

Submission

To: Ministry for the Environment
By email: planningstandards@mfe.govt.nz

By: Northland Regional Council

On: Draft National Planning Standards June 2018

Introduction

1. The Northland Regional Council (council) is grateful for the opportunity to comment on the draft standards.
2. We are supportive of the principle of standardising plans and their content. The submission focuses on implementation issues as we see them for the National Planning Standards (the standards), and aspects we would like retained.
3. The key concern we have is the cost of implementing the standards and opening plan content to challenge. As currently proposed, our assessment is that implementing the standards is likely to require many consequential changes beyond those allowed by Section 581, RMA, which means these changes would need to be made via a Schedule 1 process. This will result in costs to council to run the process and defend plan content – even though we won't be changing the effect of the content. We believe it's a significant waste of ratepayer's money to pay for a process that doesn't change the effect of our RMA documents. We estimate this cost could be up to \$280,000 – which is about 1% of the rates council collects.

Submission

Timeframe for implementing

4. While we are heartened to see an extension from five years (as previously signalled) to seven years to implement the standards, we would prefer that we didn't have to implement the standards until the next 10-year review of the relevant planning document. Implementing the standards as part of the 10-year review will significantly reduce the costs of implementation (assuming there is a raft of consequential changes requiring a Schedule 1 process).
5. Our Regional Policy Statement (RPS) was made fully operative in May 2018. A seven-year deadline (2026) will be two years before the RPS is due for its review.
6. The council notified the Proposed Regional Plan for Northland (a combined regional plan) in 2017 and council decisions are likely to be released in early 2019. Assuming significant appeals, it's likely the Proposed Regional Plan won't be operative until 2021 at the earliest. This

means the Proposed Regional Plan will only be five years old before it needs to be changed to implement the standards.

7. If we are required to implement the standards before the 10-year review date of the RPS or regional plan, we'd likely include this with another Schedule 1 review. This will reduce some of the costs of the Schedule 1 process for implementing the standard (particularly the process costs), but there will still be potentially significant costs associated with the time and effort of defending challenges to content. It's difficult to provide an accurate estimate of this cost, but assuming there would need to be significant changes to our RPS and Regional Plan, a best guess is that it would be between \$60,000 - \$100,000 for the RPS and between \$120,000 and \$180,000 for the Regional Plan (including labour).

Flow on of changes from RPS

8. Something to be mindful of is that changes to the RPS (from implementing the standards) may have a flow on to local plans. The flow on effect is unlikely to be from the direct implementation of the standards - it will be from the potential changes to provisions that are opened to challenge resulting from the Schedule 1 process to deal with consequential changes.
9. The preference would be to amend the RPS first before territorial authorities amend their plans. According to the draft standards, all the Northland local territorial authorities will be required to amend their district plans within five years of gazettal. This would mean the RPS should be amended within 3-4 years. However, as discussed, we would much prefer to wait until the RPS is due for its 10-year review.
10. A solution would be for the implementation of the standards in territorial plans to be delayed until the conclusion of any Schedule 1 consequential amendments of the RPS.

Definitions and metrics

11. We are supportive of having nationally consistent definitions and metrics. However, we have some concerns about implementing them.

Schedule 1 vs Section 58I

12. In many instances, the inclusion of definitions and metrics will not be like for like. This means that if councils want to include definitions but not change the effect of rules (in particular), changes will need to be made to rules.

