

Ngati Awa Submission to the Proposed Bay of Plenty Regional Policy Statement

This is the submission of Te Runanga o Ngati Awa.

Te Runanga o Ngati Awa is the iwi authority that is a confederation of 22 hapu comprising over 18000 registered members of Ngati Awa iwi.

Ngati Awa is a settled iwi with ancestral lands in the Whakatane district, and parts of Opotiki, Kawerau and Western Bay of Plenty districts.

Te Runanga o Ngati Awa was first established by its 22 hapu as an iwi authority in the early 1980's.

It was re-constituted under Te Runanga o Ngati Awa Act in 2005 after settlement of historic grievances involving the Crown's confiscation of all of the territory in which Ngati Awa's natural resources and ancestral taonga exist.

Various statutes in the Ngati Awa Claims Settlement Act 2005, the Ngati Awa Deed of Settlement and Te Runanga o Ngati Awa Act 2005 are relevant to the current proceedings, including descriptive statutory acknowledgements that broadly describe Ngati Awa relationships with very many natural resources within the Bay of Plenty region.

We note that Ngati Awa statutory acknowledgements are identified and explained by Council in its compendium document to the operative and proposed Bay of Plenty Regional Policy Statement.

We ask for confirmation that the compendium forms an actual part of the proposed policy statement but is not subject to public submissions.

We wish to acknowledge that a list of statutory areas has been extracted from Schedules in the Ngati Awa Claims Settlement Act 2005, but has not included Motiti Island which appears in the body of the Ngati Awa Claims Settlement Act 2005.

We request that Motiti Island be added to the list in the compendium on the basis that Motiti is:

- An offshore island and coastal environment with which Te Patuwai Hapu has longstanding and enduring relationships that must be recognised and provided for in decision-making
- Specifically identified in the body of the Ngati Awa Claims Settlement Act as an offshore island of significance to Ngati Awa hapu, Te Patuwai.

We also note that:

- Whanau from Te Patuwai hapu are multiple Maori land owners on the northern side of the island
- In the early 1930's Te Patuwai Hapu Tribal Committee established a forum that provided regular meetings to discuss, decide and implement change management decisions affecting Motiti Island and its residents

- Te Patuwai Tribal Committee still provides that forum to which pukenga, kaumatua and younger members of Te Patuwai hapu gather to discuss change management
- That decisions about change at Motiti Island became subject to regulation by a statutory agency as recently as 2005 and that since that time consents have been granted that have not been informed by consultation with Te Patuwai hapu, Te Runanga o Ngati Awa or Te Patuwai Tribal Committee and its members

We seek confirmation that the relationships of Te Patuwai hapu of Ngati Awa have been duly noted and formally listed in the compendium to the Bay of Plenty Regional Policy Statement thus ensuring that consents and planning instruments proposed for Motiti are a subject for consultation with Te Patuwai hapu and Te Runanga o Ngati Awa.

Further, we submit that staff at Council must be trained in the methods for engagement with Ngāti Awa and its hapu in consenting and planning processes.

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

Ngāti Awa has statutory acknowledgements relevant to harbours, rivers, coastal environment, reserves, 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 works as a team that is capable of providing responses and assessments of change proposals within its rohe but it cannot sustain that capability if it is expected to pay for the privilege of to prepare h assessments to assess its relationships and its culture and traditions with its ancestral taonga.

Ngāti Awa seeks to be heard at any hearing held for the proposed Bay of Plenty Regional Policy Statement.

Ngāti Awa requests that a suitably qualified, experienced and independent person, familiar with Māori cultural values, protocols and te reo Māori, be appointed to any Hearing Committee for this matter.

Reference to Ngāti Awa Submission to the Draft Regional Policy Statement for the Bay of Plenty region 2009

Our attached comments of the 1 April 2010 to the Draft Regional Policy Statement for the Bay of Plenty region 2009 refer and support this submission.

We note that the proposed BOPRPS takes account of many of the points raised in our earlier comments.

We wish to submit those earlier comments as submissions to the proposed Bay of Plenty Regional Policy statement, and update them with the following submissions.

Continued Support for parts of the Operative Bay of Plenty Regional Policy Statement

The operative 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, in particular policies 5.3.2(b) (especially 5.3.29B)(iv) and Methods of Implementation in section 5.3.2(c), as well as the Māori Heritage Criteria, and other criteria 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.

