



# REGIONAL FORUM

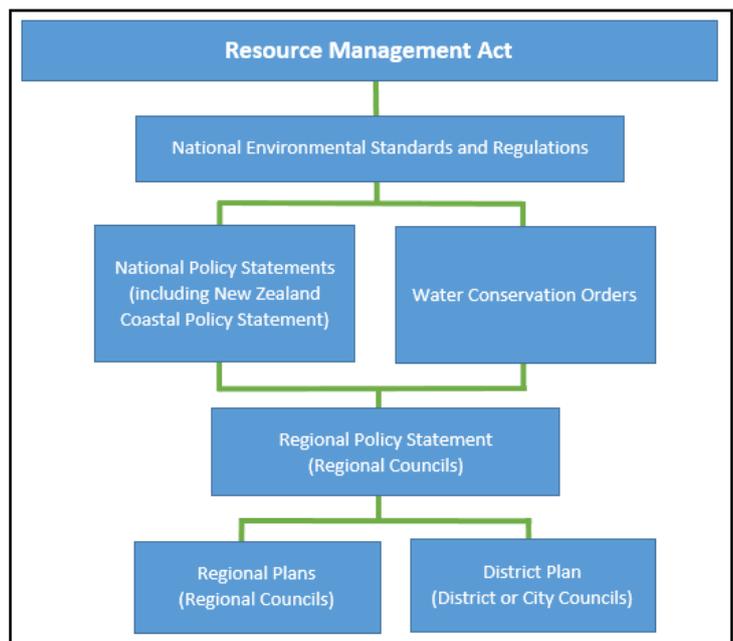
People Water and Land – *Te Mana o te Tangata, te Wai, te Whenua*

## Policy context for the Regional Forum

### Purpose of this paper

This paper details the setting for the Forum’s work, which is described in the Terms of Reference as considering and advising Governance on the options available to achieve the community’s objectives for freshwater. This will include regulatory and non-regulatory methods, and will include consideration of the impacts, timing, targets, limits, methods, and policy context.

The purpose of this paper is to set out the ‘field of play’ for the plan change that will come from the Regional Forum’s work. The starting point for the policy scope and context is the National Policy Statement for Freshwater Management (NPSFM), which sits under the umbrella of the Resource Management Act 1991 (RMA). The RMA provides the overarching direction under which a regional council functions but also provides for a series of policy documents which have been developed over time and provide more specific direction on particular topics. The diagram shows the different types of policy documents which sit under the RMA. They form a hierarchy, with every type of document sitting underneath the RMA needing to be consistent with those above it.



This paper explains the planning documents that are directly relevant under the RMA, and other legislation that is relevant to Council when making its decision on the plan change. Rather than providing a high level of detail, this paper ensures that the Forum is aware of the relevant documents and legislation. As the Forum moves ahead in their work and explores methods which could be implemented, Environment Southland’s Policy & Planning team will provide detailed advice around the scope and direction in these higher order documents as needed, to ensure that the final package is consistent with the policy framework and is legally sound.

# Planning under the Resource Management Act

## Purpose and Principles

The Resource Management Act revolves around its purpose, which is to promote the sustainable management of natural and physical resources. In this context, sustainable management means:

*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

In achieving sustainable management, councils are required to consider a series of matters, some of national importance, and the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The following matters of national importance are listed in section 6 and have the greatest weight:

- *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;*
- *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;*
- *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;*
- *the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;*
- *the protection of historic heritage from inappropriate subdivision, use, and development;*
- *the protection of protected customary rights; and*
- *the management of significant risks from natural hazards.*

Other matters to be considered under section 7 are:

- *kaitiakitanga;*
- *the ethic of stewardship;*
- *the efficient use and development of natural and physical resources;*
- *the efficiency of the end use of energy;*
- *the maintenance and enhancement of amenity values;*
- *intrinsic values of ecosystems;*
- *maintenance and enhancement of the quality of the environment;*
- *any finite characteristics of natural and physical resources;*
- *the protection of the habitat of trout and salmon;*
- *the effects of climate change; and*
- *the benefits to be derived from the use and development of renewable energy.*

The principles of the Treaty of Waitangi must be taken into account in decision-making. These are not further explained here as the Forum has already been provided with more detailed material. All of the matters in this part of the Act are important considerations during the policy development process.

