

BEFORE THE ENVIRONMENT COURT

ORIGINAL

Decision No. C 45/2008

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER of appeals under Variation 2 to the Banks Peninsula Proposed District Plan under Clause 14 of the First Schedule of the Act

BETWEEN

E M BRIGGS

(ENV C 196/05)

D W COLLINS

(ENV C 167/05)

CANTERBURY REGIONAL COUNCIL

(ENV C 193/05)

FRIENDS OF BANKS PENINSULA
INCORPORATED

(ENV C 173/05)

SUMMIT ROAD SOCIETY
INCORPORATED

(ENV C 207/05)

DIRECTOR-GENERAL OF
CONSERVATION

(ENV C 197/05)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY INCORPORATED

(ENV C 198/05)



NEW ZEALAND INSTITUTE OF
FORESTRY (CANTERBURY BRANCH)
AND OTHERS

(ENV C 201/2005)

FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED

(ENV C 187/05)

A B NEWPORT AND ORS

(ENV C 176/05)

I D AND P J RICHARDSON

(ENV C 177/05)

A CRAW

(ENV C 178/05)

C J AND J M CHAMBERLAIN

(ENV C 179/05)

E J C AITKEN

(ENV C 181/05)

G P J DE LATOUR

(ENV C 182/05)

D P DE PASS

(ENV C 183/05)

A R DALGLISH

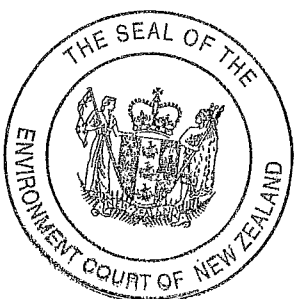
(ENV C 184/05)

D C CARTER

(ENV C 185/05)

R E AND M F MILLAR

(ENV C 186/05)



New Zealand Incorporated, I D & P J Richardson, A Crow, C J and J M Chamberlain, E J C Aitken, G P J De Latour, D P De Pass, A R Dalglish, D C Carter (collectively referred to as **Federated Farmers or the farming interests**)

Ms J Borthwick for Zias Investments Limited (**Zias**)

Mr G Cleary for Robinsons Bay Trust and Pacific Investment Trust (**Pacific Investments**)

Mr C J Todd for Royal Forest and Bird Protection Society Incorporated (**Forest and Bird**) (signatory to mediated agreement, will abide decision of the Court, granted leave to withdraw)

Mr C S Fowler by memorandum for New Zealand Institute of Forestry (Canterbury Branch) and Others (**Institute of Forestry**)

Mr P N Rutledge for Director General of Conservation (**the DOC**) (signatory to mediated agreement, will abide decision of the Court, granted leave to withdraw)

Ms A C Dewar for Lyttelton Port Company Limited (**Port of Lyttelton**) (section 274 party)

Ms L L Sewell for Orion New Zealand Limited (section 274 party on ENV C 187/05)

Ms H Broughton for herself (section 274 party on ENV C 196/05)

Ms M Stapylton-Smith for herself

No appearance for Transit New Zealand Ltd (struck out)

No appearance for R E and M F Millar (struck out)

No appearance for R Columbus (struck out)

Mr C O Carranceja and Ms A Ray for the Christchurch City Council (**the City**)

Date of Decision: 24 April 2008

DECISION OF THE ENVIRONMENT COURT

- A: The Outstanding Natural Landscapes, Coastal Natural Character Landscapes and Rural Amenity Landscapes (including main ridgelines) as set out in evidence of A Rackham and Y Pflüger are confirmed subject to minor amendment to CNCL on the Zias property.
- B: Plan provisions as indicated in annexure "1:D" subject to the amendment outlined in this decision are confirmed.
- C: The appeals are resolved accordingly. The respondent Council is directed to prepare changes in accordance with decision.



I D AND A M S CAMPBELL

(ENV C 189/05)

K M AND F M STAPYLTON-SMITH

(ENV C 194/05)

CHRISTCHURCH CITY COUNCIL

(ENV C 203/05)

TRANSIT NEW ZEALAND

(ENV C 209/05)

ZIAS INVESTMENTS LIMITED

(ENV C 204/05)

ROBINSONS BAY TRUST AND
PACIFIC INVESTMENT TRUST

(ENV C 191/05)

Appellants

AND

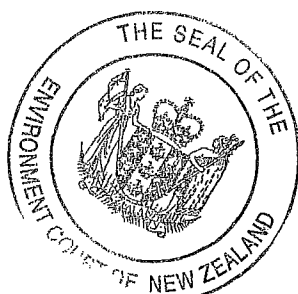
CHRISTCHURCH CITY COUNCIL
(formerly BANKS PENINSULA
DISTRICT COUNCIL)

Respondent

Hearing: at Christchurch on 28 January – 1, 4, 5, 7, 8, 11-13 February 2008
Site visit 18 February 2008

Court: Environment Judge J A Smith
Environment Commissioner A J Sutherland
Environment Commissioner C E Manning

Appearances: Mr G V Taylor and Ms S Schlaepfer for E M Briggs and D W Collins
Ms A M Douglas and Mr P A C Maw for Canterbury Regional
Council (**the Regional Council**)
Ms J Cook for Friends of Banks Peninsula Incorporated (**Friends of
Banks Peninsula**)
Mr J Goodrich for Summit Road Society Incorporated (**Summit Road
Society**)
Mr A F J Gallen and Ms S K Voldseth for Federated Farmers of



D: Applications for costs should be received within 40 working days, replies ten working days later, and final submissions five working days after that.

REASONS

Introduction

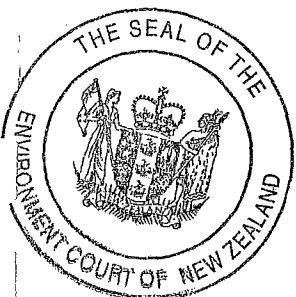
[1] These appeals relate to the landscaping provisions of the Banks Peninsula Proposed District Plan (**Proposed Plan**). In particular they relate to **Variation 2** introduced in 2002 after the landscaping provisions of the Proposed Plan notified in 1997 were abandoned by the District Council and not processed through the hearing process.

[2] These appeals raise issues of delineation for outstanding natural landscapes (**ONL**) and coastal natural character landscapes (**CNCL**). The remainder of the rural area is included within the rural amenity landscape (**RAL**) and main ridgelines within the RAL are now identified on relevant maps. The Banks Peninsula Plan has now been subsumed as part of the Christchurch District Plan as a result of the amalgamation of the Councils. It presently forms a distinct subsection of the Christchurch City Plan, namely the Banks Peninsula Proposed District Plan.

Matters resolved

[3] At the commencement of the hearing a number of matters that had been set down did not require a hearing. These included utilities issues involving particularly Telecom New Zealand and Telecom Mobile (RMA 49B/02 and ENV C 199/05) and Orion New Zealand Limited (ENV C 200A/05 and RMA 113/02). These matters have been resolved but rely on the mediated agreements and the determination of ONL and CNCL and RAL resulting from this hearing being incorporated in the Proposed Plan. These can be subject to a Court determination once the Court has issued this decision.

[4] Another appeal, Grimsdale (ENV C 170/05), did not need to proceed before this Court given that the parties have reached a site-specific settlement in respect of the



property and a determination can be issued on that matter independent of the outcome of the landscape appeals. Several other parties did not appear and their appeals were struck out. We understand that the Transit appeal is appropriately addressed through a mediation agreement to which they were parties.

[5] The Institute of Forestry did not appear but filed a memorandum. They support the City's case in relation to definitions of forestry and existing forestry, amendment to rule 1, chapter 19, deletion of rule 3.6.2 and the delineation of ONL and CNCL as proposed in the Banks Peninsula Landscape Study. On this basis the Institute of Forestry did not oppose other provisions and withdrew the following aspects of their appeal:

- (a) ENV C 201B/05 regarding forestry guidance appeals;
- (b) ENV C 201C/05 regarding rules related to:
 - (i) permitted or controlled status for forestry outside LPA/CPA areas;
 - (ii) amendment to provisions applicable to new plantation forestry.

The Institute also withdrew section 274 notices relating to LPA/CPA in appeals ENV C 193D/05, ENV C 193I/05 and ENV C 173B/05.

[6] In summary the Institute of Forestry abides the decision of the Court and did not participate. To the extent any aspects of appeal ENV C 201/05 are still not withdrawn (parts F and G), no evidence was offered to support the appeal. Accordingly, to the extent any remedy is sought beyond the mediated agreement and evidence in support of the Council, those aspects of the appeal are struck out.

Issues

[7] Two key issues arise in this case and there are a further two matters relating to site-specific issues. They are:



- (1) whether the delineation of ONL, CNCL and RAL (including main ridgelines) areas in the Banks Peninsula as now proposed by the City are the most appropriate (or better);
- (2) whether provisions **1:D** (attached) from the mediated agreement proposed by the majority of parties are the most appropriate or whether they should be subject to alteration or amendment, and if so in what ways. A number of the issues are matters of detail but issues in relation to density of buildings and subdivision and their status within the RAL and CNCL landscape are at large.

[8] The site-specific issues relate to two headlands in Akaroa Harbour known as Tikao and Takamatua. The delineation identifies CNCL areas on both headlands. Appeals by Pacific Investments (with respect to Tikao) and by Zias Investments Limited (with respect to Takamatua) seek to reduce further the CNCL areas on these sites and/or argue for buildings in the CNCL as restricted discretionary activities.

History

[9] To understand the context in which these appeals have been heard it is important to understand the history of landscape issues on Banks Peninsula. It was common ground of all the parties that Banks Peninsula has been recognised as an outstanding landscape at a regional level, particularly in the Operative Regional Policy Statement.

[10] The 1997 Banks Peninsula Proposed Plan identified around half (some 50,000 of approximately 96,000 hectares) of the rural land in Banks Peninsula as either landscape protection areas, high or moderate intensity (**LPAs**) or coastal protection areas (**CPAs**). There was a significant public reaction. We are told that the population of Banks Peninsula is in the region of 5,000 people and around 1,200 submissions or cross-submissions were received on the Plan provisions. Many of the submissions related to landscape and indigenous vegetation were from ratepayers.

[11] Faced with this level of submission the Council determined that it would not proceed to decisions, but rather would establish a rural task force on landscapes with



stakeholder representatives. Mr M G Garland, a senior resource management consultant, was adviser to the rural task force on resource management matters. He tells us that it comprised representatives for Federated Farmers, Friends of Banks Peninsula, Forest and Bird, commercial forestry organisations, Department of Conservation, the Regional Council, District Council staff and councillors. He tells us that the task force met over some 18 months but that the outcome was disappointing:

Because at the end although some common ground was found, some of the parties may even have been further apart.

[12] The recommendation of the task force was to adopt interim provisions for coastal and landscape protection which were much reduced from those shown in the Proposed Plan as notified. The intention was that these be retained in the Plan for around two years while a further and comprehensive landscaping study was undertaken. Banks Peninsula District Council notified Variation 2 on 30 August 2002 as a response to this advice, but extended some of the protected areas to include more of the land protected in the District Plan as notified in 1997. The end result was to define landscape and coastal protection areas which were around 30,000 hectares in total. Mr M R T Hofmans, a planner called by the City Council, advises us that compared with the original notified Plan, Variation 2 attracted 161 submissions and 25 further submissions. Consequent upon the decision of Council in respect of the submissions released in 2005 the matters were appealed to this Court.

[13] Representations were made by the parties in 2005 asking that the Court place these appeals on hold in order that the Council could undertake the Landscape Study reflected in the Council's decision on submissions. The Court indicated that it would require managed mediation of the process and regular reports as to progress on the study. Due to delays with the study the Court reconvened the pre-hearing conference in March 2007 when it was advised that the Landscape Study was imminent (by the end of April) and that the parties could proceed to mediation on the matter in May. Considerable effort was then applied by a Court Commissioner, with mediation taking place over a number of days in parallel with mediations in respect of indigenous vegetation matters.



[14] Matters of indigenous vegetation have been settled and were the subject of a consent order of this Court. The result of the mediation meetings on landscape was that three mediated agreements were reached between various parties, based upon the Banks Peninsula Landscape Study undertaken by Boffa Miskell Limited and released in May 2007. These agreements form part of a bundle which we annex hereto as Annexure “1” and consists of items “A” to “E”, including the mediated provisions of the Plan as they relate to landscape parts of the Plan (“1:D”). This is a very long document but it is essential to attach it for a full understanding of the issues at large in terms of the Plan. As can be seen, substantial re-writing of the Plan has been necessary to satisfy the terms of the mediated agreements. Substantial compromises were made by all parties enabling the majority to reach agreement.

[15] Even those parties who have not been a party to all the mediated agreements, including Briggs, Collins, Pacific Investments and Zias Investments, accept in broad terms the provisions of item “1:D”.

[16] A number of parties, however, have significant reservations concerning item “1:E”. This is a map of the ONL and CNCL landscape areas produced by the Landscape Study, and adapted by the removal of areas which are not, in the Council’s view, within the scope of these appeals. In addition to removing areas beyond the scope of submissions, the Council agreed to ground truth the lines drawn on a number of sites and, in the case of a significant proportion of these particular sites, the lines have been adjusted. All those alterations are accepted with the exceptions relating to Tikao and Takamatua where Pacific Investments and Zias seek greater reduction of the landward limits of the CNCL.

[17] We note that after the completion of this stage of the process the parties attended further mediations conducted outside the Court’s processes in an attempt to avoid hearing.



The mediated agreements

[18] A wide range of parties before this Court supported the mediated agreements including the City, Federated Farmers, the Director-General of Conservation, Forest and Bird, Friends of Banks Peninsula, Summit Road Society, Port of Lyttelton, and a series of individual farmers. The Regional Council also was a signatory to the agreements and acknowledged that it was bound to support these agreements before the Court. It pointed out, however, that it had not agreed to the delineation of the ONL and CNCL areas identified on the map (“1:E”).

[19] The question of the inter-relationship of the mediated agreements with Delineation map “1:E” is a matter we will discuss in due course. For current purposes however we note that it was acknowledged by the Regional Council that it had not filed any appeal in respect of the delineation of the ONL and CNCL areas (formerly LPA and CPA areas) and that it would need to rely upon other appeals to present evidence on this issue. We also note that other signatories to the mediated agreement on the rules were unaware of the extent of changes to the maps which the Regional Council would ultimately seek.

[20] It appeared to be a common position that in respect of the LPAs, now the ONL areas, the only appeal relevant was that of Ms E M Briggs, which sought the restoration of the 1997 LPA high and moderate sensitivity areas. The Regional Council is not a section 274 party to that appeal.

[21] The Regional Council was a section 274 party to the Forest and Bird appeal which sought the imposition of the CPA, now CNCL, area over the coastline including to the first ridge or 300 metres inland whichever is the lesser. We note however that Forest and Bird was a signatory to the mediated agreements (“1”) and sought leave to withdraw from the conduct of the hearing while abiding the decision of the Court.

[22] We note that the mediated agreements are ones that were signed by a wide divergence of groups and were the subject of considerable negotiation and compromise. They involved matters of value judgments, and were agreed by groups with very



different values. The ONL and CNCL areas of Map E prepared by Boffa Miskell now encompass an area of some 23,000 hectares compared to the 30,000 hectares contained within the Council's Variation 2 and the 50,000 hectares originally notified in 1997. As we shall see, the Regional Council is now seeking that the area covered by the ONL and CNCL overlays occupy some 75,000 hectares. This area is far more extensive than that notified in the 1997 version of the Plan. Federated Farmers and the individual farmers they represented considered that they had entered into the mediation in good faith in the belief the parties were seeking adjustment to the lines rather than a wholesale return to the 1997 lines or the inclusion of an even greater area.

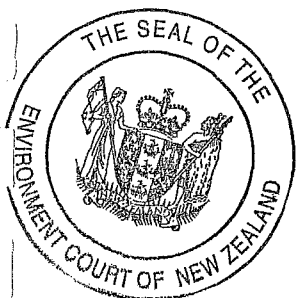
The legal tests

[23] As this Plan was notified prior to 2003 it appeared to be the common position of the parties before this Court that the appeal was to be resolved in accordance with the Act pre the 2003 amendment. In practical terms the tests for a rule as set out in *Nugent Consultants Limited v Auckland City Council*¹ would apply. In *Nugent* the Court established the following tests for assessing a rule in a Plan:

The rule must:

- *be necessary in achieving the purpose of the Act;*
- *assist the territorial authority to carry out its functions of control of actual or potential effects of the use;*
- *be the most appropriate means of exercising that function;*
- *have a purpose of achieving the objectives and policies of the Plan.*

[24] *Necessary* has been interpreted as meaning *better* in *Suburban Estates Limited v Christchurch City Council*². We also note that in terms of that decision, inasmuch as the objectives and policies of the Plan are beyond challenge, they can be assumed to embody the requirements of Part 2 of the Act. All parties agree with these tests.



¹ [1996] NZRMA 487.
² C217/2001 at para 276.

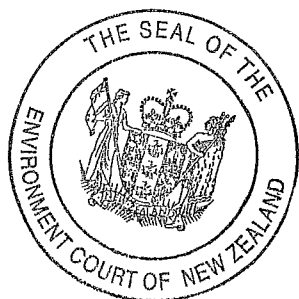
[25] Overall these tests were amended in 2003. However, a number of recent formulations include provisions which we regard as having equal applicability to provisions pre-2003 and wider application to all provisions of a plan. These were discussed in the Court's recent decision *Sloan and Ors v Christchurch City Council*³ relying in part upon *Eldamos Investments Limited v Gisborne District Council*⁴.

[26] We consider the following principles apply in this case:

- (a) *the Court does not start with any particular presumption as to the appropriate zone, rule, policy or objective (see Eldamos para 123, also Wellington Club v Carson*⁵);
- (b) *the Court is seeking to obtain the optimum planning solution within the scope of the appeal it has before it, based on an evaluation of the totality of the evidence given in the hearing without imposing a burden of proof on any party (see Eldamos para 129);*
- (c) *a policy, rule or method can be considered against the purpose found in the objectives and policies in the Plan. Where the objectives and policies are challenged these will need to be judged against superior documents including any relevant regional plan, policy statements, national standards or policy statements. Nevertheless the Court recognises that the provisions in all plans do not always fit neatly together and we regard the policies and objectives of a plan through the filter of Part 2 of the RMA when necessary;*

[27] Furthermore we consider that in examining a provision under section 32 of the Act, pre the 2003 amendment, the determination of whether it is better is informed by considering:

- (a) whether it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act;
- (b) whether it is in accordance with Part 2 of the Act;



³ C3/2008.
⁴ ENV W47/2005.
⁵ [1972] NZLR 698 at 702.

- (c) if a rule, whether it achieves the objectives and policies of the Plan;
- (d) the efficiency and effectiveness of the provision;
- (e) the benefits and costs of that provision.

The positions of the parties

[28] Some parties were arguing that the mediated methods and rules were not the better provisions to meet the objectives and policies (i.e. particularly Ms Briggs and Mr Collins). Although the Regional Council's evidence might be taken to support such a position, Ms Douglas accepted that the Regional Council was bound by the mediated solution it had signed and did not seek to resile from it. Inasmuch as the delineation of ONL, CNCL and RAL proposed by the City Council represents a method the Regional Council had not agreed to this as part of the mediated solution and remained free, within limits we shall subsequently outline, to argue against it.

[29] Other parties, particularly the Department of Conservation and Forest and Bird, accepted the mediated methods and rules which were presented to the Court. On the basis that these parties would abide the decision of the Court they were granted leave to withdraw from the hearing.

[30] As we understood the evidence for parties such as Summit Road Protection Society and Friends of Banks Peninsula Incorporated, they again, although supporting the evidence of Ms Lucas and the Regional Council in respect of delineation issues, did not seek to resile from the mediated agreements to which they had been signatories.

[31] The position for Zias and Pacific Investments was somewhat more complex. Zias was a signatory to all three agreements but reserved its position on several issues. Pacific Investments was a signatory to only the first agreement (as were Briggs and Collins) but reserved its position.

[32] We deduce from their statement of position that both Zias and Pacific Investments seek to enable dwellings on their properties although this was not precisely how they described their cases. Accordingly they seek minor changes to the mediated agreement and:



- (a) to reduce the CNCL areas in terms of the landward limit to allow for buildings on their respective properties to be in RAL areas rather than CNCL;
- (b) discretionary activity status for buildings within CNCL areas (Pacific Investments). Zias accepted such status would be on sites of 20 hectares or more;
- (c) in the case of Pacific Investments, controlled activity status for dwellings in the RAL at higher density (evidence suggested 1:10 hectares).

We note however that if we were to accept the theoretical basis on which these parties advance the case for their own properties, this would have consequences in terms of the soundness of the demarcation of the various landscape categories put forward by the Council over a wide area.

Is the City's proposed delineation map within jurisdiction?

[33] For most parties the objectives, policies, methods and rules of this Plan are not generally in dispute. There are several notable exceptions but given the breadth of the provisions in question the disputes are relatively narrow. Most of these issues relate to those provisions which would better achieve and implement the objectives and policies of the Plan, including the delineation issue. There is a significant dispute as to the appropriate delineation of ONLs, CNCLs and, consequently, the RAL areas.

[34] The Regional Council raised a broader argument both in its opening and subsequently in the evidence of Ms Littlewood. The issue is that the map as shown in "1:E" is inconsistent with and does not give effect to the superior statutory documents, particularly:

- (a) the New Zealand Coastal Policy Statement (**NZCPS**);
- (b) the Regional Policy Statement (**RPS**);
- (c) the Regional Coastal Environment Plan (**RCEP**).



The issue is perhaps most clearly set out in Minutes of the Regional Council Meeting 309, Thursday 13 December 2007, produced to this Court as Exhibit 11 which at 23.2 stated:

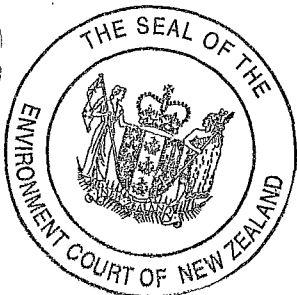
In particular, the draft district planning maps derived from the Landscape Study are considered to be inconsistent with the Regional Coastal Environment Plan for the Canterbury Region (RCP) and will not give effect to the Canterbury Regional Policy Statement.

Mr Smith said staff were seeking authorisation to present primary and rebuttal evidence to the Environment Court to ensure that the Banks Peninsula District Council's (now Christchurch City Council) Proposed District Plan will be consistent with the RCP and will give effect to the RPS, and therefore achieve sustainable management.

[35] In submissions to this Court Ms Douglas referred to the requirement for a district plan, after August 2005, to give effect to the NZCPS (section 75(3)(b)), any regional policy statement (section 75(3)(c)) and, pursuant to section 75(4), not be inconsistent with a regional plan for any matter specified under section 30(1). Such a submission essentially proposes that the City's position is not open to the Court in a jurisdictional sense. Given the City's obligations under the Act, that is a serious allegation and, to the extent it can be, must be decided as a preliminary issue.

[36] Section 75 of the Act was amended in 2005. Prior to 1 August 2003 the relevant provision of the Act was section 75(2) which provided:

- (2) *A district plan must not –*
 - (a) *Be inconsistent with any national policy statement or New Zealand coastal policy statement; or*
 - (b) *Be inconsistent with any water conservation order; or*
 - (c) *Be inconsistent with –*
 - (i) *The regional policy statement; or*



- (ii) *Any regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV.*

[37] From 1 August 2003 to 10 August 2005 a substitute provision applied, which need not be cited, as the parties are agreed that section 112(1) of the Amendment Act preserved the position of the pre-2003 provisions⁶. It is common ground that Variation 2 was publicly notified on 30 August 2002 prior to the Amendment Act taking effect.

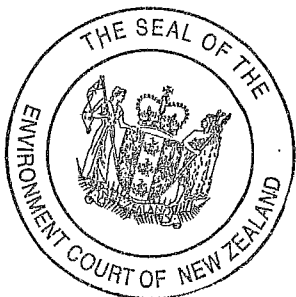
[38] On 10 August 2005 section 75 was amended again and relevantly section 75(3) provided:

- (3) *A district plan must give effect to –*
- (a) *any national policy statement; and*
 - (b) *any New Zealand coastal policy statement; and*
 - (c) *any regional policy statement.*

[39] There is a general transitional provision at section 131(1)(a) of the 2005 Amendment stating that the amendments made by the Act do not apply to a plan that had been publicly notified but had not proceeded to the stage at which no further appeal is possible. However, subsection (4) goes on to say that:

Section 67 ... 75(1), (2), (3)(a) and (b), (4) and (5) of the principal Act as substituted by sections 41 and 46 of that Act apply to a proposed plan that as at the commencement of this Act has been notified.

[40] Ms Douglas argues that section 75(3) applies, notwithstanding that this variation had been notified prior to 2005. The 2005 Amendment Act came into force on 10 August 2005, at which time appeals in this matter had been filed. The Commissioners' decision was issued on 30 May 2005 and the majority of appeals were filed on or before 21 July 2005. The issue which then arises is whether the notification referred to in



⁶ Following *Matukituki Trust v Queenstown Lakes District Council* (HC) CIV-2006-412-000733, Fogarty J.

section 131(4) is intended to include all subsequent stages, even when the decision of the Hearing Commissioners has been issued and an appeal to this Court filed.

[41] Importantly, not all of section 75 is subject to section 131(4). Section 75(3)(a) and (b) covers only national policy statements and the New Zealand Coastal Policy Statement. Accordingly, section 75(3)(c) of the Regional Policy Statement remains subject to the saving provisions of section 131(1).

[42] The change in wording to section 75 of particular relevance between the 2005 Act and the pre 1 August 2003 Act is:

- (a) Under section 75(2) 1 August 2003: a district plan must *not be inconsistent* with any national policy statement or the New Zealand Coastal Policy Statement (NZCPS) nor *be inconsistent* with a regional policy statement or any regional plan of its region in regard to any matter of regional significance or for which a regional council has primary responsibility under Part 4 (section 75(2)(a) and (c)).
- (b) This is compared to the 2005 amendment section 75(3) which requires that a district plan must *give effect to* any national policy statement (section 75(3)(a)), NZCPS (section 75(3)(b)), and any regional policy statement (section 75(3)(c)). It must *not be inconsistent* with a regional plan for any matter specified under section 30(1) and 75(4).
- (c) Further, the provisions of section 131 of the 2005 Amendment mean the Plan must give effect to the NZCPS but must not be inconsistent with the Regional Policy Statement or regional plan.

[43] Given the complexities of section 131(4), we have concluded that if the provisions *give effect* to the NZCPS and are not inconsistent with the RPS and RCEP then this would meet the relevant tests. In the event that the provisions do not give effect to the NZCPS, we would then need to go on to consider whether the pre-2005 provisions apply. This would involve an interpretation of section 131(4) and particularly whether the word *notified* is intended to exclude proceedings which have been appealed to the Environment Court.



[44] We intend to examine firstly whether the Delineation Map “1:E” gives effect to the NZCPS, and then to consider whether it is inconsistent with the RPS and RCEP. We accept that a definitive answer to these questions may prove inseparable from a discussion on the merits of the case.

Does the City’s proposed delineation give effect to the New Zealand Coastal Policy Statement?

[45] It was accepted by the parties that the delineation maps proposed by the Regional Council or Ms Briggs would give effect to the NZCPS. The issue is whether the Boffa Miskell maps proposed for inclusion in the Proposed Plans by the City also give effect to the NZCPS. Ms Littlewood for the Regional Council points to two particular policies of the NZCPS:

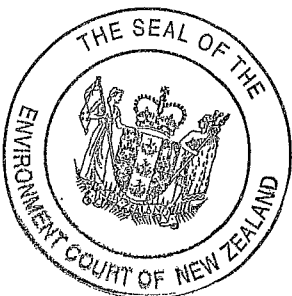
- (1) policy 1.1.1; and
- (2) policy 3.1.2

which provide:

Policy 1.1.1

It is a national priority to preserve the natural character of the coastal environment by:

- (a) *encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;*
- (b) *taking into account the potential effects of subdivision, use, or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and*
- (c) *avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.*



Policy 3.1.2

Policy statements and plans should identify (in the coastal environment) those scenic, recreational and historic areas, areas of spiritual or cultural significance, and those scientific and landscape features, which are important to the region or district and which should therefore be given special protection; and that policy statements and plans should give them appropriate protection.

[46] Ms Littlewood goes on to state that the coastal environment extends to the ridgelines and therefore the NZCPS is applicable within this area. She then goes on to cite Policy 3.1.3 (which relates to open space) and 3.2.4 which states:

Provision should be made to ensure that the cumulative effects of activities, collectively, in the coastal environment are not adverse to a significant degree.

Is the delineation proposed by the City inconsistent with the Regional Policy Statement and the Regional Coastal Environment Plan?

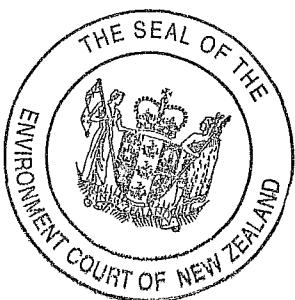
[47] Overall we conclude that the issue is not whether the various possible landscape delineations give effect to the NZCPS, but rather which provisions would better give effect to the policies of the NZCPS and the purpose of the Act.

[48] Ms Littlewood identifies various parts of the Canterbury Regional Policy Statement which she says are relevant, including Chapter 8 objective 2 which reads:

Protection or enhancement of the natural features and landscapes that contribute to Canterbury's distinctive character and sense of identity, including their associated ecological, cultural, recreational and amenity values.

Policy 3

Natural features and landscapes that meet the relevant criteria of sub-chapter 20.4(1) should be protected from adverse effects of the use, development, or protection of natural and physical resources, and their enhancement should be promoted. Activities that may have adverse effects include those involving the



clearance or modification of areas of indigenous vegetation (particularly tall tussock), earthworks, alteration to landforms, tree planting, or the erection of structures.

The particular sensitivity of these natural features and landscapes to regionally significant adverse effects in terms of sub-chapter 20.4(2) should be reflected in the provisions of district plans in the region.

Assessments of effects should be made by considering:

- (i) aesthetic values;*
- (ii) expressiveness;*
- (iii) transitory value;*
- (iv) natural science factors.*

[49] The regionally significant effects defined in 20.4(2) include:

- (a) Whether there is likely to be substantial modification of identified values, including substantial damage, loss, restoration or enhancement;*
- (b) Whether any effects are likely to be long term;*
- ...*
- (f) Whether any effects are of widespread public concern within the region;*
- (g) Whether any effects which although minor, short term or infrequent, become material when taken cumulatively, including whether any effects are potentially of high probability, or, if potentially of low probability, have a high potential impact;*
- ...*
- (i) Whether any effect is likely to lead to irreversible changes (other than minor changes).*

[50] RPS Chapter 11, Policy 1, objective 11 is:



[t]o avoid, remedy or mitigate to an extent not inconsistent with the Coastal Policy Statement the direct and indirect adverse effects of land uses or activities ... where either singularly or cumulatively they would significantly affect:

- (a) the life-supporting capacity of coastal ecosystems and the natural processes which sustain them;*
- (b) areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- (c) natural character (including associated natural processes, outstanding natural features and landscapes);*
- (d) amenity and recreational attributes;*
- (e) areas of special significance to tangata whenua;*
- (f) people's health;*
- (g) heritage values of sites, buildings, places or areas.*

[51] It is clear from even a cursory evaluation of the Proposed Plan that it is acutely aware of its obligations to balance the various factors identified both in the NZCPS and the RPS in terms of achieving appropriate outcomes under these documents, under the Act and under the District Plan's objectives and policies. The particular outcomes which are to achieve these higher order documents are set out in detail within the objectives, policies, methods and rules, which have been the subject of extensive negotiation between the parties, including the Regional Council.

[52] We cannot comprehend that the Regional Council would have agreed to such provisions if they did not give effect to the NZCPS, and satisfy the requirement not to be inconsistent with the RPS and RCEP. The question for this Court is quite simply: given the various controls agreed between the parties in the methods and rules, which delineations better achieve the objectives and policies of the Proposed Plan, the RPS, the policies of the NZCPS and the provisions of the RCEP?

[53] None of these superior documents forbid development within the coastal environment, nor do any of these documents say that the entire coastal environment must be treated in exactly the same way. In fact the NZCPS has a policy of encouraging use and development in areas where natural character is already compromised. These documents clearly provide for and allow for differentiation in treatment, depending on



the various factors identified in the RPS as relevant. These include significant indigenous vegetation factors (the subject of separate and comprehensive treatment in the Plan), issues dealing with the land/water interface, issues of outstanding natural landscapes and coastal natural character areas. We conclude that the controls over development in the coastal environment give effect to the NZCPS and RPS. In fact in this case they need only not be inconsistent with the RPS. However the linkage is greater than this. Both the NZCPS and RPS recognise that development may occur in the coastal environment. Both seek to address the tensions between protection and enablement inherent as a result.

[54] In this case the provisions of the NZCPS and RPS are understandably broad-based. We have concluded that the parties, by agreeing to a rural amenity landscape (RAL), accepted that this was an acceptable response within some parts of the coastal environment. The RAL gave an opportunity to identify particular features which might be affected by the NZCPS, the RPS and the RCEP, and provide for appropriate controls. For example a rule which has effect in the RAL preventing buildings within 40 metres of MHWS makes no sense unless some coastline was included within the RAL. Similarly, the RAL main ridgeline rule makes no sense if there are no main ridgelines within that area.

[55] As we will discuss in due course, the controls (even in the RAL) are substantial and include Provisions "1:D" agreed by the Regional Council that would control development within the RAL. Even on Ms Lucas' approach to delineation a significant number of areas within the coastal environment would be included within the RAL. Accordingly it could not be said that the RAL provisions of themselves would be inconsistent with the RPS and/or the RCEP.

[56] As we understand the argument of Ms Douglas, and the evidence of Ms Littlewood, it is that the demarcation of landscapes proposed in the Boffa Miskell Study places in the RAL numerous areas more appropriately categorised as ONL and CNCL. The rules of the RAL fail to adequately protect these areas. For this contention, Ms Littlewood acknowledges that she is entirely dependent on the landscape analysis of Ms Lucas. In other words the jurisdictional argument is inextricably linked with the factual



argument about where the ONL and CNCL lines should be drawn. We did not understand Ms Douglas to advance her argument on a different basis. If we consider the delineations proposed by Mr Rackham and Ms Pflüger (or those of Dr Steven or Mr Glasson to the extent they seek reductions in the ONL and CNCL areas) better justified than those proposed by Ms Lucas or Ms Briggs, the jurisdictional argument lapses. This conclusion also applies in respect of the Regional Coastal Environment Plan, which we discuss in the following section of this decision.

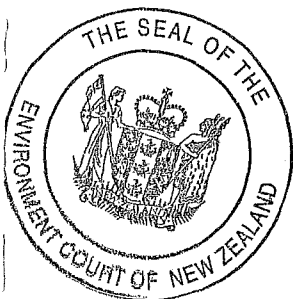
[57] Objective 6.1 of the RCEP is:

To protect, and where appropriate enhance, the following areas, sites and habitats of high natural, physical, heritage or cultural value:

- (a) *Areas of Significant Natural Value (identified in Schedule 1, and shown on the Planning Maps in Volume 2);*
- (b) *Those areas listed in Schedules 2 and 3;*
- ...
- (g) *Coastal landforms and landscapes, submerged platforms and seascapes that are regionally, nationally or internationally representative or unique, including the Kaikoura coast, Banks Peninsula, Kaitorete Spit and the Timaru reefs;*
- (h) *Areas identified in consultation with Tangata Whenua including wahi tapu urupa, tauranga waka and mahinga kai;*
- (i) *Areas of significant amenity value, including recreational attributes;*
- (j) *Areas having high natural character in the coastal environment;*
- (k) *Areas having significant heritage values;*
- ...

[58] The Schedules do not list specific areas not already covered by the Boffa Miskell report. Ms Littlewood argues that in fact to achieve objective 6.1 particularly (g), (i) and (j) requires greater protection than the RAL rules over significantly wider areas than those in the Schedules.

[59] Objective 6.2 is:



To protect, and where appropriate enhance, natural character and amenity values of the Banks Peninsula coastal environment including:

- *Volcanic and coastal landforms and features;*
- *Estuarine and coastal vegetation and habitat;*
- *Coastal processes and ecosystems;*
- *Areas of high water quality;*
- *Areas of high visual amenity value, and/or otherwise unmodified by structures or other activities, in particular the outer bays and open coast.*

[60] Again we are satisfied that the provisions proposed by the City are an attempt to give effect to the RCEP and are at least not inconsistent with it. Our reasoning is as follows:

- (1) the RCEP provisions are again particularly broad and must be taken to allow the current activities which already occur on Banks Peninsula;
- (2) the Regional Council's focus appears to be on adverse effects and it is not clear from the RCEP that it identifies development and use as automatically inconsistent with the provisions of the RCEP;
- (3) the RCEP categorisation turns on the identified adverse effects and what is inappropriate development.

[61] To this extent the provisions reflect the RPS Chapter 11 which recognises at 11.2, objective 1 that it should provide for appropriate use and development of the coastal environment while protecting and, where appropriate, enhancing the various elements identified therein.

[62] All these issues turn not upon whether an area is identified as an outstanding natural landscape or area of high natural character, but rather on the various elements which are identified in relation to it, for example at 11.2, issue 1, objective 1 (a) to (f) and at various other places throughout the RPS and Plans.



[63] In the end the Court cannot conclude that simple delineation of ONL and CNCL areas is inconsistent with the RPS or the RCEP. In particular, Ms Lucas acknowledged that significantly increased controls in the RAL Zone would achieve an appropriate outcome. Thus the delineation map proposed by the City cannot of itself be inconsistent with either the RPS or the RCEP.

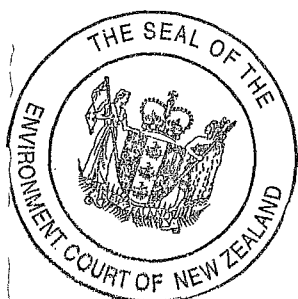
[64] Accordingly we have concluded that the issue turns on the content of the District Plan as a whole rather than the delineation map "1:E". The question is: what is the appropriate response to the matters identified in the NZCPS, the RPS, the RCEP in the Proposed Plan?

[65] There is clear agreement that there need to be provisions within the Plan which recognise the value of the Banks Peninsula district landscapes and adequately address them.

The Plan approach as developed in the mediated agreements

[66] As the Court has already discussed, the Plan as mediated responds to these needs to recognise values by creating what can be categorised as either sub-zones or overlays in the Rural Zone. These are the outstanding natural landscape, the coastal natural character landscape and the rural amenity landscape. These overlays or rural sub-zones were an agreed response of the parties, including the Regional Council, to the issues identified in the NZCPS, RPS, RCEP and the objectives and policies of the Proposed District Plan.

[67] To understand the intent of these provisions the Court must enquire as to what the parties agreed to at the time they signed the various mediated agreements. In practical terms we are satisfied that at the time the parties were negotiating the contents of the Plan provisions they were aware of the mapping achieved by Boffa Miskell through its Landscape Study. That Landscape Study was released to the parties at the end of May 2007 and mediations took place consequent upon the receipt of that and in consideration of the outcomes and the maps. In particular we note that Court mediations were delayed until the Landscape Study and maps were available. Further,



the three phases of the Landscape Study saw the methods and rules (Phase 3) developed as a result of the mapping (Phases 1 and 2).

[68] It is clear that in agreeing to the ONL, CNCL and RAL methods and rules, the parties must have contemplated that the eventual plan outcome could adopt the overlays in the form shown in the Boffa Miskell map (annexed hereto and marked “2”) from the Study. Although that map was subsequently the subject of further changes relating to jurisdiction, it was clearly a possible outcome that the final map would be similar in form to that included in the May 2007 Boffa Miskell report (annexed as “2”). It is also clear that parties to the mediations sought extensions or reductions to those delineations.

[69] Some parties, importantly Ms Briggs and Mr Collins, did not agree with the approach and were not signatories to the second and third mediated agreements. However, before this Court Ms Briggs sought that the LPA high and moderate sensitivity areas from the 1997 Plan be included and explicitly did not include any evidence relating to the coastal protection areas.

[70] Ms Briggs’ view was that the Landscape Study performed by Boffa Miskell was not rigorous or robust enough to meet Part 2 of the Act and section 32, and that the rules of the RAL area do not give adequate protection to the landscape and will not prevent inappropriate subdivision and development. Accordingly we understood the essence of her argument to be that the Boffa Miskell Delineation Map “2” did not achieve the purpose of the Act and was not the better provision; and that in the short term the previous LPA delineation map from the 1997 Plan should be inserted until such time as an appropriate study to identify the areas could be conducted. We presumed her view was that an appropriate study would cover more extensive areas than those in the Boffa Miskell report.

[71] We did not understand Mr Collins to contest that the Court had jurisdiction to uphold the delineation of areas as proposed in the Boffa Miskell Study; rather both Mr Collins and Ms Briggs submitted that it should not do so on the merits of the case.



[72] Given that only the limits of the delineation lines “2” remained at issue between the parties, we have concluded that the Agreed Plan Provisions “1:D” must have been seen as acceptable and within the jurisdiction of this Court whatever the eventual delineation of areas.

The dilemma for the Court

[73] Accordingly the Court is in a particular dilemma as to how to proceed with analysis. It is clear that there is a close inter-relationship between the methods and rules “1:D”, which are largely agreed, and the delineation of the ONL, about which the parties have a greater range of positions. However, we consider the changes in delineation proposed by some parties would have far more significant effect than the changes sought in respect of the methods and rules. The Court must look at an integrated solution to both but it is in a difficult position as to which part to approach first.

[74] Given that the Regional Council is bound by the mediated agreement, this may affect the scope of the argument on delineation. Ms Lucas (the landscape architect for the Regional Council) and Ms Littlewood (the planner for the Regional Council) say that the RAL provisions are inadequate to protect the values of Banks Peninsula. Ms Littlewood says that the 40 metre set-back protection for much of the district’s coastline is clearly inconsistent with objective 6.2 of the RCEP. She says:

I consider that the lack of recognition and focus on protecting such values within the CNCL within amended Variation 2 is a significant weakness.

As a signatory to the mediated agreements Ms Littlewood and the Regional Council are bound not to undermine the methods and rules agreed. A clause in both the 13 September (B) and 14 September (C) agreements states:



The parties agree that:

- (a) *They will support the matters agreed to in this Heads of Agreement and*
- (b) *They will not present a case inconsistent with the matters agreed to in the Heads of Agreement.*

Neither agreement determined delineation. However, the parties did agree on such matters as:

- (a) setback from MHWS in RAL (clause 28, 13 September);
- (b) main ridgeline rule in RAL (clause 29, 13 September);
- (c) the concept of the coastal environment as a working environment (clause 17, 13 September).

As we see from what follows, it may be that Ms Littlewood is expressing herself loosely, and intended to indicate that a greater set-back than 40 metres was warranted over a greater extent of the coastline, and for that reason the CNCL should be extended. However the Court is reluctant to gloss the evidence of witnesses.

[75] Ms Littlewood raised similar issues with the ONLs:

[It is] largely as a consequence of an inadequate plan Map E ["I:E"] that the district plan does not provide ...

However she goes on to say that the written provisions are considered generally consistent with the RPS, the NZCPS and the Proposed District Plan.

[76] Given the difficulties we have described, it appears to us that it is necessary for us to undertake a more detailed examination of the delineation issues and the issues relating to the methods and rules of the Plan before reaching an integrated outcome as to the better provisions to be inserted.



[77] In order to undertake this analysis, we have concluded that we will firstly examine the methods and rules agreed by the signatories to the mediated agreement and their impact and then discuss the delineation issues.

[78] It will then be necessary for the Court, having conducted this review, to consider those changes to the rules still sought by various parties and to try to integrate these provisions in terms of section 32 and Part 2 of the Act in order to achieve the outcome which better achieves the purpose of the Act and the unchallenged provisions of the Plan.

[79] We have decided that we should formulate a decision on the basis of the merits of the case. However, since it was clearly an issue between the parties, we have added to this decision a section dealing with the role of expert witnesses before this Court, and issues relating to the status of Ms Briggs and Mr Collins as expert witnesses, along with a discussion of the scope of relief which the various submissions and appeals left open for the parties to seek.

Controls in the RAL, CNCL and ONL overlays

[80] In order to understand the methodology of the Plan, it is necessary to identify the distinctions between treatment of development in the ONL/CNCL areas and RAL. ONL/CNCL areas are treated in the same way and all controls occur in the same part of the Plan. Controls and status of activities in the RAL areas differ from those in the ONL/CNCL in some respects. Key controls in the RAL areas are:

- (a) a 40 metre set-back from the mean high water springs for structures and buildings in particular;
- (b) one residential dwelling per 40 hectares below the 160 metre contour and one per 100 hectares above the 160 metre contour as a permitted activity;
- (c) discretionary activity status for subdivision below 40 hectares below the 160 metre contour and below 100 hectares above the 160 metre contour and for building on lots smaller than those sizes;



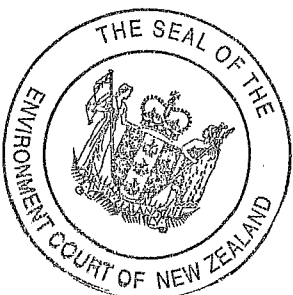
- (d) a buffer providing controlled activity status for residential buildings within the distance of 150 metres horizontal or 50 metres vertical of an ONL or CNCL, whichever is the lesser;
- (e) special controls for buildings greater than 100 metres outside building clusters within a minimum of 20 vertical metres of a main ridgeline;
- (f) reflectivity control as identified on delineation maps;
- (g) a height control of 7.5 metres and yard controls;
- (h) controls in relation to the natural surface of water bodies;
- (i) a maximum site control of 10% or 2,000 metres site coverage whichever is the lesser, with no separate building being greater than 300 m²;
- (j) earthwork controls;
- (k) forestry controls within 100 metres of mean high water springs and not in indigenous vegetation areas between one hectare and ten hectares as controlled criteria set out; above ten hectares restricted discretionary.

[81] Dwellings on lots subdivided down to one hectare where the balance up to the permitted size of either 40 hectares below 160 metres or 100 hectares above that contour is covenanted from further development are provided for as restricted discretionary activities. Full discretionary activities include dwellings on a one hectare lot where at least four hectares is covenanted. There are a series of extra standards for restricted discretionary and full discretionary activities in Chapter 7.1 of the Plan and there are detailed assessment criteria at Part 8. A dwelling on a lot under four hectares is a non-complying activity.

[82] The major differences between these and the CNCL and ONL provisions which are contained within the same general rule is that in the ONL and CNCL all buildings outside a building cluster are non-complying, and forestry is non-complying.

Potential adverse effects of RAL controls

[83] Given that Ms Lucas seemed to consider that the ONL and CNCL rules were sufficient to control potential adverse effects, we conclude that it is the construction of buildings outside a building cluster and forestry which in her view create the significant adverse effects in the RAL. It has, however, been difficult for us to formulate what it is



in the RAL rules which creates the adverse effect from the evidence of those parties who consider the ONL and CNCL areas too limited. It appears to us that the parties are concerned with the following issue:

That buildings or forestry may be consented to or permitted on ridges or spurs or otherwise be visible within Banks Peninsula within the RAL area.

[84] However, it is clear from the photographic and other evidence given to this Court, and from our site visit, that there are already a great many buildings and forestry blocks on the ridges and spurs of Banks Peninsula. One of the unfortunate consequences of being a member of the Court is that repeated analysis of landscapes leads to a critical evaluation of landscapes that many take for granted. For the general population there appears to be a conceit of the mind which occurs when it views pleasant landscapes. This appears to subtract from the view the incongruent elements such as large square forestry blocks up to and including ridges, prominent buildings situated on high points, roads, telephone poles and trees and other clear indications of extensive modification with the result that the individual reads the environment as natural.

[85] A clear example of this is evidence given to us about the outstanding naturalness of Akaroa crater rim. On inspection there are a number of significant elements, including forestry blocks up to and including the crater rim and buildings, which are prominent in almost every view. Examples of this are a large corrugated iron barn above the Hilltop Tavern (on the crater rim and near a main road) and a forestry block on the crater rim itself.

[86] Most of Banks Peninsula is a modified pastoral environment. This is true of coastal areas where the prominent ridge spurs are generally grazed pasture. Photographs of ridges at Port Levy and Pigeon Bay demonstrate areas which have been subject to ploughing and regrassing. We are told that stock frequently graze on the upper slopes of Mt Herbert, including the broad ridge down towards Diamond Harbour. To make barns, forestry, dwellings and tracks non-complying activities over most of the Peninsula would lead to an immediate and serious impediment to existing farming activities and inevitably create arguments as to existing use rights.



