



## INTRODUCTION

1. My name is Gregory Francis Pollock. I am the Business Director - Planning, in the firm of Beca Carter Hollings and Ferner Ltd, and in that role am responsible for the commercial, technical and business leadership of over 80 planners and urban designers in New Zealand and Australia. I have the qualifications of Bachelor of Resource and Environmental Planning (Hons), Masters of Resource and Environmental Planning, and a Diploma in Business Studies (Dispute Resolution). I have had 13 years professional experience in planning, in New Zealand and four years practising in Australia. I have been involved in consenting infrastructure and utility projects in the coastal environment and preparing coastal policy documents – including wastewater utilities for the North Shore City Council, telecommunications infrastructure nationwide, coastal hazard protection works in the Wairarapa, and waterfront master planning at the Western reclamation in Auckland. I have also recently been involved in the preparation of section 32 reports for the draft National Policy Statements on renewable electricity generation and freshwater management. I have also recently been involved in managing a major AEE for a wind farm development. I am a Full Member of the New Zealand Planning Institute.
2. I have read the proposed NZCPS and Contact Energy Limited's (Contact) submission, and confirm that I support the submission.
3. In this statement of evidence, I provide the following:
  - Introduction, including an overview of the role of the NZCPS, and relevant background information;
  - An overview of the structure, intent and general 'balance' of the proposed NZCPS;
  - An assessment of the potential practical implications of the proposed NZCPS on activities in the coastal environment, including an assessment against Part II of the Resource Management Act ("RMA", "the Act");
  - An analysis of the objectives and policies, in particular those relating to renewable energy generation, including assessment of the submission made by Contact;
  - An analysis of other key submissions; and
  - Conclusions.

4. Attached to this statement of evidence, is a marked up version of the proposed NZCPS which includes those amendments sought by Contact, plus amendments I have drafted within the scope of Contact's submission. The relief sought by Contact in relation to the NZCPS is captured in the marked up version. Alternatively, amendments which achieve the same intention as Contact's submission would be acceptable in my opinion.

## **EXECUTIVE SUMMARY**

5. The first NZCPS under the RMA was gazetted in 1994. The 2008 proposed NZCPS has been prepared primarily as a response to the acceleration in coastal development and seeks to balance the use, development and protection of the coastal environment.
6. An independent review of the NZCPS was undertaken by Dr Rosier (May, 2004), to provide improved policy guidance on topics including a definition of the coastal environment, identification of coastal landscapes and seascapes, and criteria for assessing appropriate use and development of our coast. Specifically, the review was undertaken in partial recognition that the resource management issues in the coastal environment are constantly changing.
7. However, I conclude that the proposed NZCPS fails to identify and address the key resource management issues facing the coast today. Perhaps of greater concern is that the proposed NZCPS does not, in my opinion, address the future issues resource management decision makers will no doubt face within the framework of achieving sustainable management.
8. The context for the proposed NZCPS has become more important since changes to the RMA in 2005, which require district and regional policy statements and plans to "give effect to" the NZCPS (section 55). The earlier test of not being "inconsistent with" the NZCPS is generally accepted to be a lesser test. This clearly means the NZCPS will direct these other documents to be amended insofar as they relate to the coastal environment. In my opinion, this amendment to the Act was required to provide greater weight to national and regional policy statements, and is entirely appropriate. However, this means the NZCPS must provide a balanced approach to the coastal environment which reflects the intention of the purpose and principles of the Act (that is, sections 5, 6, 7 and 8).
9. I consider that overall the proposed NZCPS represents a skewed approach to the management of the coastal environment primarily as it does not correctly reflect the definition of sustainable management. The proposed NZCPS is heavily focused on the protection and restoration of the coastal environment and does not accurately reflect the sustainable management principles as set out in the Act. In particular, the proposed NZCPS:

- Appears to confuse the role of the Minister of Conservation, and it appears that many of the policies in the proposed NZCPS are driven by the conservation functions of the Minister, rather than the policy and decision making functions under the RMA. As a result, the NZCPS appears to be heavily weighted towards policies which aim to protect and conserve the coastal environment, and which discourage use and development – even where this could be considered appropriate;
  - the focus of the policies in the NZCPS is on avoidance of adverse effects, rather than allowing for the possibility that in some instances remedying or mitigating effects may also be an appropriate course of action;
  - Makes only selective references to the matters in sections 6 and 7 of the Act.
10. In addition to these higher level observations, I also conclude that the proposed NZCPS is overly complicated, particularly in relation to natural character and amenity values. While acknowledging these are important and challenging issues, the proposed NZCPS provides detailed policy direction which expands on Part II, and in some cases seeks to further define Part II, incorporating current criteria from relevant case law (which in some instances, such as natural character, is in my observation an evolving area of case law). Local and regional councils are required to implement the direction set in the NZCPS, but little is offered by way of guidance as to what the new policies and terms mean in practice, or how they can best be implemented. While in my opinion, local authorities should be given a choice as to which techniques or solutions are appropriate in their area, in many places, the proposed NZCPS defines the method or technique that shall be used.
11. In addition, the NZCPS should, in my opinion, take account of other government policy in a critical area – that is, renewable electricity generation. There are a number of important national policy initiatives, including the New Zealand Energy Strategy, the NZ Energy Efficiency and Conservation Strategy, the Emissions Trading Scheme and the recently notified NPS on Renewable Electricity Generation. The proposed NZCPS should aim to reflect these national policies, including recognition that section 7 of the Act now includes reference to the benefits to be derived from renewable energy generation. While the government has recently released a number of NPS's, and these will go through their own Board of Inquiry processes, I would strongly assert that the NZCPS should seek to be a 'stand-alone' policy document for the coastal environment. In other words, the proposed NZCPS should deal with matters such as renewable electricity generation, as there is no certainty as to what other NPSs might finally direct in relation to this issue.
12. In seeking to provide suggested amendments to the NZCPS, Contact is seeking a more balanced approach regarding the overall development and protection of the coastal environment, and seeks to ensure that the NZCPS includes suitable recognition for existing

and proposed energy infrastructure and assets, as well as recognising the benefits to be derived from renewable energy generation, which may be located within the coastal environment. As presently drafted, the proposed NZCPS represents a significant impediment to the development of renewables in the coastal environment. Given the current electricity generation challenges faced, this is a serious concern.

13. Finally, the NZCPS should be redrafted to accurately reflect Section 5(2)(c) of the Act which allows for adverse effects to be not only avoided, but also where appropriate – remedied or mitigated. This allows for greater flexibility and innovation in the use and development of natural and physical resources. It also allows for greater discretion and decision making power to be devolved to territorial local authorities who can undertake decision making informed by local context and issues.

## BACKGROUND

### DR ROSIER INDEPENDENT REVIEW

14. An independent review of the NZCPS by Dr Johanna Rosier was commissioned by the Minister of Conservation in 2002 and released on 6 August 2004. The objectives of the review included:
  - Assessing the ability of the NZCPS to address current and emerging coastal issues; and
  - Making recommendations to the Minister of Conservation on the need, if any, to review, change or revoke any policies within the statement.
15. Overall, it was considered by Dr Rosier that “...*the NZCPS has had a positive effect on coastal management in New Zealand.*” In particular;
  - *NZCPS has effectively generated debates about our national priorities for coastal management; and*
  - *NZCPS is effectively implemented through Regional Policy Statements and Regional Coastal Plans but is:*
    - *Only partially effective in influencing district plans; and*
    - *Only generally referred to in resource consent applications.*
16. I would agree with Dr Rosier’s conclusion based on my own experience with the NZCPS. The key issue that I consider needs to be carried through to the new NZCPS is that it must generate national debate about national priorities for coastal management. This implies that

there is a level of agreement about what the national priorities are. In my opinion, the proposed NZCPS does not articulate these priorities in a manner that reflects what I would consider to be some of the national priorities. This stems from a lack of a clear 'vision' for the coastal environment, or at the least, a lack of clarity on the role of the NZCPS and what resource management issues it seeks to address.

17. Dr Rosier recommended that the NZCPS be formally reviewed:

- To revoke obsolete policies; and
- To provide improved policy guidance on topics including a definition of the coastal environment, identification of coastal landscapes and seascapes, and criteria for assessing appropriate use and development of our coast.

