

Tangata whenua provisions

**Recommendations in response to
submissions on the Proposed Regional Plan
for Northland - Section 42A hearing report**

Date: 3/07/2018
Author: Keir Volkerling
Version: Final

Table of contents

Purpose and format of the report	3
Report author	4
About the tangata whenua provisions	4
Overview of submissions	5
General comments	6
Submissions and analysis	6
Recommendation	7
Changing policies into other types of provisions	7
Submissions	7
Analysis	8
Recommendation	9
Requirement to follow “best practice”	9
Submissions	9
Analysis	10
Recommendation	10
Changing wording of policies with material consequences	10
Submissions	10
Analysis	11
Recommendation	12
Jurisdiction issues	12
Other matters	13
Appendix 1 - Response to other matters raised in submissions	14
Appendix 2 - Policies from the Hawkes Bay Resource Management Plan	17
Appendix 3 - Relevant subsections of s30	18
Appendix 4 – Implications of jurisdiction issues beyond the Proposed Plan	19

Purpose and format of the report

1. This report was prepared pursuant to Section 42A of the Resource Management Act 1991 (RMA). This report provides the hearing panel the rationale for the recommended changes to the tangata whenua provisions in the Proposed Regional Plan for Northland (the Plan) in response to submissions.
2. The recommendations made in this report are mine and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. In addition, my recommendations may change as a result of presentations and evidence provided to the hearing panel, and in response to further submissions. It's expected the hearing panel will ask authors to report any changes to their recommendations at the end of the hearing.
4. My recommendations focus on changes to the Plan provisions. If there is no recommendation, then assume the recommendation is to retain the wording as notified.
5. Generally, the specific recommended changes to the provisions are *not* set out word-for-word in this report. The specific changes (including scope for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
6. This report is structured with a focus on the key matters for the tangata whenua provisions raised in submissions. The key matters are:
 - Changing tangata whenua policies into other types of provisions
 - Requiring use of best practice for analysis in Policy D.1.2
 - Weakening the strength of policies by, for instance, only considering significant and not all effects on tangata whenua values
 - Jurisdiction issues
7. Matters covered by submissions that fall outside the key matters are addressed in the “Other matters” section in less detail.
8. Further submitters are not referred to as they are in support or opposition of original submissions (they cannot go beyond the scope of the original submissions).
9. The approach of addressing matters raised in submissions (rather than addressing submissions and/or and submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.

10. This report should be read in conjunction with section 3 – *Tangata Whenua Values* – in the Section 32 report.

Report author

11. My name is Keir Volkerling and I have been contracted for the development of the tangata whenua policies for the Proposed Regional Plan, their application in relevant rules, the associated s32 report, and this s42A report. I have worked for iwi authorities in Northland in development and management roles. In recent years I have worked on resource management for iwi, local government, and for central government.
12. My previous RMA and related work includes:
- *With iwi:* developing iwi planning documents; submissions and appeals on consents and planning, with consequential Environment Court and formal mediation appearances; advice to national Iwi Chairs Forum.
 - *With local government:* advisor to a tangata whenua member of the Hauraki Gulf Forum for eight years; developing tangata whenua natural resources provisions for the Auckland Unitary Plan; development of Treaty guidelines and preparation for district plan review for Far North District Council.
 - *With central government:* Member of the 2011 Technical Advisory Group chaired by Sir Douglas Kidd to propose reform to aquaculture legislation; appointed by an Iwi Leader Group to work with Ministry of Fisheries to develop mechanisms for delivery of the aquaculture settlement, and to develop a regulation for aquaculture.
13. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

About the tangata whenua provisions

14. The relevant provisions in the Plan for tangata whenua addressed in this report are:

Definitions

- Places of Significance to Tangata whenua (proposed new definition)

Policies

- Policy - D.1.1 Tangata Whenua
- Policy - D.1.2 Requirements of an analysis of effects on tangata whenua and their taonga
- Policy - D.1.3 Affected parties
- Policy - D.1.4 Managing effects on Places of Significance to Tangata Whenua
- Policy - D.1.5 Places of Significance to Tangata Whenua

