole purpose of maintaining the good ecological health of that forest.¹⁰



⁸ Mr Williams, evidence-in-chief, paragraphs [9] and [11]

⁹ Mr Williams, evidence-in-chief, paragraph [6].

¹⁰ Chapter 50 of the Operative Franklin District Plan, Definitions, at page 50-5

What are the actual proposed provisions?

[10] The provision proposed in the plan to explain the APPA is found at 17E.7. Tasman Coast Management Area. It provides:

17E.7.6 EXPLANATION FOR AWHITU PENINSULA POLICY AREA

Map 111 of the District Plan identifies the Awhitu Peninsula Policy Area (APPA). The APPA is a specific location where Rule 23B.2.2.5(v) applies in respect to PRODUCTION FORESTRY. The APPA is identified in this location because of the unique combination of:

Outstanding landscapes and landforms with high and very high sensitivities;

High coastal natural character

The combination of these valued elements is unique to this location in the District. This method is not used elsewhere in the District because of this reason.

The APPA is limited to the area identified within the Coastal Zone and Tasman Coast Management Area on Map 111. Rule 23B.2.2.5(v) provides as a permitted activity for small scale woodlots that are subsidiary to FARMING activities. Applications for PRODUCTION FORESTRY need to address its effects in respect to the elements identified above and the criteria in Part 23B.4.2.9.

[11] If a farmer wished to plant production forestry of over 2 hectares in the APPA, the Council proposes that the activity be assessed as a restricted discretionary activity requiring resource consent. Accordingly s 104C of the RMA would apply to any such application. This means that the proposal would need to be assessed against the matters over which the Council had restricted its discretion in the plan. The proposed rule is now set out:

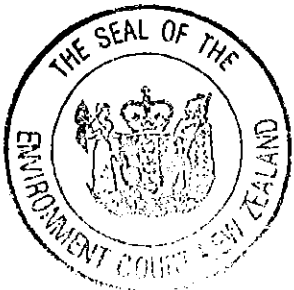
23B.4.2.9 PRODUCTION FORESTRY – Coastal Zone

1. Notwithstanding the above, the Council will not have regard to those matters listed in Part 53 and the matters listed in 23B.4.1 and will restrict its discretion to only the following matters:

...

v. Where located within the 'Awhitu Peninsula Policy Area' illustrated on Map 111:

- scale and shape of the PRODUCTION FORESTRY, planting and fire break patterns.



- Effects of PRODUCTION FORESTRY on:
 - Views and ridgelines
 - Natural and scenic character of the coastal environment.
 - Natural hazards, landscape values and amenity values
 - Significant indigenous terrestrial and aquatic vegetation and habitat.
- benefits to the FARMING activities on SITE.
- positive effects of carbon sequestration and erosion control.
- future harvesting

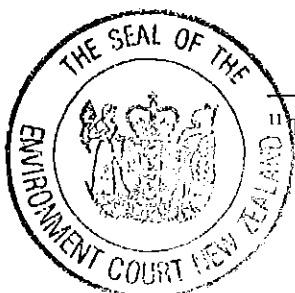
...

2. Assessment criteria

In considering whether adverse effects are avoided, remedied or mitigated, the following matters shall be taken into account..

- v. Where located within the "Awhitu Peninsula Policy Area" illustrated on Map 111;
 - The extent to which the activity is of a scale, location and design which enables its integration with the coastal environment and visual landscape (being visible from public places).
 - The extent to which the activity adversely affects the physical integrity of any natural feature.
 - The effects on the natural character of the coastal environment.
 - The extent to which the activity maintains existing indigenous vegetation patterns.

[12] The assessment criteria in the draft provision focus on the assessment of landscape values, but not the economic and environmental benefits to the landowner and the wider community expressed in the matters outlined in the last three bullet points of the matters over which discretion is said to be restricted in Rule 23B.4.2.9.1(v). Mr Tollemache accepted that these matters should be included in the assessment criteria and had been mistakenly excluded from them and agreed¹¹ that the economic benefits or otherwise of rural activities should be part of the assessment criteria contained in Rule 23B.4.2.9.2(v) to cover the type of situation where, perhaps, the rural activity became uneconomic or there was a need for more flexibility to



consider the economic aspirations of the landowner. The positive effects to the community of carbon sequestration and erosion control (accepting that the latter is also a matter potentially benefiting the private interest) should also be included.

[13] Mr Tollemache also suggested that Rule 23B.4.2.9.1(v) should be amended to read “*benefits to the Rural Activities on the Site,*” rather than “*benefits to the FARMING activities on SITE.*” This is because the definition of farming excludes forestry, and even though “rural activities” is not defined, Mr Tollemache accepted that it would be a broader concept which he maintained is understood given that it is a term used in the Regional Plan. Mr Tollemache agreed that this amended definition could potentially bring in activities that may not necessarily be in their own right or exclusively farming, but he did not see that this would necessarily undermine the intent of the matter which is subject to the discretion.¹²

[14] It is important to note that the Council’s proposed rule does not prevent production forestry occurring in areas greater than 2 hectares in the APPA; rather it requires consideration on a case-by-case basis as an application for resource consent. Should an applicant meet the assessment criteria relevant to the matters over which the Council proposes to restrict its discretion, resource consent would be granted subject to whatever conditions were deemed to be appropriate. Mr Gardner’s submission on this point was that such a process would put the landowner to unnecessary and unjustified expense.

[15] We also note that the criteria and assessment matters in (i)-(iii) are generally clearly drafted. Our understanding arising from the directive of 17E.7.6 and cross-examination is that these are also to be part of the restricted discretionary activity for the APPA area. This is not clear in the current drafting, and we think it should be.

What is the law that applies to this appeal?

Do the amendments to the RMA apply?

[16] PC14 was notified in September 2003, with the result that the provisions of the RMA prior to the 2005 and 2009 amendments apply. Accordingly, the specific requirement in s290A of the RMA for the Court to have regard to the former Council’s decision on PC 14 does not apply, as this section was introduced in 2005.



Nonetheless we agree with Mr Gardner¹³ that we should not ignore the Council's previous decision, although we note that it proposed a more restrictive activity status¹⁴ than that which is now sought by either the Council or Federated Farmers, so in this regard such an approach does not assist the case for Federated Farmers.

Is there a burden of proof on the Council to justify its proposed provision?

[17] In his opening submissions it appeared that Mr Gardner was submitting that there ought to be a civil burden of proof on the Council to justify the provision it is now proposing. If this was the intent of Mr Gardner's submission, it is not supported by the case law. We adopt the principles previously established in the case law to the effect that no party has a formal onus of proof in relation to a plan change appeal.¹⁵ In addition, the Court does not start with any particular presumption as to the appropriate zone, rule, policy or objective,¹⁶ which means that there is no presumption that the Council's proposed rule is necessarily appropriate or correct. The law is well-settled that the proceedings in relation to plan change appeals are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of the policy statement and plans.¹⁷ The Court is seeking to obtain the optimum planning solution within the scope of the appeal it has before it, based upon an evaluation of the totality of the evidence given in the hearing, without imposing a burden of proof on any party.¹⁸

[18] In this case this means that we must evaluate the totality of the evidence we have heard to determine whether the Council's proposed APPA provisions are the optimum planning solution in comparison to Federated Farmers' suggested approach.