### A regional council's role

Functions for councils under the RMA are separated for regional councils and territorial authorities (which are commonly referred to as district councils or city councils). As a regional council, Environment Southland has responsibility for:

- the control of land use in relation to soil conservation, water quality, water quantity, aquatic ecosystems, and natural hazards;
- identifying and monitoring contaminated land;
- the coastal marine area (including occupation of space, discharges of contaminants, noise, and activities on the surface of water);
- activities in the beds of rivers and lakes, including structures, excavation, disturbance, and the introduction of plants;
- water quantity, including the level and flow in a water body and the taking, use, damming, or diversion of water;
- discharges of contaminants to land, water, and air; and
- maintaining indigenous biodiversity.

Not all of Environment Southland's functions are addressed in one plan, with activities affecting air quality and the coastal marine area addressed in separate plans. This means that the focus of the pSWLP is on land use activities, activities in the beds of lakes and rivers, water quantity, and discharges to water and land.

The RMA specifies that many activities involving the beds of lakes and rivers, water, or the discharge of contaminants can only occur if they are expressly allowed by a rule in a regional plan or by a resource consent. This means that regional plans need to specifically set out what activities can occur, and the circumstances in which consent is required.

### National Policy Statement for Freshwater Management

The NPSFM is the key document that has led to the People, Water, Land programme and the Regional Forum. It identifies the national significance of Te Mana o te Wai, and sets out the requirements for regional councils to identify Freshwater Management Units (FMUs) and set freshwater objectives, limits (including targets), and methods to achieve the community's values in each FMU. While the NPSFM is highly relevant, additional detail is not provided here as the Forum is already familiar with the NPSFM.

The Action for Healthy Waterways package has not been released at the time of writing, but will include an amended version of the NPSFM. Environment Southland's Policy & Planning team will update the Forum on the relevant changes when the Government has made the new documents available.

### New Zealand Coastal Policy Statement

The RMA requires that there is a New Zealand Coastal Policy Statement (NZCPS) at all times. Its purpose is to achieve the purpose of the RMA (sustainable management) in relation to the coastal environment. This means that it is not restricted to activities occurring within the coastal environment, but also activities which can affect the coastal environment. For example, Policy 22 requires that sediment loadings in runoff and in stormwater systems are

reduced through controls on land use activities, and that the impacts of vegetation removal (including through harvesting plantation forestry) are controlled.

### National Policy Statement for Renewable Energy Generation (NPSREG)

The NPSREG identifies two matters of national significance:

- the need to develop, operate, maintain, and upgrade renewable electricity generation activities throughout New Zealand; and
- the benefits of renewable electricity generation.

This NPS is relevant to the hydro-electricity generation occurring within the Waiau FMU at Manapōuri and Monowai, within the Matura FMU at the Alliance plant in Matura, and on small scales across Southland.

As the regional plan is beneath the NPS in the hierarchy of planning documents, it must include objectives, policies, and methods to provide for new and existing energy generation activities. Those making decisions on the plan change must recognise the benefits of renewable electricity generation, consider the maintenance of existing generation assets, and consider the effects of reducing generation output.

### National Policy Statement for Electricity Transmission

This NPS identifies the need to operate, maintain, develop, and upgrade the electricity transmission network as a matter of national significance. In addition to the transmission network as a whole, this NPS also applies to the use and development of new electricity generation, including renewable generation.

### National Environmental Standards for Sources of Human Drinking Water

The NES for Sources of Human Drinking Water applies to registered drinking water supplies that provide 501 or more people with drinking water for at least 60 days each year. It requires that a regional council cannot include a permitted activity rule in a plan if it will cause drinking water (after existing treatment) to exceed health quality criteria or guideline values, or otherwise to further decrease the quality of the drinking water.

### National Environmental Standards for Plantation Forestry (NESPf)

These environmental standards cover a range of activities associated with plantation forestry, including planting, earthworks, river crossings, and harvesting. The standards allow a rule in a plan to be stricter than the NESPf if it relates to the National Policy Statement for Freshwater Management, which means that the plan change will not be restricted by the NESPf. If a rule in the plan is less strict than the NESPf then the NESPf will apply, which could be either through permitted activity requirements or a consent.

### Southland Regional Policy Statement (SRPS)

Regional councils are required to have a regional policy statement as well as their regional plans. In the hierarchy of planning documents under the RMA, they sit below National Policy Statements and above regional plans and district plans. The Southland Regional Policy Statement became operative in October 2017, and guides resource management decisions for the region. It provides direction for both regional plans and district plans within Southland (with the district plans being produced by the Southland District Council, Invercargill City Council, and Gore District Council). The SRPS contains objectives, policies and methods, which include directions for both plan-making and consenting. An example relevant to the Forum's work is Method WQUAL.9, which requires that the use of land use rules is considered to

manage cumulative effects of non-point source discharges where they are a significant contributor to decreases in water quality.