Maps

- Places of Significance to Tangata Whenua

Overview of submissions

15. A total of 34 submitters made submissions on the tangata whenua provisions.
16. The submitters can be grouped as:
 - *Tangata Whenua entities* (Ngati Ruamahue, Haititaimarangai Marae, Patuharakeke Te Iwi Trust, Te Hiku Iwi Collective, Te Rarawa Anga Mua, Tinopai RMU).
 - *Councils* (Kaipara Council, Whangarei District Council and Far North District Council).
 - *Government agencies* (Heritage NZ and Minister of Conservation)
 - *Primary Production* (Balle Brothers Group, Federated Farmers, Horticulture NZ, AFFCO).
 - *Energy and Infrastructure* (Stratera, NZ Refining, The Oil Companies, Transpower, NZTA, Top Energy)
 - *Community and Interest groups* (Yachting NZ, GE Free Northland, Te Kopu – Pacific Indigenous, *Aquaculture NZ*).
 - *Various individuals* (9 submitters¹)

¹CEP Services; Tautari R, Norris,M; Brownlie,A; Knausenberger,E; Miru,M; King,K&F; Foy,F and Heteraka, M.

General comments

Submissions and analysis

17. Many of the submissions to the tangata whenua policies, and in particular to D.1.1 and D.1.2, seem to arise from misconceptions or anxiety about things which are unknown or badly understood. While most of the relevant tangata whenua related provisions of the RMA have existed since 1991, there is often a lack of understanding of their implementation opportunities and consequences. This lack of understanding can give rise to unjustified anxiety and over-reaction.
18. For instance, the s32 report makes clear the requirements of Schedule 4 and provisions of the RPS are the basis for D.1.1 and D.1.2. Schedule 4 requires resource consent applications to include an assessment of the effects of the activity on, for example:
- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga²
 - cultural and spiritual values³
19. The aim of policies D.1.1 and D.1.2 is to refine the need for cultural analysis to assist applicants and decision makers to determine what types of effects on tangata whenua and their taonga are most relevant and how the effects should be assessed. Thus, the analysis would still have to occur in the absence of the policy but without guidance and focus. Despite this some submitters have interpreted the policy as saying that an applicant “must have a cultural impact assessment” or words to that effect. In fact, the policy, along with Schedule 4, ensures that only an analysis commensurate with the scale of potential impacts is required.
20. D.1.2 provides a process for undertaking an investigation. Investigation does not necessarily require consultation. It could, in some cases, be entirely achieved through documentation. While the policy includes the Schedule 4 requirement to report on consultation, it does not require consultation with tangata whenua. However several submitters have identified this policy as requiring mandatory consultation.

² Section 6(e), Part 2, RMA. Clause 2(1)(f), Schedule 4, requires an assessment of the activity against the matters set out in Part 2.

³ Clause 7(1)(d), Schedule 4

Recommendation

21. I do not recommend changes to the policies in response to these submission points. While the submissions do not warrant response in terms of changes guidance documents (outside the plan) could more fully set out expectations and clarify implementation details for applicants, tangata whenua and consent staff.

Changing policies into other types of provisions

Submissions

22. Several submitters stated that policies D.1.1 and D.1.2 should be information requirements or methods. Some submitters stated this with little or no supporting commentary⁴.
23. The Oil Companies included the following commentary:
Policies should be able to be used when assessing and determining resource consents. A good litmus test for a policy is whether or not it will fulfil that purpose. It is considered that these policies do not do that, but rather codify the process to be undertaken for information provision.
24. Whangarei District Council have the following [note, this is a paraphrase from Quality Management]:
- *The purpose of a policy is to identify a course of action to achieve or implement the overarching objective(s) of the Plan. Policies are required to be implemented through methods (which often take the form of rules in the Plan).*
 - *In the consideration of non-complying activities, policies have an important function in the 'gateway' test set out under section 104D(1). For this reason, and in order to provide appropriate direction to plan users and decision makers, it is important that policies provide clear guidance by avoiding ambiguity. WDC raises concerns that many of the policies are not policies to direct a course of action, and in many instances, function as information requirements, methods and standards. The role of such 'policies' in the application of permitted activities and assessment of controlled activity applications may present jurisdictional challenges.*

⁴ NZTA, Patuharakeke Te Iwi Trust, Rowan Tautari, Transpower

25. Transpower has submitted on D1.1: “*The provision is a method/process to be applied in a resource consent application, rather than framed as a policy*”.