What is the statutory test that applies when assessing the merits of proposed plan provisions?

[19] The law that applies was not in dispute, but needs to be summarised briefly in order to provide a framework for the following legal analysis. The Court is required

¹³ Relying on *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112

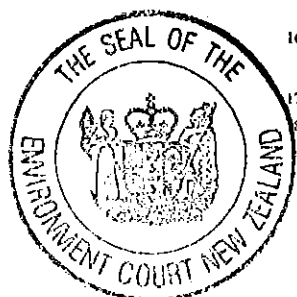
¹⁴ It proposed production forestry be a discretionary activity across the Coastal Zone

¹⁵ *Coatesville Countryside Residents' Living Group v Rodney District Council*, A077/09 and *Sangam Investments Ltd v Franklin District Council*, 3ELRNZ, 406

¹⁶ *Coatesville Countryside Residents' Living Group v Rodney District Council*, *ibid*; *Eldamos Investments Ltd v Gisborne District Council*, W047/2005 at paragraph [123]

¹⁷ *Sangam Investments Ltd v Franklin District Council*, *supra*

¹⁸ *Eldamos Investments Ltd v Gisborne District Council*, *supra*



to consider the provisions of s 32 of the RMA, the interpretation of which is now incorporated into case law. Both counsel referred to *Long Bay-Okura Great Park Society Inc v North Shore City Council*,¹⁹ which dealt with the same provisions of the RMA that apply to this case.

[20] The relevant requirements in this case (in no particular order) are whether the Council's proposed APPA provisions:

- (a) have regard to the actual or potential effect of activities on the environment;
- (b) give effect to the New Zealand Coastal Policy Statement ("NZCPS")²⁰;
- (c) are consistent with the Auckland Regional Policy Statement ("ARPS") and have regard to Proposed Change 8: Landscape to the ARPS ("Proposed Change 8");
- (d) implement the policies and therefore the objectives of the District Plan;
- (e) are the most appropriate methods for achieving the objectives of the District Plan, having regard to their efficiency and effectiveness (taking into account benefits and costs and the risk of acting or not acting if there is insufficient information);
- (f) assist the Council to carry out its functions so far as to achieve the purpose of the Act; and
- (g) are in accordance with the provisions of Part 2 of the RMA.

Federated Farmers' challenged all of the above matters, apart from paragraph (f) which did not seem to be in dispute.

¹⁹ A078/2008 at paragraph [34]

²⁰ The NZCPS 2010 applies by operation of law



Do the proposed provisions have regard to the actual or potential effect of activities on the environment?

What are the actual and potential positive effects arising from production forestry in the APPA?

[21] The positive effects from production forestry were identified as those which enabled farmers to provide for their economic wellbeing, and to make productive use of less productive land, with positive benefits also arising because production forestry can also enable carbon sequestration and erosion control.

[22] The thrust of the cross-examination for Federated Farmers on this topic was that the Council had not obtained sufficient evidence to establish the positive benefits that arise from production forestry. It was suggested that the services of a forestry consultant should have been obtained. We do not agree that this was necessary, because the proposed rules specifically refer to the positive benefits that can arise from production forestry. In other words, these are specifically recognised as being important factors. Where the point might be well made, is in relation to the personal economic benefit a farmer might receive from being able to use his or her land for production forestry without the constraint of needing to apply for resource consent. While we were not provided with much evidence about whether or not there is, in fact, demand for production forestry by farmers in the proposed APPA,²¹ Mr Tollemache did provide a background of forestry use. Using Council GIS he assessed that of the approximately 6800 ha in the APPA, about 44 ha were planted in exotic production forestry. He calculated the largest block as being 9 ha, the next largest 5 ha with the remainder averaging 1.6ha in area.²² We doubt that a forestry consultant would have been able to provide an expert opinion on this that was anything less than general. As well, on plan change appeals such as this, we think it reasonable for the Council to leave it to the specific interest group to advance matters of demand. Federated Farmers could have provided evidence from its members within the APPA setting out the demand for production forestry in the area, but did not. This kind of evidence would not have been difficult or expensive to obtain. In its absence, and taking into account the actual forestry assessed by Mr Tollemache as being in situ, we are not convinced that there is great demand for production forestry in this area. Nor

²¹ We acknowledge Mr Williams evidence about his production forestry, but as we have already noted his property is not within the proposed APPA. We also acknowledge his general evidence about the planting of pine on the Awhitu peninsula historically.

²² Mr Tollemache, evidence-in-chief, paragraph [5.2]



were figures supplied to enable us to measure the cost burden that an application for resource consent might engender.

[23] We observed various blocks of production forestry in the proposed APPA on our site visit, but they were not particularly prevalent. The impression we gained was that farmers within the APPA prefer to undertake more traditional production farming (dairy or cattle), with the odd larger block having been set aside for production forestry.

[24] We are satisfied that the proposed provisions provide for the actual or potential positive effects of production forestry in the APPA.

What are the actual and potential adverse effects arising from production forestry in the APPA?

[25] The focus of the actual and potential adverse effects arising from production forestry which the plan change seeks to control in the APPA were as we have already outlined, identified as relating to landscape values, with particular focus on effects on the natural character value of the landform in the APPA, and the visual impact of production forestry. We can also foresee other potential adverse effects (such as traffic and noise, but they are not managed through this proposed rule and were not addressed as being effects of concern.

[26] Mr Brown noted a number of effects arising from plantation forestry.²³ He explained that monocultural plantings give rise to visual homogenisation. Exotic forests display geometric forms such as rectilinear edges, apical form and uniformity of height and these, together with their blue green hue, contrast markedly to the colouring and profile of native forests. Natural landforms and key views may be screened by the forest which as a consequence diminishes relationships to the landscapes endemic features, landmarks or elements. Finally the process of harvesting is physically destructive both ecologically and visually. Mr Brown considered that these elements of exotic forestry would have a major and adverse effect on the ONL particularly as the qualities, such as the exposure to and connection to the Tasman Sea, and the dramatic profile of the peninsula's dune ridges are derived from its openness.²⁴

²³ Mr Brown, evidence-in-chief, paragraph [54]

²⁴ Mr Brown, evidence-in-chief, paragraph [64]



[27] Mr Brown (for the Council) was the only witness to give evidence on the topic of landscape. He has considerable expertise not only in planning, but also in landscape architecture and landscape assessment. More particularly, Mr Brown has considerable experience assessing the landscape values of the Awhitu Peninsula in the context of the greater Auckland region. In 1982-84 and 2002-04 he was a key participant in two assessments of the Auckland region's landscape; first for the then Auckland Regional Authority ("ARA"), contributing to the draft Regional Policy Scheme (with landscape policies adopted by the ARA in late 1987), then for the Auckland Regional Council ("ARC") – contributing to Plan Change 8 to the ARPS, which is still subject to appeal.²⁵ We will return to these strategic documents later in this decision. Suffice to say that Mr Brown's expertise in this area was significant, and his opinion was, in the main, unshaken by cross-examination.

