
Protocol

Bay of Plenty RMA Policy and Plans

between

Bay of Plenty Regional Council
Ōpōtiki District Council
Whakatāne District Council
Kawerau District Council
Rotorua Lakes Council
Tauranga City Council
Taupō District Council
Western Bay of Plenty District Council
Minister of Local Government



This document may be obtained from:

Bay of Plenty Regional Council's website:

[Council Protocol for Bay of Plenty RMA Policy and Plans | Bay of Plenty Regional Council | Toi Moana \(boprc.govt.nz\)](#) Telephone: 0800 884880

Protocol for Bay of Plenty RMA Policy and Plans

The following local authorities¹ are parties to this Protocol:

- Bay of Plenty Regional Council
- Kawerau District Council
- Ōpōtiki District Council
- Rotorua Lakes Council
- Minister of Local Government² as Territorial Authority for off-shore islands.
- Tauranga City Council
- Western Bay of Plenty District Council
- Whakatāne District Council
- Taupō District Council

Introduction

The Protocol describes how and when local authorities in the Bay of Plenty region consult each other in relation to their Resource Management Act 1991 (RMA) policy and plans. It applies to the regional policy statement, regional plans, and city/district plans during scoping, drafting, submissions and hearings, and appeals.

The RMA reform will be a period of transition for local authorities and as such will require another review of this protocol. The second review may be scheduled after the select committee process to help align coordination between local authorities on the proposed changes.

This Protocol provides detail to support the commitment entered into in the Bay of Plenty Triennial Agreement.

Purpose

The Protocol aims to:

- ensure local authorities consult each other early and follow best practice during policy statement and plan preparation and changes;
- avoid misunderstandings of roles and statutory obligations;
- define when comments or submissions are appropriate;
- establish an agreed process:
 - including expectations and timeframes;

¹ **Local authority** means a regional council or territorial authority—S5, Local Government Act 2002

² The Minister of Local Government is the territorial authority for Motiti Island and Tuhua Island S22, Local Government Act 2002

- that is consistent across local authorities; and
- that is efficient and avoids duplication of role.

Principles

The protocol will be delivered by local authorities based on the following principles:

- **Partnership – Mana Paparua:** local authorities agree to work together to establish and commit to a mutually beneficial relationship.
- **Mutual respect – Whai i te Tika:** local authorities agree to foster a relationship based on mutual respect, acknowledging each other's responsibilities, interests, views, capabilities, and constraints.
- **Honesty of purpose – Whakapono:** local authorities agree to work together within an environment of trust and respect for each other and to conduct their relationship with integrity and good will.
- **Open communication – Whakawhitiwhitinga Kōrero Pono:** local authorities agree that their relationship will involve open, timely communication and transparent consultation processes.
- **Active engagement – Hononga Rata:** local authorities to engage in a proactive and positive manner, based on a commitment to be responsive to each other, and agree to address any conflict or tension openly and constructively.

We, the chief executives of the local authorities in the Bay of Plenty region, agree to this Protocol for Bay of Plenty RMA Policy and Plans:

Bay of Plenty Regional Council

Chief Executive

Kawerau District Council

Chief Executive Officer

Ōpōtiki District Council

Chief Executive Officer

Rotorua Lakes Council

Chief Executive

Tauranga City Council



Chief Executive

Western Bay of Plenty District Council



Chief Executive Officer

Whakatāne District Council



Chief Executive

Taupō District Council



Chief Executive Officer

Minister of Local Government



Hon Kieran McAnulty

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Protocol for Bay of Plenty RMA Policy and Plans

1 Scope

This Protocol sets out how Bay of Plenty local authorities are to interrelate with each other in respect to the regional policy statement (RPS), and regional and district plans, under the RMA. The chief executives (rather than the mayors, chairman and Minister) agree to this Protocol to reflect that it addresses operational process (not substantive policy³). The Protocol promotes earliest consultation and integration of policy through collaboration in the submission process. The essence of the Protocol is to generate efficiencies, meet resource management outcomes and enhance the relationships between local authorities.

The Protocol forms part of the Bay of Plenty Triennial Agreement and meets the requirements of the RMA. The Local Government Act 2002 requires that the region's local authorities enter into a triennial agreement after each election⁴ to co-ordinate the responsibilities of local authorities. The chief executives are to review this Protocol every three years as part of the Triennial Agreement or by agreement.

The Protocol applies during the stages of scoping, preparing, varying, or changing a policy statement⁵ or plan.

