



SAFEGUARDING YOUR ENVIRONMENT + KAITIAKI TUKU IHO

Regional Resource Management Plan

Proposed Plan
Change 1

August 2006

ISBN 1-877405-12-4
HBRC Plan No. 3882

Resource Management Act 1991

Hawke's Bay Regional Council

HAWKE'S BAY REGIONAL RESOURCE MANAGEMENT PLAN – PROPOSED PLAN CHANGE 1

It is hereby certified that this is Proposed Plan Change 1 to the Hawke's Bay Regional Resource Management Plan, adopted by resolution of the Council on the 17th day of August 2006.


The Council further resolved that Proposed Plan Change 1 be publicly notified on the 30th day of August 2006.

SIGNED under the Seal of)
Hawke's Bay Regional Council)
In the presence of:)


Eileen von Dadelszen
Chairman



Seal Number: 2523


Andrew Caseley
Chief Executive

Date: 17 August 2006

Regional Resource Management Plan – Proposed Plan Change 1

Geographic Coverage of Regional Resource Management Plan

Adopted by Council: 17 August 2006

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Resource Management Act 1991

Hawke's Bay Regional Resource Management Plan Proposed Plan Change under section 73 of the Resource Management Act 1991

Proposed Plan Change 1 – Geographic Coverage of Regional Resource Management Plan



The Hawke's Bay Regional Council has resolved to change the operative Regional Resource Management Plan and has prepared proposed Plan Change 1 in accordance with section 73 of the Resource Management Act 1991. HBRC has also resolved to publicly notify the Regional Coastal Environment Plan as a proposed plan.

EXPLANATION

The Hawke's Bay Regional Council decided to review its Operative Regional Coastal Plan. As a result of that review process, HBRC has prepared a 'Regional Coastal Environment Plan' which is a combined plan incorporating regional planning provisions for the coastal marine area and the landward margin of the coast – the coastal environment. This arrangement of regional planning provisions requires amendments to be made to the Regional Resource Management Plan so that it does not apply to the Hawke's Bay coastal environment.

The purpose of Plan Change 1 is to amend the Regional Resource Management Plan so that it will not apply within the coastal environment.

For the purposes of the Regional Resource Management Plan and the Regional Coastal Environment Plan, the 'coastal environment' is defined as meaning an environment in which the coast is a significant element or part and includes:

- (a) the coastal marine area
- (b) any areas identified as being affected by, or potentially affected by, coastal flooding or coastal erosion and
- (c) any of the following:
 - i) tidal waters and the foreshore above mean high water springs
 - ii) dunes
 - iii) beaches
 - iv) areas of coastal vegetation and coastal associated fauna
 - v) coastal cliffs
 - vi) salt marshes
 - vii) coastal wetlands, including estuaries and
 - viii) areas where activities occur or may occur which have a direct physical connection with, or impact on, the coast.

It should be noted that the term 'coastal environment' is not defined in the Resource Management Act 1991, but is used in s6 of the RMA and in the New Zealand Coastal Policy Statement. It was defined under the now repealed Town and Country Planning Act 1977 as an environment in which the coast is usually a significant part or element. The Environment Court has held that the coastal environment is usually accepted as extending to the crest of the nearest skyline. In some cases, the coastal environment for the purposes of s6 and/or the NZCPS may extend inland of the coastal environment as shown on the planning maps. However the provisions of the Regional Coastal Environment Plan only apply seaward of the 'inland coastal environment boundary' shown on that plan's planning maps. Plan Change 1 intends that provisions of the Regional Resource Management Plan will only apply landward of that 'inland coastal environment boundary.'

Proposed Amendments

The following references are made to chapters/sections within the Regional Resource Management Plan (August 2006 printed version). New text is shown in underlined italics and deleted text as ~~struck-out~~. All other text and provisions appearing in this Plan Change are incidental to the proposed amendments. Consequently, any submissions on these incidental provisions are most likely to be beyond the scope of the Plan Change and will be treated accordingly.

