

Appendix 5: Legal and statutory framework – compliance with the requirements of relevant national direction and the RMA (or regulations made under it) (including section 32AA evaluation report)

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Introduction

1. The Proposed Change is being prepared in accordance with a Streamlined Planning Process under Schedule 1 of the RMA as directed by the Minister.
2. Step 4 of the Minister’s Direction for the Proposed Change to the CRPS requires the Council to provide the reports and documents required by clause 83(1) of Schedule 1 for the Minister’s consideration.
3. Clause 83(1) of Schedule 1 requires (among other things) a summary document showing how the Proposed Change to the CRPS complies with the requirements of:
 - a. Any relevant national direction;¹ and
 - b. The RMA or regulations made under it.
4. This report fulfils this part of Step 4 of the Minister’s Direction and the clause 83(1) requirements.

Summary of statutory framework

5. The RMA sets out the requirements for the content of and the preparation or change to a regional policy statement.

General requirements

6. The Proposed Change must (in conjunction with the CRPS in its entirety) achieve the purpose of the RMA by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.²
7. The Proposed Change must be developed in accordance with:³
 - a. Environment Canterbury’s functions under section 30;
 - b. the provisions of Part 2 of the RMA;
 - c. the obligation to prepare and have particular regard to an evaluation report in accordance with section 32;
 - d. a national policy statement, New Zealand coastal policy statement, and national planning standard; and
 - e. any applicable regulations.

¹ Part 5, Subpart 1 of the RMA sets out “National Direction” and includes national environmental standards, national policy statements, New Zealand coastal policy statements, and national planning standards.

² RMA, s 59.

³ RMA, s 61(1).

8. Environment Canterbury's functions under section 30 of the RMA as they relate to the Proposed Change include the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region⁴ and the strategic integration of infrastructure with land use through objectives, policies and methods.⁵
9. The Proposed Change must give effect to:⁶
 - a. any applicable national policy statements;
 - b. the New Zealand Coastal Policy Statement; and
 - c. a national planning standard.
10. The Proposed Change must meet the RMA's specified requirements for alignment with other RMA policy and planning instruments as summarised in the table below. Consideration must also be given to various other statutory documents in the manner directed by the RMA, which are also summarised in the table below.
11. Particular regard must be had to the section 32 report for the Proposed Change.⁷ A further evaluation under section 32AA of any changes proposed must also be undertaken and particular regard had to.

Contents

12. The contents of a regional policy statement must state:⁸
 - a. the significant resource management issues for the region; and
 - b. the resource management issues of significance to iwi authorities in the region; and
 - c. the objectives sought to be achieved by the statement; and
 - d. the policies for those issues and objectives and an explanation of those policies; and
 - e. the methods (excluding rules) used, or to be used, to implement the policies; and
 - f. the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and
 - g. the environmental results anticipated from implementation of those policies and methods; and
 - h. the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and

⁴ RMA, s 30(1)(ba).

⁵ RMA, s 30(1)(gb).

⁶ RMA s 62(3).

⁷ RMA, s 61(1)(d).

⁸ RMA, s 62(1).

- i. the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—
 - i. to avoid or mitigate natural hazards or any group of hazards; and
 - ii. to maintain indigenous biological diversity; and
 - j. the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and
 - k. any other information required for the purpose of the regional council's functions, powers, and duties under this Act.
13. The Proposed Change seeks to insert a new policy and make amendments to Map A in Chapter 6 of the CRPS, along with consequential changes to the other content of Chapter 6 (including objectives, policies, methods, text and definitions).

The Council's obligations in relation to the statutory documents

Alignment with statutory documents

14. Regional policy statements fall within a hierarchy of planning documents. When preparing and assessing a change to a regional policy statement, the RMA prescribes how regional policy statements (including any change) are to align with other planning instruments.
15. One of the key issues associated with the consideration of submissions on the Proposed Change is to ensure that the Proposed Change aligns with other planning instruments in accordance with the statutory tests. The following table summarises the alignment required:

Statutory document	Alignment required by the Proposed Change	Comment
Regulations: <i>Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007</i> <i>Resource Management (Measurement and Reporting of Water Takes) Regulations 2010</i> <i>Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011</i>	Prepared in accordance with ⁹	While there are a number of regulations under the RMA (which include national environmental standards), none are relevant to the Proposed Change and they have not been considered further in this report.

⁹ RMA, s 61(1)(e).

Statutory document	Alignment required by the Proposed Change	Comment
<i>Resource Management (National Environmental Standards for Freshwater) Regulations 2020</i> <i>Resource Management (National Environmental Standards for Air Quality) Regulations 2004</i> <i>Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016</i> <i>Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009</i> <i>Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017</i>		
<i>New Zealand Coastal Policy Statement 2010 (NZCPS)</i>	Give effect to ¹⁰	Give effect to is a strong direction and requires full compliance and positive implementation of the superior instrument. ¹¹ Technical reports supporting the Waimakariri District Plan Review indicate that the proposed Kaiapoi Future Development Area is potentially at risk from flooding influenced by coastal inundation. The NZCPS is arguably therefore relevant to the Proposed Change,
National Policy Statements: <i>National Policy Statement on Urban Development 2020 (NPS-UD)</i> <i>National Policy Statement for Freshwater Management 2020 (NPS-FM)</i> <i>National Policy Statement on Electricity Transmission 2008 (NPS-ET)</i>	Give effect to ¹²	

¹⁰ RMA, s 62(3).

