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Consolidated notes from the Plan Structure and Provision Writing Workshop November 2005

These notes summarise the key discussion and agreement points from a two-day workshop involving 15 experienced resource management practitioners drawn from councils, consultancies and the Resource Management Law Association of New Zealand. The workshop was held at the Ministry for the Environment Wellington offices on 24th and 25th November 2005. The notes have been prepared using individual sets of comprehensive notes taken by Ministry for the Environment staff over the two days of the workshop. These have been compared and combined in an attempt to confirm the key messages and areas of agreement from the workshop.

The “key points” represent the main ideas and points where there seems to be a reasonable level of agreement. It needs to be acknowledged that agreement was not unanimous in all cases.

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Day One

Attendance: Tami Woods (Greater Wellington RC), Andy Ralph (Tauranga CC), Martin Butler (EBOP), Phillip Martelli (Western Bay of Plenty DC), Pam Gare (Invercargill CC), Tony Quickfall (Nelson CC), Hans Versteegh (Marlborough CC), Karen Bell (Auckland CC), Andrew Feierabend (Hurunui DC), Patrick McHardy (Manawatu DC) Duncan Laing (RMLA / Simpson Grierson), Jan Crawford (facilitator), Greg Hill (facilitator), Richard Hills (MfE), Greg Vossler (MfE), Rebecca Young (MfE).

Apologies: Andrew Geurin (Kapiti Coast DC), Fraser McRae (Otago RC), Nicola Shorten (Greater Wellington RC).

Day One Session One: How directive should a regional policy statement be?

Discussion

The role of the RPS and ‘directiveness’

Discussion commenced with Hans Versteegh (Marlborough DC) describing the role of the regional policy statement in Marlborough. The regional policy statement provides the overall direction for two regional plans based on geographic areas (“Sounds” and “Waiiau-Awatere”). The regional policy statement assists in setting the context for the plans (providing a description of the issues and how it is intended to deal with them), and is often relied upon in Environment Court cases. The view was put forward that the regional policy statement should be quite directive, given that it sets the overall direction for the region / district, ensures consistency of policy and assists in integrated management.

Duncan Laing was invited to make comments on regional policy statements under the Resource Management Act amendments. He noted:

- The starting point for the regional policy statement is s.62 of the Resource Management Act. This section sets out that regional policy statements should contain issues, objectives, policies and methods (excluding rules).
- The regional policy statement can have a mandatory type influence, but only within the objectives, policy, and methods framework. Provision that must be given effect to can only be written as a policy or a method.
- A tension now exists concerning what “give effect to” will actually mean. “Not be inconsistent with” is virtually the same as “give effect to” where policies are directive (see *Auckland Regional Council v North Shore City* 1995). However “give effect to” does not provide any leeway as it is a higher threshold. Councils will need to work smarter to achieve better alignment.

Greg Hill added the point that the more directive nature of “give effect to” may mean the vaguer “shall encourage” wording found in some plans may need to be replaced.

There appeared to be general agreement that the next generation of regional policy statements will need to be more directive than those of the early 1990s. The regional policy statement was also expected to have a much greater influence on the content of regional and district plans than they do now. There seemed to be a view that the regional policy statement was often considered to be a “regional council document” and that it should instead be seen as a ‘regional document’ for both regions and districts.

Changes in regional council functions and the relationships between councils and council planning documents means that regional policy statements need to, and have more scope to, move beyond biophysical bottom lines and into land-use planning issues as well. This will require an increased level of cooperation between regional councils and territorial authorities, something already envisaged by the Resource Management Amendment Act 2005. Territorial authorities have the expertise to assist regional councils in developing land-use strategies, but some in the group felt that care was needed to ensure that contributing authorities were able to work towards agreed regional outcomes, rather than reflecting the diverse political views that may be held by their elected representatives.

Martin Butler (EBOP) advised that councils in the Western Bay of Plenty were already working together in a cooperative manner as part of the SmartGrowth project. In implementing SmartGrowth (an urban growth management framework), the regional policy statement has the appearance of being a rule without actually being one (a regional policy statement can not contain rules under the Resource Management Act).

Tony Quickfall (Nelson City) noted that it was more than just the provision of direction that mattered, the regional policy statement also needs to provide clear connection between provisions and clarity as to what the intent of those provisions are. Explanations and reasons are still required to be part of the regional policy statement.

Clarity and directiveness become particularly important when there are many councils with different issues and interests within a region. Karen Bell (Auckland City) gave an example of the Auckland situation which raised questions as to whether the differences between TLAs should be dealt with in a manner that is wide ranging and in great detail, or whether policies in the regional policy statement should be left to be more general so as to provide for flexibility. A further challenge was presented by the fact that many district plans were prepared and notified before the regional policy statement came into force. This in turn limited the ability of the regional policy statement to provide integration. It is a challenge that will continue into the second generation of planning documents as they come up for review. Greater attention will be required to the sequencing of plans and the whole plan development process (including consultation) not just notification. Such sequencing will require a higher level of cooperation between regional and territorial authorities than what existed during the development of first generation plans.

Issues in the RPS

Comments about inconsistencies in regional policy statement interpretation by the Environment Court led to discussion on the vagueness of wording seen in first generation regional policy statements. That vagueness was seen by some as a risk avoidance technique, or the result of trying to accommodate the wishes of many parties in such a way that did not result in there being losers elsewhere. In other cases, the regional policy statement became a de facto strategic

planning document incorporating material not really suitable for the regional policy statement, or the wooliness was attributed to no one having had experience in writing such a document before. Duncan Laing made point that whatever the origin, the wooliness meant that the regional policy statement became all things to all people and provided little in the way of strong direction. The key was to identify the significant resource management issues of the region and to write objectives and policies around them.

The suggestion was made that the first generation of regional policy statements had insufficient rigour applied to enable the significant issues to be properly identified. Good consultation and a robust collaborative process that sees regional and territorial local government working more closely together may assist in better identifying issues and possible responses. Triennial agreements under the LGA require a more collaborative process for regional policy statements, and provide a possible means around which collaborative relationships can be built. Karen Bell noted that the challenge will be to get councillors operating and engaged in collaboration between regional councils and TLAs, and this could become quite political. A regional policy statement that is directive may not get unanimous approval from TLAs regardless of how collaborative the process is.

