

# Kāpiti Coast District Council Submission on “Our future resource management system”

## National Planning Framework

### **1. What role does the national planning framework (NPF) need to play to resolve conflicts that currently play out through consenting?**

The national direction advanced by government needs to create a clear and cohesive framework for decision-making. In an ideal world, there wouldn't be internal conflicts within this framework – but resource management decision-making is complex and there are always going to be trade-offs between different objectives, even those considered to be nationally significant.

If central government seeks to resolve conflicts by creating some kind of clear hierarchy (for example by saying that water outcomes have a higher priority than housing outcomes) the system becomes increasingly inflexible, and consideration about the relative value of those outcomes within a local context are lost. There may well be instances where, on a regional or local level, it makes sense for a different prioritisation to occur.

However, what we ideally want to avoid is draft plan changes seeking to resolve tensions being appealed on the basis of the way the competing objectives have been traded off in the local context. This creates huge inefficiency, so there needs to be a process of resolving conflicts before plan changes are developed.

One possible option within the new framework is for the Regional Spatial Strategies to identify resolve any conflicts in national direction as they apply to identified growth areas. This decision would be made by the joint committee, which (as proposed) includes central government representation as well as local government and iwi – so would allow view points from across the governance spectrum and all parties involved in the development and implementation of national direction. It would also allow decisions to be made in a way that looks at how the objectives are being balanced across the region. Continuing with the water/housing example, this would allow housing objectives to be prioritised at the regional scale to focus growth in areas where there is less impact on water values, while limiting growth in the areas where there is greatest risk to te Mana o te Wai. This approach would also create clarity for developers and others about the relative weight being applied to the various outcomes, would allow public engagement in the process, and would allow for local/regional variation in the way conflicts in national direction are resolved. Having resolved these conflicts through the RSS, the relative hierarchy of national direction objectives would flow down into NBEA plans, simplifying the trade-offs to be made through plans and individual consenting decisions.

The role of the NPF is therefore to be sufficiently directive and provide a framework or criteria that enables these decisions on trade-offs to be made through the RSS process. It needs to be clear on the outcomes it is seeking to achieve so these can be appropriately considered.

### **2. How would we promote efficiency in the Board of Inquiry process while still ensuring its transparency and robustness?**

The simplest way to create efficiency in processes such as this is to limit appeals – as appeals consume significant time and resource without necessarily increasing the quality of decision-making or improving outcomes. This is already a significant feature of the existing BOI process. Other suggestions for creating an efficient, robust and transparent process are below.

1. For a robustness of decisions-making there is real importance on appointing a high-quality panel with a range of relevant skills and resource management experience to ensure a robust process. This can be assured by creating clear terms of reference for the panel, outlining the range of skills and experience that is required from members.
2. This BOI process may also benefit from an independent accountability mechanism – perhaps the PCE could provide an auditing/oversight function to add transparency and accountability to the process.
3. Creating national direction documents written in plain English that can be easily understood and interpreted by the general public.
4. Finally, there may also be value in clearly placing a greater weight on technical expert opinions on matters of a technical nature. While the public would still be able to provide a written submission on all parts of the NPF, oral submissions at hearings on such technical matters could be by invitation only (and only likely to occur for suitably qualified experts).

As an example of this approach, the NPF could cover the issue of flood risk management. The draft NPF would contain some overall outcomes that must be met, but could also specify methods for Councils to follow when modelling flood hazard risk. As part of the BOI process, the panel could convene a panel of experts to provide recommendations on the proposed method(s) for assessing flood hazard based on their collective expert opinion – eg the calculation and use of “freeboard” in models to ensure that they are in line with industry best practice. Submissions from the public are then received, but only ‘expert’ submitters with appropriate industry experience/qualifications would be invited to present orally to discuss technical points. This would target oral submissions (and therefore hearing time) on those submitters most likely to have an impact on the final shape of technical direction provided by the NPF.