13. For example, the draft standards have a definition for earthworks:

means any land disturbance that changes the existing ground contour or ground level

14. The draft standards also define land disturbance:

means the alteration to land, including by moving, cutting, placing, filling or excavation of soil, cleanfill, earth or substrate land

15. The Proposed Regional Plan for Northland defines earthworks as:

The mechanical disturbance of the surface of the land by excavation, cutting and filling, blading, ripping, contouring, or placing or replacing earth, but does not include:

- 1. the placement of cleanfill material, or*
- 2. land preparation, or*
- 3. construction, repair, alteration or maintenance of bores, or*
- 4. the maintenance of walking and other recreational tracks, or*
- 5. the placement of roading aggregates during road and track works, or*
- 6. digging post holes, or*
- 7. planting trees.*

16. The notable difference between the two definitions is the list of excluded activities. If we didn't want to change the effect of the rules for earthworks, we'd need to amend the earthworks rules to ensure they don't capture the list of excluded activities. We don't think it should be necessary to make this type of change using a Schedule 1 process but it's not clear that such a change is anticipated by Section 581(3)(d)¹.
17. Section 581(3)(d) requires "...any consequential amendments to any document as necessary to avoid duplication or conflict with the amendments". Relating this back to the earthworks example, we think it would be a stretch to say that the rule changes "are necessary to avoid duplication or conflict" with the inclusion of the definition of earthworks. The wording of the rules for earthworks does not duplicate or conflict with the definition of earthworks.
18. As stated previously, we'd like to make these types of changes without using the Schedule 1 process. The solution is to amend Section 581 or to allow a longer timeframe to implement so changes can happen at the same time as the RMA required 10-year review of plan and policy provisions.

Minimising the scope of the Schedule 1 process

19. There is a risk that the increased process costs for councils to incorporate the definitions and metrics will mean that councils may look for ways to minimise the cost of the Schedule 1 process.
20. A significant driver of Schedule 1 costs is the scope of the changes and therefore the opportunity to challenge provisions. The greater the scope of the changes, the more likely people will challenge it and councils (and others) must spend resources defending it. So, if we had to make the changes to the earthworks rules to address the exceptions, it would allow anyone with a concern with the rules to challenge any aspect of the rules – even though we have no intention of changing the scope of the rules.
21. If councils are forced to undertake a Schedule 1 process to incorporate the definitions before the 10-year review then one option they may consider is doing it in a way that would avoid opening the rules to challenge. One way of doing this would be to do a plan change to change the word 'earthworks' in the operational plan to an alternative name, for example, 'land modification'.

¹ We assume that such a change wouldn't come under S581(2)(b) as definitions and metrics are not a constraint or limit.

There is still a risk that someone could argue that by changing the name in the rules, it opens the ability to challenge any part of the rules, but the risk would be a lot less compared to changing the rules to address the exceptions.

22. The draft standards state the prescribed definitions apply to synonyms. The Oxford dictionary defines a synonym as:

A word or phrase that means the same as another word or phrase in the same language

23. It could be successfully argued that changing the word 'earthworks' to (for example) 'land modification' would mean the definition is not 'the same', given the revised definition excludes a list of activities. Perversely, this could result in a situation that there is even more variation in the terms used in plans to describe activities than there currently is (at least in the short term). The approach may only be a stop gap measure until the 10-year review (or the relevant provisions are subject to a plan change for other reasons) at which time the definitions in the standards would be incorporated. This is not necessarily an option that we would use, however, it is worth noting that it is an option that any council could adopt.

Timing of Schedule 1 process vs 581 process

24. Another issue we foresee is that if the insertion of the definitions leads to changes in the way the rules effect activities, then the Schedule 1 changes to the rules will need to happen before the insertion of the new definitions. This is because the insertion of the definitions will be immediately operative, whereas any consequential changes requiring a Schedule 1 process wouldn't be operative until any challenges are resolved.
25. Using the earthworks example; if the definitions were inserted before the Schedule 1 process concluded, then the earthworks rules would apply to the exceptions, which may mean, for example, consent would be required for activities that are intended to be permitted, or vice versa. A Schedule 1 process may take, for example, two years, which means it would need to start at least two years before the cut-off date for implementation to avoid this situation.
26. A solution would be to have a mechanism to exempt the insertion of a definition into an operative plan if a plan change is notified to address consequential changes resulting from the definition.