Ngāti Awa routinely uses planning instruments consistent with policy 5.3.2(b) and the Māori Heritage Criteria and the various guidelines and explanations supporting each policy in the development of our cultural impact assessments of proposed activities and our assessment of planning instruments for our rohe.

Our assessments are informed by Ngāti Awa people with relationships with places and resources proposed for change or development. These include hapu representatives, uri, iwi authority executive and where necessary or appropriate affiliated Maori Land Trusts or owners and neighbour iwi.

Overall this means that we make a significant investment of time and effort in the development of assessments that are provided to applicants to inform Council decisions.

While most consent applicants are willing to cover these costs, the consent process does not provide certainty that applicants will be asked by Council to:

- Consult with Ngati Awa
- Cover the cost of that consultation
- Recognise that the assessments we provide contribute to councils decisions about activities sought by consent applicants
- Recognise that in preparing written assessments Ngāti Awa is being obliged to spend its own resource on staff time and assessments tools and processes (GIS database, pukenga advice, hui, domestic consultation and management processes to ensure mandate and authority to sign by delegated authority), to respond to the enquiries

received from consent applicants and planners. While we recognise that these Ngāti Awa processes are precisely what applicants, Council, the community and government would hope to see supporting the written responses developed by ngati Awa, we are concerned that Ngāti Awa is being expected to pay for the process of developing those assessments for consent applicants and planners. This is unreasonable, unfair and unsustainable. It is an issue that can be addressed through procedural means, at council.

We seek the development of policy that compels applicants to ensure council is supplied with appropriately prepared written cultural impact assessments to inform its change management decisions within the region.

Policy 5.3.2(b)(iv) in the Operative BOPRPS

Te Runanga seeks amendment to and retention of policy 5.3.2(b)(iv) in the proposed BOPRPS as follows:

5.3.2(b)(iv) *To recognise that only Māori can determine their relationships and that of their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga.*

We strongly support the retention of the Māori Heritage Criteria and all other 'Māori' policies, objectives and methods of implementation, particularly an amended policy 5.3.2(b)(iv) 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 assert, imperative.

We seek retention of the Māori Heritage Criteria and all relevant Māori policies, objectives and methods of implementation in the operative BOPRPS within the Proposed Bay of Plenty Regional Policy Statement.

Proposed Bay of Plenty Regional Policy Statement

The Proposed BOPRPS is taking shape.

Most of the policies and other instruments within the proposed document are supportable.

We identify key flaws with three proposed methods - Method 10, Method 39 and Method 40, as follows:

Proposed Method 39 (as it appears in the Proposed BOPRPS):

*Method 39: **Consider** consulting potentially affected tangata whenua*

*Method 40: **Consider** the necessity of consulting potentially affected tangata whenua during consent processing*

- The word ‘consider’ is subjective and provides no certainty for Council or the community. While internal operations might be developed in Council to guide the form of ‘consideration’ to be applied by Council staff, those operational procedures are not developed alongside Māori. Questions arise then as to how will Council know who are the potentially affected ‘tangata whenua’ given tangata whenua can include iwi, iwi authorities, hapu, Māori land Owners, Maori Land Trusts and any Maori person that wishes to call themselves tangata whenua in a general context, throughout the region?
- The requirement of the RMA1991 and LGA2002 is for Councils to ensure its decisions are informed by Māori and recognises and provides for the relationships of Māori and their culture and traditions with their ancestral lands and taonga etc. The question is, how does Council propose to ensure its process of ‘consideration’ will meet its obligations to be capable of demonstrating that it has recognised and provided for those relationships, culture and traditions of Maori?
- Given Councils role is to determine whether an activity subject to resource consent processes can be granted (with conditions) or declined, and to prepare regulatory instruments that will ensure Council carries out its functions and meets its obligations under statutes, does the proposed method now imply that Council will now also be required to form an opinion as to which Māori group or individual is representing the ‘tangata whenua’?

The following submissions are developed with those questions and previous comments in mind.

Insert the following Issue:

Issue *Assessments of the extent to which Māori values, traditions, culture and relationships are actually or potentially adversely affected by human activities can only be made by those Maori people with relationships with the area proposed for change and development however Māori assessors are often expected to produce those assessments at their cost.*

The relief sought is identified in the following section of our submissions.

Section 2.6 Iwi Resource Management

In our previous comments we agreed that the effectiveness and efficiency of giving effect to policies is hindered by Council’s lack of application of methods contained within regional policy statements and plans.