Key points

- The starting point for deciding on the content of a Regional Policy Statement is still s.62 Resource Management Act 1991. The mandatory imperative of “give effect to” will be expressed through policies and methods.
- The Resource Management Amendment Act 2005 confirms a top-down hierarchy with the regional policy statement giving direction to plans. This has increased the expectation or requirement for a regional policy statement to be more directive than before.
- Some policies and methods in a regional policy statement may take on a directiveness similar to, but not the same as, rules.
- The requirement to ‘give effect to’ a regional policy statement through a regional plan or district plan is an active duty that replaces the more passive requirement to ‘not be inconsistent with’.
- The more directive nature of the regional policy statement will require a greater level of justification via s.32 than that which existed before.
- The regional policy statement is a document for the region, not a regional council document. The Resource Management Amendment Act 2005 strengthens this and anticipates a collaborative approach between regional councils and territorial authorities in the development of the regional policy statement.
- The triennial agreement under the Local Government Act 2002 is a key means to foster collaboration as well as consultation. Collaboration will be very important in preparing the next RPSs, and could be seen as the precursor to “giving effect to” a regional policy statement.

- Sequencing the development of the regional policy statement in relation to plans will be critical to ensure that the regional policy statement is ready in advance of plans (so that plans do not need to be subsequently changed again). Sequencing needs to be looked at not only in terms of notification, but for other elements (such as consultation).

Day One Session Two: Features of a well organised and structured RPS

Discussion

The Horizons OnePlan

Discussion opened with Patrick McHardy showing the group the structure of the proposed Horizons Regional Council OnePlan, which was set out with the regional policy statement being the first part. Central to the overall structure of the document was the grouping of provisions around topics such as:

- Strategic management
- Iwi issues
- Water
- 'Living heritage'
- Air
- The coastal marine area
- Natural hazards
- Hazardous substances and contaminated land.

From section 12 onwards, the proposed OnePlan takes on the structure of a sequential series of regional plans, though the issues and objectives are contained in sections 3-11 (what is effectively the regional policy statement portion).

The OnePlan also features regulatory and non-regulatory methods of addressing issues, including the use of LTCCP instruments. Many in the group agreed that the LTCCP could be used as a way of identifying and addressing issues if the regional policy statement and LTCCP were developed at the same time. If the timing was out, integration could be more difficult. The broadness of community outcomes that are currently seen in many LTCCPs would need to be addressed if they were to be of use in regional policy statements. This was something that was being done in Southland, where a set of what were essentially 'second tier outcomes' had also been produced.

Dealing with issue significance and variability

Jan Crawford said that what the regional policy statement needed to do was to take the significant environmental issues identified in the LTCCP consultation process on board and to determine their regional significance. As a starting point, you could use the community outcomes. However Martin Butler and Tami Woods noted that community issues could vary within the same region, and there was also the likelihood that the community would not be familiar with every facet or fact about the environment within a region. There was also the possibility that an issue could be regionally significant, but may only be located in one particular area of a region.

One way of dealing with the geographic variability and significance of issues may be to structure the regional policy statement in a similar way to district plans. There could be a discrete section

or part of the regional policy statement that dealt with issues that were ‘region-wide’ followed by a section or several sections based around specific areas or issues that were limited in geographic extent. In effect, the latter sections may be dealing with issues in more detail than regional policy statements may have done before. Tami Woods noted that this hybrid-type model was similar to that contemplated by Greater Wellington Regional Council. Greater Wellington was considering having their regional policy statement broken down into “biophysical bottom line” and “area management” chapters. Hans Versteegh also noted that something similar existed in Marlborough where, effectively, there were issues dealt with through ‘regional zones’ and others dealt with on a ‘region-wide’ basis. Comment was made that greater opportunities for integrated management and better targeted direction appeared to exist with a hybrid model of regional policy statement.

During discussion, the following tables were drawn up to illustrate a possible “hybrid” region-wide issues and geographic area based issues approach to structuring a regional policy statement, compared to an older style topic based approach to structuring a regional policy statement.

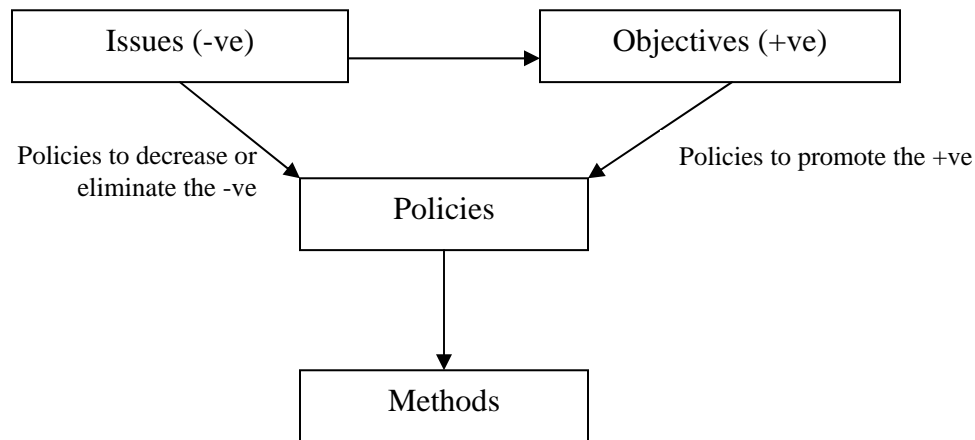
Example hybrid approach to the RPS	Example topic approach to the RPS
<p>Region-wide issues</p> <ul style="list-style-type: none"> • Air • Water • Land • Contaminated sites <p>Locality specific significant issues</p> <ul style="list-style-type: none"> • Hazards <ul style="list-style-type: none"> ○ Flooding at XX ○ Coastal erosion at YY • Air <ul style="list-style-type: none"> ○ PM10 levels at ZZ ○ NN commercial area • Water <ul style="list-style-type: none"> ○ Quality in AA river ○ Allocation in BB • Land • Biodiversity <ul style="list-style-type: none"> ○ Locality CC ○ Locality DD 	<p>Air quality</p> <ul style="list-style-type: none"> • Domestic discharges to air • Transportation • Industrial discharges • Dust <p>Water</p> <ul style="list-style-type: none"> • Discharges • Allocation • Damming <p>Land</p> <ul style="list-style-type: none"> • Erosion • Earthworks • Soil quality <p>Natural hazards</p> <ul style="list-style-type: none"> • Flooding • Erosion <p>Contaminated land</p> <p>Biodiversity.</p>

Issues, content and writing of the RPS

In determining what issues should be dealt with by the regional policy statement it was suggested that issues should follow the legal presumptions set out in sections 6-8 and 9-14 of the Resource Management Act 1991 and be grouped accordingly. However just restating the matters outlined in Part II of the Resource Management Act 1991 is inadequate, as these matters need to be applied to the region to help define the issues that were important. Greg Hill offered the thought that while the issues may need to be defined with reference to Part II of the Resource

Management Act 1991, there was no reason why they could not be grouped into topics in much the same way Auckland has set strategic directions for urban growth.

Martin Butler provided a model for looking at how issues, objectives, policies and methods could be viewed in the context of the regional policy statement. In this model policies were seen to be way of managing issues and objectives. Policies could be written both from the standpoint of minimising the issues (which may be written from the negative position of something that needed to be resolved) and maximising the positive objectives (which are written from the positive position of the desired end state or response sought).



