



caring about you & your environment

Report 01.242

10 April 2001

File: X/7/2/1

[Report 2001.P&F01.242.MM:sw]

Report to Policy and Finance Committee
from Murray McLea, Section Leader, Policy Development

Changes to the Transitional Regional Plan and Regional Freshwater Plan

1. Purpose

To obtain approval from the Council to proceed with consultation on possible changes to the Transitional Regional Plan and the Regional Freshwater Plan

2. Background

The Transitional Regional Plan became operative in 1991 when the Resource Management Act (RMA) was passed into law. It pulled together statutory instruments from various pieces of legislation that the Wellington Regional Council was responsible for at the time. Now that the Council has prepared and made operative five regional plans under the RMA, it is appropriate to consider what should happen to the Transitional Regional Plan. By default, the Transitional Regional Plan will remain in force until it is withdrawn using the plan change provisions of Schedule 1 of the RMA.

The Council's intention has been to withdraw the Transitional Regional Plan once its regional plans became operative. However, the process for withdrawal of the Plan provides an opportunity for the Council, in consultation with people and communities, to check whether any of its provisions remain necessary.

When the regional plans were notified, some provisions of the Transitional Regional Plan became redundant, and these provisions were removed by way of a plan change. Now that the regional plans are all operative, the Council can consider withdrawing the Transitional Regional Plan altogether.

A copy of the current operative version of the Transitional Regional Plan is available in the Councillors' lounge and will be tabled at the Policy and Finance Committee meeting.

3. **Should anything remain now?**

Most rules in the Transitional Regional Plan were replaced by rules in the Council's regional plans. The Council no longer needs any of these Transitional Plan rules with one possible exception. Rule 5.7.1 in RP 25 of the Transitional Plan provides protection for groundwater from activities that could lead to contamination, such as boring, drilling, and driving piles that exceed 5 metres in depth. The same protection is provided in the Regional Freshwater Plan, except that the Regional Freshwater Plan has not included all the activities that could result in contaminants passing between the surface of the land and an aquifer.

Other rules in the Transitional Regional Plan are deliberately not covered by rules in the regional plans. RP 24, RP 25, RP 26, and RP 27 all contain land use provisions relating to natural hazards. Following considerable debate at the time, the Regional Policy Statement specifically gave territorial authorities the prime responsibility for land use controls relating to natural hazards outside of the beds of rivers and the coastal marine area. The Council has a particular interest in flooding because of its operational responsibility to protect people from floods. According to the Regional Policy Statement, controls on stopbanks and in floodways that are outside river beds should be contained in district plans, not regional plans.

The intention of the Regional Policy Statement was to provide people as much as possible with "a one stop shop" for resource consents. Such an approach reduces the need for people to apply for resource consents to use land from both territorial authorities and the Wellington Regional Council. Now that the first round of district plans is almost complete, we can assess how well they protect people from flooding. Unfortunately, not all district plans have adequate provisions. While the Regional Policy Statement directs that territorial authorities make rules about land use outside river beds for natural hazards in the first instance, it does allow us to make rules when district plans do not have adequate provisions.

Council staff responsible for flood protection consider that some provisions in the Transitional Regional Plan relating to protecting stopbanks from damage and preventing people from placing obstructions in floodways need to remain.

4. **What are the Options?**

Four options are identified and discussed in each of the following paragraphs.

The Council could **do nothing**. The provisions referred to in the previous section that may still be needed would remain. Balanced against this is the confusion caused by other provisions of the Transitional Regional Plan that are not always consistent with rules in the Council's other regional plans. A further reason why we should not leave the Transitional Regional Plan in its current form is that the provisions we may want to use are probably not enforceable under the RMA. The ability to enforce some of these provisions is discussed further in the second paragraph, below.

We could **change the Transitional Regional Plan so that it is withdrawn completely**. It has been the Council's intention to withdraw the Transitional Regional Plan once its regional plans became operative. Withdrawal of the Transitional

Regional Plan now without making some changes to another regional plan, as suggested in the second paragraph below, would leave the gaps identified in section 4 of this report.

The Council could **change the Transitional Regional Plan so that the provisions identified in the previous section of this report remain**. Such an approach would remove provisions in the Transitional Regional Plan that are inconsistent with the regional plans and retain the provisions that are still necessary. The main reason why this approach may not be useful is that some of the remaining provisions are likely to be unenforceable. The floodways mentioned in some of the Transitional Regional Plan provisions are not mapped. Decisions of the Environment Court indicate that it would require greater certainty about the location of floodways. Another example of an “unenforceable” provision is Rule 2.7.1 in RP 25 of the Transitional Regional Plan. It relies on the “opinion” of the Council to decide whether taking livestock, vehicles, or machinery on a stopbank would damage it. Such a test is unlikely to satisfy the Environment Court.

A fourth option is that the Council could **change the Transitional Regional Plan so that it is withdrawn altogether while, at the same time, changing the Regional Freshwater Plan to include some reworded provisions that are in line with the RMA**. This approach would result in complete withdrawal of the Transitional Regional Plan. It would also ensure that any provisions still needed from the Transitional Regional Plan are retained in a form that is enforceable under the RMA. This is the preferred option and recommended approach.

If the Council changes the Regional Freshwater Plan, it could also be an opportunity to make other changes. Since the Regional Freshwater Plan was made operative, Wairarapa staff have made a lot of progress on the development of minimum flows and water allocation for rivers not yet included in the Plan. These provisions could now be included in the Plan. There are other small improvements that could be made to the Plan that, in themselves, do not warrant a plan change.

5. **The next step - consultation**

We have already carried out consultation within the Council to the point where the key elements of possible changes to the Regional Freshwater Plan have been established. Further consultation will be carried out with flood protection staff.

Changes to either the Transitional Regional Plan and/or the Regional Freshwater Plan will benefit from external consultation. The statutory minimum for consultation is set out in the Schedule 1 of the RMA. It requires us to consult with the Minister for the Environment, territorial authorities in the Region, adjacent regional councils, and iwi. We will consult with these groups and others such as Federated Farmers and Flood Advisory Committees before coming back to the Council to seek approval for plan changes.

6. **Communication**

If the Committee adopts the recommendation, consultation will occur as proposed in the report.

7. **Recommendation**

That the Council proceed with consultation on changing the Transitional Regional Plan so that it is withdrawn altogether, and making changes to the Regional Freshwater Plan.

Report prepared by:

Approved for submission:

MURRAY McLEA,
Section Leader, Policy Development

WAYNE HASTIE,
Manager, Resource Policy

JANE BRADBURY
Divisional Manager, Environment