

Hawke's Bay Regional Coastal Environment Plan

Operative

8 November 2014





PART G – ADMINISTRATIVE MATTERS

29 Administrative Matters

29.1 Introduction

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

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| Chapter 29.2 | provides guidelines for resource consent applicants by setting out the resource consent processes and procedures |
| Chapter 29.3 | sets out the circumstances under which the HBRC will use financial contributions |
| Chapter 29.4 | sets out a regime for coastal occupation and charging for the occupation of space in the CMA |
| Chapter 29.5 | addresses cross-boundary issues, including the need for integrated management |
| Chapter 29.6 | outlines the procedures to be used to assess the suitability and effectiveness of this Plan, through monitoring and review |

29.2 Guidelines for Resource Consent Applicants

As part of assessing resource consents under the RMA there are administrative matters that are followed to ensure that resource consent applications are processed in a structured and effective manner. This chapter sets out detailed guidelines to assist the applicant in understanding the administrative steps involved in processing resource consents.

29.2.1 The Process

Any person may apply to the HBRC for resource consents where the activity would otherwise contravene sections of the RMA. 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 go through a public notification procedure.

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 Chapter 29.2.4.

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.

29.2.2 Notification and Non-notification of Resource Consent Applications

In order to assess whether a resource consent application needs to be notified, the HBRC uses the following activity classification:

29.2.2.1 Controlled activities

The HBRC will not publicly notify resource consent applications for controlled activities or require notice of the application to be served on all affected persons, except as expressly stated otherwise in specific rules in this Plan.

29.2.2.2 Restricted discretionary activities

The HBRC will generally not publicly notify resource consent applications for restricted discretionary activities or require notice of the application to be served on all affected persons (if any), in circumstances where the proposed activity is unlikely to affect any of the following persons:

- (a) lawfully established resource users
- (b) other land owners within the vicinity
- (c) organisations with statutory responsibilities in relation to the resources that may be affected by the proposed activity
- (d) tangata whenua who have a special relationship with the resources not shared by the rest of the community
- (e) land owners or occupiers of the affected site, who will not be involved in undertaking the proposed activity
- (f) or 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.

The above general circumstances apply unless expressly stated otherwise in specific rules in this Plan.



29.2.2.3 Discretionary activities

The HBRC will generally publicly notify resource consent applications for discretionary activities or require notice of the application to be served on all affected persons on the basis that these activities are likely to have more than minor adverse effects on the environment. Notwithstanding this, HBRC may be satisfied that the adverse effects of some discretionary activities on the environment will be minor and the application need not be served on any person or publicly notified.

29.2.2.4 Non-complying activities

The HBRC will generally publicly notify resource consent applications for non-complying activities or require notice of the application to be served on all affected persons on the basis that these activities are likely to have more than minor adverse effects on the environment. Notwithstanding this, HBRC may be satisfied that the adverse effects of some non-complying activities on the environment will be minor and the application need not be served on any person or publicly notified.

29.2.2.5 Restricted coastal activities

Section 117(3) of the RMA requires HBRC to publicly notify any application for a restricted coastal activity. The Minister of Conservation is the decision-making authority, while the HBRC assists in an administrative capacity. However, HBRC holds a hearing and makes a recommendation to the Minister. That recommendation is appealable to the Environment Court, which then makes its own (non binding) recommendation to the Minister.

Notwithstanding the above, the RMA enables the HBRC to publicly notify resource consent applications if requested by the applicant or special circumstances exist in accordance with s94C of the RMA.

29.2.3 **Consent Duration**

The HBRC will typically grant:

- (a) land use consents for land use activities pursuant to s9 of the RMA, and reclamations pursuant to s13 of the RMA, for an **unlimited period** and
- (b) resource consents for other activities for a period of **20 to 35 years** -

unless one or more of the following exceptions apply:

- (c) the activity has a duration of less than 20 years, in which case a consent will be granted for the duration of the activity
- (d) 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
- (e) the consent is for the allocation of gravel or another resource whose availability changes over time in an unpredictable manner
- (f) the type of activity has effects that are unknown or potentially significant for the locality in which it is undertaken
- (g) at the time of granting consent, the effects of the activity are/were unknown or little understood and a precautionary approach is adopted.

29.2.4 **Consent Review**

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.

Section 128 of the RMA sets out circumstances when conditions of a resource consent can be reviewed. Those circumstances only apply to review of conditions – not the entire granting of a resource consent.



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

29.2.5 Consent lapsing

In addition to the requirements set out in s125 of the RMA in respect of an application made to HBRC to extend the period after which a consent lapses, HBRC will take into account the following where relevant:

- (a) the existing level of resource allocation from the catchment from which consents have been granted
- (b) the level of demand for water from the catchment from which consents have been granted
- (c) the activity for which consent has been sought
- (d) Water, environmental, economic and market conditions and availability of essential inputs including matters that would be classified as force majeure (unforeseen circumstances).

29.2.6 Enforcement Procedures

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 Part C and Part D of this Plan for unregulated activities (using the enforcement provisions available under s17 of the RMA).

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:
 - (c) working in collaboration with an organisation representing the resource user, if such an organisation exists
 - (d) promoting the use of community working groups which bring affected people together in order to discuss the problem
 - (e) Using an independent facilitator to mediate between disputing parties
 - (f) Using the services of independent experts to carry out investigations.
 - (g) 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 occurring, HBRC will use infringement notices as a punitive measure to encourage compliance with RMA requirements.

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.