2 Initiation

The local authority responsible for the policy statement or plan initiates and co-ordinates protocol actions. The following staff are responsible for managing this Protocol:

Bay of Plenty Regional Council	Policy and Planning Manager	RPS, regional plans, and input to district plans
Western Bay of Plenty District Council	Manager Resource Management	District plan, input to RPS, regional plans and adjacent territorial authorities' district plans
Tauranga City Council	Manager: City Planning and Growth	
Rotorua Lakes Council	Manager Planning Services	
Whakatane District Council	Manager Policy, Planning & Consents Compliance.	
Kawerau District Council	Manager Regulatory and Planning	
Opotiki District Council	Planning and Regulatory Group Manager	
Taupō District Council	Policy Manager	
Minister of Local Government	Manager Local Government Operations, The Department of Internal Affairs Te Tari Taiwhenua	

³ Taupō District Council jurisdictional boundaries are wider than the Bay of Plenty Region and accordingly when undertaking a plan change that does not impact this Region then this protocol does not apply.

⁴ [Local Government Act 2002 No 84 \(as at 20 November 2022\), Public Act 15 Triennial agreements – New Zealand Legislation](#)

⁵ RMA Schedule 1 3A: Consultation in relation to policy statements.

3 Protocol application

This Protocol describes four stages of interaction:

- scoping
- drafting and consulting
- notifying and submitting
- appeals to the Environment Court.

For the Protocol to be effective, the initiating local authority should:

- allocate sufficient time and resources to the first two stages of this process;
- give sufficient notice of meetings;
- distribute an agenda with detail and time allocation reflecting the significance of the issues;
- allow time for responding parties to respond;
- provide a note taker to record attendance, matters discussed, agreements reached, who is to undertake further work, points of difference;
- distribute the meeting record.

Table 1: Relationship between stages of interaction

Informal ◀ Interaction ▶ Formal			
1 Scoping	2 Drafting and consulting	3 Notifying and submitting	4 Appeals to the Environment Court
<ul style="list-style-type: none"> ▪ Informal ▪ Without prejudice ▪ Frank, open and honest ▪ Wide ranging and inclusive ▪ Broad resource management focus ▪ Fully explore issues and methods and their implications ▪ Documented outcome ▪ Joint research initiatives 	<ul style="list-style-type: none"> ▪ Semi-formal ▪ Focus on policy justification ▪ Case management approach ▪ Narrow matters to those of material concern ▪ Negotiate ▪ Documented outcome ▪ Expert information 	<ul style="list-style-type: none"> ▪ Formal ▪ Strong policy justification ▪ Focus on matters of significance ▪ Case management approach ▪ Peer review by management ▪ Negotiate ▪ Documented outcome ▪ Council submission 	<ul style="list-style-type: none"> ▪ Formal ▪ Strong policy or plan justification ▪ Negotiation at senior level

4 Scoping—Stage 1

Scoping is to identify common issues and objectives, queries regarding policy interpretation, including any points of difference and the reasons for those and set out a process to resolve these. Further information may be necessary to resolve differences.

Discussion prior to policy statement and plan preparation will allow:

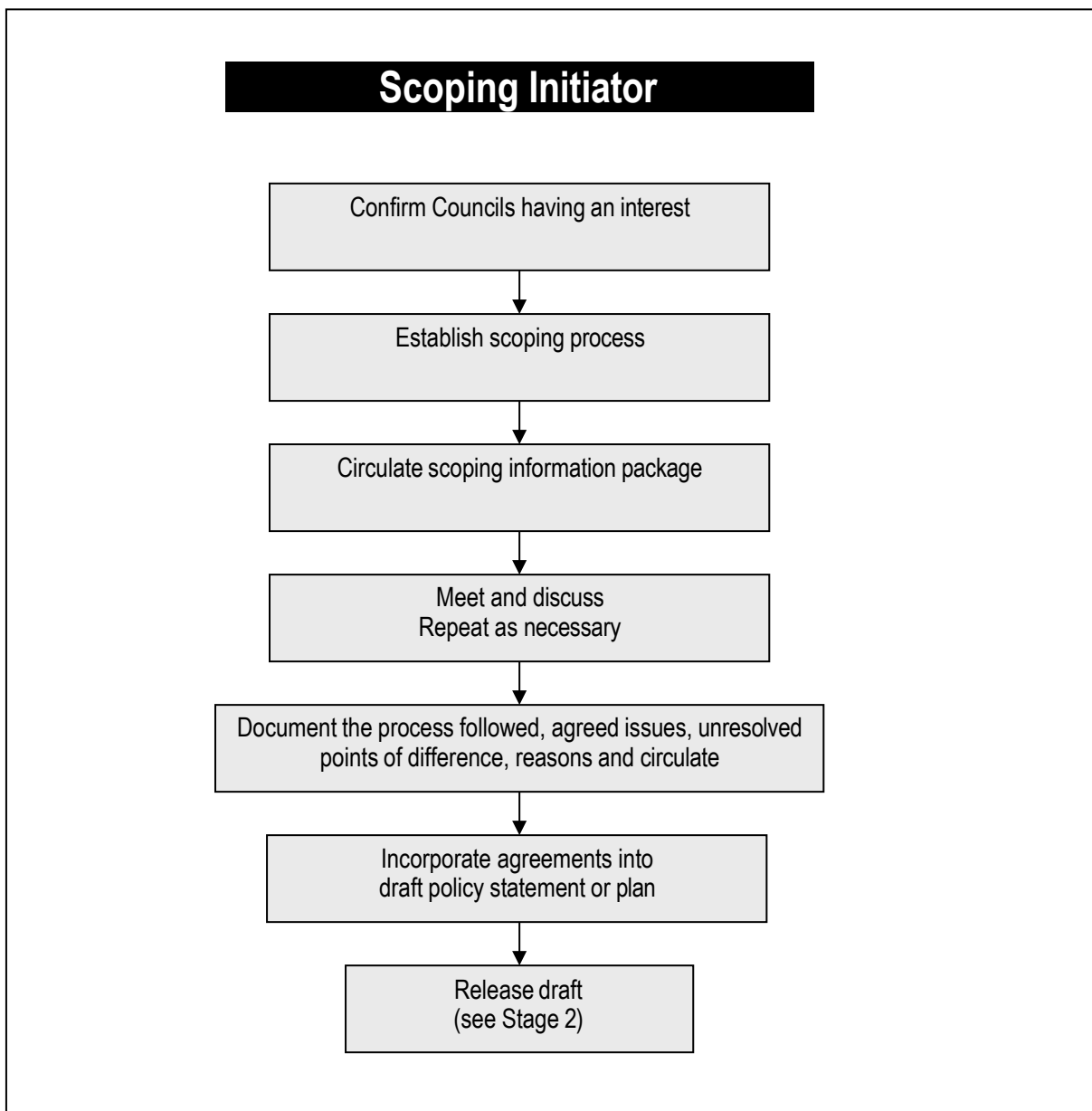
- a wide range of issues and options to be identified
- free, open, and frank discussion without prejudice
- best use of professional resources to evaluate techniques and options

As required, the initiating local authority may consider:

- the right people are identified and involved, such as staff/consultants responsible for policy statement or plan preparation and assessment, technical advisors, and managers responsible for the political interface.
- timely and sufficient information is available to enable meaningful interaction, including a summary of issues, options, risks, and resource management outcomes sought that corresponds to the complexity of the issue.
- research projects or reports commissioned on relevant issues should be included.
- reports to the initiating local authority setting the scene are included.

The initiating local authority should distribute a summary of the position reached through scoping before releasing a draft policy statement or plan for comment.

The following flow diagram is a **guide** to scoping. Changes to the process should be agreed by the interested parties.



5 Drafting and consulting—Stage 2

Local authorities usually release a **draft** for consultation before notifying a proposed policy statement or plan. This stage may be formal or informal. When a policy statement or plan reaches a draft stage and before it has been released for wider consultation, send it to local authorities with an interest for their comment.

A presentation to interested local authorities may be beneficial to generate efficiencies later in the more formal stages. Remind elected representatives of this and advise against consultation being truncated.

Effective consultation can help parties understand each other's position and to identify, discuss and resolve points of difference. Matters not resolved are likely to be the subject of formal submissions.

Once the policy statement/plan is formally notified, no new issues would be expected unless material changes introduce new matters. Signal any change in political direction to other local authorities as soon as possible.