While targeting oral submissions in this way reduces some access to the hearings process, the value of lay input into the development of technical provisions is incredibly limited. The professional opinions of suitably trained and qualified experts ought to be the primary consideration in technical matters. Community engagement would still be provided for through written submissions, and their oral submissions would instead be focused on the overall outcomes being sought by the (hypothetical example of) national direction on flood risk management and then at a regional level on how the resulting model would be implemented locally, rather than debating the validity of the technical model itself.

### **3. How often should the NPF be reviewed, bearing in mind the relationships between the NPF, regional spatial strategies and NBEA plans?**

One of the core tensions within the resource management system has always been the balance struck between certainty and flexibility. There is a need for certainty in the system

to allow planning and investment to take place, but also a need for the system to be flexible enough to account for changing needs and circumstances. Creating long review cycles for the foundations of the resource management framework – the NPF and RSS – will create a level of certainty for those planning for growth and the associated infrastructure, however there still needs to be enough agility in the system to adjust to the unexpected challenges and change that the future will bring, as well as respond to implementation issues which may come to light.

Creating a minimum review requirement in line with the RSS could have some benefits, however it may also be too static. Many existing national direction tools have been created with a five-year implementation review, so it may be appropriate to have a similar cycle that allows practical updates to be made. It is also important that there is opportunity for ‘course correction’ based on the ongoing monitoring and reporting of progress towards the outcomes set out in the NPF, and a five-yearly review cycle would provide for this if there is clarity in the outcomes we are seeking from the system and there is an effective monitoring system in place.

Consideration would need to be given to how these mid-cycle ‘course correction’ changes are then rolled down into RSS and NBEA Plans, given their own review cycles, as well as any implications for the proposed implementation agreements that sit under the RSS and other infrastructure planning and funding mechanisms.

For technical matters, an annual update schedule may be appropriate. This timeframe has recently been adopted for technical updates to the Building Code, to ensure it stays current with advances in building technology. It may be appropriate to take a similar approach to technical areas of the NPF.

## Regional Spatial Strategies

### **4. To what degree should RSSs and implementation agreements drive resource management change and commit partners to deliver investment?**

Similar to our comments to question 3 above, there is a need to balance certainty with flexibility. Having certainty from central government agencies that they will fund their part of the medium to long term infrastructure required to support planned growth is important for local government as they plan for that same growth, and it needs to be linked to the existing LTP and infrastructure cycles of funding and investment. We all need to be working towards the same goals with the same level of commitment. However, there still needs to be enough flexibility in the system to accommodate unforeseen changes. We need to have enough flexibility that we are still able to agree to visionary growth strategies and the infrastructure needed to support them, rather than growth strategies that are instead shaped by funding agencies trying to minimise inflexible budget commitments decades into the future. We also need to make sure that local voices are heard and that investment is shared across regions.

The level that implementation agreements commit partners needs to be linked to the level of influence in decision making and the relative importance of the funding to achieve overall outcomes. As an example, if an implementation agreement commits a territorial authority to a funding obligation that would result in a significant rates increase, that territorial authority needs to have had a clear role in the decision-making that led to that implementation agreement, and in the drafting of the agreement itself. But implementation

agreements should be able to be used as a tool to require a funding commitment from a reluctant agency where a that investment can unlock a priority growth area or service delivery improvement.

We would like to see more clarity about how the RSS will integrate with existing planning and funding mechanisms – both within Councils (through LTPs and Annual Plans, and the collection of Development Contributions) as well as nationally/regionally (e.g. regional land transport plans). We want to avoid creating an additional and/or duplicative level of decision-making in a system where we are seeking to create efficiency.

#### **5. How can appropriate local issues be included in RSS?**

The importance of local voices in the RSS should not be underestimated. These voices will be vital to ensure that locally important infrastructure is still able to be funded, even if it doesn't meet the test of being regionally or nationally significant. We also need hear about local values and concerns so that they aren't overridden by a regional/national drive for growth that is unaware of the local consequences. This could be achieved by:

1. Providing all local Councils and iwi with representation on RSS joint committees
2. Having TA officials involved in the RSS development process
3. Undertaking active local consultation processes within local communities as part of the RSS development
4. Providing local communities with the opportunity to submit documents that outline their own vision/priority outcomes for their communities.

