Review of the Regional Policy Statement for Taranaki:

A review of case law and changes to legislation

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Executive Summary

- The purpose of this report is to assist the Taranaki Regional Council in its review of the *Regional Policy Statement for Taranaki*. The report considers the relevant provisions of the Resource Management Act 1991 ("RMA") as amended by the Resource Management Amendment Act 2003. It also reviews developments in case law since the *Regional Policy Statement* was made operative on 1 September 1994.

- A regional policy statement ("RPS") is a statutory document and all statements within it have legal effect (*St Columba's Environmental House Group v Hawke's Bay Regional Council*). It is a significant document because of its impact on other statutory instruments throughout the region (*Eco-Net v Tasman District Council*).

- The phrase "integrated management" is intended to be more than an empty slogan. In *Carter Holt Harvey Forests Ltd. v Tasman District Council*, the Court noted that "*in providing an overview of environmental issues of the region, the RPS is the primary instrument by which integrated management is to be achieved*". In *Carter Holt*, the Court noted that the approach of the RMA is issue driven, "so issues need to be carefully and appropriately defined". Once an issue has been defined, there is inevitability in the manner in which statutory policy is further developed.

- As amended, section 61(1)(e) now specifically excludes rules from the range of methods to be provided for in a RPS. This is a clarification of what was already the case.

- Regional policy statements derive their main impact from the stipulation that district plans cannot be inconsistent with them (*Auckland Regional Council v North Shore City Council*). However, it is only where a RPS is sufficiently directive that an obligation to implement it (or parts of it) arises.

- Regional councils are not precluded from stating methods of implementation under other legislation by reference (e.g. rules in pest management strategies, see *Royal Forest & Bird Protection Society of New Zealand v Northland Regional Council*).

- The amendments to the RMA include a clarification of the matters that must be included in a regional policy statement in section 62. The Second Schedule to the Act (matters that may be provided for in policy statements and plans) has been repealed on the basis that it was simply a duplication of original section 62 (contents of regional policy statements). The wording of new section 62 remains substantially the same. New section 62(2) changes the default responsibility (where no responsibility is specified) for hazardous substances from the regional council to territorial authorities.

- Regional policy statements are now required to "give effect' to a national policy statement or New Zealand coastal policy statement (previously they were simply required to "not be inconsistent with" those documents) (section 62(3)).

- Section 30 (functions of regional councils) of the Act has been amended to include biological diversity within the ambit of the regional council's functions.

- Section 32 has been repealed and substituted. The section 32 duty as amended, appears to set out a less onerous threshold than previously. New section 32 provides that an

evaluation must be carried out "before a …proposed policy statement … is publicly notified". This clarifies what had already been determined by case law.

- It is implicit in section 32 that the duty it imposes can only be performed within the scope of the Council's functions (*Application by North Shore City Council*) and within the context of all the provisions of the law about regional policy statements.

- The only amendments to Part II (purpose and principles) relate to the elevation of the importance of historic heritage. The "protection of historic heritage" is now a matter of national importance under sections 6 and has been consequently deleted from section 7.

- The provisions of Part II are a mandatory consideration for the preparation and review of regional policy statements. In *Application by North Shore City Council*, the Court considered the relationship between regional policy statements and the provisions of Part II and held that *"Provisions in regional policy statements of the kinds listed in Part II are only authorised to the extent that they relate to matters of regional significance and serve the functions of regional councils under s 30"*.

- Applying section 5 involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. Sections 6 to 8 represent factors contributing to the evaluation under section 5 and are accessory to the purpose of the RMA (*Doves Bay Society Inc v Northland Regional Council*).

- The formal statutory process for the preparation of regional policy statements remains largely unchanged under the Amendment Act.

- Clause 3 of the First Schedule sets out the duty to consult. In *Wellington International Airport Ltd v Air New Zealand*, the Court of Appeal held that consultation could not be equated with negotiation, the latter implying a process that has as its object arriving at an agreement.

- In conclusion, this review has not identified any major developments in case law that will have significant impact on the way in which the Taranaki Regional Council reviews (and replaces) its RPS, or on the scope or content of regional policy statements. There are however, a number of amendments to the Act, which will have implications.

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1. Introduction

The purpose of this report is to contribute to the review of the *Regional Policy Statement for Taranaki*. The first part of the review project involves an internal review, including a review of case law and changes to relevant legislation since the Regional Policy Statement was made operative on 1 September 1994. This report considers the relevant provisions of the Resource Management Act 1991 ("RMA") as amended by the Resource Management Amendment Act 2003 ("RMAA")[1]. It also outlines relevant developments in case law since 1994.

2. Review of policy statements (section 79)

The RMA provides that every regional council must commence a full review of its regional policy statement ("RPS") not later than 10 years after the statement became operative (section 79(1))[2]. Section 79 remains unchanged by the RMAA. If, after reviewing its RPS the council considers that the statement requires change or replacement, "it shall change or replace the statement or plan in the manner set out in the First Schedule" and Part V. Alternatively, if the regional council considers that the policy statement can remain without change or replacement, "it shall publicly notify that statement as if it were a proposed policy statement in the manner set out in the First Schedule" and Part V (section 79(3)). (Refer below for case law and legislative change relating to the First Schedule and the provisions of Part V).

In *Petersen v Napier City Council (EnvC C124/2000)*, the Environment Court considered the life-cycle of district plans and noted that the same general cycle was applicable to policy statements. The normal cycle of seven stages is as follows:

(1) Review of operative policy statement	Section 79(1) and (2)
(2) Decision to change, replace or continue	Section 79(3)
(3) Preparation of proposed policy statement	Clauses 2,3 (and section 32)
(4) Notification of, submissions and hearing on proposed policy statement	Clause 5 to 11
(5) References[3] to the Environment Court	Clauses 14-17
(6) Variations (if any) to the proposed policy statement	Clauses 16A and 16B
(7) Notification that the new (or amended) policy statement is operative	Clause 20

In *Peterson* the Court considered that the use of the term "review" for later stages of the cycle was misleading because section 79(3) makes is clear that stage (2) of the process only commences *after* reviewing the policy statement. Stages (3) to (7) were not seen as part of a "review" of an operative policy statement, but rather the sequence of events for a replacement policy statement. The Court also noted that an important aspect of the

[1] Refer to the Appendix for the full text of the relevant provisions of the RMA as amended by the RMAA.
[2] Section 79(4) RMA requires the council to *"review all sections of, and all changes to, the policy statement regardless of when those sections or changes became operative"*.
[3] Now "appeals" following the RMAA.

identification of each stage is that each needs to be completed or discontinued before the next begins[4].

3. Part V: regional policy statements

Sections 59-62 of Part V of the RMA ("Standards, Policy Statements, and Plans") govern regional policy statements. In *St Columba's Environmental House Group v Hawke's Bay Regional Council (PT W85/94*), the Planning Tribunal was of the view that the fact that regional policy statements have a section in the RMA that is entirely separate from other plan provisions, demonstrates their significance in the overall structure of plan provisions, both regional and district.

3.1 Purpose of regional policy statements (section 59)

Regional councils are obliged at all times to have one RPS[5]. Section 59 of the RMA sets out the purpose of regional policy statements, which is *"to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region"*. This provision remains unchanged following the enactment of the RMAA.

A regional policy statement is a statutory document and all statements within it have legal effect (see *St Columba's*). The RPS is *"the heart of resource management"* in each region (*North Shore City Council v Auckland Regional Council (A70/94)*) and is a significant document because of its impact on other statutory instruments throughout the region (*Eco-Net v Tasman District Council (EnvC W117/97)*).

The main goal of a regional policy statement is to achieve the purpose of the RMA set out in section 5. (Refer below for case law in relation to section 5.) Under section 59, there are two components to a RPS. The first is an overview of regional resource management issues and the second is a framework of policies and methods to achieve integrated management of the natural and physical resources of the region. Anything included within a RPS must fall within the parameters of this guiding section.

3.1.1 An overview of resource management issues

As discussed above, the first part to a regional policy statement is to provide *"an overview of the resource management issues of the region"*. This is qualified by subsection 62(a) (refer below), which provides that a RPS shall state the "significant resource management issues of the region"[6]. Any overview should encompass all significant resource management issues of interest to the region[7].

In the *St Columba's* case, the Planning Tribunal considered part of the proposed RPS for Hawke's Bay. Chapter 3 of the RPS entitled "Vision for Hawke's Bay, Principles of Sustainable Management, included 13 "criteria" promoting sustainable management and

[4] Judge Jackson stated that he presumed that a resolution passed by the local authority under the Local Government Act would be required at each stage.
[5] Section 60(1) RMA
[6] See *St Columba's* (Ibid.)
[7] An overview of the policies to achieve integrated management of the natural and physical resources of a region is not required (*Auckland Regional Council v North Shore City Council [1995] NZRMA 424, CA*).

stated that these were derived from the purposes and principles contained in Part II of the RMA. The Tribunal considered whether the vision chapter provided an "overview" of issues in terms of section 59. The Tribunal held that whilst the vision chapter appeared to be unrelated to other chapters and to serve simply as an introduction, it did not adequately reflect the resource management issues specifically referred to in succeeding chapters. The Tribunal noted that all statements within regional policy statements have legal effect and that the lack of integration between the vision chapter and the subsequent chapters of the RPS and the broad statements and assertions in the vision chapter would create ambiguity and lead to arguments before the Tribunal. The Tribunal was regretful about its decision because it acknowledged that *"a vision chapter is an expression by concerned members of the regional community for the region's environmental wellbeing and was accepted by the regional council as such"*. However, there was no reason why the introductory part of the vision chapter could not go into the RPS as part of the chairman's foreword or as an appendix.

