



Meeting of the Regional Planning Committee

Date: Wednesday 14 August 2019
Time: 1.00pm
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

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Parking

There will be named parking spaces for Tangata Whenua Members in the HBRC car park – entry off Vautier Street.

Regional Planning Committee Members

Name	Represents
Karauna Brown	Te Kopere o te Iwi Hineuru
Tania Hopmans	Maungaharuru-Tangitu Trust
Nicky Kirikiri	Te Toi Kura o Waikaremoana
Liz Munro	Heretaunga Tamatea Settlement Trust
Joinella Maihi-Carroll	Mana Ahuriri Trust
Apiata Tapine	Tātau Tātau o Te Wairoa
Mike Mohi	Ngati Tuwharetoa Hapu Forum
Peter Paku	Heretaunga Tamatea Settlement Trust
Toro Waaka	Ngati Pahauwera Development and Tiaki Trusts
Paul Bailey	Hawkes Bay Regional Council
Rick Barker	Hawkes Bay Regional Council
Peter Beaven	Hawkes Bay Regional Council
Tom Belford	Hawkes Bay Regional Council
Alan Dick	Hawkes Bay Regional Council
Rex Graham	Hawkes Bay Regional Council
Debbie Hewitt	Hawkes Bay Regional Council
Neil Kirton	Hawkes Bay Regional Council
Fenton Wilson	Hawkes Bay Regional Council

Total number of members = 18

Quorum and Voting Entitlements Under the Current Terms of Reference

Quorum (clause (i))

The Quorum for the Regional Planning Committee is 75% of the members of the Committee

At the present time, the quorum is 14 members (physically present in the room).

Voting Entitlement (clause (j))

Best endeavours will be made to achieve decisions on a consensus basis, or failing consensus, the agreement of 80% of the Committee members present and voting will be required. Where voting is required all members of the Committee have full speaking rights and voting entitlements.

Number of Committee members present	Number required for 80% support
18	14
17	14
16	13
15	12
14	11

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

Subject: FOLLOW-UPS FROM PREVIOUS REGIONAL PLANNING COMMITTEE MEETINGS

Item 4

Reason for Report

1. On the list **attached** are items raised at Regional Planning Committee meetings that staff have followed up. All items indicate who is responsible for follow up, and a brief status comment. Once the items have been reported to the Committee they will be removed from the list.

Decision Making Process

2. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives the report "Follow-up Items from Previous Meetings".

Authored by:

**Leeanne Hooper
PRINCIPAL ADVISOR GOVERNANCE**

Approved by:

**James Palmer
CHIEF EXECUTIVE**

Attachment/s

[↓1](#) Followups for August 2019 RPC meeting

Follow-ups from Previous Regional Planning Committee Meetings

Meeting held 3 July 2019

ref	Agenda Item	Action	Responsible	Status Comment
1	Follow-ups from Previous RPC meetings	2 May 2017 version as accepted by PSGEs - to be considered and discussed by the Co-Chairs and Deputy Co-Chairs prior to being brought back to RPC as 'recommended' by them for adoption	T Skerman /P Munro	18September RPC meeting agenda item
2	Making Plan Change 5 Operative	Provide clarification as to whether owners are obliged to remediate drainage if and when a resource consent expires	M Miller	Reference follow-up 2 following
3	Making Plan Change 5 Operative	Provide brief overview of implications of Change 5 on the Regional Council's own operations in riparian margins	I Maxwell	
4	Resource Management Policy Project July 2019 Updates	Provide a list of all resource management plans and renewal dates, similar to tables in the HBRC annual report	E Humphries	Reference 4 following
5	Statutory Advocacy July 2019 Update	Provide WDC decisions on the resource consent application to clear 248 hectares of manuka and kanuka in Mahia	E Humphries	
6	RPC recommendations to Council	PC5, TANK and Outstanding Water Bodies Plan Change recommendations to Council	L Hooper	All recommendations carried as proposed at the 31 July 2019 Regional Council meeting.

Meeting held 17 April 2019

ref	Agenda Item	Action	Responsible	Status Comment
7	HBRC 2019-20 Annual Plan Approach	Summary of the Annual Plan budgets relevant to the RPC to be provided to members	L Hooper	Relevant 2019-20 budgets listed as (reference 7)

Reference follow-up 2

Historically if a wetland is drained it is no longer a wetland. If this has been achieved through forming drains then these are likely to be lawfully established diversions if they precede the RMA and therefore these can continue as permitted activities under the RRMP. The discharge of drainage water via gravity flow systems is a permitted activity. (The discharge of drainage water via a pump station is a controlled activity). Under the RRMP, councils are able to undertake river control and drainage works as described in the HBRC Environmental Code of Practice, as a permitted activity. So generally activities falling within these categories are able to continue without expiry.

The Poukawa Catchment scheme is an established flood drainage scheme established in the 1970s and 1980s. The operation and maintenance of this scheme is a permitted activity. There are some consented elements to this. One is the operation of a control gate below Lake Poukawa. This is not to control the lake level but rather to hold water in the soils for agricultural benefit during the summer. Another consented activity is the bunding along drains to hold water in the lake and drains and the pumped discharge of water from the land into the drains and lake. This has become necessary because of the shrinking of the peat soils across the agricultural and cropping areas causing the levels to drop below the drain and lake levels.

These two consents have the same expiry dates, i.e. 31 May 2023. If these consents are not replaced at this time then current farming activities will not be practical to the current extent and changes will be required. Potentially reversion to a wetland will extend covering a larger area if water is not pumped off the land. If this was to occur the need for maintaining the drainage scheme in the current manner would need to be reviewed. How active Council or consent holders should be in taking remedial actions is open to question. If the consent to control levels is allowed to expire then the structure should be removed to the extent necessary to stop the ability to control the levels. If the consent to pump water expires and is not renewed then water will pond over a larger area for longer probably allowing a reversion to wetland without much other action. There is nothing associated with the consent or under the RMA that would require other remedial action or enhancement of the wetland.

Reference follow-up 4

Plan/Plan Change	Operative Date / (Notification Date)	Review Date
Regional Policy Statement	28 Aug 2006	28 Aug 2016 – Planned to commence 2021
Regional Resource Management Plan	28 Aug 2006	28 Aug 2016 – Planned to commence 2021
Regional Coastal Environment Plan	8 Nov 2014	8 Nov 2024 – Planned to commence 2021
Change 1 - Geographic coverage of coastal environment	8 Nov 2014	
Change 2 - Air Quality	1 Jan 2012	
Change 3 - On-site Wastewater	1 Oct 2012	
Change 4 - Managing the built environment	1 Jan 2014	
Change 5 - Land Use and Freshwater Management	Operative by 31 Aug 2019	
Change 6 - Tukituki River Catchment Plan	1 October 2015	
Variation 1 - Rivermouth hazard areas	8 Nov 2014	
Variation 2 - Air Quality	8 Nov 2014	
Variation 3 - On-site wastewater	8 Nov 2014	
Plan Change 7 - Outstanding Water Bodies	(31 Aug 2019)	
Plan Change 8 - Mohaka Catchment Plan	(estimated 2021)	
Plan Change 9 - TANK (Tutaekuri, Ahuriri, Ngaruroro, Karamu) Catchment Plan	(2019)	
Plan Change 10 - Oil and Gas Regulation plan	Ceased*	To be incorporated in RRMP/RCEP review*
Remaining catchment areas (i.e. Esk, Nuhaka, Te Ngaru, Tutira, Porangahau, Southern coast area, Waihua, Waikari, Waipatiki, Wairoa, Whakaki etc.)	(estimated 2024)	

NOTE: The NPSFM requires overall policy implementation by 31 December 2025. Although NPSFM Policy E1(ba) allows for that date to be extended to 31 December 2030 in some circumstances. Based on a recommendation from the RPC, in November 2018 Council agreed to extend the full implementation out to 31 December 2030 because meeting a 2025 timeframe would result in lower quality planning and it would be impracticable for the Council to complete implementation of all policies by 31 December 2025.

* At meeting 12 September 2018, RPC recommended to Council to cease further work on the preparation of the Oil and Gas Plan Change, with a view to incorporating this work, as appropriate in future coming reviews of the Regional Resource Management Plan and the Regional Coastal Environment Plan. That recommendation was subsequently agreed by the Regional Council on the 26 September 2018.

Reference follow-up 7

Projects relating to Regional Planning Committee work include the following.