Chapter 1 (Introduction)

Amend paragraph 1.1.2 as follows:

- 1.1.2 The purpose of this Plan is to set out a policy framework for managing resource use activities in an integrated manner across ~~the whole of~~ the Hawke's Bay Region. Management of the coastal marine area and wider coastal environment is largely addressed in the Hawke's Bay Regional Coastal Environment Plan, and the New Zealand Coastal Policy Statement. **The Regional Policy Statement section of this document recognises the regional significance of the coastal marine area and wider coastal environment of Hawke's Bay. However rules covering the Coastal Marine Area and coastal environment are covered in the Regional Coastal Environment Plan.** ~~The only exception to this is in relation to the discharge of contaminants into air. Owing to their transient nature, discharges into air across the whole Region (including the coastal marine area) are addressed in this Plan and expressly excluded from the Regional Coastal Plan.~~

Therefore, the Hawke's Bay Regional Resource Management Plan has effect:

- ***Over the whole of the Hawke's Bay Region in relation to the Regional Policy Statement***
- ***Over the whole of the Hawke's Bay Region, (Figure 1), excluding the coastal environment marine area for all other activities that are the function of the HBRC under the RMA (except for discharges of contaminants into air which do apply in the coastal marine area)***

Amend paragraph 1.1.4 as follows:

- 1.1.4 The process of developing this Plan involved the review and merger of the documents listed above, as well as the preparation of new policy. **In particular, the policy framework for land management contained within this Plan is new.** It is considered that the substantial reduction in the number of policy documents will improve the quality of the policy framework and make it easier to use. ~~Once this Plan becomes operative, the HBRC will have~~ The reduction of policy documents will result in just two statutory planning documents under the RMA:
- (a) The Hawke's Bay Regional Resource Management Plan (incorporating the requirements for a regional policy statement), ie: this Plan; and
 - (b) The Hawke's Bay Regional Coastal Environment Plan.

Amend paragraph 1.2.1 as follows:

Chapter 5: Regional Plan Objectives and Policies – Chapter 5 sets out the key objectives sought to be achieved by the Regional Plan by establishing an overall framework for the management of land, air quality, surface water quality, groundwater quality and the beds of lakes and rivers throughout the region (but not within the coastal environment). The policies relating to these objectives set environmental guidelines and how the guidelines will be implemented.

Chapter 6: Regional Rules and Resource Consents - Chapter 6 is the regulatory section of the Plan. It contains regional rules that allow, regulate or prohibit resource use activities across the region (but not within the coastal environment). Chapter 6 starts with a Users' Guide, to assist readers with interpretation of the rules, and a summary of all the rules contained within the Plan.

Amend section 1.3.3 as follows:

- 1.3.3.1 As noted in section 1.1, the HBRC has prepared a number of regional plans under the RMA. This Plan has built upon, and merged, all of these except the Regional Coastal Environment Plan. However, it is important for Plan users to note that the Regional Policy Statement part of this Plan applies over the whole region, including the ~~Coastal Marine Area~~ coastal environment. The Regional Coastal Environment Plan will remain separate, in part owing to the role of the Minister of Conservation in approving regional coastal plans, and the existence of the New Zealand Coastal Policy Statement. At the time of writing this Plan, the New Zealand Coastal Policy Statement was the only national policy statement in existence.
- 1.3.3.2 The HBRC has merged the Regional Policy Statement and all other regional plans (excluding the Regional Coastal Environment Plan) into this one document in order to provide a more integrated and user-friendly approach. The overall size of this Plan is considerably smaller than the combined size of the policy statement and plans it has replaced. In addition, the risk of overlaps, gaps and inconsistencies between different rules or policies is lessened.