What is special about the natural character of the landform in the APPA?

[28] Mr Brown's overall view was that the landform in the APPA was of such high natural character that it was a regionally outstanding landscape or ONL. He accepted that, ironically, the clearing of the land for production farming has revealed the landform which contributes to the special character of the Awhitu Peninsula. Among its most notable features Mr Brown listed (abridged):

- The massive dune catchment basins and lake/wetland basins around Lake Pokorua and Pehiakura Lakes, Hamilton's Gap and Cochrane's Gap
- The line of steep cliffs and escarpments which provide the interface between both the turbulent body of water (Tasman Sea) and the entrance to the Manukau Harbour. This sequence of sandstone/mudstone dune cliffs rapidly climbs from sea level to between 210 and 285 metres
- A series of massive dune ridges and headlands that wrap around the basins creating a spine which dominates the centre of the peninsula
- The broad carpet of pastoral grass across the catchment basins and ridges which emphasise the profile and contour of the ridge sequence and which afford often quite spectacular views of the Tasman Sea and Manukau Harbour

²⁵ Mr Brown, evidence-in-chief, paragraph [11]



- More sporadic, but still important, stands of pohutakawa dominated forest down the western coastline.²⁶

[29] In addition Mr Brown drew our attention to the need to protect the visual and physical integrity of the multiple pa sites down the peninsula, which are particularly important because of the synergy between the distinctive profiles and those of the major dune ridges which surround/flank them, together with other archaeological/heritage sites.²⁷

[30] Mr Brown's opinion that the landform in the APPA comprised an ONL was not just his own view; it is supported by Proposed Change 8 to the ARPS. We specifically evaluate whether or not the proposed provisions are consistent with Proposed Change 8 later in this decision, but it is important to note that Federated Farmers accept that the land in the APPA is part of an ONL of significance to the Auckland Region.

[31] Mr Brown's evidence was not only based on his own expert opinion about the value of the landform present in the APPA. He also referred to research undertaken in the lead up to Proposed Change 8 to the ARPS which found that, from a qualitative/public perception perspective,²⁸ production forestry landscapes rated near the very bottom of the landscape spectrum. Mr Brown described it as notable that forestry was rated lower than pastoral landscape, which he described as "*often very open, devoid of natural remnants, and – in terms of landscape structure, patterns and overall composition – rather bland, and ill-defined.*"²⁹ Mr Brown described the more uniform, structured form of production forestry, and distinguished it in terms of naturalness from conservation forestry, which differs in colour, shading, size, form, and variety of species. We infer from Mr Brown's evidence however that when he referred to conservation forestry he meant indigenous or native forest rather than exotic forest, but we note that the definition of conservation forestry in the plan refers to both.

[32] Mr Gardner submitted that "natural" in relation to ONL's did not necessarily mean that the landscape must be pristine. He referred us to the *Long Bay-Okura*³⁰

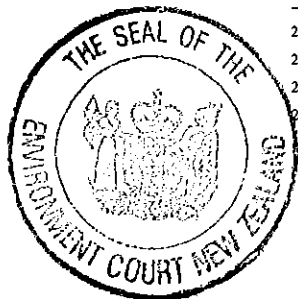
²⁶ Mr Brown, evidence-in-chief, paragraph [57]

²⁷ Mr Brown, evidence-in-chief, paragraph [71]

²⁸ Mr Brown, evidence-in-chief, paragraph [31]

²⁹ *ibid*, paragraph [31]

³⁰ *supra*



case where the Court extensively discussed what might comprise “naturalness”, and in which it referred to a list of criteria³¹ that might assist to determine what it meant in a given case. Mr Gardner particularly referred to the Court’s view that...”*There is a spectrum of naturalness from a pristine natural landscape to a cityscape, and a “cultured nature” landscape may still be an outstanding natural landscape.*”³² Mr Gardner then submitted that a “working landscape” (meaning a pastoral landscape) was the same as a “cultured nature landscape,” so that the presence of forestry in particular pine forest does not necessarily preclude that landscape from being an ONL.

[33] Mr Gardner referred to the *Environmental Defence Society Inc v Rodney District Council*³³ as an example. In that case the proposed Rodney District Plan provided for forestry as a permitted activity in rural areas, but this was challenged on appeal by the Environmental Defence Society. The competing values relating, on the one hand to landscape values, and on the other to the use of rural land for production forestry, were advanced by the parties supporting them. It is to be noted that the Court considered the case to be relatively evenly balanced, but it accepted that, overall, there was no reason set out in the Plan to explain why forestry should be treated differently from horticulture or farming, given that they are all primary production activities that the Plan sought to protect and enable in the Rural zone. Accordingly, the Court favoured the protection and enablement of forestry over matters of natural character. The appeal by EDS was dismissed.

[34] Ms Hartley distinguished the *Environmental Defence Society Inc* case, submitting that it arose in a different context related to different plan provisions, and incorporated a different factual scenario. She highlighted that in the *Environmental Defence Society Inc* case, the Court found that the relevant policies and objectives identified activities, including forestry, as permitted within the areas in question. By contrast, the policy direction of PC 14, she submitted, is to encourage sustainable forestry only in appropriate locations in the Coastal and Rural Zones.³⁴ In addition, she submitted that the policies relating to the Tasman Coast seek to recognise the wild scenic and remote values of it. Furthermore, she submitted that there is very little production forestry within the APPA at present.

³¹First outlined in outlined in *Wakatipu Environment Society Incorporated v Queenstown Lakes District Council* [2000] NZRMA 59 at paragraph [89]

³² A78/2008 at paragraph 135

³³ A117/2009

³⁴ Policy 14 of 17C.2.2 Key Rural-Coastal Zone policy



[35] We agree with Ms Hartley that the *EDS* case is distinguishable for the reasons she outlined. It is not possible to provide the kind of broad brush argument that the approach of Federated Farmers in this case invites. Just because an activity is permissible in the context of a particular factual situation in one region, does not mean that it should apply in other regions. The *EDS* case is not similar enough on its facts to require us to give the outcome significant weight in this case.

[36] We agree with the list of criteria of “naturalness” outlined by the Court in *Long Bay-Okura* and we do not disagree with its view that a cultured nature landscape may still be an outstanding natural landscape, but in this case we are not required to assess whether the land in the APPA is an ONL, because this has been accepted by the parties. The reasons for the landform being outstanding were described by Mr Brown in his evidence, and whilst they do include the landform revealed by pastoral farming, they do not include (and indeed specifically exclude) production forestry. There was simply no expert evidence called by Federated Farmers to substantiate this submission in relation to the APPA, with the result that whether or not tracts of pine forest can be assessed as an ONL remains a theoretical possibility only.