¹¹ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38 at [80]; *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211 at [50].

¹² RMA, s 62(3).

Statutory document	Alignment required by the Proposed Change	Comment
<i>National Policy Statement for Renewable Electricity Generation 2011 (NPS-REG)</i>		<p>at least in respect to the management of coastal hazards.</p> <p>The only national policy statements that are relevant to the Proposed Change are the NPS-UD and the NPS-FM. The requirement to give effect to the NPS-UD and the NPS-FM is considered further below.</p> <p>While there are a number of proposed or draft national policy statements (including the Proposed National Policy Statement for Highly Productive Land), these proposed / draft documents currently do not have legal effect and no weight should be given to them in making recommendations or decisions on the Proposed Change.</p>
National Planning Standards 2019	Give effect to ¹³	<p>Amendments to a regional policy statement to comply with the remainder of the National Planning Standards must be made by three years (being 3 May 2022) from when the Planning Standards come into effect or when a proposed regional policy statement is notified (whichever is sooner).¹⁴</p> <p>Amendments to the CRPS to comply with the remainder of the National Planning Standards will be made as part of the upcoming review of the CRPS.</p>
Water conservation orders:	Not be inconsistent with ¹⁵	None of the four water conservation orders that apply in

¹³ RMA, s 62(3).

¹⁴ National Planning Standards 2019, instruction 17.1 and 17.2.

¹⁵ RMA, s 62(3).

Statutory document	Alignment required by the Proposed Change	Comment
<i>National Water Conservation (Rakaia River) Order 1988, amended by the National Water Conservation (Rakaia River) Amendment Order 2011 and National Water Conservation (Rakaia River) Amendment Order 2013.</i> <i>National Water Conservation (Lake Ellesmere) Order 1990, amended by the National Water Conservation (Te Waihora/Lake Ellesmere) Amendment Order 2011.</i> <i>National Water Conservation (Ahuriri River) Order 1990</i> <i>Water Conservation (Rangitata River) Order 2006</i>		the Canterbury region ¹⁶ are relevant to the Proposed Change.

Other considerations

16. There are also a range of other statutory documents that consideration must be given to. These obligations can be summarised as follows:

Statutory document	legal test/ Consideration	Comment
Any management plans and strategies prepared under other Acts	Have regard to ¹⁷	<p>Give genuine attention and thought to the matter.¹⁸</p> <p>The Sports Fish and Game Birds Management Plans for Nelson/Marlborough, North Canterbury and for the Central South Island prepared under the Conservation Act 1987 are not</p>

¹⁶ National Water Conservation (Rakaia River) Order 1988, amended by the National Water Conservation (Rakaia River) Amendment Order 2011 and National Water Conservation (Rakaia River) Amendment Order 2013. National Water Conservation (Lake Ellesmere) Order 1990, amended by the National Water Conservation (Te Waihora/Lake Ellesmere) Amendment Order 2011. National Water Conservation (Ahuriri River) Order 1990. Water Conservation (Rangitata River) Order 2006

¹⁷ RMA, s 61(2)(a)(i).

¹⁸ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, at 314.

Statutory document	legal test/ Consideration	Comment
		considered to be relevant to the Proposed Change. Our Space 2018-2048: Greater Christchurch Settlement Pattern Update Whakahāngai O Te Hōrapa Nohoanga has been had regard to in preparing the Proposed Change.
A plan under the Greater Christchurch Regeneration Act 2016	Not be inconsistent with ¹⁹	The only plan under the Greater Christchurch Regeneration Act 2016 relevant to the Proposed Change is the Land Use Recovery Plan (LURP). The Proposed Change is not inconsistent with the LURP. It broadly aligns with the vision, goals and outcomes of the LURP. It also supports the framework of actions set out in the LURP.
Any relevant entries on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014	Have regard to ²⁰	The Proposed Change does not impact the relevant entries.
Any regulations relating to ensuring sustainability, or the conservation, management or sustainability of fisheries resources (including regulations or bylaws relating to taiāpure, mahinga mātaītai, or other non-commercial Māori customary fishing)	Have regard to ²¹	Any regulations are not relevant to the Proposed Change.
The extent to which the Proposed Change needs to be consistent with	Have regard to ²²	The adjacent regional councils (which also includes unitary

¹⁹ Greater Christchurch Regeneration Act 2016, s 60(2)(f).

²⁰ RMA, s 61(2)(a)(iia).

²¹ RMA, s 61(2)(a)(iii).

²² RMA, s 61(2)(b).

Statutory document	legal test/ Consideration	Comment
the policy statements and plans of adjacent regional councils		<p>authorities)²³ are Otago Regional Council, West Coast Regional Council, Tasman District Council and Marlborough District Council.</p> <p>The extent to which the Proposed Change needs to be consistent with the regional policy statements and plans of these councils has been considered.</p> <p>As the Proposed Change is a targeted change that falls entirely within the Canterbury region and has been prepared to give effect to the NPS-UD, it is considered that the Proposed Change is not inconsistent with these planning documents.</p>
The extent to which the Proposed Change needs to be consistent with regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	Have regard to ²⁴	Any regulations under this Act are not relevant to the Proposed Change.
Any relevant planning document recognised by an iwi authority <i>Mahaanui Iwi Management Plan (2013)</i>	Take into account ²⁵	<p>Must address the matter and record it has been addressed in the decision; but weight of the matter is for the decision maker's judgment in light of the evidence.²⁶</p> <p>The Mahaanui Iwi Management Plan has been taken into account</p>

²³ RMA, s 2 definition of "regional council"

²⁴ RMA, s 61(2)(c).

