



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

Draft National Planning Standards

TO: Ministry for the Environment

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Submission on behalf of the Resource Management Law Association of New Zealand Inc

Introduction

1. This Submission is made by the Resource Management Law Association of New Zealand Inc (**RMLA**).
2. The RMLA is concerned to promote within New Zealand:
 - a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework
 - b. Excellence in resource management policy and practice
 - c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.

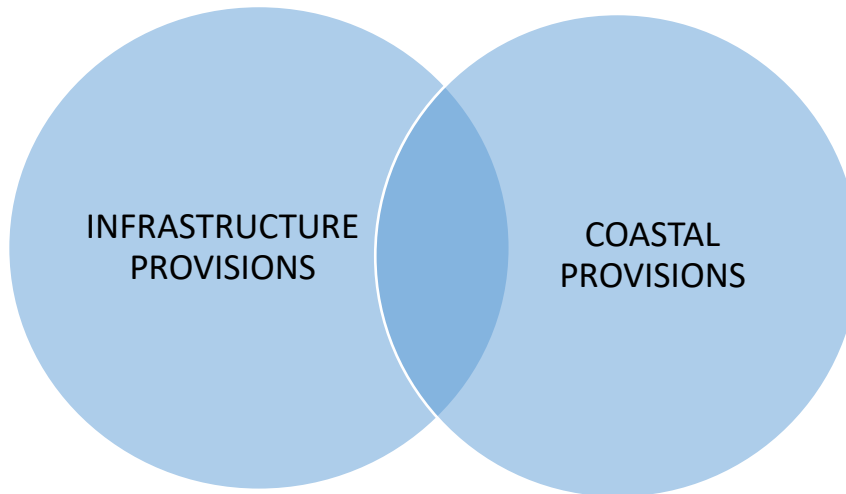


Figure 1: Example of how the subject matter of provision overlaps

9. The provisions in the overlap might relate, for example, to structures in areas with outstanding natural character in the coastal environment. The requirement for provisions regarding the management of infrastructure and energy matters to be included in one chapter, and provisions regarding the management of water and the coastal environment in another chapter, fails to recognise the extent to which such provisions overlap. It also has the potential to perpetuate issues of conflict between provisions, rather than supporting integrated decision-making at a plan level. Sufficient flexibility is required to ensure that matters relating to more than one topic may appear in one, other or multiple chapters/sections.
10. An alternative approach would be to attempt to define themes to further minimise overlap. We do not support that approach as it is likely to result in artificial distinctions between topics, and is less consistent with integrated management.

Implementation

11. Proactive implementation training and monitoring of the effectiveness of implementation of the Standards will be important to ensure the goals for standardisation are achieved.
12. The 5 and 7 year implementation timeframes will represent a resourcing challenge to local authorities in terms of time, staff and cost. Comprehensive implementation guidance including good practice examples and on-the-ground support will be critical to assist in

meeting this challenge and ensure that the initial cost of implementing the standards is not so significant that it will outweigh any benefits that could be achieved from having them in place.

13. The present implementation timeframes are likely to result in significant “planning fatigue” and inefficiencies for local authorities that have recently completed a major plan review exercise, such as Auckland Council and Christchurch City Council. Consideration should be given to excluding such local authorities from having to implement the draft Standards at all or, at the very least, those Councils should not be required to implement the draft Standards until they undertake their next plan review process.
14. At present, the Standards that will comprise a whole planning instrument (i.e. structure, form and content) are presented separately. A template that shows how the individual Standards look when brought together in a planning instrument is likely to assist implementation. For example, the Ministry for the Environment (“MfE”) could make available at least some of the planning instruments that have been prepared under its “Council pilot programme” as “best practice” examples for other Councils to use.

Scope for consequential amendments

15. Section C (Recognition in Plans) in each Standard sets out the mandatory and discretionary directions. Mandatory directions and any consequential amendments that are needed to avoid duplication or conflict with amendments must be implemented without following a Schedule 1 process. Decisions about whether consequential amendments go beyond the scope of amendments authorised by section 58I (3)(d) of the RMA are likely to be difficult. We foresee this as a particular issue where the Standards require use of a standard definition, and where a planning instrument already contains a suite of provisions that are based around a different definition (e.g. “earthworks” or “height”).
16. The objectives of the standard will be undermined if scope decisions on similar issues are litigated around the country. The extent of the Environment Court’s jurisdiction to consider these issues is also unclear: we anticipate that the declaration provisions are likely to apply but if they are not, parties may seek to use judicial review to challenge scope decisions. We consider that the High Court would not be the appropriate place for these issues to be determined, and suggest that consideration is given to an amendment to section 310 (as necessary) to ensure that Environment Court declaratory powers are available.

Information that should be provided in a s 32 evaluation rather than in plans

17. Several aspects of the Standards direct Councils to detail information in the planning document that should instead be provided in s32 evaluations which are prepared to guide and record the plan development process. This includes summaries of the district land area, economic activity, population etc. There is an opportunity to make plans shorter and more relevant by removing this content from the plan and instead ensuring s32 evaluations are made easily available on Council websites. The Ministry could consider the extent to which it can include requirements around the availability of s32 evaluations in the draft Standards.

Private Plan Changes

18. In the private plan change process the proposer – rather than the Council – sets the agenda and start time, often with a desired time for the conclusion or resolution of the private plan change in mind. Therefore, Councils may feel obliged to process private plan changes ahead of Council-led plan reviews. Private plan changes will be required to comply with the contents of the Standards, but issues arise as to how sequencing will occur and this adds an additional layer of complexity to the “consequential amendments” issue addressed above. Guidance on this issue would likely assist.

Variations and proposed instruments

19. The standards all apply to regional policy statements, regional plans, district plans and combined plans. Yet the proposed standard itself refers to s58I of the RMA. In that section “document” also includes a proposed plan, a variation, and a change. It would therefore be useful to clarify that the standard applies to variations, changes and proposed instruments as well.

Additional matters that could have usefully been included in the draft Standards

20. The draft Standards appear to have missed an opportunity to address a range of matters that would have assisted to improve planning instruments and which many practitioners were expecting to see included in the Standards. For example, we anticipated that the draft Standards would include a comprehensive and well-tested set of provisions relating to infrastructure activities, given these are often lineal networks which cross local authority boundaries. They are accordingly exactly the type of activities that would most benefit from having a common and clear set of rules throughout the country. Hopefully such matters can be considered in future draft Standards.