A comment was made that first generation regional policy statements often contained a lot of information based around the background science of issues, descriptions of the environment, and processes that was not absolutely necessary to the operation or use of the policy statement.

Comments were also made to the effect that:

- The regional policy statement should focus on the integration of issues, possibly including those associated with urban growth
- The regional policy statement needs to serve as a point of reference for plans.
- The regional policy statement was not just a framework for assessing consents but provided a context for non-regulatory approaches such as education.
- The regional policy statement provided the big picture in terms of environmental management.

One plan or many?

Combining separate regional plans into one document is an increasing trend amongst regional councils, while Nelson City (a unitary authority) has gone so far as to incorporate their district plan provisions into a combined plan as well. Given that several regional councils were already integrating their regional policy statements and regional plans into a single document, the question was raised as to whether this was best practice. There were mixed opinions as to whether this model would work well outside the unitary authorities, particularly if regional policy statements are to be seen as a regional document rather than regional council document. There

was also a view expressed that having the regional policy statement as a separate document made it less intimidating to users, and made it more convenient to refer to and read alongside other plans.

Use of explanations in the RPS

A brief discussion ensued as to the place of explanations and reasons in the regional policy statement. It was suggested that there was value in retaining explanations in the regional policy statement in the interests of integration, but that reasons could be located in a section 32 report or similar type document. Duncan Laing reminded the group that the content of a regional policy statement is still defined by s.62 of the Resource Management Act 1991. Section 62 requires councils to include explanations and reasons in the regional policy statement.

The provision of explanations and reasons within a regional policy statement, and the requirement for plans to ‘give effect to the regional policy statement’, could see some of the material previously contained in plans transferred to the regional policy statement. The effect of this would be to place much greater importance on the regional policy statement to identify and justify the inclusion of regionally significant issues that needed to be addressed through plans. Duncan Laing raised the possibility that should this be the case, then it was likely that “battles” over the inclusion of certain issues and the need to control them could be fought at the regional policy statement stage rather than the plan or consent stage. It could be argued that the regional or district plan would be doing nothing more than meeting its statutory obligation to give effect to the regional policy statement.

Key points

- S.62 of the Resource Management Act 1991 is a starting point for regional policy statement content.
- The regional policy statement defines issues that are of significance to the region. These may be issues that apply on a region-wide basis, or a local issue that is regionally significant because of its effect or overall importance to the region.
- Significance may be evaluated by checking if the issue:
 - (1) is a matter derived from sections 6 and 7, or 9-14 of the Resource Management Act 1991;
 - (2) related to an LTCCP outcome regarding an environment of the region;
 - (3) is a matter identified through technical or scientific studies as having a significant impact on the environment; or
 - (4) affects more than one territorial authority in the same region.
- The structure of the next rounds of regional policy statements are likely to start to look more like the hybrid-model of district plans. “General” chapters with “region-wide” issues, and other chapters which seek to manage issues that are geographically defined.
- To assist those drafting plans, the regional policy statement should state what is to be given effect to, and by whom. The regional policy statement should serve as a key point of reference for both regional and district plans.

Questions for possible follow up in guidance note

- Should the regional policy statement be incorporated into a single combined regional policy statement/regional plan, or be a separate document?

Day One Session Three: Regional and district plan structure

Note: This session saw the main group split into two streams, with regional and unitary authority staff discussing regional plans, and TLA staff discussing district plans.

Discussion

Regional plans

Existing regional plan structures

Discussion opened with group members talking about the content and structure of their existing regional plans.

- Tami Woods described a topic or issue based on the Greater Wellington regional plan.
- Tony Quickfall described the Nelson plan as being a fully integrated plan incorporating regional, district and coastal plan components. The overall structure bears a resemblance to a hybrid district plan.
- Hans Versteegh noted that Marlborough District too took an integrated approach that saw regional, coastal and district plans combined. The 'Sounds' plan is similar to the Nelson plan in taking what is essentially a hybrid approach.
- Martin Butler said that the Bay of Plenty has a number of separate regional plans covering distinct topic areas or resources.

Principles for writing regional plans

Discussion then moved on to guiding principles that could be applied in writing regional plans. Comment was made that it was important to consider who the plan was being written for. Plans needed to be written with the end user in mind.

When writing rules, a number of features were considered to be worthwhile:

- Provide a clear trigger as to when a consent is needed;
- Group rules according to activities or effects;
- Have a summary table that can be used as a guide or 'road map' to activity rules throughout the plan;
- Provide clear linkages to and identification of, the relevant policies and objectives that relate to a rule (possibly in electronic hyperlink or database form).

It was noted that there were also a number of problems that were encountered with the first generation of regional plans, and that these included:

- A structure that made it difficult to understand where specific provisions were to be found;
- Subjective wording that 'muddied' thresholds for rules;
- Complex structures and layouts that did not provide clear linkages between provisions;

- Uncertainty in rules as to the standards that were to apply;
- Reluctance to use the permitted activity status;
- Uncertainty over the areas over which discretion was reserved.

Some of the confusion and uncertainty in regard to rule drafting appeared to arise out of the use of 'assessment criteria' alongside rules in some plans, whereas other plans assessed rules against policies. Comment was made that assessment criteria were useful in helping to assess controlled and discretionary activities. However, the matters over which control or discretion was to be reserved needed to be clearly identified and distinguished from standards or thresholds. Assessment criteria could be more specifically identified and worded as policies.

Drafting of issues in regional plans

Discussion moved briefly onto drafting issues in regional plans. Tony Quickfall suggested that plans needed to look beyond the current issues that might effect the regions environment and think ahead five, ten, or fifteen years time. Objectives and policies in plans needed to be written with these horizons in mind. It may also be helpful to identify overarching or higher priority objectives which provide the context and further guidance to activity-based objectives, policies and rules that follow.

Plans containing mandatory content only –v- Plans with all provisions allowed under s.67

The group was asked to comment on the prospect of reducing the content of plans to the minimum allowed by the Resource Management Amendment Act 2005. The main points from the resulting discussion were:

- Issues are the basis from which rules originate and should remain in plans so as to maintain clear linkages.
- The 'stripped out' plan will require a higher level of detail and analysis to be included in the RMA section 32 report. This may simplify the content of the RMA plan, but may inadvertently result in outcomes that were not sought.
- Ultimately the content of a plan will depend on the preferences of individual councils and the political willingness [or otherwise] to adopt a particular style.
- As a guide, what the Environment Court finds most useful in interpreting plans are the objectives and policies and, to a lesser extent, the explanations. It would however be good practice to develop objectives and policies that can stand on their own without explanations (while acknowledging that this could be a challenge).

