



Proposed Change 3 (Rangitaiki River) to the Bay of Plenty Regional Policy Statement: Section 32AA evaluation of changes

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1 Introduction

This report should be read in conjunction with the Staff Recommendations Overview Report dated 11 April 2017, the Supplementary Staff Recommendations Report dated 12 July 2017 and the Reconvened Deliberations report dated 10 August 2017. These reports provide detailed analysis of the recommended changes to Proposed Change 3 (PC 3) and address the Hearing Committee's duty under section 32 of the Resource Management Act (the Act) to be carried out by the Committee in the course of deciding whether to accept or reject a submission on PC 3.

Sections 32 and 32AA of the RMA are set out in full in **Appendix 1**.

2 Background

Section 32 of the Act prescribes requirements for preparing and publishing evaluation reports, including an 'amending proposal' that would amend a policy statement. Section 32 directs that an evaluation report is to examine whether its objectives are the most appropriate way to achieve the purpose of the Act and whether its provisions are the most appropriate way to achieve the relevant objectives by:

- a. identifying other reasonably practicable options for doing so;
- b. assessing the efficiency and effectiveness of the provisions in doing so; and
- c. summarising the reasons for deciding on the objective provisions.¹

The report is to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects anticipated from implementation of the proposal.²

In assessing the efficiency and effectiveness of provisions, the assessment has to identify and assess the anticipated benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment anticipated to be provided or reduced. The assessment, if practicable, shall also quantify the benefits and costs. If there is uncertain or insufficient information about the subject matter of the provisions, the risk of acting or not acting must also be assessed³.

Such evaluation reports were prepared and made available to the Hearing Committee along with all submissions received⁴. This is referred to in the report that follows as "the Evaluation Report".

2.1 Further evaluation

Section 32AA, requires a further evaluation for any changes proposed since the original evaluation report was completed. That further evaluation does not need to be published as a separate report if it is referred to in the decision-making record in

¹ RMA s32(1)(b)

² RMA s 32(1)(c)

³ RMA s 32(2)

⁴ Proposed Change 3 (Rangitaiki River) to the Bay of Plenty Regional Policy Statement, Section 32 Evaluation Report, October 2016

sufficient detail to demonstrate that it was undertaken in compliance with that section⁵.

The purpose of this report is to provide the Hearing Committee with the necessary evaluation to include within its decisions report should it accept the recommendations made in the *Staff Recommendations Overview Report* dated 11 April 2017, *Supplementary Staff Recommendations Report* dated 12 July 2017 and *Reconvened Deliberations Report* dated 10 August 2017 (collectively referred to as “the Recommendation Reports”).

That will enable the Committee to fulfil its duty under section 32AA.

3 Fulfilling the S32AA Duty

The first point to note is that the duty relates only to changes made between notification and decisions on submissions. Section 32AA states that a further evaluation is made for:

“any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed”

All changes recommended to be made (excepting a few very minor consequential changes) are discussed in detail in the Recommendation Reports. The Recommendation Reports explain the objective or provision affected by the amendment sought by submitters; outlines the amendment sought; explains the effect of making the amendment; and sets out the Officers’ evaluation and rationale for making or not making the change sought (as the case may be).

The Staff Recommendations Report recommends various changes to the objectives and provisions (policies and methods) of PC 3. Many of the recommended changes aim to clarify the intent, provide consistency with the RPS, remove potential confusion or ambiguity or better recognise and provide for the vision, objectives and desired outcomes of Te Ara Whānui o Rangitāiki (the River Document) in a manner consistent with the purpose of the Act.

Few recommendations substantively change the objectives and provisions of PC 3 in a way that would be characterised as a “different” approach from that addressed in the evaluation report. Accordingly, the underlying cost and benefits of the objectives and provisions will not vary from those that have been previously discussed in the Section 32 Evaluation Report, Version 4.0 dated October 2016. This is explained in further detail below and any exceptions that require specific new evaluation are addressed.

3.1 Reasonably practical options

The Hearing Committee’s duty is to examine whether the amendments proposed to the objectives in PC 3 are the most appropriate way to achieve the purpose of the Act and whether amendments recommended to the provisions are the most appropriate way to achieve the objectives. The first step in this assessment is to identify other reasonably practicable options.

In identifying options the Hearing Committee should confine itself to those that have been presented in submissions or the section 42A (Staff Overview) Report on Submissions dated 11 April 2017, and to combinations or refinements to them. It

⁵ RMA s32AA(1)(d)(ii)

should refrain from searching for other options on its own initiative. This is beyond the Committee's function and risks depriving submitters of the opportunity to respond.

In this regard completely new or different planning approaches cannot be considered (as no reasonably practical options were put forward by submitters) but any alternative wording sought for specific objectives or provisions that would constitute a genuinely alternate option should be considered.