[87] In broad terms we have concluded that if some 70,000 hectares or more of Banks Peninsula rural area was to be either ONL or CNCL as the Regional Council sought, we would have to review the applicability of the methods and rules agreed between the parties. Federated Farmers were very clear that their agreement to the methods and rules was predicated upon the ONL and CNCL being generally as shown by Boffa Miskell. In broad terms we have concluded that 70,000 hectares of land subject to the ONL/CNCL rules would constitute such a significant imposition upon the conduct of farming activities that it would be inconsistent with the overview of the Rural Zone which notes (Chapter 19):

Agricultural productive land has more recently become the most visually dominant aesthetic component of the Banks Peninsula landscape, and is a key element of the landscape as we know it today. This is a major contributor to its outstanding character. As such it is a significant resource which must be managed sustainably.

and:

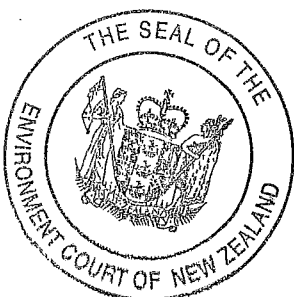
While pastoral farming remains the dominant land use, economic, social and technological changes have encouraged diversification into other activities.

[88] Accordingly objective 1 of Chapter 19:

To maintain the landscape values, natural character and amenity values of each of the landscape categories identified within the Rural Zone

must be viewed in the context of a district in which a significant number of those landscape values derive from the agricultural productive land. This is noted in the explanation and reasons (page 22 of Annexure “1:D”).

These landscape qualities have resulted from a variety of natural and human events and processes. Important components of the landscape include the



distinctive landforms of the area resulting from the natural processes of volcanic activity, erosion and deposition, and the vegetative pattern of open grasslands interspersed with stands of exotic plantings, remnant and revegetating indigenous forest and secondary growth. These landforms patterns of vegetation and agricultural activities help define the landscape character of the Rural Zone.

[89] Objective 3 at page 25 of Annexure “1:D” is:

To maintain and enhance the amenity values and conditions required for health and safety within the Rural Zone.

The explanation and reasons note::

The Rural Zone is valued for its landscape character, amenity values and productive land use activities.

The delineation of ONL and CNCL

[90] It is clear both from her evidence-in-chief and answers in cross-examination that Ms Lucas has used the contents of the rules as a basis to decide the appropriate delineation of ONL, CNCL and RAL. It appears that if different methods and rules were included, her view as to the delineation may have been different. With respect, we cannot conclude that questions of outstanding natural character should be determined upon the basis of the content of the methods and rules. Essentially this appears to put the cart before the horse. The consequence of such an approach would be that the level of protection throughout the majority of the Banks Peninsula would be the same. It would see no particular distinction between building a house outside a building cluster at Chorlton or erecting it on the Akaroa crater rim.

[91] As we explain later in this decision, a consideration of the rules may assist in determining whether a level of protection greater than that offered by the RAL is



appropriate in the coastal environment, though caution must always be applied in working back from rules to an estimation of natural character.

[92] We conclude that Boffa Miskell have approached this issue in entirely the right order. Firstly they have undertaken an objective assessment of the various value layers, thereafter reaching a judgment as to the appropriate areas categorised as ONL (and as we later explain CNCL). Subsequently they have considered methods and rules to address the categories thus established. Accordingly in general terms we accept the broad approach of the methods and rules to give greater protection to ONLs (and to adopt a more cautious approach in the CNCL) while allowing scope for more development within the RAL.

[93] In her evidence-in-chief, Ms Lucas refers to her map 38 which she purports outlines the ONL delineation which should occur within the district. Unfortunately, the map is a landform map and refers only to two areas:

- (a) landform-based ONL; and
- (b) colluvial slopes bottom lands including valley floors (see exhibit).

There is a note to the effect that CNCL is not included. We append a copy of map 38 as annexure "3" to this decision.

[94] It is a mystery as to what this map was intended to delineate and this confusion recurred in much of the evidence and cross-examination of Ms Lucas. Given Ms Lucas filed some 55 pages of evidence-in-chief and nearly 20 pages in reply, it is surprisingly difficult to ascertain precisely the arguments advanced by Ms Lucas or the outcomes she is seeking. Paragraphs 324 to 326 of her evidence-in-chief urge the following:

*Extend the ONL areas to include the **Smooth dip slopes** landforms (attachment 38). These landforms involve many of the prominent and vulnerable ridge crests.*



For the outer coast, outer harbours and outer large bays, the ONL would appropriately encompass the lands from the crater rims down to the MHWS but exclude the valley floors

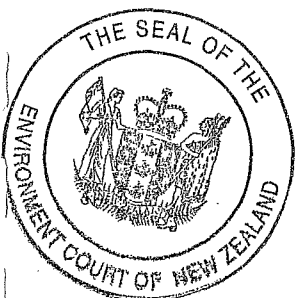
Include the Kaitorete Spit landform as an ONL

(refer revised ONL map attachment 38) [Now "3"]

[95] Essentially it is unclear from that map whether Ms Lucas is referring to just the landform-based ONL which is shown in various shades of blue/purple or also intends to include within the ONL the colluvial slopes bottom lands including valley floors (i.e. the green or yellow areas). At the commencement of the case Ms Douglas suggested that it included part, at least, of the green areas but, later, in answer to questions, Ms Lucas indicated that the area included in the ONL was only that coloured blue or purple. Her explanation as to what was meant by smooth dip slopes was a reference back to an earlier map contained within her evidence (attachment 2) which showed a number of orange areas on another plan identifying smooth dip slopes. All these areas were on the outer part of Banks Peninsula and do not represent the difference between attachment 38 and the Boffa Miskell report.

[96] Accordingly, at the commencement of the hearing the Court understood the Regional Council to be proposing that of the approximately 96,000 hectares within the Rural Zone of Banks Peninsula some 92,000 hectares was to be covered by ONL or CNCL. Ms Lucas clarified that this was not the intent and that only some 75,000 hectares was to be included within the ONL or CNCL, being the areas identified on her attachment 38, together with some additional areas of coastline within some of the inner harbours and the outer bays but still excluding some inner harbour areas elsewhere. During the hearing she produced a map, which we attach as Annexure "4", showing these areas.

[97] Ms Briggs sought the reinsertion of ONL based on the 1997 LPA as high and moderate sensitivity. The major distinctions between Ms Briggs and Boffa Miskell related to the inclusion by Ms Briggs of most spur ridges and greater areas around crater



rims. These are set out in Annexure "5" and include CPA and LPA totalling some 50,000 hectares. Given that Ms Briggs advanced no evidence on CPAs, her evidence would support areas of ONL additional to those set out by Boffa Miskell, probably adding in the order of 10,000 hectares to the current ONL and adding the RAL controls for Main Ridgelines as ONL areas.

[98] Summit Protection Society supported more ONL around the Lyttelton crater rim while Friends of Banks Peninsula supported more ONL around Akaroa and sought the inclusion of Main Ridgelines as ONL.

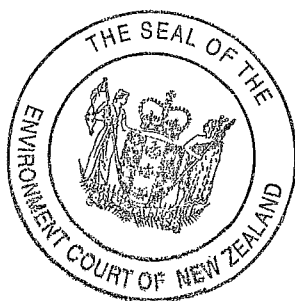
[99] Ms Lucas's ONL and CNCL areas include a significant amount of existing development, including particularly much of the forestry and a good proportion of the housing within Banks Peninsula. Many house sites on slopes and ridges and in areas such as Chorlton have been occupied by Europeans for around 150 years and she seeks that they now be included within either a suggested CNCL and/or an ONL. Even the 1997 preferred LPA's cover a number of areas subject to substantial development especially on the northern and western parts of the Peninsula.

[100] Our site visit confirmed photographic and other evidence that the Court had received that there are extensive housing, barns, roads, other structures and forestry right up to and including the crater rims. One prime example of this is the Hilltop Tavern situated just below the crater rim on the Akaroa side, and on the main road between Christchurch and Akaroa. The summit road is another example of a ridge road.

The Landscape Study

[101] The approach used by Boffa Miskell is, to our and the witnesses' knowledge, the first application of the approach we proceed to describe in this country. The resulting Landscape Study report is some 260 pages long, consisting of detailed analysis through three phases. These phases are described as:

- (1) character descriptions;
- (2) landscape values;



(3) management mechanisms.

[102] In Phase 1 the study discusses issues such as the meaning of *landscape* including references to *Landscape Planning Guide – For Peri-urban and Rural Areas* by R Peart. It goes on to identify a range of factors referred to before this Court as the Pigeon Bay factors, being:

- natural science factors – geological, topographical, ecological and dynamic components of the landscape;
- its aesthetic values, including the memorability and naturalness;
- its expressiveness (legibility), how obviously the landscape demonstrates the formative processes leading to it;
- transient values: occasional presence of wildlife; or its values at certain times of the day or of the year;
- whether the values are shared and recognised;
- its value to tangata whenua;
- its historical associations.

[103] It goes on to say:

This landscape assessment reflects this wide-ranging understanding of landscape and as such it incorporates input from specialists in geology, geomorphology, archaeology, tangata whenua and agriculture as well as specialist landscape assessors. Landowner, stakeholder and general public input will also play a significant role.

[104] The study then proceeds to discuss the geological history of the area and there follows a series of figures relating to geology, river environments, landform components, elevation, slope, aspect, soils, and vegetative cover. It then discusses biological history and its influence on the landscape. Interestingly, it demonstrates that the majority of the Peninsula, with the exception of the Lyttelton area, was covered by forestry at the time of European arrival in 1830, and shows the subsequent reduction of that indigenous forestry to cover less than 1-1.5% by 1920.



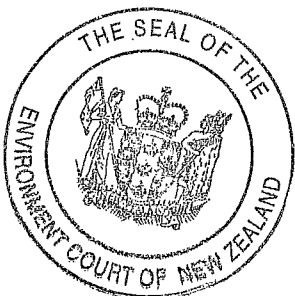
[105] It then addresses archaeology and cultural landscape and, after a chapter on Banks Peninsula agriculture, there follows a series of figures showing the landuse and agribase. Interestingly, 61% is in grassland and a further 25% in tussock and danthonia used for grazing. The accompanying charts demonstrate mature and regenerating native bush in the order of 8% cumulatively. Finally in Phase 1 there is a broad landscape description of the area, showing eight areas, being:

- the Lyttelton volcanics;
- the pre-Lyttelton volcanics;
- the northern Mt Herbert volcanics;
- the southern Mt Herbert volcanics;
- the Ellesmere/Kaitorete Spit;
- the Akaroa volcanics – outer caldera [north];
- the Akaroa volcanics – outer caldera [south];
- the Akaroa volcanics – inner caldera.

[106] Some 31 landscape character areas are then identified. The study notes (at page 40):

After much analysis and consideration of various geomorphological and land typing approaches the study team has returned to a catchment breakdown as the basis for the 'character areas' (Figure 16h). This approach appears to have meaning in terms of settlement pattern and how people orientate within and think about the Peninsula. Wider features and attributes identified in the high level Peninsula-wide analysis and in the land typing work are not lost in this process. One of the joys of GIS technology is that all layers of information are accessible and can be readily re-analysed and attributed to the character areas.

In section E of the report each of these areas are [sic] described. Each description is followed by an evaluation and accompanying maps.



[107] Then follow three maps showing local landscape features and elements, namely: archaeological sites, sacred sites, Ngai Tahu heritage sites and protected trees; areas identified with important natural values; geopreservation sites. These maps complete phase 1 of the study.

[108] The study then addresses matters under Phase 2 – landscape values. It notes (page 46):

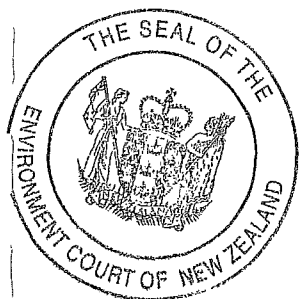
This second phase analyses the landscape description and evaluates its importance. The landscape character area descriptions and evaluations are included in Section E of this report.

The Environment Court and the Study Brief require that these investigations identify:

- *Outstanding natural features and landscapes (section 6(b));*
- *Visual amenity landscapes (section 7(c));*
- *Valued cultural/heritage landscapes (section 6(e) and (f));*
- *Coastal 'natural character' (landscapes section 6(a)).*

This is a complex phase requiring a significant component of judgement by the investigations team. To assist the team, both other experts and the community were consulted on landscape values. Landscape is a multi-dimensional concept and includes natural science, heritage, aesthetic and a number of other values. This study also addresses natural character, heritage landscape, coastal landscapes and visual amenity values. These are discussed below.

[109] The study then goes on at page 48 to discuss legibility and expressiveness. In brief the study team identified the Lyttelton and Akaroa crater rims as exceptional, as it did the volcanic layering of Mt Bradley, Mt Herbert and Mt Evans summits and the upper slopes. It identified Kaitorete Spit as highly legible, particularly where it is actively forming, and also noted several isolated landform features that were highly



expressive of particular volcanic and erosive activity, including selected dykes, domes and vents and various rocky summits. It also notes:

- *the smooth slopes around the outer coast were considered to be expressive but arguably of lesser significance. However, the geologically recent Diamond Harbour slope below Mt Herbert is the most expressive of these volcanic slopes.*

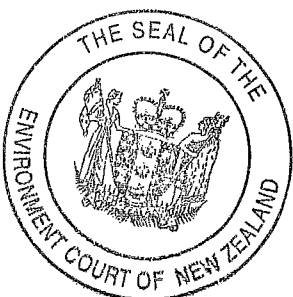
[110] It states later, referring to a map entitled *Legibility* on page 50:

It is the study team's opinion that this map incorporates the areas of the Banks Peninsula landscape that are most expressive of its formation. However, it is necessary to recognise that many other landforms and landcover are expressive of past natural processes and as such the entire peninsula landscape is legible. It is also necessary to recognise that the quality of expressiveness within the landscape is not necessarily vulnerable to all landuse changes ...

[111] The study then examines natural science, aesthetic quality, transient values, shared and recognised values, tangata whenua values, coastal and natural landscape, visual amenity values, heritage values, cultural values and precincts. The end result is a map delineating outstanding natural features and landscapes (figure 28 [our Annexure "2"] and figure 29). There then follows a detailed analysis of the 31 landscape character areas.

[112] Phase 3 goes on to deal with management mechanisms. The Court annexes hereto as "6" page 201 of the report which identifies the values, the areas affected and the desired outcome. In particular we note the comment in relation to outstanding natural features and landscapes:

It is important to note that working farms are part of outstanding landscapes. Continuation of farming activities in these landscapes is therefore anticipated.



[113] Similar tables appear on pages 202 and 203 in respect of coastal natural character landscapes, heritage landscapes, visual amenity landscapes. At page 204 the study goes on to address threats, which include earthworks, tree planting, vegetation removal, buildings and structures. Thereafter a series of tools is developed to address these issues and this has formed the basis of subsequent discussions on the methods and rules to be adopted.

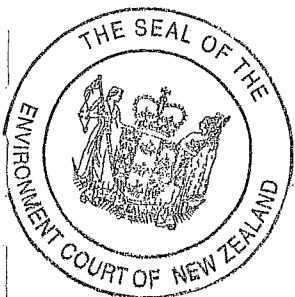
[114] There were a significant number of criticisms of the Boffa Miskell approach, including by Ms Lucas and Ms Briggs. Ms Lucas did not disagree with the methodology used but suggested that a number of various value layers established by Boffa Miskell did not appropriately recognise the values concerned so that those values were under-represented in the resulting maps. Ms Briggs had broader criticisms of the methodology itself which, she claimed, resulted in an under-recognition of the areas to be included in the ONL and CNCL.

Analysis of Landscape Study approach

[115] We have heard the evidence of Mr A M Rackham and Ms Y Pflüger supporting the Landscape Study. We have also considered carefully the evidence of Ms Lucas, Ms Briggs, Mr P Rough, Mr C R Glasson and Dr M L Steven. This moves through a range of parties from those who entirely support the approach of Boffa Miskell (Mr Rough) to those who significantly criticise both the methodology and the outcome (Ms Briggs and from a completely different perspective Dr Steven).

[116] We have reached a clear and unanimous view that we prefer the approach and evidence of the witnesses called by the City Council, particularly Mr Rackham and Ms Pflüger. We consider that the landscape approach adopted is robust and repeatable. While acknowledging that subjective judgments must be made, it has sought in the first instance to obtain the maximum amount of objective information and has canvassed available sources in preparing that information.

[117] Interestingly, no witness opposing the City's position suggested an alternative methodology. It appears that Ms Lucas relied entirely upon the landform characteristics as the basis of her identification of outstanding natural character, whilst acknowledging



that the criteria of Pigeon Bay (and even of the RPS) may require broader consideration. Ms Briggs and Ms Lucas acknowledged that they had not undertaken a section 32 analysis, nor had any other witness supporting their position.

[118] To the extent there is a difference between the expert witnesses, we prefer the evidence of Mr Rackham, Ms Pflüger and Mr Rough wherever there is a conflict. In particular, we are not satisfied that either Ms Lucas or Ms Briggs has adopted any identifiable process to reach their conclusions as to the outstanding natural landscape areas. Mr Rough put the issue in this way (paragraph 11 of rebuttal evidence):

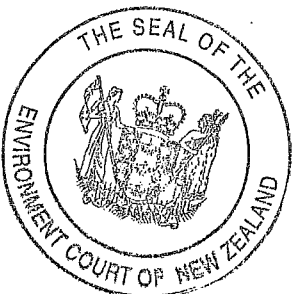
I find it difficult to take the rest of Ms Lucas' evidence seriously. At paragraph 120 she states "the ONL would appropriately be expanded to more comprehensively include the essential attributes to these landscapes." Ms Lucas then refers to her attachment 38 with its extensive "landform based ONL" yet nowhere in her evidence (text or attachments) is reference made to more comprehensive landscape values maps (than contained in the BPLS) which one would have expected her to prepare as a basis for analysing and determining ONL, HL, CNCL and RAL type categories. And by referring to the attachment 38 with its "landformed based ONL" the question needs to be posed whether or not her map of ONL areas was in fact based on all seven criteria for assessing a landscape (as set out at paragraph 35 of her evidence).

[119] In discussing her map 38 (Annexure "3") which she amended by the addition of CNCL, Ms Lucas at page 395 of the transcript noted:

The purple is the framework ONL as I have described in my evidence, that was landform based.

And later at page 403 Ms Lucas said in answer to questions from the Court:

What I have got there Sir is the framework ONL as I have described it – that ONL – it's landform based and that is described there.



[120] We have concluded that Ms Lucas has returned to an assessment of outstanding natural character based on landform without considering a number of other factors which influence whether the landform can properly be described as an *outstanding natural landscape*. We have concluded that Boffa Miskell have properly recognised the limitation of the various value layers and have explicitly undertaken an overall assessment. This is to be contrasted with the approach of Ms Lucas and others, who have criticised the approach of Boffa Miskell but offered no substitute methodology by which they have reached any conclusions. Ms Briggs, for example, has simply identified the various factors and then gone on to criticise the approach of Boffa Miskell. Interestingly, Ms Briggs herself does not appear to attack the methodology directly and states at paragraph 6.27 of her evidence-in-chief:

I agree with these statements extracted from the Study and in particular the need for 'each layer' to include all the relevant information to order to ensure that the analysis is both transparent and explicable. However, in my opinion the maps do not reflect the text, and do not illustrate some of the crucial information from the maps included in Phase 1. Nor do they represent all of the important information gathered during the process, both from the public and from the "experts" commissioned by Boffa Miskell.

[121] There follows a series of criticisms of the various layers adopted by Boffa Miskell and her basic thesis which follows is that Variation 2 fails to meet section 5 and adequately recognise or make provisions for sections 6(a), (b) and (c) in particular. The end result of this approach is her opinion that the Variation should be refused outright (in which case there would be no particular landscape controls) or some form of interim rules put in place until a *proper* investigation has been undertaken.

[122] Given that the methodology adopted by Boffa Miskell in this case was the subject of parties' approval and oversight by the Court as part of the appeals process, it is difficult to understand the basis upon which the parties say the methodology is wrong. For our part we have concluded that the methodology is broad and robust. We have further concluded that it is the most comprehensive approach to a district landscape undertaken in New Zealand to date, a point not disputed by other witnesses.



[123] The suggestion that there is somehow a better process which could be adopted has not been borne out by any evidence given to the Court. No witness has produced an alternative or better methodology than that used. Essentially the argument by various witnesses seems to be that the various value layers they would have produced would have been different to those produced by Boffa Miskell. We have no doubt that this could be the case. As is clear from the evidence of the seven landscape witnesses in this case, there appear to be as many opinions as to what represents outstanding natural landscape and coastal natural character landscapes as there are experts. That very tension is recognised in the study, which has sought to adopt objective information at the phase 1 stage.

[124] At one point Ms Lucas referred to the *essence of landscape* in answer to a question from the Court. Considering the evidence of several of the witnesses overall, including that of Ms Lucas, we conclude that they made intuitive or value judgments that the Landscape Study does not adequately cover the areas they believe are outstanding natural landscapes. In that regard the Court reminds itself of the words of the Court in *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*⁷ where it noted:

Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis.

[125] If that is the case the fact that well-versed experts are in dispute as to whether some of the total area suggested by Ms Lucas is outstanding natural landscape, speaks for itself. For our part we agree that the Banks Peninsula landscape represents an outstanding landscape at a regional scale given the geomorphology of the area. The test is whether it constitutes an *outstanding natural landscape* at a district level, involving elements beyond geomorphology.

[126] We agree with the approach of Boffa Miskell to outstanding natural landscapes and accept that they have adopted a uniform approach over the entire district. Given that there was no argument about particular delineations of ONL on specific sites, we



⁷ C180/1999 at para 99.

accept and prefer the evidence of Mr Rackham and Ms Pflüger as to the ONL depiction. For the sake of clarity, we conclude that Ms Lucas' and even Ms Briggs' suggestion as to the ONL significantly over-represent the ONLs of Banks Peninsula.

[127] Furthermore, we agree with Boffa Miskell's Map 2 as to outstanding natural landscapes identified in the study. In a jurisdictional sense we accept that the Court may be limited to those areas within the scope of the current proceedings. However, we agree that the wider area identified in the study should, after an appropriate process, be incorporated as part of the outstanding natural landscape providing continuity between areas and a balanced approach. We will discuss the applicability of section 293 in due course.

[128] Furthermore, we accept that the delineation of ONL areas by Boffa Miskell in its maps gives a more appropriate or better distinction for addressing methods and rules which avoid inappropriate development within those areas. In addition, we have concluded that Ms Lucas, in delineating the ONL was, among other things, influenced by the ONL based on the content of the rules in the Rural Amenity Landscape. That is an extraneous criterion and not one identified within either the RPS or any of the other decisions which she cited.

[129] Furthermore, we accept that the Boffa Miskell approach has been subject to a rigorous process under both section 32 and Part 2 of the Act, subject to commentary by experts and the general public, and has a wide degree of acceptance within the local community as represented by the various parties before this Court.

[130] We cannot leave this issue without stating our conclusion that this is the most comprehensive analysis of landscape issues this Court has been faced with to date. It uses innovative tools, including the K2Vi overlay mapping system. Furthermore, it provides a consistent and repeatable approach to the various value layers identified. In doing so it seeks to maximise the objective information which can be provided into the layers before reaching a value judgment and integrating those layers into the various categories of ONL, CNCL and RAL.



The Coastal Natural Character Landscapes

[131] We indicate at the outset that we have similarly concluded on the question of CNCLs that the Boffa Miskell report is robust and soundly based. It identified areas fronting some 63% of the coastline, and of varying depth as constituting this category of landscape. Many of the inner bays and much of the Lyttelton and Akaroa harbours were excluded.

[132] Section 6(a) of the Act requires those exercising functions under the Act to recognise and provide for as a matter of national importance:

- (a) *the preservation of the natural character of the coastal environment (including the Coastal Marine Area ... and the protection of [it] from inappropriate subdivision use and development.*

[133] We note that the section does not qualify the phrase *natural character of the coastal environment* with the adjective *outstanding* in the way that natural features and landscapes are qualified in section 6(b). Thus it is necessary under section 6(b) to make a judgment of what is inappropriate development. In the case of the natural character of the coastline, we consider an approach which identifies areas requiring greater protection than the balance as acceptable. It is agreed by the expert witnesses that at least at the land/sea interface of all the coast has a degree of natural character, even if it is limited in highly developed areas to tidal fluctuation.

[134] Mr Rackham noted that if the coastal environment is regarded as that extending from MHWS to the nearest ridgeline, a very large part of Banks Peninsula would be included. The same regulatory regime over the whole area would dilute the importance attached to areas closer to the coast. Mr Rackham told us that the study team had viewed the CNCL as a means of identifying the limit to which the dominance of the coast and coastal processes, patterns and elements was apparent. While the various parties put forward divergent views of where this landward limit was located, we do not understand any party to dissent from the notion of coastal dominance as a means of defining the limits of areas requiring greater protection.



[135] Mr Rackham indicated that in many cases local topography provided little assistance due to the scale of the landforms, although in many instances a distance of some 500 metres from MHWS was the point at which the dominance of the coast was no longer so apparent. Mr Rackham noted however that the study team had been aware of the arbitrariness of the distance chosen and had sought the advice of other parties; as a result of this additional information the CNCL line had been refined, with the result that very few inland boundaries were finally set as far as 500 metres from the coast.

[136] Some areas of the coastline (approximately 37%) are not included in the CNCL because they are of reduced natural character. The main reasons for this include the presence of housing and other built structures, roading, forestry plantations, and, beyond the study area, wharves and marine farms.

Criticism of the CNCL approach

[137] The Boffa Miskell Landscape Study was nevertheless subject to criticisms both on the grounds of identifying too much land and of identifying too little as worthy of additional protection as CNCL. Ms Lucas considered the areas of CNCL as arbitrarily truncated while witnesses called by landowners, particularly Dr Steven and Mr Glasson, urged that the study had lacked sufficient scientific rigour in determining what constituted natural character. We analyse these criticisms in turn.

[138] The area of coast for which Ms Lucas sought CNCL provisions was very extensive (Annexure "4"). Many of the areas identified by Ms Lucas were also covered by ONLs in Annexure 38, including all of the outer bay areas. There were limited areas which were identified as CNCL only, and these included areas in Lyttelton Harbour and on the western side of Port Levy and below the residential area on the eastern side, much of the eastern side of the inside of Pigeon Bay, selected heads of bays on the outer bay and the area of coast on Lake Ellesmere, together with areas around the Akaroa Harbour. Given that this map was only produced to the Court during the hearing, it is difficult to understand the methodology which has been adopted. Other experts were not really in a position to comment on it given the particularly broad scale of the map produced to the Court during the hearing and the lack of any rationale.



[139] Ms Lucas' approach appears to have been to include an area in the coastal natural character landscape unless there was extensive existing modification at the water's edge. Her reasoning for this approach is not explained. In her detailed discussion of the CNCLs Ms Lucas repeatedly refers to the methods and rules and the outcomes which would be achieved in the RAL as a basis for supporting inclusion of various areas within the CNCL. An example of this is paragraph 207 which we suspect discusses the Lyttelton Harbour area:

The District Council proposes that the RAL extends right to MHWS around most of the rural inner harbour. Whilst the associated lands to the coast may not be highly natural, much exhibits important unbuilt and open naturalness that enables the associated important coastal areas below MHWS to exhibit high natural character. With the permitted and controlled activities, I assess that the RAL regime provides inadequate protection for the coastal natural character and natural seascape/landscape values. A CNCL overlay is necessary, in my view.

[140] Ms Lucas appears to approach other areas in similar fashion, producing similarly oracular conclusions. For example she says of the outer area of coast between Port Levy and Pigeon Bay that matters of national importance are inadequately protected by the Council's proposed regime and a redraft is necessary (para 240), and likewise of the lands around Pigeon Bay, where Ms Lucas opines an RAL regime is inadequate and that natural character, natural landscape values along with heritage matters and amenity values *are more appropriately addressed in a redraft*. It is not clear to the Court whether Ms Lucas is seeking a redraft of the RAL methods and rules – to which the Regional Council had agreed in mediation – or as she suggests in a later paragraph (269), a redraft of the Council's landscape delineations.

[141] We note that almost none of the coastline included by Ms Lucas as CNCL, or for that matter much of that included by Boffa Miskell, has been recognised by the Regional Council in its RCEP as requiring particular protection. Those areas identified in the RCEP are all included within the coastal natural character area and/or ONLs proposed by the respondent.



[142] We turn now to the critique of the Boffa Miskell Landscape Study approach of Dr Steven and Mr Glasson. We note that while their detailed evidence refers to specific sites at Tikao Point and the Takamatua Peninsula, their methodological criticisms have implications for the whole CNCL area.

[143] As we understand his evidence, Dr Steven considers that natural character is to be assessed on a purely scientific basis, and located on a scale similar to that produced by Van der Maarel in 1975:

Natural	Near- Natural	Semi- Natural	Agricultural	Near Cultural	Cultural
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He regards level of naturalness as a matter to be determined by scientific analysis uncontaminated by such matters as public opinion.

[144] In broad terms he was critical of the Landscape Study for conflating two judgments, a judgment as to level of naturalness, which he considered should be made scientifically and objectively according to a pre-determined set of scientific criteria, and a judgment as to importance or value or significance, based on the affective aspects of the experience of nature. To that extent we suspect that he considers the approach of the Court following *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*⁸ inadequate in this respect also.

[145] We are concerned that the application of a scale like that set out by Van der Maarel may lead to an over-emphasis on indigenous vegetation cover as the *sine qua non* for a level of natural character requiring protection. While vegetation cover is important, it cannot be the only criterion for assessing natural character. Depending on the individual situation, landforms, tidal actions, and the presence of various fauna all contribute to the assessment. We note further that vegetative cover is often a



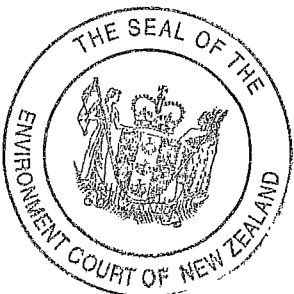
consequence of land management practice and changes to that practice can induce a renaissance of native plants. After all, the evidence in this case was that much present indigenous vegetation results from the reversion of agricultural land to nature which has occurred in the last 80 or so years.

[146] A further consequence of the adoption of the Van der Maarel scale is that land modified for agriculture would have some difficulty in reaching a level of naturalness qualifying for protection. Yet there are unchallenged provisions of the Plan stating that agricultural activities are a major contributor to the outstanding natural character of the landscape (see our earlier discussion).

[147] For us the important point is that as far as deciding an appropriate planning regime is concerned, Dr Steven concedes a second judgment is required. By producing a series of overlays which include elements of both scientific and aesthetic analysis Boffa Miskell have achieved a degree of separation between scientific and value-laden judgments. While Dr Steven was critical of the use of context as a means of judging the level of naturalness he agreed that context could be used for assessing the **value** of the naturalness present. We consider that a broad judgment is appropriately used for deciding whether an area of land in the coastal environment is worthy of greater protection than that afforded by the rules of the RAL, including both scientific and affective elements.

[148] Various of the farmers giving evidence were concerned at the effect of CNCLs on their own land use. We accept that the agreement of those farmers to the mediated position is one which can have particular ramifications for them. Nevertheless, none of those witnesses demurred from the mediated agreement and all were prepared to live with it.

[149] In the end, whether land should be included in the CNCL is a value judgement. Overall in broad terms we accept the approach of Mr Rackham and Ms Pflüger. The approach of various farming witnesses to which we have referred confirms that view. We will consider in a separate section of this decision the delineation of the landscape on the particular properties of concern to Dr Steven and Mr Glasson, the Pacific Investment's property on Tikao Point and the Zias property on the Takamatua Peninsula.



We note however that the respective landscape experts concede that coastal natural character exists on both these properties. The dispute is about its landward extent.

Continuing analysis of Proposed Plan provisions

[150] Having reached this point, we must now consider:

- (a) the delineation of CNCL on the Tikao and Takamatua Headlands;
- (b) the disputes as to provisions to be altered or inserted in the Proposed Plan.

We will of course discuss these provisions keeping in mind the requirement to obtain the better outcome commensurate with giving effect to the Act and the NZCPS, being consistent with the RPS and RCEP and achieving and implementing the objectives and policies of the Proposed Plan.

[151] Once we have discussed the detailed provisions we intend to consider the tentative results in terms of section 32 and Part 2 of the Act. We will then reach a conclusion as to the better provisions to achieve sustainable management as that term is used in Part 2 of the Act.

Delineation of CNCL on Tikao and Takamatua

[152] The only remaining issue as to delineation relates to two site-specific issues. Both were subject to review and reduction of CNCL lines by Ms Pflüger as a result of ground-truthing. Both appellants remain dissatisfied with the areas covered by CNCL on their respective properties.

Tikao Headland

[153] Tikao Headland is a prominent headland on the western side of Akaroa Harbour. Together with the Takamatua Headland opposite on the eastern side, it is described by Ms Pflüger as a gatepost separating the inner and outer harbours. Petit Carenage Bay lies to the north, and Tikao Bay to the south, so the landform is surrounded by water on three sides.

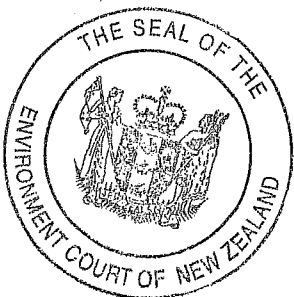


[154] The land rises steeply from the water to a contour of around 100 metres above sea level. From that point the gradient of the land eases, rising in slightly undulating fashion to a main ridge 126 metres above sea level. West of the high point of the ridge, the land drops slightly to a point where three water tanks are located. The steep coastal slopes have a covering of regenerating native species, chiefly kanuka, but also including mahoe, ribbonwood, lowland totara, matai and kahikatea. The gentler slopes at the top, which from a distance appear almost flat, are in pastoral use.

[155] Pacific Investments acknowledges that the land/sea interface has coastal natural character. Mr Cleary submits however that the coastal natural character overlay should extend only over the steeper coastal slopes with perhaps a small buffer beyond. Dr Steven's evidence was that the only defensible demarcation line was at the clearly discernable point where the steep coastal slopes gave way to gently rolling land that is suitable for cultivation. He noted that this change in the terrain was also marked by a change in vegetative cover. The succession of regenerating native vegetation on the steep slopes gives way to managed pasture; whilst gorse present on some of the steeper slopes was likely to act as a nurse cover for native vegetation, woody species attempting to establish on the pasture were controlled by spraying.

[156] Dr Steven drew attention to a solitary kanuka visible on the south-east facing slopes of the headland. He considered that the contour at which this tree stands would be an appropriate contour at which to draw the CNCL boundary over the whole site. He told us that such a boundary would allow for marginal increase in upslope regeneration of native species, and would complete the impression of fully vegetated slopes when viewed from the sea or from Akaroa.

[157] We accept that natural character is higher on the steep coastal slopes than on other parts of the Pacific Investment's site. We did not understand either Mr Rackham or Ms Pflüger to deny this. Rather, it was their evidence that Tikao Headland was perceived as a whole, the coastal slopes and wide ridge summit together, and that the whole was an important landform. Ms Pflüger described the headland as an important natural coastal landform in a prominent location, surrounded by the harbour on three sides. She concluded that viewed as a whole it contributed to natural character. Mr



Rackham's opinion was that to use the bush edge for delineation purposes and to ignore the strong Tikao landform would not achieve protection of high natural character within the Tikao coastal environment. Our viewing of the area from the pastoral area of the land in sight and sound of the sea and from the harbour enabled us to understand Mr Rackham and Ms Pflüger's evidence.

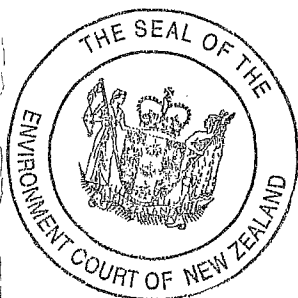
[158] In any case we would have been inclined to prefer the evidence of these witnesses to that of Dr Steven. But we also record that Dr Steven made a significant concession in answer to questions from the Court. Dr Steven had been discussing views of the site from the sea, and had confirmed that the approximate position of the CNCL line would be around the contour of the single kanuka tree. The transcript at this point reads (at page 779):

HIS HONOUR: So a building built just beyond that point would be clearly visible there?

DR STEVEN: Oh of course, sir, and I wouldn't support such a location for a dwelling.

We conclude that the CNCL line needs to be drawn further inland than the line put forward by Dr Steven, and to cover a greater proportion of the pastoral land, since the rules of the RAL Zone would allow a dwelling to be located in that position provided site density standards were complied with.

[159] The only alternative to the line of Dr Steven was that put forward by Ms Pflüger. In undertaking an on-site inspection to re-evaluate the location of the CNCL, Ms Pflüger had noted that coastal influence was confined to the coastal slopes and higher ridges of the headland, since the land drops into a dip between the two clusters of water tanks. As a consequence Ms Pflüger's report recommended that the demarcation line be moved some 50 metres east. However, Ms Pflüger's map, appended as Annexure "7" shows a move to the west. We note that the legend is incorrect as far as the CNCL line is concerned. We confirm that the appropriate position is the more easterly.



The Zias site

[160] The Takamatua Headland acts as the eastern portal to the inner harbour, and rises to a height of 209 metres. Zias Investment Trust owns a site of some 51 hectares on the south-western corner of Takamatua hill which forms the northern headland of the embayment for Akaroa township. The site rises to approximately 180 metres above sea level at its highest point along its boundary on the west side of the hill.

[161] The landform has similarities to that of Tikao Point. The land rises steeply to a height of between 60 and 100 metres above sea level and then slopes more gently towards the summit. About 20% of the site is covered by regenerating hardwood species, amongst which kanuka is prominent, whilst ngaio, mahoe and kohuhu also form part of the canopy. A similar proportion of the property is in open pasture, more or less free from the gorse scrub and shrubland which dominates the remainder.

[162] The northern area of the site overlooks and falls towards Lushington Bay. Immediately beyond the northern boundary are a dwelling and a substantial area of plantation forestry. Because of these modifications the Boffa Miskell study excludes this coastal area from the CNCL. Unfortunately some parts of the excluded area are apparently geologically unstable and therefore unsuitable for residential development.

[163] Initially Zias advanced through counsel and witnesses the proposition that the location of the CNCL line coupled with the instability of the remainder of its land effectively precluded development on the entire property. Ms Borthwick suggested that if the provision was unchanged, this left the Plan open to challenge on the basis that no reasonable use had been provided for the Zias land. However the influence that such a proposition might have had on the outcome was diminished by Mr Glasson's acknowledgement in cross-examination that there were *less desirable sites* to build on in the Zias property which the Council proposes as Rural Amenity Landscape. We acknowledge, as both Mr Glasson and Mr Garland indicated, that some potential sites in the RAL would be highly visible.

[164] At first sight, the issues separating the parties on the appropriate demarcation line on this site are similar to those on Tikao Point. There are steep slopes rising from

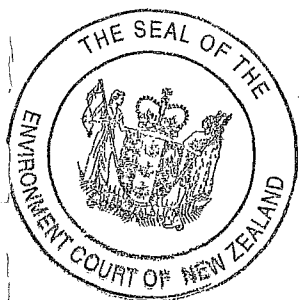


the harbour, topped by more gently rising land. It is the coastal slopes which contain most of the regenerating native vegetation. Mr Glasson advocated an approach to the evaluation of natural character that was theoretically very similar to that of Dr Steven. The difference in Zias' case is that on parts of the gentler land the considerable spread of gorse, through which we picked our way on the site visit, demonstrates the potential this land has for eventual reversion to indigenous bush cover.

[165] Mr Glasson's evidence was basically that the CNCL area should be confined to the coastal slopes which contained the coastal vegetation, whilst Ms Pflüger considered the whole southern portion of the site, south of the ridge which climbs from the southern extremity of Lushington Bay, should be included. She noted that the undeveloped coastal slopes of the southern part of the headland provided an important foil to the developed areas of Takamatua Bay and Akaroa township, and made an important contribution to the quality of coastal harbour landscape. The landform itself was prominent, in her opinion.

[166] In practice the landscape lines drawn by Ms Pflüger and Mr Glasson are not that far apart. They are shown on Mr Glasson's aerial photograph appended as Annexure "8". Mr Glasson includes the coastal slopes descending into the southern part of Lushington Bay within the CNCL; Ms Pflüger does not. She, as we have indicated, draws the line on the ridge which rises from the southern point of that bay. Where the lines of Pflüger and Glasson meet they run together around the top of the steeper vegetated coastal slopes in a south-easterly direction to a point that is about half-way along the east-west axis of the site. At that point Ms Pflüger's line runs across paddock in an easterly and north-easterly direction to the easternmost point of the site. Mr Glasson's line runs south, descending across vegetated areas of the site, and then in a south-westerly direction, before turning through 180 degrees to enclose what was described as a *tear drop* of less steep, grassed land on the south-west promontory of the site and reaching the south-eastern boundary of the site well south of the southern limit proposed by Ms Pflüger.

[167] Zias did not conceal its purpose of including the tear-drop within the RAL and achieving a potential building site on part of the south-western promontory of the



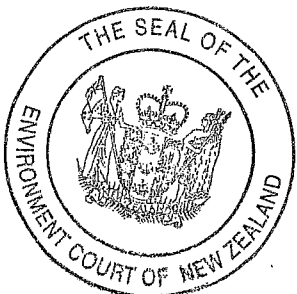
headland. We note that if we were to accept the Glasson line, access to the tear-drop building site would be over an existing four wheel drive track through an area which is agreed by all parties to be well within the CNCL. Mr Glasson's aerial photograph marked with the demarcation lines proposed by himself and Ms Pflüger, and with areas of likely land instability, also shows that this track, both on entering the agreed CNCL from the north, and on its approach to the potential building platform, would pass through geologically unstable areas. We anticipate, both from Mr Glasson's evidence and from our site visit that substantial upgrading to the track would be necessary before this track could be used to access a dwelling.

[168] As in the case of Tikao Point, we accept that the coastal slopes, especially where native species have regenerated, have the highest natural values on the site. But the landform itself is also important. Ms Pflüger told us that it is highly visible from elevated points around the crater rim and low-lying parts of Akaroa township and the water. She considered the headland was a prominent landform which contributes significantly to the landscape quality of the inner and outer harbour.

[169] We do not think Mr Glasson disagrees with that opinion. He described the landscape between Duvauchelle and Akaroa as a modified landscape of pastoral grazing, settlements and housing, yet he considered that it still possesses a moderate to high degree of natural character, because of the rural character and openness of the landscape and landform composition. When discussing this site he said that much of the site is of natural character but at the lower end of high, given that it has been modified through fire and grazing.

[170] We consider it would be inconsistent with that evaluation to suggest that only land which is now covered by native vegetation warrants CNCL overlay, particularly when the gorse-covered areas are likely to be in transition to a greater degree of indigenous cover.

[171] Since Zias have asked us to do so we consider particularly the locations of its two proposed building sites and whether they should be included within the RAL, so that resource consent for development would be easier to obtain. We indicate that nothing in this judgment should be read as determining the outcome of a specific



resource consent application, where the consent authority would be required to consider both the particular proposal and any mitigation measures the applicant was willing to offer.

[172] Ms Pflüger's report on the site, attached to her evidence, indicates that site 2 is on the flat summit of a prominent ridge which visually contains French Bay and Children's Bay around Akaroa township. She considered that a building on the site would inevitably be prominent when viewed from the harbour and parts of Akaroa. When questioned about the potential of kanuka growing on the slopes to shield the site, she said that while she had not examined visibility from Akaroa in detail, the visibility of Akaroa from the site suggested that there would also be views from the township into the site.

[173] We consider the size of the south-western promontory is such that it is perceived as a coastal character area as a whole. It is too small to be divided into character units. The *tear-drop* RAL proposed by Mr Glasson appears to us simply a device to facilitate development in a prominent area. The proximity of surrounding kanuka in the grazed area and the prominent landform give this part of the site a high degree of natural character. The sea on three sides results necessarily in that character also being coastal. We conclude this site is better included in the CNCL given the coastal and indigenous vegetation nature of the site.

[174] We prefer to exclude the Lushington Bay area from the CNCL, as did Ms Pflüger. The most obvious demarcation line is to follow the ridge to the south of the Bay. The other building site proposed by Zias is described by Ms Pflüger as on that ridgeline. While that ridgeline is prominent, we consider the natural character to the north of that line is diminished by the presence of housing and commercial forestry in and around Lushington Bay. That appears to bring the northern part of Zias proposed site 1 within the RAL. In any event, clearly land in close proximity to site 1 will be in the RAL and thus may be available for development according to the permitted site standard of one dwelling per forty hectares. We confirm the demarcation line between CNCL and RAL on the Zias land as following the ridge and adjacent to the native vegetation. This may require a minor adjustment of Ms Pflüger's demarcation line which seems to follow the gully line to the north of the ridge.



[175] We note that on both the Pacific Investments and the Zias properties the delineations we have approved affect the location but not the extent of permitted residential development on the site. In the RAL dwellings are permitted at a density of one per 40 hectares. Where a site is partly within the RAL and partly within CNCL, provided the development occurs within the RAL, land contained within the CNCL may be used to satisfy the density requirement. The total area of the Zias property is 51 hectares; that of the Pacific Investments 48 hectares. In each case the owners of the land could construct a single dwelling on the site as a permitted activity provided it is located in the RAL area if the provisions remain unchanged.

Plan Provisions

[176] Evidence and submissions were also given on a number of specific Plan provisions. The major one related to lot sizes in CNCL and RAL and the status of building activity. We deal with the major issues in turn.

Main Ridgelines

[177] The first was the question of buildings located near Main Ridgelines. The Court has concerns over proposed rule 3.8 of Chapter 19 (the Rural Zone) which reads:

Where buildings are not located within 100m of an Existing Building Cluster in a Rural Amenity Landscape, they shall be located a minimum of 20 vertical metres, measured at right angles from the highest point of the axis of any Main Ridgeline as identified on the Planning Maps.

[178] This rule gave particular concern to the Court, particularly as to the wording used and the clarity of meaning.

[179] There are many main ridgelines *identified on the planning maps*. Each has a highest point on its axis. Thus the condition requires buildings to be located a minimum of 20 metres vertically below the lowest of these highest points. This is an elevation that could be defined. It is likely to exceed 500 masl and will be well above



many portions of all main ridgelines. We conclude that the intention of the rule is to locate future buildings on sites, such that the buildings do not intrude into skylines. Accordingly the rule could properly read:

Where new buildings are to be located on a main ridge line as identified on the planning maps but not within 100 metres of an existing building cluster in a rural amenity landscape, they shall have a building platform at an elevation at least 20 metres below that of the adjacent main ridge line.

This wording can be considered and adjusted if necessary.

Reflectivity

[180] This was an issue raised by the Regional Council and evidence was given as to the distinction between reflectance and reflectivity. As a result of concerns by the Court in this regard, Commissioner Sutherland formulated a proposition as to the distinctions between reflectance and reflectivity. No party or witness disputed that distinction. It was suggested by the Regional Council in closing that the relevant rule (3.9) could be amended by removing the word *colour*, so that it read:

The reflectivity of buildings and structures shall be no greater than 40% except for buildings located within an existing building cluster.

We agree with this amendment, and final wording can be adjusted if necessary.

Building clusters

[181] In respect of the term *building cluster* itself, there was significant criticism that this could constitute a stock yard and a small shed. Mr Carranceja acknowledged this concern and suggested that the phrase *stock yard* be removed from the definition of *existing building cluster*. Accordingly it would read:

Means either a homestead/dwelling in existence at the (date on which the clause becomes operative) or farm accessory buildings in existence at (insert date on



which the clause becomes operative) and which include at least two of the following: animal handling shed, implement shed, hay barn or other major farm building.

We agree with this amendment to the definition, and final wording can be adjusted if necessary.

Visibility

[182] Mr Collins gave detailed evidence about visibility from public places as a criterion for the activity status of development of homesteads. He had submitted on Variation 2 seeking that dwellings on land visible from public places should be classified as restricted discretionary activities. We conclude that his proposition is unrealistic. We are advised that there are a significant number of paper roads located over Banks Peninsula, and most of Banks Peninsula is visible from the sea. On this basis almost every property would be subject to constraint, and difficult and protracted evidence relating to visibility, landscaping, vegetation and the like would be necessary to determine the activity status of proposals. In our view such a criterion adds an unnecessary complication to the administration of the Plan and would add significant costs to parties seeking consent for little gain.

