

Environment Ngāti Awa

1 April 2010

The Chairman
Environment Bay of Plenty
PO Box 364
Whakatane 3120

Tēna koutou katoa,

Ngati Awa Comment on the Draft Regional Policy Statement for the Bay of Plenty region 2009

This is the submission of Te Runanga o Ngati Awa.

Te Runanga o Ngati Awa represents 22 hapu comprising over 15000 registered hapu and whanau members affiliated to Ngati Awa iwi.

Ngati Awa is a settled iwi in the Whakatane district.

Te Runanga o Ngati Awa is constituted under Te Runanga o Ngati Awa Act 2005.

The Ngati Awa Claims Settlement Act 2005 and the Ngati Awa Deed of Settlement also refer.

These came into effect on 26 October 2005.

Ngati Awa people are tangata whenua, kaitiaki, landowners and ratepayers within the Bay of Plenty region.

Ngāti Awa has statutory acknowledgements relevant to Ohiwa Harbour, Tarawera, Rangitaiki and Whakatane Rivers, various reserves, various forests, fresh, ground and salt water resources and many other ancestral taonga including geothermal and air resources.

Ngati Awa also has interests and statutory relationships with various offshore islands and the coastal marine area.

The Ngāti Awa Rohe Moana was also confirmed and gazetted in 2007.

Ngāti Awa is an important stakeholder in the eastern Bay of Plenty.

Ngati Awa people actively exercise kaitiakitanga.

Only Ngati Awa pukenga on whom Ngāti Awa hapu and iwi rely can determine Ngati Awa relationships with our ancestral lands waters, waahi tapu, sites, air, and other ancestral taonga.

Ngati Awa is equipped to assess its relationships and its culture and traditions with its ancestral taonga.

Development of Integrated Operational Procedures that Give Effect to ‘Māori’ Policy in Regional Plans and Policy Statements

The Regional Policy Statement was developed over a period of years with the assistance of many members of the Maori regional community.

Ngāti Awa people were amongst those that contributed to the development of objectives, policies and methods of implementation aimed at addressing issues of concern to Maori.

The resulting instruments provide a regional texture to section 6(e), 7(a), 8 and various other provisions in the Resource Management Act 1993 relevant to iwi planning documents.

They are useful instruments that underpin the activities of Māori practitioners servicing iwi and hapu of the Bay of Plenty region and assist Council staff in taking account of the relationships of Maori and their culture and traditions with their ancestral taonga.

Ngāti Awa routinely uses planning instruments such as the Māori Heritage Criteria and has developed procedures that are consistent with the various guidelines and explanations supporting each policy.

We are particularly supportive of the Māori heritage criteria and processes promoted in the accompanying guidelines as these are routinely used in the development of our cultural impact assessments.

We also develop our assessments in accord with the process identified in the Heritage Criteria Guidelines thus ensuring that our assessments are informed by comments from pukenga, and Ngāti Awa people with relationships with places and resources proposed for change or development have contributed to our assessments.

Overall this means that we can place our investment of time and effort into the development of assessments that can inform Council staff thus providing Council the means to demonstrate how it has taken account of recommendations of Māori in the decisions of Council.

Indeed there are two recent instances when we have championed the heritage criteria in the Environment Court, holding them up as some of the best planning instruments available to Maori in New Zealand.

We therefore strongly support the retention of the Māori Heritage Criteria and all other ‘Māori’ policies, objectives and methods on implementation in the operative BOPRPS and encourage Council to invite us to participate in its evaluation of its performance in this area.

In terms of the s35 evaluation document relevant to the review of the operative Bay of Plenty Regional Policy Statement we agree with the comment on page 23 that ‘the suite of Māori Culture and Traditions policies and methods’ in the operative Regional Policy Statement are ‘sound’ and, we would observe, imperative.

In our previous comments to the review of the operative policy statement we also agreed that the effectiveness and efficiency of implementation of those policies is hindered by Council's lack of implementation.

