



**BOGGY PATCH OR  
ECOLOGICAL HERITAGE?**

**Valuing wetlands in Tasman**

*Office of the*  
**PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT**  
**Te Kaitiaki Taiao a Te Whare Pāremata**

PO Box 10-241, Wellington  
March 2002

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## PREFACE

This investigation is, at its core, about value, values and relationships. The value of wetlands and the values and understandings, developed through good relationships, that different sectors of a community bring to their thinking about wetlands.

But why the focus on wetland management? There are many reasons. These include international recognition that they are an important habitat for many species; the loss of most lowland wetlands through drainage; the ecosystem and recreational values to society, communities and land based businesses; and that the stewardship of wetlands – in common with other forms of environmental management – is increasingly becoming the focus of the pampered palates of the world's prosperous, our global customers. Wetlands are therefore not simply patches of land that can be evaluated in simple agricultural production and economic terms. Their management, and any legislation governing their uses, must embrace a much wider context.

This is all rather grand stuff: national and international biodiversity matters and perceptions and values of global customers. How do the landowner, the community and the Tasman District Council cope with this complexity? The devil is always in the detail. How to craft practical policies, rules and incentives to meet the aspirations of communities without adding unduly to the pressures on individuals and farm families.

In investigating the concerns about wetland management in the Tasman District my team and I have tried to unpick these complexities in practical ways. We believe that better management of Tasman District wetlands (and this report indicates that management *must* improve), is critically dependent on all parties recognising the value of wetlands on the farm, across the district, and within a national and international context. This necessitates open and robust discussions about such contentious matters as property rights, who covers costs, and who benefits. These discussions have of course been taking place. Unfortunately they have often been acrimonious and associated with proposed significant natural areas in the Tasman Resource Management Plan or with the Council granting retrospective resource consents for illegally drained wetlands.

A new framework for dialogue is now needed, one that focuses on the quality of the Council's relationship with the various interest groups in the region. Until all relationships are improved it will be very difficult to maintain productive dialogue that leads to the ultimate end, the maintenance of ecologically healthy wetlands in the region. I have recommended some actions to help the dialogue process. They focus on ensuring a better understanding of the wider values of wetlands through improved mechanisms for various sections of the community to talk to each other and to hear each other. There is a real opportunity for the Council to develop policies that facilitate the management of wetlands from a broader values base. To date they appear to have failed to do that adequately. They must do better and they can, if there is a willingness to be innovative and cultivate good relationships across the wider community.

Finally I wish to acknowledge that non-statutory mechanisms, such as covenanting, are a critical component of securing the long term health and

hence values of wetlands. I consider, however, that while there are so many gaps in knowledge of the wetlands in Tasman District it is essential to retain a robust regulatory bottom line.

I trust this small contribution to thinking about wetland management assists all parties. I thank all who assisted us with it. I intend to monitor progress, having confidence that there will be tangible improvements, the lessons from which could be taken to other parts of New Zealand.

A handwritten signature in black ink, reading "J Morgan Williams". The signature is written in a cursive, flowing style.

**Dr J Morgan Williams**  
**Parliamentary Commissioner for the Environment**

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# 1 INTRODUCTION

The management and protection of wetland ecosystems is a significant issue locally, nationally and internationally. Wetlands are under threat the world over from accelerated drainage, land reclamation, pollution and exploitation of wetland species. In the last 150 years, New Zealand has lost about 85% of all wetland area, mostly to drainage for pasture. Within the Tasman District, Waimea has lost 90% of its wetland area, Golden Bay over 70% and West Coast and Abel Tasman over 30% of their wetland area (Preece, 2000). Wetlands are now some of our most rare and at risk ecosystems.

Wetlands are important and significant ecosystems. In New Zealand, they provide a major habitat for at least eight species of indigenous freshwater fish as well as frogs, birds and invertebrates. Coastal wetlands are more biologically productive than almost any other ecosystem, providing habitat, breeding areas and food for shellfish, crustaceans, inshore fish and birds. A fifth of New Zealand's birds use wetlands as their primary habitat. Wetlands also support other ecosystems by absorbing floodwaters and filtering wastewater. They regulate water flows, recharge ground aquifers, maintain water quality and limit coastal erosion (MfE, 1997:7.24).

New Zealand is a party to the Ramsar Convention<sup>1</sup> that sets out a framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The obligations this international treaty imposes on New Zealand have been translated into a range of actions. Section 6(a) of the Resource Management Act 1991(RMA) identifies the preservation of the natural character of wetlands and the protection of them from inappropriate subdivision, use and development as a matter of national importance.

## 1.1 Background

In November 2001, the Parliamentary Commissioner for the Environment (the Commissioner) received correspondence from Tasman residents on the provisions of Variation 15 to the Proposed Tasman Resource Management Plan (PTRMP) of the Tasman District Council (TDC). There were complaints about the proposed permitted activity rule for the diversion and discharge of water from wetlands.

As a result of the complaints, an initial scoping investigation was undertaken which gave rise to the following two concerns:

1. the adequacy of the process used to prepare Variation 15 and, in particular, the permitted activity rule for the diversion and discharge of water from wetlands which appears to have been notified without the appropriate supporting arguments and justification
2. the potential for significant adverse effects on wetlands and the wider environment that may occur as a result of the drainage of wetlands under the permitted activity rule

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<sup>1</sup> See Chapter 2 for more information.



The Commissioner decided to undertake a further investigation reviewing the international and national context for the sustainable management of wetlands at a strategic level and assessing the TDC approach with respect to:

- international conventions on wetlands
- national initiatives on wetlands
- Resource Management Act 1991 (RMA) requirements
- regional approaches to wetland management
- the contribution of wetlands to sustainable land use

## 1.2 Purpose of investigation

Under the Environment Act 1986, the Commissioner is authorised to review, at his discretion, the system of agencies and processes established by the Government for managing the allocation, use and preservation of natural and physical resources. The focus of each review is on ascertaining how the Government system maintains and improves the quality of the environment.

The Environment Act also authorises the Commissioner to investigate the effectiveness of environmental planning and management carried out by public authorities. The purpose of these investigations is to provide the public authority with an independent opinion on whether its planning and management is beneficial to the environment and, where the Commissioner considers appropriate, to provide the authority with advice on remedial measures.

Therefore, pursuant to section 16(1)(b) of the Environment Act, the purpose of this investigation is **to assess the effectiveness of environmental planning and management carried out by the Tasman District Council (TDC) in respect of the sustainable management of wetlands in the Tasman District.**

## 1.3 Terms of reference

The terms of reference are:

1. To investigate and assess the effectiveness of the processes used by TDC in the preparation of Variation 15 as it relates to the sustainable management of wetlands
2. To investigate and assess the potential environmental outcomes for the sustainable management of wetlands that are likely to occur as a result of Variation 15

Several of the stakeholders consulted with criticised these terms of reference. The concerned Tasman residents suggested that while they were satisfied with the report, their *'major concern is the narrow focus of the investigation. As explained, although important in its own right, the Variation 15 matter is one example of a number of other problems relating to inappropriate consideration of environmental issues...'* They went on to state that *'addressing one issue such as Variation 15 is really addressing a symptom rather than a cause'*. The Nelson/Marlborough Fish and Game Council was also concerned that the report doesn't investigate some of the broader

environmental management issues in the Tasman District, which may be just as important as the issue of wetlands management. The Tasman District Council was concerned that *‘the report does not enable a contextual consideration to come through and is very narrow in its scope. The relevant context should be: what is an appropriate approach to regulating wetland drainage under the RMA, and where are regional councils at in such an approach?’*

The Commissioner acknowledges these criticisms of the terms of reference but wishes to stress that while this investigation does focus on wetland management, per the concerns about Variation 15, it is doing so as an example of how TDC approaches environmental management. In short the study does take account of the wider concerns about environmental management by focusing on matters of values and relationships.

## 1.4 Methodology

The methodology used to carry out this investigation comprised the following:

1. A review of a substantial amount of relevant literature including the Tasman Regional Policy Statement, the Proposed Tasman Resource Management Plan along with associated variations and a range of background documents prepared by TDC
2. Consultation and interviews with a number of interested parties and representatives of TDC during the course of a visit to the Tasman District on 11–13 February 2002 (see Appendix 1)
3. Analysis of the effectiveness of environmental planning and management carried out by TDC in respect of the sustainable management of wetlands in the Tasman District using the following criteria:
  - i. The Council has identified the range, quantity and significance of wetlands in the Tasman District
  - ii. The Council has developed a system of plans (regulatory and non-regulatory), policies and methods to achieve the sustainable management of wetlands in the Tasman District
  - iii. The system of plans, policies and methods to achieve the sustainable management of wetlands in the Tasman District is consistent with national and international policies on wetland management
  - iv. The Council has established environmental objectives and outcomes and a monitoring and reporting system for wetlands that enables progress towards meeting the environmental objectives and outcomes to be assessed
  - v. The Council has consulted appropriately with stakeholders during the development of the system of plans, policies and methods to achieve the sustainable management of wetlands in the Tasman District
  - vi. The Council has complied with appropriate procedural requirements when developing the system of plans, policies and

## methods to achieve the sustainable management of wetlands in the Tasman District

A draft report was released on 4 March 2002 to those parties consulted with for their consideration. Comments were received from Tasman District Council, the concerned Tasman residents, farmers' representatives, the Department of Conservation Nelson/Marlborough conservancy, Nelson/Marlborough Fish and Game Council, the Department of Conservation Head Office and the Ministry for the Environment. A number of amendments to the report have been made as a result.

### 1.5 What this investigation is not

The particular focus of this investigation has been on the provisions of Variation 15 to the Proposed Tasman Resource Management Plan relating to wetland drainage and the broader picture surrounding that. While it is clear that provisions in other parts of the Proposed Plan (for example, those relating to subdivision and earthworks) may have an impact on the sustainable management of wetlands, no in-depth analysis of those provisions has been carried out.

This investigation does not traverse the issue of methodology for defining wetland significance. This would be a major report in itself.

This investigation is not an in-depth assessment of TDC's fulfilment of its obligations to tangata whenua under sections 6(e), 7(a) and 8 of the RMA. Nor is it an in-depth assessment of the effectiveness and approach taken by TDC to its interactions and relationships with other parts of the Tasman community.

The study does not attempt to investigate overall environmental management performance by TDC. However, as noted above, this study is within the context of overall environmental management performance, particularly in terms of perceptions about environmental values and whose values have a 'voice' on such matters.

## 2 FRAMEWORK FOR WETLANDS MANAGEMENT

### 2.1 Why are wetlands important?

Wetlands are highly productive environments that support a diverse range of flora and fauna. They provide habitat for waterfowl and other birds (many migratory), amphibians, fish and invertebrates, and are important storehouses of plant genetic material (MfE, 1997; OAG, 2001).

In addition, wetland ecological processes provide an array of ecosystem services<sup>2</sup> the benefits of which have indirect economic value, including water storage and flood control, waste disposal and water purification, erosion control, water table maintenance and the retention, removal and transformation of nutrients.

These benefits are often unrecognised and hence undervalued. Gains to landowners who retain wetlands on private land include utilising the benefits provided by ecosystem services, contributing to the long-term sustainability of the environment, and contributing to New Zealand's biodiversity goals.<sup>3</sup> By providing waterfowl habitat, wetlands also offer hunting opportunities.

Wetlands are also traditional taonga for tangata whenua, valued for their everyday usefulness. For example there are harakeke (flax) and dyes for weaving, tuna (eels), manu (birds), patiki (flounder), as well as rongoa (plants used for medicinal purposes). Wetlands are also valued as taonga for their spiritual and metaphysical properties, and for their historical associations and significance to tribal identity.

### 2.2 The state of New Zealand's wetlands

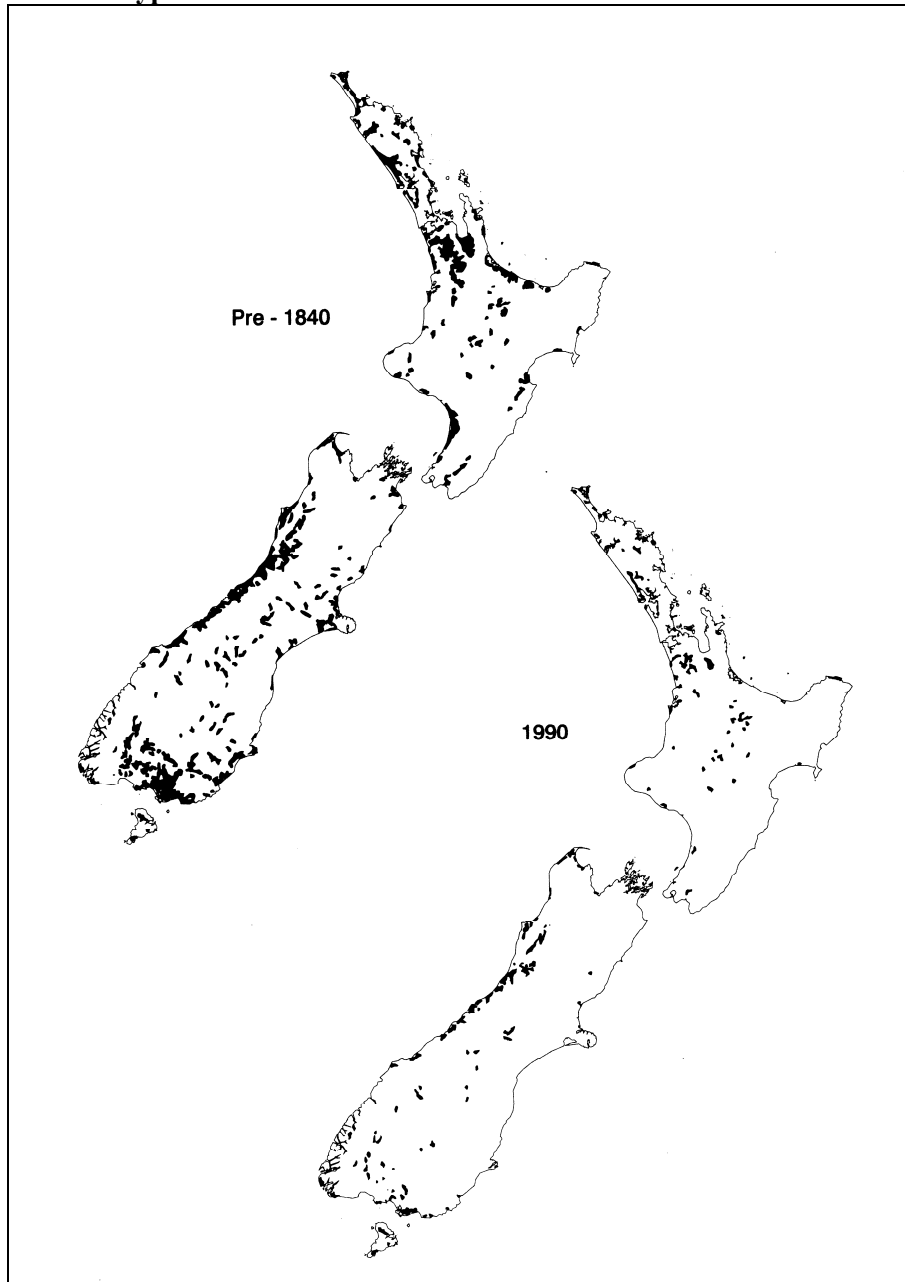
Wetland areas have been reduced by drainage for pasture by about 85 percent in the last 150 years from approximately 672,000 hectares to about 100,000 hectares (figure 1). This occurred mainly between 1920 and 1980 but still continues to a limited degree in some areas. Although several thousand wetlands remain (including 70 deemed to be of international importance) most are very small, and their natural character and habitat quality have been lost or degraded by drainage, pollution, animal grazing and introduced plants. Some characteristic New Zealand wetland types may have been lost completely (MfE, 1997).

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<sup>2</sup> The functions performed by ecosystems that ensure natural cycles (e.g. water, carbon, oxygen, and nitrogen), processes and energy flows continue to provide an environment that supports life, including human life. Ecosystem services such as the provision of fresh water from catchments and wastewater assimilation by wetlands represent the benefits that people derive, directly or indirectly, from ecosystem functions.

