



Te Runanga o Ngāti Ruanui Trust
Submission – Draft National Planning Standards



First of all, Te Rūnanga o Ngāti Ruanui Trust (Ngāti Ruanui) would like to thank the Ministry for the Environment for the opportunity to work productively together, and in providing an iwi perspective (on behalf of the Iwi Advisory Group) during the drafting of the National Planning Standards (NPS).

Our submission further strengthens the draft NPS to achieve the purpose of the Resource Management Act 1991 (RMA), and in particular, sections 6(e), 7(a) and 8. Moreover, to ensure that the regional and district councils (those exercising powers and functions under the RMA) give effect and provide for iwi environmental interests and values, and framework for participation. Our submission includes recommendations to strengthen linkages between structure standards, reference to international framework, and answers to consultation documents.

Consultation Document

Q1: What are your thoughts on this proposed package of planning standards? If you consider changes necessary, how would these affect the anticipated outcomes?

Overall, Ngāti Ruanui supports the proposed package of planning standards. The succeeding sections of our submission refers to recommended changes, primarily to provide better linkage between structures, chapters and sections. We've also included information to clarify our stance. In our view, the recommended changes will not affect anticipated outcomes.

Q2: What topics or matters should be investigated for future planning standards?

Tangata whenua environmental monitoring

Tangata whenua have been observing and interacting with their environment for centuries. Traditionally, tangata whenua believes that small shifts in the mauri (life force) of any part of the environment (through use or misuse) would cause shifts in the mauri of related components, which could eventually affect the whole system. For iwi and hapu, values and cultural perspectives help provide for resource management framework. These frameworks help tangata whenua articulate the way they interpret their existing environment, the issues they contend with, how they assess effects, how they measure change, and how they process information and arrive at decisions.

Tangata whenua environmental monitoring can therefore be used to assess cultural health as well as environmental change. We believe that the NPS should have effective and defensible systems and approaches in place for environmental and cultural assessment, methods for monitoring, interpreting, and reporting on cultural and environmental impacts, linked to tangata whenua values (matauranga māori).

We recommend that tangata whenua environmental monitoring approaches be developed to complement and contribute to mainstream state of the environment monitoring and reporting. This monitoring approach can be used to track changes in the way tangata whenua values the environment.



Resource consent conditions

Section 108 of the RMA provides that a resource consent can be granted on any condition, subject only to any express provision elsewhere in the RMA and any Regulations.¹ The RMA also has additional condition setting provisions that relate to land subdivision, discharges to air, land and water, water takes and reclamations in the coastal marine area. Moreover, key requirements for conditions are taken from the case law such as the Newbury case.² There may be merits in investigating future planning standards relating to resource consent conditions.

Consultation for resource consent applicants

Undertaking consultation with tangata whenua is important for councils to be able to fulfil particular obligations to tangata whenua under the RMA. The RMA contains specific requirements to undertake consultation with tangata whenua through iwi authorities as part of the plan development process. However, consultation to gain written approval of affected persons under section 95E of the RMA is governed by best practice approach.

The Environment Court has 'synthesised' a statement of principles for consultation from a number of court case decisions relating to resource consents and notices of requirement, and should be understood before embarking on any consultation process. However, court case decisions are not the first point of call to understand effective consultation. Therefore, we believe that there are merits to investigate future planning standards which refers to 'consultation (for resource consent applicants)'.

Q3: Do you agree with the level of standardisation proposed in the plan structure standards? Yes

Q4: Are there other topics that would benefit from a chapter structure standard?

The purpose of the RMA is to promote the sustainable management of natural and **physical resources** [our emphasis]. Sustainable management means managing the use, development, and protection of natural and **physical resources** in a way, or at a rate, that enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) sustaining the potential of natural and **physical resources** (excluding minerals) to meet the reasonably foreseeable needs of future generations;

Given the above, we recommend that topics referring to **physical resources** will benefit from a chapter structure standard. This would adequately reflect the purpose of the RMA.

¹Waitakere City Council v Estate Homes Ltd [2007] 2 NZLR 149 (SC).

²Newbury District Council v Secretary of State for the Environment: Newbury District Council v International Synthetic Rubber Co Ltd [1981] AC 578; [1980] 1 All ER 731 (HL).



