

# **8 ADMINISTRATIVE MATTERS**

## 8.1 Introduction

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8.1.1 The chapter covers a number of administrative matters for which HBRC has responsibilities and functions under the RMA:

**Section 8.2** Provides guidelines for resource consent applicants by setting out the resource consent processes and procedures.

**Section 8.3** Sets out the circumstances under which the HBRC will use financial contributions.

**Section 8.4** Addresses cross-boundary issues, including the need for integrated management and local authority responsibilities in relation to natural hazards and hazardous substances.

**Section 8.5** Outlines the procedures to be used to assess the suitability and effectiveness of this Plan, through monitoring and review.

## 8.2 Guidelines for Resource Consent Applicants

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8.2.1 As part of granting resource consents under the RMA there are administrative matters that are followed to ensure the processing of consents occurs in a structured and effective manner. Section 7.2 of this plan sets out detailed guidelines to assist the applicant in understanding the administrative steps involved in processing resource consents.

### 8.2.2 THE PROCESS

8.2.2.1 Any person may apply to the HBRC for resource consents where the activity would otherwise contravene sections of the Act. In doing so it would be assumed that an activity that has not been permitted under this Plan has actual or potential effects on the environment. In many cases the HBRC must consider whether these effects are adverse and impact on other parties. If this is the case then the HBRC may require the consent to be go through a public notification procedure.

8.2.2.2 Once an application is received by HBRC the duration of the consent must be considered. Changes to the Plan that affect resource consent conditions apply to new consents and may apply to existing consents. Where there are new environmental standards in the plan, the conditions of existing consents may be reviewed as set out in sections 7.2.4.1 (b) and (c).

8.2.2.3 The following sections provide more detailed guidelines to assist the applicant in understanding the administrative matters which are considered during the processing of resource consents.

### 8.2.3 NON-NOTIFICATION OF RESOURCE CONSENTS

8.2.3.1 In order to assess whether notification of a resource consent application is required the HBRC uses the following activity classification:

(a) **Controlled activities**

The HBRC will consider resource consent applications for controlled activities without notification or the need to obtain the written approval of affected persons in accordance with section 94 (1) (b) RMA, except as expressly stated otherwise in specific rules in this Plan.

(b) **Restricted discretionary activities**

The HBRC will consider resource consent applications for restricted discretionary activities without notification or the need to obtain the written approval of affected persons in accordance with section 94 (1A) RMA, in circumstances where the proposed activity is unlikely to affect any of the following persons:

- (i) Lawfully established resource users.
- (ii) Other land owners within the vicinity.
- (iii) Organisations with statutory responsibilities in relation to the resources that may be affected by the proposed activity.
- (iv) Tangata whenua who have a special relationship with the resources not shared by the rest of the community.
- (v) Land owners or occupiers of the affected site, who will not be involved in undertaking the proposed activity.
- (vi) Alternatively, the HBRC will consider resource consent applications for restricted discretionary activities without notification where written approval has been obtained from all of the above persons who are affected by the proposed activity.

(c) **Discretionary activities**

The HBRC will generally consider resource consent applications for discretionary activities with notification, on the basis that these activities are likely to have more than minor adverse effects on the environment.

## 8.2.4 CONSENT DURATION

8.2.4.1 The Regional Council will grant:

- (a) Land use consents for land use activities pursuant to section 9 of the RMA, and reclamations pursuant to section 13 of the RMA, for an **unlimited period**, and
- (b) Resource consents for other activities for a period of **20 to 35 years**.

8.2.4.2 Unless one or more of the following exceptions apply:

- (a) The activity has a duration of less than 20 years, in which case a consent will be granted for the duration of the activity.
- (b) There is a need to align the consent expiry date with others, in order that the cumulative effects of activities can be considered through a common consent renewal process.
- (c) The consent is for the allocation of gravel or another resource whose availability changes over time in an unpredictable manner.
- (d) The type of activity has effects that are unknown or potentially significant for the locality in which it is undertaken.