<sup>3</sup> DoC and MfE, 2000: *The New Zealand Biodiversity Strategy*. Wellington, New Zealand. See pages 15-21 for New Zealand's biodiversity goals, and pages 45-54 for freshwater biodiversity issues and objectives.

**Figure 1. The decline of New Zealand's freshwater wetlands, inferred from soil types**



Source: Landcare Research

### 2.3 The Convention on Wetlands of International Importance especially as Waterfowl Habitat (The Ramsar Convention)

The Ramsar Convention is an intergovernmental treaty that provides the framework for national action and international cooperation for the *conservation* and *wise use* of wetlands and their resources. It was adopted in Ramsar, Iran in 1971 and came into force in 1975. New Zealand became a Party to the Ramsar Convention in 1976.

The Ramsar Convention defines wetlands as ‘areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres’.<sup>4</sup>

The Ramsar Convention recognises the importance of the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl. It recognises that wetlands constitute a resource of great economic, cultural, scientific and recreational value, the loss of which would be irreparable. The Convention aims to stem the progressive encroachment on and loss of wetlands now and in the future, and to conserve wetlands and their flora and fauna, by combining far-sighted national policies with co-ordinated international action.

As a contracting party, New Zealand’s obligations under the convention are to:

- designate at least one wetland of international significance for inclusion in a List of Wetlands of International Importance (the List) maintained by the Ramsar Convention Bureau<sup>5</sup>
- include wetland conservation considerations within its national land-use planning, and formulate and implement this planning so as to promote the conservation of wetlands included in the List, and as far as possible the ‘wise use’ of wetlands in its territory. The ‘wise use’ concept is defined as ‘the sustainable utilization of wetlands for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem’
- promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not

The Department of Conservation (DoC) is the designated ‘Administrative Authority’, responsible for implementing the Ramsar Convention. However, development and implementation of wetlands policy is the joint responsibility of DoC and the Ministry for the Environment (MfE).

A report published by the Ramsar Convention Bureau, *Towards the wise use of wetlands*, concluded that ‘social and economic factors are the main reasons for wetland loss and therefore need to be of central concern in wise use programmes’ (Davis, 1993). The report stated that ‘ideally wise use should be pursued through a comprehensive national programme addressing information, awareness, policy, planning, management and institution building’. A clear, recurrent message running through all of the wetland case studies featured in this report, was that the ‘lack of political will at the outset, lack of coordination, insufficient use of existing knowledge, fragmentary management, lack of training and absence of follow-up are the main reasons for the continuing degradation and disappearance of wetlands, to the detriment of future generations’.

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<sup>4</sup> Ramsar listed wetlands include lakes, rivers, estuaries, and coastal waters as well as swamps and bogs.

<sup>5</sup> New Zealand has five wetlands on the List: Farewell Spit in Tasman, Waituna Lagoon in Southland; and Kopuatai Peat Dome, Whangamarino Wetland and Firth of Thames Tidal Estuary, all in Waikato.

## 2.4 National framework

### *Legislation*

New Zealand has not enacted a specific piece of legislation for the implementation of the Ramsar Convention because existing legislation was considered adequate. Therefore, the management and protection of wetlands is principally controlled through the Conservation Act 1987 (CA) and the RMA. Other relevant legislation includes the Reserves Act 1977 (RA) and the National Parks Act 1980 (NPA).

The CA promotes the conservation of New Zealand's natural and historic resources, and for that purpose established the Department of Conservation. DoC's functions under the Act include managing for conservation purposes, land and other natural and historic resources held under the Act, and advocating for conservation. DoC also administers wetlands held under the RA and NPA.

The RMA provides the mechanism by which New Zealand fulfils its second obligation under the Ramsar Convention, which is to include wetland conservation considerations within its national land-use planning. The overarching purpose of the RMA, set out in section 5, is to promote the sustainable management of natural and physical resources.<sup>6</sup> Section 6 of the RMA sets out matters of national importance, section 7 sets out other matters to be given particular regard, and section 8 directs persons with functions and powers under the Act to take into account the principles of the Treaty of Waitangi. These sections provide additional guidance on how to achieve the purpose of the RMA using words and expressions that are meant to be broad and intended to enable the application of policy in a general way.<sup>7</sup> Essentially, they are principles to guide sustainable management (PCE, 2001).

Section 6(a) states that the preservation of the natural character of wetlands and the protection of them from inappropriate subdivision, use and development is a matter of national importance. Section 6(c) states that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance. MfE is responsible for administering the RMA, and monitoring its effect and implementation.

Damage to wetlands is often a consequence of the diversion of water. Section 14 of the RMA provides that no person may divert water unless the diversion is expressly authorised by a rule in a regional plan or by a resource consent.

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<sup>6</sup> Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and  
(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and  
(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

<sup>7</sup> *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70, 85.

### *National policy*

As part of the implementation of Ramsar, central government released the New Zealand Wetland Management Policy in 1986, which set out broad objectives for wetland management (Commission for the Environment, 1986). Implementation of the policy is the joint responsibility of DoC and MfE. This policy states that ‘because past and current development and modification of wetlands has greatly reduced their former extent, emphasis in wetland management has to be given to preservation, with development only when there is an overwhelming balance in its favour’. However, DoC suggests that ‘as the first National Wetland Policy by a Contracting Party, this document is becoming outdated in terms of both the evolution of the Convention and the changes in legislation and governance structures in New Zealand...’<sup>8</sup>

In 1998, DoC undertook to the Ramsar Secretariat to produce a National Wetlands Action Plan by December of that year (OAG, 2001). The aim of the plan was to assist the coordination and planning of all agencies and owners involved with wetland management by identifying priority actions to protect and restore high value wetland ecosystems and freshwater habitat. The plan has not yet been produced.

DoC established the National Wetlands Coordination Committee in 1998 ‘to meet commitments under the Ramsar Convention and coordinate inter-agency wetland and conservation efforts’. The committee includes representatives of non-governmental organisations, local authorities, landowners, local government associations, and other stakeholders. Maintaining participation in the Committee has proved difficult and DoC is currently reviewing the Committee in order to make it more influential and effective.

DoC’s Statement of Intent for 2001-2004 lists a number of ten-year intermediate goals and strategic directions aimed at expanding its biodiversity efforts (DoC, 2001). One of the goals for freshwater is to maintain in, or restore to, an indigenous natural character, a representative range of freshwater ecosystems and habitats. A related strategic direction is the development and implementation of a freshwater action plan. DoC has recently completed a draft Freshwater Strategic Action Plan, which will prioritise and guide the Department’s wetlands management and advocacy. The plan will be released for consultation later in the year.

In terms of national policy under the RMA, no national policy statement (NPS) has been prepared to provide guidance to local government on the sustainable management of wetlands. However, MfE is currently developing an NPS on indigenous biodiversity. The scope of the NPS includes indigenous biodiversity in freshwater, therefore it will provide direction on the management of indigenous wetlands.

### *The Department of Conservation*

DoC is responsible for managing wetlands on conservation land, and consequently manages most of the wetlands on the List. The Department

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<sup>8</sup> [http://www.ramsar.org/wurc\\_policy\\_newzealand.htm](http://www.ramsar.org/wurc_policy_newzealand.htm)



also manages over 50% of the remaining palustrine<sup>9</sup> wetland areas in New Zealand. Another function of DoC is to advocate for wetland conservation under the CA (section 6).

DoC administers a national wetland resource inventory (WERI), which lists about 3000 ecologically and regionally significant wetlands in New Zealand. Around 80 of these are located in the Tasman District. The WERI inventory does not provide a view of general trends in wetland loss, or restoration, at a national level because it focuses on ecologically and regionally significant wetlands and it is not systematically updated (MfE, 1997: 7.62).

### *The Ministry for the Environment*

MfE has recently developed an Environmental Performance Indicators Programme to help track changes in the environment and provide information in order to make informed environmental management decisions. The Government's objectives for the programme are to systematically report on the state of New Zealand's environmental assets, to systematically measure the performance of its environmental policies and legislation, and to better prioritise policy and improve environmental decision-making (MfE, 2002). Wetland condition and extent is one of the freshwater indicators included in the programme.

### *Local Authorities*

Much of the responsibility for implementing the RMA lies with New Zealand's 12 regional councils, 70 territorial authorities (district or city councils) and four unitary authorities (which exercise the functions of both a regional council and a territorial authority) (see Appendix 2). Tasman District Council is a unitary authority.

In terms of functions that relate to wetlands, regional councils are responsible for controlling the taking, use, damming, and diversion of water, and controlling the quantity, level and flow of water in any water body (section 30, RMA). Policies and rules regarding wetland management vary between regional councils (see Appendix 3). Territorial authorities are responsible for controlling the actual or potential effects of the use of land (section 31, RMA). 'Use' includes the destruction of, damage to, or disturbance of, the habitats of plants or animals, in, on, or under land (section 9, RMA).

Local authorities have the power under the RMA to grant resource consents that give a person or organisation permission to use or develop a natural or physical resource, and/or carry out an activity that affects the environment in some way for a stated period.

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<sup>9</sup> A wetland hydrosystem bound by dry land or by any other hydrosystem, where attached/rooted vegetation is emergent permanently or seasonally above freshwater, non-tidal surface water or groundwater. Palustrine wetlands include marshes, bogs, swamps and fens.

## 2.5 Report of the Controller and Auditor-General

In 2001, the Office of the Controller and Auditor-General (OAG) released a report entitled *Meeting International Environmental Obligations*, examining New Zealand's approach to four multilateral environmental agreements, including the Ramsar Convention. The report stated two desired outcomes from the Ramsar Convention, for domestic implementation purposes, and using the recitals of the convention as a guide. These were:

- to stem the progressive encroachment on and loss of wetlands
- to ensure the conservation of wetlands by combining far-sighted, national policies with coordinated international action

The report stated that the New Zealand Wetland Management Policy focuses on general principles of preservation and protection of wetlands rather than pragmatic national level directions on priorities, targets, standards and roles, and that it contains insufficient national direction for full implementation of the Ramsar Convention. The report also noted shortcomings with the RMA and the CA with regards to providing national policy direction, and found no national level policy direction on freshwater wetlands, other than the outdated policy mentioned above.<sup>10</sup>

With regards to the Ramsar Convention, the report concluded that:

- Although progress has been made in a number of areas of wetlands management and protection, the policies and legislative measures adopted to implement the Ramsar Convention do not appear to be successful in meeting the desired outcomes of the convention.
- Allocation of the policy responsibility for wetlands has been deficient, and that this has resulted in the lack of coherent national policy framework on wetlands.
- There is evidence that wetlands degradation in New Zealand has been worse than it ought, which may have been inevitable to an extent, but the probable cause is attributed in part to the lack of guidance (in legislative and policy terms) on where the balance should lie between development and wetland protection.
- The variability and differing values of wetlands lead to difficulties in application and implementation of the Ramsar Convention, reinforcing the need to develop a national wetlands planning framework to set priorities, targets, standards and so on within an agreed understanding of the Convention obligation of 'as far as possible the wise use of wetlands' (OAG, 2001:43).

Out of these conclusions came a set of recommendations including:

- The formal designation of a lead agency to develop and implement wetland policy, and the development of protocols to enable the lead agency to work effectively with other interested parties on wetlands issues.
- The development of a national framework for planning and monitoring for wetland conservation and protection that will:

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<sup>10</sup> The National Coastal Policy Statement, developed under the RMA, sets out a national framework for coastal wetlands.

- define national wetland priorities, targets, guidelines, standards, incentives, monitoring and agency roles
  - allow regional and local authorities around the country to implement different wetland conservation and protection priorities within a clearly defined framework
  - address specifically the need to improve the conservation of wetlands on privately owned land, including continual effective wetland advocacy within the RMA framework
  - provide for adequate monitoring.
- The use of existing legislative tools (for example the RMA and CA) to implement the framework (OAG, 2001:44).

### 3 THE TASMAN DISTRICT

The Tasman District is 9786 square kilometres in area with a population of 44 000 (figure 2). About 63% of the district is designated as conservation land or regional park, most of which is in mountainous areas. More than 35% of the district is zoned as rural land and is mostly hill and plain country (table 1). Tasman has five of the country's 73 wetlands of 'national importance': Farewell Spit, Whanganui Inlet/Mangarakau Swamp, Waikoropupu Springs, the Buller River Catchment and the Waimea Inlet (Cromarty and Scott, 1996). The district's economy is largely biologically based with a strong export orientation (TDC, 2000). Activities contributing to the economy include fruit growing, farming, fishing, forestry, viticulture and tourism. The Tasman District Council is the governing local authority.

**Table 1. Zoning of land throughout Tasman District (at April 2000)**

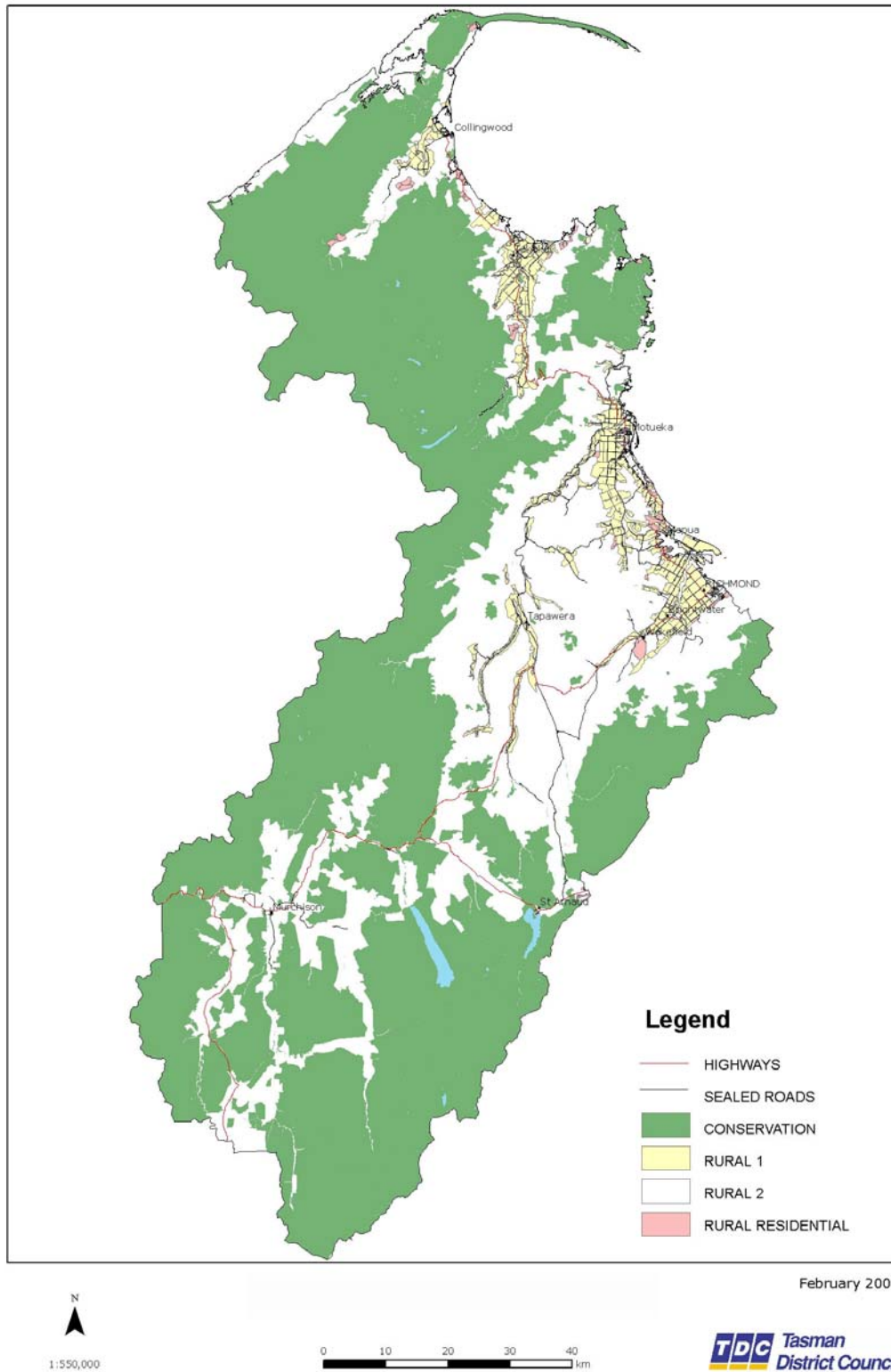
Zoning	Area (ha)	Area (%)
Conservation/Open space	617 292	63.8
Rural 2	302 472	31.3
Rural 1	40 487	4.2
Rural residential	4869	0.5
Residential	1309	0.1
Other	1125	0.1

(Source: TDC, 2000)

#### 3.1 The Tasman Regional Policy Statement

The Tasman Regional Policy Statement (operative 1 July 2001) provides an overview of the resource management issues of the region, and sets out the objectives, policies and methods to achieve integrated resource management, as required by section 6.2 of the RMA (TDC, 2001b). The protection of natural, recreational and cultural values of water bodies (including wetlands) is listed as a significant issue in the Tasman District (Issue 7.2). The maintenance and enhancement of the natural and cultural values, including natural character, of fresh waters, including recreational, fisheries, wildlife and other instream values is listed as an objective. Policies and methods of implementation are described in Appendix 4.

