

Part 2
Proposed Plan Change 114
Landscapes

Section 42A Hearing Report

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- 2 Recommended ONL boundary adjustment for property of M Taylor
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- 4 Dr Hayward report: ONF map boundary improvements Sept 2016
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1.0 Introduction

1. This is **Part 2** of the section 42A (**s42A**) report. This part should be read in conjunction with the other **Parts 1 – 11**. The evaluation of general topics is contained within **Part 1** of the s42A report.
2. This report has been prepared in accordance with s42A of the Resource Management Act 1991 (**RMA**) and forms the Hearing Report for the Whangarei District Council's (**WDC**) Proposed Plan Change 114 Landscapes (**PC114**). This report provides consideration of the proposed provisions, recommendations in relation to submissions and, where appropriate, the report cross-references the section 32 (**s32**) evaluation, further expert evidence, analysis of any background material and legislative discussions.
3. This section 42A report has been prepared by Glenn Neil Mortimer of Mortimer Consulting. My statement of qualifications and experience is as follows:
 - I am a resource management consultant based in Whangarei. I hold a MSc in marine ecology. I have been a Full Member of the New Zealand Planning Institute since December 2011.
 - I have operated my own private practice, Mortimer Consulting, since 2009 and have over 30 years of experience in natural resource management, including 13 years at senior management level within local government. That role included overseeing the preparation of the first generation Regional Policy Statement and regional plans for Northland. I have significant experience in all aspects of resource management plan preparation from initial research and consultation through to Environment Court hearings. This includes management of teams and/or contracted specialists to undertake projects.
 - Input into policy and plan reviews, along with consent application preparation and processing, have been a major focus for the last six years. Clients have included the Department of Conservation, regional and district councils, private companies and individuals.
 - I was project manager for the regional mapping project undertaken for the Northland Regional Council in 2012 as part of its Regional Policy Statement review. This included overseeing the identification and mapping of the outstanding natural features and landscapes which are now being incorporated in the Whangarei District Plan as part of PC114.
 - I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. The opinions expressed in this evidence are based on my qualifications and experience, and are within my area of

expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position. The report acknowledges that I wrote the s32 report and continue to support the analysis in it except where stated in response to submissions.

- I have no vested interest in the outcome of PC114 nor any conflict of interest to declare.

4. A comprehensive description of the background to PC114, a chronology of events relevant to the proceedings of PC114 and overview of the Rolling Review process and statutory considerations is all included in **Part 1** of the s42A report.

2.0 Description of the Plan Change as Notified

5. PC114 proposes changes to Chapters 16 (Landscape) and 57 (Landscape Area Rules) and Appendix 13 (Outstanding natural features and geological sites in the Whangarei District) in the Operative Whangarei District Plan (**WDP**). Chapter 16 includes two schedules: Schedule 16A (Criteria for Assessing Landscapes) and Schedule 16B (Outstanding Natural Features including Geological Sites).

6. PC114 can be summarised as follows:

- The amalgamation of the previously separate landscape policy and rules chapters, and the related Appendix 13, into one new standalone chapter.
- Deletion of current WDP references to natural character, geological sites, and lower order landscapes in order to focus the new chapter solely on outstanding natural features (ONFs) and outstanding natural landscapes (ONLs). This includes the deletion of current WDP objectives 16.3.1 (preservation of coastal natural character) – now dealt with in PC87 - and 16.3.4 (preservation of natural features significant to Maori) – now proposed to be dealt with in PC100 Sites of Significance to Maori.
- Insertion of four new proposed objectives expanding on current WDP objectives 16.3.2 (protection of ONFs and ONLs) and 16.3.3 (maintenance of values of ONFs and ONLs).
- Insertion of two additional new objectives to give express recognition to (a) existing landuse and development within ONFs and ONLs, and (b) the particular circumstances surrounding undeveloped Maori land within ONLs.
- Inclusion of a new proposed policy to clearly bring Regional Policy Statement 2016 (**RPS**) ONF and ONL mapping information into the WDP, i.e. recorded characteristics and qualities, and mapped location and extent, of ONFs and ONLs.
- A general retention of the existing WDP policy section structure but with:
 - a clear differentiation between coastal and non-coastal ONFs and ONLs, with a stronger protection emphasis within the Coastal Area; and
 - strengthened policies emphasizing avoidance of adverse effects on identified ONFs and ONLs.

- Deletion of existing WDP Schedule 16A criteria in favour of direct reference to the Northland regional landscape assessment worksheets for individual identified ONLs as external reference documents.
 - An expanded schedule of ONFs replacing existing WDP Schedule 16B and Appendix 13.
 - Separation of the scheduled ONFs into categories based on their relative vulnerability to modification.
 - Inclusion of thirty-two additional mapped ONFs in Whangarei district which are not currently protected by the WDP but are either mapped or listed within the RPS.
 - Inclusion in WDP Chapter 2 Meanings of Words, a proposed definition of 'land preparation' to provide clarity to associated proposed rules.
 - Inclusion of the following in WDP Chapter 3 Reference documents:
 - *WDC. 2016. Guidelines for Managing Change in Outstanding Natural Landscapes.*
 - *Littoralis Landscape Architecture & Simon Cocker Landscape Architecture. 2014. Northland Regional Council Northland Mapping Project: Outstanding Natural Landscapes – Mapping Methodology Report. Prepared for and held by Northland Regional Council.*
 - Consequential amendments to various other WDP chapters to ensure alignment with PC114.
7. A comprehensive description of PC114 is included in the s32 report [see **Appendix A of Part 1** of the s42A report]. The notified text of PC114 is provided as **Appendix B of Part 1** of the s42A report.

3.0 Purpose of Report

8. This report considers submissions received in relation to PC114. It has been prepared in accordance with S42A of the RMA to assist the Commissioners with deliberations on submissions and further submissions in respect of PC114.
9. The report includes recommendations to the Commissioners to accept, accept in part or reject individual submissions. Where appropriate, it also includes recommended changes to the PC114 provisions. These are shown as tracked changes in **Part 1** of the s42A report **Attachment 2A**. In response to submissions, I have in every instance considered efficiency, effectiveness and appropriateness and the recommendations represent the most appropriate response in accordance with section 32AA of the RMA (**s32AA**). Depending on the complexity of the change proposed, the s32AA assessment then follows in a separate table underneath or an overall discussion. In accordance with section 32AA(1)(c), the assessment of each change has been undertaken at a level of detail that corresponds to the scale and significance of the proposed changes

10. When making its decision, WDC is required under Clause 10 of the First Schedule of the RMA to give reasons for allowing or not allowing any submissions (grouped by subject matter or individually). The decisions of the Council may also include consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

4.0 Structure of the Report

11. The report has been structured to provide an assessment of the submissions and further submissions received by WDC, arriving at a recommendation to the Hearing Commissioners.
12. All submissions received have been categorised based on which plan change they are most applicable to. Several submissions have been assessed in **Part 1** of the s42A report as they either address broad topics or relate to multiple plan changes.
13. Once allocated to a specific plan change, each submission point has then been grouped either thematically based on topic or by specific PC114 provision. As some submissions relate to multiple topics, cross references to the discussion and recommendation sections of other topics have been included. Topic headings for the submissions assessed under PC114 are as follows:

- A. Corrections
- B. General Support/Opposition
- C. ONL/ONF Mapping
- D. Coastal/non-coastal differentiation
- E. Landowner compensation
- F. Provision for specific landuses

14. This is followed by an evaluation of remaining submissions with reference to specific PC114 provisions as follows:

- G. Description and Expectations
- H. Objectives
- I. Policies
- J. Eligibility and Notification Rules
- K. ONL Landuse Rules
- L. ONL Subdivision Rules
- M. ONF Landuse Rules
- N. ONF Subdivision Rules
- O. Assessment Criteria
- P. ONF Schedule

15. The assessment of submissions generally adheres to the following format:
- Submission information – Matters raised in the submission points with a brief outline of relief sought and reasons for relevant submission points.
 - Discussion – Discusses responses to the relief sought. Where appropriate, submission points have been grouped together for discussion.
 - Recommendation – Outlines a recommendation to the Commissioners in response to the relief sought.
16. Any recommended amendments to the notified text as a result of submissions are attached to this report [see **Attachment 2A** of **Part 1** of the s42A report]. Any recommended additions to the notified text are shown as underlined and deletions as strike-through.

5.0 Consideration of Submissions

17. The following further submissions were received from submitters who did not make an initial submission on PC114.

Table 1 – Further Submissions – PC114	
Submitter	Cross submissions
Brian TA Denham & Susan A Jones	X-664, X-727
Damon Paul Keyte	X-289, X-308, X-310
Debbie & James Dalton	X-131, X-134, X-136
Lee & Catherine Sawyer	X-290, X-293, X-295, X-296
Acacia Park Landowners Association Inc	X-172, X-173, X-174, X-175
Fossil Stone Ltd	X-155, X-156
Jones-Dye Holdings Ltd	X-250
T A and KN Jones Family Trust	X-184
Andrew W Barclay	X-741, X-742
Colin Thomas	X-306
Margaret Thomas	X-301, X-302
Beverly Ann Gailey	X-243
Catherine Healey	X-071
David J & Lesley A Franklin	X-191
Gregory John Healey	X-072
Jennifer Gaylene Harrington	X-023
Ngaire Elizabeth Cliff	X-130
Stephen Badger	X-145
David & Davina Field	X-244
Hans J Wetendorf & Karin Behncke	X-249

Recommendation

18. I **recommend that** these further submissions be **accepted** by the Commissioners under Schedule 1 Clause 8 of the RMA on the basis that each of the submitters represents a party with a greater interest than the general public – generally landowners with properties in or adjacent to land affected by PC114.

A. Corrections

Submission Information

19. Geoscience Society of New Zealand¹ (**Geoscience Society**) requests that a correction be made to the reference given to the Geoscience Society of New Zealand's inventory used to identify outstanding natural features initially within the RPS and now within PC114.

Discussion

20. LAN.8.1 ONF Schedule cites the source of the information as being "Inventory (and maps) of Important Geological Sites and Landforms in the Northland Region", Geological Society of New Zealand unpublished report 95/2 (1995).".
21. The correct reference should be "Kenny, J. A., Hayward, B. W. (1996). Inventory and maps of Important Geological Sites and Landforms in the Northland Region", Geological Society of New Zealand Miscellaneous Publication No. 83, 51 pp.".

Recommendation

22. I recommend that the Commissioners **accept** submission point 52/2 and that the amendment is made.

B. General Support/Opposition

Submission Information

23. Five submission points² were made in general support of PC114.
24. Erudite Holdings Ltd and Kevin & Lianne McMahon³ support PC114 as it applies to their specific property.
25. The Department of Conservation (**DOC**)⁴, NRC⁵ and the Royal Forest & Bird Protection Society (**Forest & Bird**)⁶ generally support PC114 as a key part of the WDP giving effect to the New Zealand Coastal Policy Statement (**NZCPS**) and relevant RPS policies (including 4.5.1, 4.5.2

¹ 52/2

² 78/25, 117/1, 194/2, 238/10, and 467/16

³ 530/2 and 531/3

⁴ 78/25

⁵ 117/1

⁶ 467/16

and 4.6.1), and of recognising and providing for matters of national importance, in particular RMA s6(b).

26. Patuharakeke⁷ also supports the overall intent of PC114 as in most instances the outstanding landscapes identified are also significant cultural landscapes that warrant protection.
27. Keith Salmon⁸ is in blanket support of PC114.
28. Seven submission points⁹ were made in general opposition to PC114.
29. Three submission points¹⁰ oppose the plan change, seeking amendment because the plan change as drafted does not make it clear that the provisions only apply to mapped ONL and ONF areas.
30. 51/1, 123/1, 150/1, 268/1 and 473/1 are philosophically opposed to PC114, based on perceived conflicts with private property rights and/or the potential costs to landowners of the proposed landuse and subdivision restrictions.
31. J Kellermeier & E Weiherer¹¹ and T & J Gillespie¹² oppose PC114 in the belief that existing provisions are sufficient to achieve the intended purpose of PC114.
32. Mark Sowry¹³ opposes PC114 as it applies to his specific property.
33. Other submission points made in support of or opposition to specific provisions are addressed under the relevant subsequent topics in this report.

Discussion

34. The rationale for PC114 is made clear in both the description of PC114 (LAN1.1) and, in more detail, sections 2 – 5 of the companion s32 report. The new provisions derive from RMA s6(b) and reflect the clear policy direction in both the NZCPS and the RPS in regard to identifying and protecting ONLs and ONFs. These provisions replace existing, albeit less detailed and restrictive, provisions within the WDP, i.e. the concept is not new to the WDP.
35. Each of the above submitters do, however, request some amendments to the detailed provisions of PC114. Changes recommended to those and other provisions elsewhere in this report do not, in my opinion, alter the intention or outcome of PC114 and rather aim to improve the clarity and/or enhance the relevant provisions.
36. The protection of ONFs and ONLs from inappropriate subdivision, use, and development is a matter of national importance under section 6(b) of the RMA. Central to the protection of these resources is the process of identifying and scheduling (listing) relevant details of these within the WDP, together with annotated maps showing their individual locations and extent. This work was done regionally by NRC in 2012 and is now formally adopted within the RPS. RPS

⁷ 238/10

⁸ 194/2

⁹ 45/1, 51/1, 123/1, 150/1, 268/1, 297/1, and 473/1

¹⁰ 81/1, 82/1 and 87/1

¹¹ 45/1

¹² 297/1

¹³ 471/1

methods 4.5.4 and 4.6.3 require the WDP to be amended to include the maps of the ONLs/ONFs and methods for the control of subdivision and landuse within the mapped areas.

37. The option of 'rolling over' the existing WDP Schedule and Resource Maps was considered but discounted in the s32 Report as this would fail to take into account the latest ONL/ONF information available and also fail to give effect to the relevant policies within the NZCPS and RPS. The current WDP provisions predate the second-generation NZCPS and RPS so do not reflect the relevant new national and regional policy direction(s).

Recommendation

38. I recommend that the Commissioners:

- **Accept** submission points 78/25, 117/1, 194/2, 238/10, 467/16, 530/2 and 531/3 with regard to their general support for PC114, notwithstanding specific amendments sought as outlined elsewhere in this report.
- **Reject** submission points 45/1, 51/1, 81/1, 82/1, 87/1 123/1, 150/1, 268/1, 297/1, 471/1 and 473/1.

C. ONL/ONF Mapping

Submission Information

39. 78 submission points were made on the topic of the accuracy of mapping of ONLs and/or ONFs. 42 of these were from the submission of the WDC Policy and Monitoring Manager (#92), which recommends changes to specified ONL and ONF boundaries as a result of pre-notification consultation with affected landowners (see discussion below).
40. 20 of the submission points were from landowners who were visited or spoken to as part of the pre-notification consultation process undertaken for PC114. Nine submission points¹⁴ expressly indicate agreement with the changes recommended in submission 92 while 13¹⁵ consider that the boundary changes sought in Submission 92 do not go far enough. Two of these¹⁶ relate to ONFs rather than ONLs.
41. Of the remaining two submission points¹⁷, Joan M Jarman¹⁸ opposes the recommended ONL boundary change but this appears based on a misunderstanding of the way the recommended boundary adjustment has been depicted.
42. Mike Taylor¹⁹ relates to a property that was visited but, due to the size of the site, the requested ONL boundary adjustments were not able to be independently assessed prior to notification.

¹⁴ 36/1, 54/1, 86/1, 107/1, 231/1, 239/1, 276/1, 300/1 and 360/2

¹⁵ 13/1, 98/1, 118/3 & 4, 119/3 & 4, 152/1, 213/1, 252/1, 430/5, 479/25, 500/1 and 515/1

¹⁶ 430/5 and 479/25

¹⁷ 148/1 and 229/1

¹⁸ 148/1

¹⁹ 229/1

The submission neither supports nor opposes PC114 but requests that ONL adjustments be made as indicated on the accompanying map.

43. Nine submission points²⁰ relate to the mapping of specific areas or properties as ONL which were not visited or spoken to as part of the pre-notification consultation process. Three of these submission points²¹ oppose the non-inclusion of an existing Notable Landscape Area (**NLA**) in south Whangarei, as identified in the WDP maps, as an ONL within PC114.
44. Nita Joseph²² raises specific issues around the relationship between PC114 and an Environment Court-approved Concept Development Plan for a large lot located at Pataua South, part of which is now proposed to be an ONL.
45. The Geoscience Society²³ supports the inclusion of the mapped ONFs within PC114 but also seeks the inclusion of an additional ONF.
46. Hye Young & Kedde Whang²⁴, Willem-Frederig Kedde²⁵, Federated Farmers (**FFNZ**)²⁶, Kevin & Pamela Gillespie²⁷ and James A Torrie²⁸ raise the general issue of the level of detail of the mapped information sent out as part of either the pre-notification consultation or formal notification processes, considering this information to have been inadequate.

Discussion - General

47. The base maps for the ONLs and ONFs included within PC114 were derived from a Northland-wide mapping project undertaken in 2012 by NRC as part of its RPS review. RPS Method 4.5.4(1) sets a two-year timeframe for district councils in Northland to incorporate the mapped areas into their district plans after the RPS is made operative. The RPS was made partially operative by NRC in May 2016, including all policy and map provisions relating to the ONFs and ONLs.
48. PC114 has provided the opportunity for mapped ONLs and ONFs in the Whangarei District to be incorporated within the WDP. As part of the pre-notification process for PC114, the maps and a draft copy of the PC114 provisions were circulated to affected landowners for initial comment. In late March/early April 2016, written information was sent to around 1600 landowners inviting them to provide feedback by 13 May 2016. The opportunity was also offered to have consultants visit their property to discuss the implications of PC114 with them on site.
49. Over 200 landowners subsequently contacted WDC asking for further details and/or requesting a site visit. A significant number of landowner queries were able to be addressed via phone or email follow-up, including many whose property bordered an ONF or ONL but was not actually

²⁰ 48/1, 126/5, 246/1, 295/2, 315/1, 349/1, 427/1, 465/2 and 466/1

²¹ 126/5, 295/2, and 349/1

²² 427/1

²³ 52/1

²⁴ 168/1

²⁵ 173/1

²⁶ 411/1

²⁷ 417/3

²⁸ 475/1

within the mapped area. Notwithstanding these clarifications, between 22 April and 3 June 2016 ninety joint site visits were undertaken throughout the District by Glenn Mortimer of Mortimer Consulting (author of this s42A report) and Mike Farrow of Littoralis Landscape Architecture. Four off-site meetings were also held with landowners.

50. The site visits typically began with a discussion of the mapping of ONFs and ONLs with respect to the affected property. The background to the mapping undertaken by the NRC in 2012 was explained as was the fact that the key focus of this consultation round was on the proposed policies and rules that would apply within the mapped areas. However, it was apparent in many cases that when the existing mapped ONL boundaries were viewed at the scale of individual properties, there were areas included around the margins that did not meet the required criteria.

51. RPS method 4.5.4(2) provides for ONL/ONF boundary adjustments. This states:

The coastal environment, and areas of high and outstanding natural character within the coastal environment, and outstanding natural features and outstanding natural landscapes as shown in the Regional Policy Statement – Maps may be changed, provided the changes are:

- (i) Undertaken using the attributes and criteria listed in Appendix 1; and*
- (ii) Shown in the regional or district plan.*

52. Wholesale revisiting of the NRC ONF/ONL mapping process – which areas were included and which were not - would have resulted in unnecessary duplication of the effort and integrity of the RPS process. The focus was therefore on relatively minor boundary adjustments but not major revisions of the mapped ONFs/ONLs.

53. Mike Farrow is a landscape architect who was part of team which undertook the 2012 RPS mapping project, hence he had the necessary expertise to assess landowner-requested ONL boundary adjustments against RPS Appendix 1. His qualifications and experience are set out in Attachment 1. His annotated ONL boundary changes are those included in Submission 92. Digitised versions appear in **Attachment 5**.

54. ONF boundary change requests were also discussed with Dr Bruce Hayward who was one of the two authors of the geological sites inventory used for the RPS mapping.

55. Affected landowners were made aware of the mapping changes and provided with an opportunity to make submissions in support or opposition to them. These submissions are summarised above under the heading 'Submission Information' and discussed within the following sections.

Discussion – Map Detail

56. A number of submissions²⁹ raise the general issue of the level of detail of the mapped information sent out as part of either the pre-notification consultation or formal notification processes, considering this information to have been inadequate to assess the implication of

²⁹ 168/1, 173/1, 411/1, 417/3 and 475/1

PC114 on specific properties. There was opportunity through both processes to seek clarification from WDC of the ONF/ONL boundaries in relation to specific properties, as many landowners did. This information can still be provided on request.

57. FFNZ in particular suggests that the use of the WDC GIS mapping system, via the Council's website, is not accessible enough and that (a) property level maps should be sent to all affected landowners and (b) ground-truthing and consultation with landowners is undertaken. Although the maps were at a higher level, this is precisely the process that was offered as part of the pre-notification process. Considerable effort was made to engage with all affected landowners but ultimately this necessarily relied on them contacting the Council to take up the opportunity.
58. There is considerable uncertainty about the merits of any ground-truthing post-notification other than in response to individual submissions on mapping. There is also no statutory requirement for further consultation after the notification stage. In my opinion, the information provided and the consultation undertaken has therefore been appropriate.

Recommendation – Map Detail

59. I recommend that the Commissioners **reject** submission points 168/1, 173/1, 411/1, 417/3 and 475/1.

Discussion – ONL Boundaries

60. In this section, submission points on ONL mapping are grouped and discussed based on whether or not the subject properties were visited as part of the pre-notification consultation process. This is because the details of the subject sites are better known for those that were visited. Those sites not previously visited have been assessed using satellite imagery and other available information.
61. The following groupings are used, with a recommendation included after discussion on each grouping for clarity:
 - WDC submission recommending agreed ONL boundary changes and submissions in support of those agreed boundary changes
 - Submissions in opposition to agreed boundary changes
 - Submissions for properties not visited during the pre-notification consultation

Agreed ONL Boundary Changes

62. 40 ONL boundaries were considered to warrant minor boundary adjustments after site visits. A further nine recommended minor boundary changes arose out of discussions with the WDC Infrastructure and Services Department (**WDC I&S**).
63. Details of the recommended map changes are set out in Submission 92 from the WDC Policy and Monitoring Manager. These were produced by landscape architect Mike Farrow, previously involved in the RPS mapping.

64. As noted above, eight of the landowners visited made submissions in support of the changes as now recommended in submission 92.
65. Joan Jarman³⁰, whose property was visited, appears to have misread the accompanying map, thinking that the grazed areas marked 'x' were to be included within the ONL whereas they are recommended to be excluded (see 92/25). I anticipate that the submitter will be comfortable knowing that these areas are in fact to be excluded as agreed during the site visit. However, for procedural reasons, I consider the submission as written should be rejected.
66. Mike Taylor³¹ is atypical in that the submission relates to a property that was visited but the size of the site and the time available did not allow for a detailed assessment of the ONL boundary at sites of concern to the landowner. These are depicted in the attachment to the submission. The site has since been revisited and some boundary adjustments are recommended as shown on the map attached to this report (**Attachment 2**). These changes are agreed by the submitter.
67. G Tucker³² requests an ONL mapping amendment to exclude former quarried areas within his property. The submitter, who was out of the country when the site visit was undertaken, appears unaware of the recommended boundary adjustment sought in Submission 92³³ designed to achieve this same outcome.

Recommendation

68. I recommend that the Commissioners:
- **Accept** submission point 92 and amend the ONL map boundaries as shown in **Attachment 5**.
 - **Accept** submission points 36/1, 54/1, 107/1, 231/1, 239/1, 276/1, 300/1 and 360/2.
 - **Reject** submission point 148/1.
 - **Accept in part** submission points 213/1 and 229/1.

Opposed ONL Boundary Changes

69. In regard to the remaining submission points³⁴ in opposition, given the robust site visit process undertaken in my opinion any additional changes should only occur if (a) new information has come to hand via submissions and (b) any changes are consistent with the RPS mapping criteria.
70. I support each of the seven boundary changes sought by Submission 92 and refer to them in this section as the 'Submission 92 changes'.

³⁰ 148/1

³¹ 229/1

³² 213/1

³³ 92/34

³⁴ 13/1, 98/1, 118/3 & 4, 119/3 & 4, 152/1, 252/1, 500/1 and 515/1

71. Before addressing each submission point in turn, it is relevant to highlight here that recent Court of Appeal decisions have confirmed that whether or not land qualifies as an ONL is not influenced by the consequences of according it that status in terms of what might take place on that land. The Court has found that it would be illogical and contrary to the intent of s 6(a) and (b) of the RMA to conclude that an outstanding area should only be so classified if it were not suitable for a range of other activities³⁵.
72. J Lovatt³⁶ relates to a rectangular 0.2ha residential property oriented in a roughly north-south direction. The property is bisected by a small stream, the northern side of which is in dense indigenous vegetation. The southern side has largely been cleared. The land on either side of the stream slopes steeply downward to the watercourse.
73. The initial ONL boundary line included a significant part of the southern slope. The recommended change would largely exclude this area from the ONL and instead run more directly along the existing margin of the bush area. This appears likely to address the submitter's concerns around undue restrictions on development on the cleared area of the property.