Other suggestions as to how to improve the structure and user-friendliness of regional plans included:

- Using summary tables of rules at the front of the plan that outline the rule, activity status and links to relevant controls.
- Including overarching and region-wide provisions at the front end of plans before moving to geographic area, or activity specific provisions (with a cascade of objectives policies and rules).
- Producing (ideally) one plan could improve linkages and integration.

Comment was made that the next regional plans would not be starting from scratch; they are likely to be based in some way on plans that exist now. While some councils may choose to radically restructure their plans, others may decide to make only minor alterations.

District plans

Good and not so good features of district plans

Based on his own experience Duncan Laing was asked to comment on what he considered were good features of existing plans, and what sorts of things needed to be improved upon.

Duncan began by saying that ‘effects-based plans’ were probably truer to the original intent of the Resource Management Act 1991 than alternative approaches, but they did not work well in situations where there was strong growth pressure. Standards in the effects-based plans he had seen tended to be too loose and subjective, with the plans resulting in outcomes the community probably didn’t intend.

Aspects of plan drafting that he considered to important were:

- Getting the linkages right (ie. clear connections between rules, policies and objectives and cross referencing);
- Eliminating, as far as possible, words that introduce subjective thresholds;
- Using plain English wording, but not where such words will reduce certainty or differ from terms used in the Resource Management Act 1991;
- Identifying and confirming that the relationships between land use and subdivision are clear and correct.

Duncan also observed that there were a number of features in plans he had seen that needed to be improved upon;

- The wording (or in some cases lack of it) concerning circumstances over which a council was reserving discretion or control was confusing, too open, or in some cases, absent;
- The threshold standards for changes in activity status were sometimes unclear or subjective;
- The wording of plan provisions that required a consent to be notified were not well worded.

What is ‘The Plan’ and who is the audience?

Discussion then turned briefly to two questions, what is the ‘plan’?, and who is the plan written for? Karen Bell asked if the plan was an electronic document or a hard copy document. It was noted that lawyers who had been asked to comment on this in the past had split opinions, with some believing that there had to be a physical document, and others believing an electronic copy would meet the intent of the law. Duncan Laing said that there was nothing in the Resource Management Act 1991 itself that required a district plan to be in hard copy format. The National Library Act does however require New Zealand publications to be provided to the National Library in printed form, and if it is electronic, in electronic format also. It was also suggested that given the expectations when the Resource Management Act 1991 came into force that district

plans were to replace district schemes, it was probably assumed at that time that plans would be hard copy in format. The question was left open pending further investigation.

The question as to who the plan is written for emerged from a comment by Patrick McHardy. Patrick noted that, in his experience, regular plan users are almost all resource management professionals. This generated some debate. While professionals were likely to be the most common users of present plans, the question was asked if this was because businesses and the general public find them too confusing and rely on qualified professionals to assist with interpretation. It was possible that having greater consistency in plan structure nationwide could reduce some of the confusion people had in understanding planning documents.

There were also other considerations raised concerning the development of a more standardised structure:

- It could assist new staff to become more quickly acquainted with the plan (reducing down time and leading to more efficient service). This could be useful given that surveys have shown that planning staff, on average, spend less than four years in any one job or place.
- It could make it easier for consultants who are working on large projects that require consideration of many plans, to understand what is required and where important information can be found. This could have flow-on effects in regard to the quality of applications, time spent on application preparation and interpretation, and the cost to the applicant.

Comment was also made that some councils may favour having a standardised approach to plan formats as it could save further time-consuming argument over how to put a plan together, thereby allowing more time to be spent on formulating appropriate responses to issues.

The material being assembled by the Ministry for the Environment is in the nature of guidance and there is no intent to force councils to follow it at present.

Plans containing mandatory content only –v- Plans with all provisions allowed under s.75

The group moved on to discussions about what policy framework components should be contained in a district plan, given that the Resource Management Act 1991 only specified objectives, policies and rules as being mandatory. Duncan Laing said that issues probably needed to be kept in plans. Though the Environment Court looks at policies and explanations, issues and methods do not receive much attention.

While there was general agreement that reasons could be contained in a Section 32 report, there was uncertainty about how much this would shorten a plan, particularly where explanations were already written succinctly. In some cases it may only shorten a plan by a few pages, but in others much larger savings could be made.

Explanations were also something that had the potential to be transferred into some sort of external document, although there was not unanimous support for this. In some cases explanations play an important role in explaining complicated provisions, apparent discrepancies, or the relationship between provisions. Duncan Laing made the comment that explanations should not be a substitute for poor drafting and noted that additional wording could undermine what a provision was trying to achieve by creating interpretive uncertainty.

Debate over whether reducing the content of plans to cover only those matters that were now mandatory requirements raised the question as to how many councils would change their plans in future.

- Andy Ralph - Tauranga would probably retain the hybrid format but reduce the content by removing things such as explanations, reasons, and anticipated environmental results.
- Patrick McHardy – Manawatu District would keep their hybrid approach but may reduce the content.
- Pam Gare – the Invercargill Plan is different, and is more like a topic or issue based plan. Unsure what changes would be made at this time.
- Andrew Feierabend – Hurunui would probably continue with a hybrid plan, pooling issues into a single section (rather than having them spread throughout the plan) but retaining methods.
- Karen Bell – Auckland may stay with a hybrid plan style.

If councils were to adopt a plan with reduced content, the workshop participants felt it was important to strengthen the links to, and bolster the content of, external documentation so that the information was still available if and when required.

Should plans be reduced to containing objectives, policies and rules only, it is likely that external documents may become larger (for instance containing issues, explanations, methods and outcomes) as practitioners look for ways to explain:

- the content of the plan
- the context in which it sits
- the origin and intent behind some provisions
- the full suite of methods proposed for managing an issue.

Such additional components and commentary could be included in a modified section 32 report. A question was asked whether including components in a section 32 report would open them up to challenge. Duncan Laing said they probably wouldn't be, as challenges to section 32 reports are based around non-compliance with the section (a challenge to the process as it was carried out rather than the content of the report). In regard to the weighting or attention the Environment Court may give provisions that are removed from the plan, Duncan Laing noted that court appeared to be most interested in objectives, policies and rules. Explanations and reasons were rarely considered.

It was also noted that section 104(1)(c) provided a potential means through which matters in a section 32 report could be considered in decisions on resource consent applications. This is not given heavy weight in the Resource Management Act 1991, and the degree to which a section 32 report could be used as a matter to be considered has not been thoroughly tested.

Key points

- Plan users consist of multiple audiences (the public, courts, resource management professionals, council staff [both present and future]). All would benefit from a plan structure that is logical, clear, and simple.
- There is general [but not unanimous] agreement that plans should contain as a minimum, issues, objectives, policies and rules. Explanations and methods are at the discretion of the council to include.

