

Proposed Regional Plan for Northland

MINUTE AND REQUEST OF THE HEARING PANEL

Minute 3

CONTENTS OF THE PLAN

[01] It has come to the attention of the Panel that there may be certain aspects of the Proposed Regional Plan for Northland (pRPFN) that fall outside the jurisdiction of the Northland Regional Council, raising the question of whether some provisions can or should remain in the Plan.

[02] Specifically, section 65(1) of the RMA explicitly specifies the functions for which a regional council may prepare a regional plan:

A regional council may prepare a regional plan for the whole or part of its region for any function specified in section 30(1)(c), (ca), (e), (f), (fa), (fb), (g), or (ga).

[03] Those parts of section 30 state:

- (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:
 - (v) [Repealed]
- (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
- (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:
- (fb) if appropriate, and in conjunction with the Minister of Conservation,—
 - (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:
- (g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
 - (i) soil conservation:
 - (ii) the maintenance and enhancement of the quality of water in that water body:
 - (iii) the maintenance of the quantity of water in that water body:
 - (iv) the avoidance or mitigation of natural hazards:
- (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

[04] In addition, section 68(1) enables the Council to include rules in the pRPFN as follows:

- (1) A regional council may, for the purpose of—
 - (a) carrying out its functions under this Act (other than those described in paragraphs (a) and (b) of section 30(1)); and
 - (b) achieving the objectives and policies of the plan,—
 include rules in a regional plan.

[05] Upon reviewing the contents of the pRPFN in light of submissions received, it appears to us that provisions relating to certain matters (outside of the coastal marine area) and certain areas included on the Plan's I Maps may derive from sections 30(1)(a) and 30(1)(b) of the Act, rather than from those subsections of section 30(1) under which a regional council may prepare a regional plan or include rules in a plan. Those matters and areas are:

- a) Historic Heritage Areas and Sites
- b) Outstanding Natural Features
- c) Outstanding Natural Landscapes
- d) Areas of Outstanding Natural Character
- e) Areas of High Natural Character
- f) Sites and Areas of Significance to Tangata Whenua

[06] From sections 65(1) and 68(1) of the Act it appears that the pRPFN may not be entitled to address or contain rules on those matters other than in respect of mapped areas which have values or attributes falling within the confines of the relevant parts of section 30(1) that are listed in section 65(1), primarily sections 30(1)(c) and (ga). These can be paraphrased as follows:

- a) soil conservation
- b) maintain or enhancing the quality of water
- c) maintaining the quantity of water
- d) maintaining or enhancing aquatic ecosystems
- e) maintaining indigenous biological diversity

[07] Our preliminary view is that the provisions of the pRPFN should be amended to conform with the requirements of sections 65(1) and 68(1) of the Act. The result being that (outside of the coastal marine area):

- a) the Plan cannot address or have rules dealing with Historic Heritage Areas and Sites and all references to Historic Heritage Areas and Sites should be omitted from the Plan, and
- b) the rules in the Plan can only address Outstanding Natural Features, Outstanding Natural Landscapes, Areas of Outstanding or High Natural Character, and Sites and Areas of Significance to Tangata Whenua if those mapped areas have values or attributes falling within the above list of matters deriving from sections 30(1)(c) or (ga) of the Act.

[08] Our initial consideration of the areas mapped in I Maps indicates that while some of the Outstanding Natural Features, Areas of Outstanding or High Natural Character, and Sites and Areas of Significance to Tangata Whenua would meet the test described in [07] (b) above, some do not. Our preliminary view is that, at the very least, outside of the coastal marine area those that do not should be removed from the I Maps.

- [09] The I Maps do not include any Outstanding Natural Landscapes and so, coupled with the constraints imposed by sections 65(1) and 68(1) of the Act, our preliminary view is that (outside of the coastal marine area) any provisions in the Plan relating to Outstanding Natural Landscapes, or perhaps even landscapes in general, should be omitted from the Plan.
- [10] We request that the Section 42A Report explicitly address these matters.
- [11] We also invite submitters on parts of the Plan relating to the areas listed in [05] above to present legal submissions from legal counsel on the matters raised in this Minute. It would be of most assistance to us if those legal submissions were provided to the Council by **Tuesday 3 April 2018**. This will enable consideration of the legal submissions to be included in the Section 42A Report. All legal submissions received will be posted on the Council's website.
- [12] Finally, we note that section 64(1) of the Act requires there to be a regional coastal plan for the coastal marine area of the region and that the Council's wide-ranging functions set out in section 30(1)(d) of the Act pertain to the contents of the regional coastal plan. We have no concerns about the content of the pRPFN in that regard.



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5 March 2018