3.1.2 Policies and methods to achieve integrated management

The second part of a RPS is to provide *"policies and methods to achieve integrated management of natural and physical resources"*[8]. In *Carter Holt Harvey Forests Ltd. v Tasman District Council (EnvC W7/98)*, the Court noted that *"in providing an overview of environmental issues of the region, the RPS is the primary instrument by which integrated management is to be achieved"*.

In *St Columba's* (refer above) the Tribunal also considered whether the vision chapter was "a proper vehicle to trigger integrated management of the region's resources". The Tribunal held that the policies and methods to achieve integrated management were those referred to more specifically in section 62(1)(d) and (e) of the RMA (refer below) and could not therefore form part of the overview chapter itself.

Although the integrated management of resources may not be fully achievable under the RMA, the Planning Tribunal has stated that it is intended to be more than an empty slogan. Establishing and implementing objectives, policies and methods for the achievement of integrated management are important functions of regional councils (*Application by North Shore City Council [1995] NZRMA 74)*. The Planning Tribunal went on to say that the notion of integrated management implies that management decisions that might otherwise be made [e.g. by territorial authorities], are constrained in the interests of integration.

> *"The regional council function is not limited to land and water surfaces, but extends to all natural and physical resources of the region, and the territorial authority function focuses on the effects of activities in relation to land and water surfaces. For such a regime to be able to work effectively in practice, the exercise of the regional council function must be able to impose some measure of restraint on management decisions made in exercise of the territorial authority function. That is the very nature of the regional council function to achieve the integrated management of all the natural and physical resources of the region"*.

[8] "Natural and physical resources" is defined in section 3 of the Act as including *"land, water, air, soil, minerals and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures"*.

3.2 Preparation and change of regional policy statements (section 60) and matters to be considered by regional council (section 61)

A RPS may be changed in the manner set out in the First Schedule, *"at the instigation of a Minister of the Crown, the regional council, or any territorial authority within or partly within the region"* (section 60(2)). In addition to the process set out in the First Schedule, a policy statement must be prepared and changed in accordance with the regional council's functions under section 30, the provisions of Part II, the statutory duty to consider alternatives, benefits and costs under section 32 and any regulations (section 61(1)). (Refer below for an outline of case law and legislative change relating to the First Schedule, Part II, section 30 and section 32).

A regional council must also have regard to certain other matters set out in section 61(2). This section has been amended by the RMAA to delete the requirement to have regard to planning documents recognised by iwi authorities. That requirement is now contained in new subsection 61(2A), which states that local authorities **must** now **take into account** iwi planning documents when preparing or changing regional policy statements "to the extent that its content has a bearing on resource management issues of the region". This differs from the previous lesser requirement to simply "shall have regard to" those documents.

3.3 Contents of regional policy statements (section 62)

Section 62 has been repealed by the RMAA and substituted with a new section 62 to clarify the matters that *must* be included in a RPS.

Prior to the RMAA, section 62 provided that *"a regional policy statement shall make provision for such of the matters set out in Part I of the Second Schedule, (and such of the matters set out in Part II of that Schedule as are of regional significance), that are appropriate to the circumstances of the region)"*. The RMAA repeals the Second Schedule on the basis that it provided little more than what was already provided for in the body of the RMA and generated confusion by using different wording to that set out in the Act[9].

3.3.1 Issues, objectives, policies, methods and reasons (subsections 62(1)(a)-(f))

The RMA envisages a portfolio of plans beginning with the RPS. The role of the RPS is seen as identifying the significant resource issues of the districts within its region in a manner, which will be helpful to individual district plans[10]. Subsections 62(1)(a) to (f) require that an RPS must state significant resource management issues, objectives, policies for those issues and objectives, methods (excluding rules) to implement the policies and the principal reasons for adopting the objectives, policies and methods. The wording remains substantially the same as it was prior to the RMAA, with the exception of subsections 62(1)(b) and (e) (refer below).

In *Carter Holt Harvey Forests Ltd.*, the Court noted that the whole approach of the RMA is issue driven, "so issues need to be carefully and appropriately defined". If a regional policy

[9] Resource Management Amendment Government Bill 1999 - Commentary
[10] 1/2/95 Ken Tremaine, Environmental Unit, KPMG Peat Marwick (Commentary on *Application by North Shore City Council* (Ibid.)).

statement identifies a significant resource management issue (subsections 62(1)(a) and (b)), and states policies for that issue, it must also state the methods to implement the policies. Once an issue is defined, there is inevitability in the manner in which statutory policy is further developed. In the *Carter Holt* case, the Court also noted that *"it is the objectives of the RPS where the integrated management of resources and the promotion of sustainable management should be most evident. This is because it is these that control the rest of the RMA policy framework"*.

"Issues", "objectives", "policies" and "methods" are distinct aspects of the planning process. The meanings of "policies" and "methods" overlap however. A "method" is what is to be done to give effect to a policy, whereas the term "policy" refers to the way in which an objective is to be attained (*Application by North Shore City Council*). In *Auckland Regional Council v North Shore City Council [1995] NZRMA 424*, the Court of Appeal held that "policy" and "policies" must bear their natural and ordinary meaning in the context of the RMA and defined the word to mean a "course of action", which could be either flexible or inflexible, broad or narrow. The Court rejected the submission that a policy could not contain something "highly specific" (in that case, a mandatory direction to territorial authorities). The case was in contrast to the earlier Planning Tribunal decision, which suggested that a direction to a territorial authority was more in the nature of a method than a policy.

Prior to the RMAA, section 62(1)(b) provided that a RPS state "matters of resource management significance to iwi authorities". This has been amended to provide for "the resource management issues of significance to iwi authorities in the region". This brings the wording of the subsection in line with section 62(1)(a) (significant resource management issues for the region) and makes it clear that significant resource management matters for iwi should be stated as issues and accordingly, that objectives, policies and methods should flow from those (prior to the RMAA, it was unclear where "matters" of resource management significance to iwi sat in the RPS hierarchy).

As amended by the RMAA, section 62(1)(e) now specifically excludes rules from the range of methods to be provided for in a regional policy statement. This is really just a clarification of what was already the case. In *Application by North Shore City Council*, the Planning Tribunal stated that section 62, when read with sections 30 and 68, showed *"an intention that regional policy statements might contain objectives, policies and methods (excluding rules) to achieve integrated management of the natural and physical resources of the region"*. In *Carter Holt Harvey Forests Ltd.*, the Court emphasised that *"the RPS is not the document in which the finer controls on resource use are developed, these being left to other relevant planning instruments"*. However, the language of section 62(1)(e) does not preclude the stating of methods of implementation under other legislation by reference.

In *Royal Forest & Bird Protection Society of New Zealand v Northland Regional Council (EnvC A33/98)*, the Court held that it was appropriate to include policies and methods of implementation in the RPS to address aspects of the regionally significant resource management issue of pest management, which could not otherwise be addressed in planning instruments under the RMA. The Court's view was that although section 61 directs that a Regional Council is to have regard to strategies prepared under other Acts, in preparing a regional policy statement, section 62 then goes on to direct that *"a regional policy statement is to state the significant resource management issues of the region, that it is to state the policies in regard to those significant issues, and that it is to state the methods used or to be used to implement the policies"*. The Council's RPS stated that pest management was a significant resource management issue for the region and stated polices in relation to those issues. The Court held that it followed that the Council also had to state the methods "used or to be

used to implement the policies". Further, section 62 does not direct that the methods of implementation can only be rules contained in instruments created under the RMA. The Court concluded that the language of section 62 *"does not preclude the stating of methods [in a RPS] of implementation under other legislation, such as rules in regional pest management strategies under the Biosecurity Act"*.

In *Auckland Regional Council v North Shore City Council [1995] NZRMA 424*, the Court of Appeal considered whether certain provisions in the Auckland RPS were permissible in regional policy statements. The provisions directed territorial authorities in the region as to the content of their district plans in certain respects (including limiting areas of urban development). The Court noted that the scheme of the RMA is that "rules" may be included in regional plans (section 68) or district plans (section 76) but not in regional policy statements, but that that could not limit the scope of a RPS. The Court held that the *"scheme of the Act does not include direct enforcement of regional policy statements against members of the public. … Regional policy statements may contain rules in the ordinary sense of that term, but they are not rules within the special statutory definition*[11] *and directly binding on individual citizens. Mainly they derive their impact from the stipulation of Parliament that district plans may not be inconsistent with them."* However, it is only where a RPS is sufficiently directive that an obligation to implement it (or parts of it) arises. The degree of discretion which may be exercised by territorial authorities depends on the degree of specificity contained in the policies set out in the RPS[12]. That was the view of Judge Smith in *Canterbury Regional Council v Waimakariri District Council (EnvC C70/2002)*, where the Court considered the provisions of the Waimakariri District Proposed Plan and whether is was inconsistent with the Canterbury RPS. The Court found that certain wording in the RPS was not mandatory in such a way as to require implementation in district plans.

In the *Auckland Regional Council* case, the Court found that although the ARC was not the provider of services such as sewerage and transport, it had a regional planning role that included a responsibility for evolving policies and methods to achieve integrated management of the natural and physical resources of the region. The Court stated that the *"need for a true regional relationship is crucial to and a limitation on the formulation of regional policy"* and that the regional council did have the power under the RMA to include the provisions under dispute[13].