Figure 2. Tasman District Zones



## 3.2 The Transitional Regional Plans

The TDC has two Transitional Regional Plans in force until the Tasman Resource Management Plan becomes operative. One plan covers the Tasman District excluding the Upper Buller catchment (TDC, 1991a), and authorises the taking and diversion of stormwater and land-drainage water (section 10), subject to a set of conditions including:

*10.6 That this authorisation shall not apply to the drainage of naturally occurring bodies of standing water, including swamps, bogs, marshes, ponds, or lakes.*

The other plan covers the Upper Buller catchment (TDC 1991b) and authorises the diversion and discharge of surface water from agricultural land. There is no specific reference to wetland drainage within the accompanying set of conditions.

## 3.3 The Proposed Tasman Resource Management Plan – the development of *Part V: Water*

The Proposed Tasman Resource Management Plan is divided into six parts in various stages of development. This report focuses primarily on *Part V: Water*.

*Part V: Water* consists of Chapters 30-32, and applies to all uses of water including taking, diverting and damming. Chapter 30 sets out the region's water management issues and the objectives, policies, methods of implementation, principal reasons and explanation, and performance monitoring indicators relating to each issue. Chapter 31 states the rules applying to the taking, diverting and damming of water in the region, whilst Chapter 32 deals with water permit and coastal permit applications.

*Part V: Water* has moved through three stages so far (two draft stages and one proposed stage):

- The first draft of *Part V: Water* was released for public consultation on 26 March 2001.
- The second draft of *Part V: Water* was reported to Council on 24 September 2001.
- *Proposed Part V: Water* was publicly notified on 3 November 2001, as Variation 15. Submissions close on 1 April 2002.

The key provision causing concern is the proposed permitted activity rule for the diversion or discharge of water from a wetland. See box 1 for the wording of this rule.

**BOX 1: Development of Proposed Rules for the Diversion or Discharge of Water from a Wetland**

**First draft** of permitted activity rule 31.5.1:

*The diversion or discharge of water from a wetland is a permitted activity and can be undertaken without a resource consent if it complies with the following conditions:*

- (a) *the diversion or discharge of water is not from a naturally occurring wetland greater than 500 square metres.*
- (b) *the diversion or discharge of water is not from a naturally occurring wetland that includes any of the following:*
  - (i) *indigenous dune vegetation;*
  - (ii) *salt herb fields;*
  - (iii) *coastal shrublands in the Coastal Environment Area.*

**First draft** of discretionary activity rule 31.5.2:

*The diversion and discharge of water from a wetland that does not comply with the conditions of a permitted activity is a discretionary activity. A resource consent is required. Consent may be refused or conditions imposed.*

**Permitted activity rule as proposed** (now rule 31.4.1):

*The diversion or discharge of water from a wetland is a permitted activity and can be undertaken without a resource consent, if it complies with the following conditions:*

- (a) *The diversion or discharge of water is not from a naturally occurring wetland:*
  - (i) *greater than 500 square metres in any Residential or Rural Residential Zone;*
  - (ii) *greater than 1000 square metres in any Rural 1 Zone;*
  - (iii) *greater than 5000 square metres in any Rural 2 Zone.*
- (b) *The diversion or discharge of water is not from a naturally occurring wetland that includes any of the following:*
  - (i) *indigenous dune vegetation;*
  - (ii) *salt herb fields;*
  - (iii) *coastal shrublands in the Coastal Environment Area.*

The following sections detail the changes that have been made to *Part V: Water* with regards to wetlands management through the various stages of plan development.

*First draft of Part V: Water*

The first draft of *Part V: Water* was released for public consultation on 26 March 2001. Twelve of the 92 submitters to the draft were concerned with wetlands management (TDC, 2001a). Of those 12 submitters, six sought greater protection for wetlands, whilst four sought an increase in the area of wetlands for which drainage is a permitted activity.

In response to the summary of submissions, TDC staff noted that:

- Very small wetlands can have significant values, as do lowland wetlands because there are so few left.
- As the Council is yet to carry out an assessment of the significance of wetlands remaining in the district, wetland drainage should be discretionary, especially in areas subject to renewed development pressure because of the increased interest in dairying.
- Some landowners feel their options for developing their land have been unfairly constrained by Council, but given TDC's responsibilities under section 6 of the RMA, the rights of individuals must be weighed against the need for sustainable use of resources. In light of this, in addition to a regulatory approach, education, advocacy and incentive measures should be adopted.
- The Council (and many parts of the community) has not adequately acknowledged the significance of wetland values in the District.
- Plan rules must necessarily establish a baseline for protecting wetland values.
- There is no provision in the plan for promotion of wetland establishment (TDC, 2001a).

From these conclusions, council staff recommended amendments to *Part V: Water* including:

- being more specific about the significance of the values of wetlands and the need to protect them from adverse effects of activities
- adding methods for the support and encouragement of wetland protection, including financial incentives for private landowners
- amending methods to include commitment to liaison with landowners and other stakeholders to identify other methods of promoting sustainable management of wetlands
- adding policies and methods for the promotion of wetlands development
- adding methods that commit Council to further investigation into the values and significance of wetlands in the District and the threats to them
- amending Rules 31.5.1 and 31.5.2 so that the only wetland drainage that is permitted is that of artificially constructed dams or wetlands and that the drainage of coastal wetlands is a non-complying activity

### *Second draft of Part V: Water*

In response to the submissions received, a number of amendments were made, and a second draft of *Part V: Water* was reported to Council on 24 September 2001. The following section details changes made in this draft.

#### *Amendments to Chapter 30*

As mentioned, Chapter 30 sets out the region's water management issues and the objectives, policies, methods of implementation, principal reasons and explanation, and performance monitoring indicators relating to each issue.



The introduction to Chapter 30 was expanded to include more in depth coverage of:

- the water resources of the Tasman District (including a brief section about wetlands)
- the uses and values of wetlands
- sustainable water management
- activities with adverse effects on water bodies (including a section on the diversion of water and wetland drainage)

Issue 30.1 regarding reduced water body flows or levels, encompasses wetlands management. A new objective was introduced under this issue:

*...the maintenance, and enhancement where possible, of the quality and extent of wetlands in the District.*

The existing policy relating to wetland management was expanded, and three new wetlands policies were added (see Appendix 5). Within the Methods of Implementation section, a number of non-regulatory measures were added. A financial incentive measure was added regarding Council funding for the protection and enhancement of existing wetlands and establishment of new wetlands. An education measure was added regarding the provision of information and advice about establishing wetlands, and enhancing and protecting existing wetlands (see section 3.6).

A segment on the diversion of water and wetland management in the principal reasons and explanation section was extended to include discussion of development of community participation, education, financial incentives and wetland inventory development.

A performance monitoring indicator regarding wetland management was added: *changes to quality and extent of wetlands*; and Schedule 30.1 (Uses and Values of Rivers, Lakes, Wetlands and Aquifers) was more specific with regards to wetlands.

#### *Amendments to Chapter 31*

There was one amendment to Rule 31.5.1 (the addition of (b)(iv), excluding wetlands discharging to Black Valley Stream or Lake Roto-iti from being drained as a permitted activity), whilst Rule 31.5.2 remained unchanged.

#### *Consequential amendments to Part 1 of the PTRMP*

Due to amendments made in this draft, a number of definitions were added to Part 1 of the PTRMP (Chapter 2: Meaning of Words), including a wetland definition. The core definition is taken directly from the RMA, with an added list of what that specifically does and does not include (for example, it does not include wetted pasture).

#### *Proposed Part V: Water (Variation 15)*

Variation 15 introducing *Proposed Part V: Water*, was publicly notified on 3 November 2001, one of nine sets of amendments to the Proposed Tasman Regional Management Plan notified (Variations 10-18), the submission period closing 1 April 2002.

The wetlands provisions in *Proposed Part V: Water* remained largely unchanged from the last draft, except for a major revision to Rule 31.5.1, now Rule 31.4.1 (see box 1 for wording). The rule, therefore, now allows the diversion and discharge of water from a naturally occurring wetland:

- 500 square metres (0.05 hectare) or less in any Residential and Rural Residential zone
- 1000 square metres (0.1 hectare) or less in any Rural 1 zone
- 5000 square metres (0.5 hectare) or less in any Rural 2 zone, unless the wetland is included in part (b) of the rule (see Appendix 6)

Council staff presented a supplementary report regarding Variation 15 to the Environment and Planning Committee at a meeting on 11 October 2001. The report covered the two issues of domestic water supply and wetlands, and made a number of recommendations relating to each issue. The recommendations relating to domestic water supply were voted upon and carried by the committee (Item 1.1).

With regards to wetlands, staff recommended that:

- The proposed new rule regulating wetland drainage be deleted and the rule as originally drafted be adopted
- If the above recommendation is not adopted, that Council advise staff on some additional text to explain the issue and rules in light of the proposed amendments

The minutes of the Council meeting record that the Chair of the Committee ‘proposed that Part V be notified and the other recommendations not be actioned. He said the staff were asked to come back with a report on Item 1.1. There was no request for any further debate or discussion on items that had been decided. He recognised the significance of wetland is not necessarily dependent on size, but in the planning process there is a need to have a rule to work on’.

In response to this, the minutes record that a Council officer ‘said the reason why it has come back is because it was unclear to staff as there was a mismatch in terms of policy and allowance for wetlands drainage.’

There was a vote that no further action in relation to the two wetlands recommendations be taken, and it was carried 8:5 (also see Process and Administration Issues in section 5.3).

### *Other rules impacting on wetlands management*

Other provisions for wetlands management in the PTRMP include Rule 17.4.9A within *Part 2: Land*, which states that it is a permitted activity to destroy or remove indigenous vegetation from a naturally occurring wetland less than 500 square metres, unless the wetland includes indigenous dune vegetation, salt herb fields, or coastal shrublands in the Coastal Environment Area. Otherwise it is a discretionary activity under Rule 17.4.9B. There are areal inconsistencies between this permitted activity rule relating to wetlands and the proposed permitted activity rule for wetland drainage.

### 3.4 Information base

TDC released a policy paper on the district's Natural and Built Heritage as part of their District Plan Review in 1995 (TDC, 1995). The purpose of the document was to discuss key issues in relation to natural and built heritage in Tasman District, and to consider a range of objectives, policy options and possible rules for the District Plan. In addition to including heritage buildings and specimen trees, the paper listed 102 natural heritage scientific, scenic and wildlife areas, most occurring on private land. Ten of the 102 areas were freshwater wetlands.

This information was subsequently incorporated into the PTRMP as notified on 25 May 1996 in Chapter 10 and Section 18.1. Rules in this section regulated indigenous vegetation removal in natural heritage areas. Following receipt of submissions, Variation 1 to the Plan removed all but 21 natural heritage areas and introduced a consent requirement for indigenous forest and vegetation removal from naturally occurring wetlands above areal thresholds (500 square metres for wetland vegetation). Three of the 21 natural heritage areas are freshwater wetlands. Variation 1 was appealed and the references have yet to be heard. The 500 square metre threshold for consent is challenged.

In 1998 an overview of the freshwater wetlands of the Tasman District was commissioned by the Nelson/Marlborough Fish and Game Council, DoC and TDC, and released in January 2000 (Preece, 2000). The first of its kind for the district, the aim of the inventory was to provide an overview of freshwater wetland extent, type and threats, and compare the gathered information with historical data. The report acknowledges that 'inventory is the necessary first step to provide the knowledge required for appropriate management of ecosystems'.

The overview states the following limitations:

- The inventory scale, methodology and resources allocated for the exercise provide a clear overview, but do not meet the level of detail and accuracy required to provide detail on individual sites or a baseline for future monitoring.
- The inventory was undertaken as a desk-top exercise, therefore limiting the type of information which could be collected. There is, therefore, no assessment of individual wetland significance, and in addition to this, some wetland types are under-represented.
- Using the methodology and resources available, the only change over time able to be detected was that of wetland area. It was not possible to document wetland degradation, change in type or function.

A total of 795 sites, representing 1037 individual wetlands were recorded in the inventory database, with a total area of 8606 hectares. Most of the wetlands recorded were small – 92% of the wetlands were less than 10 hectares, and 64% less than 1 hectare. There was no analysis of wetland location and size according to district zone. Forty percent of the wetlands recorded are located in areas less than 100 metres altitude, while 74% of the wetlands are threatened in some way. The inventory noted that many of the lowland wetlands in the district have undergone extensive modification, and once substantial wetlands are now represented by tiny remnants.

Around 80% of the district's current wetland area is protected. However, these protected wetlands are unrepresentative of what was originally in the region, as most are in montane and alpine areas of National Parks. Preece notes that lowland areas have been subject to the greatest development pressures in the district. Fourteen percent of current natural wetland area under 100 metres altitude is protected (or 2.8% of the 1840 area). Table 2 presents data on palustrine wetland loss and protection in four lowland ecological districts. The report notes that 65% of the remaining wetland area in these four lowland ecological districts is found in the relatively remote West Whanganui Ecological District.

**Table 2. Palustrine wetland area and protection for four lowland ecological districts**

Ecological District	1840 area (ha)	1999 area (ha)	Percent of wetlands area lost	Protected wetlands	Percent of 1840 area protected	Percent of 1999 area protected
Golden Bay	3666	814	77.8%	37	1%	4.5%
Motueka	2322	6	99.7%	1.7	0.1%	30%
Moutere	824	59	92.8%	5.5	0.7%	9.3%
West Whanganui	1031	612	40.6%	81	7.9%	13.3%
<b>Total</b>	<b>7843</b>	<b>1491</b>	<b>81%</b>	<b>125</b>	<b>1.6%</b>	<b>8.4%</b>

(Source: Preece, 2000)

In the absence of fieldwork, it was not possible to accurately assess the threats to the district's wetlands, but the greatest threats to palustrine wetlands were identified as grazing and drainage, followed by logging, invasive plants and lowering of the water table.

The report makes a number of recommendations based on the findings. They include:

- producing a comprehensive baseline inventory of all Tasman wetlands. It was noted that increasing the level of inventory detail would allow assessment of conservation value and threat, and provide sound information for RMA planning and resource consent applications.
- setting up a wetland monitoring programme.
- coordinating wetland management through the production and adoption of a joint Wetlands Strategy, involving relevant decision makers and stakeholders.
- recognising the major losses and degradation of lowland wetlands by actively investigating and implementing possibilities for their active management, protection, restoration and creation.
- developing a simple education programme based on achieving greater understanding of wetlands by planners, decision makers, stakeholders and the public.

Recent efforts by TDC have resulted in some progress towards fulfilling these recommendations, especially the last two, and funding currently being sought by TDC should contribute to the implementation of the first three recommendations.

