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Enquiries to: Lisette Balsom



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Ministry for the Environment  
PO Box 10362  
Wellington 6143  
Attention: Draft National Planning Standards



Tena koutou

**Waikato Regional Council submission on the Draft National Planning Standards**

Thank you for the opportunity to make a submission on the Draft National Planning Standards. Please find attached Waikato Regional Council's (the council's) submission regarding this document. The submission was formally endorsed by the council's Strategy and Policy committee under delegated authority on 7 August 2018.

Should you have any queries regarding the content of this document please contact Lisette Balsom directly on [REDACTED] or by email at [REDACTED].

Regards,

A handwritten signature in black ink, appearing to read "Tracey May".

Tracey May  
**Director Science and Strategy**

# Submission from Waikato Regional Council on the Draft National Planning Standards

## 1 Introduction

1.1 Waikato Regional Council (the council) appreciates the opportunity to make a submission on the Draft National Planning Standards (the standards).

1.3 The council supports the intention of the standards which aim to make Resource Management Act (RMA) plans simpler to prepare, and easier for users to understand, compare and comply with.

1.4 We welcome acknowledgement of implementation costs and timing implications for councils. There is a requirement to amend plans to fit the framework of the standards within a five year timeframe and to do so without any undue delay or Schedule 1 process.

1.5 However, existing provisions may not cleanly transfer to the framework proposed by the standards, creating a risk that the intent or meaning of provisions may change. Clarifying the intent or meaning of provisions may require the need for consequential amendment. These consequential amendments can create timeframe and cost uncertainties for implementing the standards and increase the risk for legal challenge for local authorities.

1.6 We acknowledge the intention to provide guidance on the scope of consequential amendments required by implementing the standards, and whether a Schedule 1 process would be required to make these changes. However, the timing of this guidance is not clear. We are firmly of the view that this guidance is needed prior to the standards taking effect so that the effect of these can be assessed and incorporated into timeframes and budgets for planning processes.

1.7 Attachment 1 of this submission provides feedback to specific proposals contained in the standards that the council either supports, opposes or seeks amendment to.

1.8 Our contact details are:

[REDACTED]

1.9 We look forward to release of the final standards and are available to provide input to any remaining issues and solutions to be explored.

## Attachment 1: Comment on specific proposals contained in the standards

Standard	Issue	Submission Point	Relief sought
S-RPS	Geothermal	<p>Page 9 of the standards states that “If water matters are addressed in the regional policy statement (RPS) they must be included in the water chapter. Local authorities must consider whether to combine this chapter with the land chapter.” A similar provision is provided for on page 13 for regional plans.</p> <p>Requiring geothermal water to be dealt with in the same chapter as fresh water cuts across the intent of the RMA that resource management issues specific to a region should be dealt with by that region. Geothermal water (and coastal water) are recognised by the RMA as having different management issues from fresh water and need to be treated differently.</p> <p>Because of the different issues that geothermal water and land uses face, and because of the integrated nature of the effects of use of geothermal water and land, the council prefers its current structure of dealing with these resource issues together in a separate chapter. Waikato and Bay of Plenty regions between them are responsible for sustainable management of 90 percent of the nation’s geothermal resource. The issues regarding the management of geothermal water are different from those for freshwater and both councils have in their RPS and Regional Plan separate chapters for the management of this regional geothermal resource, containing specific objectives, policies, rules, other implementation methods and environmental results anticipated.</p>	Provide clarification in the standards that geothermal water can be considered separately as a special topic.
S-RPS	Integrated Management	<p>The purpose of a RPS is to provide an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region (s59 RMA).</p> <p>Several existing RPSs, including the Waikato RPS, have ‘Integrated Management’ as a significant matter addressed through objectives and policies.</p>	Include Integrated Management as a theme for a RPS.

