
BEFORE THE HEARINGS COMMITTEE

IN THE MATTER

**of hearings on submissions
concerning the proposed One
Plan notified by the
Manawatu-Wanganui
Regional Council**

**SECTION 42A REPORT OF ANDREA RUTH BELL
ON BEHALF OF THE MANAWATU-WANGANUI REGIONAL COUNCIL**

1. INTRODUCTION

Qualifications and experience

1. My name is Andrea Ruth Bell. I am a self-employed environmental consultant. I hold the qualifications of Bachelor of Science (Earth Sciences), Master of Science (Earth Sciences - First Class Honours) and Graduate Diploma of Applied Science (Resources and Environmental Planning), all from the University of Waikato. I have also completed two years of a Master of Public Policy from Victoria University. I am a member of the Resource Management Law Association.
2. From 1989 to 1994 I worked at the Waikato Regional Council, firstly as a scientist and then as a senior planner. From 1995 to 1997 I worked at the Hawke's Bay Regional Council as the Council's Planning Manager. Since leaving the Hawke's Bay Regional Council I have worked as an environmental consultant, mostly in a part-time capacity.
3. I have worked on a number of policy statements and plans under the Resource Management Act 1991 ("the Act"). My work has included: project managing the first draft of the Waikato Regional Plan; preparing the Hawke's Bay Regional Air Plan (which was awarded a trophy for "best plan" from the Resource Management Law Association); authoring a guide to the preparation of regional policy statements and regional plans¹; devising a framework for merging Hawke's Bay's regional policy statement and regional plans (excluding the Regional Coastal Plan) into one document - the Hawke's Bay Resource Management Plan - and then crafting the draft plan; peer reviewing the Proposed Regional Air Plan for Otago; peer reviewing the Proposed Regional Coastal Plan, and Proposed Regional Water and Soil Plan for Northland; responding to submissions on matters of significance to tangata whenua in the Proposed Auckland Regional Plan: Air, Land and Water; and responding to submissions on the Geothermal Module of the Proposed Waikato Regional Plan. I am presently assisting the Auckland Regional Council with the review of its Regional Policy Statement, managing the areas of land, fresh water, air quality, the coastal environment and waste.

Involvement in the One Plan

4. The Manawatu-Wanganui Regional Council ("the Council") resolved to merge its Regional Policy Statement and all its regional plans into one consolidated document: the One Plan. I was engaged in January 2005 to assist staff preparing the Plan. My first task was to review preliminary work on the One Plan and, as part of my review, I devised the structure upon which the Plan has been written. I also helped staff write several Chapters of the Plan; this has involved crafting provisions to meet the requests or intentions of staff. My role in the One Plan project has stopped short of any involvement in consultation, or liaison with Councillors. Nor have I undertaken any analyses of benefits or costs. In summary, while I am the architect of the One Plan's framework, the Plan's provisions have been built by Council staff.

¹ Hawke's Bay RC, Taranaki RC, Manawatu-Wanganui RC, Otago RC, Southland RC 1998: *Regional Policy Statements and Regional Plans: A Guide to their Purpose, Scope and Content*.

Scope of evidence

5. The purpose of my evidence is to convey the thinking that underpins the way the One Plan has been designed. The contents of my evidence are as follows:
 - i. **One Plan philosophy:** In section 2, I set out the key principles upon which the framework has been established. In particular I explain why I recommended a structure for the One Plan which keeps the Regional Policy Statement (“RPS”) and Regional Plan separate. I also describe the respective roles of Part I (the RPS) and Part II (the Regional Plan), and how they fit together to make one consolidated document.
 - ii. **Compliance with the Act:** In section 3, I set out how the One Plan complies with the Act in terms of:
 - a. the contents of a regional policy statement;
 - b. the contents of a regional plan;
 - c. the contents of a regional coastal plan; and
 - d. the need for a regional plan to “give effect to” a regional policy statement.
 - iii. **Issues raised by submitters:** In section 4, I respond to jurisdictional issues raised by submitters which challenge the arrangements within the One Plan.
 - iii. **Concluding comments:** Finally, in section 5 I draw my evidence to a close.