21. **Recommendations** relating to overarching issues:

- a. MfE should provide guidance on scheduling or staging of the implementation of Standards to ensure Councils can undertake this work as effectively and efficiently as possible. This guidance needs to address how consequential amendments should be undertaken (specifically, how such consequential amendments should be staged and when they will reach the point of having to follow the Schedule 1 process).
- b. MfE should consider excluding such local authorities who have recently completed a major plan review exercise from having to implement the draft Standards at all or, at the very least, those Councils should not be required to implement the draft Standards until they undertake their next plan review process.
- c. Support integrated planning by providing sufficient flexibility to address overlapping issues. This is addressed further below in relation to specific draft Structure and Form standards, as relevant.
- d. Assistance with implementation and effectiveness monitoring of the standards could include:

- i. The provision of targeted MfE support to a group of local authorities within a region to ensure consistent implementation of the Standards at the regional and sub-regional level;
 - ii. Provision of a review service prior to confirming a non-schedule 1 implementation or prior to public notification of amendments introduced alongside Schedule 1 plan changes; and
 - iii. Regular workshops, training and review sessions with practitioners to ensure feedback on and learnings from implementation of the Standards can be captured, analysed and responded to in a timely manner to benefit all territorial authorities.
- e. Comprehensive implementation guidance that is issued prior to or at the same time as gazettal of the Standards.
 - f. MfE to work with local authorities to identify opportunities to share resources, disseminate learnings and maximise potential efficiencies relating to the implementation of the Standards.
 - g. MfE to create consolidated planning instrument templates, which are released as part of the guidance prior to or at the same time as gazettal of the Standards.
 - h. MfE to advise the Minister on the appropriateness of an amendment to s 310 to ensure Environment Court declaratory powers are available to determine issues of scope to make consequential changes.
 - i. Amend the Standards to remove directions that planning instruments include content that is properly to be included in s 32 evaluations. Require that s 32 evaluations are available on council websites.
 - j. MfE to produce guidance (to be issued either prior to or at the same time as gazettal of the Standards) that provides advice as to how Councils can best manage sequencing and consequential amendments in circumstances where they are processing private plan changes concurrently with making changes to implement the Standards.
 - k. MfE to provide on-the-ground support to Councils and planning practitioners preparing or processing private plan changes to ensure that the efficiency benefits anticipated by the introduction of the Standards are realised.
 - l. Clarify that standards apply to proposed instruments, changes and variations.

S-RPS: Draft Regional Policy Statement Structure Standard

- 22. Water Conservation Orders (“WCOs”) are not currently listed as a mandatory section heading in Part 1 of Table 3. Although WCOs will not be relevant to all regions, we suggest that their inclusion in this section list would still provide a useful indicator for those regions that do have waterbodies subject to WCOs and wish to list those WCOs among the other

National direction instruments. An instruction should make it clear that the inclusion of this heading is only mandatory for those local authorities for which it is relevant.

23. The instruction regarding the proposed Land chapter in Part 4 of Table 3 states: "If land matters are addressed in the regional policy statement they must be included in the Land chapter. Local authorities must consider whether to combine this chapter with the Water chapter". There is a corresponding instructions for the Water chapter. It is not stated how the two chapters are to be combined, or whether local authorities may also consider combining other chapters. This creates ambiguity and is contrary to the Standards stated intent of creating clarity and uniformity.
24. It is also not stated why specific instructions have been given regarding combining the Land and Water chapters, in contrast to chapters regarding other themes, where there is similarly (or more likely) to be a degree of overlap. For example, "Landscape, landforms and natural character", "Ecosystems and indigenous biodiversity", "Environmental risk" and "historic heritage" can all be found on land or in the coastal environment. As currently drafted, the Standard would indicate that where these matters overlap, they should be duplicated or even triplicated, which will render the Regional Policy Statement ("RPS") repetitive and over-long. Further, if the Land and Water chapters are combined, this combined chapter will overlap with nearly every other chapter, with the end result being neither efficient nor user friendly.
25. This is made more difficult by the ambiguity of what exactly falls into which chapter. While "Land" is given the same definition as in s2 of the RMA, it is unclear whether a "land matter" must relate to land primarily, exclusively, or in any capacity? The degree of potential overlap between themes and chapters might be clearer, if the extent of each theme is more clearly defined or explained.
26. The broad scope of each theme also serves to limit the value of the "Special topics" chapter, which may only be used to address "other matters or topics that cannot be addressed under the other chapters". If land and water matters are defined widely, there will be very few matters that could not be addressed within those chapters (or combined chapter) and that could therefore legitimately fall to be considered in the "Special topics" chapter.
27. It may be more useful to specify that the Special topics may be used for matters that, despite relating to another theme, are more appropriately discussed within a discrete chapter. For example, a region with an identified seismic vulnerability may wish to address earthquake matters distinctly from general Environmental risk, or regions with significant geothermal resources may find it preferable to approach this in a chapter separate from other matters relating to Water or Infrastructure and Energy.
28. There is also no clear pattern to the order in which the themes are listed, being generally alphabetic with the exception of "Landscape, landforms and natural character." Given that all other themes are ordered, this appears to be a result of an error, and will impede the navigability of the proposed RPS until it is rectified.
29. **Recommendations:**
 - a. Include WCOs in the list of National direction instruments (where relevant).

- b. Provide an instruction or guidance note clarifying how chapters may be combined and whether chapters other than the Land and Water chapters may be combined.
- c. Amend the instruction requiring all matters relating to a given theme to be included in that chapter, so that the extent of potential overlap and repetition may be reduced. It would be useful to substitute this with an instruction about how local authorities should manage and prioritise matters that may apply to multiple themes.
- d. Provide an instruction or guidance note that more clearly explains the intended scope or extent of each theme, and the degree to which a matter must relate to a given theme in order for its inclusion in that chapter to be mandatory.
- e. Amend the instruction relating to “Special topics”, to provide for its use even when the matters may relate to another theme listed in Part 4.
- f. Move the “Landscape, landforms and natural character” theme so that the list of themes is properly alphabetised.