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		<p>The only place for this matter to be addressed by the standards is in Special Topics. This is not considered appropriate for a regionally significant matter addressing the main purpose of an RPS.</p>	
<b>S-RPS</b>	Growth management	<p>RPSs have a significant role to play in directing not only the approach to managing natural resources, but also in directing matters of land use and urban form, including but not limited to how urban growth is managed.</p> <p>This role is confirmed by the National Policy Statement Urban Development Capacity which requires some councils to set development capacity targets and include these as objectives in their RPSs.</p> <p>Given the importance of RPSs in this area we suggest a specific theme on urban form, growth management or similar is appropriate.</p>	<p>Include in the standard for RPSs, a specific theme that provides for urban form / growth management or similar.</p>
<b>S-RPS; S-RP</b>	Themes – coastal environment v Coastal Marine Area	<p>Regional councils grant consents for activities in the coastal marine area (CMA) and have a reduced statutory role on the landward side of Mean High Water Spring (MHWS) within the coastal environment. It is difficult under the draft standards to provide clear guidance on these different statutory roles within the same theme.</p> <p>In many cases there may be confusion over the correct theme in which to address activities related to several themes. For example, provisions on electricity transmission activities affecting indigenous vegetation in the CMA could be contained in either the Coastal Environment, Ecosystems and Indigenous Biodiversity or Infrastructure and Energy themes, and could result in confusion for users of different regional plans.</p>	<p>Provide for RPSs and regional plans to contain a CMA theme if they address issues differently across MHWS.</p> <p>Provide direction on provisions that could potentially be contained in a number of themes.</p>
<b>S-RPS, S-RP</b>	Environmental Risk theme	<p>Clarification of the topics that must be included in this theme is required. Examples and discussions with MfE confirm that natural hazards are appropriate here, but no others.</p> <p>It appears this theme is based on the Auckland Unitary Plan approach. Note the topics contained with the Environmental Risk Section of the Auckland Unitary Plan are not considered appropriate for a regional council, as contaminated land and the</p>	<p>Clarify the matters to be included in 'environmental risk'. If it is intended to cover natural hazards only, then rename it 'natural hazards' to avoid complicating plans.</p>

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		discharge of pesticides are appropriately addressed in other sections of the regional plan.	
<b>S-IGP 7. b</b>		The standard requires “a list of all RMA planning documents relevant to the region/district/city, and how they relate to each other and to the policy statement/plan. This includes a <b>discussion</b> around their hierarchy.” (emphasis added). The term “discussion” potentially provides scope for ambiguity, where technically there is an established clear hierarchy of planning documents that should be represented.	Amend to read: “This includes a clear statement as to their hierarchy.”
<b>S-IGP 10. b</b>		The standard requires a description of “how, as rules in proposed plans move towards becoming operative, their relative status [and thus weighting] is presented in the plan”. It is unclear what “is presented” means in this context. Clarification is sought as to whether as the Schedule 1 process progresses, councils are required to provide real time status update of the weighting that should be applied to the rules. If this is the intention, the council opposes this standard because the weighting to be given to a rule is a matter of fact and degree to be determined in the particular circumstances (and potentially determinable by the Court from time to time) rather than a matter to be pre-determined by the Plan.	Clarify the intent of the standard, and if the intended meaning of this standard is as assumed in the submission point, delete this standard.
<b>S-SD</b>		Section 75 of the RMA states that a district plan must give effect to any National Policy Statement, the New Zealand Coastal Policy Statement, any National Planning Standard and any RPS. The standard goes into great detail about how plans and policies need to show how they give effect to the national level documents. However it is silent on how district plans need to give effect to an RPS. This omission needs to be addressed.  One possible way to address this is in the Strategic Direction Standard. Also, a number of regions now have regional or sub-regional spatial plans. It is important that the standards recognise such documents as important strategic guidance for RMA plans.	Provide in the standard a place in district plans where there is a description of how the district plan gives effect to the relevant RPS.  Amend the first bullet point under section 3 of the Strategic Direction Standard to read: “an identification and outline of the key strategic or significant resource management matters of importance to the district, including relevant matters in a RPS or regional or sub-regional spatial plan, that need to be given effect to”.

