

the LGA cannot deliver this effectively. While the HSNO Act⁵¹ includes a range of assessment criteria that the EPA is to consider for field tests, (i.e., taking into account adverse effects on human health and safety and the environment) and controls required for all field tests, there is no requirement to address liability issues. Councils owe a duty of care to their constituents and they may launch a legal challenge against the council if such measures were not in place.

Thus, under a “do nothing” response, a council could still expect to face significant pressure to complete a plan change under the RMA that would at least make GMO activities subject to minimum provisions concerning monitoring and financial accountability. This would be directed at having a council incorporate conditions or performance standards that would seek to ensure altered genetic material did not migrate beyond the site at which it was being used. There would be very little difference in cost between a plan change directed at a minimum response and that targeting a fuller response.

Another scenario is that a private plan change could be introduced and Council would become the respondent if it decided not to adopt it and did not have statutory grounds to reject the plan change.

In summary, the information behind the policies and methods promoted in this Plan Change is based on international and national evidence and there is little risk associated with the Plan Change going ahead. It is consistent with a precautionary approach that prohibits activities in the face of uncertainty, particularly where the potential costs are high and may be irreversible. The risk of not acting (not pursuing this Plan Change) is that the significant Resource Management Issue remains unresolved and the resources of the Northern Peninsula are not managed sustainably.

4.4 Appropriateness of the Objectives in Achieving the Purpose of the Act

Section 32(3)(a) of the RMA requires the evaluation to examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act. This section of the report considers the role of the Objectives in achieving the purpose of the Act and in achieving the sustainable management of the natural and physical resources in the Northern Peninsula.

The Plan Change Objectives are:

- 1.4.1 *The environment, including people and communities and their social, economic and cultural wellbeing and health and safety, is protected from potential adverse effects associated with the outdoor use, storage, cultivation, harvesting, processing or transportation of GMOs through the adoption of a precautionary approach, including adaptive responses, to manage uncertainty and lack of information.*
- 1.4.2 *The sustainable management of the natural and physical resources of the district/region with respect to the outdoor use of GMOs, a significant resource management issue identified by the community.*

⁵¹ Sections 44A and 45A.

These Objectives are the desired end point from the resolution of the significant Resource Management Issue set out in Section 3.1.

Section 5 of the Act sets out its purpose as follows:

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which 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; and
 - b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Achieving the purpose of the Act also requires addressing the matters set out in sections 6 (matters of national importance), 7 (other matters) and 8 (Treaty of Waitangi) of the Act.

As set out in Section 4.2, inserting provisions into the District / Unitary Plan to manage the outdoor use of, and potential effects of, GMO activities is considered to be the most appropriate way of achieving the purpose of the Act for this type of activity. The Objectives clearly state the desired outcome of providing for outdoor use of GMOs while ensuring potential adverse environmental effects are avoided, or mitigated through a precautionary approach. The Objectives also ensure unacceptable risks to the community from the outdoor release of GMOs are avoided. The Objectives recognises the value of natural and cultural resources in the Northern Peninsula, and the need to protect these values from the outdoor use of GMOs.

The Objectives will sustain the physical resources of the Northern Peninsula, now and for future generations, in particular the life supporting capacity of air, water and soil ecosystems, and through the adoption of effective policies, rules and methods, any potential adverse effects on the environment can be avoided.

The Objectives will enable people and communities to provide for their social, economic and cultural well being and for their health and safety by protecting existing primary producers from possible economic harm through GM contamination and loss of markets, protecting marketing and branding advantages and price premiums for primary producers, marketing and branding advantages for the tourism sector, and respecting socio-cultural differences, particularly the cultural values of Māori.

The Objectives will ensure the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga are recognised and provided for.

The Objectives adopt a precautionary approach to the management of GMOs. The essence of the precautionary principle involves assessing and responding to potential risks or effects before they eventuate. There are uncertainties about the scope and scale of risks arising from the use of GMOs. Where the risks are high or difficult to assess or quantify by conventional risk analysis, or the potential effects are significant or uncertain, caution should be exercised before permitting and/or undertaking the activity in question, until more is known about the risks and potential effects. The adoption of a precautionary approach, as set out in Objective 1.4.1, to manage the

outdoor use of GMOs to minimise the risk to the environment, economy and socio-cultural resources and values, is inherent in the Act. The Objectives also reflect community preferences for a precautionary approach to address the issue of outdoor uses of GMOs.

It is concluded that the above Objectives are the most appropriate way of achieving the purpose of the Act.

With Regard to other Objectives in the District / Unitary Plan

Sections 59, 63 and 72 of the RMA state that the purpose of the preparation, implementation, and administration of regional policy statements, regional plans and district plans is to assist regional and district councils to carry out their functions in order to achieve the purpose of the Act. In assessing whether the Objectives are the most appropriate way to achieve the purpose of the Act, it is therefore appropriate to undertake an assessment to ensure that the Objectives are generally consistent with the other objectives in the District / Unitary Plan as these are an existing expression of how the council carries out its functions.