2. ONE PLAN PHILOSOPHY

6. As I stated previously, the Council decided to merge its RPS and regional plans into a single resource management document: the One Plan. This decision was driven by a desire to provide a simpler, more focused plan; one which clearly addressed the key issues for the Region and which was more user-friendly than the suite of documents it would replace.
7. I devised the structure upon which the One Plan has been written. The key principles underpinning the One Plan’s structure are as follows:
 - i. keeping the RPS and Regional Plan separate;
 - ii. assigning different roles to the RPS and Regional Plan whereby the RPS establishes the overall framework for managing natural and physical resources and, within this framework, the Regional Plan sets out how activities will be controlled;
 - iii. providing a means by which the most critical issues facing the Region could be readily identified; and
 - iv. avoiding duplication between the RPS and Regional Plan.

I will discuss each of these matters in further detail.

Keeping the RPS and Regional Plan separate

8. Within the One Plan, Part I comprises the RPS and Part II comprises the Regional Plan for the purposes of the Act. An alternative structure, whereby

the Council's RPS and Regional Plans would be fully merged into one seamless document (with no explicit distinction between the issues, objectives, policies, and non-regulatory methods of the RPS and Regional Plan) was considered. I recommended that the RPS and Regional Plan be kept separate within the One Plan because of the differences in the way these two planning instruments are treated under the Act.

9. Firstly, regional policy statements have a specific purpose under the Act: to provide an overview of the resource management issues of the region, and policies and methods to achieve integrated management of the natural and physical resources of the whole region (see section 59), whereas the purpose of a regional plan is non-specific: to assist a regional council to carry out any of its functions under the Act (see section 63). The identification and tackling of regionally significant issues, and the establishment of integrated approaches to resource management, would appear to be the domain of regional policy statements more so than regional plans.
10. Regional policy statements have more influence on local planning. The Resource Management Amendment Act 2005 changed the wording of section 67(3) and section 75(3) such that the requirement that plans "not be inconsistent with" national and regional policy statements has been replaced with the more directive and proactive "must give effect to". By comparison, a district plan must still "not be inconsistent with" a regional plan (see section 75(4) of the Act). The amendments are intended to give greater strategic importance to regional policy statements and ensure greater maintenance of locally developed outcomes².
11. The Act prescribes different contents for regional policy statements and regional plans. Regional policy statements cannot contain rules whereas regional plans can. Moreover, the Resource Management Amendment Act 2005 reduced the mandatory contents of regional plans (and district plans) to just objectives, policies and rules (if any), with all other contents now optional. These changes provide a means by which local planning can be streamlined, and by which much of the duplication evident between first generation regional policy statements and regional plans can be avoided. Plans can now be shorter and easier to navigate. The amendments also reflect the reality that many practitioners only refer to the objectives, policies and rules of a plan, ignoring other provisions.
12. For all of these reasons, I believe it is preferably to have a One Plan which clearly distinguishes the RPS from the Regional Plan, than one which merges these two planning instruments.
13. The Act also contains different provisions regarding who can request changes to regional policy statements and regional plans. Any person may request the preparation of a regional plan, or a change to an existing regional plan. However, only a Minister of the Crown or a territorial authority within the region may request a change to a regional policy statement. I do not believe that this distinction necessitates the separation of the RPS and Regional Plan. Indeed, it may not make much difference in practice as I imagine the Council would examine any request for a change objectively, whether the request related to the RPS or Regional Plan. Nevertheless this distinction does point to the need,

² Resource Management and Electricity Legislation Amendment Bill – Explanatory Note.

for the sake of compliance with the Act, to be clear within the One Plan about what constitutes the RPS and what constitutes the Regional Plan.

Establishing distinct roles for the RPS and Regional Plan

14. Within the arrangement recommended for the One Plan, I envisaged that the RPS and Regional Plan would have different roles. The RPS would focus on the key issues facing the Region, and set out how these would be addressed. The Regional Plan would deal with how activities would be regulated, and how decisions would be made on consent applications.
15. This approach is reflected in the contents of the Plan. Part I (the RPS) is largely structured according to resource management issues – see Chapters 3 to 10 which are titled “Infrastructure, Energy, Waste”, “Te Ao Maori”, “Land”, “Water”, “Living Heritage”, “Air”, “Coast” and “Natural Hazards”. Part II (the Regional Plan) begins with overarching objectives and policies for the regulation of activities (in Chapter 11). The bulk of Part II is then structured according to the restrictions on activities under sections 9 to 15 of the Act – see Chapters 12 to 17 which are titled “Land Use Activities and Land-Based Biodiversity”, “Discharges to Land and Water”, “Discharges to Air”, “Takes, Uses and Diversions of Water, and Bores”, “Structures and Activities involving the Beds of Rivers, Lakes and Artificial Watercourses, and Damming”, and “Activities in the Coastal Marine Area”. Each of these Chapters starts with policies guiding decision-making on consent applications, and then sets out all relevant rules. Part II also contains provisions for financial contributions (in Chapter 18).
16. Another way of describing the differences between the roles of Part I and Part II is in terms of the phrase coined by the Hon. Peter Salmon to describe the basics of resource management: *‘identifying the resource, determining its capacity, and then limiting its use’*³. This framework has since been extensively referred to by Philip Milne (Simpson Grierson) in a think-piece on managing cumulative effects⁴. Within the One Plan the purpose of the RPS (Part I) is to “identify resources” (including the establishment of values or management purposes for specific resources), and “determine resource capacity” (in other words, the sustainable limits of a resource) where this is necessary. The RPS also indicates how resource use should be limited, but stops short of actually restricting activities - this being the job of rules in regional and district plans, and resource consent processes. The purpose of the Regional Plan (Part II) is simply to regulate activities and to guide decision-making on consent applications, nothing more.
17. In accordance with the different purposes of Part I and Part II of the One Plan, it logically follows that the anticipated environmental results and monitoring procedures should reside in Part I.