A full package of mandatory content

27. As highlighted with the earthworks example above, the goal of achieving consistency with the definitions may not be achieved and is likely to be costly for councils to implement. If the planning standards are to prescribe content, then we think it should be the whole package of content. So, using the earthworks example, the standards could prescribe the definitions and the suite of rules (and possibly policies and objectives) for all earthworks and land disturbance activities. Councils would then have two choices – either to adopt the content as prescribed without a Schedule 1 process, or to vary the standardised content via the Schedule 1 process. Accompanying the standardised content should be a section 32 evaluation. If councils want to vary the standardised content, they would do a s32AA evaluation, that is, the focus would only

be on the variation and councils would have the section 32 to use as the reference for the s32AA evaluation.

Mandatory headings and matters addressed

28. The standards prescribe mandatory section headings and then set out the matters to be included in each section if the matters are addressed in the plan and/or policy statement. We therefore understand the direction to mean that if the plan includes a prescribed matter it must go into that section, and that the plan and/or policy statement doesn't have to include the matter if it isn't addressed in the document. We support this approach (assuming our understanding is correct).
29. We also assume councils may include additional matters into the prescribed sections. In other words, councils are not constrained to just the matters listed for the section. Again, we support this.
30. A minor point – it's not clear what happens where the plan contains none of the matters listed. For example, there is a mandatory heading for "Evaluation and monitoring" but our Proposed Regional Plan doesn't contain any such content. Would the heading be included but with no content or, because there is no content, can we exclude the heading? If the heading must be included then our approach in this situation would be to include the text "Not included" or the like. We suggest it be made clear that the heading only needs to be included if there is content under it.

Themes

31. We are comfortable with the themes prescribed for RPS's. The themes generally align with the themes of our current RPS.
32. We do however have some concerns with the themes for regional plans, particularly as they apply to rules. The themes generally make sense as they would apply to policies, but not for rules. Our view is that there should be an option for rules to be packaged by activity.
33. Most people interact with a plan via the rules with an activity in mind – not a theme. Also, rules are written for an activity – that's what the RMA requires. The most efficient and effective way is to package them by activity.
34. Packaging rules by themes is going to result in a lot of cross-referencing and a considerable amount of confusion about where best to locate rules and which sections to cross reference from. The draft guidance material states:
For example rules relating to protecting biodiversity in wetlands, can be in the water chapter, the ecosystem and indigenous biodiversity chapter and in the relevant catchment chapter. However best practice is that the rule should only be written once (to avoid confusion and possible typos) and cross-referenced as many times as needed.

35. The example could also include ‘the coastal environment’ and ‘landscape, landforms and natural character’ chapters. Each wetland rule would have four or five cross-references. This is just one example – multiplying this across a plan, it will result in hundreds of cross-references. All of this is unnecessary if the rules were packaged by activity without the need to cross-reference to the themes.

Electronic accessibility and functionality standard

36. Instruction 16 in Table 18 requires regional coastal plan provisions to be identified (Section 64, RMA). While it is a minor issue, we don’t support this because:

- It is not a legal requirement of the RMA;
- We’re not aware of any benefit to plan users; and
- Identifying the coastal marine area provisions for the purposes of the Minister of Conservation’s sign-off is an administrative issue and can be addressed outside the plan.

37. If it’s to be retained, then the reference should be amended to “*the parts that relate to the coastal marine area*” to reflect the wording of Section 64(3), RMA.

38. Instruction 3 in Table 19 requires regional plans to be “...*spatially integrated with GIS system, allowing click to drill through different map layers and specific rules that apply to particular properties or activities and infrastructure services.*” While we do not envisage any major problem implementing this, we question the value of this functionality for users of regional plans. Unlike district plans, most of the regional plan rules have no geographic variation. It’d mean that for any one location most of the same plan rules will be applicable. It’s a bit different in the coastal marine area where there are zones and overlays, but as the vast majority is not in private title, we don’t envisage there would be much demand for this functionality.