S-RP: Draft Regional Plan Structure Standard

- 30. The list of National direction instruments in Part 1 of Table 4 does not include any relevant WCO. As for the draft RPS Structure Standard, we suggest that the list of National direction instruments should be amended to include any relevant WCO. An instruction should make it clear that the inclusion of this heading is only mandatory for those local authorities for which it is relevant. It would also be useful to make reference to the RPS as providing direction at a regional level, where a regional plan is prepared separately from an RPS.
- 31. Part 3 of Table 4 states that “if the local authority includes issues and objectives in a separate section this part must be used”. This instruction appears contrary to the instruction regarding objectives in the draft Chapter Form Standard (see page 63 of the draft Standards), which states “where provided, objectives must be grouped together”. This would appear to imply that objectives are to be grouped together within chapters, contrary to the requirement to combine all objectives together in one place in the draft Regional Plan Structure Standard.
- 32. As per our comments in paragraphs 21 to 26 of this submission, the following aspects of Part 4 of Table 4 require further consideration and amendment:
 - a. There is a lack of clarity as to the process for combining chapters, and whether local authorities’ power to combine chapters is limited to Land and Water matters.
 - b. Requiring all matters relating to a theme be included in that chapter will create unnecessary duplication and impede the usability of the plan.
 - c. The intended scope or extent of each theme is unclear and would benefit from further definition or clarification.

- d. The breadth of what can be covered under each theme (particularly the Land and Water themes) could serve to limit the utility and usefulness of the “Special topics” chapter, to the point of rendering it redundant.
 - e. The list of themes is not alphabetically ordered.
33. Unlike the draft Structure Standard for District Plans, the draft Structure Standard for Regional Plans does not provide for a “Strategic Direction” chapter. We suggest that there should be consistency between the two planning instruments in this regard and that even aside from such matters, it would be useful for Regional Plans to include a “Strategic Direction” chapter.
34. **Recommendations:**
- a. Include WCOs in the list of National direction instruments (where relevant) and the RPS as providing relevant regional direction.
 - b. Clarify whether objectives are to be grouped together within chapters, or within one section of the Regional Plan.
 - c. Provide an instruction or guidance note clarifying how chapters may be combined and whether chapters other than the Land and Water chapters may be combined.
 - d. Amend the instruction requiring all matters relating to a given theme to be included in that chapter, so that the extent of potential overlap and repetition may be reduced. It would be useful to substitute this with an instruction about how local authorities should manage and prioritise matters that may apply to multiple themes.
 - e. Provide an instruction or guidance note that more clearly explains the intended scope or extent of each theme, and the degree to which a matter must relate to a given theme in order for its inclusion in that chapter to be mandatory.
 - f. Amend the instruction relating to “Special topics”, to provide for its use even when the matters may relate to another theme listed in Part 4.
 - g. Move the “Landscape, landforms and natural character” theme so that the list of themes is properly alphabetised.
 - h. Consider whether Regional Plans might also benefit from inclusion of a “Strategic Direction” chapter.

S-DP: Draft District Plan Structure Standard

35. The list of National direction instruments in Part 1 of Table 5 does not include any relevant WCO. As for the draft RPS and Regional Plan Structure Standards, we suggest that the list of National direction instruments should be amended to include any relevant WCO. An instruction should make it clear that the inclusion of this heading is only mandatory for those

local authorities for which it is relevant. It would also be useful to make reference to the relevant RPS as providing direction at a regional level.

36. As worded, Part 3 of Table 5 would require every district plan to have a “Strategic Direction” chapter, as district plans will necessarily include provisions on significant resource management matters. We suggest the instructions for this part of Table 5 should be amended to clarify that a Strategic Direction chapter is only required where the local authority is including specific and separate provisions regarding resource management matters that are of particular significance to the district.
37. There does not seem to be a pattern to the manner in which the district-wide matters listed Part 4 of Table 5 have been ordered. As it is compulsory for local authorities to include these chapters (and presumably in this order listed), it would seem prudent for some consideration to be given to what an appropriate order should be. Alphabetical order would seem suitable and easy to implement. Alternatively, related chapters (e.g. National environmental values and Community values) could be linked.
38. References to “the prevention or mitigation of adverse effects from the storage, use, disposal or transportation of hazardous substances” as a function of territorial authorities were removed from s31 of the RMA by the Resource Legislation Amendment Act 2017. The inclusion of “hazardous substances and contaminated sites” as a section in the Environmental risks chapter seems contrary to this clear signalling of a move away from territorial authorities’ responsibility in this area.
39. It is not clear why Infrastructure and Energy and Subdivision need to be made separate topics under the draft Standard. For example, Infrastructure and Subdivision both can be found under the Auckland-wide heading in the partly operative Auckland Unitary Plan (“AUP”).
40. In Part 5 of Table 5, using the names of zones for naming zone chapters seems likely to cause confusion. For example, having a number of zones including one called “Rural zone”, in a chapter called “Rural zones” would make the plan difficult to use and navigate. The same can be said of the “Commercial zones”, “Industrial zones” and “Residential zones” chapters.
41. As with Part 4 of Table 5, there is no discernible pattern to the manner in which the area-specific matters listed in Part 5 of that table have been ordered. As it is compulsory for territorial authorities to include these chapters in this order, it would seem prudent for some consideration to be given to what the appropriate order is. The ordering of the sections within the Special purposes zones chapter in particular would benefit from being alphabetised.
42. **Recommendations:**
 - a. Include WCOs in the list of National direction instruments (where relevant) and the RPS as providing relevant regional direction.
 - b. Clarify that a “Strategic Direction” chapter is only required in respect of resource management matters that are of particular significance to the district.

- c. Arrange the district-wide matters in a coherent manner (e.g. alphabetically; thematically).
- d. Delete the “hazardous substances and contaminated sites” section from the Environmental risks chapter.
- e. Amend the chapters so that Infrastructure and energy and Subdivision fall within General district-wide matters or provide clarification as to the rationale for their exclusion.
- f. Amend the names of the zone chapters so that they are not the same as zones within those chapters.
- g. Arrange the area-specific matters and sections within the Special purpose zones alphabetically.