The issues on which submitters identified genuinely alternate options to that in PC 3 (as opposed to changes aimed at clarification or technical wording changes) are listed as follows:

1. Objective 2 – an alternative put forward by Trustpower to focus the objective on significant indigenous biodiversity values (rather than all values) and an option put forward by Ravensdown to require enhancement of habitats only where degraded.
2. Objective 3 – an alternative option put forward by Ravensdown to require water quality to be restored where degraded and maintained where good or excellent and alternative options promoted by Trustpower seeking to establish objectives for freshwater management units that maintain or enhance water quality or identify the water quality parameters that are to be restored and to what extent.
3. Objective 6 – an alternative put forward by Trustpower to align the objective with the wording in section 7(a) of the RMA to 'have particular regard' to kaitiakitanga.
4. Objective 7 – an alternative put forward by Trustpower to focus the objective and associated policies on specifically addressing the maintenance of natural features and landscapes that are not outstanding. Also, an alternative put forward by Federated Farmers to focus the objective on infrastructure and particularly dams.
5. Policy RR 3B – an alternative advanced by Trustpower to establish water quality limits for contaminants such as nutrients, sediment and bacteria for freshwater management units and remove the requirement to provide drinking water sources. In addition, an alternative put forward by Fonterra to exclude the zone of reasonable mixing which applies to point source discharges.
6. Policy RR 4B and Method 23I – an alternative put forward by Trustpower to ensure use and development is within the environmental flows and/or levels and water quality limits and to include consideration of the effects of activities on the beds and margins of waterbodies. In addition an alternative put forward by the Rangitāiki Tarawera Rivers Scheme Liaison Group and Rivers and Drainage Staff and Galatea-Murupara Irrigation Society to include flow variability in Method 23I.
7. Method 23D – an alternative put forward by Trustpower to focus the method on tuna specifically rather than fish and to widen its scope to allow the 'owners of structures' to facilitate access so that modification of existing structures is not an absolute requirement. This would provide for the continuation of the trap and transfer system.
8. Method 23S – an alternative sought by Trustpower to specify the mechanism for requiring structures impeding tuna access to be removed, the types of structures to be removed and the circumstances where it would be impractical to require removal.

9. Method 23K – an alternative option sought by Trustpower to focus the method on identifying key sources of contaminants entering waterways.

3.2 Effectiveness and efficiency

An assessment of the efficiency and effectiveness of amendments to PC 3 must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment.

As noted above, if practicable, the assessment is to include quantifying those benefits and costs; and assessing the risk of acting or not acting if there is uncertain or insufficient information about the technical subject matter.

In those respects the Hearing Committee will also need to confine its consideration to the evidence available from both Council officers and submitters. Quantifying social, cultural, economic and environmental benefits and costs of PC 3's amendments and alternative options, in monetary terms is difficult.

Many of the amendments and options are aimed at aligning the objectives and provisions of PC 3 with Part 2 of the Act, existing RPS provisions or the NPSFM. These types of changes are likely to reduce the additional economic cost of implementation by enabling integration with existing work programmes underway to implement the RPS and NPSFM. Providing clarity and certainty in the objectives and provisions improves efficiency in implementation and generally provides greater benefits and reduced costs. Determining the cultural and social costs and benefits of PC 3 and the amendments and alternative options in a quantifiable way, and in particular, in monetary terms is generally problematic.

For these reasons, the Hearing Committee will have to rely on assessments of costs and benefits of both the recommended PC 3 provisions and the alternative options put forward by Council officers and submitters that are more conceptual and general than analytical and calculated.

It is also worth noting that many of the PC 3 provisions are already being implemented or programmed to be implemented through the Rangitāiki River Catchment Annual Work Programme and the respective partner agencies long term funding plans.

3.3 Evaluation

The limitations set out above accepted, the broad nature of the costs and benefits of the proposed amendments relative to the alternative options and the appropriateness overall is assessed as follows.

1. The option proposed in the Recommendation Reports in relation to Objective 2 is more appropriate because:
 - a. Focusing the objective on the protection of significant indigenous ecosystems ensures alignment with Section 6(c) of the Act and that the objective achieves the purpose of the Act. It also provides consistency with existing RPS Policy MN 2B; and
 - b. The costs of the recommended option should be less than the original wording because there is greater certainty about the ecosystems that are the subject of the objective. The recommended option narrows the scope of the objective and thereby reduces costs.