The minimum lot size for discretionary activity

[183] The minimum lot size for subdivision or for building on existing lots as a discretionary activity in the RAL is currently four hectares or one hectare provided the balance to four hectares is covenanted below the 160 contour. This is a full discretionary activity. Mr Rackham for the City Council, agreed that a higher minimum level of some ten hectares was desirable, as did a number of other witnesses. Lot size was described as a crude but effective mechanism to avoid adverse cumulative effects of intensity. In this regard some statistics provided give an indication of the level of this issue on Banks Peninsula.

[184] To allow a subdivision to achieve an average of 10 hectares would require a minimum of 20 hectares. There are 176 lots over 100 hectares, 379 between 40 and



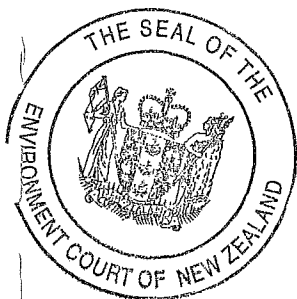
100 hectares, 550 between 20 and 40 hectares, and 2,229 between 4 and 20 hectares. In short, if a 10 hectare average was adopted for subdivision this would provide at most only for a further 1,105 lots. There would also be a similar provision of a 10 hectare minimum or one hectare with the balance to 10 hectares covenanted (which would provide opportunities for development on currently undeveloped lots between four and 20 hectares. Given that it would be a full discretionary activity and that the assessment criteria are extensive, it could not be assumed that all of the lots large enough for a number of four hectare allotments would necessarily obtain consent for subdivision. Nevertheless, a four hectare minimum lot size would represent approximately a doubling of the numbers of properties which could be developed.

[185] Given the limited number of properties on Banks Peninsula and the resident population thereof (less than 5,000 and probably in the vicinity of 6,000-8,000 houses), such a level of development at four hectares minimum might create an adverse effect, particularly within the RAL. We conclude that this could be addressed by fixing ten hectares as the minimum lot size for subdivision and for the construction of a dwelling on an existing title as a discretionary activity.

[186] Given that we can see no difficulty with retaining the one hectare lot minimum provided the balance is covenanted, the minimum size allotment for a controlled activity would be at the one hectare and the remainder of the 40 hectares under 160 masl covenanted. The limits for a full discretionary activity would be one hectare and the remainder of the 10 hectares covenanted (below the 160 contour). This would mean that if a lot of 40 hectares was to be subdivided as a discretionary activity with a one hectare lot, a minimum of nine hectares would need to be covenanted, or as a controlled activity a minimum of 39 hectares. Such a level of control is, in our view, appropriate.

Activity status in ONL/CNCL areas

[187] It was argued by Ms Borthwick and Mr Cleary that the current rules for buildings outside a building cluster within the CNCL were far too severe. They suggested the status of activities should be full discretionary rather than non-complying. When pressed, however, Mr Cleary did not suggest that buildings on the coastal margin, for example the area of indigenous bush on the Tikao steep slope, should be the subject



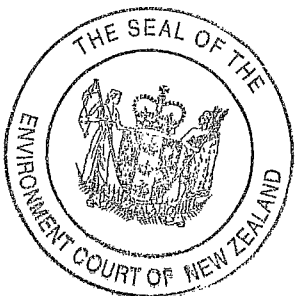
of building consents. He agreed that it was not generally appropriate that buildings be placed in such an area.

[188] In essence we understood the arguments for both Tikaō and Takamatua to be that if landward limits were fixed as suggested by Boffa Miskell, then there were areas within the upper headland which might be suitable for house sites but they would be included in the CNCL. As a basis for these arguments these parties rely on the statements in the Banks Peninsula Landscape Study and in the evidence of Mr Rackham and Ms Rykers that there would be some areas in the CNCL capable of absorbing change. However both Ms Rykers and Mr Rackham maintained their position in cross-examination that within the area they had designated CNCL development was generally not appropriate.

[189] In such circumstances we conclude it reasonable for any proposal for residential development in the CNCL to be required to show that it can be distinguished from the generality of cases. That is, non-complying status is not unreasonable.

[190] We accept that it might be possible to frame discretionary criteria in such a way as to make it clear that consent would rarely be granted (see *Scurr v Queenstown Lakes District Council*⁹). However the Plan is not currently designed in this way. It essentially seeks to adopt progressive discouragement of various activities, depending on the type of activity and its location. Thus there is a hierarchy from permitted activities, i.e. one in 40 hectares in the RAL zone below 160 metre contour and more than 40 metres from the MHWS to non-complying where the activity is within an ONL or CNCL outside a building cluster. The exception for small-scale buildings within farm clusters is designed to recognise the reality of rural Banks Peninsula as a working landscape while ensuring that such construction as that occasions does not become sprawling or sporadic.

[191] We accept the submissions of the respondent Council and the evidence of their witnesses that providing for residential activity within the CNCL or ONL areas outside building clusters would not give appropriate signals to the public as to the Proposed



⁹ C60/2005.

Plan's objectives and policies. The Proposed Plan seeks essentially to encourage new development, firstly within settlement areas and secondly at low intensity through the RAL. Thereafter it seeks to encourage buildings within building clusters, particularly if they are near a main ridgeline or within an ONL or CNCL area. Thereafter buildings require consent as full discretionary activities at higher intensities in the RAL and as non-complying activities within the ONL and CNCL.

[192] We have concluded this approach is entirely appropriate in the case of both Tikao and Takamatua. The entire sites are no longer specified as CNCL areas. On both sites there is a range of appropriate positions where a house could be built provided it met the other standards of the Plan within the RAL area. In both cases those house sites would still have views to the sea, although they would not have a level of coastal dominance that a site within the CNCL would obtain.

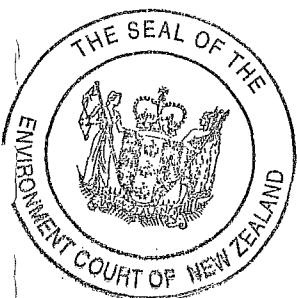
Is there jurisdiction to adopt greater controls on subdivision and dwellings?

[193] We have concluded that the relief sought in Ms Briggs' appeal and evidence, including that adopted for Mr Collins, would provide jurisdiction for additional controls. Item (iii) of the relief seeks:

A series of new rural zones which reflect the most efficient and effective management of natural and physical resources and provide for the appropriate subdivision of the rural areas.

[194] Although that discusses rural zones, it also appears to include the question of the contents of the Rural Zone rules. We did not understand the Regional Council or any other party to contend that there was not such jurisdiction, given the imposition of the RAL which clearly encapsulated the type of rural zone envisaged. We do not consider that, given the broad interpretation of the word *zone*, this could not apply to the RAL nor that those words *including appropriate subdivision* would not include the control over dwelling density within the area.

[195] Such an outcome was put to a number of farming witnesses who acknowledged that their desire was to be able to provide extra dwellings from time to time, or



occasionally subdivision as required. They acknowledged, however, that it was not their intention to provide for wide-scale subdivisional development and that the type of provision the Court was suggesting could be a realistic option.

[196] We conclude this approach would also provide an incentive for parties to seek controlled activity status by being able to covenant the balance to 40 hectares in preference to a discretionary activity with a smaller covenanted area provided. In that sense we see some benefit from a ten hectare minimum lot (or one plus nine covenanted) in terms of achieving the general objectives for the Rural Zone, particularly as they relate to the high values of landscape and the threats of over-intensification. It will provide some real protection against multiple subdivision, which appears to be at the heart of many of the concerns of the witnesses and will limit the number of properties which are able to subdivide.

[197] On the other hand, the amended provisions we propose would continue to provide flexibility for the farming community. We do not suggest final wording at this stage and leave it to the parties to see if that wording can be agreed. It seems that similar wording to that for controlled activities but with a provision for at least 10 hectares average per lot on subdivision and for a minimum covenanted area of nine hectares plus a minimum of one hectare for a dwelling would achieve the overall outcome sought.

Other concerns

[198] Mr Collins and others were concerned as to whether particular rules were appropriate given the directions of the policies and objectives. In particular there was concern about dwellings as permitted in the RAL at certain densities and how this or the 40 metre set-back of buildings from the MHWS preserved the natural character of the coastal environment or avoided sprawling or sporadic subdivision (for example).

[199] Underlying all this evidence are paradigms as to what is inappropriate or acceptable. No witness was prepared to set out for us many examples of inappropriate development either in evidence-in-chief or when asked by the Court. A particular house above Diamond Harbour was often referred to. This was the subject of a resource



consent not appealed to this Court. One or two other examples were also subject to resource consents. It was not suggested that any of the many farm houses on spurs or ridges were inappropriate. The existing environment is subject to numerous examples of building and forestry which do not meet the ONL provisions yet are within areas identified by Ms Briggs and Ms Lucas as outstanding natural landscapes.

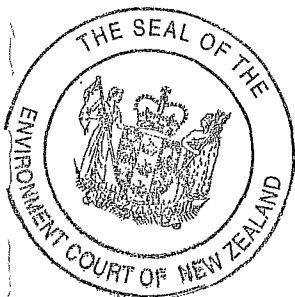
[200] We are satisfied that the RAL provisions will encourage an improvement in the location of buildings and possibly their design in terms of the Plan and maintain or enhance the Peninsula's visual and/or landscape values. We reach this conclusion because the Plan encourages development in less sensitive locations and uses the consent process as an opportunity to achieve design improvement and mitigation as appropriate. Where appropriate design and/or mitigation cannot be achieved, refusal of consent remains an option.

The integrated assessment of the Plan provisions in terms of section 32 and Part 2 of the Act

[201] As is clear from the Court's deliberations to this point, we have concluded that the ONL and CNCL approach of Boffa Miskell better achieves the objectives of the Plan and the Act than does the approach of the other landscape and planning witnesses. It is more effective and efficient in defining those areas which are of particular importance while generally permitting the conduct of farming activities within the rural area.

[202] Issues of general adverse effect, intensity and cumulative effect are addressed by density provisions and particular controls which encourage the placement of buildings within existing building clusters. A general discretion is granted to allow buildings at higher density, taking into account potential for environmental compensation, and encouraging the covenanting of balance areas to achieve density outcomes.

[203] In that regard it appears to us that the mediated solution, largely supported by this Court, recognises a fair assessment of the various costs and benefits and appropriateness of the provisions. Given the wide range of stakeholders concerned, issues of the costs and benefits of the various provisions, and their effectiveness and efficiency are tied up with achieving a flexibility of operation for the farming



environment while avoiding significant intensification of residential activity and forestry development in the rural area, particularly in those areas of particular importance.

[204] We consider the specific criteria of section 32 pre the 2003 amendment.

Efficiency and effectiveness

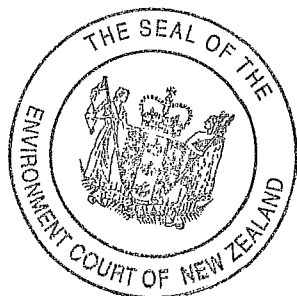
[205] Balanced against the most economically beneficial use for rural land is the requirement to protect the outstanding natural character, natural coastal character and amenity values of the Peninsula. To achieve this the controls need to be cost-effective and targeted. By identifying particularly valuable landscapes the methods and rules give higher priority to protection than farming flexibility in those landscapes. This is justified if public values are preserved while costs to individuals are kept to the minimum necessary to achieve that outcome. Provisions such as those for building clusters achieve an appropriate balance.

[206] In other rural areas the RAL controls seek to encourage appropriate outcomes by a hierarchy of consent requirements and by permitted and acceptable levels of activity.

[207] We are encouraged by the wide range of supporters of these provisions, including the farming community most affected, to the view that this delicate balance between landscape protection and the enablement of rural activity has been achieved.

Costs and benefits

[208] In terms of costs and benefits, we see that the Plan is particularly seeking to avoid development in those areas where there is the greatest potential for adverse effect in terms of the RPS. In this regard the benefits of the specific policies are seen as particularly focussed around those areas while providing generally for the conduct of farming activity within the balance of the Rural Zone. The Plan adopts a level of intervention which is appropriate to the particular adverse effects, recognising particularly the potential for building and forestry within the critical areas of the crater rim, indigenous vegetation areas and other areas identified as outstanding natural landscapes. It has taken an approach in respect of the main ridgelines which recognises



that there is the potential for structures in particular to have an impact upon those and that these effects can be appropriately limited by main ridgeline controls within the RAL area. Again the Plan recognises that particular impacts of, for example, forestry on coastal natural character and buildings can be regulated in a number of areas by controls within the RAL. The Plan applies a CNCL only where greater protection is justified in the coastal margin.

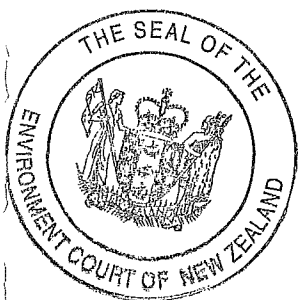
[209] Federated Farmers and a number of individual landowners submitted that all the costs of regulation fell on them. We have concluded that there are benefits to landowners from the Proposed Plan Variation 2. Essentially, activity in the less sensitive areas is encouraged, including buildings and forestry. Farming is a permitted activity in all rural areas and is not directly controlled except where additional buildings are required or exotic forestry is proposed.

[210] On the other hand the public has the benefit of a managed and well stewarded rural area where the natural features and geomorphology will continue to be accessible and visible. Given the high degree of *buy in* by the community, the Plan represents a workable and cost effective interpretation of the Act and other documents. It allows public and private interests to co-exist and work together for sustainable management.

More appropriate

[211] Many concerns were based on a fear of developers subdividing the Peninsula into large residential lots. There were frequent references to Queenstown. There is precious little evidence of such an approach on Banks Peninsula. The provisions we have adopted on lot size and subdivision would make multiple lot development below a minimum lot size of 40 hectares difficult and subject to a full discretionary consent even in the RAL.

[212] The very strong landforms will remain significant in almost all circumstances. Most houses permitted under the Proposed Plan will be absorbed due to the sheer scale of the spurs and ridges. We see little risk of adverse effects. Even then the effects would be small in themselves and effects would be considered in any case requiring a resource consent. We are satisfied that at the permitted activity level for houses or



forestry in RAL the effects over the life of the Plan would be minimal. We are strengthened in this view by the adoption of a ten hectare minimum building lot density for discretionary activity consents and the limited number of lots that can utilise such subdivision prospects.

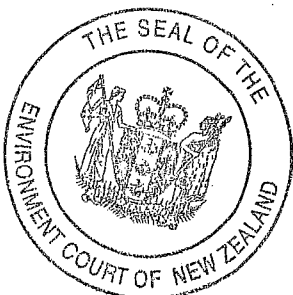
Part 2

[213] Overall we conclude that the provisions as now altered by the Court would better meet the purpose of the Act than the various alternatives. It is not possible for us to undertake analysis of every single permutation that would be possible and we conclude that that is not the purpose of section 32 or Part 2 that we should do so. In the end the objective is to achieve sustainable management as that term is described in the Act, and Part 2 of the Act is enabling in that regard.

[214] We see the parties before the Court as generally representative of those the Act requires to be enabled. Most of those have accepted that the mediated agreements achieve an enabling of their positions while recognising the valid interests of the other groups. In that regard it recognises a compromise of the various parties' positions. In itself that suggests sustainable management, although that cannot be the only test.

[215] Having regard to the settled objectives and policies of the Plan, we have concluded that the methods and rules achieve an appropriate balance and that the delineation of the areas marked as ONL and CNCL has been subject to a robust analysis. Although we would have preferred that all the areas identified as ONL and CNCL by the Boffa Miskell Landscape Study be included within this Plan, we accept that a number of areas are outside the scope of the variation and/or appeals. In that regard it is almost inevitable that a further variation would be required so these areas can be included.

[216] Nevertheless, we have concluded that with the adjustments we have discussed and subject to the alterations of the CNCL lines in respect of the Takamatua area discussed earlier, the provisions of the Plan are appropriate with ONL/CNCL delineations as described by Ms Pflüger and Mr Rackham.

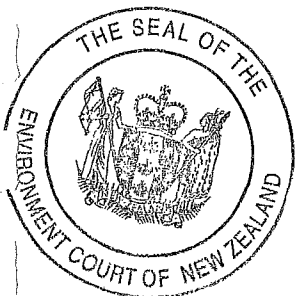


The scope of submissions, and the role and admissibility of expert evidence before the Court

[217] Jurisdictional issues were raised at an early stage after appeals were filed and pre-hearing conferences held and remained a significant issue. Given the strong views of the parties and the costs to all parties of the process to date, we concluded we should firstly address matters on the merits before considering jurisdictional matters. Nevertheless, we acknowledge the challenges to the position of the Regional Council and the evidence of Ms Lucas. Also raised was whether Ms Briggs and Mr Collins could properly appear before the Court as experts given that they are appellants. We now deal with these issues.

[218] As discussed, the appeals of the Regional Council did not address either the delineation of ONL or CNCL. Their appeal related to methods and rules and was adequately addressed in terms of the mediated settlement. This gives rise to the question as to what role Ms Lucas was fulfilling in preparing and presenting her evidence to this Court. Ms Lucas did not feel that she was constrained by the appeal of the Regional Council and prepared her evidence on a wider basis as to what she considered the appropriate ONL and CNCL were without regard to jurisdictional issues before this Court. The statement of issues of the Regional Council filed in October 2007 made it clear that it was the position of the lines which was in dispute. However Ms Lucas justified many of her opinions on the basis that the RAL rules were not sufficient to address issues arising in those areas.

[219] It transpired that Ms Lucas had been briefed originally for the Regional Council at the stage of the submissions and decision by Council. She had advanced evidence, we gather, similar to that produced to this Court. After appeal Ms Lucas was aware of the Court process and was in fact retained by the Christchurch City Council to give them advice on the tenderers for the Landscape Study. She advised the City Council and, we understand, recommended the appointment of Boffa Miskell based upon the methodology proposed in their tender. Subsequently, throughout the process, she advised the City Council and made various comments both to the City Council and Boffa Miskell in respect of the proposed Landscape Study. In her own words Ms Lucas accepts that the majority of her recommendations to the City were adopted.



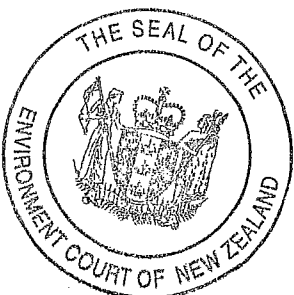
Importantly, her comments in respect of the extent of the ONL and CNCL areas were not adopted by Boffa Miskell, at least not in full, and the report was produced in May 2007.

[220] We accept that the extent of the ONLs and CNCLs sought by the Regional Council were not made clear until the circulation of Ms Lucas' rebuttal evidence in December 2007. Prior to that, reference to map 38 in her evidence-in-chief would have done little to assist the parties in understanding the extent of her concerns, although it would have been clear that she sought coverage significantly greater than the ONLs proposed by Boffa Miskell. That evidence was circulated on or about 21 November 2007.

[221] We were told by Mr Hofmans that the Council received its last invoice from Ms Lucas in June 2007. Subsequently she had conversations with the Regional Council some time in June or July. Later it was suggested it may have been August when the Regional Council again had preliminary discussions with Ms Lucas concerning the appeal. Subsequently Ms Lucas was instructed **for the Regional Council** in September 2007 or thereabouts, but was unable to produce to the Court any written brief as to the scope of her instructions.

[222] Mr Hofmans for the City Council expressed some surprise that Ms Lucas, after the expiry of her contract with the City, accepted further instructions from the Regional Council and produced briefs with this degree of difference. Mr Rackham accepted that reasonably small changes in thresholds resulted in significant changes in the areas of the various landscape categories.

[223] From the Court's perspective, however, it is quite clear that Ms Lucas' current proposals go well beyond the LPAs/CPAs proposed in 1997 and are fundamentally different to those proposed by the District Council in its 2002 Variation. Variation 2 was based on the recommendations of the Rural Taskforce, of which the Regional Council was a member. In practical terms, if parties had been aware from the cross-submission process that some 75,000 hectares of land was to be included within the ONL/CNCL areas, we would have anticipated a level of submission and participation at least as great as, if not greater than that relating to the Proposed Plan of 1997 (1,200



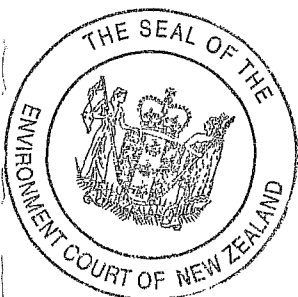
participants). That only 10-15% of that number was involved in Variation 2 is, in our opinion, the result of the area involved being reduced from some 50,000 hectares to around 30,000 hectares. The reason for the reduced participation since then would have been the further reduction of the areas involved down to 23,000, with an understanding that the maximum area which could be involved would be 50,000 hectares, supported by Ms Briggs. Ms Douglas suggested that Ms Lucas' evidence should not be limited because of the potential to rely on section 293.

[224] As the High Court noted in *Hamilton City Council v New Zealand Historic Places Trust (Hamilton City)*¹⁰:

[25] The primary purpose of s293 must be to provide the Court during the hearing of an appeal with a mechanism for expanding the nature and extent of the relief sought beyond the scope of the reference where appropriate (Apple Fields, Para 36) but always, of course, related back to and arising out of the reference itself. The reference defines the scope of the appeal or enquiry and the appropriate relief. Consequently there must be a nexus between the reference itself and the changed relief sought.

[225] In short, Ms Lucas' evidence is not *on* Variation 2 but suggests a fundamentally different approach to landscape issues. Changes to the extent sought by Ms Lucas were not even the subject of any submission or appeal. There was no nexus between the reference and the changed relief sought. Section 293 cannot be a legitimate basis to circulate such evidence.

[226] For the Court's part we have concluded that the role of an expert must involve preparing evidence relating to the issues before the Court.



¹⁰

[2005] NZRMA 145 at 152.

[227] The decision of the Environment Court in *Hamilton City Council v The New Zealand Historic Places Trust*¹¹ together with *Canterbury Regional Council v Apple Fields Limited*¹² were relied upon as granting the power to grant relief beyond the scope of the reference. However, as we have already quoted, that same decision and others such as *Royal Forest and Bird Protection Society Incorporated v Southland District Council*¹³, and *Re Vivid Holdings*¹⁴ all make it clear that the parties can only pursue relief which is within the general scope of submissions which have not been reduced by appeal, or in this case the subsequent notice.

[228] In the circumstances Ms Douglas accepts that the Regional Council appeal does not grant any scope for the position on delineation pursued before this Court. She instead relies upon the appeal of Ms Briggs, which sought the re-introduction of the LPA and CPAs from the 1997 Proposed Plan and that of Forest and Bird, which sought the introduction of coastal protection areas.

[229] Mr Taylor, appearing for Ms Briggs, made it clear that his client sought only the re-introduction of the LPA high and moderate sensitivity areas, these being within the scope of her appeal and submission. Ms Briggs did not produce any evidence nor pursue any remedy in respect of the coastal protection area. Importantly, the Regional Council was not a party to the appeal of Ms Briggs and therefore could not substitute itself nor give evidence in support of that case. Mr Taylor did not adopt the evidence of the Regional Council on the coastal area and only adopted Ms Lucas' evidence to the extent that it supported Ms Briggs on the re-adoption of the LPA lines proposed in 1997.

[230] Forest and Bird abided the decision of the Court and had not given the required notice seeking to progress questions of the CPAs (now CNCLs) before this Court at the hearing.



¹¹ Above.
¹² [2003] NZRMA 408.
¹³ [1997] NZRMA 408.
¹⁴ [1999] NZRMA 467.

[231] Accordingly, we conclude that the scope of the appeals did not permit evidence to be produced seeking ONLs beyond the LPA area and that the Regional Council had no status in respect of the Briggs' appeal or any other appeal to advance such evidence. To that end such evidence would be an irrelevant consideration for this Court in considering any of its powers, including those under section 293, and we would be obliged to disregard it.

[232] Furthermore, in respect of the CNCLs, Forest and Bird had limited its position before this Court by failing to give notice that it sought to support such lines and advising the Court that it would abide the decision of the Court in respect of the substantive matter. Although it said it supported the Regional Council's evidence in relation to the ONLs and CNCLs, we do not take it that Forest and Bird was therefore seeking to participate in the hearing and actively pursue such outcomes which it had not given notice of. In particular, the decision of Forest and Bird to abide the decision of the Court and retire from participation in the hearing was made after the Court had highlighted these issues.

[233] To the extent that the Regional Council was a section 274 party to those proceedings, it could substitute but only to the extent that those issues were still live before the Court. As we have already noted, the scope of an appeal is limited not only by the submission made and the appeal filed but also by any subsequent change of position that might be adopted. Given that this Court specifically required parties to set out the basis upon which they would be proceeding to hearing and indicated that it would only allow those issues to be pursued at hearing, Forest and Bird were then limited by that ruling to the extent that they did not cover the matters in notice to the Court. However, we accept that as a section 274 party the Regional Council might substitute for the appellant.

[234] Accordingly, we conclude that there is jurisdiction to extend the CNCL areas only to the extent the Regional Council was substituted as appellant for Forest and Bird under section 274 of the Act. To that extent it could only seek to extend the CNCL to the first ridge or 300 metres, whichever is lesser.



[235] Annexed as “4” is Ms Lucas’ ONL/CNCL map produced at the hearing. It is clear that many CNCL areas go beyond 300 metres and are therefore outside the Forest and Bird appeal. To the extent that Ms Lucas’ ONLs overlap CNCLs this could only be to the extent identified in annexure “5” [Ms Briggs’ LPA map] shown as LPAs. In short:

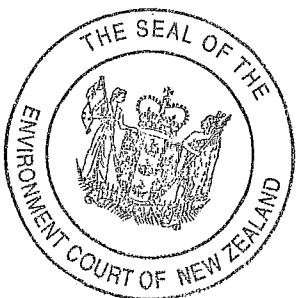
- (a) there is no appeal pursued in respect of CPA areas;
- (b) Ms Lucas’ evidence referring to ONL can only support 1997 LPAs;
- (c) in relation to coastal areas the CNCL can only add areas to the first ridge or 300 metres of MHWS whichever is lesser, relying on Forest and Bird’s appeal.

[236] It was clearly open to Ms Briggs to pursue the LPAs as per the 1997 Notified Plan, and her evidence supported that position before the Court. To the extent that Ms Lucas supported such a position, her suggested ONLs appear to include all the areas identified by Ms Briggs and therefore could be said to be generally supportive of that position. Given our conclusion on the merits of that argument, we have concluded that the Boffa Miskell position is to be preferred. We therefore also accept the Boffa Miskell position that there are certain areas identified in their Landscape Study which were outside the terms of the appeals before the Court, including Ms Briggs’, and therefore which the Court has no jurisdiction to grant generally. No evidence produced contradicted that position.

Admissibility of expert evidence of Ms Briggs and Mr Collins

[237] The issue in regard to Ms Briggs and Mr Collins is a more fundamental issue encapsulated by the maxim *Nemo in sua causa aequus*. Loosely it means *nobody is a fair judge in their own cause*.

[238] The obligation of an expert witness is to give independent evidence and Ms Briggs and Mr Collins were giving evidence in support of their own appeals. We accept either could give general evidence as lay witnesses. Mr Taylor for his part



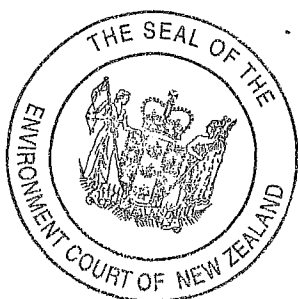
accepted that even if these witnesses were accepted as expert witnesses, giving evidence in their own cases would go to the question of the weight to be given to their evidence.

[239] Having regard to the significant costs involved in these proceedings, we would have considered it important for both of these appellants to consider retaining independent experts. Mr Collins for his part acknowledges that he would not accept a role as a Commissioner in relation to these issues for Banks Peninsula given his appeal. It is difficult to see the distinction between that and acting as an expert witness for himself.

[240] We note that Ms Briggs is currently an employee of the Christchurch City Council in the role of principal advisor: natural environment. Essentially she has had to maintain a Chinese wall in her employment given that the City Council amalgamated with Banks Peninsula District Council in 2006 after these appeals were filed.

[241] Both Ms Briggs and Mr Collins acknowledged that they were foundation members of the Lyttelton Harbour Landscape Protection Association Incorporated, although both have since resigned. The objectives of the Association are telling:

- 2.1 *To promote the preservation and protection of the outstanding landscapes of the Lyttelton Harbour basin, particularly the coastal environment, headlands, ridges and outstanding natural features that form part of the Lyttelton Harbour basin landscape;*
- 2.2 *To advocate for the Lyttelton Harbour basin landscape;*
- ...
- 2.4 *To participate in statutory and non-statutory consultation processes to advance the preservation and protection of the outstanding landscapes of the Lyttelton Harbour basin including, but not limited to, the filing of submissions and appeals (where appropriate) under the Resource Management Act 1991 in respect of:*
 - (a) *district plan and regional plan review processes including variations and plan change applications regarding the same; and*
 - (b) *not relevant.*



[242] As Mr Carranceja for the City noted, the preservation and protection of outstanding landscapes in the objectives of the Association are not subject to the Part 2 limitations relating to inappropriate development. The advocacy role is one which is particularly noted as being inappropriate for expert witnesses given Clause 2 of the Code:

2. *An expert witness is not an advocate for the party who engages the witness.*

[243] In this regard we have carefully considered Ms Briggs' and Mr Collins' evidence. We conclude that they have prepared their evidence keeping in mind that they are parties giving evidence in their own cause. We do not consider that they have done anything untoward in the preparation of their evidence. We suspect, although we do not know, that their evidence would have been similar if given for a third party with which they had no involvement.

[244] We note in particular in relation to Mr Collins' evidence that there are a number of methods he has discussed which would result in better drafted provisions and that some of Ms Briggs' comments are repeated by one or more of the other expert witnesses.

[245] However, our conclusion is that the privilege afforded an expert witness to give opinion evidence is one of some importance. We recognise that many lay witnesses before the Environment Court give opinion evidence on a range of matters and that this tension is often recognised by the Court in the weight it attributes to a particular witness's evidence.

[246] The Court has reached the view that it needs to draw a line in the sand on this issue given the tendency of lay witnesses to give opinion evidence and experts to give evidence in their own cause from time to time. We consider that it is inappropriate as a matter of principle for expert witnesses to give evidence as experts in their own case. At the very least it will mean that little weight should be given to their evidence where there is a conflict with other witnesses. It also impacts upon the administration of justice because if some parties are allowed to give opinion evidence in their own cause,



they may be seen as getting preferential treatment before the Court compared with other parties.

[247] We accept that the issue has been left unresolved in the past although the purpose of the Practice Note as it relates to expert witnesses clearly seeks in part to address this type of issue.

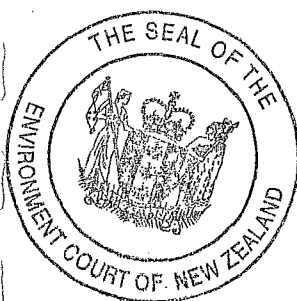
[248] Overall the evidence of Ms Briggs in particular raises the broader issue in respect of expert witnesses before this Court who may give evidence criticising another witness's evidence, yet fail to undertake any analysis as is required under the Act and Practice Note in respect of their own opinions.

[249] This is the case with Ms Lucas' evidence and also with Ms Briggs. Little weight can be given to such expert evidence. In the circumstances of this case we have decided the case on its merits, although we note for the future that the issue of admissibility of expert evidence when given in its own cause or beyond the scope of appeal could properly be raised as a preliminary issue. In this case evidence given beyond the scope of the hearing may be relevant to issues of costs.

Section 293

[250] It was suggested that section 293 could be utilised to achieve either the results suggested by Ms Lucas (although outside jurisdiction) or that sought by Boffa Miskell (although outside jurisdiction). We recognise that there is a direct connection between what is *on* a variation and alive in terms of the proceedings on appeal and the scope of the Court's jurisdiction under section 293. Whilst we recognise that section 293 does give power to grant relief beyond the scope of the appeal, we acknowledge that these cases also make it clear that the Court must consider that a reasonable case has been presented and opportunity has been given to interested parties to consider the proposed change.

[251] We have carefully considered the wording of section 293 and consider that little weight has been given in this case to the commencing words of *section 293(2)*. Although, of course, the criteria have been changed as a result of the 2003 Amendment,



this application would be considered under the pre-2003 wording. However, the common wording in both cases is *on the hearing of any appeal against or inquiry into the provisions of any policy statement or plan*.

[252] We note the comments of the High Court in *Hamilton City Council v New Zealand Historic Places Trust* already cited.

[253] It seems axiomatic to us from the application of the case law we have discussed that the *hearing* which is conducted must be within scope. Essentially section 293 provides that the Court may seek to adopt an alternative resolution to the appeal which is not within scope but that the hearing itself must be within scope. There is nothing in the appeal of the Regional Council nor in any appeal to which it is a section 274 party which has a nexus to the relief it now seeks, relying on Ms Lucas' evidence.

[254] We note that the Court in *Friends of Nelson Haven and Tasman Bay (Incorporated) v Tasman District Council*¹⁵ drew attention to the lack of nexus between the original relief sought by the appellants in that case and changed relief in the form of landscape protection over land additional to that included in the initial reference, and determined section 293 could not be used to extend the scope of the appeal to include other lands. The situation faced by the Court in that case is not dissimilar to the situation before us. We determine that in this case section 293 could not be used as a means of bringing the Regional Council's proposals within scope, even if it could be justified on the merits of the case.

[255] An example in Banks Peninsula where the Court has adopted section 293 is in relation to noise contours for the Port of Lyttelton. In that case there were a significant number of appeals which were within scope but the parties reached a mediated solution which adopted a new contour line and noise measurement parameter (L_{dn}). That outcome was not one sought by any appeal. Nevertheless it represented, on the views of the various experts and parties, a better outcome and approach.



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W13/2008 at paras 25-6.

[256] In practical terms the issues on this appeal are covered by submissions on the general powers and are within scope given the terms of Ms Briggs' general appeal or other appeals now resolved. This Court is concerned that using the powers under section 293 for matters never notified or submitted on could fundamentally change the approach of the Plan and apply it to significant areas where no notice has been given.

[257] In the event that section 293 is as broad in its application as the Regional Council submits, we would have considered that a full renotification of the variation would be required in any event, given that it is likely to cover in excess of twice the area of land and provoke a significant scale of opposition not addressed in this appeal. However, for practical purposes we conclude it is not the role of the experts to seek to adopt a fundamentally different approach in evidence at hearing in circumstances where those experts have participated in the preliminary selection of the methodology to be utilised in establishing the landscape provisions of the Plan.

[258] In this regard we note that the Court allowed these proceedings to lie dormant for a long period based upon an agreement by the experts that the Landscape Study was to employ the appropriate methodology. If the parties fundamentally disagreed with that approach it was incumbent upon them to advise the Court immediately, in which case the matter would have proceeded to a hearing approximately two years ago. We conclude that section 293 would not be appropriate for use in this case, even if we were convinced of the merits of the Regional Council proposals, which in fact is far from the case.

Conclusions and Directions

[259] We are satisfied that the delineation maps attached as annexure "1:E" are correct subject to minor corrections set out in Ms Pflüger's on-site evaluation reports and this decision, which makes one potential change on the Takamatua Headland Ridge.

[260] Amended maps "1:E" and amended provisions "1:D" incorporating the suggested changes should be prepared and circulated by the Council within 20 working days. The other parties must identify any dispute within a further ten working days.

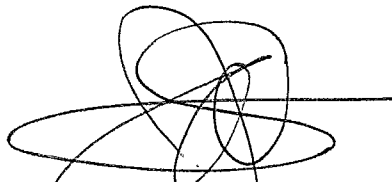


The Council is then to file a memorandum attaching the maps and correcting any remaining errors within a further ten days. The Court will then determine whether it can finalise the map or make further directions.

[261] Any application for costs is to be filed within 40 working days, replies ten working days thereafter and final submissions five working days thereafter. Such applications should clearly distinguish any costs related to the Study/mediation process and those related to this hearing and include relevant invoices.

DATED at CHRISTCHURCH this 24th day of April 2008

For the Court:



J A Smith
Environment Judge



Issued¹⁶: - 2 MAY 2008

¹⁶ Smithje/Jud_Rule/D/C 196-05.doc.

"A"

ANNEXURE 1:A

IN THE ENVIRONMENT COURT

RMA 49B/02, 113/02,
 ENV C 165(A, B, C, D)/05, 167(A, C)/05, 170/05, 173B/05,
 176A, C/05, 177/05, 178(A, B)/05, 179(A, B)/05, 181(A, B, D)/05,
 182(A, B, D)/05, 183(A, B)/05, 184(A, B, D)/05, 185(A, B)/05,
 186(A, B)/05, 187(A, C, D, E, G, I, L, M, O, P, S, T, U, V, W, Y(i),
 AA, BB, DD, GG, HH, II)/05, 188/05, 189/05, 190A/05,
 191(A, C, D)/05, 193(A, C, D, F, G, I, J)/05, 194(A, B)/05,
 196(A, B, D(i), E)/05, 197(A, F, G(i))/05, 198(A, D, E, I, J)/05,
 199(A & B)/05, 200A/05, 201(B, C, F, G)/05, 203(A, B)/05,
 204(A, B)/05, 207(A, B, C)/05, 209(A, C)/05

Under the the Resource Management Act 1991 ("the Act")
 And of the landscape appeals on the Banks Peninsula Proposed District Plan under Clause 14 of the First Schedule of the Act

Between **A CRAW**
 (ENV C 178A, B/05)

AB NEWPORT & ORS
 (ENV C 176A, C/05)

AR DALGLISH
 (ENV C 184A, B, D/05)

C GRIMSDALE
 (ENV C 170/05)

CANTERBURY REGIONAL COUNCIL
 (ENV C 193A, C, D, F, G, I, J/05)

CJ & JM CHAMBERLAIN
 (ENV C 179A, B/05)

CHRISTCHURCH CITY COUNCIL
 (ENV C 203A, B/05)

DC CARTER
 (ENV C 185A, B/05)

DW COLLINS
 (ENV C 167A, C/05)

DIRECTOR GENERAL OF CONSERVATION
 (ENV C 197A, F, G(i)/05)

DP DE PASS
 (ENV C 183A, B/05)

FEDERATED FARMERS OF NZ INC
 (ENV C 187A, C, D, E, G, I, L, M, O, P, S, T, U, V, W, Y(i),
 AA, BB, DD, GG, HH, II/05)

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FRIENDS OF BANKS PENINSULA INC
(ENV C 173B/05)

EJC AITKEN
(ENV C 181A, B, D/05)

EM BRIGGS
(ENV C 196A, B, D(i), E/05)

GPJ DE LATOUR
(ENV C 182A, B, D/05)

ID & AMS CAMPBELL
(ENV C 189/05, 190A/05)

ID & PJ RICHARDSON
(ENV C 177/05)

KM & FM STAPYLTON-SMITH
(ENV C 194A, B/05)

MB ANDERSON
(ENV C 165A, B, C, D/05)

NZ INSTITUTE OF FORESTRY (CANTERBURY BRANCH)
AND OTHERS
(ENV C 201B, C, F, G/05)

ORION NZ LTD
(RMA 113/02, ENV C 200A/05)

R COLOMBUS
(ENV C 188/05)

RE & MF MILLAR
(ENV C 186A, B/05)

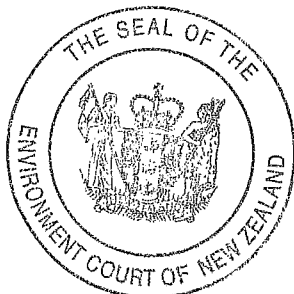
ROBINSONS BAY TRUST & PACIFIC INVESTMENT
TRUST
(ENV C 191A, C, D/05)

ROYAL FOREST & BIRD PROTECTION SOCIETY INC
(ENV C 198A, D, E, I, J/05)

SUMMIT ROAD SOCIETY INC
(ENV C 207A, B, C/05)

TELECOM NZ LTD & TELECOM MOBILE LTD
(ENV C 49B/02, 199A, B/05)

TRANSIT NZ
(ENV C 209A, C/05)



ZIAS INVESTMENTS LTD
(ENV C 204A, B/05)

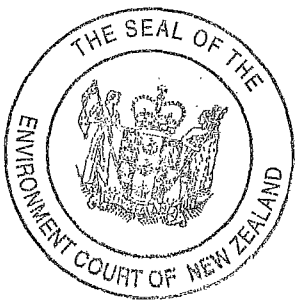
Appellants

And

CHRISTCHURCH CITY COUNCIL (formerly BANKS
PENINSULA DISTRICT COUNCIL)

Respondent

HEADS OF AGREEMENT
Dated 24th August 2007



[Handwritten signatures and initials]

HEADS OF AGREEMENT

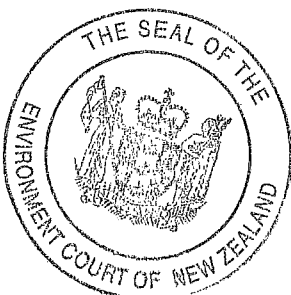
1. Most parties to the Banks Peninsula Landscape appeals attended mediation on 23 and 24 August 2007.
2. The following parties were not represented at the mediation:
 - (a) AB Newport & ors;
 - (b) HC Broughton;
 - (c) MB Anderson;
 - (d) Orlon New Zealand;
 - (e) RE & MF Millar;
 - (f) R Stowell;
 - (g) Telecom NZ Ltd & Telecom Mobile Ltd;
3. Zias Investments Ltd and NZ Institute of Forestry (Canterbury Branch) & ors attended mediation, but were not present at the time this Heads of Agreement was drafted.
4. The purpose of mediation was to discuss and agree upon appropriate relief in relation to the landscape topics under appeal.
5. As a result of mediation, the parties have reached agreement on how the appeals can be resolved in part. The agreement is set out in the following paragraphs.

ONL and CNCL areas

6. With the exception of Pacific Investment Trust and Robinsons Bay Trust, the parties agree that:
 - (a) The Overview in Chapters 12, 13 and 19 of the Proposed Plan can be amended to insert the following paragraphs:

As a result of early settlement patterns and the continued use of the land today some development including homesteads, accessory buildings and structures are established within these areas.

Users of the Rural Zone need to be able to respond to future opportunities for a range of land uses, which may include different forms of development. These types of activities can be complementary to farming activities and in the case of tourist,



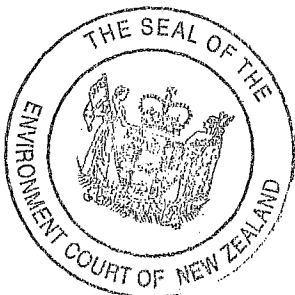
ecologically based or accommodation activities of a scale consistent with objectives and policies. These can have the added benefit of enabling the community and visitors access to the coast and outstanding landscapes.

The Landscape Assessment which has identified the CNLC, ONL and Prominent Ridgelines has been undertaken at a district wide level. In identifying these landscapes it is recognised that there is the potential for areas to exist within sites which have the potential to absorb some change. The nature of that change must be appropriate having regard to the landscape values identified and relevant objectives and policies.

- (b) The rules of the Proposed Plan in Chapter 19 relating to ONL and CNCL areas can be amended as follows:
- (i) Farm accessory buildings are Controlled Activities if located within an Existing Building Cluster (i.e. within 100m of existing buildings and a maximum building floor area which the parties have not agreed to). Farm accessory buildings are Restricted Discretionary Activities in all other locations;
 - (ii) All other buildings (including Dwellings) are Controlled Activities within an Existing Building Cluster (i.e. within 100m of existing buildings and a maximum building floor area which the parties have not agreed to). Buildings (larger than a maximum building floor area which the parties have not agreed to) will be Restricted Discretionary Activities (but need not be notified). All buildings more than 100m from an Existing Building Cluster will be a Non-Complying Activity.

Pacific Investment Trust and Robinsons Bay Trust

7. The Christchurch City Council ("CCC") will ask Ms Yvonne Pfluger to undertake a site visit of the property of Pacific Investment Trust and Robinsons Bay Trust ("PIT") for the purpose of ground-truthing the location of the ONL and CNCL lines as identified in the Boffa Miskell landscape map dated 10 August 2007 (shown in the blue areas). This is to take place on 27 August 2007.
8. In the course of the site visit under clause 7, Ms Pfluger will consider the CNCL area with a view to providing a letter to PIT on the following basis:
- (a) Ms Pfluger will provide a letter to PIT on Boffa Miskell letterhead.



- (b) The views given in the letter are strictly the opinion of Yvonne Pfluger. It may be submitted to the Council in future for its consideration in support of a resource consent application, but the views expressed in the letter do not bind the Council.
- (c) The letter will also identify any areas within the CNCL area that are likely to be able to absorb change in the context of s6(a) values.
- (d) However, the degree of change that may be appropriate will need to be assessed on a case-by-case basis, depending on any particular proposal for change.

9. Pacific Investment Trust and Robinsons Bay Trust ("PIT") undertakes to advise all parties by Monday 3 September 2007 whether or not they agree to the matters set out in paragraph 6 above.

Agreement by Pacific Investment Trust and Robinsons Bay Trust

10. In the event that PIT agrees to the matters set out in paragraph 6 above by Monday 3 September 2007, then

- (a) The Christchurch City Council ("CCC") will ask Ms Yvonne Pfluger to undertake a site visit of the properties set out in Schedule "A" for the purpose of ground-truthing the location of the ONL lines, CNCL lines and important (Main) Ridgelines as identified in the Boffa Miskell landscape map dated 10 August 2007 (shown in the blue areas).
- (b) In the course of each site visit, Ms Pfluger will consider the ONL and CNCL areas with a view to providing a letter to the landowner for each property set out in Schedule "A" on the following basis:
 - (i) Ms Pfluger will provide a letter to landowners on Boffa Miskell letterhead.
 - (ii) The views given in the letter are strictly the opinion of Yvonne Pfluger. It may be submitted to the Council in future for its consideration in support of a resource consent application, but the views expressed in the letter do not bind the Council.
 - (iii) The letter will also identify any areas within ONL/CNCL areas that are likely to be able to absorb change in the context of s6(a) and (b) values (except in the case of Messrs Grimsdale and Columbus, where the letter will identify any areas within the RAL



areas that are likely to be able to absorb change in the context of s7 values).

- (iv) This letter will also identify any areas within Important (Main) Ridgelines that are likely to be able to absorb change.
- (v) However, the degree of change that may be appropriate will need to be assessed on a case-by-case basis, depending on any particular proposal for change.

No agreement of Pacific Investment Trust and Robinsons Bay Trust

11. In the event that PIT does not agree to the matters set out in paragraph 6 above, then:

- (a) the Council is not bound to undertake any of the action set out in paragraph 10 above;
- (b) the Court's timetable will apply as follows:
 - (i) CCC will file a reporting memorandum as to outstanding landscape issues by 28 September 2007;
 - (ii) All parties to exchange evidence by 19 October 2007;
 - (iii) All parties to exchange rebuttal by 2 November 2007;
 - (iv) All parties to provide 4 copies of all their evidence to CCC's solicitors;
 - (v) CCC to file 4 copies of all evidence by 9 November 2007 in ring binders;
 - (vi) Hearing on or after 19 November 2007.

12. All parties other than PIT agree that they will continue to support the matters set out in paragraph 6 above and present a joint case on the agreed matters against PIT.

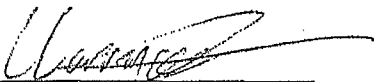


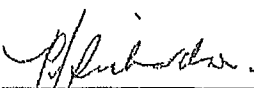
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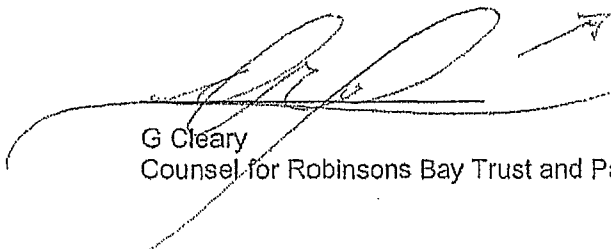
Other agreements

- 13. All parties also agree to amend (or retain) the provisions of the Proposed Plan as set out in Schedule "B".