Further, in the case at first instance[14], the Planning Tribunal found that a RPS could not require assessments and monitoring by territorial authorities. The Tribunal could not find any authority *"for a regional council to expect territorial authorities to carry out monitoring to the extent to which those authority's policies and programmes give effect to regional development objectives. That is monitoring that the Act directs the regional council to carry out"*.

Section 62(1)(f) of the RMA, provides that a regional policy statement must state *"the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement"*. This provision was unchanged by the RMAA. In *St Columba's*, the appellant sought to have a broad vision statement and principles included in the RPS under section 61(1)(f) as a "catch-all". The Planning Tribunal found that the RPS already explicitly stated the reasons for adopting objectives, policies and methods, without adding further ones in the guise of principles. Further, the Tribunal found that it was implicit that reasons do not

[11] Section 2(1) defines "rule" as a district rule or a regional rule.
[12] Williams, D.A.R. (Ed.) – Environmental & Resource Management Law, p.112.
[13] One of the provisions provided that *"urban development shall be permitted only in urban areas defined in the Statement"*.
[14] *Application by North Shore City Council [1995] NZRMA 74*

have substantive effects (which the principles effectively did). They support the objectives, policies and methods that form a substantive or operative part of the statement.

3.3.2 Responsibility for natural hazards, hazardous substances and biological diversity (subsection 62(1)(i) and (2))

New section 62(1)(i) provides that in addition to natural hazards and hazardous substances, a RPS must state the local authority responsible, either in whole or in part, for specifying the objectives, policies and methods for the control of the use of land, in relation to the maintenance of biological diversity. This reflects the new biodiversity function given to regional councils contained in amended section 30 RMA.

Where no responsibility is specified, new section 62(2) (which replaces the last part of original section 62(1)(ha)) changes the default responsibility for hazardous substances from the regional council to territorial authorities. The default responsibility for natural hazards remains with the regional council. No default is specified for biological diversity.

3.3.3 Other information (subsection 62(1)(k))

Prior to the RMAA, sections 62(1)(j) and (k), provided that a RPS contain *"any other information that the regional council considers appropriate"*; and *"such additional matters as may be appropriate for the purpose of fulfilling the regional council's functions, powers, and duties under this Act"*. New section 62(1)(k) is an amalgamation of those two subsections and reads "any other information required for the purpose of the regional council's functions, powers, and duties under this Act".

In *St Columba's*, the Tribunal accepted the submission that the word "information" meant "objectively verifiable fact rather than separate objectives or policies". In that case, the series of detailed objectives that the appellant sought to have included were found not to fit easily within the statutory framework of a RPS. Under the new section 62(1)(k), "any other information" is also qualified by the fact that it must be "required for the purpose of the regional council's functions, powers and duties"[15]. The Tribunal also considered whether principles derived from the Rio Declaration could be included in the policy statement. The Tribunal found that the principles of the Rio Declaration were broad concepts, having broad implications and were not "objectively identifiable fact" as required by the term "information".

3.3.4 Consistency with other documents (subsection 62(3))

Section 62(3) now states that a RPS *"must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement"*. The section previously provided that regional policy statements should simply "not be inconsistent with" any national policy statement, New Zealand coastal policy statement or water conservation order. The rationale behind this change was to take away the discretion of local authorities to interpret whether or not the approaches they have taken or intend to take are inconsistent with those documents and thereby to increase the ability by which central government can provide certain and consistent direction on policy to local government across the country.

[15] The regional council's functions, powers and duties are legal ones able to be carried out only within the context of the provisions of Part II of the Act from which they draw their direction or purpose (*St Columba's*).

3.3.5 Other provisions (subsections 62(1)(g), (h) and (j))

Subsections 62(1)(g) and (h) relating to anticipated environmental results and processes to deal with cross-boundary issues remain unchanged following the RMAA. The wording of subsection 62(1)(j)[16] has been reworked. Previously, the section provided for "procedures to be used to review" the provisions of the RPS and "to monitor the effectiveness of the statement as a means of achieving its objectives and policies". The section now more simply provides for "the procedures used to monitor the efficiency and effectiveness of the policies and methods contained in the statement".[17]

4. Functions of regional councils (Section 30)

Section 30 sets out the functions of regional councils for the purposes of giving effect to the RMA in its region.

The scope of a RPS is limited to what is authorised under the RMA or in regulations. In *Application by North Shore City Council*, the Planning Tribunal accepted that the direction in section 61(1) (outlined above), that a regional council prepare its RPS in accordance with its functions under section 30 was intended to be a limitation.

4.1 RMAA 2003 (subsections 30(1)(c)(iiia) and (1)(ga))

Significantly, the RMAA amends section 30 to include biological diversity within the ambit of the regional council's functions. Section 30(1)(c) is amended by inserting new subparagraph (iiia) "the maintenance and enhancement of ecosystems in water bodies and coastal water". New subsection (ga) "the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity" is also inserted into section 30(1). This gives regional councils a specific mandate to provide for biodiversity. Section 2 now also includes a definition of "Biological diversity" as *"the variability among loving organisms, and the ecological complexes of which they are a part, including diversity within species, between species and of ecosystems"*.

4.2 Objectives, policies and methods (subsections 30(1)(a),(b) and (ga))

Section 30(1)(a) and (b) provide for *"the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region"* and *"the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance"*. These provisions indicate that objectives, policies and methods are distinct aspects of the planning process.

Sections 30(1)(a) and (b), together with Part II, provide regional councils with the authority to set objectives and policies to implement section 6, 7 and 8 matters that are relevant to the regional council's functions (but not to make rules for that purpose) (*Application by Canterbury Regional Council [1995] NZRMA 110*). The Tribunal stated that the function in section 30(1)(a) *"does not extend to the control of the use of land by rules, but it does include establishing and implementing methods that are not rules to achieve integrated management"*.

[16] Original subsection 62(1)(i).
[17] Note the previous comments under 3.3.1 that a RPS cannot require monitoring by territorial authorities (*Application by North Shore City (Ibid.)*).

Section 68(1)[18], provides that a regional council may include rules in a regional plan for the purpose of carrying out its functions under the Act, other than for those set out in subsections 30(1)(a) and (b). This precludes a regional council from making rules in respect of those functions.

Regional councils are confined to objectives and policies, whereas territorial authorities have the function of the control of effects (section 31(b)). Regional councils are also confined to effects that are of regional significance. Effect is given to the objectives and policies formulated under section 30(1)(b), by the fact that the district plan must not be inconsistent with those objectives and policies (section 75(2)). However, *"rules are clearly envisaged by para.s (c) to (g), which authorise regional councils to control those matters"*[19]. Accordingly, where Part II matters are relevant to the functions covered by those subsections; those matters can be dealt with by way of rules as well as objectives and policies. This includes new section 30(1)(c)(iiia), relating to the "maintenance and enhancement of ecosystems in water bodies and coastal water" which falls under the control of the use of land in section 30(1)(c).

New section 30(1)(ga) however, provides as a regional council function for "the establishment, implementation, and review of objectives, policies and methods for maintaining indigenous biological diversity". This is drafted in a similar way to section 30(1)(a) and (b) with no reference to control, but is not excluded from the making of rules by section 68(1). The fact that new section 31(b) gives territorial authorities the function of maintaining indigenous biological diversity by controlling the actual and potential effects of the use, development or protection of land, indicates that territorial authorities have been given the rule-making function in relation to biological diversity. However, this is not clear[20].

4.3 Natural hazards (subsection 30(1)(c)(iv))

Subsection 30(1)(c)(iv) provides that it is a regional council function to control the use of land for the purpose of "the avoidance or mitigation of natural hazards". In *Canterbury Regional Council v Banks Peninsula District Council [1995] 3NZLR 189*, the Court of Appeal held that this required regional councils not to control the occurrence of a natural hazard but to avoid or mitigate the effect of a natural hazard. In that case it was held to be consistent with a regional council's functions for it to investigate flood plain hazards and institute appropriate controls on a regional basis, rather than through individual territorial authorities.

4.4 Fisheries (subsection 30(2))

Section 30(2) excludes the application of the functions of regional councils and the Minister of Conservation to the control of the harvesting or enhancement of populations of aquatic organisms, "where the purpose of that control is to conserve, enhance, protect, allocate, or manage any fishery controlled by the Fisheries Act 1983". As outlined above, section 30(1)(a) emphasises the achievement of the integrated management of natural and physical resources (including fisheries resources and related marine farming structures), but the effect of section 30(2) is that the integrated management of specific fisheries is a matter to be

[18] "Regional rules".
[19] Brookers RMA commentary.
[20] This is really irrelevant for the purposes of the RPS anyway, as an RPS can contain methods but not rules.

dealt with under the fisheries legislation (*Golden Bay Marine Farmers v Tasman District Council EnvC W42/2001).*

4.5 International obligations

The functions set out in section 30 do not include more peripheral issues such as the effects of international agreements. In *Proutist Universal v Nelson City Council (EnvC W121/96),* the Court held that the Council did not have the power to include GATT / World Trade Organisation rules as part of its RPS and that therefore, the Court did not have the jurisdiction to order the Council to do so. Although there is a presumption that local government legislation is to be read consistently with New Zealand's international obligations where possible, those obligations are not binding unless incorporated into legislation. A Court's role in giving effect to a treaty or international agreement depends on the status of the agreement. In *St Columba's,* the Planning Tribunal did not consider that it was the appropriate forum by which to incorporate the principles of the Rio Declaration into a RPS and held that it did not have the jurisdiction to do so.

