



Proposed Change 5 (Kaituna 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 30 August 2022. This report provides detailed analysis of the recommended changes to Proposed Change 5 (PC5) and address the Freshwater Hearing Panel's duty under section 32 of the Resource Management Act (the Act/RMA) to be carried out by the Panel while deciding whether to accept or reject a submission on PC5.

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

¹ RMA s32(1)(b)

² RMA s 32(1)(c)

³ RMA s 32(2)

⁴ Proposed Change 5 (Kaituna River) to the Bay of Plenty Regional Policy Statement, Section 32 Evaluation Report, June 2021

⁵ RMA s32AA(1)(d)(ii)

The purpose of this report is to provide the Freshwater Hearing Panel with the necessary evaluation to include within its decisions report should it accept the recommendations made in the *Overview Report on Submissions* dated 30 August 2022.

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

3 **Fulfilling the S32AA Duty**

The s32AA 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 (except a few very minor consequential changes) are discussed in detail in the *Overview Report on Submissions*. The *Overview Report on Submissions* 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.

The *Overview Report on Submissions* recommends various changes to the objectives and provisions (policies and methods) of PC5. Many of the recommended changes aim to clarify the intent, provide consistency with the RPS, the National Policy Statement for Freshwater Management 2020 (NPSFM), remove potential confusion or ambiguity or better recognise and provide for the vision, objectives and desired outcomes of Kaituna He Taonga Tuku Iho (the Kaituna River Document) in a manner consistent with the purpose of the Act.

Few recommendations substantively change the objectives and provisions of PC5 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 June 2021. This is explained further below and any exceptions that require specific new evaluation are addressed.

3.1 **Reasonably practical options**

The Freshwater Hearing Panel’s duty is to examine whether the amendments proposed to the objectives in PC5 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 Panel should confine itself to those that have been presented in submissions or the section 42A (*Overview Report on Submissions*) report dated 30 August 2022, and to combinations or refinements to them. It should refrain from searching for other options on its own initiative. This is beyond the Panel’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 alternative options to that in PC5 (as opposed to changes aimed at clarification or technical wording changes for consistency with the NPS-FM) are:

1. Objective 41 – an alternative from Tauranga City Council to include safe drinking water sources to the water quality objective.
2. Objective 44 and Policy KR 5B and all references to best management practice – an alternative put forward by Federated Farmers to refer only to good management practice.
3. Objective 46 – an alternative option put forward by Federated Farmers to require Te Maru o Kaituna to engage with primary industry groups in addition to iwi and the wider community.
4. Method 23J – an addition advanced by AFFCO NZ Ltd to include commercial and industrial users.
5. Table 5: objective 44 monitoring indicator – an alternative put forward by WBOPDC to include regional or sub-regional spatial planning and farm management plans.

3.2 Effectiveness and efficiency

An assessment of the efficiency and effectiveness of amendments to PC5 must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment.

If practicable, the assessment should quantify those benefits and costs and assess the risk of acting or not acting if there is uncertain or insufficient information about the technical subject matter. In that respect, the Freshwater Hearing Panel will need to confine its consideration to the evidence available from Council officers and submitters. Quantifying social, cultural, economic and environmental benefits and costs of PC5's amendments and alternative options, in monetary terms, is difficult.

Some of the amendments and options are aimed at ensuring the objectives and provisions of PC5 are consistent with the NPS-FM. These types of changes are likely to reduce the additional economic cost of implementation by enabling integration with existing work programmes to implement the RPS and NPS-FM. 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 PC5 and the amendments and alternative options in a quantifiable way, and, in monetary terms, is generally problematic.

For these reasons, the Freshwater Hearing Panel will have to rely on assessments of costs and benefits of both the recommended PC5 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 PC5 provisions are already being implemented or programmed to be implemented through Te Tini a Tuna – Kaituna Action Plan.