## 8.2.5 CONSENT REVIEW

8.2.5.1 For resource consents that are granted, the HBRC will establish at the time of considering the application and on a case by case basis the need to review consent conditions during the term of the consent. A review of consent conditions will be the preferred means (as opposed to a short term-consent) for:

- (a) Dealing with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage. This type of review will be invoked only where a more than minor change in adverse effects, or any unanticipated significant effect, arises during the exercise of the consent.
- (b) Requiring the holder of a discharge permit to adopt the best practicable option to remove or reduce any adverse effect on the environment. This type of review will be invoked when it is necessary in order to utilise technological developments or to meet new environmental standards.
- (c) Giving effect to any operative regional rules relating to maximum or minimum levels of flows or rates of use of water, or minimum standards of water quality or air quality.
- (d) Determining the degree of consistency between the volume of water authorised to be taken and actual water need as recorded through actual water use, including an assessment of efficiency of water use.
- (e) Addressing staged improvements or changes planned by the consent holder, which are unlikely to increase the level of adverse effects on the environment.
- (f) Reviewing the appropriateness of any condition requiring the holder of a resource consent to supply the consent authority information relating to the exercise of the resource consent.

8.2.5.2 There are situations where a review can be undertaken only of those conditions of a resource consent for which a review is specified.

8.2.5.3 The timing and frequency of any such review will be determined on a case by case basis, but the maximum frequency will generally be in the order of **5 to 10 years**.

## 8.2.6 CONSENT LAPSING

8.2.6.1 In addition to the requirements set out in section 125 of the Act in respect of lapsing consents the HBRC will take into account the following:

- (a) the existing level of allocation from the catchment from which consents have been granted
- (b) the level of demand for water from that catchment
- (c) the activity for which consent has been sought.

## 8.2.7 ENFORCEMENT PROCEDURES

8.2.7.1 The HBRC will use enforcement measures as a means of achieving compliance with:

- (a) resource consents
- (b) permitted activity rules, and
- (c) the environmental guidelines set out in Chapter 5 of this Plan for unregulated activities (using the enforcement provisions available under section 17 of the RMA).

8.2.7.2 The HBRC will adopt the following approach for the use of enforcement measures:

- (a) The HBRC will, in all its activities, place emphasis on holding discussions and providing information as the primary means of addressing non-compliance by resource users.
- (b) In the event that further action is necessary, the HBRC may adopt a range of methods to seek to address the problem, including one or more of the following:
  - (i) Working in collaboration with an organisation representing the resource user, if such an organisation exists.
  - (ii) Promoting the use of community working groups which bring affected people together in order to discuss the problem.
  - (iii) Using an independent facilitator to mediate between disputing parties.
  - (iv) Using the services of independent experts to carry out investigations.
- (c) However, in the event of a blatant breach of conditions of a rule in the plan where there is no serious or ongoing environmental harm occurs, Council will use infringement notices as a punitive measure in order to encourage observance of RMA requirements.

8.2.7.3 Notwithstanding the approach set out above, in the event of single instances of non-compliance that have serious adverse environmental effects, the HBRC may immediately use the enforcement provisions under the RMA to control adverse effects.

8.2.7.4 In considering the range of enforcement action proceedings available Council will consider (but not limit itself to) the following factors:

- The significance and scale of environmental effect.
- Mitigation and remedial measures undertaken since the event.
- The culpability of the alleged offender.
- The occurrence of previous incidents and any associated warnings.
- The quality of Council evidence.
- Whether a deterrent is needed.

## 8.2.8 EXISTING ACTIVITIES VERSUS NEW ACTIVITIES

8.2.8.1 Any environmental guidelines introduced in this Regional Plan, or by way of later changes to this Regional Plan, apply to both existing and new resource consent holders. However, in the event that existing consent holders do not comply with new environmental standards (introduced by way of rules), they will be given a period of time within which to achieve compliance. Any such period of time will be decided after discussion with the consent holder, but will generally be in the order of 5 to 10 years, or at the time of granting a new consent upon expiry.