18. My assessment of key issues defined by the Dr Rosier review, and their omission from the proposed NZCPS suggests that a number of findings of this review have not been considered appropriately. While the Rosier review does acknowledge there are many conflicting opinions when consulting with stakeholders about the coastal environment, it does provide a number of useful recommendations about improvements to the NZCPS. In particular, the following do not appear to have been adequately captured in the proposed NZCPS as a result of the independent review process:

- The brevity of the NZCPS has been praised by a range of stakeholders;
- A balance of public and private interests should be preserved (section 3.2, pg 27);
- The lack of a clear vision for the coastal environment has meant that there is inconsistent interpretation of the NZCPS in district and regional planning documents; (section 3.2, pg 27);
- Cumulative effects associated with landscape change could be more explicitly provided for in the NZCPS (section 3.2, pg 27); and
- Maintaining the hierarchy of avoiding, remedying and mitigating effects, particularly in relation to natural character (section 9.4, pg 69).

19. I also note that a number of the recommendations from the Dr Rosier review appear to have been accepted, and have been incorporated in the proposed NZCPS. The independent review provides a comprehensive perspective from a range of stakeholders on the past performance of the NZCPS. In my opinion, one of the most important observations of the review is that the NZCPS has been a relatively simple document, and as a result, regional coastal plans in particular have picked up many of the policy directions of the NZCPS

(bearing in mind the previously applicable test of being “not inconsistent with” with NZCPS). While the proposed NZCPS is clearly more comprehensive in the topics covered, in my opinion, it does not necessarily provide any greater clarity to Councils in preparing district and regional planning documents under the RMA. This is further complicated because the document as currently drafted is not entirely consistent with Part II of the Act.

## THE PROPOSED NZCPS

### PLANNING OVERVIEW OF THE ROLE OF THE NZCPS

20. The New Zealand Coastal Policy Statement (“NZCPS”) is a national level policy statement provided for by the Resource Management Act 1991 (“the RMA” or “the Act”). The NZCPS is mandatory, and was first gazetted in May 1994. The purpose of a NZCPS is defined by section 56 of the Act as being “*to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand*”.
21. The 1994 NZCPS has been reviewed, and in 2008 a proposed NZCPS was notified. Following a recommendation by the Board of Inquiry and adoption by the Minister, the proposed NZCPS will be gazetted and become operative, presumably replacing the existing NZCPS. The proposed NZCPS has been drafted primarily in response to the acceleration of coastal development and seeks to balance the use, development and protection of the coastal environment.
22. Section 58 of the Act further defines the contents of a NZCPS, as follows:
  - (a) **National priorities** for the preservation of the natural character of the coastal environment of New Zealand, including protection from inappropriate subdivision, use, and development:
  - (b) The protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga:
  - (c) Activities involving the subdivision, use, or development of areas of the coastal environment:
  - (d) The Crown's interests in land of the Crown in the coastal marine area:
  - (e) The matters to be included in any or all regional coastal plans in regard to the preservation of the natural character of the coastal environment, including the specific circumstances in which the Minister of Conservation will decide resource consent applications relating to---

*(i) Types of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area; or*

*(ii) Areas in the coastal marine area that have significant conservation value:*

*(f) The implementation of New Zealand's international obligations affecting the coastal environment:*

*(g) The procedures and methods to be used to review the policies and to monitor their effectiveness:*

*(h) Any other matter relating to the purpose of a New Zealand coastal policy statement.*

23. These sections of the Act are significant in the context of considering the proposed NZCPS, and Contact's submission in particular. The Act states specifically that the NZCPS is to achieve sustainable management in the coastal environment. The list of potential contents for an NZCPS (s58) confirms the significance of this resource management document in guiding both decision makers, policy makers, Courts, applicants and all stakeholders with an interest in the coastal environment. The NZCPS has, over the past 14 years, formed a critical building block for the coastal resource management framework in New Zealand.

## EMERGING RESOURCE MANAGEMENT ISSUES

24. Contact has a number of in-principle concerns that have influenced their submissions on the objectives and policies in the proposed NZCPS. Over the duration of the current NZCPS the key issues facing the coastal environment have changed. In some instances the existing NZCPS has enabled significant issues, such as discharge of untreated effluent to the coastal environment, to be addressed, and as a result the adverse effects have 'diminished'. However, over this time a range of new issues – from local to global in nature – have become more prominent, and the existing NZCPS is no longer adequate to deal with issues that can be anticipated in the future. It is therefore appropriate to review the performance of the NZCPS in the context of significant resource management issues in the coastal environment. Therefore, I support amendments to the proposed NZCPS which seek to address these new or emerging resource management issues.

25. There are a number of issues that are not adequately addressed, including:

- Ensuring that the concept of sustainable management is applied with rigour in the coastal environment;
- Recognising that there needs to be a balance between protection of important coastal values (including those identified in sections 6 and 7), and appropriate subdivision, use and development of the coastal environment;

- Acknowledging that change will occur in the coastal environment, and ensuring there are appropriate strategies in place to manage this change. One of the defining features of the coastal environment is that change is a constant force. At a local level, change can be easily observed over time as a result of coastal processes. Human activity can also cause change. There are a number of potentially more serious changes too at an international level, such as climate change and sea level rise. Our ability to adapt to these changes will be critical – particularly due to New Zealand’s largely coastal population;
- Recognising that adapting to climate change has potential to be a significant resource management issue for New Zealand, and that there needs to be a range of creative measures to respond to this in the coastal environment. These measures should, wherever possible, provide certainty for resource users. The response must allow for a range of possibilities, and not simply focus on removal of communities, infrastructure and activities from the coastal environment;
- A range of activities can improve or reduce access to the coastal environment, and as a result, the NZCPS should address the situations where public access is appropriate versus not appropriate; and
- Recognising the role of tangata whenua in coastal management, and ensuring that cultural values are protected from inappropriate subdivision, use and development;
- Increasing population growth, in particular in coastal communities, meaning the challenges for sustainable management of the coastal environment will become greater as a result of increasing pressure for development;
- The need for a range of methods and techniques to be applied at national, regional and local level to protect significant coastal landscapes, values and biodiversity from inappropriate subdivision, use and development;
- The increasing demands on coastal ‘space’ for a range of activities, including generation of electricity from renewable sources. The current approach is first come first served (similar to water allocation), and while this is generally appropriate, there should in my opinion, be a strategic review or some policy direction at a national level as to the broad areas and criteria for determining where these activities can occur. An *ad hoc* approach to coastal occupation for major activities in the CMA is unlikely to serve the best interests of sustainable management, particularly in relation to marine and tidal energy;
- Recognition that use and development in the coastal environment has adverse and in some cases, cumulative effects. In some instances, activities can have a range of significant benefits which must also be recognised; and

- There is a difference between public and private land and there must be certainty for all stakeholders on the coastal environment as to how land and the coastal marine area is to be used.

## ENABLING PROVISIONS LACKING

26. Contact in its submission considers that the proposed NZCPS in its current form is not *“consistent with the sustainable management of natural and physical resource purpose of the RMA. For example, the document is very protection focussed and lacks any real focus on the “enabling” component of the definition of sustainable management under section 5 [of the Act]. This over-emphasis on protection and lack of emphasis on enabling use and development of the coastal environment leads to a lack of balance in the document, and consequently this national policy statement is unlikely to lead to the sustainable management outcome contemplated by section 56 of the RMA.”* I agree with Contact’s submission, and provide detailed assessment of the objectives and policies as they stand to support this later in my evidence.

## NEW TECHNOLOGY IN THE COASTAL ENVIRONMENT

27. The NZCPS is the key resource management document for the coastal environment. However, there are a number of other policy initiatives that must be considered. The unbalanced approach presented in the proposed NZCPS is a significant concern for Contact, particularly in the context of renewable energy generation in New Zealand. Renewable energy is likely to play an increasingly significant part in a sustainable future for New Zealand. To this end, the coastal environment is critical to developing renewable energy generation. The coastal environment is already being used to develop wind, wave and tidal energy. Wind energy in particular is now well understood from an RMA perspective, and good case law is developing. Marine energy is less well understood, but will no doubt be a major part of New Zealand’s generation system in the next ten years or more. In my opinion, the proposed NZCPS does not allow for the possibility to new technology being applied in the coastal environment.
28. There are two key aspects to the context of the NZCPS which warrant further discussion – firstly, the national policy context established as a framework to the NZCPS, and secondly, Part II of the RMA.