Q5: Does the tangata whenua part structure standard help meet RMA requirements for iwi authorities and tangata whenua input into RMA plans? Will this help tangata whenua and councils to work together?

In our view, major issues refer to limited partnership, lack of recognition and implementation of kaitiaki principles in resource management decision-making, and lack of understanding of cultural issues in regional and district plans. The main barriers includes: lack of recognition of rights and status of iwi and hapū as Treaty partners; lack of Treaty knowledge and provisions for the Treaty of Waitangi; process and timeframes do not take into account iwi/hapū consultation processes; lack of/difficult systems in place for allowing iwi/hapū participation; actions by local government that impinge on iwi/hapū rights (e.g., pro-development, deliberately ignoring iwi authorities as affected person); under-resourcing of iwi/hapū to effectively participate; lack of knowledge of Māori issues by local government; lack of Māori representation in local government; consultation undertaken as ‘tick box’ exercise with no intention to address cultural issues; and so on and so forth.

These barriers are solidified by studies made by scholars³ on District and Regional Council plans. According to studies plan quality (for 28 district councils) is generally poor, and most of the 28 district councils reviewed ‘need to improve the way they identify Māori issues and incorporate these into plans’. They also showed most councils had difficulty understanding and implementing the main sections in the RMA, such as section 6e, 7, and 8 often providing a ‘narrow treatment of iwi interests in plans’. Council plans lacked formal consultation guidelines, cultural monitoring methods and evaluation.

To address this, iwi and hapū have called for active participation as partners in the resource management decision-making process, promote and initiate processes that enables the effective exercise of partnership and kaitiakitanga. In our view, the tangata whenua structure standard would help address identified barriers and to meet RMA requirements for iwi authorities and tangata whenua input into RMA plans. However, we believe that including ‘audit’ provisions (undertaken by an independent party and approved by iwi authorities or by iwi authorities themselves) with the NPS is necessary to ensure that regional and district councils comply with the NPS and in particular tangata whenua standards.

Regional and district plans that detail environmental and cultural outcomes could be used as reference in determining the effectivity of objectives, policies and rules through the implementation of cultural monitoring (compliance on audit standards) in the future. At the moment, a system of balance and checks do not exist. There may be merits to investigate planning standards for compliance audits on RMA provisions particularly associated with tangata whenua’s cultural well-being.

³Ericksen et al. (2001) and Jefferies et al. (2002)



Additional Comments: State of Environment Reports

What is not always clear to readers of the State of Environment Reports is how the monitoring methods employed by councils relate to the interests held by tangata whenua and other sectors within the community. By working closely with tangata whenua, councils could emphasise that monitoring is undertaken accurately, appropriately assesses the tangible and intangible characteristics of resources valued by tangata whenua. Increasingly, cultural monitoring is sought by tangata whenua to be incorporated with the State of Environment Reports.

Q6: Should we have a standard set of zones? Yes. Would this make plans across New Zealand easier to use? Yes.

Q7: Are some zones missing, or are some zones not needed?

In our view, there are some zones missing: Buffer Zone and Reverse Sensitivity Zone. These zones are discussed further in the succeeding sections of our submission.

Q8: Is the inclusion of purpose statements for zones useful for guiding how they may be used?

The purpose statements refer specifically to the use of each zone without reference to 'sustainable management'. These words should be included.

Q9: Do the purpose statements help you understand which zones you currently have in your plan, and how they fit into the planning standard's zone? Yes.

Q10: Is 'Level 5' of the Electronic Accessibility and Functionality Scale an appropriate standard for council ePlans? Should it be more or less ambitious? What would you include/exclude?

Yes, Level 5 is appropriate. It should be more ambitious.

Q11: For councils: what type of support would be useful to help you implement the ePlan standard? Not applicable.

Q12: Does the mix of map colours and symbols function well for your plan(s)? Yes, as long as the colours used contrast each other.

Q13: Should other symbols or mapping instructions be included in the first set or future sets of planning standards? Yes.



Additional Comments: Participatory Mapping

We recommend the use of ‘participatory mapping’ to ensure that intrinsic cultural values and cultural landscape are included and preferences are translated into maps showing cultural hot spots⁴. ‘Participatory mapping’ has become an increasingly popular way to identify locations and, in this case, culturally valued by tangata whenua for better informing planners, policymakers and plan users.