3.3 Evaluation

Bearing in mind the limitations set out above, 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. **Objective 41:** the option proposed in the Overview Report on Submissions is more appropriate because:
 - a. Including safe drinking water sources in the objective ensures alignment with sections 5 and 7(f) of the Act, the National Environmental Standard for Sources of Human Drinking Water Regulations 2007 and will better align with Policy KR 2B; and
 - b. The recommended option is unlikely to increase costs compared to the original wording because parts of the catchment with existing drinking water sources are afforded protection under the National Environmental Standard for Sources of Human Drinking Water Regulations 2007.
2. **Best management practice (BMP) to good management practice (GMP):** the option proposed in the Overview Report on Submissions is more appropriate because:
 - a. Depending on the context, BMP is not always reasonable and practicable compared to GMP. The shift from BMP to GMP is not a downgrading of outcomes. GMP is more achievable and reflects the national approach to ensuring practical delivery of environmental practices as part of a suite of requirements designed to deliver environmental outcomes. For further reasoning, please refer to paragraphs 6.133 to 6.140 of the Overview Report on Submissions.
 - b. Costs are expected to be less than the alternative because BMP, depending on the industry, does not always consider what is reasonable and practicable, so is less attainable and may involve ongoing unsustainable significant capital expenditure to maintain the 'best' level.
 - c. To provide a practical example, a study on [*Economic and contaminant loss impacts on farm and orchard systems of mitigation bundles to address sediment and other freshwater contaminants in the Rangitāiki and Kaituna-Pongakawa-Waitahanui Water Management Areas \(14 November 2018\)*](#) (Perrin Ag Consultants Ltd & Manaaki Whenua Landcare Research) was carried out to support Regional Council's Plan Change 12 to the Regional Natural Resources Plan process for these Water Management Areas (WMAs).

A model was developed to estimate contaminant losses and resulting water quality outcomes. The model assessed the economic impact of implementing the mitigations on representative farm and orchard systems in the WMAs. Mitigation measures were categorised into three bundles (M1, M2 and M3) of increasing cost and effectiveness. Although not explicitly stated in the study, M1 is generally akin to GMP (efficient fertiliser use, efficient irrigation, riparian fencing etc) on a sliding scale to M3, which is generally akin to BMP such as major capital expenditure. The study showed that the costliest mitigations were not economically feasible in some sectors. All sectors showed reduction in nutrient loss by implementing GMP.

3. **Objective 46:** the option proposed by Federated Farmers to include primary industry groups in addition to iwi and the wider community is more appropriate because:
 - a. The amendment aligns with more closely with RPS Objectives 11 and 12 and continues to align with Objective 8 of the Kaituna River Document. The option recommended encourages an integrated approach to provide transparency for all parties involved and ensure strategies are practicable; and
 - b. Including primary industries in the objective is unlikely to impose significant costs on the community or increase costs.

4. **Method 23J:** the option proposed in the Overview Report on Submissions is more appropriate because:
 - a. The wording amendment aligns more closely with RPS Objectives 11 and 12. The option recommended encourages an integrated approach to provide transparency for all parties involved and ensure strategies are practicable; and
 - b. Including commercial and industrial users in the method is unlikely to impose significant costs on the community or increase costs.

5. **Table 5: Objective 44 monitoring indicator:** the option proposed in the Overview Report on Submissions is more appropriate because:
 - a. It will better articulate the outcome sought in a measurable way and provide additional indicators of development in the catchment. The option also provides greater flexibility in the indicators available to monitor achievement of the objective and is linked to Policy KR 5B and Project 5 in the Kaituna Action Plan; and
 - b. It is unlikely to significantly increase costs because the additional indicators are matters that will need to be measured or monitored as part of Regional Councils performance management framework.

4 Conclusion

The Overview Report on Submissions recommends some changes that have not previously been subject to an evaluation under section 32 of the Act. These changes clarify the intent or scope of the objectives and provisions or are technical or consequential in nature rather than proposing an alternative option. Some submitters proposed amendments that could be regarded as reasonably practicable options that are alternatives to provisions or parts of provisions in PC5. To the extent that they have done so, and the Overview Report on Submissions has recommended changes that in whole or part reflect the option advanced by the submitter, a further evaluation is required.

The Freshwater Hearing Panel has considered the Overview Report on Submissions and accepts the recommendations therein and adopts the Overview Report on Submissions together with this report as the further evaluation required under section 32AA of the Act.

If after consideration and deliberation the Freshwater Hearing Panel resolves to depart from the recommendations contained in the Overview Report on Submissions 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.