8.2.8.2 The following factors will be taken into account when deciding an appropriate timeframe for any required improvement:

- (a) The degree of non-compliance with the new standards.
- (b) The degree of adverse effects on the environment caused by non-compliance with the new standards.
- (c) The availability of technology which will allow the new standards to be met, and
- (d) The financial implications of meeting the new standards.

- 8.2.8.3 It is important to note that the HBRC cannot review the conditions of existing resource consents to recognise new environmental standards, unless the standards are introduced by way of rules in a Plan in accordance with section 128 (1) (b) of the RMA or the resource consent expressly allows such a review. This means, for example, that the environmental guidelines set out in Chapter 2 of this Plan cannot be used to review the conditions of an existing consent, unless the consent expressly allows this. However, they can be used at the time of consent renewal.

## 8.3 Financial Contributions

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- 8.3.1 Where the HBRC grants a resource consent, it may impose a condition requiring that a financial contribution be made for the purposes specified in this Plan.

- 8.3.2 The term “financial contribution” is defined in section 108 (9) of the RMA as:

“... a contribution of:

- (a) money, or
- (b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of the Maori Land Act 1993 unless that Act provides otherwise, or
- (c) a combination of money and land.”

- 8.3.3 Section 108 (10) of the RMA states that:

“A consent authority must not include a condition in a resource consent requiring a financial contribution unless:

- (a) The condition is imposed in accordance with the purposes specified in the plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and
- (b) The level of contribution is determined in the manner described in the plan.”

- 8.3.4 Financial contributions may, therefore, be required for a variety of purposes, including the purpose of offsetting any adverse effects. In accordance with section 111 of the RMA, any financial contribution of money collected by the HBRC must be used in reasonable accordance with the purposes for which the money was received.

- 8.3.5 The following provisions reflect the requirements of the Act and set out:

- (a) the circumstances when a financial contribution may be imposed
- (b) the purposes for which the contribution may be used, and
- (c) the manner in which the level of contribution will be determined.

### 8.3.6 CIRCUMSTANCES

- 8.3.6.1 The HBRC will only use financial contributions as a resource management tool in relation to resource consents granted for river bed gravel extraction.

### 8.3.7 PURPOSES

- 8.3.7.1 The purposes for which financial contributions will be sought from river bed gravel extractors are as follows:

- (a) Construction of, or maintenance of, roads, fences and gates that are used or will be used to access the gravel extraction site.

- (b) Stop bank restoration or enhancement to offset the effects of gravel extraction on flooding.
- (c) Strengthening or restoration of affected flood control or river stabilisation works.
- (d) Replanting of vegetation removed, destroyed or damaged by gravel extractors accessing gravel extraction sites, or by the gravel extraction process.
- (e) Downstream planting of riparian margins to offset erosion caused or exacerbated by gravel extraction.

### **8.3.8 LEVEL OF CONTRIBUTION**

8.3.8.1 The level of contribution will be determined in the following manner:

- (a) The total annual cost of the works and services to be funded by the contributions (as determined in each year's annual plan prepared pursuant to the Local Government Act 1974) divided by the total annual estimated volume of river bed gravel extraction, thereby giving rise to a uniform financial contribution per cubic metre of gravel extracted.
- (b) The final actual financial contributions sought will fairly and reasonably reflect the degree of adverse effects arising as a result of river bed gravel extraction.

## **8.4 Cross Boundary Issues**

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8.4.1 The RMA requires that regional policy statements and regional plans set out the processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or between regions. The Act also enables regional policy statements to establish which local authority (i.e. the regional council or territorial authority) shall have responsibility for developing objectives, policies, and rules relating to the control of the use of land for:

- (a) the avoidance or mitigation of natural hazards, and
- (b) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.