Project 840 – Community Representation & Regional Leadership

Hawke's Bay Regional Council - Annual Plan 2019/2020		
TANGATA WHENUA ENGAGEMENT		
PROJECT #: 874		
PROJECT EXPENDITURE	Job #	Ann Pln 2a Ann Pln 2019/20 Wks / \$
TOTAL PROJECT COSTS		766,124

Hawke's Bay Regional Council - Annual Plan 2019/2020		
STRATEGIC DEVELOPMENT AND EXECUTION		
PROJECT #: 190		
PROJECT EXPENDITURE	Job #	Ann Pln 2a Ann Pln 2019/20 Wks / \$
TOTAL PROJECT COSTS		501,458

Hawke's Bay Regional Council - Annual Plan 2019/2020		
REGIONAL COASTAL PLAN		
PROJECT #: 191		
PROJECT EXPENDITURE	Job #	Ann Pln 2a Ann Pln 2019/20 Wks / \$
TOTAL PROJECT COSTS		121,837

Hawke's Bay Regional Council - Annual Plan 2019/2020		
STRATEGY & PLANNING		
PROJECT #: 192		
PROJECT EXPENDITURE	Job #	Ann Pln 2a Ann Pln 2019/20 Wks / \$
TOTAL PROJECT COSTS		1,669,066

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

Subject: CALL FOR ITEMS OF BUSINESS NOT ON THE AGENDA

Item 5

Reason for Report

Hawke's Bay Regional Council standing order 9.13 allows:

"A meeting may discuss an item that is not on the agenda only if it is a minor matter relating to the general business of the meeting and the Chairperson explains at the beginning of the public part of the meeting that the item will be discussed. However, the meeting may not make a resolution, decision or recommendation about the item, except to refer it to a subsequent meeting for further discussion."

Recommendation

That the Regional Planning Committee accepts the following "Minor Items of Business Not on the Agenda" for discussion as Item 10.

Topic	Raised by

Leeanne Hooper
PRINCIPAL ADVISOR GOVERNANCE

Joanne Lawrence
GROUP MANAGER
OFFICE OF THE CE & CHAIR

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

Subject: PROPOSED TANK PLAN CHANGE 9 – AGREE AMENDMENTS FOR NOTIFICATION

Item 6

Reason for Report

1. This item seeks the Committee's agreement to the content of the Draft TANK Plan Change version 9.2 so as to provide staff direction for preparing a Proposed Plan Change 9. This will enable the Committee to make decisions about notification of the Plan Change at their meeting on 18 September 2019.
2. The RPC considered a series of recommendations in respect of the TANK Plan Change at their meeting on 3 July 2019. Some of the recommendations were in respect of matters considered at the RPC meeting on 15 May and carried over to the July meeting.
3. The Committee did not make any decisions and instead directed a sub-group of RPC members to consider and make recommendations on the issues identified by RPC tangata whenua representatives as still outstanding.
4. The RPC sub-group and advisors met twice (25 July and 1 August) and this report accounts for the findings of the sub-group, including recommendations for further amendments.
5. This item also encompasses all additions and amendments to Version 9 of the Plan as reported on at the 3 July meeting but for which a decision is still to be made. These amendments are provided still as tracked changes in Version 9.2 in Attachment 1. The supporting section 32 report for these changes is attachment 4.
6. The topics described in more detail in this report as a result of directions by the RPC are as follows.
 - 6.1. Heretaunga Plain's groundwater allocation limit
 - 6.2. Policy direction for flow maintenance provisions
 - 6.3. Assessment of TANK Plan Change in relation to Outstanding Waterbodies PC7.

Allocation Limits for the Heretaunga Plains Aquifer

7. The RPC considered alternatives to the allocation limit included in PC9.1 for the Heretaunga Plains at their meeting on the 3rd July. The discussion arose in relation to concerns about the potential effectiveness of the stream flow maintenance scheme that has been included to manage effects groundwater abstraction on stream flow and options for further reducing groundwater abstraction to address that concern.
8. Members of the RPC also expressed a view that the combined management provisions did not adequately provide for the range of instream values held for the Heretaunga Plains water bodies.
9. The draft plan contains a number of measures in relation to the management of water abstraction from the Heretaunga Plains water bodies. These measures are summarised in Table 1 in Attachment 2.
10. The policy direction includes management of the Heretaunga Plains aquifers as if it was over-allocated as it prevents further allocation and re-allocation of water pending further information about and review of the:
 - 10.1. actual water use
 - 10.2. total allocated amount following review and replacement of all existing water permits
 - 10.3. stream flow information

- 10.4. degree of success of the proposed stream flow management regime
 - 10.5. effectiveness of other ecosystem improvements, and
 - 10.6. appropriateness of the interim allocation limit in light of this review.
11. One component for water management is the establishment of an allocation limit. The draft includes 90 Mm³ /year as an 'interim' allocation limit. It is substantially less than the currently allocated amount of around 140-160 Mm³ /year.
 12. The interim 90Mm³ /year limit, in combination with Policies 38 and 45 ensures that no new water can be allocated until the review is undertaken, even if water becomes available within allocation limits (a minor exception is currently provided for re-allocation to urban or community use but see further discussion below about Policy 45).
 13. Although not expressed as such, the policies provide for a 'sinking lid' approach to water allocation until a review occurs following implementation of this plan. This is made more apparent by suggested amendments listed in Table 1.
 14. The management approach in the draft plan includes offsetting the stream depletion effects by stream flow maintenance pumping. It enables water users to avoid a cease take restriction if water is pumped into streams to offset their depletion effect when flows fall below the specified trigger. In one part of the Plains (the Paritua/Karewarewa area), the lack of certainty about groundwater and surface water connections and management opportunities is reflected in specific policy direction for further investigation and data collection.
 15. The draft Plan envisages that not all adverse effects will be avoided, but that the management solutions included in the plan will remedy or offset adverse effects on ecosystems and instream values while still providing for the economic and social values of the abstracted water.
 16. Tangata whenua sought further reductions in water allocation and use than were indicated by the modelling based on the 2012-13 year. Attachment 2 provides modelling information about the extent to which water use would need to be reduced in order to significantly reduce stream depletion.
 17. The terminology of 'interim' is creating some confusion about the nature and role of this allocation limit. The limit applies for the life of the plan and guides decision making in respect of new applications for water abstraction. The 90 M m³/year reflects modelled use during the 2012-13 year. New permits issued subject to this plan will only be provided where there is an existing permit due for expiry and each permit will be subject to an actual and reasonable assessment of water use that results in a defined annual or seasonal amount. For irrigators, this is based not only on use in the ten years up to 2017, it is also now subject to specified reliability of supply, modelled crop water demand and efficiency standards. Industrial and commercial water abstraction will also be subject to this actual and reasonable assessment including demonstration of efficient water use. An exception for actual and reasonable is provided for urban water supply who must meet demands of urban growth through savings made in existing networks. This is further discussed in attachment 2.
 18. The allocation limit is therefore interim because:
 - 18.1. there is some uncertainty about the current levels of water allocation and water use
 - 18.2. it is not known whether the interim limit in combination with all the other management measures will adequately address adverse stream depletion effects,
 - 18.3. the result of the new allocation regime following the expiry and review of existing consents is not yet known
 - 18.4. it is unknown what, if any, measures would be needed to reduce allocation further to that, or some other limit, and what the associated costs of further reduction might be

- 18.5. if further reductions in water use are required, the distribution of costs across existing consent holders still needs to be determined.
19. Other plan provisions will also impact on how the sustainable limit is to be more definitively determined upon review. In particular, the success of the stream flow maintenance and habitat enhancement schemes will be assessed in relation to their effectiveness in meeting ecosystem health and water quality objectives. This scheme aims to offset the stream depletion effects of groundwater abstraction on the lowland streams and improve ecosystem health and riparian land management.
20. It was previously suggested that 'interim' be deleted because review Policy 39 already indicates it is subject to review. However, stronger direction about the interim nature of the plan provisions was sought by tangata whenua. This would better reflect their concerns about the effectiveness of the stream flow maintenance scheme in adequately protecting ecosystem health in the lowland streams and its role in the longer term. As a result of their concerns, it is suggested that use of the term 'interim' is helpful although a further option to delete reference to a specific allocation limit is also included for consideration.