These regional engagement mechanisms would need to be adequately resourced for them to be effective. It is important to recognise that these mechanisms for local voices are all likely to reduce the overall efficiency of the system. However, we believe the benefits of including local voices in the process far outweigh the efficiency costs.

#### **6. With regional and unitary council boundaries proposed for the RSS, how should cross-boundary issues be addressed?**

Regions should be required to understand the spatial footprint of their communities and be given the flexibility to expand their scope if it is appropriate to do so. It makes sense to think in terms of spatial footprints – where are people moving each day for work, school, health services, recreation, commerce etc, rather than water catchments. For example, the Wellington Regional Growth Framework includes the councils of the Wellington region, as well as Horowhenua District Council. Many residents in the north of our district look north to Horowhenua rather than south to Wellington for many of their needs, e.g. healthcare. However, it is also important that funding barriers are removed where they may make this broadening of scope more challenging. For example, there are existing barriers to funding public transport links across regional boundaries – even when those services are vital community public transport links. Regional boundaries, based on water catchments, are not necessarily a good signal of spatial footprints of communities. Consultation of adjoining councils and engagement of adjoining Joint Committees should be mandatory.

### **NBA Plans**

#### **7. Do you agree with the Randerson Panel's recommendation to have one combined NBA Plan per region?**

The concept of one plan per region is a major change to the level at which decisions are made in the resource management system. This change sets the 'default' level of decision making for resource management at the regional level, unless it is otherwise provided for at the national level through the NPF. Under the RMA, decisions relating to land use were primarily made at the local level through district plans, and this change is a significant departure from the subsidiarity principle.

The complexity of resource management issues means that different issues will be most effectively and efficiently dealt with at different levels within the system. While regional decision-making may be appropriate for many resource management issues, there will still be a number of issues that are sufficiently nuanced to require consideration at the local level or risk poor environmental and/or community outcomes. The devil truly is in the detail for this particular change. The way in which local level variation and input into regional planning processes is provided for in the new system will be fundamental in understanding the potential impact and workability of 'one plan per region', and at this stage there is simply too little detail to understand how it might work.

**8. Would there be merit in enabling sub-regional NBA plans that would be incorporated into an NBA Plan?**

There is a need to provide for local content in regional NBA plans. As noted above, the regional level is not the right level for decision making on all issues – sometimes a more localised approach is warranted. Providing for sub-regional plans, or sub-regional chapters within a plan, would provide an opportunity to allow a level of flexibility and local voice within a regional plan. There needs to be a process to draw in local community views and issues that need managing in a local context, or support for more minor, local issues to be dealt with outside of the NBA, for example through broadened bylaw powers).

It is not only important to provide for localised content, but it is also important for local communities to feel represented and engaged in the regional planning process. They need to be able to engage in the plan making process and feel that they have been heard. They need to see their own community reflected in the plan and have some ownership of the plan itself and the outcomes it is trying to achieve. Without an opportunity for local plan content, it is hard to imagine how this can be adequately achieved, however it needs to be done in a way that doesn't undermine the efficiency benefits of a single regional plan.

**9. What should the role of local authorities and their communities be to support local place-making and understanding of local issues in NBA plans?**

Local authorities have a key role to play in both advocating for the needs and aspirations of their communities at the regional table and to work with their communities to engage them in the regional plan making process and to identify needs for localised planning content.

Currently there is a lack of planners which results in many council planning units being understaffed and competing with each other for scarce resources. In this sense, creating an expert regional policy planning unit to develop and draft the regional plan is likely to help ease some of those pressures and create some efficiencies, as well as allowing for specialist subject matter experts to be employed where councils individually were unable to justify that resource. However, there still needs to be a local planning capability to ensure that there is an understanding of local issues and views and that they can be articulated in a way

that is helpful for plan development. There is also likely to be a role for local councils to draft the localised plan content.