- Removing matters such as principle reasons, other methods, anticipated environmental results, cross boundary issues and monitoring procedures from plans increases the importance of this material being covered in s.32 and s.35 (plan monitoring) reports.

Regional plans specific

- Summary ‘rules tables’ at the start of the relevant chapters are useful
- Regional plans should commence with ‘generic’ region-wide provisions followed by the less generic provisions that only apply to particular topics/issues or particular geographic areas within the region.
- Methods seen as being at the discretion of individual councils.
- Assessment criteria need to be more specifically drafted as policies, rather than ‘matters to be considered’ as part of rules.

District plans specific

- Hybrid district plans are the preferred model (generic district-wide provisions, complemented by zoned or management area orientated provisions).
- Explanations can be reduced or used only when needed. Keeping methods in the plan is useful to provide the picture to staff, but not essential, and can be left to the discretion of the council. They could be replaced by short explanatory notes in some cases.

Questions for possible follow up in guidance note

- Who is the key plan audience? Who is the plan being written for?
- What is “the plan” – a hard copy document, an electronic document, or both?
- What are the pros and cons associated with having a series of regional plans based around a series of topics or issues verses the combined ‘omnibus’ plan approach?
- What is the recommended format to deal with the relationship between issues, objectives, policies and rules (i.e. should each be grouped so that all issues are together, all objectives together etc, or should there be a flow from issue to rules)?
- What is important to include for the benefit of the courts, verses wider audiences?
- How are issues raised through external processes (e.g. Local Government Act community outcomes processes) to be incorporated into plans with sufficient robustness, relevance and precision?

Day two

Attendance: Andy Ralph (Tauranga CC), Andrew Guerin (Kapiti Coast DC), Martin Butler (EBOP), Phillip Martelli (Western Bay of Plenty DC), Pam Gare (Invercargill CC), Tony Quickfall (Nelson CC), Hans Versteegh (Marlborough CC), Karen Bell (Auckland CC), Andrew Feierabend (Hurunui DC), Patrick McHardy (Manawatu DC), Bill Loutit (RMLA / Simpson Grierson), Jan Crawford, Greg Hill, Richard Hills, Greg Vossler, Rebecca Young.

Apologies: Fraser McRae (Otago RC), Nicola Shorten (Greater Wellington RC), Tami Woods (Greater Wellington RC).

Day Two Session One: Writing issues in plans

Discussion

Regionally significant issues and testing issues

Day two commenced with a question asked at the conclusion of the first day of how to determine whether an issue is of regional significance. Suggestions as to what measures could be used included:

- If the issue is, or is closely aligned with, an outcome identified through the community outcome (LTCCP) process – acknowledging that the outcomes often had to be refined to be useful (as had taken place in Southland).
- Issues identified in technical reports as having a significant effect on the environment (for example, coastal erosion or loss of biodiversity) – noting that some issues may not be seen as important by the community (possibly because they are not aware of them) but still need to be managed.
- Issues that affect more than one territorial authority or were region-wide

However, within a region there could be variations as to how important some issues were. These differences need to be provided for. It is also sometimes difficult to engage the whole community at the regional level due to geographic size, population size, diversity or a combination of these considerations.

Karen Bell noted that often the community can identify issues, and can sometimes provide non-regulatory solutions to resolving them. She cited the 0800 SMOKEY hotline in Auckland as an example. This started a short discussion based around the need to test issues before putting them into planning documents.

Questions needed to be asked of each issue included:

- Is the issue real or perceived? (Sometimes this may involve engaging with the community or commissioning technical reports).
- Is the issue significant?
- Is the issue a Resource Management Act 1991 issue?
- Is the plan the most appropriate vehicle for dealing with the issue?

It was suggested that the Ministry for the Environment could develop a checklist that would help people decide the significance of an issue and whether it is appropriate for a council to deal with it.

Updating guidelines on writing issues

Issue identification and issues in plans

Discussion opened with an acknowledgement that current guidance preceded the 2003 and 2005 amendments to the Resource Management Act, and had its origins in the mid 1990s. Law and practice has moved on since that time.

Before focussing on the issues themselves, a comment was raised that plan provisions in general should follow some basic principles to assist their focus and workability. Suggestions for these included:

- Provisions should conform to **SMART** principles (Specific, Measurable, Achievable, Realistic, Timeframes)
- Checking issues using **the 5 whys** (starting with the symptom and working back to the cause by asking “why” following each answer) – it provides a useful way of getting to the true, underlying issues, instead of dealing with the symptoms.
- Asking “who”, “what”, “where” and “when” in regard to provisions as a check on clarity.

Greg Hill noted that issues are still mandatory in a regional policy statement but neither regional councils nor territorial councils needed to include them in plans. Regardless of this, every council would still need to go through the process of identifying issues before they could address them. Issues need to be prioritised according to significance and how they relate to the purpose of the Resource Management Act 1991. It was suggested that objectives could be written in a way that incorporated issues so that they were more self explanatory (thereby enabling the issue statement to be omitted entirely), but there appeared little enthusiasm among those present to do this.

Pam Gare said that issues in plans needed to be seen as being part of a wider picture. Issues could be derived from non-Resource Management Act plan sources, but equally some Resource Management Act issues could be addressed by plans and projects outside a Resource Management Act plan. It was noted that LTCCPs, land transport management plans, reserve management plans, and annual plans (among others) all had the ability to assist in addressing Resource Management Act related issues to varying degrees.

Regional and local significance

The proposition was put that regional policy statements should deal with significant issues for the region. Regional plans and district plans would then fill the role of implementing parts of the regional policy statement while also dealing with more focussed, refined, or specific issues for the region or relevant district. There appeared to be no disagreement with this suggestion. However, it was suggested that Ministry guidance should be updated to reflect that issues in regional policy statements would be different to those found in regional and district plans and that examples of each should be provided (while taking into account that issues are not mandatory in plans).

The idea that issues in a regional policy statement could be different to those in a plan, but that a regional policy statement had to be given effect to raise the point that issues may need to be prioritised in some way. This was not only to establish which are of higher significance, but also assist circumstances where management regimes for dealing with one issue run into conflict with management solutions for another issue. It was suggested that guidance from the Ministry for the Environment on how to prioritise issues would be helpful.

Explanatory statements and issues

There was debate as to the length of issues and use of explanatory statements. While there was general agreement that issues needed to be clear and concise, there was concern that short issue statements may insufficiently relay the context within which the issue was set. It was suggested that case law may provide some indication of what use was made of issue statements by the Courts and whether lengthy issues and explanations were any better than short ones. Some councils relied heavily on explanations accompanying issues to provide the context of the issue, particularly in preceding before the Environment Court. The context could also be helpful in assessing whether the issue was still relevant some years later (though it was noted by others that issues can also be deleted or amended via plan changes to keep them relevant). The suggestion that explanations accompanying issues should be only one or two paragraphs in length had a mixed response. However the group generally agreed that the use/length of explanatory statements should be minimised, but that councils should retain the discretion to include explanations in their plans as required (such as when issues were complex, many faceted, or had close relationships with other issues).