S-CP: Draft Combined Plan Structure Standard

- 43. The list of National direction instruments in Part 1 of Table 6 does not include any relevant WCO. As for the draft RPS, Regional Plan and District Plan Structure Standards, we suggest that the list of National direction instruments should be amended to include any relevant WCO. An instruction should make it clear that the inclusion of this heading is only mandatory for those local authorities for which it is relevant.
- 44. As per our comments in paragraphs 21 to 26 of this submission, the following aspects of Part 3 and Part 4 of Table 6 require further consideration and amendment:
 - a. There is a lack of clarity as to the process for combining chapters, and whether local authorities’ power to combine chapters is limited to Land and Water matters.
 - b. Requiring all matters relating to a theme / region-wide matter be included in that chapter will create unnecessary duplication and impede the usability of the plan.
 - c. The intended scope or extent of each theme / region-wide matter is unclear and would benefit from further definition or clarification.
 - d. The breadth of what can be covered under each theme / region-wide matter (particularly the Land and Water themes / matters) could serve to limit the utility and usefulness of the “Special topics” chapters, to the point of rendering those chapters redundant.
 - e. The list of themes / region-wide matters is not alphabetically ordered.
- 45. The various topics in Part 4 of Table 6 are referred to as “Region-Wide Matters”. This is inconsistent with Part 4 of Table 4 (in the draft Regional Plan Structure Standard), where these topics are referred to as “Themes”. This has the potential to create confusion and inconsistency between Regional Plans and the corresponding (Regional Plan) sections of Combined Plans.

46. It is also not clear why Infrastructure and Energy and Subdivision need to be made separate topics in Part 4 of Table 6. As noted, Infrastructure and Subdivision both can be found under the Auckland-wide heading in the AUP.
47. As with the draft District Plan Structure Standard, using the names of zones for naming zone chapters in Part 6 of Table 6 seems likely to cause confusion. For example, having a number of zones including one called “Rural zone”, in a chapter called “Rural zones” would make the plan difficult to use and navigate. The same can be said of the “Commercial zones”, “Industrial zones” and “Residential zones” chapters.
48. There is also no discernible pattern to the manner in which the area-specific matters listed in Part 6 of Table 6 have been ordered. As it is compulsory for local authorities to include these chapters in this order, it would seem prudent for some consideration to be given to what the appropriate order is. The ordering of the sections within the Special purposes zones chapter in particular would benefit from being alphabetised.
49. Unlike the draft Structure Standard for District Plans, the draft Structure Standard for Combined Plans does not provide for a “Strategic Direction” chapter. We suggest that there should be consistency between the two planning instruments in this regard and that even aside from such matters, it would be useful for Combined Plans to include a “Strategic Direction” chapter.
50. **Recommendations:**
 - a. Include WCOs in the list of National direction instruments (where relevant).
 - b. Provide an instruction or guidance note in Part 3 and Part 4 clarifying how chapters may be combined and whether chapters other than the Land and Water chapters may be combined.
 - c. Amend the instructions in Part 3 and Part 4 requiring all matters relating to a given theme to be included in that chapter, so that the extent of potential overlap and repetition may be reduced. It would be useful to substitute these instructions with an instruction about how local authorities should manage and prioritise matters that may apply to multiple themes.
 - d. Provide an instruction or guidance note in Part 3 and Part 4 that more clearly explains the intended scope or extent of each theme / region-wide matter, and the degree to which a matter must relate to a given theme / region-wide matter in order for its inclusion in that chapter to be mandatory.
 - e. Amend the instruction relating to “Special topics” in Part 3 and Part 4, to provide for their use even when the matters may relate to another theme / region-wide matter listed in Part 3 or Part 4 respectively.
 - f. Arrange the themes / region-wide matters in Part 3 and Part 4 a coherent manner (e.g. alphabetically).

- g. Consider whether topics in Part 4 should be referred to as “Themes” rather than “Region-Wide Matters”, to be consistent with the draft Regional Plan Structure Standard.
- h. Amend the chapters in Part 4 so that Infrastructure and Subdivision fall within General region-wide matters or provide clarification as to the rationale for their exclusion.
- i. Amend the names of the zone chapters in Part 6 so that they are not the same as zones within those chapters.
- j. Arrange the area-specific matters in Part 6 and sections within the Special purpose zones alphabetically.
- k. Consider whether Combined Plans might also benefit from inclusion of a “Strategic Direction” chapter.

S-IGP: Draft Introduction and General Provisions Standard

- 51. In the Introduction chapter, it would be helpful to say how far back the obligation to state the date policy statement or plans became operative extends, or whether it is only a pro-active requirement. As to clause 4c, it is not clear what the obligation is. It simply states: “local strategic scene setting”. As to clause 5a, we query the value in requiring inclusion of information as to the role of the policy statement or plan. As to clause 6a it would be helpful to include a guide as to the expectations of the standard as to “key information about the region and/or district that is of relevance from a resource management perspective”.
- 52. In the “How the Policy Statement/Plan Works” Chapter, it is not clear why the statutory requirements in ss60, 64, 65 or 73 of the RMA need to be explained in the relevant planning document. This is likely to add unnecessary detail. As to clause 7b and c, there seems to be a double up of the information required. It would be helpful to clarify the expectation of 7b, as that would inform the operation of 7c as well. As to clause 8, there seems to be a double counting of the requirements of this part of the standard. It would be helpful for example to outline the requirements of clause 8e “an outline of the administrative or other provisions of the RMA that apply” as that may reduce the need for some of the other requirement of 8 a – f. As to clause 10, the required information could be helpful, but again it seems to double up on the statutory provisions of the RMA which explain these matters.
- 53. **Recommendations:**
 - a. Generally do not require the inclusion of material that repeats the Act unless there is a good reason for it.
 - b. Where information required by the Act must be stated in a planning instrument, provide guidance as to the level of detail required.

S-TW: Draft Tangata Whenua Structure Standard

54. It is useful to ensure that tangata whenua matters are given appropriate prominence in planning instruments, consistent with the Act's requirement to take into account the principles of the Treaty. However, the s 8 obligation applies when exercising all functions and powers under the Act, and we question whether separation of tangata whenua matters into a separate chapter appropriately discharges that duty in a sufficiently integrated way. We note from the s 32 evaluation that this issue was specifically considered in the consultation with tangata whenua over the content of this standard, and that the intention is to strike a balance between placing "process" matters up front in a prominent way and integrating "content" matters throughout. As we have said in other parts of this submission, we are not convinced that the standards adequately provide for that integration.