8.4.2 Section 8.4.3 below sets out the procedures for dealing with cross boundary issues, and section 8.4.4 sets out the respective roles of the HBRC and territorial authorities in relation to natural hazards and hazardous substances.

### **8.4.3 PROCEDURES FOR CROSS BOUNDARY ISSUES**

8.4.3.1 Cross boundary issues can occur between the HBRC and adjacent regional councils who share regional boundaries; between the territorial local authorities within the region (Wairoa District, Napier City, Hastings District, Central Hawke's Bay District, Taupo District, and Rangitikei District Councils); and between the HBRC and these territorial local authorities.

8.4.3.2 Cross boundary issues generally occur when the environmental effects of one resource use are felt in another part of the environment (e.g. effects of water quality caused by land use activities). Integrated management aims to minimise the effects of cross boundary issues and promote complementary, efficient and effective management of all natural and physical resources.

8.4.3.3 Integrated management involves a consideration of:

- (a) The effects of the use of one natural and physical resource on other natural and physical resources or on other parts of the environment, recognising that such effects may occur across space and time.
- (b) The functions and roles of other agencies for managing natural and physical resources.
- (c) The objectives and interests of the community, recognising that natural and physical resources cannot be managed without having regard to social, economic and cultural factors.

8.4.3.4 The processes that will be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or between regions, are as follows:

- (a) Having regard under sections 61 and 66 of the RMA to the policy statements and plans (including management plans and strategies prepared under other Acts) of territorial authorities and neighbouring regional councils, and the extent to which this Plan needs to be consistent with those documents.
- (b) Liaising and sharing information with the Gisborne District Council, Bay of Plenty Regional Council, Waikato Regional Council and Manawatu Wanganui Regional Council in respect of the management of land, air, water, and discharges, particularly in respect of the extent to which there should be cross boundary consistency.
- (c) Liaising and sharing information with the Wairoa District, Napier City, Hastings District, Central Hawke's Bay District, Taupo District, and Rangitikei District Councils on cross boundary issues affecting resource management, particular in respect of the management of incompatible land uses, hazardous substances and natural hazards and contaminated sites.
- (d) Establishing procedures with the territorial local authorities set out in (c) for ensuring efficient resource management processes in areas where there are overlaps in the functions of regional councils and territorial authorities under the RMA.
- (e) Making submissions on district plans prepared by the territorial local authorities set out in (c) aimed at ensuring that those plans are not inconsistent with this regional plan, and are not unnecessarily inconsistent with each other.
- (f) Undertaking transfers of functions, powers or duties under section 33 the RMA, where this would result in more efficient or effective resource management processes or outcomes.
- (g) Exercising the following functions and powers under the RMA in relation to resource consent applications:
  - (i) Making submissions on resource consent applications made to other consent authorities, and advising affected territorial authorities and adjoining regional councils (where appropriate) of resource consent applications lodged with the HBRC.
  - (ii) Holding joint hearings with the territorial local authorities set out in (c) for resource consent applications that have cross boundary issues.
  - (iii) Co-ordinating information to be submitted with applications for resource consents that have cross boundary issues.
  - (iv) Involving other management agencies in pre-hearing meetings under section 99 of the RMA, in circumstances where their statutory or declared area of interest is affected.
  - (v) Co-ordinating and facilitating consultation between resource consent applicants, key resource user groups, tangata whenua, and statutory organisations (including territorial local authorities, the

Department of Conservation, the Fish and Game Council, network utility operators and representatives of the health sector).

- (h) Adopting a proactive approach in achieving environmental solutions through cooperation with territorial authorities (including the formation of joint committees where appropriate), where resource management issues which cross territorial and regional boundaries arise.

## 8.4.4 LOCAL AUTHORITY RESPONSIBILITIES FOR NATURAL HAZARDS & HAZARDOUS SUBSTANCES

8.4.4.1 Section 62 (1) (b) (h) of the RMA enables regional policy statements to set out the respective responsibilities of the regional council, and territorial authorities within the region concerned, for developing objectives, policies, and rules relating to the control of the use of land for:

- (a) the avoidance or mitigation of natural hazards, and
- (b) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.