Key points

- There is a need to test the significance of issues before incorporating them into plans (ie is the issue real? Is it a Resource Management Act 1991 issue? etc).
- The regional policy statement must address regionally significant issues while regional plans and district plans address issues that are within their responsibilities. The latter may include 'refined' or more geographically specific adaptations of issues in the regional policy statement. Regardless, all plans will need to implicitly or explicitly identify what the issues are in order to manage them.
- The use of explanatory material accompanying 'issues' is at the discretion of the individual council and need to be based on a case-by-case consideration. If used, explanatory material needs to be kept short, focussed and worded so as not to contradict the issue statement itself.
- State clearly what the issue is and where it applies.
- Attention needs to be paid to the relative priority of each issue. If a management technique to address two issues unavoidably clash, which takes priority?

Questions for possible follow up in guidance note

- Who is the community the issue applies to? Who constitutes the community?
- When do regional or district plans need to be reviewed, once the regional policy statement has been amended?
- How is information or data important to defining issues which may be held by other parts of the local authority captured (for example, that from engineers or strategic planners)?
- The guidance note needs to start with information on the identification of issues and then move onto the difference between issues in regional policy statements and plans.
- More examples need to be provided in future guidance notes. Examples of regional policy statements as well as plan policies will need to be provided as it appears they will differ more noticeably post the Resource Management Amendment Act 2005

Day Two Session Two: Writing objectives and policies

Discussion

Some guiding principles

Discussion opened with the proposition that in writing objectives and policies second generation plans will not be starting from scratch, there will be existing objectives and policies to review this time around, something to adapt and improve upon. Added to this is a growing body of case law containing useful directives to assist future objective and policy drafting.

Bill Loutit noted that there was a lot of room for improvement over the first generation plan objectives and policies. Many were so non-specific that they gave little guidance as to what the plan was trying to achieve. It was important that objectives and policies were:

- clear and certain, defining terms, what the course of action is to be, and what outcome is desired and where
- defensible and based on sound analysis.

Key guiding questions that assist the drafting process include:

- What is the resource or geographic area that the objective or policy applies to?
- What are the values connected with the resource or area that require management?
- What is the outcome being sought? Ask, what is to be achieved? – as a way of taking the issue further towards resolution.

Comment was also made that checking and rechecking of provisions and how they relate to each other needs to be carried out throughout the hearing process. Care needed to be taken to ensure that plan provisions were not diluted by constant revisions to the extent that they no longer met the objectives or managed the issues for which they were written. This, in turn, may require more directive advice to council hearings committees.

Objectives

General principles

Objectives should state what is to be achieved and where. Other points noted were:

- Objectives should do more than restate the issue or parrot the Resource Management Act 1991 – they need to state what is needed to be achieved to meet the purpose of the Act and to resolve issues (regionally or locally).
- There could be a hierarchy of objectives, with objectives to give effect to regional policies at or near the top.
- There is a move away from very short (e.g. 3-6 word) objectives towards ones that provide more specificity and certainty. The idea that an objective should be in the form of a sentence that was a clear, well defined statement of intent seemed to have broad support.

- Specialist advice may need to be brought in to help define terms used in the objectives, or to incorporate greater specificity (such as to what needs to be achieved and where) into objectives.

When reviewing objectives, Tony Quickfall noted that it was important to check them against resource consents that had been issued:

- Are the objectives being met?
- What problems have been encountered with them?
- How could the problems be addressed?

Others in the group noted that such questions were useful in reviewing current plan provisions generally, and should be part of plan effectiveness monitoring. It was important that plan provisions were able to reflect information gained through an effective monitoring programme to ensure that they were defensible and based on sound reasoning.

It was useful to check objectives and policies with consent planners in the drafting stage so that a quick and relatively objective assessment can be made as to how well they might work in practice.

In assisting planners to draft better second generation plans it was felt that new Ministry for the Environment guidance should address how broad objectives could be refined to be more descriptive and specific. Guidance was requested to assist resource management practitioners in the thought processes behind identifying issues, and the ways objectives could be worded to meet the issues in a more specific manner.

It was suggested by some of the participants that providing more specific objectives and policies may reduce the need for the lists of assessment criteria some plans contained. Transferring assessment criteria into policies could overcome some of the confusion that is experienced in implementation, as it would clarify what consents were being assessed against, and what matters of assessment were of importance.

Policies

General principles and concepts regarding policy

The Ministry guidance note on plan provision writing, and the Oxford dictionary, described a policy as “a general course of action to implement an objective”. It was felt that given the directive nature that some policies could now take, the word “general” should be dropped from future guidance. It was also felt that policies should identify who they apply to (or who is to implement them), as well as specifying the direction or course of action to be followed.

While earlier discussion had mentioned the “5 whys” as a possible technique to get to the heart of issues, it was suggested that the “5 Ws” could be used in similar way to think about drafting policies. “Where, why, what, when and who” could be questions that may help guide the writing of policies:

- Where does the policy apply to?
- What course of action is proposed for when?
- (What circumstances) and who is to implement the policy or who does it apply to?

- The ‘why’ may relate to circumstances under which the policy is to be applied or used by some councils in an explanatory capacity.

Directiveness and the use of ‘Should’ –v- ‘Shall’

Mention was made of past Ministry for the Environment guidance which said that all objectives should commence with the word “to” and that policies should contain the word “should”. The question was asked as to whether recent changes to the Resource Management Act had meant this guidance was out of date. “Should” did not appear to provide clarity and certainty and conveyed an element of discretion.

In discussion it was suggested that the advent of directive regional policy statements and court decisions such as the *Auckland Regional Council –v- North Shore City (1995) [NZLR 18]* case meant that policies could be directive, and the term “shall” could be inserted, replacing “should”. In some cases however it may be appropriate that discretion is exercised in the application of policies, such as in complex consent applications where some policies may conflict with, but be of lower importance than other policies. This suggested that there could in fact be a hierarchy of policies, those which were paramount and were to take precedence over others that use the directive term “shall,” and those which in the normal course of events should be considered, but would ‘give way’ to the directive policies if there was any conflict – ie: less directive, using the word “should” to convey an element of discretion. It was then of paramount importance that the plan was checked to ensure that directive policies did not conflict or create a situation where regardless of outcome, one of the conflicting directive policies could not be complied with.

There remains the question as to how directive a policy can be before it actually becomes a rule. The group were unable to come up with any specific measures as to how the two could be differentiated, other than the idea that rules were often very specific and were often associated with standards and terms. The *Auckland Regional Council –v- North Shore City (1995) [NZLR 18]* case may provide some principles that could be written up.