### Te Tangi a Tauira

Te Tangi a Tauira (the cry of the people) is the iwi management plan for Southland. It was prepared by Te Ao Marama Inc, and has been endorsed by the four rūnanga in Murihiku/Southland along with Te Rūnanga o Ngāi Tahu. It identifies Ngā Take (Issues) and corresponding Ngā Kaupapa (Policies) in seven sections: Huringa Ahua o Te Rangi (Climate Change); O Te Pū Hau (Air); Te Atawhenua (Fiordland); Takitimu Me Ona Uri (High Country and Foothills); Te Rā a Takitimu (Southland Plains); Te Ākau Tai Tonga (The Southern Sea Coast, Southland's Coastal Environment); and Ngā Moutere o Murihiku (Offshore Islands). Within each of these sections, issues and policies are grouped according to activities that primarily occur (but are not limited to) that section. The policies are relevant to both plan-making and consenting, and must be considered by Council when making a decision on the plan change.

### Water Conservation Orders

Water Conservation Orders (WCOs) can provide for the preservation of a water body in its natural state as far as possible, the protection of outstanding characteristics (such as habitat, fisheries, scientific or ecological values, scenic characteristics, or recreational or cultural purposes), or the protection of characteristics which have outstanding significance in accordance with tikanga Māori. In the hierarchy of planning documents, they sit at the same level as National Policy Statements, but rather than applying nationally they are specific to the named water body. Southland currently has two WCOs, for the Mataura and Ōreti rivers.

The Mataura WCO recognises the outstanding fisheries and angling amenity features, and sets requirements for both water quantity and water quality. The water quantity provisions essentially require that upstream of Seaward Downs, no more than 5% of the flow is allocated to consumptive use. This is quite a different water allocation approach compared to the way that water is allocated for other catchments under the Regional Water Plan and the pSWLP. In comparison to these plans it allows for water to be taken at lower flows but is more restrictive above the point where flow restrictions would normally be applied for water takes in other catchments. In relation to water quality, it sets out standards which must be met following discharges to water.

The Ōreti WCO recognises the river's outstanding habitat for brown trout, angling amenity, habitat for black-billed gulls, and significance in accordance with tikanga Māori. It requires that water is not allowed to be dammed (by either a rule or a consent), that fish passage is maintained, and that a discharge into the protected waters is not allowed (by either a rule or a consent) if it would reduce water quality after reasonable mixing.

### National planning standards

The national planning standards were introduced in 2017 to address differences between plans and policy statements between different councils. They will require a common structure and format for all plans, and are intended to ensure that plans are able to be easily interpreted by users. The part of the standards most likely to be relevant to the Regional Forum's work is the definitions, which must be used if a term is defined by the standards (in addition to any relevant definitions under the RMA or other planning documents).

## Other RMA planning documents

While the following planning documents sit in the hierarchy above the regional plan, they are unlikely to be directly relevant due to their focus on territorial authority activities or activities outside of the scope of the future plan change to the pSWLP.

### National Policy Statement for Urban Development Capacity

The NPS for Urban Development Capacity sets out high-growth and medium-growth urban areas, which have specific objectives and policies apply. None of the councils in the Southland region are considered to be high-growth or medium-growth urban areas, and the provisions of the NPS are relevant to the context of a regional policy statement or a district plan rather than a regional plan. The Ministry for the Environment has recently been consulting on proposed changes to this NPS.

### National Environmental Standards for Air Quality

This NES is generally outside the scope of the plan change, as it relates to discharges to air and would fall under the scope of the Regional Air Plan. The NES sets ambient air quality standards for carbon monoxide, nitrogen dioxide, ozone, PM<sub>10</sub>, and sulphur dioxide. It also prevents activities such as burning of bitumen occurring and places restrictions on others, such as the burning of oil which requires consent.

### National Environmental Standards for Telecommunication Facilities

The NES for Telecommunication Facilities relates to a range of activities associated with telecommunications equipment, and apply to both regional council and territorial authority areas of control. Generally in the areas of regional control the standards defer to the rules in the relevant regional plan, including in relation to earthworks, or the bed of a lake or river. The standards also allow for regional rules to be stricter than anything specified in the NES.