Amend section 1.4.7 as follows:

- 1.4.7.2 The coastal environment is a rich and productive ecosystem with a broad range of habitats supporting a diverse flora and fauna. Coastal dunelands, river mouths, reefs and rocky shores and outcrops are amongst the significant habitats in Hawke's Bay. A number of areas of significant conservation value have been identified in the Regional Coastal Environment Plan, and form a key part in the management of the coastal environment.
- 1.4.7.3 ~~The coastal environment contains a~~ number of major facilities and public utilities are located within the Hawke's Bay coastal environment. These including include roads and port facilities, such as the Port of Napier and the wharves, slipways, and marina of the Inner Harbour.
- 1.4.7.4 ~~The area covered by the Coastal Marine Area, with the exception of air discharges, is managed through the Regional Coastal Plan, operative June 1999.~~ The Regional Coastal Environment Plan applies to the Hawke's Bay coastal environment, which includes the coastal marine area.

Chapter 3.2 (The Sustainable Management of Coastal Resources)

Amend paragraphs 3.2.6 and 3.2.7 as follows:

- 3.2.6 Integrated management of the coast requires special effort as the Regional Council and the territorial authorities in the region jointly manage the coastal environment area landward of the 'coastal marine area'. This is achieved through district and (as appropriate) regional plans. However, the 'coastal marine area' is primarily the responsibility of the Hawke's Bay Regional Council, which must prepare a Regional Coastal Plan. ~~This Plan relates to the use, development, and protection of the natural and physical resources of the specific area. This area is limited, on the landward boundary, by Mean High Water Springs, and on the seaward boundary by the outer limits of the Territorial Sea. HBRC has combined its regional coastal plan with other regional planning provisions applicable to the coastal environment into the Regional Coastal Environment Plan. The coastal environment includes the coastal marine area and an area of land immediately adjacent to the coast.~~ The Minister of Conservation also retains some specific responsibilities over ~~this area~~ the coastal marine area.
- 3.2.7 The New Zealand Coastal Policy Statement (NZCPS) provides principles for, and guidance to, regional and territorial authorities in managing coastal resources. The NZCPS links matters of national importance, as set out in the Act, with the objectives, policies, rules and other provisions of regional and district plans, including the Regional Coastal Environment Plan. The Regional Coastal Environment Plan thus contains a greater level of detail for areas and activities within the coastal environment on the seaward side of mean high water springs than the broad regional policy framework for coastal resources included in the Regional Policy Statement ~~(note that the Regional Coastal Plan does not include provisions relating to air quality. Air moves across the whole region, so air in the coastal marine area is included under the air quality provisions in this Plan rather than in the Regional Coastal Plan).~~

Amend paragraphs 3.2.15 to 3.2.18 as follows:

- 3.2.15 There are no specific policies relating to the coastal environment part of this Plan, although provisions within the Regional Policy Statement parts of this Plan do apply within the coastal environment. ~~The relevant policies for the landward side of the coastal environment are found elsewhere in this Plan, along with air quality policies that apply to the coastal marine area as well as on land. Specific policies for the coastal marine area are found in the Regional Coastal Plan. Specific regional plan provisions (including policies) for the coastal environment are contained within the Regional Coastal Environment Plan.~~
- 3.2.16 The Hawke's Bay Regional Coastal Environment Plan is a comprehensive combined plan, incorporating the regional coastal plan that HBRC is required to prepare which meets the RMA responsibility for the HBRC to have such a plan. It sets out in some detail objectives, policies and methods including rules which are the basis for management ~~of this part~~ of the coastal environment. Thus the Regional Policy Statement of this Plan does not repeat or elaborate on the above objectives, and the Regional Coastal Environment Plan should be referred to for further detail.
- 3.2.17 ~~For the remainder of the coastal environment~~ Under the Act, HBRC has joint responsibility with territorial authorities within the region for the management of activities and effects of activities within the coastal environment. ~~The aspects of coastal management that are the Regional Council's responsibility are managed under the other policy areas in this part of the Plan. For example, management of soil loss and surface water quality will help achieve the objective of management of coastal water quality; and management of some natural hazards will help achieve appropriate outcomes on both sides of mean high water springs. Air quality in the coastal marine area is managed entirely under the air quality provisions of this Plan.~~
- ~~3.2.18 Other~~ Some aspects of those activities are the sole responsibility of district councils – particularly managing the effects of land uses, development and subdivision in terms of the Act and in ways which are not inconsistent with this Regional Policy Statement or regional plans. District plans ~~which should also be referred to as these may set out more specific objectives, policies, methods and rules for the landward side of the coastal environment, should be referred to.~~

