

Environmental Law Initiative Submission

Proposed Waikato Coastal Plan



Environmental Law Initiative
Tiakiina te mauri o te taiao

ABOUT ELI

ELI uses litigation, advocacy and education to protect Aotearoa's marine, freshwater and terrestrial environments and biodiversity.

ELI is a registered charitable trust, advised by a small team of experts in environmental law, policy, science, ecology and management.

Though operating independently, we partner with a range of other groups and individuals — including iwi, hapū, governmental agencies, charities, and organisations— to achieve common outcomes for the environment.

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Submission – Proposed Waikato Regional Coastal Plan

To: Waikato Regional Council

From: Environmental Law Initiative

1. This is a submission on the Waikato Regional Coastal Plan by the Environmental Law Initiative (ELI).
2. The specific provisions of the proposal that this submission relates to are set out in the table below. The submissions and decisions sought from WRC are set out below.
3. We wish to be heard in support of this submission. If others make a similar submission, we will consider presenting a joint case with them at a hearing. We could not gain an advantage in trade through this submission.
4. ELI's Submission focusses on how the proposal will achieve integrated management for land-based activities which cause pollution in the coastal and marine environments. We are concerned with the extent the plan ensures estuaries and their catchments are effectively managed as a single, connected and healthy entity. This is the challenge set out by the Parliamentary Commissioner for the Environment.¹
5. ELI **supports** aspects of the proposal which take steps towards healthy outcomes for estuaries, particularly for degraded estuaries. These include identifying degraded environments and specifying outcomes for these. Such outcomes, once set, can be planned for, using rules. To ensure the proposal is set up to achieve its own goals, we seek a number of amendments. The S32 Report indicates that for water quality, WRC is heavily relying on future NPSFM-based planning processes. We recommend that to ensure this happens, the WRC clearly signals where full effect has not yet been given to relevant coastal policies in the NZCPS, and the WRPS. This is so that it is unambiguous in future planning processes which are not explicitly 'about' coastal matters, what aspects of the NZCPS remain to be implemented.
6. ELI considers that the proposal misses an important opportunity to adopt a catchment management approach framework which links to outcomes, limits, targets and timeframes set for coastal waters. We **seek amendment** so that this approach is adopted, and incorporated through all elements of the plan which manage water quality, biodiversity and discharges. If the approach is not changed, ELI makes specific submissions on the option that has been proposed:
 - a. 6 – IM Integrated management / Whakahaere rawa pāhekoheko
 - b. 11 – ECO Ecosystems and indigenous diversity / Te mauri o te taiao me te rerenga rauropi
 - c. 12 - EI – Energy and infrastructure / Pūngao me ngā hanganga matu
 - d. 17 – NH Natural Hazards / Ngā mōrearea ao tūroa
 - e. 23 – WAQ Water quality / Kounga wai
 - f. 24 – WD Discharges to water / Rūkenga ki te wai.

¹ *Managing Our Estuaries* Report at p 10.

7. Our submission is that amendments are necessary and required by law so that the WRCP will:
 - a. Substantiate the WRCP role in relation to the WRP, so that together they can fully give effect to the NZCPS and WRPS;
 - b. Comply with RMA and NZCPS bottom lines and minimum environmental standards required for water quality and effects in coastal ecosystems;
 - c. Establish objectives, limits and targets with the characteristics needed to give effect to the WRPS, Hauraki Gulf Marine Park Act 2000 (HGMPA) and NZCPS.

ELI's specific submission points are set out in the table below.