²⁵ RMA, s 61(2A)(a).

²⁶ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [42].

Statutory document	legal test/ Consideration	Comment
		when preparing the Proposed Change.
The matters in a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 to the extent that they relate to the relevant customary marine title area	Recognise and provide for ²⁷	The Proposed Change does not cover any customary marine title areas.
The matters in a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 that relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group	Take into account ²⁸	The Proposed Change does not relate to any common marine and coastal areas.
Trade competition or the effects of trade competition	Must not have regard to. ²⁹	The Council has not had regard to trade competition or the effects of trade competition in preparing the Proposed Change or making recommendations on the submissions.

Part 2 and the RMA purpose and the interaction with the planning hierarchy

17. Part 2 of the RMA sets out the purpose and principles of general application in giving effect to the RMA. One of the overarching requirements is that the purpose of the CRPS (including the Proposed Change) achieves Part 2 of the RMA.³⁰ In addition, section 61(1) provides that

²⁷ RMA, s 61(2A)(b)(i).

²⁸ RMA, s 61(2A)(b)(ii).

²⁹ RMA, s 61(3).

³⁰ RMA, s 59.

regional policy statements (including any change) must be prepared in accordance with the provisions in Part 2.

18. As set out below, the application of Part 2 when giving effect to higher order directions has been the subject of the Supreme Court's decision in *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited*.³¹
19. The Supreme Court's decision cast doubt on the previously accepted approach of applying an "overall broad judgment" under Part 2 when assessing a planning document and whether it gives effect to higher order documents and also when assessing objectives and policies that compete or "pull in different directions".³²
20. The Court found that there was no basis to refer back to section 5 or to undertake an overall judgment when assessing whether specific, directive, policies in the NZCPS had been given effect to by the provisions of a proposed plan change.³³ In particular, the Supreme Court found by majority that:
 - a. The requirement for the regional plan to "give effect to" the NZCPS was a strong direction;³⁴
 - b. There was no basis to refer back to section 5 or an overall judgment when addressing whether the NZCPS has been given effect to as it is the "mechanism by which Part 2 is given effect to in relation to the coastal environment."³⁵
 - c. The use of the word "avoid" in policies 13 and 15 of the NZCPS, has its ordinary meaning of "not allow" or "prevent the occurrence of", and while a policy in the NZCPS "cannot be a 'rule' within the special definition in the RMA, it may nevertheless have the effect of what in ordinary speech would be a rule."³⁶
21. The Supreme Court was quite clear that there will still be situations where it is necessary to "go back to" Part 2, including:³⁷
 - a. If the policies in question do not "cover the field and a decision-maker will have to consider whether Part 2 provides assistance in dealing with the matter(s) not covered"; or
 - b. Where there is any uncertainty as to the meaning of particular policies (of the NZCPS); or

³¹ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38.

³² *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* at [36].

³³ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* at [152].

³⁴ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* at [77].

³⁵ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* at [83]-[86].

³⁶ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* at [96] and [116].

³⁷ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* at [88]-[90].

- c. Where there is an allegation of invalidity in the higher order document(s).
22. The Supreme Court's decision in *King Salmon* has been addressed in the context of a council promulgated plan change following a decision of the High Court in *Royal Forest and Bird Protection Society Incorporated v Bay of Plenty Regional Council*.³⁸ In that case, the High Court found that Part 2 remained relevant to plan-making decisions under the RMA, given the nature of the obligation on councils to prepare a plan change in accordance with the matters set out in sections 66(1)(a)-(f), which contains reference to Part 2.
23. In *Forest and Bird v Bay of Plenty Regional Council*, the Court determined that the ratio of *King Salmon* could apply equally to a Council-promulgated plan change, given that the process under Schedule 1 is the same regardless of whether it was requested.³⁹
24. This case also dealt further with the issue of reconciling competing national direction. The Court recognised that generally tensions within planning documents will often be more apparent than real, and if a tension is detected recourse should be had to higher order documents, as established by *King Salmon*.⁴⁰ The Court considered that councils should make a "thorough going attempt to find a way to reconcile" the provisions wherever possible.⁴¹
25. The High Court confirmed in *Environmental Defence Society Inc v Otago Regional Council*⁴² that specific and unqualified policies (with directive wording, such as "avoid") prevail over the less directive provisions.⁴³ The Court confirmed the finding in *King Salmon* that there is no need to refer back to Part 2 when determining a plan change (absent one of the three exceptions discussed above), as by giving effect to the NZCPS (in that case) the regional council was acting in accordance with Part 2.⁴⁴
26. Based on these cases, while resort should not be had to Part 2 in interpreting objectives and policies in higher order directions unless they fall within one of the categories recognised by the Supreme Court, the decision in *King Salmon* did not "do away" with Part 2 considerations being relevant to the overall assessment of the provisions in reaching a recommendation on the Proposed Change (bearing in mind the statutory considerations as set out in sections 32, and 59 to 62 of the RMA). It is necessary for a decision-maker to

³⁸ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* (2017) 20 ELRNZ 564 (HC).

³⁹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* at [78].

⁴⁰ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* at [76].

⁴¹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* at [98].

