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Ministry for the Environment
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Attention: Draft National Planning Standards Team

Submission on Draft National Planning Standards

Introduction

The Taranaki Regional Council (the Council) thanks the Ministry for the Environment for the opportunity to make a submission on the Draft National Planning Standards.

The Council makes this submission in recognition of the purpose of local government set out in the Local Government Act 2002, and the role, status, powers and principles under that Act relating to local authorities. In particular, the Council's comments are made in recognition of its:

- functions and responsibilities under the Local Government Act 2002 and the Resource Management Act 1991 (RMA); and
- its regional advocacy responsibilities whereby the Council represents the Taranaki region on matters of regional significance or concern.

The Council has also been guided by its Mission Statement *'To work for a thriving and prosperous Taranaki'* across all of its various functions, roles and responsibilities, in making this submission.

The submission comments firstly on issues of poor problem definition and the likely costs to communities of implementing mandatory national planning standards. It recommends the RMA be amended to remove the requirement for mandatory national planning standards and that a thorough section 32 analysis of benefits, costs and alternatives be undertaken prior to any national planning standards being drafted. The submission then comments on those aspects of the national standards that are of particular interest or concern to the Council.

The Council has not followed a detailed clause by clause analysis of the planning standards but rather its comments are limited to major issues of concern that the Ministry for the Environment can consider and then make recommendations regarding changes to the RMA or to the planning standards.

Poor problem definition and costs to the community

While the Council understands the motivations of some participants under the RMA for promulgating national planning standards, there are, nonetheless, very real risks and costs to local communities of requiring the implementation of mandatory national standards that must be applied at the local level. Great care is needed, together with strong evidence-based justification, if plans are to be changed mandatorily without further consultation with local communities.

The Council considers that the national planning standards as drafted do not adequately define the problem to be addressed to the extent that justifies overriding local decision-making on issues affecting local communities.

The Council emphasises that it is the role of democratically elected members of local councils to formulate local plans designed to deal with local issues. If there is little or no flexibility to enable this to happen, many local communities will come to see national planning standards as an unwarranted imposition on their council's statutory duty to their communities.

Given this and other issues raised in this submission, the Council considers that the RMA should be amended to remove the requirement for mandatory national planning standards.

The Council also raises the issue of whether in this particular case, the benefits of having nationally defined planning standards, outweigh the costs of implementing those standards. Benefits may accrue to some users (e.g. large businesses and infrastructure providers who work across New Zealand) but there will be significant costs to councils and local communities of doing so. Local RMA professionals know their local and regional planning documents so are not assisted by the need for standardisation. Indeed, within Taranaki, some of these professionals, groups or organisations helped formulate the plans through informal and formal planning processes to suit Taranaki conditions.

The Council is concerned that the planning standards as currently designed will not achieve the stated outcome of 'less time and fewer resources required to prepare and use plans' (*National Planning Standards Consultation Document*, page 11). On the contrary, in our case, the planning standards will likely result in significant planning costs associated with detailed analysis of the Regional Policy Statement for Taranaki and the four operative regional plans to ensure there are no gaps and especially, no unintended consequences of implementing the standards. Given the significance of some of the required changes, particularly around some definitions, the Council believes that this will ultimately lead to a Schedule 1 process being followed. This is essentially requiring a re-write of our resource management planning documents.

The Council considers the issues being addressed in the national planning standards have not been adequately costed and are likely to have been significantly underestimated.

Furthermore, regional council's as a sector, will be faced with a choice of whether to invest in either complying with the national standards or continuing our efforts to improve resource management outcomes, particularly in land and water management. Councils cannot do both at the same time. The Council considers that further progress on achieving environmental outcomes is paramount and is a much superior use of resources than diverting those resources into revising provisions that have already been or will be

substantially agreed with the community. The Council notes that the Ministry's own analysis confirms that there will be no benefit to the natural environment with these changes.

Other options such as investing in the development of e-plans and promoting and encouraging more combined plans could well have been looked at or looked at more closely as part of a rigorous section 32 analysis. These could well have been adopted at lower cost with less disruption (and with a greater likelihood of achieving the desired results) in areas of the country where they were most needed. Instead, a blunt national instrument will see every local authority, (which includes all regional, district and city councils and unitary authorities), caught up in revising or changing their plans and assessing what those changes might mean for other parts of their plans, and for the future development of their districts or regions.

The Council again submits that the RMA be amended to remove the requirement for mandatory national planning standards and that a thorough analysis take place of the need for national planning standards and their benefits, costs and alternatives, prior to any national planning standards being promulgated.

The remaining parts of this submission address more specific matters of interest or concern with the draft national planning standards.