Recommendation - Lovatt

74. I recommend that the Commissioners **accept in part** submission points 13/1 and 520/1 and **accept** submission point 92/4 and amend the ONL map boundary as shown in **Attachment 5**.
75. Daniel & Carol Murdoch's³⁷ submission concerns a large rural farming property which extends into a very large area of predominantly indigenous vegetation which is mapped as an ONL. Within this proposed ONL overlay on the property are ridgelines that have been cleared for grazing and/or contain farm tracks and residential dwellings. The Submission 92 change would exclude these areas (see 92/28).
76. The submitter would like the area to be excluded extended to remove a larger part of a 5ha fenced area around the homestead. This is used for rearing calves but appears to include substantive areas of regenerating native bush. In my opinion removal of these bush areas would be inconsistent with the ONL mapping criteria used.

Recommendation - Murdoch

77. I recommend that the Commissioners **reject** submission point 98/1 and **accept** submission point 92/28.
78. N and M Dobbs³⁸ and N Dobbs³⁹ request that the proposed ONL boundaries align with those of an existing NLA. 80% of the property is included in the steeply sloping Bream Head Manaia sequence ONL. Both the upper and lower ONL boundaries differ from the existing NLA.

³⁵ Man O' War Station Ltd v Auckland Council. CA422/2015 [2017] NZCA 24

³⁶ 13/1 and 520/1

³⁷ 98/1

³⁸ 118/1

³⁹ 119/1

79. Following the site visit, the Submission 92 change (see 92/8) would remove an area of orchard and residential garden on the western edge of the land and an area of grassland on a ridge on the opposite, eastern margin of the property. If accepted, these changes will mean the lower ONL boundary covers less of the property than the existing NLA. However, the upper ONL boundary will extend the existing NLA boundary some 75m further up to the top of the slope to roughly align with the cadastral property boundary.
80. As WDP Schedule 16B makes clear, the outstanding and notable natural areas currently identified on the WDP maps were identified 20 years ago as part of the Whangarei District Landscape Assessment (1995). Since that time, a degree of regeneration has occurred on this property at the crest of the upper slope. While challenged by the submitter, the qualities of the new encapsulated area are now considered by Mr Farrow to be consistent with the prevailing characteristics of the main body of the ONL - a combination of steep terrain and indigenous shrubland or forest. As discussed, the Submission 92 change would remove a small area of grassland.

Recommendation - Dobbs

81. I recommend that the Commissioners **reject** submission point 118/1 and 119/1 and **accept** submission point 92/8.
82. P Richards⁴⁰ requests ONL boundary adjustments in two places on a property under several titles. The Submission 92 changes (see 92/16) are in this general area but it appears that for at least one, on the southwest corner of Part Lot 5 DP 24879, is less than desired by the submitter.
83. The requested change would bring the ONL boundary back to more closely follow the edge of a large area of contiguous indigenous vegetation. This will exclude a current area of pasture from the ONL. However, the submitter would prefer the line to be brought back well within the bush area to allow the resultant excluded area to be developed in future. I consider that the line in 92/16 is more consistent with the mapping criteria, which generally seeks to use natural boundaries to delimit ONLs.

Recommendation - Richards

84. I recommend that the Commissioners **reject** submission point 152/1 and **accept** submission point 92/16.
85. J and K Forsythe⁴¹ relates to a property adjoining the North River and Waipu Caves Forest Remnants ONL. The submitter disputes that the area qualifies as an ONL. However, the site was visited by Mike Farrow who concluded that the site does in fact meet the criteria of being an ONL – with some minor boundary adjustment sought in Submission 92 (see 92/23).

⁴⁰ 152/1

⁴¹ 252/1

Recommendation - Forsythe

86. I recommend that the Commissioners **reject** submission point 252/1 and **accept** submission point 92/23.
87. A and C Rushton⁴² indicate that the Submission 92 change to the ONL boundary (see 92/17) does not go far enough in excluding areas of weeds and exotic trees. The adjustment will exclude a small portion of the Parihaka and Associated Forest ONL on this property that is affected by a past slip and has some mature exotic pine trees, and a further small segment modified by the driveway to the house. The remaining ONL overlay on the property is considered by Mr Farrow to be an integral visual part of the adjacent bush that covers most of the wider ONL – even though it may contain some exotic species.

Recommendation - Rushton

88. I recommend that the Commissioners **reject** submission point 500/1 and **accept** submission point 92/17.
89. Similarly, Fraser⁴³ considers that areas of exotic weeds and manuka have been inappropriately included within the ONL that extends over part of their property. The Submission 92 changes to the ONL boundaries (92/12) are intended to exclude such areas, as seen during the site visit, but also taking into account the integrity of the remaining vegetated areas with the more mature adjacent bush. It is unclear whether or not the submitter supports the Submission 92 changes.

Recommendation - Fraser

90. I recommend that the Commissioners **accept in part** submission point 515/1 and **accept** submission point 92/12.

Discussion - ONL Sites Not Visited

91. Turning to the nine submission points that relate to the mapping of specific areas or properties as ONL which were not visited or whose owners were not spoken to as part of the pre-notification consultation process, these are distinguished from those that were visited in that there is a less detailed knowledge of the affected site and/or the landowner's concerns. However, for the points raised, the mapping issues are reasonably clear save for one. J. Brown⁴⁴ does not provide a property address or legal description to which the submission relates and nor does it provide submitter contact details so this information could be ascertained. Accordingly, the validity or otherwise of the submission point cannot be assessed.
92. Woodward and Ali⁴⁵ do not contest the ONL overlay on the property but request that the boundary follow that of an existing bush covenant. However, the covenant boundary is some 100m inward from the natural bush margin used for the ONL boundary. Excluding the

⁴² 500/1

⁴³ 515/1

⁴⁴ 315/1

⁴⁵ 48/1

intervening contiguous bush area would, in my opinion, be inconsistent with the ONL mapping criteria.

93. Kartheus⁴⁶ relates to a property (Sec 1 SO 65504) where only a small sliver of a much larger ONL is included along the north-western property boundary. After discussion with Mr Farrow, I consider that the sliver is highly unlikely to contribute to the qualities and characteristics of the wider ONL and therefore, in my opinion, imposing the proposed PC114 restrictions on this very small area is not justified. I therefore consider a minor adjustment of the ONL boundary to follow the north-western property boundary to be appropriate (**Attachment 3**).
94. Of the remaining six submission points, three⁴⁷ oppose the non-inclusion of all of an existing NLA in south Whangarei within PC114. Two of these⁴⁸ also raise concern that there was no consultation over the proposed reduction in this area.
95. As stated in the s32 report and in Section 2 of this report, PC114 proposes to remove current WDP provisions for lower order landscapes, including the category of Notable Landscapes, to instead focus solely on ONF and ONLs. As part of the regional mapping exercise undertaken in 2012, the many and varied landscape areas within the Whangarei District were reviewed in order to identify those that met the criteria for being considered 'outstanding'. Some NLAs were consequently elevated to the status of ONL including the majority of the NLA in question (now called the 'Otaika Valley Bush and Te Wai-Iti Forest ONL'). The existing mapped NLA segment between the suburb of Raumanga and the Winstones Quarry was, however, adjudged by NRC to not meet the required criteria and so is not included in the newly defined ONL area.
96. In regard to the issue of consultation, the approach taken for PC114 was to confine pre-consultation to those landowners with ONLs or ONFs on all or part of their property. This is because the mapped ONLs/ONFs were generally lifted directly from RPS maps and the principal focus for landowner consultation was the restrictions proposed to apply as a result of PC114 rather than the mapping itself.
97. Turning to the submissions of G & T Robertson⁴⁹ and L Rountree⁵⁰, both request that the proposed ONL zoning be totally removed for their properties. Each property is currently either wholly (Rountree) or substantively (Robertson) within a much larger NLA. The natural qualities of these properties, which are blanketed with areas of native bush, were reassessed by the NRC in 2012 and are now considered to warrant inclusion within an ONL.
98. The Rountree property remains wholly within the proposed ONL, whereas the area of the Robertson property included in the ONL will be reduced from the NLA coverage, though still significant in overall percent terms. Notwithstanding this, the respective areas generally fit the required criteria for inclusion and no argument to the contrary has been raised in either of the submissions.

⁴⁶ 246/1 and 377/1

⁴⁷ 126/1, 295/2, and 349/1

⁴⁸ 126/5 and 349/1

⁴⁹ 465/2

⁵⁰ 466/1

99. Nita Joseph's submission⁵¹ is unique in that the entire property is subject to an existing WDP Site Schedule/Overlay Area provision (11 Pataua South) following an Environment Court decision issued in 2005. The submission states that the zoning of part of the property as ONL will adversely affect the landowner's rights in respect of the development proposal approved by the Court.
100. Those provisions, however, have never been exercised in the sixteen and a half years since the decision was issued. In addition, after consideration of other options, the Site Schedule provision in general are being recommended for deletion from the WDP as part of PC85 (see **Appendix 2 of Part 1** of the s32 report).
101. Given the above and the fact that the area concerned meets the ONL criteria, it is my opinion that the ONL identification should remain.

Recommendation – ONL Sites Not Visited

102. I recommend that the Commissioners:

- **Accept** submission points 246/1 and 377/1.
- **Reject** submission points 48/1, 126/5, 295/2, 315/1, 349/1, 427/1, 465/2 and 466/1.

Discussion – ONF Mapping

103. In regard to the mapping of ONFs, the Geoscience Society⁵² supports the inclusion of mapped ONFs within the proposed PC114 schedule but also seeks to include an additional ONF – the Opuawhanga dacite dome. This volcanic cone was not mapped as part of the 2012 RPS mapping project, and does not appear in RPS Appendix 4.
104. Appendix 4 identifies those natural features that were not able to be mapped at the time the RPS was prepared but which are considered likely to warrant being formally identified as ONFs once work is undertaken to map their spatial extent.
105. As part of the PC114 preparation process, those ONFs listed within RPS Appendix 4 which occur within the Whangarei District were mapped in order to ensure that the PC114 schedule was as up to date as possible. The new WDC mapping also took advantage of a separate ONF review process commissioned by NRC. The initial report dated, November 2015, recommended mapping of a number of additional sites. However, this report did not include the Opuawhanga dacite dome. This feature was therefore not mapped and included in the proposed PC114 maps.
106. Mention of the dacite dome was included in the final technical report dated May 2016 but this new addition was not picked up until after PC114 had been notified.

⁵¹ 427/1

⁵² 52/1

107. The RPS does not preclude PC114 from including ONFs in addition to those already mapped or not mapped but listed in RPS Appendix 4. Other ONFs can be added provided these meet the criteria set out in RPS Appendix 1 – Mapping Methods.
108. In brief summary, the three criteria for a feature to qualify as an ONF are:
- (a) natural and not created by human activity;
 - (b) of regional significance and vulnerability; and
 - (c) mapped by the Geosciences Society (which has the necessary expertise in this area).
109. The Opuawhanga dacite cone meets all of these criteria. The only issue is that, if included in the proposed new WDP schedule, landowners within this area will not have had the chance to be informed of the restrictions that will result from the ONF overlay.
110. The landform is on what is currently a single rural property and has a mix of pasture and exotic forestry on the top and flanks, and a single large dwelling near the summit. Grazing and forestry harvesting and replanting are proposed to be permitted activities. Main landowner concerns are therefore likely to be around the proposed restrictions on new buildings, building alterations and extensions, and earthworks including roading and tracking.
111. While consultation with the affected landowner(s) is preferable before ONFs are added, there is no statutory requirement for this. There was also, in theory, the opportunity to make a further submission in opposition to the Geosciences Society submission. However, in fairness to the landowner(s), that submission does not include an exact location of the feature or an accompanying map showing its boundaries. Even if they were aware of the PC114 process, the landowner(s) are therefore unlikely to have known that the new ONF was located on their property. For this reason, while the Opuawhanga dacite cone meets the RPS criteria, it is my opinion that the submission point be declined in the interests of natural justice.
112. During landowner site visits, one ONF was considered to warrant minor boundary adjustment and this has accordingly been requested through submission point 92/40. Note this is mislabelled as a recommended ONL change in the submission.
113. A further three recommended minor ONF boundary changes arose out of discussions with WDC I&S. Details of the requested map changes are set out in submission point 92/42 and accompanying report. These were produced with input from Dr Hayward.
114. Two landowners have taken issue with the ONF mapping (430/5 and 479/25).
115. André & Robin LaBonté⁵³ take issue with the fact that the Waipu Cove karst ONF, which runs along the seaward edge of their property, was not included in the operative RPS maps. This ONF was instead included in PC114 as a result of the additional ONF identification and mapping work subsequently undertaken.

⁵³ 430/5

116. The Waipu Cove karst is included in RPS Appendix 4. The concern is that because it was not mapped as part of the RPS review, there was no associated landowner consultation by NRC in 2012 (when the original mapping was done). However, as noted above, ONFs identified in PC114 do not need to be confined to those within the RPS maps provided they meet the criteria in RPS Appendix 1. Secondly, while NRC did not undertake consultation, the submitters were consulted with by WDC as part of the pre-notification consultation undertaken for PC114.
117. The ONF runs along the coastal margin between Waipu Cove and Langs Beach. Generally, the ONF boundary follows the natural delineation line between pasture and the exposed rocky coastal shelf, except that at the south eastern end a surveyed esplanade reserve boundary is used – presumably in the interests of legal clarity. During on-site discussions of PC114 with the landowners, it was agreed to recommend the use of the outer canopy of the fringing pohutukawa to more consistently delineate the landward edge of the ONF for the subject property (see 92/39). 430/5 requests a minor adjustment to this recommendation to exclude a very small area at the eastern property boundary. This does not appear a significant issue other than to note that a corresponding amendment would also be needed on the neighbouring property so that the boundary between the two is aligned.
118. WDC I&S⁵⁴ is concerned that the mapping of the One Tree Point ONF, as notified in PC114, is not accurate. This is based on the understanding that a further review of this feature had been undertaken post-notification.
119. Responding to pre-notification comments from the WDC I&S, a revision (reduction) of the ONF boundary was received from Dr Hayward on 2 September 2016, after notification (**Attachment 4**).
120. Given that the boundary has been reduced rather than increased and the legal scope for adjustment is provided by 479/25, in my opinion the latest boundary adjustment should be adopted.

Recommendation – ONF Mapping

121. I recommend that the Commissioners:
- **Accept** ONF map boundary adjustments set out in submission point 92/42, 430/5 and 479/25 and amend the WDP maps accordingly.
 - **Reject** submission point 52/1.

⁵⁴ 479/25

D. Coastal/Non-Coastal Differentiation

Submission Information

122. Three submission points were made with regard to the proposed differentiation between coastal and non-coastal ONLs and ONFs within PC114. In the PC114 provisions, coastal ONLs and ONFs receive greater protection than non-coastal ONLs and ONFs.
123. Refining NZ (**NZRC**)⁵⁵ challenges the assertion made in the s32 report that this approach is consistent with the NZCPS and RPS policies (focusing on proposed objective LAN.1.2.3). The Geosciences Society⁵⁶ and FFNZ⁵⁷ consider that proposing separate activity tables for ONFs that are within and outside the Coastal Area (**CA**) to be unhelpful and unnecessary.

Discussion

124. As set out in section 6.3.2 of the s32 report for PC114, the proposed objectives and policies in general reflect the protection-oriented provisions of RMA section 6(b), NZCPS policy 15 and RPS policy 4.6.1 toward outstanding natural features and landscape. This includes a weighted hierarchy of protection between coastal and non-coastal ONFs and ONLs which gives effect to RPS policy 4.6.1(1) and (2).
125. Following the decision of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, implementation of NZCPS Policy 15 requires a very high threshold of avoidance of adverse effects on ONFs and ONLs within the coastal environment, except where those effects are minor or transitory. This is directly reflected in RPS Policy 4.6.1(1). However, RPS Policy 4.6.1(2) also expressly allows for a more moderate protection regime within non-coastal areas. Outside of the coastal environment, only significant adverse effects on ONFs and ONLs must be avoided whereas lower order effects may be either avoided, remedied or mitigated depending on the circumstances.
126. Proposed objective LAN.1.2.3 and policy LAN.1.3.4 are in my opinion necessary to comply the direction from caselaw and the national and regional policy statements. NZRC challenges the policy basis for this but does not provide any detail as to why.
127. Having necessarily made a distinction between adverse effects management thresholds within coastal and non-coastal ONFs and ONLs, proposed rule provisions need to separately cover activities within coastal and non-coastal ONLs and ONFs. In light is this, the proposed separate LAN.5 Tables 1 and 2 are considered both appropriate and lawful for ONF (and ONL) management.

Recommendation

128. I recommend that the Commissioners **reject** submission points 52/3, 411/37 and 444/1.

⁵⁵ 444/1

⁵⁶ 52/3

⁵⁷ 411/37

E. Landowner Compensation

Submission Information

129. Thirteen submission⁵⁸ points were made with regard to the topic of landowner compensation or other financial recompense for the landuse and subdivision restrictions proposed to be imposed via PC114.
130. The specific types of relief sought within submissions from affected landowners include:
- WDC providing financial assistance to affected landowners to independently investigate and quantify the effect of PC114 on their property;
 - WDC covering the costs of resource consent applications for activities that were permitted within ONLs and/or ONFs prior to PC114;
 - Rates reduction commensurate with the percentage of property covered by an ONL or ONF overlay;
 - Purchase of affected properties; and
 - Continuing to apply existing WDP environmental benefit provisions.

Discussion

131. RMA section 85(1) generally provides that an interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in the RMa. However, s85(2) states that:

Notwithstanding subsection (1), any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds—

(a) in a submission made under Part 1 of Schedule 1 in respect of a proposed plan or change to a plan; or

(b) in an application to change a plan made under clause 21 of Schedule 1.

132. Only one of the submitters, Wiseman, has expressly referred to RMA s85.
133. Section 85(1) makes clear that the regulation of the use of private property via planning provisions, in this case PC114, does not amount to injurious affection. The outcome of an appeal or application brought under section 85(2) is that the plan provisions may be amended rather than providing compensation to the affected landowner.

⁵⁸ 27/1, 118/5, 119/5, 132/2, 168/2 & 3, 173/2 & 3, 202/1, 430/6 and 7, and 481/1.

134. There is therefore no legal requirement for WDC to provide financial assistance to affected landowners to independently investigate and quantify the effect of PC114 on their property, or to purchase affected land or assist with consent application costs.
135. Notwithstanding this, WDC in promulgating PC114 did turn its mind to non-regulatory measures that could and should be proposed to support landowners in managing, enhancing and protecting ONLs and ONFs. These are set out in policy LAN.1.3.16 and include contributing toward the cost of the required landscape assessments and the provision for rates relief.
136. In regard to the actual extent of rate relief that might be proposed, if proposed policy LAN.1.3.16(d) remains worded as is and is made operative then the matter will need to be considered a part of a review of the WDC rate remission policy.

Recommendation

137. I recommend that the Commissioners
- **Reject** submission points 27/1, 118/5, 119/5, 202/1, 430/6 & 7 and 481/1.
 - **Accept in part** submission points 132/2, 168/2 & 3, and 173/2 & 3 as far as is consistent with proposed policy LAN.1.3.16(d) and its statutory implementation

F. Provision for Specific Landuses

Submission Information

138. Eight submitters⁵⁹ have raised a number of points with regard to the topic of recognition of specific landuses within PC114 or, more specifically, within the mapped ONLs and ONFs. These landuses are:
- Rural production - principally farming, forestry and horticulture (Submissions 242, 411 and 425).
 - Regionally significant infrastructure/network utilities – state highways, rail, electricity transmission network and petroleum and/or natural gas pipelines (Submissions 429, 444, 453, and 476).
 - Local infrastructure/community facilities (Submission 479).
 - Temporary military training activities (Submission 450).
139. These submissions are generally in support of PC114 Objective LAN.1.2(5) and, for regionally significant infrastructure and community facilities, Policy LAN.1.3(9). However, most also seek amendments to the detailed provisions of PC114 - particularly the proposed policies and rules.
140. As some of these submissions also cover provisions within other plan changes, the submission points have been addressed collectively in **Part 1** of the s42A report. Relevant points from the NZ Defence Force (NZDF) on PC114 are addressed in **Topic I** of that report, those from

⁵⁹ 242/1, 411/10, 37 & 38, 425/16-18, 479/15-17, 19 & 22-24 and 453/25-29

submissions of Kiwi Rail, NZRC, and Transpower are addressed in **Topic M**, and the Horticulture NZ (HortNZ) submission point on the proposed definition of “land preparation” is dealt with in **Topic O**.

141. The remaining submissions, on rural production, state highways and local infrastructure are addressed here. Specifically, the following is a discussion and recommendation on the general issue of appropriate level of recognition of existing productive or infrastructure-related landuses within ONLs and ONFs. Where relevant, evaluation of related submission points on specific PC114 provisions is also dealt with later in this report.

Rural Production (Horticulture) - Discussion

142. In regard to rural production activities, NZ Avocado and HortNZ represent horticultural interests, primarily but not exclusively, avocado and kiwifruit growers. The only point made by NZ Avocado⁶⁰ is in blanket support of HortNZ’s submission⁶¹ so the following discussion will necessarily focus on the latter submission.
143. The submission points raised by HortNZ are largely focused on proposed provisions relating to the Whatitiri Shield Volcano ‘Large Landform’ ONF (Whatitiri ONF). The surface of much of this ONF (approx. 50%) is currently used for horticultural activity. The submission essentially argues that the PC114 policies and rules need to recognise both the needs of this existing activity and the relative insensitivity of this large landform to human modification through earthworks, buildings and structures.
144. The proposed rules in LAN.5 Table 1 would apply as this is a non-coastal ONF. The rules already reflect a more permissive approach toward new buildings, structures and earthworks on large ONFs compared to smaller ONFs. This is in direct recognition of the reduced vulnerability to human modification of the large Whatitiri ONF.
145. The initial draft of Table 1, used for pre-notification landowner consultation including horticulturists (but not HortNZ), had rules making new buildings and structures a restricted discretionary activity on large landform ONFs and permitted activity limits of 1000m³ for land preparation and 500m³ for general earthworks.
146. This regulatory position was derived from an initial evaluation of the existing WDP rules and comparable rules for ONFs/ONLs within the Far North District Plan, the Kaipara District Plan and the then proposed Auckland Unitary Plan. The intention was and is to have as much consistency as possible between the WDP landscape provisions and those within the district plans of neighbouring districts and the Auckland region.
147. Following consultation with landowners over the draft PC114, the blanket restricted discretionary activity status for new buildings and structures was changed to include a permitted activity height limit of 5.5m height. This was purposely to allow for equipment storage sheds and the like associated with horticultural activity. At the same time, WDC agreed that the

⁶⁰ 242/1

⁶¹ 425/1 - 24

proposed definition of 'land preparation' be amended and the associated volume limit removed to specifically allow for such activities as:

- ploughing or rotary soil cultivation for vegetable crops; and
- ridging or mounding of soil for tree crops such as avocados.

Such superficial land disturbance is not seen as a significant threat to the Whatitiri ONF.

148. These concessions were made to ensure that the proposed rules do not unduly restrict existing authorised use (horticulture) of the Whatitiri ONF and other landforms within Category A. HortNZ⁶², however, now seek an even more permissive regime for buildings, structures and earthworks and, more generally, for rural production activity within large landform ONFs. Rather than being tailored to the specific requirements of the horticultural industry, this appears largely based on an interpretation of the commentary on large landforms in LAN.8.3 Categories of Outstanding Natural Features. This includes the statement "*They (large landforms) can typically withstand moderate scale earthworks or constructions without significant impact.*".
149. It is unclear what specific horticultural activities are considered to be prevented or unduly restricted by the proposed rules as they stand, other than the construction of artificial crop protection structures e.g. pole and textile shelterbelts for kiwifruit orchards. Issues relating to the allowance of land preparation activity largely revolve around the clarity of the definition of that term as the relevant horticultural activities described in the previous paragraph are intended to be covered.
150. A general more permissive regime is not in my opinion appropriate for large landform ONFs for the simple reason that these landforms are ranked as 'outstanding' and therefore merit a degree of caution when stipulating what type and extent of development is allowed on them as permitted activities.
151. The proposed rule regime is in my opinion robust as it is based on:
- (a) an initial evaluation of similar plan provisions from other districts and regions;
 - (b) a tailoring of provisions to the particular characteristics of the ONF categories within the Whangarei District; and
 - (c) pre-notification consultation with affected landowners, including horticulturalists, to ensure that existing uses are not unduly restricted.
152. Allowance for artificial crop protection structures to be permitted has not been considered to date as planted shelter belts are generally used. However, allowance for crop protection structures would be consistent with the general agreement, and statutory requirement, to not unduly restrict existing horticultural uses. The Whatitiri ONF landcover currently includes a latticework of planted shelterbelts and any artificial crop protection structure should in my opinion blend in with this.