We believe there is a lack of operational process for the integration of assessments contributed by practitioners in iwi and hapu organisations. There does not appear to be a process for identifying tangata whenua as affected parties, nor is there a routine procedure for Council staff to make enquiry of Māori and iwi practitioners.

We believe we are a necessary party to these processes but that we are not routinely engaged nor involved in discussions for their improvement and integration with our internal procedures.

This means there is likely to be a continued lack of consistent implementation in assessment operations and processes which can result in:

- Lost time – when applicants are referred to us at the 11th hour of the process
- Omissions of assessments of cultural impacts or a failure to refer to iwi planning instruments
- Uncertainty as to who will cover the cost of assessments and an unreasonable expectation that hapu and iwi should cover the cost of assessing consents (for example) which inform consent officers and provide them with a basis for recommending decisions
- Inconsistency with the level of assessment afforded other Part II matters
- Unwitting destruction and damage to places, values and relationships of significance to tangata whenua
- Vulnerability of Council decisions from criticism that consents may be granted with little consideration of impacts on cultural heritage places
- Failure on the part of Council to meet its responsibilities as a Heritage Protection Agency.

We see it as being consistent with Council policy that Council commits to giving effect to the various 'Partnership' policies and methods contained within its plans and operative policy statement by engaging in the development of protocols with iwi to achieve sustainable outcomes through improved assessment procedures.

Recognition and provision for the relationships of Māori and their culture and traditions with their ancestral taonga is a requirement of the Resource Management Act 1991. It is clearly Councils responsibility to demonstrate how it has recognised and provided for such matters in its decision-making.

Council can foster the capacity of Māori to contribute to its decision making by ensuring that cultural impact assessments are called and paid for by applicants for resource consent that are proposing changes or development within the rohe of tangata whenua. These provisions can often be made through adjustments to process.

Requiring cultural impact assessments will assist Council to meet its obligations under the RMA, while providing hapu and iwi with an ability to recover costs associated with the making of those assessments. Retention and implementation of Maori heritage assessment policy and promulgation and education in the use of Māori heritage criteria will assist.

In the planning regime Ngāti Awa also routinely points to our Iwi Planning documents all of which have been routinely and consistently ignored by Council since the first deposit of our first iwi planning document in 1993.

We wish to focus on how to resolve these issues and consider that discussion and development of integrated operational processes would allow us all to work better together.

In the context of the preparation of the Draft Regional Policy Statement for the Bay of Plenty region 2009, our main comment is that the 'Māori' policies in the regional plans and policy statement are sound, should remain intact and can be made more operationally effective if they are implemented by Council in an integrated way alongside practitioners in iwi and hapu.

Recognition of the extent to which Māori, iwi and hapu invest further in engagement with Council is required.

Māori are an important part of the region.

It is important that Council understand the status of Māori in order that their relationships with their ancestral taonga are able to be recognised.

It appears that Māori are often incorrectly perceived by Council as being a non-governmental organisation or a lobby group rather than the indigenous people of New Zealand, whose Treaty rights must be taken into account by Council.

Consultation Policies

Council must decide whether it will consult when an application for resource consent it is processing will actually or potentially affect sites and resources of significance to Māori.

While it is accepted that there is no obligation on the part of applicants to consult, Councils are obliged by section 6 (e) of the RMA 1993 to 'recognise and provide for the relationships of Maori and their culture and traditions with their ancestral lands and taonga'; and through various sections of the Local Government Act 2002 to ensure that Council decisions are informed by the contributions of Māori.

Given that Council is required to consider and assess 'any effect on natural and physical resources having aesthetic, recreational, scientific historical, spiritual, or cultural, or other special value for present or future generations' it is important that consents officers are informed by persons knowledgeable about such matters.

The Heritage Criteria in the RPS and their complementary guidelines assist Māori to undertake such assessments and provide them for applicants and Councils use.