Provision	Submission	Reason for submission	Relief sought
3. Interpretation/ He Whakamāramatanga			
Degraded water	Support with amendment	Recognising areas where waters have been degraded facilitates their improvement. Specifying these in a schedule assists clarity. Defining “degraded water” as occurring only where it passes a threshold of being “significant” may however unintentionally erase recognition of degradation that is less than significant, which should also be managed for improvement (NZCPS).	Retain definition for significant degradation and provide for degraded waters which are less than significant.
health	Support	ELI supports a definition which encapsulates the attributes of a healthy ecosystem.	Retain
Reasonable mixing zone	Amendment sought	The WRPS requires the reasonable mixing zone to be the smallest area for mixing necessary to achieve the required water quality.	Amend as required to ensure smallest area for mixing necessary to achieve the required water quality.
river and flood protection schemes	Amendment sought	<p>The definition should only apply to regionally significant flood control and drainage infrastructure. This was the infrastructure assessed in the s32 report, and the approach aligns with the WRPS.</p> <p>The definition requires “activities undertaken and approved under...” to be interpreted by plan users. As the standards and pathways for approvals under various legislation may differ, a reasonable level of expertise is required in determining whether and how activities have been approved. The reference to the RMA is particularly uncertain as a pathway for scheme approval. For plan users to make an assessment as to whether activities are undertaken and approved under the legislation specified, they need transparent and publicly accessible records of such approvals. We consider it is not possible for lay-users of the plan to assess whether schemes meet this definition.</p> <p>The words “managed by Waikato Regional Council” are also likely to become a source of uncertainty, as drainage scheme management varies across the region; schemes may be</p>	<p>Amend this definition to encompass only schemes listed in a schedule and define the activities covered more precisely (i.e. regionally significant infrastructure operating in compliance with approvals).</p> <p>Suggested drafting: <i>means schemes listed in Schedule X when operating as approved. activities undertaken under approved river and flood protection schemes, or land drainage schemes, managed by Waikato Regional Council in accordance with the Land Drainage Act 1908, Soil Conservation and Rivers</i></p>

		<p>managed by the WRC, or other territorial authorities such as the Hauraki District Council. The maintenance function of the WRC would further complicate the assessment, especially when it is exercised for non-WRC schemes.</p> <p>The intended meaning of the word “river” is not clear. The definition includes all “activities undertaken” under the relevant schemes. This is so broad as to capture unintended activities, potentially as part of maintenance, upgrades, or system changes.</p> <p>These clarity and discretion issues are especially problematic when the definition applies to permitted activities.</p> <p>For this definition to function as a basis for rules, it should apply to only certain scheduled schemes.</p>	<p><i>Control Act 1948, Taupiri Drainage and River District Act 1929 and the Resource Management Act 1991.</i></p> <p><i>Schedule X</i> Identify and map all river and flood protection schemes intended to operate under the WRCP. List each of these in a schedule, including the statutory means of approval and the managing authority.</p>
6. IM – Integrated managed / Wakahaere rawa pāhekoheko			
Overview / Tirohanga whānui	Amendment sought	<p>It is not clear whether the pWRCP is intended to include direction (ie objectives and policies) that are relevant to the wider coastal environment, beyond the CMA. We assume this it is intended to do so because some policies and objectives do apply to the “coastal environment”. Clarity on scope is essential to enable all planning to take an integrated management approach to the wider coastal environment.</p> <p>If and where the plan does apply to the coastal environment, this should be clearly stated. As a starting point, it should be clarified that only the rules (rather than the whole plan) are limited to “address the coastal marine area”. Reference to “recognition” of activities and relationships also sets an unclear expectation.</p>	<p>Amend, including as follows (or to same effect): <u>While the rules in this plan addresses the coastal marine area from MHWS seaward, and the objectives and policies address the coastal environment – these are both this-is-also-a dynamic boundaries affected by natural physical processes, human activities, climate change and sea level rise.</u></p>
Objectives / Ngā whaingā; Policies / Ngā Kaupapahere; Rules / Ngā ture	Amendment sought	<p>It is appropriate that the chapter contains no rules, however, it is fundamental to effective integrated management that the objectives and policies for IM must be given effect to through relevant activity rules in <i>all</i> Waikato regional plans, ki uta ki tai, and not solely for the WRCP. This approach is supported by the</p>	<p>Amend including as follows (or to same effect):</p> <p><i>Advisory note: 1. This chapter contains no rules. The objectives and policies for IM –</i></p>