Addressing the most critical issues

18. I understand that the Council was vigorous in its desire for the One Plan to clearly state and comprehensively tackle four keystone issues facing the Region. These four issues – surface water quality degradation, increasing

³ *Revisiting the Purpose and Purpose and Approach to Resource Management – Beyond the RMA Conference*, Environmental Defence Society, May 2007.

⁴ *When is Enough, Enough? Dealing with Cumulative Effects under the Resource Management Act*. Quality Planning Website, March 2008.

water demand, unsustainable hillcountry land use, and threatened native biodiversity – are introduced upfront in Chapter 1. Chapter 1 points to how these issues are dealt with in the One Plan. These four issues are by no means the only issues identified in Part I; however as a principle Part I has been kept as short as possible. Any temptation to cover a vast range of matters has been avoided, in order that Part I focuses on issues that are truly important in the Region.

19. I endorse the approach proposed by the Council whereby it has distinguished “keystone” issues from other issues in Part I. I believe that this is a useful way of ensuring that the Council’s resources are targeted at areas where they are most needed.

Avoiding duplication between the RPS and Regional Plan

20. In my opinion duplication between a regional policy statement and regional plan is thoroughly undesirable, particularly where these documents cover the same matters but in slightly different ways (as is often the case). Duplication detracts from the user-friendliness of a council’s documents. It risks causing confusion for territorial authorities when preparing their district plans. It also makes the jobs of consent applicants preparing assessments of environmental effects, and consent officers endeavouring to apply section 104(1)(b) of the Act in good faith unnecessarily difficult and cumbersome. In summary, duplication undermines the credibility of a Council’s planning framework under the Act.
21. The One Plan has been designed to avoid duplication. As I have stated previously, the Plan has been crafted in a way that has assigned different purposes to Part I (the RPS) and Part II (the Regional Plan). The Plan has also utilised the opportunities presented by section 67 of the Act, as amended by the Resource Management Amendment Act 2005. Part II (the Regional Plan) only contains the mandatory requirements for regional plans under section 67 – objectives, policies and rules. These measures have resulted in a framework that makes it easy to avoid duplication between the RPS and Regional Plan.

3. COMPLIANCE WITH THE ACT

Contents of the RPS

22. Part I of the One Plan is the Council’s proposed RPS. The contents required of a regional policy statement under the Act are listed in section 62. Part I of the Plan complies with section 62 as follows:
 - a. Chapters 1 to 10 set out the significant resource management issues for the Region including, in Chapter 4, the resource management issues of significance to iwi authorities (as required by section 62(1)(a) and 62(1)(b)(i)). There are presently no foreshore and seabed reserves in the Manawatu-Wanganui Region. Therefore section 62(1)(b)(ii) of the Act, requiring the identification of the resource management issues of significance to the board of a foreshore and seabed reserve, does not apply.

- b. Chapters 2 to 10 contain objectives, policies, methods, anticipated environmental results, explanations and principal reasons (as required by sections 62(1)(c), (d), (e), (f) and (g) of the Act).
 - c. Section 2.1 sets out the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions (as required by section 62(1)(h) of the Act).
 - d. Local authority responsibilities for the management of natural hazards, hazardous substances, and indigenous biological diversity are respectively set out in policies 10-1, 3-10 and 7-1 (in accordance with section 62(1)(i) of the Act).
 - e. Finally, the procedures to monitor the efficiency and effectiveness of the RPS are set out in section 2.2 (as required by section 62(1)(j) of the Act).
23. In addition, the One Plan's Annexes – the Glossary and Schedules – form part of the RPS insofar as the contents of the Annexes are referred to in Part I.