### 3.5 Monitoring and compliance with the RMA

The TDC has adopted a guideline and protocol to assist staff with implementing their enforcement responsibilities under the RMA (TDC, 2001c). It notes that the need to enforce compliance with the law may arise following environmental monitoring and compliance monitoring of resource consents, and from investigating specific complaints lodged with council. It states that if a breach of legislation or resource consent has occurred then TDC will take enforcement action, and that council's primary concern with enforcement is to work with the landowners and resource users to resolve matters of compliance. Stages involved in the TDC's enforcement process include promoting awareness and providing assistance, warnings, the issuing of enforcement notices and, in extreme cases, prosecution.

TDC categorises their enforcement mechanisms into three interconnected outcomes:

- avoidance, mitigation or remedying of adverse effects
- compliance
- deterrents and compensation

There are three recent episodes of non-compliance relating to wetlands that have been controversial in the Tasman District:

- partial drainage of Nguroa wetland
- partial drainage and modification of a pakihi wetland near Pupu Springs
- drainage of a coastal wetland and destruction of native vegetation at Pakawau

In the first case, TDC issued a non-notified resource consent retrospectively. In the second case a retrospective resource consent is being sought, and the landowner has taken advice offered by TDC relating to the ongoing management of the wetland. In the last case, TDC issued an infringement notice to the contractor under the RMA, and a retrospective resource consent is being sought.

A performance monitoring indicator relating to wetlands was included in *Proposed Part V: Water*, that of 'changes to quality and extent of wetlands'. Preece's recent overview of freshwater wetlands addresses changes to the extent of freshwater wetlands from 1840 to 1999 but, due to limitations of the inventory, does not address changes to wetland quality. TDC's most recent state of the environment report (2000) commented on the loss of wetlands in the district and presented a map of wetland distribution in Tasman, based on the findings of Preece's report (2000).

### 3.6 Non-regulatory initiatives by TDC

As mentioned, *Proposed Part V: Water* sets out a number of non-regulatory methods to achieve objectives and policies relating to wetlands (section 30.1.40 Methods of Implementation). They are as follows:

- Education and advocacy:
  - the provision of information and advice about wetlands uses and values, and measures to protect them
  - the provision of information and advice about the establishment of wetlands, and enhancement or protection of existing wetlands, including enhancement of wetland values of dammed water
  - providing information to landowners about sources of funding, such as through the QEII Trust, Nga Whenua Rahui and others, for the protection and enhancement of significant natural areas such as wetlands
- Financial incentives:
  - Council consideration of funding for the protection and enhancement of existing wetlands and establishment of new wetlands
- Investigations and monitoring:
  - continuing development and maintenance of the database in consultation with iwi and interest groups, that identifies specific water bodies or parts of water bodies, including wetlands, their particular uses, values and significance
  - investigations and monitoring of the water resources of the District to understand the values and significance of naturally occurring wetlands in the District and to assess the contribution of water levels and flows to their values

Recent non-regulatory initiatives undertaken by TDC that relate to PTRMP wetlands objectives and policies include:

- releasing a comprehensive information brochure, *Wetlands of Tasman District*. The brochure describes wetland types, values, threats and losses in the district, and goes into detail about the new proposed rules relating to wetlands management. In addition to discussing TDC's role in promoting and encouraging the sustainable management of wetlands (for example offering free advice and financial assistance), it describes simple solutions to enhance wetland environments. These include drainage control, stock management, planting and fencing, attracting wetland birds, encouraging fish, weed control and dealing with animal pests. It also lists contact information for other organisations offering help and advice on wetlands projects
- organising a visit to Mangarakau Swamp on 2 February 2002 (in conjunction with DoC) to coincide with World Wetlands Day. The visit proved so popular that a second visit was organised for the next weekend
- presenting two environmental awards to wetlands restoration projects in 2001, one in Marahau, the other in Motueka

### *The Riparian Land Management Strategy*

The TDC released a Riparian Land Management Strategy in 2001. Its purpose is to:

- identify the priority actions for the Council to enhance water quality and habitat values, and public access through improved riparian management
- outline where further investigation and consultation is required to provide guidance on the management needs of riparian areas in the Tasman District

The Strategy provides guidance on actions, by TDC and other parties, to implement the relevant objectives, policies and methods contained in the PTRMP. The Strategy takes a non-regulatory approach and is about ‘getting action on the ground to achieve real benefits’. Work undertaken in the last six months includes planting, fencing and covenanting of riparian areas, mainly on dairy farm properties.

Its initial focus (i.e. the first three years) is on identifying where further information and consultation is required to better identify the values that need protecting, the problems that exist and the potential solutions. A full public review will be carried out after three years to update the Strategy and set out any recommendations on changes to the PTRMP that may be required.

It lists general outcomes desired and states that, as work on the strategy progresses during its first three years, more detailed outcomes will be developed. The Strategy will take a co-ordinated district-wide approach involving groups with an interest in achieving the outcomes of the Strategy. The Strategy suggests that contributions to its implementation could come from a number of groups, including TDC, landowners, iwi, Fish and Game Council, DoC, Ministry of Agriculture and Forestry, MfE, community groups and non-governmental organisations, Eel Management Committee, industry, science providers and Landcare Trust. It states that ‘successful implementation of the Strategy is far more likely if these groups “own” the Strategy, pool their resources and expertise, and work together. By getting agreement on priorities, and commitment to action from different organisations, the Strategy can be a catalyst for joint action’.

The Strategy could provide a useful model on which to develop a district-wide strategy for wetlands management.

### *Enhancing Natural Areas in Partnership with Landowners*

Action Bio-Community is a recently launched nation-wide initiative managed by Local Government New Zealand and funded by MfE’s Sustainable Management Fund. Its focus is to build the capacity of local government for biodiversity management, and it provides funding of \$1.1 million over three years. TDC is currently seeking a portion of this funding for an initiative titled ‘Enhancing natural areas in partnership with landowners’. TDC staff have put number of proposals forward as part of this initiative.

These include:

- convening a Tasman Biodiversity Group
- providing a Natural Areas Advisory Service
- providing financial assistance to landowners
- gathering information on natural areas in the Tasman District

It is expected that, if secured, this funding will contribute in some part to the sustainable management of wetlands in the Tasman District.

### 3.7 Other organisations

Other organisations in the Tasman District that contribute to wetlands management include the Nelson/Marlborough Conservancy of DoC, the Nelson/Marlborough Fish and Game Council and the Tasman Environmental Trust.

The functions of DoC in relation to wetlands management at a national level have been discussed previously (see section 2.4). Within the Tasman District, DoC contributes to wetlands management primarily through providing specialist advice and information, advocacy and the management of wetlands on conservation lands. At various stages DoC has been involved in TDC's plan development process. Initially DoC was asked to provide survey information on significant natural areas. This information was subsequently incorporated into the proposed resource management plan but met with a lot of opposition from the community. TDC notified a variation withdrawing the relevant sections of the proposed plan and that variation has now been referred to the Environment Court.

The functions of Fish and Game Councils throughout New Zealand are to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters. This includes assessing and monitoring the condition and trend of ecosystems as habitats for sports fish and game and, in relation to planning, representing the interests and aspirations of anglers and hunters in the statutory planning process and advocating the interests of the Council, including its interests in habitats (s26Q, CA).

The Tasman Environmental Trust was established in 2000 to assist in the protection, restoration and appreciation of the district's natural areas, so they can be enjoyed by all. The Trust recognises that despite the district's national parks and wide range of environments, 'there are still many missing pieces in [the] local environmental jigsaw'. Its focus is on land not owned by the Crown, and it works with landowners and other agencies to protect and restore forest and wetland remnants, fence and plant stream and river margins, improve access to allow people to appreciate our natural heritage, and negotiate legal protection of important ecosystems. The aim of the trust is to provide assistance for those environmental projects that would 'fall through the gaps' and not otherwise get funding or assistance from existing organisations. Projects the Trust is involved in include the restoration of Pearl Creek, working towards the protection of Pohara Cliffs, and establishing walkways along the Wai-iti River.





## 4 COMMUNITY CONCERNS AND ASPIRATIONS

This section seeks to summarise the main issues raised by sections of the community during the course of this investigation. However, it is by no means an exhaustive list of concerns held by the community on environmental issues in the Tasman District. It should be noted that these are the views of the sections of the community consulted, not those of the Commissioner.

### 4.1 Concerned Golden Bay residents

The issues to do with Variation 15 were originally raised with the Commissioner by some residents of the Golden Bay area (referred to here as the complainants). The complainants, in general, commented on the changing values around New Zealand's natural environment. They voiced concern that many people view wetlands as 'useless swamps' of low value, and noted the parallel between this and the way that our indigenous forests were regarded as an impediment in the 19th century, only fit to be cleared. They were concerned about the high proportion of wetlands lost and wetlands representativeness within the district, particularly the lack of lowland wetlands.

The complainants had a number of concerns relating to the proposed wetlands drainage permitted activity rule. They do not feel that the environmental effects of the drainage rule have been properly considered. They commented that basing the rule on wetland area and zoning is not relevant, rather it is the intrinsic value of the wetland that is important. The complainants also noted the inconsistency between the wetlands drainage rule and the indigenous vegetation clearance rule with regards to area and zoning differences (see Chapter 3). They questioned whether there was any section 32 analysis<sup>11</sup> during the development of the drainage rule. Overall, they noted that TDC has recently produced some good brochures and information on wetlands management but these initiatives have not been backed up by action (for example, poor enforcement and the proposed permitted activity rule).

The complainants discussed the history of the identification of significant natural areas (SNAs) in the Tasman District. They felt that the community was misinformed over the SNA identification process during the mid 1990s, and that DoC were maligned and incorrectly perceived as 'landgrabbers', when in fact they were simply acting as an advisor to TDC. They felt that this SNA process prompted a political swing within the district, with the 'back to basics' approach gaining community appeal, and a resultant change of council. The complainants were concerned at the current Council's emphasis on territorial authority responsibilities under the Local Government Act, such as building roads and drains, at the possible expense of resource management planning. They were also concerned at the lack of experience

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<sup>11</sup> Refers to section 32 of the RMA which requires a consideration of alternatives and an analysis of the costs and benefits prior to adoption of any particular approach to implementing the RMA.

of councillors on the Environment and Planning Committee (and a lack of overlap of experience from the last electoral term) in dealing with resource management issues.

They were particularly concerned about three incidences of non-compliance under the RMA regarding wetlands drainage in the district. They were appalled at the drainage of Nguroa wetland, and felt that TDC showed a disregard of the Purposes and Principles of the RMA (Part II: Sections 5-8; see Chapter 2, Legislation) in granting a consent to drain this wetland. They considered that there appeared to be major political influences in the process that may have influenced TDC's decision making.

The complainants believe that some landowners may be under financial pressure to develop and intensify their land use, and stated that landowners need fair and proper compensation (financial assistance) for setting land aside for protection.

The key issues for the complainants are:

- the intrinsic values of wetlands not being recognised
- environmental effects of the proposed permitted activity rule not being considered
- Council's lack of focus on and experience with resource management
- RMA non-compliance with regards to wetlands drainage

## 4.2 Tangata whenua

The Commissioner notes that the concerns raised by iwi were much broader than the issue of sustainable wetlands management.

There are six tangata whenua iwi in Tasman:

- Ngati Rarua (Golden Bay and Tasman Bay)
- Ngati Tama (Golden Bay and Tasman Bay)
- Te Atiawa (Golden Bay and Tasman Bay)
- Ngati Koata (eastern parts of Tasman Bay)
- Ngati Kuia (eastern parts of Tasman Bay)
- Te Poutini Kai Tahu (southern part of the district)

The key issue raised by representatives of local iwi was what they describe as the 'poor' relationship between TDC and local iwi. Iwi suggest there are inadequate structures in place for managing the relationship. Iwi have been proactive in terms of seeking to improve the working relationship with TDC. In particular, they have set up a voluntary resource management group, which acts as a centre for advice for TDC and others (for example, Nelson City Council, DoC, consent applicants etc). Iwi are unable to fund a liaison person and noted with some frustration that TDC has chosen not to fund an iwi liaison member on staff.

Iwi expressed a concern that TDC does not take their interests seriously when considering resource management issues, and often fails to ask whether the issue under consideration will affect tangata whenua. They feel TDC seeks to determine the agenda for consultation itself, thus abrogating the principle of partnership under the Treaty. Iwi believe that these actions result in a failure to consult adequately on issues and therefore lead to

inappropriate decision-making. They feel frustration that when consultation is undertaken, it is often left to the latter stages of policy development, when it should have been undertaken much earlier (see PCE, 1998: 86-87 for further information on consultation). They noted that the RMA generally places a lot of pressure on iwi to participate in consultation and the resources of the iwi are stretched to cope. Iwi are under a lot of pressure to make sure that responsibilities handed down to them from their tupuna can be adhered to. Consequently many people are involved on a voluntary basis.

Iwi expressed frustration with regularly having to bring new councillors up to speed with a basic understanding of iwi issues. They acknowledged the understanding of iwi issues by some councillors, but not the Council 'collective'. There was a suggestion that new councillors could benefit from the input of an iwi advisor, as part of their induction. Despite this there is acknowledgement of the positive work being undertaken recently by the TDC (see section 6.2).

Iwi feel that there is a lack of understanding of linkages within the environment from a Maori world view (for example, the link between water quality and discharge). These linkages are an integral component of iwi values but are not integral to the RMA and therefore not reflected in Council's structure and policy-making process. Iwi see this as evident in the lack of integration between departments and in the way the chapters of the Proposed Resource Management Plan are divided. There is concern that the proposed plan is lacking in identifying cultural values and inadequate in terms of meeting iwi aspirations. There is an overall concern from iwi that TDC displays an inability to weigh up and decide where iwi values fit within sustainable resource management, and a reluctance to engage with these aspects of their responsibilities under the RMA.

The key issues for iwi are:

- the need to build a relationship which goes beyond consultation on specific issues
- the lack of access to representation at the Council table
- inadequate consultation processes run by TDC, in particular, consulting too late in the process
- insufficient resources for iwi to participate fully in the resource management of the Tasman District
- poor understanding by TDC of iwi culture, history, kaupapa and issues of concern

### 4.3 Federated Farmers' group

The Federated Farmers' group felt that TDC could use quicker, more streamlined processes in dealing with resource management issues such as wetlands drainage, and that solutions could be found much sooner, that comply with the RMA and are not overly prescriptive. This was in the context of discussion about two recent situations where wetlands had been modified without first obtaining resource consent. The group felt that most farmers are prepared to comply with environmental standards and, if they breach them, want the time and the opportunity to get back into compliance.

The group noted that not everyone in the community has an understanding of the RMA and they may therefore feel that legal advice is warranted when dealing with RMA issues. They were concerned that legal processes may prolong any resolution of non-compliance issues, driving up costs unnecessarily, doing much damage in the process. They noted that complainants have little costs, compared to the Council and consent applicants, and these costs could be kept to a minimum by taking a conciliatory approach that gets parties together early to find a workable and consistent solution.

Within the Federated Farmers' group there was a range of thinking about TDC's relationships and responsibilities. Although recognising that the Council's priorities and emphasis on roading and infrastructure have had good results, some were concerned that more emphasis should be placed on the Council's environmental management responsibilities. The issue is getting a balance. They also commented on the lack of integration between Council departments (for example, the Environment and Planning and Engineering departments). Others believed that councillors were in touch with farmers, and may have a better feel than their staff for what sort of environmental management approaches are appropriate.

There is support from the farming community for a working group approach to environmental issues in the district. A group organised by TDC and dairy farmers to deal with dairy effluent was viewed as successful, providing a good example of how alternative methods of dealing with RMA issues can have positive outcomes for the environment and all concerned. The effort it requires to get a group up and running is seen as worthwhile. The group noted that personalities are important in the formation of these working groups, so as to build trust to enable communication and information sharing.

Plan provisions under section 6 of the RMA were discussed, and were described as 'land-grabbing by default', and counterproductive to generating interest and raising awareness of wetlands. The group suggested that public interest and involvement under the RMA need to be balanced by financial assistance for property owners. They also suggested that the proposed wetlands drainage rule might be setting the wrong baseline and that a package approach is needed.