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

- (a) the significance and scale of environmental effects
- (b) mitigation and remedial measures undertaken since the event
- (c) the culpability of the alleged offender
- (d) the occurrence of previous incidents and any associated warnings
- (e) whether a deterrent is needed.

29.2.7 Existing Activities versus New Activities

Any environmental guidelines introduced in this Plan, or by way of later changes to this 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 of an existing consent.

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.

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 s128(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 Chapters 8-25 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.



29.3 Financial Contributions

29.3.1 Overview

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.

The term 'financial contribution' is defined in s108(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*
- A combination of money and land."*

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 or proposed 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 or proposed plan."*

Financial contributions may, therefore, be required for a variety of purposes, including the purpose of offsetting any adverse effects. In accordance with s111 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.

The following provisions reflect the requirements of the RMA 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.

29.3.2 Circumstances

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

29.3.3 Purposes

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.

29.3.4 Level of Contribution

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 in accordance with the Local Government Act) 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 financial contributions sought will fairly and reasonably reflect the degree of adverse effects arising as a result of river bed gravel extraction.

29.4 Coastal Occupation and Coastal Occupation Charges

Most of Hawke's Bay region's coastal marine area is public space, available for anyone in the community who wants to use and enjoy it. In some of these areas, private or commercial structures or activities may affect people's use of or access to the region's coastal marine area. Under the RMA, all regional councils must decide whether or not to charge for the private occupation of public space in the coastal marine area of their region.

An 'occupation' of space within the coastal marine area excludes other people or activities for a period of time that is more than transitory. This may include the actual physical space that is taken up by the activity or structure and also the area surrounding, over, under, or within any given activity or structure. Structures and activities that 'occupy' space in the CMA may therefore include wharves, jetties, boat ramps, boat sheds, moorings, marine farms, cables and pipelines.



An 'occupation charge' is an annual fee, to be paid by any person or organisation who occupies public space in the coastal marine area to the exclusion of the public. Access, use and enjoyment of the coastal marine area can be restricted, prevented or enhanced by structures and/or activities occupying space in the CMA. Being able to charge for occupation, particularly where a private benefit has been obtained, is one way the public can be 'recompensed' for this loss of opportunity to the full use and enjoyment of the coastal marine area.

Occupation charges do not relate to the value or income generated by an activity occupying space in the coastal marine area. For example, a private boatshed versus a commercial boat storage facility is not a relevant consideration for imposing an occupation charge.

Under the RMA, 'occupation' and 'occupation charges' only apply to Crown land or land vested with the HBRC (which in the Hawke's Bay region, is the clear majority of the coastal marine area) and do not apply to privately owned land in the CMA.

In preparing this Plan, the HBRC has considered whether or not a coastal occupation charging regime applying to persons who occupy any part of the CMA should be included. **The HBRC considers that a coastal occupation charging regime should not be included in this Plan at this time.** This statement is for the purposes of s64A(2) of the RMA.

29.5 Cross Boundary Issues

The RMA requires that 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 Hawke's Bay Regional Resource Management Plan contains provisions establishing which local authority (i.e. the HBRC or territorial authority) has 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.

29.5.1 Procedures for Cross Boundary Issues

Activities conducted within one region may result in adverse effects that are felt within a neighbouring region. These activities may be related to the direct use of resources within the coastal marine area, or to land use activities which pollute waterways and ultimately coastal waters. For this reason, processes need to be developed to manage issues which cross regional boundaries.

In addition to these inter-regional cross-boundary issues, there are those that involve the HBRC and the region's four territorial authorities that have coastal boundaries. These issues relate to activities conducted within one district which have adverse effects felt in others or in the coastal marine area.

Integrated management aims to minimise the effects of cross boundary issues and promote complementary, efficient and effective management of all natural and physical resources. Integrated management involves a consideration of:

- (a) the effects (including cumulative 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.

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

- (a) Having regard under s61 and s66 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 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, and Central Hawke's Bay 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 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 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 s33 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 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 s99 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 authorities, the Department of Conservation, the Fish and Game Council, network utility operators and representatives of the health sector)
 - (vi) adopting a proactive approach in achieving environmental solutions through co-operation with territorial authorities (including the formation of joint committees where appropriate), where resource management issues which cross territorial and regional boundaries arise.

29.6 PLAN MONITORING AND REVIEW

29.6.1 Statutory Requirements

Under s62 and s67 of the RMA, this Plan is required to state the procedures to be used to:

- (a) review the contents of this Plan and
- (b) monitor the effectiveness of this Plan as a means of achieving its objectives and policies.

These obligations link directly to s35(2)(b) of the RMA, which requires the HBRC to monitor the suitability and effectiveness of any plan for the region.

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

“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 the manner set out in Schedule 1 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 the manner set out in Schedule 1 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.”*

29.6.2 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 Part F of this Plan, including:

- (a) state of the environment monitoring
- (b) compliance monitoring and
- (c) 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 HBRC, and resource consent processes, to ascertain whether:

- (a) the specified policies have been interpreted and applied consistently
- (b) non-regulatory methods have been implemented



- (c) rules have been interpreted and applied consistently
- (d) the HBRC's discretion to grant consents has been applied consistently
- (e) the conditions attached to resource consents have applied consistently and
- (f) 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 HBRC's objectives and policies.

29.6.3 Plan Review

In accordance with s79 of the RMA, the HBRC 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. This Plan incorporates a review of the regional coastal plan. As this Plan is the first regional plan for the Hawke's Bay region that has merged with the regional coastal plan, there may be a need to review the Plan or change parts of it at an earlier stage. In particular, the HBRC 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.