Chapter 5.1 (Environmental Objectives and Policies)

Amend paragraphs 5.1.1 and 5.1.2 as follows:

- 5.1.1 This Chapter establishes the resource management direction for the functions for which the Council has chosen to exercise its management responsibility through the preparation of a regional plan (other than a Regional Coastal Environment Plan).
- 5.1.2 The environmental objectives and policies in sections 5.2 to 5.8 form the framework of environmental management for the Regional Plan (*excluding areas within the coastal environment*). In order to achieve the objectives for each resource – land, air, surface water, groundwater and the use of river and lake beds - there is a policy in the form of a guideline, followed by a policy stating how implementation of the guideline will occur. Because the nature and use of each resource varies, the type and form of guideline for each resource will also vary, from the general to the specific. There is no 'across the board' means of implementation of environmental guidelines.

Chapter 6.1 (Users Guide to Rules)

Amend paragraph 6.1.1.1 as follows:

- 6.1.1.1 Chapter 6 of the Plan contains rules which allow, regulate, or prohibit resource use activities *in the Hawke's Bay region (but not within the coastal environment)*. This Users' Guide has been prepared to assist readers to locate and understand rules of interest. It provides the following: ...

Chapter 8.4.4 (Local Authority Responsibilities for Natural Hazards and Hazardous Substances)

Amend paragraph 8.4.4.5.1 as follows:

- 8.4.4.5.1 Both the HBRC and the territorial authorities within the Hawke's Bay region will be responsible for developing **objectives and policies** for controlling managing the use of land for the purpose of avoiding and mitigating natural hazards. ~~However, the territorial authorities will be responsible for developing methods controlling the use of land for the purposes of avoiding or mitigating natural hazards, except in relation to coastal hazards. In relation to coastal hazards, both the HBRC and territorial authorities may be responsible for developing methods controlling the use of land for the purpose of the avoidance or mitigation of coastal hazards.~~

Chapter 9 (Glossary)

Add new definitions as follows:

Coastal environment means an environment in which the coast is a significant element or part, and includes:

- (a) the coastal marine area;
(b) any areas identified as being affected by, or potentially affected by, coastal flooding or coastal erosion;
(c) any of the following:
(i) tidal waters and the land above mean high water springs;
(ii) dunes;
(iii) beaches;
(iv) areas of coastal vegetation and coastal associated fauna;
(v) coastal cliffs
(vi) salt marshes;
(vii) coastal wetlands, including estuaries; and
(viii) areas where activities occur or may occur which have a direct physical connection with, or impact on, the coast.

For the purposes of this Plan, the coastal environment comprises all of the coastal marine area of Hawke's Bay and the coastal margin. The inland boundary of the coastal margin and coastal environment is as shown on the planning maps in Volume 2 of the Hawke's Bay Regional Coastal Environment Plan.¹

¹ NOTE: The term 'Coastal Environment' is not defined in the RMA but is used in s6 of the Act and in the New Zealand Coastal Policy Statement. It was defined under the now repealed Town and Country Planning Act 1977 as an environment in which the coast is a significant part or element. The Environment Court has held that the coastal environment is usually accepted as extending to the crest of the nearest skyline. In some cases, the coastal environment for the purposes of s6 and/or the New Zealand Coastal Policy Statement may extend inland of the coastal environment as shown on the Regional Coastal Environment Plan's planning maps. However, the provisions of this Plan only apply landward of the inland coastal environment boundary shown on those planning maps.