Chapter form standard

39. Instruction 3 of the Chapter form standard, says:

“Chapters within *Part 2 – Tangata Whenua, Part 3 – District-Wide Matters and Part 4 – Area-Specific Matters* must use the order of headings below.”

40. We understand that the *Part 2 – Tangata whenua* is the only relevant part applicable in instruction 3 to a regional plan or regional policy statement. We understand this to mean that *Part 2 – Tangata whenua* must include all the headings as prescribed. However, it’s not clear whether content must be included under each heading as the requirement is only that we “must consider” the inclusion of the relevant content. We could be in a position where we are required to have the heading but there is no content under it.

41. Instruction 4 says;

“*Unless otherwise stated, regional policy statement chapters, regional plans chapters and combined plan chapters may contain headings in the order provided.*”

42. We assume this means that unless otherwise stated (and we cannot find anywhere where it is stated) it is up to the council whether it chooses to include one or more of the headings. We support this.
43. Similarly, instruction 5, 6 and 7 (for example) say that “*Local authorities must consider whether...*”. We interpret this to mean that council can choose whether to include the relevant content – which we support. However, there doesn’t seem to be any direction as to how we would demonstrate that we have considered whether the relevant content is to be included. Without any direction, our approach would likely be to provide advice to council and get a council resolution.
44. Table 26 “Rule table” requires setting out the activity status when compliance with the rule is not achieved. We have some concerns with this – which we’ll highlight using the following example of a rule from our Proposed Regional Plan:

Existing structures – permitted activity

The following structures in the coastal marine area that:

- 1) existed at 30 June 2004, or
- 2) were authorised,

are permitted activities:

- 3) stormwater outlet pipes, and
- 4) road and railway culverts, and
- 5) bridges, and
- 6) aerial and submarine telephone cables, and
- 7) aerial and submarine power cables, and
- 8) suspended and submarine pipelines, and
- 9) jetties up to 10 square metres, and
- 10) hard protection structures in the coastal marine areas within enclosed waters (refer I 'Maps'), and
- 11) boat ramps and concreted slipways less than 15 metres in length and less than four metres in width, and
- 12) dinghy skids used solely for private boat launching and retrieval, and
- 13) steps, and
- 14) wharves and jetties in the Coastal Commercial Zone, and
- 15) non-habitable buildings and structures on wharves and jetties in the Coastal Commercial Zone

provided:

- 16) the structure complies with C.1.8 'Coastal works general conditions', and
- 17) the structure is not within a Marina Zone, and
- 18) the structure owner can provide, if requested by the regional council:
 - a) clear written or photographic evidence the structure existed at 30 June 2004, or
 - b) a copy of the necessary approval(s) for the authorisation of the structure.

The RMA activities this rule covers:

- Occupation of space in the common marine and coastal area (s12(2)(a)).

45. Firstly, it's not clear what a non-compliance is versus being beyond the scope of the rule. Referring to the example, clearly if the structure doesn't comply with clauses 16-18 then it's a non-compliance. But what about an existing structure that doesn't come within the scope of clauses 1-15? Is a jetty more than 10m² (for example) considered to be a non-compliance?
46. Secondly, there could be many activity statuses depending on which rule requirement is not complied with, for example, depending on what zone the structure is in, whether it's in an area of outstanding natural character or not, and the type of structure.
47. Our preference would be to remove the requirement to set out the activity status when compliance with the rule is not achieved.

Mapping Standard

48. It's not clear whether a symbology set will be provided to councils. We assume it will be (to ensure consistency), and in that case, it will need to be compatible with council systems (in our case ArcGIS).

Signed on behalf of the Northland Regional Council by:

A handwritten signature in black ink, appearing to read 'M Nicolson', with a long horizontal line extending to the right.

Malcolm Nicolson (Chief Executive Officer) Dated: 15 August 2018

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