Springs and connected water bodies

21. The protection of spring flow and lowland stream ecosystems is of particular concern to tangata whenua and they note a range of uncertainties and issues with the scheme and in relation to the modelled management scenarios.
22. The lack of certainty that the Plan provisions will actually improve current poor state of some lowland tributaries remains a concern for tangata whenua. For example, it is known that not all streams affected by depletion can be managed in this way. For some, losses to groundwater will exceed any flow maintenance pumping (such as for the Karewarewa). In other circumstances, small tributary waterways may be too far from a cost effective pumping scheme solution.
23. The required detail for each scheme cannot be provided for at a Plan level as each scheme will depend on a range of local and site specific issues including identifying relevant water permits, abstraction and pumping options, and any other measures that a water user collective might develop to ensure stream flows are maintained, such as by rostering or changing points of take. Opportunities and constraints for stream flow maintenance solutions will need to be addressed in more detail through subsequent resource consent processes.

Other management options

24. RPC direction at the July 3 meeting, sought consideration of several additional options to reduce overall allocation of groundwater:
- 24.1. Status quo (as per draft PC9.1)
- 24.2. Reduce the allocation limit from 90 Mm³ /year to 80 Mm³ /year in policy and rules. Reductions in water allocation and use to be achieved through new allocation regime
- 24.3. 2.a Ensure any new takes above the allocation limit are prohibited, rather than non-complying
- 24.4. Reduce the actual and reasonable amount allocated through consents by a further 10% (at 1% further reduction per year).
25. The costs and benefits of these options are described in more detail in Attachment 2. The attachment also provides more information about the modelling that was carried out, including modelled actual and reasonable water use.
26. In considering these options a number of other solutions were explored by the RPC sub-group.

RPC sub-group feedback

27. The RPC sub-group developed a number of amendments to the relevant policies to better reflect the policy intent and the interim nature of some of the management solutions. A further option that considers the merits of not having a defined allocation limit has been added since then as option 5b. The amendments are as described in Table 1 below.

Table 1: List of issues and amendments

	Issue	Amendments	Risk and Opportunities
1	The stream flow maintenance scheme does not fully remedy impacts on mauri or reflect tikanga or matauranga Māori.	Adverse effects of groundwater abstraction on mātauranga Māori and tikanga clearly acknowledged in Policy 34 as over-riding concern. Section 32 report to reflect nature of these concerns	Tangata whenua concerns may not be fully addressed by the plan – but plan review process will enable reassessment about the extent to which adverse effects are to be further avoided or remedied and mitigated
2	The proposed management provisions should be interim and subject to further review.	Re-introduce reference to interim for allocation limit in Policy 34	While interim, the plan nonetheless provides some certainty for existing investment, while preventing new water use.
3	The re-allocation of water based on the defined 'actual and reasonable' assessment with a "sinking lid" approach to further reduce water use.	Allocation for new water use is avoided through the setting of the limit and non-complying rule and robust policy direction to guide decisions. Heretaunga Plains will be managed as over-allocated. No more water to be allocated, 'sinking lid' approach adopted. Policy 34	Existing investment is provided for, although is more constrained than previously to drive more efficient water use and management systems.
4	Any water that is unallocated, even if the total allocation is less than the specified limit, would not be re-allocated to any use until a review had been carried out	If there is unallocated water it is left unused to provide additional protection for ecosystem values Policy 45 deleted. Policy 34 and 47	Avoids further investment into water that might need to be clawed back if the allocation limit is further reduced
Either 5a	An interim allocation limit be set at 80Mm ³ /year.	This reflects the actual and reasonable reallocation regime to provide for existing investment with a focus on further reducing water use overall. Policy 34, Rule TANK 10, Schedule 6.	Version 9.2 currently includes this provision as general guidance that the aquifer is significantly over-allocated and an indication that significant reductions in allocation are required. However, the limit could provide a starting point for assessing the plan provisions, and there is a risk that it will be seen as the correct number from which a debate about an alternative proposition will begin, which is not the policy intention. .

	Issue	Amendments	Risk and Opportunities
or 5b	No specific allocation limit be included but the combination of actions relied on to prevent new allocations and reduce current allocations	Combination of other provisions means limit is provided by restricting any new allocation of water to actual and reasonable and otherwise managing the HPs aquifer as over-allocated until review of plan provisions carried out	This more accurately reflects the uncertainties about the sustainable allocation limit and the impacts on water abstraction resulting from any changes beyond those already modelled. This also reflects the strong commitment for review of all aspects of water management for the aquifer because of the nature of the uncertainties and the significant potential costs and benefits associated with this decision.
6	The stream flow maintenance and habitat enhancement scheme development and operation would be more clearly provided for and directed by a new Schedule to the Plan.	Provides more clarity about obligations and expectations in respect of the design and operation of such schemes Policy 36 and new Schedule 12	Enables both flexibility and innovation while establishing minimum requirements.
7	Further direction included about how success of the stream flow maintenance and habitat enhancement scheme would be assessed.	Assessment criteria included in the policy and reflected in monitoring requirements for the schemes New Policy 37 and Schedule 12	Provides more clarity in relation to expectations and performance.
8	Concern that new clauses about constraints for developing large infrastructure over time creates a loophole for new use. (V9.1; Policy 34 Clause (h)(v).	The clause has been removed. More targeted amendment to Rule TANK 7 and glossary.	The provision is not to allow widespread development but to protect existing authorised commitments to water use. It has very limited application.
9	The development of the stream maintenance schemes needs to be in advance of water permit expiry	The implementation plan needs to be more explicit about council's role in making sure the schemes are able to be developed and rolled out as consents expire and new applications are made.	Provides more clarity for consent applicants.

Recommendation

28. The RPC sub-group developed a number of amendments to the Heretaunga Plains policies that reflect the direction in Table 1 including item 5a. Amendments are shown in tracked changes in the attached Version 9.2 of the TANK Plan Change (Attachment 1) and include both options 5a and 5b. Option 5b is recommended.

Outstanding Waterbodies in Tank Catchments

29. The RPC has made decisions on a change to the RPS for outstanding water bodies. An assessment of the TANK plan change for these water bodies is provided below.
30. The outstanding water bodies in the TANK catchments as listed in Proposed Plan Change 7 are:

- 30.1. Wetlands and lakes
 - 30.2. Kaweka Lakes
 - 30.3. Lake Poukawa and Pekapeka Swamp
 - 30.4. Ngamatea East Swamp
 - 30.5. Ngaruroro River
 - 30.6. Tūtaekurī River
 - 30.7. Taruarau River
 - 30.8. Karamu River
 - 30.9. Heretaunga Aquifer.
31. The Ahuriri Estuary is also identified as an Outstanding Water Body. The TANK Plan Change provides land and water management provisions in respect of freshwater bodies. The Plan must also ensure an integrated approach with respect to inputs to coastal waters and to that extent the TANK Plan Change addresses freshwater inputs to the Ahuriri Estuary and potential impacts on estuary values.

Background

32. Wetlands and lakes are assigned high levels of protection already, both as a result of existing RRMP rules that require no adverse effects as a result of specified activities, and further within the TANK catchments as all wetlands in the TANK catchments are recognised for their high natural, ecological and cultural values. With the exception of Lake Poukawa, the specific wetland/lake water bodies (Listed above) are not however, separately mentioned in PC9.
33. The indigenous species, ecosystem health, recreational activities and particularly natural character, instream values and hydrological functioning values of the mainstem of the Tūtaekurī and Ngaruroro rivers and 4 of their tributaries are protected and improved, particularly in relation to:
 - 33.1. the establishment of freshwater quality objectives
 - 33.2. prohibition on damming
 - 33.3. high flow allocations
 - 33.4. flow triggers for water abstraction at high and low flows
 - 33.5. riparian land management.
34. The improvement to the values provided for by this range of measures will improve the mauri of the water bodies and is therefore intended to also improve cultural and spiritual values.
35. The provisions of the TANK plan go beyond the 'protection' of these existing values to improvement of them.
36. The NPSFM Objectives A2 and B4 require the protection of the significant values of OWB's while water quality is maintained or improved and that water is not over-allocated. The water body values are as they currently are, and these NPSFM objectives do not require improvement beyond the current state to enable a water body to become (more) outstanding.
37. Protection does not necessarily mean no further use or development. Guidance from the Ministry for the Environment states;
 - 37.1. *"The NPSFM objectives do not require that every aspect of the water body is fully protected, unless that is necessary to protect the outstanding characteristics. For example a water body may be outstanding because it is the habitat for an endemic freshwater fish, but protecting that fish may be possible even if some water takes and discharges are authorised."*

Water quality

38. Water quality is subject to new TANK Plan Change objectives for the maintenance or improvement of freshwater quality. Freshwater quality state objectives are specified for a large range of water quality attributes. Attribute states are set in relation to the most critical or sensitive value for that attribute (e.g. E. coli levels represent maintenance and improvement of water quality for swimming, while clarity protects water quality for fish that rely on visual clarity for feeding).
39. The TANK Plan specifies that 'maintain' means ensuring the state of the attribute does not decline below its present state if it is already above the specified state, and must be improved if it is below the specified state. It does not allow for movement to a lower quality within an NPSFM band for that attribute.
40. Both the values identified in the TANK Plan Change and the significant values listed in the OWB plan change are therefore being protected and improved.