5.1 Commenting on proposed RPS/plans and RPS/plan changes

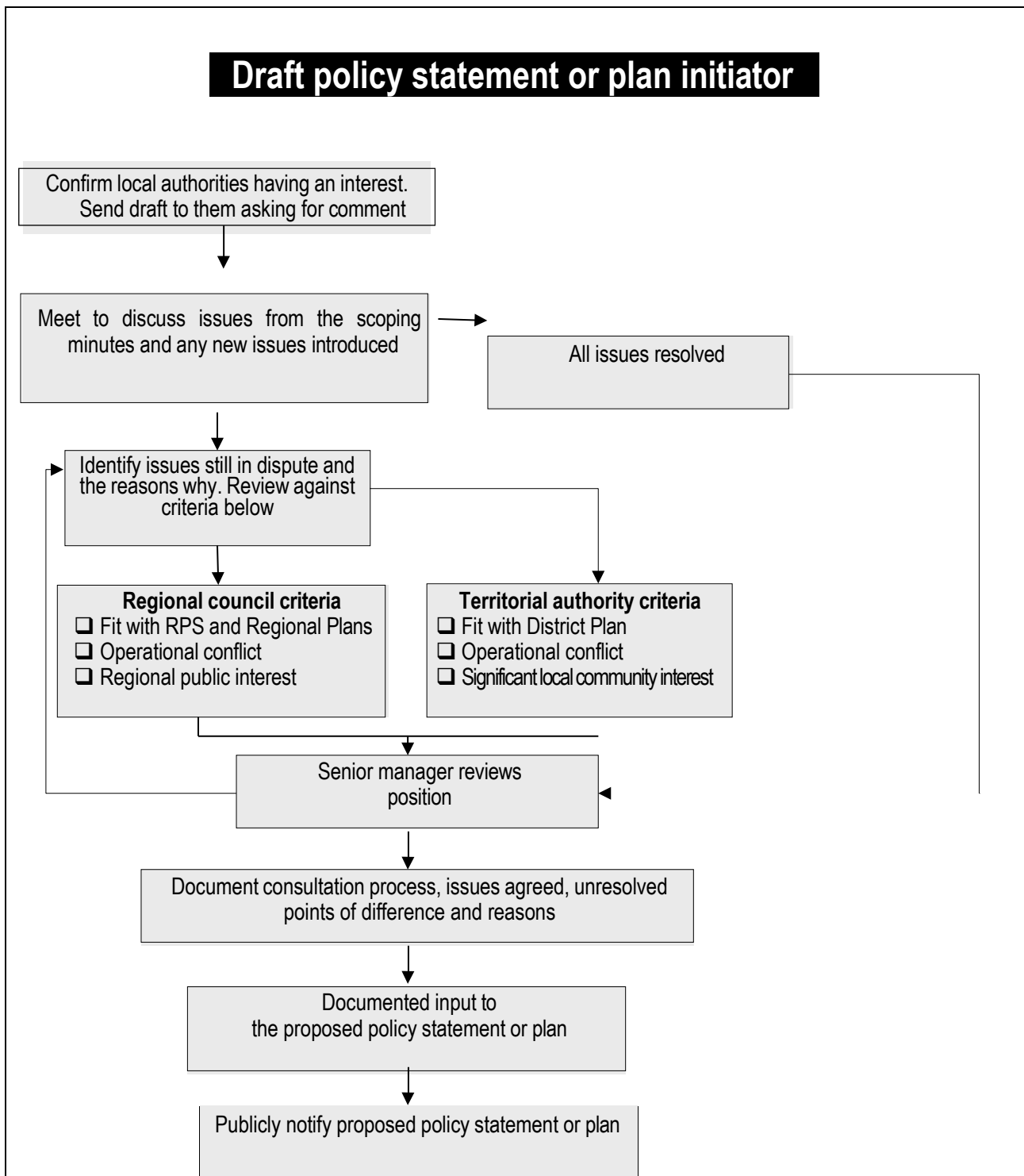
Comments on a draft policy statement or plan are semi-formal, represent the organisational view and would generally be discussed with the initiating local authority. Include a summary of the position reached through the scoping stage.

Comments should:

- emphasise the resource management purposes that the initiating local authority is seeking.
- Focus on policy and plan implications⁶ with an emphasis on matters of difference already identified.
- Reference the relevant policy statement or plan objective, policy, method and/or rule (see Appendix).
- Distinguish between matters of significance to the local authority and those of more general concern.
- Refer to relevant operational or strategic plans to validate the comment, including the long-term plan, asset management plans, pest strategies, reserve management plans, corporate action plans and growth strategies and models.
- Explain the impacts on the local authority in terms of practicality and reasonableness, and any cost implications (if known), in sufficient detail to be credible and stand scrutiny.
- It is good practice for parties to discuss comments before lodging them. Explore opportunities to reach agreement. An example of good practice is inviting regional council staff to district plan project teams and vice versa.