## OTHER NATIONAL POLICY CONTEXT FOR THE NZCPS

29. The government is seeking to promote the development of renewable electricity generation, in order to achieve a range of goals, including security of supply of electricity as well as

reducing New Zealand's generation of greenhouse gases. There are a range of measures that have been put forward by the government to achieve this over the past few years. From a policy perspective, three of the most significant include:

- The New Zealand Energy Strategy;
- The New Zealand Energy Efficiency and Conservation Strategy;
- The recently notified proposed National Policy Statement on Renewable Electricity Generation; and
- The Emissions Trading Scheme legislation. While this has recently been passed by Parliament, I do not intend to discuss this in further detail, other than to note it is seen as part of a package of measures to address greenhouse gas emissions.

30. In 2007 the Government introduced the "New Zealand Energy Strategy to 2050: Towards A Sustainable Low Emissions Energy System" (October 2007) ("The Energy Strategy"). The document recognises two major energy challenges faced by New Zealand, including:

- The need to respond to the risks of climate change by reducing the greenhouse gases caused by the production and use of energy; and
- To produce clean, secure, affordable energy while treating the environment responsibly.

The Resource Management Act is clearly a fundamental part of the equation in meeting both of these challenges.

31. The vision identified in the Energy Strategy was:

*A reliable and resilient system delivering New Zealand sustainable, low emissions energy services, through:*

- *Providing clear direction on the future of New Zealand's energy system;*
- *Utilising markets and focussed regulation to securely deliver energy services at competitive prices;*
- *Reducing greenhouse gas emissions, including through an emissions trading scheme;*
- *Maximising the contribution of cost-effective energy efficiency and conservation of energy;*

- *Maximising the contribution of cost-effective renewable energy resources while safeguarding our environment;*
  - *Promoting early adoption of environmentally sustainable energy technologies; and*
  - *Supporting consumers through the transition.*
32. The Energy Strategy includes a range of measures, but of greatest relevance to the proposed NZCPS is that there is a significant target for increased use of renewable electricity generation. At section 4.2.1 of the Energy Strategy, the Government has identified the “*adoption of a target for renewable electricity generation of 90 per cent by 2025 (based on delivered electricity in an average hydrological year).*” The strategy notes that there is likely to be enough geothermal, wind and hydro energy to meet New Zealand’s electricity demand for the next 20 years or so. It goes on to state that if marine generation (and other renewable sources) become economically viable within that time, New Zealand would be able to use predominantly renewable electricity sources for even longer.
33. The Energy Strategy is providing clear direction for New Zealand to focus on developing new sources of renewable electricity generation. The development of this new generation capacity will require a range of specific projects, which will require approval under the RMA. A significant number of these projects for new renewable generation will likely be in the coastal environment – including wind farms, and increasingly in the future, marine energy projects which will generate electricity from the tide, currents and waves. In addition, a number of existing electricity generation plants are in the coastal environment – including Contact’s plants – as explained in the statement of Mr Sommerville. This means there is a significant national benefit to be derived from ensuring the coastal environment is able to accommodate projects which generate electricity, including from renewable sources of energy. Projects must of course, be able to demonstrate they can meet the ‘tests’ of sustainable management as defined in Part II of the Act.
34. While the Energy Strategy provides clear direction for what is required from an energy perspective for New Zealand to improve its security of supply, reduction of greenhouses and so forth, it does not enable renewable electricity generation projects to gain approvals under the RMA. Therefore, the Energy Strategy also notes (at 4.6.4) that improved leadership and guidance will be provided through the RMA in relation to consenting renewable electricity generation. The Government notified a National Policy Statement on Renewable Electricity Generation (“NPS(REG)”) on 6 September 2008.
35. The proposed NPS(REG) recognises the need to provide increased direction on the development of renewable energy. In the preamble to the NPS(REG) it is noted that “*The contribution of renewable electricity generation, regardless of scale, towards addressing the*

*effects of climate change plays a vital role in the wellbeing of New Zealand, its people and the environment<sup>7</sup>. Energy demand in New Zealand continues to grow, while the challenges in gaining resource consents for projects which increase generation capacity is difficult. This is because, as the NPS notes correctly that “Development that increases renewable electricity generation capacity can, however, have environmental effects that span local, regional and national scales, often with adverse effects manifesting locally and positive effects manifesting nationally.”*

36. The NPS(REG) has the overriding objective:

*To recognise the national significance of renewable electricity generation by promoting the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities, such that 90 per cent of New Zealand’s electricity will be generated from renewable sources by 2025 (based on delivered electricity in an average hydrological year).*

37. In addition, the NPS(REG) includes policies which:

- Recognise the national significance of the benefits of renewable electricity generation activities;
- Acknowledge the practical constraints associated with the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities;
- Have regard to the relative reversibility of adverse effects associated with particular generation types;
- Enable identification of renewable electricity generation possibilities; and
- Support small and community-scale renewable electricity generation.

38. While the NPS(REG) will provide appropriate guidance for both planning documents, as well as for decision makers under section 104, it must not be seen as the only solution to dealing with these issues. The NZCPS, as the primary document for providing national direction for coastal issues should, in my opinion, seek to provide its interpretation of how renewable electricity generation can meet the requirements of sustainable management in the coastal environment. As noted earlier, there is potential for conflict between different NPS documents. Furthermore, there is no guarantee that the NPS(REG) will be gazetted. Therefore, the NZCPS must be a ‘stand-alone’ national policy document, ideally one which is consistent with other national policy and Part II of the Act, but which nevertheless deals with all significant resource management issues in the coastal environment.

39. While the above policy documents provide a focus on renewable electricity generation, and security of supply for electricity generation in general, the proposed NZCPS does not appear to recognise the importance of existing generation assets in the coastal environment as nationally significant assets. Further, the NZCPS fails to recognise the potential for future renewable electricity projects to locate either in the coastal environment or the coastal marine area. In my opinion the NZCPS should aim to address these issues, and should not seek to rely on other, yet to be confirmed, documents to deal with these issues in the coastal environment.

## INTEGRATING POLICY

40. One final concern is the relationship between NPSs – including the NZCPS. I have reviewed relevant sections of the RMA, and cannot find guidance in the Act as to how policy conflicts between different NPSs are to be addressed. This is a problem that until recently was not considered due to a lack of NPSs, apart from the mandatory NZCPS of course. Given that there are now an additional three NPSs notified or operative (Transmission, Renewable Electricity Generation and Freshwater Management), plus others under active consideration (Flooding and Urban Design), there is real potential for these documents to be inconsistent with each other – either at the point of notification or gazettal. This is particularly possible with various Boards of Inquiry considering NPSs simultaneously. One obvious means to ensure NPSs are consistent with each other is to use Part II of the RMA as the benchmark against which policy is tested.

## PART II OF THE RMA

41. Part II of the RMA is fundamental to resource management decision making, and to achieving the stated purpose of the Act – sustainable management of natural and physical resources. In my opinion, the proposed NZCPS does not reflect the overriding purpose and principles of the Act, as set out in Part II. I outline the reasons for this conclusion below.
42. The proposed NZCPS has an unbalanced approach to the management of the coastal environment, failing to recognise the “enabling” action of the Act with a focus on natural resources and disregard for physical resources. My review of section 5 of the Act in relation to the proposed NZCPS concludes that:
- Section 5 notes that people and communities must be able to provide for their social, economic and cultural wellbeing. While the NZCPS does not reference the need to be able to generate electricity, the ability to do so is a key requirement of social, economic and cultural wellbeing. Given the importance of the coastal environment to current and

future generations, the objectives and policies should better reflect the ability to use the coastal environment for this nationally significant activity;

- In my opinion, the proposed NZCPS focuses on managing the ‘protection’ of natural and physical resources, rather than managing the ‘use, development and protection.’ Sustainable management requires an ability to use and develop resources, including coastal resources;
- Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations has an implicit focus on the future. Renewable electricity generation by its nature is aiming to secure the interests of future generations. This type of electricity generation also reduces greenhouse gas emissions, which is again consistent with the concept of sustainable management. The only real challenge in relation to this aspect of sustainable management is whether there are cumulative effects arising from a range of projects. This is entirely possible, particularly in areas where energy resources (e.g. wind, tidal currents etc) are unique – that is, present in commercially viable quantities such that a number of generators seek to develop projects in a particular location. Even with cumulative effects, in my opinion, it should still be possible to consider these effects as meeting the tests of sustainable management. A further challenge in this regard is the allocation of coastal space;
- The need to safeguard life-supporting capacity still applies in the coastal environment, and in my opinion, this concept has generally been well reflected in the NZCPS. However, this concept cannot be taken in isolation from the other aspects of section 5; and
- The final requirement in section 5 is that the adverse effects of activities are avoided, remedied or mitigated. The proposed NZCPS in many instances prefers the avoidance of effects. While this approach is legitimate in specific situations where there is strong justification for avoidance, this is not the case in the NZCPS. Rather, the document uses “avoid” policies to reinforce the overall impression that the coastal environment is not, as a rule, suitable for use and development.