Q14: Can these spatial planning tools be used to address the planning issues in your community?

Because the majority of information systems and planning databases presently used in New Zealand for resource management and land-use planning are deficient in tangata whenua value information (i.e. cultural, historic, spiritual) it can be argued that many of goals of the RMA are difficult to meet, or at best are only partially met through indirect processes. Iwi and hapū information systems linked with spatial planning tools, research agencies, and government departments would help integrate tangata whenua values to resource management and land-use planning processes and systems. In our view, the use of the spatial planning tools would help assist in addressing tangata whenua planning issues.

Q15: Should additional spatial planning tools be included?

Marine Spatial Tools

Marine Spatial tools could be used to address coastal management issues (priority issues) including monitoring results outlined in the State of the Environment report. There is a wide variety of material which can be included in marine spatial plans. This ranges from the identification of candidate marine protected areas in to full zoning (applied to the Great Barrier Reef Marine Park) with focus on integrated management and sustaining life-supporting capacity (ecological functions) of the marine area. It also emphasises the importance of people and communities to be able to use the marine resources for cultural, economic, recreational activities, and identifying areas which may be suitable for those activities.

A marine spatial plan might include: spatial identification of ecologically important marine areas (whale sanctuary, migration corridors) and connections between them; areas having different important ecological functions; spatial identification of different uses and values including cultural, social and economic; spatial identification of areas of conflict; strategies and tools to address conflicts; provision for use and development for mana whenua (identification of marine wahi tapu areas, location of resources of special value, identification of important sea routes including initial migration and tribal linkages, location of traditional waka moorings, location of traditional landmarks used for navigation, use of traditional marine place names, identification of resources of importance to contemporary iwi development).

⁴ Hot spots relate to the coincidence of numerous landscape features including tree lines, forests, cultural buildings and animal habitats are located in an area or in close proximity from each other.



Participatory Spatial Planning

Tangata whenua has a highly developed sense of place for which cultural areas with high capacity for intrinsic qualities like spirituality and inspiration could be identified. We believe that it is important to include 'participatory' spatial planning with the planning standards, where mana whenua and local community's awareness and familiarity are highly valued. Besides this, spatial understanding of the assets delivered by cultural landscape can help in prioritising areas for maintenance/restoration strategies while demonstrating the importance of conservation of culturally valued areas. Inclusion of 'participatory' approach considers rural dynamics where several actors and different processes which influence changes are included.

Cultural-Spatial Planning

To provide security and assurance that our cultural values, heritage and historical landscapes and other significant natural and physical resources are protected, we recommend that the NPS includes Cultural-Spatial Planning tools.

In our view, Cultural-Spatial Planning could establish amongst other things:

- Planning considerations which involves Papakāinga, areas of cultural interest, landscape, cultural practices and values and historical associations.
- Set-back requirements from culturally significant areas (Cultural Zone). For example, 1000 metres from statutory acknowledged areas.
- Consideration of cultural values-based frameworks. This type of framework identifies, organize, and describe key tangata whenua values as a basis for guiding and determining natural and physical resource management and can be used to set limits and standards connected to our values
- Consideration on cultural opportunities mapping and assessment. These are tools that provide a framework for incorporating cultural perspectives, values, and interests into freshwater management, contemporary resource management, and intergenerational planning.
- Application of Geographic information systems (GISs) in conjunction with Iwi Environmental Management Plan.

Cultural mapping

Cultural mapping has been recognised by United Nations Educational, Scientific and Cultural Organisation as a crucial tool and technique in preserving the world's intangible and tangible cultural assets. It encompasses a wide range of techniques and activities from community-based participatory data collection and management to sophisticated mapping using Geographic Information System. Many of the approaches being adopted are participatory and encourage tangata whenua to identify, record, and investigate cultural assets – both tangible or intangible and that form the foundations of the culture. Cultural mapping involves tangata whenua identifying and documenting local cultural resources.



Due to the limited archaeological investigation undertaken in most parts of fresh waterbodies (rivers and streams of significant cultural values) and surrounds (including the affected site) to date, further archaeological investigation is required. In our view, such investigation (alongside iwi cultural advisors) should include evidence of pre-historic māori settlements through archaeological excavation and their relationship with recorded horticultural pit and borrow sites. Such a study would help identify more site of value to tangata whenua and could be undertaken as part of the Cultural Mapping. This would provide tangata whenua, and decision-makers with more information needed to assess impacts of a proposal on unfounded and identified archaeological remains from a cultural perspective. We recommend that the MfE considers this approach with the mapping standards.