⁶ Constructively comment on style or grammar in informal exchanges between peers, e.g. by email.

Draft policy statement or plan key steps



6 Notifying and submitting—Stage 3

6.1 Submissions

Given the consultation undertaken at the scoping and draft stages and the efforts to resolve matters of difference, issues still outstanding should relate to matters of substance. By the time a policy statement or plan has been publicly notified, matters in contention between the parties should be clearly identified and understood. Communicate any **new** matters introduced into the proposed policy statement or plan likely to be of interest to the recipient and the reasons for inclusion.

To reduce the risk of other parties' submissions against sought-after provisions being accepted, local authorities are encouraged to make supportive submissions. By submitting, a local authority gains rights to appeal. Section 274 of the RMA may provide additional opportunities to join appeal proceedings.

Any submission relying on relevant policy documents should reference that objective, policy, method and/or rule.

Submissions on a notified policy statement or plan are formal and must be supported by policy including:

For regional council submissions on district plans:

- the operative and proposed regional policy statement
- operative and proposed regional plans
- other statutory documents, including the regional council long-term plan, regional land transport strategy, pest management strategy, civil defence emergency management group plan, National Policy Statements
- relevant operational requirements and corporate activities.

Submissions should relate to matters impacting implementation of regional policy and plans, regional council operations or issues of regional public interest.

For territorial authority submissions on the regional policy statement, regional plans and adjacent territorial authorities' district plans:

- district plans and other statutory documents including long-term plan, asset management plans, growth management plans, strategies and
- relevant operational requirements, National Policy Statements and corporate activities.

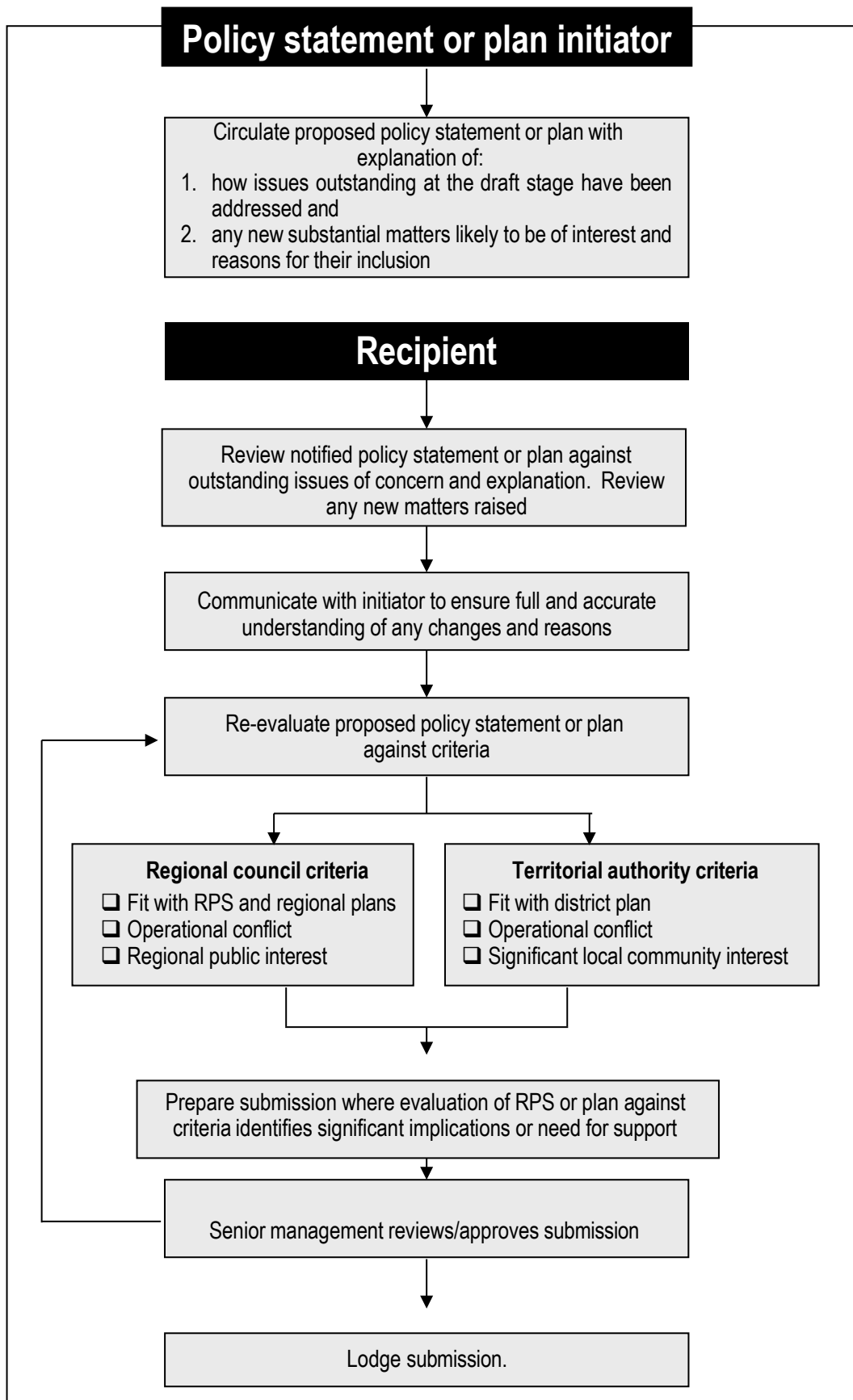
Submissions should relate to matters impacting the territorial authority's district plan, its operations including cost, reasonableness and practicability, or issues of local community interest.