Water Quantity

41. PC9 introduces new allocation limits and flow triggers for both high and low flow abstraction, and includes a new limit for total abstraction from the Heretaunga Plains aquifer.
42. In particular, damming is prohibited to protect the natural character, instream values and hydrological functioning both for the Ngaruroro and Tūtaekurī Rivers and four of their tributaries. This serves to protect values such as jet boating and the braided reaches which are essential habitat for some bird species.
43. New allocation limits are also specified for both the Ngaruroro and Tūtaekurī Rivers at low flows. The allocation limits have been substantially reduced to reduce impacts of abstraction on instream values. Further, the Plan seeks to increase the minimum flow for the Tutaekuri.
44. The TANK Plan Change recognises and manages a wider range of values in relation to water quantity in addition to the instream and intrinsic values and also addresses the needs of people and communities for water.
45. Both the values identified in the TANK Plan Change and the significant values listed in the OWB plan change are therefore being protected and improved.

Ecosystem Health

46. A key factor for improving water quality and ecosystem health is linked to good riparian land management. PC9 focuses on improved riparian management and includes milestones for both stock exclusion and riparian planting to provide shade. These provisions will improve natural character, instream values and water quality and habitat for indigenous species.
47. Both the values identified in the TANK Plan Change and the significant values listed in the OWB plan change are therefore being protected and improved.
48. Table 1 in Attachment 3 shows how TANK refers to the water bodies and what provisions are included to protect identified values. The following section describes how the TANK gives effect to the OWB plan change.
49. The Implementation Plan which has been developed alongside the TANK plan also highlights a number of measures, actions and targets which will support the delivery of the freshwater objectives of the plan

Outstanding Waterbodies Policies Proposed PC7

50. New and amended objective and policy has been introduced into the RPS to identify and direct management of outstanding water bodies as per the direction of the NPSFM.
51. The RPS objectives requires protection of outstanding and significant values and includes several policies in relation to the preparation of regional plans and the consideration of resource consents.

52. Table 2 in Attachment 3 provides an assessment of the specific new policies introduced by PC7 in relation to the provisions of the TANK plan Change. The overall assessment is that the TANK Plan Change does give effect to the RPS provisions for outstanding water bodies in the TANK catchments. However a couple of amendments are suggested to ensure the appropriate connections are made.

Recommendations

53. **Objective 2;** Amend clause (e) to read;
“The significant values of the outstanding water bodies in schedule 25 and the values in the plan objectives are appropriately protected and provided for.
54. **Objective 15**
Insert new clause “(f) the protection of the outstanding values of the Kaweka Lakes, Lake Poukawa and Pekapeka Swamp and the Ngamatea East Swamp”.

Other Issues

55. It is recommended that suggested amendments reported in respect of the 3 July report to the RPC are also incorporated into the Tank Plan Change for notification. A number of additional minor corrections and amendments have also been made to Version 9.1 and are shown as tracked changes in Version 9.2 (Attachment 2).

Consideration of Tangata Whenua

56. The TANK Plan Change when it is notified will have considerable potential impact on tanagata whenua and the values they hold for water. This report arises in relation to their feedback on the pre-notification draft of the Plan Change and demonstrates that particular regard is being given to the advice received from iwi authorities.

Consideration of Climate Change

57. The Plan Change contains an objective that any decisions made about land and water use take into account effects of climate change. The plan considers long term impacts of decision making and incorporates the need for developing community resilience by making land use decisions that address multiple objectives and provides for the development of longer term water supply and demand strategies.

Strategic Fit

58. The Plan Changes delivers on several of the Councils strategic goals especially in relation to sustainable land and water use and efficient infrastructure.

Financial and Resource Implications

59. The plan preparation process is incorporated in existing council budgets. The implementation of the Plan will have significant impact on council staff and other resources that have yet to be fully assessed.

Decision Making Process

60. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (LGA). In this case, the decision about content is prior to the next step of making a decisions about notification as prescribed by the Resource Management Act and which will be subject to process steps prescribed by Schedule 1 of the RMA. Staff have assessed the requirements contained in Part 6 Sub Part 1 of the LGA in relation to this item and have concluded:
- 60.1. The decision about the content of the Proposed Plan Change 9 (TANK) does not significantly alter the service provision or affect a strategic asset
 - 60.2. The persons affected by this decision are the Hawke’s Bay regional community
 - 60.3. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions

made, Council can exercise its discretion and make this specific decision about the content of the Proposed Plan Change 9 (TANK) without consulting directly with the community or others having an interest in the decision.

Recommendations

1. That the Regional Planning Committee:
 - 1.1. Receives and considers the “Proposed TANK Plan Change 9 – Agree Amendments for Notification” staff report.
 - 1.2. Agrees to the amendments described in the following recommendations being incorporated into proposed TANK Plan Change 9:
 - 1.2.1. amendments as at paragraph 29
 - 1.2.2. amendments as at paragraphs 54 and 55
 - 1.2.3. amendments as at paragraph 56.
 - 1.3. Requests that staff prepare a Proposed Plan Change with those amendments as noted in 1.2 above, and provide it to the 18 September 2019 Regional Planning Committee meeting to enable adoption by Hawke’s Bay Regional Council on 25 September 2019 for notification.

Authored by:

Mary-Anne Baker
SENIOR PLANNER

Approved by:

Ceri Edmonds
MANAGER POLICY AND PLANNING

Attachment/s

- | | | |
|-------------------|---------------------------------------------------------------------|----------------------|
| 1 | TANK Draft Plan Change 9 Version 9.2 July 2019 with tracked changes | Under Separate Cover |
| 2 | Modelling impact of actual and reasonable reallocation | Under Separate Cover |
| 3 | Assessment of Outstanding Waterbodies and TANK Plan Changes | Under Separate Cover |
| 4 | Section 32 Report | Under Separate Cover |

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

Subject: DECISION MAKING UNDER PART 2 OF THE RESOURCE MANAGEMENT ACT

Item 7

Reason for Report

1. This item provides Regional Planning Committee members with an overview of their obligations as Resource Management Act 1991 (RMA or the Act) decision-makers in the context of reviewing and amending regional plans and the Regional Policy Statement.

Background

2. At the 3 July 2019 meeting RPC members requested that staff provide a report to the 14 August 2019 meeting to assist their understanding of their obligations as RMA decision-makers. In addition to the general principles of decision making, committee members requested a particular focus on:
 - 2.1. an overview of Part 2 of the Act
 - 2.2. further analysis of the weightings given to each part, and how the requirements to “recognise and provide for”, “have particular regard to” and “take into account” in terms of sections 6, 7 and 8 of the Act respectively have been interpreted and applied
 - 2.3. weighting to be given to higher order planning documents
 - 2.4. a brief analysis of the matters decision makers must take into consideration, particularly in relation to Māori interests and values, when making plan change decisions under the National Policy Statement for Freshwater Management 2014
 - 2.5. How these obligations were reflected in the TANK process
3. The attached paper has been authored by HBRC staff and reviewed by Partners at law firm Simpson Grierson.

TANK Plan Change

4. The process under which the TANK Plan Change was prepared sits in an RMA hierarchy under the requirements of the National Policy Statement for Freshwater Management (NPSFM). The way in which Māori values and interests were to be considered are particularly outlined in Objective D1 and Policy D1 of the NPSFM.

Involving

5. The TANK process ensured iwi and hapū were involved throughout the process, making specific provisions for membership of mana whenua. While the process was not always ideal for a range of reasons, the Council responded to concerns as best it was able (as discussed in the 3 July report to the RPC).
6. This included funding additional input by mana whenua consultants into the plan making process as well as additional meetings with mana whenua members of TANK throughout the process to support understanding and enhance opportunities to provide input.
7. TANK members were supported in properly giving effect to the NPSFM in their decision making through measures such as the TANK Terms of Reference and the clear articulation of tangata whenua as more than ‘stakeholders’ in this process.