Key points

- Policies and objectives need to be clear, certain.
- Objectives should state what needs to be achieved, and where it is to be achieved.
- Policies could be guided by asking “how” an objective is to be achieved, “where” the policy applies, what course of action is to be taken and when, and possibly “who” is to comply with the policy.
- “Shall” could be used where policies are intended to be directive (e.g. in a regional policy statement), while “should” could be used where some discretion in the application of a policy is intended.
- Use of “shall” allows little discretion so its application requires careful and judicious consideration. Policies using “shall” will need to be carefully checked to ensure that they do not conflict with each other.
- Using consent processing staff to assist in drafting and testing provisions is recommended. Areas where they can assist include:
 - identifying issues;
 - checking the practicality of provisions and their implementation, clarity, certainty;
 - checking that linkages between issues, objectives, policies and rules are clear;
 - finding possible gaps and overlaps in policies and rules.

Questions for possible follow up in guidance note

- How do you refit existing objectives and policies to bring them up-to-date / in line with good practice? Guiding questions and tips?
- How do you refine broad objectives to enable them to become more specific in plans (with particular reference to LTCCP outcomes and refining existing objectives)?
- Would a ‘policy development checklist’ assist with writing clearer, robust policy?
- How directive can a policy be before it becomes a rule? Is it a matter of explicitly identifying something as a policy rather than a rule?

Day Two Session Three: Writing methods and rules

Discussion

Methods

Should methods still be included in plans?

Discussion opened by noting that the inclusion of methods in a regional policy statement was still required, but was discretionary in regard to regional and district plans. Rules could not be included in a regional policy statement, but this did not mean that methods could not be worded in a directive way.

Some participants suggested that it was still useful to have all methods listed in plans. This would assist consent staff to become aware of the bigger picture of how the plan is being implemented, assist budgeting and internal planning, and provide evidence of a “carrot and stick” being applied within a single document. A question was raised concerning how often “other methods” were really used. A straw poll from around the group suggested it was variable, possibly due in part to the differing levels of council commitment to using them (or allocating budget), the additional amount of administration that was involved, or vague and general wording.

While others felt that s.32 documents and other plans could play an equally valid role in coordinating and listing methods, note was made of the higher ‘faith’ the public had that methods in the Resource Management Act 1991 plans would be implemented.

Further discussion concerning retention of methods is summarised in the following table:

Removing methods from plans	Keeping methods in plans
<ul style="list-style-type: none"> ▪ Non-regulatory methods are rarely used and often have costs that councils (present and future) may not be prepared to fund. ▪ Lengthy lists of methods add to the bulk of a plan. ▪ The LTCCP can be used to list / describe ‘other methods’ and more effectively coordinate funding through financial strategies and the Annual Plan. 	<ul style="list-style-type: none"> ▪ Having methods outside the plan makes them less visible and gives the perception they are not important ▪ Plans are more than regulatory documents ▪ Non-regulatory methods assist in achieving the purpose of the RMA ▪ Having methods in s.32 reports are not beneficial as once the plan is operative the s.32 is forgotten. ▪ Inclusion of non-regulatory methods promotes integration and overall planning across council departments (including budget planning)

One possible solution was to divide the plan into two parts. The first part would consist of the mandatory plan provisions. The second part of the plan would contain the wider context-type information including options and non-regulatory methods. A danger with this approach is that the second part of the plan could be seen as less important and over time ignored. It was noted that some first generation plans with multiple volumes had already experienced this in regard to their policy or issues identification volumes. A question was raised as to whether the issue was really about managing perceptions of non-regulatory methods, or was it that regulatory staff do not have the time to set up or implement non-regulatory solutions? The group noted that there may be element of both but no real investigation had been done to confirm this.

The group suggested a set of consideration for assisting in deciding whether and what (if any) methods should be included in plans.

- Who is the intended audience for the plan?
- What will the community accept?
- What sort of information is being looked for by plan users?
- What methods are better included in the LTCCP or other plans?

The group also made observations to the effect that if the intent was to only have rules, then there was no need to have lists of methods in plans (ie, the method is regulatory or rules only). However, section 32 still required the assessment of other means to achieve the objectives of the plan – not just rules.

RMA plans and the LTCCP

In looking at how a plan was implemented it was important to look at the wider picture. There are plans outside of a district or regional plan (such as the LTCCP or asset management plans) that need to be recognised and linked to. Resource Management Act 1991 plans are a tool through which the environmental outcomes of an LTCCP can be implemented, but equally the LTCCP and other plans present an opportunity through which some of the non-regulatory Resource Management Act 1991 methods can be implemented. The LTCCP itself presents a good opportunity to coordinate finances for non-regulatory methods

It was acknowledged that many LTCCPs have not really been developed, or were developed in a way that synergies between plans were looked at or refined this time around. The suggestion was made that councils should, and may be better able to, refine and coordinate the relationships between the plans next time. It was suggested the Ministry for the Environment could provide a map/diagram or comment on the timing of regional policy statement and plan reviews in relation to LTCCPs. Andy Ralph said that they already have a similar sort of model that was necessitated in part by the SmarthGrowth BOP project.

Greg Hill noted that given the more directive nature of the regional policy statement, methods in that document will need to be more specific, directive and clearly worded.

Rules

Changes in legislation

Jan Crawford opened the discussion on rules by noting that there was a shift from what existed before, as rules were now mandatory and that no explanations of those rules are now required to be in the plan. Karen Bell noted that while explanations were not required in every case, there is still an important role for definitions to be included in a plan, and that an increased level of consistency between regional councils and their territorial authorities in using common definitions is needed (to avoid gaps or overlaps in the way some issues are managed). It was generally acknowledged that there should be greater consistency in definitions, but that individual circumstances somehow needed to be taken into account. A central “New Zealand set” of definitions may help, but they should be a reference point rather than mandatory. The Ministry for the Environment seemed to be the logical organisation to produce such a set.

Jan Crawford also noted that another change that had occurred since the first generation of plans had been prepared was the more explicit use of the permitted baseline concept. Bill Loutit noted that the permitted baseline only really applied to permitted activities under the Resource Management Act 1991. In further discussion the group noted that factoring the permitted baseline into rules required careful analysis of what was actually permitted by the rules – and looking closely to see if there were unintended effects. This could be done through running a series of hypothetical development proposals through the rules before they are notified, to see what may or may not be allowed. It was noted that this was in some ways similar to what previous case law had proposed, in that the permitted baseline was essentially related to what was hypothetically possible provided it was ‘not fanciful’.

General principles in rule writing – updating guidance

The group was then asked to go through the existing Ministry guidance on writing rules and suggest changes that needed to be made or improvements. In general, the group appeared to be in agreement that the existing guidance made a useful starting point which essentially needed to be updated with more examples included. It was felt that guidance should also mention that explanations accompanying rules were not now required.