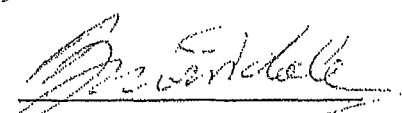
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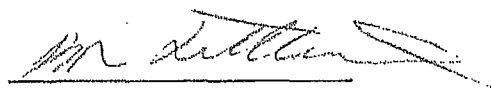

C O Carranceja
Counsel for Christchurch City Council


P Richardson
for A Craw, AR Dalglish, Banks Peninsula Community Task Force Farmers, Banks Peninsula Conservation Trust, CJ & JM Chamberlain, DC Carter, DP De Pass, GPJ De Latour, Federated Farmers of New Zealand Inc, ID & RJ Richardson, PG & HM Heddel

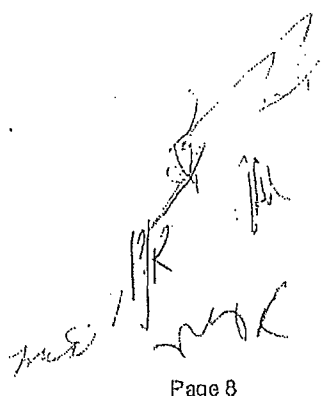

G Cleary
Counsel for Robinsons Bay Trust and Pacific Investments Trust

This does not signify agreement in respect of para 15


C Grimsdale


R Littlewood
for Canterbury Regional Council





DW Collins

DW Collins
for DW Collins and L Briggs

P N Rutledge

P N Rutledge
Counsel for Director General of Conservation

EJC Aitken

EJC Aitken

J Cook

J Cook
for Friends of Banks Peninsula Inc

D Bryce

D Bryce
for ID & AMS Campbell and R Columbus

M Day

M Day
for Lyttelton Port Company Limited

M Stapylton-Smith

M Stapylton-Smith



P. Theining

P Theining

P. Theining

PD Helps
for PD & HC Helps

R Stowell

M Yoder

M Yoder
Counsel for Royal Forest & Bird Protection Society Inc

J Goodrich

J Goodrich
for Summit Road Society Inc

R Shaw

R Shaw
for Transit NZ



Handwritten notes and signatures in the bottom right corner, including initials and a date '12/10/14'.

J Borthwick
Counsel for Zias Investments Ltd



Handwritten signatures and initials:
- A large, stylized signature, possibly 'J Borthwick', at the top right.
- A signature below it, possibly 'Glen' or 'Glen' with a flourish.
- A signature below that, possibly 'mcs' or 'mcs' with a flourish.
- A signature at the bottom right, possibly 'mcs' or 'mcs' with a flourish.

"A"

Ied Ennes

Andrew Dalglis

Chris Chamberlain

Philp Helps

Mary Stapleton Smith

Jan Ryan / Annandale
\ Kennethmont

Edward Aitken

Peter Thelning

Andrew Crow

Mary Ann Sibley (Sunny Point)

Paul DeLoraine

Steve / Francis Helps ?

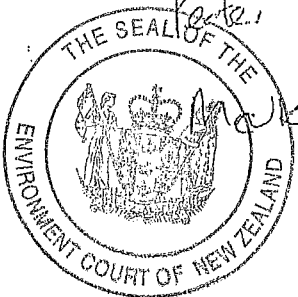
Bill Oborn

Richardson Simpson ?

Peter & Robyn Dimmock

Shadbutt

We will coordinate
for you and
offer to assist
where practically
possible.



(Tom Richardson iprichardson@xtra.com)

"B"

ANNEXURE 1:B

IN THE ENVIRONMENT COURT

RMA 49B/02, 113/02,
ENV C 165(A, B, C, D)/05, 167(A, C)/05, 170/05, 173B/05,
176A, C/05, 177/05, 178(A, B)/05, 179(A, B)/05, 181(A, B, D)/05,
182(A, B, D)/05, 183(A, B)/05, 184(A, B, D)/05, 185(A, B)/05,
186(A, B)/05, 187(A, C, D, E, G, I, L, M, O, P, S, T, U, V, W, Y(i),
AA, BB, DD, GG, HH, II)/05, 188/05, 189/05, 190A/05,
191(A, C, D)/05, 193(A, C, D, F, G, I, J)/05, 194(A, B)/05,
196(A, B, D(i), E)/05, 197(A, F, G(i))/05, 198(A, D, E, I, J)/05,
199(A & B)/05, 200A/05, 201(B, C, F, G)/05, 203(A, B)/05,
204(A, B)/05, 207(A, B, C)/05, 209(A, C)/05

Under the the Resource Management Act 1991 ("the Act")

And of the landscape appeals on the Banks Peninsula Proposed
District Plan under Clause 14 of the First Schedule of the Act

Between **A CRAW**
(ENV C 178A, B/05)

AB NEWPORT & ORS
(ENV C 176A, C/05)

AR DALGLISH
(ENV C 184A, B, D/05)

C GRIMSDALE
(ENV C 170/05)

CANTERBURY REGIONAL COUNCIL
(ENV C 193A, C, D, F, G, I, J/05)

CJ & JM CHAMBERLAIN
(ENV C 179A, B/05)

CHRISTCHURCH CITY COUNCIL
(ENV C 203A, B/05)

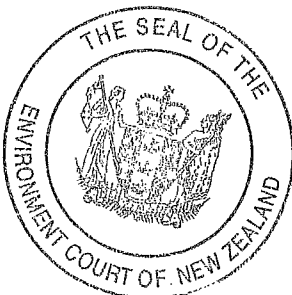
DC CARTER
(ENV C 185A, B/05)

DW COLLINS
(ENV C 167A, C/05)

DIRECTOR GENERAL OF CONSERVATION
(ENV C 197A, F, G(i)/05)

DP DE PASS
(ENV C 183A, B/05)

FEDERATED FARMERS OF NZ INC
(ENV C 187A, C, D, E, G, I, L, M, O, P, S, T, U, V, W, Y(i),
AA, BB, DD, GG, HH, II/05)



FRIENDS OF BANKS PENINSULA INC
(ENV C 173B/05)

EJC AITKEN
(ENV C 181A, B, D/05)

EM BRIGGS
(ENV C 196A, B, D(i), E/05)

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(ENV C 189/05, 190A/05)

ID & PJ RICHARDSON
(ENV C 177/05)

KM & FM STAPYLTON-SMITH
(ENV C 194A, B/05)

MB ANDERSON
(ENV C 165A, B, C, D/05)

**NZ INSTITUTE OF FORESTRY (CANTERBURY BRANCH)
AND OTHERS**
(ENV C 201B, C, F, G/05)

ORION NZ LTD
(RMA 113/02, ENV C 200A/05)

R COLOMBUS
(ENV C 188/05)

RE & MF MILLAR
(ENV C 186A, B/05)

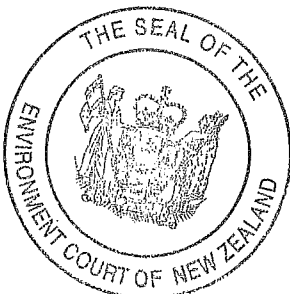
**ROBINSONS BAY TRUST & PACIFIC INVESTMENT
TRUST**
(ENV C 191A, C, D/05)

ROYAL FOREST & BIRD PROTECTION SOCIETY INC
(ENV C 198A, D, E, I, J/05)

SUMMIT ROAD SOCIETY INC
(ENV C 207A, B, C/05)

TELECOM NZ LTD & TELECOM MOBILE LTD
(ENV C 49B/02, 199A, B/05)

TRANSIT NZ
(ENV C 209A, C/05)



**ZIAS INVESTMENTS LTD
(ENV C 204A, B/05)**

Appellants

And

**CHRISTCHURCH CITY COUNCIL (formerly BANKS
PENINSULA DISTRICT COUNCIL)**

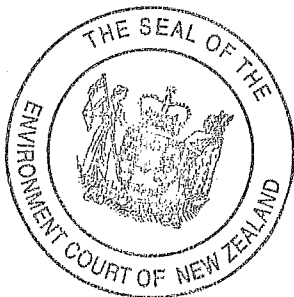
Respondent

**HEADS OF AGREEMENT
Dated 13 September 2007**



HEADS OF AGREEMENT

1. Most parties to the Banks Peninsula Landscape appeals attended mediation on 13 September 2007.
2. The following parties were not represented at the mediation:
 - (a) AB Newport & ors;
 - (b) C Grimsdale;
 - (c) DW Collins;
 - (d) EJC Aitken;
 - (e) EM Briggs;
 - (f) HC Broughton;
 - (g) ID & AMS Campbell;
 - (h) Lyttelton Port Company Limited;
 - (i) M Stapylton-Smith;
 - (j) MB Anderson;
 - (k) NZ Institute of Forestry (Canterbury Branch) & ors
 - (l) Orion New Zealand;
 - (m) R Columbus;
 - (n) R Stowell;
 - (o) RE & RF Millar;
 - (p) Robinsons Bay Trust and Pacific Investments Trust;
 - (q) Summit Road Society Inc;
 - (r) Telecom NZ Ltd & Telecom Mobile Ltd.
3. The purpose of mediation was to discuss and agree upon appropriate relief in relation to the landscape topics under appeal.
4. As a result of mediation, the parties have reached agreement on how the appeals can be resolved in part. The agreement is set out below.



Terminology

5. The parties agree to replace the term "Visual Amenity Landscape" with "Rural Amenity Landscape".

Quarrying

6. The parties agree to insert a new rule 6.3 into Chapter 19 of the Banks Peninsula Proposed District Plan ("Proposed Plan") so that quarrying is listed as a discretionary activity.
7. In all other respects, all issues regarding quarrying are settled between the parties.

Environmental Merit

8. The parties agree that Federated Farmers' request in appeal ENV C 187Y(l)/05 to insert Policy 1C and amend explanations and reasons in Chapter 19 will no longer be pursued.
9. The parties also agree to insert the words "coastal natural character landscapes" into the following parts of the Proposed Plan:
 - (a) Chapter 9, 1st paragraph of the overview, after the words "outstanding natural features and landscapes";
 - (b) Chapter 19, Method 3 after the words "outstanding natural features and landscapes";
 - (c) Chapter 19, Rule 8(i)(xv) after the words "outstanding natural features and landscapes";
 - (d) Chapter 31, Rule 4.4, Environmental Merit bullet-point, after the words "outstanding natural features and landscapes"; and
 - (e) Chapter 31, Policy 7A, after the words "outstanding natural features and landscapes".
10. In all other respects, all issues regarding environmental merit are settled between the parties.

Forestry

11. The parties agree to amend the definition of "forestry" to state:

Means the planting, tending, maintenance, and harvesting of trees but does not include:



- o existing forestry for the purposes of the Interpretation of the rules in the Plan
- o shelterbelts
- o amenity tree planting
- o milling or processing of timber except in the case of portable sawmill operations.

12. Amend the rules relating to forestry in Chapter 19 of the Proposed Plan so that:

- (a) Permitted activity 0 to 1ha of forestry (per site or 20ha whichever is lesser. For the purpose of administering this rule no such contiguous area of planting shall exceed 1ha);
- (b) Controlled activity from 1ha to 10ha of forestry (non-notified);
- (c) Restricted Discretionary Activity for over 10 ha of forestry.

13. In all other respects, all issues regarding forestry are settled between the parties, including acceptance of the following as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007:

- (a) Definition of existing forestry;
- (b) Standards for forestry;
- (c) Matters for control and assessment matters;
- (d) Forestry Guidelines in Appendix IX.

Earthworks

14. The parties agree to amend Chapter 19 Rule 3.5 of the Proposed Plan to state:

3.5 Earthworks

The maximum uphill cut depth shall be no more than 2 metres (except for the construction of the proposed road serving land between Cass Bay and Corsair Bay shown on Planning Maps S3 and S4).

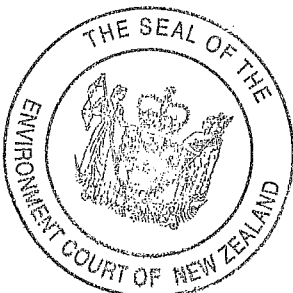
The maximum downhill vertical spill of side castings shall be no more than 2.4metres (except for the construction of the proposed road serving land between Cass Bay and Corsair Bay shown on Planning Maps S3 and S4).

The maximum volume of earth moved shall not exceed 100m³ per site within any one consecutive 12 month period except that for farm access tracks, the following standards apply:

- (i) No restriction on maximum volume of earth moved; and
- (ii) No part of the farm access track shall be located within 30m of a State Highway boundary; and
- (iii) The farm access track shall be no more than 250m in length.

The maximum width of any vehicle track is to be five metres.

There shall be no disturbance of a known waahi tapu site.



15. The parties agree to amend the definition of "earthworks" so that the following is added as an exemption:
 - (a) Benching for new fencelines in Rural Amenity Landscapes.
16. All other issues relating to earthworks are settled between the parties except for the following that will be pursued at the Environment Court:
 - (a) Whether earthworks associated with the benching for new fencelines in outstanding natural landscapes or coastal natural character landscapes can be a permitted activity or require a resource consent as a restricted discretionary activity?

Chapter 12 – Objectives and policies

17. The parties agree to insert the following sentence in Chapter 12 Overview, paragraph 2:

The coastal environment is a working landscape where pastoral farming continues to be the dominant landuse.

18. The parties amend the last sentence of paragraph 2 Chapter 12 Overview, by deleting the comma after the word "sited".
19. In all other respects, all other objectives and policies in Chapter 12 as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 are accepted by the parties.

Chapter 13 – Objectives and policies

20. The parties agree to insert the following sentence into Chapter 13 Overview:

The outstanding natural landscape is a working landscape where pastoral farming continues to be the dominant landuse.

21. In all other respects, all other objectives and policies in Chapter 13 as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 are accepted by the parties.

Chapter 19 – Objectives and policies

22. The parties (except Director-General of Conservation) agree to replace the last sentence of the last paragraph of Chapter 19 Overview to state:

Ridgelines that are currently free of built development are subject to a rule that seeks to maintain that environment.



23. In all other respects, all other objectives and policies in Chapter 19 as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 are accepted by the parties.

Methods

24. The parties agree to amend the last part of the last sentence of the first paragraph of Method 1 Chapter 12 as follows:

...to provide for the maintenance of recreation, and amenity and other values in accordance with Sections 6 & 7 of the Resource Management Act.

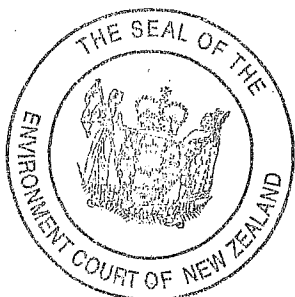
25. In all other respects, the methods in Chapters 12, 13 and 19 as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 are accepted by the parties, except that:
- (a) The first paragraph of Chapter 12 Method 1 refers to a 40m setback from MHWS. The reference to "40m" remains in dispute.

Buildings – ONL and CNCL areas

26. The parties agree that the rules of the Proposed Plan in Chapter 19 relating to ONL and CNCL areas can be amended as follows:
- (a) Farm accessory buildings are Controlled Activities if located within an Existing Building Cluster (i.e. within 100m of existing buildings) and subject to a maximum floor area of 75m². Otherwise, farm accessory buildings are Restricted Discretionary Activities.
- (b) All other buildings (including Dwellings) are Controlled Activities within an Existing Building Cluster (i.e. within 100m of existing buildings) and subject to a maximum floor area of 75m². Buildings larger than 75m² will be Restricted Discretionary Activity (but need not be notified). All buildings more than 100m from an Existing Building Cluster will be a Non-Complying Activity.
27. In all other respects, the rules in respect of buildings within ONL and CNCL areas as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 are accepted by the parties, including matters of control and assessment matters.

Buildings – RAL areas

28. The parties agree that the MHWS yards standard in Chapter 19, Rule 3.2.1 for sites within those areas shown as RAL on the Planning Maps shall be 40



metres. A breach of this rule will require resource consent as a restricted discretionary activity.

29. The parties agree that the main ridgeline rule (which relates to buildings within 20m vertical from a main ridgeline) can be amended so that:
- (a) Such buildings are controlled activities if located within an Existing Building Cluster (i.e. within 100m of existing buildings) and subject to a maximum floor area of 75m².
 - (b) Otherwise, such buildings are a restricted discretionary activity.
30. In all other respects, the rules in respect of buildings within ONL and CNCL areas as set out in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 are accepted by the parties, including:
- (a) Chapter 19 Height standard – 7.5m;
 - (b) Chapter 19 Site Coverage – Maximum size is 300m² with total size not exceeding 10% of site or 2000m²;
 - (c) Chapter 19 Reflectivity – 40% except for building in existing clusters;
 - (d) Chapter 19 Buffer from ONLs and CNCLs – Within 150m horizontal or 50m vertical distance, which ever is lesser, building becomes Controlled Activity.

Non-notification

31. The parties agree to amend the Non-Notification of Applications rule in Chapter 19 of the Proposed Plan to state:

Non-Notification of Applications

Any application for a resource consent for a controlled activity may be considered without the need to obtain a written approval of affected persons and need not be notified in accordance with Section 93 of the Act, unless the Council considers special circumstances exist in relation to any such application.

Environment Court hearing

32. The parties agree that:
- (a) They will support the matters agreed to in this Heads of Agreement;
and

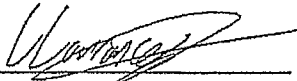


- (b) They will not present a case inconsistent with the matters agreed to in this Heads of Agreement.

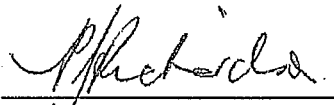
Christchurch City Council position

33. The Council's agreement to this Heads of Agreement is subject to the final approval of the District Plan Appeals Subcommittee.

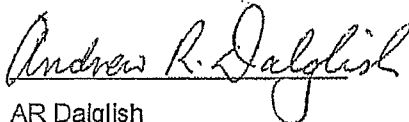
DATED at Christchurch this 13th day of September 2007



C O Carranceja
Counsel for Christchurch City Council



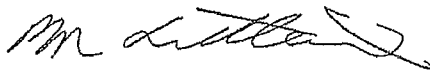
P Richardson
for A Crow, Banks Peninsula Community Task Force Farmers, Banks Peninsula Conservation Trust, CJ & JM Chamberlain, DC Carter, GPJ De Latour, Federated Farmers of New Zealand Inc, ID & PL Richardson, PG & HM Heddell, and P Thelning



AR Dalglish

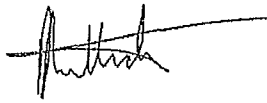


DP De Pass



R Littlewood
for Canterbury Regional Council

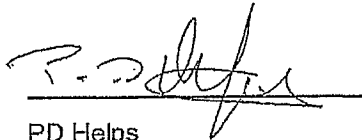




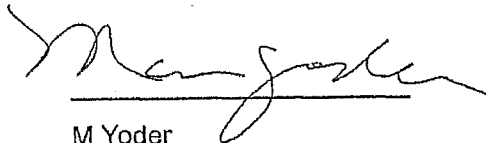
P N Rutledge
Counsel for Director General of Conservation



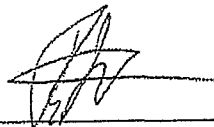
J Cook
for Friends of Banks Peninsula Inc



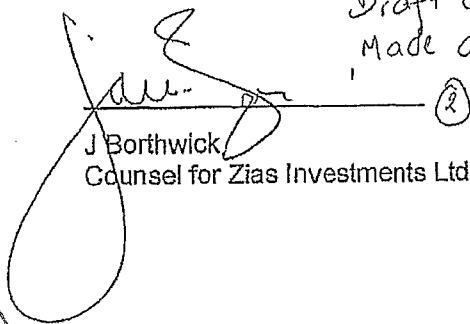
PD Helps
for PD & HC Helps



M Yoder
Counsel for Royal Forest & Bird Protections Society Inc



R Shaw
for Transit NZ



J Borthwick
Counsel for Zias Investments Ltd

- ① With the exception of paragraph 19. The Third Draft does not yet incorporate the changes made at Mediation on 24/25 August 2007.
- ② With the exception of paragraph 26 (b) - the final sentence of the same.





ANNEXURE 1:C

IN THE ENVIRONMENT COURT

RMA 49B/02, 113/02,
ENV C 165(A, B, C, D)/05, 167(A, C)/05, 170/05, 173B/05,
176A, C/05, 177/05, 178(A, B)/05, 179(A, B)/05, 181(A, B, D)/05,
182(A, B, D)/05, 183(A, B)/05, 184(A, B, D)/05, 185(A, B)/05,
186(A, B)/05, 187(A, C, D, E, G, I, L, M, O, P, S, T, U, V, W, Y(I),
AA, BB, DD, GG, HH, II)/05, 188/05, 189/05, 190A/05,
191(A, C, D)/05, 193(A, C, D, F, G, I, J)/05, 194(A, B)/05,
196(A, B, D(i), E)/05, 197(A, F, G(i))/05, 198(A, D, E, I, J)/05,
199(A & B)/05, 200A/05, 201(B, C, F, G)/05, 203(A, B)/05,
204(A, B)/05, 207(A, B, C)/05, 209(A, C)/05

Under the the Resource Management Act 1991 ("the Act")

And of the landscape appeals on the Banks Peninsula Proposed District Plan under Clause 14 of the First Schedule of the Act

Between

A CRAW
(ENV C 178A, B/05)

AB NEWPORT & ORS
(ENV C 176A, C/05)

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C GRIMSDALE
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CANTERBURY REGIONAL COUNCIL
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DP DE PASS
(ENV C 183A, B/05)

FEDERATED FARMERS OF NZ INC
(ENV C 187A, C, D, E, G, I, L, M, O, P, S, T, U, V, W, Y(i),
AA, BB, DD, GG, HH, II/05)



FRIENDS OF BANKS PENINSULA INC
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(ENV C 207A, B, C/05)

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(ENV C 49B/02, 199A, B/05)

TRANSIT NZ
(ENV C 209A, C/05)



ZIAs INVESTMENTS LTD
(ENV C 204A, B/05)

Appellants

And

CHRISTCHURCH CITY COUNCIL (formerly BANKS
PENINSULA DISTRICT COUNCIL)

Respondent

HEADS OF AGREEMENT
Dated 14 September 2007



HEADS OF AGREEMENT

1. Most parties to the Banks Peninsula Landscape appeals attended mediation on 14 September 2007.
2. The following parties were not represented at the mediation:
 - (a) AB Newport & ors;
 - (b) C Grimsdale;
 - (c) DW Collins;
 - (d) EJC Aitken;
 - (e) EM Briggs;
 - (f) HC Broughton;
 - (g) ID & AMS Campbell;
 - (h) Lyttelton Port Company Limited;
 - (i) NZ Institute of Forestry (Canterbury Branch) & ors
 - (j) Orion New Zealand;
 - (k) R Columbus;
 - (l) R Stowell;
 - (m) RE & RF Millar;
 - (n) Royal Forest & Bird Protections Society Inc;
 - (o) Telecom NZ Ltd & Telecom Mobile Ltd;
 - (p) Transit NZ.
3. The purpose of mediation was to discuss and agree upon appropriate relief in relation to the landscape topics under appeal.
4. As a result of mediation, the parties have reached agreement on how the appeals can be resolved in part. The agreement is set out below.

Earthworks – ONL and CNCL

5. In the Heads of Agreement dated 13 September 2007, the parties were not in a position to agree on whether earthworks associated with the benching for



new fencelines in outstanding natural landscapes or coastal natural character landscapes can be a permitted activity or require a resource consent as a restricted discretionary activity.

6. The parties (except Robinsons Bay Trust and Pacific Investments Trust) have discussed this topic further and have now agreed that:
 - (a) Earthworks for the benching for fencelines within ONL & CNCL areas can be a permitted activity provided that the maximum width is 3m, the maximum cut is 1m, and earthworks are revegetated within 3 months.
 - (b) Otherwise, earthworks for the benching for fencelines will require resource consent as a restricted discretionary activity.

Dwelling Density – RAL

7. The parties (except Robinsons Bay Trust and Pacific Investments Trust) agree that the rules in Chapter 19 of the Proposed Plan can be amended so that in the Rural Amenity Landscape ("RAL"):
 - (a) Dwellings on 40ha below 160m and 100ha above 160m are permitted activities, provided that there are no more than 2 dwellings on any certificate of title. Allow "swapping" whereby land above 160m can be used to supplement the 40ha requirement for a dwelling to be located on contiguous land below 160m. Swapping does not apply the other way (i.e. land below 160m cannot be used to supplement the 100ha requirement for a dwelling to be located on contiguous land above 160m).
 - (b) Discretionary Activity for dwellings on 4 - 40ha below 160m and 4 - 100ha above 160m contour.
 - (c) Non-complying Activity for dwelling on less than 4ha.
 - (d) Contiguous ONL and CNCL land can be used to supplement the permitted and discretionary area requirements for a dwelling in the RAL.
 - (e) A dwelling can be established as a restricted discretionary activity on a title no smaller than 1ha provided that contiguous land of an area sufficient to meet the permitted density standard (paragraph 7) is covenanted so as to be kept free of dwellings. For example, a dwelling



can be erected on a 1ha site above 160m provided that land contiguous with that site above 160m of an area of 99ha is covenanted.

- (f) A dwelling can be established as a discretionary activity on a title no smaller than 1ha provided that contiguous land of an area sufficient to meet the discretionary density standard (paragraph 7(b)) is covenanted so as to be kept free of dwellings. For example, a dwelling can be erected on a 1ha site provided that land contiguous with that site of an area of 3ha is covenanted.

Subdivision – RAL

8. The parties (except Robinsons Bay Trust and Pacific Investments Trust) need to discuss further the details in resolving the subdivision standards. It is intended that the subdivision rules will reflect the dwelling density standards, but this needs further exploration. The Council will provide the parties with a proposal next week.

Chapter 19 – Rule 5.2(a)

9. The parties (except Robinsons Bay Trust and Pacific Investments Trust) agree to amend Rule 5.2(a) of Chapter 19 as in the Third Draft of amendments as circulated to all parties via email on 30 August 2007 by adding the words "Discretionary Activity or" before the words "Non-Complying Activity".

Position of Summit Road Society Inc

10. Summit Road Society Inc did not execute the Heads of Agreement dated 13 September 2007.
11. In addition to the matters contained in this Heads of Agreement, Summit Road Society Inc also agrees to the matters contained in the Heads of Agreement dated 13 September 2007.

Position of Director-General of Conservation

12. The Director-General of Conservation did not agree with paragraph 22 of the Heads of Agreement dated 13 September 2007.
13. In addition to the matters contained in this Heads of Agreement, the Director-General of Conservation now also agrees with paragraph 22 of the Heads of Agreement dated 13 September 2007.



Position of Zias Investments Ltd

14. Zias Investments Ltd reserves the ability to challenge at the Environment Court whether dwellings can occur in the CNCL as a restricted discretionary activity subject to compliance with the minimum dwelling density standards.

Process from here

15. It is agreed that:
- (a) Robynsons Bay Trust and Pacific Investments Trust will confirm by Tuesday 18 September 2007 whether or not they will oppose a request for the adjournment of appeals.
 - (b) The other parties will seek to adjourn the appeals in order to enable the Council to "ground-truth" the ONL & CNCL lines in accordance with the Heads of Agreement dated 24 August 2007. This may be supported by Robynsons Bay Trust and Pacific Investments Trust depending on the answer to paragraph 15(a).

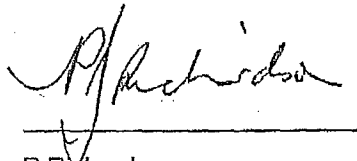
Environment Court hearing

16. The parties agree that:
- (a) They will support the matters agreed to in this Heads of Agreement; and
 - (b) They will not present a case inconsistent with the matters agreed to in this Heads of Agreement.

Christchurch City Council position

17. The Council's agreement to this Heads of Agreement is subject to the final approval of the District Plan Appeals Subcommittee.

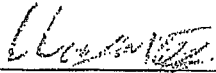
DATED at Christchurch this 14th day of September 2007.



P Richardson

for A Craw, Banks Peninsula Community Task Force Farmers, Banks Peninsula Conservation Trust, CJ & JM Chamberlain, DC Carter, GPJ De Latour, Federated Farmers of New Zealand Inc, PD & JC Helps, AR Dalglish, ID & PJ Richardson, PG & HM Heddell, and P Theining

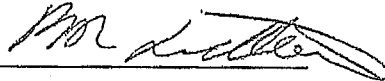




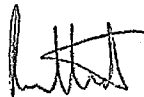
C O Carranceja
Counsel for Christchurch City Council



DP De Pass



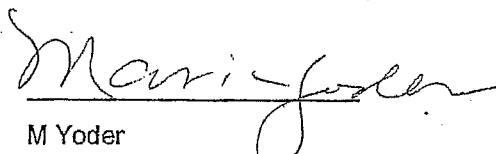
R Littlewood
for Canterbury Regional Council



P N Rutledge
Counsel for Director General of Conservation



J Cook
for Friends of Banks Peninsula Inc



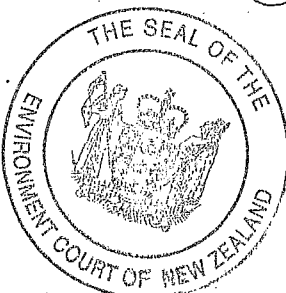
M Yoder
Counsel Royal Forest & Bird Protection Society Inc

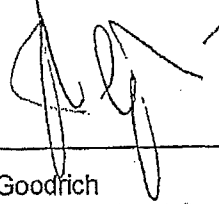


J Borthwick
Counsel for Zias Investments Ltd

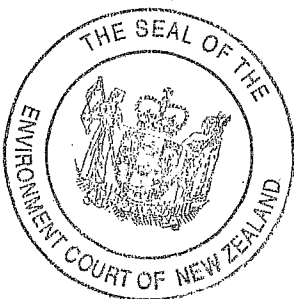


M Stapylton-Smith





J Goodrich
for Summit Road Society Inc



OVERVIEW

Banks Peninsula contains a rich array of widely appreciated heritage features. These include outstanding natural landscapes and landforms, coastal natural character landscapes and areas of ecological value, archaeological sites and features of cultural and historical heritage value.

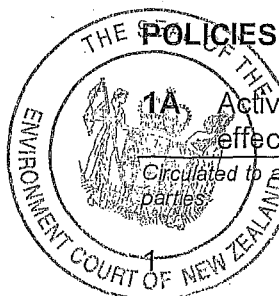
The natural environment of Banks Peninsula has been heavily modified by the actions of humans over many hundreds of years of occupation. However, there still remains a diverse array of forest remnants, coastal landforms, wetlands and other habitat areas which provide living evidence of the original natural environment of the Peninsula.

The remaining vestiges of the original natural environment of the Peninsula provide a rich heritage and are part of the uniqueness of the District which makes it an attractive place to live in and visit. The inherent characteristics and values of the natural environment of the Peninsula require sustainable management through a process whereby development respects conservation.

Private landowner initiatives such as covenanting, fencing, and management agreements make a vital contribution to the conservation of heritage. Sites containing areas protected by covenanting agreements are denoted by a logo on the Planning maps.

In addition, the provisions of legislation such as the Conservation Act, the Historic Places Act and the Reserves Act provide mechanisms for the identification and conservation of heritage sites, buildings and places. Private landowner initiatives such as fencing, management agreements, and covenanting also contribute to the conservation of heritage. District Plan provisions can be used to broaden and enhance the scope of preservation and conservation through a considered mix of control education, incentive and support.

ISSUE 1	The indigenous biodiversity of Banks Peninsula, and its component indigenous ecosystems, habitats, and communities and species are continuing to be modified and degraded by the effects of activities and land uses.
OBJECTIVE 1	To protect and enhance indigenous biodiversity and ecosystem functioning of Banks Peninsula through the protection and enhancement of significant flora and fauna habitat, and riparian areas; the maintenance of natural biological and physical processes; and the retention of indigenous vegetation and wetlands generally.



1A Activities and development should avoid, remedy or mitigate any adverse effects on:

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- the ecological resilience and functioning, habitat values, and amenity values of areas of significant indigenous vegetation, significant wetlands or significant habitats of indigenous fauna;
 - habitat linkages and corridors between areas of indigenous vegetation, wetlands and other natural habitats;
 - fresh water fish habitat, fish passage and aquatic ecosystems generally.
- 1B** Public access to significant habitats of indigenous fauna and to areas of significant indigenous vegetation should only take place at a level which does not compromise the ecological values.
- 1C** To encourage the protection and enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 1D** To avoid, remedy or mitigate the adverse effects of activities and development on habitat linkages and wildlife corridors between areas of indigenous vegetation, wetlands and other natural habitats.
- 1E** Public access to the coastline, lakes and rivers should only take place at a level that does not compromise environmental quality or amenity.
- 1F** To avoid, remedy or mitigate the adverse effects of activities and development on fresh water fish habitat, fish passage and aquatic ecosystems generally.

EXPLANATION AND REASONS

The protection of indigenous vegetation and habitats of indigenous fauna is a matter of national importance under Section 6 of the Resource Management Act. The purpose of the Act, Section 5, defines 'sustainable management' to include, amongst other things, safeguarding the life-supporting capacity of ecosystems.

The Peninsula contains remnants of the original indigenous vegetation cover, primarily forest and wetland remnants, and these are the priority for protection. Regenerating indigenous vegetation is also important for maintaining biodiversity, habitats, ecological functioning, and amenity in the District. Ecosystem functioning and biodiversity can only be maintained and enhanced by addressing the problems of fragmentation, loss of ecological resilience, weed and pest invasion, and the adverse effects arising from some land use activities.

Ecosystem functioning describes the ability of an ecosystem to retain itself. This involves factors such as the maintenance of water quality and quantity, maintenance of the cycle of nutrients, and the retention of habitats and habitat linkages. Ecological resilience is the ability of ecosystems to recover from detrimental activities or events such as drought or vegetation removal. Loss of ecological resilience is measured in relation to the particular situation, for plant communities it may be indicated by the invasion of exotic species, and for an animal community it may be measured by the change in population.

The priorities for the conservation of regenerating indigenous vegetation are the more established and representative areas. Provisions for its protection need to



recognise the relative ecological value of different sites and make reasonable allowance for activities accordingly. Since many of these significant areas are located amongst land used for farming, they need protection from activities such as stock grazing, earthworks, drainage, and pesticide use, and from the effects of activities such as wilding tree spread.

The modified natural environment has largely been cleared of its indigenous vegetation coverage, however, some of this environment, including streams and other waterbodies, provide valuable habitat areas for indigenous fauna.

Habitat linkages are essential to ensuring the continued survival of species and ecosystems. In a highly fragmented system, such as Banks Peninsula, they are essential to safeguarding the life-supporting capacity of ecosystems. Corridors need to be used in conjunction with existing reserves, remnants on private land, and areas of regeneration.

ISSUE 2	Sites, buildings, and places and areas which are of cultural heritage value can be adversely affected by inappropriate development.
OBJECTIVE 2	To ensure that the use and development of physical resources does not adversely affect the integrity of important elements of the cultural heritage of the District.

POLICIES

- 2A** The conservation of features and places of significant cultural heritage value will be promoted through their protection from the adverse effects of land use.
- 2B** Further development within existing settlements should respect and complement identified heritage values.
- 2C** The conservation of features and places of significant cultural heritage value will be promoted through their protection from the adverse effects of use of land use.

EXPLANATION AND REASONS

The District contains a number of cultural heritage features which warrant protection because of their archaeological, architectural or historical importance, or because of their significance to Maori. The values of heritage features can be adversely affected by land use activities, and the potential effects of such activities should be assessed on a case-by-case basis. Protection of such features may be most appropriately provided by managing the area surrounding a heritage site if that area is important to the heritage values of the feature, or if the exact location of a feature is uncertain. In the case of existing settlements, controls may be needed to protect the heritage character of an area, rather than being restricted to sites. Controls may also be necessary to ensure that heritage features are not modified in an inappropriate manner.

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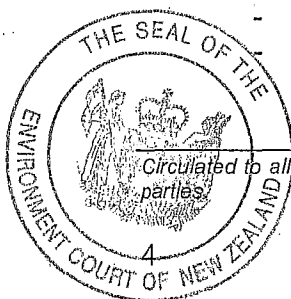
METHODS TO ACHIEVE OBJECTIVES AND POLICIES

Other District Plan Provisions

- Rules to limit the location, type and scale of activities in Conservation Reserves, as set out in Chapters 12, 13 and 16.
- Rules to control vegetation clearance and earthworks to avoid, remedy or mitigate the adverse environmental effects associated with providing public access.
- Lists of Protected and Notable buildings, objects and sites in Appendices IV and V, and the objectives, policies and methods set out in Chapter 14 (Cultural Heritage).
- Rules to control external alterations or additions to buildings, and the erection or demolition of buildings in the Residential Conservation and Town Centre Zones of Akaroa and Lyttelton.
- Lists of notable buildings in Appendix V.
- Guidelines for buildings located within Rural, Rural-Residential and Akaroa Hill Slopes Zones in Appendix VIII.
- Design guidelines for buildings located within Residential Conservation and Town Centre Zones in Appendices X and XI.
- Protected trees are identified on the Planning maps and listed in Appendix VII, and objectives, policies and methods are set out in Chapter 15 (Trees).

Council Assistance

- Rate relief is available if significant areas of indigenous ecosystems are given formal protection by means of appropriate covenants.
- The provision of information to enable people to have a greater understanding of natural heritage features and the need for their protection, and information regarding the organisations which can provide assistance to protect them.
- For resource consent applications which are required solely in relation to the heritage protection controls associated with the provisions below, the Council shall:
 - waive application fees for non-notified applications (up to and including the release of Council's decision);
 - reduce application fees for notified applications up to the comparable amount for non-notified applications, and will give consideration to waiving application fees over and above this:
 - Outstanding Natural Feature and Landscapes Areas
 - The Coastal Protection Area



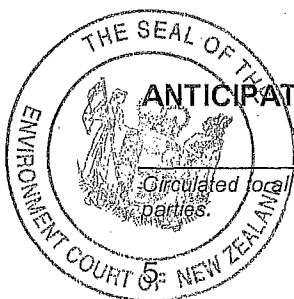
- Areas defined as significant indigenous vegetation or identified as significant indigenous vegetation and significant habitats of indigenous fauna in accordance with Method 1 Chapter 19.
- Council will give consideration to waiving or reducing financial contributions and reserve contributions which arise from subdivision involving significant natural areas (such as indigenous vegetation, habitats, wetlands, and esplanade reserves) when the heritage values of the property are adequately safeguarded.
- Council will give consideration of grants for fencing areas of indigenous vegetation.

Other Methods

- Preparation and implementation of a strategic plan for reserves management to be completed within two years of the Plan being operative. The scope of the plan is to include:
 - A walkway network to be identified.
 - An active policy for purchasing and developing reserves for their ecological potential, as well as their suitability for people. In particular, the plan should consider the lower slopes where there is limited habitat for some wildlife species. This approach to include the planting of native plant species that have been sourced locally.
 - Community involvement and participation in reserves projects, landscape plans and similar settlement enhancement and landscape programmes under the Local Government Act.
- Adoption of Council approved management plans for particular areas of the Peninsula and funding mechanisms to assist in their implementation.
- A register will be held outside of the District Plan which identifies the location of esplanade reserves and strips.

RELATED DISTRICT PLAN PROVISIONS

- Outstanding Natural Feature and Landscapes Areas, Coastal Protection Areas, and Conservation Reserves are identified on the Planning maps.
- Rules to limit the location, type and scale of activities in the Outstanding Natural Feature and Landscapes Areas and Coastal Protection Areas and Conservation Reserves, as set out in Chapters 12, 13 and 16.
- Forestry Guidelines in Appendix IX, and the objectives, policies and methods relating to forestry set out in the Zone chapters.

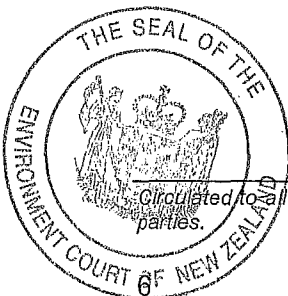


ANTICIPATED ENVIRONMENTAL RESULTS

Circulated for parties 3 October 07. Includes amendments arising out of Heads of Agreements between the parties.

The following environmental results are anticipated from the implementation of the objectives and policies relating to nature conservation:

- The protection and enhancement of the quality of natural habitats, ecosystems (including aquatic habitats), and significant areas of indigenous vegetation.
- Retention of the District's indigenous biodiversity.
- Protection of the listed historic and notable buildings, sites, places and areas and archaeological sites.
- Protection of waahi tapu and the features and sites located within the 'silent file' areas.
- The built environment does not dominate the natural environment and identified heritage items and heritage areas.
- Preservation of the historical character and streetscape of the Akaroa township.



OVERVIEW

The coastal environment of Banks Peninsula is a legacy of the District's unique geological past. The long and intricate coastline offers an attractive natural environment consisting of large sheltered harbours, coastal cliffs, tidal estuaries, marshes and dunelands, interspersed with beaches and sheltered coves. Many of the natural features of the coastal environment are recognised as having regional and national significance.

The coastline is also a focus for social, economic and cultural activity in the District. The major settlements of the District are located on the coast, and the coastline and surrounding waters are important for recreation, and the visitor industry and aquaculture. The coastal environment is a working landscape where pastoral farming continues to be the dominant landuse. The coastline is also likely to be of increasing importance for land-located aquaculture enterprises, which must be sited, very close to a source of unpolluted seawater.

As a result of early settlement patterns and the continued use of the land today some development including homesteads, accessory buildings and structures are established within these areas.

Users of the Rural Zone need to be able to respond to future opportunities for a range of land uses, which may include different forms of development. These types of activities can be complementary to farming activities and in the case of tourist, ecologically based or accommodation activities of a scale consistent with objectives and policies. These can have the added benefit of enabling the community and visitors access to the coast and outstanding landscapes.

One of the matters of national importance set out in Section 6 of the Resource Management Act is the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development. All tiers of government share the responsibility for the management of the coastal environment. At the national level there is the New Zealand Coastal Policy Statement which has, as its purpose, the statement of policies to achieve the purpose of the Act in relation to the coastal environment. The District Plan must not be inconsistent with this. The Canterbury Regional Council is responsible for the seaward side of the coastal environment from Mean High Water Springs (MHWS). This part of the coastal environment forms the Coastal Marine Area. The Regional Council and the Minister of Conservation are responsible for controlling activities, which take place within the Coastal Marine Area. The Regional Council also controls activities that are landward of the CMA and are within the Coastal Hazard Zones of the Regional Coastal Environment Plan.

In 2007 the Council completed a Landscape Study of the Rural Zone on Banks Peninsula. As part of this study, the Council identified those areas of the coast most highly valued for their naturalness and lack of obvious modification in accordance with Section 6(a) of the Resource Management Act. These areas are now encompassed within a Coastal Natural Character Landscape category. This landscape category is defined on the planning maps and does not exceed a



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CHAPTER 12 THE COASTAL ENVIRONMENT

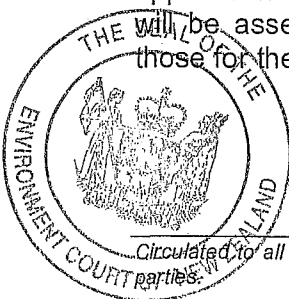
distance of approximately 500m from MHWS . Beyond this distance the dominance of the coast and the sea/land interface is considered to lessen. The landscape boundary line has been designed to accommodate localised landform subtleties and areas of modification which have reduced natural character.

The Landscape Study which identified the Coastal Natural Character Landscapes has been undertaken at a district wide level. In identifying these landscapes it is recognised that there is the potential for areas to exist within sites which have the potential to absorb some change. The nature of that change must be appropriate having regard to the landscape values identified and relevant objectives and policies.

The District Council's responsibility for the coastal environment extends from the landward side of the MHWS. There is no statutory limit to the landward extent of the coastal environment. For the purposes of the administration of the Plan, a line landward of the MHWS as shown on the Planning Maps has defined an Interim Coastal Protection Area. It coincides in part with a 30m set-back from MHWS. It also predominantly includes areas within both Akaroa and Lyttelton Harbours, together with Kaitorete Spit and some of the outer bays, which have high natural character and high sensitivity to potential development. These areas include parts of the former Rural 3 zoned areas within the Akaroa harbour and also include important areas such as wetlands and dune complexes, which the community has agreed are a part of the immediate coastal environment needing protection. In addition, the Interim Coastal Protection Area includes those areas of coastline that are landward of and adjoining 'Areas of Significant Natural Value' or 'High Natural, Physical, Heritage or Cultural Value' as identified in the Proposed Regional Coastal Environment Plan. The landward extent of the Interim Coastal Protection Area in these circumstances is defined by a combination of the 60m contour line and a 300m setback distance from MHWS.

Any additional areas may be investigated and identified in consultation with landowners and be the subject of future plan changes. The extent of the Interim Coastal Protection Area does not by any means include all land-based activities and natural and physical features which have an effect upon the coastal environment. The Interim Coastal Protection Area do not define the coastal environment: virtually the whole peninsula, in a broad sense, is within the coastal environment. For instance, a definition in the Regional Policy Statement includes the land backdrop to the coast. Virtually the entire District is part of the Coastal Environment in these standards. Such values are also a matter for the Rural and other Zones.

The provisions of this section of the plan apply across much of the District wherever coastal influence is an important factor (almost the entire district). Any application for a resource consent for an activity within the coastal environment will be assessed against the objectives and policies set out below as well as those for the relevant zone.



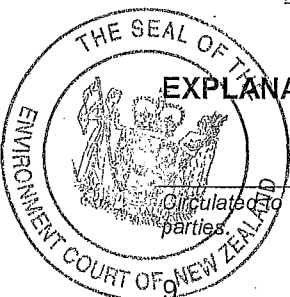
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ISSUE 1	Inappropriate subdivision, use and development can adversely affect the existing natural character of the coastal environment.
OBJECTIVE 1	To preserve the natural character and amenity values of the coastal environment of the District, <u>including the Coastal Natural Character Landscape</u> , and protect it from the adverse effects of inappropriate subdivision, use and development.

POLICIES

- 1A** Coastal landforms, landscapes and vegetation which exhibit distinctive natural character and visual amenity values within of the coastal environment, are to be protected from inappropriate subdivision, use and development.
- 1B** To preserve the natural character of the coast through:
- retention, as far as possible, of remaining areas of indigenous vegetation, habitat, natural landforms and the ecological, open space and amenity values associated with these.
 - maintenance of the natural character in those parts of the coastal environment which are unbuilt and/or remote.
- 1BC** The scale, form and location of buildings and other structures should not to be visually dominant in the coastal environment.
- 1C1D** New subdivision, use and development that are appropriate to the location are to occur generally in areas where the natural character has already been compromised.
- 1D1E** Avoid sprawling or sporadic subdivision use and development.
- 1E** Within Interim Coastal Protection Areas to preserve the natural character of the coastal environment and protect it from inappropriate subdivision, use, and development.
- 1F** The adverse effects of use and development (including but not limited to land disturbance, earthworks, exotic forestry, indigenous vegetation clearance, buildings and other structures) should be:
- avoided, remedied or mitigated in a manner that preserves the high natural character values of the Coastal Natural Character Landscape;
 - avoided, remedied or mitigated in other areas of the coastal environment.

EXPLANATION AND REASONS



Circulated to all parties 3 October 07. Includes amendments arising out of Heads of Agreements between the parties.

Many parts of the coastline and the coastal environment of the District are wild and remote and are highly valued for their natural character and amenity values. It is important that these areas' high natural values are not adversely affected by activities, earthworks and structures located adjacent to the foreshore. Structures such as jetties and boatsheds, in as much as they are a District Council responsibility, are to be located in areas where that sort of development exists already, where such facilities are required for reasons of safety or are necessary for the carrying out of permitted activities. The policies therefore seek to recognise and provide for the relevant section 6 and 7 matters, while at the same time remaining consistent with section 5 of the Act in that people and communities will still be able to provide for their social, economic and cultural wellbeing.

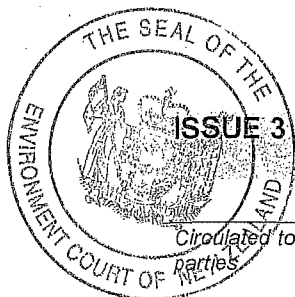
ISSUE 2	Modification of wetlands and dune systems, drainage structures, vehicle access and noise, and clearance of significant indigenous vegetation, can adversely affect seabird and mammal and other wildlife habitats within the coastal environment.
OBJECTIVE 2	To protect, and where practicable, enhance significant indigenous vegetation and significant indigenous wildlife habitats in the coastal environment.

POLICIES

- 2A** The adverse effects of subdivision, use and development of areas identified as significant ecosystems, significant indigenous wildlife habitats, and significant indigenous vegetation are to be avoided, remedied or mitigated.
- 2B** The retention, restoration and rehabilitation of the indigenous ecosystem functioning, habitat values and natural character of the coast of the Banks Peninsula is to be encouraged.

EXPLANATION AND REASONS

There are habitats or parts of habitats within the coastal environment. These include remnant areas of indigenous coastal vegetation and seabird and marine mammal habitats. Some of these habitats contain rare and endangered species and it is particularly important that they are not adversely affected by the physical intrusion of structures, or the effects of air, water, noise pollution, vegetation clearance or predators.