2. The option proposed in the Recommendation Reports in relation to Objective 3 is more appropriate because:
 - a. It will better articulate the outcome sought in a measureable way based on current water quality standards, whilst meeting the legislative requirement to recognise and provide for the corresponding objective in the River Document. The recommended option is also consistent with the objectives of the NPSFM.
 - b. The costs should be less than the alternatives because the amendment is more explicit about the level of water quality sought and requires efforts to improve water quality where degraded and maintain where good or excellent.
3. The option proposed in the Recommendation Reports in relation to Objective 6 is more appropriate because:
 - a. The wording amendment will provide better alignment with Section 6(e) and 7(a) of the Act and is therefore more appropriate in achieving the purpose of the Act. The recommended option is also more consistent with existing RPS Objective 13; and
 - b. The costs should be less than alternatives because the option recommended in the Staff Recommendations Report will assist in clarifying the intent of the outcome sought.
4. The option proposed in the Recommendation Reports in relation to Objective 7 is more appropriate because:
 - a. Aligning the objective with the obligations to maintain and enhance amenity values under Section 7(c) and the quality of the environment under Section 7(f) ensures consistency with the purpose of the Act and better fulfils the statutory obligation to recognise and provide for corresponding Objective 7 of the River Document; and
 - b. The costs should be less than alternatives because the option recommended in the Staff Recommendations Report will remove duplication and enhance clarity of intent.
5. The option proposed in the Recommendation Reports in relation to Policy RR 3B is more appropriate because:
 - a. The terminology used in the recommended option is consistent with both the Regional Water and Land Plan and the National Policy Statement for Freshwater Management. Consistent terminology is important to avoid uncertainty and ensure planning provisions are interpreted correctly. The recommended option relating to clause (d) of the policy is more appropriate as it recognises that it may be unrealistic to expect to achieve safe sources of drinking water throughout the entire catchment.
 - b. The cost should be less than alternatives because the option recommended in the Recommendations Report provides greater clarity about the intent of the provision enabling more focussed and efficient implementation efforts. It also ensures that efforts to achieve the very high drinking water standard is limited to those areas where the water is used for that purpose.
6. The option proposed in the Recommendation Reports in relation to Policy RR 4B and Method 23I is more appropriate because:

- a. It will provide greater certainty that the limits referred to in the policy relate to water quantity and quality and encompasses the broad scope of effects intended to be captured by the policy (including flow variability) in order to recognise and provide for the River Document.
 - b. The cost should be less than alternatives because the option recommended for Policy RR 4B is specific about the factors that constrain the use and development of resources within the Rangitaiki River catchment. In addition, the costs associated with the recommended option for Method 23I lie largely with the implementation of the NPSFM.
7. The option proposed in the Recommendation Reports in relation to Method 23D is more appropriate because:
- a. Amending the method to focus specifically on providing for tuna passage over new and existing structures, rather than fish generally ensures alignment with the overriding Objective 1 as well as Policy RR 1B.
 - b. The costs of the recommended option should be less than alternatives because the narrowing of the method to focus on tuna access specifically avoids the need to design and install solutions that enable access by a variety of fish species which are likely to have different requirements for access.
8. The option proposed in the Recommendation Reports in relation to Method 23S is more appropriate because:
- a. It provides greater flexibility in the methods available to achieve the objective by allowing alternative access points to be provided rather than limiting the option to removing or adapting existing structures. This recognises that it may not always be possible to remove or adapt structures and provides helpful guidance regarding other options. Providing flexibility to enable the most effective means of improving access is the most appropriate way to achieve the objective. The addition of consultation with tangata whenua is appropriate for cultural access matters.
 - b. The cost should be less than alternatives because it avoids a requirement to remove or adapt structures which is likely to be more costly than providing alternative access points.
9. The option proposed in the Recommendation Reports in relation to Method 23K is more appropriate because:
- a. Amending the method to refer to illegal refuse dumping better represents the intent of the corresponding provision within the River Document, which refers to addressing the issue of rubbish entering waterways. Consistency with the River Document is important to fulfil the statutory obligation to recognise and provide for the desired outcomes of the River Document.
 - b. The cost should be less than alternatives because the identification of refuse dumping sources and locations is generally more straightforward than determining sources of pollutants, which requires complex water quality sampling and analysis and can often involve diffuse sources.

4 Conclusion

The staff Recommendation Reports recommend a number of changes that have not previously been subject to an evaluation under section 32 of the Act. These changes include those that clarify the intent or scope of the objectives or provisions

or are technical or consequential in nature rather than proposing an alternative option. In addition, some submitters proposed amendments that could be regarded as reasonably practicable options that are alternatives to particular provisions or parts of provisions in PC 3. To the extent that they have done so, and the Recommendation Reports have recommended changes that in whole or part reflect the option advanced by the submitter, a further evaluation is required.

The Hearing Committee has considered the Recommendation Reports and accepts the recommendations therein, and adopts the Recommendation Reports in full together with this report as the further evaluation required under section 32AA of the Act.

If after consideration and deliberation the Committee resolves to depart from the recommendations contained in the Recommendation Reports in a substantive way (that is, it proposes amendments that could materially change the effectiveness and efficiency – including social, cultural, economic and environments costs and benefits of the provisions) then it will need to undertake a further evaluation in respect of those amendments it proposes.

32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must—
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—
 - (a) the provisions and objectives of the amending proposal; and
 - (b) the objectives of the existing proposal to the extent that those objectives—
 - (i) are relevant to the objectives of the amending proposal; and
 - (ii) would remain if the amending proposal were to take effect.
- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.
- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
 - (a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
 - (b) at the same time as the proposal is publicly notified.
- (6) In this section,—

objectives means,—

 - (a) for a proposal that contains or states objectives, those objectives:

(b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means,—

- (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change;
- (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

32AA Requirements for undertaking and publishing further evaluations

- (1) A further evaluation required under this Act—
 - (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and
 - (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
 - (d) must—
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement), or the decision on the proposal, is publicly notified; or
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- (2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).
- (3) In this section, **proposal** means a proposed statement, plan, or change for which a further evaluation must be undertaken under this Act.