Coastal margin means an area of the coastal environment identified for the purposes of the Hawke's Bay Regional Coastal Environment Plan to manage activities and the effects of activities occurring within the coastal environment. It does not include any part of the coastal marine area.

Regional Coastal Environment Plan means a combined regional coastal plan and regional plan applicable to the coastal environment of the Hawke's Bay region.

Any other necessary consequential amendments.

Hawke's Bay Regional Resource Management Plan
Proposed Plan Change 1 –
Section 32 Evaluation Summary



OVERVIEW

The following sets out a summary of the evaluation behind Hawke's Bay Regional Council's (HBRC) decision to prepare the 'Regional Coastal Environment Plan' (RCEP) and consequently publicly notify Plan Change 1 to the Regional Resource Management Plan.

In reviewing, preparing and publicly notifying proposed plans and proposed plan changes, councils have a duty under s32 of the Resource Management Act 1991 (RMA) to evaluate a number of matters and to consider alternative ways to achieve environmental outcomes. An analysis of the benefits and costs in deciding which provisions are the most efficient has to be carried out.

Section 32 requires HBRC to:

- "(3)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.*
- (3A) *This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.*
- (4) *For the purposes of the examinations referred to in subsections (3) and (3A), 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."*

The RMA also requires that a report be prepared that summarises the evaluation and gives reasons for that evaluation. This report has been prepared under that requirement (under s32(5)).

This report takes the form of an evaluation summary solely in relation to HBRC's decision to combine regional planning provisions for the coastal environment into the RCEP – it does not purport to be the comprehensive s32 record of all evaluation, council discussions, staff workshops and assessment undertaken in the course of preparing the RCEP. Detailed evaluation of plan provisions can be found in the numerous reports which made up the various council meeting agendas (and subsequent minutes), and the technical reports and publications, and other reports prepared for HBRC by consultants and staff. In addition, a separate report¹ has been produced as a s32 evaluation summary of the RCEP.

Section 23 of RMA states that compliance with the RMA does not remove the need for people to comply with other applicable legislation. In the case of preparing the RCEP and Plan Change 1, s23 does not absolve HBRC of its obligations under s76 of the Local Government Act 2002 (LGA). Section 76 of the LGA states that every decision of a council must be made in accordance with decision making tests and processes specified. Section 79 of the LGA sets out the discretion and judgements to be made by councils for decisions.

Prior to adopting the RCEP and Plan Change 1 as a proposed plan proposed plan change respectively, and publicly notifying them, Council was required to make a decision in accordance with the provisions of Part 6 subpart 1 of the LGA. Having assessed the requirements contained within those sections in relation to adoption of the proposed RCEP and Plan Change 1, the following was concluded:

¹ HBRC Environmental Management Group Technical Report 'Hawke's Bay Regional Coastal Environment Plan: Section 32 Evaluation Summary June 2006' EMT 06/08 (HBRC Plan Number 3864).

that the decisions [to be] made are significant under the criteria contained in Council's adopted policy on significance, however Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided and particularly, that those people have had and will have further opportunity to comment and submit on the proposed Regional Coastal Environment Plan and proposed Plan Change following a decision by Council to publicly notify them.

EVALUATION SUMMARY

Regional Coastal Plan Review – Scope and Purpose

Regional coastal plans are mandatory plans prepared by regional councils under the RMA for the coastal marine area (CMA) of a region. Under the RMA, regional councils may combine one or more of its regional plans. The RCEP is a combined plan incorporating regional planning provisions for the CMA and the landward margin of the coast – the coastal environment.