5. Duties to consider alternatives, assess benefits and costs, etc. (Section 32)

Section 32 has been repealed and substituted with new sections 32 and 32A following the RMAA. New section 32 sets out a cost-benefit evaluation and the times at which that evaluation must be carried out and requires a report to be prepared summarising the evaluation. New section 32A sets out the manner in which an evaluation may be challenged.

5.1 Nature of the section 32 duty

Importantly, new section 32 differs from the original section in that previously, the duty required local authorities to (among other things) be satisfied that any objective, policy, rule or method was **necessary** to achieve the purpose of the Act and the most appropriate means, having regard to its efficiency and effectiveness relative to other means. The new section provides that an evaluation must examine the extent to which each objective is the **most appropriate** way to achieve the purpose of the Act and whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.

Prior to the RMAA, the section 32 duty involved three distinct steps[21]. Firstly, to "have regard to" certain matters including the necessity of a provision in achieving the purpose of the RMA, alternative means of achieving that purpose and the reasons for and against adopting the proposed provision and the principal alternative means available (including doing nothing). Secondly, to "carry out" a cost-benefit evaluation in respect of alternative means and thirdly, to "be satisfied" that any provision is "necessary" to achieve the purpose of the RMA and the "most appropriate" means.

Under section 32 as amended, the regional council no longer has to address the necessity of each objective, policy, rule or other method or be "satisfied" before adopting any provision. The duty appears to now consist of only two steps being; firstly, an examination of the extent to which each objective is the "most appropriate" way to achieve the purpose of the

[21] Brookers RMA commentary to section 32.

RMA and secondly, whether the policies, rules, or other methods are the "most appropriate" for achieving the objectives, having regard to their efficiency and effectiveness. The examination must "take into account" the benefits and costs and the risk of acting or not acting where there is uncertain or insufficient information.

The section 32 duty, as amended, appears to set out a less onerous threshold than previously.

5.2 Application of section 32 in the context of a RPS

Regardless of the changes to the section, much of the case law regarding the duty contained in section 32 and its relationship to regional policy statements remains relevant.

In *Royal Forest & Bird Protection Society of New Zealand*, the Court accepted that the duties imposed by original section 32(1) (now effectively new subsections 32(3) and (4)), apply to regional councils in adopting policies and methods of implementation in regional policy statements[22]. In terms of how that duty is carried out, the Planning Tribunal in *Application by North Shore City Council*, found that it is implicit in section 32 that the duty it imposes can only be performed within the scope of a local authority's functions.

Any method chosen in a RPS must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement (section 62(3)). So, a regional council addressing the issues set out in original section 32(1) (new subsections 32(3) and (4)), in respect of the provisions contained in a RPS, must do so in the context of all the provisions of the law about regional policy statements, including the provisions of section 62(3). A regional council's consideration of the contents of its RPS in terms of the section 32 duty is within the context of a regime in which certain instruments impinge on the freedom that regional councils might otherwise have to adopt certain objectives, policies and methods in their regional policy statements.

In *Royal Forest & Bird Protection Society of New Zealand*, the Court restated the section 32 duty[23] as follows:

> *"An objective, policy or method of implementation in a proposed regional policy statement has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the regional council to carry out its function of achieving integrated management of the natural and physical resources of the region, or its functions of the control of the use of the land for the purpose of soil conservation, or (in respect of policies, but not methods of implementation) its function in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance, in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan".*

This is still relevant, although the objectives, policies and methods no longer have to be shown to be "necessary" to achieve the purpose of the RMA.

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[22] This was also the case in *Coeur Gold New Zealand v Wellington Regional Council (EnvC A97/98).* Presumably, they also accepted that the duty would apply in relation to objectives applied to regional councils developing regional policy statements.

[23] Earlier summarised in *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59, 70-1.

5.3 When the section 32 duty applies

New section 32 provides that an evaluation must be carried out "before a… proposed policy statement… is publicly notified". Prior to the RMAA, the section provided that the duty applied "before adopting any objective, policy, rule or other method". The amendment clarifies what had already been determined by case law[24]. In *Countdown Properties (Northlands) Ltd. v Dunedin City Council [1994] NZRMA 145 (HC),* the Court held that the words "before adopting" meant that the section 32 analysis should be carried out at the time the planning instrument (in that case a plan change) is advertised.

6. Part II: purpose and principles

6.1 RMAA 2003

The purpose of the RMA contained in section 5 remains unchanged following the RMAA. The only amendments to Part II relate to the elevation of importance of historic heritage. The reference to heritage values in subsection 7(e) is repealed and new subsection 6(f) has been added. This means that the "protection of historic heritage" is now a matter of national importance under section 6 rather than an "other matter" under section 7.

6.2 Interpretation of Part II by the Courts

In *NZ Rail Ltd. v Marlborough District Council [1994] NZRMA 70,* Grieg J referred to Part II as follows:

> *"This Part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules and principles of statutory construction which aim to extract the precise and unique meaning from the words used. There is a deliberate openness about the language, its meaning and its connotations which I think is intended to allow the application of policy in a general and broad way".*

Applying section 5 involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources[25]. The purpose of the RMA contained in section 5 sets the tone for measuring all actions taken under the Act. Sections 6 to 8 represent factors contributing to the evaluation under section 5 and are accessory to the purpose of the RMA (*Doves Bay Society Inc v Northland Regional Council (EnvC C126/2002)*).

In *NZ Rail*, the Judge observed that section 6(a) was subordinate to the primary purpose of the promotion of sustainable management contained in section 5, and is not an end or objective on its own[26]. The matters contained in section 5 are paramount, not those in section 6. In other words, the matters of national importance contained in section 6 are not intended to be achieved at all costs. The achievement that is promoted is sustainable management and questions of national importance play a part in the overall consideration[27].

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[24] And reinforced by the Resource Management Amendment Act (No.2) 1994.
[25] Brookers RMA commentary to section 5.
[26] These comments are equally applicable to the matters contained in section 7 (*Minister of Conservation v Otago Regional* Council) and may also apply to section 8.
[27] For example, if the purpose of the RMA is best achieved by the implementation of a state highway link, the Act does not require natural features recognised by section 6 to be permanently protected

In *Minister of Conservation v Otago Regional Council (EnvC C71/2002)*, citing the *NZ Rail* case, the Environment Court held that section 5 is informed by the balance of Part II and section 5 by its very nature recognises that there are various contributions to sustainable management under section 5(2) and that any of the factors in Part II may impact upon them. The Court considered that section 5(2) raises in broad terms the key elements that are then elucidated further in sections 6, 7 and 8. Sections 6 to 8 are all subordinate to promoting sustainable management.

In terms of the provisions of those sections, the Court's view was that they do not provide *"any particular hierarchy for matters bearing upon the decision under section 5, the question of sustainable management under section 5, or in fact an exclusive list of all matters which would bear upon the core criteria of section 5"*. The Court held that all the provisions of sections 6 to 8 *"are evaluated in the exercise which must be undertaken by the Court under section 5 to establish what, in the particular circumstances, amounts to sustainable management of natural and physical resources"*. No primacy was attached to any matter in section 6 to 8.

The position was different in the case of *Ngati Maru Iwi Authority Inc v Auckland City Council 24/10/02 (HC)*[28]. In that case the Court accepted that the provisions of Part II broadly indicate the level of weight to be given, effectively establishing a hierarchy by giving priority to the matters of national importance in section 6 over the matters set out in sections 7 and 8. The Court accepted however, that in some circumstances, interests of a lower order of significance might in a particular context, be held to outweigh the consideration of factors of a higher order where the evidence supporting the latter was insubstantial.

Some key points in relation to the provisions of sections 5, 6, 7 and 8 are set out below[29].

6.2.1 Section 5: purpose

Some key points:

- Subsection 5(1) gives pre-eminence to the *sustainable* management of natural and physical resources, not just their management. In *Marlborough District Council v Southern Ocean Seafoods Ltd. [1995] NZRMA 220 (PT)*, the Tribunal considered that the term "sustain" means "to endure without failing or giving way" such that "resources are not used up at a rate greater than their recuperative properties allow". "Promote" has a positive connotation requiring affirmative action.

- The phrase "protection of natural and physical resources" in subsection 5(2) was interpreted as meaning "to keep safe from harm or injury" in *Port Otago Ltd. v Dunedin City Council (EnvC C4/2002)*, as opposed to the prevention of harm or the maintenance of an existing state in perpetuity.

- In *Royal Forest & Bird Protection Society v Manawatu-Wanganui Regional Council (A86/95 (PT))*, the Court noted that the three subparagraphs of subsection 5(2) do not simply express environmental bottom lines and must each be afforded full

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from every work undertaken in the public interest (*Auckland Volcanic Cones Society Inc. v Transit New Zealand (31/3/03, AP123-SW02, (HC)*).

[28] This decision takes precedence as it is more recent than the Environment Court decision in the *Minister of Conservation* case and was decided by the High Court.

[29] These are taken from Brookers RMA commentary.

significance and applied according to the circumstances of the particular case. The subparagraphs provide cumulative safeguards or constraints, which must all be met to fulfil the purpose of the RMA (*Shell Oil NZ Ltd. v Auckland City Council* W8/94 *(PT)*).

- The reference to "natural and physical resources" in subsection 5(2)(a) is not limited to resources with actual or potential economic value (*Burnett v Tasman District Council [1995] NZRMA 280)* but does not include beliefs (although they are part of cultural and social wellbeing) (*Friends and Community of Ngawha v Minister of Corrections (AP110/02 HC)*).