Q16: Do you agree with the level of prescription in the chapter form standard? Yes.

Q17: Would the acronym and alphanumeric code approach work well for your plans? Yes.

Q18: Are these drafting principles suitable for definitions? Should they be changed or expanded?
They should be expanded. Refer to our comments on Part 2C - Definitions.

Q19: What other definitions should be standardised in future sets of planning standards? Refer to
Refer to our comments on Part 2C - Definitions.

Q20: Is it appropriate to use NZ Standards as the basis for noise metric and vibration standards?
Yes.

Q21: Should the planning standards set noise limits for certain zones? Yes.

Q22: How will these implementation timeframes affect your council? Not applicable

Q23: What sort of guidance and support would be useful to plan users and councils? What guidance should we prioritise? Refer to our comments on succeeding sections of our submission.

Q24: Should MfE target its implementation support to smaller councils with fewer resources? Yes.



Draft National Planning Standards

Draft national planning standards overview

There are 18 draft NPS relevant to the various resource management policy statements and plans in New Zealand. Table 2 of the draft NPS sets out which standard is relevant to each type of policy statement and plan.

We recommend that Strategic Direction (S-SD) be included with the Chapter standards for Regional Policy Statements, regional Plans and Combined Plans in Table 2 to ensure consistency with the Part/chapter structure standards set out in Table 1.

Combined Plan Structure Standard includes the South Taranaki District Council (STDC). Six of the territorial authorities (Gisborne, Marlborough, Nelson, Tasman and Chatham Islands) and Auckland Council, sometimes referred to as unitary authorities, - combine the functions of regional councils and territorial authorities. STDC is not one of them.

S-RPS: Draft Regional Policy Statement Structure Standard

S-RP: Draft Regional Plan Structure Standard

Part 4 – Themes: Landscape, landforms and natural character

Ngāti Ruanui has expressed unease about inappropriate landscape modification particularly in relation to both ‘special’ landscapes (e.g. coastal, cultural and historic) and landscapes which may appear ‘ordinary’ yet have great significance to our hapu and whanau. This is epitomised by the signing of the European Landscape Convention in 2000, which suggests that there may be shortcomings in the identification of landscapes’ cultural significance, and that better attention should be paid to how to sustain landscape’s contribution to cultural identity and diversity.

In New Zealand, case law determines criteria for assessing landscapes: natural science factors (ecological, geological); aesthetic values (undeveloped coastline), transient values, historical associations, values to tangata whenua and whether the values are shared and recognised (refer to Wakatipu Environmental Society v Queenstown Lakes District Council C89/2005).

We note that what is perceived to be of value will depend on the particular interest of the discipline: an ecological artefact, material culture, visual resource, a metaphor, an artistic depiction, ideology, and agent of power relations, to name a few key themes. Assessments by landscape architects, for example, are strongly influenced by design and picturesque principles.



We suggest that to adequately reflect landscape's cultural contribution requires decision-makers (including plan-users) to understand the nature and range of values that may be present in a given landscape, how these are spatially spread, how they interact and how new development would need to be designed to support and enhance such values. For further comments relating to Cultural Landscape, refer to Part 2C – Definitions.

We recommend that the NPS define landscape, determine criteria for assessing cultural landscape (cultural values model – physical form, landscape as a whole most referred to as vista, places within the landscape, networks such as tracks, traditional and contemporary practices, past practices, natural processes, past events, relationships, feelings, rootedness, and stories).

S-DP: Draft District Plan Structure Standard

Part 2 – Tangata Whenua

We note that linkage between Part 2 and the rest of the standards is not clearly evident. To address this, we recommend:

That the instructions' column include **Local authorities must implement the Tangata Whenua Standard with the Strategic Direction Standards (S-SD) and the District Wide Matters Standards (S-DWM).**

Part 4 – District Wide Matters

Tangata whenua plays a unique part in the indigenous culture of New Zealand. We provide a different world-view, a different set of perspectives often lacking at local and central government level, and the community at large. We have a distinct set of customs and values (referred to as tikanga), different set of issues often based on cultural perspectives, beliefs and assumptions, and whakapapa (ancestral linkage). Hence, we consider ourselves distinct from the community or stakeholders. We recommend the following changes which refers to this distinction and our kaitiaki responsibilities:

The Community values chapter be amended to include '**Tangata whenua and community values**'.