Jan Crawford then asked the group to identify what other things needed to be considered when writing rules:

- When writing plans the cascade of rules should start with permitted activities.
- Rules should probably be grouped according to activities, or in some cases geographic areas.
- Permitted activities should not be written in such a manner that makes them subject to conditions (including financial contributions).
- It is important to remove subjectivity or unintended discretion through the use of words such ‘should’, ‘approximate’, or ‘appropriate’.
- The use of bullet points in rules should be avoided. For referencing sake, use of roman numerals or some other form of numbering should be used in regard to lists.
- Where appendices are cross referenced from the body of the plan it is helpful for the appendix itself to refer back to the plan provisions from which it was derived. It was

suggested the explicit guidance be provided by the Ministry for the Environment on the use of appendices.

Prohibited activities

There was a short discussion around the future of prohibited activities based around the decision from *Coromandel Watchdog Group and Thames Coromandel DC v Ministry of Economic Development and the New Zealand Minerals Association CIV 2004-485-1838*. It was noted that what appeared to concern the Court was the unjustified manner in which a blanket prohibited activity was being used, along with the inference that “prohibited activities” could be used like another resource consent class, by suggesting to the applicant that a plan change would be required to undertake certain activities.

It was suggested that in relation to prohibited activities:

- The activity status only be used where there is clear justification based on effects and information gathered about the activity.
- The activity status needed to be linked strongly to policies and objectives to help reinforce, justify and clarify why the prohibited status is in place.
- The activity status should not be applied in a blanket manner, but probably sparingly according to the geographic areas where such activities should not be allowed regardless of potential mitigation or remedial measures that may be put forward.
- While the law theoretically allowed the prohibited activity status to be altered to a more permissive status via a plan change, it was not advisable to include reference to this in a plan.

Examples of prohibited activities in plans that seem to be working including airport noise restrictions (NZE 6805 provisions), some of those drafted for Aquaculture Management Areas and height limits near Mauao (Mount Maunganui).

‘Catch all’ provisions

Discussion turned briefly to the use of “catch all” rules. It was noted that there had been a change in the Resource Management Act 1991 that meant that the effects of activities not listed in plans were now discretionary rather than non-complying. Comment was also made that “catch all” rules do not need to be supported by policy, as authority for their position comes from the Resource Management Act 1991 itself. It was suggested that future guidance should provide more information on “catch all” rules, such as when they should be used and under what circumstances. It was also noted that section 68(5) provides a possible basis for “catch all” provisions in a regional plan, by referring to rules that require a consent for an activity causing, or likely to cause an adverse effect.

Notification clauses

Guidance was also requested on notification provisions for plans. In particular, there was interest as to who should be notified and what type of notification should be applied. It was noted that those required to be notified were those ‘adversely affected’ by a proposal. ‘Adversely affected’ people were identified by the courts to include those with a proprietary interest, or those whose

interest was greater than the general public. The type of notification required is set out by law in regard to the two tests under s.93;

1. are effects more than minor? (if yes, then full notification is required); and
2. if the answer to '1' is no, has the written approval of all affected parties been obtained? (if no, then limited notification is required, if yes, the consent need not be notified).

However, the Resource Management Act 1991 also allows the plan to specify when notification may be waived or required, regardless of the two tests (for example s.94D(3)). Guidance was requested as to what circumstances waiving or explicitly requiring notification could be required. As a starting point, it may be possible for councils to review their own consents to see if there were any circumstances where it was consistently shown that an activity had minor effects that did not require notification, or, that when notified, there were never any submissions that altered the final decision in any way.

Assessment criteria and policies

Discussion briefly returned to the use of assessment criteria in plans. As they operated currently in the plans that have them, assessment criteria is designed to provide guidance to consent officers when they are exercising their discretion. In some cases, this can come at the expense of policies being ignored in favour of these criteria. It was put that assessment criteria may not actually be needed if objectives and policies are specific enough to give sufficient direction and guidance. For example, there could be specific assessment policies to provide guidance as to what is important in considering consent applications. It was suggested that the Ministry provide guidance on how to incorporate assessment criteria into plans. It was also noted that:

- Assessment criteria in policies would need to be definitive (possibly in terms of being clear as to what was being assessed, where, and to what extent).
- It is important that assessment criteria are seen in, and given, sufficient context.

Using tables

The final point of discussion referred to the use of tables in plans. It was felt that tables could serve as a useful road map to rules and other provisions, but care was needed to avoid their overuse. To work well, tables needed to be clear and self explanatory. Careful consideration was also needed as to how they will work on-line or in electronic formats where wide tables do not fit easily on computer screens and are cumbersome to move around.

Key points

- The present Ministry for the Environment Guidance still serves as a useful basis but needs to be further developed and updated with more and better examples.
- There needs to be greater consistency in the use of definitions. The same definitions need to be used throughout the plan (i.e. the same ones used in policies as in rules), and where possible across the regional policy statement and plans (to assist in “giving effect to” and consistent administration).

- Rules should be grouped according to activity class in a logical cascade.
- Summary tables at the start of chapters work well.
- Permitted activities should have clearly measurable thresholds
- Reviewing existing [granted] resource consents can inform rule drafting for second generation plans (such as assisting to determine when notification will not be required, or in making changes to activity class by modifying standard consent conditions for use as permitted activity standards).
- Assessment criteria and rules:
 - permitted activity rules should stand on their own
 - matters over which a council retains its discretion should be clearly stated as such
 - assessment criteria should be based on the matters identified in the relevant policies and be couched as policies.
- Prohibited activities should only be used where they can be clearly justified. They should not be used as a blanket-type provision and should not be used if it is anticipated and deemed acceptable for applicants to get around prohibited activity status through a plan change.
- The relationship between standards that form an appendix in a plan, and the rule to which they relate needs to be made clear. Cross references between the two (going both ways) need to be explicit so that it can be seen when they are part of a rule and not just information.

Questions for possible follow up in guidance note

- What is the permitted baseline? How do you apply it in the drafting of rules? How is “cumulative effect” incorporated into rules to avoid unintended consequences?
- When should ‘catch all’ provisions be used? Under what circumstances should they be applied?
- How do you write limited notification clauses into plans? Under what circumstances should notification be made mandatory by a plan or waived?
- If ‘information requirements’ are taken out of plans, where should they be located?
- Ministry for the Environment Guidance would be helpful on the following topics:
 - Notification clauses in plans
 - Writing directive policies and methods in the regional policy statement
 - Assessment criteria / policies
 - ‘Catch all’ provisions in plans
 - How to incorporate the permitted baseline into rules.
 - A national set of definitions for inclusion in plans to promote consistency