#### AVOID, REMEDY AND MITIGATE

43. Overall, section 5 allows decision makers to exercise an overall judgement about any particular project or policy proposal. That judgement allows a balancing of effects – and where effects cannot be avoided, they can still be remedied or mitigated. When project benefits are taken into account it is still possible to conclude that some adverse effects, including potentially significant adverse effects, are acceptable if there are significant positive benefits against which to weigh the adverse effects. In other words, section 5 allows for a weighing or balancing of a wide range of matters in relation to a project. As currently drafted, the NZCPS would effectively eliminate a number of renewable energy projects, as

the 'avoid' policies would mean the effects could not be contemplated in the first instance, even where there are more nationally significant benefits for them to be weighed against.

44. The following list identifies those policies in which there is a focus on avoidance of effects without recognition of the ability to remedy or mitigate adverse effects (which Contact have sought be amended to reflect the avoid, remedy or mitigate approach in the Act):

- Policy 21 – which deals with cumulative effects;
- Policy 31 – relating to indigenous biological diversity;
- Policy 32 – Outstanding natural features and landscapes;
- Policy 33 – Subdivision, use and development;
- Policy 38 – The habitat of Maui Dolphin;
- Policy 44 – Maintaining water quality;
- Policy 46 – Mixing Zones;
- Policy 50 – Ports and other marine facilities;
- Policy 52 – Subdivision and development in areas of hazard risk;
- Policy 54 – Protection structures; and
- Policy 55 – Historic heritage identification and protection.

45. The need to absolutely 'avoid' adverse effects imposes a greater restriction than that required by the Act, and the NZCPS should recognise that there are proposals that will generate adverse effects, but which are still consistent with the sustainable management purpose of the Act.

#### NO MORE THAN MINOR EFFECTS

46. Other policies state that the level of effect shall be no more than minor (e.g. Policy 32). Once again, in making an assessment of the ability of a project to meet the sustainable management purpose of the Act, the right approach in my opinion is to assess a range of effects – both positive and adverse. Effects that are more than minor may still allow sustainable management to be achieved, including by remediation, mitigation or considering other project benefits. Again therefore, I would argue strongly that it is possible to reach a conclusion that a project with more than minor adverse effects, either with or without

mitigation, can meet the sustainable management purpose of the Act in certain circumstances.

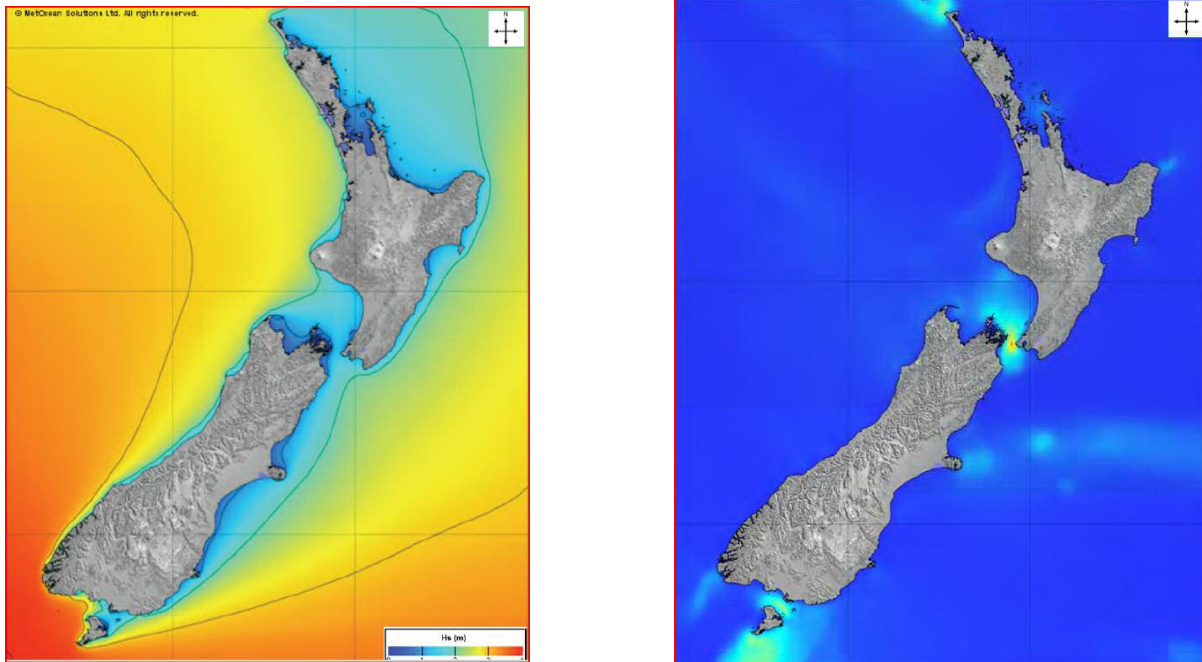
47. Many renewable electricity generation projects in the coastal environment will rely – or are already relying - on a ‘balancing’ Part II matters approach in order to gain resource consents. In my opinion, this approach is entirely consistent with Part II of the Act, and without the ability to make these judgements within the context of sustainable management, subdivision, use and development in the coastal environment will be stifled. Given that the majority of our population lives on or near the coast, the consequences of this are significant in terms of people and communities being able to provide for their wellbeing. On this basis, Contact has sought modification and in some cases deletion of policies that are inconsistent with Part II of the Act, and I support that approach entirely.

#### SELECTIVE USE OF SECTION 6 AND 7

48. Following on from Section 5, the proposed NZCPS deals with a number of matters identified in section 6 and 7 of the RMA. While this is to be expected, there is selective use of sections 6 and 7. As an example, the proposed NZCPS does not adequately provide for existing infrastructure located in the coastal environment, nor does it adequately reflect the provisions of section 7(b), (i), or (j), relating to climate change, energy efficiency and renewable energy. This means the proposed NZCPS does not provide support or flexibility in terms of the development of new renewable energy sources and new technologies such as wave and tidal energy.
49. Renewable energy resources will require strategic planning to address matters such as coastal occupation. For example, with aquaculture causing significant concerns in relation to the occupation of space, Government provided a specific response – to identify allocated areas of coastal space for aquaculture, and from here a specific process applies to determine who can use the CMA for this purpose. Similarly, through other legislation, mineral sources are ‘tendered’ to third parties for exploration purposes. The NZCPS has missed an opportunity to provide guidance for the future on areas where tidal or marine energy could in future become viable in a manner consistent with Part II of the Act – that is, the NZCPS should provide for ‘strategic planning’ for this issue in relation to the coastal marine area.
50. By way of example, the following map provides an overview of New Zealand’s tidal currents. It is highly likely that these areas will be subject to resource consent applications for new forms of renewable energy in due course. The proposed NZCPS does not adequately deal with the issues this will raise in terms of certainty, coastal occupation, the first come first served approach, or how conflicting uses will be dealt with. I include this map simply to demonstrate that there are potentially significant parts of the New Zealand coast where this

issue in particular will become prominent. Similarly, a map of New Zealand's wind resource produced ten years ago would have been reasonably accurate in predicting at least the general regions where wind farm development is now occurring.