⁶² 425/16 – 18

153. The matter of artificial crop protection structures is comprehensively dealt with in **Topic O** in **Part 1** of the s42A report. This recommends that a definition of the term be added and that this form of structure be excluded from the WDP definition of the term “building”. Associated new recommended rules would make such a structure less than 10m high a permitted activity in the Rural Living and Rural Production Environments.
154. Noting that WDP definition of “building” includes “any temporary or permanent, movable or immovable structure”, it is recommended that this word be deleted from the landuse and development rules in LAN.5 Table 1 and, as consequential amendment, Table 2. If the proposed exclusion of artificial crop protection structures from the definition of buildings is accepted, then this will allow these structures to occur as permitted activities up to the proposed 10m height limit.
155. In regard to earthworks, it is relevant to note that the permitted earthworks volume limit within large landform ONFs in the Auckland Unitary Plan is 50m³. The Geoscience Society⁶³ advocates that this limit also be used for Whatitiri and other Category A ONFs within the Whangarei District. This matter is discussed in more detail later in this report along with other submission points on the relevant rules.

Recommendation

156. I recommend that the Commissioners:
- **Accept in part** submission point 425/16.
 - **Reject** submission points 425/17 – 18.

Rural Production (Farming and Primary Production) – Discussion

157. FFNZ⁶⁴ request that existing farming and primary production activity should be expressly listed as an attribute or value of the ONF or ONL within which they occur. Further, FFNZ requests that existing landuse and development within ONLs and ONFs, much of which is related to rural farming and primary production, should be recognized and provided for within the mapped areas.
158. FFNZ⁶⁵ also request that farming be a single defined activity (encompassing fencing, stock grazing, and land preparation) which is permitted across all categories of ONF.
159. Addressing each issue in turn, in my opinion the intent of objective LAN.1.2.1 and associated policy LAN.1.3.2 is to provide information on the individual qualities and characteristics of ONLs and ONFs. The information, included in ONL worksheets and schedule LAN.8, is directly derived from the information used to categorize the landscapes and features as outstanding in the first instance. More specifically, the listed characteristics and qualities are generally based around the natural attributes of the ONL or ONF concerned. The presence of existing farming

⁶³ 52/9

⁶⁴ 411/10, 37 & 38

⁶⁵ 411/36, 37 & 41

and primary production activity, buildings and the like are recognized but as modifying (or modified) elements in the general natural setting.

160. The presence of farming or primary production activity therefore was not and is not a defining quality or characteristic of ONLs or ONFs. Indeed, the mapping of ONLs has endeavoured to exclude grazed pasture and farm buildings as much as possible. Where such activities are included within ONLs, it is generally only at the margin and/or as subsidiary elements of a larger natural vegetated landform that is the ONL. Expressly listing farming and primary production as attributes or values of the ONF or ONL within which they occur would therefore, in my opinion, be inconsistent with this approach.
161. Notwithstanding this, the presence of existing landuse and development within ONLs and ONFs is proposed to be recognized and, in proposed policy LAN.1.3(17), provided for. However, such provision needs to be fettered by the overall intent to protect ONLs and ONFs. Some activities such as buildings, earthworks and vegetation clearance still need to be carefully controlled. Amendment to the objective LAN.1.2.5 to make general provision for such existing activity would therefore be misleading and for that reason is, in my opinion, not appropriate.
162. In regard to defining farming as a single activity, there is a proposed definition of the term 'farming' in the separate but related proposed PC85. Specifically, PC85 includes a consequential amendment to WDP Chapter 4 Meaning of Words to insert the following definition:

Farming *“means any agricultural or horticultural activity having as its primary purpose the commercial production of any livestock or vegetative matter for human or animal consumption. The production of livestock or vegetative matter utilises the in situ production capacity of the soil, water and air as a medium for production.*

Farming includes:

- (a) all types of livestock breeding, cropping, grazing, aquaculture*
- (b) horticulture, including covered cropping as in greenhouses*
- (c) apiaries*
- (d) normal rural practices including associated buildings and structures*
- (e) crop support structures and artificial crop protection*
- (f) airstrips.*

But excludes:

- (a) Plantation forestry and intensive livestock farming.”*

163. While the desire to have the specific activity of farming covered as single activity is appreciated, as can be readily seen the definition covers a raft of differing activities with differing actual or potential effects on ONFs and ONLs. Some activities such as stock grazing and apiaries are in my opinion unlikely to have an adverse effect on the qualities and characteristics of ONFs and ONLs. The construction of large buildings such as greenhouses and milking sheds however may. A blanket categorization of farming, as proposed to be defined, as a permitted activity would therefore in my opinion be inconsistent with the protection of ONLs and ONFs.

Recommendation

164. I recommend that the Commissioners **reject** submission points 411/10, /36, /37, /38 and /41.

State Highways – Discussion

165. New Zealand Transport Agency (**NZTA**)⁶⁶ supports PC114 but requests that provision be made for the consideration of functional and operational needs for infrastructure to be located within ONLs and ONFs. However, no guidance is given within the submission as to how that provision might be appropriately made within PC114.
166. As there is already provision within LAN.1.2.5 and policies LAN.1.3.17 & 18 for recognition of existing infrastructure, including state highways, within ONLs and ONFs, I assume that the request relates to new infrastructure only. Further, given the submitter is responsible for the management and improvement of the state highway network within the Whangarei District, I assume it is primarily new activity associated with improving the safety and efficiency of the network that is sought to be provided for.
167. A central consideration in responding is whether or not sections of the state highway network are currently located within ONLs and ONFs and therefore subject to the proposed PC114 restrictions. These circumstances occur in two non-coastal locations; within a segment on the southern flank of the Brynderwyn Range and Bush Margins ONL, and at the north eastern edge of the Pukenui Forest ONL, overlapping Western Hills Drive.
168. Policy LAN.1.3.4 does not preclude new use and development within non-coastal ONLs and ONFs but does set a high threshold for major works such as new state highway construction or modification. As most of the works will be earthworks, proposed policy LAN.1.3.11 would also apply and this provides more latitude for works provided the three conditions listed in the policy are met.
169. In any event, the activity is not prohibited and could be applied for as a discretionary activity under proposed rule 3.4.1. The fact that the state highway falls to be considered as regionally significant infrastructure will have a bearing on any decision made, especially if the recommended amendments to the relevant assessment criteria in LAN.7 are accepted (see next section).
170. It is also relevant to note that state highway corridors are typically designated as such and that the designation conditions will supersede the proposed rules.

Recommendation

171. I recommend that the Commissioners:
- **Accept** submission points 453/26 - 29
 - Accept in part 453/25

⁶⁶ 453/25

Local Infrastructure/Community Facilities – Discussion

172. WDC I&S is generally supportive of the provisions within PC114 for the ongoing operation, maintenance, renewal and repair of district infrastructure and community facilities (479/15, 19, 22 and 23). However, three significant aspects of PC114 are considered by the submitter to need refinement, namely:
- (a) Wider provision for minor upgrading of network utilities within ONFs (479/16);
 - (b) Additional assessment criteria relevant to applications for the provision and maintenance of public infrastructure and services (479/17); and
 - (c) A relaxation of the restriction on hard protection structures within coastal ONFs and ONLs (479/24).
173. 'Minor upgrading' is a term defined in WDP Chapter 4 and generally covers:
- An increase in the carrying capacity, efficiency or security of any network utility operation utilising existing support structures or structures with the effects of a similar scale, character, bulk and form.
- It expressly excludes “*additional structures or the replacement of structures with the effects that are not of a similar scale, character, bulk and form.*”
174. The proposed PC114 provision for minor upgrading of network utilities (and buildings and structures associated with public parks, reserves and community infrastructure) within ONFs make this a permitted activity within non-coastal large landform ONFs (Category A) and volcanic cone (Category B) ONFs, but discretionary within smaller ONFs (categories D and E)⁶⁷. In coastal ONFs of all category types, minor upgrading is a discretionary activity.
175. The submitter argues that such activity should be a restricted discretionary activity for all coastal and non-coastal ONFs, where it is currently proposed to be discretionary, and a permitted activity within coastal large landforms (Category A). This is on the basis that minor upgrading activity is unlikely to give rise to additional adverse effects as it must by definition utilise existing structures or ones of similar size and scale as exist at present.
176. This general reasoning for the activity becoming restricted discretionary is accepted for the reason stated. However, the only coastal large landform ONF is the Bream Head eroded stratovolcano which is largely managed by the DOC as a mainland nature reserve and does not include any existing network utilities. The application of a general restricted discretionary status is therefore, in my opinion, more appropriate than making the activity permitted.
177. Where resource consent is required for a restricted discretionary, discretionary or non-complying activity, the proposed assessment criteria in LAN.7 are to be applied. The submitter requests that the following additional assessment criteria relevant to the provision and maintenance of public infrastructure be included in LAN.7:

⁶⁷ There are no Category C ONFs within the non-coastal area.

(a) The extent to which the proposed works will protect the feature from damage, such as providing for erosion protection, or to remediate previous damage.

(b) The extent to which modification of a feature is necessary to provide for the proposed infrastructure and to which the proposed structure has a functional or operational need to be in the location proposed.

(c) Whether the proposed works are necessary to improve the resilience and security of the relevant infrastructure.

178. Requested criteria (a) and (b) are consistent with protecting ONLs and ONFs. Criteria (c) goes to the necessity for the proposed infrastructure works and is consistent with the allowance of the establishment of infrastructure and community facilities within the ONL or ONF under proposed policy 1.3.9.
179. The submitter takes issue with proposed policy 1.3.3(b) which requires the avoidance of the use of hard protection structures within coastal ONLs and ONFs. The submitter considers this inconsistent with NZCPS policies 25 and 27 and RPS policies 7.1.3 and 7.2.2. These policies “discourage” the use of hard protection structures but also recognise that these may be the only practical means of preventing or managing coastal hazards in specific circumstances, e.g. in areas of significant and/or vulnerable existing development likely to be affected by coastal hazards.
180. The present policy 1.3.3 was arrived at after considering the location, characteristics and qualities of coastal ONLs and ONFs within the Whangarei District and the potential need (or not) for hard protection structures within those areas (with reference to hazard mapping and existing areas of coastal settlement or private or public development). The submitter indicates that hard protection structures already exist within coastal ONFs and ONLs. However, at present, I understand that this only applies to the category E One Tree Point ONF where there is an existing protective seawall below the eroding cliffs. That structure is already in place so is not affected by the proposed policy unless it was proposed to be altered or extended in future – which could be the case if the present structure does not fully achieve its purpose.
181. While the issue appears largely philosophical, amendment to allow hard protection structures under defined circumstances would provide future-proofing of the policy as the District landuse and development grows. However, additional assessment criteria will also be required as the specific matters around the use of hard protection structures is not covered at present.

Recommendation

182. I recommend that the Commissioners:
- **Accept** submission points 479/15, 19, 22 and 23.
 - **Accept in part** submission point 479/16 and amend LAN.5 Tables 1 and 2 to make minor upgrading of network utilities and buildings and structures associated with public parks, reserves and community infrastructure a restricted discretionary activity where it is currently proposed to be discretionary.

- **Accept in part** submission point 479/24 and amend policy LAN.1.3.3(b) to read:

Associated with coastal hazard management that avoids the use of hard protection structures, such as seawalls and rock armouring, along with other visible artificial elements, except where such structures are the only practical means to protect significant existing development or infrastructure.

And add the following related assessment criteria after LAN.7.1(2):

3. For the extension or alteration of existing lawfully established hard coastal protection structures, and for new hard coastal protection structures:

- (i) any relevant coastal hazard management strategy, plan or assessment relating to the area where hard protection structures are proposed, including the ability to relocate buildings, structures, infrastructure or land uses which the structure is designed to protect; and
- (ii) the ability to use, retain or enhance natural defences in place of hard protection structures.

- **Accept** submission point 479/17 and add the following assessment criteria to LAN.7.1(1):

- n. For works associated with the provision or maintenance of network utilities and community infrastructure:
 - i. The extent to which the proposed works will protect the Outstanding Natural Feature or Outstanding Natural Landscape from damage or will remediate existing damage.
 - ii. The extent to which modification of an Outstanding Natural Feature or Outstanding Natural Landscape is necessary to provide for the proposed infrastructure and to which the proposed structure has a functional or operational need to be in the location proposed.
 - iii. Whether the proposed works are necessary to improve the resilience and security of the relevant infrastructure.

G. LAN.1.1 Description and Expectations

Submission Information

148. FFNZ⁶⁸ requests that the stewardship of landowners is recognised because the ONLs and ONFs that exist today result from previous generations valuing the inherent properties of these resources and seeking to retain and even protect them.

Discussion

149. LAN.1.1 is an introduction to the concept and value of outstanding natural landscapes and natural features within the Whangarei District, setting the scene for the objectives, policies, and rules that follow. In the context of PC114, I consider it appropriate to acknowledge that the

⁶⁸ 411/3

naturalness of the mapped ONLs in particular is in large part attributable to past and present efforts by both private and public landowners, including WDC and DOC, to actively retain and protect significant landforms and/or areas of indigenous vegetation within the District.

Recommendation

150. I recommend that the Commissioners **accept** submission point 411/3 and add the following penultimate sentence to LAN.1.1:

It is also appropriate to acknowledge that the naturalness of the mapped ONLs is in large part attributable to past and present efforts by both private and public landowners, including the Whangarei District Council and the Department of Conservation, to actively retain and protect significant landforms and/or areas of indigenous vegetation within the district.

H. LAN.1.2 Objectives

Submission Information

183. Submission points by Hye Young & Kedde Whang⁶⁹, Willem-Fredrig Kedde⁷⁰ and FFNZ⁷¹ relate to proposed objective LAN.1.2.1. The principal issue raised in the first two submission points actually relates to the mapping of ONLs and ONFs. These points have therefore been addressed in Topic C of this report.
184. FFNZ supports the objective but considers that it needs amendment to be more explicit about how ONL and ONF identification will occur and to require that the specific values of each ONL and ONF be listed in a schedule and mapped. Specifically, FFNZ requests that the objective LAN.1.2.1 be amended to read:

Identify Outstanding Natural Features and Outstanding Natural Landscapes and their values within the Whangarei District using criteria, and include them in a schedule and on maps.

151. Submission points by FFNZ⁷², HortNZ⁷³ and Landowners Coalition⁷⁴ relate to proposed objective LAN.1.2.2. FFNZ supports the objective but aligns with HortNZ in wanting to see the stated qualities and characteristics of ONLs and ONFs amended to include existing land use and development. Landowners Coalition wants the term 'inappropriate' defined to add certainty and clarity.
152. Submission points by DOC⁷⁵, FFNZ⁷⁶, NZRC⁷⁷ and Landowners Coalition⁷⁸ relate to proposed objective LAN.1.2.3. DOC seeks to have the objective apply more broadly to natural features

⁶⁹ 168/1

⁷⁰ 173/1

⁷¹ 411/4

⁷² 411/5

⁷³ 425/1

⁷⁴ 431/18

⁷⁵ 78/26

and landscapes within the coastal environment, not just ONLs and ONFs. Specifically, DOC seeks that objective LAN.1.2.3 be amended to read:

Provide ~~greatest~~ protection for natural features and natural landscapes ~~Outstanding Natural Features and Outstanding Natural Landscapes~~ within the coastal environment, with particular attention to those landscapes and features that are outstanding.

153. FFNZ requests amendment to clarify that “appropriate development” is still allowable within coastal ONLs and ONFs. The suggested amended objective would read:

Provide greatest protection for Outstanding Natural Features and Outstanding Natural Landscapes within the coastal environment, while enabling appropriate development that is consistent with underlying zoning.

154. NZRC and Landowners Coalition oppose the objective.

155. Submission points by FFNZ⁷⁹ and Landowners Coalition⁸⁰ relate to proposed objective LAN.1.2.4.

156. FFNZ is generally supportive of the objective but requests that it be amended to actively enable and support conservation, rehabilitation and enhancement actions – rather than just promote them. Landowners Coalition simply comment that if conservation of ONFs and ONLs is the objective then WDC should purchase the land.

157. Submission points FFNZ⁸¹, HortNZ⁸², KiwiRail⁸³, Landowners Coalition⁸⁴ NZRC⁸⁵, and NZTA⁸⁶ relate to proposed objective LAN.1.2.5.

158. FFNZ generally supports the objective but requests that it be amended to also provide for existing landuse and development within ONFs and ONLs, including farming and primary production activity.

159. Similarly, HortNZ generally support the objective but request that the existing uses and development be detailed within the WDP provisions. KiwiRail, the NZRC, the NZTA and the Landowners Coalition support the proposed objective as worded.

160. Submission points by FFNZ⁸⁷ and Landowners Coalition⁸⁸ relate to proposed objective LAN.1.2.6.

161. FFNZ generally supports the objective but requests that it be amended to also provide for Maori landuse and development on their land. Landowners Coalition oppose the objective.

⁷⁶ 411/7

⁷⁷ 444/1

⁷⁸ 431/19

⁷⁹ 411/8

⁸⁰ 431/20

⁸¹ 411/9

⁸² 425/2

⁸³ 429/13

⁸⁴ 431/21

⁸⁵ 444/2

⁸⁶ 453/26

⁸⁷ 411/11

⁸⁸ 431/22

Discussion

162. Objective LAN.1.2.1 as notified is intended to make clear that the proposed PC114 will focus only on ONFs and ONLs within the District that have been formally identified. Plan writing convention is that objectives do not include statements about how they are to be achieved. This is the role of the policies designed to implement the objective. This has been done for this objective through policies LAN.1.3.1 and .2.
163. The FFNZ requested inclusion of reference to 'values' is in my opinion inappropriate as:
- (a) the intended meaning of the term is not defined or clarified within the submission; and
 - (b) its use would create unnecessary confusion over its relationship with the phrase "characteristics and qualities" which is used in preference within other PC114 objectives and policies.
164. In respect of the submission points on objective LAN.1.2.2, the general issue of what the characteristics and qualities encompass has been previously discussed within Topic F of this report. Put simply, while farming or primary production activity may be present within ONLs or ONFs, such activity was not and is not a defining quality or characteristic of ONLs or ONFs. Separate recognition of such landuses within ONLs and ONFs is made through objective LAN.1.2.5 and supporting policies.
165. The Landowners Coalition request for clarity over the word "inappropriate" is understood. However, such expansion is in my opinion not possible or necessary within the context of a plan objective. Suffice to say here that the Supreme Court in *King Salmon* has stated that:
- ..."where the term "inappropriate" is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that "inappropriateness" should be assessed by reference to what it is that is sought to be protected."⁸⁹
166. Within PC114, it is the characteristics and qualities of the ONFs and ONLs that are sought to be protected. For activities requiring consent, appropriateness will depend on such things as the nature and extent of the activity is proposed and the degree of effect on the characteristics and qualities of the ONF or ONL concerned. If an activity is inconsistent with the policies, then it will generally be considered inappropriate. Conversely, permitted activities are manifestly considered "appropriate" within ONFs and ONLs.
167. In regard to the DOC-requested changes to objective LAN.1.2.3, as stated above PC114 is deliberately confined to the protection of identified ONLs and ONFs only. Protection of other lower order natural features and landscapes within the coastal environment is dealt with under the more general PC87 Coastal Area plan change.
168. The submitter also states that the use of the word "*greatest*" introduces a relative weighting to this objective. As explained in the Topic D of this report, this is deliberate to reflect that,

⁸⁹ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, paragraph 101

following the *King Salmon* decision, implementation of NZCPS Policy 15 requires a very high threshold of avoidance of adverse effects on ONFs and ONLs within the coastal environment. In the absence of a similar national policy directive for non-coastal ONFs and ONLs, a less stringent approach is taken.

169. FFNZ's requested amendment to the same objective is intended to reflect, in its view, objective 6 of the NZCPS. That objective includes the statement 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.

170. Objective LAN.1.2.2 already makes clear that ONFs and ONLs will be protected from inappropriate subdivision, use and development so in my opinion it is axiomatic that appropriate landuse will be allowed. It should also be self-evident that PC114 applies a Resource Area policy regulatory overlay to the underlying zoning, as occurs with the present WDP Landscape chapter. 'Appropriateness' is therefore not determined just by what the underlying zoning policies and rules allow but also, and more specifically, what actual or potential effects an activity may have on the characteristics and qualities of ONFs and/or ONLs

171. NZRC's opposition to the objective has been dealt with in Topic D of this report.

172. Landowners Coalition considers the use of the phrase "greatest protection" implies avoidance and essentially means prohibiting human activity, which in its view is too onerous. However, if PC114 is read as a whole then it is clear that many activities are allowed (permitted) or allowable (subject to consent application), so in my opinion this perception of the objective is incorrect.

173. FFNZ supports objective LAN.1.2.4 but recommends that it be amended to actively enable and support conservation, enhancement and rehabilitation of ONFs and ONLs as well as promote these actions. In my opinion, the word 'promote' is deliberately used in the objective in its meaning of 'to actively encourage' so as to allow flexibility for WDC as to how such actions are to be supported. Notwithstanding this, the proposed policies LAN.1.3.14 - .16 make clear that there will be an active commitment to support landowners.

174. A response to the FFNZ submission on objective LAN.1.2.5 is provided in Topic F of this report. The remaining submission points are in support of the objective as worded and are not expected to alter as a result of the recommended rewording.

175. Landowner Coalition opposition to objective LAN.1.2.6 appears to be based on philosophic grounds and in my opinion ignores the RMA requirements to give special recognition, and provision for, Maori and their relationship with their ancestral lands. FFNZ requests that the objective be amended to also provide for Maori landuse and development on their land, analogous to the submission point made on LAN.1.2.5. In my opinion, the use of the words 'make allowance for' within the proposed objective is sufficient for the narrow purposes of PC114 given the only unique Maori landuse being provided for is papakainga development.

Recommendation

176. I recommend that the Commissioners:

- **Reject** submission points 168/1 and 173/1 and **reject** submission point 411/4 in respect of proposed objective LAN.1.2.1.
- **Reject** submission points 425/1 and 431/18 and **reject in part** submission point 411/5 in respect of proposed objective LAN.1.2.2.
- **Reject** submission points 78/26, 411/7, 431/19 and 444/1 in respect of proposed objective LAN.1.2.3.
- **Reject** submission point 411/8 in respect of proposed objective LAN.1.2.4.
- **Reject** submission point 411/9 and **accept** submission points 411/9, 425/2, 429/13, 431/21, 444/2 and 453/26 in respect of proposed objective LAN.1.2.5 and retain wording as notified.
- **Reject** submission points 411/11 and 431/22 in respect of proposed objective LAN.1.2.6.
- **Reject** submission point 431/20 in respect of proposed objective LAN.1.2.4.

I. LAN.1.3 Policies

Policy LAN.1.3.1 - Submission Information

177. Four submission points⁹⁰ relate to proposed policy LAN.1.3.1.

178. Far North District Council (**FNDC**) and FFNZ request the deletion of the words “*that are sensitive to the effects of subdivision, use and development*” from the policy.

179. FFNZ further requests that the following words be added to the end of the policy “and to describe the Outstanding Natural Features and Outstanding Natural Landscapes and their qualities and characteristics in the landscape assessment worksheets and Schedule 8.4.”.

180. HortNZ opposes the proposed policy.

181. The Landowners Coalition challenges what it sees as a presumption within the policy that subdivision is bad for the environment but does not offer suggested wording amendments.

Policy LAN.1.3.1 - Discussion

185. FFNZ does not explain why their relief is necessary and why the words requested to be deleted are superfluous. FNDC however does suggest that the inclusion of the words gives the impression that some ONFs and ONLs are not sensitive, and that it is implicit that areas identified as outstanding will sensitive to subdivision, use and development.

⁹⁰ 410/98, 411/12, 425/3 and 431/23

186. While the wording was included to provide a clear link to other policies controlling subdivision, use and development, in my opinion this is adequately covered by policy LAN.1.3.2. I therefore consider that the words should be deleted to avoid confusion. This may also resolve the Landowners Coalition concern around the implied perception of subdivision activity.
187. FFNZ further requests that the following words be added to the end of policy LAN.1.3.2 “and to describe the Outstanding Natural Features and Outstanding Natural Landscapes and their qualities and characteristics in the landscape assessment worksheets and Schedule 8.4.”. Given the focus of the policy is on the express inclusion of relevant information on identified ONFs and ONLs into the WDP, I consider this appropriate.
188. HortNZ opposition to the policy is an aspect of what it sees as a lack of vital information within PC114, leading to its associated call to have PC114 amended and renotified. In the case of this policy, the relief sought is to amend the mapped areas to only include areas which are sensitive to the effects of subdivision use and development. As noted above, all the mapped ONFs and ONLs are in my opinion sensitive to the effects of subdivision, use and development albeit that the degree of sensitivity may vary within and between the mapped areas.