It is inappropriate for any other person to undertake such assessments on behalf of Māori, iwi and hapu.

Regional Council must clarify whether it will operate in accord with its policies which encourage and foster this 'best management practice' or whether it will ignore its policies on the basis of its understanding of the amendment to the RMA in 2005.

Discussion for the development of mutually acceptable integrated assessment processes will assist all parties.

Policy to this effect will also provide clarity, certainty and consistency as to the most appropriate consultative approach to take in the processing of applications for resource consent.

Land Management

Other Issues to Recognise in the RPS

There is a large proportion of Māori land in the Bay of Plenty region¹. However there appears to be limited understanding in Council of Māori land tenure, constraints and issues faced by Māori land and its owners. For example when processing applications for aerial discharge of 1080 regional council accepts as evidence of written consent from the Māori land owners, consent forms that have been signed by the lessee forestry companies that have commissioned the 1080 drop. There is no recognition that the lessee is not the land owner and therefore ineligible to sign off. And there can be a lack of clarity as to who from the Māori land owners groups is eligible to sign off on such documents. Greater understanding of Māori land tenure and management issues would advantage Councils, the Māori regional community, Māori land in the region and Māori economic development.

Māori land and reserves are vitally important to Māori social, economic, cultural and environmental sustainability and development.

Multiple ownership of Māori land as tenants in common can affect Māori decision-making about land management and its sustainable development.

In cases where Māori land is under-utilised, adverse environmental effects, such as a proliferation of pest species, under-management of waterways or, from a social and economic perspective, a 'failure to thrive', can result.

Māori aspirations for land use, papakainga and other developments can be hindered by Council's lack of understanding of the specific issues affecting Māori land, its management and its tenure.

Council consideration and consultation on these issues with the wider Māori regional community is promoted.

The Regional Policy Statement can include policy that recommends Councils improve their understanding of issues affecting Māori land, its management and its owners.

Sustainable growth and development, particularly in the eastern region, can be positively affected by a greater understanding of the issues faced by Māori land and its owners.

Pest Management

Regional Council is encouraged to ensure that appropriate animal pest management methods and consenting processes are used.

Consenting Processes

¹ The recent report *Te Ripōata Ohanga Māori mō Te Waiariki: Report on the Māori Asset Base in the Waiariki Economy – An Economic Growth Strategy for a Sustainable Future*, Te Puni Kōkiri 2009 indicates at least 31 percent of the land area of the BOP is owned by Maori

In the current consents process regional council staff routinely accept the signatures supplied by forest companies who lease Māori Land as evidence of land owners consent. This is not appropriate.

We can provide information about two recent applications for consent to aerially discharge 1080 over vast areas of Māori land where the written consents lodged with council were signed off by the lessee on behalf of the Māori land owner who had not been informed of the proposed activity.

These issues demonstrate a need to ensure there is understanding in Council about such relationships. In speaking to these recent examples our only intention is to point out that there are improvements to be made to assessment processes and that greater understanding of Māori land tenure and management would advantage all parties.

Animal Pest Management Issues

Integrated processes for assessing applications for such activities need to be developed by the regional council land management and consents divisions, the Animal Health Board and the Department of Conservation and district councils.

It is important that regional council continues to operate as a pest manager.

It is also important that regional council leads the process of development of integrated management processes and practices for the management of pest animals and plants.

Policy, objectives and methods of implementation to this effect are recommended.