Discharges and run-off from land use activities can affect the quality of coastal waters.

Circulated to all parties 3 October 07. Includes amendments arising out of Heads of Agreements between the Parties

OBJECTIVE 3 Land use activities are carried out in such a way so as to maintain or enhance coastal water quality.

POLICIES

- 3A** When considering resource consents or plan change requests, to ensure that proposals are designed to avoid or reduce sediment and other contaminants from entering the coastal water.
- 3B** Land use activities should not induce erosion, subsidence or landslip.

EXPLANATION AND REASONS

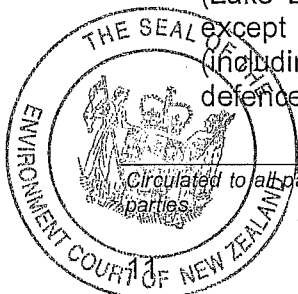
Although the Canterbury Regional Council through its control of discharges principally manages such issues, land use activities, if carried out inappropriately, do have the potential to reduce the quality of the coastal waters. The Council, in conjunction with the Canterbury Regional Council, will foster land use practices that serve to reduce silt-laden runoff. Mitigation measures, such as the use of silt ponds, will be required.

ISSUE 4 Public access to and along the coast.

OBJECTIVE 4 To maintain and enhance public access to and along the coast in a way that does not adversely affect natural character, indigenous ecosystems, human safety or the amenity values of the coast and adjacent land.

POLICIES

- 4A** Public access is to be maintained and enhanced.
- 4B** To maintain and enhance recreational amenity and public foot access to and along the coast by progressively identifying, mapping and signposting suitable unformed legal roads where alternative practical access is not available.
- 4C** Adverse effects of the use of public access on the natural character indigenous ecosystems and amenity of the coast, rural amenity values and human safety are to be avoided, remedied or mitigated.
- 4D** To restrict vehicle access to Kaitorete Spit and the margins of Te Waihora (Lake Ellesmere) to formed roads and authorised formed vehicle tracks except this shall not apply to vehicles used for management purposes (including for farming purposes), scientific research or by fire fighting, civil defence and rescue organisations.



EXPLANATION AND REASONS

Public access to and along the coastline is currently provided by public roads (some formed and some unformed) and reserves. A road, which is unformed for most of its length, encircles the majority of the coastline of the District. This road is located within the Interim Coastal Protection Area which will act as a buffer to assist in preserving the natural character of the coastal environment. For this reason, it is not intended that this road is formed for vehicular purposes, except where it is the only viable access to the coast or it is necessary for health or safety reasons. Some areas do not have clear or practical access. Following consultation with affected parties it may be appropriate to make improvements to such access.

In addition to this coastal road a proportion of the coastline is in public ownership and used for a range of recreational activities. However, it is important that the level of provision and degree of public access to the coastal environment takes into account environmental and other constraints such as the need for safety or privacy. Access for intensive recreational activities are to be directed towards the more developed parts of the coastline while allowing for limited access, for example only by foot or limited time to sensitive habitats where appropriate.

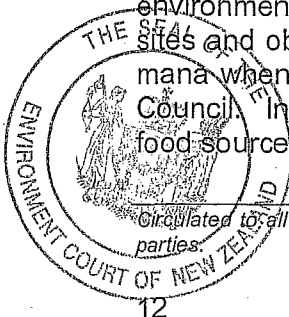
ISSUE 5	Use and development of the coastal environment may adversely affect the traditional relationships that tangata whenua have with the coastal environment.
OBJECTIVE 5	To recognise and provide for the values of Ngai Tahu and the local tangata whenua relating to the coastal environment.

POLICIES

- 5A** Use and development should not adversely affect Waahi tapu and other sites, which are significant to tangata whenua.
- 5B** Access to the coastline for the gathering of kai moana is to be maintained or enhanced where appropriate, in consultation with landowners.

EXPLANATION AND REASONS

The coastal environment of Banks Peninsula and its conservation has a dual significance to Ngai Tahu. In particular, there is a desire to protect Ngai Tahu environmental values and to secure the protection of culturally significant places, sites and objects associated with the occupancy of land by Ngai Tahu who have mana whenua for the area within the jurisdiction of the Banks Peninsula District Council. In addition, there is the need to preserve access to traditional coastal food sources.



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METHODS TO ACHIEVE OBJECTIVES AND POLICIES

Method 1

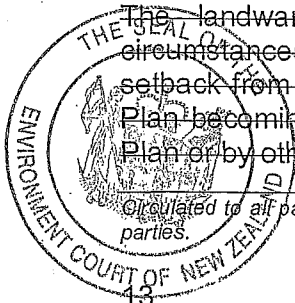
Landscapes which display a high degree of naturalness along with an absence of obvious modification are identified as Coastal Natural Character Landscapes on the Planning Maps. Within these areas greater protection is to be afforded the existing values in accordance with Section 6(a) of the Resource Management Act. Ribbon development is considered to be undesirable along the coastal margin and coastal areas not encompassed within the Coastal Natural Character Landscape are subject to a 40m setback from MHWS to provide for the maintenance of recreation, amenity and other values in accordance with Sections 6 & 7 of the Resource Management Act.

The Interim Coastal Protection Area has been identified as including land within a 30m setback from MHWS, which generally coincides with the coastal road reserve plus ten metres setback landward of the reserve. Also included as more extensive individual areas are a number of wetlands at the head of tidal estuaries and some other areas, particularly within the Akaroa and Lyttelton Harbours, which are identified on the Planning Maps. The Council has identified these for protection because they have one or more of the following characteristics:

- they contain areas of significant indigenous vegetation; or
- they form part of a plant and/or animal community that is shared with the adjacent coastal marine area; or
- they have a high degree of natural character; or
- they are a significant habitat of indigenous fauna; or
- the landowner has agreed to the inclusion in the plan as a method of protection; or
- they are important for scientific, historic, cultural or recreational purposes; or
- they contain a significant landform or feature; or
- they are landward of an Area of Significant Natural Value or Area of High Natural, Physical, Heritage or Cultural Value shown in the Regional Coastal Environment Plan.

Although, at the time of this Plan becoming operative the number of such areas is limited, in the future the Council is committed, with the assistance of land care groups including the Banks Peninsula Conservation Trust, to identify further areas and include them in the Plan with the co-operation of the landowners. The Council considers that reliance on the 30m setback from MHWS is the minimum appropriate in regulatory terms along with additional areas in the harbour basins and outer bays based on areas of coastline that are landward of and adjoining 'Areas of Significant Natural Value' or 'High Natural, Physical, Heritage or Cultural Value' as identified in the Proposed Regional Coastal Environment Plan. The landward extent of the Interim Coastal Protection Area in these circumstances is defined by a combination of the 60m contour line and a 300m setback from MHWS. These provisions will be reviewed within two years of the Plan becoming operative. Protection of greater areas either through the District Plan or by other methods may be desirable and in some cases necessary.

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Method 2

Rules relating to activities located within these areas and the coastal environment generally have been chosen as one appropriate method of achieving the purpose of the Act. These are set out in the Rural Zone provisions. A range of non-regulatory methods also applies in this and other Zones.

Method 3

Council shall, in conjunction with affected landholders and interested parties, consider management options, including signage and fencing, to protect those parts of Kaitorete Spit which are at risk or experiencing damage from inappropriate vehicle access. These areas are shown in Appendix XXII.

ASSESSMENT OF APPLICATIONS

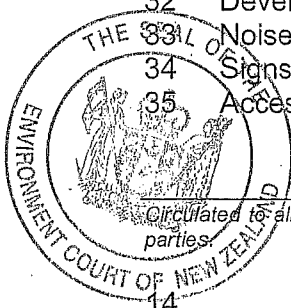
Any application for resource consent for an activity which is located within the Coastal Environment, is to be assessed against the objectives and policies set out above as well as the objectives and policies for the Rural Zone and any other objectives and policies and assessment matters of the Plan which are relevant in the consideration of the application.

ANTICIPATED ENVIRONMENTAL RESULTS AND MONITORING

The environmental results, which are anticipated through the administration of the provisions of this chapter, are indicated in Chapter 19, the Rural Zone. In order to assess the suitability and effectiveness of the objectives, policies and methods in achieving the Anticipated Environmental Results the Council will develop a monitoring strategy which will include monitoring indicators of the type shown – see Chapter 19 Anticipated Environmental Results.

REFERENCE TO OTHER PROVISIONS

- 14 Cultural Heritage
- 15 Trees
- 16 Conservation Reserves Zone
- 19 The Rural Zone
- 31 Subdivisions
- 32 Development Contributions
- 33 Noise
- 34 Signs
- 35 Access Parking and Loading



OVERVIEW

The distinctive landscape of Banks Peninsula results from a combination of physical processes and human activity. The natural components of the landscape are the landforms, which include ridges, peaks and volcanic features such as cones, bluffs and coastal cliffs and seastacks. Logging and land clearance stripped the Peninsula of much of its original forest cover prior to the present farming regime. By the 1920s less than 1% of the original forest cover was left. By the 1990s the situation was much improved, with regenerating native forest now covering about 15% of Banks Peninsula. This regenerated forest cover, including areas nurtured or enhanced by landowners along with the remnants of old growth forest and other landscape features have become important elements of the landscape character of the District. In particular, some areas of natural habitat and some of the highly visible upland areas are regarded by many as the most outstanding elements of the landscape and worthy of protection from the adverse effects of subdivision and development which could detract from their visual integrity or habitat value. The outstanding natural landscape is a working landscape where pastoral farming continues to be the dominant landuse.

As a result of early settlement patterns and the continued use of the land today some development including homesteads, accessory buildings and structures are established within these areas.

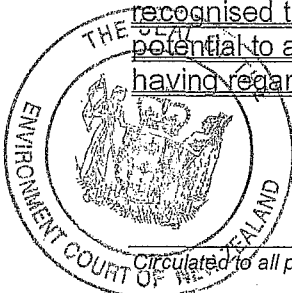
Users of the Rural Zone need to be able to respond to future opportunities for a range of land uses, which may include different forms of development. These types of activities can be complementary to farming activities and in the case of tourist, ecologically based or accommodation activities of a scale consistent with objectives and policies. These can have the added benefit of enabling the community and visitors access to the coast and outstanding landscapes.

~~A number of specific outstanding areas are contained within the Rural Zone. These areas include the most elevated visually prominent ridgelines and peaks within the District, and those surrounding the Lyttelton and Akaroa harbour basins, in particular.~~

In 2007 the Council completed a Landscape Study of the Rural Zone. As part of this study, the Council identified areas of outstanding natural features and landscapes.

They represent those areas with the most significant values assessed in relation to the statutory requirements of Section 6(b) of the Resource Management Act and which require protection from inappropriate development and subdivision. Activities and structures which may potentially modify or detract from these values are to be discouraged from occurring. The coastal landscape is discussed in Chapter 12.

The Landscape Assessment which identified the Outstanding Natural Landscapes has been undertaken at a district wide level. In identifying these landscapes it is recognised that there is the potential for areas to exist within sites which have the potential to absorb some change. The nature of that change must be appropriate having regard to the landscape values identified and relevant objectives and policies.



ANTICIPATED ENVIRONMENTAL RESULTS AND MONITORING

The environmental results, which are anticipated through the administration of the provisions of this chapter, are included in Chapter 19 The Rural Zone. In order to assess the suitability and effectiveness of the objectives, policies and methods in achieving the Anticipated Environmental Results the Council will develop a monitoring strategy which will include monitoring indicators of the type shown - see Chapter 19 Anticipated Environmental Results.

REFERENCE TO OTHER PROVISIONS

- 14 Cultural Heritage
- 15 Trees
- 16 Conservation Reserves Zone
- 19 Rural Zone
- 31 Subdivisions
- 32 Development Contributions
- 33 Noise
- 34 Signs
- 35 Access Parking and Loading
- 37 Waste Management and Hazardous Substances
- 38 Natural Hazards



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OVERVIEW

The Rural Zone covers most of the peninsula. It extends from the elevated and deeply dissected inland parts of the District to the coastline. Much of it is also part of the coastal environment. The natural resources of soils, landform, climate, drainage and vegetation have largely provided the basis for the land uses carried out in the Rural Zone. Although some 1000 years ago forests covered the whole peninsula, much of it had disappeared by the mid 1800s. Timber extraction and land clearance played an early part in determining the rural landscape but now agriculture is the dominant land use and with some exceptions, it is one of the most significant determinants of the current rural landscape. Remnant areas of native forest had diminished to less than 1% of the original cover by 1920. Since then however, there has been significant regeneration to bolster the small original cover remaining. The importance of pastoral farming is reflected in the fact that over 70% of the zone is in pasture and pastoral farming is a valued part of the rural landscape character in many areas. Remnants of the indigenous forest and scrubland are scattered throughout the area and are largely confined to gullies and more inaccessible terrain. These provide shelter for stock, habitats for native species and also contribute to the landscape and biological diversity of the area. Agricultural productive land has more recently become the most visually dominant aesthetic component of the Banks Peninsula landscape, and is a key element of the landscape as we know it today. This is a major contributor to its outstanding character. As such, it is a significant resource which must be managed sustainably.

While pastoral farming remains the dominant land use, economic, social and technological changes have encouraged diversification into other activities. From the earliest days of human occupation the landscape has reflected the changing use of the Peninsula's natural resources. The current pattern of pastoral sheep and beef farming and intensive horticulture is part of this continuing evolution. In time these activities may be succeeded by others. A variety of horticultural activities are carried out where climatic and other natural factors are favourable. Land use is not static and will fluctuate as management techniques and economic conditions change. It is essential that such changes are accommodated and facilitated so that the agricultural resource can be managed sustainably. The Council will undertake plan changes to facilitate such change if necessary.

Forestry has increased in the last 10 years, mostly as an adjunct to pastoral farming but also as a stand-alone land use investment in suitable areas. As with any vegetation, particularly larger more deep-rooted species, exotic forests bring a number of benefits including economic opportunity, generally improved water quality, CO² absorption, soil stability, shelter and visual buffering, and help provide ecological corridors. Forestry can also have adverse effects on indigenous vegetation (if clearance or over-planting is involved), naturalness, views from roads, and the availability of water in the catchment. During and after harvesting there can be adverse effects on soil conservation, water quality, traffic, roads and bridges. Large trees can also shade roads and properties. The Council supports the use of forestry industry approved practices.



CHAPTER 19 THE RURAL ZONE

There is also increasing pressure from non-farming activities to locate within the Rural Zone. Provision of visitor facilities is increasingly seen as a means of supplementing rural income. In addition, there is a demand for low-density residential opportunities within the Rural Zone. The intensification of residential development in rural areas has the potential to degrade the low density character and landscape values of the rural environment, create pressure on infrastructure services and lead to conflict with other rural uses. Such impacts inhibit the efficient use and development of the rural land resource. Limited provision has been made for the residential use of rural land through the provisions of the Rural-Residential Zone. Because demand for such use can never be fully met in a manner consistent with the sustainable management of the rural land resource, control through the District Plan is necessary. The Council does not wish to discourage people from living in the Rural Zone, provided the sustainable management of the natural land resource is not compromised.

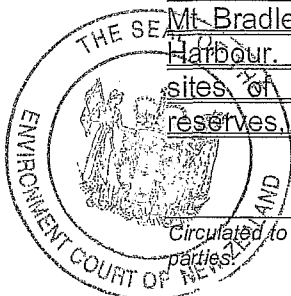
Other non-farming activities that are becoming increasingly reliant on the rural resource include passive recreation and eco-tourism activities, as well as conservation activities. Such uses need to be managed in a way to ensure any adverse effects on the character and quality of the Rural Zone are no more than minor.

The range of resources and activities occurring in the Rural Zone raises a number of resource management issues. Part III of the Plan outlines the significant resource management issues confronting the District. Most of those are applicable to the Rural Zone. This part of the Plan focuses on those resource management issues which are particular to the Rural Zone. It seeks to minimise any adverse effects that may arise.

In addition, the Plan seeks to foster the protection of the landscape character and amenity values of the Rural Zone by promoting sustainable management and positive conservation actions through both regulatory and non-regulatory means.

In 2007 the Council completed a Landscape Study of the Rural Zone. The purpose of this study was to identify Outstanding Natural, Coastal Natural Character and Visual Amenity Landscapes within the Rural Zone of Banks Peninsula (Coastal Natural Character Landscapes and Outstanding Natural Landscapes are referred to in Chapters 12 and 13 respectively). The Study was based on a comprehensive description of the existing landscape and described the landscape at three scales – peninsula-wide, by landscape character areas and by landscape features and elements. The study considered legibility, natural science, aesthetic, transient, shared and recognised, cultural and heritage values.

The Study concluded that the legibility of the Akaroa and Lyttelton Crater Rims was exceptional along with volcanic layering of the summits and upper slopes of Mt Bradley, Mt Herbert and Mt Evans and the volcanic dip slope of Diamond Harbour. Kaitorete Spit is also an important landform. Along with landform and sites of geological interest the Study considered the relevance of marine reserves, Recommended Areas of Protection, QEII covenants, Department of



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CHAPTER 19 THE RURAL ZONE

Conservation Protected Areas and other areas of significant natural value and their contribution to the landscape.

Key features contributing to landscape quality were found to include prominent ridgelines, areas free of development, rugged and exposed coastlines, areas of openness, natural vegetation patterns and historic settlement. Much of the Peninsula is considered to display exceptional aesthetic quality with a mosaic of land uses contained within a working environment. Natural landscapes were those displaying a strong predominance of natural features, patterns and processes with lesser evidence of human activity.

Tangata Whenua has identified the whole of the Peninsula as outstanding with native flora, fauna and waterways all contributing to cultural appreciation of the landscape.

The Outstanding Natural, Coastal Natural Character and Visual Amenity Landscapes identified by the Study have been incorporated into the District Plan, although the latter was renamed the Rural Amenity Landscape.

As a result of early settlement patterns and the continued use of the land today some development including homesteads, accessory buildings and structures are established within the Outstanding natural and Coastal Natural Character Landscapes.

Users of the Rural Zone need to be able to respond to future opportunities for a range of land uses, which may include different forms of development. These types of activities can be complementary to farming activities and in the case of tourist, ecologically based or accommodation activities of a scale consistent with objectives and policies. These can have the added benefit of enabling the community and visitors access to the coast and outstanding landscapes.

The Landscape Study which has identified the Outstanding Natural and Coastal Natural Character Landscapes and Main Ridgelines has been undertaken at a district wide level. In identifying these landscapes it is recognised that there is the potential for areas to exist within sites which have the potential to absorb some change. The nature of that change must be appropriate having regard to the landscape values identified and relevant objectives and policies.

The Rural Amenity Landscape applies to the balance of the Rural Zone which are not included within the Outstanding Natural Landscapes or the Coastal Natural Character Landscapes. The Rural Amenity Landscape is considered to be of high aesthetic quality where there is a general absence of large scale or concentrated development. A reduced level of control is anticipated in the Rural Amenity Landscape compared with the Outstanding Natural and Coastal Natural Character Landscapes. It is predominantly a working landscape reflecting the domination of agricultural and pastoral activities on the Peninsula.

Within the Rural Amenity Landscape ridgelines that make a significant contribution are to be identified on the Planning Maps as Main Ridgelines. Ridgelines that are currently free of built development are subject to a rule that seeks to maintain that environment.

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ISSUE 1	Structures, development and activities can adversely affect the landscape character and amenity values of the Rural Zone.
OBJECTIVE 1	To maintain the landscape values, natural character and amenity values of each of the Landscape Categories identified within the Rural Zone.

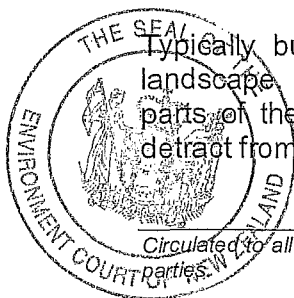
POLICIES

- 1A** The following qualities or elements contribute to the landscape character and amenity values of the rural environment and are to be maintained and enhanced:
- A generally small scale low density of buildings and residential development in those areas of the District where landscape character and amenity values are vulnerable to degradation. (See also Chapters 12, 13 and 31.)
 - Absence of highly visible structures and development on prominent ridges and skylines. (See also Chapters 12, 13 and 31.)
 - Prominent rocky outcrops.
 - Areas of indigenous vegetation and habitat.
 - The quality and clarity of water in rivers and streams.
 - Indigenous streamside (riparian) and coastal vegetation.
 - The ability to sustainably provide for the evolving nature of land based activities.
- 1B** Sustainable management and positive conservation is to be encouraged through non-regulatory means, including a Banks Peninsula Conservation Trust or other independent organisations.

EXPLANATION AND REASONS

The landscape qualities of the Rural Zone of the District are highly valued by the community of Banks Peninsula and visitors. These landscape qualities have resulted from a variety of natural and human events and processes. Important components of the landscape include the distinctive landforms of the area resulting from the natural processes of volcanic activity, erosion and deposition, and the vegetative pattern of open grasslands interspersed with stands of exotic plantings, remnant and regenerating indigenous forest and secondary growth. These landforms patterns of vegetation and agricultural activities help define the landscape character of the Rural Zone.

Typically buildings and structures are relatively minor elements of the rural landscape. However, when located on prominent high points and ridgelines, or parts of the coastline, or when large or in a dense pattern, they can visually detract from the existing landscape character, resulting in adverse effects on rural



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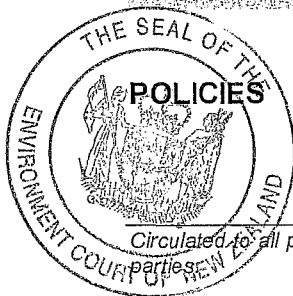
amenity and landscape values. Similarly, when poorly sited or designed, exotic tree planting and other development can result in adverse effects on the landscape regardless of scale. Adverse visual effects on the landscape character of the Rural Zone are to be avoided or mitigated. The outstanding natural features in the landscape are also afforded protection from inappropriate development through the provisions of Chapters 12 The Coastal Environment and 13 Outstanding Natural Features and Landscapes.

These policies therefore seek to recognise and provide for the relevant section 6 and 7 matters, while at the same time remaining consistent with section 5 of the Act in that people and communities will still be able to provide for their social, economic and cultural wellbeing. The policies are intended to ensure that future development in the Rural Zone is carried out in a sustainable manner that respects the existing landscape character and amenity values which are highly valued by the community and visitors to the area. The density, siting and appearance of buildings and other structures shall be managed in a way that ensures the landscape character of the rural area is not compromised. While it is considered important to allow for a range of living and working opportunities in the Rural Zone, it is commonly recognised that a valued element of the landscape is its open and uncluttered character. If this landscape character is to be maintained and enhanced, it is necessary to respect those highly visible and sensitive features such as ridgelines, the most significant parts of the coastal environment and areas of significant indigenous vegetation. It must also be recognised that the most significant ridgelines, peaks and coastal landscape features are highly visible and it may not be appropriate for buildings to be established in such locations.

Forestry plantings in the Rural Zone are to be sympathetic towards maintaining rural landscape values through the application of sound siting and design principles. It is envisaged that there could be some sites or areas within sites that will be unsuitable for exotic plantings. Where planting is appropriate steps will generally be needed to deal with the spread of wilding trees.

ISSUE 2 Land use activities involving the removal or modification of indigenous vegetation and habitats of indigenous fauna can lead to adverse effects on the ecosystems, habitat functions and cultural values.

OBJECTIVE 2 To identify, protect and enhance significant indigenous vegetation and significant habitats of indigenous fauna wetlands and ecosystems; and encourage the retention and enhancement of indigenous vegetation and habitats of indigenous fauna.



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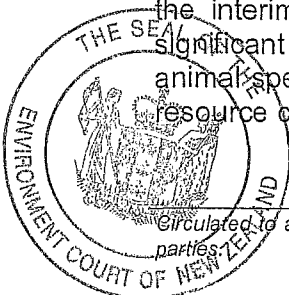
CHAPTER 19 THE RURAL ZONE

- 2A** Areas of significant indigenous vegetation and significant habitats of indigenous fauna referred to in Method 1, Chapter 19 are to be protected and adverse effects on such areas are to be avoided.
- 2B** Where land use activities, buildings or earthworks result in the removal of significant indigenous vegetation, new areas of equivalent environmental value are to be established or other areas enlarged in compensation.
- 2C** Plantings of exotic forestry are to avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 2D** The control of pests and weeds, which can damage indigenous vegetation, or habitats of indigenous fauna, is to be encouraged in line with the Canterbury Regional Pest Management Strategy.
- 2E** The Council, in the consideration of any resource consent application is to be able to take into account whether or not the community benefits by the applicant taking effective and appropriate steps to preserve indigenous vegetation and habitats of indigenous fauna closely related to the application site.
- 2F** Exotic tree plantings shall be sited, designed, of a species and managed to prevent wilding tree spread.
- 2G** The planting of indigenous tree species is to be encouraged.
- 2H** To encourage the retention and enhancement of remaining areas of indigenous vegetation and habitats of indigenous fauna.
- 2I** To identify, protect and promote the enhancement of sites of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with the criteria contained in Method 1 Chapter 19.

EXPLANATION AND REASONS

The Rural Zone contains some areas of significant remnant and regenerating indigenous vegetation and significant habitats of indigenous fauna. These have an important ecological function supporting populations of native plants and wildlife and are also important as living reminders of the original natural heritage of the District. It is the Council's intention to protect and enhance these areas through a combination of regulatory and non-regulatory measures.

It is acknowledged that significant habitats of indigenous fauna have not been specifically addressed in the methods of this Plan. However, it is recognised that the interim definition of significant indigenous vegetation encompasses some significant habitats of indigenous fauna, and Appendix XX lists threatened animal species. The effects on these shall be assessed where activities require resource consent under this plan.



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CHAPTER 19 THE RURAL ZONE

The removal or modification of indigenous vegetation and habitats of indigenous fauna can have adverse effects on ecosystems, habitat functioning, cultural values, and soil erosion. These areas are fragmented and at risk from invasion of pests and weeds. The current land occupiers in most cases have shown that with appropriate land management practices these areas can be increased in extent and their quality enhanced. The Council wishes to support and encourage this trend.

Significant areas of indigenous vegetation make an important contribution to the landscape and habitat values of the District. In particular the Council recognises that there are areas within the District which could contain unique, special or rare natural features or are representative examples of biological or geological features that were once more common or extensive within the District.

ISSUE 3	Some activities can adversely affect the amenity values and health and safety in the rural environment.
OBJECTIVE 3	To maintain and enhance the amenity values and conditions required for health and safety within the Rural Zone.

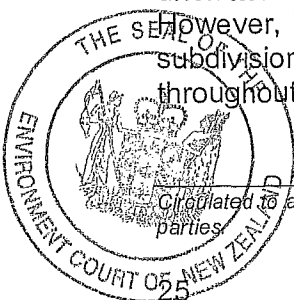
POLICIES

- 3A** Activities must not generate continuous or persistent nuisance, sufficient to have more than minor adverse effects on the amenity values and the health and safety of adjoining land users.
- 3B** Levels, duration and character of noise and odour are to be consistent with those normally generated by rural activities.
- 3C** Any adverse effects on amenity values, health and safety from increased density of development, vehicle movements or changes to the level of intensity or character of road usage on district roads, are to be avoided remedied or mitigated.
- 3D** Adverse effects from any activity affecting the rural outlook and privacy of adjoining properties are to be avoided, remedied or mitigated.

EXPLANATION AND REASONS

The Rural Zone is valued for its landscape character, amenity values and productive land use activities. Important amenity values include the open and uncluttered character of the landscape, tranquillity, the rural outlook and privacy.

However, it is to be noted that the land tenure is characterised by a pattern of subdivision with a number of small sites of less than four hectares scattered throughout the District. If it were permissible to establish a dwelling on each of



those sites as-of-right, this intensification of residential activity has the potential to lead to adverse effects on the character and rural amenity values of the rural zones that are highly regarded by the community and visitors to the area. It may also generate adverse effects such as contamination and human health problems associated with on-site disposal of effluent.

Increases in the scale and intensity of development in the Rural Zone can result in increases in noise and vehicle movements associated with some new activities. There may also be visual impacts from an increase in the number, density and scale of buildings. Changes in the type of land use activity (to factory farming for instance) can also result in adverse effects caused by odour. Although increased development in rural zones can bring economic and social benefits to the community, such as improved infrastructural services and maintaining schools and community facilities, these must be balanced against the actual and potential adverse effects on the environment.

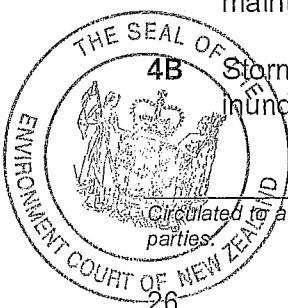
The scale and location of activities must be such that they do not cause more than minor adverse effects on the existing amenity values and landscape character of the Rural Zone. Careful design and siting of buildings and amenity planting can assist in mitigating any adverse effects and maintaining the visual amenity of the Rural Zone. This is of particular importance in visually prominent parts of the Zone. Other valued characteristics of the amenity of the Rural Zone can include privacy, a spacious rural outlook, peacefulness, clean air and low traffic volumes. It is acknowledged that the operation of some activities associated with farming and forestry sometimes generates severe levels of noise, dust and odour by urban standards, and those who live in rural zones must expect these. However activities are to be managed so that these effects do not exceed levels which are normally expected in rural zones and do not endanger the health and safety of the community.

ISSUE 4 Land use activities can have adverse effects on water quality and quantity and the natural character of streams and water bodies.

OBJECTIVE 4 To maintain and enhance the quality and quantity of natural water bodies and potable water sources and protect their natural character.

POLICIES

4A Buildings are to be sited and other activities carried out so as to allow retention and establishment of riparian and wetland vegetation and ensure the water quality and quantity of water bodies and potable water sources is maintained or enhanced.



4B Stormwater is to be disposed of so that it does not create erosion, inundation, and siltation or reduce the water quality of any water body.

CHAPTER 19 THE RURAL ZONE

- 4C** Effluent and stormwater from any new development is to be safely and effectively disposed of to avoid any adverse effects on ground or surface water quality.
- 4D** Riparian areas are to be managed to maintain and enhance their vegetation and natural character while, at the same time not unduly restricting the capacity of the channel to convey maximum flows.

EXPLANATION AND REASONS

This is an area where the Council's responsibilities complement those of the Regional Council. The Canterbury Regional Council has a central role but it is recognised that policies relating to land use activities, which can affect such issues, are not inconsistent with regional policies.

Some activities and buildings, if inappropriately located, have the potential to adversely affect water quality. This can occur through run-off of pesticides and nutrients into water bodies and sedimentation resulting from earthworks and erosion. Water flows and quality can also be altered through drainage, removal of riparian vegetation and through livestock entering waterways. An increase in the density of dwellings and other activities which rely on the disposal of effluent to the ground can also cause potential adverse effects on human health and has the potential to degrade water quality and reduce available sources of potable ground water.

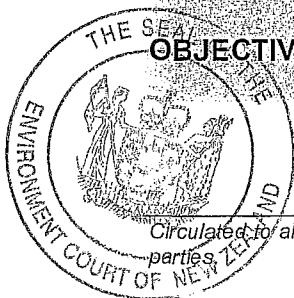
Water is an essential resource in the Rural Zone. The location of riparian vegetation can act as a buffer and reduce the amount of sediments and other contaminants entering streams and other bodies of water. Similarly, locating buildings and activities at a distance from water bodies will reduce the risk of contaminants entering the water. There are no reticulated waste disposal systems within the Rural Zone. On-site methods of effluent disposal are used with septic tanks being most common. Other waste and storm water is generally disposed of to the ground. It is important that on-site methods of disposal do not compromise ground or surface water quality. Some activities, such as large-scale forestry throughout a catchment, although generally having a beneficial effect on water quality, can have the potential to deplete ground and surface water resources. It will be necessary for those activities not to reduce the water resource to the extent that there will be adverse effects on the natural environment or on existing activities and indigenous vegetation.

ISSUE 5

Some activities and land uses can have adverse effects on the life-supporting capacity of soils.

OBJECTIVE 5

To safeguard and maintain the life-supporting capacity of the soil resource.



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POLICIES

- 5A** Activities are to avoid contamination of soils.
- 5B** Land management practices are to include measures to avoid loss of soils through erosion, the long-term depletion of soil organic matter, soil nutrients or natural fertility and degradation of water quality.
- 5C** Earthworks are not to lead to erosion or the siltation of any water body including coastal water and are to be protected by appropriate stabilisation planting and drainage.

EXPLANATION AND REASONS

Again, this is an area that complements the role of the Canterbury Regional Council. To the extent that the District Council's role is required to be not inconsistent with the regional role these policies are appropriate.

While the implementation of soil conservation measures is the primary responsibility of the Regional Council, the District Plan may also include measures to ensure the life-supporting capacity of soil is not compromised.

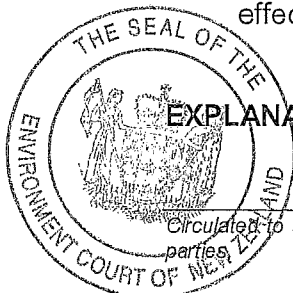
The soil's life-supporting capacity can be sustained by ensuring that as far as practicable land use activities do not result in erosion, breakdown of soil structure or contamination of soils.

ISSUE 6 New occupiers and land-use activities can bring expectations of standards of amenity infrastructure and services which are not realistic alongside established activities and existing conditions in the rural working environment.

OBJECTIVE 6 To ensure new use activities are compatible with existing standards of amenity, infrastructure and services.

POLICY

- 6A** Existing lawfully established rural activities are expected to improve their environmental performance but generally are not to be required to modify their lawfully established current operations and associated environmental effects to satisfy the needs of new land-use activities.

**EXPLANATION AND REASONS**

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CHAPTER 19 THE RURAL ZONE

The concept of reverse sensitivity has been recognised by the Environment Court as a legitimate concern for district plans. The concept relates to the effects of the existence of sensitive activities on other existing activities in their vicinity, particularly by leading to restraints in the carrying out of those existing activities.

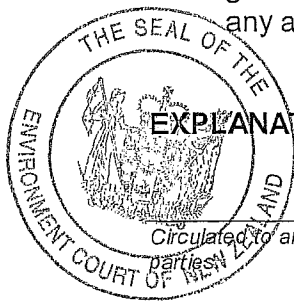
Existing lawfully established activities, and the effects that they create, are component parts of the natural and physical environment. It is reasonable to restrict or refuse consent for proposed activities in close proximity to an existing activity on the grounds that the existing activity, although legitimately established, may give rise to adverse effects likely to be detrimental to the operation of the proposed activity.

Rural activities that have been lawfully established are still under an obligation to avoid, remedy or mitigate adverse effects. The reverse sensitivity principle does not enable activities to offend against the overriding duties expressed in sections 16 and 17 of the RMA.

ISSUE 7	New land-use activities can raise expectations of, or require, levels of service which realistically cannot be achieved by existing infrastructure and services in the rural environment unless the appropriate levels of financial and physical resources are available.
OBJECTIVE 7	To ensure that future development does not exceed available servicing and infrastructure capacities at the cost of the community.

POLICIES

- 7A** Where any new activity requires a significant extension of Council funded public infrastructure or services it is to generally be provided by the person carrying out the activity or an appropriate financial contribution is to be required. The level of contribution required is to take into account the costs and benefits of the proposed activity and the contributions being made whether by rates or road user charges or other indirect forms of contributions.
- 7B** Any traffic generated by a proposal is not to compromise road safety or efficiency.
- 7C** Activities located within the Rural Zone are to dispose of all wastes generated, including chemical waste, sewage and stormwater, to ensure any adverse effects are avoided, remedied or mitigated.



EXPLANATION AND REASONS

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Increasing development in the Rural Zone also may generate demand for additional infrastructure and services. Existing facilities are developed to a level which is sufficient to service an economy largely centred on extensive farming and dispersed rural settlement. There are no reticulated systems of effluent or waste disposal and all activities must rely on site specific systems. To ensure the efficient use of the resources of the District, future development may sometimes be better concentrated in areas of existing facilities. Most activities located in the Rural Zone are directly dependent on the resources of the land and soil. Others provide services and social and cultural facilities to the rural community or process the resources of the zone.

Further development within the Rural Zone may result in a need to expand or upgrade elements of the existing infrastructure. One example would be an activity generating increased vehicle movements therefore making it necessary to widen or upgrade roads. The road network is a significant physical resource in the Rural Zone, providing for access throughout the District. It is important that the traffic generated by land-use activities does not compromise the level of service of the roading network and that any adverse effects on traffic safety are avoided, remedied or mitigated. In addition to the methods contained in this chapter, Chapter 35 "Access, Parking and Loading" of the Plan includes methods to achieve the safe and efficient functioning of the road network. Where roads are expected to serve other users to the Rural Zone, costs must not necessarily fall upon existing rural dwellers. Other activities may generate effluent or other wastes which require specialised disposal systems to be installed. It is expected that these costs will be met or shared to a commensurate level by the developer so that unsustainable demands are not placed upon existing rural infrastructure.

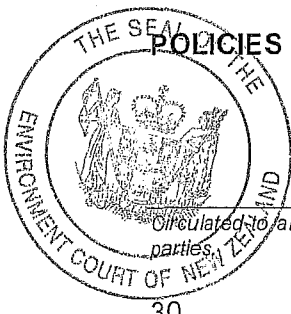
It is also important to ensure that the provision of any necessary additional infrastructure in the Rural Zone avoids, remedies or mitigates any potential adverse effects on the environment including any potential adverse effects on amenity values. All activities located within the Rural Zone must be capable of adequately disposing of wastes so that any adverse effects are contained within the site.

ISSUE 8

Conservation and environmental enhancement may in some cases be effectively achieved by non-regulatory methods

OBJECTIVE 8

To encourage the development of non-regulatory methods of achieving the conservation and enhancement of the valued landscapes, vegetation and wildlife of the Banks Peninsula.



- 8A** The Council is to foster the development of non-regulatory measures including education, advocacy and assistance, which involve land managers and the community in the conservation of the valued qualities of the rural environment.
- 8B** ~~The Council is to review the provisions in this Plan relating to outstanding natural features and landscapes within two years of the date this Plan becomes operative.~~

EXPLANATION AND REASONS

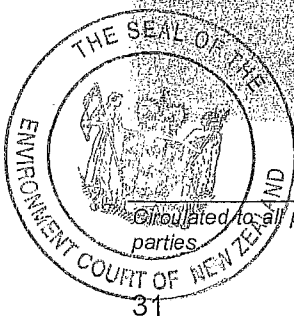
It is unusual to have objectives and policies relating to types of methods but in this case the successful outcome of this Plan is dependent on the methods adopted.

For the most part, the rural landowners of Banks Peninsula have managed the rural resource responsibly. This has been achieved cooperatively with most rural dwellers sharing similar environmental values. It is important to maintain and nurture this spirit. The Council recognises the wealth of knowledge that is held by rural dwellers and landowners and it does not seek to impose its methods where this would damage the cooperative spirit.

The Council must administer its District Plan over a relatively large and quite complex Rural Zone. It has limited resources with which to do so and it is aware that it could not administer rural policies successfully without the very full support and involvement of the rural community, particularly the landowners who are the first line managers of the resources. For this reason the Council's intention is to concentrate on methods designed to cultivate a climate of cooperation where there is a high degree of local involvement and "ownership". The Council intends to give every opportunity for such non-regulatory methods to work and undertakes to support them throughout the life of the plan. In taking this path the Council is aware there is a need to engender the support of the community and that this is more likely with the adoption of cooperative methods. Having said that, the Council will be monitoring the success of the methods and, if necessary, will undertake changes to the Plan to introduce new methods including possible rules. Rules are the method chosen to deal with elements requiring controls where the Council believes non-regulatory methods would be unlikely to be effective. Some rules have been selected and put in place to control adverse effects until non-regulatory methods can be put in place. The methods to implement the objectives and policies are set out below.

ISSUE 9

The efficient functioning of Lyttelton Port may be compromised by nearby sensitive activities being established in that part of the Rural zone identified as Port Environs Overlay Area on Planning Maps S0 and S1.



OBJECTIVE 9 To enable the efficient operation, use and development of the Port of Lyttelton as a major sea link for New Zealand.

POLICIES

- 9A** To ensure that the efficient operation, use and development of Lyttelton Port is maintained or enhanced by avoiding reverse sensitivity effects arising from adjoining land use activities.
- 9B** To recognise that any future landward expansion of the Port would involve land in the coastal environment between Te Awaparahi Bay and Gollans Bay.

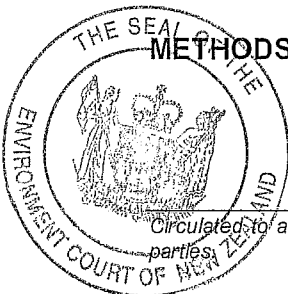
EXPLANATION AND REASONS

The efficient functioning of Lyttelton Port is a significant resource management issue and the importance of the Port to the local and regional economy is set out in Chapter 27 (Lyttelton Port). To this end a Port Environs Overlay Area has been identified within the Rural zone and the Council considers that it would not be prudent for activities, that are sensitive to existing or future port activities, to establish in this area. For example, dwellings, healthcare facilities and visitor facilities would be sensitive to noise, vibration, dust and visual effects associated with the Cashin Quay berths, the existing coal stockpile or the Gollans Bay Quarry, or would be sensitive to the future development of the Lyttelton Port into Te Awaparahi Bay and Gollans Bay.

Extension of the Port into Gollans Bay would result in substantial changes to the rural character and rural amenity of this area. However, the area is part of the coastal environment and is therefore included under Chapter 12 (The Coastal Environment). The land is also identified as a 'Rural Amenity Landscape' under this Chapter (the Rural Zone). This means there is a potential tension between Objective 9 and Policy 9B and these more general provisions. Objective 9 and Policy 9B must have priority however because:

- The Port cannot expand westwards due to existing residential settlement; and
- Gollans Bay is contiguous with the existing Port and has been subject to long established, periodic quarrying.

However, any such eastward extension of the Port would still have those general obligations to avoid, remedy or mitigate adverse effects on the environment.



METHODS TO ACHIEVE OBJECTIVES AND POLICIES

Circulated to all parties 3 October 07. Includes amendments arising out of Heads of Agreements between the parties.

Method 1: Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna

Part A:

To use the definition of significant indigenous vegetation and associated rule as an interim regulatory method for addressing the significant indigenous vegetation and significant habitats of indigenous fauna requirements of the Resource Management Act.

Part B:

To identify (in consultation with landowners and other interested parties) sites of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with a set of criteria below.

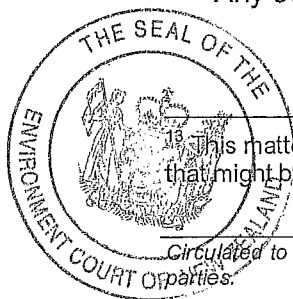
Council is committed to undertaking a study to identify significant indigenous vegetation and significant habitats of indigenous fauna. The details of the process by which the sites of significance will be identified will involve:

- Establishment of a broad based community steering group to oversee the study and assist the Council with input and advice. This is intended to ensure, among other things, that the process of identification is well understood and has wide community acceptance.
- Identification of potential sites with S6c values using the criteria included below;
- On the ground assessment of the values of these sites;
- Discussions with landowners on appropriate management mechanisms;
- Evaluation and review of the application of the criteria listed below;

Council intends to complete the study and carry out a section 32 analysis to determine whether any of the areas should be included in the Plan within 5 years of this provision being approved by the Environment Court.

Before deciding on whether any identified area should be included in the District Plan, Council will have regard to all of the following matters as part of its s32 of the RMA analysis:

- Threats or risks to the identified values;
- Other options for ensuring the identified values and their needs are recognised and protected;
- Economic effects on the landowner (e.g. management costs, lost development potential);
- Resources required to implement effective protection;
- Ecological functioning¹³
- The potential benefits of including the site in the Plan (including ecological benefits and benefits for the landowner, such as its use for environmental merit)
- Any other relevant factor;



This matter provides for consideration of the long-term ecological management needs for any site that might be included in the Plan, including the need for a buffer zone.

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CHAPTER 19 THE RURAL ZONE

The criteria will be applied at the Ecological District scale in a way that recognises that the majority of ecosystems on the Banks Peninsula are secondary and/or induced. The importance of the 'commonplace' is central to recognising the full range of biodiversity values.¹⁴

The criteria should include but not necessarily be limited to:

1. The ecological values of an area or group of areas- the values of the places themselves
 - Representativeness . Supporting indigenous vegetation, habitats, physical features¹⁵ or ecological processes which are typical of their ecological district, including the commonplace.
 - Rarity. - Supporting, or important for the recovery of, an indigenous species, habitat, physical feature, or community of species which is threatened nationally or is rare at a local level (i.e. within the Ecological District).
 - Distinctiveness¹⁶. - The type and range of unusual features of the area itself including:
 - presence of indigenous species at their distribution limit
 - levels of endemism (eg the presence of endemic species)
 - the type locality for a plant or animal
 - the occurrence of relict distributions
 - physical features (which provide atypical habitat)
2. The ecological context of the area or a group of areas including the relationship with their surroundings. This recognises that ecological processes affecting indigenous ecosystems extend beyond their obvious physical boundaries, e.g. hydrology, pollination and dispersal.
 - Size, shape, buffering connectivity and linkages. The extent to which an area has ecological value due to its configuration, location and ecological functioning in relation to its surroundings.¹⁷

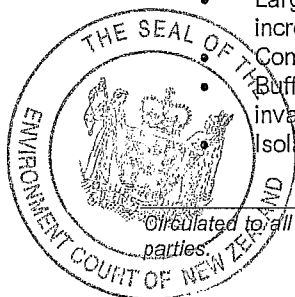
¹⁴ The focus of the District Plan is on "typical" and not necessarily "original" or "best" vegetation cover or habitats, recognizing that the common/ widespread secondary ecosystems on the Banks Peninsula have ecological values. The commonplace (synonym for common) is a key concept within the criterion of representativeness. The character of an Ecological District is broadly defined by the presence of common ecological features, e.g. second growth forest remnants, silver tussock grasslands and volcanic rock outcrops. The inclusion of common communities and features within significant areas is the main way in which most biodiversity is recognised. This approach is important as it caters for the needs of smaller and inconspicuous biota that are not normally seen. To complement the commonplace, unusual or rare features are catered for by other criteria to ensure that the full range of ecosystems and ecological features are recognised.

¹⁵ "Physical features" provide habitat structure for a number of plants and animals.

¹⁶ Distinctiveness focuses on truly "unusual" features rather than things that are rare or representative.

¹⁷ The combination of size, shape, buffering, and connections to its surroundings all contribute to the ecological value of an area of vegetation or habitat (sometimes called a "patch"). The ecological functioning of an area may be adversely affected by activities in its surroundings (sometimes called the "matrix"). Examples include:

- Large areas often have greater natural diversity, but small areas collectively can have increased value or may be important for invertebrates.
- Compact areas are normally less affected by edge effects.
- Buffers help to reduce external influences such as wind effects on a forest edge, weed invasion, grazing impacts and nutrient pollution.
- Isolated remnants can act as stepping stones between larger remnants.



Note: The application of some ecological criteria such as representativeness, rarity and connectivity may not be able to be confirmed until a number of properties have been surveyed in a particular locality and the overall pattern of remnant indigenous vegetation and habitats can be assessed.

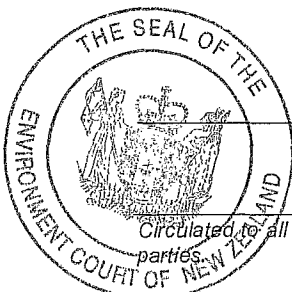
Method 2: Non-Regulatory Methods

It is not intended that these tasks be the exclusive preserve of any individual or group. However, it is the Council's intention to assist local organisations, including the Banks Peninsula Conservation Trust, in achieving the objectives and policies of this Plan.

In performing the following tasks, Council will consult with people, associations or trusts having objectives which include the following activities:

- Encouraging landholders to adopt good management practices, Land Management Plans, property agreements, QEII covenants, and the like.
- Furthering conservation by raising funds to facilitate the independent purchase of land and promoting other techniques such as private agreements and seeking sources of public funding.
- Recommending examples of good practice worthy of awards.
- Initiating and facilitating community projects relevant to good resource management.
- Recommending new areas for environmental protection.
- Developing land use management practices and encouraging landowners to abide by these practices.
- Recommending changes to the Landscape Plan to include new areas for protection.
- Serving as a source of goods and services whereby land managers can access resources for environmental enhancement.
- Providing positive incentives, where appropriate, as a means of encouraging conservation and environmental enhancement.