[37] We accept Mr Brown’s evidence that the landform in the APPA is part of an ONL. This means that the evaluation of the natural character of the landform in the APPA starts with the acknowledgement that the landscape is an outstanding natural landscape. Section 6(b) of the RMA requires all persons exercising functions and powers under it (including the Council and this Court) to recognise and provide for the protection of outstanding natural landscapes from inappropriate use and development as a matter of national importance.

What are the adverse visual effects arising from production forestry?

[38] Mr Brown identified the potential of production forestry to cover up the landforms, and obscure from view dune lakes, water features, and remnant stands of forest. In his opinion, these features are central to the character of the Awhitu Peninsula’s coastal landscapes. He was also concerned that tracts of production forestry over 2 hectares had the potential to screen views from key parts of the local roading network along the western coastline from Lake Pokorua to the Manukau Heads light house.³⁵



³⁵ Mr Brown, evidence-in-chief, paragraph [55]

[39] Having undertaken our site visit, we agree with Mr Brown's conclusion, but we observe that the views from the roading network are varied in terms of the ability of the road user to clearly see and, perhaps, even appreciate the landform to which Mr Brown referred. Having said that, in part the landform is dramatic, and we agree that it would be lost if significant parts of the production farmland within the APPA were planted with production forestry.

How are the adverse effects potentially arising from production forestry different from those arising from conservation forestry?

[40] Federated Farmers argued that the effects arising from production forestry and conservation forestry were indistinguishable. Mr Gardner highlighted that conservation forestry of any scale is a permitted activity. It was accepted that the Awhitu Peninsula is erosion-prone.³⁶ Conservation planting is generally used to prevent erosion. Mr Gardner submitted that there are no restrictions on the types of trees that may be planted for conservation purposes. Indeed, he highlighted that the definition of conservation forestry makes it clear that it includes "... *management of exotic... forests primarily for soil conservation...*" Mr Gardner referred to Mr Williams' evidence that exotic forestry in the form of radiata pine has been previously planted on the Awhitu Peninsula for conservation purposes, and has subsequently been harvested.

[41] Mr Gardner also submitted that there would seem to be nothing which would prevent a farmer from planting up a block of conservation forest under the conservation forestry permitted activity rule, and then, when the forest is mature, applying for consent for production forestry for the land. All of this led to the conclusion, Mr Gardner submitted, that the proposed rule is unworkable, and yet the adverse effects arising from production forestry could, he submitted, be the same effects arising from conservation forestry, which can take place as a permitted activity.

[42] Mr Gardner also posed the following rhetorical question: if forestry is undertaken as a permitted activity for soil conservation purposes, and after a time the soil becomes successfully conserved, does the forest cease to be conservation forestry and become production forestry? Mr Gardner raised the possibility of the Council being able to take enforcement action against a farmer for not having resource consent

³⁶ Mr Brown, evidence-in-chief, paragraph [43]; Mr Tollemache, evidence-in-chief, paragraph [7.9]



to undertake production forestry activity, despite the forestry originally starting its life as conservation forestry.

[43] The Council met these submissions by referring to Mr Brown's evidence that the effects arising from conservation forestry are different from those arising from production forestry, and Mr Tollemache's evidence (the planner for the Council) that, as there is no commercial production associated with conservation forestry, its application is likely to be limited in extent³⁷. Furthermore, Ms Hartley agreed that a farmer could be subject to enforcement action if he or she sought to plant conservation forestry under the guise of production forestry, when in fact the conservation forestry was not that, but production forestry.

[44] The grounds of appeal do not permit us to re-visit the rule regarding conservation forestry. Nonetheless, Mr Gardner has raised some interesting points that the Council may well wish to examine in light of the stance it has taken in relation to the rules that should apply to production forestry in the APPA. Having said that, we do not absolutely accept Mr Gardner's submissions, because the evidence from Mr Brown did not support the view that the effects arising from both types of forestry are the same. However, Mr Brown said:

.....there are very few limits and restrictions on it. [conservation forestry] I think that realistically, however, in looking at taking land out of productive use, which would be the case for virtually any farmer within the APPA, you'd have to think carefully about why you're doing it....³⁸

And

....I think that the conservation forestry is more likely to occur on steeper lower slopes. I think the woodlots in general under two hectares, again are more likely will occur slightly lower down. They might well be used, for instance, around buildings and homesteads and in the sort of blocks that are for instance shown on that 30 annexure 9, sorry 8. But, other forestry for production purposes I think would have a different outcome and that's what I'm worried about. And in fact that's reflected in what you see right next to the Awhitu Road at present.³⁹

[45] Having no evidence to the contrary we accept Mr Browns view, but we are concerned that the very visual concerns which surround production forestry could well attach to conservation forestry. Conservation planting for the purpose of actual



³⁷ Mr Tollemache, evidence-in-chief, paragraph [7.24]

³⁸ Transcript page 100, lines 23 - 25

³⁹ Transcript page 101, line 26

conservation would in our view better relate to indigenous species and would make sense as a concept for enhancement and in fact be consistent with Objective 2 of the NZCPS. We are aware of the impending notification of the Unitary Plan for Auckland (in 2013) and encourage the Council to consider the nature of conservation planting more fully, given the issue which has arisen through the presentation of this case.

Overall conclusion regarding actual and potential effects

[46] The actual and potential adverse effects arising from production forestry in the APPA relate to natural character values, the visual impact that might arise from production forestry and those relating to archaeological sites. We are satisfied that the proposed provisions have regard to these effects, which are crisply articulated in the assessment criteria contained in the proposed rule.

Do the proposed provisions give effect to the NZCPS?

What are the relevant objectives and policies that apply?

[47] The NZCPS is a national policy statement under the RMA. The purpose of the NZCPS is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand. The first NZCPS was issued in 1994. A new (and replacement) statement took effect on 3 December 2010.

[48] The NZCPS is to be applied as required by the RMA by persons exercising functions and powers under the RMA. Local authorities must amend regional policy statements, proposed regional policy statements, plans, proposed plans, and variations to give effect to NZCPS provisions and a process it outlined for this. The current NZCPS postdates PC14 but we heard no evidence that PC14 was inconsistent with it.

[49] Policy 1 of the NZCPS provides direction on the extent and characteristics of the *coastal environment*. Both Mr Brown and Mr Tollemache agreed the APPA falls within the coastal environment. We heard no evidence to the contrary⁴⁰ and we accept it. This is important because s6(a) of the RMA requires all persons exercising functions and powers under it (including the Council and the Court) to recognise and



Mr Tollemache, evidence-in-chief, paragraph [8.28]

provide for the preservation and protection of the natural character of the coastal environment from inappropriate use and development, as a matter of national importance.

[50] Objectives 2 and 6 and Policies 1, 6, 7, 13 and 15 of the NZCPS are relevant to these proceedings and outline the ways in which the statutory imperative outlined in s6(a) of the RMA is to be implemented. The relevant portions of the objectives are now set out:

Objective 2

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

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

Objective 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, recognising that:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities; ...
- the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land; ...