Discharges of Contaminants

Additional issues relating to discharges of contaminants to air, land and water include:

- Aerial discharge of 1080 over vast areas of land leased by forest companies without consultation with the land owners are being routinely granted by regional council subject to consultation with the land owner just prior to the proposed activity. The problem is that if 'global' consents have already been granted by Council without the consent of the land owner, issues can arise if at a later date the owner is consulted and declines consent for the proposed activity on their land. This course begs a litigious outcome rather than providing all parties with certainty prior to the granting or otherwise of consents
- Residual flood risks such as the potential for contaminated sediments to be transported from contaminated sites to rivers and waterways during heavy storm events need to be addressed in the regional policy statement. The recently prepared Rangitaiki/Tarawera Flood Risk Management Plan acknowledges that at Kawerau there are contaminated sludge ponds in close proximity to the Tarawera River. In a storm event that material can be washed into the river and deposited on arable lands in the receiving environment. It is important that regional council leads in addressing these issues. Including policy and planning instruments in the RPS will assist.

Air Quality

Other Issues

Contaminated Dust – Use a Joint Consenting Process for Activities that Disturb Contaminated Sites

There are many pcp/dioxin contaminated sites in the region. When such sites are disturbed by earthworks dust can result. That dust is contaminated with pcp/dioxin.

It is important that regional, district and city councils work collaboratively to assess activities affecting contaminated sites.

In doing so council must ensure that human health and the environment is protected from the harmful effects of dust borne pcp/dioxin and other contaminants.

Water Quality

Other Issues

Regional council approves the discharge of treated effluent to the sea.

This is unacceptable to Maori and many other people.

Policy, objectives and methods of implementation that address this issue is promoted.

Water Quantity

Other Issues

Māori rights under Article II of the Treaty of Waitangi to have full, exclusive and undisturbed access and use of water are not recognised in regional policy and plans.

Policy and consultation to address this issue is promoted.

Coastal Environment

Other Issues

Integrated management of the coastal environment is required. Māori must feature as a key stakeholder in such management regimes.

Policy and protocols that recognise and provide for kaitiakitanga activities of Māori in the decision-making process are promoted.

Iwi Resource Management

Te Runanga o Ngati Awa has developed and recognised several iwi planning documents which it administers through Environment Ngati Awa.

Two such plans are in draft form but both are recognised as relevant by this iwi authority and have been operational for three years.

Environment Bay of Plenty has contributed to the review of these plans. This review is still underway but will be concluded in June 2010. Environment Bay of Plenty staff are invited to meet with us to discuss these plans in order to take them into account in the Bay of Plenty Regional Policy Statement.

We note that when consulting iwi authorities during the preparation of a proposed policy statement or plan, councils will be treated as having consulted if they have followed the procedure outlined in new clause 3A of the First Schedule.

Councils must:

- consider the ways they may foster the development of the capacity of iwi authorities to respond to an invitation to consult
- establish and maintain processes to provide opportunities for those iwi authorities to consult it
- consult
- enable the iwi authorities to identify resource management issues of concern to them
- Indicate how those issues have been or are to be addressed.

As a minimum, councils must consult with those iwi authorities whose details are entered as a record kept under section 35A. These new requirements are similar to the requirements under section 81 of the Local Government Act 2002 to facilitate Māori participation in decision making.

The principles of consultation have been clearly established by the courts and are of particular relevance in consulting iwi authorities under this clause. Iwi planning documents, and the process of preparing such documents, can provide a good starting point for identification of resource management issues of concern to tangata whenua.

Under new clause 3B of the First Schedule, a council is not required to comply with the above procedure if the same matter has been the subject of consultation with the same person/people under another Act in the 12 month period before public notification of the proposed policy statement or plan. However, the person/people must have been advised that the information obtained under the previous consultation exercise could apply to matters under the RMA.

Note 'tribal Runanga' is no longer referred to in the First Schedule or elsewhere in the Act. The definition of iwi authority in section 5 of the Act is wide enough to include tribal Runanga. There is no mandatory requirement to consult hapū contained in records kept under section 35A, however, councils are encouraged to do so.

Building capacity and promoting best practice

The Ministry for the Environment will continue to take steps to improve the relationships between iwi, local government and central government. Current measures include the promotion and support of best practice, pilot projects, iwi planning, environmental forums and one-to-one targeted assistance'.