Analysis

26. Submitters have proposed limits to the general scope of policies. However, case law establishes that there are few bounds on the nature of a policy. This is discussed in *the King Salmon* decision⁵ at [112] to [116]. The Court found that, while policies do not have the statutory enforceability of rules, there is little limitation on the content of policies. In support they cite *Auckland Regional Council v North Shore City Council* [1995] 3 NZLR 18 (CA):

“It is obvious that in ordinary present-day speech a policy may be either flexible or inflexible, either broad or narrow. Honesty is said to be the best policy. Most people would prefer to take some discretion in implementing it, but if applied remorselessly it would not cease to be a policy. Counsel for the defendants are on unsound ground in suggesting that, in everyday New Zealand speech or in parliamentary drafting or in etymology, policy cannot include something highly specific”.

27. Information requirements are usually included in a plan where specific and easily identifiable information is required, and the processes for accessing or researching the information do not need to be explained or set out in the provisions. These can be simple information requirements, such as map locations or names and addresses; or more complicated but available details, such as engineering specifications. Policy D.1.1 is a set of triggers for the need to implement an analysis, and cannot be replaced by simple information requirements. Policy D.1.2 sets out processes for an analysis, which cannot be reduced to simply information requirements.
28. I disagree with the Oil Companies. The policies **are** for assessing and determining resource consents. Further, D.1.1 is not a list of information required for any consent, but directs **when** an analysis is required. This analysis then informs consent assessment and determination at various stages, ie s88, s92, and s104. Schedule 4 states requirements to include an AEE is subject to the provisions of the plan. The policy gives guidance for these processes.

⁵ SCC82-2013 EDC v King Salmon

29. I disagree with the Whangarei District Council:

- In response to submissions, the objective below from the RPS is recommended for inclusion in the Proposed Plan. The policy gives effect to this objective:

3.12 Tangata whenua role in decision-making

Tangata whenua kaitiaki role is recognised and provided for in decision-making over natural and physical resources.

- In terms of the s104 gateway for non-complying activity applications, the policy is not relevant to such decisions. Those gateway decisions are made in terms of the potential impacts of proposed activities and whether they are contrary to relevant policies. A process policy, such as D.1.1 is not relevant in this context.
- I understand the potential concern about jurisdiction and permitted and controlled activities. These require a high degree of certainty. We have endeavoured to ensure that is the case for the relevant rules. WDC give no examples of rules where there is a problem.

30. There is the implication in some submissions that a policy should not specify processes. However it is not uncommon in operative plans for this to be the case. For instance, in the operative Hawkes Bay Resource Management Plan Policies UD10.3 and UD10.4 set out processes for the development of structure plans (see Appendix 2).

31. Further, there are other policies in the Proposed Regional Plan which contain process directives and have not had similar submissions rejecting their validity. For instance a policy such as D.2.7 includes a number of process directives. I suspect opposition to the policy status of D.1.1 may arise from uncertainty about tangata whenua values and processes, rather than from the form and nature of the policy itself.

Recommendation

32. Retain the policies as notified.

Requirement to follow “best practice”

Submissions

33. AFFCO and the Oil Companies have questioned the requirement to follow “best practice” in Policy D.1.2, and suggested deleting the requirement, or to specify what best practice refers to.

Analysis

34. When there are examples of best practice which can be cited they should be included, but using “best practice” in a general sense without reference to specific practices is included in other plans. For instance the operative Tasman Resource Management Plan has frequent examples in policies of reference to best practice with no specific practice identified. For instance, in Policy 36.3.3.1(5) is “Any best practice option to reduce any actual or potential adverse effect on ambient air quality”⁶.
35. Currently there is only limited best practice guidance on Quality Planning⁷ (QP) for cultural analysis (more for receiving than creating a cultural analysis, but of some relevance). Te Puni Kokiri (TPK) were working on developing best practice for both cultural analysis and iwi planning documents, but the project appears to have lapsed. But if either QP or TPK or any other recognised entity developed best practice, it would be appropriate to require its use. Amendments to the policy could add references to indicate those specific entities above, or a generic type of reference (such as “follow best practice as determined by relevant professional organisations” or “organisations with their status widely recognised”) may be useful. Again, footnotes and guidance documents could provide clarification.

Recommendation

36. My recommendation is that in Policy D.1.2 (3) the use of “best practice” is retained as currently used, but with the addition of a footnote - “Best practice can be determined by relevant professional bodies”.

Changing wording of policies with material consequences

Submissions

37. Transpower proposed that the D.1.1 requirement for an “*analysis of effects on tangata whenua and their taonga*” is amended to an “*analysis of significant adverse effects on*”

⁶ Other similar policies in the Tasman plan are 6.1.3.1A, 27.1.3.2, 27.1.20.3, 27.4.20.3, 34.1.3.22, 34.1.3.13

⁷ The Quality Planning website is a partnership which includes Ministry for the Environment, New Zealand Planning Institute, Resource Management Law Association, New Zealand Institute of Surveyors, Local Government New Zealand and New Zealand Institute of Architects. It promotes good practice for RMA planning.

tangata whenua and their taonga" (underlining added for emphasis).