The group is aware of the positive wetlands initiatives being undertaken by Taranaki Regional Council, in working with landowners to identify significant wetlands on private land and in providing financial assistance, advice and education. The group feels it is important to have advice and support available from Council to create new wetlands and modify existing wetlands (without impairing life-supporting capacity), because wetlands can play an important role in nutrient and runoff management.

Farmers are generally aware of environmental standards they should be meeting and feel that the positive sustainable land management undertaken by them is often overlooked. There is concern, however, at the costs involved in managing a significant site, and suggestion that some of this cost could be sourced from other sectors of the community willing to contribute, as protecting and maintaining such sites is a public good.

The key issues for the Federated Farmers' group are:

- much earlier opportunities for being involved in consultation on resource management issues
- greater use by TDC of negotiation and mediation to resolve situations where farmers are not complying with the provisions of the relevant resource management plans
- opportunities for proactive involvement in working parties set up to resolve resource management issues around the district
- establishment of a working relationship with TDC involving a greater level of trust between the parties

#### 4.4 Department of Conservation (Nelson Marlborough conservancy)

DoC stated that wetland management is a critical issue because of the gaps in knowledge about significant wetlands in the district, the cumulative loss of the district's wetlands and the modification of the many wetlands remaining. Wetland representativeness was raised as a concern, because most upland wetlands are on conservation land, while most lowlands wetlands are on private land.

DoC noted that the size and location of a wetland may not determine its significance. From an ecological perspective, setting a rule for wetland drainage based on threshold area and district zoning is crude and creates problems in terms of workability. There is concern, based on Preece's overview of freshwater wetlands in the Tasman District (2000), that under the current proposed rule 40% of remaining wetlands could be lost. DoC is concerned that short-term market drivers combined with financial pressures on landowners are resulting in the draining of wetlands and their conversion to pasture for dairying. Other factors contributing to a decline in wetlands were suggested: the loss of corporate memory regarding significant wetlands in the region, RMA inadequacies in preventing cumulative effects and rule changes through various lives of TDC's resource management plans.

While acknowledging the sustainable land management and conservation efforts being undertaken in their conservancy by some landowners and landcare groups, DoC are concerned that other landowners may lack knowledge of their responsibilities under the RMA, or feel threatened by the Act. They may not appreciate the full range of benefits from conserving wetlands, and view them as land just going to waste. There is concern that widespread debate is fuelling an ongoing nervousness about RMA issues, rather than serving to seek and encourage sustainable land management solutions, for example, through good consultative processes. DoC supports the work currently underway by TDC in establishing a Tasman Biodiversity Group in the District, and is keen to participate. Skills seen as important for achieving a good working relationship included the ability to engage, listen and build up trust. Another important factor is ensuring that all key stakeholders are represented in the group.

DoC acknowledges recent TDC efforts in giving wetlands a higher profile. The joint production of the overview of freshwater wetlands in the Tasman District (Preece, 2000) by Fish and Game, DoC and TDC was a positive step in the right direction, but is only an overview. DoC feels that more effort is

needed to identify the location of, and find out more about all of the district's wetlands, especially the smaller ones. Monitoring is viewed as an issue – too often wetland drainage has been discovered by chance or when drainage is easily seen from the road – and there is concern that much drainage may be going on undetected.

The key issues for DoC are:

- inadequate inventory of the significance of remaining wetland areas
- preservation of lowland wetlands
- improved relationships with landowners

## 4.5 Nelson/Marlborough Fish and Game Council

Nelson/Marlborough Fish and Game Council (NMFGC) is concerned that, beyond the Preece inventory, there is little known about wetlands in the Tasman District. It doesn't provide detail to a sufficient scale regarding wetland location, nor does it address significance. NMFGC questions how a resource can be managed properly if its extent and values are not known, and commented that a number of small wetlands can play as important a role as one large wetland. For the NMFGC the next logical step following on from the Preece report would be to identify in greater detail what wetlands remain and their significance.

The NMFGC recognises the value of undertaking a proper consultation process, and believes the outcomes can be beneficial for all stakeholders, but believes past difficulties encountered in identifying the district's SNA are problematic for TDC and DoC, and may be a hindrance in moving forwards. The NMFGC is also concerned that some stakeholders have a poor recognition of the legal framework for wetlands management.

The NMFGC is concerned that the Council places more emphasis on its territorial responsibilities under the Local Government Act (for example, building roads) rather than on its resource management responsibilities. It is also concerned with TDC's rule permitting wetlands drainage and with TDC's policy regarding gravel extraction (NMFGC recently took an enforcement order application over TDC's gravel extraction works in the Wai-iti River in 2000).

The key issues for the NMFGC are:

- lack of knowledge of the region's wetlands
- barriers to moving forwards due to the past SNA identification process
- Council placing less emphasis on resource management responsibilities

## 5 DISCUSSION OF KEY ISSUES

### 5.1 Valuing wetlands in the Tasman District

Wetlands have a multitude of values: intrinsic, biodiversity, cultural, ecosystem service and recreational values, to name a few. Different wetlands are valued differently. For example, some types of wetlands may be better at purifying wastewater and hence may be useful to farmers with runoff management issues. Others may contain significant assemblages of indigenous flora and fauna and hence be of high conservation value. There is a range of appreciation of the values of wetlands within the Tasman community, which has a direct bearing on perceptions of their importance. This results in conflicting positions within the community. **Wetland values need to be identified, discussed explicitly and understood in order to move ahead. The values placed on wetlands, the significance of those values, and those values relative to the value placed on other land use options are at the heart of the issue.**

#### *Conservation values*

We have lost much of our wetland area, many remaining wetlands are modified and fragmented, and some wetland types are under-represented. One obligation under the Ramsar Convention is to include wetland conservation considerations within national land-use planning, and to promote as far as possible the wise use of wetlands. Supporting this obligation, the overarching purpose of the RMA is to promote the sustainable management of natural and physical resources, including wetlands, and the CA promotes the conservation of New Zealand's natural and historic resources.

The Controller and Auditor-General commented that the policies and legislative measures adopted in New Zealand to implement the Ramsar Convention do not appear to be successful in meeting the desired outcomes of the convention, and recommended the development of a national framework for planning and monitoring for wetland conservation and protection (OAG, 2001). **The absence of a robust national framework has not assisted Councils such as the Tasman District Council in carrying out their responsibilities.**

#### *Agricultural production*

Wetlands areas are often considered to hold more value if drained and converted to agriculturally productive land. Financial pressures placed on landowners to develop and intensify land use may encourage wetland drainage.

Representativeness of wetland type is an issue in the district: Tasman's protected wetlands are mostly in mountainous areas, while lowland wetlands are found mostly on private land, and for reasons discussed above are at greatest risk. Property owners suggest that regulation to protect wetlands is actually appropriation of property by legislation, unless some financial assistance is involved.



### *Ecosystem services*

Wetland ecological processes provide an array of ecosystem services, the benefits of which have indirect economic value. These include water storage and flood control, waste disposal and water purification, erosion control, water table maintenance and the retention, removal and transformation of nutrients. Landowners often may not recognise and value the ecosystem service benefits provided by wetlands, and these benefits often extend beyond the particular property boundaries.

## 5.2 Property Rights

A key tension underlying the challenge of sustainably managing wetlands in New Zealand is differing perspectives on what constitutes property rights. The majority of remaining lowland wetlands are on private property, yet the significant values attached to these wetlands result in the public taking an active interest in how these values are managed. Disagreement over how this private/public tension can be resolved is restricting our ability to move forward.

Property rights are a bundle of recognised rights that together represent an individual's right to possess, enjoy, use and dispose of certain physical resources, such as land or buildings. Property rights are really about relationships among people with respect to land and other resources. They specify who can use property and who cannot, who decides the uses of the property and who gets the benefits and pays the costs from land uses. (Greider and Garkovich, 2000).

Different perspectives on what constitutes property rights are often at the root of disagreements over the extent and what sorts of planning controls are acceptable. The argument for unfettered property rights tends to run along the lines that the individual property owner is best placed to know what to do with a property and, nuisance effects aside, should be allowed to proceed. The contrary argument is that protection of the public good/interest does not necessarily flow from an individual maximising benefits, and that some intervention by regulation is often needed.

In New Zealand, even the traditional common law doctrine that ownership of property carries with it absolute rights of use and enjoyment has *always* been subject to limitations (Williams, 1997). The greatest interest in land that can be obtained in New Zealand is an 'estate in fee simple', which provides a right to use the land subject to absolute ownership by the Crown. Parliament can enact laws that alter or remove property rights, provided that it has proceeded according to the appropriate process for enacting legislation.

The RMA provides the principal statutory context for this debate. Part II of the RMA imposes fundamental duties and responsibilities in respect of the use of land, air and water. The Environment Court has recently confirmed that the RMA may authorise the limitation of private property rights in the interest of public benefit provided certain preconditions exist<sup>12</sup>; that is, land use is permitted unless it contravenes a rule in a plan generally justified in

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<sup>12</sup> *Gargiulo v Christchurch City Council* (Unreported, Environment Court C137/00, 17 August 2000, Jackson J) paragraph[72].

terms of effects on the environment, or if there are existing use rights. The court has also stated that the RMA does not contain any object for the protection of private property rights and that a consent authority's decision should be made for the public law purpose of the Act – the promotion of sustainable management – rather than for the private law purposes of the enforcement of property rights.<sup>13</sup>

Land drainage is not a land use activity but is the diversion of water. Section 21 of the Water and Soil Conservation Act 1967 (WSCA) provided that all rights to use natural water were vested in the Crown. The WSCA has been repealed, however, the rights conferred by s21 of the WSCA are continued by s354 of the RMA. Therefore the right to drain land is vested in the Crown and is prohibited unless expressly authorised (see s14 of the RMA).

### 5.3 Environmental Planning and Management

A key part of this investigation is assessing the effectiveness of the environmental planning and management carried out by TDC in respect of the sustainable management of wetlands in the Tasman District (see section 1.4 Methodology). Table 3 examines the list of criteria developed to assist with the assessment and comments in summary form on the extent or otherwise to which the criteria have been met.

**Overall, a number of the key elements of effective environmental planning and management, which will promote the sustainable management of wetlands, are in place within the framework of the PTRMP. There are also positive trends in terms of advocacy, education and funding (see Chapter 3).** Therefore, this section is confined to discussing those areas that are considered to be gaps in the planning and management framework: the lack of information on wetlands, the proposed permitted activity rule and some process and administration issues.

#### *Lack of information*

The Ramsar Convention Bureau report concluded that 'while comprehensive understanding of the ecological constraints of a wetland system should be sought, activities affecting wetlands need to be governed by the precautionary principle when such knowledge is not available. In other words, if the impact of specific actions is not clearly understood, then these actions should be prohibited even if there is insufficient evidence to prove a direct link between the activities and resulting wetland degradation' (Davis, 1993). TDC has recognised this principle and encoded it in the Tasman Regional Policy Statement (Issue 13.6 and Policy 13.7).

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<sup>13</sup> *Saunders v Northland Regional Council* (Unreported, Environment Court A40/98, 27 April 1998, Sheppard J) paragraph [56].

**Table 3. Summary of assessment of environment planning and management by Tasman District Council**

<b>Criterion</b>	<b>Achievements</b>	<b>Gaps</b>
i. The Council has identified the range, quantity and significance of wetlands in the Tasman District.	An inventory (funded by DoC, Fish and Game and TDC), which has identified the range of wetlands in the district and wetland quantity up to a point, is available for TDC's use (see Preece, 2000).	TDC has not yet assessed wetland significance. Funding is being sought for the 2002/03 financial year for promoting the enhancement of natural areas in partnership with landowners, and if successful, will contribute to this goal.
ii. The Council has developed a system of plans (regulatory and non-regulatory), objectives, policies and methods to achieve the sustainable management of wetlands in the Tasman District.	During the development of the PTRMP, the Council has incorporated objectives and policies and methods consistent with achieving the sustainable management of wetlands in the district (see Appendix 5).	<p>The rule permitting wetlands drainage within the methods of implementation in the PTRMP appears inconsistent with the purpose of the RMA and such national policy as exists.</p> <p>The council has not developed any non-regulatory plan specific to wetlands management in the district.</p> <p>The council has not completed the process of identifying those wetlands also considered to be areas of significant indigenous vegetation pursuant to section 6(c) of the RMA.</p>
iii. The system of plans, policies and methods to achieve the sustainable management of wetlands in the Tasman District is consistent with national and international policies on wetland management.	In general, the system of proposed plans, policies and methods appear to be consistent with national and international policies on wetland management, taking into account the lack of a coherent wetlands national policy framework (OAG, 2001).	<p>The rule permitting wetlands drainage within the methods of implementation in the PTRMP appears inconsistent with achieving this goal.</p> <p>The council has not completed the process of identifying those wetlands also considered to be areas of significant indigenous vegetation pursuant to section 6(c) of the RMA.</p>
iv. The Council has established environmental objectives and outcomes and a monitoring and reporting system for wetlands that enables progress towards meeting the environmental objectives and outcomes to be assessed.	<p>TDC has established an environmental objective for wetlands within the PTRMP.</p> <p>With regards to environmental monitoring and reporting TDC has, in its methods of implementation section, committed itself to continuing the development and maintenance of the database that identifies wetland uses, values and significance, and to understanding wetlands values and significance (see ii).</p>	<p>TDC has not established specific outcomes with regards to wetlands in section 30.4: Environmental Results Anticipated.</p> <p>The council has set a performance monitoring indicator of changes to the quality and extent of wetlands, but this would require establishment of a baseline inventory for wetland quality and extent, which it does not have, in order to assess performance. However, a funding bid is proposed that will assist in providing this information (see i).</p> <p>With regards to enforcement monitoring and reporting, there are no policies specific to wetlands, but TDC has adopted a general policy for compliance and enforcement in its operative Tasman Regional Policy Statement, Policy 13.9, and has a general guideline for enforcement investigations. TDC is considered by some of those consulted with to have a poor history of enforcement with regards to wetlands drainage, but recent initiatives indicate that this may be improving. However, the PCE has not undertaken a</p>

		full analysis of the effectiveness of compliance and monitoring undertaken by TDC and will therefore not comment further.
v. The Council has consulted appropriately with stakeholders during the development of the system of plans, policies and methods to achieve the sustainable management of wetlands in the Tasman District.	Throughout the development of the PTRMP, TDC has met the requirements of the RMA in terms of consulting with stakeholders, noting the consultation at the draft stage on the proposed plan, changes made as a result of that consultation and the current extended period of consultation on the Variations as notified.	Some parts of the community have expressed concern at insufficient consultation in the early stages of policy development.
vi. The Council has complied with appropriate procedural requirements when developing the system of plans, policies and methods to achieve the sustainable management of wetlands in the Tasman District.	In general, TDC has complied with the all current good practice procedural requirements under the RMA as evidenced by the background documents, the iterative consultation and reports to Council relating to the Variations.	It appears that the proposed permitted activity rule was amended by Council without a written section 32 analysis explicitly considering alternatives and identifying the costs and benefits of the new conditions in the rule.

Whilst Preece's overview of wetlands in the Tasman District contains valuable information, it lacks sufficient detail to provide a baseline for future monitoring. Information on the location, extent and qualities of individual wetlands is vital for the sustainable management of wetlands.

Permitting wetland drainage via a rule based on land use zone and wetland area, without detailed assessment of the extent or significance of wetlands in the district, does little to promote sustainable management of a resource, particularly given the large area of wetland that can be drained under the rule. A more precautionary approach to wetland drainage is warranted, one that considers the environmental impacts on a case-by-case basis. When the process of assessing the extent and significance of wetlands in the district is completed, a more informed decision may be made on whether or not to permit wetland drainage or modification.

The Commissioner acknowledges that this consultative process of identifying significant natural areas will take time, and that TDC faces many challenges, including building trust within the community, securing adequate funding for the exercise, and deciding on how best to assess significance.