A senior manager will review the submission to ensure:

- it is **well founded** in terms of policy or other relevant criteria
- it is a **significant matter** on its own or gives rise to significant implications for the local authority in carrying out its responsibilities or implementing its policy
- it specifies an appropriate **means of relief**.

Before confirming the submission, the senior manager **may** refer it to their counterpart to ensure the submission is accurate, policy driven and appropriate. This is an optional good practice step in light of the purpose of the Protocol.

Notifying and submitting steps



6.2 Further submissions

Further submissions have a 10-working day timeframe; the initiating party should provide an advance copy of the summary of submissions if possible. Apply the criteria under 6.1 of this protocol when making a further submission.

6.3 Local authority hearings

Pre-hearing meetings

Local authorities should discuss the need for pre-hearing meetings while preparing officer reports on submissions and jointly agree on a case-by-case basis. These discussions could identify areas of common interest and points of difference and how to address them in the hearing.

Hearings

Ten working days' notice is required for a hearing on a proposed policy statement or plan (Schedule 1, clause 8B of the RMA). It is good practice to provide more time than the minimum required⁷.

Allow adequate time for an officer's report to be considered in the preparation of technical evidence. The officer's report must be received by a submitter at least 5 working days before the hearing (section 42A(3) of the RMA), but aim to send it at least 10 working days before a hearing for complex plan matters. This allows time for technical evidence to be circulated before the hearings. An authority conducting a hearing may require a submitter to provide briefs of evidence (section 41B of the RMA), in which case additional notice of hearing is essential.

Relevant staff are expected to appear at the hearing. The initiating local authority is recommended to appoint a "case manager" to co-ordinate the hearing process and be responsible for running the hearing, co-ordinating appearances and facilitating and supporting the process. The local authority submitter should also have one point of contact. The case manager should present the local authority's concerns effectively, including ensuring technical experts are available if necessary. The hearing process is to assist the hearing panel make a good decision, which includes providing the hearing panel with expert opinion.

6.4 Decisions

The initiating local authority should send its decisions and the amended proposed policy statement or plan to the local authorities that submitted.

7 Appeals to the Environment Court - Stage 4 (RMA Schedule 1 process only)

Given the significant cost, resource and relationship impacts of appeals, every effort should have been made to reach agreement on matters of significant difference before this stage. If a local authority is lodging or joining an appeal, it is good practice to give prior notice to the initiating local authority. Mediation may be appropriate where parties are keen to find common ground⁸.

⁷ The statutory obligations applying to hearings are set out in the RMA. Sections 39, 39A, 39B, 39C, 40, 41, 41A, 41B, 41C, 42, and 42A, and Schedule 1, clauses 8AA, 8B, 8C, 8D, 9, 10 and 11, may apply.

⁸ When considering appealing, note that declaration provisions under s 310 RMA and section 82, Disputes, may also be useful where clarity is sought from the Court.

Appendix: Relationship of Resource Management Act Policies and Plans

Some relevant sections of the RMA

- s62 Contents of regional policy statements
- s65 Preparation and change of other regional plans
- s66 Matters to be considered by regional councils
- s67 Contents of regional plans
- s73 Preparation and change of district plans
- s74 Matters to be considered by territorial authority
- s75 Contents of district plans