(Our emphasis)

[51] Of the policies, Mr Brown emphasised Policies 13 and 15, which he said: *“focus on the identification of coastal environments which display high outstanding levels of natural character, the preservation of natural character, and protection of outstanding coastal landscapes.”*⁴¹

[52] Policy 13 addresses *“preservation of natural character.”* It is a policy:



Mr Brown, evidence-in-chief, paragraph [42]

- (1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:
- (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and
 - (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:
 - (c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and
 - (d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.
- (2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:
- (a) natural elements, processes and patterns;
 - (b) biophysical, ecological, geological and geomorphological aspects;
 - (c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
 - (d) the natural movement of water and sediment;
 - (e) the natural darkness of the night sky;
 - (f) places or areas that are wild or scenic;
 - (g) a range of natural character from pristine to modified; and
 - (h) experiential attributes, including the sounds and smell of the sea; and their context or setting.

(Our emphasis)

[53] Policy 15 addresses natural features and natural landscape. It directs avoiding adverse effects of activities on outstanding natural features and outstanding landscapes in the coastal environment⁴² and provides direction as to how the Council should go about this at parts (c) to (e) of the policy:

... by

- (c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:



Policy 15(a)

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

(Our emphasis)

How do the proposed provisions give effect to the NZCPS?

[54] There was no dispute between the parties that the APPA exhibits the qualities which the NZCPS seeks to protect. Mr Brown⁴³ set out the methods and evolution of the assessment which has been undertaken to determine the value of this landscape. That description demonstrated a careful and informative process which has led to the provisions which now underpin the APPA as we explain in reference to the regional planning instruments. We agree that the APPA is part of a coastal environment with outstanding natural character. We also accept that the landscape is modified. Both these aspects are anticipated by the NZCPS. As such the APPA requires protection, and regional and district planning instruments should provide for such protection.



⁴³ Mr Brown evidence-in-chief, paragraphs [14] to [27]

[55] The NZCPS also recognises that there are some uses and developments which depend upon the use of natural and physical resources in the coastal environment, and which are important to the social, economic and cultural wellbeing of people and communities. Existing pastoral farming undertaken in the APPA would fall into that category. Mr Tollemache described the area and number of properties in the APPA, and our own observation of the activities established there confirmed a well-established pastoral farming industry. We note that the former Franklin District is largely a rural District, with most of the settlements and communities within it likely to have been based around rural activities. The NZCPS acknowledges the balancing required to support established activities, but in our view this does not go so far as to outweigh the intended protection of areas of outstanding natural character, which the evidence establishes are included in the APPA.

[56] We conclude that the proposed provisions give effect to the NZCPS.

Are the proposed provisions consistent with the ARPS, and do they have regard to Proposed Change 8?

What are the relevant ARPS provisions?

[57] There is an operative regional policy statement (“the ARPS”) in place which identifies the APPA. Mr Tollemache’s evidence⁴⁴ was that a number of its objectives and policies establish a foundation to enable natural character and landscape values to be preserved and protected in the Auckland Region.⁴⁵ We agree.

[58] Policy 6.4.19.1 requires the use and development of land to be controlled within the areas identified in the ARPS maps. The APPA is included in land identified as having landscape rating 6 and 7 in these maps,⁴⁶ which affords it the highest level of protection.⁴⁷ Policy 6.4.19.1 (contained in Chapter 6 - Heritage) prior to its amendment by Proposed Change 8 (which we will come to shortly), indicated that subdivision, use, and development shall be “*controlled so that these quality outstanding landscapes*” (those in Maps 6 and 7) are “*protected by avoiding adverse effects on character, aesthetic value and integrity of the landscape unit as a whole*” and such landscapes “*are protected*” from such activities which “*cannot be visually*

⁴⁴ Mr Tollemache, evidence-in-chief, paragraph [8.21]

⁴⁵ Mr Tollemache, evidence-in-chief, paragraphs [8.22]-[8.23]

⁴⁶ Map Series 2 and 3

⁴⁷ Mr Brown, evidence-in-chief, paragraphs [17]-[18] and Annexure 3



*accommodated within the landscape without adversely affecting the character, aesthetic value and integrity of the landscape unit as a whole.*⁴⁸

[59] Mr Tollemache also referred us⁴⁹ to parts of Policy 7.4.4.1⁵⁰ which states:

1. The natural character of the coastal environment shall be preserved, and protected from inappropriate subdivision, use and development by:

(i) In areas of high natural character, avoiding adverse effects on:

(c) the physical integrity of coastal landforms and geological features and associated natural processes;

(d) features, elements and patterns which contribute to landscape value and scenic and visual value;

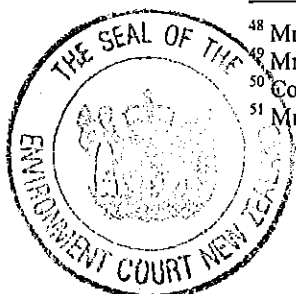
(e) natural features, sites and natural areas of historic, aesthetic, cultural or spiritual value;

[60] We have read the full version of Policy 7.4.4.1, and we agree that the parts selected by Mr Tollemache are most relevant. In the absence of any contrary evidence, and based on the background which Mr Brown provided to us, we are satisfied that the APPA is within the area identified in the ARPS, and that these policies are relevant. However, as we understand it, the boundaries and wording of the ARPS have been changed by Proposed Change 8 to more closely align with s6(b) of the RMA, with the introduction of the terminology *outstanding natural features and landscapes* (“ONL”). We now turn to Proposed Change 8.

Are the proposed provisions consistent with Proposed Change 8?

[61] Proposed Change 8 to the ARPS is all but operative save for one outstanding appeal by Federated Farmers, which is broad in its scope.⁵¹ This appeal does not challenge the ONL boundary, which has been applied to the Awhitu Peninsula under Proposed Change 8.

[62] Mr Gardiner advised us that a specific policy has been included in Proposed Change 8 to address Federated Farmers concerns regarding rural production activities in ONLs. The policy referred to by Mr Gardner is 6.4.22(1) (vii), which forms part of



⁴⁸ Mr Tollemache, evidence-in-chief, paragraph [8.22]
⁴⁹ Mr Tollemache, evidence-in-chief, paragraph [8.23]
⁵⁰ Contained within Chapter 7 – Coastal Environment
⁵¹ Mr Gardner, opening submissions, paragraph [92]

a list of policies designed to give effect to Objectives 6.3.4, 6.3.5, 6.3.6 and 6.3.9.⁵² Unfortunately, this was not a policy addressed by Mr Tollemache in detail, although he did list⁵³ it as a reference. We set out the policy (the underlined sections being those added/amended by Proposed Change 8) in its context:

6.4.22 Policies: Landscape

The following policies and methods give effect to Objectives 6.3.4, 6.3.5, 6.3.6 and 6.3.9.8.