Identifying Values

8. The Council provided additional funding to mana whenua to assist them in clearly identifying their values and corresponding attributes, in the TANK catchments. These reports were considered and accounted for by TANK members in making decisions about water quality and quantity objectives. They also considered iwi management plans and took into account the relevant provisions of those plans.

Reflecting

9. The NPSFM describes the decision making process that was to be followed to determine and make decisions about Māori and community values.
10. The Plan Change contains objectives and policies seeking a higher level of management effort for improving the ecosystem health of the TANK waterbodies which reflect the direction provided in the NPSFM. The TANK members adopted an integrated approach considering connections from the upper catchments to the sea including impacts on estuary values; ki uta ki tai. It did this while considering the matters provided in the NPSFM, particularly those in Policy CA2 (f), which among other things require consideration of:
 - 10.1. the choices between values and the formulation of freshwater objectives and limits
 - 10.2. any implications for resource users, people and communities
 - 10.3. timeframes.

Gaps and Opportunities

11. The preparation of the Plan Change identified gaps and opportunities in respect of mana whenua values and interests. These gaps particularly related to matauranga Māori and how this enables kaitiakitanga. The gaps are reflected as placeholders in the Plan that are to be filled following further input into and development of the appropriate measures to satisfy these needs. This requires both Council support as well as mana whenua involvement and is included in the Implementation Plan.
12. As noted in the attached paper, the Council is giving effect to the NPSFM through this plan change. Evidence of the extent to which the plan change gives effect to the NPSFM and therefore the purpose of the Act will be reported on in the section 32 report. This report, together with the submissions, and evidence prepared in relation to the plan change assist the decision maker in determining whether, and how, the requirements of the NPSFM and RMA are being met.

Particular regard

13. The RPC has been required to have particular regard to the feedback from iwi on the pre-notification draft. This imposes an obligation on decision makers to give particular weight to the feedback and creates a duty on the decision maker to be on inquiry, in other words passive action is not sufficient. That this duty was properly carried out is reflected in the direction for further input by the sub-group of the Committee along with advisors to further explore resolution of outstanding concerns.

Decision Making Process

14. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and considers the “*Decision Making Under Part 2 of the Resource Management Act*” staff report.

Authored by:

**Ellen Humphries
POLICY PLANNER**

**Mary-Anne Baker
SENIOR PLANNER**

Approved by:

**Ceri Edmonds
MANAGER POLICY AND PLANNING**

Attachment/s

[!\[\]\(da429e12a05eb927178659682de93cbb_img.jpg\) 1](#) RMA Decision Making and Maori interests and obligations under Part 2 and the NPSFM

RMA DECISION MAKING AND MĀORI INTERESTS: OBLIGATIONS UNDER PART 2 AND THE NPSFM

1. The purpose of the Hawke's Bay Regional Planning Committee Act 2015 is to "*improve tāngata whenua involvement in the development and review of documents prepared in accordance with the Resource Management Act 1991 for the Hawke's Bay region*" (section 3). The relevant RMA documents are the the Regional Policy Statement and the Regional Resource Management Plan.
2. The Regional Planning Committee's (RPC) Terms of Reference (2014) record the purpose of the RPC is to "*oversee the review and development of the Regional Policy Statement and Regional Plans for the Hawke's Bay region, as required under the Resource Management Act 1991*".
3. At the 3 July 2019 meeting RPC members requested that staff provide a report to the 14 August 2019 meeting to assist their understanding of their obligations as Resource Management Act 1991 (RMA or the Act) decision-makers. In addition to the general principles of decision making, committee members requested a particular focus on:
 - An overview of Part 2 of the Act;
 - Further analysis of the weightings given to each part, and how the requirements to "recognise and provide for", "have particular regard to" and "take into account" in terms of ss 6, 7 and 8 of the Act respectively have been interpreted and applied;
 - Weighting to be given to higher order planning documents; and
 - A brief analysis of the matters decision makers must take into consideration, particularly in relation to Māori interests and values, when making plan change decisions under the National Policy Statement for Freshwater Management (2017).

Resource Management Act 1991

4. The RMA is underpinned by the concept of sustainable management of natural and physical resources. Sustainable management is defined in section 5 of the RMA as:

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 well-being 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.*
5. The Act anticipates and allows for resource use and development subject to environmental effects being appropriately managed. The focus of the RMA is on managing the effects of activities rather than regulating the activities themselves, although in practice most planning documents still have a strong focus on activities.

Part 2 of the RMA

6. Part 2 (sections 5-8) establishes the purpose and principles of the RMA:
 - Section 5 sets out the purpose of the Act
 - Section 6 sets out matters of national importance - which decision makers must "recognise and provide for";

- Section 7 sets out other matters - which decision makers must "have particular regard to"; and
- Section 8 requires decision makers to "take into account" the principles of the Treaty of Waitangi.

7. The matters in sections 6 to 8 sit in behind the overall "sustainable management" purpose of the RMA (section 5), and inform the elements that are relevant to determining the meaning of sustainable management in a particular context. The use of different terms in sections 6, 7 and 8 intentionally creates a descending hierarchy of considerations. However, there is no veto right that trumps the purpose of the Act. Sections 6, 7 and 8 are all prefaced with the words "*in achieving the purpose of this Act*" and a decision maker has to consider and appropriately weigh each relevant Part 2 matter to reach a balanced result.

Recognition of Māori interests

8. Sections 6 to 8 contain provisions relating specifically to Māori, in particular:
- Section 6(e) requires RMA decision makers to recognise and provide for "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga";
 - Section 7(a) requires RMA decision makers to have particular regard to kaitiakitanga; and
 - Section 8 requires decision makers to take into account the principles of the Treaty.
9. The Privy Council has found that sections 6(e), 7(a) and 8 are "*strong directions, to be borne in mind at every stage of the planning process*".¹ Each of these provisions is discussed in more detail in the relevant section below.

Section 5 – Purpose

- | |
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| <p>(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.</p> <p>(2) In this Act, 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 well-being and for their health and safety while—</p> <p>(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and</p> <p>(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and</p> <p>(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

10. The definition of sustainable management is a guiding principle of the Act. As identified in section 5, the RMA aims to manage the three way tension between use, development and protection. This requires a balancing act between the interests of various parties, with consideration being given to each. The degree of emphasis on each of the three elements will depend on the particular circumstances being considered. However, the sustainable management purpose of the RMA means that neither use and development nor protection will necessarily prevail.

¹ *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC).

11. In an appeal against a plan change to enable salmon farms, *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*, the Supreme Court emphasised that environmental protection is a core element of sustainable management, and so a policy of preventing the adverse effects of development on particular areas was consistent with sustainable management. However, the Court did not go on to state that protection must prevail over development in all cases.²

Potential tension:

As noted above, section 5 must be read and therefore considered by those performing duties under the RMA as an integrated whole. The sustainable management purpose of the RMA enables decision makers to protect natural and physical resources as well as allowing for their use and development.

Making a decision under the RMA can involve weighing up the significance of different factors and considerations, some of which may be conflicting.

Section 6 – Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

12. Section 6 requires decision makers to “recognise and provide for” the listed matters of national importance. In recognising and providing for the specified matters, decision-makers are required to do something more than “have regard to” or “take into account”, but the matters identified in section 6 are to be recognised and provided for in the context of the overall sustainable management purpose of the RMA.³ A positive action is required not only to recognise but also to provide for the matters in question. This includes (but is not limited to) making appropriate provision in policy statements, plans and rules under the Act.

² *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZLR 593.

³ *Trio Holdings v Marlborough DC* [1997] NZRMA 97 (PT)

13. There is no hierarchy between the matters listed within section 6. Where there is a conflict between matters of national importance the decision maker must weigh the significance of the competing interests in the circumstances of the particular case.
14. Section 6(e) requires decision makers to recognise and provide for "*the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*". In response to evidence that contradicted Maori traditional evidence, the Court has emphasised that s 6(e) provides for the relationship of Maori and their culture with waahi tapu and other taonga. Parliament did not intend others to evaluate the cultural beliefs of Maori - that is for Maori to assert and establish.⁴ The court has also observed that consenting authorities would be unable to recognise and provide for the matters of section 6(e) without consulting iwi⁵. However, the traditional Māori holistic view of the environment does not warrant treating section 6(e) as if it extended to diffuse relationships with whole districts⁶.
15. Where a development will meet the purpose of sustainable management, the fact that it may adversely impact on the relationship between Māori and the affected lands, water, sites, wāhi tapu and other taonga may not necessarily prevent development. As with other section 6 matters, section 6(e) does not establish a power of veto⁷ or trump all other matters. Further, the Environment Court has also found that a plan which demonstrably aspires to protect water quality from further degradation and to improve it over time "*will suffice to recognise and provide for this [section 6(e)] issue of national importance.*"⁸
16. For completeness, the Environment Court (and therefore the Regional Council) has no jurisdiction to remedy alleged historical wrongs or allocate resources in connection with any obligation that the Crown might have as Treaty partner.⁹

Potential tension:

There is no hierarchy within the principles of section 6 and all matters must be recognised and provided for in the preparation of regional planning documents. While tāngata whenua have a traditional holistic relationship with the environment, and that relationship is to be recognised and provided for, it does not provide a right to veto decisions. As a consequence, the regional council and the plans which are developed are bound by constraints and direction set out within the legislation.