The section column of the Community values chapter includes the word '**Taonga**'.

The section column of the Natural environmental values includes the word the words '**Mauri/Intrinsic Assets**'.



Part 5 – Area-Specific Matters

Generally, we support all the zones listed in Part 5 – Area Specific Matters. However, we recommend additional zones to be included with the NPS. Refer to reverse sensitivity discussion under the Infrastructure and Energy chapter (S-IE) for further comments.

That **Buffer and Reverse Sensitivity Zones** be included between sensitive and intensive activities/infrastructure.

S-TW: Draft Tangata Whenua Structure Standard

Mandatory Directions

Recognition of iwi/hapu chapter

We recommend the following changes to the Recognition of iwi/hapu chapter of the NPS:

That areas of significance to tangata whenua be included.

That a list of taonga species be included.

That the role of mana whenua in resource management (assessment of cultural impact, monitoring, etc be included) be included. This will adequately link with the Strategic Direction Standard/chapter which states:

“-how the Māori resource management provisions in Part 2 of the RMA 1991, and Treaty of Waitangi (Te Tiriti o Waitangi) principles as identified through consultation with tangata whenua will be implemented through the plan.”

Tangata whenua local authority relationships chapter

We recommend the following changes:

That the words **“How the relationship will be applied in resource management context”** be included with the Tangata whenua local authority relationships chapter.



Consultation chapter

In our view, the statement '*Reference to how the consultation processes are given effect to*' will ensure that 'intrinsic' matters raised by tangata whenua through the consultation process and in the Cultural Impact Assessment will be actioned by local authorities.

S-SD: Draft Strategic Direction Structure Standard

Strategic Direction chapter

Sections 30 and 31 of the RMA requires every regional and district councils respectively to establish, implement, and review objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region and district.

Integrated management (IM) provides firstly, a suitable framework for identifying and resolving complex resource problems such as biodiversity or estuary protection, which may escape detection in non-integrated management approaches. Second, it helps management agencies with limited resources perform their functions efficiently and effectively. IM does this by coordinating the actions of multiple management agencies, removing redundancies, consolidating information, improving communication, and promoting a 'holistic' understanding of the environment. Third, IM can reduce the time and cost associated with RMA implementation.

The RMA does not define IM but it does provide for it in several ways: (1) as part of the vision (reflected in the definitions, purpose, principles sections; (2) as a framework for implementation by local authorities; and (3) by providing mechanisms to assist with integrated planning, implementation and monitoring. Besides this, there are many definitions of IM in the literature. The MfE commissioned a paper to review the literature and subsequently synthesized the following working definition:

an approach to environmental management which requires recognition of the linkages between different parts of the environment, and adopts a range of tools to identify and manage environmental effects across these different parts, and to ensure co-ordination across institutional barriers such as agency boundaries.⁵

We recommend that the NPS (Strategic Direction chapter) includes the definition of IM, operationalise its concept (including identifying barriers and drivers), and how integration may look like in regulatory and non-regulatory areas.

⁵Ministry for the Environment, 'Integrated Environmental Management', Draft, KPMG, 6 December, 1996.



It is important to emphasise that, where environmental effects cross the boundaries of local authorities (within the RMA jurisdiction) and over to the adjoining Exclusive Economic Zone (EEZ) or vice versa, integrated management also applies. In this case, the RMA consenting process should be triggered where effects of activities within the EEZ crosses over the adjoining Coastal Marine Area and vice versa. The interpretation of IM has been one of the points of contention with respect to the Trans-Tasman Resources Ltd's seabed mining consent within the South Taranaki Bight. We recommend that the NPS should address this 'controversial' issue.

S-DWM: Draft District Wide Matters Standard

Natural Environment Values (S-NEV)

S-NEV refers to matters that must be located in the Landscape, landforms and natural character section. We recommend the following changes:

That the word '**Landscape**' should be defined (Refer to previous discussion on Landscape and Cultural Landscape).