- Subsection 5(2)(b) cannot be construed as placing an absolute prohibition on the use of air, soil, water and ecosystems. Decisions about the use of those resources must balance other resource management considerations.

- The reference to mitigation in subsection 5(2)(c) contemplates that some adverse effects may be considered acceptable. The extent of effect is a question of fact and degree (*Trio Holdings Ltd. v Marlborough District Council (1996) ELRNZ 353).*

- The words "avoid, remedy or mitigate" in subsection 5(2)(c) are to be read conjunctively, as being of equal importance, rather than steps on a continuum. The subsection cannot fulfil the overall purpose of sustainable management if it is interpreted in such a way as to give primacy to ecological values over the management function (to do that will not always fulfil the purpose of sustainable management). What is required is a weighing of factors in order to evaluate which will best achieve the purpose and principles of the RMA (*Winstone Aggregates Ltd. v Papakura District Council (EnvC A049/2002).*

6.2.2 Section 6: matters of national importance

Some key points:

- The words "recognise and provide for" were considered in *Bleakley v Environmental Risk Management Authority[2001] 3 NZLR 213 (HC).*[30]. There the Court held that there was "a deliberate legislative contrast" between section 5 "recognise and provide for" and section 6 "take into account" and that when *"Parliament intended that actual provision be made for a factor, Parliament said so"*. The Court also noted that *"one does not "provide for" a factor by considering and then discarding it"*. However, while section 6 of the RMA requires matters of national importance to be recognised and provided for, that is in the context of achieving the purpose of the Act in section 5. Even if a feature is identified as being of national importance that does not mean that it must be protected absolutely (*Auckland Volcanic Cones Society Inc. v Transit New Zealand (31/3/03, AP123-SW02 (HC)*). "Recognition and provision" must promote the sustainable management of natural and physical resources.

- "Preservation of natural character" (subsection 6(a)): The words "natural" and "natural character" do not necessarily equate with pristine but can include a range of qualities and features created by nature, including for example, pasture and exotic trees (*Harrison v Tasman District Council [1994] NZRMA 193 (PT)*). Preservation does not mean reinstatement of degraded environments (*Auckland Volcanic Cones Society Inc.*).

[30] A case decided under the provisions of the Hazardous Substances & New Organisms Act 1996.

- The words "coastal environment" in subsection 6(a) are not defined in the RMA but was defined under the Town & Country Planning Act 1977 by the Courts in *Northland Regional Planning Authority v Whangarei County (1977) A4828 (TCPAB)* and has been applied in *Wilkinson v Hurunui District Council (EnvC C50/2000)*:

  "What constitutes the coastal environment will vary from place to place and according to the position from which a place is viewed. Where there are hills behind the coast, it will generally extend up to the dominant ridge behind the coast".

- "Protection of outstanding natural features and landscapes" (subsection 6(b)): Landscape includes both the physical and the aesthetic or perceptual qualities and may include the built aspect of an historic landscape in an area where a significant event in human history has taken place (*NZ Marine Hatcheries (Marlborough) Ltd v Marlborough District Council (EnvC W129/97)*). It involves both natural and physical resources as well as factors relating to the viewer and social and cultural conditions (*Pigeon Bay Aquaculture Ltd v Canterbury Regional Council [1999] NRMA 209 (EnvC)*). To fall within section 6(b), a landscape must be **both** outstanding and natural *(Wakatipu Environmental Society Inc v Queenstown-Lakes District Council [2000] NZRMA 59*). What is outstanding is a subjective assessment. "Feature" means a distinctive or characteristic part of a landscape (*Wakatipu Environmental Society Inc v Queenstown Lakes District Council (EnvC C129/2001)*).

- "Protection of areas of significant indigenous vegetation" (subsection 6(c)): The meaning of "significant" was discussed in *Minister of Conservation v Western Bay of Plenty District Council (EnvC A71/2001).* In that case the Court held that "significant" requires an informed judgment as to those natural resources which require protection and includes considering the extent to which the biodiversity resource has already been diminished [31].

- Subsections 6(a), (b) and new subsection 6(f) refer to "protection… from inappropriate subdivision, use and development". Subsection 6(c) refers to "protection" but not to inappropriate use etc. The word "protection" does not carry the connotation of absolute protection, prevention or prohibition[32].

- "Subdivision", "use" and "development" are activities that contemplate physical interference with the natural character of the environment (*Marlborough District Council v New Zealand Rail Ltd W40/95 (PT)*). "Inappropriateness" must be judged from the point of view of preserving the matters identified as being of national importance (*Aquamarine Ltd v Southland Regional Council (EnvC C126/97)*) and must be made in terms of the overall criteria of section 5. The appropriateness of an activity is not relevant under subsection 6(c).

- "Relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga" (subsection 6(e)): "Ancestral land" is land that has been owned by ancestors and is not confined to land remaining in Maori ownership as Maori freehold or customary land (*Royal Forest & Bird Protection Society v W A Habgood Ltd. (1987) 12 NZTPA 76 (HC)*).

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[31] Evaluation criteria include rarity , vulnerability, representativeness, diversity and pattern, naturalness, size and shape, ecological viability (*Minister of Conservation v Western Bay of Plenty District Council).*

[32] This was the meaning under the Town & Country Planning Act (*EDS v Mangonui County Council [1989] 2 NZLR 257)* and is similar in the context of the RMA.

- "Waahi tapu" is not defined in the RMA. Waahi tapu are sacred places with some form of essential characteristics, "essential" relates to the meaning of or contribution to the essence of a person or thinking, or a basic or indispensable element (e.g. death, association with notable people, activities or resources) (*Te Runanga o Ati Awa ki Whakarongotai Inc v Kapiti District Council (EnvC W23/2002)*). In *Winstone Aggregates Ltd. v Franklin District Council (EnvC A80/02)*, the Court accepted the dictionary and Waitangi Tribunal definitions of waahi tapu, namely that the term relates to restricted geographical spaces and must be places of "high spiritual and religious danger", such as urupa and ceremonial or spiritual sites. It does not include old pa sites, fortifications, earthworks or cultivations.

- "Taonga" is not defined in the RMA. Although the term generally applies to tangible objects, intangible values such as beliefs which are central to a culture can be taken as treasured by that culture (*Bleakley)*.

6.2.3 Section 7: other matters

Some key points:

- "Shall have particular regard to": This creates a duty of inquiry, however passive action does not meet the test (*Gill v Rotorua District Council (1993) 2 NZRMA 604)*. The matters contained in section 7 must be recognised as "important to the particular decision and therefore are to be considered and carefully weighed in coming to a conclusion" (*Marlborough District Council v Southern Ocean Seafoods Ltd [1995]NZRMA 220*). However, although the matters in section 7 must be considered, they are not requirements or standards that must be met (*Donnithorne v Christchurch City Council [1994] NZRMA 97*).

- "Kaitiakitanga" (subsection 7(a)): Section 2 defines this term as applying only to "the exercise of guardianship". The framework of the RMA is sufficiently flexible to allow kaitiakitanga to be exercised in a number of ways. In *Tautari v Northland Regional Council (A55/96 (PT))*, the Tribunal noted that the ethic of kaitiakitanga is not a practice that can be taken up or put down at will, but requires ongoing involvement.

- "The ethic of stewardship" (subsection 7(aa)): This subsection extends the ethic of stewardship beyond kaitiakitanga, but there is an overlap with subsection (a). (This subsection was inserted by the Resource Management Amendment Act 1997.)

- "Efficient use and development" (subsection 7(b)): In *NZ Rail Ltd. v Marlborough District Council [1994] NZRMA 70 (HC)*, the Court held that broad aspects of economics are relevant to the considerations under subsection 7(b), rather than narrow considerations of financial viability or profitability[33]. In *Sanford (South Island) Ltd. v Southland Regional Council (EnvC C016/2002)*, the Court noted that "efficiency" in section 7 does not relate only to economic matters, and used in its broadest sense may require an evaluation of not only individual activity sites (in that case marine farming), but also sites as a whole, balancing issues and benefits under section 5. Subsection 7(b) is relevant in assessing the efficiency of methods such as the plan provisions (translatable to provisions of a policy

[33] However, in *Marlborough Ridge ltd. v Marlborough District Council (1997) 3 ELRNZ 483*, the Court noted that all aspects of efficiency are economic by definition, because economics is about the use of resources generally.

statement) and accordingly has a relationship with section 32 (refer above) (*Marlborough Ridge Ltd. v Marlborough District Council (1997) 3 ELRNZ 483*).

- "Maintenance and enhancement of amenity values" (subsection 7(c)): The term "amenity values" is defined in section 2 as "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes". In *Port Otago Ltd. v Dunedin City Council (EnvC C4/2002)*, the Court held that the requirement to "maintain" allows a council to protect rather than preserve or enhance and that "protect" means to "keep safe from harm or injury" and does not require prevention or prohibition. Subsection 7(c) does not require proposals both to maintain **and** enhance amenity values (*Shell NZ Ltd v Auckland City Council [1996] NZRMA 189 (CA)*)[34]. This applies to subsection 7(f) also ("maintenance and enhancement of the quality of the environment").

- Subsection 7(e) relating to heritage values has been repealed by the RMAA (refer above).