51. Figure 1: Wave Climate (left) and tidal current (right) (Source: Development of Marine Energy in New Zealand, EECA and GW, pg 38 and 47, 30 June 2008)



52. As a general observation in relation to Part II matters, the language of sections 6 and 7 are in a number of instances used selectively, or alternatively, new language is introduced in the document. By way of example in relation to 6(a), Part II notes that the natural character is to be protected from inappropriate subdivision, use and development. Policy 30 'drops' reference to inappropriate subdivision, use and development, and simply states natural character will be protected. Part II is not protecting these features absolutely, but rather protecting them from inappropriate subdivision, use and development. Again, this implies or allows a judgement which must meet the sustainable management purpose of the Act and also recognises the significant role the coastal environment plays in a range of projects. While I am strongly of the view that natural character should be protected, this does not mean the landscape should become 'frozen' in time, and it should not mean that there is no opportunity to undertake certain activities within that environment. In my opinion, this is what is contemplated by the Act.
53. Finally, the draft NZCPS contains a number of "ill defined" concepts and includes policies which are inconsistent with the statutory provisions of the Act, or require qualification through the use of expressions such as "where this is appropriate" or "where this is consistent with the sustainable management purpose of the Act". All sections of Part II

should apply in the coastal environment. This means that a national policy statement should not attempt to override, replace or selectively interpret Part II of the RMA. Part II provides the overriding guidance for what sustainable management means.

#### “GIVE EFFECT TO” THE NZCPS

54. The change in the RMA to “give effect to” the NZCPS means that the document now has a far greater ability to influence decision making – both at policy and resource consent decision making levels. Previously, plans and policy statements were required to ‘not be inconsistent with the NZCPS.’<sup>1</sup> In my view, this is a good amendment to the Act, as it provides a real ability to ensure issues that are significant at national or regional levels flow through to regional and local plans, which in my experience are extremely important as the most likely ‘first port of call’ for people contemplating activities, and often provide the most direct guidance for what activities will be considered in a certain location.
55. This new test also means there must be a greater rigour in testing the implications of policy. It is a significant test, but in my opinion, the current NZCPS has not been sufficiently tested, as there are many potential outcomes of the NZCPS that have not been considered, a few of which have been outlined in my evidence so far. I have reviewed the Section 32 assessment for the proposed NZCPS, and in my opinion this has not identified the range of issues that could have been dealt with, and as a result, the Section 32 assessment does not identify the range of stakeholders that will be affected.
56. If concerns about Part II raised by the submissions of the various electricity generation companies (including Contact) as well as other submitters are not addressed, it raises the very real prospect that the NZCPS will significantly increase statutory costs, and result in lost opportunity. Costs would likely increase for Councils (and stakeholders) through the plan and policy statement process and through additional costs for preparing resource consent applications. One ‘worst case scenario’ is that costs associated with the NZCPS include lost opportunity costs. This could occur if the strong focus on avoidance of effects means proposals that could otherwise be considered in the context of sustainable management are unable to be considered, or are considered as ‘non-complying’ activities. It is important to note that the submission from Contact does not attempt to make consenting for major projects significantly easier than at present, but simply to place it in a position where it can rely on Part II of the Act and clear, comprehensive NZCPS policies. This will allow ‘good projects’ that can meet the tests of sustainable management to go ahead, and conversely, projects that are doubtful could presumably be declined.

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<sup>1</sup> In 2005, an amendment to the Resource Management Act meant policy statements and plans now have to “give effect” to the NZCPS. When the current NZCPS was gazetted, the requirement of the Resource Management Act was that policy statements and plans be “not inconsistent with” it.

57. The “give effect to” test is clearly a higher one than the previous test. A number of the provisions of the NZCPS are highly directive, and will in many instances, mean local authorities will need to change the way they are undertaking land use planning, or other planning activities – even where the current approach is achieving the purpose of the Act.
58. To provide an example as to what the “give effect to” test may mean in practice. I use Policies 14, 15 and 16 to illustrate an easily conceivable scenario. (I note that Contact in its submission sought the deletion of these policies, perhaps as a result of some of the potential consequences of the policy). These policies relate to the form of subdivision and development, and attempt to promote more sustainable forms of urban development. While I do not doubt that this is a critical issue for urban communities, I question whether the NZCPS is the appropriate ‘vehicle’ for this direction, or at the least, whether the NZCPS should be as ‘directive’ as Policy 14 and 15. There are many other examples like this within the proposed NZCPS.
59. Consider as an example, a hypothetical wind farm development in the coastal environment. My interpretation of Policy 14 would require local authorities to have defined where subdivision and development of various types will not be appropriate. I note that identifying locations where specific types of development will and will not be appropriate appears to be at odds with the RMA’s effects based approach. However, ignoring that obvious observation, the next key issue is that local authorities must now undertake significant land use planning exercises along all sections of the coast to make determinations in relation to a range of activities. This approach was initially considered in the proposed NPS on Renewable Electricity Generation, but was rejected following consultation with local government and electricity generators – the establishment of “no-go” areas is not consistent with sustainable management, nor is it efficient from a local authority perspective.
60. The policy goes on to identify the specific solution to protecting the coast – that is, set-backs for development (Policy 14)(d)). In the case of a wind farm, setting back development from the coastal marine area has the potential to make a project uneconomic before there is even a chance to weigh the positive and adverse effects in the context of a sustainable management decision. These setbacks do not appear to link to any relationship with outstanding natural landscapes, or other section 6 matters.
61. In summary, I would note that in the present policy context, it is extremely challenging to succeed in consenting a major renewable electricity project, such as a wind farm, in the coastal environment. However, in most situations, the existing framework of the NZCPS, regional policy statements and plans, and district plans, typically allow a wind farm developer to put a project forward and have it considered on its merits. Typically, the merits of these projects relate to the need to consider a range of national benefits against a range

of local adverse effects. As a planner, I consider my role to be assisting decision makers by weighing these various effects within the context of Part II of the Act. As presently drafted, the proposed NZCPS would not allow such a weighing process to occur. If this document becomes operative in its present form, I would find it more challenging as a planner for argue for wind farms in the coastal environment generally.

## PROCESS TO IMPLEMENT NZCPS

62. Sections 55(2) and 55(2A) of the RMA provides guidance on how local authorities must implement a national policy statement. In addition, sections 62(3) relating to regional policy statements, section 67(3) relating to regional plans, and 75(3) relating to district plans note that these documents must give effect to any National Policy Statement.
63. Section 55 indicates that NPS's may include timeframes for specific actions to occur, or simply to require amendments as soon as practicable. It must state whether a local authority must follow Schedule 1 in relation to amendments to its documents. Alternatively, it may use Clause 16 of Schedule 1 to make changes to a document without notification or hearing.
64. Policy 13 requires local authorities to notify amendments to regional policy statements, regional plans including coastal plans and district plans to give effect to the proposed NZCPS. This is to be done as soon as practicable, and no later than five years after the date of gazettal.
65. As noted in its submission, Contact *"understands the intention behind Policy 13, but it is not clear what it means for local authorities to "amend" statutory documents"*. This could have a range of meanings, and clarity is needed on what local authorities are required to do in the five year timeframe. While this lack of clarity may appear to be a minor consideration, and can be easily amended by drafting (see the attached version of the proposed NZPCS as amended by Contact's submission), the ambiguity or possibility of misinterpretation creates difficulties and uncertainty for all those parties that will be dealing with the NZCPS in the future.
66. This should be clarified in relation to two issues. Firstly, the term 'amend' should be considered to mean 'notification', and secondly, the use of the First Schedule should specifically be defined as excluding Clause 16 unless explicitly stated. Specific examples within the proposed NZCPS where the process is unclear are as follows:
  - Policy 24, which relates to coastal occupation charging, dictates that the Schedule 1 process shall be used to amend regional coastal plans within 12 months (again, Contact's

submission correctly notes that Councils cannot hope to control this timeframe post notification);

- Policy 37 which relates to restricted coastal activities – and which I note does not specify a time, simply “as soon as practicable”. The process to be used is that in Section 55 of the RMA – that is, Councils will amend their documents without notification or hearing. I also note that in my opinion, Policy 37 is out of place, and does not simply relate to natural character issues, but is perhaps better located under the ‘General’ policy section; and
- Policy 38 to make reference to Clause 16 (via section 55), but this should be more explicit.