That a **Mauri values** section be included in order to provide linkage with Part 2 - Tangata whenua.

Community Values chapter (S-CV)

We recommend the following changes:

That the title of this chapter be changed to '**Tangata whenua and Community Values**'. (Refer to discussion on Part 4 – District Wide Matters)

That the sites of significance to tangata whenua section should be defined to include statutory acknowledged areas, taonga, etc (referred to in Part 2 – Tangata whenua values).

That the explanation on how iwi is engaged should include cultural monitoring, research, to name a few.

That Cultural Landscape should be linked with Part 4 – Themes: Landscape, landforms and natural character and definition section.



Infrastructure and Energy Chapter (S-IE)

We recommend the following changes:

That 23c and 25 include the emphasised words:

*'23 c. provisions to manage reverse sensitivity effects between infrastructure and other activities **and effects on future permitted activities restricted by granting consent to such infrastructure.***

*'25 The Infrastructure and Energy chapter must refer to **Spatial Plans** and any relevant applied Special Purpose Zone (e.g. Airport zone, Port Zone, Hydro-electricity Generation Zone, **Cultural Zone**).*

That this chapter includes reference to renewable energy.

Other comments: Reverse Sensitivity

Reverse sensitivity applies to situations where a potentially incompatible land use is proposed to be sited next to an existing land use. Where this occurs within a rural area, for instance, it is reasonable to expect that existing rural activities will be able to continue to operate within the environmental limits provided for in the district plan. Current concerns largely revolve around cross-boundary effects: noise, agricultural use, odour, return stack heaters, glare or lighting, and visual effects.

The New Zealand Transport Agency (NZTA) has collated information about reverse sensitivity rules within operative district plans. Figure 1 shows that there are variations in terms of reverse sensitivity controls applied by different councils. Overall, majority of the councils do not have reverse sensitivity controls (red shaded area). As mentioned earlier, reverse sensitivity should not focus solely on protecting existing lawfully established activities but should also ensure that such activities must not pose any restrictions on permitted activities (do not require resource consent).

In our view, the inclusion of reverse sensitivity controls (i.e. reverse sensitivity zone, buffer zone) with the NPS would address this matter.

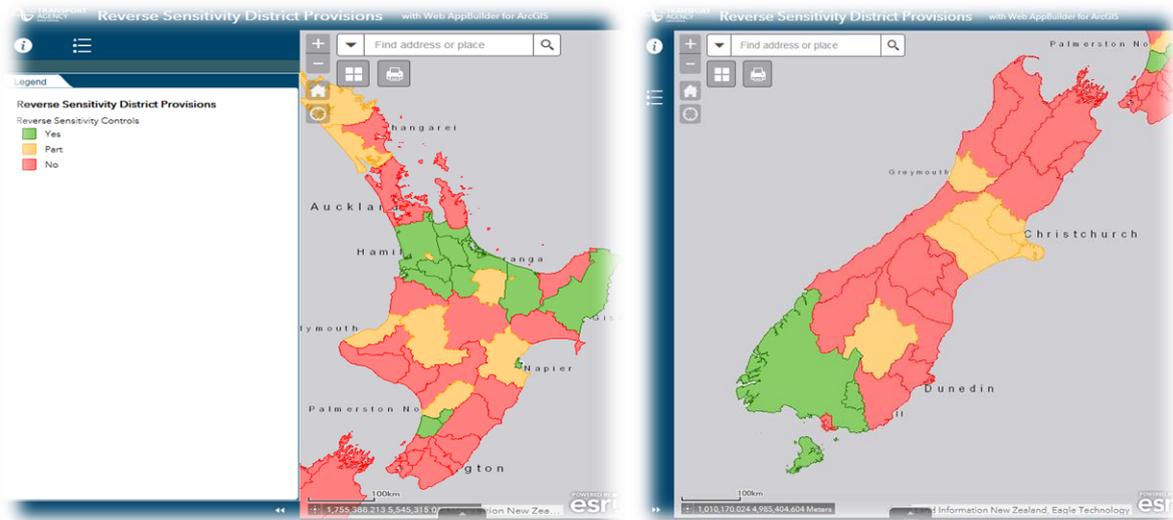


Figure 1: Map showing Reverse sensitivity buffer and effects areas in the north island and part of the South Island of New Zealand. Source: <https://www.nzta.govt.nz/roads-and-rail/highways-information-portal/technical-disciplines/noise-and-vibration/planning/reverse-sensitivity-plan-provisions/>

General District-Wide matters chapter (S-GDW)

Temporary activities section

We recommend the following changes:

That 30b be included with the Temporary activities section:
30 b. objectives, policies and methods, including rules which avoids, remedy or mitigates effects on receiving environment.