S-SD: Draft Strategic Direction Structure Standard

55. We have no comments on this draft Standard.

S-DWM: Draft District Wide Matters Standard

56. The Natural Environmental Values chapter directs district councils to include in this chapter sections on:
- a. the coastal environment (if relevant);
 - b. landscape, landforms and natural character;
 - c. other section so address other particular natural environment values on a district wide basis that are not addressed within specific zones;
 - d. matters relating to ecosystems and indigenous biodiversity.
57. Natural character is included in the same section as landscape and landforms. Natural character is not defined in the RMA, but preservation of the natural character of particular areas from inappropriate subdivision, use and development is specifically provided for in s6(a) of the RMA, separate from outstanding natural features and landscapes, which are provided for in s6(b). Landscapes and features must meet a threshold to be a matter of national importance which does not apply to natural character – this distinction is not well recognised by clause 7a (see paragraph 59 below). In addition, Policy 13(2) of the New Zealand Coastal Policy Statement (NZCPS) directs that it must be recognised that "natural character is not the same as natural features and landscapes or amenity values", and goes onto identify the matters that may be included in the concept of 'natural character' in the coastal environment. While the Standards do not preclude planning instruments providing for natural character distinctly from landscape and natural features within the 'landscape, landforms and natural character' section, this grouping may not encourage local authorities to apply best planning practice when identifying areas with high or outstanding natural character and developing provisions and methods to manage outcomes in respect of natural character.
58. The intention of clause 6c, which refers to "objectivesthat will ensure the life supporting capacity of these systems are safeguarded" is unclear. Section 5 includes a requirement to

safeguard the life-supporting capacity of air, water, soil, and ecosystems as part of sustainable management. Other parts of s 5 are also relevant, as are relevant parts of s 6 and 7. It would be broader, and more appropriate, to direct councils to include in this chapter objectives, policies and methods, including rules (if any) to implement the council's functions (referring to s 31 matters) and duties (referring to part 2 matters and the matters that must be addressed in district plans) in relation to the coastal environment. In that case it would not be necessary to refer to management of effects in the coastal environment (clause 6d) as this would be covered by reference to council's functions. This submission also applies to clause 7b, and the same formulation could be used for each of the subsequent District Wide Matters chapters.

59. "Landforms" is not a term used in the RMA. The RMA refers to landscapes and features. If the term landforms is intended to cover features, and perhaps something more, we suggest that it is defined.
60. Clause 7a refers to landscapes, landforms and natural character that are outstanding, significant or valued by the community. "Significant" is not a term normally associated with landscapes, landforms or natural character. Natural character is to be preserved from inappropriate subdivision, use and development regardless of whether it meets a threshold of value (beyond having natural character). We suggest that this provision could be amended to better align with the RMA.
61. Clause 9 refers to "biodiversity" which is not a term used in the RMA, and we suggest that either the term biological diversity is used or "biodiversity" is defined by reference to the RMA definition of biological diversity.
62. The Community Values chapter requires, in relation to *Sites of significance to Maori*, an explanation of how iwi are engaged. Engagement may be with a group other than iwi, and we suggest that it would be appropriate to reflect this.
63. The infrastructure and Energy chapter directions include that the chapter must be consistent with the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2016 and the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016. It is not just this chapter, but the whole plan, that must be consistent with those regulations, and many other higher order instruments. We suggest that the Standard does not need to repeat this requirement, as it is specified in the RMA. Alternatively, all relevant higher order instruments should be referenced, and all parts of the plan should be required to be consistent with them (or give effect to them, depending on the instrument in question)..
64. This raises a broader issue about integration across chapters, which was also addressed in our comments on overarching issues. Current practice is to implement higher order documents in an integrated way where provisions "speak to" each other. For example, provisions relating to outstanding natural landscapes in the coastal environment might be located in a coastal environment chapter, provisions in an infrastructure and energy chapter might be qualified by reference to the landscape provisions in the coastal environment chapter. In contrast, the Standards specify that provisions to give effect to the NZCPS are

to be located in the coastal environment section of the Natural Environmental Values chapter. We suggest that a statement providing for integrated planning across a plan is included in the Standard.

65. Clause 23 refers to “infrastructure, including where relevant...” and there follows a list of built features. This includes matters that are not infrastructure as defined in the Act. In particular “street furniture”. We suggest that this should be deleted. Other features that are infrastructure are not listed, in particular structures for transport on land by cycleways and walkways, facilities for the loading or unloading of cargo or passengers transported on land by any means and navigation installations. We suggest that it may be more appropriate just to refer to infrastructure, without including this list which is not comprehensive and which includes things that are not infrastructure.

66. **Recommendations:**

- a. Include a statement after clause 2 that: Where it is necessary in order to achieve integrated management of natural and physical resources, the matters to be addressed in particular chapters or sections may be cross-referenced or partially addressed in other chapters or sections.
- b. Amend “landforms” to “features” in clause 7 or define “landforms” to include features and any other matters that it is intended to cover.
- c. Address natural character separately from landscapes and landforms, or at a minimum amend 7.a to refer to: identification of landscapes or landforms ~~and natural character~~ that are outstanding, ~~significant~~ or valued by the community, or areas having natural character.
- d. Amend clause 6c to: objectives, policies and methods, including rules (if any) ~~that will ensure the life supporting capacity of these systems are safeguarded to implement the council’s functions and duties in relation to the coastal environment.~~
- e. Amend clause 7b to: objectives, policies and methods, including rules (if any) ~~that will ensure the life supporting capacity of these systems are safeguarded to implement the council’s functions and duties in relation to landscapes, landforms and natural character.~~
- f. Consequentially delete clause 6d and 7c.
- g. Amend all subsequent chapters to use the same formulation.
- h. Amend clause 9 to refer to biological diversity.
- i. Amend 18f to refer to: an explanation of how engagement with tangata whenua is anticipated to occur ~~iwi are engaged.~~
- j. Amend clause 23f by deleting the list of features at i. to x.