67. I consider that the proposed NZCPS contains a number of policies that do not make it clear how they are to be given effect to. By way of example, policy 2 relies on mechanisms and processes that, as far as I am aware cannot be delivered through a plan provision or consent decision – or at the very least, will require major reconsideration of how resource consents are processed from an efficiency perspective. In the context of the higher “give effect to” requirement, it is my opinion that a number of objectives and policies in the proposed NZCPS must be rewritten simply to clarify their intent, and to provide consistency with Part II of the Act. Whether policies can be implemented, and how they will impact on the day to day functioning of the planning and resource management process is critical. The ‘effectiveness’ of the entire NZCPS document could, in my opinion, be questioned if it creates uncertainty. This lack of clarity means that resource consent applicants, councils and others are not certain when specific plans will require amendment, or under what process.

## **ANALYSIS OF OBJECTIVES AND POLICIES**

68. In this section of my evidence, I refer to the attached ‘tracked changes’ version of the proposed NZCPS. This version is based on Contact’s submission. In my evidence, I also include specific objectives and in some cases, policies, which I have amended in a manner which is consistent with the intent of Contact’s submission, but which offers an alternative approach.

## **STRUCTURE OF THE NZCPS**

69. The proposed NZCPS provides a reasonably clear structure upon first inspection. That is, there are a series of ten objectives, following by policies grouped as ‘General’, ‘Subdivision, Use and Development’, ‘Natural Character’, Public Access, ‘Water Quality’, Coastal Hazards’ and ‘Historic Heritage’.

70. In reviewing the structure of the proposed NZCPS, there are a number of general observations or themes arising from both my review and analysis, and Contact's original submission.
71. The first key amendment required to the NZCPS in my opinion is to provide a much clearer 'vision' of what New Zealanders want for the coastal environment. The need for a clear vision came through in the Dr Rosier Review. While I note that this is not typical RMA policy 'jargon', the NZCPS lacks a strong statement as to its purpose, and what it seeks to achieve in the coastal environment over the next ten years.
72. The second and perhaps most critical observation, is that in my opinion the NZCPS does not establish a clear set of key resource management issues that are of such significance that they warrant being addressed at a national level. The development of clear issue statements, or alternatively focussed objectives, provides any resource management policy document with a concise summary of what the document seeks to address and why.
73. The objectives in the NZCPS as drafted appear to replace, in some way, the 'Principles' that are included in the current NZCPS. However, the ten objectives are not sufficiently focussed in my opinion. The track changes version attached to my evidence identifies the changes Contact sought in relation to these ten objectives.
74. Contact also sought more balance in these objectives, as they are primarily focussed on protection and not enabling use and development of the coastal environment. In order to provide the Board some assistance in relation to how the objectives could be both simplified, and balanced, I provide for consideration below a revised set of objectives in an attempt to simplify the proposed NZCPS objectives:

***Objective 1: Sustainable Management***

*Enable people and communities to provide for their social, economic, and cultural wellbeing through the use, development, and protection of natural and physical resources in the coastal environment.*

***Objective 2: Protection of the Coastal Environment***

*Recognise the national significance of protecting significant landscape, bio-diversity and cultural values in the coastal environment from inappropriate subdivision, use and development.*

***Objective 3: Change***

*Manage change in the coastal environment to achieve sustainable management, with particular emphasis on:*

- *Identifying and implementing policies and actions to assist people and communities in adapting to climate change, including by appropriate decisions relating to future land use, infrastructure and other services in the coastal environment;*
- *Ensuring that all subdivision, use and development in the coastal environment is appropriate;*
- *Recognising that the coastal environment can provide an opportunity to derive benefits from renewable energy generation;*
- *Minimising the impact of human activity on natural coastal processes, coastal erosion, accretion and other coastal hazards.*

**Objective 4: Use, Development and Occupation**

*Recognise that appropriate subdivision, use and development in the coastal environment, including providing for the ability to occupy coastal space, is of national significance to the wellbeing of people and communities.*

**Objective 5: Access**

*Recognising that wherever practicable, public access to the coastal marine area is to be maintained and enhanced, but that in some cases – including on private land – this may not be desirable or appropriate.*

**Objective 6: Treaty of Waitangi**

*Management of natural and physical resources in the coastal environment takes account of the principles of the Treaty of Waitangi and recognises the role of tangata whenua as kaitiaki.*

75. In my opinion, these revised objectives could provide more balanced guidance to sustainable management in the coastal environment. I comment on each of these six objectives below:
76. Objective 1 seeks to recognise the importance of sustainable management in the coastal environment. This is essentially as proposed in Objective 1 of the NZCPS, and recognises the importance of people and communities carrying out appropriate activities along the coast.
77. Objective 2 acknowledges that there are significant landscape, bio-diversity and cultural values in the coastal environment that need to be protected. I note that these values are to be protected from inappropriate subdivision, use and development – meaning that the protection of these values does not involve a ‘ban’ on other activities. Again, the requirements of section 5 of the Act will allow a judgement to be made in relation to specific

policy proposals, or projects as to whether a specific activity is appropriate or not. These values are important to New Zealand, for a range of reasons – economic (e.g. tourism), social (e.g. recreation, enjoyment, etc) and cultural.

78. Objective 3 recognises that change in the coastal environment will occur, and that provided it is managed in accordance with sustainable management, this is acceptable. The challenges associated with climate change are real and being faced at present, and warrant specific attention in the objectives of the proposed NZCPS. In particular, the way in which people and communities will adapt to the effects of climate change in the coastal environment is critical. Related to climate change, is our collective response to it. The government has signalled that one part of our response will be increasing our investment in, and reliance on, renewable electricity generation. Section 7(j) of the RMA was amended to include reference to the benefits to be derived from the use and development of renewable energy, and so in my opinion, it is appropriate to reference this in the objectives of the proposed NZCPS.
79. The NZCPS should not specify the methods or planning techniques that we will collectively use to respond to change or climate change. However, it should recognise that key elements of any solution will involve examining land use in the coastal environment. Along with land use, infrastructure and other services should be considered. Different parts of the coast will require different solutions – meaning that in some cases, non-statutory solutions such as revegetation may provide sufficient protection against the effects of climate change. In other locations, protecting existing infrastructure may be the key priority, which may involve a series of ‘hard’ engineering solutions. The existing NZCPS appears to make conclusions that certain techniques and methods are preferred at the apparent expense of others (e.g. retreat from the coast v appropriate designed infrastructure).
80. There are other factors that affect change. The first is human activity in the form of subdivision, use and development. The tests for determining what is appropriate in relation to sustainable management are now well established in case law, and unless there is sound reason to change this approach, the proposed NZCPS should follow the direction of Part II of the Act. Of course, human activity can influence coastal processes, erosion and can be impacted by coastal hazards, and so these matters should be considered as a national priority also – particularly when the real costs of poor decision making in the coastal environment are considered.
81. Objective 4 recognises the need for people and communities to be able to carry out a range of activities in the coastal environment. The objective also specifically recognises that some of these activities will involve occupation of space in the coastal marine area. This should be followed up in the policy section of the NZCPS with, at the very least, a process to make

determinations at a national level about how occupations will be considered. There are a range of new activities in the CMA which will require coastal occupation. I have noted only one in my evidence, which is marine and tidal energy generation.

82. Objective 5 recognises that the New Zealand public have an expectation of access to the coastal marine area. What is perhaps less well understood is the nature of Crown versus private ownership, and how access can be provided versus withheld. There are situations where access is not appropriate, for a range of reasons. In my opinion, access to the CMA should be provided unless there is a good reason not to. These reasons can include public safety and operational issues. Contact has expressed some of these concerns in its submission, and in relation to private land, access should not be considered as a given, but just as applies to private land in all other parts of the country, access is considered on a case by case basis, taking into account factors such as safety.
83. Objective 6 recognises the importance of the Treaty of Waitangi, and the role tangata whenua play in the coastal environment in terms of resource management.
84. The amendments sought by Contact to the objectives aim to improve them to the extent that they are consistent with the Act or practicable. Whether the Board accepts the revised objectives I have outlined above, or the amended objectives in the attached tracked change version is not material in my opinion. What is important in my opinion, is that the Board considers some form of simplification of these objectives, including to ensure that the NZCPS objectives provide sufficient guidance across a number of issues that are likely to occur in the coastal environment, and to achieve consistency with Part II of the Act, and in so doing, provide a balanced approach.
85. The proposed NZCPS also needs to recognise the tension “...between the desire for certainty on the part of those owning land and the desire for the retention of discretion on the part of those controlling the use of land”.<sup>2</sup> Certainty for all parties is achieved by providing a clear direction for not only the desired outcome or end result but also the process required so that it is clear who will give effect to the policy and how. In my opinion, a number of these objectives are not sufficiently clear, and do not attempt to boil down to the key challenges in the coastal environment, or key issues, as I outlined earlier in my evidence.