⁴ *Maungaharuru-Tangitu Trust v Hastings District Council* [2018] NZEnvC 79

⁵ *Director-General of Conservation v Marlborough District Council* W089/97

⁶ *Beadle v Minister of Corrections* A074/02

⁷ *Maungaharuru-Tangitu Trust v Hawke's Bay Regional Council* [2016] NZEnvC 232

⁸ *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50

⁹ *Freda Pene Reweit Whanua Trust v Auckland Regional Council* (2004)

Section 7 – Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (e) [Repealed]
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

17. While the section 7 requirement “to have particular regard to” is not as strong as “to recognise and provide for” in section 6, section 7 imposes an obligation on decision makers to give particular weight to the listed ‘other matters’. This creates a duty on the decision maker to be on inquiry, in other words passive action is not sufficient.
18. The matters in section 7 tend to be more abstract and more evaluative, however, section 7 is still a high test. To “have particular regard” requires matters to be considered, but does not set absolute requirements or standards.¹⁰
19. Section 7(a) is distinct from Section 7(aa). Kaitiakitanga is distinguishable from the ethic of stewardship in that it applies only to the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori.
20. To give effect to the concept of kaitiakitanga it is important to consult with Māori. Consultation in this context involves an obligation to hear and understand the views of tangata whenua on the exercise of kaitiakitanga and to let those views influence the decision-making.

Potential tension:

Section 7 principles have less weight than sections 5 and 6, which means section 7 matters may be accepted in part or rejected. This is likely to be a point of contention for tāngata whenua as kaitiaki, as this role is viewed to be of significant importance in sustainable management and for the overall protection of the environment.

Section 7 matters may be rejected or accepted only in part.

¹⁰ *Donnithorne v Christchurch CC* [1994] NZRMA 97 (PT); following *R v C* [1976] 1 NZLR 436 (HC) (which distinguished the directive “have regard to” from “take into account”).

Section 8 – Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

21. The requirement to “take into account” the principles of the Treaty requires the decision-maker to consider the relevant Treaty principles, to weigh those up with other relevant factors and to give them the weight that is appropriate in the circumstances, but they are subordinate to the primary purpose of the RMA.¹¹
22. The principles that relate to the obligations on the Crown (but not necessarily the Regional Council) can be summarised as follows:
- The two parties to the Treaty must act reasonably towards each other and in utmost good faith;
 - The Crown must make informed decisions (which will often require consultation, but not invariably so);
 - The Crown must not unreasonably impede its capacity to provide redress for proven grievances; and
 - The Crown must actively protect Maori interests.
23. In short, the “principles” are “the underlying mutual obligations and responsibilities which the Treaty places on the parties.”¹²
24. Although section 8 requires local authorities to take into account the principles of the Treaty, it does not impose on them the obligations of the Crown under the Treaty or its principles or empower them to consider claims arising under the Treaty of Waitangi Act 1975: *Hanton v Auckland City Council* [1994] NZRMA 289 (PT).
25. In the context of regional planning frameworks, the requirements for the Regional Council to consider the impacts on tangata whenua arise from the provisions of the RMA. The obligation under section 8 is to take the principles of the Treaty into account when making decisions.
26. In most cases, consultation will be required to establish the matters of interest and concern to tangata whenua. Consultation does not necessarily lead to agreement, however consultation does not give a right of veto. Furthermore, failure to achieve agreement does not necessarily invalidate consultation.

Possible tension:

Although the Crown is the Treaty partner, section 8 requires the Regional Council to take the principles of the Treaty into account in making its decisions under the RMA.

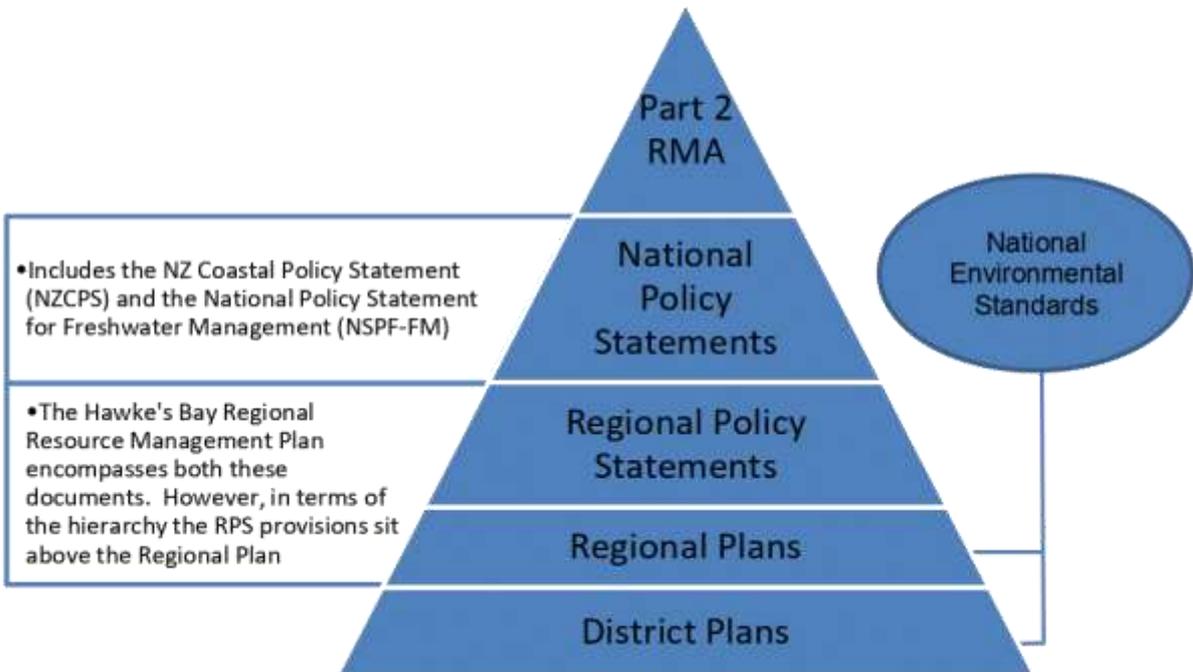
Although the Treaty principles are to be taken into account in RMA decision making, this does not necessarily mean that Māori values are to be given more weight or priority over other values. While some may assume that section 8 means that Māori values should be given primacy, and that assumption can lead to dissatisfaction from tāngata whenua, that is not the way in which the RMA operates, and a failure to achieve agreement does not invalidate consultation.

¹¹ *Minister of Conservation v Southland DC EnvC A039/01; Freda Pene Reweti Whanau Trust v Auckland RC 9/12/05*, Courtney J, HC Auckland CIV-2005-404-356.

¹² *Carter Holt Harvey Ltd v Te Runanga o Tuwharetoa ki Kawerau* [2003] 2 NZLR 349; (2003) 9 ELRNZ 182 (HC), citing *NZ Maori Council v A-G* [1994] 1 NZLR 513 (PC), 517, per Lord Woolf.

Hierarchy of planning documents

27. RMA planning documents sit within a hierarchy, and collectively those documents are intended to implement the RMA. The hierarchy is shown in the following diagram:



28. As is shown by the diagram, the documents move through a hierarchy of those prepared at a national level, through to regional documents and then district documents. The lower order documents are required to give effect to particular higher level documents.

29. The Minister for the Environment¹³ is responsible for developing national policy statements (NPS). These are developed through a rigorous process of formulation and evaluation and allow central government to provide policy direction for lower order planning documents to be prepared by regional and district councils.¹⁴

30. National environmental standards (NES) are regulations that prescribe standards for environmental matters. The government sets the standards where appropriate to ensure a consistent standard across the country for an activity or resource use, and councils must enforce them as well as ensuring their own planning documents are not out of step with the NES.