		RMA, NZCPS, WRPS and HGMPA s 7(a) - which refers to the interrelationships between the Hauraki Gulf and its catchments.	<i>Integrated management are to be given effect to through the relevant activity rules of the plan, the Waikato regional plan, and any other operative planning documents in the Waikato Region.</i>
11. ECO – Ecosystems and indigenous biodiversity / Te mauri o te taiao me te rerenga rauropi			
Overview / Tirohanga whānuio	Amendment sought	The focus in paragraph 1 on the “coastal marine area” should be expanded to the “coastal environment”, to properly give effect to the NZCPS (including policy 11), the WRPS, and in recognition that the habitats of shorebirds and seabirds (paragraph 2) are by definition part of the “coastal environment”.	Amend overview to encompass the “coastal environment”.
ECO – 01	Amendment sought	The relevant NZCPS and WRPS provisions apply to the coastal environment rather than the coastal marine area. This should apply to the coastal environment for the reasons set out above.	Amend to apply this objective to reference the “coastal environment” instead of the “coastal marine area”.
ECO - 02	Amendment sought	Reasons as set out above.	As above.
12. EI – Energy and infrastructure / Pūngao me ngā hanganga matua			
EI-P1	Amendment sought	Infrastructure should not be enabled where it results in exceedances in statutory minimum standards and environmental bottom lines.	Ensure the infrastructure provided does not exceed minimum standards for discharges in the RMA and bottom lines set out in national direction.
17. NH – Natural Hazards / Ngā mōrearea ao tūroa			
NH - P6	Amendment sought	ELI supports the intent to provide policy support for long term adaptation planning rather than status quo, however management focussed on risks <i>to the scheme</i> (as proposed) is	Amend the policy to provide for nature-based solutions as a priority, and enable reduction of dependency on drainage.

		<p>more likely to embed the status quo, than adapt to climate change.</p> <p>The contents of the adaptive management strategy as proposed deprioritises effects of the scheme on the environment (including contribution to GHG emissions, and the removal of wetland ecosystem services). To align with the National Adaptation Plan 2022, environmental costs, benefits and risks should be assessed and reduced as a first priority.</p> <p>There are very large GHG emissions associated with draining peat. These will go on as long as drainage continues and at scale to the depth of the drainage.</p> <p>The National Adaptation Plan 2022 emphasises the importance of local government consideration of nature-based solutions in management of infrastructure. This includes the use of wetlands to mitigate flood risk. The “critical actions” for the natural environment include the implementation of water quality, biodiversity and policies in the NPSFM, NPSIB, and NZCPS.</p>	<p>Amend the policy so that the adaptive management strategy includes an assessment of the environmental costs and benefits of any structure, and an assessment of the risks to the environment as a result of the scheme.</p>
23. WAQ – Water Quality / Kounga wai			
Overview	Amendment sought	<p>The overview recognises the coastal effects of land-based discharges. We support this aspect. It separates the management of these discharges from operation of the pWRCP, and objectives and policies in the coastal environment. The separation does not reflect integrated management. Without integrating land-based decisions with the objectives and policies for the management of coastal water, there can be no assurance that management of freshwater quality will in turn meet NZCPS and pWRCP objectives and policies.</p>	<p>Retain paragraph 2.</p> <p>Retain: Reference to policy 21 NZCPS.</p> <p>Amend: the remaining statements to reflect integrated management, and include:</p>

		<p>The overview needs to be clearer that the provisions of the NZCPS and the pWRCP are also relevant to the management of contaminants from land-based activities and discharges managed under the WRP.</p> <p>We support the reference to policy 21 NZCPS, however the overview should capture the policy of improvement (rather than the lesser standard of no further degradation which appears in this statement):</p> <p><i>The Firth of Thames and Whiritoa Lagoon are identified as degraded water bodies. Activities within these areas need to demonstrate they are not contributing to further water quality degradation.</i></p>	<ul style="list-style-type: none"> a. The role of the WRP in implementing the objectives and policies of the WRCP, NZCPS and HGMPA in addition to the NPSFM. b. Notice that for degraded water bodies activities, a demonstrated contribution to improvement will be required. c. Notice that objectives and policies will be relevant for all activities contributing to degradation.
WAQ - O1	Amendment sought	<p>It is the minimum standard that water quality should be at least maintained, regardless of whether quality is deemed “high”. We rely on the RMA, NZCPS, NPSFM and HGMPA in making this submission.</p>	<p>Amend as follows (or to the same effect):</p> <p><i>Water quality is <u>at least</u> maintained where it is high and improved in areas where water quality is degraded.</i></p>
WAQ - O2	Amendment sought	<p>Include the concept of ‘ecosystem health’ to substantiate ‘life supporting capacity’. We support the definition of ‘health’ in this context.</p>	<p>Amend as follows:</p> <p><i>The mauri, <u>life-supporting capacity, ecosystem health</u> and the community and recreational values of coastal water are protected and, where appropriate, enhanced.</i></p>