Method 3: Guidelines



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- The Council is committed to continuing education and advocacy and will play a pro-active role in initiating consultation with landowners and organisations concerned with land and environment.
- Work with the Banks Peninsula Conservation Trust and the local community to develop guidelines, within or outside the Plan for buildings, earthworks and forestry. Such guidelines are also to be continuously available in pamphlet form and distributed to applicants for building consent with correspondence answering enquiries PIMs and LIMs and with Council newsletters.
- Work with the Banks Peninsula Conservation Trust and the local community to develop guidelines and advice on the management of areas of indigenous vegetation and habitats of indigenous fauna.
- The Council is committed to support Landcare Groups and may extend such support to other similar groups, including Coastcare groups.

Method 4: Taking Into Account Environmental Merit When Considering Resource Consents

This is achieved by including in the assessment matters for any application for resource consent whether, and to what extent, the community benefits by landowners taking or having taken effective steps to preserve in perpetuity indigenous vegetation and habitats of indigenous fauna, outstanding natural features and landscapes, coastal natural character landscapes or sites of natural, scientific or cultural significance. The Council would take that benefit into account and whether or not such preservation took place on the land subject to the application or other closely related land under the control of the applicant at that time.

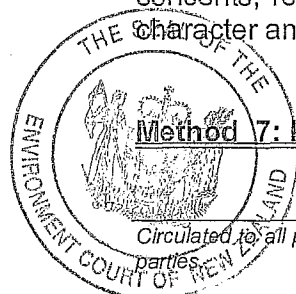
Method 5: The Summit Road (Canterbury) Protection Act

The provisions of the Summit Road (Canterbury) Protection Act apply to land within the area from the Summit to 30 vertical metres below the Summit Road between Gebbies Pass and Evans Pass (refer to the Act, and any subsequent Acts, and the gazette notice).

Method 6: Rules

The provision of rules to control activities in the Rural Zone, and the provision of controls and performance standards including assessment matters for resource consents, regarding the actual or potential effects of activities on the landscape character and amenity values of the rural environment.

Method 7: Inclusion of areas identified in the Landscape Study (2007)



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The Council intends to carry out a section 32 analysis to determine whether to include areas identified in the Landscape Study as Outstanding Natural Landscapes and Coastal Natural Landscapes which have not been included within the provisions of the Plan.



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RULESNon-Notification of Applications

Any application for a resource consent for a controlled activity may be considered without the need to obtain a written approval of affected persons and need not be notified in accordance with Section 93 of the Act, unless the Council considers special circumstances exist in relation to any such application:

1. Permitted Activities

The following are permitted activities where they meet the standards set out in Rule 2 and 3 (below), unless otherwise specified as a controlled, restricted discretionary, discretionary or non-complying activity.

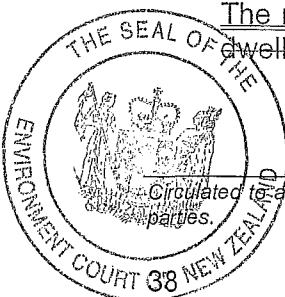
- a) Farming.
- b) Farm accessory buildings and structures.
- c) Creation and maintenance of Reserves.
- d) Outdoor recreation, which does not involve the commercial use of, motorised vehicles.
- e) Conservation activities.
- f) Home enterprises.
- g) The creation of dwellings and accessory buildings within those areas shown as Rural Amenity Landscape on the Planning Maps.
- h) Woodlot Forestry not exceeding an area of 1ha per site or at a ratio of 1ha for every 20ha contained in a site, within those areas shown as Rural Amenity Landscape on the Planning Maps (for the purpose of administering this rule no such contiguous area of planting shall exceed 1ha).
- i) Existing Forestry
- i) Earthworks undertaken within those areas shown as Rural Amenity Landscape on the Planning Maps.
- j) The maintenance and repair of roading infrastructure.

2. Standards for Permitted Activities**2.1 Dwelling Density**

Dwellings within those areas shown as Rural Amenity Landscape on the Planning Maps shall not exceed a density of:

- For dwellings located below the 160m contour line, 1 dwelling per 40 hectares of contiguous land area within a site;
- For dwellings located above the 160m contour lines, 1 dwelling per 100 hectares of contiguous land area located fully above the 160m contour line within a site;

The maximum number of dwellings per site shall be two. No more than one dwelling on any site with a minimum net site area greater than 40ha.



3. Standards for Permitted, Controlled, Restricted Discretionary and Discretionary Activities

3.1 Height

Maximum height of buildings and structures 7.5 metres

3.2 Yards – Minimum

3.2.1 All buildings or part of a building are to be setback the following minimum distances from boundaries:

Front boundary	7.5 metres
Side/Rear boundary	7.5 metres
Boundary fronting a state highway	20 metres
<u>For sites within those areas shown as Rural Amenity Landscapes on the Planning Maps - Boundary fronting the coast (MHWS)</u>	<u>30-40 metres</u>

3.2.2 In relation to any permanent natural surface water body:

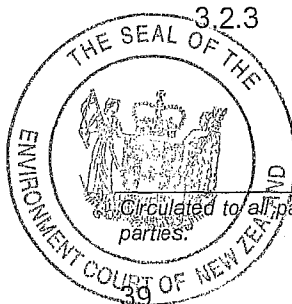
- (i) no erection of any building or structure; earthworks; dwellings; removal of significant indigenous vegetation; or planting of forestry or ~~woodlot forestry~~ shall be undertaken within 10m of any stream or river; or within 20m of a wetland or lake, except for those wetlands or lakes identified in the Lakes Zone;
- (ii) no forestry or ~~woodlot forestry~~; dwellings and accessory buildings; removal of significant indigenous vegetation; or any activity set out in rule 6.2 d-l shall be undertaken within 20m if a stream or river with an average channel width over 3m.

The following are exemptions from rules 3.2.2(i)-(ii):

- the maintenance, refurbishment or replacement of existing lawfully established buildings and structures;
- roofing of existing stockyards;
- minor bridges or culverts which are permitted by the Regional Council;
- the maintenance of existing tracks;
- fencing;
- water storage tanks up to 30,000 litres, water troughs, pumps, pump sheds (under 10m²), power poles (associated with a pump or pump shed) and pipes;
- pole structures for overhead lines not closer than 7.5m from any permanent natural surface water body.
- earthworks required for the above exemptions subject to compliance with Rule 3.5 and where permitted by the Canterbury Regional Council.

3.2.3 The nearest trees in any area of forestry or ~~woodlot forestry~~ shall be situated at least:

- 50m from any dwelling or a dwelling site approved by the Council on an adjoining property, or land zoned Rural-



Residential, Akaroa Hillslopes, Papakaianga, Residential, Small Settlement or Town Centre where it adjoins the Rural Zone.

- 10m from the boundary of any adjoining property under separate ownership unless the adjoining owner provides written agreement to a lesser distance and such consent is entered on the Council's property file for PIM and LIM purposes.

3.2.4 Location of planting

No vegetation such as trees, shelter-belts, vegetation or forestry or ~~woodlot~~ shall be planted in any position which will result in shading of the State Highway carriageway between 10:00am and 2:00pm on the shortest day of any calendar year.

3.3 Site Coverage

Maximum – 10% of net site area or 2000m² whichever is the lesser with the maximum size of any separate building being 300m².

3.4 Building Platforms

Any building located on sites created by subdivision occurring after 30 January 1997 must be located on a building platform identified on an approved plan of subdivision. For the purpose of this rule 'building' excludes those less than 50m² in area and 6m in height provided the structure is not used for sleeping accommodation.

3.5 Earthworks

The maximum uphill cut depth is ~~three~~ 2 metres (except for the construction of the proposed road serving land between Cass Bay and Corsair Bay shown on Planning Maps S3 and S4).

The maximum downhill vertical spill of side castings is to be ~~six~~ 2.4 metres (except for the construction of the proposed road serving land between Cass Bay and Corsair Bay shown on Planning Maps S3 and S4).

The maximum volume of earth moved shall not exceed 100m³ per site within any one consecutive 12 month period except that for farm access tracks, the following standards apply:

- (i) no restriction on maximum volume of earth moved;
- (ii) no part of any farm access track shall be located within 30m of a State Highway boundary;
- (iii) the farm access track shall be no more than 250m in length.

The maximum width of any vehicle track is to be five metres.

There shall be no disturbance of a known waahi tapu site.

~~Exemptions to Rule 3.5 include earthworks for the maintenance of any existing:~~

- ~~• track or cut; or~~



- fenceline; or
- roading infrastructure

provided the effect of the earthworks is not to increase the extent of the uphill batter vertical cut height or increase the downhill vertical spill of side castings.

3.6 Forestry and Woodlot Forestry

3.6.1 No forestry or woodlot forestry is to be planted within:

- an area of significant indigenous vegetation,
- within 100m of MHWS.

3.6.3 ~~The boundary of any area of forestry or woodlot forestry containing wilding-prone species identified in the Forestry Guidelines (Appendix IX to the Plan) shall comprise at least four rows of a less spread prone species.~~

~~'Less spread prone species' means a species with a spreading vigour of less than or equal to 12, in accordance with "Calculating Wilding Tree Spread Risk from New Plantings" (Appendix IX, Forestry Guidelines).~~

3.7 Access

Any dwellings are to have legal access to a formed public road (note that the formation of any unformed legal road on the coast is not acceptable for this purpose).

3.8 Location Below Ridgeline – Rural Amenity Landscape

Where buildings are not located within 100m of an Existing Building Cluster in a Rural Amenity Landscape, they shall be located a minimum of 20 vertical metres, measured at right angles from the highest point of the axis of any Main Ridgeline as identified on the Planning Maps.

3.9 Reflectivity

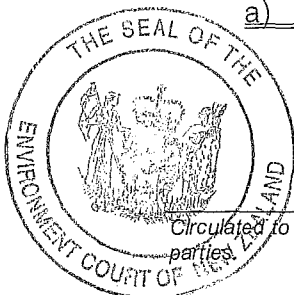
The (colour) reflectivity of buildings and structures shall be no greater than 40% except for buildings located within an Existing Building Cluster.

4. Controlled Activities

The following are controlled activities:

4.1 Buildings

- a) All buildings within an area shown on the Planning Maps as an Outstanding Natural or Coastal Natural Character Landscape, or on a Main Ridgeline within the Rural Amenity Landscape, which do not



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exceed a floor area of 75m² and are located within 100m of an Existing Building Cluster.

- b) Any permitted building located within a Landscape Buffer shall be a Controlled Activity. For the purpose of this rule, the Landscape Buffer is an area within a Rural Amenity Landscape measured from the boundary of either an Outstanding Natural Landscape or a Coastal Natural Character Landscape as shown on the Planning Maps for a distance of 150m horizontal distance or 50m vertical distance from the boundary, whichever is the lesser.
- c) The creation of one dwelling on Lot 1 DP 12401.

In granting a resource consent for a controlled activity, the Council shall restrict the exercise of its discretion to conditions on the following:

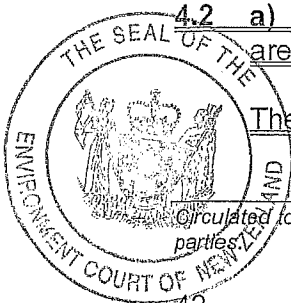
- Scale and design of buildings and additions to buildings.
- External colour of buildings and structures.
- The location of buildings, structures and earthworks on a site specifically in relation to their impact on:
 - Any natural landform features, including ridgelines and skylines;
 - Maintaining a backdrop of landform or vegetation behind the building;
 - Proximity to other building and structures in the rural environment.
- Landscaping of the site.
- The location of site access and vehicle parking spaces.
- The effects on indigenous vegetation and habitats of indigenous fauna, wetlands, ecological corridors and linkages, including those areas referred to in the Banks Peninsula Ecological Region Protected Natural Areas Programme Survey Report No 21, 1992.
- Land stability.
- Impact on water quality and quantity.

Where a resource consent is required for a controlled activity under Rule 4.1a)-b) above the additional matters to which Council's control is limited to include:

- Height, size, scale, and reflectivity of buildings
- Site coverage
- External finish, design and colour of buildings
- Visibility from publicly accessible viewing points
- Effects on natural character
- Effects on landscape values identified in the Banks Peninsula Landscape Study 2007.

4.2 a) Forestry above 1.0 ha and up to a maximum of 10ha within those areas shown as Rural Amenity Landscape on the Planning Maps.

The matters to which Council's control is limited include:



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- Location in relation to existing landforms and natural features, including ridgelines and headlands
 - Location in relation to sites of cultural and/or archaeological significance
 - Effects on - landscape and amenity values
 - The effects on indigenous vegetation and habitats of indigenous fauna, wetlands, ecological corridors and linkages, including those areas referred to in the Banks Peninsula Ecological Region Protected Natural Areas Programme Survey Report No 21, 1992.
 - Land stability
 - Effects of harvesting
 - Matters set out in the Forestry Guidelines in Appendix IX
 - Wilding plant prevention, minimisation and management measures
- e) ~~The creation of a second dwelling on a site with a minimum net site area greater than 40 hectares existing prior to 30 January 1997.~~

5. Restricted Discretionary Activities

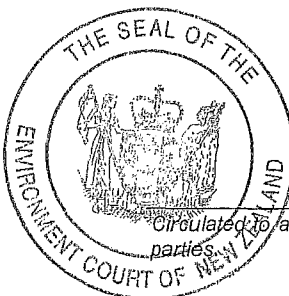
An application must be made for a restricted discretionary activity for the following:

5.1 Earthworks

- a) Any earthworks within an area shown on the Planning Maps as Rural Amenity Landscape which do not comply with one or more of the standards for a Permitted Activity in Rule 3.5.
- b) Earthworks, excluding quarrying, undertaken within those areas shown on the Planning Maps as Outstanding Natural Landscape or Coastal Natural Character Landscape.

In considering any application for resource consent under Rule 5.1, the Council shall restrict the exercise of its discretion to the following matters, having regard to those assessment matters listed in Rule 8:

- o location of earthworks
- o extent or volume of earthworks
- o depth and length of cuts
- o siting, design and methods for implementing earthworks
- o impact on natural contours and alteration of the natural form of the land
- o impact on any geological features
- o impact on the legibility of the landscape
- o visibility of the area subject to earthworks from public viewing points
- o loss of native vegetation



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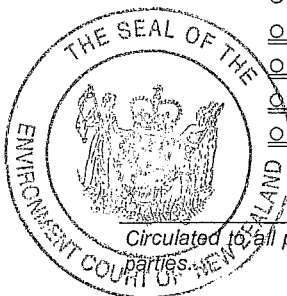
- impact on amenity and aesthetic values of the locality
- impact on known cultural sites
- rehabilitation, revegetating and reshaping
- location and shaping of any fill
- effects on indigenous vegetation and habitats of indigenous fauna, wetlands, ecological corridors and linkages, including those areas referred to in the Banks Peninsula Ecological Region Protected Natural Areas Programme Survey Report No 21, 1992.
- any impacts on riparian margins
- control of run-off during excavation and prior to implementation of rehabilitation
- requirement for an accidental discovery protocol and/or monitoring of earthworks within identified cultural and heritage landscapes.

5.2 Buildings

- a) Any buildings for Permitted Activities within an area shown on the Planning Maps as Rural Amenity Landscape which do not comply with one or more of the standards for a Permitted Activity in Rule 2 or 3, provided they are not listed as a Non-Complying Activity.
- b) Dwellings within an area shown on the Planning Maps as Rural Amenity Landscape where the following criteria are met:
 - The dwelling is located on a separate certificate of title no less than 1ha in area; and
 - A balance area which, in combination with the title created for the dwelling, complies with dwelling density standard 2.1, has been legally defined, and is subject to a covenant preventing the erection of any further dwellings on the total land area in perpetuity.
- c) All buildings within an area shown on the Planning Maps as an Outstanding Natural or Coastal Natural Character Landscape which exceed a floor area of 75m² and are located within 100m of an Existing Building Cluster.
- d) All farm accessory buildings within an area shown as Coastal Natural Character or Outstanding Natural Landscape which are located more than 100m from an Existing Building Cluster.

In considering any application for resource consent under Rule 5.2, the Council shall restrict the exercise of its discretion to the following matters, having regard to those assessment matters listed in Rule 8:

- height
- size/scale
- external finish, design and colour of building
- reflectivity
- location, anywhere within the property
- visibility from public viewing points
- effects on landscape values



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- o effects on indigenous vegetation and habitats of indigenous fauna, wetlands, ecological corridors and linkages, including those areas referred to in the Banks Peninsula Ecological Region Protected Natural Areas Programme Survey Report No 21, 1992.

5.3 Forestry over 10ha within an area shown on the Planning Maps as Rural Amenity Landscape.

In considering any application for resource consent under Rule 5.3 the Council shall restrict the exercise of its discretion to the following matters, having regard to those Assessment Matters in Rule 8:

- (i) The matters set out in the Forestry Guidelines in Appendix IX
- (ii) The location and management, including revegetation, of cuts and fills;
- (iii) The effects on the stability and life-supporting capacity of soil;
- (iv) Any benefits generated by the forestry in relation to carbon sequestration or reduction of greenhouse gases.
- (v) Any effects arising from harvesting.
- (vi) Any effects, positive or negative, on water quantity and quality.
- (vii) The mix of species
- (viii) The relationship of the activity with existing landforms and natural features including the methods necessary to maintain values associated with natural character, amenity and landscape including ridgelines and in particular Main Ridgelines identified on the Planning Maps;
- (ix) The extent to which the scale and extent of the proposed forestry may dominate the landscape, and in particular, adversely affect the openness of the landscape or visually dominate an area of high natural values;
- (x) The extent to which the scale and extent of the proposed forestry may adversely affect amenity values, including any cumulative impact taking into consideration existing or consented tree planting on an adjoining site;
- (xi) The potential for planting to block views from formed legal roads and other public places
- (xii) The effect of any tracking or roading required for forestry on landscape and amenity values, including visibility, scarring, the extent to which existing contours are followed and any measures that would assist in remedying or mitigating any adverse landscape effects;
- (xiii) Effects on indigenous vegetation and habitats of indigenous fauna, wetlands, ecological corridors and linkages, including those areas referred to in the Banks Peninsula Ecological Region Protected Natural Areas Programme Survey Report No 21, 1992.;



- (xiv) Effects on ancestral lands of tangata whenua, water, sites, wahi tapu and other taonga;
- (xv) Whether the site contains a recorded archaeological site, and whether the NZ Historic Places Trust are notified;
- (xvi) Wilding plant prevention, minimisation and management measures;
- (xvii) Setbacks from wetlands, rivers and waterbodies; and
- (xviii) Setbacks from formed legal roads, existing residential dwellings and areas zoned for residential purposes to avoid, remedy or mitigate adverse effects arising from loss of sunlight.

5.1 ~~An application must be made for a restricted discretionary activity for the following where the proposal meets the standards set out in Rules 3 and 7 and is not otherwise specified as a discretionary or non-complying activity:~~

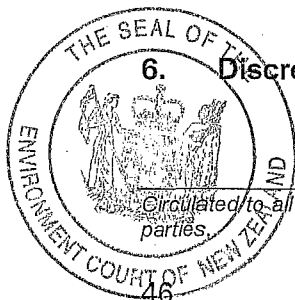
5.1.1 ~~One dwelling on any site with a minimum net site area between 20 and 40 hectares.~~

5.1.2 ~~The erection of any building or structure, earthworks (with the exemption of these elements for fencing, stock yards, water storage less than 2000 litres, reticulation, troughs and pipes for farming purposes) within the area from any ridgeline mapped as a Prominent Ridge on the Planning Maps to 20 vertical metres below that ridgeline.~~

5.1.3 ~~Forestry.~~

~~In considering any application for resource consent under Rule 5.1, the Council shall restrict the exercise of its discretion to the following matters:~~

- ~~•The relationship of the activity with existing landforms and natural features;~~
- ~~•The design, appearance and location of the building or structure;~~
- ~~•The methods necessary to maintain landscape character and amenity values;~~
- ~~•Any vegetation screening or backdrop;~~
- ~~•The location and management, including revegetation, of cuts and fills;~~
- ~~•The effects on the stability and life-supporting capacity of soil;~~
- ~~•The effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, ecological corridors and areas contained in Appendix XX – Recommended Areas for Protection;~~
- ~~•Measures to prevent, minimise and manage wilding tree spread;~~
- ~~•Setbacks from wetlands, rivers and waterbodies;~~
- ~~•The degree to which any forestry proposal is consistent with the matters set out in the Forestry Guidelines in Appendix IX.~~



6. Discretionary Activities

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CHAPTER 19 THE RURAL ZONE

- 6.1 An application must be made for a discretionary activity for:
- any activity included in the lists of permitted activities, controlled activities or restricted discretionary activities which does not comply with one or more of the standards for such activities, except where otherwise stated.
- 6.2 An application must be made for a discretionary activity for the following where the proposal meets the standards set out in Rules 3 and 7.
- ~~(a) One dwelling on a site with a minimum net site area between 4 and 20 hectares, provided the site is not located within an Interim Coastal Protection Area or Interim Outstanding Natural Features and Landscape Protection Area as shown on the Planning Maps.~~
- ~~(b) The erection of any building or structure or earthworks (with the exemption of those elements for fencing, stock yards, water storage less than 2000 litres, reticulation, troughs and pipes for farming purposes) within an Interim Coastal Protection Area, or Interim Outstanding Natural Features and Landscape Protection Areas as shown on the Planning Maps.~~
- ~~(c) Forestry or woodlot forestry within an Interim Coastal Protection Area or Interim Outstanding Natural Features and Landscape Protection Area as shown on the Planning Maps.~~
- (a) Rural industries and services.
- (b) Factory farming.
- (c) Service stations.
- (d) Package sewage treatment plant.
- (e) Healthcare facilities and veterinary practices.
- (f) Relocated buildings.
- (g) Places of assembly.
- (h) Visitor facilities.
- (i) Community facilities
- (j) Dwellings within an area shown on the Planning Maps as Rural Amenity Landscape where the following criteria are met:
- The dwelling is located on a separate certificate of title no less than 1ha in area; and
 - A balance area which, in combination with the title created for the dwelling, does not comply with dwelling density standard 2.1 but does exceed 4ha, is legally defined, and subject to a covenant preventing the erection of any further dwellings on the total land area in perpetuity.

6.3 Quarrying

7. Additional Standards for all Restricted Discretionary and Discretionary Activities

All associated vehicle parking is to be contained on the site.



CHAPTER 19 THE RURAL ZONE

- 7.2 All buildings, pens and other structures used to contain animals or birds for factory farming purposes, any associated composting area and any associated effluent disposal system (including any area upon which effluent is disposed) are to be situated at least:
- 1200 metres from the boundary of any site located in the adjoining Residential, Rural-Residential, Akaroa Hill Slopes, Small Settlement, Papakaianga, Recreation or Scenic Reserves, Open Space or Conservation Zones.
 - 250 metres from a Lakes Zone.
 - 250 metres from any existing dwelling on any adjoining property.
 - 20 metres from any boundary of the property on which they are sited.
- 7.3 Any areas for keeping animals or birds outdoors for factory farming purposes are to be fenced so that it is kept a minimum of 20 metres from any adjacent surface water body and all run off is to be prevented from entering such a water body.
- 7.4 Any package sewage treatment plant, including any effluent ponds, are to be established at least 300 metres from any Residential, Rural-Residential, Akaroa Hill Slopes, Small Settlement, Papakaianga, Lakes or Recreational Reserve Zone or at least 150 metres from any existing dwelling.
- 7.5 Buildings used for retail sales are to be set back a minimum distance of:
- 7.5.1 30 metres from any state highway; and
- 7.5.2 15 metres from any other road boundary.
- 7.6 Any buildings located on sites created by subdivision occurring after 30 January 1997 must be located on a building platform identified on an approved plan of subdivision.
- ~~7.7 For buildings with an Interim Coastal Protection Area, or Interim Outstanding Natural Features and Landscape Protection Area as shown on the Planning Maps the colour reflectivity is to be no greater than 40%.~~

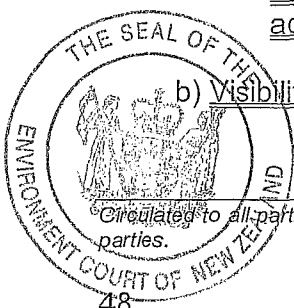
8. Assessment of Applications

Applications for Restricted Discretionary and Discretionary Activities will be assessed but not exclusively against the following criteria as relevant to the proposal concerned:

a) Openness of the Landscape

- i. The extent to which a proposal may dominate or detract from a landscape characterised by open space, when viewed from a public road or public place. Consideration should be given to the ease of accessibility to that place and the significance of the viewing point.

b) Visibility and Natural Character



- i. The visibility of a proposal from a public road (including legal unformed road) or public place. Consideration should be given to the ease of accessibility to that place and the significance of that viewing point.

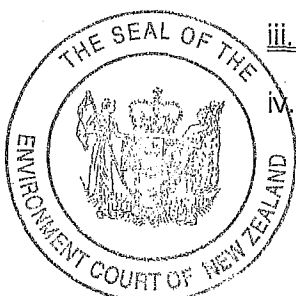
The extent to which:

- ii. natural elements within a site such as topography, ridges or terraces, and/or vegetation may assist in mitigation or containment of any adverse impacts created by a proposal on natural character and visibility.
- iii. screening in the form of earthworks or new planting may assist in mitigation of adverse effects on natural character.
- iv. a proposed building or structure may break the line and form of any ridges, hills or prominent slopes.
- v. any vegetation may act as a backdrop to mitigate the effect of any building against the sky line, and if that vegetation is protected from removal.
- vi. a proposal may adversely affect the visual coherence, legibility and integrity of the landscape, taking into account existing and consented development, including zoning.
- vii. the proposal will be visually prominent within an area which is characterised by high natural values.
- viii. a proposal may adversely affect natural character through the creation of artificial or unnatural lines and structures or the introduction of new elements into the landscape which contrast with the natural character.
- ix. the proposal may conform or detract from existing patterns in the landscape.
- x. The capacity of the landscape to absorb further change, having regard to any existing development or land use within the landscape.
- xi. Whether profile poles have been erected for any building or structure close to a ridgeline, to demonstrate the potential effect on the sky line.
- xii. Where development has already occurred, the extent to which further development is likely to lead to further degradation of natural values or domestication of the landscape

c) Amenity Values

The extent to which the proposal:

- i. may adversely affect the amenity values of neighbouring properties
- ii. may detract from the pleasantness, coherence, openness and attractiveness of a site.
- iii. would be compatible with the appearance, layout and scale of other buildings in the surrounding locality.
- iv. maintains or conforms with the mosaic character of the Rural Amenity Landscape, and in particular the existing pattern and scale of land use activities.



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d) Cumulative Effects

- i. The potential for the proposed activity and/or structure to create cumulative effects on the natural form of the landscape and landscape values.
- ii. The significance of those effects over time on the landscape values and natural character of the locality and the District.
- iii. The proximity of the proposed structure to other existing structures in the locality and the extent to which the proposed structure, when considered in combination, may contribute to a loss of rural amenity values.

e) Cultural Values

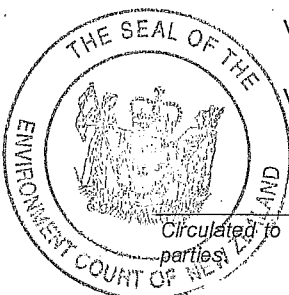
- i. The extent to which the activity modifies or damages Waahi Tapu, Waahi Taoka, and whether Tangata Whenua have been consulted.
- ii. The extent to which the proposal may affect Ngai Tahu's cultural and traditional association with a Statutory Acknowledgement Area.
- iii. Whether the site contains a recorded archaeological site, and whether the NZ Historic Places Trust has been notified.

f) Removal of Indigenous Vegetation

- i. The extent to which the loss of indigenous vegetation will adversely affect:
 - the overall natural character of an area;
 - landscape values of an area;
 - indigenous ecosystem integrity and function;
 - cultural values;
 - natural character associated with a water body

g) Buildings and Structures

- i. Consideration of the scale, form, location and external finish, design and colour of any structure and the impact on coherence of landscape character or pattern of natural features such as indigenous vegetation, coastal escarpments, ridges etc.
- ii. The nature and extent of existing development within the vicinity or locality.
- iii. Whether or not the proposal is likely to lead to the introduction of elements into the landscape, inconsistent with rural amenity values.
- iv. The extent to which the number of dwellings or the building coverage on a site would visually dominate or contrast with existing character and amenity values.
- v. The need for any increased building height in order to undertake the proposed activity.
- vi. The extent to which increased building height may detract from views and outlook from adjoining properties or from public roads and places.
- vii. The benefits that may be obtained from clustering of buildings within the landscape.
- viii. Consideration of and the extent to which any buildings or structures conform with design guidelines for the Banks Peninsula landscape.



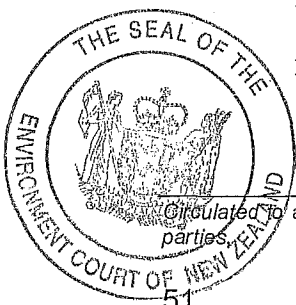
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h) Opportunities for Benefits

- i. The extent to which the proposal may protect, maintain or enhance any ecosystems or outstanding natural features.
- ii. The extent to which the proposal may create opportunities to protect open space from further development.
- iii. The extent to which the proposal may provide an opportunity to remedy or mitigate an existing adverse effect by modifying, mitigating or removing existing structures or developments.
- iv. The extent to which the proposal creates opportunity to protect the natural character and nature conservation values of any lake, river, wetland or stream.
- v. The use of any restrictive covenants, easements or other legal instrument to realise any positive effects of protection or enhancement and/or to ensure potential future effects, including cumulative effects are avoided.
- vi. The extent to which the proposal avoids fragmentation of the landscape and allows for the physical and visual connections between natural features and elements.
- vii. Whether the proposal is necessary or desirable to achieve a permitted or appropriate use or maintenance of the land.
- viii. The extent to which opportunity has been taken to cluster built development in areas of existing built development with a higher potential to absorb development while retaining areas which are more sensitive to change.

i) Othera) Design appearance, colour, scale and location of building.

- i. Design and location of site access and parking (if required).
- ii. The relevant objectives and policies of the Rural Zone (Chapter 19), Outstanding Natural Features and Landscape (Chapter 13) and Coastal Environment (Chapter 12).
- iii. The degree to which any proposed building is consistent with the matters set out in the building guidelines in Appendix VIII.
- iv. The location, extent and species of tree planting.
- v. The location of vehicle accessways.
- vi. The fencing of land and other methods to secure environmental protection or enhancement of any area.
- vii. Hydrological effects (availability of water, seasonal variations and water quality).
- viii. The potential for shading and icing of roads and neighbouring property.
- ix. The location and the routing of any vehicle track.
- x. Any other objectives and Policies of the Plan which are relevant to consideration of the application.
- xi. The guidelines in the Plan.
- xii. Any relevant criteria set out in Chapter 30 (Resource Consent Procedures).
- xiii. The environmental benefits of clustering buildings as opposed to separation.

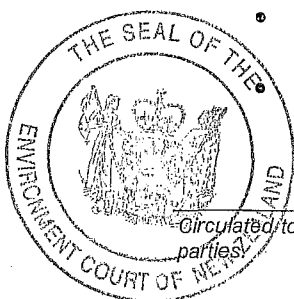


- xiv. Whether, and to what extent the community benefits by the applicant taking or haven taken effective and appropriate steps to preserve in perpetuity indigenous vegetation and habitats of indigenous fauna, outstanding natural features and landscapes, coastal natural character landscpes, or sites of natural, scientific or cultural significance, and in which case that benefit is to be taken into account by the Council whether or not such preservation took or has taken place on the land the subject of the application or any other closely related land under the control of the applicant at that time; and whether the area protected has already been used and accepted as an environmental merit for a previous resource consent application. The degree of benefit (environmental merit) can be influenced (but not determined) by the extent to which the new site is in the same locality or community of interest as the site on which the significant indigenous vegetation, outstanding natural feature and landscape, or site of natural, scientific or cultural significance has been preserved.
- xv. The degree to which they are detrimental to any Area of Significant Natural Value or Area of High Natural, Physical, Heritage or Cultural Value shown in the Regional Coastal Environment Plan.
- xvi. The effects on indigenous vegetation and indigenous habitats of fauna, wetlands ecological corridors and linkages including those areas referred to in the Banks Peninsula Ecological Region Protected Natural Areas Programme Survey Report No 21, 1992.
- xvii. For forestry, the management methods proposed, and any potential impact on infrastructure resources and public safety by relevant transport arrangements at times of harvesting of any forestry plantation.
- xviii. For forestry, the potential effects of afforestation or harvesting activity on the ancestral lands of the tangata whenua, water, sites, wahi tapu and other taonga.
- xix. The effect on habitats which are significant for the survival of threatened animal species in Appendix XX.

9. Non-Complying Activities

9.1 Clearance of significant indigenous vegetation except:

- minor trimming or disturbance (i.e. the removal of branches from trees/shrubs and removal of seedlings/saplings) of significant indigenous vegetation within 2 metres of existing fences, existing vehicles tracks, existing buildings, and existing utilities; within the legal formed roads; and in the course of removing declared weed pests.
- where the clearance is carried out on an area of improved pasture for pastoral farming purposes.
for conservation activities.

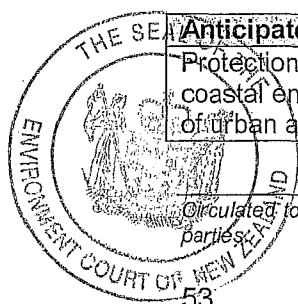


CHAPTER 19 THE RURAL ZONE

- 9.2 Where properties adjoin the foreshore road between Governors Bay Jetty and Church Lane and also join another legal road, any vehicle access from the foreshore road is a non-complying activity.
- ~~9.3 The creation of a dwelling on any site with a minimum net site area less than 4ha~~
- 9.3 Dwellings within those areas shown as Rural Amenity Landscape on the Planning Maps on a separate certificate of title less than 4ha unless provided for as a restricted discretionary or discretionary activity in respect to Rules 5.2(b) or 6.2(j) above.
- 9.4 All buildings within an area shown on the Planning Maps as an Outstanding Natural or Coastal Natural Character Landscape and not provided for as a Controlled or a Restricted Discretionary Activity.
- 9.5 Forestry within an area shown on the Planning Maps as an Outstanding Natural or Coastal Natural Character Landscape.
- ~~9.4 The creation of a dwelling on any site with a minimum net site area less than 20ha and located within an Interim Coastal Protection Area or Interim Outstanding Natural Features and Landscape Protection Area as shown on the Planning Maps.~~
- 9.76 Any activity contained in Rule 6.2 which does not comply with the standards set out in Rules 3 and 7.
- 9.78 Within the area identified as the Port Environs Overlay Area, the erection of any dwellings, residential units, visitor accommodation, or healthcare facilities shall be a non-complying activity.
- 9.78 The construction of any dwelling or the establishment of any forestry within 25 metres (measured horizontally) either side of the ridgeline of land between Cass and Corsair Bay, the location and extent of that ridgeline being as shown on Planning Map S3.
- 9.89 *Heli-landing areas located within 450m from any Rural-Residential, Small Settlement, Papakaianga, Akaroa Hillslopes, Residential, Residential Conservation or Town Centre Zone.*
- 9.910 Any activity not otherwise specified as a permitted, controlled, restricted discretionary, or discretionary activity is a non-complying activity.

ANTICIPATED ENVIRONMENTAL RESULTS

Anticipated Environmental Result	Monitoring Indicator	Information
Protection of natural character of the coastal environment by the confinement of urban and other development to within	Extent of settlements and other developments.	BPDC resource consent records



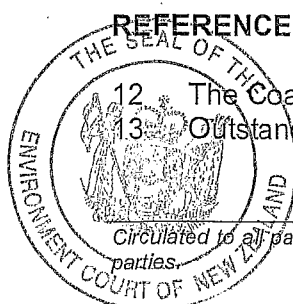
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Anticipated Environmental Result	Monitoring Indicator	Information
the present boundaries of the existing settlements or to areas where similar types of development exist already	Subdivision within the coastal environment	
Sites of significant indigenous vegetation and significant habitats of indigenous fauna within the Banks Peninsula environment are protected or restored and rehabilitated	Loss of or changes to sites of significant indigenous vegetation and indigenous fauna	CCC monitoring
Maintained or enhanced access to the Coastal Marine Area	Access provision Changes to the vegetation cover wildlife soil stability	Public survey BPDC Resource records
Use and development of the coastal environment that avoids or mitigates degradation of its natural character	Vegetation cover soil stability Recreational use	BPDC monitoring surveys Aerial photos BPDC resource records
A standard of water quality in the coastal environment that allows continued access to the sustained social, cultural, recreational and economic values of the Zone	Water quality	Canterbury Regional Council Survey Runanga
Natural character is maintained as the dominant element in the Areas of Outstanding Natural Features and Landscape	Resident's perceptions of naturalness Area of indigenous vegetation	Survey Consents Aerial photographs
No buildings or structures are conspicuous on prominent features of the Areas of Outstanding Landscape	No structures on or near prominent ridges that can be seen from the Akaroa and Lyttelton harbour basins	Landscape photographs from defined points Consents
The life-supporting capacity of land, water and air is maintained and enhanced	Soil health Water quality Ambient air quality	Canterbury Regional Council monitoring BPDC water quality testing Crown Research Institutes
Rural character is retained	Population density by area Land use change Noise levels Traffic counts	Community perception Land use analysis Noise surveys Traffic count surveys Complaints register
Avoidance of dwellings or other activities within the Port Environs Overlay Area, which may be sensitive to the operation, use or development of Lyttelton Port.	Extent of development within the Port Environs Overlay Area.	Resource consent records.

REFERENCE TO OTHER PROVISIONS

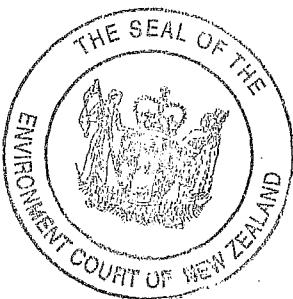
12. The Coastal Environment

13. Outstanding Natural Features and Landscapes



CHAPTER 19 THE RURAL ZONE

- 14 Cultural Heritage
- 15 Trees
- 16 Conservation Reserve Zone
- 31 Subdivisions
- 32 Development Contributions
- 33 Noise
- 34 Signs
- 35 Access Parking and Loading
- 36 Utilities
- 38 Natural Hazard



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OVERVIEW

The principle purpose of subdivision is to provide a framework for land ownership so that development and activities can take place. Because subdivision is the foundation for much of the development that occurs in the District, it frequently influences the future use of land. It is not the act of subdivision itself that causes adverse effects, rather the activities undertaken on the sites created. For example, the size and shape of sites often have a direct effect on the range of uses, which can be undertaken, on land. Such uses can, in turn, have effects on the environment and therefore raise issues of potential concern such as amenity values and natural hazards mitigation.

The Plan does not make assumptions about the activities which may be undertaken on land as a result of subdivision, nor does it seek to pre-determine activities which can take place following subdivision. However, it can be assumed that the resources within a site newly created site are likely to be used, and it is this use that may have an impact on the environment and generate demands on infrastructure and services.

The adverse effects of activities are generally controlled by the provisions for each Zone. However, in dealing with subdivision it is appropriate to give consideration to the potential effects of those activities that may be undertaken on sites which are created.

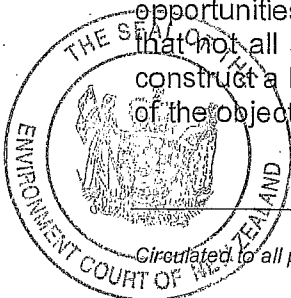
For example, buildings, earthworks, and the formation of vehicle access associated with permitted activities, may have an impact on the amenity of an area. Therefore, it is appropriate at the time of subdivision to ensure that where sites may be used for activities that involve buildings, consideration is given to suitable building platforms and the means of achieving vehicle access.

The requirement to identify building platforms is most appropriately made at the subdivision stage. It is at this stage that consideration can be given to the location of building platforms in relation to vegetation, topography and impact on the landscape.

Some sites created by subdivision may be used for activities, which do not require the erection of buildings and/or are not suitable for buildings. This may include sites subdivided for the purpose of conservation or landscape protection among others. It may be appropriate that such sites are not unduly constrained by minimum site area rules. Subdivision in any site, all or part of which is contained within the Summit Road (Canterbury) Protection Act is controlled by this Act.

It is possible that some such sites are also suitable as lifestyle properties for residential purposes as long as the main purpose of conservation or landscape protection is achieved. For cases where that may not be so, provision is made to transfer the subdivision/development right to a more suitable location provided again that permanent protection of the feature is thereby achieved.

Accordingly, the rules are structured to allow a range of site sizes to provide opportunities for the sustainable management of land in the District. It is anticipated that not all sites will have a building constructed on them. Where it is intended to construct a building on a site, the siting of the building should be considered in terms of the objectives and policies for subdivision and the relevant Zone.



The subdivision of land to create sites on undeveloped land inevitably requires consideration of the need for services such as road access, sewage disposal, water supply, electricity and other infrastructure which may vary considerably, even in urban areas. The matter of servicing is often an important aspect of the subdivision process, particularly for new, undeveloped sites and needs careful consideration to ensure all effects and costs are taken into account.

The subdivision of land that is already developed, such as the dividing of a property with two houses on it into two separate sites, may not raise questions of servicing and access. Such subdivision includes the internal subdivision of buildings.

Under the Resource Management Act, all subdivisions to create allotments under 4 ha are required to have esplanade reserves of 20 metres in width created along the edges of any rivers and lakes or the coast which the allotment includes or adjoins, **except** as provided by any rule in a District Plan. For allotments of more than 4 ha, esplanade reserves or esplanade strips of 20 metres in width shall be created, if there is a rule to such effect in the Plan. Although subdivision is the primary method of creating esplanade reserves/strips, they may also be created as a condition of consent for a land use consent. A road which is unformed for much of its length encircles the coastline of the district and a substantial portion of the margins of Wairewa and Te Waihora. Esplanade reserves and strips cannot be required on the subdivision of sites which abut this road. This road provides public access to the sea around almost all of the Banks Peninsula District and is twenty metres in width with the exception of the following areas:

- Akaroa, Beach Road from opposite Rue Benoit through to Rue Brittan;
- Lyttelton, from te Awaparahi bay to, and including the navel point reclamation;
- Little Port Cooper;
- Between Akaroa Harbour and the heads.

For this reason the creation of esplanade reserves/strips will be required only for subdivision of land abutting the margins of Wairewa and Te Waihora. Esplanade reserves/strips **may** also be created as a condition of a land use consent. Esplanade reserves/strips **may** also be created adjacent to rivers. In addition, there are rules to provide for variations to the widths of esplanade reserves/strips, or for the complete waiver of the esplanade requirements and for the waiver of requirements to vest the beds of rivers and lakes.

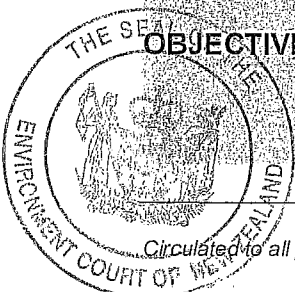
A network of unformed legal roads exists within the District and in some locations this network offers opportunities for appropriate pedestrian access to the coastline and other places having public amenity value. Consultation with landowners is an integral part of this process.

ISSUE 1

Sites created by subdivision may be inappropriate for permitted and controlled activities in particular Zones and thus have the potential to indirectly result in adverse effects on the environment.

OBJECTIVE 1

To ensure that sites which are created by subdivision do not indirectly result in adverse effects on Outstanding Natural and Coastal Natural Character Landscapes and the visual amenity and natural values of the environment.



POLICIES

- 1A** Every new site created shall be able to accommodate a permitted, controlled or discretionary activity in terms of the rules of the relevant Zone.
- 1B** Sites created to contain existing buildings shall be able to accommodate those buildings in compliance with the rules of the Zone, or without increasing any existing non-compliance.
- 1C** Site layout should assist in achieving the long-term protection of outstanding natural features and landscapes, significant indigenous vegetation and significant habitats.
- 1D** The layout and size of sites should recognise existing landscape patterns, including topographical features such as ridgelines, valleys and watercourses.
- 1E** Where it is intended that sites are to accommodate a building, appropriate building platforms shall be determined at the time of subdivision.
- 1F** Where it is considered that an appropriate building platform is not available on a site, the Council may impose a consent notice which precludes the erection of a building on that site.
- 1G** All building platforms and driveways shall avoid areas of indigenous vegetation worthy of protection.
- 1H** All building platforms and driveways should take into account the topography of sites.
- 1I** Sites created in the Residential Conservation Zone should reflect the historic pattern of adjacent sites.

EXPLANATION AND REASONS

Although the act of subdivision does not create any direct adverse effects on the environment, the size and layout of sites and the location of boundaries and accessways can have an indirect effect because of the way in which future activities undertaken on land may be influenced by subdivision. Similarly, the size and layout of sites and the location of boundaries may result in adverse effects because of the way in which they relate to significant environmental features and landscape patterns.

To ensure that the act of subdivision does not lead to adverse effects on the environment, the size and layout of sites should take into account the natural and environmental features of the land, including vegetation and topography. The size and layout of sites should also take into account where buildings and driveways can be located without resulting in adverse effects and the historic pattern of sites and buildings in the Residential Conservation Zone.

In areas located within Outstanding Natural and Coastal Natural Character Landscapes, the subdivision rules have been designed to ensure that the natural character, openness and landscape values of these areas is maintained. The



creation of a title carries an expectation that some form of land use activity or development can be undertaken on the land and the requirement for a consent notice is considered appropriate having regard to the non-complying status of buildings outside Existing Building Clusters in these landscapes.

ISSUE 2 Inappropriate subdivision and development may lead to soil erosion and slope instability.

OBJECTIVE 2 To ensure that natural hazards, soil erosion and slope instability are not exacerbated by activities.

POLICIES

- 2A** Any site created shall not increase risks from natural hazards, soil erosion and slope instability unless such adverse effects can be avoided, remedied or mitigated.
- 2B** All earthworks necessary for the creation of vehicle accessways should cause minimum disturbance to the landform of the site and adjoining sites.

EXPLANATION AND REASONS

Because subdivision can influence the impact activities have on the environment, it follows that subdivision on land affected by soil erosion, slope instability and natural hazards has the potential to exacerbate such problems.

Also, because the size and layout of sites can influence future activities on land, such as the creation of driveways and building platforms, the size and layout of sites should take into account the extent to which such activities may affect areas susceptible to soil erosion, slope instability and natural hazards.

ISSUE 3 Conservation Reserves, or Heritage Items which are appropriate for the creation of a reserve may be compromised by inappropriate subdivision.

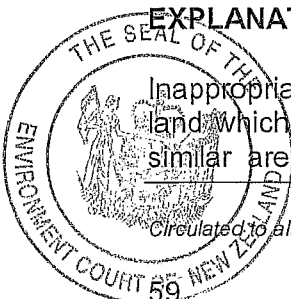
OBJECTIVE 3 To enable sites to be created for reserves or to contain Conservation Reserves, or Heritage Items.

POLICY

- 3A** The subdivision of land to contain any Conservation Reserves, Heritage Item or land for the purpose of reserves shall be a controlled activity.

EXPLANATION AND REASONS

Inappropriate subdivision can compromise Conservation Reserves, Heritage Items or land which is appropriate for the creation of a reserve by isolating them from other similar areas or exposing them to potential adverse effects from future activities



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which could take place on new sites. The Plan enables land containing Conservation Reserves or Heritage Items to be created as a reserve.

ISSUE 4 Subdivision may generate unsustainable demand on infrastructure and services provided by the Council, such as roads, water, and sewage facilities.

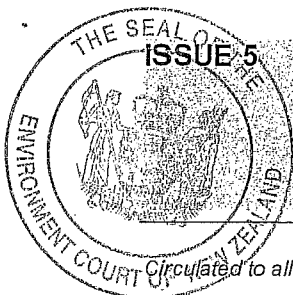
OBJECTIVE 4 To ensure that adequate provision is made for services, infrastructure and access to sites which are created.

POLICIES

- 4A To ensure, upon subdivision that anticipated development is provided with a means of disposing of sewage in a manner which is consistent with maintaining public health; and avoids, remedies or mitigates adverse effects on the environment.
- 4B To require that the adverse effects of stormwater disposal on coastal and freshwater ecosystems are avoided, remedied or mitigated.
- 4C Adequate provision should be made for vehicle access to a formed road from each site. In the case of land being subdivided with frontage to a state highway, all access should be from an alternative road where such access is available.
- 4D Adequate provision should be made to allow for the supply of energy and telecommunication services.
- 4E Access via existing public walkways should be maintained and enhanced where appropriate.