⁴² This decision has been appealed to the Court of Appeal on the question of law of whether the High Court misapplied the Supreme Court's decision in *King Salmon* – see *Port Otago Ltd v Environmental Defence Society Inc* [2020] NZCA 246.

⁴³ *Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278 at [45].

⁴⁴ *Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278 at [109].

consider the higher order documents and policy direction when assessing whether the Proposed Change achieves the requirements of section 62.

27. Rather, the implication of the recent decisions is that in assessing the Proposed Change, an overall judgment approach cannot be relied on to justify a departure from directive policies, particularly in this case, those set out in the NPS-UD.

NZCPS

28. Waimakariri District Council commissioned Jacobs to develop a hydrodynamic model to examine the susceptibility of the coastal area of the Waimakariri District to coastally driven flooding from the Waimakariri and Ashley River Mouths. The Jacobs report summarises simulations performed for a range of storm tide and fluvial events and a range of mean sea level rise allowances. Figure 19 of the Jacobs report identifies areas of land below mean sea level, areas of land below the median groundwater level, and overlapping areas where initial ponding is specified in a 1.88 metre sea level rise scenario. Figure 19 identifies the potential for flooding in an area that includes the proposed Kaiapoi Future Development Area.⁴⁵ The Council understands that this work is part of the Waimakariri District Council's district plan review, to understand the extent of future coastal erosion and sea water inundation hazards.
29. The mapping in Figure 19 suggests that the proposed Kaiapoi Future Development Area is potentially at risk from flooding influenced by coastal inundation. The NZCPS is arguably therefore relevant to the proposed Kaiapoi Future Development Area, at least in respect to the management of coastal hazards, which would make it a relevant consideration for the Proposed Change.⁴⁶
30. The Proposed Change must give effect to the NZCPS. As set out above, the requirement to "give effect to" is a strong one and requires positive implementation of the superior instrument. Policies 6, 7 and 25 of the NZCPS apply to activities in the coastal environment and are considered relevant to the Proposed Change (insofar as it relates to the areas identified above).
31. Policy 6 of the NZCPS applies to activities in the coastal environment. The Policy recognises that the provision of infrastructure is important to the social, economic and cultural well-being of people and communities, while considering the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment. Further, Policy 6 encourages the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and growth.
32. Policy 7 of the NZCPS which addresses strategic planning provides that when preparing regional policy statements, the Council should consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment. Further, the Council must identify areas of the coastal

⁴⁵ Phase 2 Coastal Inundation Modelling – Final Study Report dated 12 March 2020
<<https://openmaps.waimakariri.govt.nz/HazardsReports/Phase2CoastalInundationModellingReportJacobs.pdf>>

⁴⁶ See Policy 1 of the NZCPS which defines the extent and characteristics of the coastal environment as including areas at risk from coastal hazards.

environment where particular activities and forms of subdivision, use and development are or may be inappropriate, and provide protection from inappropriate subdivision, use and development in those areas through objectives, policies and rules.

33. Policy 25 of the NZCPS regulates subdivision, use and development in areas potentially affected by coastal hazards over at least the next 100 years. Policy 25 of the NZCPS requires the avoidance of increasing the risk of social, environmental and economic harm from coastal hazards, as well as the avoidance of redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards. Policy 25 also encourages the location of infrastructure away from areas of hazard risk, where practicable.
34. For completeness, we note that under the CRPS Statement of Local Authority Responsibilities, territorial authorities within greater Christchurch are responsible for specifying the objectives, policies, and methods for the control of the use of land, to avoid or mitigate natural hazards in their respective areas. The Council is responsible for specifying the objectives, policies and methods for the control of the use of land within areas in greater Christchurch likely to be subject to coastal erosion and sea water inundation including the cumulative effects of sea level rise over the next 100 years, where provisions are not specified in an operative district plan. Both territorial authorities and the Council are responsible for specifying the objectives, policies, and methods for the control of the use of land, to avoid or mitigate natural hazards in areas subject to seawater inundation. The Council is limited to developing objectives, policies and non-regulatory methods, whereas territorial authorities will develop objectives, policies and methods which may include rules.
35. The CRPS already contains objectives, policies and methods to address natural hazards (including the identification of forms of subdivision, use and development that may be considered inappropriate).
36. The Proposed Change will enable the Waimakariri District Council to provide for development in the identified Future Development Area, in certain circumstances. However, more detailed planning to ensure that future subdivision, use and development does not contribute to the increased risk of social, environmental and economic harm from coastal hazards will take place through district planning processes (and will be informed by technical reports such as the one prepared by Jacobs for the Waimakariri District Council).
37. When the CRPS is considered as a whole, incorporating the Proposed Change, it is considered that the policy direction appropriately manages these matters and gives effect to the NZCPS, particularly in the light of the local authority obligations set out in the CRPS in relation to natural hazards.