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F-1		<p>There is a requirement that all versions of the current plan since first becoming operative must be available on the local authority website, and that a copy of all previous plans under the RMA, both at the time they first became operative, and the final version before being superseded by the replacement plan, must be available from the local authority website.</p> <p>This would be a major exercise for councils and risks confusing users with links to versions of plans that are likely of little relevance.</p>	Amend these points to account for only operative versions of plans once the standard is adopted.
F-2	Zones	There is no Coastal Environment Zone or similar identified in the zone colour palette table (Table 21). As a Coastal Environment Topic is identified for district plans that have a coastline, the ability to have a Coastal Environment Zone or similar to give effect to the New Zealand Coastal Policy Statement is important.	Include a Coastal Environment Zone option.
F-5: Rule Table (Table 26 )		<p>The rule format for each type of rule includes the following for each - “Activity status when compliance not achieved”. This requirement is opposed for two reasons:</p> <p>(1) The relationship between rules is not necessarily straightforward in that the rule which applies when compliance is not achieved with a particular rule, will vary <b>subject to the reason</b> for the non-compliance. For example, the council’s rule 4.2.9.1 regulates the construction and use of culverts in waterways. There are various reasons why a particular culvert proposal may not comply. If the catchment size is above 100 ha, then it will default to controlled activity rule 4.2.9.3. If the culvert does not provide fish passage then it will default to discretionary activity rule 4.2.4.2. If the culvert relates to a waterway that is identified as a Significant Geothermal feature, then the activity will default to discretionary activity rule 7.6.6.3 which has a specific set of assessment criteria.</p> <p>(2) Where the status is controlled or restricted discretionary activity, it requires specification of the matters over which control/discretion is reserved, and other details such as any notification provisions that apply. These information requirements can be extensive – for example, the matters of control for some rules in the Waikato Regional Plan run to the best part of a full A4 page.</p>	<p>Delete the requirement “Activity status when compliance not achieved” and replace with “Where compliance not achieved, the relevant rule is... or... or...”</p> <p>OR</p> <p>Remove the requirement for regional rules to use this table where it is inefficient or confusing, and allow the use of free text.</p>

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		These details (which every rule is required to include) will result in duplication of text, that can be replaced with a cross-reference to the relevant rule.	
<b>CM-1: Definitions</b>		Some terms that are defined in the Resource Management Act 1991 are also defined in the standards. This may be unnecessary duplication.	Delete definitions for terms which are defined in the RMA and replace with a general standard to the effect that any word used in the Plan which has an RMA definition, shall be subject to that definition.
<b>Definition of "drain"</b>		<p>The definition is given as: "means any artificial watercourse, open or piped, that is designed and constructed, or used, for the purpose of the drainage of surface or subsurface water". This definition also links to the RMA definition of "river" which explicitly excludes an "artificial watercourse, including...farm drainage canal" but includes a "modified watercourse".</p> <p>The council has two main concerns regarding this definition:</p> <ul style="list-style-type: none"> <li>• Is a "drain" the same as a "farm drainage canal"? If it is, then it is recommended that the terminology be aligned. (If it isn't, then the difference between the two is unclear).</li> <li>• The definition does not address ambiguity concerning the current definition of "river" and the associated meanings of "artificial" and "modified" watercourse (neither of which are defined).</li> </ul> <p>The council has attempted to differentiate the two through its Regional Plan, by defining "artificial watercourse" as one which has no natural headwaters essentially. This enables a distinction to be made between a river that has been channelised or diverted for some of its length (a "modified watercourse") and a true farm drain which is entirely constructed and is not connected to any natural streams/waterways further upstream.</p>	<p>Align the definition with the existing RMA definition of "river".</p> <p>And</p> <p>Include in the definition a reference to drains having no natural headwaters.</p>
<b>Definition of "Industrial activity"</b>		The definition is limited in scope, also with misalignment between the definitions of "industrial activity", "industrial or trade premises" (in the RMA) and "rural industry."	Align the definitions of "industrial activity" and "rural industry" and ensure they are both consistent with the RMA definition of "industrial or trade premises".

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		<p>For example, “industrial activity” does not include storage, transfer, treatment or disposal of waste materials (part of the RMA definition of industrial or trade premises).</p> <p>Furthermore, the definition in the standards of “rural industry” implies that this is a subset of “industrial activity”, however, the activities that comprise rural industry – primary production and aquaculture – are outside of the definition of “industrial activity”.</p>	
<b>Consequential amendments</b>	Clarification of scope	<p>There is a requirement to amend plans to fit the framework of the standards within a set timeframe, and to do so without any undue delay or Schedule 1 process. However, as many existing provisions may not cleanly transfer to the framework proposed by the standard, and will require consequential amendments, there is a risk that the intent or meaning of provisions may change. This creates uncertainties around costs and timeframes for implementing the standard, and also increases risk for legal challenge.</p> <p>Council supports the proposal to provide guidance on the scope of these consequential amendments required by implementing the standards, and whether a Schedule 1 process is required to be undertaken or not allowed.</p> <p>However, this guidance needs to be provided to councils prior to gazettal of the standards so that the implications can be determined for feedback.</p>	Provide guidance on consequential amendments prior to the standards taking effect so that the effect of these can be determined, and incorporated into timeframes and budgets for planning processes.