Preliminary Steps of Regional Coastal Plan Review

HBRC commissioned and received a report from a consultant, Robin Britton, that looked at the performance and effectiveness of the operative Regional Coastal Plan (RCP). Ms Britton's report² (which became known as 'Phase One' of the RCP Review) made a number of recommendations to address gaps and potential future pressures that the RCP may experience. Key findings from that report on performance and implementation of the RCP were:

- a) the operative RCP is fundamentally robust;
- b) the two most pressing issues are aquaculture management and **the management of the land-sea interface (and the matters associated with it particularly land adjoining the coast, water quality, and coastal erosion)**;
- c) there are a number of legislative changes and a number of upcoming national directions that are likely to impact on the review of the RCP; and
- d) the RCP could be updated in a number of areas such as structure, rule interpretation and meeting existing environmental pressures [**emphasis added**].

Alternatives Evaluated

The Regional Policy Statement identifies the integrated management of coastal waters as a significant issue for the region. Many elements of the region's coastal environment are inextricably linked, regardless of the location of mean high water springs.³ Phase One of the RCP Review also identified a number of difficulties in effectively managing issues in the CMA in isolation from those on the immediately adjoining land. Examples of these are:

- a) managing the effects of direct and indirect discharges of contaminants to land on coastal water quality;
- b) managing the effects of natural hazards, natural processes and any works to address those; and
- c) dealing with the effects of subdivision, use and development on the natural character, ecosystems and amenity values of the region's coast.

During discussions early in the RCP Review process, Councillors indicated a preference for the regional coastal plan's scope to be extended beyond the coastal marine area to include the coastal environment. Councillors accepted that Hawke's Bay's coastal environment varies from place to place depending on natural and physical characteristics, therefore a 'one size fits all' approach for the identification of the coastal environment's landward boundary was not preferred.

Extending the scope of the regional coastal plan to cover the coastal environment could lead to an 'overlap' of regional plan provisions for the landward component of the coastal environment. A clear and simple planning approach was required to avoid this overlap and any potential confusion for plan users. It was urged that if a coastal environment approach was adopted, it must clearly distinguish coastal plan provisions from the provisions of the Regional Resource Management Plan (RRMP) and district plans. A number of approaches were evaluated to achieve this clear distinction:

- a) retain the regional coastal plan as applying to the CMA only;

² Phase One: Regional Coastal Plan Review (August 2003) EMI 0311 (HBRC Plan Number 3445)

³ Mean high water springs is the jurisdictional boundary between the coastal marine area and other parts of the region.

- b) combining regional coastal plan with all other relevant regional planning provisions into a 'regional coastal environment plan';
- c) retain the regional coastal plan as applying to the CMA only and develop coastal management overlay(s) applicable over land for specific resource management issues. The management overlay(s) could be included within the regional coastal plan or the Regional Resource Management Plan.

HBRC has favoured the preparation of a combined regional coastal environment plan (approach (b) above) having considered the relative efficiencies and effectiveness of each of the above broad approaches. A single plan applying to a geographic area was favoured, rather than Plan users having to refer to multiple plans covering different resource management issues for the same area. HBRC accepted that there may be some difficulties or inconsistencies encountered during the 'transitional period' while the proposed RCEP progresses through to an operative plan and the RRMP remains applicable in the interim.

To ensure the combined plan approach in (b) above is properly implemented, it is necessary to amend the Regional Resource Management Plan to clarify that the Regional Coastal Environment Plan is the regional plan applicable within the coastal environment⁴, and the Regional Resource Management Plan is the regional plan applicable to all other parts of the region. It should be noted that the Regional Policy Statement parts of the RRMP remain applicable over the entire Hawke's Bay region, irrespective of Plan Change 1 and the Regional Coastal Environment Plan.

⁴ The inland boundary of the coastal environment is identified on the Regional Coastal Environment Plan's planning maps. The Regional Coastal Environment Plan also includes a definition of 'coastal environment' in its Glossary.