S-ASM: Draft Area Specific Matters Standard

67. Although it is not expressly stated in the title, the Draft Area Specific Matters Standard relates to district plans (and district plan provisions of combined plans) only. It could usefully be renamed Draft Area Specific Matters Standard (District) and clause 1 amended to refer to district councils and district plans/combined plans.
68. Under clause 7, it is not clear if one or all criteria (a), (b) and (c) must be met to qualify for a special purpose zone. This could be clarified.
69. We understand that the zone purpose statements in clause 8 are part of the Standard and must be given effect to by district councils. We have some concern about the potential for conflict between giving effect to the zone purpose statements and other requirements to give effect to national direction or implement council functions and Part 2. For example, the purpose of the Rural Production Zone is to “prioritise” primary production activities. As a description of the zone, this is not contentious, but as a purpose that must be implemented there is potential for conflict with other matters that should be “prioritised” such as natural hazard mitigation, maintenance of indigenous biological diversity, or implementation of national direction regarding electricity transmission. Other zone purposes state that the purpose is to “enable” particular activities, when in practice they are only enabled to the extent consistent with other RMA functions and duties. We suggest that reframing the purpose statements as descriptions without the use of directions like “prioritise”, “provide” or “enable” would achieve the objective of having consistent use of zones without this potential for conflict.
70. This Standard includes Zones, Precincts, Development Areas and Designations but does not include Overlays. We recommend that Overlays are provided for in accordance with the Spatial Planning Standard.
71. **Recommendations:**
- a. Amend title of Standard to Draft Area Specific Matters Standard (District) and amend clause 1 to: Except as provided in direction 2 below, ~~local authorities~~ district councils must amend their ~~documents~~ district plans and combined plans...
 - b. Clarify whether a special purpose zone must meet one or all of sub-clauses 7(a)-(c).
 - c. Reframe zone purpose statements as zone descriptions and avoid the use of terms such as “prioritise”, “provide” or “enable.”
 - d. Include mandatory or discretionary directions on use of Overlays.

S-SAM: Draft Schedules, Appendices and Maps Standard

72. Clause 1 provides that the purpose of this Standard is: *To enable consistent schedules, appendices and maps are provided in policy statements and plans*. It is not clear whether the intention is to refer to “consistent schedules”, or “consistent schedules, appendices and maps”. If the latter, a minor amendment is required to correct the syntax (changing “are” to “to be”).

73. RMLA supports proposed Schedule table 17 and considers that a requirement to identify sites including a description of values will assist plan users and local authorities to understand how activities may affect areas of value. We suggest that a link or cross-reference to the site's location on planning maps would further assist.

74. **Recommendations:**

- a. Consider whether Clause 1 should be amended to: To enable consistent schedules, appendices and maps ~~are~~ to be provided in policy statements and plans.
- b. Require that sites/areas identified in schedules include a cross-reference or link to their location on planning maps.

F-1: Draft Electronic Accessibility and Functionality Standard

75. Local authorities are required to comply with baseline accessibility within 12 months of gazetting, and level 5 of the ePlan electronic accessibility and functionality scale (F-1 D) within 5 years. Level 5 sets out "*ePlan spatially integrated with GIS system, allowing click and drill through different map layers and specific rules that apply to particular properties or activities and infrastructure services.*" This will enable users to "click to drill", view the plan in full or through user queries, download and print out, including with the council seal. The standard also allows users to make submissions on a plan change on-line.

76. These standards when achieved will provide for generally efficient and effective online access to plans. However, the transition to ePlanning raises a number of issues.

77. The provisions apply to all local authorities. A number of the larger local authorities have 7 years to comply, however the requirements may place heavier cost and resource load on some smaller local authorities (in population terms) which nevertheless cover substantial geographic areas.

78. Second, a core characteristic of ePlanning and standardisation is the opportunity to realise economies of scale, where the same capabilities including GIS platforms may be applied across small or larger geographic areas at little extra cost – especially if the same standards apply throughout. The Discussion Document noted this potential for efficiencies, including through resourcing at regional council level being made available to the constituent territorial local authorities. This prospect is not raised in section F-1, though it is likely to enhance efficiency, effectiveness and speed of implementation of ePlanning.

79. A third issue is with electronic information is version control, to ensure both that the current or most recent information is available (as per Table 18.6), and that previous information which was relevant at any earlier point in time is also accessible. This record or archive function is important, and the shift to the ePlan standard needs to make provision for this.

80. A fourth issue is maintaining the comprehensiveness of ePlan and its equivalents across all aspects of council functions. While ePlanning is raised here in the context of National Planning Standards, it is a major trend in its own right. This suggests the primary requirement

is to ensure that the transition to ePlanning is efficient and effective, and that an important part of that transitions is compatibility with, and contribution to, national standards. In Discussion Document H, it was noted that *“MfE remains broadly interested in the issues and opportunities associated with advancing an ePlanning system that involves all planning functions moving online. Early areas of focus are likely to be: online consent applications (submission and tracking), online submissions on plans changes, and online forms and fee payment for all services.”* This suggests that in parallel with ePlan development, community interaction with councils will be predominantly on-line (through the planning interface) and that community expectations are likely to be for similar levels of service across other council functions.

F-2: Draft Mapping Standard

81. The mapping standards relate to colour coding for specific zones, and use of symbols.
82. Notwithstanding any issues about the adequacy of the range of zones, the basic requirements are the visual clarity of maps – so that different zones have clearly different colours – and the integrity of the zone groupings – so that similar zones may be distinguishable according to their basic colour, which is also an important aspect of map interpretation.
83. There are six standardised zonings are Residential (4), Rural (4), Commercial (6), Industrial (3), Open Space and Recreation (2) and Conservation (1), plus Special Purpose zones (7+). However, as currently proposed (Table 21 Zone colour palette table) there appears to be close similarity within-zone (for example, Low-density residential and Medium-density residential have very similar colours). Similarly, the Commercial zoning group all have shades of red pink or dark orange which aids interpretation, but the Industrial grouping also includes pink (Light industrial).
84. We recommend consideration be given to re-allocation of the colour palette, so that each major zone (Residential, Commercial, etc) be allocated a distinct main colour (such as yellow, red, green, blue) and that the within-zone colours are distinguishable within that main colour (in similar vein to the proposed Commercial colours).
85. The list of symbols (Table 22 Symbology table) is brief. We assume that a range of additional symbols to denote points or places of planning significance are able to be included.

F-3: Draft Spatial Planning Tools (Regional) Standard

86. The Standard provides that an overlay spatially identifies an area, feature or item that following a region-wide assessment has been determined to have distinctive values or environmental risks that require management. There are a number of reasons why areas, features or items may be identified in an overlay without a region-wide assessment having occurred. Examples are: where the area is identified through a private plan change, where areas are sequentially identified following sub-regional assessments (eg by catchment), or where additional sites that were not identified in a region-wide assessment are subsequently added by a plan change. We do not consider that the reference to a region-wide assessment is necessary to achieve the objective of standardising the use of overlays.

87. **Recommendation:**

- a. Delete reference to “region-wide” in description of Overlay function.

F-4: Draft Spatial Planning Tools (District) Standard

88. We make the same comment with respect to the reference to “district-wide” in the description of the Overlay function in this Standard.