WAQ – P new	New policy sought	Water quality policies should require activities to address the broader impacts of climate change including eutrophication and acidification. This recommendation is made in the WRC s 35 report for the operative WCP.	Add a new policy as follows (or to the same effect): <i><u>Require discharges to assess effects in relation to the broader impacts of climate change on the coastal environment.</u></i>
WAQ -P1	Support with amendment	Include the concept of improvement where required, and a timeframe for improvement. We repeat submission WAQ – O1. Where improvement is required, the timeframe should result in demonstrable progress by 2030 (WRPS). 'Natural coastal processes' may be interpreted narrowly; amend to ensure it captures biological processes and ecosystem health.	Amend as follows (or to the same effect): <i>Avoid, remedy or mitigate the adverse effects of activities to maintain <u>and improve (to achieve demonstrable progress by 2030)</u>:</i> Add reference to 'ecosystem health' at WAQ-P1 (3).
WAQ - P2	Support with amendment	We support the proposal to apply water quality standards and trigger levels, however we seek more clarity in the role these standards and trigger values are anticipated to play. Our submission on Schedule 9, 9A, 9B and 9C are below, and we rely on them here. We support the requirement for water quality enhancement, however this is unlikely to be meaningful or effective without a prescribed timeframe. As a starting point, the timeframe should result in demonstrable progress by 2030 (WRPS). However, the timeframe specified should link to full achievement of a target state. We note the absence of targets for water quality where minimum standard are met means that there is no mandate for improvement once minimum environmental standards are met, meaning there is no mechanism to fully implement WAQ-O2.	Introduce targets and timeframes for water quality, and amend the policy to require these are met.
WAQ- P3	Amendment sought.	ELI supports a policy based on loadings, which should be managed in addition to contaminant concentrations.	Amend so that BPO is relied on where discharges are consistent

		ELI opposes the focus of this policy on BPO. BPO will not achieve minimum standards, or ensure maintenance of water quality, and therefore is not sufficient to achieve the WQ objective, or ensure that the standards for discharges in the RMA are met. BPO may be used, subject to minimum environmental standards being met, and consistent with achieving the WQ Objectives and RMA thresholds for discharges which may enter water.	with Schedule 9 minimum standards and RMA discharge standards. Add a policy that discharges which are not consistent with are consistent with Schedule 9 minimum standards and RMA discharge requirements are not enabled.
WAQ – P4	Amendment sought.	This policy is not sufficient to achieve the WQ Objectives. A contribution to improvement in water quality must be required, and “addressing any cumulative effects” means an improvement.	Amend as follows: <i>Require activities in areas identified in Schedule 9C as having degraded water quality to not contribute to any further degradation of water quality, and to contribute to an <u>improvement in water quality</u>, including addressing any cumulative effects.</i>
WAQ – P6	Support with amendments	ELI supports this provision, but seeks amendments for clarity. All trigger values should be included (not just toxicants). We submit that it should be clarified that this policy takes precedence in the event of a conflict in policies in the WRCP.	Amend to include all Schedule 9B trigger values (not just the toxicants). Include provision that for the avoidance of doubt, policy WAQ-P6 prevails in relation to other WRCP policies.
Rules / Ngā ture	Amendment sought	The “relevant activity rules of the plan” are not defined. Users may interpret this to mean the rules set out in 24 – WD only. It should be clarified that the policies and objectives will be relevant in the coastal environment and for discharges inland which may enter CMA waters.	Amend the advisory note to clarify the full range of rules (not limited to those in the WRCP) which would give effect to the objectives and policies.
24 WD – Discharges to water / Rūkenga ki te wai			