Contents of the Regional Plan

24. Part II of the One Plan is the Council's proposed Regional Plan. As I have stated previously, the purpose of Part II is to regulate activities and to guide decision-making on consent applications, nothing more. The mandatory contents of a regional plan are listed in section 67(1) of the Act. Part II (the Regional Plan) complies with section 67(1) as follows:
- a. Chapter 11 (in section 11.2) sets out the objectives of the Regional Plan (as required by section 67(1)(a) of the Act).
 - b. Chapter 11 (in section 11.2) sets out general policies of the Regional Plan, and Chapters 12 to 17 set out policies in relation to particular activities (as required by section 67(1)(b) of the Act).
 - c. Chapters 12 to 17 set out the rules of the Regional Plan (as provided for by section 67(1)(c) of the Act).
25. In addition, the One Plan's Annexes – the Glossary and Schedules – form part of the Regional Plan insofar as the contents of the Annexes are referred to in Part II.
26. While the Regional Plan complies with section 67(1) of the Act, I note that the general objectives and policies are buried in Chapter 11 (and that this Chapter is entitled "Introduction to Rules"). The general objectives and policies therefore risk being overlooked. As presently written Chapter 11 serves four purposes: describing the contents of Part II (in section 11.1), providing a users' guide to the rules (in sections 11.1.1, 11.1.2 and 11.1.3); providing a summary of the rules (in section 11.1.4); and stating the general objectives and policies of the regional plan (in section 11.2). The general objectives and policies are very important. In particular, Policies 11-1, 11-2 and 11-3 provide the basis for all the rules of the Regional Plan in terms of section 67(1) of the Act. In earlier versions of the One Plan the general objectives and policies were placed in a stand-alone Chapter, separate from the other provisions of Chapter 11. I recommend that such a structure be reinstated.

27. Section 67(2) of the Act lists optional contents of regional plans. The One Plan does not include any of these. Most of the optional contents – the issues that the Plan seeks to address, the methods other than rules for implementing the policies, the expected environmental results, the procedures for monitoring the efficiency and effectiveness of the policies and methods, and the processes for dealing with cross-boundary issues (see sections 67(2)(a), (b), (d), (e), and (f) of the Act) – are included in Part I, and to include them in Part II would result in duplication.
28. With respect to the remaining optional contents under section 67(2)(c), (g) and (h) of the Act: the principal reasons for adopting the policies and methods have been kept out of Part II in order to keep the Plan as streamlined and user-friendly as possible; the Council saw no reason to include in the Plan the information required of consent applicants; and the only other information considered necessary, aside from guidance material, were provisions enabling the use of financial contributions. The policies in Chapter 18 state the purposes of financial contributions and the manner in which the level of contribution will be determined (in accordance with section 108(10) of the Act).

The Regional Coastal Plan

29. The Act requires (in section 64(1)) that at all times there must one or more regional coastal plans for the coastal marine area of a region, and establishes (in clause 19 of the First Schedule) that the Minister of Conservation must approve all regional coastal plans. Section 64(2) enables a regional coastal plan to form part of a regional plan and section 64(3) stipulates that, in this case, the Minister of Conservation shall approve only that part which relates to the coastal marine area. Under the Act the contents of a regional coastal plan are the same as the contents of other regional plans, except that a regional coastal plan is required to address coastal occupation charges in the manner prescribed in section 64A.
30. The Council has chosen to incorporate its regional coastal plan into the One Plan. For the purposes of the Act, the “regional coastal plan” comprises Chapter 17, together with the general objectives and policies of Chapter 11. A statement to this effect is included at the beginning of Chapter 17. Within Chapter 17, policy 17-3 meets the requirements of section 64A of the Act in relation to coastal occupation charges.

“Giving effect to” the RPS

31. Under section 67(3) a regional plan is required to “give effect to” the regional policy statement. This raises the question of whether a regional plan should be prepared at the same time as the regional policy statement, or whether they should be prepared sequentially. However the option of preparing a policy statement and plan at the same time, in one document, is clearly envisaged by the Act under section 78A.
32. The one document approach has provided a valuable means of comprehensively tackling the most significant issues for the Region under a single framework. Within the One Plan, the Regional Plan gives effect to the RPS in that it establishes the rules and consent processes that are a necessary part of addressing the key issues. This approach works particularly well in the Manawatu-Wanganui Region, as the “big four” issues (surface water quality degradation, increasing water demand, unsustainable hillcountry land use, and

threatened native habitats) largely require a response from the Regional Council and can therefore be comprehensively tackled through the combined provisions of the One Plan.