89. **Recommendation:**

- a. Delete reference to “district wide” in description of Overlay function.

F-5: Draft Chapter Form Standard

90. The F-5 provisions set out a chapter form standard which appears generally suitable.

F-6: Draft Status of Rules and Other Text and Numbering Form Standard

91. The F-6 provisions set out a Text and Numbering form standard which appears generally suitable in terms of structure, order and comprehensiveness.

CM-1: Draft Definitions standard

92. Section 2 RMA provides a list of definitions that apply “In this Act, unless the context otherwise requires”. The same formulation is regularly used in Plans. Unlike the Act, the Standard does not enable reference to context to check the appropriateness of applying definitions to particular circumstances, as definitions are described as mandatory, and clause 3d states that the definitions appearing in the definitions table apply wherever the term (or a synonym of a term) is defined in a regional policy statement or plan. Where the Standard uses a definition that is from the RMA, it converts the definition into one that applies regardless of context. We consider that this may lead to unintended consequences, and that it would better provide for the application of legal terms to real life situations if the Standard, like the RMA, provided for definitions that apply “unless the context otherwise requires”. Establishing that context requires that a specified definition does not apply is a high bar, and not likely to occur regularly.

Definition	Comment	Recommendation
Accessory building	Under the draft definitions a 'building' is a subset of a 'structure', i.e. a building is a structure but not all structures are buildings. A primary structure may include accessory buildings/structures in the same way that a primary building includes accessory buildings/structures. For this reason 'accessory building' should be amended to 'accessory structure'.	Amend 'accessory building' to 'accessory structure'.

Bore	A bore is typically drilled. The reference to “constructed” in the definition appears artificial.	Amend to “ <i>any hole drilled or constructed into the ground...</i> ”
Building	There is a potential issue with the ‘building’ definition which applies to any structure “...enclosed with two or more walls and a roof, or any structure that is similarly enclosed”. Infrastructure, e.g. hydro dams, can include internal rooms that are enclosed by walls and a roof but the rooms are not the principal purpose. The same would apply to other enclosed structures, such as tunnels, pipelines, and wind turbine towers. These examples are types of ‘infrastructure’ which are structures that are usually managed differently in policy statements and plans from other types of ‘buildings’. These structures could be classified as a ‘structure’ and specifically excluded from the ‘building’ definition.	Consider the definition of building and whether some structures that are normally regulated as infrastructure should be excluded from the definition. It may not be appropriate to exclude all infrastructure because some infrastructure buildings will be regulated as buildings.
Cleanfill	A distinction between “cleanfill” (i.e. natural material such as clay, gravel, sand, soil and rock which may be deposited on a site as fill during earthworks) and “a cleanfill” (i.e. the site where cleanfill material is deposited) is necessary.	Include definitions of “cleanfill” (site) and “cleanfill material” as per examples such as the AUP.
Drain	It is uncertain whether the definition would capture a canal for irrigation or electricity generation purposes – which are artificial watercourses but are not normally defined as drains. The words “drainage of surface water” may capture water being “carried or taken away” in a canal for hydro / irrigation purposes.	Amend to exclude “ <i>an irrigation canal, water supply race or canal for the supply of water for electricity power generation.</i> ”
Drinking water	We recognise that this definition largely reflects the New Zealand Drinking Water Standards, but the reference to “intended to be used” is subjective and the reference to intention is unnecessary.	Amend to the following: “ <i>Water for human consumption; and includes water for food preparation, utensil washing, and oral or other personal hygiene.</i> ”
Earthworks	The definitions distinguish between land disturbance and earthworks – the latter applies only to land disturbance that changes the existing ground contour or level. The NES for Plantation Forestry uses a very different definition for the term earthworks. This creates a potential conflict when plans attempt to implement the standards and recognise the NES.	Clarify how definitions that are differently defined in national direction are to be applied. Provide guidance for reconciliation of the Standards and the NESPF.

Functional need	The definition does not cover technical, logistical or operational requirements or constraints that impact on the need to locate in a particular environment. This was previously covered in a separate operational need definition.	Include a new definition of operational need, as follows: <i>“The need for a proposal or activity to traverse, locate or operate in a particular environment because of technical or operational characteristics or constraints.”</i>
Ground level	The definition of ground level seems to have been written for subdivisions that include building platforms and doesn't work well for old sites with retaining walls on multiple boundaries with in-fill housing	Consider whether the definition is suitable in those circumstances.
Height	<p>The Standard proposes two definitions for 'height'; one for district plans that uses 'ground level' as the reference point; and the other for a RPS or regional plan that uses different reference points.</p> <p>The district plan 'height' definition is problematic for lake bed or riverbed structures, such as hydro power schemes. Part of the issue stems from the overlapping jurisdiction for lake beds or riverbeds whereby district councils control land use which can extend to land covered in water that amounts to the bed of a lake or river. It is these circumstances where an alternative reference point becomes appropriate, for example using the existing hydro dam crest for the construction of a minor structure on top of the dam, as 'height' assessments relative to 'ground level' become somewhat meaningless. Other alternative reference points include a reduced level elevation (RL) or a water level datum.</p> <p>To address this matter different reference points are required to measure 'height' of 'structures' where it is not practical to use 'ground level' and this will ensure the 'height' definition does not unnecessarily modify an existing permitted activity framework, i.e. where the district plan currently uses a different reference point.</p> <p>We consider that a 'height' definition in district plans that differs from that in a RPS or regional plan only adds unnecessary complexity and a</p>	<p>Include a single definition of height applicable to both district and regional plans, as follows: <i>“The vertical distance between the highest part of a structure and the ground level immediately below or other reference point stated in a rule. The reference point inside the coastal marine area is mean sea level.”</i></p> <p>Provide guidance to assist in implementation of this definition in rules. For example, guidance could address how rules should address “overall height” where a structure is on a sloping sites and the intention is to regulate the vertical distance between the highest part of the structure and the ground level immediately below the lowest part of the structure.</p>