### National Environmental Standards for Electricity Transmission Activities

The NES for Electricity Transmission Activities applies to both regional council and territorial authority areas of control, and addresses activities relating to existing transmission lines. Within the regional council's area of control, these activities include earthworks and the discharge of contaminants to water. Although not specifically stated in the NES, regional rules cannot be more strict in relation to existing electricity transmission activities because the NES requires consents for all activities it does not specifically address. However, as the NES is so specific to existing electricity transmission activities, it is unlikely to be of consequence to the Forum's work.

### National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

This NES relates to contaminated land, and is primarily relevant to consent processes for regional and district councils rather than plan-making processes. The standards set out permitted activities for removing or replacing fuel storage systems, sampling or disturbing soil, or subdividing or changing land use (in the context of a district council).

## [Resource Management \(Measurement and Reporting of Water Takes\) Regulations 2010](#)

These regulations apply to all consumptive consented water takes with a rate of take above 5 litres per second. They require metering and record-keeping on a daily basis, unless permission is given by Council to record takes on a weekly basis instead. A regional rule or consent condition can be stricter than the regulations, but cannot be more lenient.

## Other relevant legislation

### [Ngāi Tahu Claims Settlement Act 1998](#)

Ngāi Tahu Claims Settlement Act 1998 (the Settlement Act) gives effect to the Deed of Settlement signed by the Crown and Te Rūnanga o Ngāi Tahu on 21 November 1997 to achieve a final settlement of Ngāi Tahu's historical claims against the Crown.

The Settlement Act includes a new instrument called a Statutory Acknowledgement. Statutory Acknowledgements recognise Ngāi Tahu's mana in relation to a range of sites and areas in the South Island (in particular, Ngāi Tahu's cultural, spiritual, historical, and traditional association with those areas), and provide for this to be reflected in the management of those areas. Statutory Acknowledgements are relevant to RMA consent application processes which affected areas identified as Statutory Acknowledgements.

### [Local Government Act 2002](#)

The Local Government Act 2002 relates to responsibilities and powers of councils outside of the RMA. It includes requirements for councils to have a long-term plan at all times, which covers the period of time at least 10 years ahead and is used for three years. For example, Environment Southland's current long-term plan is for 2018-2028, and will be used until 2021 when a new 2021-2031 long-term plan will be developed. Councils are also required to develop an annual plan for each financial year. It is through these plans that councils set rates and are able to set out the funding that will be provided for different programmes of work. This can include non-regulatory work that sits outside of RMA processes, such as funding staff work programmes of advice and education.

### [Resource Management Act Amendment Act 2020](#)

This act has only recently been passed by Parliament at the end of June 2020, and makes changes to the RMA. The key change of relevance to the plan change process is that a new freshwater planning process will be followed for the plan change, with hearings following public submissions to be heard by a freshwater hearings panel.

From 31 December 2021, Council will be able to consider matters relating to climate change. This includes discharges to air of greenhouse gas emissions (which previously were not able to be considered in relation to the effects of greenhouse gases on climate change), and emissions reduction plans and national adaptation plans developed under the Climate Change Response Act 2002. As the plan change to be informed by the Regional Forum's work is relating to land and water, these provisions will not be directly relevant.

## Climate Change Response (Zero Carbon) Amendment Act 2019

This legislation was referred to in the media as the 'Zero Carbon Act' or 'Zero Carbon Bill'. It amended the Climate Change Response Act 2002 to respond to the Paris Agreement signed in 2016. Introduced changes include the establishment of the Climate Change Commission and a 2050 target for the reduction in emissions of greenhouse gases. As the plan change to be informed by the Regional Forum's work is relating to land and water, these provisions will not be directly relevant.

## Future documents that may be relevant

The Forum may be aware of other documents, proposed changes, or proposed legislation which the Government is or has been consulting on, including:

- the Action for Healthy Waterways package (which will include an amendment to the National Policy Statement for Freshwater Management, National Environmental Standards for Freshwater, and regulations for Stock Exclusion from waterways);
- proposed National Policy Statement for Indigenous Biodiversity;
- proposed National Policy Statement for Highly Productive Land;
- proposed changes to the NES for Sources of Human Drinking Water; and
- proposed National Environmental Standards for Wastewater Discharges and Overflows.

These cannot be taken into account by the Forum in their work as they do not have legal effect and could be subject to significant change following consultation. Environment Southland's Policy & Planning team will update the Forum on any additional planning documents which come into effect during the course of their work.