- "Quality of the environment" (subsection 7(f)): Although this is not a matter of national importance under the RMA, the quality of the environment is protected by the requirement in section 5 that adverse effects on the environment be avoided, remedied or mitigated (*Marlborough Hockey Assn Inc v Marlborough District Council (1992) 1 NZRMA 274*).

- "Finite characteristics of natural and physical resources" (subsection 7(g)): In *Cash v Queenstown-Lakes District Council (1993) 2 NZRMA 347 (PT)*, the Planning Tribunal considered that this subsection may suggest the need to limit the use of a particular resource or to provide incentives to develop other under-used resources, through the planning process. The subsection is not to be interpreted as restricted to the extreme situation where a finite resource is threatened with being totally used up so that it is no longer available for future generations (*McDonald v Auckland Regional Council (EnvC A204/2002)*.

6.2.4 Section 8: Treaty of Waitangi

Some key points:

- Section 8 requires local authorities to take into account the principles of the Treaty but does not impose on them the obligations of the Crown under the Treaty or its principles (*Hanton v Auckland City Council [1994] NZRMA 289*).

- The principles are not defined in legislation, however, the principles derived from Court of Appeal decisions are: that there is a duty on the two parties to the Treaty to act reasonably towards each other and in good faith, that the Crown must make informed decisions, that the Crown must not impede its capacity to provide redress from proven grievances and that there is a duty on the Crown to actively protect Maori interests[35].

[34] This interpretation applies generally (i.e. to the provisions of a policy statement also).
[35] These principles were derived by the Court of Appeal in cases brought under the State-Owned Enterprises Act . In *Haddon v Auckland Regional Council (A77/93) (PT)*, the Tribunal accepted that there are dangers in applying judicial interpretations from that Act's context to the RMA, because of the different purposes of the statutes. They can be referred to as a guide however different principles may be identified within the context of the RMA (e.g. active protection of rangatiratanga).

- To "take into account" is no higher than an obligation to consider the particular factor in making a decision, to weigh it up with other relevant factors and to give it considerable, moderate, little or no weight at all, as is appropriate in the circumstances (*Bleakley*).

- Section 8 is subordinate to the primary purpose of the RMA contained in section 5. The duty to take into account the principles of the Treaty does not necessarily prevail over the duties to have regard to the other contents of Part II. All relevant matters must be weighed so that a balanced judgement can be made for achieving the purpose of promoting the sustainable management of natural and physical resources (*Minister of Conservation v Southland District Council (EnvC A039/01)*).

- In *Winstone Aggregates Ltd.*, the Court characterised section 8 as a section that recognises the relationship of tangata whenua with natural and physical resources and encourages active participation and consultation with tangata whenua.

- The principle that decision makers must, in order to act in good faith, make informed decisions based on all the relevant information about the interests of Maori, will usually require consultation[36]. Section 8 cannot be dismissed as being "no more than procedural" and a local authority can avoid breaching the Treaty only if it properly investigates and consults, is seen to do so by virtue of the material put before the decision maker and takes the Treaty principles into account in making its decision (*Wellington Rugby Football Union Inc. v Wellington City Council W84/93 (PT)*). In terms of consultation however, section 8 does not embrace an absolute requirement that unanimous agreement must be achieved (*Tangiora v Wairoa District Council (EnvC A26/98)*).

- The duty to take account of the principles of the Treaty of Waitangi must be carried out in a way that does not anticipate any particular outcome of a claim under the Treaty of Waitangi Act 1975 (*Banks v Waikato Regional Council (A31/95)*).

- The principle of active protection requires positive action (e.g. to initiate, facilitate and monitor the consultation process) (*Sea-Tow Ltd. v Auckland Regional Council A129/93 (PT)*).

6.3 Relationship between Part II and regional policy statements

The provisions of Part II (particularly section 5) are a mandatory consideration for the preparation and review of regional policy statements[37].

In *Application by North Shore City Council*, the Court considered the relationship between regional policy statements and the provisions of Part II and held that "*Provisions in regional policy statements of the kinds listed in Part II are only authorised to the extent that they relate to matters of regional significance and serve the functions of regional councils under s 30. Objectives and policies of the kind contemplated by section 30(1)(b) might be examples. To the extent that a matter listed in Part II is of regional significance and is required to serve the functions of a regional council, it is permissible content of a regional instrument.*".

[36] Brookers RMA Commentary – section 8.
[37] As set out above, section 61(1) provides that a regional council shall prepare and change its RPS in accordance with the provisions of Part II.

In the *St Columba's* case, the proposed RPS set out a number of "principles for sustainable management", together with criteria to achieve that within the Hawke's Bay context. The Tribunal found that some of the "principles" re-interpreted the provisions of section 5 or conflicted with the overall provisions of Part II and that *"it is not the function of an RPS through a group of such principles to interpret and qualify the statutory purpose and principles of the Act as a separate component of the [policy statement]"*. A regional council's functions, powers and duties are legal ones able to be carried out only within the context of the provisions of Part II of the Act, from which they draw their direction or purpose.

In *Southland District Council v Southland Regional Council (EnvC C29/97)*, the Court considered the validity of certain objectives and policies. It found that an objective requiring preservation of natural character of the natural environment was not contrary to section 6(a), because it was only one of a number of objectives which must be considered together. Similarly, an objective "to maintain and enhance the biodiversity of indigenous species within the Southland region" was found to be consistent with sections 6(c) and 7(d).

A regional council cannot elevate a resource to the status of national importance, unless supported by section 6 (*Canterbury Regional Council v Selwyn District Council [1997] NZRMA 25*). However, the scheme of the RMA enables a regional council to make decisions that may effectively have a similar result if factual and economic factors are found to support such a course[38].

7. First Schedule

The formal statutory process for the preparation of the RPS contained in the First Schedule remains unchanged under the RMAA with the exception of amendments to wording which are largely concerned with the change of the word "reference" to "appeal" in terms of appeals to the Environment Court on matters relating to planning instruments (as opposed to resource consents).[39]

7.1 Consultation

Clause 3 of the First Schedule sets out the duty to consult. What amounts to consultation was considered in *Wellington International Airport Ltd. v Air New Zealand [1993] 1 NZLR 671*. In that case, the Court of Appeal held that "consultation" could not be equated with negotiation, the latter implying a process that has as its object arriving at an agreement. *Wellington International Airport* was sited with approval in *Ngati Kahu v Tauranga District Council [1994] NZRMA 481* where the Planning Tribunal considered the requirement to consult in the context of references by local Maori on a proposed plan change. The Tribunal considered that a Council "*cannot be bound to consult for however long it takes to reach a consensus. What it must do is consult for a reasonable time in a spirit of goodwill and open-mindedness, so that all reasonable (as distinct from fanciful) planning options are carefully considered and explored"*. Regardless of whether a consensus is achieved however, the Tribunal

[38] Brookers RMA commentary.

[39] New section 78A (inserted by the RMAA), provides that a local authority may prepare a document that meets the requirements of two or more of a regional policy statement, a regional plan or a district plan (i.e. combines the regional policy statement or plans or district plans). This is subject to the requirements of section 60, 64, 65 and 73 (preparation and change of regional policy statements, regional coastal plans, other regional plans and district plans). Accordingly, if a combined plan was created (e.g. as a result of review), that would be prepared (or subsequently changed) in accordance with the First Schedule.

observed that a Council then has to stand back and hear and consider all submissions impartially in a judicial manner and cannot be swayed in considering those other submissions by the outcome of any earlier consultation. Consultation must be conducted in a spirit of good will and open-mindedness, over a reasonable span of time, and to a degree sufficient for the local authority to be informed on the matters in issue.

The requirement to consult contained in clause 3 includes a mandatory duty to consult the Minister for the Environment, a duty to consult those other Ministers of the Crown, local authorities and tangata whenua who may be affected and a power to consult anyone else. No case law was found on the phrase "may be affected" in the context of clause 3 of the First Schedule. However, the Brookers RMA commentary sets out some guidance. It provides that in exercising the discretion to consult those who "may be affected", the local authority *"must take into account whether a party may be affected, whether such an impact is beneficial or adverse and whether it is significant or minor…. Each exercise of the discretion will depend upon its facts. The discretion can be exercised so as to give the benefit of the doubt to any party and thereby consult with that party if it is unclear whether that party may be affected, as the local authority has a very wide power of consultation."*

Clause 3(1)(c) of the First Schedule provides that tangata whenua shall be consulted "through iwi authorities and tribal runanga". "Tangata Whenua" is defined in section 2 of the RMA as meaning in relation to a particular area, "the iwi, or hapu, that holds mana whenua over that area". In *Ngati Kahu* the Tribunal noted that consultation is required to be through iwi authorities and tribal runanga but that it was appropriate in the circumstances of that case that consultation be with Ngati Kahu hapu, as the District Council had previously determined a consultative framework with Maori and proposed that iwi determine the appropriate level of consultation. The fact that the definition of "tangata whenua" includes hapu does not however, absolve local authorities from not having consulted through "iwi authorities or tribal runanga", without prior iwi authority.