38. AFFCO asks for a range of changes to reduce the strength of Policy D.1.4:
- Adding "net" to allow more flexible mitigation.
 - Delete "values".
 - Replace "no more than minor" with "no more to minor to moderate".
39. Transpower has proposed that only significant effects should be considered in Policy D.1.4.

Analysis

40. Policy D.1.1 gives direction and focus to analysis for inclusion of analysis of effects on tangata whenua and their taonga in the AEE for a consent application. The provisions of Schedule 4 are not limited to consideration of significant effects only nor is there any such limitation in Method 8.1.5 of the RPS It is not appropriate to limit the scope of the policy to only significant effects⁸.
41. The changes requested by AFFCO to Policy D.1.4:
- It is difficult to see how adding "net" will enable to allow more flexible mitigation other than by allowing offsets. While offsets can be appropriate for impacts on net values such as biodiversity where alternative site development is possible, for Places of Significance this is not appropriate and generally not possible. For many impacts resulting in modification of heritage and similar resources, values are lost and cannot be replaced by offsetting. These resources are often unique and irreplaceable, hence cannot be substituted or offset when damaged or destroyed. Where offsetting is possible, such as when a traditional mahinga kai is impacted and alternative sites are offered, this can be provided by the policy's option for mitigation. A general provision for net effects is therefore neither appropriate nor necessary.
 - If "values" is deleted from the policy, protection would need to be provided without restriction. This could have most consequence for landscapes, where in much of the area there may be no values which would be affected. By including "values"

⁸ The RPS method requires Council to analyse impacts, and consequently Council needs the applicant's AEE to address these matters

the effects are limited to those activities which impact the recorded values of recorded site / area. By deleting “values” the scope of the policy and its constraints would be less focussed, presumably against the interests of AFFCO.

- The proposal to replace “no more than minor” in Policy D.1.4 with “no more than minor to moderate” would both weaken the policy without justification, and create uncertainty. “No more than minor” is standard RMA terminology, whereas “minor to moderate”, or “moderate”, have no common understandings. The policy does not prevent all activities, but requires that they are appropriately managed. The policy as notified has clarity, which the addition of “moderate” would remove clarity.

42. Policy D.1.4 is for the protection of Places of Significance to Tangata Whenua. These are to be determined by a rigorous process set out in Policy D.1.5. Any adverse effect on the recorded significant values which cannot be avoided, remedied or mitigated should not be limited to those which are more than minor. The Transpower proposal that only significant effects are considered is therefore totally inappropriate.

Recommendation

43. I recommend no changes to Policies D1.1, D1.2, D1.4 and D.1.5 in response to these submissions.

Jurisdiction issues

44. Minute 3 of the Hearings Panel clarifies the status of management of heritage and other resources in regional planning, which by inference should include Places of Significance to Tangata Whenua.
45. Section 30 of the RMA limits the jurisdiction of a regional council when managing Places of Significance to Tangata Whenua. The restriction does not apply to those Places in the coastal marine area. In freshwater the control is limited to activities that may have effects included on matters in the relevant subsections of s30 (see Appendix 3)
46. Policy D.1.5 should therefore be changed to ensure it is consistent with the s30 jurisdiction.
47. While these changes may be sufficient to avoid jurisdiction problems in the Regional Plan, there are some outstanding issues remaining. While these cannot be resolved within the Regional Plan, they do need to be addressed (refer Appendix 4 for discussion).

Other matters

48. Refer to Appendix A for the summary of submission points, analysis and recommendations made on the tangata whenua provisions not addressed in the key matters sections of this report.

Appendix 1 - Response to other matters raised in submissions

Note – this table does not include the summary of submission points, analysis and recommendations made on the tangata whenua provisions addressed in the key matters sections of the report.