Conversely Ngāti Awa routinely applies the approach espoused by operative policy and in guidelines for heritage criteria, using processes that are designed to integrate with the statutory consenting process and planning process.

Gaps in process and relationships management appear when one organisation (Ngāti Awa) is routinely giving effect to methods espoused, but not routinely implemented by the other.

We believe there is a lack of operational process for the integration of cultural assessments contributed by iwi and hapu organisations.

Insert the following Recommended Objectives to Address the Above Issue

Objective ***Council fosters 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.***

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.

Council maintenance of a 'Tangata Whenua Database' or 'Iwi/Hapu Database' that compliments the statutory acknowledgements database and instruments Council has now prepared as a consequence of iwi settlements will assist in identifying the appropriate commentators from distinct iwi and hap from throughout the region. It is imperative that Council works with its Māori regional community when developing and maintaining such databases.

What is most important though is that Council is not equipped to determine the extent to which a place of resource is significant to Maori and it is therefore reliant on those Maori to assess and contribute to its decision-making via processes that will meet statutory timeframes.

This points to the biggest procedural issue of all facing Maori – that is the difficulty in sustaining an assessment procedure when it is expected to establish, promulgate, manage and maintain the assessment process in a policy and procedural climate that does not require the applicant to cover the costs associated with the preparation of cultural impact assessments.

Identifying Tangata Whenua

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 in planning and consenting processes.

If this were to continue there would likely be a continued lack of consistent implementation in the assessment of proposals for change and development in the region which can result in adverse environmental effects including on the cultural well-being of Māori.

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 and integrated assessment procedures in the consenting and planning processes.

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.

We acknowledge that the proposed BOPRPS is taking some necessary steps to address these issues and comes close to satisfying the submissions points we outlined in our comments to the Draft BOPRPS in April last year.

However there are three proposed methods that will undermine the promising policy being proposed in the regional policy statement by installing subjective methods that are at odds with the integrated operational procedures we promote.

We submit that Proposed Methods 10, 39 and 40 be amended

We have developed draft amendments to those methods which are largely based on the two paragraphs below which we assert warrant further deliberation by Council.

Amend Method 10

Proposed Method 10: Consider and discuss with iwi (or hapu or both) the iwi/hapu resource management plans in assessments of environmental effects

Iwi/hapu planning documents are made by iwi and hapu. They are available to iwi and hapu to administer and change at their discretion. Such plans are routinely lodged with Council, but are rarely delivered by the authors with guidance as to how they are intended to be regarded at Council.

Use of the planning instruments in iwi/hapu documents by Council would be inappropriate if that use was undertaken without discussion with the iwi/hapu that made the plans.

Amend Method 39 and 40

Method 40 Consider the necessity of Consulting potentially affected tangata whenua during consent processing

We seek confirmation that Council will undertake to train its staff in the use of integrated processes that give effect to policy by the implementation of methods contained within regional planning instruments.

The above amendment ensures consultation with potentially affected tangata whenua will occur during the consent process.

Training of staff in integrated procedures to give effect to these methods will provide certainty for the community and Council, and consistency of application of consultation methods across the region.

Conversely, the proposed wording provides for officer discretion, which maintains the status quo thus resulting in the proposed policy statement bringing no change to the issues outlined above.

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.

Geothermal Objectives

Geothermal objectives are generally supported however we note that reinjection of geothermal fluids drawn for electricity generation does not feature as a method by which sustainable management of the geothermal resource is to be achieved.

To that end we submit that further provisions are required to ensure the proposed policy, objectives and methods of implementation are consistent with and point to regulation within the Regional Water and Land Plan.

We seek policy in the proposed BOPRPS that requires reinjection where practicable and appropriate to the production method, field characteristics, and safety considerations.

Discharges of used geothermal fluid to water and land where that fluid will eventually enter a surface water body is unacceptable.

Avoiding discharges of geothermal fluid to rivers and land is the aim.

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 make submissions to the Proposed Bay of Plenty Regional Policy Statement.

Ngāti Awa is supportive of many of the provisions in the policy statement and encourages Bay of Plenty Regional Council 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
for Chief Executive

Copy of Comments Dated 1 April 2010 which form part of the

Ngati Awa Submission to the Proposed BOPRPS

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.

¹ The recent report *Te Ripoata 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 Kokiri 2009 indicates at least 31 percent of the land area of the BOP is owned by Maori

Consenting Processes

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