



Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement: Section 32AA evaluation of changes

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Bay of Plenty Regional Council
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1 Introduction

This report should be read in conjunction with the Staff Recommendations Overview Report dated 6 June 2023 and the Staff Recommendations on Submissions and Further Submissions Report. This report provides analysis of the recommended changes to Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement (Change 6) and address the Hearing Panel's duty under section 32 of the Resource Management Act (the RMA) to be carried out by the Panel while deciding whether to accept or reject a submission on Change 6.

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 RMA 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.

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 section⁴.

The purpose of this report is to provide the Change 6 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 6 June 2023. That will enable the Panel to fulfil its duty under section 32AA.

¹ RMA s32(1)(b)

² RMA s 32(1)(c)

³ RMA s 32(2)

⁴ RMA s32AA(1)(d)(ii)

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 are discussed in detail in the staff overview report.

The recommended changes aim to clarify the intent and provide consistency with the National Policy Statement on Urban Development (NPS-UD). Staff have not recommended any changes that substantively change any of the provisions of Change 6 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 August 2022. This is explained further below and any exceptions that require specific new evaluation are addressed.

3.1 Reasonably practical options

The Change 6 Panel’s duty is to examine whether the amendments proposed to Change 6 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 direction of the NPS-UD. 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 staff overview report on submissions dated 26 May 2023, 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. This is a standard Schedule 1 process and the usual scope constraints apply.

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 Change 6 (as opposed to changes aimed at clarification or technical wording changes for consistency with the NPS-UD) are:

1. The inclusion of existing use rights for lawfully established activities in Policy UG 22B
2. The inclusion to protect ‘Māori Development’ from incompatible uses or development and reverse sensitivity effects in Policy UG 22B;
3. Recognition of reverse sensitivity effects throughout the whole of Change 6, specifically Policies UG 7A, UG 7Ax, UG 14B, 18B, 20B and 24B.
4. Recognition of the National Policy Statement on Highly Productive Land (NPS-HPL)
5. Recognition of proposed National Policy Statement on Indigenous Biodiversity (NPS-IB)
6. Consequential changes to Section 2.2.3: Use and Allocation of Coastal Resources
7. Consequential changes to Section 2.11: Natural Hazards

8. Deletion of Policy UG 14B – Restricting urban activities outside of urban environments

3.2 Effectiveness and efficiency

An assessment of the efficiency and effectiveness of amendments to Change 6 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 Change 6 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 Change 6's amendments and alternative options, in monetary terms, is difficult.

Some of the amendments and options raised by submitters are aimed at ensuring that existing land use activities are not inhibited by the direction of Change 6 such as through recognition of existing use rights and reverse sensitivity effects. As detailed further below, the Act and operative RPS provide for both existing use rights and reverse sensitivity effects in which the benefits and costs associated with not including such changes is neutral.

Some of the amendments and options are aimed at ensuring the provisions of Change 6 are consistent with the NPS-UD. These types of changes are likely to reduce the additional economic cost of implementation by providing clarity and certainty in the provisions improves efficiency in implementation and generally provides greater benefits and reduced costs. Determining the cultural and social costs and benefits of Change 6 and the amendments and alternative options in a quantifiable way, and, in monetary terms, is generally problematic.

For these reasons, the Change 6 Hearing Panel will have to rely on assessments of costs and benefits of both the recommended Change 6 provisions and the alternative options put forward by Council officers and submitters that are more conceptual and general than analytical and calculated.