Overview / Tirohanga whānui	Support with amendment sought	We support the acknowledgement in the final paragraph that the CMA is the ultimate receiving environment for contaminants, and that the WRP will regulate these discharges. This should be expanded to clarify that while the WRP regulates inland activities, the objectives and policies of the WRCP will be relevant to decisions authorising such activities.	Retain final paragraph, and clarify the relevance of WRCP objectives and policies to all discharges which ultimately enter the CMA.
WD-P1	Support with amendment sought	Include the concept of 'ecosystem health' to substantiate 'life supporting capacity'. We support the definition of 'health' in this context.	Amend as follows: <i>Discharges to the coastal marine area ensure the health of people and communities is safeguarded, and the life-supporting capacity, <u>ecosystem health</u> and mauri of the receiving environment is maintained.</i>
WD-P2	Support with amendment sought	We support the avoid sub-policies in 1, 6 and 8. We support sub-policy 5 as consistent with WRPS policy. We find that the requirement to "have particular regard" at sub-policy 9 might conflict with the avoid policy at 8. These are bottom lines so they need to ensure avoidance before sub-policy 9 can operate.	Amend to ensure that sub-policy 9 is subject to sub-policy 8.
WD-P10	Amendment sought	We support the intent of this policy, however it is not sufficient to achieve the outcomes sought. The policy should require meaningful reductions in load where improvements are required. We repeat the submission made at WAQ-P3 above.	Amend the policy to first require consistency with minimum environmental standards (and any new targets and timeframes), by requiring contaminant loads which meet these standards.
Rules / Ngā ture			
WD-R4	Oppose and amendment sought	ELI repeats the submission above in relation to the definition of "river and flood control scheme discharges".	Delete permitted activity, and required coastal consents for all such activities.

		<p>The extremely low-quality water discharged from some drainage networks during summer is significant. Before a regional council enables the discharge of such water with low oxygen, high nutrients, high sediment content and botulism as a permitted activity, it must be satisfied there are no significant adverse effects on aquatic life (RMA s 70).</p> <p>Permitted activities must also be effective in achieving the objectives of the plan. This includes the objectives set out in the ECO section.</p> <p>We consider that Option 2(b) (s 32 Report) is the appropriate approach, as it would not rely on permitted activities and instead use consents for these activities. ELI strongly recommends that the rule is assessed against s 70 if it is retained.</p> <p>Dissolved Oxygen should not be managed as a percentage (which is subject to temperature perturbations and require expert judgment), and does not capture spikes in low DO which might have significant adverse effects on aquatic life, or impact ecosystem health. It is consistent with the reports referred to in the s 32 report, and Schedule 9A, to use a minimum value expressed in mg/l.</p>	<p>If the permitted activity is retained: Amend the dissolved oxygen threshold to a minimum of mg/l (e.g., 4.6, as in Schedule 9A).</p>
WD-R6	Oppose and amendment sought	<p>ELI repeats the submission above in relation to the definition of “river and flood control scheme discharges”.</p> <p>The matters for control should include measures relevant to adverse effects in the life supporting capacity of water within the reasonable mixing zone (WRPS).</p> <p>The extremely low-quality water discharged from some drainage networks during summer are not compatible with controlled activity status. Consent authorities may not grant discharge consents when the thresholds in s 107 are breached.</p>	<p>Delete controlled activity, and replace as an activity where discretion is available.</p>

WR-R11	Oppose	<p>ELI strongly opposes this rule. We rely on the s 32 report and supporting reports as to the extremely low water quality that may be discharged by these schemes.</p> <p>New drainage contradicts directives for climate change mitigation and adaptation, nature-based solutions approach set out in the National Adaptation Plan 2022, and principles of water sensitive design (which are recognised elsewhere in the plan in relation to stormwater as follows: <i>Water sensitive design seeks to protect and enhance natural freshwater systems, sustainably manage water resources, and mimic natural processes to achieve enhanced outcomes for ecosystems and our communities</i>).</p> <p>Discharges from new drainage should be avoided in areas already degraded from land-sourced contamination transported via drainage networks (NZCPS).</p>	Amend WD-R11 to a prohibited activity.
WD – R New	New rule requested	ELI requests a new rule prohibiting new scheme discharges, and scheme discharges which increase nutrient loadings where minimum standards are no longer met in receiving environments. Reasons are set out above.	Introduce prohibited activity for scheme discharges which increase nutrient loadings where minimum standards are not met in receiving environments.
Schedule 7A			
Firth of Thames Ramsar site	Support	The Firth of Thames is of international, national and regional significance.	Retain
Southern Firth of Thames and margins	Support	The Firth of Thames is of international, national and regional significance.	Retain
Schedule 9 – Water quality standards / Āpiti 9 - Ngā paerewa kounga wai			
Schedule 9	Amendment sought	For clarity, the standards apply for the entire coastal environment rather than the CMA alone. While the WRCP appears to be intended to control only those activities located in the CMA, this does not constrain the application of environmental standards. This is supported by the RMA, WRPS and NZCPS (including policies 11, 22, 23). The s 32 report acknowledges the role the	<p>Amend as follows:</p> <p><i>Schedule 9 identifies water quality standards for the CMA <u>coastal environment in the Waikato region</u>. Schedule 9</i></p>