7.2 Public notice

Clause 5 provides that a local authority that has prepared a proposed policy statement shall publicly notify it. The only express requirements of a public notice under this clause are set out in clause 5(2). In *Petersen*, the Court noted that there might be implied requirements in clause 5. In that case, the Court held that there were issues relating to the content of the public notice. It did not refer to the RMA or to the fact that the public notice was given under clause 5 of the First Schedule to the Act and it referred to a "review". The Court was concerned by the former omission because the "plan" could be "any kind of "10-year plan". The Court considered that the reference to a "review" was misleading because that would *"suggest that the reader need look no further if they are only concerned about their own rights and that they can wait until the public notice states that there is a proposed (replacement) district plan"*.[40]

In *Hodge v Christchurch City Council (PT C1/96)*, the Tribunal considered the adequacy of a public notice in relation to two proposed plan changes. Clause 5 of the First Schedule does not require public notification of an "explanation" of a change[41]. In *Hodge* however, the Tribunal held that although an explanation of a change is not required by the RMA, some description beyond simply a numerical one is necessary. The Tribunal concluded that such

[40] The Court in *Petersen* considered the life-cycle of a plan and held that the review is the first stage, and that it is only when the review is completed that the other stages commence (refer above).
[41] The Town and Country Planning Act 1977 (section 52(2)) required public notification of two things, namely the change and an explanation of it.

a description must be fair and accurate and not misleading, but it does not have to be detailed or fulfil the requirements of the previous legislation. In *Hodge*, the Tribunal read two public notifications together and considered that *"they would have adequately conveyed to the ordinary reasonable reader a sufficient description of the nature of the Change"*.

In *Petersen*, the Court considered that it would have been fairer if the public notice had been headed: *"Public Notice under clause 5 of the First Schedule to the Resource Management Act 1991"* and have included a statement that the proposed plan was to replace the operative plan (rather than simply saying *"The Council has adopted the Proposed City of Napier District Plan"*).

7.3 Submissions

Clause 6 provides that any person including the local authority in its own area may make a submission in the prescribed form. In *Atkinson v Wellington Regional Council (EnvC W13/99)*, the Court held that where the Council had accepted and made a decision on a submission that did not comply with the detailed requirements of the prescribed form, that the participatory nature of the RMA meant that the submission could not be held to be invalid (because such participation should not be bound by undue formality).

Clause 6 (and clause 8 in relation to further submissions) expressly provides for a local authority to make a submission on its own policy statement (in contrast to the previous position under the Town & Country Planning Act)[42].

Clause 7 requires a local authority to publicly notify *"the availability of a summary of all decisions requested by persons making submissions on a proposed policy statement or plan"*. The contents of a summary are at the local authority's discretion, however its purpose is to enable people to work out whether they are affected by any submission seeking change to a notified policy statement and to see in summary what those changes are. In *Re Christchurch City Council (C71/99)*, the Court held that the required standard was reasonable compliance with clause 7 such that the test was whether the summary was fair and accurate and not misleading. The Court was of the view that an accurate identification of the resource (e.g. in that case, the land affected by the submission) was essential.

7.4 Decisions

Clause 10 provides that whether or not a hearing is held, a local authority must give its decisions, which shall include the reasons for accepting or rejecting any submissions. The duty to give reasons may be breached by failure to give reasons or because the reasons given are inadequate. The reasons given should explain why the decision was reached, deal with the principal points raised and leave the reader with the view that those points have been given proper consideration. They should also give the person who made the submission sufficient information on which to base a decision on whether or not to appeal and to formulate a notice of appeal (in *Rausevic v Henderson Borough A156/80*), the Planning Tribunal declined jurisdiction to deal with an appeal where the Council whose decision was being appealed had not given reasons for the decision).

Clause 10(3) provides that decisions on submissions amend the proposed policy statement from the date of public notification that the decisions have been made (clause 10(3)). In

[42] Presumably however, a Council should use the variation procedure under Clause 16A if it wished to make a substantive amendment to the policy statement after public notification (Brookers RMA commentary).

Moody v Wellington City Council (EnvC W31/98), the Court found that the public notice was so generic and non-specific that it did not satisfy the requirements of clause 10(3) because it did not clearly identify the relevant parts of the plan to which the decisions related.

Clause 10(2) provides that a decision may include consequential alterations arising out of submissions. In *Van der Plas v Tasman District Council (EnvC W80/01)*, the Court held that a "consequential alteration" does not involve changing the substance of an earlier decision. In amending the provisions of a policy statement, the local authority can include amendments that an informed and reasonable member of the public, having studied all the submissions made, should have appreciated that the local authority might make if it accepted those submissions *(Nelson Pine Forest Ltd. v Waimea City Council (1988) 13 NZTPA 69 (HC)*). Ultimately however, it is up to the local authority or Environment Court to decide whether any amendment made goes beyond what is reasonably and fairly raised in submissions. In *Atkinson*, the Court held that the question is whether on the facts of each case the matters at issue were raised in submissions or were relevant to matters raised in submissions.

It is a question of degree as to how far the local authority can make amendments not specifically sought in submissions. In *Atkinson*, the test was not whether relief had been expressly sought in the original submission, but whether the relief goes beyond what is reasonably and fairly raised in submissions (a question of degree to be judged in the context of the terms of the proposed planning instrument and the content of the submissions).

Clause 11 concerns the notification of decisions on submissions and has been amended by the RMAA 2003. Previously, the clause required a local authority to serve a copy of its decision on a provision, on every person who made a submission on that provision. The amended clause now requires a local authority to serve "*a notice of decision and a statement of the time within which an appeal may be lodged*". New clause 11(3) requires a local authority giving notice of a decision to make a copy of the decision available at its offices and all public libraries and to include with the notice a statement of the places where a copy of the decision is available. A local authority must also send or provide a copy of the decision to any person requesting it, within 3 working days of the request.

7.5 RMAA 2003

The RMAA has amended clause 16(1) to provide that a local authority shall amend its proposed policy statement to give effect to any direction in a national environmental standard or a national policy statement, in addition to any direction of the Environment Court.

Clause 16(2) remains unchanged and provides for a local authority to make amendments without formality, where such alterations are of minor effect and to correct minor errors. It is a matter for the discretion of the local authority as to whether the correction of minor errors is required or whether an alteration is of minor effect. What amounts to "minor" is a question of fact. In *Application by Christchurch City Council (EnvC W177/96)*, the Court stated that the test of "minor effect" and "alterations having minor effect" was whether the amendment affects the rights of some members of the public, or whether it is merely neutral, only if it is neutral can an amendment be made.

In terms of the timing of amendments, the Court said that Councils should be free to correct minor errors or make amendments having minor effect at any time that is convenient,

however if any changes affect rights, they cannot be make under clause 16 at all after the time for submissions has closed.

8. Conclusion

This report reviews developments in case law since the *Regional Policy Statement* was made operative on 1 September 1994. It also considers the relevant provisions of the RMA as amended by the RMAA 2003.

In terms of developments in case law, this review has not found any cases with significant implications for regional policy statements generally, either in the way they are reviewed or in their scope or content. Overall, the cases reviewed assist with the interpretation of specific provisions of the Act. Importantly, some cases emphasise the significance of the regional policy statement in the hierarchy of planning instruments and as a tool to achieve integrated management. The careful formulation of issues is particularly important as issue definition effectively determines the manner in which statutory policy is further developed. Although regional policy statements cannot include rules, the fact that documents further down the hierarchy must not be inconsistent with them, means that they can have an important influence. However, the degree of discretion which may be exercised by territorial authorities depends on the degree of specificity contained in the policies set out in the RPS.

The RMAA 2003 made a number of amendments to the RMA that have implications for regional policy statements. Perhaps most significantly, the functions of regional councils have been extended to include a mandate to provide for biodiversity. The streamlining of section 62 together with the repeal of the Second Schedule to the Act, mean that councils will have greater clarity in terms of what must be included in a regional policy statement. It is also hoped that the simplification of the wording of the section 32 duty to consider alternatives and assess benefits and costs will flow through into practice.

Appendix: Relevant provisions of the Resource Management Act 1991 (as amended by the Resource Management Amendment Act 2003)

PART II

PURPOSE AND PRINCIPLES

5. Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(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 wellbeing and for their health and safety while—

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

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..

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:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(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.

Deleted: (e) Recognition and protection of the heritage values of sites, buildings, places, or areas:¶

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).

PART IV

FUNCTIONS, POWERS, AND DUTIES OF CENTRAL AND LOCAL GOVERNMENT

…

Functions, Powers, and Duties of Local Authorities

30. Functions of regional councils under this Act

(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

(b) The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

(c) The control of the use of land for the purpose of—

- (i) Soil conservation:
- (ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:
- (iii) The maintenance of the quantity of water in water bodies and coastal water:
- ***(iiia) The maintenance and enhancement of ecosystems in water bodies and coastal water:***
- (iv) The avoidance or mitigation of natural hazards:
- (v) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

(d) In respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—

- (i) Land and associated natural and physical resources:
- [(ii) The occupation of space on land of the Crown or land vested in the regional council, that is foreshore or seabed, and the extraction of sand, shingle, shell, or other natural material from that land:]
- (iii) The taking, use, damming, and diversion of water:
- (iv) Discharges of contaminants into or onto land, air, or water and discharges of water into water:
- [(iva) The dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:]
- (v) Any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
- (vi) The emission of noise and the mitigation of the effects of noise:
- (vii) Activities in relation to the surface of water:

(e) The control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—

- (i) The setting of any maximum or minimum levels or flows of water:
- (ii) The control of the range, or rate of change, of levels or flows of water:

(iii) The control of the taking or use of geothermal energy:

(f) The control of discharges of contaminants into or onto land, air, or water and discharges of water into water:

(g) In relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—

(i) Soil conservation:

(ii) The maintenance and enhancement of the quality of water in that water body:

(iii) The maintenance of the quantity of water in that water body:

(iv) The avoidance or mitigation of natural hazards:

(ga) The establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

(h) Any other functions specified in this Act.