**10. Will the proposed plan-making process be more efficient and effectively deliver planning outcomes?**

There is a very real risk that this proposed process will be too long and not responsive. While conceptually going through a single hearing and appeal process is more efficient than repeating plan making processes many times over across a region, plan-making processes for large plans can be unbelievably costly, time consuming, and difficult for the public to engage with. Taking the GWRC Proposed Natural Resources Plan (PNRP) as a local example of a regional-level plan:

- The PNRP was publicly notified in July 2015
- Hearings were held from 2015 – 2018
- Decisions were released in July 2019
- Appeals are still being resolved in 2022 and the plan is not yet fully-operative.

This timeframe is not a failing of the regional council, but an indication of the complexity of matters under consideration and the plan-making process that is required by the RMA (which this proposal does not appear to fundamentally change). The proposed regional NBA plans will include all of the matters included in the PNRP as well as all of the issues managed in the district plans across a region. Adding more matters to the pile will not improve this already unwieldy and complex process, even if a single plan-making process is more efficient on paper. The process will be more complicated, especially with the additional layer of the RSS. It is unclear whether the RPS will also still be required.

It is unclear whether there is an expectation that these NBA plans be created and maintained through single plan change processes that deals with the entire plan at once, or whether joint committees will have the option to undertake rolling chapter reviews. While there are pros and cons of both approaches, rolling reviews on a topic-by-topic basis are likely to be the most manageable approach for councils and their communities who need to try and engage in the plan making process at a regional level. The quantity of information contained in a full draft NBA plan would likely be so voluminous that it would be virtually impenetrable for anyone other than the most insomniac planner, which would have significantly negative outcomes for community engagement.

## RSS and NBA Joint Committees

**11. How could a joint committee model balance effective representation with efficiency of process and decision-making?**

The discussion document states that joint committees will be appointed to “develop and make decisions on RSS and NBA plans. However, it is unclear from the information provided to date whether or not the proposed joint committees are going act as hearings panels themselves, or whether independent panels will be appointed and the joint committees are just the final decision maker. This is an important distinction that needs to be clarified. Currently, while some Councillors are accredited and able to sit on RMA hearings panels, in practice it is common for independent commissioners (who are usually highly experienced planners) preside over the vast majority of hearings processes, with Councillors often only making the final decision to approve the plan change based on the commissioner’s

recommendations (with a very limited scope to reject the recommendations presented to them). The technical skills required are very different for these two approaches. If the joint-committee was to act as the hearings panel, then we would expect to see a mix of appointed and elected members to ensure that the right balance of skills are available to effectively run a complex resource management hearings process.

Due to the significant time commitment required for the joint committees, there may be few elected members willing to sit on JCs, as it will reduce their time and effectiveness at assisting their constituents. Providing for membership during and post-election will also be important.

Draft Terms of Reference would help us understand and provide further comment on the make-up of the joint committees and their appointment processes.

Providing a strong, well-resourced secretariat while ensuring TLAs retain some internal capacity and capability is essential. This is critical at a time where there is a growing shortage of planners.

**12. How could a joint committee provide for local democratic input?**

Local councils know their local communities best, therefore it is important to have local government represented throughout the plan making process. But it is important to note there are two distinct sides to local government – elected members and technical officials/public servants. This discussion document does not clearly distinguish between these two roles when talking about local authority representation and involvement in decision making. Both local government roles serve different and important functions, and the role of one cannot and should not be substituted for the other. As such, the contribution of technical input by officials cannot provide a substitute for direct democratic accountability through elected member representation on the joint committees and vice versa. Ensuring that there is democratic representation for each council on the joint committee is therefore the only way to ensure there is democratic accountability back to our communities.

**13. How could a joint committee ensure adequate representation of all local authority views and interests if not all local authorities are directly represented?**

We strongly advocate for all local authorities being given the opportunity to be directly represented on all joint committees that will make decisions that affect their role. We do not believe there is an adequate alternative that will provide the necessary democratic accountability.