Provision or matter	Summary of main submission points	Discussion	Recommendation
Definition of Place of Significance to Tangata Whenua	Heritage NZ proposed a definition with a number of examples of types of places included.	A definition similar to that of the Heritage Site definition is warranted. Extra wording as proposed by Heritage NZ is not needed.	Add a definition: “A Place of Significance to Tangata Whenua that has been assessed by Policy D.1.5”
D.1.1 Analysis of effects on tangata whenua and their taonga	Haitaitaimarangai proposed including wording from s6 of the RMA.	This does not add value, as s6 must be implemented.	No change
	Haitaitaimarangai proposed changing “damage or destruction” to “alteration” for effects on sites etc.	“Damage or destruction” are standard terms for impacts on heritage and related values. Effects resulting in “alteration” are regarded as causing “damage”.	No change
	Haitaitaimarangai proposed a further provision for impacts on cultural activities	These are already addressed in the policy	No change
	The Te Hiku Collective asked for protection of iwi economic interests to be included in the triggers for analysis	The aim of D.1.1 is to ensure analysis of those impacts on tangata values that are specific to tangata whenua and would not be likely to be captured by other provisions. Potential impacts on iwi economic interests can be addressed by general provisions to the extent that there is jurisdiction.	No change
D.1.2 Requirements for an analysis of effects	Haitaitaimarangai proposed including wording from s6 of the RMA	This does not add value, as s6 must be implemented.	No change
	The Te Hiku Collective has asked for protection of iwi economic interests to be included in the analysis	As above	No change.
	Hort NZ have asked for iwi planning documents to be taken into account	The policy requires that regard is had for iwi planning documents which is consistent with s104.	No change

Provision or matter	Summary of main submission points	Discussion	Recommendation
	Hort NZ have requested that “as appropriate” is added in D.1.2 2)	D.1.2.1) determines that the scope is commensurate with the impacts (as does Schedule 4)	No change
D.1.3 Affected parties	The Oil Companies have asked for “affected persons” in the policy to be changed to “affected parties”.	“Persons” is in s95B and related sections. I agree that there should be consistency. This would be best achieved by using RMA language throughout the name and the text of the provision	Change the name of D.1.3 to “Affected persons”.
	The Oil Companies identify an inconsistency between wording in D.1.4 and D.1.2	The Oil Companies are correct.	Change “the tangata whenua entity” to “the tangata whenua community”.
	Patuharakeke Te Iwi Trust have asked for Customary Protected Rights and Customary Marine Title applicants to be included as affected persons to be notified	Those persons are all required by statute to be notified, and specification in plan is not needed	No change
D.1.4	Some submitters have requested that the following words are deleted: “Resource consents will only be granted”. Rowan Tautari specifically supported the inclusion of these words	If effects cannot be avoided, remedied or mitigated then the result would be the application would be declined. So to that extent the words are accurate but arguably redundant. However they do provide clarity.	No change
D.1.5 Places of Significance to Tangata Whenua	Patuharakeke Te Iwi Trust have requested a different process for identification	If the approach of this submission was adopted it is likely that no Sites / Areas would be identified for plan inclusion for a significant period. Also, since there is discretion for the policy to be used for identification of Sites / Areas in a consenting process (for instance if triggered by Policy D.1.1 d) it can provide the opportunity for protection prior to or independent of scheduling. Therefore, it can have immediate value. Without the type of rigour proposed in the plan in D.1.5 many such identifications could be	No change

Provision or matter	Summary of main submission points	Discussion	Recommendation
		<p>ineffective in practice in consenting decisions.</p> <p>As this is the only submission that seeks this relief and the provisions otherwise have wide support from tangata whenua and others, I prefer to not make any changes in response to this submission.</p>	
Consultation with iwi only	<p>Te Hiku have submitted:</p> <p>the Resource Management Act 1991, is very clear that the provisions of consultation are directly related to iwi authorities. The Act specifically states: “tangata whenua may, through their iwi authorities” (Clause 58M, Clause 3 (1)(d), Clause 3B). Relief sought would be to include a footnote on the term tangata whenua with the reference: ‘tangata whenua through their iwi authorities’</p>	<p>Section 58M applies to Mana Whakahono processes only, and not consultation in general.</p>	No change
Maps	<p>Three submitters⁹ have requested further Places of Significance to Tangata Whenua are added</p>	<p>None of these proposals are accompanied with the evidence (as required by D.1.5) of why addition of the site should be considered. However their proposals for Places of Significance can be noted for future investigation and subsequent possible variation or plan change</p>	No change

⁹ Patuharakeke, Whaingaroa, Upperton

Appendix 2 - Policies from the Hawkes Bay Resource Management Plan

POL UD10.3 Notwithstanding Policy UD10.1, structure plans for any area in the Region shall:

- a) Be prepared as a single plan for the whole of a greenfield growth area;
- b) Be prepared in accordance with the matters set out in POL UD12;
- c) Show indicative land uses, including:
 - i. principal roads and connections with the surrounding road network and relevant infrastructure and services;
 - ii. land required for stormwater treatment, retention and drainage paths;
 - iii. any land to be set aside for business activities, recreation, social infrastructure , environmental or landscape protection or enhancement, or set aside from development for any other reason; and
 - iv. pedestrian walkways, cycleways, and potential public passenger transport routes both within and adjoining the area to be developed;
- d) Identify significant natural, cultural and historic or heritage features;
- e) Identify existing strategic infrastructure; and
- f) Identify the National Grid (including an appropriate buffer corridor).

POL UD10.4 Notwithstanding Policy UD10.1, in developing structure plans for any area in the Region, supporting documentation should address:

- a) The infrastructure required, and when it will be required to service the development area;
- b) How development may present opportunities for improvements to existing infrastructure provision;
- c) How effective provision is made for a range of transport options and integration between transport modes;
- d) How provision is made for the continued use, maintenance and development of strategic infrastructure;
- e) How effective management of stormwater and wastewater discharges is to be achieved;
- f) How significant natural, cultural and historic or heritage features and values are to be protected and/or enhanced;
- g) How any natural hazards will be avoided or mitigated; and
- h) Any other aspects relevant to an understanding of the development and its proposed zoning.

Appendix 3 - Relevant subsections of s30

- (c) the control of the use of land for the purpose of–*
 - (i) soil conservation:*
 - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:*
 - (iii) the maintenance of the quantity of water in water bodies and coastal water:*
 - (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:*
 - (iv) the avoidance or mitigation of natural hazards:*

- (e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including–*
 - (i) the setting of any maximum or minimum levels or flows of water:*
 - (ii) the control of the range, or rate of change, of levels or flows of water:*
 - (iii) the control of the taking or use of geothermal energy:*

- (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:*

- (fa) if appropriate, the establishment of rules in a regional plan to allocate*
Any of the following:
 - (i) the taking or use of water (other than open coastal water):*
 - (ii) the taking or use of heat or energy from water (other than open coastal water):*
 - (iii) the taking or use of heat or energy from the material surrounding geothermal water:*
 - (iv) the capacity of air or water to assimilate a discharge of a contaminant:*

- (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:*

Appendix 4 – Implications of jurisdiction issues beyond the Proposed Plan

The operative RPS in Method 4.6.3 requires in (1) that district councils regulate:

(iii) The location and scale of earthworks and indigenous vegetation removal (outside wetlands and the beds of lakes, rivers and the coastal marine area);

(iv) The disturbance, demolition or alteration of physical elements and / or structures of historic heritage that meet Policy 4.5.3 (outside the coastal marine area and beds of lakes and rivers).

And that the regional council regulates:

(v) The disturbance, demolition or alteration of physical elements and / or structures of historic heritage that meet Policy 4.5.3¹⁰ (in the coastal marine area and beds of lakes and rivers).

The Method therefore prevents district councils from exercising this control at all for earthworks and heritage in the freshwater environment, and s30 prevents the regional council from fully doing so. As a consequence, the RPS effectively prevents heritage and earthworks management in freshwater environments for impacts outside the s30 constraints from being subject to any regulation. The RPS needs to be amended to correct this jurisdiction related error.

There are other circumstances where heritage management may be overlooked. This is when there is a need for a regional consent and no direct requirement for an associated district council land use consent, but when heritage or other resources outside the regional council's s30 jurisdiction may be impacted. There are instances where this distinction has not generally been problematic. For instance, a subdivision requires a district council land use consent, and impacts on heritage resources from associated earthworks (often in some regions requiring a regional consent) can and often are recognised as a district council management responsibility and management requirements are then included in consent conditions. However, there are instances where a regional consent is required and there is no automatic related district council land use consent required. For instance, a consent for earthworks on the bed of a river which would impact the heritage values which are outside the regional council's jurisdiction would have no direct requirement for a district council consent, and hence the impacts on heritage resources would not be regulated.

This situation can be avoided by identifying in the RPS the types of regional consent or potential impacts for which there must also be a related district council land use consent. It is only in the RPS that this can be effective in linking district and regional planning requirements (unless an amendment of s30 of the RMA is enacted).

¹⁰ Policy 4.5.3 has criteria for assessing, identifying and recording historic heritage.