### *Proposed Permitted Activity Rule*

While the policies, objectives and non-regulatory methods (for example, education, advocacy and financial incentives) proposed in the PTRMP are consistent with the goal of achieving the sustainable management of wetlands in the Tasman District, the rule permitting wetland drainage is inconsistent with this outcome. Section 68(1) of the RMA provides that a regional council may, for the purposes of carrying out its functions under the Act and achieving the objectives and policies of the plan, include in its regional plan rules which prohibit, regulate, or allow other activities. Case law indicates that a Council is not permitted to include in its plan rules inconsistent with the objectives and policies of the plan, and that rules are to be interpreted accordingly.<sup>14</sup>

Given the lack of information available about the extent and significance of wetlands in the Tasman District, the proposed rule permitting wetland drainage is inconsistent with an objective of the PTRMP, that of 'the maintenance, and enhancement where possible, of the quality and extent of wetlands in the District'. It will allow drainage in a situation where there is no clear understanding of the significance of what may be lost, with the potential for significant adverse effects on the environment. The rule is also inconsistent with the policies relating to wetlands drainage in the PTRMP (see Appendix 5).

In addition, the proposed permitted activity rule for wetland drainage is inconsistent with the proposed rule permitting destruction or removal of indigenous vegetation from a naturally occurring wetland, only when the wetland area is less than 500 square metres. This rule, also based on area, gives little consideration to wetland significance.

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<sup>14</sup> *Beach Road Preservation Society Inc v Whangarei District Council* [2001] NZRMA 176 (HC)

It is acknowledged that the proposed permitted activity rule may be challenged through submissions and further submissions on Variation 15 and modified as a result of decisions. Decisions by TDC on the submissions and further submissions may also be referred to the Environment Court. The final outcome of the process in respect of this rule is, therefore, unclear.

By way of comparison with other approaches, six regional councils have classified diversion of water or wetland modification as a discretionary or non-complying activity. Of the eight Councils that have a permitted activity rule, six have identified criteria or conditions that need to be met, which take into account either adverse effects on wetlands and/or exclude wetlands included in significant natural area lists. Activities affecting wetlands included in a significant natural area list usually require at least discretionary activity resource consent. No other regional council has based a rule on land use zones, although some rules include an area criterion. The approach to rules is therefore fairly variable. See Appendix 3 for a summary of regulatory and non-regulatory approaches to wetlands management.

### *Process and administration issues*

A number of process and administration issues arose during the course of the investigation. The most critical process issue arose from actions taken during the development of Variation 15. It appears that the proposed permitted activity rule for wetland drainage was amended by Council without a publicly available written section 32 (s32) analysis explicitly considering alternatives and identifying the costs and benefits of the new conditions in the rule. A report to the Environment and Planning Committee dated 11 October 2001 notes that *‘there is no indication elsewhere or in the explanation for the rule why the threshold for wetland drainage varies according to zone’*. It goes on to advise that *‘Council should be aware that the proposed amendments will be subject to strong opposition by some submitters and that there is no section 32 analysis to support the Council’s decision’*.<sup>15</sup> This would seem to be a failure on the part of the Council to comply with its duties under section 32 of the RMA. Councillors are ultimately responsible for ensuring that an appropriate s32 record is available when proposed plan provisions are notified (MfE, 2000).

TDC’s response to the draft report on this issue was *‘this is so but in fact the Council had a robust political debate on 11 October 01 and compared its perception of the costs of consents for wetland drainage (under the 500m2 version of the rule) to its perception of the values likely to be lost. It was “satisfied” that it had adopted the most efficient and effective means (in terms of Section 32). Its only procedural failure was in fact in not producing a documented analysis of its verbal debate’*. From the Commissioner’s point of view, the key issue here is that the content of the verbal debate is only available to those few potential submitters who happened to be at the meeting. Other potential submitters will not have the opportunity to consider the reasons for the Council’s decision prior to lodging a submission. In addition, it is difficult to assess whether or not the ‘robust political debate’ would meet criteria for a s32 analysis.

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<sup>15</sup> Supplementary Report tabled at the meeting Proposed Variation 15 *Part V Water (Domestic Water Supplies and Wetlands)* EP01/10/11

A good s32 analysis produces better environmental outcomes and better plan provisions. A recent report by MfE, “*What are the options? A Guide to using section 32 of the Resource Management Act*” (2000) summarises the benefits of good s32 analysis as follows:

- Better environmental outcomes
  - Measures are targeted at achieving the purpose of the RMA
  - Plan provisions achieve desired environmental outcomes in effective and efficient ways
  - The council’s decision-making is better informed
  - The council can have confidence that its proposed plan provisions are soundly based
- Costs to the community are kept to a minimum
  - The costs borne by affected parties are the least practicable costs consistent with achieving the purpose of the RMA
  - The council’s own transaction costs can be factored into decision-making
- More robust provisions
  - The needs of stakeholders are better met
  - The acceptability of the plan provisions is improved, and the number of submissions opposing plan provisions is reduced
  - The number of references to the Environment Court is likely to be reduced
  - The council has a sound basis for its case if/when plan provisions are referred to the Environment Court
- Provides a basis for future monitoring
  - The assessment of the effectiveness of plan provisions provides the information required to set the anticipated environmental results
- Reporting assists plan implementation and review
  - Councils (and other parties) have easy and assured access in the future to authoritative information on why particular provisions are in the plan and why other possible provisions are not
  - A report assists council decision-makers to exercise their discretion in an appropriate way, and assists councillors and staff when they are required to justify plan provisions to plan users
  - A report assists the council when it is considering plan variations or plan reviews (MfE, 2000:6)

Recent case law<sup>16</sup> indicates that the only way to challenge a s32 report is by way of submission to a local authority, in this case a submission on Variation 15. This provides an opportunity for the local authority to reconsider its s32 process, before deciding on whether or not to modify the plan. Questions about the adequacy of a s32 analysis can be raised before the Environment Court should an appeal be lodged against a local authority’s decisions on submissions. In looking at the merits of plan provisions, the Environment Court can consider and be influenced by any absence of a proper s32 analysis but the RMA does not empower the Environment Court to direct a local authority to start its plan process again either in whole or in part.

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<sup>16</sup> *Kirkland v Dunedin City Council*, CA 121/01

It is noted that the Council has not delegated the hearing of submissions on the Variations to a subcommittee of any kind, instead the whole Council will conduct the hearings. This is consistent with the fact that, under the RMA, local authorities may not delegate the approval of a plan to any other party. However, it is possible to delegate to a committee or to independent commissioners, the responsibility to conduct hearings and make recommendations to Council for its consideration.

Given the controversy over some of the provisions of Variation 15, it may be appropriate for the Council to adopt the latter approach, that is, delegation to a subcommittee to ensure that other parties such as submitters to the proceedings are satisfied they are getting a fair hearing. Delegation to independent commissioners, or to a committee composed of councillors and specialists, may also be helpful where there are complex technical issues to consider such as the significance of wetlands and how that may be established. It is considered important that the policy development process is separated as far as is practical from decision-making within the judicial process.

A final issue is that a number of the groups consulted perceive that the Council gives greater priority to carrying out functions under the Local Government Act 1974 (for example, development of infrastructure such as roading) in comparison with some of its responsibilities under the RMA. This issue was not specifically addressed as part of this investigation and the Commissioner will therefore not be commenting further.

### *Contraventions of the Transitional Plan*

The three recent episodes of non-compliance relating to wetlands have been controversial in the Tasman District (see section 3.5), and there is concern about TDC issuing retrospective consents for wetlands drainage. There was the perception, raised a number of times throughout consultation, that it is ‘easier to ask for forgiveness than it is to ask for permission’ (i.e. a resource consent). This view, enhanced by the issuing of retrospective resource consents, has the potential to undermine the whole RMA process and lead to ‘death by a thousand cuts’ for Tasman’s wetlands.

## 5.4 Relationships in Tasman District

The turbulent history of SNA identification within the district has created a lack of trust between parties, which may be a barrier to moving ahead in identifying significant wetlands in the district. Compliance issues have also affected relationships (see box 2). Some sections of the community expressed concern that they were not being heard by Council, and did not have access to representation at the Council table.

This lack of trust appears to have led to a situation with some property owners that might be called ‘stalemate’. This situation has to be turned around. In the interests of promoting sustainable management of wetlands, property owners have to feel confident to come to Council for advice and a resource consent where required.



With respect to iwi groups, the key issue seems to be more about the iwi groups wanting to establish a well-developed, robust working relationship with TDC that is ongoing in its own right as a context for consultation on a specific resource management issue.

However, a number of the groups consulted agreed on the need for a proactive consultative approach in working successfully towards the sustainable management of wetlands, and in dealing with other resource management issues, such as non-compliance.

### **Box 2. Wetland drainage and compliance issues**

The Commissioner is concerned at the outcomes that have occurred in the past when wetlands have been drained without resource consent and compliance action has been taken by TDC. On more than one occasion, the process in dealing with non-compliance issues has resulted in soured relationships and left stakeholders feeling great hurt, and in some instances deep personal stress. **In these situations, there are no winners. The environment, the community, the farm business, the property owner, and the agencies involved all suffer in various ways.** This is a poor foundation on which to move forwards. There needs to be an improvement in the management of non-compliance situations in the future, where stakeholders contribute positively to building relationships and work towards understanding the range of values around wetlands held within the community.

## 6 A WAY FORWARD

*One man's unproductive, soggy, boggy patch in the back paddock is somebody else's precious and unique ecological heritage. And therein can lie a problem.*<sup>17</sup>

Most of New Zealand's wetlands have been drained. Of those remaining, many are small, and their natural character and habitat quality have been lost or degraded by partial drainage, pollution, animal grazing and introduced plants. Lowland wetlands are under-represented and most at risk. Drainage and modification of wetlands continues, New Zealand's wetland area is still in decline, and the valuable services that wetlands offer (see section 2.1) are being lost.

### 6.1 Sustainable management of wetlands

Both the international and national community have identified the protection and management of wetlands as critical. This is expressed through the Ramsar Convention, and within New Zealand through the RMA and CA. New Zealand is committed to including wetland conservation considerations within national land-use planning, and to promote as far as possible the wise use of wetlands. This commitment may be hindered by the absence of a national framework for planning and monitoring for wetland conservation and protection, but the commitment is not optional. All New Zealanders must be guided by it.

Tasman District, like much of New Zealand, relies on a biologically-based economy. One outcome of the growing and expanding economy has been the drainage of wetlands for pasture conversion. However, with property ownership comes a responsibility for landowners to care for those resources in a sustainable manner, so that the environment as a whole can continue to provide for future generations. Sustainable land management requires approaches that recognise the complexity of biophysical systems and processes (for example, carbon and nitrogen cycling, soil formation and nutrient cycling), encompass biodiversity, and maintain ecosystem services.

It is difficult to assign a monetary value to the benefits gained, by landowners and the wider community, from the ecosystem services provided by wetlands (for example, flood control, water purification, and erosion control). With these benefits unvalued in a business sense, and with landowners under financial pressure to develop and intensify land use, wetland drainage becomes an attractive option.

Off-farm, there is an increasing array of initiatives and market pressures working to retain wetlands on private property. Recent Government funding aimed at reducing biodiversity losses should provide financial assistance to landowners to protect their wetlands. Also, given the increasingly environmentally conscious global markets, remaining lowland wetlands could be more valuable to food and fibre farming businesses as wetlands, as evidence of environmental stewardship, rather than additional areas of pasture. It seems likely that future moves by landowners towards more

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<sup>17</sup> The Dominion, 17/1/2002, *Battle of the Wetlands*, pg 9

sustainable land management practices in New Zealand will be driven by the requirement to meet environmental standards imposed by customers (both onshore and offshore).

Some farmers in New Zealand are opting to create or reinstate wetlands on their property recognising that wetlands are an asset, both in a physical/ecological context and as an integral part of ‘paddock to plate’ environmental (and thus market) integrity. Landowners may also undertake appropriate modification of their wetland (in consultation with their regional or unitary council), thereby increasing ecosystem service gains to their farm business whilst still retaining or enhancing wetland biodiversity. A number of current initiatives led by TDC (see section 3.6) will provide important assistance to property owners for managing wetlands sustainably. These approaches to sustainable land use incorporating wetlands provide a positive way into the future.

## 6.2 Values and relationship building

The variable understanding and appreciation of wetlands values within the community is at the crux of the issue (see section 5.1). These values need to be identified, discussed explicitly and understood in order to move forwards.

The distrust and bad feeling between stakeholders, generated by the SNA identification process and some past instances of non-compliance involving wetlands drainage, also needs to be addressed, because it creates a barrier to moving forwards. More opportunity for debating these issues is needed to reach a greater degree of consensus. It is important that planning processes recognise the value of property rights and seek to integrate the rights of private landowners with the interests of the wider community. TDC, in a supportive role, needs to provide the forum and facilitate a process in which the community is able to fully explore these issues.

The process should include all stakeholders and cover issues such as:

- exploring the full range of wetlands values held within the community
- exploring the full range of benefits and costs of wetlands
- discussing significance with regards to wetlands
- developing an understanding of the international and national legal framework
- developing a wetlands management framework, including monitoring and compliance processes that recognise the existing framework but builds on it where necessary
- contributing towards establishing a wetlands monitoring programme
- developing working partnerships
- drawing on ideas and knowledge that stakeholders bring to the group

Moving to the wider contexts for wetlands management, TDC needs to develop its working relationships with local iwi. TDC needs to improve its processes for consultation and for access by iwi to decision-making and representation at the Council table: *‘Better and more effective environmental outcomes are more likely to be achieved, more efficiently, when there are better processes in place between tangata whenua [and] councils’* (PCE, 1998: 114).

TDC also needs to increase its understanding and recognition of:

- Maori culture, tikanga and kaitiakitanga
- te Tiriti o Waitangi (the Treaty of Waitangi), the principles of the Treaty and their implications for environmental management
- particular matters of significance and issues of concern raised by local iwi

TDC, as indicated in its response to the draft of this report, clearly holds a different view on the issue of its working relationship with iwi compared to that expressed by the iwi groups consulted. To quote from the response to the draft report '*Council staff have sought iwi comment on issues and options at the earliest consultation phase for the water management framework for the Plan, in 2000*'. The response states '*We have met with iwi on a number of occasions in 2001 including seeking feedback on the policy paper, and have paid for consultant planning advice on behalf of iwi to reflect a Maori dimension to water management in the Plan*'. Initiatives in terms of working with iwi taken by TDC include '*the content of Part V itself in relation to the Maori dimension to water resources management, recognition of the need for the Plan to contain a more comprehensive set of provisions concerning Maori kaupapa and tikanga, support for cultural heritage information to be upgraded, particularly in relation to the high growth coastal Tasman area, the management of Te Waikoropupu (freshwater springs in Golden Bay), and acceptance of the need for iwi monitoring of development*'.

The disjunction between the views expressed (see also Chapter 4 and section 5.4) points to the need for more work on building the relationship. Iwi spoken to during the study primarily wanted to talk about the nature of the relationship with the Council, that is, was there a foundation on which dialogue about specific issues could be advanced. In sharp contrast, the Council's written response is primarily about the process of consultation on water management matters, that is, what they have done, rather than the nature of the relationship. Improving the Council's understanding and recognition of these dimensions, and of their obligations to tangata whenua, will be essential for the Council's fulfilment of its statutory responsibilities under sections 6(e), 7(a) and 8 of the RMA. Improved understanding, and effective processes for consultation and tangata whenua participation, will be central to the Council's duties in relation to the principles of the Treaty – for example, '*the requirement to act in good faith, or the duty to have adequate information on which to base decision-making*' (PCE, 1998: 61). As kaitiaki, with responsibilities to past, present and future generations, and to te taiao me nga taonga tuku iho, tangata whenua have much to contribute to the sustainable management of the environment and natural resources.

### 6.3 Wetlands policy in the Tasman District

A policy package aimed at managing a resource sustainably needs to incorporate a number of characteristics:

- a knowledge of the scope and significance of the resource
- community involvement/participation
- recognition of the broader strategic context of the importance of sustainable land use for New Zealand's future
- recognition of the statutory framework

- appropriate objectives and outcomes
- barriers and opportunities
- policies and methods of implementation
- funding and resources for implementation
- on-going monitoring and effectiveness evaluation

Given the national importance placed on wetland management and protection, a multi layered partnership approach is appropriate to include national policy direction and assistance with implementation. This assistance may take a variety of forms – research and information, funding, and purchase of wetlands for the public estate. To date, little national assistance has been available to local government. The picture is changing with recent initiatives such as Action Bio-community (see section 3.6) and work on the development of an NPS on indigenous biodiversity.