1. Outstanding Natural Landscapes identified in Map Series 3a and described in Appendix F shall be protected by ensuring subdivision, use and development in these areas is appropriate in terms of its type, scale, intensity and location, and is undertaken in such a way that it:

(i) maintains the primacy of naturalness in these landscapes and ensures that built elements are subservient to this naturalness;

(ii) maintains the visual coherence and integrity of the landscape;

(iii) maintains significant natural landforms, natural processes and significant vegetation areas and patterns;

(iv) maintains the visual or physical qualities that make the landscape iconic, rare or scarce at the national, regional or district level;

(v) manages adverse effects on the components of the natural character of the coastal environment consistent with Policy 7.4.4;

(vi) avoids, remedies or mitigates adverse effects on the natural character of wetlands, lakes, rivers and their margins, with particular regard being given to the avoidance of significant adverse effects on those wetlands, lakes, rivers and their margins specifically identified for their natural values in regional and district plans;

(vii) recognises and provides for ongoing primary production, (excluding large scale factory farming) as part of a working landscape, particularly in outstanding natural landscapes where pastoral land dominates;

(viii) accommodates regionally significant infrastructure, where it meets the requirements of Policies 6.4.22.8 and 9;

(ix) enables the operation of existing mineral extraction sites provided that;.....

(x) avoids adverse cumulative effects and is consistent with Policy 6.4.22.4.

(xi) supports the achievement of long term certainty in the management of Outstanding Natural Landscapes through regional or district plan provisions.

(xii) is consistent with the Strategic Objectives and the Strategic Policies for Urban Containment and Rural Areas and the associated methods of Chapter 2 of this RPS.

(Our emphasis in bold)



⁵² ARPS as amended by Change 8, Chapter 6 Heritage, Page 26. 6.4.22 Policies: Landscape

⁵³ Mr Tollemache, evidence-in-chief, paragraph [8.25], and Attachment 11.

[63] Mr Tollemache provided greater context to Policy 6.4.22 by referring to Policy 6.4.22(3) & (4),⁵⁴ as follows (the underlined sections being those added/amended by Change 8):

3. Subdivision, use and development in landscapes adjoining Outstanding Natural Landscapes should have regard to its **adverse physical and visual effects** on the Outstanding Natural Landscape and should manage these effects to:

(i) **maintain significant landforms** and indigenous vegetation and habitats that are **also significant elements or patterns** in the Outstanding Natural Landscape to **protect the visual** and biophysical linkages between the two areas;

(ii) avoid locating significant built elements on the boundary with an Outstanding Natural Landscape, and in particular Outstanding Natural Landscapes within:

- (a) regional parks;
- (b) Department of Conservation estate;
- (c) significant local reserves;
- (d) the coastal marine area.

4. In determining whether subdivision, use and development contributes to adverse **cumulative effects** on Outstanding Natural Landscapes, as required by Policy 6.4.22.1 (xi) an overall judgement shall be made on whether it;

(i) has significant adverse visual and physical effects immediately beyond the boundary of the site;

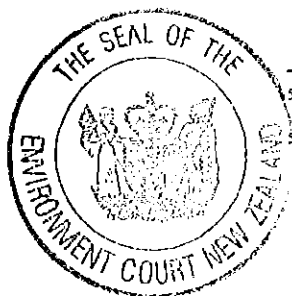
(ii) **reduces the visual and aesthetic coherence** and integrity of the wider landscape unit;

(iii) **reduces landscape quality** and diversity of the local area or within the district, or across the wider Auckland Region;

(iv) if the landscape is iconic, rare or scarce at the national, regional or district level whether the adverse effects result in a **loss or a reduction of the landscape qualities that make the area iconic, rare or scarce;**

(Our emphasis in bold)

[64] As we have said, Mr Gardner made it clear that he accepted that the APPA is within the ONL. In fact he stated that there was no doubt about this issue⁵⁵. He did not query the boundaries of the ONL which we note includes two additional areas that are



⁵⁴ Mr Tollemache evidence-in-chief, paragraph [8.25] and Attachment 11

⁵⁵ Transcript page 78, line 2

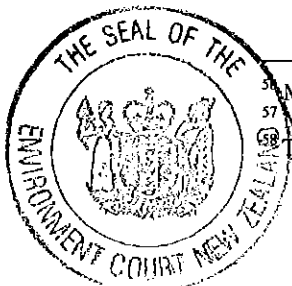
not included in the APPA, and it was generally agreed that the boundaries expressed in Proposed Change 8 are appropriate for our purposes.

[65] It is necessary to understand the context of the policy upon which Mr Gardner relies in order to understand the importance of it. We have considered the whole group of policies of which it forms one part. We have also considered the context of these policies in terms of the objectives which they are intended to support. Policy 6.4.22(vii) is one policy in the context of a great number of policies which articulate such matters as the importance of visual and aesthetic coherence and integrity of an ONL which the ARPS seeks to protect. An emphasis on pastoral land is apparent in the particular policy wording but there is no mention of production forestry. PC14 permits pastoral farming. We find no specific support in these policies for production forestry as an anticipated activity within the ONL.

[66] We accept Mr Gardner's submission that primary production in broad terms would encompass production forestry, but that does not of itself mean that all aspects of primary production share similar environmental characteristics. Currently, production forestry is not predominant in the APPA; rather, a specific form of primary production (pastoral farming) is in existence, and this activity has been instrumental in revealing the landform as we see it today⁵⁶. Mr Brown described this as relatively unique in the region, and certainly in the former Franklin District⁵⁷.

[67] Mr Brown accepted that there are other unique and exceptional environments in the Auckland region, but he confirmed that they are unique and exceptional for different reasons. Thus, while from a farmer's point of view production forestry is a rural activity; its generated characteristics from a landscape character perspective are such that, in this case, those inherent characteristics require assessment because of the special character of the APPA. We understood from Mr Brown that these circumstances would not necessarily apply across other ONLs because they would not necessarily share the same character.⁵⁸

[68] The proposed provisions do not preclude production forestry, but require the effects of it on this landscape to be tested before such a change in land use is undertaken. We are satisfied that the proposed provisions do, therefore, provide for



⁵⁶ Mr Brown, evidence-in-chief, paragraph [43], bullet point 4, page 16

⁵⁷ Mr Brown, evidence-in-chief, paragraph [61]

Transcript pages 90, lines 5, 10 – 91

“ongoing primary production where pastoral land dominates” consistent with the ARPS/Proposed Change 8 policies. In short we do not find that the policy upon which Mr Gardner relies renders the rule inconsistent with these policies.

Do the proposed provisions implement the operative policies, and therefore the objectives, of the District Plan?