NPS-UD

38. The Proposed Change must give effect to any national policy statement. As set out above, the requirement to "give effect to" is a strong one and requires positive implementation of the superior instrument.
39. Section 55 of the RMA is the relevant section dealing with local authority recognition of national policy statements. A national policy statement must be recognised by the local authority by it:
 - a. Amending its plans to either (a) include specific objectives and policies set out in the national policy statement, or (b) give effect to objectives and policies, without using a Schedule 1 process if the national policy statement directs; and

- b. For all other amendments to a document needed to give effect to a national policy statement the local authority must use a Schedule 1 process (i.e. in this case a streamlined planning process as directed by the Minister).
- 40. Under section 55(2D), the local authority must make the amendments as soon as practicable or within the time specified in the national policy statement or before the occurrence of an event specified in the national policy statement.
- 41. The NPS-UD is the national policy statement of particular relevance to the Proposed Change.
- 42. The NPS-UD was gazetted on 23 July 2020 and took effect on 20 August 2020, replacing the NPS-UDC. Further background on the NPS-UDC is set out in the Section 32 Report at pages 15 to 17.
- 43. The NPS-UD recognises the national significance of:
 - a. having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future
 - b. providing sufficient development capacity to meet the different needs of people and communities.
- 44. The NPS-UD requires that local authorities must provide sufficient development capacity to meet expected demand for housing and for business land over the short, medium and long terms.
- 45. The NPS-UD applies to all local authorities that have all or part of an urban environment within their district or region (identified as Tier 1, 2 and 3 local authorities), and to planning decisions (including resource consent decisions) by any local authority that affect an urban environment.
- 46. For the purpose of the NPS-UD, Christchurch is identified as a Tier 1 urban environment and Environment Canterbury, Christchurch City Council, Waimakariri District Council and Selwyn District Council are Tier 1 local authorities. Not all land falling within the jurisdiction of the three territorial authorities is an “urban environment” – defined in the NPS-UD as any area of land that is, or is intended to be: (a) predominantly urban in character; and (b) part of a housing and labour market of at least 10,000 people.
- 47. Given the strategic planning arrangements that already exist between the Greater Christchurch councils through the Greater Christchurch Partnership, it was agreed that the urban area covered by the UDS would be the geographic area of focus and the relevant urban environment for the purposes of meeting the NPS-UD requirements. This area is defined in Map A of Chapter 6 of the CRPS.
- 48. The NPS–UD includes a requirement to:
 - a. Provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term (Policy 2). In order to be ‘sufficient’ to meet expected demand for housing, the development capacity must be:
 - i. Plan-enabled (i.e. in relation the short-term, zoned in an operative district plan; in relation to the medium-term zoned in an operative or proposed

- district plan; in relation to the long-term, zoned or identified for future urban use or intensification in an FDS);⁴⁷ and
 - ii. Infrastructure-ready (i.e. development infrastructure is available (short-term), funded (medium-term), or identified in a local authority's infrastructure strategy (long-term));⁴⁸ and
 - iii. Feasible and reasonably expected to be realised;⁴⁹ and
 - iv. For Tier 1 and 2 local authorities, meet the expected demand plus the appropriate competitiveness margin.⁵⁰
 - b. Set housing bottom lines for the short to medium term and the long term in regional policy statements and district plans (Policy 7).
 - c. Undertake quarterly monitoring of urban development indicators (Part 3, subpart 3, clause 3.9).
 - d. Prepare a Housing and Business Development Capacity Assessment (Part 3, subpart 5); and
 - e. Prepare a Future Development Strategy (Part 3, subpart 4).
- 49. If a local authority determines that there is insufficient development capacity over the short term, medium term, or long term, it must:
 - a. Immediately notify the Minister for the Environment; and
 - b. If the insufficiency is wholly or partly a result of RMA planning documents, change those documents to increase development capacity for housing or business land (as applicable) as soon as practicable, and update any other relevant plan or strategy (including any FDS, as required by subpart 4); and
 - c. Consider other options for:
 - i. Increasing development capacity; and
 - ii. Otherwise enabling development (Part 1, sub-part 1, clause 3.7).
- 50. The Greater Christchurch Partnership has already commenced work to update the Greater Christchurch Housing Development Capacity Assessment. This will need to be adapted to address new requirements under the NPS-UD ahead of the 31 July 2021 timeframe required by the NPS-UD. The Partnership is also exploring options for the development of a new FDS, in time to inform 2024 Long Term Plans.
- 51. Central to the NPS-UD is a new, broader focus on the achievement of 'well-functioning urban environments' (Objective 1 and Policy 1). Policy 1 articulates a set of outcomes for local authorities to use when preparing plans and making decisions, and sets direction for the intended outcomes of the NPS-UD. The objectives and policies also include specific

⁴⁷ NPS-UD, Part 3, sub-part 1, clause 3.4(1).

⁴⁸ NPS-UD, Part 3, sub-part 1, clause 3.4(3).

⁴⁹ NPS-UD, Part 3, sub-part 1, clause 3.26.

⁵⁰ NPS-UD, Part 3, sub-part 1, clause 3.2.

references to climate change (Objective 8, and Policies 1 and 6) and Te Tiriti o Waitangi (Objective 5 and Policy 9).