4. ISSUES RAISED IN SUBMISSIONS

33. I have been asked by Council staff to respond to three issues identified in territorial authority submissions on the One Plan. The three issues have been summarised by legal counsel as follows:

- a. **Issue 1** – *There are no objectives in Part II (the Regional Plan); and/or*
- b. **Issue 2** – *Objectives and policies of the RPS are also intended to be objectives and policies of the Regional Plan, and that is not in conformity with the Act since the objectives and policies of a regional policy statement have a different purpose to those of a regional plan; and/or*
- c. **Issue 3** – *The One Plan fails to make a clear distinction between the objectives and policies of the RPS and Regional Plan. A clear distinction between the objectives and policies of the RPS and those of the Regional Plan is required:*
 - i. *so that people can perform the statutory functions (such as territorial authorities) to give effect to the RPS; and*
 - ii. *so that planners can evaluate resource consent applications before territorial authorities precisely; and*
 - iii. *to comply with the “top down” approach required in the preparation of regional plans.*

I will now respond to each of these issues.

34. **Issue 1** – *There are no objectives in Part II (the Regional Plan).* This is not correct. The objectives of Part II are set out in section 11.2.2. However, as I have noted previously, the general objectives and policies of the Regional Plan are presently buried in Chapter 11 and there would be benefit in reinstating a separate Chapter for them. With respect to the adequacy of the objectives of Part II, I wish to reiterate that the scope of Part II is restricted to the Regional Council’s control of activities. The objectives in section 11.2.2 elucidate what the Council wishes to achieve in this respect - regulation in a manner which maximises certainty, avoids unnecessary costs, and gives effect to the RPS. There is no point in having resource-based objectives in Part II, as this would simply duplicate the provisions of Part I.

35. **Issue 2** - *Objectives and policies of the RPS are also intended to be objectives and policies of the Regional Plan.* This is not correct. The objectives and policies of the RPS are not intended to also serve as the objectives and policies of the Regional Plan (although I note that the Act does not preclude this option). As I have outlined previously, Part I and Part II of the One Plan are distinct in that they separately meet the requirements of the Act for regional policy statements and regional plans. Having said that, the policies of Part II contain extensive references back to the provisions of Part I. This is appropriate as Part II is the Regional Council’s regulatory component of the broader framework provided by the One Plan.

36. **Issue 3** - *The One Plan fails to make a clear distinction between the objectives and policies of the RPS and Regional Plan.* In my opinion the One Plan does make a clear distinction between the objectives and policies of the RPS and Regional Plan. The One Plan states at the beginning of both Part I (in section 1.2) and Part II (in section 11.1) that Part I comprises the RPS and Part II comprises the Regional Plan. Therefore Part I contains the objectives and policies of the RPS, and Part II contains the objectives and policies of the Regional Plan. Territorial authorities must therefore “give effect to” the provisions of Part I of the One Plan. For example, under Chapter 7 territorial authorities must ensure that rare and threatened habitats, as defined in Schedule E, are protected from activities that may cause any loss or modification to the representativeness, distinctiveness or ecological context of these areas (in accordance with Objective 7-1); territorial authorities must also protect, as far as practicable, the characteristics and values of the outstanding landscapes identified in Schedule F (in accordance with Objective 7-2). The objectives and policies of Part I of the One Plan therefore set out “what” territorial authorities must give effect to. Part I also sets out “how” territorial authorities will do this for the matters stated in section 62(1)(i) of the Act, and identifies the role of territorial authorities in each of the Methods. Whether Part I should go beyond this, by providing more guidance on “how” territorial authorities should give effect to the RPS, is a matter for discussion and agreement between the Regional Council and territorial authorities.

5. CONCLUSION

37. I have endeavoured to describe the reasons underpinning the way the One Plan has been constructed. I have also examined the contents of the One Plan against the requirements of the Act, in order to demonstrate that Plan is compliant with the Act. While the Plan’s contents do comply with the Act, I have recommended that the general objectives and policies of the Regional Plan (which are presently located in section 11.2) be moved to a stand-alone Chapter, to lessen the risk of these important provisions being overlooked. Otherwise I believe that the framework of the One Plan is a significant improvement on the documents it will replace, and has the potential to serve the Region well. That brings my evidence to an end.

Andrea Bell
20 May 2008