Earthworks section

We recommend the following changes to address effects on Areas of significance to tangata whenua:

That 33b be included with the Earthworks section:
33 b. objectives, policies and methods, including rules are linked to Part 4, particularly heritage and cultural matters.



S-ASM: Draft Area Specific Matters Standard

Zone chapters (S-ZONES)

We recommend to include the following:

That 7d be included with the Zones chapter:

7 d. are significant to mana whenua values, in accordance with Part 2 – Tangata whenua and the Treaty of Waitangi principles.

That the Discretionary direction include the words ‘sustainable management’ with the purpose statement for each zone.

That the purpose statement of the Maori Cultural Zone includes the emphasised words:

*‘The purposes of the Māori cultural zone are **to protect the cultural significance of the area and taonga** and to enable a range of activities which specifically meet Māori cultural needs including but not limited to residential and commercial activities.’*

F-5: Draft Chapter Form Standard

We recommend the following changes to the Mandatory directions – Monitoring:

That the emphasised words be included:

*14 Local authorities must consider ~~whether~~ monitoring needs to be provided for in any chapter or section **including iwi participation on cultural monitoring.***

CM-1: Draft Definitions standard

We recommend the following changes:

That Table 29: Definitions table should include and define the terms referred to Part 2C – Definitions.

That the definition of reverse sensitivity be changed to include the emphasised words:

*means the potential for the operation of an existing lawfully established activity to be compromised, constrained, or curtailed by the more recent establishment or alteration of another activity which may be sensitive to the actual, potential or perceived adverse environmental effects generated by an existing activity, **without compromising or restricting the establishment of activities permitted as of right.***



Part 2B – Spatial Planning Tools and Zone Framework Standards

In our view, Figure 3 (showing seven zone frameworks included in Discussion Paper C) does not adequately reflect how applicable zones are linked with other zones, particularly if they adjoin each other and when effects or activities cross multiple zones. We recommend that this be amended accordingly.

7 Summary of the issues analysis

We support the addition of Maori cultural zone. However, it is important that the purpose statement adequately reflect its intent. Refer to the recommendations under the Zone chapters (S-ZONES).

We agree with Option 1c, subject to the following recommended changes:

That Figure 4 (shows the zone framework following consultation) be amended to include buffer zones in between sensitive zones and zones that cater for intensive activities and infrastructures.

That the reverse sensitivity zone be included with the special purpose zone.

That buffer zones be applied along the margins of Development areas and areas between adjoining sensitive and intensive activities.

Part 2C – Definitions

8 Amendments to the standard as a result of consultation

We support the revised drafting principles. The recommended terms (refer to the succeeding sections) are consistent with the definitions criteria and principles.

10.4 Infrastructure-related terms

Although Cultural Landscape and Tangata whenua Cultural Zone (defined through the proposed 'Purpose Statement') are not infrastructure related terms, it is important to note that these terms are triggered by infrastructure and related works. Hence, the rationale to include them.



12 Options assessed

We prefer a combination of options 2 (controversial terms) and 3 (criteria-based approach). In our view, applying ‘controversial term’ as one of the criteria will ensure that terms often debated on and eliminate time-consuming debates and future challenges.

Table A1: Assessment against criteria for inclusion of the term in the definition standard

Overall, we support the inclusion of all the te reo terms included in Table A1. However, we recommend that the following terms be included with Table A1.

Cultural Landscape

Cultural landscapes are generally large areas with layers of interrelated values and features, and can have many connected communities. They may include individual places, linear elements (ancestral tracks) and areas. The setting or curtilage of these landscapes is of particular importance. The RMA does not explicitly refer to cultural landscape. Instead, reference to ‘wider historical and cultural area’ as criteria for inclusion on the New Zealand Heritage List/Rārangi Kōrero is used. We believe that this term is within the scope of the RMA and should be included with the planning standards.