	single 'height' definition for all policy statements and plans is considered appropriate	
Industrial activity	The definition may exclude existing industrial activities undertaken within industrial zones. In particular, clause (a) needs to be broader than just applying to "goods". For example, a wastewater treatment plant does not involve goods, but the processing of waste materials is industrial in nature and effects. The definition should include a reference to "industrial or trade premises" as defined in the RMA. The MfE Evaluation Report says that the RMA terms are too narrow and circular. By including references to these RMA terms it expressly captures the chain of process from receipt of raw materials through to dispatch or use in another process, and acknowledges that an industrial activity can involve the use, storage, treatment or disposal of waste material, and the discharge of contaminants associated with the industrial or trade process.	Add a new clause (d) to the definition: <i>"including any industrial or trade premises (as defined in section 2 of the RMA)"</i>
Intensive primary production	The definition does not capture all forms of intensive primary production (eg intensive dairy farming or horticulture) but rather captures <u>indoor primary production</u> .	Amend this to be a definition of <i>"indoor primary production."</i>
Reverse sensitivity	Applies to existing lawfully established activities, but not unimplemented consented activities. In contrast, the likes of Policy D of the NPSREG requires decision makers to avoid reverse sensitivity effects on <u>consented</u> and existing renewable electricity generation activities. Given that many infrastructure projects have a long lead from consenting to construction / implementation, the definition of reverse sensitivity should be amended to capture consented activities also.	Amend to cover the situation where the first in time activity is consented but yet to be implemented.
Site	We consider that site has so many different meanings in different contexts that it should be left undefined. The current definition of 'site' is considered unworkable and is a significant issue as the term 'site' is embedded in many of the other definitions. The problems with the definition are: o the definition essentially defines a property, but in plans 'site' can mean a feature or spatial area, a permitted activity area or consent area, all of which may not align to property boundaries; o it is unclear how the definition would be applied in the coastal marine area;	Do not include a definition of site. If a definition is considered essential, it should encompass all of the ways in which site is used, eg: <i>depending on context, means a contiguous area of land, bed or coastal marine area that can be described: a) using legal</i>

	<p>o clause (a) to (e) of the definition all refer to 'land' but the RMA definition of 'land' does not include the bed of a lake or river for the purpose of a regional council function or a regional rule. This is problematic when defining some activities, such as a bridge.</p> <p>o The definitions for 'accessory building' and 'ancillary activity' refer to the principle building/activity or primary activity "on the same site". This becomes problematic under the definition for 'site' which links to the property. For example, a windfarm development (lessee) over a property that continues to be run as a farm (landowner) where to the lessee the primary activity is the windfarm but to the landowner the primary activity is farming. It is unclear if both parties have rights to claim 'accessory buildings' and 'ancillary activities' over the same site.</p> <p>o The definition for 'setback' refers to "...the boundary of its site, or other feature specified in the Plan". Those "other features" should themselves be able to be defined as a site (e.g. a significant natural area, or outstanding landscape). These usually do not align to property boundaries.</p>	<p><i>identifiers (e.g. legal description or certificate of title); or</i></p> <p><i>b) spatially on a plan within which a consented or permitted activity can take place; or</i></p> <p><i>c) spatially to identify a feature specified in a policy statement or Plan.'</i></p>
Stormwater	As written the definition excludes stormwater which does not directly discharge to a waterbody or the CMA. Stormwater which flows to land should also be included.	Amend to refer to: <i>"Water from natural precipitation (including any contaminants it contains) that flows over land or structures (including in a network), to <u>land</u> or <u>to</u> a waterbody or the coastal marine area."</i>
Structure	The standard proposes to amend the definition of structure in the RMA. The MfE Evaluation Report does not provide any evaluation for why the definition differs from that in the RMA. It is unclear whether the RMA or Standard definition would prevail, which creates uncertainty.	Use RMA definition of structure.

93. **Recommendations:**

- a. Amend clause 3b and make any other necessary amendments to specify that definitions apply unless the context otherwise requires.
- b. Amend definitions in accordance with the table above.

CM-2: Draft Noise and Vibration Metrics Standard

94. Part A of the draft Noise and Vibration Metrics Standard requires rules that reflect the latest version of the relevant acoustical New Zealand Standards and “provide a consistent methodology for the management of vibration effects”. Although New Zealand does not have vibration standards, there are appropriate foreign standards that might be referred to, e.g. the German standard DIN 4150-3, for measuring the effects of vibration on structures.
95. Referring to a specific standard may create difficulty should that standard need to be updated. A more appropriate approach would be including a reference to “the most appropriate international standards” and a guidance note indicating how the most appropriate international standards are to be determined and promulgated (e.g. by Standards New Zealand or a nationally recognised and accepted professional body). Any language requiring the “latest version” of these international standards may also benefit from clarity, as some standards (such as DIN 4150-3) have later versions that are yet to be made available in English. Any guidance should specify that it is the most recent English version that needs to be complied with.
96. Paragraph 3 of Part D of the draft Noise and Vibration Metrics Standard refers to “Noise measurement”. This term carries a greater degree of specificity than the more general term “noise assessment”, and may not be the appropriate term with regard to the metrics in the table referenced.
97. Table 30 in Part D of the draft Noise and Vibration Metrics Standard does not include New Zealand Standard 6807:1994 noise management and land use planning for helicopter landing areas. This standard is used nationally, and the reason for its exclusion is unclear.
98. The reference to the Rating Level and LMAX levels in paragraph 4 of Part D of the draft Noise and Vibration Metrics Standard will not always be appropriate, in terms of noise assessment. The Rating Level does not apply to certain specific noise sources, such as aircraft, roads or wind farms, and these should instead be measured in accordance with their relevant standards. To assess these in accordance with 6802:2008 would be incorrect, as that standard explicitly excludes their use.
99. **Recommendations:**
 - a. Amend the purpose in Part A to read: *“To require rules that manage noise emissions to reflect the latest version of the relevant acoustical New Zealand Standards and manage vibration effects to reflect the latest version of the appropriate international vibration standards”*.
 - b. Provide a guidance note to indicate the method for determining the most appropriate international standards, and clarifying that “latest version” of such standards means the most up-to-date version currently available in English.
 - c. Amend paragraph 3 of Part D to refer to “noise assessment”, rather than “noise measurement”.

- d. Amend Table 30 to include *New Zealand Standard 6807:1994 noise management and land use planning for helicopter landing areas*.
- e. Amend paragraph 4 of Part D by adding the following sentence: “*Where there is another applicable acoustical New Zealand Standard listed in Table 30, any rules shall recognise the measurement and assessment methodology of the applicable standard.*”

100. If there is any further opportunity to do so, the RMLA wishes to be heard in support of this submission.



Signature of Karol Helmink on behalf of the Resource Management Law Association

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