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. **Policy UG 22B – Existing use rights for existing lawful activities:** The option proposed within the overview report to not include existing use rights is more appropriate because:
 - a. Existing use rights is not necessary for inclusion in the policy. The direction of the NPS-UD is to take into account the Treaty of Waitangi. Sections 10, 10A and 20A of the Resource Management Act sets out protections for existing lawful activities as such those activities don't need to be assessed against this policy.
2. **Policy UG 22B – Protection of 'Māori development from incompatible uses or development and reverse sensitivity effects:** The option proposed within the overview report to not include Māori development in Policy UG 22B(e) is more appropriate because:

- a. The term ‘Māori development’ is a wide term that could include a range of uses. It is undefined by the RPS and NPS-UD. Providing protection from incompatible uses and reverse sensitivity effects from an activity is likely to constrain development in the surrounding environment but the extent of this constraint is not and cannot be quantified. Given this, it is considered inappropriate to widen the scope of the policy in the way being suggested at this time.
- 3. Recognition of reverse sensitivity effects throughout provisions:** The option proposed within the overview report to not include reference to reverse sensitivity effects is more appropriate because:
- a. The RPS already recognises reverse sensitivity effects on existing lawfully established activities through various policies such as *Policy UG 20B: Managing reverse sensitivity effects on rural production activities and infrastructure in rural areas*, *Policy EI 7B: Managing the effects of infrastructure development and use*, *Policy AQ 1A: Discouraging reverse sensitivity effects associated with odours, chemicals and particulates*, and *Policy EI 3B: Protecting nationally and regionally significant infrastructure*. Additional policy would add little and so is not considered necessary.
- 4. Recognition of NPS-HPL:** the option proposed in the Overview Report on Submissions is more appropriate because:
- a. A separate program of works is underway to implement the NPS-HPL. In the interim, clause 3.5(7) of the NPS-HPL outlines that until the RPS is amended to include maps of highly productive land, each relevant territorial authority and consent authority must apply the NPS-HPL as if reference to highly productive land:
 - (a) is
 - (i) zoned general rural or rural production; and
 - (ii) LUC 1, 2, or 3 land; but
 - (b) is not:
 - (i) identified for future urban development; or
 - (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.
 - b. Staff consider the best option is to give effect to the NPS-HPL on a comprehensive basis as part of Proposed Change 8 (NPS-HPL) to the RPS, which in turn, may require further amendments or additions to the existing operative RPS rural growth management provisions. In the meantime, there are sufficient safeguards in the NPS-HPL and RPS.
- 5. Recognition of proposed NPS-IB:** the option proposed in the Overview Report on Submissions is more appropriate because:
- a. The NPS-IB is still under development and is yet to be gazetted. There is no way of knowing with any certainty what the final form of the directions will be. Once it is finalised and takes effect Council will make any amendments necessary to ensure that it is given effect to.
- 6. Consequential changes to Section 2.2.3: Use and Allocation of Coastal Resources and to Section 2.11: Natural Hazards:** the option proposed in the Overview Report on Submissions is more appropriate because:

- a. The references to Appendices D and E within the Coastal Environment and Natural Hazards sections were an oversight and should have been removed through Proposed Change 6. Staff also consider Proposed Change 6 is an appropriate process to amend these statements referencing Appendices D and E as their reference will become irrelevant and the statements would be incorrect on the adoption of Change 6 (as currently proposed) and could lead to confusion. This correction of minor effect can be made under cl16 RMA.
- 7. Deletion of Policy UG 14B – Restricting urban activities outside of urban environments:** the option proposed in the Overview Report on Submissions is more appropriate because:
- a. Policy UG 14B is not a duplicate of Policy UG 7A. Policy UG 7A is a gateway policy to consider unanticipated and out-of-sequence developments and provides local authorities with criteria to consider large scale private plan changes that would add significant development capacity to an urban environment. If the criteria in Policy UG 7A can be met, local authorities will still need to consider the existing rural environment that proposed urban development will interface with.
 - b. Restricting urban activities is particularly relevant to protecting the productive potential of the regions rural land resource and providing for the growth and efficient operation of rural productive activities.

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 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 Proposed Change 6. To the extent that they have done so, 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 Change 6 Hearing Panel will consider the overview report on submissions and determine whether it 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 Change 6 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.



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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:
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(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.