Policy LAN.1.3.1 - Recommendation

189. I recommend that the Commissioners:

- **Reject** submission points 425/3 and 431/23 in respect of proposed policy LAN.1.3.1
- **Accept** submission point 410/98 and **accept in part** submission point 411/12 and amend proposed policy LAN.1.3.1 to read as follows:

To identify the location and extent of the District's Outstanding Natural Features and Outstanding Natural Landscapes ~~that are sensitive to the effects of subdivision, use and development,~~ on the District Plan Resource Maps and describe their characteristics and qualities in landscape assessment worksheets (Outstanding Natural Landscapes) and Schedule 8.4 (Outstanding Natural Features).

Policy LAN.1.3.2 - Submission Information

190. Submission points⁹¹ relate to proposed policy LAN.1.3.2.

191. FFNZ submits that the policy should be reworded as follows to make clear that it is only protection from “inappropriate subdivision, land use and development” that is sought to be achieved:

To protect Outstanding Natural Features and Outstanding Natural Landscapes from inappropriate subdivision, land use and development with particular regard to their individual characteristics and qualities as identified in landscape assessment worksheets (Outstanding

⁹¹ 411/13, 425/4 and 431/24

Natural Landscapes) and Schedule LAN.8 (Outstanding Natural Features).

192. HortNZ and the Landowners Coalition oppose the policy. HortNZ suggests that more detail on the qualities and characteristics of individual ONFs needs to be added to Schedule LAN.8.4 and PC114 then renotified to allow submissions on this.

Policy LAN.1.3.2 - Discussion

193. I agree with FFNZ that the suggested reworded would make it clear that it is only protection from “inappropriate subdivision, land use and development” that is sought to be achieved, consistent with RMA s6(b).

194. Horticulture New Zealand opposition to the policy has been separately addressed in Topic D of this report. The Landowners Coalition opposition to the policy is based on its perception of landscape assessments as being too subjective and esoteric. The methodology used is however based around criteria developed through Environment Court decisions and I consider it robust. In any event, in my opinion the appropriate time for challenges to the methodology was during hearing of submissions on the RPS and associated ONF/ONL mapping, and not indirectly via submission on a proposed PC114 policy.

Policy LAN.1.3.2 - Recommendation

195. I recommend that the Commissioners:

- **Reject** submission points 425/4 and 431/24 in respect of proposed policy LAN.1.3.2.
- **Accept** submission point 411/13 and amend proposed policy LAN.1.3.2, including consequential amendments arising from recommended changes to policy LAN.1.3.1, to read as follows:

To protect Outstanding Natural Features and Outstanding Natural Landscapes from inappropriate subdivision, land use and development with particular regard to their individual characteristics and qualities as identified in landscape assessment worksheets (Outstanding Natural Landscapes) and Schedule LAN.8.4 (Outstanding Natural Features).

Policy LAN.1.3.3 - Submission Information

196. Eight submission points⁹² relate to proposed policy LAN.1.3.3.

197. The NZ Defence Force (**NZDF**) wishes to see the policy retained as is, particularly clause (a).

198. Transpower NZ considers the policy needs to be amended to give effect to National Policy Statement on Electricity Transmission (**NPSET**).

⁹² 78/27, 151/6, 410/99, 411/14, 431/25, 450/21, 476/4, and 479/24

199. DOC requests that the policy be amended, or a new policy included, to give effect to Policy 15(b) NZCPS and RPS Policy 4.6.1(1)(b), i.e. on management of effects on coastal natural features and landscapes that are of a lower level than outstanding.

200. FFNZ submits that the policy would be better reframed as follows to clarify what activities could be considered appropriate within coastal ONFLs through the development of standards:

Within the Coastal Area, ~~to avoid adverse effects of~~ provide for subdivision, use and development that is considered consistent with or has only minor adverse effects on the characteristics and qualities of Outstanding Natural Features and Outstanding Natural Landscapes by ~~restricting activities to these~~ developing standards regarding:

a. *~~Of a scale, location and design~~ that is consistent with characteristics and qualities of ONFLs or have only minor or transitory adverse effects; or*

b. *~~Associated with~~ coastal hazard management that avoids the use of hard protection structures, such as seawalls and rock armouring, along with other visible artificial elements.*

201. FNDC considers that the use of 'minor or transitory' effects in (a) of the policy is taken out of context with the *King Salmon* Supreme Court decision and therefore does not give effect to Policy 15 of the NZCPS and policy 4.6.1 of the RPS.

202. WDC I&S seeks an amendment to (b) to moderate the current emphasis on avoidance of hard protection structures.

203. Landowners Coalition submit that the positive effects of subdivision need to be included as a consideration within the policy and that avoiding the use of hard protection structures in (b) would limit options to avoid coastal erosion of public and private land.

204. S Bretherton requests that clause (b) be deleted altogether⁹³.

Policy LAN.1.3.3 - Discussion

205. The submission points of Transpower and WDC I&S have been separately dealt with in **Topic M** within **Part 1** of the s42A report and in **Topic F** of this report respectively so are not discussed here. I concur with the statement made in those sections.

206. Consistent with the submission point on objective LAN.1.2.3, DOC requests that this (or other) policies in PC114 address NZCPS policy 15(b) and its RPS policy equivalent. As previously explained, NZCPS policy 15(a) requires avoidance of adverse effects on ONFs and ONLs in the coastal environment whereas 15(b) focuses on the management of adverse effects on "other natural features and natural landscapes" in the coastal environment. PC114 is confined to ONFs and ONLs so in my opinion the requested amendment or additional policy would not be fitting or appropriate.

⁹³ note the submission refers to policy LAN.1.3.5 but clearly relates to policy LAN.1.3.3.

207. The FFNZ-requested amendments in my opinion ignore the imperative that the *King Salmon* Supreme Court decision gives to “giving effect to” NZCPS policy 15(a) and the associated need for a cautionary policy regulatory approach within PC114 toward subdivision, use and development within coastal ONFs and ONLs. The strict application of the NZCPS requirement to avoid any adverse effects means that a general consideration of the consistency or otherwise of landuse and/or subdivision activity with the characteristics and qualities of the affected ONF or ONL is not sufficient. The many and varied ways in which adverse effects may arise also means that management by general standards is not, in my opinion, practicable or possible.

208. FNDC take an opposite view to FFNZ and suggest that the reference to minor or transitory adverse effects in policy LAN.1.3.3(a) is taken out of context from the Supreme Court decision and therefore does not give effect to NZCPS policy 15(a) or RPS policy 4.6.1. The Supreme Court in *King Salmon* accepted⁹⁴ previous Environment Court statements that NZCPS policy 15 should not be interpreted as imposing a blanket prohibition on development in any area of the coastal environment that comprises an outstanding natural landscape as that would undermine the purpose of the RMA, including consideration of factors such as social and economic wellbeing. The decision later goes on to expressly state⁹⁵, talking about the directly analogous NZCPS policy 13(1):

It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding.

209. This is the only reference to transitory effects within the Court decision. The proposed provision in policy LAN.1.3.3(a) is therefore in my opinion entirely consistent with the decision and appropriate in giving effect to NZCPS policy 15(a).

210. In regard to the submissions of Landowners Coalition and S Bretherton on policy LAN.1.3.3(b), this matter has been discussed in Topic F of this report. There are very few ONLs or ONFs located at the coastal margin where hard protection structures might even be contemplated. I support amended wording to make allowance for hard protection structures where these are the only practical means to protect significant existing development or infrastructure. This in my opinion is sufficient allowance for this activity in the context of the PC114 objectives and the national and regional policy direction.

Policy LAN.1.3.3 - Recommendation

211. I recommend that the Commissioners:

- **Accept** submission point 450/21 in respect of proposed policy LAN.1.3.3(a).
- **Accept** submission point 479/24 in respect of proposed policy LAN.1.3.3 and amend clause (b) as recommended in Topic F of this report.

⁹⁴ At para 94

⁹⁵ At para 145

- **Reject** submission points 78/27, 151/6, 410/99, 411/14, 431/25 and 476/4.

Policy LAN.1.3.4 - Submission Information

212. Four submission points⁹⁶ relate to proposed policy LAN.1.3.4.
213. FFNZ submits that the policy should be deleted in its entirety, considering the topic of managing adverse effects on ONFs and ONLs to be already covered by other more detailed objectives and policies.
214. HortNZ considers the characteristics and qualities of the ONF's that are to be protected are not clear so these need to first be added to Schedule LAN.8.4 and PC114 then renotified to allow submissions on this.
215. Transpower NZ considers the policy needs to be amended to give effect to NPSET.
216. Landowners Coalition submits that the reference to cumulative effects should be deleted as these are subjective and unknown.

Policy LAN.1.3.4 - Discussion

217. The submission point of Transpower has been separately dealt with in **Topic M** within **Part 1** of the s42A report. HortNZ oppose the policy but not on the basis of its wording or appropriateness.
218. In regard to FFNZ, I accept that there are other policies within PC114 that give more detailed guidance on the avoidance, remediation and mitigation of adverse effects. However, in the context of protecting non-coastal ONFs and ONLs and the less restrictive rules for these areas that follow, I consider that it is important to make clear the different general policy approach to that for protecting coastal ONFs and ONLs.
219. Landowners Coalition suggestion that reference to cumulative effects be deleted from the policy in my opinion ignores the fact that a cumulative effect expressly comes under the definition of the term "effect" in RMA s3. While these can be difficult to clearly monitor and/or discern over space and time, nonetheless in my opinion they need to be considered.

Policy LAN.1.3.4 - Recommendation

220. I recommend that the Commissioners **reject** submission points 411/15, 425/5, 431/26 and 476/4.

Policy LAN.1.3.5 - Submission Information

221. Four submission points⁹⁷ relate to proposed policy LAN.1.3.5.
222. FNDC considers that using the phrase 'to the greatest extent' significantly weakens the intent of the policy and should be deleted to make it consistent with the NZCPS and RPS.

⁹⁶ 411/15, 425/5, 431/26 and 476/4

⁹⁷ 151/5, 410/100, 411/16 and 431/27

223. FFNZ submits that the policy needs to be consistent with 5(2)(c) of the RMA and provide for remediation and mitigation as well as avoidance of adverse effects. It is also submitted that clauses (b) and (d) be deleted and the remaining clauses reworded to allow greater flexibility for management. Clause (b) is considered to create a subset of more important areas within ONLs when the whole unit should be considered to have the same sensitivity. The reference in (d) to visual intrusiveness is considered too subjective to be of practical value.
224. Landowners Coalition opposes the policy on the basis that avoidance to the greatest extent practicable is too high a standard and that the landowner is best able to make judgement on matters listed in clauses (a) to (f).
225. S Bretherton seeks the deletion of policy 5(b), stating that hard protection structures do not necessarily indicate a visual eyesore⁹⁸.

Policy LAN.1.3.5 - Discussion

226. In my opinion, the policy provides general guidance on how subdivision, use and development can avoid adverse effects on ONLs and therefore be made appropriate within these special areas. It does so by listing criteria or principles which are generally accepted as being good landscape management practice. The emphasis on avoidance of effects is deliberate in order to underpin the specialness of the identified landscapes, their sensitivity to adverse visual and landscape effects, and the associated protection imperative that comes from RMA s6(b) and national and regional policy. One of the main issues with the current WDP landscape policies is that these do not provide this level of specificity and clarity and that therefore decision-making on the appropriateness or otherwise of subdivision and landuse development proposals has been difficult.
227. The policy acknowledges – through the use of the phrase “to the greatest extent” - that total avoidance of adverse visual or landscape effects will not always be possible and, in relation to non-coastal ONLs, not necessarily required.
228. As it does for proposed policy LAN.1.3.2, FNDC considers that all adverse effects must be avoided, within coastal ONLs at least, otherwise it is inconsistent with the applicable NZCPS and RPS policies. As already discussed in the relation to proposed policy LAN.1.3.2, total avoidance is not in my opinion required by either the NZCPS or RPS.
229. FFNZ takes the alternate position from the District Council, considering that emphasis on avoidance alone, without mention of remediation and mitigation, is inconsistent with RMA s5(c) and with the fact that the proposed landscape rules allow for activities to occur, i.e. there is no blanket prohibition of activities. It submits that the policy should be amended to read:

Subdivision, use and development in or on an Outstanding Natural Landscape shall be located and designed to ~~avoid, to the greatest extent,~~ manage adverse landscape and/or visual effects by:

⁹⁸ note the submission refers to policy LAN.1.3.4 but clearly relates to policy LAN.1.3.5.

- *Being integrated with or consistent with identified characteristics, ~~and~~ qualities and landuses of Outstanding Natural Landscapes;*
- ~~— Avoiding sensitive landforms such as ridges, spurs, headlands, knolls and peaks;~~
- ~~— Being responsive to natural contours;~~
- ~~— Being visually unobtrusive;~~
- ~~Maintaining established areas and patterns of encouraging voluntary actions that maintain or enhance indigenous vegetation cover; and~~
- ~~— Avoiding permanent earthworks scarring. Developing permitted activity standards for earthworks.~~

230. Again as previously discussed, in my opinion diminishing the protection focus from the ONL management policies is not consistent with s6(b), and the relevant NZCPS and RPS policies. The requested amendments would also remove the clear guidance intended to be given through the policy and, as a consequence, make the determination of what is appropriate or inappropriate within ONLs much more difficult. I consider that the amendments would be a retrograde step. The same argument applies in respect of the Landowners Coalition submission.

231. However, I acknowledge the policy as worded may be read to over-emphasize the avoidance of adverse effects. I therefore suggest that the phrase “to the greatest extent” be modified to “to the greatest extent practicable”. This would also be more consistent with the wording used in policies LAN1.3.9 and 11.

Policy LAN.1.3.5 - Recommendation

232. I recommend that the Commissioners:

- **Accept in part** submission point 411/16 and amend the phrase “*to the greatest extent*” to “*to the greatest extent practicable*”
- **Reject** submission points 151/5, 410/100 and 431/27.

Policy LAN.1.3.6 - Submission Information

233. Three submission points⁹⁹ relate to proposed policy LAN.1.3.6.

234. FFNZ considers that Policy 6 is unnecessary and should be deleted as the topic of scale and significance of adverse effects is already covered by other policies.

235. HortNZ wants to see an additional matter added under (a) - the existing use of the area.

236. Landowners Coalition requests that the words "potential for spatial or temporal cumulative adverse effects" should be removed and "transitory effect" defined.

⁹⁹ 411/17, 425/6 and 431/28

Policy LAN.1.3.6 - Discussion

237. This policy is directly linked to the implementation of proposed policies LAN.1.3.3 and .4 which require that the relative scale and significance of adverse effects of subdivision, use and development proposals be accurately assessed. I consider it important that clear overarching guidance is given on key elements to be used in such a determination, including the fact that minor or transitory effects may not be environmentally adverse. I do not agree that the policy is unnecessary in this context or that the general criteria are reflected in other policies, e.g. LAN.1.3.8. Those other policies provide guidance on how adverse effects may be avoided for specific types of landuse and development, which in my opinion is clearly different from the weighing up process necessary to make a determination of significance of adverse effects.
238. The effects, both positive and negative, of existing use of land is a consideration in regard to (a)(ii) and (vi) but is not a separate matter on its own in determining significance of effects.
239. The difficulties in monitoring and managing cumulative effects is acknowledged but in my opinion these effects are nonetheless critical to consider in assessing the appropriateness of a particular subdivision, use or development proposal.
240. The word “transitory” I consider sufficiently clear in its ordinary meaning of temporary, fleeting, or short-term. What effects are indeed transitory can only be determined on a case by case basis.

Policy LAN.1.3.6 - Recommendation

241. I recommend that the Commissioners **reject** submission points 411/17, 425/6 and 431/28.

Policy LAN.1.3.7 - Submission Information

242. Three submission points¹⁰⁰ relate to proposed policy LAN.1.3.7.
243. FFNZ considers that the proposed policy is unnecessary and should be deleted as the issues of earthworks, vegetation clearance, and built development are already covered by other policies.
244. HortNZ wishes to see the words “and the existing use of the area” added to the end of the policy to recognise that existing land use is a contributing factor to the current state of an ONF.
245. Landowners Coalition opposes the policy as being too vague and of no practical value.

Policy LAN.1.3.7 - Discussion

246. This overarching protection policy is specific to managing adverse effects on ONFs and provides clear guidance on the pivotal elements in doing so, i.e. maintaining the form, integrity and extent of mapped ONFs and taking into account the vulnerability of the feature to modification. In my opinion, this provides necessary context to the other more detailed policies

¹⁰⁰ 411/18, 425/7 and 431/29

aimed at managing the effects on ONFs arising from the specific activities of earthworks, vegetation clearance and built development.

247. Existing use of ONFs is not a critical factor in this context but in my opinion is an ancillary detailed consideration, appropriately addressed through separate policy, i.e. proposed policies LAN.1.3.17 and 18.

Policy LAN.1.3.7 - Recommendation

248. I recommend that the Commissioners **reject** submission points 411/18, 425/7 and 431/29.

Policy LAN.1.3.8 - Submission Information

249. Six submission points¹⁰¹ relate to proposed policy LAN.1.3.8.
250. FNDC considers that the policy implies that the adverse effects arising from buildings and structures are acceptable even though, in the coastal environment, adverse effects are to be avoided to be consistent with the NZCPS and the RPS.
251. FFNZ submits that the policy should be deleted and replaced with a new policy allowing for buildings and structures that are consistent with the qualities and characteristics of the outstanding natural features and landscapes. HortNZ supports the policy as notified.
252. Transpower NZ considers that the policy needs to be amended to give effect to NPSET.
253. S Bretherton considers that (a) should be deleted and that in reference to (b), buildings should be allowed on ridgelines subject to conditions¹⁰².
254. Landowners Coalition also takes issue with clause (a), believing that the rights and values of an individual property owner are of greater regard than assumed values of the public.

Policy LAN.1.3.8 - Discussion

255. The matter of allowance of minor or transitory adverse effects within the coastal ONLs has already been well traversed in respect of the objectives and other policies. I accept that the threshold within the Coastal Area is higher but in my opinion this does not preclude buildings and structures if the criteria set out within this proposed policy can be met.
256. Reframing of the policy to allow buildings and structures that meet specified standards has also been addressed elsewhere. While theoretically possible, given the range of landscapes and potential types and scale of development that might conceivably be proposed, in my opinion it is very difficult to see how standards can be made robust enough to achieve the outcomes required by RMA s6(b), NZCPS policy 11 and RPS policy 4.6.1.
257. Clauses (a) and (b) are expressly included as the ONLs are to be managed as a public asset. Any reduction in the ONL aesthetic characteristics and qualities though visual intrusion of buildings and structures within the landscape is to be avoided. This will limit the options of

¹⁰¹ 151/7, 410/101, 411/19, 425/8, 431/30 and 476/4.

¹⁰² note the submission refers to policy LAN.1.3.10 but clearly relates to policy LAN.1.3.8.

some affected property owners and require the building or structure to substantially blend in with the landscape. This does not preclude such buildings being on ridgelines, provided the visual effects can be sufficiently remedied or mitigated.

Policy LAN.1.3.8 - Recommendation

258. I recommend that the Commissioners **reject** submission points 151/7, 410/101, 411/19, 425/8, 431/30 and 476/4.

Policy LAN.1.3.9- Submission Information

259. Nine submission points¹⁰³ relate to proposed policy LAN.1.3.9.
260. NRC supports the policy but considers that the term “regionally significant infrastructure” should be defined for clarity.
261. FNDC considers that the separate policy allowance for regionally significant infrastructure within coastal ONFs and ONLs is too permissive and inconsistent with the NZCPS and RPS.
262. FFNZ submits that it is unfair for one particular land use (regionally significant infrastructure) to be given a more permissive approach than other land uses and so the policy should be deleted. Landowners Coalition express similar views.
263. HortNZ supports the policy as notified, as does KiwiRail and WDC I&S.
264. NZRC broadly supports the policy but considers that the criteria contained in subparagraphs (b) and (c) are unreasonable, and should be amended.
265. Transpower NZ considers that the policy needs to be amended to give effect to NPSET.

Policy LAN.1.3.9 - Discussion

266. I agree that the term “regionally significant infrastructure” should be defined for clarity given that this policy makes an implicit distinction between this (and community facilities) and other types of building and structure within ONFs and ONLs. This policy is purposely designed to recognise the greater, and in some cases essential, public benefits that arise from the establishment and operation of regionally significant infrastructure and community facilities.
267. Such a policy regulatory distinction is common practice within district plans, stemming directly from RMA s5(2). Having said that, it is important to highlight that the circumstances where new such buildings and/or structures might occur within Whangarei District ONLs or ONFs appear very few, especially as most if not all of the infrastructure network is already in place. Any additions or alterations are in my opinion likely to be within the same general localities or corridors rather than in new ONL/ONF areas with the potential for new adverse effects. For example, cellphone towers already occur on a number of the higher standing ONLs and/or ONFs, e.g. on Mt Parihaka and on the Parakiore, Hikurangi and Maunu volcanic cones, and the

¹⁰³ 117/2, 410/101, 411/20, 425/8, 429/14, 431/31, 444/3, 476/4 and 479/22.

Transpower transmission line traverses the Pukenui Forest ONL. Similarly, the Refinery Auckland Pipeline (RAP) traverses through the Brynderwyn Ranges ONL.

268. In regard to the proposed criteria (b) and (c), in my opinion these are required to underpin the NZCPS and RPS policy directives for managing effects of activities within coastal and non-coastal ONLs and ONFs. In particular, the criteria and the policy more generally, give effect to RPS policy 5.5.3 which states:

Allow adverse effects arising from the establishment and operation of new regionally significant infrastructure and the re-consenting of existing operations where:

- The proposal is consistent with Policies 4.6.1(1)(a), 4.6.1(1)(b), 4.6.1(2).....;
- *The proposal does not result in established water quality limits or environmental flows and / or levels being exceeded or otherwise could lead to the over-allocation of a catchment (refer to Policy 4.1.1);*
- *Damage to and / or loss of the relationship of iwi with ancestral sites, sites of significance, wāhi tapu, customary activities and / or taonga is avoided or otherwise agreed to by the affected iwi or hapū; and*
- In addition to the matters outlined in 1) (a) – (c) above, other adverse effects are avoided, remedied or mitigated to the extent that they are no more than minor.

(underlining added for emphasis)

269. LAN policies 1.3.3(a) and 4, referred to in criteria (b) of LAN.1.3.8 directly reflect RPS policies 4.6.1(1) and (2). Criteria (c) mirrors the requirement in 5.5.3d above.

Policy LAN.1.3.9 - Recommendation

270. I recommend that the Commissioners:

- **Accept** submission point 117/2 and amend the last sentence to read:

For the purposes of this policy:

Regionally significant infrastructure means those structures and facilities listed within Appendix 3 Regional Significant Infrastructure of the RPS for Northland; and

Community facilities include district parks, reserves and network infrastructure including roading.

- **Accept** submission points 425/8, 429/14, and 479/22.
- **Reject** submission points 410/101, 411/20, 431/31, 444/3 and 476/4.

Policy LAN.1.3.10 - Submission Information

271. Five submission points¹⁰⁴ relate to proposed policy LAN.1.3.10.
272. FFNZ strongly opposes what is considered large scale earthworks (interpreted by the submitter as being anything over 150m³, 150m² and cuts of more than 2m) and suggests amendment to focus on management of the effects of earthworks generally.
273. HortNZ supports the policy as proposed but requests amendment to the permitted activity thresholds for 'large scale' earthworks within the applicable rules.
274. WDC I&S suggest the policy should be restricted to long-term large scale earthworks.
275. Landowners Coalition also appears to query the relationship between the policy and the permitted activity limits used in the rules.

Policy LAN.1.3.10 - Discussion

276. The intention of this policy is to establish a bottom line for earthworks activity within ONFs and ONLs given that large scale earthworks, such as quarrying/mineral extraction, within these mapped areas will inevitably conflict with the protection of their characteristics and values. I accept however that the use of the broad term "large scale" within the policy does not give sufficient clarity on its own as to the level of activity that is to be avoided.
277. It is important to highlight here that, having established the bottom line avoidance of large scale earthworks in proposed policy LAN.1.3.10, the other two earthworks policies are intended to provide guidance on:
- (a) avoiding adverse visual effects of allowable earthworks (LAN.1.3.11); and
 - (b) remediation or mitigation of adverse effects of cut and fill batters specifically (LAN.1.3.12).
278. The link between proposed policy LAN.1.3.10 and the rules, which appears to be unclear to three of the submitters, are the rules:
- making earthworks within ONLs non-complying where it does not meet permitted or controlled activity standards; and
 - prohibiting mineral extraction within all but non-coastal Category A and B ONFs.
279. The permitted activity earthworks area and volume thresholds have a different purpose. These are intended to encompass a scale of activity likely to have only minor or transitory adverse effects.
280. FFNZ request that the policy be amended to read:
- To ~~avoid large scale~~ manage earthworks, including mineral extraction, in or on Outstanding Natural Features and Outstanding Natural Landscapes by permitted standards and limits.*

¹⁰⁴ 151/8, 411/21, 425/9, 431/32 and 479/18

281. I consider this general amendment inappropriate as it would fundamentally change the intended purpose of the policy and also in my opinion place undue, and unrealistic, reliance on permitted activity thresholds to manage effects. It does, however, highlight that management of adverse effects, beyond visual effects (covered by proposed policy LAN.1.3.11), of smaller scale earthworks are not clearly addressed.
282. Amendment to restrict the policy to long-term large scale earthworks would in my opinion raise separate issues of term definition. Short and medium term earthworks can also cause significant adverse effects and/or effects that are not minor or transitory.

