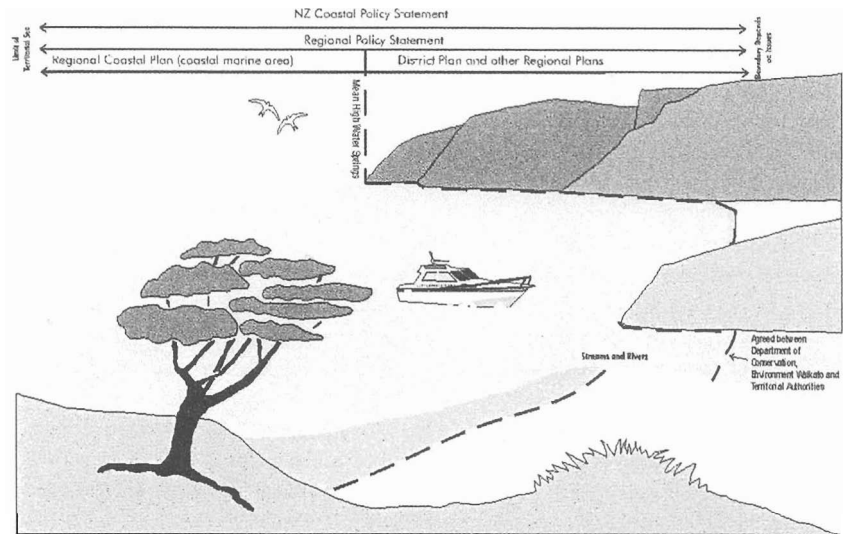


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A REVIEW OF REGIONAL COASTAL PLANS

A PERSONAL VIEW ABOUT
MATTERS WHICH SHOULD
BE CONSIDERED BY
REGIONAL COUNCILS IN
THE REVIEW OF THEIR
"FIRST GENERATION"
REGIONAL COASTAL PLANS



INTRODUCTION

The RMA enacted in 1991, required that Regional Coastal Plans (RCPs) be proposed by 1 July 1994. The first New Zealand Coastal Policy Statement, which was to influence the preparation of RCPs, was to be notified by 1 October 1992, but subsequently became operative on 5 May 1994. Therefore, many of the RCPs were prepared in the absence of this national policy and gave cursory attention to it, in order to meet the deadline of the Act. The RMA test at the time, was for the RCPs to be "not inconsistent" with the NZCPS. In the Resource Management Amendment Act 2003 this is now strengthened to ensure that Councils "give effect to" national policy statements.

Plans for the coastal areas were new for all regional councils. Some regions had previously developed harbour or maritime plans under the Harbours Act 1950, but these provided little guidance in the preparation of RMA plans and policy statements. The challenge was to provide a planning framework for all coastal areas within the region – from Mean High Water Springs (MHWS) to the 12 nautical miles limit. Notwithstanding the extensive

areas, most RCPs opted to provide generic policy focused on "effects" of activities (as governed by s12, Schedule II and Part II of the RMA). Depending on the level of information available, some areas were zoned and activities more specifically provided for.

Whatever approach was taken, it was clear that there was a lack of specific information to enable adequate standards to be written into rules, to provide any clear guidance or certainty to applicants or decision-makers.

REVIEW PROCESS

A number of Councils are currently considering a review of their RCPs. Interestingly, this is irrespective of when the plans may have been made operative (NB: 5 out of 17 RCPs are currently still not operative). Although the RMA stipulates that plans are to be reviewed within 10 years of their operative date, it is clearly being recognised that many of the plans proposed in 1994 (or thereabouts) are already well out of date and have not kept pace with the level of coastal development and coastal pressures that have evolved in the past 10 years.

From a practitioner's perspective, reviewing

plans should include an assessment of how workable and useful the plans have been; how well they have dealt with the key issues being faced by the region; and whether they continue to adequately address expected future pressures. In addition, there are a range of other key issues and legislative changes that have emerged over time that will influence the development of the next generation of plans. Some of these are outlined below.

LEGISLATIVE/NATIONAL POLICY CHANGES

There have been a number of changes to legislation that have impacted on the coastal marine area (CMA), in particular, RMA Amendments relating for example, to climate change, biodiversity, historical heritage, aquaculture reforms, marine pollution, occupation charges. Likewise case law has evolved around some significant issues, such as definition of occupation, permitted baseline, "holistic" planning, etc.

There have also been other major influential national policy directives/ legislative reviews, such as the Foreshore and Seabed legislation, Oceans Policy, review of the NZCPS, Local Government Act, review of the Marine Reserves Act, Government's Sustainable Development Strategy, and so on. Each of these reviews raises issues of timing for any RCP review. While Council staff generally recognise the need to review their RCPs now, it is yet again, likely to be undertaken in the absence of a definitive national perspective about the management of the coastal environment and oceans.