We would be grateful if you would work with us to determine how we might assist you in your review of the RPS and whether Council would assist Ngati Awa in the current review of its iwi planning documents.

Hazardous Substances and Contaminated Sites

Other Issues

Dis-integrated inter-agency processing of applications associated with contaminated sites and contaminant discharges can result in confusion and adverse environmental and health effects – e.g. Stage 3 The Hub – neither district nor regional council imposed a condition that required the applicant to avoid burning PCP and dioxin contaminated tree stumps alongside a major state highway, residences, businesses and a state school in the summer of 2007

There are 36 known contaminated sites in the Whakatane District. Environment Bay of Plenty owns the worst – Kopeopeo and Orini Canals. It is imperative that Council commits to the remediation of these sites and leads by example.

Policy that will assist the establishment of remediation projects that must be tackled alongside district councils, health boards, Occupational Health and Safety agencies, iwi/hapu, land owners and the community is required. Regional council is already a member of the Contaminated Sites Working Party. An ongoing commitment to maintain and enhance membership and support for this forum is recommended.

Remediation of contaminated sites is necessary but costly. Consultation on methodologies and effects is also necessary to ensure communities are aware of proposals for remediation.

Policy that results in the accumulation of funding to be allocated to the appropriate remediation of contaminated sites is promoted.

Consultation on policy and methods of implementation to address these wider issues is also promoted.

Matters of National Importance

We promote with Council the need for it to achieve its Long Term Council Community Plan objectives in respect to heritage protection and management by ensuring that it continues to support Heritage Co-ordinator and archaeologists positions and activities such as the completion and implementation of a Heritage Strategy, development of Cultural Alert Layers in consultation with iwi and hapu, and linkages with iwi and hapu management plans which sometimes identify sites and resources of significance to Māori so that Council is more able to take account of in its decision-making.

We also consider it is necessary for Council to demonstrate and lead other consent authorities in their roles as a Heritage Protection Agencies.

Growth Management and Infrastructure

Other Issues

The extent to which Māori assets can contribute to growth management and infrastructure integration has not been identified.

While some work has been done in the Tauranga area there remains little understanding of the interests of Māori in growth management and infrastructural development, particularly in the eastern and southern parts of the region.

The members of the former Māori Regional Representation Committees of Council provided Council with the means to communication on these matters as almost all members of those committees also served on Māori Land Trusts and Incorporations in their home areas.

It is strongly recommended that consultation be undertaken with the Maori regional community and that meetings of the former members of the dis-established MRRC's and their practitioners be convened to discuss this topic in the review of policy relevant to this topic.

Hui with members of Te Hono o Mataatua and other fora established by members of the Māori regional community are also recommended.

Concluding Remarks

Thank you for providing an opportunity to comment on the review of the Regional Policy Statement for the Bay of Plenty region 2009.

We acknowledge that the recent amendment to the Resource Management Act provides greater opportunities for the regional policy statement to be more focussed, directive and strategic in its approach than any previous policy statement could be.

This approach is very welcome as it will promote consistent implementation of policy throughout the region which, if affected by the works and activities recommended in this submission, heralds a positive move forward for the Bay of Plenty region.

Environment Bay of Plenty is making progress in the way it treats with the Maori regional community. However it has not yet arrived in terms of the way in which it values indigenous participation in its decision-making.

Environment Bay of Plenty must begin to implement its policies in particular the way in which Māori assessments contribute to its decision-making.

These implementation policies and methods must become part of the routine of Council and its staff if sustainable management and sustainable development is to be achieved in the Bay of Plenty region.

Ngāti Awa is supportive of many of the provisions in the policy statement and encourages Environment Bay of Plenty to implement its policies and work with us on developing mutually acceptable integrated procedures and protocols that will assist us all in giving effect to them.

We look forward to engaging in further consultation with you.

Kia ora

Beverley Hughes
MANAGER
for Chief Executive