(2) The functions of the regional council and the Minister of Conservation [under subparagraph (i) or subparagraph (ii) or subparagraph (vii) of subsection (1)(d)] do not apply to the control of the harvesting or enhancement of populations of aquatic organisms, where the purpose of that control is to conserve, [use, … enhance, or develop any fisheries resources controlled under the Fisheries Act 1996].

32. Consideration of alternatives, benefits, and costs

(1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—

(a) the Minister, for a national policy statement or regulations made under section 43; or

(b) the Minister of Conservation, for the New Zealand coastal policy statement; or

(c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1); or

(d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of the Schedule 1.

(2) A further evaluation must also be made by—

(a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; and

(b) the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.

(3) An evaluation must examine—

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of this examination, an evaluation must take into account—

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

(5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.

(6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

Deleted: 32. Duties to consider alternatives, assess benefits and costs, etc ¶
(1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall—¶
(a) Have regard to—¶
(i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and¶
(ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and¶
(iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and¶
(b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and¶
(c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)—¶
(i) Is necessary in achieving the purpose of this Act; and¶
(ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.¶
[(2) Subsection (1) applies to—¶
(a) The Minister, in relation to—¶
(i) The public notification of any proposed national policy statement or of any review of, change to, or revocation of any national policy statement:¶
(ii) Any recommendation that the Governor-General in Council approve any national policy statement or any review of, change to, or revocati… [1]

32A. Failure to carry out evaluation

(1) A challenge to an objective, policy, rule, or other method on the ground that section 32 has not been complied with may be made only in a submission under Schedule 1 or a submission under section 49.

(2) Subsection (1) does not preclude a person who is hearing a submission or an appeal on a proposed plan, proposed policy statement, change, or variation, or a submission on a national policy statement or New Zealand coastal policy statement, from taking into account the matters stated in section 32.

PART V

STANDARDS, POLICY STATEMENTS, AND PLANS

…

Regional Policy Statements

59. Purpose of regional policy statements

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

60. Preparation and change of regional policy statements

(1) There shall at all times be for each region one regional policy statement prepared by the regional council in the manner set out in the First Schedule.

(2) A regional policy statement may be changed in the manner set out in the First Schedule, at the instigation of a Minister of the Crown, the regional council, or any territorial authority within or partly within the region.

61. Matters to be considered by regional council

(1) A regional council shall prepare and change its regional policy statement in accordance with its functions under section 30, the provisions of Part II, and its duty under section 32 and any regulations.

(2) In addition to the requirements of section 62(2), when preparing or changing a regional policy statement, the regional council shall have regard to—

(a) Any—

(i) Management plans and strategies prepared under other Acts; and

[(iia) Relevant entry in the Historic Places Register; and]

[(iii) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing); and]

to the extent that their content has a bearing on resource management issues of the region; and

Deleted: (ii) Relevant planning document recognised by an iwi authority affected by the regional policy statement; and

Deleted: (iv) Regulations made under this Act, including regulations made under section 43—¶

(b) The extent to which the regional policy statement needs to be consistent with the policy statements and plans of adjacent regional councils.

(2A) A regional council must, when preparing or changing a regional policy statement, take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region.

[(3) In preparing or changing any regional policy statement, a regional council must not have regard to trade competition.]

62 Contents of regional policy statements

(1) A regional policy statement must state–

(a) the significant resource management issues for the region; and

(b) the resource management issues of significance to iwi authorities in the region; and

(c) the objectives sought to be achieved by the statement; and

(d) the policies for those issues and objectives and an explanation of those policies; and

(e) the methods (excluding rules) used, or to be used, to implement the policies; and

(f) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and

(g) the environmental results anticipated from implementation of those policies and methods; and

(h) the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and

(i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land–

(i) to avoid or mitigate natural hazards or any group of hazards; and

(ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and

(iii) to maintain indigenous biological diversity; and

(j) the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and

(k) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.

(2) If no responsibilities are specified in the regional policy statement for functions described in subsection (1)(i)(i) or (ii), the regional council retains primary responsibility for the function in subsection (1)(i)(i) and the territorial authorities of the region retain primary responsibility for the function in subsection (1)(i)(ii).

(3) A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement.

…

78A Combined regional and district documents

(1) A local authority may prepare a document that meets the requirements of 2 or more of the following:

(a) a regional policy statement:

(b) a regional plan:

(c) a district plan.

(2) Subsection (1) is subject to sections 60, 64, 65, and 73.]

Deleted: 62. Contents of regional policy statements ¶
(1) A regional policy statement shall make provision for such of the matters set out in Part I of the Second Schedule, (and such of the matters set out in Part II of that Schedule as are of regional significance), that are appropriate to the circumstances of the region, and shall state—¶
(a) The significant resource management issues of the region; and¶
(b) Matters of resource management significance to iwi authorities; and¶
(c) The objectives sought to be achieved by the statement; and¶
(d) The policies in regard to those significant issues and objectives, and an explanation of those policies; and¶
(e) The methods used or to be used to implement the policies; and¶
(f) The principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and¶
(g) The environmental results anticipated from implementation of those policies and methods; and¶
(h) The processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or between regions; and¶
[(ha) For the region or any part of the region, which local authority shall have responsibility within its own area for developing objectives, policies, and rules relating to the control of the use of land for—¶
(i) The avoidance or mitigation of natural hazards;¶
(ii) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances—¶
and may state particular responsibilities for particular hazards or hazardous substances or group of hazards or hazardous substances; but if no responsibilities for a hazard or hazardous substance are identified in the policy statement,¶
[[(iii) The regional council shall retain primary responsibility for the natural hazard; and¶
[[(iv) The relevant territorial authority shall retain pri

... [2]

32. Duties to consider alternatives, assess benefits and costs, etc

(1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall—

(a) Have regard to—

(i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and

(ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and

(iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and

(b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and

(c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)—

(i) Is necessary in achieving the purpose of this Act; and

(ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.

[(2) Subsection (1) applies to—

(a) The Minister, in relation to—

(i) The public notification of any proposed national policy statement or of any review of, change to, or revocation of any national policy statement:

(ii) Any recommendation that the Governor-General in Council approve any national policy statement or any review of, change to, or revocation of any national policy statement:

(iii) Any recommendation that regulations be made under section 43:

(b) The Minister of Conservation, in relation to—

(i) The public notification of any proposed New Zealand coastal policy statement or of any review of, change to, or revocation of any New Zealand coastal policy statement:

(ii) Any recommendation that the Governor-General in Council approve any New Zealand coastal policy statement or any review of, change to, or revocation of New Zealand coastal policy statement:

(iii) Any requirement, under clause 19(1) of the First Schedule, that a regional council make amendments to a regional coastal plan:

(c) Every local authority, in relation to—

(i) The public notification, under clause 5 of the First Schedule, of any proposed regional policy statement or proposed plan or of any change to a regional policy statement or of any variation:

(ii) Any decision made by the local authority, under clause 10 of the First Schedule, on a proposed regional policy statement or proposed plan or on any change to any regional policy statement or on any variation:

(iii) Any decision made by the local authority under clause 29(4) of the First Schedule on any plan or change requested under clause 21 of that Schedule.

[(3) A challenge to any objective, policy, or rule, or other method, on the ground that subsection (1) has not been complied with, may be made only in a submission made under—

(a) Section 49 or section 50 or either of those sections as applied by section 57; or

(b) The First Schedule.

[(4) Every person on whom duties are imposed by subsection (1) shall prepare a record, in such form as that person considers appropriate, of the action taken, and the documentation prepared, by that person in the discharge of those duties.

[(5) The record prepared by a local authority under subsection (4) in relation to the discharge by that local authority of the duties imposed on it by subsection (1), in relation to any public notification specified in subsection (2)(c)(i), shall be publicly available in accordance with section 35 as from the time of that public notification.]

Page 29: [2] Deleted **Mike & Nic** **9/18/2003 10:40:00 AM**

62. Contents of regional policy statements

(1) A regional policy statement shall make provision for such of the matters set out in Part I of the Second Schedule, (and such of the matters set out in Part II of that Schedule as are of regional significance), that are appropriate to the circumstances of the region, and shall state—

(a) The significant resource management issues of the region; and

(b) Matters of resource management significance to iwi authorities; and

(c) The objectives sought to be achieved by the statement; and

(d) The policies in regard to those significant issues and objectives, and an explanation of those policies; and

(e) The methods used or to be used to implement the policies; and

(f) The principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and

(g) The environmental results anticipated from implementation of those policies and methods; and

(h) The processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or between regions; and

[(ha) For the region or any part of the region, which local authority shall have responsibility within its own area for developing objectives, policies, and rules relating to the control of the use of land for—

(i) The avoidance or mitigation of natural hazards:

(ii) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances—

and may state particular responsibilities for particular hazards or hazardous substances or group of hazards or hazardous substances; but if no responsibilities for a hazard or hazardous substance are identified in the policy statement,

[[(iii) The regional council shall retain primary responsibility for the natural hazard; and

[[(iv) The relevant territorial authority shall retain primary responsibility for the hazardous substance.]]]

(i) The procedures to be used to review the matters set out in paragraphs (a) to [(ha)], and to monitor the effectiveness of the statement as a means of achieving its objectives and policies; and

(j) Any other information that the regional council considers appropriate; and:

(k) Such additional matters as may be appropriate for the purpose of fulfilling the regional council's functions, powers, and duties under this Act.

(2) A regional policy statement shall not be inconsistent with any national policy statement, New Zealand coastal policy statement, or water conservation order.