Policy LAN.1.3.10 - Recommendation

283. I recommend that the Commissioners:

- **Accept in part** submission point 411/21 and amend the policy to read:

To avoid large scale earthworks, including mineral extraction, in or on Outstanding Natural Features and Outstanding Natural Landscapes and manage adverse effects of other earthworks through permitted activity standards and consent requirements.

- **Reject** submission points 151/8, 425/9, 431/32 and 479/18.

Policy LAN.1.3.11 - Submission Information

284. Six submission points¹⁰⁵ relate to proposed policy LAN.1.3.11.
285. S Bretherton appears to suggest deletion of the policy but does not expressly specify this.
286. FNDC considers that using the phrase ‘to the greatest extent practicable’ significantly weakens the intent of the policy and should be deleted to make it consistent with the NZCPS and RPS.
287. FFNZ believe the policy should be deleted and reliance placed on policy LAN.1.3.10 (as requested to be amended) to manage adverse effects from earthworks.
288. HortNZ suggests that the potential visual effects will vary across the range of landscapes and features as some are able to absorb development to a greater extent than others. An amendment is sought to the policy to provide greater flexibility and to focus on effects visible from public places only.
289. Landowners Coalition seeks to replace the word “avoid” with “mitigate”.

Policy LAN.1.3.11 - Discussion

290. As noted above, each of the three proposed policies around earthworks has a different purpose. Proposed policy LAN.1.3.11 provides guidance on avoidance of adverse visual effects of earthworks. In my opinion, this is necessary given the tight constraints on such activity required

¹⁰⁵ 151/9 and 10, 410/102, 411/22, 425/10 and 431/33

by the NZCPS and RPS. The policy will primarily come into play when considering consent applications under RMA s104.

291. The FNDC position has been traversed before and in my opinion is factually incorrect. I consider that minor or transitory adverse effects are allowable within coastal ONFs or ONLs.

292. The position of FFNZ follows on from its requested amendments to proposed policy LAN.1.3.10 to broaden its scope. However, even though I partially agreed with amendments to that policy, in my opinion the requested amendment to policy LAN.1.3.10 would still not provide the necessary guidance that proposed policy LAN.1.3.11 does.

293. HortNZ request that the policy be amended to read:

To avoid, to the greatest extent practicable, the adverse visual effects of earthworks including accessway and building platform creation within ONF and ONL relevant to the particular ONF or ONL when visible from a public place and the ability to absorb development:

a) Consideration of the vulnerability of the ONF or ONL

294. The two main elements to this are (a) the restriction of the policy to areas visible from a public place, and (b) the ability of the ONF or ONL to absorb development, i.e. its vulnerability.

295. Restricting the policy to areas visible to the public essentially implies that degradation of the characteristics and qualities of the ONF or ONL is appropriate if out of sight. In my opinion, there are two main issues with this.

- First, the amendment assumes that private property owners will not share the view that the ONF or ONL is outstanding and will therefore be unconcerned about visual effects of earthworks on their experience and appreciation of the ONF or ONL; and
- Second, given the literal and figurative high profile of larger ONFs and ONLs such as volcanic cones, there is an appreciable risk that the effects of earthworks in a location presently masked by existing exotic forestry, shelterbelts, and the like, will become apparent to the public and be significant if and when these masking features are removed.

296. Notwithstanding this, I accept that the relative capability of an ONL or ONF to absorb the visual effects of proposed landuse and development is a central consideration. This is already addressed via proposed policy LAN.1.3.6(a)(ii).

297. The Landowners Coalition suggestion that the current policy emphasis on avoidance of adverse effects be reduced to mitigation would in my opinion be inconsistent with the NZCPS and RPS. Mitigation, and remediation, will however come into play if total avoidance is not practicable.

Policy LAN.1.3.11 - Recommendation

298. I recommend that the Commissioners **reject** submission points 151/9 and 10, 410/102, 411/22, 425/10 and 431/33.

Policy LAN.1.3.12 - Submission Information

299. Submission points 410/103, 411/23 and 431/34 relate to proposed policy LAN.1.3.12.
300. FNDC states that adverse effects on ONFs and ONLs in the coastal environment are required to be avoided and therefore policy reference to remediation or mitigation 'where practicable' is not consistent with the NZCPS and the RPS.
301. FFNZ submits that Policy 12 be deleted, because Policy 10 is considered sufficient to manage earthworks on ONLs.
302. Landowners Coalition supports the policy as written.

Policy LAN.1.3.12 - Discussion

303. The matters raised by FNDC and FFNZ have been well traversed in respect of the preceding two policies and elsewhere in this report. Given my previous recommendation to reject these submissions, in my opinion no change is necessary.

Policy LAN.1.3.12 - Recommendation

304. I recommend that the Commissioners:
- **Accept** submission point 431/34.
 - **Reject** submission points 410/103 and 411/23.

Policy LAN.1.3.13 - Submission Information

305. Submission points by FFNZ¹⁰⁶ and Landowners Coalition¹⁰⁷ relate to proposed policy LAN.1.3.13. FFNZ submits that the policy be amended to be consistent with Section 6 of the RMA, which requires only significant indigenous vegetation be protected, whether or not it occurs on an ONFL. Landowners Coalition request that the policy exclude land rehabilitated by a private landowner at their own cost and initiative.

Policy LAN.1.3.13 - Discussion

306. The policy provision is made in the general context of protecting ONLs and ONFs under RMA s6(b) and in my opinion is not targeted toward RMA s6(c). I consider that it is clear within the policy that the reason for seeking to protect areas of indigenous vegetation is because of their contribution to soil erosion control of ONFs and to character and visual qualities of ONLs. This is different from protecting them for their biodiversity and habitat values.
307. Trying to distinguish at a district-wide level between land rehabilitated by private landowners from other areas which have naturally regenerated would in my opinion be very difficult and ultimately unnecessary given that both the landowner and WDC appear to share objectives in protecting the area of indigenous vegetation. Notwithstanding this, the policies that follow are

¹⁰⁶ 411/24

¹⁰⁷ 431/35

designed to openly acknowledge and support those landowners who actively manage such areas.

Policy LAN.1.3.13 - Recommendation

308. I recommend that the Commissioners **reject** submission points 411/24 and 431/35.

Policy LAN.1.3.14 - Submission Information

309. Submission points by S Bretherton¹⁰⁸, FFNZ¹⁰⁹ and Landowners Coalition¹¹⁰ relate to proposed policy LAN.1.3.14.

310. S Bretherton opposes on the basis that it is unclear how actions will be encouraged but does not request deletion¹¹¹.

311. FFNZ supports the policy as written as does the Landowners Coalition.

Policy LAN.1.3.14 - Discussion

312. The policy sits alongside subsequent policies LAN.1.3.15 and .16 for the rehabilitation and enhancement of ONFs and ONLs. Ms Bretherton is correct in that, other than remediation works that may be captured by the other two policies, there is presently no clear provision within the WDP rules or assessment criteria. There is also no current provision within the WDC Long Term Plan (**LTP**). I consider it appropriate, however, that remediation be acknowledged and that the opportunity for funding provision for this via Council resolution following LTP submissions, be provided for.

Policy LAN.1.3.14 - Recommendation

313. I recommend that the Commissioners:

- **Accept** submission points 411/25 and 431/36.
- **Reject** submission point 151/11.

Policy LAN.1.3.15 - Submission Information

314. Submission points by S Bretherton¹¹², FFNZ¹¹³ and Landowners Coalition¹¹⁴ relate to proposed policy LAN.1.3.15.

315. S Bretherton opposes on the basis that it is unclear how actions will be recognised but does not request deletion¹¹⁵.

¹⁰⁸ 151/11

¹⁰⁹ 411/25

¹¹⁰ 431/36

¹¹¹ note the submission refers to policy LAN.1.3.16 but clearly relates to policy LAN.1.3.14.

¹¹² 151/11

¹¹³ 411/26

¹¹⁴ 431/37

¹¹⁵ note the submission refers to policy LAN.1.3.17 but clearly relates to policy LAN.1.3.15.

316. FFNZ supports the policy but suggest it should be amended so as not be limited to previously compromised ONFLs. Landowners Coalition supports the policy as written.

Policy LAN.1.3.15 - Discussion

317. The policy sits alongside policies LAN.1.3.14 and .16 for the rehabilitation and enhancement of ONFs and ONLs. Related assessment criteria LAN.7.1(k) - (m) expressly provide for any positive ONF or ONL enhancement and rehabilitation actions to be taken into account when considering a development proposal.

318. FFNZ request that the policy be amended to read:

To recognise the positive effects of development proposals that provide for the maintenance or enhancement and ~~rehabilitation of previously compromised localised areas within~~ of Outstanding Natural Landscapes.

319. This would shift the policy coverage into the same realm as LAN.1.3.16. The policy as notified is designed to cover the specific situation of decision-making on land development proposals within ONFs and ONLs, as opposed to the more general provision for active management of these areas.

Policy LAN.1.3.15 - Recommendation

320. I recommend that the Commissioners:

- **Accept** submission point 431/37.
- **Reject** submission points 151/11 and 411/26.

Policy LAN.1.3.16 - Submission Information

321. Five submission points¹¹⁶ relate to proposed policy LAN.1.3.16.

322. Hye and Kedde submit that the policy needs to include clear dollar figures for contributions and rates relief taking into account area of property affected.

323. FFNZ supports the policy as written as does the Landowners Coalition.

324. HortNZ supports it in part on the proviso that the overall PC114 policy framework is such that landowners are prepared to co-operate with active management.

Policy LAN.1.3.16 - Discussion

325. The submissions of Hye and Kedde have been previously addressed in Topic E of this report. Such matters of detail need to be dealt with through the WDC Charging and Rate Remission Policies rather than within the WDP.

¹¹⁶ 168/2, 173/2, 411/27, 425/11 and 431/38

326. HortNZ highlights the need to have fair and reasonable policy provisions. As discussed elsewhere in this report, in my opinion efforts have been made to ensure that normal horticultural activities are not unnecessarily compromised by PC114.

Policy LAN.1.3.16 - Recommendation

327. I recommend that the Commissioners:

- **Accept** submission point 411/27, 425/11 and 431/38.
- **Reject** submission points 168/2 and 173/2.

Policy LAN.1.3.17 - Submission Information

328. Submission points 151/12, 411/28, 425/12, 431/39 and 453/27 relate to proposed policy LAN.1.3.17.

329. FFNZ and NZTA support the policy as written.

330. S Bretherton submits that the policy should be amended to expressly require working with landowners to provide for the continuation of existing activities.

331. HortNZ oppose in part on the basis that the policy is seen to limit existing use rights within ONLs and ONFs in a manner not anticipated in the RMA.

332. Landowners Coalition also seek amendment to expressly permit existing use rights, including the replanting of plantation forestry and other land based activities.

Policy LAN.1.3.17 - Discussion

333. Engagement with affected landowners has been undertaken over this and other provisions of PC114 via pre-notification consultation and the submissions process.

334. I do not accept the positions of HortNZ and Landowners Coalition as compliance with the protective requirements of RMA s6(b) will inevitably require some level of restriction on existing landuse. In my opinion, it is well within the purview of the district council prescribed RMA role and responsibilities to institute such controls, albeit with the mind to minimising unnecessary regulation. The rules have been developed with a clear focus on those activities known to affect ONLs and ONFs i.e. buildings and structures, earthworks and vegetation clearance. Other activities are not subject to the rules or are expressly permitted, e.g. stock grazing, and therefore not affected.

Policy LAN.1.3.17 - Recommendation

335. I recommend that the Commissioners:

- **Accept** submission point 411/28 and 453/27.
- **Reject** submission points 151/12, 425/12 and 431/39.

Policy LAN.1.3.18 - Submission Information

336. Submission points¹¹⁷ relate to proposed policy LAN.1.3.18.
337. FNDC considers clause (a) is inconsistent with the NZCPS and RPS for ONFs and ONLs in the coastal environment.
338. HortNZ support the policy in part but consider that it should be amended to take account the ability of (individual) ONLs and ONFs to absorb development.
339. NZRC requests the deletion of the word “minor” from the policy to allow for more general upgrading of existing authorised landuse and development.
340. Landowners Coalition seeks unspecified amendment to the policy so as to allow the same existing use rights to be exercised as at present.

Policy LAN.1.3.18 - Discussion

341. This policy stems from the fact that many of the ONFs and ONLs encompass existing landuses and developments and that the continuation of such activity is reliant on ongoing maintenance of buildings, formed accessways, etc. In my opinion, provision for minor upgrading, as defined in the WDP, is therefore appropriate if the two criteria can be met.
342. Criterion (a) applies during the period of maintenance or minor upgrading operations when, in the context of what those operations entail, adverse effects can be considered transitory, i.e. they occur only for a limited time. In my opinion, the wording should be amended to make this clear as it could currently be read to allow adverse effects that continue beyond the maintenance or upgrading period.
343. Criterion (b) applies after the operations are completed and expressly requires that the effects are the same or similar as existed before the maintenance or minor upgrading works were undertaken. In my opinion, the wording of this too could be amended to make clear that it is the adverse effects of the landuse and development that are the focus not the maintenance or upgrading operations.
344. With such amendments, I consider the policy to be consistent with the NZCPS and RPS. Extending the policy to also allow for more general, potentially major, upgrading operations is in my opinion not appropriate. The term ‘allow’ in the policy is intended to underpin the permitted activity rules for ONFs and ONLs - although there are still consent requirements where it is not certain whether the effects can meet the two criteria, e.g. minor upgrading within smaller coastal ONFs. This policy is not intended to prohibit (“not allow”) larger upgrading activity, which appears to be the concern of NZRC. Such activity is intended to be covered by the more general preceding policy. Again, in my opinion some amendment to the wording of LAN.1.3.18 may be desirable to provide for maintenance and minor upgrading rather than allow adverse effects.

¹¹⁷ 410/104, 425/13, 431/40 and 444/4

345. HortNZ requests that the policy be amended to read:

To allow adverse effects arising from the maintenance and minor upgrading of existing authorised landuse and development in or on Outstanding Natural Features or Outstanding Natural Landscapes, wherever it is located, taking into account the ability to absorb development:

346. In my opinion, this is unnecessary as the focus of the policy is on providing for the continuation of existing authorised landuse and development and not on the appropriateness and/or effects of new development.

347. The Landowners Coalition issue over existing use rights cannot be addressed through lack of specificity in relation to this particular policy. As noted, the policy expressly provides for the maintenance of existing landuse and development. The submission does not clarify how it is seen that this limits perceived existing use rights.

Policy LAN.1.3.18 - Recommendation

348. I recommend that the Commissioners:

- **Accept in part** submission point 410/104 and 444/4 and amend the policy to read:

To provide for ~~allow adverse effects arising from the maintenance and minor upgrading of existing authorised landuse and development in or on Outstanding Natural Features or Outstanding Natural Landscapes~~ as a permitted activity, wherever it is located, where:

a. The adverse effects generated ~~whilst~~ during the period the maintenance or minor upgrading is being undertaken are not significant; and

b. The adverse effects of the landuse or development after the conclusion of the maintenance or minor upgrading are the same or similar to those that existed before the activity was undertaken.

- **Reject** submission points 425/13 and 431/40.

Policy LAN.1.3.19 - Submission Information

349. Submission point by Landowners Coalition¹¹⁸ relates to proposed policy LAN.1.3.19.

350. Landowners Coalition oppose the policy on the basis that the same planning rules should apply to land regardless of the identity of its owners.

Policy LAN.1.3.19 - Discussion

351. I consider that the submission overlooks the fact that there are special RMA provisions relating to Maori and their relationship to the ancestral land. In my opinion, this is a matter of national importance that needs to be openly acknowledged and provided for within the context of PC114.

¹¹⁸ 431/41

Policy LAN.1.3.19 - Recommendation

352. I recommend that the Commissioners **reject** submission point 431/41.

J. LAN.2 Eligibility and Notification Rules

Submission Information

353. S Bretherton¹¹⁹ relates to proposed rule LAN.2.1. S Bretherton requests that the wording be amended to allow the least restrictive rule to apply.
354. Three submission points¹²⁰ relate to proposed rule LAN.2.2. Summerland Estates Ltd and NZRC request deletion of rule 2.2.1 as being unfair and unreasonable and/or without statutory basis. Landowners Coalition request the rule be amended to require notification of directly affected parties only.
355. Four submission points¹²¹ relate to proposed rule LAN.2.3. DOC supports the rule. NZDF request an exemption for TMTA. G & T Robertson request that the requirement for a Landscape Outcome Assessment be minimised for a new residential unit or structure within an ONL outside the Coastal Area where the building or structure and associated earthworks are not visible to the public. Landowners Coalition submit that such an assessment should only be required where a development proposal is significant in scale.

Discussion

356. Proposed rule LAN.2.1 follows a standard format within the WDP. PC114 restrictions on subdivision, landuse and development are imposed for clear ONF/ONL protection purposes, as set out in the proposed objectives and policies. In my opinion, it would be contrary to the intent of PC114 to default to less restrictive underlying Environment rules.
357. In regard to proposed rule LAN.2.2.1, which requires public notification of proposals that are non-complying activities, RMA 77D(a) allows local authorities to make rules specifying which consent applications must be publicly notified. I accept that such a requirement will increase processing timeframes and potentially processing and compliance costs. The rule only applies, however, to non-complying activities for which consents should only be granted in exceptional circumstances. In my opinion, there is sufficient public interest in the protection of ONFs and ONLs that there should always be a wider opportunity for submissions for such activities.
358. In regard to the requirement for a professional Landscape Outcome Assessment in proposed rule LAN.2.3, this applies to all activities requiring consent and, in my opinion, is necessary to ensure that proposals for subdivision, use or development comply with the PC114 policies.
359. Given the wide range of possible location, scale and intensity of activities requiring consent, in my opinion it is not considered appropriate that exceptions be made to this requirement. I

¹¹⁹ 151/13

¹²⁰ 95/1, 431/42 and 444/5

¹²¹ 78/28, 431/43, 450/22 and 465/4

expect, however, that the level of detail within Landscape Outcome Assessments will be tailored to the relative significance of particular proposals.

Recommendation

360. I recommend that the Commissioners:

- **Reject** submission point 151/13 in respect of proposed rule LAN.2.1
- **Reject** submission points 95/1, 431/24 and 444/5 in respect of proposed rule LAN.2.2
- **Accept** submission point 78/28 and **reject** submission points 431/43, 450/22 and 465/4 in respect of proposed rule LAN.2.3

K. LAN.3 ONL Landuse Rules

General - Submission Information

361. DOC¹²² relates to proposed rules within LAN.3 generally - seeking unspecified amendment to provide for activities to give effect to NZCPS policy 15(b) and RPS policy 4.6.1(1)(b).
362. FNDC, FFNZ & NZDF¹²³ relate to proposed rule LAN.3.1.1. FNDC seek to ensure that PC114, together with the underlying zone provisions, are sufficient to confirm that the effects of permitted activities are appropriate. FFNZ and NZDF support the rule as written.
363. S Bretherton¹²⁴ seeks the removal of prohibitive restrictions for further subdivision or building, stating that the rules are draconian.

General - Discussion

364. The rules are confined to ONLs. Managing effects on other natural landscapes within the Coastal Area is dealt with under the separate but related PC87 Coastal Area. NZCPS policy 15(b) and RPS policy 4.6.1(1)(b) are in my opinion therefore not relevant to PC114.
365. Support for proposed rule LAN.3.1.1 is acknowledged.
366. Proposed restrictions on subdivision and built development have been assessed under s32 evaluation as effective and efficient. It is my opinion that the proposed provisions, subject to amendments recommended within this report, are appropriate. This includes the specified permitted activities.

General - Recommendation

367. I recommend that the Commissioners:

- **Reject** submission point 78/29 in respect of proposed rules in LAN.3.
- **Reject** submission point 151/3.

¹²² 78/29

¹²³ 410/91, 411/29 and 450/23

¹²⁴ 151/3

- **Accept** submission points 410/91, 411/29 and 450/23 in respect of proposed rule LAN.3.1.1.

Permitted Activity Rule LAN.3.1.2 - Submission Information

368. Eleven submission points¹²⁵ relate to proposed rule LAN.3.1.2.
369. FNDC submit that the rules in section LAN.3.1.2 should be amended to ensure there are no cumulative adverse effects arising from a proliferation of buildings on any one site.
370. FPNZ supports the permitted status of uninhabited buildings ancillary to rural production and for alteration and extension of existing buildings, but considers some of the standards are impractical and will not recognise and provide for farming as required by proposed policy LAN.1.3.17 (rules LAN.3.1.2(1), (2) and (3)).
371. NZRC supports rules LAN.3.1.2(4) and (5) as written as does WDC I&S.
372. Landowners Coalition believes that the specified thresholds in rules LAN.3.1.2(1), (2) and (3) are either unnecessary or overly restrictive and that rules LAN.3.1.2(4) and (5) should apply to private landowners as well. Rule LAN.3.1.2(4) is opposed on the basis that it is not acceptable for a local authority to create onerous rules and then exempt themselves. The same rule should apply to private landowners.
373. Unspecified amendment is sought to rule LAN.3.1.2(5), also on the basis that the same rule should apply to private landowners.
374. S Bretherton¹²⁶ has made numerous submission points regarding building and structure rules, opposing the limits set and seeking deletion of clauses. Note that the numbering listed in submissions do not match that of the proposed land use rule numbers.

Permitted Activity Rule LAN.3.1.2 - Discussion

375. I accept that the potential for cumulative adverse effects arising from a proliferation of buildings on any one site is an issue. This aspect will be managed through the underlying zoning provisions. For example, within the Rural Production Environment covered by PC85A, proposed rule RPE.2.3.2 (discretionary activities) states:

Any residential unit resulting in more than 1 residential unit per 20ha of net site area.

376. The gross floor area thresholds for permitted non-habitable buildings (50m² for coastal ONLs and 100m² for non-coastal ONLs) have been based around similar rules in:
- PC87 for buildings within Outstanding Natural Character areas (50m²)
 - Kaipara District Plan rules for Outstanding Natural Landscapes (50m²)
 - Far North District Plan rules for Outstanding Landscapes (25m²)

¹²⁵ 410/88, 411/30-32, 431/44-48, 444/6 and 479/15

¹²⁶ 151/14 – 16, 19 and 20

- Auckland Unitary Plan rules for Outstanding Natural Landscape Overlay (50m²)

377. The need for consistency across district and regional boundaries is, in my opinion, important. As can be seen the threshold for coastal ONLs is consistent with the majority of these plans. It is less restrictive in the non-coastal ONLs in recognition both of RPS policy 4.6.1(2) and the fact that most rural production activity will be outside the coastal ONLs. Notwithstanding this, in my opinion the critical underlying concern is management of visual effects rather than responding purely to the functional requirements for buildings associated with rural production activity. I do not agree, as FFNZ suggest, that because farming as an existing land use in many coastal ONLs it will not create adverse effects.

378. The permitted activity provision for maintenance and minor upgrading of buildings and structures associated with public parks, reserves, network utilities, etc. is appropriate in my opinion because:

- a) these buildings and structures have acknowledged public benefit; and
- b) the term “minor upgrading” has a defined meaning within the WDP, applicable only to network utility operations, that means that more than minor or transitory adverse effects should not arise.

The same does not apply to private buildings and structures so, in my opinion, it would be inappropriate to widen the application of proposed rule LAN.3.1.2(4) to include these.

379. Proposed rule LAN.3.1.2(5) is deliberately worded so that it applies to the provision of underground power, water or sewerage connections to private as well as public properties. In my opinion there is no necessity to make a distinction as the visual effects in either case will be nil.

Permitted Activity Rule LAN.3.1.2 - Recommendation

380. I recommend that the Commissioners:

- **Accept** submission points 444/6 and 479/15.
- **Accept in part** submission point 410/88.
- **Reject** submission points 151/14 – 16, 19 and 20, 411/30-32 and 431/44-48.

Permitted Activity Rule LAN.3.1.3 - Submission Information

381. Eight submission points¹²⁷ relate to proposed rule LAN.3.1.3.

382. R & G Bowkett submit that earthworks within an ONL on private property should be permitted for (a) creating new walking or mountain biking tracks up to 1.5m wide under existing tree cover and (b) for a small campsite in the bush.