**14. Are sufficient accountabilities included in the proposed new integrated regional approach to ensure the strategies and plans can be owned and implemented by local authorities?**

There is insufficient detail in the proposal to understand what accountabilities are expected to be in place.

**15. How should joint committees be established?**

The establishment of the joint committees will depend on their intended role/scope. Draft Terms of Reference would help us understand and provide further comment on the make-up of the joint committees and their appointment processes.

## Consenting

### **16. Will the proposed future system be more certain and efficient for plan users and those requiring consents?**

More detail is required in order to make meaningful comments about the consenting system. However, we are comfortable in principle with the reduction in activity classes which could more clearly signal the intent of planning rules, while allowing discretion where appropriate. We also support enabling third party approvals to allow more discretion.

A checking process may be required to determine if an activity is permitted, particularly if it is reliant on a management plan. Who assesses the management plan and is this cost recoverable?

## Compliance, Monitoring and Enforcement

### **17. Do you agree with the proposed changes to compliance, monitoring and enforcement provisions and tools?**

We are broadly supportive of the CME proposals, in particular to allow cost recovery for monitoring of permitted activities, and to allow the consideration of an applicant's compliance history in consent decision making. However, there is insufficient detail to understand how these changes would be implemented and whether they would be workable, and whether there are sufficient safeguards in place.

One benefit of regional hubs for CME is efficiency of size leading to improved training. One risk of regional hubs for CME is reduced responsiveness due to physical distance. Local enforcement capability can respond promptly to issues.

### **18. How practical will the proposals be to implement?**

There is insufficient detail to provide comment on the implementation.

## Monitoring and system oversight

### **19. Will these proposals lead to more effective monitoring and oversight of the system?**

There is generally insufficient information provided to be able to meaningfully comment on this. However, monitoring and reporting will be essential to the functioning of the system and alerting decision-makers when the settings within the system (ie the NPF and RSS) need adjustment, and the feed-back system needs to be clearly identified so that we are not monitoring for monitoring's sake instead the system produces meaningful data that is useful for ongoing decision-making.

A standardised approach to monitoring, directed from the centre or region, could be beneficial, improving usefulness and consistency of data sets. This would help provide clarity of monitoring priorities and clearly link monitoring to system outcomes.

The role of territorial authorities in monitoring and reporting on the state of the local environment needs to be appropriately funded as this is used to inform central and regional decision-making.



**20. Will the system be able to adequately respond and adapt to changing circumstances?**

There are concerns about the potential for lengthy processes to update RSS and NBA plans. Feedback loops from TAs on implementation and emerging issues back into the Joint Committee and Secretariat will be critical for designing a responsive system. There doesn't appear to be clear processes for this to occur within the proposed system.

**Roles and Responsibilities**

**21. What does an effective relationship between local authorities and joint committees look like?**

While local authorities will naturally play a connecting role between their communities and regional joint committees, care needs to be taken that this is truly a role that facilitates meaningful engagement on both sides both in plan development and feedback on implementation. There is some concern that specifying territorial authorities as being essential for undertaking local consultation could result in meaningless consultation being undertaken by a local authority with little direct influence over the end result, leaving communities frustrated with their local authority for 'not listening'.

With joint committees responsible for decision-making and TAs responsible for implementation and enforcement, we suggest regular reporting from the joint committee back to the TA via public meetings. This could create a sense of accountability for the joint committees, rather than territorial authorities being punished at elections for unpopular decisions.

Further detail on the scope of these roles, and terms of reference for the joint committees, would be useful in being able to understand the relationship between local authorities and the joint committees further.

Similarly, without further information about how local plans/outcomes documents might be considered as part of the development of RSS and the NBA plans, it is difficult to know how local authorities can most usefully play a role in facilitating the involvement of their community without simply creating additional documents that appear to go nowhere and/or have little impact.