## REVISED POLICIES – GENERAL (POLICIES 1-13)

86. Policies 1-13 fall under the ‘General’ section of the proposed NZCPS. The majority of amendments suggested by Contact in this group of policies relates to consistency with Part II, or providing a more balanced approach. Particular changes are suggested for Policies 1, 3, 5, 7, 8 and 13. A number of policies are proposed for deletion, which warrant some discussion.
87. Firstly, is Policy 5 in relation to the precautionary principle, which is sought to be deleted. While in my opinion the precautionary principle is a legitimate ‘philosophy’ or principle for the coastal environment, given the unbalanced policy framework of the proposed NZCPS as currently drafted, I am of the view that its inclusion as a policy will distort the implementation of sustainable management. In particular, in my opinion, the Act already has an in-built precautionary approach, including the way in which ‘effects’ are defined in section 3, and the established interpretation of sustainable management includes an inherent level of precaution. Including this policy, and in particular with the new “give effect to” regime, is likely to result in an overly precautionary approach to assessing coastal projects.
88. Secondly, policy 7 and 8 serve to reinforce the view that the NZCPS does not provide sufficient clarity around the role of the Minister of Conservation in a Conservation Act capacity versus the RMA. In my opinion, the status of land would also be a matter for consideration in a resource consent application. Section 104(1)(c) allows consideration of land status. This comment also applies to any conservation land that may still be working through a process. I interpret this policy to apply to marine reserves (in the coastal environment) but perhaps other forms of protection. If this is the case, in my opinion the status or weight to be applied to the application should be considered by the Courts. A further concern is that Policy 8 does not appear to provide a sense of timing. That is, if a resource consent application is lodged for an activity prior to a statutory protection being lodged, should it not be able to be heard under the regime that existing at the time the resource consent was lodged? My conclusion would be that it should. This is not to argue against the real and significant benefits that statutory protection offers important parts of our coastal environment, but the concern relating to ‘due process’ is a real one in relation to this policy.
89. The only other observation is that in my opinion, the following policies are out of place in their present location, and should be included in the general policies:

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<sup>2</sup> In May 1978, at a Legal Research Foundation Seminar on the newly-introduced Town and Country Planning Act 1977, Mr P M Salmon, as he then was, spoke on The Adequacy of Planning Procedures in Relation to our Needs.

- Policy 37 which relates to restricted coastal activities is better suited to being included in this first group of 'General' policies, rather than in the natural character policies; and
- Policy 29 – which relates to financial contributions.

## REVISED POLICIES – SUBDIVISION, USE AND DEVELOPMENT (POLICIES 14-29)

90. Particular changes are suggested for Policies 14, 15, 16, 17, 19, 20, 21, 22, 25, 27 and 28. In my opinion, these policies as presently drafted are the most 'far-reaching' and significant of any in the NZCPS. Policies 14, 15 and 16 in particular provide a great deal of extremely directive policy on matters which in my opinion are not necessary for the NZCPS. While I acknowledge these matters can be covered within the ambit of section 58, I do not consider it is a national priority for the NZCPS to state that coastal development should provide for 'mixed use' development, or avoid ribbon type development (for example).
91. However, I do consider that the NZCPS should provide direction to local authorities that, at a local level, there is a need to undertake more strategic planning to guide significant spatial decisions about the coast – particularly where there are conflicting uses, or significant demand for development. For example, the development of non-statutory 'Coastal Management Plans' to inform statutory documents about the long term vision for the coast is now a well established technique that leads ultimately to more sustainable planning decisions. A policy in the NZCPS should allow Councils to determine the techniques that are best for their district or region, but it can encourage new approaches to addressing these challenges. On that basis, I have suggested a revised wording for Policy 14 to allow Councils to use techniques that are most appropriate to the coastal pressures experienced in their area – be it urban or rural. In addition, I consider it is important for Councils to define effects that will be appropriate, and those that will not. This will provide greater certainty for communities and resource consent applicants/holders.
92. Contact provided a submission on Policy 27 which relates to reclamation. However, even with these amendments, I consider the revision does not adequately identify the range of complex issues associated with reclamations. There are two matters to consider – the activity for which reclamation is sought (which must provide a strong justification as to why reclamation is required) and then the actual design and construction of the reclamation. I have attempted to re-draft this policy using the basic matters identified in the proposed NZCPS, so that there is greater distinction between these two matters as follows (I note that this differs from the Contact submission, but in my opinion, the policy remains unclear):

### **Policy 27A - Justifying Reclamation**

*Reclamation of the coastal marine area is generally discouraged, except where:*

- *Land outside the coastal marine area is not available for the proposed activity; or*
- *The activity which requires reclamation can only occur in the coastal marine area; or*
- *There are no practicable alternative methods of providing for the activity; or*
- *The reclamation will provide significant regional or national benefit; or*
- *The reclamation will provide 'protection' from the effects of climate change or coastal hazards.*

### **Policy 27B – Reclamation Design**

*Where a resource consent is sought for reclamation, particular regard shall be had to:*

- *The expected effects on the site of climate change and sea level rise, over no less than 100 years;*
- *The shape of the reclamation, and whether the materials used, are visually and aesthetically compatible with the adjoining coast;*
- *The use of materials in the reclamation, including avoiding the use of contaminated materials that could adversely affect water quality in the coastal marine area;*
- *Public access, including providing access to and along the coastal marine area at high tide, unless a restriction on public access is appropriate as provided for in Policy 43;*
- *The ability to satisfactorily remedy or mitigate adverse effects on the coastal environment;*
- *The ability to avoid consequential erosion and accretion, coastal and other natural hazards.*

93. Overall the draft NZCPS should include policies to emphasise the benefits derived from renewable energy generation and to ensure that there is support for this in policy statements and plans, including associated infrastructure such as transmission lines. Such amendments would allow the NZCPS to be more closely aligned to Part II of the Act, and would also recognise that this is likely to be one of the significant issues in the coastal environment.

## REVISED POLICIES – NATURAL CHARACTER (POLICIES 30-38)

94. Particular changes are suggested for Policies 30, 31, 32, 33, 34, 35, 36 and 38. Overall, natural character and biological diversity should be separated and addressed through their own relevant policies including those which address outstanding natural character, and policies should be reworded to include “avoid, remedy or mitigate” in respect to adverse effects as set out in Section 17 of the Act.
95. A further observation is that some of the policies in this section also capture criteria that have been developed in case law relating to outstanding natural features and landscapes. While this is to be commended, in relation to this particular issue, I question whether this area of case law is likely to continue evolving. The *Pigeon Bay* criteria have evolved over time, and been modified and whether locking these into Policy 32 is a sensible approach is worthy of debate in my opinion.
96. Other amendments in this section relate to the restoration of natural character (Policy 35). While this is a worthy goal, again the question arises of where this applies, and whether the term “where appropriate” provides sufficient certainty for users of the coastal environment. Restoration is often considered as part of a mitigation package for major projects. However, I am strongly of the opinion that this policy will cause significant additional costs on resource consent applicants, even in situations where the effects of their proposals do not warrant such costs as part of the overall mitigation package. That is, there is potential for restoration activity to be required of users of the coastal environment, even where there is no link to adverse effects.
97. The suggested changes in this group of policies are generally required to achieve consistency between the Act and the proposed NZCPS in regard to the protection of natural character, rather than applying a broad brush approach to the protection of natural character, noting that Section 6 (a) of the Act refers to the “preservation of natural character” and not restoration, which in my opinion would involve a much higher level of ‘active management’.