31. Regional policy statements (RPS) provide an overview of the resource management issues in the region. RPS set out policies and methods to achieve integrated management of the natural and physical resources within the region.

32. Regional plans assist a regional council in carrying out its functions in order to achieve the sustainable management purpose of the RMA. The Council must amend regional policy statements and regional plans to give effect to NPS and RPS. The phrase "give effect to" means "implement" - it is a strong directive that creates a firm obligation on the part of those subject to it.¹⁵

33. District plans, prepared by district and city councils, must give effect to NPS and RPS, and not be inconsistent with a regional plan.

¹³ The Minister of Conservation is responsible for the New Zealand Coastal Policy Statement.

¹⁴ There are currently NPS for: Urban Development Capacity, Freshwater Management, Renewable Electricity Generation, Electricity Transmission and the New Zealand Coastal Policy Statement.

¹⁵ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZLR 593, at [77].

National Policy Statement for Freshwater Management 2014 (amended 2017 - NPSFM)

34. Broadly, the NPSFM requires regional councils to set objectives for the state of fresh water bodies in their regions and to set limits on resource use to meet these objectives.
35. The NPSFM seeks to manage fresh water through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management. In doing so, the importance of Te Mana o Te Wai is woven throughout the the NPSFM, and is specifically referenced in a number of the objectives and policies. Te Mana o te Wai is defined as the “integrated and holistic well-being of a freshwater body”.
36. Some of the key requirements of the NPSFM require regional councils to:
- consider and recognise Te Mana o te Wai in freshwater management
 - safeguard fresh water’s life-supporting capacity, ecosystem processes, and indigenous species
 - safeguard the health of people who come into contact with the water
 - maintain or improve the overall quality of fresh water within a freshwater management unit
 - improve water quality so that it is suitable for primary contact more often
 - protect the significant values of wetlands and outstanding freshwater bodies
 - follow a specific process (the national objectives framework) for identifying the values that tāngata whenua and communities have for water, and using a specified set of water quality measures (called attributes) to set objectives
 - set limits on resource use (eg, how much water can be taken or how much of a contaminant can be discharged) to meet limits over time and ensure they continue to be met
 - determine the appropriate set of methods to meet the objectives and limits
 - take an integrated approach to managing land use, fresh water and coastal water
 - involve iwi and hapū in decision-making and management of fresh water.
37. Part D of the NPSFM specifically provides for tangata whenua roles and interests.

Objective D1:

To provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.

Policy D1:

Local authorities shall take reasonable steps to:

- a) Involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region;
- b) Work with iwi and hapū to identify tangata whenua values and interests in fresh water and freshwater ecosystems in the region; and
- c) Reflect tangata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.

38. Objective D1 and Policy D1 support and clarify existing RMA requirements to involve iwi and hapū in freshwater management and decision-making. Guidance on the NPSFM developed by the Ministry for the Environment provides useful interpretation for Part D¹⁶.

¹⁶ Ministry for the Environment, 2017, *A Guide to the National Policy Statement for Freshwater Management 2014 (as amended 2017)*, pp. 87-89.

- “Provide for” and “to ensure” imply an imperative for action on the part of councils.
 - “Take reasonable steps” depends on the local context and resourcing available to both the council and iwi and hapū. It anticipates that councils will provide appropriate opportunities based on current best practice.
 - “Involvement” and “involve” allows different approaches to the way iwi and hapū are involved in the management of freshwater. It leaves the most appropriate approach open to council and iwi/hapū agreement.
 - “Work with” clarifies that councils should not identify tangata whenua values and interests on their behalf.
 - “Reflect” means more than just have regard to. Councils must take tangata whenua values and interests into account in decision making and demonstrate how they have been reflected.
39. Regional councils are to implement the NPSFM by 31 December 2025, although an extension to 31 December 2030 can be made in some circumstances
40. The Regional Council is giving effect to the NPSFM through various plan changes. For each plan change, an evaluation report referred to as a ‘section 32 report’, must be prepared. This report is developed according to section 32 of the RMA and, amongst other matters, must examine the extent to which the plan change achieves the purpose of the NPSFM (and therefore the Act). This, together with the submissions, and evidence prepared in relation to the plan change assist the decision maker in determining whether, and how, the requirements of the NPSFM are being met.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

Subject: RESOURCE MANAGEMENT POLICY PROJECT AUGUST 2019 UPDATES

Item 8

Reason for Report

1. This report provides an outline and update of the Council's various resource management projects currently underway (i.e. the regular update reporting presented to every second meeting of the Regional Planning Committee).

Resource management policy project update

2. The projects covered in this report are those involving reviews and/or changes under the Resource Management Act to one or more of the following planning documents:
 - 2.1. the Hawke's Bay Regional Resource Management Plan (RRMP)
 - 2.2. the Hawke's Bay Regional Policy Statement (RPS) which is incorporated into the RRMP
 - 2.3. the Hawke's Bay Regional Coastal Environment Plan (RCEP).
3. From time to time, separate reports additional to this one may be presented to the Committee for fuller updates on specific plan change projects.
4. Similar periodical reporting is also presented to the Council as part of the quarterly reporting and end of year Annual Plan reporting requirements.

Decision Making Process

5. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the "*Resource Management Policy Projects August 2019 Updates*" staff report.

Authored by:

Ellen Humphries
POLICY PLANNER

Dale Meredith
SENIOR POLICY PLANNER

Approved by:

Ceri Edmonds
MANAGER POLICY AND PLANNING

Attachment/s

[1](#) RMA August 2019 Update

**Status Report on HBRC Resource Management Plan Change Preparation & Review Projects
(as at 7 August 2019)**

Project	Narrative update	Next intended reporting to RPC
'PC5' Integrated land & freshwater management	At Council meeting 31 July 2019, the Council agreed to make PC5 operative by 31 August 2019. Staff are preparing to publicly notify that PC5 is being made operative on Saturday 31 August 2019..	N/A
'PC7' Outstanding waterbodies plan change	To publicly notify and call for submissions on Saturday 31 August 2019. At Council meeting 31 July 2019, the Council resolved that Proposed PC7 be adopted for public notification by 31 August 2019. The Council also agreed that funding would be provided to four iwi authorities to provide further evidence and information regarding cultural and spiritual values for waterbodies where information gaps have been identified, and that the notification period will run for 6 months.	Staff will provide an update of submissions received over the coming months.
'PC8' Mohaka Catchment plan change	Under preparation. Not yet notified. Preliminary project re-design is underway with Ngāti Pāhauwera, iwi and Māori Trusts. There has been a delay in progressing an Agreement with Ngāti Pāhauwera, and discussions have just resumed on the Agreement and co-design of the plan development process. The intention is to re-engage with the wider community in November, following public notification of the OWB and TANK plan changes.	September 2019.
'PC9' Greater Heretaunga/ Ahuriri catchment area plan change (a.k.a. TANK project)	Under preparation. Not yet notified. The TANK sub-group has met twice and staff held an IRRICALC workshop with stakeholders on 5 August 2019. Staff will provide an update from these workshops to RPC at 14 August meeting.	14 August 2019.
Ngaruroro and Clive Rivers Water Conservation Order	Stage 2 of the hearing commenced on 26 February 2019. 8 March 2019 was the final sitting day of the hearing although the hearing will remain adjourned to allow for comprehensive closing submissions from the Applicant. The full written closing submissions and Version 5 of the draft Order were provided to the Environmental Protection Agency on 29 March 2019.	Staff will provide an update as and when new information becomes available.
Statutory Acknowledgements of Treaty settlements	No further Treaty settlement legislation relating to parts of the Hawke's Bay region has been passed into law since the previous update. <i>Refer to Pātaka online mapping tool for further information [website link] about current Statutory Acknowledgements in Hawke's Bay region that have been passed in various Treaty settlement statutes.</i>	Staff will provide an update as and when new information becomes available.