¹²⁷ 94/1, 95/6, 410/94, 411/33, 431/49 & 50, 453/28 and 479/19

383. Summerland Estates Ltd request that rule LAN.3.1.3(1) be amended so that the restriction of 150m² does not apply to the repair or maintenance of roads, driveways, farm and forestry tracks.
384. FNDC requests that LAN.3.1.3(1)(c)(iii) be removed (provision of walking or cycling tracks less than 3m wide) and that the words “planting of any vegetation” be removed from LAN.3.1.3(1)(c)(i).
385. FFNZ submits that tilling and cultivation, harvesting, planting, digging post holes, drilling bores, installing and maintaining water pipes and troughs, digging offfal pits, burying dead stock and plant waste are included as permitted in LAN.3.1.3(1)(c)(i) and not be subject to (a) or (b).
386. NZTA supports the rule as written as does the WDC I&S.
387. Landowners Coalition believes that the specified thresholds in rules LAN.3.1.3(1) are either unnecessary or overly restrictive. However, the Coalition agrees with the listed activities in LAN.3.1.3(1)(c)(i-iii).
388. S Bretherton¹²⁸ has made a submission point regarding earthwork rules, seeking an amendment to include the text “that may or may not be seen from public land”. Note that the numbering listed in submissions do not match that of the proposed land use rule numbers.

Permitted Activity Rule LAN.3.1.3 - Discussion

389. The specified earthworks thresholds in rule LAN.3.1.3(1) are directly comparable with those in similar rules in the Kaipara District Plan and PC87. Auckland Unitary Plan rules are more restrictive while those in the Far North District Plan are less restrictive.
390. As is standard planning practice, these thresholds set clear limits between earthworks which can be permitted and those which require closer scrutiny through the resource consent application process. In my opinion, they are both necessary and appropriate for the purpose.
391. Summerlands Estates appears to have misread the rule in that item (c)(i) – (iii) are exempt from the volume and height/depth limits in (a) and (b). This includes the repair or maintenance of roads, driveways, farm and forestry tracks. The rule construction could be altered to make this clearer and to be more consistent with the analogous rule within PC87 for Outstanding Natural Character Areas. This can include separating out the individual activity groupings within (c)(i).
392. Provision for new walking or cycling tracks is covered by (c)(iii) so this aspect of the Bowkett submission is already addressed. This rule is included so as to allow private and public landowners to provide for recreation in, and enjoyment of, ONLs. In my opinion, permitted activity status for earthworks associated with camping site creation is inappropriate in this context, unless it meets the permitted volume and height/depth thresholds.
393. FNDC is concerned that the visual effect of cut faces associated with the provision for new walking or cycling tracks could be more than minor within coastal ONLs. In my opinion, the

¹²⁸ 151/17

likelihood of extensive tracking is low and will still be subject to additional controls under the vegetation clearance rules in both LAN.3.1.4 and PC87 for High and Outstanding Natural Character areas, which apply over most vegetated coastal ONLs.

394. The inclusion of the words “planting of any vegetation” in LAN.3.1.3(1)(c)(i) is also consistent with the analogous PC87 rules. FNDC is concerned that this will allow forestry planting which might have ‘downstream’ adverse effects on the characteristics and qualities of an ONL. In my opinion, large scale plantings are likely to require vegetation removal which will trigger consent requirements if over 150m² in area.
395. FFNZ wish to see a range of farming-related activities exempted from the permitted volume and height/depth limits. As discussed for the previous rule, in my opinion the critical underlying concern is management of visual effects rather than responding purely to the functional requirements for earthworks associated with farming activity. Notwithstanding this, it appears that most of the types of earthworks listed in the submission appear likely to meet the permitted activity criteria - with the possible exception of land tilling and cultivation (land preparation). In my opinion, as pastoral areas have generally been excluded from the well-vegetated mapped ONLs, any limitations on land preparation should not be a significant issue.

Permitted Activity Rule LAN.3.1.3 - Recommendation

396. I recommend that the Commissioners:

- **Accept** submission points 431/50, 453/28 and 479/19.
- **Accept in part** submission point 94/1 and 95/6 and amend and reformat the rule to read:

*Earthworks within an Outstanding Natural Landscape is **permitted** if:*

a. The earthworks

i. excavation and fill volume is less than 150m³ and the area is less than 150m² in any 12 month period within a site; and

ii. the height or depth is less than 2m over a continuous distance of less than 50m within a site; or

b. The work is directly associated with:

i. the repair and maintenance of roads, fences, utility connections, driveways, parking areas, effluent disposal systems, swimming pools, ~~garden amenities, gardening, planting of any vegetation, burial of marine mammals,~~ walking or cycling tracks, or farm and forestry tracks; or

ii. garden amenities, gardening, or the planting of any vegetation

iii. burial of marine mammals,

iv. a sand dune restoration project; or

v. the provision of walking or cycling tracks less than 3m wide.

- **Reject** submission points 151/17, 410/94, 411/33 and 431/49.

Permitted Activity Rule LAN.3.1.4 - Submission Information

397. Ten submission points¹²⁹ relate to proposed rule LAN.3.1.4.
398. FNDC and NZTA support the rule as written.
399. FFNZ submit that the rule should be deleted, and indigenous vegetation clearance instead made a permitted activity where it meets the underlying Countryside or Coastal Countryside Environment standards. NZDF seeks to include TMTA amongst the listed permitted activities.
400. The Forest & Bird submits that the proposed permitted activity thresholds are too generous and will fail to abate the ongoing and cumulative loss of habitat for indigenous species. It is requested that the rules set more restrictive and specific restrictions on how much vegetation can be cleared and for what purposes if outstanding natural and landscape values are to be protected and preserved.
401. NRC considers that LAN.3.1.4(1)(a) unreasonably constrains permitted vegetation clearance associated with routine maintenance, forestry and customary activities to 150m³. Replacing the word "and" after(1)(a) with an "or" is suggested.
402. Landowners Coalition submits that rule LAN.3.1.4(1)(b) be amended by deleting the words "that are a demonstrable danger to human life or structures" from subclause (i), increasing the setback distance from existing buildings from 3m to 20m in subclause (ii), and deleting subclause (iv) (removal for customary rights). However, subclauses (iii) and (v) are supported.
403. Summerland Estates Ltd submit that the rule should be amended by adding new point (vi) "Construction of a dwelling on an approved building platform." and make this up to a maximum area of 250m². This is to allow for vegetation clearance associated with the construction of a dwelling on an approved building platform where time has elapsed and vegetation has regenerated on the platform. If this option is not acceptable then inclusion of an additional activity standard is requested which states that no vegetation with a girth greater than 500mm shall be removed.

Permitted Activity Rule LAN.3.1.4 - Discussion

404. For internal WDP consistency, the area threshold used in this rule mirrors those used in the previous earthworks rule and for PC87 rules for vegetation clearance within ONCs. Defaulting to the underlying zoning provisions, as FFNZ request, would mean that destruction or clearance of an area of up to 500m² of predominantly indigenous vegetation would be permitted. This tripling of the proposed permitted activity threshold is, in my opinion, inconsistent with the landscape protection objectives of PC114 as well as the applicable NZCPS and RPS policies.

¹²⁹ 95/8 - 9, 117/3, 410/92, 411/34, 431/51 & 52, 450/24, 453/29 and 467/17

405. Conversely, setting an even lower area threshold and specifying the methods by which vegetation clearance must be done is, in my opinion, unnecessarily restrictive. For comparison, 150m² is less than the average NZ house size of around 210m². No evidence is provided by Forest & Bird to support the assertion that such a limit will result in any appreciable loss of existing indigenous vegetation.
406. The notified rule intentionally seeks to confine the circumstances where indigenous vegetation clearance is permitted without consent. However, the current rule construction is not consistent with the analogous rules within PC87 for high and outstanding natural character areas. The notified rule for vegetation clearance within ONCs has a blanket 150m² threshold with no exceptions. The proposed rule for vegetation clearance within HNCs has a higher 250m² threshold with allowance for specified exemptions. These are similar to those listed in LAN.3.1.4 but the LAN rule makes these subject to, not exempted from, the threshold limit.
407. NRC implies that vegetation clearance associated with the listed activities is unlikely to be of any great moment in the context of PC114, as these are only applicable in very discrete circumstances. I agree, noting that ONLs are distinguishable from ONCs in that the ONCs generally encompass smaller areas of higher quality indigenous vegetation. I therefore support amending the rule to align with the analogous rules within PC87 for mapped HNC and ONC areas.
408. I do not consider the amendments sought by the Landowners Coalition to be appropriate, particularly if the rule is altered as recommended below. Special provision for the removal or pruning of trees that are a risk to life or property is appropriate in my opinion. However, a general allowance for the removal of trees within ONLs would, in my opinion, be contrary to the relevant PC114 policies.
409. The 3m setback used in (b)(i) is consistent with PC87 rules, as is the provision for vegetation removal for customary rights. No rationale is provided by the submitter for seeking to extend the setback to 20m. As the clear rule intention is to prevent encroachment of vegetation onto or over buildings, structures, tracks, etc, a 3m setback is sufficient for this purpose in my opinion.
410. Vegetation removal for customary rights is expected to be only in very limited circumstances and, in my opinion, highly unlikely to be of an extent that would have an effect on the characteristics and qualities of ONL. It is understood that the Landowners Coalition oppose special provision for Maori but I see the provision as entirely consistent with RMA s6(e).
411. The notified provision for vegetation clearance associated with the construction of a dwelling on an approved building platform as a controlled activity under proposed rule LAN.3.2(1) is in my opinion appropriate. This aligns with the directly related rule LAN.3.2(2) which allows for construction of a residential unit on an approved building platform as a controlled activity. Such construction would otherwise be discretionary.
412. These provisions allow a closer focus to be placed on the adverse effects of development within a specific site (building platform and access) as opposed to the broader property level. Given the contribution of indigenous vegetation to the characteristics and qualities of most, if not all,

ONLs, I consider it is appropriate to allow for reconsideration of the limited matters of control listed in LAN.3.2(3) – after which consent must be granted.

413. Also, as Summerland Estates notes, it can be some time before an approved subdivision is built upon and consequently the local environment may have changed, such as through natural revegetation of previously cleared areas.

Permitted Activity Rule LAN.3.1.4 - Recommendation

414. I recommend that the Commissioners:

- **Accept** submission points 410/92, 431/52 and 453/5.
- **Accept** submission point 117/3 and amend rule LAN.3.1.4(1)(a) to read as follows:

..Of less than or equal to 150m² of contiguous indigenous vegetation in any 12 month period within a site; ~~and~~ or

- **Reject** submission points 95/8-9, 117/3, 410/92, 411/34, 431/51, 450/24, 453/29 and 467/17.

Controlled Activity Rules LAN.3.2 - Submission Information

415. 11 submission points¹³⁰ relate to proposed rule LAN.3.2.

416. FNDC supports rule LAN.3.2.1 as worded.

417. Landowners Coalition opposes rules LAN.3.2.1 and 3.2.2 and matters of control 3.2.3 believing that the activities covered should be permitted.

418. Summerland Estates Ltd submit that construction of a residential unit, and any associated vegetation clearance, on a building platform approved as part of a subdivision consent should be made a permitted activity. This is on the presumption that effects of the vegetation clearance and the dwelling would already have been assessed through the subdivision application. If the activities (new building and vegetation clearance) are to remain controlled activities, it is requested that the landscape assessment requirement for both be deleted for the same reason. Allied to this, it is submitted that matter of control LAN.3.2.3(a) be deleted and replaced with "The visual prominence of the building from public areas located outside the site, the building height, building materials and reflectivity." or similar.

419. NRC submit that rule LAN.3.2.1 should provide for vegetation clearance and earthworks for the construction of accessways, not just building platforms and that the matters of control in LAN.3.2.3 be expanded to address the potential effects of residential buildings.

¹³⁰ 95/2 – 4 & 7, 117/5 - 6, 410/92-93 and 431/53-55

Controlled Activity Rules LAN.3.2 - Discussion

420. The Landowners Coalition opposition to the controlled activity rules and associated matters of control is because the imposition of the consent requirement is considered to create unreasonable uncertainty and unfair costs. This overlooks the fact that as controlled activities, consent must be granted – hence there is certainty of outcome even though modifications might be required to the proposed activity within the ambit of the listed matters of control. The costs involved are likely to be limited but, in my opinion, are considered necessary to ensure that the characteristics and qualities of ONLs are protected.
421. The submission points of Summerland Estates have been touched on with respect to the permitted activity rules. The assessment of effects at the subdivision stage is likely to only cover the general suitability (or not) of building platforms and any formed access to them. It will only be when a lot is bought and a residential unit is designed for the platform location, that the site-specific details and therefore potential environment effects will be known.
422. The proposed stipulation that building platforms be identified through a professional landscape assessment provides some assurance that the platforms will be appropriately located. I am also aware that there are existing approved subdivisions within ONLs where an assessment of effects on the ONL characteristics and qualities of actual building construction and accessway formation has not been done. Building of a residential unit in these situations will fall to be considered as either a discretionary or non-complying activity depending on the location of the proposal.
423. Matter of control LAN.3.2.3(a) allows the level of detail of any prior landscape assessment to be reviewed through the consent process. Its deletion could mean that total reliance would be placed on an assessment done at the subdivision stage, when this may not have been undertaken to the level required to accurately understand the full effects of the building platform, any associated accessway formation, and/or of building a dwelling of a particular design on them. This is particularly so for existing approved subdivisions where the affected area has subsequently been included within an ONL. I therefore consider it essential that this matter of control be retained. I accept, however, that it could be amended to make its intended purpose clearer.
424. I acknowledge that there are currently no matters of control that relate specifically to residential unit construction under proposed rule LAN.3.2.2. I consider these should be included as requested by NRC and generally indicated by Summerland Estates.
425. I also agree that rule LAN.3.2.1 should also provide for vegetation clearance and earthworks for the construction of accessways, as well as building platforms. The two elements are generally both considered as part of subdivision design, and in my opinion should be considered together as part of consenting actual site development and building proposals.

Controlled Activity Rules LAN.3.2 - Recommendation

426. I recommend that the Commissioners:

- **Accept** submission point 117/5 and **accept in part** submission points 410/92-93, and amend rule LAN.3.2.1 to read as follows:

Earthworks or indigenous vegetation clearance within an Outstanding Natural Landscape, either within or outside of the Coastal Area, necessary to create a defined building platform and associated accessway(s):

- **Accept** submission point 117/6 and **accept in part** submission point 95/4 and amend the matters of control in LAN.3.2.3 as follows:

a. The appropriateness of the landscape assessment in relation to site-specific protection of the identified characteristics and qualities of the Outstanding Natural Landscape.

b. The visual prominence of the proposed building, and associated accessway(s), with reference to building height, materials, and exterior reflectivity.

c. The suitability of the defined platform for the proposed building.

d. Visual effects of platform access and onsite infrastructure arrangements.

e. Any mitigation measures proposed including landscape treatment and screening.

- **Reject** submission points 95/2, 3 & 7 and 431/53-55.

Restricted Discretionary Activity Rules LAN.3.3 - Submission Information

427. FNDC¹³¹ and Landowners Coalition¹³² relate to proposed rule LAN.3.3.
428. FNDC supports the proposed rule.
429. Landowners Coalition opposes the rule on the basis that the effects of papakāinga development should assessed and treated in the same manner as any other development.

Restricted Discretionary Activity Rules LAN.3.3 - Discussion

430. As discussed with reference to LAN.1.3.19, I consider that the Landowner Coalition submission overlooks the fact that there are special RMA provisions relating to Maori and their relationship to the ancestral land. This is a matter of national importance that in my opinion needs to be openly acknowledged and provided for within the context of PC114.
431. As set out in the accompanying s32 report in respect of that policy, Maori land is ancestral land meaning that for those that whakapapa to it, there is a traditional and cultural relationship with it that goes beyond that for land in private ownership. WDP Plan Change 94B: Papakainga includes provisions expressly to make papakainga development on such land easier than it is under current provisions. If PC114 protection policies were strictly applied to such land, such development could be precluded, especially within the Coastal Area where it would otherwise

¹³¹ 410/97

¹³² 431/56

be a non-complying activity. Allowance for papakainga development on this land is therefore, in my opinion, appropriate subject to landscape protection controls.

Restricted Discretionary Activity Rules LAN.3.3 - Recommendation

432. I recommend that the Commissioners:

- **Accept** submission point 410/97.
- **Reject** submission point 431/56.

Discretionary Activity Rule LAN.3.4 - Submission Information

433. Eleven submission points¹³³ relate to proposed rule LAN.3.4.

434. FNDC supports the proposed rules LAN.3.1.4(1) and (3) as written.

435. Landowners Coalition opposes rules LAN.3.1.4(1) and (2) on the basis that every landowner should be permitted to build a dwelling, and where restrictions are placed, they should only relate to significant effects set at a high threshold. LAN.3.1.4(3) is also opposed, on the basis that papakāinga development should be assessed and treated in the same manner as any other development.

436. Patuharakeke Hapu submit that papakāinga development on ancestral Maori land within a coastal ONL should be a restricted discretionary activity as it is within non-coastal ONLs. It is suggested that the listed matters of discretion for restricted discretionary activities are sufficient to ensure that values of coastal ONLs are adequately protected.

437. Summerland Estates Ltd submit that rule provision needs to be made for the construction of a residential dwelling in an ONL that is not within the CA and is not on an approved building platform as a discretionary activity. The activity is not otherwise covered by the proposed rules.

438. Hye and Kedde submit that while LAN 3.1.4(2) allows building as a discretionary activity if the entire property included within an ONL, owners of properties where there is only a fraction not included within an ONL will not be covered even though the ONL effect is similar.

439. FFNZ submits that activities not meeting permitted standards are given restricted discretionary status excluding production forestry, which it considers should be permitted within ONFs and ONLs.

440. G & T Robertson request that building a residential unit within a non-coastal ONL be made a permitted activity.

Discretionary Activity Rule LAN.3.4 - Discussion

441. Landowners Coalition submission points appear based on the argument of private property rights. I acknowledge that building of a residential unit is a common aspiration of private property owners, including for those whose properties are within ONLs. The construction of

¹³³ 95/5, 168/3, 173/3, 238/11, 410/92-93 and 97, 411/35, 431/57-58 and 465/3

inappropriately located, designed and/or constructed buildings are however one of the main causes of degradation of the characteristics and qualities of ONLs.

442. Allowance has been made for a restricted discretionary consent threshold where the proposed residential unit will be on a pre-approved building platform. Beyond this, I consider it necessary for the protection of ONLs that proposals to construct residential units undergo close scrutiny and can be declined if the circumstances dictate. In addition, in my opinion the NZCPS and RPS policy requirements necessitates that PC114 set a particularly high threshold construction activity within the Coastal Area.
443. The Coalition's position on the rule for papakainga development has been foreshadowed by other submission points made on preceding policy and rule provisions. I consider the inclusion of rule LAN.3.4.3 to be appropriate.
444. Patuharakeke Hapu submission that this activity be made restricted discretionary would, in my opinion, not be consistent with the higher adverse effects threshold required for buildings and other works within the CA under the NZCPS and RPS. In that circumstance, I consider it is more appropriate that the decision-making authority have wide discretion as to the matters that can be considering in determining whether or not to grant a particular papakainga proposal.
445. The submission point of Summerland Estates is dealt with by proposed rule LAN.3.4.1(b). This is directly linked to proposed rule LAN.3.2.2, which applies to the construction of a residential dwelling in an ONL that is on an approved building platform. Proposed rules in LAN.3.4.1 apply outside the CA (not within the CA) and 3.4.1(b) expressly applies to construction of a residential dwelling in an ONL that does not comply with proposed rule LAN.3.2.2, i.e. is not on an approved building platform.
446. Hye and Kedde raise a valid point in that a property that is substantively but not entirely within an ONL and without an existing dwelling will fall to be considered a non-complying activity. In my opinion, it is very difficult to provide the necessary rule certainty to cover such situations. The underlying presumption is that if not all of a property is within an ONL then the unaffected area may provide an opportunity for building a residential unit without conflicting with the ONL characteristics and qualities. If it is desired that a dwelling be within the ONL, then I consider the consent categorization appropriate. Those properties entirely within ONLs have no such alternative.
447. FFNZ request for the preferential use of restricted discretionary activity standards rather than discretionary, would require a far more detailed understanding than is presently available on the potential scale and intensity of future landuse and development within ONLs and the likely effects of this development on their characteristics and qualities. In the context of protecting ONLs, I therefore consider it most appropriate to err on the side of caution and retain the discretionary activity status, including for new forestry. This allows the full range of relevant factors to be considered by decision-makers when consent applications are made.
448. In regard to the submission of G & T Robinson, allowing for building of residential units within an ONL without consent would, in my opinion, be to ignore a significant risk to the protection of

ONL characteristics and qualities. The consent process allows relevant matters to be considered and an objective judgement made about the level of adverse effect, and therefore appropriateness or otherwise, of the specific proposal.

Discretionary Activity Rule LAN.3.4 - Recommendation

449. I recommend that the Commissioners:

- **Accept** submission points 95/5 and 410/92-93 and 97.
- **Reject** submission points 168/3, 173/3, 238/11, 411/35, 431/57-58 and 465/3.

Non-complying Activity Rule LAN.3.5 - Submission Information

450. Six submission points¹³⁴ relate to proposed rule LAN.3.5.
451. FNDC supports the proposed rules LAN.3.5(1)(a) in relation to earthworks and vegetation clearance.
452. FFNZ submits that activities not meeting permitted standards are given restricted discretionary status excluding production forestry, which it considers should be permitted within ONFLs.
453. Landowners Coalition opposes rules LAN.3.5(1)(a) and (b) on the basis that every landowner should be permitted to build a dwelling, and where restrictions are placed, they should only relate to significant effects set at a high threshold. LAN.3.5(1)(c) is also opposed on the basis that replanting of production forestry should be a permitted activity.
454. NRC submits that the activity status for an extension/alteration to an existing building in ONLs that cannot comply with rules LAN.3.1.2 or 3.2.2 should be discretionary activities and not non-complying. The non-complying status for this activity is seen as onerous, particularly given that a new residential dwelling within an ONL is either a controlled or discretionary activity. The approach is also considered inconsistent with proposed PC87 rules relating to buildings within Outstanding Natural Character areas.
455. S Bretherton¹³⁵ has made submission points regarding non-complying rules, seeking to increase 25m². Note that the numbering listed in submissions do not match that of the proposed land use rule numbers.

Non-complying Activity Rule LAN.3.5 - Discussion

456. FFNZ's request for the preferential use of restricted discretionary activity standards has been previously discussed.
457. In my opinion, the non-complying status for activities within the coastal ONL is unavoidable given the high adverse effects threshold arising out of the *King Salmon* decision. This activity

¹³⁴ 117/4, 410/92 & 93, 411/36 and 431/59 & 60

¹³⁵ 151/18

status is most appropriate for activities where the potential for more than minor or transitory adverse effects is high but not so much as to warrant outright prohibition.

458. Landowners Coalition opposition to rules LAN.3.5(1)(a) and (b) in my opinion overlooks the imperatives of RMA s6(b), NZCPS policy 11 and RPS policy 4.6.1. Permitting a residential unit without the ability to prevent more than minor adverse effects would be contrary to these provisions in my view. The checks and balances provided by the consent process allow assurance to be had over the maintenance of ONL characteristics and qualities.
459. The Coalition opposition to rule LAN.3.5(1)(c) is misplaced as this only applies to new production forestry and not replanting of existing forestry. Such replanting does not require consent under any other rule so it is a permitted activity under proposed rule LAN.3.1.1.
460. In regard to the NRC submission, I accept that the non-complying activity status for an extension/alteration to an existing building in coastal ONLs may be overly restrictive given the analogous rule in PC87. PC87 proposed rule CA.4.1 makes external alterations or extensions greater than 50m² gross floor area of an existing building a discretionary activity within an Outstanding Natural Character Area. It is important to note, however, that the comparable provisions within PC114 for a new residential unit as either a controlled or discretionary activity are only within carefully defined circumstances.
461. The main underlying argument is whether or not the existing visual effects of the existing building within a coastal ONL mean that any additional effect arising from an extension/alteration can or will be moderated to the extent that this is only minor.
462. On balance, I consider that the effects of an extension/alteration to an existing building within a coastal ONL can be appropriately managed as a discretionary activity. Fundamentally, this avoids the need to have applications for such activity put through the so-called gateway tests of RMA s104D.

Non-complying Activity Rule LAN.3.5 - Recommendation

463. I recommend that the Commissioners:
- **Accept in part** submission point 410/92 and 93.
 - **Accept** submission point 117/4 and make the extension/alteration to an existing building, including a Residential Unit, within a coastal ONL that does not meet the permitted activity standards of LAN.3.1.2(3), a discretionary activity.
 - **Reject** submission points 151/18, 411/36 and 431/59 & 60.