## REVISED POLICIES – PUBLIC ACCESS (POLICIES 39-43)

98. Particular changes are suggested for Policies 40 and 43. Overall, Contact supports provision and recognition of the need to provide public access to the coast, but only where this is appropriate and notes that there may be instances where public access is inappropriate. In my opinion, the loss of public access is a serious concern, and the inclusion of policies on this issue are appropriate. However, I would also expect a significant focus on non-statutory measures to improve access, which do not appear to be

contemplated. Policies must also recognise that in some instances access is not appropriate. The evidence of Mr Sommerville has demonstrated why access should be excluded in certain situations.

#### **REVISED POLICIES – WATER QUALITY (POLICIES 44-50)**

99. Particular changes are suggested for Policies 44, 45, 46, 47, 49 and 50. Overall, Contact submits that the NZCPS should not seek to alter existing statutory tests provided in the Act (including section 107). I do support a focus on water quality within the coastal environment, provided the policies are consistent with the Act, and Part II in particular. At present, I am of the view that these policies are not weighted appropriately in that they require outcomes that may not be possible, or consistent with sustainable management. In particular, policies should recognise that following an assessment of environmental effects undertaken in accordance with relevant plans and rules, resource consents may be granted which may provide for certain discharges to occur. These discharges must of course be consistent with section 105 and 107, and sustainable management.

#### **REVISED POLICIES – COASTAL HAZARDS (POLICIES 51-54)**

100. The policies in relation to coastal hazards also require re-drafting to be more consistent with the Act, and also to be more practical in relation to how to deal with hazards. It is not practical, for example, to advocate managed retreat from the coast in many instances (as suggested by Policy 52). A range of measures are needed to respond to coastal hazards, and I do not consider these policies provide sufficient flexibility to dealing with the range of complex scenarios what arise when deal with coastal hazards.

#### **REVISED POLICIES – HISTORIC HERITAGE**

101. Finally, in relation to heritage policies, Contact's submission seeks a combination of Policies 55 (a) and 55 (b) under a 'avoid, remedy or mitigate' standard, which I support, as this is more consistent with Part II of the Act.

#### **OTHER SUBMISSIONS ON THE PROPOSED NZCPS**

102. To reiterate and support the views expressed by Contact, a review of other submissions has been undertaken. In respect of the submissions received by the Board of Inquiry, these have been summarised according to policies; submitter and themes. I considered the following themes of most relevance to the issues raised in Contact's submission, and in my evidence:

## INFRASTRUCTURE

103. The summary of submissions, in my review, notes that while there is a wide range of views, a number of submissions appear to consider that the proposed NZCPS:

- Lacks provision for and recognition of infrastructure that functionally can only be located in the CMA;
- Presents an unbalanced approach between cultural and amenity values of open space and significant infrastructure that is located near the coastal environment; and
- Shows a lack of recognition for the need to restrict access to the coast where appropriate in respect of facilities and infrastructure located near the coastal environment.

104. In my evidence, I have come to a similar conclusion, and so I agree with those submissions that seek to improve recognition of the importance of infrastructure in the coastal environment

## ENERGY – LAND

105. Of relevance to the submission by Contact, it is considered by other submitters that it is not appropriate for the draft NZCPS to identify specific sites suitable for renewable energy generation, but rather this is a matter that should be left to the generators themselves. Further it is considered that suitable recognition should be given to wind, tidal and wave powered generation in the coastal environment at the same level as other coastal resources such as ecology, water quality, natural character and landscapes. Finally, a more balanced approach is sought with respect to overall use, development and protection of the coastal environment. I agree with these summary submission points.

## ENERGY – CMA

106. Of relevance to the submission by Contact, it is seen by the submitters that renewable energy in the CMA is very important with further recognition needed regarding the national significance and benefits derived from the use and development of renewable energy in the coastal environment. Similar to the comments above, it is considered that suitable recognition should be given to wind, tidal and wave powered generation in the coastal environment at the same level as other coastal resources such as ecology, water quality, natural character and landscapes. Again, a more balanced approach is sought with respect to overall use, development and protection of the coastal environment. I agree with these submitters, and consider that this is one of the most significant weaknesses of the proposed NZCPS.

## COASTAL USE AND DEVELOPMENT

107. Of relevance to the submission by Contact, it is considered by other submitters that it is not the role of the draft NZCPS to “unduly or unnecessarily restrict appropriate activities and/or development” within the CMA. Further, the draft NZCPS should provide adequate recognition for the continued operation of significant infrastructure in the coastal marine areas / coastal environment, which in many cases by their very nature cannot be set back from the coastal marine area and other water bodies. Functional requirements may dictate a location in close proximity to the coastal environment.
108. Blanket policies for the location and form of use and development in the coastal environment, including subdivision, on a nationwide basis are not supported by a number of other submitters, and this view is supported by Contact’s submission. Rather, in my opinion, it should be left to the local authorities to determine these matters, informed by local context and issues. While I have not been explicit about who should make these decisions and how, I do agree that local authorities are best placed to make these decisions at a local level, and that the NZCPS should encourage a range of methods or techniques to be applied (and not pick winners). However, I am also of the view that unless there is a compelling reason for local authorities to undertake this work, it is most appropriate to make decisions on renewable electricity generation on a merits basis. The exception to this is in the CMA, where in my view a more strategic approach to allocation of space is required.

## OBLIGATIONS OF LOCAL GOVERNMENT

109. In regards to timeframes and resourcing, submissions request that 10 years, rather than five years, be given to give effect to the new NZCPS, and where responsibilities are to be devolved to local authorities, the appropriate additional resources and/or funding be provided. As a general observation, I do not agree with these submissions. Once the NZCPS is gazetted it represents the current view on the most important resource management issues facing the coast. There should then be a reasonably speedy response from local and regional government. A ten year period would mean that the full effect of the NZCPS would probably be at least ten years away, and that is not in the interests of sustainable management of the coastal environment. All that is required in my opinion, is for greater clarity of what is required and when by Policy 13.

## SCOPE OF RMA

110. I note that other submitters appear to have opposed the mandatory and zoning approach of the NZCPS, and that as I have observed, this conflicts with the general philosophy of the RMA. Rather, the NZCPS should be about managing effects and sustainable management, rather than prescribing activities and being protective. This more prescriptive approach,

combined with the more protection focussed policies mean the NZCPS will likely give rise to conflicts, as local authorities are required under the RMA to give effect to the NZCPS, yet the NZCPS has provisions that inhibit or prevent use and development.

111. In addition, it has been submitted that changes to the draft NZCPS are needed to ensure consistency with Part II of the Act. Contact also supports this view. I have noted that a number of policies in the proposed NZCPS are at odds with an effects based regime. While this may have merit, and in my opinion it does, such a departure should be debated at a higher level than an NPS – that is, this topic should be part of a legislative reform program, rather than a subsidiary policy document, albeit a national one.

#### NATURAL CHARACTER AND BIODIVERSITY

112. A large number of submission points are relevant to the theme of natural character and biodiversity. Of note is the view that the draft NZCPS is contrary to the provisions of the Act as it does not "...acknowledge that the natural character of the coastal environment is only required to be protected from inappropriate subdivision and use."
113. If extensive mapping is to be undertaken, the proposed NZCPS should recognise the need for a robust national methodology to define and assess areas of natural character and indigenous biological diversity and further, the protection of these areas within the NZCPS should only apply to those considered outstanding and nationally significant.
114. A number of submissions include or seek actions that are better undertaken by local authorities in the context of district and regional plans, where appropriate, and should not be directives at the national level – such as the requirement for dogs to be excluded from areas used by rare breeding birds or migratory species.
115. I have reviewed a number of other submissions to identify perspectives that provide similar and alternative views to Contact. As a general observation, it appears that there are similar concerns from a number of variable parties as to the language used in the proposed NZCPS relative to the Act.

#### CONCLUSION

116. Given the significance of the coastal environment to Contact's existing and potential future operations, the NZCPS is a critical resource management document. My evidence expands on Contact's submission. As presently drafted, I conclude that the NZCPS will result in a series of unnecessarily onerous tests for users of the coastal environment, and a disproportionate focus on protection of the coastal environment.

117. As a largely coastal population, it is important that the people and communities of New Zealand are able to make use of the coastal environment within the context of sustainable management. The amendments suggested by Contact, and those included in my evidence, will in my opinion result in the NZCPS being consistent with the RMA, and will mean the sustainable management of the coastal environment is possible to achieve.



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Dated 24<sup>th</sup> September 2008  
Presented on 2<sup>nd</sup> October 2008.