[69] We were referred to the relevant objectives and policies in the operative plan, (i.e. before PC 14), including *District Strategic Objectives* 3D.1, 3D.2; Part 5 *Conservation of Natural Features* Objective 5.2.2 and policies 5.2.2.1(c) and 5.2.2.2(b); and in relation to *Sustainably Managing Natural Heritage Resources*, Objective 5.2.3 and policy 5.2.3.2. Mr Tollemache said that the strategic objectives for the whole district “recognise the need to protect, restore and enhance natural and physical resources while creating a balance in that these resources also provide for many of the former districts social and economic strengths, particularly in terms of farming.”⁵⁹ We took his reference to *farming* in this case to mean productive rural activities as confirmed through questioning by Mr Gardner. In other words, the policy does not distinguish between rural activities, but refers to productive potential. We also observe that, as one moves through the policies expressed under Part 5 of the operative Plan⁶⁰ as Mr Tollemache has set them out, the balance against and reference to s6(b) is apparent.

What are the relevant objectives and policies in PC14?

[70] PC14 proposes a comprehensive review of the issues, objectives, policies and methods for subdivision and land use activities in the rural and coastal areas of the former Franklin district.⁶¹ A new Coastal Zone was introduced to differentiate that part of the district located within the coastal environment. Three management areas were included in this zone relating to the Tasman, Manukau Harbour and Seabird (Firth of Thames) coasts. As already outlined, “*production forestry*” is a permitted activity in the Coastal Zone (subject to certain performance standards), except in the APPA, which is located in the Tasman Coastal Management Area. It was agreed by Mr Tollemache that the only purpose of the APPA is to address production forestry in this area.⁶²

⁵⁹ Mr Tollemache, evidence-in-chief, paragraph [7.2]

⁶⁰ Mr Tollemache evidence-in-chief, paragraphs [7.3] – [7.5]

⁶¹ Mr Tollemache, evidence-in-chief, paragraph [3.1]

⁶² Transcript, page 119, line 15



[71] All of the appeals relevant to the Coastal Zone have been settled, apart from the specific rule in question. Thus the objectives and policies which are addressed in PC14 are beyond challenge⁶³. Mr Tollemache took us through the relevant objectives and policies in his evidence.⁶⁴ Part 17A contains the strategic objectives for the rural and coastal areas; Objectives 17A.1, 17A.4 and 17C.7 were highlighted as the higher order objectives which deal with landscape values as they contribute to a sense of enjoyment and appreciation of rural and coastal areas and the protection of natural character, outstanding landscape features and values. Objectives 17A.4 and 7 of the plan are:

1. To recognise and provide for enhancement of those landscape values that contribute to the sense of enjoyment and appreciation of living in rural and coastal areas.
4. To protect natural character, outstanding landscape features and values.
7. To enhance opportunities to utilise the productive potential of natural resources in an environmentally sustainable manner.

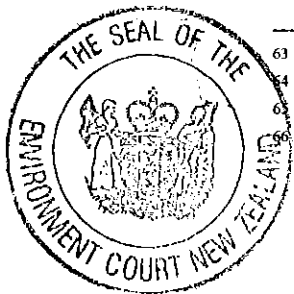
[72] Part 17C contains objectives and policies specific to the Rural and Coastal Zones. We were referred to objective 17C.2.1.1, which is:

17C.2.1.1. To maintain and enhance opportunities for rural activities that utilise soil resources in a sustainable manner and for activities which rely on natural and physical resources.

This objective is achieved through the following policy:

17C2.2.1. Provide for rural production activities that utilise the soil, land and water resources in a sustainable manner.

[73] A number of other specific examples from this part of 17C were also highlighted and we have read them in context as they were provided to us. We agree with Mr Tollemache that these objectives and policies are directed to support the strength of the district in terms of rural production⁶⁵. We also note that Mr Tollemache⁶⁶ referred to three policies which address the maintenance and enhancement of landscape and amenity values, particularly Policy 17C.2.1.14, which



⁶³ Consent Orders issued by the Environment Court on 15 June 2010.
⁶⁴ Mr Tollemache, evidence-in-chief, paragraphs [7.6] – [7.20], and Attachment 7
⁶⁵ Mr Tollemache, evidence-in-chief, paragraph [7.11]
⁶⁶ Mr Tollemache, evidence-in-chief, paragraph [7.12]

states that it is a policy to “*Encourage planting of indigenous forestry and sustainable forestry in appropriate locations.*”

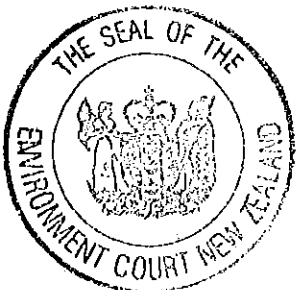
[74] In our view, however, 17E.7.3 is the most relevant of the objectives and policies, as it targets the Tasman Coast Management Area. Mr Tollemache drew our attention to Policies 1 and 5, but we provide them in the context of the whole, to assist a complete understanding of them in their context:

17E.7.3 TASMAN COAST OBJECTIVES

1. To ensure the high natural values, including natural character, landscapes and other resources are protected from inappropriate subdivision, use and development while providing for rural activities.
2. To recognise natural coastal processes by avoiding subdivision, use and development which would create coastal hazards.
3. To recognise and provide for significant cultural values across the Peninsula.

17E.7.4 TASMAN COAST POLICIES

1. Provide for limited subdivision, use and development that will enable coastal natural character and landscape values to be maintained and enhanced.
2. Avoid land modification and development along sandy coastal margins and seaward faces of the coastal escarpments or ridgelines.
3. Encourage protection of stands of indigenous bush, and restoration and enhancement planting of indigenous trees, shrubs and other plants along the coastal escarpments and ridgelines.
4. Promote public access to the coast in strategic locations, in conjunction with environmental protection, enhancement or restoration and in a way that does not adversely affect coastal processes and natural character and significant indigenous vegetation and habitats.
5. Recognise the wild, scenic, and remote values of the Tasman Coast.
6. Promote community based beach care initiatives and apply coastal protection setbacks for development.
7. Promote the protection and enhancement of ecological, cultural, water and natural character values of the dune lakes and other water bodies.
8. Recognise and provide for the protection of Maori cultural values, especially the protection of sites of significance.



9. Provide for the use of mineral and energy resources in a manner which is consistent with the natural character, special environmental and amenity values of the Tasman Coast.

10. Prevent the transfer of Rural Lot Rights into the Tasman Coast Management Area.

Do the proposed provisions implement the objectives and policies?

[75] These policies present a regime which necessitates balancing the protection and enhancement of natural landscape values with providing for rural activities. When considered in the context of all of the relevant objectives and policies that have been brought to our attention, we accept that the proposed provisions allow for that balancing to take place on a case-by-case basis in an area which is undisputedly an ONL.

Are the provisions of the Auckland Plan relevant?

[76] The Auckland Plan is a *Spatial Plan for Auckland* promulgated under s 79 of the Local Government (Auckland Council) Amendment Act 2010. It is, therefore a strategy prepared under another Act that must be had regard to under s 74(2)(b) of the RMA. The Auckland Plan was formally launched on 29 May 2012 after the evidence exchange in this case had taken place. Both parties submitted that it was relevant.