EXPLANATION AND REASONS

Subdivision to create sites on undeveloped land inevitably requires consideration of the demand likely to be created for services such as road access, sewage disposal, water supply, electricity and other infrastructure. These requirements may vary considerably, even in urban areas. The matter of servicing is therefore an important aspect of the subdivision process, particularly for new, undeveloped sites and needs careful consideration to ensure all effects and costs are taken into account. Vehicle access is required to be to a road other than a state highway where alternative access to a legal road is available, in order to protect the through-road function and safety of the state highway.



ISSUE 5 There is some land in the District which is already closely subdivided and which is inappropriate for certain activities because it is susceptible to erosion and soil instability, is inaccessible or is within Conservation Reserves or contains Heritage Items.

OBJECTIVE 5 To encourage consolidation of titles of small sites which are located in areas which are susceptible to erosion and soil instability, are inaccessible or are identified as a Conservation Reserve or Heritage Item.

POLICY

5A The Council will take into account the positive effects of the consolidation of titles of small sites on land which is susceptible to erosion and soil instability, is inaccessible or is identified as a Heritage Item when considering applications to subdivide land in the Rural Zone to less than 20 ha.

EXPLANATION AND REASONS

Inappropriate subdivision has taken place in the past in areas which are susceptible to erosion and soil instability, are inaccessible or are now identified as a Heritage Item. Such subdivision has the potential to result in adverse effects because of certain activities which are permitted in the Zone. The consolidation of titles of closely subdivided land in inappropriate areas will avoid the potential for adverse effects and will be taken into account by the Council when considering applications to subdivide land in the Rural Zone to less than 20 ha.

ISSUE 6 Subdivision and activities carried out adjacent to the sea or other water bodies may compromise conservation values or limit public access and use.

OBJECTIVE 6 To contribute to the protection of conservation values, public access and recreational use of rivers, lakes and the coastal environment by creating esplanade reserves and strips.

POLICIES

- 6A** Esplanade reserves or strips should be created where they will contribute to the protection of conservation values adjacent to the sea, rivers and lakes.
- 6B** Esplanade reserves or strips should also be created where they will enable public access and appropriate recreational use along the sea, rivers and lakes.
- 6C** Esplanade reserves or strips should not be created within the Lyttelton Port Zone for reasons of public safety and for the reasons of security of cargo and port operations.

6D Esplanade reserves or strips should not be created within the Rural Port Policy Overlay of the Rural Zone where port related development is proposed for reasons of safety and security.



EXPLANATION AND REASONS

Under the Resource Management Act, conditions on which a subdivision consent can be granted may include the provision of an esplanade reserve or strip along the edge of rivers and lakes or the coastal environment. The purpose of esplanade reserves or strips is to maintain and enhance the conservation values and public access associated with the sea, rivers and lakes. The objective and policies intend to ensure that public access and recreational use of the coast, rivers and lakes is maintained and enhanced, provided they are compatible with conservation values.

The Rural Port Policy Overlay in the Rural Zone has been introduced in order to recognise that any future major expansion of Lyttelton Port is likely to be eastwards into Gollans Bay. Esplanade reserves or strips will not be taken in circumstances where port related development is to occur, but can be taken should the land be subdivided for purposes not related to port use or development.

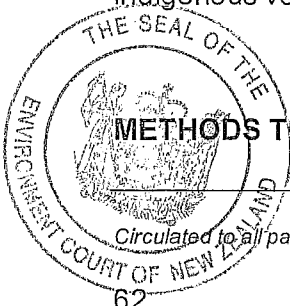
ISSUE 7	Subdivision may be able to assist in securing protection or preservation of significant indigenous vegetation or sites of natural, scientific or cultural significance.
OBJECTIVE 7	To encourage the protection or preservation of areas of significant indigenous vegetation, outstanding natural features or landscapes, or sites of natural, scientific or cultural significance.

POLICIES

- 7A** The Council is to consider the potential benefits arising out of subdivisions for a separate title for an area of significant indigenous vegetation, outstanding natural feature, and landscapes, and coastal natural character landscapes, or sites of scientific or cultural significance the outcome of which is to permanently protect the site from further subdivision or development but which may also create the right to construct and occupy a dwelling either on the site or in another location.
- 7B** Where for any reason a dwelling is not sought or would not be appropriate on such a site, the Council through a resource consent process, is to consider creating a further site more suitable in environmental terms for the placement of a dwelling and transferring the development rights to construct and occupy a dwelling to that site, or alternatively, the granting of environmental merit.

EXPLANATION AND REASONS

The prospect of financial gain to landowners willing to protect areas of significant indigenous vegetation or other areas worthy of protection is an effective incentive.



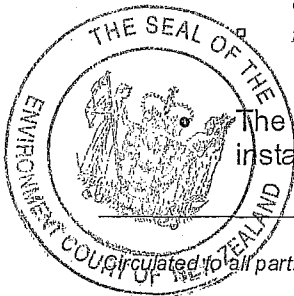
METHODS TO ACHIEVE OBJECTIVES AND POLICIES

- Standards and terms for subdivision set out in the Plan.
- Education and advocacy – initiating meetings to discuss land management issues with landowners and organisations (such as Federated Farmers, the Fish and Game Council, surveyors, foresters, LINZ and DOC).
- Support of Landcare groups and other community based environmental initiatives and organisations.
- Summit Road (Canterbury) Protection Act.
- Council will consider the signposting of unformed legal roads in the District where this is appropriate.
- Development of a comprehensive schedule, in conjunction with landowners, the Department of Conservation and interest groups, identifying priority areas for access and marginal protection in the District.

RULES

1. Controlled Activities

- a) The creation of utility allotments (unstaffed) shall be a controlled activity. The Council reserves control for the purpose of assessment of the necessity for and/or standard of access of such allotments, and the necessity for esplanade reserves and esplanade strips, and any other matters listed in 1.1 below.
- b) The following subdivisions are controlled activities where they meet the standards and terms for controlled activities set out in Rule 2 (below):
 - The creation of esplanade reserves and esplanade strips (except in the Lyttelton Port Zone).
 - Boundary adjustments, provided that:
 - the smallest of any new sites created meets the controlled activity minimum site area standard; or
 - any new site created is no smaller than the smallest of any of the existing sites subject of the boundary adjustment.
 - The subdivision of a building, provided that the building lawfully exists, complies with the Building Code, and either complies with the rules of the Plan or has obtained a resource consent for any non-compliance with the rules.
 - The subdivision of any existing site to create a new site or sites for the purpose of a reserve or wholly containing land identified in the Planning maps as a Conservation Reserves or Heritage Item, provided that:
 - the balance lot meets the minimum site area standard for the Zone; and
 - an instrument is registered on the title of the permitted site which protects the Conservation Reserves or Heritage Item in perpetuity.
 - The creation of a new site not located in Low-Moderate or Moderate-High instability area natural hazards, Coastal Natural Character ~~Interim Coastal~~



Protection Areas or Outstanding Natural Features and Landscapes Areas, with a minimum net site area as set out in the following table:

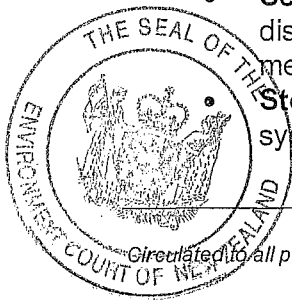
Zone	Minimum Net Site Area	Minimum Average Net Site Area
Rural – Rural Amenity Landscape	40ha unless a site is located entirely above the 160m contour line in which case the minimum site area is 100ha..	
Residential	400m ²	
Residential Diamond Harbour Density Overlay Area	600m ²	
Residential Conservation (Lyttelton)	250m ²	
Residential Conservation (Akaroa)	400m ²	
Boat Harbour	No minimum	
Lyttelton Port	No minimum	
Town Centre	No minimum	
Papakaianga	800m ²	
Small Settlements	1000m ²	
Small Settlement Zone at Governors Bay	1000m ²	1200m ²
Small Settlement Zone (Takamatua CDA only)	1500m ²	There is no minimum average lot net site area, however, a maximum number of lots to be created is 25 (excluding incidental lots as are required to be set aside for reserves, roads or for services catering for the entire subdivision such as telephone or water tanks)
Akaroa Hill Slopes	5000 m ²	
Industrial	No minimum	

- Notwithstanding the above, minimum net site areas shall not apply to sites created to establish facilities for network utility operators.

1.1 Matters Over Which Control may be Exercised

In considering an application for a controlled activity the Council may exercise control over the following matters:

- **Access** – the location and construction of any vehicle accessways, access lots or access strips in relation to natural hazards, topographical features such as ridgelines, valleys, watercourses, watersheds, and areas of indigenous vegetation.
- **Sewage** – the design and construction of any reticulated or on-site effluent disposal system, including the capacity, type of system, location and method of disposal.
- **Stormwater** – the design and construction of any stormwater disposal system, including the type of system, location and method of disposal.



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- **Shape, size and orientation of sites** – the location of sites and boundaries in relation to natural hazards, existing buildings, topographical features such as ridgelines, valleys, watercourses, watersheds, and areas of indigenous vegetation.
- **Building platforms** – the location of building platforms identified on sites in relation to areas of indigenous vegetation, ridgelines, existing development and other features in the landscape. Where no building platform is indicated or where it is determined by the Council that there is no appropriate building platform available on a site then a consent notice may be issued which precludes the erection of a building on that site.
- **Walkways** – the location of walkways, including linkages between other areas, other walkways and public open spaces.
- **Landscaping** – the location of tree planting and landscaping.
- **Water** – the ability to provide a sufficient supply of potable water.
- **Archaeological sites** – the development and layout of the subdivision should seek to avoid the modification, damage or destruction of archaeological sites. If a site is permanently protected by an easement or similar mechanism, consideration of this shall be given by Council of this in assessing any reserve contribution applying to the subdivision.

1.2 Assessment of Applications

In assessing any application for a controlled activity the Council will have particular regard to the objectives and policies for Subdivision and any other relevant objectives and policies of the Plan.

2. Standards and Terms for Controlled Activities

These standards and terms apply only to controlled activities listed in Rule 1(b).

2.1 Density

No subdivision shall be permitted which results in a density of dwellings on any site that exceeds the density of dwellings allowed by the conditions and standards for permitted and controlled activities in the relevant Zone.

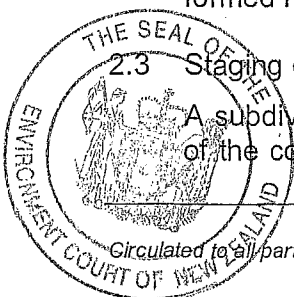
With respect to subdivision within any area shown on the Planning Map as a Rural Amenity Landscape, any building platform for a dwelling must be located on that area of the site, either above or below the 160m contour line, which will comply with the site density standard.

2.2 Access

All sites shall have legal access which is able to accommodate a driveway to a formed road. Where land to be subdivided with frontage to a state highway has practical legal access to an alternative road there shall be no access to the state highway. In the event of multiple site subdivision where parking is provided as a common facility, that parking area shall have legal access to a formed road.

2.3 Staging of Subdivision

A subdivision may be completed in stages, provided that each stage meets all of the conditions of approval appropriate to that stage, and that the balance of



the site remaining after the completion of each stage is a site which complies with the provisions of the Plan.

2.4 Esplanade Reserves

The subdivision of sites adjoining the coast or rivers and lakes shall comply with the esplanade requirements of the Plan.

2.5 Financial Contributions

The creation of new sites by subdivision shall comply with the terms for development contributions in Chapter 32 of the Plan.

2.6 Servicing

A subdivision may only be undertaken in the Residential Zone if connections to a Council-approved stormwater disposal system, effluent disposal system and a potable water supply are provided to each new allotment. All work associated with connections to these systems must be carried out in accordance with the Banks Peninsula District Council's Code of Urban Subdivision.

2.7 Takamatua and Robinsons Bay Comprehensive Development Area

Within the Takamatua Comprehensive Development Area and Robinsons Bay Comprehensive Development Area any application for subdivision shall be consistent with the respective Comprehensive Development Plan in Appendix XVII. Any subdivision that is inconsistent with the respective Plan shall be a non-complying activity.

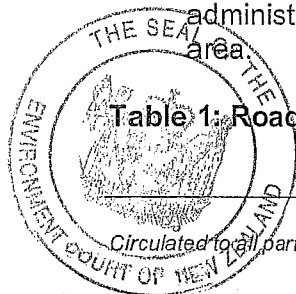
2.8 New Roads

All new roads shall be laid out, constructed and vested in accordance with the standards set out below and in Table 1.

- Residential street gradients shall not be steeper than 12.5% measured on the inside kerb alignment. The absolute maximum longitudinal gradient shall be 16.6% on short straight sections of carriageway only.
- Horizontal curves in 50km/hr zones may be circular, with a minimum centreline radius of 80m for all industrial streets and for urban collector streets. For local urban streets the inside kerb radius may be reduced progressively to a minimum of 15m as the traffic volume decreases.
- All new roads vested upon subdivision of land shall be given distinctive names, along similar themes as existing road names in the area, not already in use within the District of Banks Peninsula.

All names shall be approved by Council. Where any new road or road extension is formed or is to be vested in the Council or a named access is provided, the developer shall pay to the Council a financial contribution for the manufacture and erection of all necessary name plates. This financial contribution shall be made up of all direct costs incurred by Council plus a 10% administration fee. All name plates shall be as per Council's standard for the area.

Table 1: Road Standards



Road classification	Typical total equivalent car movements per day (ecm/d)	Minimum road reserve widths (metres)	Minimum carriageway widths (metres)	Foot-paths required
Local – Rural	<25	15	5	None
Local – Rural	25 to 200	15	6	None
Collector – Rural	>200	15	7	*
Local – Urban	<250	12	6	One
Local – Urban	>250	14	8	One
Collector – Urban	>750	16	9	One/two*

Equivalent car movement is defined as follows:

- 1 car to and from the property = 2 equivalent car movements.
- 1 truck to and from the property = 6 equivalent car movements.
- 1 truck and trailer to and from the property = 10 equivalent car movements.
- This measurement is based on an assumption that a single residential dwelling is deemed to generate a minimum of 8 equivalent car movements per day (ecm/d).
- Truck movements must occur at least 4 days per week to be classed as typical.
- * Possibly required, and will be determined by Council on a case by case basis.

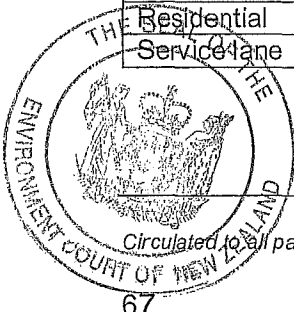
2.9 Accessways

All new accessways (individual driveways and right of ways) shall be laid out and constructed in accordance with the standards set out below and in Table 2.

- Access gradients shall not be steeper than 16.6% with an absolute maximum longitudinal gradient of 25% on short straight sections of sealed carriageway only. The first 10m of formed right of way off the carriageway shall have a maximum gradient of 10%.
- All accesses steeper than 10% or servicing 3 or more dwelling units must have turning areas available so vehicles do not have to back up or down accesses.
- All right of ways and individual driveways shall have a 'cut off drain' drained to an approved watercourse to prevent stormwater runoff crossing or entering the carriageway.
- Accesses shall only be named at the discretion of Council where there are insufficient legal road numbers available to allocate to the proposed allotments, or where the access serves 10 or more residential units. The name, name plate and costs shall be approved and charged as for new roads.

Table 2: Minimum Requirements for Access

Activity	Potential no. of units	Minimum legal width (metres)	Formed width (metres)	Sealed and drained
Residential	1 to 3	3.0	2.7	*
Residential	3 to 6	4.0**	3.5**	Yes
Residential	6 to 12	6.0**	5.0**	Yes
Service lane		6.0	4.0	Yes



- whether there are any positive effects of the retention/protection of these areas on other areas closely related to the application site.
- whether a sufficient area of land is to be provided around the area to ensure that any permitted, controlled, restricted discretionary, or discretionary activity which may take place adjacent to the area will not detract from the intrinsic qualities of the area.
- whether the area is to be protected in perpetuity by an appropriate legal instrument such as a covenant eg Banks Peninsula Conservation Trust or consent notice. Such an instrument would specify the means by which the area is to be protected from further subdivision or development.

5. Discretionary Activities – Rural-Residential Zone

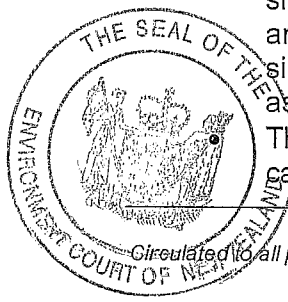
5.1 Samarang Bay and Allandale Rural Residential Zones.

Any subdivision in either the Samarang Bay or the Allandale Rural Residential Zones is a discretionary activity and shall be in general accordance with the layout (and, in the case of Samarang Bay, conditions) shown on the respective concept plans in Appendix XVI.

5.2 Assessment of Applications

In assessing any application in terms of Rule 5.1 in the Rural-Residential Zone the Council will have regard to, but shall not be limited by, the following matters:

- **Access** – the location and construction of any vehicle accessways, access lots or access strips in relation to natural hazards, topographical features such as ridgelines, valleys, watercourses, watersheds, and areas of indigenous vegetation.
 - **Sewage** – the design and construction of any reticulated or on-site effluent disposal system, including the capacity, type of system, and location and method of disposal.
 - **Stormwater** – the design and construction of any stormwater disposal system, including the type of system and location and method of disposal.
 - **Shape, size and orientation of sites** – the location of sites and boundaries in relation to natural hazards, existing buildings, topographical features such as ridgelines, valleys, watercourses, watersheds, and areas of indigenous vegetation.
 - **Building platforms** – the location of building platforms identified on sites in relation to areas of indigenous vegetation, ridgelines, existing development and other features in the landscape. Where no building platform is indicated or where it is determined by the Council that there is no appropriate building platform available on a site then a consent notice may be issued which precludes the erection of a building on that site.
 - **Water** – the ability to provide a sufficient supply of potable water.
 - **Archaeological sites** – the development and layout of the subdivision shall seek to avoid the modification, damage or destruction of archaeological sites. If a site is permanently protected by an easement or similar mechanism, consideration shall be given by Council of this in assessing any reserve contribution applying to the subdivision.
- The degree to which significant environmental features on the site are capable of protection in perpetuity by an appropriate legal instrument such



as a consent notice or covenant. Such instrument should specify the means by which the feature or features are to be protected from the effects of any land use activity.

- The degree to which a sufficient area of land is provided around any significant environmental feature to ensure that any permitted or controlled activity which may take place adjacent to the feature will not detract from the intrinsic qualities of the feature.
- The degree to which natural topography, drainage and other features of the natural environment determine site boundaries where that is practicable.

5.3 Particular Standards and Terms

Any land on a site identified on the Planning maps as a Conservation Reserves, Outstanding Natural Features and Landscape Protection Area or Heritage Item shall be protected from development in perpetuity by a covenant, consent notice or similar legal instrument. The Council will take such protection into account when assessing any reserve contribution which applies to the subdivision.

6. Discretionary Activities – Papakaianga Zone

6.1 The creation of a new site with a minimum net site area of less than 800 m² not located in a Low-Moderate or Moderate-High instability area natural hazard.

6.2 Assessment of Applications

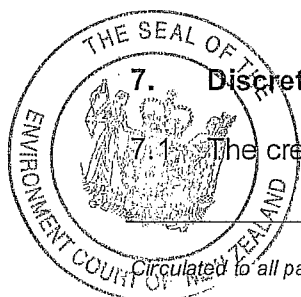
The Council will consider all relevant objectives and policies for Subdivision when assessing applications for discretionary activities. In addition, the standards and terms for controlled activities will be used as a guide.

- **Archaeological sites** – the development and layout of the subdivision shall seek to avoid the modification, damage or destruction of archaeological sites. If a site is permanently protected by an easement or similar mechanism, consideration shall be given by Council of this in assessing any reserve contribution applying to the subdivision.

6.3 Particular Standards and Terms

- The subdivider shall be tangata whenua of the ancestral land and should provide evidence to the Council of such status, endorsed by the relevant runanga and shall provide the written approval of the relevant runanga for the subdivision.
- The site shall be capable of containing a permitted dwelling.
- The creation of new sites by subdivision shall comply with the terms for development contributions in Chapter 32 of the Plan.

In addition, the Council will consider all relevant objectives and policies of the Papakaianga Zone.



7. Discretionary Activities – Residential Zone

7.1 The creation of a new site with a minimum net site area of less than 400m².

7.2 The creation of a new site located in the Low-Moderate or Moderate-High instability area.

7.3 Assessment of Applications

The Council will consider all relevant objectives and policies for Subdivision when assessing applications for discretionary activities. In addition, the standards and terms for controlled activities will be used as a guide.

- **Archaeological sites** – the development and layout of the subdivision should seek to avoid the modification, damage or destruction of archaeological sites. If a site is permanently protected by an easement or similar mechanism, consideration shall be given by Council of this in assessing any reserve contribution applying to the subdivision.
- **Access** – the location and construction of any vehicle accessways, access lots or access strips in relation to natural hazards, topographical features such as ridgelines, valleys, watercourses, watersheds, and areas of indigenous vegetation.

7.4 Particular Standards and Terms

- A subdivision consent shall be made in conjunction with a building consent for the same site.
- The "Conditions for Permitted Activities and Standards for Controlled Activities" set out in Rule 3 of the Residential Zone shall be met.
- The creation of new sties by subdivision shall comply with the terms for development contributions in Chapter 32 of the Plan.
- The subdivision of land or buildings shall not be within the Port Influences Overlay Area of the Residential Zone.

In addition, the Council will consider all relevant objectives and policies of the Residential Zone and the standards and terms for controlled activities.

8. Discretionary Activities - Residential Conservation Zone within Lyttelton

8.1 The creation of a new site with a minimum net site area of less than 250 m² not located in a Low-Moderate or Moderate-High instability area.

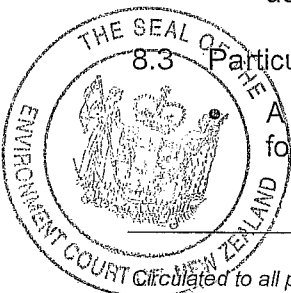
8.2 Assessment of Applications

The Council will consider all relevant objectives and policies for Subdivision when assessing applications for discretionary activities. In addition, the standards and terms for controlled activities will be used as a guide.

- **Archaeological sites** – the development and layout of the subdivision should seek to avoid the modification, damage or destruction of archaeological sites. If a site is permanently protected by an easement or similar mechanism, consideration shall be given by Council of this in assessing any reserve contribution applying to the subdivision.

8.3 Particular Standards and Terms:

A subdivision consent shall be made in conjunction with a building consent for the same site.



- The 'General standards for restricted discretionary activities' set out in Rule 5 of the Residential Conservation Zone shall be met.
- The creation of new sites by subdivision shall comply with the terms for development contributions in Chapter 32 of the Plan.
- The subdivision of land or buildings shall not be within the Port Influences Overlay Area of the Residential Conservation Zone.

In addition, the Council will consider all relevant objectives and policies of the Residential Conservation Zone.

9. Discretionary Activities – Residential Conservation Zone within Akaroa

9.1 The creation of a new site with a minimum net site area of less than 400 m² not located in Low-Moderate or Moderate-High instability area.

9.2 Assessment of Applications

The Council will consider all relevant objectives and policies for Subdivision when assessing applications for discretionary activities. In addition, the standards and terms for controlled activities will be used as a guide.

- **Archaeological sites** – the development and layout of the subdivision should seek to avoid the modification, damage or destruction of archaeological sites. If a site is permanently protected by an easement or similar mechanism, consideration shall be given by Council of this in assessing any reserve contribution applying to the subdivision.

9.3 Particular Standards and Terms

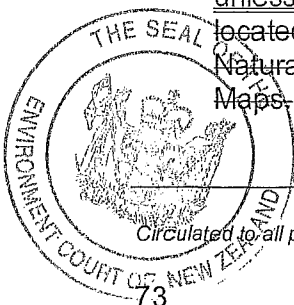
- A subdivision consent shall made in conjunction with a building consent for the same site.
- The 'General Standards for restricted discretionary activities' set out in Rule 5 of the Residential Conservation Zone shall be met.
- The creation of new sites shall comply with the terms for development contribution in Chapter 32 of the Plan.

In addition, the Council will consider all relevant objectives and policies of the Residential Conservation Zone.

10. Non-Complying Activities

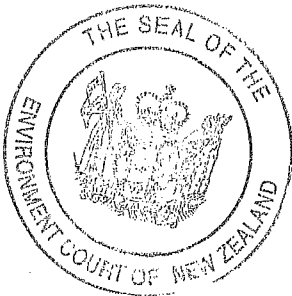
10.1 The creation of a new site in which is partly or wholly within an area shown as Outstanding Natural or Coastal Natural Character Landscapes on the Planning Maps and where there is no consent notice proposed in accordance with rule 4.1 of this chapter. ~~the Rural Zone with a minimum net site area less than 4 ha.~~

10.2 The creation of a new site in any area shown as Rural Amenity Landscape on the Planning Maps with within a minimum net site area that is less than 4ha unless where the new site complies with Chapter 19 Rule 5.2(b) or 6.2(j), and located within an Interim Coastal Protection Area or Interim Outstanding Natural Features and Landscapes Protection Area as shown on the Planning Maps.



DEFINITIONS

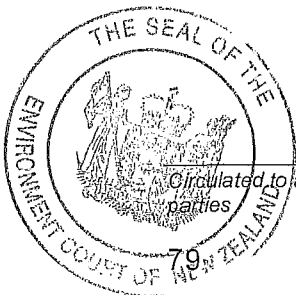
DEFINITIONS



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DEFINITIONS

- Act:** Means the Resource Management Act 1991 and its amendments.
- Accessory Building:** Means any building or structure which is detached from, and the use of which is ancillary to a permitted activity or approved building on a site.
- Allotment:** Has the same meaning as that given by the Resource Management Act 1991.
- Amenity Tree Planting:** Means the planting and tending of trees to provide shelter, landscaping or screening around buildings, roads or public open space, or for the mitigation of a natural hazard.
- Amenity Values:** Has the same meaning as that given within the Resource Management Act 1991.
- Approved Building:** Means any building associated with a permitted activity or approved as part of a resource consent.
- Building:** Has the same meaning as that given by the Building Act 1991 but excluding the following:
- Any dam that retains not more than 3 metres depth, and not more than 20,000 cubic metres volume of water, and any stopbank or culvert:
 - Any mast, pole, or telecommunication aerial on and forming part of a building, excluding dish aerial, that does not exceed 2 metres in height above the point of its attachment or base support:
 - Any retaining wall that retains not more than 1.5 metres in depth of ground and that does not support any surcharge or any load additional to the load of that ground, such as the load of vehicles on the road:
 - Any wall (other than a retaining wall), fence (other than a fence as described in section 2 of the Fencing of Swimming Pools Act 1987), and hoarding of a height not exceeding 2 metres above the supporting ground:
 - Any tank or pool and any structural support thereof (excluding a swimming pool as defined in section 2 of the Fencing of Swimming Pools Act 1987), including any tank or pool that is part of any other building for which building consent is required, - (i) Not exceeding 25,000 litres capacity and supported directly by the



DEFINITIONS

ground: or (ii) Not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground:

Any tent or marquee not exceeding 30 square metres in floor area and remaining in use for not more than 1 month:

Any platform, bridge, or the like from which it is not possible for a person to fall more than 1 metre:

Any detached building which does not protrude through the height controls and the height in relation to boundary controls for the particular Zone, and does not exceed 10 square metres in floor area, and does not contain sleeping accommodation:

Building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory or the like with a floor area not exceeding 5 square metres.

Bulk Oil Storage Structures

Means structures used for receiving, storing, and distributing petroleum products and includes tanks and ancillary equipment such as pipelines, gantry systems and fire management and utility services but excludes service stations.

Community Facilities:

Means any building or facilities or part thereof intended to be used principally by members of the local community for the assembly of people for recreation, entertainment, worship, cultural and spiritual instruction and deliberation but does not include any entertainment facilities or restaurants.

Conservation:

Has the same meaning as that given by the Conservation Act 1987. (Page 37)

Conservation Activities:

Means activities that are primarily concerned with the maintenance and/or enhancement of habitats and indigenous flora and fauna and the provision of appropriate public access to them.

Coverage:

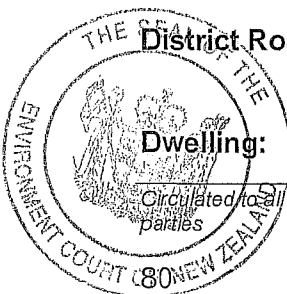
Means that portion of a site which may be covered by buildings, including accessory buildings.

District Road:

Means a road or street which is maintained by the District Council.

Dwelling:

Means any building, whether permanent or temporary,



DEFINITIONS

that is occupied, in whole or in part, as a residence; and includes the following:

- accommodation where lodging is provided, or intended to be provided for reward or payment, for not more than 6 guests on a site; and
- any structure or outdoor living area that is accessory to and used wholly or principally for the purposes of the residence.

It also includes accessory buildings. Also refer to dwelling in the definition of Port Noise Sensitive Activity.

Earthworks:

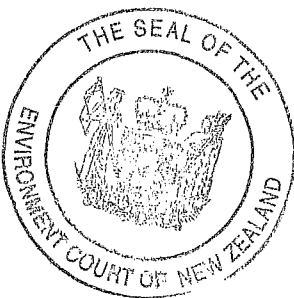
Means the excavation or depositing of earth, rock or soil or the filling of land with any material and includes:

- quarrying
- prospecting
- land contouring
- road or vehicle accessway construction

But does not include:

- ~~the cultivation of land to establish plants~~
- ~~the digging of holes for posts~~
- ~~works carried out to establish effluent disposal systems~~
- ~~earthworks associated with the construction of any approved building~~
- ~~maintenance of existing drains.~~

- The cultivation of land to establish plants
- Digging of holes for posts, water storage tanks up to 30,000 litres, troughs, pump sheds and fences;
- Earthworks carried out to establish effluent disposal systems;
- Earthworks associated with the construction of any approved building;
- Earthworks associated with the maintenance of existing drains, tracks, fencelines and roading infrastructure;
- Earthworks associated with minor bridges and culverts consented permitted by the Regional Council;
- Earthworks associated with the maintenance, refurbishment or replacement of existing, lawfully established buildings and structures provided that the effect of the earthworks is not to increase the extent of any existing uphill batter vertical cut height or increase an existing downhill vertical spill of side castings which are already greater than the standard for a permitted activity;



DEFINITIONS

Hazardous substance:

Are substances:

- a) with one or more of the following intrinsic properties:
- explosiveness;
 - flammability;
 - a capacity to oxidise;
 - corrosiveness;
 - toxicity (both acute and chronic);
 - eco-toxity, with or without bio-accumulation;

or

- b) which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of the definition.

Health Care Facilities: Means land and buildings used for the provision of services relating to the physical and mental health of people and/or animals and includes medical centres, hospitals, convalescent homes, clinics, gymnasia and veterinary hospitals. Also refer to health care services in the definition of Port Noise Sensitive Activity.

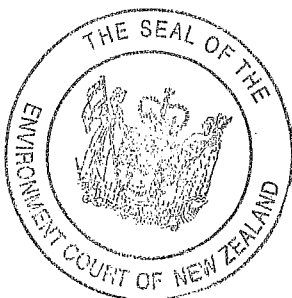
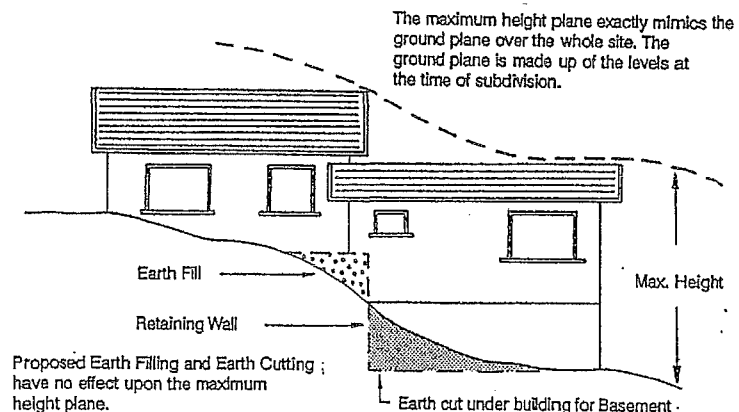
Health Impact Assessment:

The process of identifying, assessing and mitigating the effects that activities may have on the health of people in the area.

Height:

In relation to a building means the vertical distance between the ground level at any point and the highest part of the building directly above that point (see diagram). When determining height, no account shall be taken of aerials, antennas, chimneys, finials or other structures not exceeding 2 metres in height and 1 square metre in area on any one side.

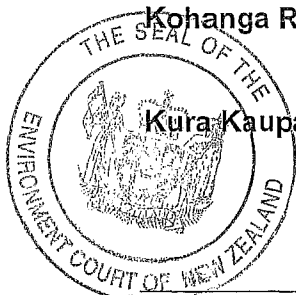
Maximum Height



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DEFINITIONS

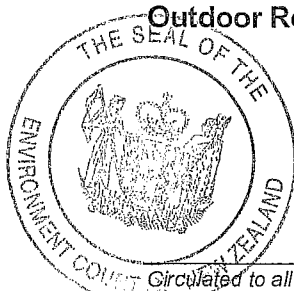
- Heli-landing Area** *An area of land used for the landing and takeoff of helicopters not in conjunction with emergency landing, search and rescue, fire-fighting, police or civil defence purposes.*
- Home Enterprise:** Means an occupation, craft or profession which is:
- established on the same site as a dwelling; and
 - is carried out entirely within a building; and
 - is carried out predominantly by persons living permanently on the site; and
 - does not involve any exterior display or storage of material or give any other exterior indication that the building is used for other than normal domestic or farm purposes (except for signage as provided for in the Plan); and
- includes a health care service or industry or service which meets the criteria set out above.
- Industry:** Means the use of land and/or buildings for the primary purpose of manufacturing, fabricating, processing, repairing, packaging or storage of goods and includes engineering workshops, panelbeaters and spray painters.
- Improved Pasture:** Means an area of pasture where:
- a) exotic species are visually the predominant vegetation cover; and
 - b) the area has been modified or enhanced by being subjected to either cultivation, irrigation, over-sowing, top-dressing, or direct drilling; and
 - c) has been subjected to routine pasture maintenance or improvement since 1 June 1987.
- Indigenous Vegetation:** Means a plant community in which locally indigenous species are important in terms of coverage, structure and/or species diversity.
- Iwi:** Tribe or people.
- Kiatiakitanga:** Has the same meaning as that given by the Resource Management Act.
- Kohanga Reo:** Means the teaching and care of pre-school children in accordance with tikanga Maori (Maori custom).
- Kura Kaupapa:** Means primary schooling designed for children from kohanga reo undertaken in accordance with tikanga Maori.



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DEFINITIONS

Liquid Waste:	Waste water, including liquid by-product from industrial, agricultural, trade or domestic premises containing residues of the processes carried out on site.
Mahinga Kai:	Food supplies.
Mana Whenua:	Has the same meaning as that given by the Resource Management Act.
Manakitanga:	Hospitality.
Marae:	Means a traditional meeting place for Maori and includes any meeting-house, dining hall and cooking area, as well as the marae ātea (sacred space in front of the meeting-house).
Mechanical Ventilation	means a mechanical system or systems designed, installed, and operating so that a habitable room, or habitable rooms (with windows and doors closed), are ventilated with outdoor air in accordance with the Building Code under the Building Act 1991.
Natural Water System:	Means any part of a natural drainage system, including any aquifer, stream, river, wetland or estuary.
Net Site Area:	Means the total area of the site less any area used for access.
Network Utility Operation:	Has the same meaning as that given by the Resource Management Act 1991.
Network Utility Operator:	Has the same meaning as that given by the Resource Management Act 1991.
Office:	Means the operation of professional, commercial and administration offices and includes banks and facilities for the receipt, processing and dispatch of mail and related documents.
Outdoor Amenity Space:	Means an area of open space required by this Plan to be provided for the exclusive use of the occupants of the residential unit to which the space is allocated.
Outdoor Recreation:	Means the use of land or bodies of water for outdoor recreation purposes based substantially on the natural resources of the area and undertaken outdoors, with ancillary buildings limited to use for shelter, refreshment, information, equipment storage and toilet facilities.



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DEFINITIONS

Outstanding Natural Features and Landscapes: Means elements of the landscape or areas of land which have been identified in accordance with specific criteria as worthy of particular protection because they are striking or special by reason of their relative excellence within the context of Banks Peninsula, the protection of which would accord with the purpose of the Act and section 6(b).

Pa: Fortified village.

Papakaianga Housing: Means the provision of residential units on sites within the Papakaianga Zone for Maori who are tangata whenua.

Papatuanuku: Mother Earth.

Place of Assembly: Means the use of any building and/or structure principally for the public assembly of people for recreation, education, worship, culture or deliberation and includes churches and church halls, schools, day care facilities, sports clubrooms and facilities, pavilions, community halls and libraries. Also refer to the places of assembly in the definition of Port Noise Sensitive Activity.

Pole Structure: Means a structure where the cross section dimension of any of its individual constituent members does not exceed 300mm.

Port Activities: Means the use of land, wharves, plant, equipment, buildings and other port facilities and structures for:

- cargo handling and passengers;
- port administration;
- maintenance and repair facilities;
- ship and boat building activities;
- warehouses, storage areas and facilities;
- and car-parking areas;

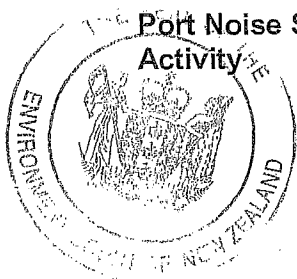
and activities associated with:

- berthing
- departure and surface movements of ships.

Port Noise Sensitive Activity

means any one or more of the following activities located in the Port Influences Overlay Area shown on Maps S1 and S2:

- 1 Dwelling, residential unit, or family flat, a habitable accessory building, or a residential activity;
- 2 Elderly persons housing complex;
- 3 Places of Assembly that involve buildings or land to be used for education facilities or day care facilities;



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DEFINITIONS

- 4 Health Care Services that involve hospitals or convalescent homes, or any other healthcare services that contain sleeping facilities for any person;

For the purposes of this definition **Day Care facility** means land and/or buildings used for the care during the day of elderly persons, persons with disabilities, and children, other than those residing on the site.

For the purposes of this definition **Educational facility** means the use of land and/or buildings for the provision of regular instruction or training and includes their ancillary administrative, boarding/residential accommodation, religious, sporting, cultural and communal facilities, and also includes pre-schools.

Potable Water: Drinking water which complies with the Drinking Water Standards for New Zealand 1995 or any substitution or amendment of this standard.

Public Car-Parking: Means an area of land or a building providing parking for the use of the public and shall not include any parking space as required by the rules of this Plan.

Public Health: Is the science and art of preventing disease, prolonging life and promoting health through the organised efforts of society.

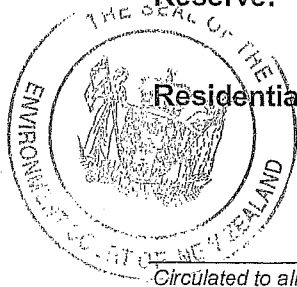
Quarrying: Means the excavation of sand, gravel or rock from the ground for the purposes of providing construction materials and includes the removal of overburden and processing to produce aggregates of sand, gravel and rock only, the storage of this material, and the erection and maintenance of plant, machinery and buildings and other works connected with such operations.

Relocatable Building: Means any building which has been substantially constructed on a site and is moved either in its entirety or in parts to a new site.

Replacement Dwelling means the construction of a dwelling that is to replace an existing dwelling.

Reserve: Has the same meaning as that given by the Reserves Act 1977.

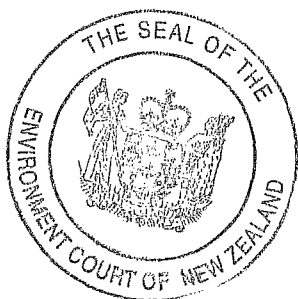
Residential Units: Means a residential activity which consists of a single self contained household unit, whether of one or more persons, and includes accessory buildings and a family flat. Where more than one kitchen and/or laundry facility is provided on the site, other than a kitchen



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DEFINITIONS

- and/or laundry facility in a family flat, there shall be deemed to be more than one residential unit.
- Retail Premises:** Means the use of land and/or buildings from which goods, merchandise, equipment or services are sold, displayed or offered for sale or direct hire to the public and includes mail receipt, sorting, processing and delivery functions ancillary to the principal use of the retail premises, but does not include service stations.
- Ridge:** Means the longitudinal crest of raised ground separating two watercourses and which is defined by contour lines on an NZMS topographical map.
- River:** Means a continually or intermittently flowing body of fresh water; and includes a stream and modified water course; but does not include any artificial water course (including an irrigation canal, water supply, race, canal for the supply of water for electricity power generation and farm drainage canal).
- Runanga:** Local representative Maori Groups.
- Rural Industry and Services:** Means industries which are engaged primarily in the processing or manufacture of products derived from the resources of the Rural Zone, which provide goods and services predominantly used by activities located within the Rural Zone. This includes any yards, pens or buildings for the accommodation of animals which are not ancillary to a farming activity, abattoirs, agricultural contractors yards, wineries, tourism, horticultural and other processing facilities and stockyards which do not form part of a farming operation but does not include portable operations servicing the rural area (such as portable sawmills).
- Service Station:** means any site where the dominant activity is the retail sale of motor vehicle fuels, including petrol, LPG, CNG and diesel and may include any one or more of the following:
- the sale of kerosene, alcohol based fuels, lubricating oils, tyres, batteries, vehicle spare parts and other accessories normally associated with motor vehicles;
 - mechanical repair and servicing of motor vehicles, including motor cycles, caravans and motors;
 - inspection and certification of vehicles;
 - the sale of other merchandise where this is an ancillary activity to the main use of the site.
- but shall not include any industrial activity.



DEFINITIONS

Sign:

Means any sign or device of whatever nature for the purpose of specific identification of any site or building, or providing directions or information, or promoting any goods, services or forthcoming events and which is visible from any public place. Such a sign may be either manufactured, painted, written, printed, carved, embossed, inscribed, inflated, projected onto or otherwise fixed to any building, hoarding, pole, tree, stone, stationary vehicle (having the express purpose of directing attention to any site or building) or any other structure, and includes captive balloons greater than 50cm in diameter. In addition, any exterior wall of a building painted in colours so as to appear part of a sign displayed upon it shall be regarded as a sign for all that part of the wall painted in such fashion.

Sign Area means the area of any sign within a continuous perimeter enclosing the extreme limits of any lettering and/or emblems, logos, etc together with any material forming an integral part of the display used to differentiate such a sign from the background against which it is placed. When referring to sign area, signs can be double sided.

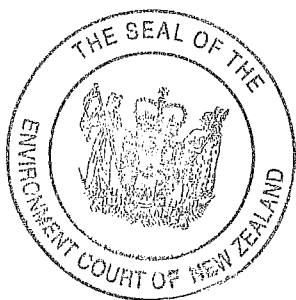
Street Sign means a sign whose specific purpose is to identify streets, roads, tracks, private right-of-ways, accessways and thoroughfares for motorists and pedestrians.

Traffic Safety Signs means a sign erected by the roading authority, namely Transit New Zealand or the Banks Peninsula District Council, to provide for traffic safety and motorist information.

**Significant
Indigenous
Vegetation:**

Means indigenous (native) trees, forest, scrub, tussock grassland, coastal vegetation, wetland and saltmarsh and other indigenous vegetation in any of the following forms:

- a) Indigenous trees, forest and scrub
 - i. Any old-growth podocarp/hardwood forest or beech forest which contains *Dacrycarpus dacrydioides* (kahikatea), *Podocarpus totara* (totara), *P hallii* (totara) *Prumnopitys taxifolia* (matai), *Prumnopitys ferruginea* (miro), *Libocedrus bidwillii* or *Nothofagus* spp trees; or any mature individual trees of these species.
 - ii. A contiguous area of 0.5ha or more of regenerating podocarp/hardwood forest or beech forest or mixed hardwood forest



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DEFINITIONS

- dominated by native trees e.g. *Melicytus ramiflorus* (mahoe), *Pseudopanax arboreus* (fivefinger), *Pittosporum eugenioides* (lemonwood), *Fuchsia excorticata* (fuchsia), *Hoheria angustifolia* (lacebark), *Plagianthus regius* (ribbonwood), *Pennantia corymbosa* (kaikomako), *Sophora microphylla* (kowhai), *Hedyacarya arborea* (pigeonwood), *Myoporum laetum* (ngaio), .
- iii. Mature and regenerating kanuka forest (*Kunzea ericoides*) in the Port Hills Ecological District with any individual kanuka plant more than 4m tall and occupying a contiguous area of 0.25 hectares or more.
 - iv. Mature and regenerating kanuka forest (*Kunzea ericoides*) in Herbert, Akaroa or Ellesmere Ecological Districts, with any individual kanuka plant more than 6m tall and occupying a contiguous area of 0.5 hectares or more.
 - v. Lower altitude mixed scrub - a contiguous area of 0.5ha or more in which mature specimens of any of the following genera: *Olearia*, *Hebe*, *Pseudopanax*, *Fuchsia*, *Griselinia*, *Pseudowintera* and *Coprosma* form the dominant cover .
 - vi. Subalpine mixed scrub with generally continuous canopy of native species in which mature specimens of any of the following genera: *Dracophyllum*, *Olearia*, *Hebe*, form the dominant cover .
 - vii. Lower altitude small-leaved shrubland dominated by small-leaved *Coprosma* species, *Muehlenbeckia complexa*, *Helichrysum lanceolatum*, *Melicytus alpinus*, *Carmichaelia australis* and/or *Discaria toumatou* (matagouri) occupying a contiguous area of 0.1 hectares or more and where canopy cover of all native shrub species exceeds 15%.
 - viii. Communities of boulder fields, bluffs and talus slopes (i.e.rock), that have rock cover that is over 40% and 30% or more indigenous vegetation cover that is made up of mosses and lichens and/or any of the following species: *Sophora prostrata*, *Podocarpus hallii*, *Phormium*

The height reached by mature kanuka varies across the Peninsula depending on rainfall, aspect, soil type and exposure. In drier areas, significant mature kanuka vegetation may only reach 4m. This is used as the threshold height in the Port Hills Ecological District to ensure that the values of the small patches of kanuka in these drier areas are recognised. However, a 6m threshold and 0.5 hectare area is appropriate for the wetter Ecological Districts. It is acknowledged that this means that large amounts of tall kanuka in the wetter areas will be recognised as significant.

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DEFINITIONS

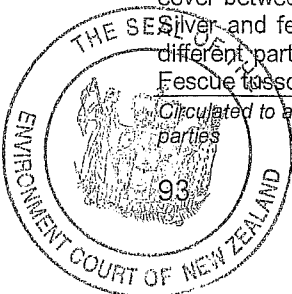
- tenax*, *P cookianum*, *Carmichaelia australis*, *Muehlenbeckia complexa*, *Melicytus alpinus*, *Corokia cotoneaster*, *Fuschia excorticata*, *F perscandens*, *F excorticata X perscandens*, *Hebe strictissima*, *H salicifolia*, *Coprosma spp.*
- ix. Mixtures of significant indigenous vegetation types described above, occupying an area of 0.5ha or more.²
- b) Indigenous tussock grassland
- i. Tall tussockland and/or tall tussock shrubland in which native snow tussock (*Chionochloa*) and/or *Dracophyllum* accounts for 15%.³
 - ii. A contiguous area of short tussockland in which native fescue/hard tussock (*Festuca novae-zelandiae*) and native inter-tussock species accounts for 20% or more of canopy cover.
 - iii. A contiguous area of over 1.0 hectare of short tussockland in which native silver tussock (*Poa cita*) and native inter-tussock species account for 30% or more of canopy cover.⁴
- c) Indigenous coastal vegetation
- i. Coastal dunes, interdunes, and foreshore communities, including those with *Desmoschoenus spiralis* (pingao)
 - ii. Coastal shrubland communities, such as those at Okains Bay, Lake Forsyth/Wairewa, Birdlings Flat, and on the Kaitorete Barrier/Spit, and those providing habitat for the yellow-eyed penguin.
- d) Indigenous wetland vegetation
- i. Naturally occurring freshwater marsh, fen, swamp, flush and aquatic vegetation, including closely associated riparian vegetation, in which any native species of the following genera are present: *Typha* (raupo), *Cortaderia* (toetoe), *Phormium* (flax), *Carex* (sedges), *Eleocharis* (spike rush), *Potamogeton* (pond weed), *Sphagnum* (sphagnum moss), *Isolepis*,

² Succession from open shrublands to closed forest cover is occurring on the BP so that the types described in a(i) to a(vii) often merge into each other and can change depending on local environmental conditions and land management practices.