It is acknowledged that TDC already has in place a number of the elements of a policy package incorporating the characteristics outlined above. However, there are some critical gaps that are affecting the overall capacity of the policy package to deliver sustainable management of wetlands. The key gaps are considered to be:

- insufficient knowledge about the scope and significance of the wetland resource and the lack of a baseline inventory needed to measure changes to the quality and extent of wetlands
- a key part of the methods of implementation, the proposed permitted activity rule

### *Research*

Research into the significance of wetlands in Tasman is crucial. Knowledge is fundamental to improving the policy package and outcomes on the ground. Knowledge will enable regulation to be targeted where it is most effective and most needed. Conversely it should establish clearly the circumstances in which regulation is not required and drainage can be permitted. It will also provide property owners with information useful for management purposes.

TDC faces an enormous challenge in accurately identifying the extent and significance of the district's wetlands and establishing a baseline inventory. The history of SNA identification in the district and some past instances of non-compliance around wetlands drainage seem to have negatively affected all stakeholders. This has resulted in a great deal of hurt and mistrust between parties, with the outcomes holding few, if any, winners.

*An Overview of the Freshwater Wetlands of Tasman District* (Preece, 2000) provides a good basis for a comprehensive baseline inventory for wetlands. Its recommendations address the district's database, inventory and research needs. It is acknowledged that TDC has made, and will have to make more, funding commitments for this work.

### *The proposed permitted activity rule*

The proposed permitted activity rule for the diversion and discharge of water from wetlands will not contribute to the sustainable management of wetlands

in the Tasman District. A rule permitting wetland drainage based only on wetland area and district zone takes little account of significance.

Current information indicates that 51% of the wetlands recently identified in the Tasman district are less than 0.5 hectare (Preece, 2000) and could be drained under the proposed permitted activity rule. When the rule was amended, further analysis of this information had not been completed. Therefore it was not known how many of the wetlands in this category were protected and how many were potentially at risk from drainage. Any decision to permit wetland drainage and modification under the RMA should be based on sound knowledge of the extent and significance of a district's wetlands. The preservation of the natural character of wetlands and their protection from inappropriate subdivision, use and development is considered to be a matter of national importance.

## 6.4 Recommendations

### *To the Tasman District Council*

1. Amend Rule 31.4.1 (Diversion and discharge of water from wetlands) in such a way that it provides for a precautionary approach to the diversion and discharge of water from naturally occurring wetlands until such time as information on the significance of naturally occurring wetlands in the Tasman District is available.

*Explanatory note: The capacity to amend the rule now that it has been notified is dependent on the content and scope of submissions received, unless TDC makes a decision to withdraw the provision and start again. However, given the international and national framework for wetlands management and protection, and given the lack of information available on the extent and significance of Tasman's wetlands, a precautionary approach (i.e. discretionary or restricted discretionary activity status requiring resource consent) is more consistent with the sustainable management of wetlands than the proposed permitted activity rule. A review of other regional approaches suggests a permitted activity rule may be an option when research has been carried out that identifies the value and significance of wetlands; and those wetlands identified as regionally significant are excluded from the permitted activity rule (for example, Taranaki Regional Council).*

*This approach will be difficult for some stakeholders to accept. However, once information on significance is available, it may be appropriate to permit drainage or modification of some naturally occurring wetlands in some circumstances. In addition, it is recognised that requiring a resource consent in these circumstances is based on a component of public good and that the costs of an application should not fall to the property owner alone. The council may waive or reduce fees for resource consents.*

2. Identify the extent and significance of the district's wetlands, produce a comprehensive baseline inventory and establish a wetlands monitoring programme.

*Explanatory note: Once information has been gathered about the extent and significance of the district's wetlands and a comprehensive baseline inventory developed, then informed policy decisions can be made about whether, and in what circumstances, wetlands drainage and modification can be permitted under the RMA. The baseline inventory will also assist TDC to assess their wetlands performance monitoring indicator, that of changes to wetland quality and extent. This recommendation is aligned with recommendations that emerged from the Overview of the Freshwater Wetlands of Tasman District (Preece, 2000). Development of a baseline inventory and monitoring programme should be undertaken in conjunction with all interested stakeholders.*

3. Take actions aimed at building relationships with stakeholders. In particular consider:
  - a wetlands working group
  - mechanisms for improving relationships with iwi

*Explanatory note: Establishing a wetlands working group is a precursor to developing community understanding of the range of values held about wetlands within the district and it will help the community to move towards consensus about sustainable management of wetlands. From the Commissioner's point of view there is clearly potential to link this recommendation to TDC's proposal to set up a Tasman Biodiversity Group (see section 3.6).*

*A number of options are available to TDC that could be used to improve the working relationship with iwi (see PCE, 1998). An example is employing an iwi liaison person at TDC to assist with TDC's fulfilment of its statutory responsibilities under sections 6(e), 7(a) and 8 of the RMA. This suggestion is aimed at addressing the broader issues of developing a constructive working relationship with iwi, which can then form a basis for consulting on specific resource issues such as wetland management.*

### *To the Ministers for the Environment and Conservation*

4. Define national wetland priorities, targets, guidelines, standards, incentives, monitoring and agency roles that will assist regional and local authorities to implement different wetland conservation and protection priorities within a clearly defined framework.

*Explanatory note: The information gathered for this report has identified a spectrum of approaches used by regional authorities to the sustainable management of wetlands. It has also highlighted some of the challenges faced by a local authority. This suggests a place for national direction and support given that wetland management and protection is considered to be a matter of national importance (see Appendix 3). The Controller and Auditor-General, in his recent report on Ramsar (OAG, 2001), identified a similar requirement. It may be appropriate for the development of a national framework to sit within the NPS on biodiversity. It may also be appropriate to produce specific guidance for wetlands management as a companion piece of work.*

## APPENDIX 1

### Parties consulted with during the course of the investigation

<b>Party</b>	<b>Date consulted</b>
Tasman District Council	11-12 February 2002
Nelson/Marlborough Fish and Game Council	11 February 2002
Department of Conservation (Nelson Marlborough Conservancy)	11 February 2002
Representatives of local iwi	12 February 2002
Concerned Golden Bay residents	13 February 2002
Federated Farmers group	13 February 2002



## APPENDIX 2

### Local authority responsibilities under the RMA

As a unitary authority Tasman District Council has regional council and territorial authority responsibilities.

Regional council responsibilities under the RMA include managing water and the beds of water bodies, controlling the discharge of contaminants, and controlling the use of land for the purpose of soil conservation and the maintenance of water quality and quantity in the region. Regional Councils share responsibility for controlling the effects of activities in the coastal marine areas with the Minister for Conservation. Territorial authority responsibilities under the RMA include controlling any effects of the use, development or protection of land, including subdivision, and controlling the effects of activities on the surface of lakes and rivers.

Regional council functions under the RMA include establishing, implementing and reviewing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region. Regional councils are required under the RMA to prepare a Regional Policy Statement, which provides an overview of the resource management issues of the region. In addition to this, a regional council may have one or more regional plans, prepared in respect of any aspect of any function for which the regional council is responsible. It must state objectives, policies and methods of implementation (including rules) relating to the resource management issue covered by that plan.

A regional council can make alterations to a proposed regional policy statement or plan. These changes are called variations, and are publicly notified so that everyone in the community has the opportunity to have their say, by making a submission.

## APPENDIX 3

### Other regional council approaches to wetland management

Note: This appendix is a summary, and is not intended to be taken as a comprehensive analysis.

Council	Relevant Plan and Status	Regulatory Measures	Non-Regulatory Measures
Auckland Regional Council	Proposed Auckland Regional Plan: Air, Land and Water	<p>Discretionary activity to take and use water from a wetland in a listed Wetland Management Area.</p> <p>Non-complying activity to drain a wetland, or extend the drained area of a wetland, if the wetland is within the bed of any lake, river or stream. If wetland is separate from the bed of a lake, river or stream, permitted activity. Council may consider reviewing this to clarify the status of non-listed wetlands – difficulty in defining a wetland.</p>	<ul style="list-style-type: none"> <li>• Environmental Initiatives fund – funding for environmental projects. These have included wetland protection and enhancement.</li> <li>• Facilitation and encouragement of “care groups”, several of which are undertaking wetland restoration and protection projects.</li> <li>• Advice to landowners on restoration and protection of wetlands.</li> <li>• Educational brochure on wetlands.</li> <li>• Consultation with landowners on results of ecological surveys. In some areas protection is encouraged through voluntary mechanisms.</li> <li>• Regional parks, many of which contain significant wetland areas, as models of ecological restoration methods.</li> <li>• Involvement in World Wetland Day celebrations.</li> </ul>
Bay of Plenty Regional Council	Proposed Regional Water and Land Plan	<p>(a) Any modification of a wetland is a discretionary activity where the activity causes any of the following adverse effects on the wetland:</p> <p>(b) Degradation of water quality, including through the discharge of sediment or other contaminants.</p> <p>(c) Alteration to natural hydrological process within the wetland, including changes to water flow and quantity, and drainage.</p> <p>(d) Erosion of land and soil resources where the activity causes or induces erosion that is persistent or required active erosion control measures. Includes land instability, scour, severe plugging, and damage to margins, backs, or land within the wetland.</p> <p>(e) Where the wetland is in the bed of a stream, river, or lake, the disturbance, removal, damage, or destruction of any plant</p>	<ul style="list-style-type: none"> <li>• Environmental enhancement fund – funding has been allocated to several projects involving wetlands.</li> <li>• Environmental programmes (including farm plans).</li> <li>• Financial assistance for fencing, planting and pest control (level of assistance linked to assessment of regional/environmental benefit).</li> <li>• Planning and technical advice on wetland management and rehabilitation methods (including engineering advice on water level controls and related structures).</li> <li>• Provision of specialist scientific assessment and advice.</li> <li>• Provision of general advice on fencing (type and location), tracking, stream crossing structures, alternative water supplies and wetland maintenance.</li> <li>• Both organising and participating in field days relating to</li> </ul>

		or part of any plant or the habitats of any plants or animals in the wetland.	<p>wetland rehabilitation and management.</p> <ul style="list-style-type: none"> <li>• Working with other agencies (DoC and Fish and Game).</li> <li>• Information provision through fact sheets and the internet web site.</li> <li>• Provision of education programmes and materials plus assistance with schools management and educational programmes.</li> <li>• Direct land holder contacts.</li> </ul>
Environment Canterbury	Draft Canterbury Natural Resources Regional Plan Chapter 9: Wetlands (note: draft plan, not yet proposed)	<p>Draining a separate wetland area, provided it does not reduce that area by more than 0.5 ha, is a permitted activity, provided the following conditions are met:</p> <p>(a) There shall be no significant adverse effects on aquatic life or in-stream habitats as a result of draining a wetland in accordance with this rule.</p> <p>Note: It will need to be verified by a suitably qualified person that there will be no significant adverse effects on aquatic life or in-stream habitats.</p> <p>(b) Irrespective of whether the wetland area is reduced in a single step or in stages, the total reduction in any one wetland area permitted by this rule is 0.5ha.</p> <p>(c) The degree of stream bed disturbance associated with this activity is to be kept to a practical minimum.</p> <p>(d) Any stream bed alterations associated with this activity are to be carried out using sound river engineering principles to minimise the risk of bank erosion or the release of sediment.</p> <p>(e) Before commencing any work under this rule written notice is to be sent to Environment Canterbury giving details of the site and a sketch plan of what is intended. Where the wetland straddles one or more property boundaries all the affected landholders must be consulted, agree, and sign the written notice.</p> <p>otherwise restricted discretionary activity to take, use, dam or divert water within a wetland.</p> <p>Environment Canterbury's discretion to grant or decline consent and in setting any conditions is restricted to:</p> <p>(a) Effects on water levels in the subject wetland itself or any other materially affected water body.</p>	<ul style="list-style-type: none"> <li>• Environmental enhancement fund – provides funding for selected projects which protect, enhance or restore indigenous biodiversity, including wetlands.</li> <li>• Providing assistance with a project to enhance a 32 ha wetland near Timaru, including financial contributions.</li> <li>• Provision of technical advice on wetland management.</li> <li>• Plan to implement a Wetland Information/Awareness Programme for Canterbury, to provide information to landowners and other interested parties on managing and safeguarding wetlands.</li> <li>• There is a provision in the Draft Plan to waive consent charges for applications to enhance a wetland, and to provide rates relief for approved wetland sites.</li> </ul>

		<p>(b) Effects on the natural character of the wetland or its surroundings.</p> <p>(c) The ability of any increased area of wetland elsewhere to compensate for any area of wetland lost from the subject area.</p> <p>(d) Effects on the flora and fauna (and in particular significant indigenous flora and fauna) of the subject wetland and any other materially affected water body.</p> <p>(e) Effects, including any cumulative effects, on seed dispersal, habitat requirements, migratory bird movement and the connectivity of wetland sequences generally.</p> <p>(f) Any difference in the extent and degree of pest problems before and after the proposal is carried out.</p> <p>Transitional plan has no specific reference to wetland drainage.</p>	
Environment Waikato	Proposed Waikato Regional Plan (as amended by decisions Oct 2001)	<p>Drainage of wetlands is a discretionary activity within a wetland that is habitat for indigenous vegetation or fauna communities.</p> <p>Creating or deepening a drain is a discretionary activity if it occurs in an area within 200m of listed wetlands (subject to confirmation with Environment Court).</p>	<ul style="list-style-type: none"> <li>• Council have signed the Waipa Peat Lakes and Wetlands Accord, which aims to co-ordinate the restoration and enhancement of the area's lakes and wetlands.</li> <li>• Supporting "lake care" groups by assisting with fencing, weed control, and planting.</li> </ul>
Gisborne District Council (unitary)	Proposed Combined Regional Land and District Plan. Chapters 4, 6 & 7 (Natural Heritage, Vegetation clearance and land discharge and River and Lake beds).	Drainage or infilling or vegetation clearance within any wetland > 200m <sup>2</sup> is a discretionary activity, otherwise permitted. If two or more wetlands lie within a 10 m radius, their areas are summed for the purposes of this rule.	<ul style="list-style-type: none"> <li>• Proposed Natural Heritage fund – could be used to fund wetland protection.</li> <li>• Areas under a QE II covenant are not rated.</li> </ul>
Hawke's Bay Regional Council	Proposed Regional Resource Management Plan (as amended by decisions June 2001)	<p>Minor diversion of water is a permitted activity, provided that:</p> <p>a. Either:</p> <p>(i) The catchment area above the diversion shall not exceed 50 hectares; or</p> <p>(ii) The diversion shall remain within the bed of the affected water body; or</p> <p>(iii) The diversion shall divert no more than 10% of the flow of the affected water body, and the diverted water shall be returned to the affected water body no more than 100 m downstream of the point at which the water is diverted;</p> <p>b. The diversion shall have no more than minor adverse effects on nationally or regionally rare aquatic life or habitat, or</p>	Financial support for the preservation of areas of significant vegetation or wetlands - funding allocated by annual plan.