Structure standards

The Council has no great issue with the current structure standards proposed for regional policy statements and regional plans but notes that other councils may have very good reasons for adopting a different structure or adopting a different structure in future.

The Council notes that generally the structure outlined in the draft standards follows the theme-based approach used by this Council in its current regional policy statement and regional plans.

However, the Council queries several aspects of the structure standards.

Part 1 Introduction and general provisions

The Council notes that under section 59 of the RMA the main statutory purpose of regional policy statements is to state policies and methods to achieve integrated management of the resources of the region. This is the only statutory document under the RMA charged with this important role. This purpose should be given explicit recognition under Part 1 Introduction and General Provisions. The Council suggests the heading 'Integrated management' be added to the section 'How the policy statement works'.

Part 2 Tangata whenua

It is not obvious where the significant resource management issues of iwi are dealt with. Part 2 of the national planning standards deal with tangata whenua/local authority relationships and iwi and hapu planning documents etc. but it is not clear where the section 62(1)(b) obligation for a regional policy statement to state the significant resource management issues of iwi authorities, is given effect to. The Taranaki Regional Council has importantly agreed with tangata whenua to include tangata whenua issues throughout its plans in future rather than have these sitting in a separate chapter. It may be that tangata

whenever issues are dealt with in Part 4 under 'Themes' but if this is the case, it is not obvious. The national planning standards need to make this clear.

Part 4 Themes

The Council queries the scope of the 'Environmental risk' section in the structure standards for both regional policy statements and regional plans. Does this cover natural hazards or is it intended to address environmental risk issues over all themes, for example, risks to water quality from water allocation policy or the risk to indigenous biodiversity from animal and plant pests? Section 6(h) of the RMA states that the management of significant risks from natural hazards is a matter of national importance and the Council would have expected that natural hazards would have been explicitly mentioned in the national planning standards.

In addition, dealing with the effects of climate change does not appear to be explicitly mentioned, despite its inclusion in section 7(i) of the RMA. This may also be covered by the 'environmental risk' section but it is not obvious and the Council would again have expected this matter to be explicitly recognised and provided for in the national planning standards.

The Council notes that some topics included in its regional policy statement are not provided for in Part 4 of the draft national standards. Examples include the built environment, amenity values and minerals. It is not clear why some topics or issues have been left out and others included. The Council notes that the planning standards provide that other sections can be included if these are required.

The Council submits that the structure or form of regional policy statements and regional plans should follow their function. This should provide flexibility to allow these important instruments to respond to changes in the policy landscape rather than be locked into a particular structure with potential for unintended consequences.

Implementation timeframes

The planning standards propose that local authorities must amend their planning documents within 5 years of gazettal of the planning standard or within 7 years for those councils who have recently completed a plan review.

The Council considers that the national planning standards impose greater risks for regional councils if changes are made outside of the normal planning cycle. There is an enhanced litigation risk from two aspects:

- the risk of litigation from choosing to not follow the Schedule 1 process for plan restructuring and insertion of definitions; and
- the risk of required hearing time and appeals to redraft and notify planning documents using a Schedule 1 process.

In their current form, the draft standards will increase litigation risks and costs, not reduce them.

The Council submits that rather than impose an arbitrary time period (5 or 7 years) within which plans must be amended, any changes required to plans to implement national planning standards should apply at the next full review of the plan. This will ensure that the

planning standards can be adopted or considered in the context of other policy changes in a fully integrated way. The Council has not seen any evidence of the urgency for the national planning standards that suggests a specific date is needed for implementing the standards. In the Council's view it is much less risky and makes more economic sense to introduce the changes in conjunction with a full review of all provisions of a plan the provisions for which will already be factored into councils' Long Term Plans.

This will also be more cost-effective for councils as it will provide councils with more time and resources to commit to existing priorities rather than diverting resources away from more urgent policy work. In this Council's case, we are in the middle of a coastal plan review with ongoing work on the fresh water and land plans occurring with notification of a reviewed plan expected in the near future.

Any requirement to implement the standards outside of a scheduled plan review process will incur significant additional costs for councils in just having to reformat plans and these costs will be even more significant if the changes trigger the RMA schedule 1 process.

There is statutory precedent for this approach in the *National Environmental Standards for Sources of Human Drinking Water* where regional councils are not required to amend regional plans that do not comply with Regulation 10, until the next scheduled review of the plan (or a relevant plan change or variation).

The Council requests that more work be done to test implementation risks of the national planning standards and that implementation be aligned with the normal plan review cycle. This would be more efficient, reduce costs to ratepayers and allow important policy and plan making work to be delivered within existing timeframes and budgets.