52. The NPS-UD requires local authorities to provide for intensification, particularly in areas close to urban centres, places that are well-served by public transport, and other areas with high demand for housing and business space (Objective 3 and Policies 3, 4 and 5). This includes enabling building heights and density to realise as much development capacity as possible in city centre zones; enabling building heights of at least six storeys in metropolitan centre zones and in 'walkable catchments' (as yet undefined) of rapid transit stops, city centre zones and metropolitan zones. In all other locations building heights and density should be commensurate to the level of accessibility and demand.
53. The NPS-UD requires territorial authorities to remove minimum car parking rates from district plans by February 2022 (Policy 11 and Clause 4.1).
54. The NPS-UD also introduced a new requirement for local authority decisions affecting urban environments to be responsive to plan change requests that would enable significant development capacity, even if the development capacity is unanticipated by RMA planning documents or out of sequence with planned land release (Policy 8). The intent of Policy 8 is to ensure councils are responsive to significant development proposals that could improve competition in land markets, accelerate land supply and discourage land banking.
55. To trigger the responsive planning policy, a plan change would need to add significantly to development capacity, contribute to a well-functioning urban environment and be well-connected along transport corridors (Part 3, subpart 2). Regional councils are required by the NPS-UD (Part 3, subpart 2, clause 3.8(3)) to include criteria in regional policy statements for determining what plan changes will be treated, for the purpose of implementing NPS-UD Policy 8, as adding significantly to development capacity.
56. Environment Canterbury has been working collaboratively with partner councils and Waka Kotahi New Zealand Transport Agency, and in liaison with Mahaanui Kurataiao to prepare draft significance criteria as part of a responsive planning policy that meets this NPS-UD requirement. Due to timing and the scope of the Minister's direction to use the streamlined planning process it was not possible to notify the draft criteria as part of the Proposed Change. The development of the significance criteria will however continue to be progressed in parallel and implemented by way of a separate RMA process.
57. In light of the above requirements of the NPS-UD, in particular, Policy 2 and Clause 3.7, the Proposed Change is a targeted change to enable the Greater Christchurch councils to give effect to the NPS-UD (in part) to provide sufficient development capacity to meet expected demand and to implement the growth strategy set out in *Our Space 2018-2048*, by:
 - a. identifying and enabling additional development capacity for housing in greenfield growth areas within the Projected Infrastructure Boundary shown on Map A in Chapter 6 of the CRPS, in Rolleston, Rangiora and Kaiapoi; and
 - b. providing flexibility for Selwyn and Waimakariri District Councils to consider rezoning land within the Projected Infrastructure Boundary to meet medium term housing demands as part of their district planning processes, where a sufficiency shortfall is identified through a housing development capacity assessment.
58. The Proposed Change seeks to achieve this by:
 - a. Amending Map A in Chapter 6 to identify FDAs in Rolleston, Rangiora and Kaiapoi as shown in Figure 15 of *Our Space 2018-2048*.

- b. Inserting a new policy (Policy 6.3.12), to enable land within these FDAs to be rezoned by the Selwyn and Waimakariri District Councils if required to meet their medium-term housing needs.
 - c. Making consequential changes to objectives, policies, text within Chapter 6 and the Definitions of the CRPS.
59. It is considered that the Proposed Change gives effect to the NPS-UD.
 60. Under clause 4.1 of the NPS-UD, Environment Canterbury must amend the CRPS to give effect to the provisions of the NPS-UD as soon as practicable and with specific policies of the NPS-UD relating to intensification, future development strategies, housing and business assessments and carparking in accordance with timeframes.
 61. This proposed change responds to the shortfalls in capacity identified through the Housing and Business Capacity Assessment and Our Space prepared under the previous NPS-UDC and is a first step in giving effect to the provisions of the NPS-UD. The proposed change was initially prepared in accordance with the NPS-UDC and was due to be notified shortly after the gazettal of the NPS-UDC. Environment Canterbury sought an extension of time for notification of the Proposed Change so that it could consider the implications of the NPS-UD. An extension was granted by the Minister, and the Proposed Change was reviewed in light of the new requirements of the NPS-UD before being notified in January 2021.
 62. The Proposed Change does not purport to, and nor it is required to, give full effect to the NPS-UD as it has not been practicable for Environment Canterbury to fully implement the NPS-UD within the scope of this change being progressed through the streamlined planning process and within the timeframes available.
 63. The purpose of this Proposed Change is to respond to an identified shortfall in development capacity as required by clause 3.7 of the NPS-UD so that the councils can give effect to Policy 2 of the NPS-UD, i.e. to provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term. In order to be sufficient to meet expected demand for housing, the development capacity must be plan-enabled. Development capacity for housing is plan-enabled in relation to the medium term if the land is zoned in an operative district plan or proposed district plan. In relation to the long term, the land need only be identified for future urban use in a future development strategy.
 64. This Proposed Change identifies and enables additional development capacity for housing in greenfield areas within the Projected Infrastructure Boundary shown on Map A in Chapter 6 of the CRPS, in Rolleston, Rangiora and Kaiapoi. It provides Selwyn and Waimakariri District Councils the flexibility to consider rezoning land within the future development areas to meet medium term housing demands as part of their district planning processes, where a sufficiency shortfall is identified through a housing development capacity assessment. The identification of areas within the existing Projected Infrastructure Boundary will contribute to well-functioning urban environments in accordance with Policy 1 of the NPS-UD.
 65. Some submitters have sought that the Proposed Change go further in order to give effect to the responsive planning approach of the NPS-UD and that comprehensive change to the CRPS policy framework is required now to enable the 'flood' or private plan change requests to respond to and implement the NPS-UD.
 66. Further changes to the CRPS are anticipated in order to fully give effect to the NPS-UD, including the introduction of criteria as to what would add significantly to development

capacity and contribute to well-functioning urban environments so that local authority decisions affecting urban environments are responsive to plan changes in accordance with Policy 8 of the NPS-UD. This work is being undertaken now, and in the meantime, any private plan change requests will need to be considered in light of the NPS-UD. More comprehensive changes to the policy framework in the CRPS will be considered as part of the full review of the CRPS scheduled to commence in 2021.