8.4.4.2 If no responsibilities are identified in accordance with this provision of the Act, the regional council retains primary responsibility for natural hazards and hazardous substances.

8.4.4.3 This section describes the respective functions of the HBRC, and of territorial authorities within Hawke's Bay, in relation to natural hazards and hazardous substances. This section is written in accordance with section 62 (1) (ha) of the RMA (and in keeping with the fact that this Regional Plan incorporates the role and provisions of a regional policy statement).

8.4.4.4 It is important that the HBRC and territorial authorities work together in the management of natural hazards and hazardous substances. To this end, the HBRC and territorial authorities have, through discussions and refinement of earlier arrangements set out in the former Hawke's Bay Regional Policy Statement (HBRC, 1995), reached the following agreements on their respective responsibilities.

### 8.4.4.5 NATURAL HAZARDS

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 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.

8.4.4.5.2 To support the territorial authorities in developing and implementing their plan provisions in relation to natural hazards, the HBRC will be the key information provider. The HBRC will provide relevant, up to date and accurate data in an appropriate form for the territorial authorities to use. The HBRC will also use this information itself for natural hazard management and planning purposes, and for Civil Defence management in accordance with the Civil Defence Act 1983.

8.4.4.5.3 The information and assistance to be provided by the HBRC will include the following, as it becomes available:

- (a) Identification and distribution of information on those parts of the region at risk from flooding, earthquakes, tsunamis, and volcanic eruptions. At the time of writing this Plan, this work had largely been completed. The main remaining tasks were the identification of flood hazard areas throughout the Heretaunga Plains and investigations into the flood risk to Wairoa township from movement of the Wairoa River mouth.
- (b) Ongoing provision of expertise and assistance to the regional engineering lifelines project through assistance to the Lifelines Steering Committee.

- (c) Ongoing maintenance and improvement of flood forecasting and assessment data, together with the provision of models of flood and storm events for emergency management purposes.
- (d) An ongoing commitment to a programme of work for identifying flood hazard areas throughout the Heretaunga Plains, and
- (e) Maintenance of the regional civil defence and emergency management capability, and a sharing of related information and expertise with the territorial authorities.

#### 8.4.4.6 HAZARDOUS SUBSTANCES

8.4.4.6.1 With respect to the management of hazardous substances, the respective responsibilities of the HBRC and territorial authorities will be as follows:

- (a) **HBRC** – The HBRC will have responsibility for hazardous substances as they relate to the discharge of contaminants to air, water and land as defined by section 15 of the RMA. The HBRC will also have responsibility for the use, storage, and transportation of hazardous substances where these are associated with the control of the use of land of any river or lake under section 13 of the RMA.
- (b) **Territorial authorities** - The territorial authorities will have responsibility for the use, storage, disposal, and transportation of hazardous substances where these are associated with the control of the use of land under section 9 of the RMA.

8.4.4.6.2 This split in functions is based on the wider functions of regional councils and territorial authorities under the Act. Notwithstanding the functional split set out above, several integrated systems need to be developed or maintained, including:

- (a) The ongoing receipt and storage by the HBRC of unwanted agricultural chemicals.
- (b) Encouragement and support for the inclusion of district plan provisions to give effect to this functional split, and
- (c) Establishment of agreed procedures and facilities in relation to the collection, storage and disposal of hazardous substances (especially from urban areas).

The HBRC will work closely with territorial authorities with regard to this functional split and the process issues outlined above in order to resolve these outstanding issues. This resolution will provide certainty for the community about what they can do to dispose of unwanted hazardous substances in an environmentally sound manner.

## 8.5 PLAN MONITORING AND REVIEW

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### 8.5.1 Statutory Requirements

Under sections 62 and 67 of the RMA, this Plan is required to state the procedures to be used to:

- (a) review the contents of this Plan (including a review of its role as the Regional Policy Statement); and
- (b) monitor the effectiveness of this Plan (including a review of its role as the Regional Policy Statement) as a means of achieving its objectives and policies.