Electronic accessibility and functionality (e-plans)

The national planning standards will require all councils to transition to e-plans. We understand that there is considerable variation around the country in what councils are doing in developing e-plans. Most councils have some form of web-based RMA plans but few have fully geo-spatial enabled and searchable on-line e-plans. Furthermore, councils have different software platforms to enable e-plans and there are variable costs in transitioning.

The Taranaki Regional Council is in the early stages of looking into options for a fully functional e-plan.

All councils have been left to deal with this issue themselves, which is inefficient as it involves each council separately going through the same process of assessing platform suitability, finding and procurement.

This is an area that would benefit from a more coordinated national approach and the Council submits that the Ministry take a national leadership role to facilitate the adoption of a standard set of specifications that would be common for all councils. The cost of transitioning to an e-plan platform is also potentially high and the Council strongly recommends that the Ministry create a fund to assist councils in the transition.

Spatial planning tools

The planning standards prescribe a specific set of spatial planning tools and how they must be used.

District plans must use the spatial planning tools listed in the planning standard whereas regional plans can use other types of spatial planning tools – provided they do not overlap or conflict with the spatial planning tools listed in the national planning standard.

The Council considers that in principle, listing a set of spatial planning tools that must be used and how they are to be used unnecessarily constrains councils in the range of techniques they may want to use to manage local environmental effects. They create yet another opportunity for legal challenge, added cost and further delay to the process of getting an operative plan in place. They may also discourage fresh approaches and new ideas in managing environmental effects that may hold back proposals to use, develop or protect resources.

This is an area that the Council considers should be left to councils and the community themselves as part of good planning practice in deciding what type of spatial planning tools to apply to particular issues or areas. The Council submits that spatial planning tools be removed from the national planning standards.

If this recommendation is not adopted, the Council considers that a change to the proposed planning standard for zones (with respect to regional spatial planning tools) be made. This standard limits the use of zones to within the coastal marine area (CMA). The Council cannot see why zones in regional plans must be limited to the CMA when they are a well understood spatial planning tool within some regional plans. Given the complexity of the matters that are addressed in regional plans, it seems appropriate to this Council, for this spatial tool to also be available outside of the CMA.

Definitions

The Council's preliminary estimate is that at least 37 terms in the Definitions Table of the national planning standards, are used in the Council's regional policy statement and regional plans (this excludes definitions of terms defined by the RMA which are also included in the Council's planning documents).

The mandatory definitions are potentially problematic for the Council given their prescriptiveness. The Council has not undertaken an exhaustive analysis but a number of the definitions are likely to have wide-ranging implications for objectives, policies and rules that include them. If this results in changes to plan coverage, or meaning or plan outcomes, then a Schedule 1 process will be required to 'fix' the issue.

Definitions that will require much closer scrutiny and testing for their potential legal effect on all affected plan provisions include the following:

abrasive blasting	accessory building	aquifer	bore
boundary	building	cleanfill	community facility
drain	drinking water	dry abrasive blasting	
dust	earthworks	educational facility	
fertiliser	functional need	greywater	groundwater
height	industrial activity	intensive primary production	

landfill	land disturbance	primary production
quarry	reclamation	residential activity
reverse sensitivity	rural industry	sewage sign
site	small scale renewable	electricity generation
stormwater	swale	wastewater wet abrasive blasting

Even a preliminary analysis has identified significant concerns relating to the proposed definitions. By way of example, concerns have been identified for the following two definitions, (and there will be others):

1. **Site:** The definition of site is used purely in a legal sense around land tenure, titles and lots. Site in a regional plan sometimes refers to an area where an activity is occurring and in that sense is not incongruent with the definition as proposed. However, site is also commonly used to define areas which have a common value, for example, 'sites of significance' and where the property boundary is only relevant for a resource consent application. If the current definition is retained, regional plans would have to use some other term to refer to these areas, as 'overlay' does not suit.
2. **Stormwater:** The definition of stormwater captures all precipitation, i.e. water, not just precipitation or runoff which has been concentrated in some form. As written the definition would exclude rain and stormwater which enters common stormwater management devices such as a soakage pit, or stormwater retention areas which are not necessarily a waterbody.

The Council submits that more work is required on all definitions before a decision is made to include any definitions in the national planning standards.

Conclusions

The Council again thanks the Ministry for the Environment for the opportunity to submit on the draft national planning standards.

The Council considers that the RMA should be amended to remove the requirement for mandatory national planning standards.

The Council considers that a more rigorous analysis takes place which looks critically at problem definition and the need for national consistency, prior to any national planning standards being promulgated. This should include identifying and costing all unintended, expensive and unproductive consequences that are likely to occur and that take the Council away from improving environmental quality.

Yours faithfully



BG Chamberlain
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