EFFECTS BASED PLANNING vs PRESCRIPTIVE PLANNING

With the advent of the RMA the hype was on "effects based" planning. The philosophy was that, provided certain effects were avoided, remedied or mitigated, activities could occur anywhere. Interestingly as a generalisation, many districts saw this as a means to continue with zoning by encompassing effects within the definition of a zone. Regions saw this as a means for the effects of use and development to be considered on a case by case context.

Both the Aquaculture Law Reform and the case law (*Pacific Paradise Ltd v Waikato Regional Council A139/2003*) have erred on the side of prescriptive activity and zone-focused planning as being the only way to address the increasing levels of pressures in coastal areas. This strategy

has evolved with no open discussion about the underlying change in philosophy for the implementation of the RMA, nor on the value or otherwise of other planning tools. This approach has also been reinforced through case law on the need to consider activities as a whole – and preferably not in relation to the different effects on the environment as defined in s12 of the RMA, ie "holistic" planning has been seen to be activity focused (*Body Corporate 97010 v Auckland City Council (CA)[2000]3 NZLR 513, [2000] NZRMA 529.*)

INTEGRATION ACROSS MHWS

While the RMA emphasises integrated management, MHWS was set as the RMA jurisdictional boundary between Regional and Territorial Authorities. Integration of the management between land and sea has not been achieved particularly well. Most RCPs and District Plans were drafted simultaneously and there were a number of barriers to achieving integrated plans at that early stage. Not surprisingly, most of the coastal pressures arise on land and the effects of land use activities then impact on the CMA (eg subdivision, water quality, structures). Likewise, most activities in the CMA occur within a short distance of MHWS. In the future, Regional Councils and Territorial Authorities will need to be "smarter" about the way they integrate their plans to ensure the land based activities are controlled in a way that does not impact on the CMA, particularly in relation to natural character, erosion (a natural process for significant parts of New Zealand's coast) and water quality (elderly/ inadequate septic tanks and community services which do not adequately address the swings in population from winter to summer demands). Regional Councils also need to be more cognitive of the associated land based effects resulting from CMA planning and decision-making.

It is anticipated that in the future, a far greater emphasis will be placed on coastal environment plans, to enable better linkages between the land and water issues. Some Regional Councils have already taken this approach, to varying degrees, in their "first generation" plans.

CUMULATIVE EFFECTS/ MULTIPLE EFFECTS

Addressing cumulative effects continues to be an area that is difficult to manage from both

a policy and a consents perspective. While cumulative effects are identified in the RMA as a part of the definition of "effects", there is no easy way to provide guidance on when one more "activity" is one too many. However with the increasing level of development and use pressures on the coastal edge, it is considered that this matter will need to be developed further within the next generation of plans, to provide stronger directions on unacceptable levels of cumulative effects. Perhaps the aquaculture model of prescriptive planning will be required for all activities.

Recent case law on permitted baseline will also influence the interpretation of cumulative effects, within the context of rule writing (particularly in relation to the plethora of old/ existing/ un-consented structures bordering the CMA). Grappling with the dilemma between natural character values and people's historical use of the CMA (especially "unauthorised" erosion structures) will also be a part of this issue of managing cumulative effects more effectively.

TANGATA WHENUA

Since the first generation of RCPs, a number of iwi authorities have developed Iwi Management Plans. The RMA has strengthened the relationship between the respective plans, by requiring them to be "taken into account", whereas previously Councils have simply needed to "have regard to" other plans. It is considered that the discussions (e.g. about territorial customary rights) that have evolved as a part of the Foreshore and Seabed debate, the more directive provisions of the Local Government Act 2003, and the increased capacity of many iwi authorities, will result in an increased expectation of closer involvement in the direction and management provisions in the next generation of RCPs.

ROLE OF PLANS

Section 104 of the RMA clearly identifies that plans and policy statements are among several matters that a Consent Authority "must have regard to" in considering a resource consent. Activities which are clearly permitted, controlled or prohibited provide clear guidance and certainty to the public, whereas discretionary and non-complying are open-ended rules. The next generation of plans will need to consider those activities that have occurred over the past 10 years and

identify those which can now readily be made permitted or controlled and those activities which should be retained as discretionary activities or be made prohibited activities. Where activities are left in the discretionary category, it is critical to assess the scope of the plan's objectives and policies to ensure they provide adequate guidance for the management of such activities.

It should also be remembered that, in some regions particularly, RCPs are a significant undertaking of resources (time, costs and

labour) to provide a framework for considering a relatively low number of consents (compared to the number of regional landwater related consents). It is considered that the scale **and/or** scope of the next generation of RCPs should also be debated, along with analysing the costs/benefits of combining with other Regional Plans.

CONCLUSION

It is expected that the next generation of plans will be more focused on activities,

on applying zoning to water space and on better addressing the land-water interface. There will probably be a more focussed policy framework and more use of permitted, controlled and prohibited rules. Triggers for cumulative effects could well be developed further, particularly for areas under intense pressures. The scope of the plans are likely to be different, as they seek to ensure better integration across the line of MHWS, which could lead to better integration with other regional **and/or** district plans.