**22. What other roles might be required to make the future resource management system effective and efficient?**

As noted in response to question 2 above, panels of experts to provide clear guidance at the national level on technical matters would be an incredibly useful resource to create efficiencies in the system. Where the advice of these expert panels is followed, those provisions would not be subject to appeal as they are based on the best expert advice available.

**23. What might be required to ensure the roles and responsibilities of local authorities can be effectively and efficiently delivered?**

Local authorities need to be appropriately funded to implement the reforms and effectively and efficiently deliver on their roles and responsibilities within the system. Further comment in the funding section below.

## Role of hapū/iwi/Māori in the future system

KCDC supports and enhanced role for Māori in the resource management system. However, it is important that Iwi are supported in this new role with sufficient resources to allow them to engage in the system to the level that this will require. Iwi have been under-resourced and over-worked in the resource management space under the RMA, with iwi drowning under plan change consultations and resource consent applications from multiple councils that intersect with their role.

Legislating for a larger role is meaningless if they are not provided the support required for them to succeed, and would be a lost opportunity. Furthermore, there is a massive inequity in the resourcing available to settled and not-yet-settled iwi and the Government will need to address these inequities as a priority to ensure that all iwi are able to engage in the new system in a fair and equitable way.

Beyond these comments, we defer to our iwi partners to provide detailed comment on their proposed role in the resource management system.

## National Entity

**24. What functions should a national Māori entity have?**

**25. What should the membership and appointments process be for the entity?**

## Joint Committee composition

**26. Should parties in a region be able to determine their committee composition?**

**27. Are sub-committees needed to meet regional needs, including Treaty settlements?**

**28. What should be the selection and appointments process for joint committee members?**

**29. How do we best provide for existing arrangements (eg Treaty settlement and other resource management arrangements)?**

## Enhanced Mana Whakahono ā Rohe arrangements, integrated with transfers of powers and joint management arrangements

**30. How could an enhanced Mana Whakahono ā Rohe process be enabled that is integrated with transfers of powers and joint management arrangements?**

**31. What should be covered in the scope of an enhanced Mana Whakahono ā Rohe and what should be mandatory matters?**

**32. What are the barriers that need to be removed, or incentives added, to better enable transfers of powers and joint management arrangements?**

## Funding in the future system

**33. How should funding be distributed across taxpayers, ratepayers, and individuals?**

It is unclear what funding is proposed to be distributed across these groups, and there is very little information in the discussion document to allow meaningful comment.

In terms of cost distribution, the resource management system has largely operated under a cost recovery model under the RMA, and we consider this to be appropriate, as costs generally lie with those who benefit from an activity. We do not see a need to change this approach, and would not consider a shift to ratepayer funding to be appropriate. However, it is also noted that the components of the resource management system (especially consenting) have increasingly required increasing ratepayer funding to supporting members of the public to understand how to make an application or participate.

While the overall question of funding of local government is out of scope of this document, it is important to note that these changes are taking place in the context of wider sector reform, which is set to include the funding of local government. It seems unnecessary to consider funding questions here in isolation. However, we will focus on the question of funding the implementation of the reform programme, and strongly advocate that Councils need to be adequately resourced to implement the changes being proposed. Councils have been put under increasing pressure for decades as a result of the 'unfunded mandate' handed down from central government through successive legislative change and new/amended national direction within the resource management system. The combined burden of these directives is immense, and councils are forced to either increase rates to fund it, or stop doing other activities that more directly benefit our communities. This approach also puts the implementation of the policies at risk and results in uneven and inconsistent implementation of national direction.

There should be more centrally driven public education on understanding the resource management system and how it operates, as well as sector training and professional development. It should not be left up to local government to educate professionals about regulatory changes put in place by central government. An example of this type of role is the public information provided by IRD on their website.

#### **34. How should Māori participation be supported at different levels of the system?**

As noted above, it is vitally important that iwi are adequately funded to undertake their enhanced role within the proposed system. It is appropriate that the costs to support iwi in undertaking this expanded role are met by central government, as it is an implementation cost of their policy changes.