		<p>NPSFM will play as the primary mechanism to improve coastal water quality. If water quality standards apply across the costal environment, these can be adopted within that process.</p> <p>ELI acknowledges that coastal monitoring data currently limits the ability to give full effect to NZCPS and WRPS water quality requirements to identify water quality units based on assimilative capacity. However, a precautionary approach would enable assimilative capacity to be estimated at a broad scale. To the extent that this approach has been taken, we would support the standards.</p>	<p><i>includes the following schedules: ...</i></p>
<p>Schedule 9A Water quality limits</p>	<p>Amendment sought</p>	<p>We understand these are intended to function as minimum water quality (environmental) standards. We recommend the language is clarified to reinforce this. We support the cumulative assessment of discharges.</p> <p>We note a lack of targets for coastal waters which are at or above the standards. The potential for further improvements to be required should be provided for.</p> <p>Attributes should relate to all elements of ecosystem health. This will require additional biological indicators to substantiate the attribute “aquatic ecosystems”. We recommend fish and birds are represented in Schedule 9A as indicators of health. This is supported by the matters canvased in the s 32 report.</p> <p>ELI support the inclusion of a minimum value of 4.6 for dissolved oxygen for degraded environments. Compliance narratives and standards must reflect no significant adverse effects on aquatic life as a result of contaminant discharges (ss 70 and 107 RMA).</p>	<p>Amend table 9A and the foreword to ensure it is clear that it represents minimum water quality standards.</p> <p>Introduce time-bound targets for water quality where minimum standards are met.</p> <p>Include attributes to measure all elements of ecosystem health and substantiate “aquatic ecosystems”, including for fish and bird life.</p> <p>Ensure the compliance narratives and standards to not reflect significant adverse effects on aquatic life.</p>

		<p>Standards should apply a precautionary approach which addresses the broader impacts of climate change including eutrophication and acidification.</p> <p>In relation to the 'units', we repeat the submission on Schedule 9 above. The units of 'degraded estuarine', 'estuarine' and 'open coast' are not mapped in the plan, and as such it is not possible to assess the extent that they implement higher-order direction or a precautionary approach. These must be mapped for the schedule to operate as intended.</p>	<p>Map the water quality units, applying a precautionary approach.</p> <p>Retain the minimum concentration value for dissolved oxygen.</p>
Schedule 9B – Trigger value limits	Amendment sought	<p>We repeat the above submission, and the submission on Schedule 9 above.</p> <p>To ensure a reduction of nutrients in receiving environments that already experience significant adverse effects on aquatic life, and to maintain ecosystem health in other receiving environments, nutrient loads should be managed in addition to nutrient concentrations. The trigger value limits must not enable significant adverse effects on aquatic life occur as a result of contaminant discharges (ss 70 and 107 RMA).</p>	<p>Map the water quality units, applying a precautionary approach.</p> <p>Include nutrient load-based attributes.</p> <p>Ensure the compliance narratives and trigger values to not reflect significant adverse effects on aquatic life.</p>
Schedule 9C – Areas of degraded water	Support with amendments	<p>ELI supports recognition of the degraded state of the Firth of Thames, as a first step to ensuring the relevant higher order policy requirements (NZCPS and WRPS) are implemented. This is also crucial to address cumulative effects. The provision for degraded environments should however specify the basis for inclusion to the schedule (and potential removal from the schedule once restored).</p> <p>The information used in preparing the s 32 reports provides clear indication of the degraded state of the Firth of Thames.</p>	<p>Retain and include criteria for review.</p>