³ Threshold recognises that this vegetation is very unusual on BP and rarely occurs at densities over 15%.

⁴ The % cover thresholds that are used for short tussock grasslands recognise that native plant cover between the tussocks (inter-tussock) can be an important component of the vegetation type. Silver and fescue tussock can be difficult to distinguish, often form mixes, and vary in density in different parts of the Peninsula due to environmental factors and pastoral management regimes. Fescue tussock is much less common than silver tussock.

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DEFINITIONS

Schoenus.

- ii. Saltmarsh vegetation in which any of the following native species are present: *Zostera novozelandica* (seagrass), *Plagianthus divaricatus* (saltmarsh ribbonwood), *Juncus kraussii* (sea rush), *Apodasmia similis* (jointed rush), *Selliera radicans*, *Samolus repens* (sea primrose), *Sarcocornia quinqueflora* (glasswort), *Mimulus repens* (native musk), *Puccinellia distans* (saltmarsh grass), *Schoenoplectus spp.*
- d) Threatened indigenous plant species
- i. An area of vegetation which provides a habitat of threatened indigenous plant species found within the Banks Peninsula District as listed in Appendix III or the latest version of the national threatened species listing.

'Silent File' Area: Means an area of land identified on the Planning maps which contains a site or sites of cultural, spiritual and/or traditional significance to Maori.

Site: Means, as appropriate to the circumstances:

- an area of land which is contained in a single certificate of title; or
- an area of land which is made up of two or more allotments held together in one certificate of title, so that they are treated as one area of land; or
- an area of land comprising one or more allotments which contain a proposed or existing development.

Structure: Means any building, equipment, device or other facility made by people and which is fixed to land; and includes any raft, houseboat or other floating structure but excludes fences and stockyards up to 1.8m high.

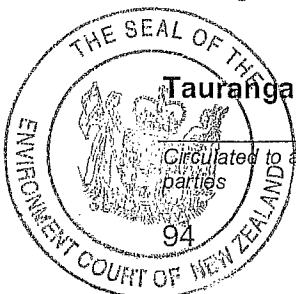
Subdivision: Has the meaning specified in section 218 of the Resource Management Act 1991.

Surface Water Body: Means water contained in any naturally occurring lake, wetland, creek, stream or river.

Tangata Whenua: Has the same meaning as given by the Resource Management Act.

Taonga: Treasured possessions, includes both tangible and intangible treasures.

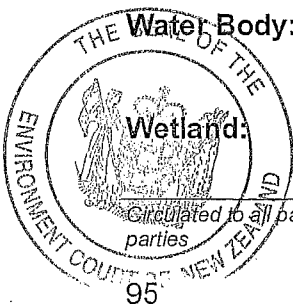
Tauranga Waka: Has the same meaning as given by the Resource Management Act.



Circulated to all parties 3 October 07. Includes amendments arising out of Heads of Agreements between the parties

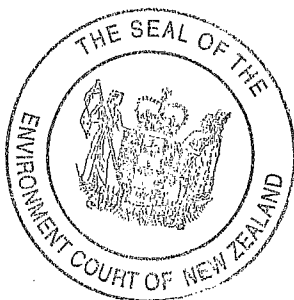
DEFINITIONS

Te Pataka a Te Rakaihautu:	Banks Peninsula.
Temporary Military Training Activity:	Means a temporary activity undertaken for the purposes of the Defence Act 1990. (Note: that Act enables the restriction of access to 'defence areas' which includes areas used for temporary military training activities.)
Tikanga Maori:	As defined in the Resource Management Act.
Turangawaewae:	Place of belonging.
Tuua:	Sacred Alters.
Urupa:	Means Maori burial ground.
Utility:	Any structure, network or facility established or operated by, or activity undertaken by a network utility operator as defined at section 166 of the Act.
Utility Allotment (unstaffed)	<p>means an allotment created for the sole purpose of accommodating an existing or proposed utility, and which:</p> <ul style="list-style-type: none">• does not provide any permanent or temporary accommodation other than during construction or upgrading of the utility; and• has no connections to a Council reticulated water supply, or sewage or stormwater disposal system.
Vegetation Clearance	Means the felling or clearing of significant indigenous vegetation by means, including but not limited to, cutting, crushing, cultivation, chemical application or burning. Clearance of vegetation shall have the same meaning.
Visitor Facility:	Means the use of any premises in which lodging, refreshment or entertainment is provided for reward or payment for more than 6 persons and includes any service or amenity ancillary to such a facility.
Waahi Tapu:	Places of sacred and extreme importance.
Waahi Tapuketia:	Buried treasures.
Water Body:	Has the same meaning as that given by the Resource Management Act 1991.
Wetland:	Has the same meaning as that given by section 2 of the Resource Management Act.



DEFINITIONS

- Whakapapa:** Genealogical collection.
- Woodlot Forestry:** ~~Means a discrete plantation of trees of no more than 2 hectares in area per site and covering no more than 50% of a site.~~
- Yard:** Means the distance between any part of a building (unless specified elsewhere in the Plan) and any site boundary, within which no buildings or parts of buildings other than eaves no more than 600 mm wide may be erected from the ground upwards. In the case of a site subject to a road widening setback, the yard control is to be the distance from the proposed legal road boundary as if the proposed road widening had occurred.
- Front Yard** refers to the yard measured from the front boundary of a site parallel to this boundary along the full width of the site. On a site with more than one road frontage, the site boundaries adjacent to the roads will be front yards and all other yards will be side yards.
- Side Yard** refers to the yard measured from the side boundaries of a site parallel to those boundaries along the length of the site (except any area within front or rear yards).
- Rear Yard** refers to the yard measured from the rear boundary of a site with a line parallel to that boundary for the full width of the site. For rear sites there shall be one rear yard (which shall be nominated) and all other yards shall be side yards.
- Protection Yard** shall be applied to any part of a site, which abuts the margin of any Surface Water Body (including any river, stream, lake or wetland).



INTRODUCTION¹

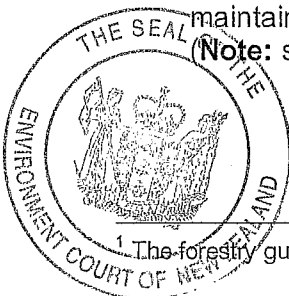
The rural sector is seeing dramatic changes in land uses, with forestry becoming a more attractive land use option in many areas. Forestry can have many social, economic and ecological benefits. These include soil protection, soil stabilisation, and habitat provision for flora and fauna. Forests can also provide important recreational resources. However, if not properly designed, forestry can also have adverse effects. These can include loss of views, landscape effects, effects on soil and water and adverse effects on indigenous flora and fauna.

The intention and purpose of these guidelines is to help raise awareness and understanding of these issues and to provide some guidance and direction in an effort to achieve the best, and most sustainable, compromise between forestry development, on the one hand, and protection of the environment on the other. Accordingly, the Council hope they will be used by prospective foresters in the design of their proposals. They will also be used by Council in assessing forestry proposals which require a resource consent as a controlled, restricted discretionary, discretionary or non complying activity.

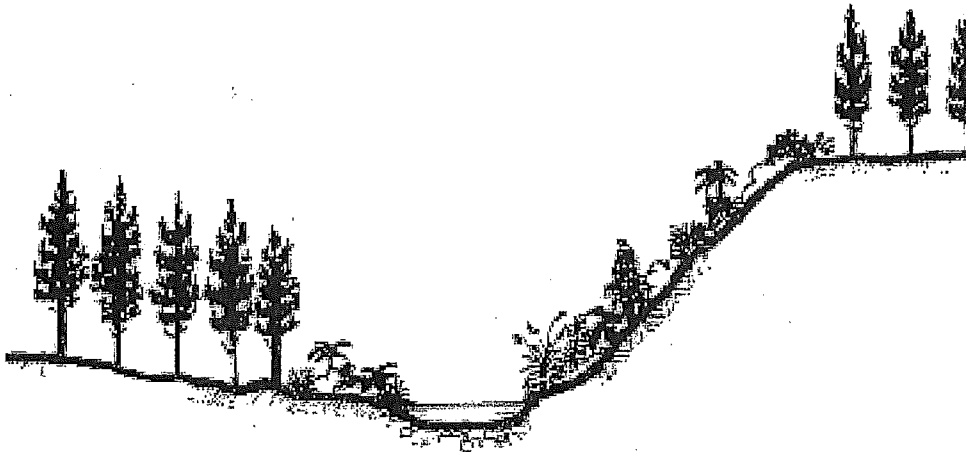
These Guidelines are not intended to be a comprehensive set of standards but have been written to address the main issues to be considered as part of any forestry proposal. For more further detailed and technical guidance elines on sound forestry practices reference should be made to the "New Zealand Environmental Forest Code of Practice for Plantation Forestry", a copy of which may be viewed at the Council offices or obtained from N.Z. Logging Industry Research Organisation (Liro Limited) P.O. Box 147, Rotorua. In addition, the Canterbury Regional Council may also have standards and rules in relation to forestry. It will be important that forestry proposals are checked with them.

1. GENERAL

- a) Avoid locating forestry development where significant landforms or special landscape features, historic structures or sites, or archaeological sites may be visually lost or overpowered or even destroyed.
- b) Forests should not be located in areas where their existence will cause shading and icing on roads, houses or settlements.
- c) Exotic plantations should avoid the clearance or replacement of native vegetation and should not achieve canopy closure over native vegetation which met the definition of "indigenous vegetation" contained in this plan, at the time of the forestry plantings.
(**Note:** see "Indigenous vegetation clearance" rules in the underlying zones.)
- d) Retain buffer zones clear of forestry plantings alongside streams and rivers. Buffer zones should be at least 10 metres in width and be vegetated to assist in maintaining stream health and enhance visual patterns in the landscape.
(**Note:** see the "Yard" rules in the underlying zones.)



¹ The forestry guidelines are subject to appeal which seeks the deletion of the guidelines (201B/05)

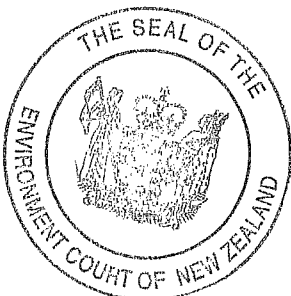
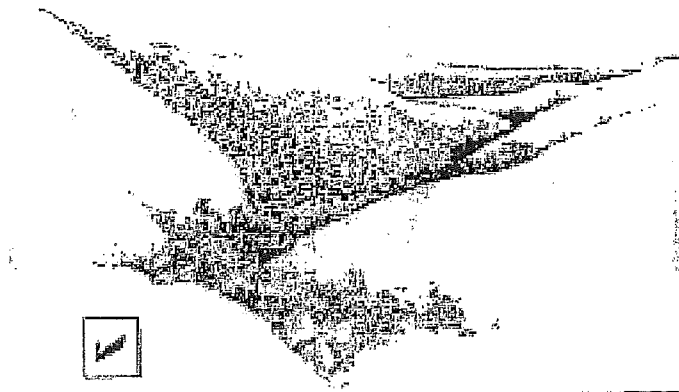


2. LANDSCAPE CONSIDERATIONS – SITING AND DESIGN

- a) The scale of forest blocks should match the scale of the landscape. In expansive landscapes a large block may be compatible. In smaller scale, topographically diverse landscapes smaller blocks should be considered.
- b) Forestry blocks should be designed to be compatible with the shape of land-forms and vegetation existing in the landscape so that the visual unity of the landscape is maintained or enhanced. Examples of good design can be seen in the following illustrations.

Forestry blocks can also reduce the naturalness of a landscape and, therefore, should not be located in or close to areas designated as "Outstanding Natural Features" where they would detract from the high natural quality of the feature.

- c) Forestry should be informally linked to other vegetation to create an overall pattern or framework.



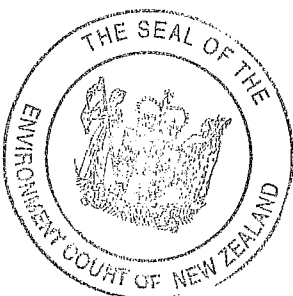
- d) In general, avoid locating forestry development on ridgelines where they form skylines visible from highways, roads or settlements in which the forestry plantings form a sharp boundary or shape which conflicts with the natural contours of the landforms in the area. Conversely, care needs to be taken, where a ridgeline is being left open, that plantings do not create a hard boundary or a "monk's haircut" along the ridgeline. The following diagram illustrates sensitively designed plantation forestry which mimics a natural pattern of forest cover.

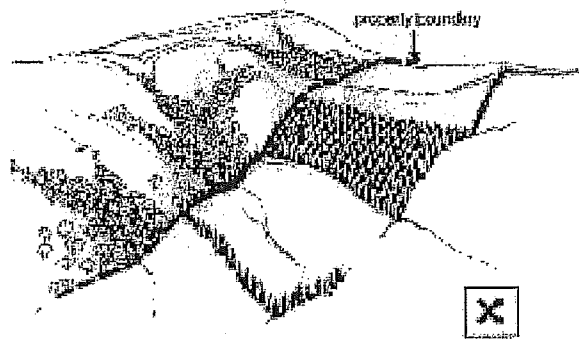


- e) Care should be taken that forestry plantings do not block views of significant landscapes, such as harbours, lakes and main ridgelines, from public viewing points, for example roads and reserves.
(**Note:** see "Summit Road setback" rules in the underlying zones.)
- f) Because of the higher impact of development on ridgelines, avoid placing service roads in or near these locations-
- g) Forest blocks should be shaped so that their borders are visually compatible with the dominant lines in the landscape.

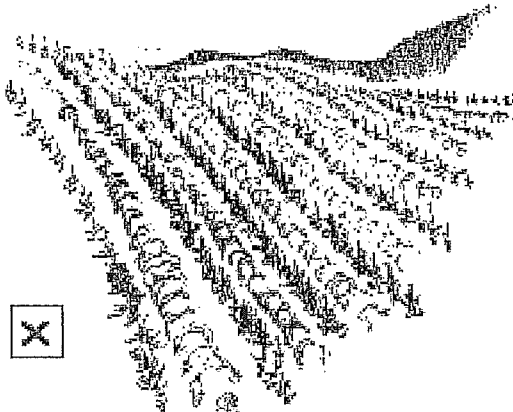


- h) Plantings should follow landform features and complement neighbouring sites. Where a property boundary cuts across such a feature, work out with the neighbour how the planting can be continued along the feature.





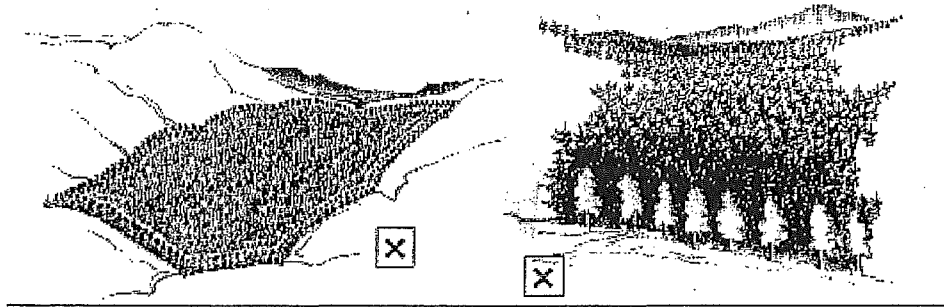
- i) Ideally, areas of existing riparian trees, bush and wetland should be retained and restored in sufficient width to maintain ecological functions, and the visual pattern of the landscape. On steeper land retention of these areas may also be beneficial in maintaining land stability and controlling water run-off.
- j) If planting rows on a hill, run rows along the contour around the hillside. Staggering rows reduces their visual impact.
- k) Avoid planting differing species in a manner so that their differences result in strong lines across the landscape. An example is the planting of alternative rows of deciduous and evergreen trees.
- l) Avoid locating forestry in areas whereby the forest may restrict established vistas from roads or settlements.



3. LANDSCAPE CONSIDERATIONS – EDGE DESIGN

- a) Edges of forestry blocks should be softened to create a natural transition from forest to pasture. Avoid straight, sharp edges and uniform planting. Edges can be softened with wider spacings.
- b) Avoid bordering forestry with a narrow fringe of ornamental trees, particularly when these are of a significantly different colour.





- c) In monocultural plantations, edges can be softened by reducing the pruning of trees on the outside of the forestry block.



- d) In mixed species forestry, put lighter, more rounded and open species near the edges.

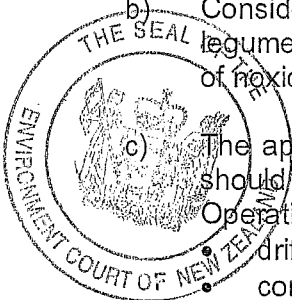


- e) In locating forestry development along shorelines, ensure that edges of planting are sympathetic with the linear characteristics of the shoreline.
- f) Decrease the density and vary the spacing of trees on edges around settlements in order to provide a visual transition between them and the forest.

4. ESTABLISHMENT PROCEDURES

- a) Firebreaks should be aligned to complement existing lines in the landscape and, where possible, run parallel to them. Firebreaks can outline individual forest blocks and should be located and aligned so that the resulting shapes are harmonious.
- b) Consider using green fire breaks such as the planting of lucerne and other legumes which have the ability to provide green cover, fire breaks and control of noxious weeds.

- c) The application of pesticides by aerial or mechanical ground-based operation should comply with the "Code of Practice for Use of Pesticides in Forest Operations" (NZFOA, 1991) to avoid:
 • drift onto crops or non-target species, and
 • contamination of waterways.

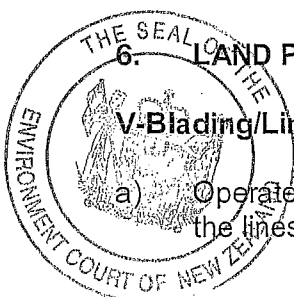


- d) Burning as an established practice is discouraged because of its adverse effects on soil and water quality. Where it is employed burning should be carried out with great care to avoid spread.

5. ROADING/TRACKING

Potentially, roading and track construction can have high impacts on landscape and soil and water values. Inappropriately located or constructed roads can create highly conspicuous and conflicting visual elements in the landscape. With sensible design and location, tracking and roads can form an acceptable part of a working environment. Care must also be taken to ensure that roading does not lead to excess road spoil or siltation entering waterways. The following points should be kept in mind when designing roading and tracks:

- a) If possible keep roads off visually conspicuous faces.
- b) Keep road locations as low as possible across visible faces.
- c) Construct narrow roads, sufficient for planting access, then upgrade once screening develops from forest growth.
- d) Remove excess material by end-hauling to minimise colour contrast from side casting.
- e) Revegetate visible cut and fill surfaces to reduce colour and line contrasts from exposed subsoils.
- f) Generally, roads should not be located in gully bottoms and gully crossings should be minimised.
- g) Locate roads a safe distance from streams and gullies. Runoff from roads should not feed directly into gullies or streams, but should be filtered through vegetation or discharged safely. Where steep side cuts cannot be avoided, ensure adequate cross formation drainage flows onto stable or protected outflow areas, not soft fill.
- h) Locate tracks and firebreaks to minimise the possibility of debris entering permanent streams.
- i) Keep earthworks clear of steep drop offs and watercourses.
- j) Do not form extraction tracks directly down towards streams where runoff may go directly into the stream.



6. LAND PREPARATION

V-Blading/Line Raking

- a) Operate on the contour where possible, to minimise runoff concentration down the lines.

- b) Leave undisturbed strips at intervals on downhill lines to trap sediment.
- c) Leave an undisturbed strip beside waterways and wetlands to filter runoff.

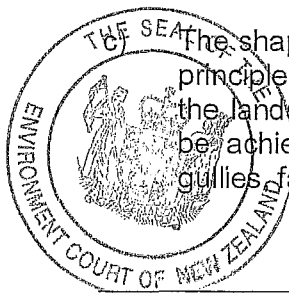
Other Operations

- d) Work along the contour where possible.
- e) Leave undisturbed strips along waterways and beside wetlands.
- f) Limit the length of downhill runs and provide breaks of undisturbed land to trap sediment.
- g) Use roller methods for crushing where possible, especially on steeper slopes, provided ridge tracking only is used for access.
- h) Align windrows of slash along the contour on sloping land to provide a physical barrier to sediment flow.
- i) Development of unstable hill slopes should not occur where the removal of vegetation, the building of roads and tracks and ancillary drainage systems, and/or the storage and transport of logs would promote mass movement.
- j) Forestry should not occur in any area where vegetation clearance is likely to cause accelerated soil erosion.

7. HARVESTING

The Council recognises that the harvesting and harvest roading stages of forestry have the potential to have significant adverse effects on soil and water quality and the landscape.

- a) On ridgelines, logging should stop short of the ridge or carry over it in an alignment sympathetic with the ridge. Avoid cutting along the ridgeline so that trees are silhouetted against the sky. In addition, the vertical ridgetop edge on either side of a clear cut can be avoided by running the setting edge across the ridge at an angle to the main view.
- b) Special care should be taken when logging blocks in the vicinity of Outstanding Natural and Coastal Natural Character Landscapes ~~“Interim Coastal Protection Areas” and “Interim Outstanding Natural Features and Landscapes Protection Areas”~~ to ensure that logging has no effect on the character of the adjacent landform or feature.



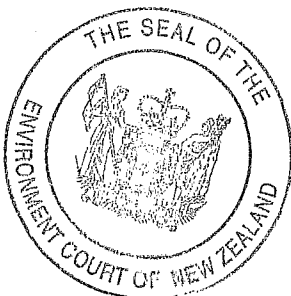
The shape and size of a clear-fell or coppiced area should follow similar design principles to those for planting, by reflecting the landform pattern and scale of the landscape to avoid introducing unnatural form and line impacts. This can be achieved by using natural landscape features such as terraces, ridges, gullies, fans, basins and toe slopes as setting boundaries.

APPENDIX IX FORESTRY GUIDELINES

- d) Avoid felling into or across waterways where possible.
- e) Remove debris from waterways.
- f) Retain streamside vegetation where possible.
- g) Keep machinery away from, and out of, waterways where possible.
- h) Consider use of full suspension cable hauling for log extraction over waterways and indigenous vegetation and on steep slopes where dragging of logs would lead to potential erosion and damage to the waterway or vegetation.
(**Note:** "Significant indigenous vegetation" is subject to protection under the District Plan and must not be damaged by land use activities.)
- i) Reduce stump removal to a minimum, especially on steep slopes where runoff could lead to erosion.
- j) Special care should be taken during harvesting, around areas of significant indigenous vegetation.

8. WILDING CONTROL

The potential exists, if a greater area of the District is planted in forestry, that certain areas may be at risk from wilding spread. A number of factors are important in determining the risk of tree spread. These include the species to be planted, surrounding land uses, and the siting of the plantation in relation to the dominant wind for the area. The following table should be used to calculate wilding tree spread risk. A high risk score may mean changing the species to be planted, the location, or the surrounding land uses.



Calculating Wilding Tree Spread Risk From New Plantings

1. Species

(a) **Spreading vigour varies with species:**

- Radiata and muricata pine..... 1
- Ponderosa pine and larch..... 2
- Corsican pine and Douglas fir..... 3
- Scots pine and Lodgepole pine (P. contorta) 4

Enter score (1, 2, 3 or 4) here

(b) **Palatability:**

- Radiata and ponderosa pine..... 1
- Lodgepole pine and larch 2
- Scots pine and Douglas fir..... 3
- Corsican pine 4

Enter score (1, 2, 3 or 4) here

2. Siting

- Flat (<10°) sheltered, or slopes facing NE to SSW 1
- Flat (<10°) partially exposed to N and W..... 2
- Flat (<10°) fully exposed to N and W 3
- Take off site, i.e. ridgetops, on or at base of slopes (>10°) or undulating land fully exposed to N and W 4

Key: < less than
> greater than

Enter score (1, 2, 3 or 4) here

3. Downwind Landuse

(a) **Within 200m:**

- Developed pasture/regular mob stocking (sheep) or closed canopy scrub/forest..... 1
- Semi-improved grazing/occasional mob stocking..... 2
- Extensive grazing only 3
- No grazing 4

Enter score (1, 2, 3 or 4) here

(b) **Within 200m-400m OR if 3 or 4 scored in "Siting", within 200m-2km:**

- Developed pasture/regular mob stocking (sheep) or closed canopy scrub/forest..... 1
- Semi-improved grazing/occasional mob stocking..... 2
- Extensive grazing only 3
- No grazing 4

Enter score (1, 2, 3 or 4) here

SCORING RESULTS

- A score of 12 or more means high spread risk.
- A high risk is also likely if a score of 3 or 4 in "Siting" is followed by a 3 or 4 in "Downwind Landuse" (a) or (b).

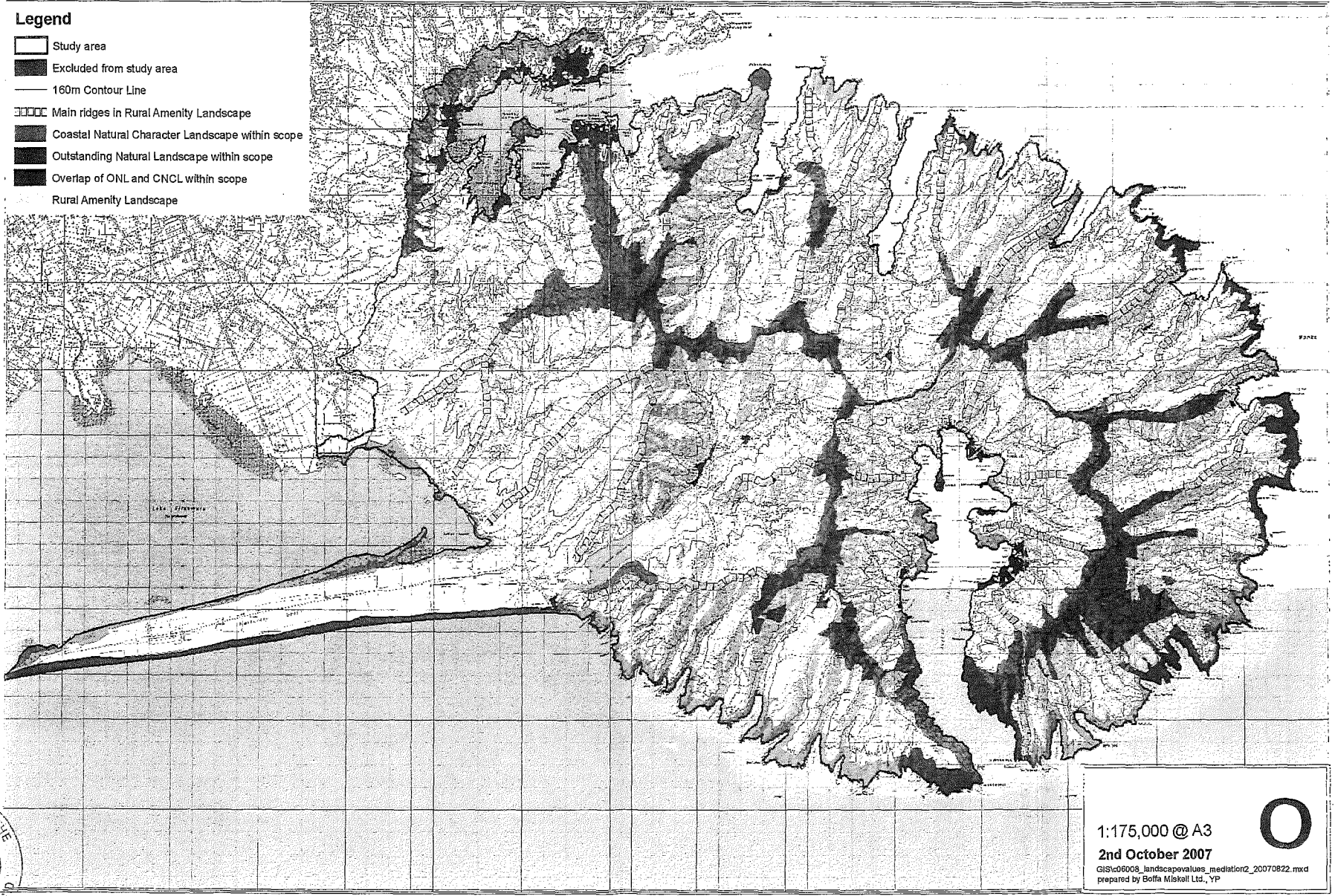
A high risk does not necessarily mean that tree planting is ruled out. A change of species, or siting, or downwind land management can significantly lower spread risk.

Prepared by N Legard, NZFRI Ltd, Rangiora, for Canterbury Wilding Tree Advisory Group 1993.











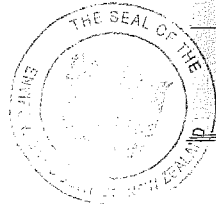
Note:

This is the same map presented at EC mediation 23/24th August 2007. It does not incorporate any amendments arising from on-again around truthing of a number of sites.

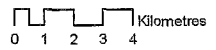


Legend

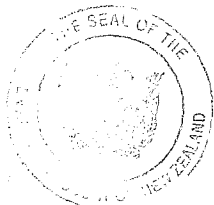
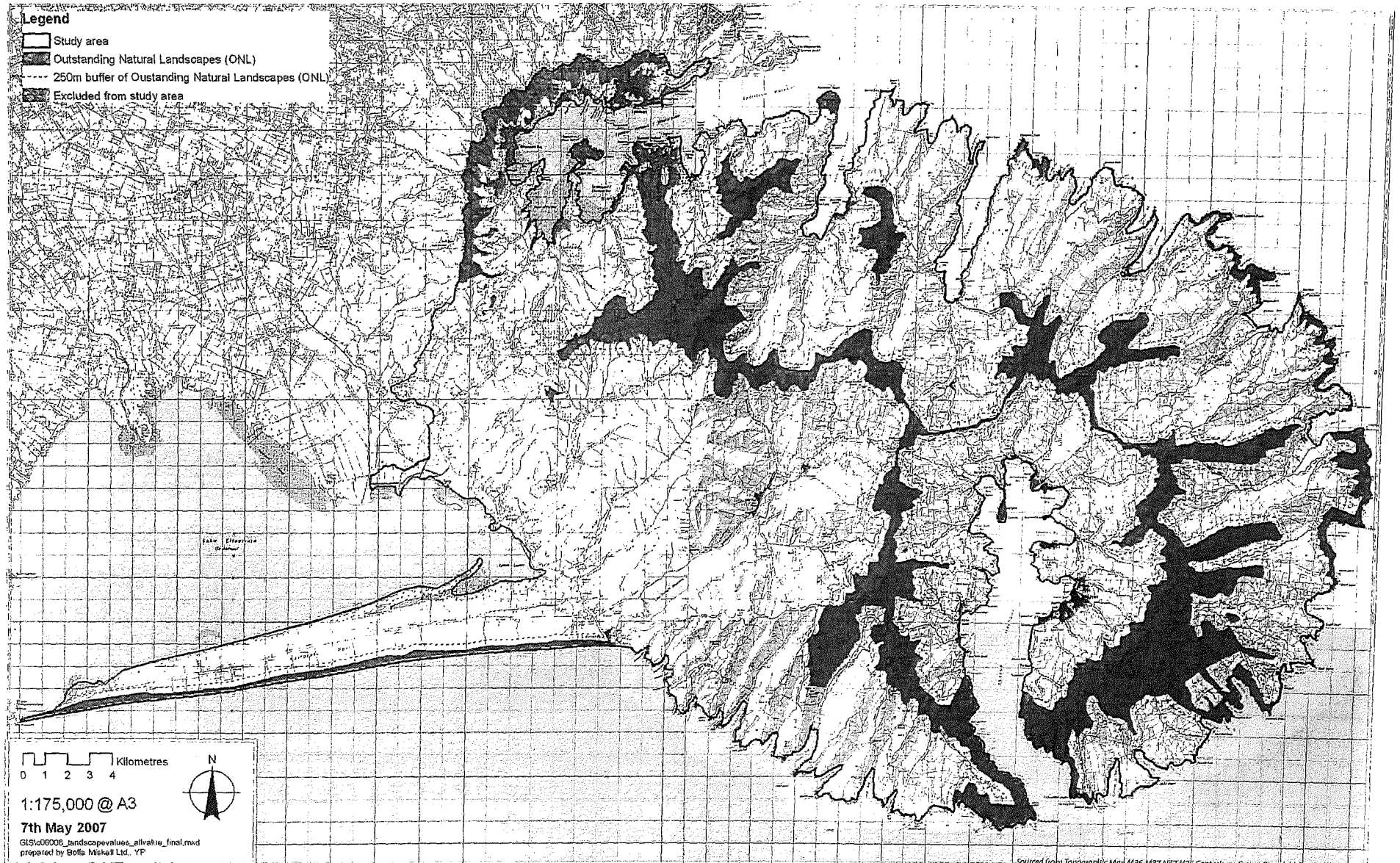
-  Study area
-  Excluded from study area
-  160m Contour Line
-  Main ridges in Rural Amenity Landscape
-  Coastal Natural Character Landscape within scope
-  Outstanding Natural Landscape within scope
-  Overlap of ONL and CNCL within scope
-  Rural Amenity Landscape



1:175,000 @ A3
 2nd October 2007
 GIS06008_landscapovalues_mediation2_20070822.mxd
 prepared by Boffa Miskell Ltd., YP



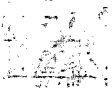
Outstanding Natural Features and Landscapes (ONL) Figure 28



Legend

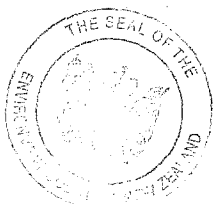
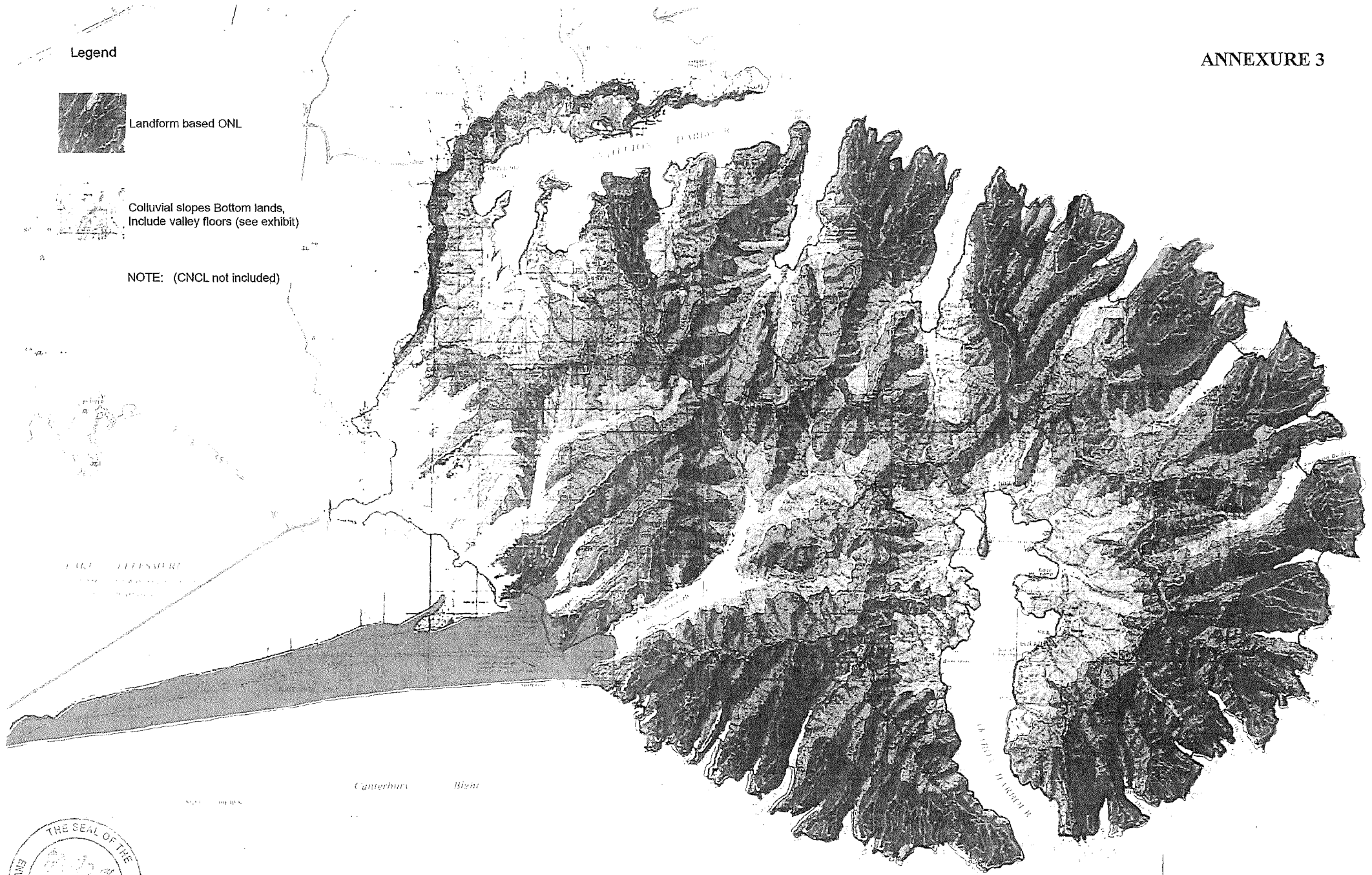


Landform based ONL

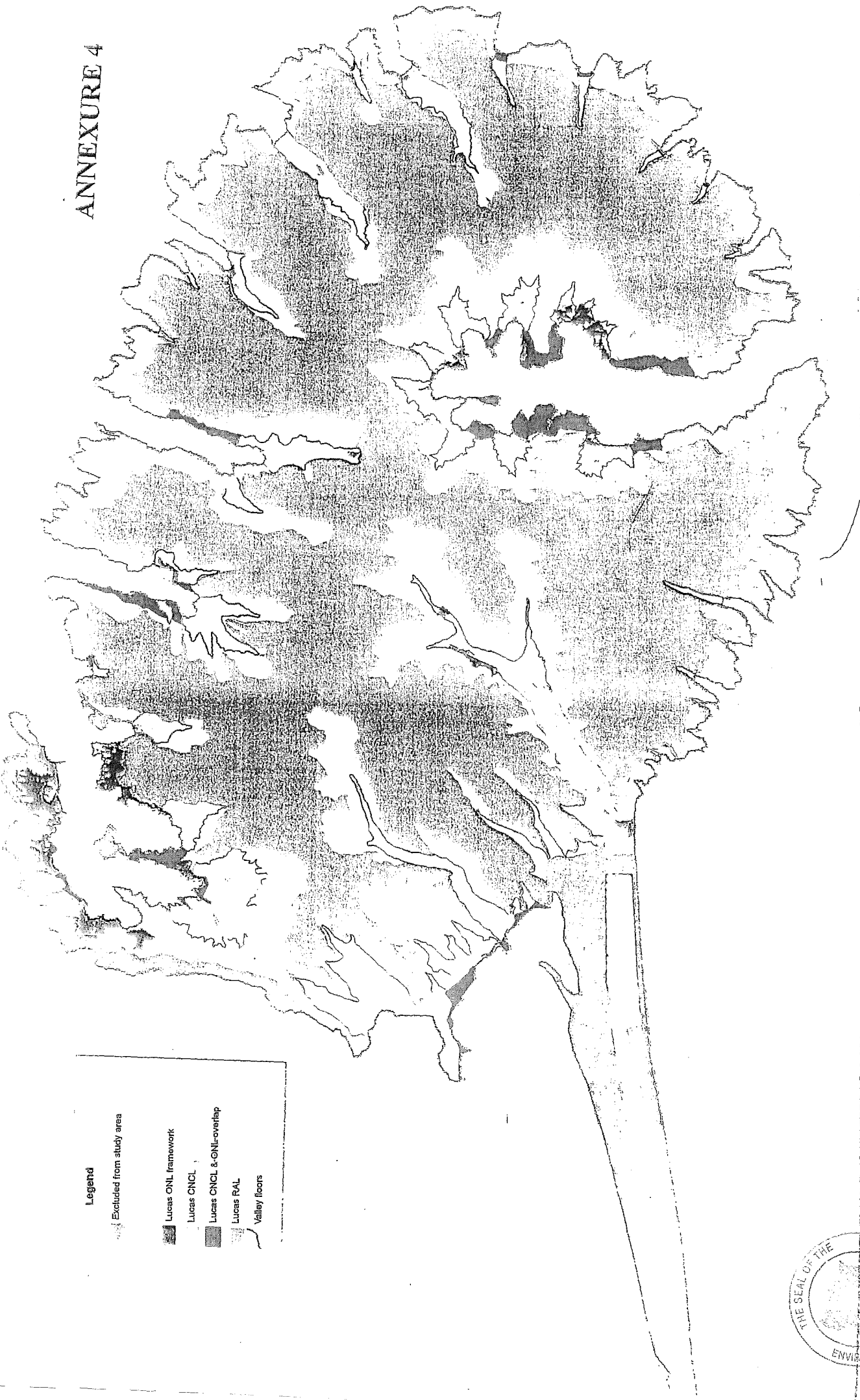


Colluvial slopes Bottom lands,
Include valley floors (see exhibit)

NOTE: (CNCL not included)

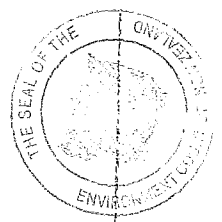


ANNEXURE 4

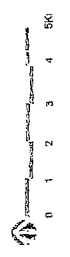


Legend

- Excluded from study area
- Lucas ONL framework
- Lucas CNCL
- Lucas CNCL & ONL-overlap
- Lucas RAL
- Valley floors



- Banks Peninsula Landscape - Di Lucas

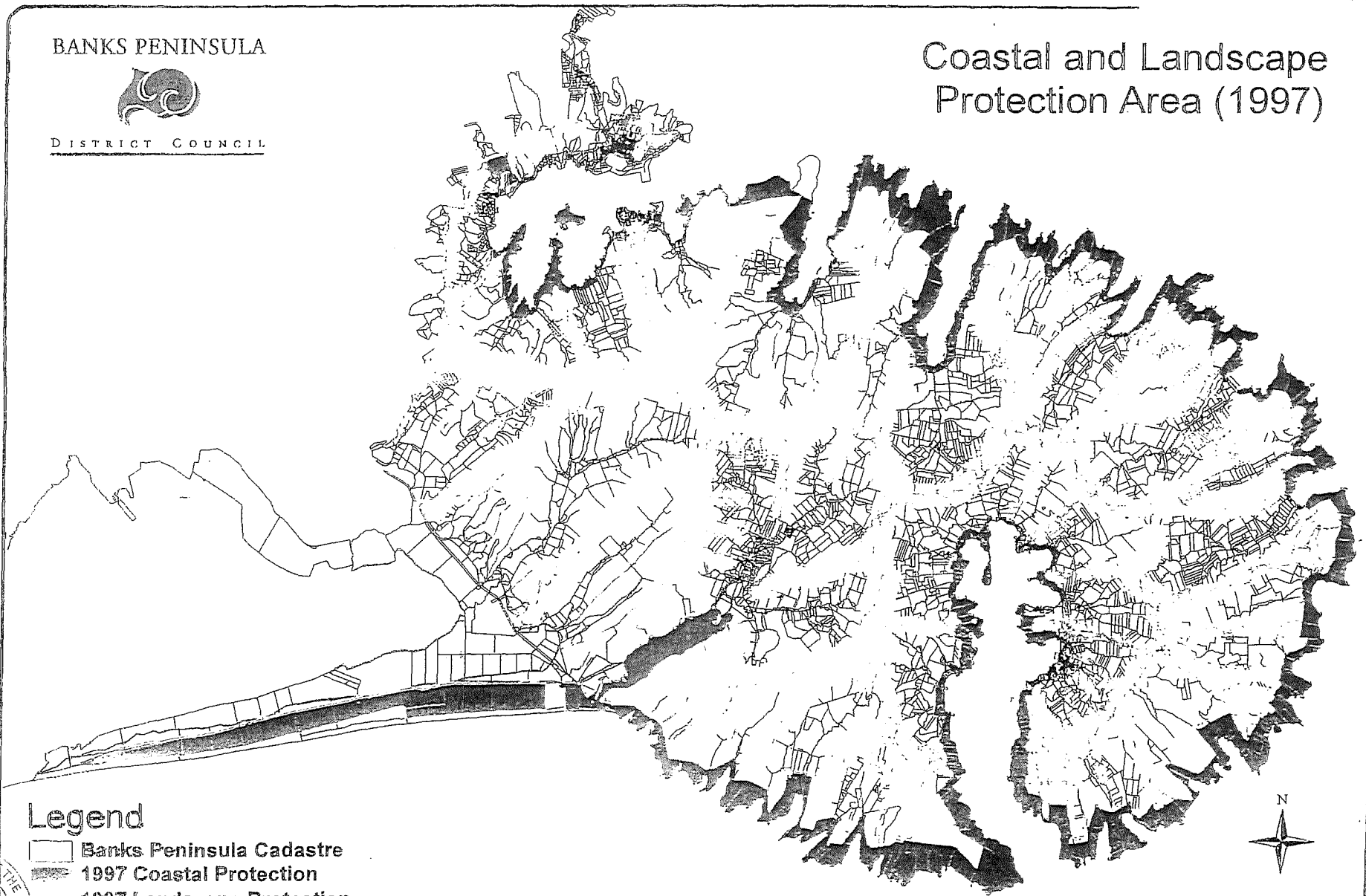


BANKS PENINSULA






DISTRICT COUNCIL

Coastal and Landscape Protection Area (1997)

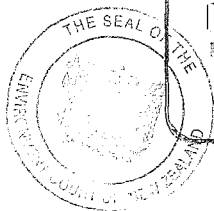


Legend

-  Banks Peninsula Cadastre
-  1997 Coastal Protection
-  1997 Landscape Protection

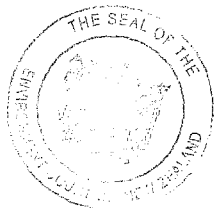


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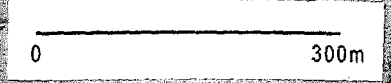


ANNEXURE 6

Landscape Category	Values	Areas	Desired Outcome
Outstanding Natural Features and Landscapes	Legibility – areas of the landscape that are most expressive of its formation.	In particular, legibility of Akaroa and Lyttelton Crater Rims and the volcanic layering of Mt Bradley, Mt Herbert and Mt Evans summits and upper slopes are exceptional. Kaitorete Spit active shoreline Diamond Harbour dipslope Special Note: the entire peninsula landscape is legible.	Avoidance of human modification of these areas and features. It is important to note that working farms are part of outstanding landscapes. Continuation of farming activities in these landscapes is therefore anticipated. Avoidance of skylining of buildings
	Natural Science – geological, ecological and dynamic components of the landscape	Geopreservation sites, selected domes, dykes and vents, indigenous forest remnants and regenerating indigenous vegetation where these are RAPs, current reserves and covenanted sites.	Avoidance of encroachment and modification of geological and landform features. Retention of areas of significant indigenous vegetation.
	Aesthetic Quality – memorable, natural, scenic, visual	Most impressive examples of Peninsula's natural landscapes displaying strong predominance of natural features, patterns and processes with lesser evidence of human activity.	Maintain an absence of development and commercial forestry, to retain continuity and setting of impressive landforms and ridgelines, natural coastlines, presence of extensive native vegetation
	Shared and Recognised – special values to people as expressed through art, media, literature etc	Key viewpoints – 250m radius Reserves with Walking Tracks - 100m buffer either side Favourite places - identified from survey	
	Cultural – areas identified by tangata whenua	Whole of Peninsula	



Lushington Bay



Contours at 20m intervals

Rural amenity landscape
Coastal natural character

LEGEND

————— CNCL boundary as defined by Boffa Miskell in BPLS

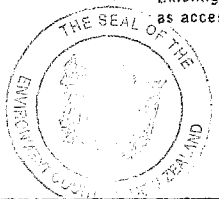
- - - - - Appellants proposed Coastal Natural Character Landscape Boundary

Rural amenity landscape
Coastal natural character

Geotech line

————— Existing site boundary

..... Existing 4WD track to remain as access to property



Zias Investments, Akaroa
Boundary Locations