		<p>threatened indigenous flora and fauna (these are listed in the plan);</p> <p>c. The diversion shall not be from one catchment to another;</p> <p>d. The diversion shall not cause any scouring or erosion of any land or any water course beyond the point of discharge;</p> <p>e. The diversion shall not adversely affect any lawfully established take, which existed at the time that the diversion commenced;</p> <p>f. The diversion shall not prevent the passage of fish within the water body;</p> <p>g. The diversion shall not cause or contribute to the flooding of any property, unless written approval is obtained from the affected property owner.</p> <p>otherwise discretionary activity.</p>	
horizons.mw	Proposed Land and Water Regional Plan	Diversion of water from a wetland is a non-complying activity if from a listed wetland; otherwise discretionary.	<ul style="list-style-type: none"> <li>• Environmental grant scheme for proposals that meet set criteria.</li> <li>• Lake Horowhenua and Hokio Stream Management Strategy.</li> <li>• Currently preparing a wetland inventory for the region.</li> </ul>
Malborough District Council (unitary)	Proposed Marlborough Sounds Resource Management Plan	<p>Drainage of any wetland listed as a significant ecological area is a non-complying activity. Drainage of a wetland that is not listed, is a discretionary activity if the wetland is over 0.4 ha, and is a permitted activity if the wetland is under 0.4 ha.</p> <p>The following assessment criteria are applied for assessing applications to drain wetlands over 0.4 ha: Whether the application adequately avoids, remedies or mitigates adverse effects on indigenous vegetation and habitats of indigenous fauna.</p> <p>In assessing consent applications for the drainage of any wetland, Council will consider the significance of the vegetation affected (including the presence of rare or endangered plant or animal species) and the impact of the proposal on ecological values of the area. Council will also take into account the extent of the reduction of the indigenous vegetation type in the District, should the application proceed, and the impact on the sustainability of that indigenous vegetation type.</p>	Management plan being developed with Iwi for a wetland area.
Nelson City Council (unitary)	Currently operating under Transitional Regional Plan (note - the same transitional plan as TDC). Draft plan to be released later in	The transitional plan authorises the taking and diversion of stormwater and land-drainage water (section 10), subject to a set of conditions including:	Freshwater Plan, which is currently under development, is likely to include policies for non-regulatory methods of managing wetlands.

	year.	10.6 That this authorisation shall not apply to the drainage of naturally occurring bodies of standing water, including swamps, bogs, marshes, ponds, or lakes.	
Northland Regional Council	Revised Proposed Regional Water and Soil Plan for Northland (Variation 2: 27 October 2001)	<p>It is a non complying activity to take, use, dam and divert water from within 50m of a significant indigenous wetland – the significance is assessed on a case-by-case basis according to whether the site meets any one of nine specified criteria (Appendix 14).</p> <p>It is a discretionary activity to take or use surface water if within 50m of any indigenous wetland, or if it causes any change to the seasonal or annual range in water level of any indigenous wetland that may adversely affect the wetland’s natural ecosystem.</p> <p>Drainage of significant indigenous wetlands is a prohibited activity.</p> <p>Any new land drainage which will have an adverse effect on an adjacent indigenous wetland requires a resource consent.</p>	<ul style="list-style-type: none"> <li>• NRC has an environmental fund that contributes in part to wetland management</li> <li>• NRC is part of a Regional Biodiversity Enhancement Forum that in part encompasses wetlands management</li> <li>• NRC have undertaken joint education initiatives with DoC and Fish and Game, displaying information at field days etc. on the value of wetlands</li> </ul>
Otago Regional Council	Proposed Regional Plan: Water (7 July, 2000)	<p>Diversion of water for purposes of land drainage is a permitted activity, provided that water is not taken from a listed significant wetland; otherwise discretionary.</p> <p>Damming or diversion of water is a permitted activity, provided there are no adverse effects on listed significant wetlands or wetlands higher than 800m altitude; otherwise discretionary activity.</p> <p>The list of 80 significant wetlands was assembled through a consultative process. As not all areas were thoroughly assessed, a second list is being prepared – the consent process will be used to determine if these areas have significant values, if an application is made to drain the area.</p>	Wetland enhancement programme – project administered by the Council’s Biodiversity Committee. Wetlands enhanced under this programme are all legally protected, usually by a covenant. After three years, 12 sites have been enhanced under this project.
Southland Regional Council	Proposed Regional Fresh Water Plan for Southland	Diversion of water for the purposes of land drainage is a permitted activity, unless it adversely affects a listed regionally significant wetland; otherwise discretionary	Possibility of developing a region-wide resource management plan for the management of wetlands, to provide one set of objective, policies and methods.
Taranaki Regional Council	Regional Fresh Water Plan for Taranaki 2001 (operative)	<p>Diversion of water from, or drainage, or planting of regionally significant protected wetland is prohibited.</p> <p>Diversion of water from, or drainage, or planting of regionally</p>	<ul style="list-style-type: none"> <li>• Environmental enhancement scheme – has contributed to fencing, planting and surveying wetlands, and other legal costs for protection such as placing of a QE II covenant.</li> <li>• Taranaki Tree Trust (charitable trust administered by TRC) –</li> </ul>

		<p>significant unprotected wetland is discretionary. (Council undertook extensive studies and consultation to identify regionally significant wetlands as priorities for protection and enhancement – 78 wetlands selected. There are four categories of listed wetlands).</p> <p>Otherwise, diversion of water for the purpose of land drainage is permitted provided that: Area of land drained shall be no greater than 10 ha; No wetland over 5 ha is to be drained; Drainage shall not cause flooding of downstream or adjacent properties; No significant erosion, scour or deposition shall result from the diversion or associated discharge; Drainage channels are of no greater than 300mm in diameter; or Drainage channels are no greater than 4m<sup>2</sup> in cross-sectional area; There shall be no significant adverse effects on aquatic life or instream habitat; No wetland listed in Appendix III is to be drained. (Appendix III lists wetland sites under 5 ha in the Taranaki region that contain nationally or regionally rare, threatened or uncommon indigenous flora or fauna).</p>	<p>includes funding for fencing and covenants – has assisted in the protection of many wetlands not identified as regionally significant, but still of value.</p> <ul style="list-style-type: none"> <li>• Helps land owners to prepare property plans to promote sustainable land management practises.</li> <li>• Protection of several areas additional to councils priority wetlands.</li> <li>• Advice to landowners and the public on wetland values, and how they can be protected and enhanced.</li> <li>• Wetlands of Taranaki booklet – overview of Council and other organisation programmes for wetland protection and enhancement.</li> </ul>
Tasman District Council (unitary)	Proposed Tasman Resource Management Plan Part V: Water	<p>The diversion or discharge of water from a wetland is a permitted activity and can be undertaken without a resource consent, if it complies with the following conditions: The diversion or discharge of water is not from a naturally occurring wetland: (i) greater than 500 square metres in any Residential or Rural Residential Zone; (ii) greater than 1000 square metres in any Rural 1 Zone; (iii) greater than 5000 square metres in any Rural 2 Zone. The diversion or discharge of water is not from a naturally occurring wetland that includes any of the following: (i) indigenous dune vegetation; (ii) salt herb fields; (iii) coastal shrublands in the Coastal Environment Area.</p>	<ul style="list-style-type: none"> <li>• Releasing a comprehensive education brochure</li> <li>• Organising field trips</li> <li>• Presenting environmental awards to wetlands restoration projects</li> <li>• Offering advice</li> </ul>
Wellington Regional Council	Regional Freshwater Plan (operative)	<p>Diverting of water from a listed wetland is a non-complying activity. Taking, using, damming or diversion of water is a discretionary activity.</p>	<ul style="list-style-type: none"> <li>• Currently developing a database of all known wetlands, which will record all known information on each wetland. Information will be verified by site visits. Visits to wetlands on private land will be used as an opportunity to offer advice</li> </ul>

			<p>and assistance to landowners on wetlands and their management.</p> <ul style="list-style-type: none"> <li>• Key Native Ecosystems project – these are areas vital to the long term viability of the regions plant and animal life. Previously, all sites were native bush, but now other ecosystems, including wetlands, are being added to this programme.</li> <li>• Educational resource for schools on website, which includes information about wetlands.</li> <li>• Project to recreate a wetland near Petone, involving planting, and ongoing maintenance of the site.</li> </ul>
West Coast Regional Council	Transitional Regional Plan (note: Draft Land and Riverbed Management Plan in development)	Land drainage is a permitted activity on land with a predominant agricultural use.	Education officer developing school resources on importance and protection of wetlands.



## APPENDIX 4

### Policies and methods of implementation relating to wetlands, from the Tasman Regional Policy Statement

#### *Policy 7.4 (TDC, 2001b: 77-79)*

The Council will:

- (i) preserve the natural character of wetlands, rivers and lakes, and
- (ii) protect and enhance or support the protection and enhancement of natural, recreational, cultural, intrinsic, and instream features and values of wetlands, rivers (including karst rivers), and lakes, in particular those that are of international, national, or regional significance;

and in determining significance of such water bodies for such values, the following criteria shall be applied:

- (i) size of water body; and
- (ii) diversity of species and abundance of populations of indigenous flora and fauna supported by the water body; and
- (iii) rarity of any species of flora or fauna, or of habitat type, associated with the water body; and
- (iv) condition of the water body; and
- (v) special scientific, recreational, cultural, or amenity values of the water body; and
- (vi) recognised international, national, or regional importance of the water body; and

in relation to all significant wetlands, rivers, and lakes, the risk adverse effects on their natural, recreational, cultural, intrinsic or instream values shall be relevant to achieving such protection or enhancement.

#### *Methods of implementation*

- (i) The Council will investigate and monitor instream uses and values of water bodies and assess the significance of and risks to such values and methods of their necessary and appropriate protection or enhancement.
- (ii) The Council will evaluate the significance of natural, recreational or cultural values for water bodies in the District, and including in particular the following:
  - (a) Motueka River and tributaries, including Wangapeka, Motupiko, Baton and Pearce Rivers and the marble aquifers of Mt Owen and Mt Arthur;
  - (b) Buller River and tributaries in Tasman District, including the Gowan, Mangles, Matakītaki, Maruia, Matiri, Owen, Glenroy, Tiraumea and Tutaki rivers and the Mt Owen marble aquifer;
  - (c) Riwaka River, including north and south branches and resurgences;

- (d) Takaka River and tributaries, including limestone and marble aquifers and Waikoropupu Springs;
  - (e) Waimea, Wairoa, Lee, Roding and Lower Wai-iti rivers;
  - (f) lowland springs and rivers, including Pearl Creek, Neiman's Creek, Takakae Stream and Motupipi River;
  - (g) north-west Rivers, lakes and wetlands, including Puponga, Mangarakau and Rakopi swamps, Lake Otuhie and Kaihoka Lakes and Wairoa, Patarau and Anatori rivers;
  - (h) waters of Abel Tasman National Park and the Onekaka, Wainui and Awaroa rivers.
- (iii) The Council will declare as a future amendment to this policy those water bodies that it regards as worthy of appropriate protection for their outstanding or otherwise significant natural, recreational or cultural values or features.
- (iv) The Council will develop policies and rules in regional plans or support provisions in any relevant water conservation order and make decisions on resource consent applications to protect such water bodies declared under Method (ii) above.
- (v) The Council will promote practices in the use of water bodies, including their beds, by landowners, operators or the public that avoid, remedy, or mitigate adverse effects on intrinsic, recreational, cultural or instream values.

*Anticipated environmental results*

- (i) Appropriate degrees of protection of significant instream values of specified water bodies in the District.

*Performance monitoring indicators*

- (i) Extent or degree of protection of specified water bodies, provided in water conservation orders or regional plans.

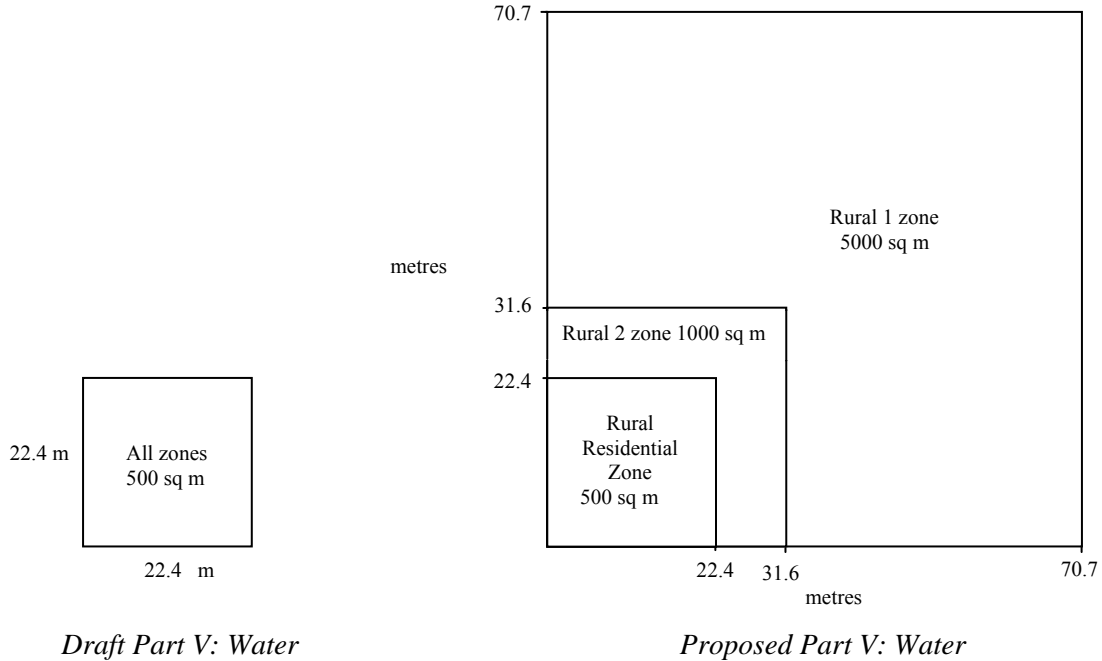
## APPENDIX 5

### Policies 30.1.19 – 30.1.22 from second draft of *Part V: Water*

- 30.1.19 To recognise the importance of wetlands as unique and vital ecosystems with a range of significant values and to protect and to enhance existing wetlands, especially regionally and nationally significant wetlands.
- 30.1.20 To encourage, promote and support the protection and enhancement of existing naturally occurring wetlands and the construction of further wetlands in the District.
- 30.1.21 To encourage, promote and support appropriate management of naturally occurring wetlands to:
- (a) control animal and plant pests;
  - (b) exclude stock grazing from wetlands;
  - (c) protect wetlands from inappropriate land use, including land drainage;
  - (d) maintain water levels to protect wetland values
- 30.1.22 To ensure that adverse effects on wetlands as a result of taking, damming, diversion or discharge of water are avoided, remedied or mitigated, taking into account:
- (a) its natural occurrence and the degree of modification from its natural state;
  - (b) the biological diversity or representativeness of aquatic or associated terrestrial species or habitats;
  - (c) its wildlife or fisheries habitat values;
  - (d) its significance as an area of indigenous vegetation or indigenous fauna;
  - (e) its significance for improving or maintaining water quality;
  - (f) the cumulative effects of wetlands on water quality, flows or level of water and habitats in receiving water bodies;
  - (g) its hydrological or biological relationship with associated water bodies, including fish passage, river or lake flows and levels of water quality;
  - (h) its significance in terms of scientific, educational, recreational, aesthetic or intrinsic values;
  - (i) its cultural or spiritual significance;
  - (j) the cumulative loss of wetlands.

## APPENDIX 6

Comparison of areas of wetland from which the diversion and discharge of water is permitted under rules in draft and proposed *Part V: Water*, PTRMP



5000 sq m =  $\frac{1}{2}$  or 0.5 hectare  
1000 sq m =  $\frac{1}{10}$  or 0.1 hectare  
500 sq m =  $\frac{1}{20}$  or 0.05 hectare

## GLOSSARY

### Technical Terms

Ramsar	Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971
s32	Section 32 of the Resource Management Act 1991

### Maori Definitions

kaupapa	plan, strategy, tactics, methods, fundamental principles
taonga	valued resources, assets, prized possessions both material and non-material
tangata whenua	people of the land, Maori people
te taiao me nga taonga tuku iho	the natural world and the valued resources passed down from the ancestors
tupuna	ancestors

### Acronyms

CA	Conservation Act 1987
OAG	Office of the Controller and Auditor-General
DoC	Department of Conservation
MfE	Ministry for the Environment
NPA	National Parks Act 1980
NPS	National Policy Statement
PCE	Parliamentary Commissioner for the Environment
PTRMP	Proposed Tasman Resource Management Plan
RA	Reserves Act 1977
RMA	Resource Management Act 1991
SNA	Significant Natural Area
TDC	Tasman District Council
WERI	Wetlands of Ecological and Representative Importance
WSCA	Water and Soil Conservation Act 1967

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