Assessment Criteria LAN.3.6 - Submission Information

464. Landowners Coalition¹³⁶ relates to proposed rule LAN.3.6, believes the assessment criteria are overly subjective and esoteric and should be amended accordingly. The submission does not specify what amendment is sought.

Assessment Criteria LAN.3.6 - Discussion

465. The submission does not elucidate why the criteria are considered subjective or esoteric so that the matter can be discussed. Neither is it specified what amendments are being sought. Consequently, it is not possible to respond to the submission in any meaningful way. It should be noted that the Landowners Coalition has made more specific submissions on LAN.7 to which LAN.3.6 is cross-referenced. These are dealt with along with other submissions on LAN.7 later in this report.

Assessment Criteria LAN.3.6 - Recommendation

466. I recommend that the Commissioners **reject** submission point 431/61.

L. LAN.4 ONL Subdivision Rules

Submission Information

467. DOC¹³⁷ relates to proposed rules within LAN.4 generally. DOC seeks unspecified amendment to provide for activities to give effect to NZCPS policy 15(b) and RPS policy 4.6.1(1)(b).

468. FNDC¹³⁸ and Landowners Coalition¹³⁹ relate to proposed rule LAN.4.1. FNDC supports the rule as written. Landowners Coalition opposes the rule and submits that subdivision within non-coastal ONLs should be a permitted activity, subject to specified criteria.

469. Anthony Lydiard & Sarah Hirst¹⁴⁰ and Landowners Coalition¹⁴¹ relates to proposed rule LAN.4.2. Mr Lydiard and Ms Hirst submit that subdivision within an ONL within the Coastal Area should be a restricted discretionary activity. Landowners Coalition oppose the rule.

470. Landowners Coalition¹⁴² relates to proposed rule LAN.4.3. Landowners Coalition believe the assessment criterion is overly subjective and should be amended though no alternate wording is suggested.

Discussion

471. The rules are confined to ONLs. Managing effects on other natural landscapes within the CA is dealt with under the separate but related PC87 Coastal Area. Giving effect to NZCPS policy 15(b) and RPS policy 4.6.1(1)(b) is therefore in my opinion not relevant to PC114.

¹³⁶ 431/61

¹³⁷ 78/29

¹³⁸ 410/96

¹³⁹ 431/62

¹⁴⁰ 440/7

¹⁴¹ 431/63

¹⁴² 431/64

472. Subdivision within either coastal or non-coastal ONLs has the potential to intensify land use and development within the affected area. The principal opportunity to consider the likely effects of that intensification and institute appropriate management controls is at the initial subdivision proposal stage, especially so for special areas such as ONLs. Requiring consent for such activity is therefore in my opinion justified to allow this level of scrutiny. I consider the associated assessment criteria fit for purpose, noting again that any reporting in respect of these can be tailored to the location, scale or intensity of the particular subdivision proposal.

Recommendation

473. I recommend that the Commissioners:

- **Reject** submission point 78/29 in respect of the proposed rules in LAN.4
- **Accept** submission point 410/96 and **reject** submission point 431/62 in respect of proposed rule LAN.4.1
- **Reject** submission points 431/63 and 440/7 in respect of proposed rule LAN.4.2
- **Reject** submission point 431/64 in respect of proposed rule LAN.4.3

M. LAN.5 ONF Landuse Rules

Submission Information - General

474. DOC¹⁴³ relates to proposed rules within LAN.5 generally. Seeking unspecified amendment to provide for activities to give effect to NZCPS policy 15(b) and RPS policy 4.6.1(1)(b).

475. Multiple submission points¹⁴⁴ relate to the proposed rules LAN.5.1 Tables 1 and 2. Those referred to in this section are either general in nature or have already been dealt with elsewhere in this or in **Part 1** of the s42A report.

476. The Geosciences Society makes a general submission point on the tables that all the cells in the activity tables be filled in to guide planners in decision making. More specifically, that the dashes (indicating 'not applicable') be amended to give clarity as to whether an activity is acceptable or not.

477. FFNZ submit that the following activities are permitted across all categories of ONFs:

- Farming, including stock grazing and fencing (for protection or any other purpose);
- Forestry harvesting and replanting;
- New forestry planting; and
- Land preparation.

¹⁴³ 78/29

¹⁴⁴ 52/4 - 12, 117/7 & 8, 171/1, 410/89 and 90, 411/37-43, 425/15 - 20, 429/15 and 16, 444/7 - 9, 450/25-28 and 479/16, 20, 21 and 23

478. Similarly, HortNZ submits, among other points, that farming and rural production activities be permitted on non-coastal large landform ONFs (category A).
479. KiwiRail is concerned that, within the Coastal Area ONFs, consent is required for minor upgrading of network utilities and requests that this be made a permitted activity.
480. NZRC expresses similar sentiments but in relation to minor upgrading of network utilities in non-coastal ONFs. NZRC also submit that the earthworks rules in Tables 1 and 2 for maintenance and repair of roads, tracks, etc. be amended to also cover earthworks associated with the maintenance and repair of network utilities.
481. NZDF have asked for several rule amendments to provide for TMTA.
482. WDC I&S submits, among other points, that minor upgrading be permitted in LAN.5 Table 2 for category A (Large Landforms) ONFs and a Restricted Discretionary Activity for all other coastal and non-coastal landforms (categories D and E of Table 1 and categories C to F of Table 2).

Discussion - General

483. Relevant submission points from NZDF on ONF rules are separately addressed in **Topic I** of **Part 1** of the s42A report . Similarly, those relevant points from submissions of KiwiRail and NZRC are addressed in **Topic M** of that report.
484. As discussed in Topic L above, the rules are confined to ONFs. Managing effects on other natural features within the Coastal Area is dealt with under the separate but related PC87 Coastal Area. Giving effect to NZCPS policy 15(b) and RPS policy 4.6.1(1)(b) is in my opinion therefore not relevant to PC114.
485. Several of the submission points from FFNZ, HortNZ and WDC I&S have been dealt with in Topic F of this report. These are:
- Farming, including stock grazing, fencing and land preparation, being permitted within all categories of ONFs (aligned with an allied FFNZ request that farming be defined as a single activity encompassing all associated activity);
 - Farming and rural production activities be permitted on non-coastal large landform ONFs (category A) – Whatitiri Shield Volcano in particular.
 - The building height restriction be deleted and reliance instead placed on underlying zoning provisions.
 - Minor upgrading be permitted in LAN.5 Table 2 for category A (Large Landforms) ONFs and a Restricted Discretionary Activity for all other coastal and non-coastal landforms (categories D and E of Table 1 and categories C to F of Table 2).
486. In summary, the recommendations were that:
- blanket permission of farming and rural production activity within all ONFs not be allowed.
 - the special building height restrictions be retained.

- minor upgrading be permitted for non-coastal category A and B ONFs and be made a restricted discretionary activity within all other ONFs.

487. Turning to the notified use of a dash (-) in some activity columns to signify the activity is not applicable, i.e. not expected to occur, within the specific category of ONF. I note that in the absence of a provision analogous to ONL rule LAN3.1.1(1), this provision means it is an 'innominate activity' rather than a permitted activity.

488. ONL rule LAN3.1.1(1) expressly provides that if an activity does not require consent then it is permitted. There is currently no such provision for ONF activities so the status is unclear, but likely to be considered discretionary under RMA 87B. I consider such provision should be added after LAN.5.1.2. The use of the 'not applicable' notation, where used, is also reviewed in following sections relating to specific activities.

489. In that regard, the remaining submission points are grouped and discussed below under the following broad rule headings:

- buildings and structures
- fencing and stock grazing
- forestry harvesting and planting
- earthworks
- vegetation clearance
- matters of control
- assessment criteria

182. Before discussing these submission points, it is relevant to again highlight two matters. First, as explained in Topic D of this report, as a result of the implications of the *King Salmon* decision there is a clear distinction between the level of adverse effects allowed within coastal ONFs versus non-coastal ONFs. Accordingly, in my opinion the proposed rule provisions need to separately cover activities within coastal and non-coastal ONLs and ONFs and hence the inclusion of separate LAN.5 Tables 1 and 2 for ONF management.

490. Secondly, as explained in Topic F of this report, that the proposed rule regime for ONFs is based on:

- (a) an initial evaluation of similar plan provisions, particularly from the neighbouring Far North and Kaipara districts and from the Auckland Unitary Plan;
- (b) a tailoring of provisions to the particular characteristics of the ONF categories within the Whangarei District; and
- (c) pre-notification consultation with affected landowners to ensure that existing uses are not unduly restricted.

491. The tabulated LAN.5 format is modelled after that used for overlay rules, including ONF rules, within the Auckland Unitary Plan (AUP). However, some activity descriptions, thresholds and activity status requirements differ based on the above process.

Recommendation - General

492. I recommend that the Commissioners **accept in part** submission point 52/4 and add the following consequential amendment to the end of LAN.5.1.2 for clarity:

3. <i>Any activity not prohibited or requiring consent as a restricted discretionary, discretionary or non-complying activity shall be a permitted activity.</i>
--

Submission Information - Buildings and Structures

493. The Geosciences Society¹⁴⁵ requests that new buildings do not have two size categories and only one be listed, and that:

- all buildings in category A Large Landforms ONFs be deemed restricted discretionary; and
- all buildings (no matter what the height) in category B Volcanic Cones ONFs be non-complying, as already proposed for fragile landforms;
- all buildings in category F Caves ONFs be discretionary.

494. FNDC¹⁴⁶ submits that:

- the rules in Tables 1 and 2 be amended to address cumulative effects arising from a potential proliferation of buildings on any one site.
- the tables be amended to incorporate new rules addressing location, scale and cumulative effects of buildings to ensure development does not occur in prominent locations.
- the rules be amended to give effect to the NZCPS and the RPS, specifically addressing the activity status for buildings on ONFs where the tests are to avoid adverse effects (in the Coastal Area) and to avoid significant adverse effects and avoid, remedy or mitigate all other effects in non-coastal areas.

495. HortNZ¹⁴⁷ submits that:

- The rule in Table 1 for new buildings and structures be amended to read "*new buildings and structures ~~incl. network utilities~~ for regionally significant infrastructure.*" – (which by default would make other buildings permitted)
- The building height restriction be deleted and reliance instead placed on underlying zoning provisions.

¹⁴⁵ 52/5 & 6

¹⁴⁶ 410/89-90

¹⁴⁷ 425/14, 15 & 16

496. R Grieve¹⁴⁸ also submits that new buildings and structures over 5.5m be made permitted within the Whatitiri Shield Volcano ONF.

Discussion – Buildings and Structures

497. The basis for the 5.5m building height used is explained in Topic F and essentially provides for equipment storage sheds and the like typically used for farming and horticultural operations. This was included in response to pre-notification feedback on the proposed rules.

498. Differential rules based on the proposed height threshold only apply to non-coastal category A (large landform) and B (volcanic cone) ONFs. In all other categories, there is no difference in the activity status for new buildings and other structures above and below the 5.5m height limit specification.

499. As discussed in Topic F, the alternative of relying on underlying zoning provisions for buildings, as requested by HortNZ, is not appropriate in my opinion.

500. The Geoscience Society wants the height limit removed altogether and the rule/activity status for specific ONF categories applied to all buildings of any height. Tougher rules are also requested for category A and B ONFs. The reason given is that houses built on the summits or upper slopes of these features, and construction of driveways to them, cause damage to the characteristics and qualities of the ONFs – particularly volcanic cones. The central issue is whether or not the proposed rules for new buildings and structures on non-coastal category A and B ONFs allow the submitter's concerns to be addressed.

501. For category A ONFs, the proposal is that new buildings less than 5.5m height be permitted and above this, restricted discretionary. In addition, all ONFs in this category bar the Whatitiri shield volcano are also ONLs. Therefore, new buildings will also need to comply with the requirements for non-coastal ONLs, which generally makes these a discretionary activity. Any lengthy new or widened accessway to a proposed building site is also likely to trigger the ONF earthworks consent requirements.

502. As the only exception, in my opinion the Whatitiri shield volcano is large enough to assimilate buildings of 5.5m or less without significant adverse effect. I therefore consider the notified permitted activity building rule for category A ONFs to be appropriate.

503. For restricted discretionary activities, which also includes new building of 5.5m height or less on category B ONFs, the matters of discretion listed in LAN.5.2 appear sufficient to cover the issue raised in that these include:

- c. *the need or purpose of the proposed building or structure*
- d. *alternative methods and locations for the proposed activity*
- e. *the potential for erosion or other adverse effect on the ONF*

¹⁴⁸ 171/1

504. For category B volcanic cones, the notified activity status for new buildings over 5.5m is discretionary. For such situations, the appropriateness of a proposed new building with respect to its location, design, etc and associated adverse effects on the ONF, can be dealt with on a case by case basis. I therefore consider the submitter's issue able to appropriately addressed by the proposed rule as it stands.
505. The Geoscience Society also wishes to see minor upgrading of network utilities and building and structure made a discretionary activity for category F ONFs (caves) where the activity is currently indicated as 'not applicable'. The 'not applicable' assignment was based on the understanding that the ONF was the cave system itself and not the overlying land. The Society's submission clarifies that the land above is intended to be included. On this basis, I consider the amendment should be made but to be consistent with the status recommended for other ONFs should be restricted discretionary.
506. Turning to the other submission points made on the ONF building rules, HortNZ suggest that building restrictions must be confined to regionally significant infrastructure because policy support for control of other types of buildings and structures is lacking. In my opinion, this is not correct. While not included under the specific policies for buildings and structures (as it has broader application), proposed policy LAN.1.3.7 clearly states:
- The location, scale and form of earthworks, vegetation clearance and **built development** in or on an Outstanding Natural Feature shall not reduce the overall form, integrity and extent of the feature*
507. FNDC is concerned that the proposed building rules do not reflect the NZCPS and/or RPS policies requiring avoidance of adverse effects (in the Coastal Area) and avoidance of significant adverse effects and avoidance, remediation or mitigation of all other effects in non-coastal areas. In my opinion, the rules already provide for this by not having a permitted height threshold within coastal ONFs and making all new buildings a non-complying activity. Such activity must therefore pass the gateway tests of s104D, which expressly require that the proposal will not create more than minor effects and not be contrary to the objectives and policies. Those policies include LAN.1.3.3 and .4 which directly reflect the relevant NZCPS and RPS policies. I therefore consider the matter appropriately addressed.
508. FNDC also requests that the rules in Tables 1 and 2 be amended to manage cumulative effects arising from a potential proliferation of buildings on any one ONF site and to ensure development does not occur in prominent locations. As discussed in relation to the similar submission point on proposed rule LAN.3.1.2, in my opinion cumulative effects can be effectively dealt with via the rules associated with the underlying zoning. These include provisions controlling multiple residential dwellings, for example, on the same site. I therefore do not consider additional rules or rule amendments to be warranted.
509. In regard to controlling the (presumably visual) prominence of buildings on ONFs, as noted above for all but the Whatitiri shield volcano, in my opinion the matter is addressed:
- (a) under the listed matters of discretion for restricted discretionary activities; and

- (b) under the assessment criteria in LAN.7.1 and wider s104 considerations for discretionary and non-complying activities – noting that criteria 1(e) states “*The siting of the activity in relation to ridgelines..*”; and
- (c) via the ONL provisions that also apply to many of the larger ONFs.

Recommendation - Buildings and Structures

510. I recommend that the Commissioners

- **Accept in part** submission point 52/6 and make minor upgrading of buildings and structures within category F ONFs a restricted discretionary activity.
- **Reject** submission points 52/5, 171/1, 410/89 and 90, and 425/15 & 16.

Submission Information – Fencing and Stock Grazing

511. FFNZ¹⁴⁹ submit that stock grazing and fencing (for protection or any other purpose) be permitted across all categories of ONFs.

512. NRC¹⁵⁰ questions the need to provide for fencing and stock grazing as a discretionary activity on large landforms in the Coastal Area (in LAN5 Table 2). This is considered unduly onerous.

513. The Geoscience Society¹⁵¹ contests the indication that the activity of stock grazing is ‘not applicable’ to the smaller non-coastal and coastal ONF categories C, D, E and F. The submitter considers grazing should be provided for as this keeps grass and vegetation down and so allows features to be seen. The suggestion is that stock grazing be:

- permitted for category F (caves) ONFs
- restricted discretionary for categories D (smaller, more fragile landforms) and E (exposures of geological material)
- discretionary for category C (dynamic landforms and features)

Discussion – Fencing and Stock Grazing

514. The FFNZ submission point is addressed by the proposed rules for non-coastal category A and B ONFs. The activities of fencing and stock grazing are either discretionary or denoted ‘not applicable’ for other ONFs. These aspects are discussed below in relation to other submission points.

515. In regard to the NRC concern around the proposed consent requirement for fencing and stock grazing on large landform coastal ONFs, the issue is confined to just one identified feature – Bream Head eroded stratovolcano. The feature sits within the Bream Head Scenic Reserve, managed by DOC. Part of the feature includes an area of open pasture that has been grazed for many years for reserve management purposes, e.g. maintaining open space and

¹⁴⁹ 411/37 and 38

¹⁵⁰ 117/7

¹⁵¹ 52/7

recreational opportunities. In my opinion, the existing fencing and stock grazing activity has not had any identifiable effect on the extensive ONF.

516. Accordingly, given:

- (a) there is only one large landform coastal ONF in the Whangarei District;
- (b) the ONF setting within a well-managed scenic reserve; and
- (c) the confined nature of the existing and potential fencing and stock grazing activity;

517. I consider that these activities can be permitted within large landform coastal ONFs without adverse effect. This also accords with the FFNZ request.

518. The Geoscience Society submission point on this topic relates to indication that the activity of stock grazing is not applicable to the smaller non-coastal and coastal ONF categories C, D, E and F.

519. As noted above, if the cave ONFs include the land above then I agree stock grazing can be permitted as this is unlikely to adversely effect on the underlying geology. However, this only applies to non-coastal cave ONFs. The coastal cave ONFs are on offshore islands and rocky coastal margins so the activity status for these should remain 'not applicable'.

520. At the other end of the spectrum, the only category C ONF within the Whangarei District is the Ngunguru sandpit. This is managed by DOC as a scenic reserve and is known to be host to over 15 species of threatened and seriously 'at risk' plant and fauna species. Stock grazing is therefore highly unlikely to be allowed to occur on that basis alone. However, this cannot be ruled out in future, especially around the distal end of the sandspit, so in my opinion it would be appropriate to include an activity status for it. I recommend that restricted discretionary rather than full discretionary given that DOC will be overseeing such activity and will be very mindful of the need to protect the sandspit from erosion, etc.

521. In regard to the category D and E ONFs, on closer inspection there are a number that occur on farm properties that are already being grazed and probably have been so for many years. These include:

- Hewlett Point karst (category D)
- Kauri Mountain hornfels (category E)
- Onemama Point allochthonous sediments (category E)
- Te Ruatahi dune sequence (category E)
- Waipu Cove Oligocene-Miocene sequence and coastal karst (category D)

522. To now impose a consent requirement when there is no evidence presented of damage to the ONF through stock grazing would, in my opinion, be overly restrictive. I consider stock grazing on or around these features can be permitted. Other ONFs in these categories are hard rock (including waterfalls) and/or coastal edges with no possibility of grazing so, in my opinion, would not be placed at risk by applying this activity status.

Recommendation - Fencing and Stock Grazing

523. I recommend that the Commissioners:

- **Accept** submission point 117/7 and make fencing and stock grazing a permitted activity for coastal category A ONFs.
- **Accept in part** submission point 52/7 and make fencing and stock grazing a restricted discretionary activity for category C ONFs and a permitted activity for non-coastal category F ONFs.
- **Accept in part** submission points 411/37 & 38 and make fencing and stock grazing a permitted activity for category D and E ONFs.

Submission Information – Forestry Harvesting and Planting

524. The Geosciences Society¹⁵² requests that the two separate activities of forestry harvesting and replanting and new forestry planting be combined into one activity, and that activity levels for this activity be:

- restricted discretionary for ONF categories A and F;
- non-complying for ONF categories B and C; and
- prohibited for ONF category E.

525. FFNZ¹⁵³ submit that the following activities are permitted across all categories of ONFs:

- Forestry harvesting and replanting;
- New forestry planting; and

Discussion – Forestry Harvesting and Planting

526. The notified provisions for this activity essentially permit forestry where it currently occurs on category A and B ONFs but seek to control new forestry on the category B volcanic cone ONFs. Forestry does not currently occur on any other category of ONF so harvesting is denoted as 'not applicable'. New forestry planting is not expected to occur on the smaller ONFs due to their location, rocky nature and/or small size, and hence this activity is also denoted as 'not applicable' for categories C - F.

527. There are widely differing views about these proposed rules from the two submitters. FFNZ considers harvesting and replanting should be permitted where it currently occurs and that new forestry planting should also be permitted, including on volcanic cone ONFs.

528. The Geoscience Society on the other hand, while agreeing that harvesting should be permitted, considers that both existing and new forestry planting activity should be bundled together and tightly controlled under one set of rules, including prohibition on category D and E ONFs. The

¹⁵² 52/8

¹⁵³ 411/6, 10, 39 and 40

underlying concern is the damage to ONFs from earthworks associated with forestry harvesting, particularly on steeper slopes. This can be prevented if replanting or new planting is prevented or at least restricted.

529. There is no disagreement between the submitters that harvesting as a landuse activity should be permitted where forestry exists now or may occur in future within ONFs. The notified rules make this clear and I consider appropriate to retain for clarity. Any effects from the associated earthworks can be controlled under the relevant rules elsewhere in the tables.

530. The key remaining questions are therefore:

- (a) Should replanting of existing forestry on ONFs be restricted?
- (b) Are tighter restrictions necessary and/or appropriate to prevent or control the adverse effects of future harvesting of any new forestry within ONFs?

531. In regard to the first question, as noted above, areas of existing forestry are restricted to parts of category A and B ONFs, including many of the volcanic cones. This activity has been undertaken by landowners to gain an economic return from otherwise steep and/or unproductive land. Having visited many of the affected ONFs, in my opinion on their own the existing forestry woodlots do not dominate either the form or integrity of the ONFs, especially in the earlier tree growth stages. Accordingly, I consider that replanting should remain a permitted activity.

532. In regard to the second question, there are two elements to consider:

- the potential adverse effects of new or expanded forestry on the category A and B ONFs; and
- whether a more cautionary approach is needed toward the likelihood of new forestry planting within the smaller ONFs.

533. Whether or not there will be adverse effects, including visual effects, of forestry on the larger ONFs appears to largely depend on the extent of forestry in relation to the overall extent of the ONF. A total forestry coverage could, for example, affect the visual legibility of the landform. However, as all of the larger ONFs are under multiple property titles and these generally contain at least one residential unit, this extreme example is highly unlikely to occur in my opinion.

534. However, blanket permission of new forestry – as currently proposed for category A ONFs – significantly limits the opportunity to manage the adverse effects of future harvesting. The location and extent of the new forestry will have a direct bearing on what controls are possible. The consent application process allows for these matters to be considered ‘upfront’ before any new planting proceeds. For this reason, I agree with the Geoscience Society that new planting on non-coastal category A ONFs should be restricted discretionary. However, as the only coastal ONF is within the Bream Head scenic reserve, I consider the activity should remain ‘not applicable’ as notified.

535. I also do not agree that the risk to category B ONFs is sufficient to warrant new planting being non-complying. I consider that the notified discretionary status is appropriate.

536. As for the other categories of ONF, I agree these are much more likely to be adversely affected by forestry operations by virtue of their smaller size. The notified provision for new plantings as 'not applicable' therefore places the ONFs at theoretical risk from such activity as there are no express consent requirements. The word 'theoretical' is used advisedly as many of the smaller categories of ONF are hard rock, including coastal cliffs, and are therefore not suitable for forestry planting in any event.

537. However, there are ONFs where forestry could conceivably be contemplated as part of planting a larger, commercially viable area. These include several coastal ONFs previously cited above such as Hewlett Point karst (category D), Onemama Point allochthonous sediments (category E) and Te Ruatahi dune sequence (category E).

538. For the above reasons, I agree with the Geoscience Society that there should be a clear consent activity status specified for new forestry plantings within coastal and non-coastal category D to E ONFs and consider their suggestions appropriate in that regard. The notified coastal category C ONF activity status already accords with their suggestion and forestry cannot occur within coastal cave (category F) ONFs so the activity remains 'not applicable'.

Recommendation - Forestry Harvesting and Planting

539. I recommend that the Commissioners:

- **Accept in part** submission point 52/8 and make new forestry planting:
 - a restricted discretionary activity for non-coastal category A and F ONFs and
 - a prohibited activity for coastal and non-coastal category D and E ONFs.
- **Reject** submission points 411/6, 10, 39 and 40.