Minor earthworks

Some district plans provide for minor earthworks as a Permitted Activity, and majority of earthworks that don’t comply with the Permitted Activity conditions as Discretionary Activity (Restricted). This approach provides a balance between allowing people to undertake minor earthworks while controlling adverse effects of earthworks, including stability.

Although earthworks are defined (through the NES) or linked with other definitions, the meaning of minor earthworks need to be standardised to ensure consistent interpretation. In our view, minor earthworks trigger Criteria 1, 2, 3, and 5, hence, recommend its inclusion with the NPS.

Precautionary Approach

Table A1 shows that precautionary approach only triggered criteria 2 and therefore not included in the definition standard. We disagree. Significant matters concerning implementation of Policy 3 of the New Zealand Coastal Policy Statement 2010 include the application of precautionary approach. Besides this, the relevance of the precautionary approach is highlighted in case law: the Tasman District Council [Environment Court 47/1112]⁶, Wratten v Tasman District Council⁷, and Jackson Bay Mussels Ltd v West Coast Regional Council⁸.

⁶ <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2011/47.html?query=tasman>

⁷ [http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/1998/65.html?query=title\(Wratten%20and%20Tasman%20District%20Council%20\)](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/1998/65.html?query=title(Wratten%20and%20Tasman%20District%20Council%20))

⁸ <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2004/198.html?query=jackson%20bay>

**Table A2.1: Explanation of terms included in the planning standards****Reverse Sensitivity**

We argue that reverse sensitivity should not focus solely on protecting existing lawfully established activities. Practically, such activities should not pose any restrictions on permitted activities (do not require resource consent). We recommend that the definition of reverse sensitivity reflects this.

Part 2F – Tangata whenua provisions

Tangata whenua has a long record of co-habitation with the New Zealand environment over the past 1000 years, and has comprehensive knowledge of cultural heritage, the ecosystems, and how to sustain them. Therefore, offer a unique indigenous perspective for planning, policy, decision-making and other resource management perspectives.

A number of sections in the Resource Management Act 1991 (RMA) make specific reference to the need to recognise and include tangata whenua issues, interests and values. Hence, providing the basis for consultation, collaboration, participation, the development of iwi management plans, development and implementation of appropriate planning tools, and processes and systems for resource consent applications, planning and policy.

The tangata whenua provisions refer to national guidance documents: Quality Planning website, and Wellington International Airport Ltd vs Air NZ [1991] case law. We recommend that international guidance documents be referred to under this provision. This is discussed below.

International Guidance Document

Indigenous rights have become a significant field in international law, culminating in the adoption by the United Nations' General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples in 2007. In particular, article 3 provides for indigenous people's right to self-determination (freely determine their political status and freely pursue their economic, social and cultural development). Consulting and cooperating in good faith with indigenous people (through their representative institutions) in order to obtain their Free Prior and Informed Consent (FPIC), prior to the approval of any project within their traditional lands and territories are outlined in articles 19 and 32. In addition, articles 18 and 31 affirm tangata whenua's rights to participate in decision-making, and to maintain, control, protect and develop traditional knowledge and cultural expressions.

The United Nations' Expert Mechanism on the Rights of Indigenous People defines FPIC as a State duty that 'entitles indigenous people to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in the process'.



Professor James Anaya, former United Nation’s Special Rapporteur on the Rights of Indigenous Peoples, in a series of reports, has stressed the need to focus on establishing a consultation process that will result in indigenous peoples’ full engagement, active contribution to prior assessment of all potential impacts (affected substantive rights and interests) of a proposed activity.

The RMA incorporates a number of tikanga Māori concepts and provides for council to have particular regard for kaitiakitanga and the principles of the Treaty. It also declares the relationship of Māori, and their culture and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga to be a matter of national importance.

As many of the Articles in the Declaration intersect with the principles of the Treaty of Waitangi (as interpreted by the Waitangi Tribunal and New Zealand Courts), there is considerable scope for the Declaration to be used to support, clarify, and promote understanding of the human rights dimensions of the Treaty and therefore, the RMA. Similarly, the Treaty of Waitangi affirms particular rights and responsibilities for tangata whenua to protect and preserve their lands, forests, waters and taonga for future generations.

We recommend the inclusion of International Guidance documents particularly the United Nations Declaration on the Rights of Indigenous Peoples.