NPS-FM

67. The NPS-FM came into force on 7 September 2020. The NPS-FM applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving environments (which may include estuaries and the wider coastal marine area).
68. The actions required of regional councils to implement the NPS-FM 2020 are set out in several clauses of Part 3, rather than through specific policy direction. There is one objective in the document, supported by 15 policies. The NPS-FM contains the fundamental concept of Te Mana o te Wai which:

"...refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community".⁵¹

69. The Council is required to give effect to the NPS-FM, to the extent that it is reasonably practicable. What is reasonably practicable will be confined by the scope within submissions on the Proposed Change.
70. Policy 6.3.12 contains directions to enable the alignment of development with the provision of infrastructure to manage the effects of diffuse discharges which could occur as a result of housing development. More detailed planning to ensure the provision of appropriate infrastructure to manage any adverse effects of housing developments on the wellbeing of water will take place through district planning processes. The effects of discharges to water, and land where they may enter water, are adequately addressed through the CRPS and the LWRP. The CRPS and LWRP already give effect to the NPS-FM; it is considered that the Proposed Change will not reduce the degree to which this occurs.

Section 32

71. In addition to the statutory tests outlined above, one of the key sections under which the Proposed Change must be evaluated is section 32 of the RMA.
72. Clause 5 of Schedule 1 of the RMA requires a section 32 evaluation to be prepared prior to notification and particular regard given to it when the decision to notify the Proposed Change was made.⁵² Step 2 of the Minister's Direction required that the Proposed Change be publicly notified in accordance with clause 5 of Schedule 1.
73. Step 4 of the Minister's Direction requires that an evaluation report under sections 32 and 32AA and a report summarising how the persons making the recommendation to the

⁵¹ National Policy Statement for Freshwater Management 2020, Part 1: Preliminary provisions, Section 1.3 (1).

⁵² RMA, Schedule 1, cl 5(1)(a).

Minister have had regard to the evaluation report must be submitted as part of the written recommendations report.

74. The objectives in the CRPS are unaltered by the Proposed Change. Accordingly, the Proposed Change must be assessed in the following terms. The evaluation must:
- a. Examine the extent to which the purpose of the Proposed Change is the most appropriate way to achieve the purpose of the RMA.⁵³
 - b. Examine whether the provisions (the policies, rules or other methods to implement the objectives) are the most appropriate way to achieve the objectives by:⁵⁴
 - i. identifying other reasonably practicable options for achieving the objectives;
 - ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives (the efficiency and effectiveness assessment); and
 - iii. summarising the reasons for deciding on the provisions; and
 - iv. Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the Proposed Change.⁵⁵
75. The efficiency and effectiveness assessment must:⁵⁶
- a. Identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth (that are anticipated to be provided or reduced); and employment (that are anticipated to be provided or reduced);
 - b. If practicable, quantify the benefits and costs; and
 - c. Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
76. Under section 32(3) where the proposal amends an existing policy statement (as is the case here) the examination of whether the provisions in the Proposed Change are the most appropriate way to achieve the objectives must relate to:⁵⁷
- a. The provisions and objectives (being the purpose of the proposal) of the Proposed Change;
 - b. The relevant and continuing objectives of the CRPS.
77. Section 32(6) defines objectives, proposal and provisions as follows:

objectives means-

⁵³ RMA, s 32(1)(a).

⁵⁴ RMA, s 32(1)(b).

⁵⁵ RMA, s 32(1)(c).

⁵⁶ RMA, s 32(2).

⁵⁷ RMA, s 32(3).

(a) for a proposal that contains or states objectives, those objectives:

(b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, *[[national planning standard,]]* regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means-

(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal

78. Whilst the Proposed Change does not itself contain objectives, the appropriateness of the provisions to be introduced by the Proposed Change have been assessed against the purpose of the Proposed Change and achieving the objectives of the CRPS. This is because the purpose of the Proposed Change is to:
- a. Give effect to Policy 2 and Clause 3.7 of the NPS-UD and enable sufficient land in Greater Christchurch to be zoned for the medium term (10 years) and identified for the long term (30 years) to meet the needs of existing and future communities, by identifying and enabling additional development capacity for housing in greenfield growth areas within the Projected Infrastructure Boundary shown on Map A in Chapter 6 of the CRPS, in Rolleston, Rangiora and Kaiapoi; and
 - b. Provide flexibility for Selwyn and Waimakariri District Councils to consider rezoning land within the Projected Infrastructure Boundary to meet medium term housing demands as part of their district planning processes, where a sufficiency shortfall is identified through a housing development capacity assessment.
79. Under Schedule 1 of the RMA, particular regard must be had to the section 32 report when the decision was made as to whether or not to notify the Proposed Change. The section 32 report for the Proposed Change was made available at the time of notification.
80. Section 32A(1) provides that a challenge to an objective, policy, rule or other method on the grounds that the section 32 report has not been prepared or regarded, or the requirements of section 32 have not been complied with, may only be made in a submission (rather than, for example, judicial review proceedings).
81. Section 32 requires a value judgment as to what, on balance, is the most appropriate option when measured against the relevant objectives. In *Rational Transport Society Incorporated v New Zealand Transport Agency*, the High Court rejected the submission that in order to be the “most appropriate”, a plan change must be the superior method; the Court found that “appropriate” meant suitable, and there was no need to place any gloss on that word by incorporating that it be superior.⁵⁸

⁵⁸ *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298 at [35] and [45].