These obligations link directly to section 35 (2) (b) of the RMA, which requires the HBRC to monitor the suitability and effectiveness of any policy statement or plan for the region.

Section 79 of the RMA sets out the procedures for reviewing policy statements and plans:

*Section 79. Review of policy statements and plans*

- (1) *Every regional council shall commence a full review of its regional policy statement, and each of its regional plans, not later than 10 years after the statement or plan became operative.*
- (2) *Every territorial authority shall commence a full review of its district plan not later than 10 years after the plan became operative.*
- (3) *If, after reviewing a policy statement or plan under this section, a regional council or territorial authority considers:*
  - (a) *that the statement or plan requires change or replacement, it shall change or replace the statement or plan in a manner set in the First Schedule and this part*
  - (b) *That the statement or plan can remain without change or replacement, it shall publicly notify that statement or plan as if it were a proposed policy statement or plan in a manner set out in the First Schedule and this Part.*
- (4) *When a regional council or territorial authority is reviewing a policy statement or plan, it shall review all sections of, and all changes to, the policy statement or plan regardless of when those sections or changes became operative.*
- (5) *A policy statement or plan shall not cease to be operative by virtue of being due for review or while it is being reviewed.*
- (6) *The obligations of each regional council and territorial authority under this section are in addition to its duty to monitor under section 35.*

#### 8.5.2 **Plan Monitoring**

The monitoring of the suitability and effectiveness of this Plan will be completed as part of the HBRC's Regional Monitoring Strategy, as discussed in Section 4.7, including:

- state of the environment monitoring
- compliance monitoring, and
- effects-based monitoring.

This will be supplemented with an audit of policies and methods, regional rules (especially permitted activity rules), certificates of compliance issued by the council, and resource consent processes, to ascertain whether;

- The specified policies have been interpreted and applied consistently.
- Non-regulatory methods have been implemented.
- Rules have been interpreted and applied consistently.
- Council's discretion to grant consents has been applied consistently.
- The conditions attached to resource consents have applied consistently, and
- The procedures for addressing cross-boundary issues have resulted in efficient resource management processes.

The results of this monitoring will be evaluated, as part of the annual State of the Environment updates, culminating in a five-yearly State of the Environment report, to determine the effectiveness of the Plan as a means of achieving the council's objectives and policies.

#### 8.5.3 **Plan Review**

In accordance with Section 79 of the RMA, the council will undertake a complete review of this Plan within ten years of it becoming operative. At that time, the entire Plan will be reviewed, including any changes made to it over that period.

The overall thrust of this Plan is to deregulate the management of resource use activities while providing a framework of sustainable management. As this is the first combined regional policy statement/regional plan for

the Hawke's Bay region, there may be a need to review the Plan or change parts of it at an earlier stage. In particular, the Council will assess the need to initiate an early review, or make changes to the Plan where:

- (a) Administrative difficulties arise from implementation of the Plan.
- (b) There is a need to make changes to introduce more catchment-specific policy frameworks.
- (c) Information obtained as part of the state of the environment monitoring program indicates the need for a review or change.
- (d) Changes in national policy, including new or amended laws, regulations, national policy statements and national environmental standards require a regional response.
- (e) A request to change the Plan needs to be actioned.

The procedures to review this Plan will include:

- (a) An assessment of the state of the environment, based on information derived from the regional state of the environment monitoring programme.
- (b) An assessment of the efficiency and effectiveness of policies and methods of implementation including rules, in achieving the objectives of the Plan.
- (c) An assessment of the resource consents process, including the types of consents, the information required to be submitted with applications, the benefits and costs of the process, the time taken to process applications, and other administrative matters, and
- (d) Formal and informal liaison with public authorities and key interest groups regarding the effectiveness of the Plan.