[77] The only evidence we had on this Plan was a supplementary statement prepared by Mr Tollemache overnight during our adjournment. With the caveat that Mr Tollemache, understandably, had not had the opportunity to review the entire document, he identified Section D and Chapters 6 to 9 as being relevant to PC 14. His research did not reveal anything *new* in the sense of the policy matters which were already before us. Federated Farmers accepted Mr Tollemache's opinion on this.

[78] The Auckland Plan identifies Significant Landscapes and Natural Features at Map 7.3, and identifies the western Awhitu as an "*outstanding natural landscape feature & high natural character & significant coastal landscape.*" There appear to be two directives (Directive 7.2 and 7.3) which are relevant, and Mr Tollemache quoted 7.3 which we set out below:

Directive 7.3



Identify significant landscapes, landscape character, natural character and natural features, and appropriately manage these to protect and enhance their biophysical and sensory qualities, and associated values.

[79] We agree with Mr Tollemache that these directives generally reflect the approach to landscapes and natural character contained in the ARPS and proposed Change 8.⁶⁷ Schedule 1 Rural Activities Categories⁶⁸ on Page 233 of the Auckland Plan. We accept Mr Tollemache's assessment⁶⁹ of these provisions and note their alignment with existing formalised RMA policy in the relevant planning documents to which we have already referred.

[80] More relevant to Federated Farmers concerns is Chapter 9, which specifically deals with rural Auckland. We agree with Mr Tollemache that the Plan balances environmental protection, rural production, and activities connected to the rural environment. We also agree that this section appears to be more generally focused on managing lifestyle subdivisions to limit intrusion or growth into rural production areas, rather than the matters the subject of this appeal. The directives in 9.1, 9.2 and 9.3 are noted, and these include protection of resources and production systems that underpin working rural land to be balanced against the identification and protection of "*rural gateways and landmarks*" that help define Auckland.⁷⁰

[81] We note in particular Directive 9.3 which provides:

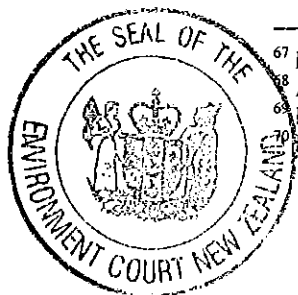
Directive 9.3

Identify rural gateways and landmarks that help define Auckland, and provide for their protection.

[82] In our view, the APPA is clearly one such area.

Are the proposed provisions the most appropriate methods for achieving the objectives of the District Plan, having regard to their efficiency and effectiveness?

[83] As we have already outlined, the rule requires amendment for it be clear, and it needs redrafting to include all of the relevant matters that require consideration



⁶⁷ Mr Tollemache, supplementary evidence, paragraph [2.13]

⁶⁸ Auckland Plan, page 233

⁶⁹ Mr Tollemache, supplementary evidence, paragraph [2.18]

⁷⁰ Mr Tollemache, supplementary evidence, paragraphs [2.19] – [2.21]

in the assessment criteria, for example reference to archaeological sites, indigenous terrestrial and aquatic vegetation and habitat. The Council have also proposed some amendments and we agree that these provide for further clarity.

[84] We note at this point a further anomaly which we have come across in proposed Rule 23B 2.2.5 where specific standards are set out in the plan to deal with instances where production forestry is a permitted activity (i.e. in the Coastal Zone generally outside of the APPA overlay, and where it is set out that woodlots up to 2ha are to be accommodated within the APPA). This did not appear to be a matter in contention, but we note that sub clause (v) is not well-drafted. We suggest that the intent of the clause would be better served if the following wording is adopted:

23B.2.2.5 Production Forestry – Coastal Zone – excluding land located within the Awhitu Peninsula Policy Area illustrated on Map 111, except for woodlots up to 2ha per site.

(i) to (iv) inclusive

Delete (v)

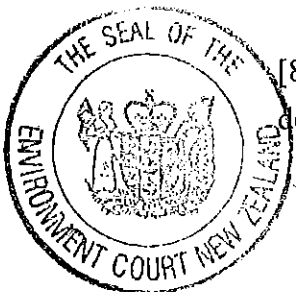
[85] If the rule were redrafted to provide for this, we would be satisfied that the rule is the most appropriate method for achieving the objectives in the District Plan, having regard to its efficiency and effectiveness. We have already highlighted the reasons why a rule is needed to achieve the objectives we have found should prevail relating to protecting land within the APPA from inappropriate use and development while still providing for rural activities. That does not prevent landowners and the Council working together in a cost-effective manner to provide, where appropriate for production forestry.

Do the proposed provisions assist the Council to carry out its functions to achieve the purpose of the Act?

[86] As already outlined, this aspect was not really in dispute. We record that we are satisfied that the proposed provisions will assist the Council to carry out its functions to achieve the purpose of the Act.

Are the proposed provisions in accordance with Part 2?

[87] We have already covered most of the specific provisions in Part 2 in the decision. To summarise, we are satisfied that the proposed rule as amended accords



with sections 6(a) and (b) of the RMA. So far as s5 is concerned, we agree that the tailored approach suggested more appropriately balances the competing public and private interests evident in this case. We are satisfied that the proposed rule meets the sustainable management purpose of the Act by managing the use and development of production farming in the APPA in a way which enables farmers in the APPA, the rural community, and others depending on it to provide for their economic wellbeing, as well as enabling the Auckland regional community to provide for their social wellbeing, by providing that the natural landform character and the ONL in the APPA is preserved and protected for the enjoyment of all.

Result

[88] It follows that the appeal by Federated Farmers will be dismissed, but our decision is subject to a number of drafting issues to be addressed to clarify the intent of the proposed rule(s). To this end we direct that:

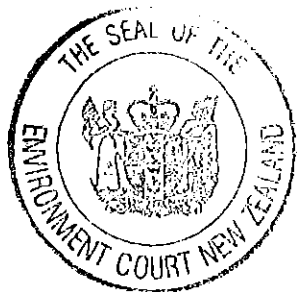
- (a) the assessment criteria at 23B.4.2.9(2) be amended to address all of the relevant restricted discretionary matters to which we have referred in this decision;
- (b) Clause 23B2.2.5 be amended to clarify the intent regarding the exclusion of the APPA area and the permissive status of woodlots up to 2ha in area plus the application of the development standards.

[89] Our suggestion is to amend the introduction to the Clause and thus there is no need for sub-para (v) as follows:

23B.2.2.5 Production Forestry – Coastal Zone – excluding land located within the APPA except for a woodlot up to 2ha per site:

PRODUCTION FORESTRY in accordance with Rule 23B.1.1.4A shall be:

- (i) set back from the edge of a river, stream, lake or WETLAND by 10 metres;
- (ii) set back from an archaeological site by 20 metres;
- (iii) located outside the COASTAL PROTECTION SETBACK;
- (iv) located outside of a SPECIAL CHARACTER AREA and



[90] The Council are to respond to these matters and provide the amended rules within the next 14 days. If necessary, a judicial telephone conference can be convened thereafter to determine what future action if any is required before a final decision is issued.

SIGNED at AUCKLAND this 17th day of August 2012

For the *Court*



M Harland
Environment Judge