82. Further, the Court did not agree that section 32(3)(b) mandated that each individual objective had to be “the most appropriate” way to achieve the RMA’s purpose. Each object was required to be examined in the process of evaluation. Objectives could not be looked at in isolation because the extent of each objective’s relationship in achieving the purpose of the Act may depend on inter-relationships.⁵⁹
83. In *Art Deco Society (Auckland) Incorporated v New Zealand Transport Agency*, the Environment Court held that an “holistic” approach should be taken in that case rather than a more focused, vertical or “silo” approach to objectives, policies and methods.⁶⁰

Section 32AA

84. As set out above, Step 4 of the Minister’s Direction requires that an evaluation report under sections 32 and 32AA and a report summarising how the persons making the recommendation to the Minister have had regard to the evaluation report must be submitted as part of the written recommendations report.
85. Section 32AA requires the Council to “undertake, and have particular regard to, a further evaluation of the proposal” in accordance with section 32AA.
86. The section 32AA evaluation is only required “for any changes that have been made to, or are proposed for, the proposal since the Council’s evaluation report for the proposal was completed” at a level of detail that corresponds to the scale and significance of the changes. The further evaluation must address the specific requirements of section 32.
87. A minor change to Policy 6.3.7(1) is recommended, to include a reference to Policy 6.3.5. Whilst Chapter 6 must be read as a whole, and Policy 6.3.5 will apply to development in the proposed Future Development Areas regardless, the effective integration of land use and infrastructure is a critical element to residential greenfield development. This additional amendment will provide further clarity for CRPS users and will appropriately support the objective of the Proposed Change (being the purpose of the Proposed Change) and the purpose of the RMA, by further promoting the effective integration of land use and infrastructure.
88. A change to Policy 6.3.11(5) is proposed, with the addition of “Future Development Areas”. This change provides important clarification for users of the CRPS and is consistent with the purpose of the proposed change, part of which is to enable urban development in those areas in certain circumstances. The proposed change is appropriate both to achieve the purpose of the objective and the purpose of the RMA. In addition to this change, further consequential amendments are proposed to the ‘Principal reasons and explanation’ paragraphs which follow Policy 6.3.11. The suggested amendments are intended to provide users of the CRPS with appropriate clarification as to the shift in focus from recovery, to a focus on giving effect to the requirements of the NPS-UD which necessarily has a more long-term focus. The changes are considered to be appropriate both to achieve the purpose of the objective, being the purpose of the proposed change, and the purpose of the RMA.
89. Three changes are proposed to Policy 6.3.12. The first change involves the addition of the reference to “or the relevant local authorities” in clause 1 of Policy 6.3.12. The recommended change ensures that in addition to the Greater Christchurch Partnership, the

⁵⁹ *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298 at [46].

⁶⁰ *Art Deco Society (Auckland) Incorporated v Auckland Council* [2012] NZEnvC 125, [2012] NZRMA 451.

relevant local authorities can also monitor housing and business development capacity and sufficiency in a collaborative manner. The outcome of this monitoring will in turn contribute to the intent of the Policy, being to enable urban development in the Future Development Areas identified on Map A, in certain circumstances. As discussed elsewhere in this report, Policy 6.3.12(1) is an important trigger that may initiate a planning response and it is therefore considered appropriate for the relevant local authorities to be explicitly referenced in Policy 6.3.12(1) in order to achieve the purpose of the objective (being the purpose of the proposed change) and the purpose of the RMA.

90. The second recommended change relates to clause 2(b) of Policy 6.3.12 and proposes the deletion of the word ‘supporting’, replaced with the word ‘enabling’. Policy 6.3.12(2)(b) now reads, “Enabling the efficient provision and use of network infrastructure”. The recommended change strengthens the direction in the Policy by requiring the development to enable, rather than simply support, the efficient provision and use of network infrastructure. Providing clearer direction to CRPS users in this regard will appropriately achieve the purpose of the objective (being the purpose of the proposed change) and the purpose of the RMA, by clearly articulating what is required for a particular urban development to proceed in a Future Development Area in Map A.
91. The third recommended change to Policy 6.3.12 pertains to clause (3) and proposes the addition of the words “and protection”, such that Policy 6.3.12(3) now reads, “The timing and sequencing of development is appropriately aligned with the provision and protection of infrastructure, in accordance with Objective 6.2.4 and Policies 6.3.4 and 6.3.5; ...” Ensuring that existing infrastructure is appropriately protected is appropriate to achieve the purpose of the objective (being the purpose of the proposed change) and the purpose of the RMA, given the overall direction within Policy 6.3.12 to ensure that any urban development in the Future Development Areas is timed and sequenced in a manner that aligns with the necessary infrastructure. The recommended change supports the intent of the proposed change by ensuring that urban development in Future Development Areas is appropriately managed.
92. A further change is proposed to Map A with the addition of “and Future Development Areas” to the title of Map A. This change provides important clarification for users of the CRPS and is consistent with the purpose of the proposed change, part of which is to identify the Future Development Areas (being land within the Projected Infrastructure Boundary) and enable urban development in those areas in certain circumstances. The proposed change is appropriate both to achieve the purpose of the objective (being the purpose of the proposed change) and the purpose of the RMA.