Submission Information - Earthworks

540. Geosciences Society NZ¹⁵⁴ requests:

- That the earthworks volume threshold that divides the general earthworks category into two be amended from 500m³ to 50m³.
- That rules for earthworks in the two revised categories be amended as follows:
 - Up to 50m³: ONF category A, permitted; categories B, C and F, discretionary; categories D and E, non-complying.
 - Greater than 50m³: category A, discretionary; categories B, C and F, non-complying; categories D and E, prohibited.
- That the proposed rules for new farming and forestry roading and tracking be amended as follows:

¹⁵⁴ 52/9 - 11

- for category A and F, discretionary;
- for categories B and C, non-complying;
- for categories D and E, prohibited.
- That mineral extraction be a prohibited activity for all ONF categories, especially for all category B volcanic cones ONFs.

541. Though not stated the submission text, the table attached to the Society's submission also indicates a request that land preparation be made:

- for category F, discretionary;
- for category C, non-complying;
- for categories D and E, prohibited.

542. FFNZ¹⁵⁵ submit that land preparation should be permitted across all categories of ONFs:

543. HortNZ¹⁵⁶ submits that the general earthworks rules including volume thresholds be deleted for non-coastal category A ONFs and replaced with rules based around cut face height limits where the cut face is visible from public places.

544. R Grieve¹⁵⁷ submits that earthworks greater than 500m³ should be made permitted within the Whatitiri Shield Volcano ONF.

545. The notified permitted activity status for maintenance and repair of existing roads, tracks and driveways, etc. in LAN 5 Tables 1 and 2 is supported by NRC, FFNZ and KiwiRail¹⁵⁸.

546. WDC I&S¹⁵⁹ submits that:

- Earthworks associated with the construction of new public walking and cycling tracks (less than 3m wide) be permitted on category A and B ONFs under LAN.5 Table 1 and be a Discretionary Activity within category D, E, and F ONFs.
- Similarly, for earthworks associated with the construction of new public walking and cycling tracks (less than 3m wide) under LAN.5 Table 2, this be permitted on category A ONFs and be a Discretionary Activity within category D, E, and F ONFs.

Discussion – Earthworks

547. The proposed rules seek to control the specific earthworks activities of land preparation, roading and tracking, and mineral extraction (quarrying) and also provide a general catch-all rule for other earthworks based on a set threshold standard of 500m³ for non-coastal ONFs and 250m³ for coastal ONFs. The 500m³ figure is based on the current permitted activity threshold within the existing WDP landscape section. This has been halved for the Coastal Area ONFs in PC114. An additional

¹⁵⁵ 411/43

¹⁵⁶ 425/18

¹⁵⁷ 171/1

¹⁵⁸ 117/8, 411/42 and 429/15

¹⁵⁹ 479/20 and 21

consideration was that the proposed thresholds are 50% and 25% respectively of the permitted activity threshold in the Regional Water and Soil Plan for earthworks on erosion-prone land, i.e. 1000m³.

548. The Geoscience Society request for the threshold be reduced to just 50m³ for all ONFs. This is partly based on the concern that earthworks of up to 500m³ would likely be enough to destroy many of the smaller category D, E and F ONFs. There is also particular concern around the effects of earthworks on volcanic cones.
549. The 50m³ threshold is used in the Auckland Unitary Plan for general land disturbance activity within ONF overlays. However, ONFs in that region are under much greater development pressure than those within Whangarei District.
550. In considering this matter, several points are important to note from the outset:
- (a) The notified volume threshold is only a permitted activity limit for non-coastal category A ONFs.
 - (b) In all other cases, it is either a trigger for tighter consent requirements (non-coastal category B and E and coastal category A ONFs) or has no influence at all, i.e. consent is required under the same activity status for general earthworks both above and below the threshold.
 - (c) The default status for all the smaller category D, E and F ONFs (coastal and non-coastal) is non-complying meaning that consent is only likely to be granted in exceptional circumstances.
551. The central issue is therefore determining an appropriate volume of earthworks that avoids unnecessary consent restriction on larger category A and B ONFs, taking into account their higher capacity to absorb the physical and visual effects of such activity, but which still achieves the objective of protecting the form, integrity and extent of ONFs.
552. At the other end of the ONF size spectrum, an allied question is: At what volume limit should earthworks on smaller ONFs be prohibited due to the significant risk of damage to them?
553. To allow some form of comparative evaluation, using an average truck payload size of 10m³, the 500m³ limit equates to approximately 50 truckloads of earth and the 50m³, five truckloads.
554. Another key factor to consider is alignment with the proposed ONL and Outstanding Natural Character area earthworks rules, especially as all category A ONFs except the Whatitiri shield volcano and Lake Ora are entirely within ONLs. Those rules use a 150m³ permitted activity threshold – or 15 truckloads of earth.
555. Consistent with the request for tighter thresholds, and to avoid confusion between the ONF and ONL rules, I consider that the threshold of 500m³ should be replaced with 150m³ in LAN.5 Table 1 for general earthworks. As the only category A ONF (Bream Head eroded stratovolcano) and category C ONF (Ngunguru sandspit) are within ONLs, I consider the threshold of 250m³ should also be replaced with 150m³ in LAN.5 Table 2.
556. The questions then become:

- (a) Should allowance of 500m³ still be retained for the very large Whatitiri shield volcano ONF?
- (b) Should there also be a lower threshold of 50m³ included for the more vulnerable smaller category D, E and F ONFs?

557. In regard to the first matter, as discussed in Topic F of this report, the main earthworks issue raised through the pre-notification consultation in relation to the Whatitiri ONF was allowance of land preparation, specifically mounding of soil for avocado growing and other horticulture crops, as a permitted activity. I recommend elsewhere in this report that this activity be included under the definition of 'land preparation', which has separate rules within the LAN.5 tables.
558. Noting that HortNZ seeks that there be no volume threshold for non-coastal category A ONFs (in favour of cut face height limits where the cut face is visible from public places), I consider that a threshold is appropriate and necessary to maintain consistency with the rules for other ONFs. On the basis that the shield volcano is less vulnerable to the effects of earthworks than other ONFs, I recommend that a separate column be provided in LAN.5.1 Table 1 for this feature and a threshold of 300m³ applied.
559. Turning to the potential for a revised (lower) limit for the category D, E and F ONFs, it is self-evident that these are much more vulnerable to modification and I therefore agree that a limit of 50m³ would be more appropriate than 150m³.
560. In effect, this would mean that there would be three main 'classes' of earthworks: up to 50m³, 50m³ up to 150m³, and greater than 150m³. In my opinion, the activity status should be the same for category A, B and C ONFs below 150m³, i.e. no distinction for the lower two threshold classes, and the same for category D, E and F ONFs, i.e. no distinction for the upper two threshold classes. The Whatitiri ONF would require the same approach but with the higher threshold value.
561. Looking then at the rules for general earthworks for the category D, E and F ONFs, the only submission to consider is from the Geoscience Society. Putting aside the request to combine Tables 1 and 2, if the threshold for these categories of ONFs is reduced to 50m³ in Table 1 the additional changes requested are:
- Up to 50m³: to make general earthworks activity discretionary for category F (cave) ONFs, where it is currently non-complying.
 - Greater than 50m³: to make general earthworks activity prohibited for category D (smaller, more fragile landforms) ONFs, where it is currently non-complying.
562. If the Society is comfortable with the change to the rule for category F ONFs to be less restrictive than that proposed, I agree that this can be changed for Table 1. However, I consider retaining the non-complying status for coastal caves in Table 2 is appropriate.
563. The requested prohibition of earthworks over 50m³ in category D ONFs is more problematic in that a number are reasonably large, e.g. the Abbey caves and Waipu caves ONFs, and/or sit within productive farmland, e.g. Hewlett Point, Matarau Road and Kaiikanui karsts. In contrast, the category E ONFs, where the activity is already prohibited albeit above the larger 500m³ threshold, are mainly

coastal and/or more discrete in area. I therefore do not agree that general earthworks should be prohibited for category D ONFs but consider they should remain subject to the statutory tests as a non-complying activity.

564. The Society has also requested that, in addition to lowering the general earthworks threshold to 50m³, the rules for category B (volcanic cone) ONFs be made tighter. Specifically:

- Up to 50m³: to make general earthworks activity discretionary where it is currently restricted discretionary.
- Greater than 50m³: to make general earthworks activity non-complying where it is currently discretionary.

565. With my recommendation to lower the threshold to 150m³, I consider the restricted discretionary status sufficient to manage adverse effects from earthworks below this volume. I also consider that the cones are robust enough to have earthworks above the threshold managed as a discretionary activity rather than non-complying. I consider it appropriate, however, to ensure this by amending the assessment criteria as follows so that all relevant matters are covered in consent decision-making:

(a) Amend criterion LAN.7.1.1(h) to read:

The extent of visible change to the Outstanding Natural Feature or Outstanding Natural Landscape which may result from the activity.

(b) Add the following criterion to LAN.7.1.2:

c. *The extent to which the proposed earthworks will cause any significant loss of geological value of the Outstanding Natural Feature, taking into account the extent to which a feature has already been modified and whether further modification will cumulatively result in a significant loss of geological value.*

566. In regard to the rules for specified earthworks activities, there is no opposition for the maintenance and repair of roads, tracks, etc. being a permitted activity so these provisions can be retained.

567. FFNZ request that land preparation also be permitted across all categories of ONF. Under the notified rules, it is permitted on category A ONFs, discretionary on category B ONFs and denoted as not applicable on all other categories – both coastal and non-coastal.

568. The presumption by FFNZ appears to be that land preparation has no adverse effect when this might not be the case, especially in regard to blading or ploughing on the steeper sided volcanic cones or within the smaller ONFs. Accordingly, I do not agree that the activity should be permitted across the board. In my opinion, the activity could however be managed appropriately as restricted discretionary on volcanic cones. For the smaller ONFs, I agree with the Geoscience Society suggestions.

569. The Society also has concern around the proposed rules for new farming and forestry roading and tracking. It requests tighter restrictions, including prohibition of this activity on category D and E ONFs. The activity as notified is permitted on large landform category A ONFs and discretionary on

category B volcanic cones. The request is that the activity be made discretionary and non-complying on category A and B ONFs respectively.

570. For category A, the activity will be caught by the tighter ONL rules for all but the Whatitiri shield volcano. For rule consistency and fairness, i.e. to avoid giving the impression that such earthworks are permitted on these ONFs when it is not, I consider the status should be adjusted as requested except for the Whatitiri ONF where in my opinion it should remain as permitted.
571. In regard to category B ONFs, for the same reasons as mentioned above, I consider that the notified discretionary status is the most appropriate. In my opinion, there are sufficient checks and balances through the consent process to enable any significant adverse effects to be avoided.
572. No change is requested for category C ONFs, which in the Whangarei District is only the coastal Ngunguru sandspit.
573. For category D and E ONFs, the request is that the new farming and forestry roading and tracking be prohibited. As mentioned previously in regard to the general earthworks threshold a number of category D ONFs are reasonably large, e.g. the Abbey caves and Waipu caves ONFs, and/or sit within productive farmland, e.g. Hewlett Point, Matarau Road and Kaiikanui karsts. I therefore do not agree that the activity should be prohibited outright for category D ONFs but consider that they should remain subject to the statutory tests as a non-complying activity. For category E ONFs, which are more discrete in area, I agree that the activity should be made prohibited.
574. For category F (caves) ONFs, I agree that the activity should be a discretionary activity.
575. Finally, it is requested by the Geoscience Society that all mineral extraction be a prohibited activity for all ONF categories, especially for category B volcanic cones. As notified, the activity is prohibited for categories D, E and F ONFs but either discretionary or non-complying for the category A, B and C ONFs.
576. For the category C ONF (Ngunguru sandspit), there is no known mineral resource to be extracted/quarried including for farm or forestry tracking, and the area is managed by DoC as a scenic reserve. Strictly then the activity would appear to be 'not applicable' in the context of PC114. However, I recommend that all forms of mineral extraction activity be denoted as prohibited for this category.
577. For the larger category A and B ONFs, no known mineral extraction activity currently occurs other than a quarrying operation on the western side of the Hurupaki scoria cone ONF – adjoining the mapped ONF boundary. Given the nature of the ONFs as outstanding, the significant risk that mineral extraction would inevitably pose to the form, integrity and extent, and the lack of any evident need for extraction activity within their boundaries, I consider that the activity should be made prohibited on all category A and B ONFs, rather than non-complying. This includes extraction for farm and forestry roading and tracking.
578. WDC I&S requests that provision be made for earthworks associated with the construction of new public walking and cycling tracks (less than 3m wide) on both coastal and non-coastal ONFs. Although is not clear where this activity might be sought to be provided, I consider it

would have the same if not less effect than new farm and forestry tracking and so should be classified in similar way, i.e.

- for category A, permitted.
- for category C ONFs, permitted – noting the width limitation and that this will only apply to the Ngunguru sandspit scenic reserve where walking access may be encouraged under a management plan for that reserve.
- for categories B and D – F, discretionary
- for category E, prohibited

579. For the same reason, I consider that the width restriction is unnecessary.

Recommendation - Earthworks

580. I recommend that the Commissioners:

- **Accept** submission points 117/8, 411/42 and 429/15.
- **Accept in part** submission points 52/9, /10 and /11 and amend the applicable rules and assessment criteria as indicated.
- **Accept** submission points 479/20 and 21 and include provision for new public walking and cycling tracks.
- **Reject** submission points 171/1, 411/42 and 425/18.

Submission Information - Indigenous Vegetation Clearance

581. The Geosciences Society NZ¹⁶⁰ requests that the proposed rules for vegetation clearance be deleted as superfluous from all ONF categories.

582. R Grieve¹⁶¹ submits that indigenous vegetation clearance over 500m² should be made permitted within the Whatitiri Shield Volcano ONF.

Discussion – Indigenous Vegetation Clearance

583. The notified LAN.5 Tables 1 and 2 provide rules for the clearance/removal of indigenous vegetation on the basis that such activity will potentially expose the ONFs to erosion. In my opinion, the rules only apply to category A and B ONFs, as the erosion issue is considered not applicable for the smaller ONFs.

584. The Geoscience Society appears to misunderstand the intent of the rules, assuming they are related to protecting ecological or vegetation values *per se*. This is not the case and I therefore consider the rules appropriate to retain.

¹⁶⁰ 52/12

¹⁶¹ 171/1

Recommendation - Indigenous Vegetation Clearance

585. I recommend that the Commissioners **reject** submission points 52/12 and 171/1.

Submission Information – Rule LAN.5.2 Matters of Discretion

586. HortNZ¹⁶² and Landowners Coalition¹⁶³ relate to proposed rule LAN.5.2. HortNZ request that an additional matter be included: *f) the ability of the ONF to absorb development and visibility from public places.*

587. Landowners Coalition oppose rule LAN.5.2.1 on the basis that it is in effect a transfer of a property right from the landowner to Council staff.

Discussion – Rule LAN.5.2 Matters of Discretion

588. I have no major issue with the inclusion of the matter requested by HortNZ but consider the ability to absorb development and visibility from public places are two separate matters.

589. Landowners Coalition oppose the rule on the basis of private property rights. This provision, however, goes directly to the statutory ability of the Council to manage effects of landuse, in this case on effects on identified ONFs. In my opinion, the approach is appropriate, being both standard planning practice and legally sound.

Recommendation - Rule LAN.5.2 Matters of Discretion

590. I recommend that the Commissioners:

- **Accept in part** submission point 425/20 and include the following additional matters of discretion to Rule LAN.5.2:

f. the ability of the ONF to absorb development.

g. the visibility of the proposed use or development from public places.

- **Reject** submission point 431/65.

Submission Information – Rule LAN.5.3 Assessment Criteria

591. Landowners Coalition¹⁶⁴ relates to proposed rule LAN.5.3, opposing the use of the assessment criteria.

Discussion – Rule LAN.5.3 Assessment Criteria

592. As with rule LAN.5.2, I consider the inclusion of such a requirement to be appropriate, being both standard planning practice and legally sound.

Recommendation - Rule LAN.5.3 Assessment Criteria

593. I recommend that the Commissioners **reject** submission point 431/66.

¹⁶² 425/20

¹⁶³ 431/65

¹⁶⁴ 431/66

N. LAN.6 ONF Subdivision Rules

Submission Information

594. DOC¹⁶⁵ relates to proposed rules within LAN.6 generally, again seeking unspecified amendment to provide for activities to give effect to NZCPS policy 15(b) and RPS policy 4.6.1(1)(b).
595. FNDC¹⁶⁶ and Landowners Coalition¹⁶⁷ relate to proposed rule LAN.6.1. FNDC supports the rule as written. Landowners Coalition opposes the rule considering it to create significant uncertainty about the use of an individual's property.
596. Landowners Coalition¹⁶⁸ relates to proposed rule LAN.6.2. Landowners Coalition opposes the rule considering it to create significant uncertainty about the use of an individual's property.
597. Landowners Coalition¹⁶⁹ relates to proposed rule LAN.6.3, opposing the use of the assessment criteria.

Discussion

598. The DOC submission has been well traversed in respect of the same submission point on other rules and will not be repeated here other than to state that I consider this outside the scope of PC114.
599. The position of the Landowners Coalition in opposing rules LAN.6.1, 6.2 and 6.3 has also been discussed in respect of similar submissions on other rules. In brief, the rules in PC114 including LAN.6.1, 6.2 and 6.3 are in my opinion required to appropriately protect the characteristics and qualities of ONFs and, within the CA, give effect to the NZCPS and RPS.

Recommendation

600. I recommend that the Commissioners:
- **Accept** submission point 410/96.
 - **Reject** submission points 78/29 and 431/67 – 69.

O. LAN.7 Assessment Criteria

Submission Information

601. Five submission points¹⁷⁰ relate to proposed LAN.7.

¹⁶⁵ 78/29

¹⁶⁶ 410/96

¹⁶⁷ 431/67

¹⁶⁸ 431/68

¹⁶⁹ 431/69

¹⁷⁰ 425/21 & 22, 431/70 & 71 and 479/17

602. HortNZ requests that for clarity the list of criteria be grouped according to: ONF, ONL or both ONL and ONF, and that existing land use be added as a criterion.
603. WDC I&S requests that additional criteria be added to enable matters relevant to the provision and maintenance of public infrastructure and services to be considered in the consenting process.
604. Landowners Coalition submit that criteria 7.1.1 b, c, e, f and g and 7.1.2a be deleted and the matters covered addressed at the landowner's discretion.

Discussion

605. The notified listed assessment criteria include those which are applicable to both ONFs and ONLs and some which are specific to ONLs. I generally agree that it would be clearer if these were separated out. However, in the interests of minimising unnecessary changes, in my opinion a more practical alternative to providing clarity is to insert the following sentence at the end of the introductory paragraph:

The criteria apply to both Outstanding Natural Features and Outstanding Natural Landscapes unless specified otherwise.

606. The assessment criteria have a particular purpose in that they are to be used to help identify and quantify the potential adverse effects of a proposal on the characteristics and qualities of the ONF or ONL concerned. This information then becomes part of the RMA s104 matters a consent authority must have regard to when considering a consent application – in effect determining the appropriateness or otherwise of the proposed activity.
607. HortNZ would like to see 'existing land use' included amongst the criteria, so that the continuation of such land use can be factored into decision-making – consistent, in its view, with proposed policies 1.3.17 and 18.
608. The matter of policy consideration is broadly covered under criterion 7.1.1a but existing land use is not given any specific prominence within the more detailed criteria. This does not preclude a consent authority from considering the necessity for, or contribution of, a proposed activity to the social and/or economic value of an existing use such as an avocado or kiwifruit growing operation. For example, under RMA s104(c) the consent authority must have regard to:

any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Any consent application will normally highlight the need for the proposed activity and the benefits that it will bring.

609. On balance, I consider that to give prominence to existing land use within the LAN.7.1 criteria would be inconsistent with the intended focus of the criteria. This is especially so given the range of activities that might come under the umbrella of the term 'existing land use'.
610. The submission point of WDC I&S has been previously dealt with in Topic F of this report.

611. I do not agree with the implication of the Landowners Coalition submission points that some matters are best left to the landowner's discretion. In my opinion, all criteria are relevant for the consent authority to consider in relation to protecting the characteristics and qualities of ONFs and ONLs. For example, I consider that the siting and/or design of a building will have a significant bearing on whether or not the characteristics and qualities of an ONF or ONL will be adversely affected. To essentially ignore these matters in the context of the PC114 objectives would be nonsensical in my opinion.

Recommendation

612. I recommend that the Commissioners:

- **Accept** submission point 479/17.
- **Accept** in part submission point 425/21 and insert the following sentence at the end of the introductory paragraph of LAN.7.1:

The criteria apply to both Outstanding Natural Features and Outstanding Natural Landscapes unless specified otherwise.

- **Reject** submission points 425/22 and 431/70 & 71.

P. LAN.8 ONF Schedule

Submission Information

613. Landowners Coalition¹⁷¹ largely agree with the features scheduled in proposed schedule LAN.8, but have concerns regarding the extent of protection on volcanic cones, particularly where plantation forestry, farmland, and margin land is included.

614. FFNZ¹⁷² and HortNZ¹⁷³ relate to proposed rule LAN.8.4. FFNZ submit that ONLs are also listed within a schedule along with the classification criteria each satisfies, all values and existing uses of the land, and identifiable risks. HortNZ submits that the table of the identified ONF's should include the specific characteristics and qualities that make the feature outstanding.

Discussion

615. In regard to the Landowners Coalition submission point, the mapping of volcanic cone and other ONFs was done by the NRC as part of the RPS review. WDC has no ability to amend their mapped extent unless undertaken by qualified experts using the required criteria. There has been no submission by qualified experts to justify any such change and no specific boundary alteration has been requested by the submitter.

616. At present the Schedule is confined to ONFs for the simple reason that the far more detailed information on the characteristics and qualities of the ONLs would make a similar schedule for

¹⁷¹ 431/72

¹⁷² 411/2

¹⁷³ 425/23

these features unwieldy. Each ONL has a detailed worksheet typically 3-4 pages long assessing the landscape against thirteen separate criteria. If further detailed information on existing uses of the land and identifiable risks was to be added, this would add to the unnecessary complexity of the records. In my opinion such information is more appropriately brought forward when a specific landuse or development proposal is made.

617. The worksheets were made publicly available as part of PC114 and are proposed to be formal external reference documents once PC114 is made operative. I consider this sufficient to inform plan users about the characteristics and qualities of ONLs.

618. In regard to ONFs, the specific characteristics and qualities that make each of the scheduled ONFs outstanding are summarised by category in LAN.8.3 and under the column headed 'Significance'. The full set of criteria used for determining whether or not a geological feature is "outstanding", as set out in November 2015 ONF mapping methodology report done for the NRC, were:

- a. *The extent to which the landform or geological feature contributes to the understanding of the geology or evolution of the biota in Northland, New Zealand or the earth.*
- b. *The rarity or unusual nature of the feature.*
- c. *The extent to which it is an outstanding representative example of the diversity of Northland's natural landforms and geological features.*
- d. *The extent to which the landform or geological feature is a component of a recognisable group of geologically associated features (e.g. Whangarei or Kaikohe volcanic fields).*
- e. *The extent to which the landform or geological feature contributes to the aesthetic value or visual legibility of the wider natural landscape.*
- f. *The community association with, or public appreciation of, the values of the feature.*
- g. *The potential value of the feature for public education.*
- h. *The potential value of the feature to provide additional understanding of the geological or biotic history.*
- i. *The state of preservation of the feature.*
- j. *The extent to which a feature is associated with a historically important natural event, geologically related industry, or individual involved in earth science research.*

619. It is not within the scope of PC114 to include, or update, this background information and neither would this be expected to yield much additional value in terms of understanding what is to be protected. As is made clear in proposed policy LAN.1.3.7, the essential qualities to be protected are the overall form, integrity and extent of the ONFs, and the activities of concern (risk factors) are earthworks, vegetation clearance and built development. In my opinion it is not difficult in terms of managing adverse effects to obtain factual information about the form, integrity and extent of an ONF for consent applications where required.

Recommendation

620. I recommend that the Commissioners **reject** submission points 411/2, 425/23 and 431/72.

6.0 Conclusions and Recommendations

621. After carefully considering the submissions and further submissions received in relation to each topic, I recommend that PC114 be amended to the extent detailed in the preceding sections of **Part 2** of the s42A report and as illustrated in **Attachment 2A** of **Part 1** of the s42A report. I further recommend that those submissions and further submissions that request the recommended amendments be accepted in whole or in part, and that all other submissions be rejected.

622. The revised provisions [**Attachment 2A** of **Part 1** of the s42A report] have been detailed and compared above against viable alternatives in terms of their costs, benefits, efficiency and effectiveness and risk in accordance with the relevant clauses of s32AA. Overall, it is considered that the revised provisions represent the most efficient and effective means of achieving the RMA and PC114.

623. I have read and am familiar with all Parts to the s42A report. I concur with any recommendations that result in amendments to PC114 to the extent illustrated in **Attachment 2A** of **Part 1** of the s42A report.

AUTHOR

A handwritten signature in blue ink, appearing to be 'GNM', is centered on a light yellow rectangular background.

Glenn Neil Mortimer

Mortimer Consulting