Project	Narrative update	Next intended reporting to RPC
<p>Responsiveness to 'National Direction' (i.e. legislation incl NPSs, national Regulations, national standards, etc).</p>	<p>Staff continue monitoring central government's announcements and proposals relating to resource management matters. A wide range of upcoming such matters in the 'pipeline' were outlined in an earlier report presented to the RPC meeting on 3rd July 2019.</p> <p>In July, HBRC lodged a submission on the Climate Change Response (Zero Carbon) Amendment Bill.</p> <p>In July, a discussion document was released on reducing agricultural emissions: https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/action-on-agricultural-emissions-discussion-document.pdf and submissions close on 13 August 2019.</p> <p>On 24 July, the Government released further information on the comprehensive review of the RMA https://www.mfe.govt.nz/rma/improving-our-resource-management-system with details on public engagement coming out at a later date⁴</p> <p>On 31 July, Cabinet's decisions on its proposed Three Waters policy package were released.</p> <p>On 5 August, a discussion document featuring a draft NZ Biodiversity Strategy was released for public feedback, with submissions closing on 22 September 2019.</p> <p>Late August-September 2019 is likely to see release of proposals in relation to at least the following:</p> <ol style="list-style-type: none"> a) Essential Freshwater Package featuring proposals for a new NPS for Freshwater Management together with several new National Environmental Standards for Freshwater Management. b) Proposals for urban development, including amendments to the existing NPS for Urban Development Capacity. c) Proposals for a new NPS on Highly Productive Land. d) Proposals for a new NPS on Indigenous Biodiversity. <p>For some of the above proposals, staff understand MFE officials intend hosting public roadshow/hui in various locations across New Zealand, but details of those are yet to be confirmed.</p>	<p>Further reporting will be on matters as and when relevant to RPC's responsibilities.</p>

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

SUBJECT: STATUTORY ADVOCACY AUGUST 2019 UPDATE

Item 9

Reason for Report

1. To report on proposals forwarded to the Regional Council and assessed by staff acting under delegated authority as part of the Council's Statutory Advocacy project since 3 July 2019.
2. The Statutory Advocacy project (Project 196) centres on resource management-related proposals upon which the Regional Council has an opportunity to make comments or to lodge a submission. These include, but are not limited to:
 - 2.1. resource consent applications publicly notified by a territorial authority,
 - 2.2. district plan reviews or district plan changes released by a territorial authority,
 - 2.3. private plan change requests publicly notified by a territorial authority,
 - 2.4. notices of requirements for designations in district plans,
 - 2.5. non-statutory strategies, structure plans, registrations, etc prepared by territorial authorities, government ministries or other agencies involved in resource management.
3. In all cases, the Regional Council is **not** the decision-maker, applicant nor proponent. In the Statutory Advocacy project, the Regional Council is purely an agency with an opportunity to make comments or lodge submissions on others' proposals. The Council's position in relation to such proposals is informed by the Council's own Plans, Policies and Strategies, plus its land ownership or asset management interests.
4. The summary outlines those proposals that the Council's Statutory Advocacy project is currently actively engaged in. This period's update report excludes the numerous Marine and Coastal Area Act proceedings little has changed since the previous update.

Decision Making Process

5. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the "*Statutory Advocacy August 2019 Update*" staff report.

Authored by:

Ellen Humphries
POLICY PLANNER

Dale Meredith
SENIOR POLICY PLANNER

Approved by:

Ceri Edmonds
MANAGER POLICY AND PLANNING

Attachment/s

[1](#) Statutory Advocacy August 2019 Update

Statutory Advocacy Update (as at 7 August 2019)

Received	TLA	Activity	Applicant/ Agency	Status	Current Situation
May 2019	CHBDC	<p>Central Hawke's Bay District Plan Review</p> <p>CHBDC are undertaking a full review of the District Plan. Notification of proposed review plan is anticipated in early 2020.</p>	Central Hawke's Bay District Council	Draft review discussion document released – public feedback closed.	Feedback submitted. A copy of HBRC's submission can be found at HBRC Submissions .
Nov 2018	NCC	<p>Napier City District Plan Review</p> <p>Review of District Plan has been initiated. Preliminary phase of review underway with notification of proposed reviewed plan in 2020/21.</p>	Napier City Council	Draft review discussion document released- public feedback closed	<p>Previously...</p> <p>Napier City Council have publicly launched a review of their district plan. Public feedback was invited on the key themes about future planning needs and opportunities for Napier City. NCC are working through the public feedback it received to influence further drafting. HBRC's roles and activities will have interests in at least the following matters of the district plan review process: transport, natural hazards, water quantity, water quality, coastal environment, urban growth management, infrastructure planning, stormwater and wastewater management, biodiversity and open spaces.</p> <p>There will be further opportunities during NCC's District Plan Review process for HBRC to provide feedback and influence content.</p>
9 Dec 2017	n/a	<p>HB Fish and Game Council's Draft Sports Fish and Game Management Plan</p> <p>A draft management plan under the Conservation Act to eventually replace the current 2005 Sports Fish and Game Management Plan for the HBFG region.</p>	HB Fish and Game Council	Notified, Submissions closed. Hearing pending	<p>Previously...</p> <p>Submission lodged. A copy of HBRC's submission can be found at HBRC Submissions.</p>
13 July 2016	HDC	<p>Howard Street Rezoning Variation 3</p> <p>Variation to rezone 21.2 hectares of land from its current Plains zone to General Residential zone in between Howard Street and Havelock Road.</p>	Hastings District Council	HDC Decisions issued Subject to appeal, mediation ongoing	<p>Previously...</p> <ul style="list-style-type: none"> Following Environment Court-assisted mediation and discussions between engineering experts, parties have indicated resolution is achievable regarding land for stormwater management. Final documentation is being drafted by HDC for Court's approval. Parties to the appeal have been discussing recently completed stormwater engineering investigations and geotechnical assessments and how the District Plan rezoning appeal might now be resolved. HDC issued its decisions on 25th March 2017.

Received	TLA	Activity	Applicant/ Agency	Status	Current Situation
24 July 2017	n/a	Application for Water Conservation Order (WCO) Application for a WCO for the Ngaruroro River & Clive River	Applicants NZ Fish & Game Council, HB Fish & Game Council, Whitewater NZ, Jet Boating NZ, Operation Patiki Ngāti Hori ki Kohupatiki Marae, Royal Forest & Bird Protection Society	Notified, Submission period closed. Special Tribunal completed Stages 1 & 2 hearing	<ul style="list-style-type: none"> • Stage 2 hearing has now been completed. Stage 2 of the hearing focussed on the lower Ngaruroro River and Clive River whereas Stage 1 had earlier focussed on the upper catchment (above Whanawhana). • The Co-applicants filed a written closing statement on 29 March 2019. • The Tribunal is yet to announce any further timetabling or milestone events prior to it preparing a report and recommendations on the application.
18 Jan 2016	WDC	Resource Consent Application Consent is sought to clear 248 hectares of Manuka and Kanuka on Part Umumanfo 2 Block on Kopuawhara Road, Mahia.	Applicant R & L Thompson Agent Insight Gisborne Ltd	Limited Notified WDC hearing pending	Previously... <ul style="list-style-type: none"> • HBRC has opposed the application based on concerns relating to the loss and degradation of soil (erosion) and water quality. A copy of the submission can be found at HBRC Submissions. • HBRC staff and applicants have held discussions about potential alternative clearance proposals.
8 Nov 2013	HDC	Proposed Hastings District Plan Review of the Hastings District Plan in its entirety. Includes the harmonisation of district wide provisions between the Napier District Plan with the Hastings District Plan where relevant.	Hastings District Council	Notified HDC decisions issued, subject to appeals	Previously... <ul style="list-style-type: none"> • Over 40 separate appeals were lodged against HDC's decisions by other groups and individuals. HBRC joined as a section 274 interested party to proceedings on eleven (11) of those appeals. All but one of those appeals has been resolved. That last one will be awaiting the appellant to prepare a draft 'structure plan' for their development area in Havelock North. • HDC issued its decisions on 12 September 2015. Council staff reviewed the decisions and were satisfied that HBRC's submission has been appropriately reflected so did not need to lodge an appeal itself.

NOTE: The following matters appearing on previous Statutory Advocacy activity updates have been removed from this edition. The following matters have reached a conclusion and there is no further 'statutory advocacy' role for HB Regional Council.

- Hastings District Council's District Plan Variation 5 regarding inner city living
- Hastings District Council's District Plan Variation 6 regarding heritage provisions for 'Vidal House.'

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 14 August 2019

Subject: DISCUSSION OF MINOR ITEMS OF BUSINESS NOT ON THE AGENDA

Item 10

Reason for Report

1. This document has been prepared to assist Committee Members to note the Minor Items of Business Not on the Agenda to be discussed as determined earlier in Agenda Item 5.

Item	Topic	Raised by
1.		
2.		
3.		
4.		
5.		