As the Plan Change provides generic plan provisions that will potentially be adopted by up to four territorial/unitary authorities and into a number of District / Unitary Plans, this assessment will be undertaken by each council when incorporating (and if necessary refining) the Plan Change provisions into their respective planning documents.

4.5 Appropriateness, Costs and Benefits of Policies, Rules and Other Methods

The assessment of the proposed policies, rules and other methods under section 32(3)(b) and 32(4)(a) is provided in Table 2. The following subsections draw issues together that benefit from a fuller description.

4.5.1 Appropriateness

The Plan Change is an appropriate response to community aspirations for a process whereby councils can determine acceptable levels of risk and cost exposure with respect to outdoor GMO activities within a council's jurisdiction.

Councils have repeatedly sought amendments to the HSNO Act to provide such a process within the national regulatory regime, but central government has ruled this out on a number of occasions. Additional controls at the local level are an alternative means of allowing councils to perform duties imposed on them under the LGA and the RMA.

As outlined in Section 4.2, the RMA is an effective option, and the most appropriate of those available. Further, there is not just an absence of conflict with the HSNO Act, supplementary regulation under the RMA is fully consistent with the intended interaction between the two statutes. At the time the HSNO Act was developed by central government, the intention was that additional controls could be set "under other legislation where these controls are more stringent or specific... and are required to

meet other outcomes or responsibilities”.⁵² Accordingly, section 142 (3) of the HSNO Act provides that local government can set higher standards for hazardous substances through RMA conditions, and while a similar provision is not specified for new organisms, a parallel use of the Act would be similarly consistent.

A key purpose of the Plan Change is to “meet other outcomes or responsibilities”, especially those under the LGA and RMA, and the outcome sought is controls that overall will be “more stringent”.⁵³ Thus rather than duplication, supplementation is the mechanism being used to achieve increased protection for the community.

The controls are supplementary as they are precisely targeted to:

- **Fill gaps in the national regulatory regime** such as the lack of robust liability provisions for activities that do not breach EPA consents; and
- **Set standards to ensure community determined outcomes are achieved.** Relative to an uncertain and / or indeterminate standard for exercising precaution in particular, the plan change sets specific performance standards that are high in themselves and can reasonably be judged as providing higher standards than indeterminacy.

To the extent that field trials will be subject to discretionary controls and this involves additional analysis, as the controls require an EPA approval before an application can be made, further analysis (such as impacts on the local economy) will again be supplementary, as will information requirements on applicants.

As the RMA controls are supplementary and not duplicative, they are the most efficient option for a council to address the significant Resource Management Issue.

The Plan Change is also consistent with the recently revised purpose statement of the LGA.⁵⁴

“to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”.

In order for a regulatory function to be “good quality”, it must be efficient, effective, and appropriate to present and anticipated future circumstances.⁵⁵ As the foregoing has set out, the Plan Change is effective and appropriate, and it is also the most efficient option available to a council.

4.5.2 Costs

The greatest potential cost is the value of any opportunities lost as a result of the inability to release GMOs. The EPA specifies that the counterfactual for determining the benefit of a proposed GMO activity is the gains to New Zealand it would provide over and above that which could have been expected to result in any case.⁵⁶ This

⁵² Simon Terry Associates, *Community Management of GMOs: Issues, Options and Partnership with Government*, 2004, p 4.

⁵³ The outcomes will in all cases be stricter in respect of financial accountability measures, and will tend to be more stringent or at least as stringent in other respects.

⁵⁴ Local Government Act 2002 Amendment Bill, 2012.

⁵⁵ Section 10, as revised in 2012.

⁵⁶ EPA, *Assessment of Economic Risks, Costs and Benefits: Consideration of impacts on the market economy*, November 2011, pp 6 and 7.

means that for foregone benefits to count there must be benefits in addition to that which could have been expected if the GMO activity had not gone ahead.

The key area of interest is agricultural GMO applications, given the predominant land uses in the Northern Peninsula. Traditional breeding has delivered consistent incremental gains in agricultural productivity, so that the baseline is far from static. Discoveries in gene science in recent decades have led to new productivity enhancement techniques, and GM is one of a number of such applied technologies. In consequence, there are a number of routes to enhanced agricultural productivity, even when limiting consideration to the genetic makeup of the inputs.

A recent comparison of corn yields in the US (where GM maize dominates over non-GM varieties) and European countries growing essentially no GM maize demonstrated Europe's equal or in many cases superior yields over a quarter of a century. This clearly illustrates that gains can be quite independent of access to any particular biotechnology, including GM products. Maize is the second most widely planted GM crop in the world and the comparison shows that since the introduction of GM crop varieties in the mid 1990s, gains in European corn yields have at least kept pace with those in the US on a per hectare basis.⁵⁷

For some time, GM developers have been anticipating step change gains that would separate food GMOs from such patterns but these have yet to be demonstrated in production. What has become clearer in recent years is that at least one other technique is equally capable of achieving step change gains. Marker Assisted Selection ("**MAS**"), also known as precision breeding, makes use of gene science to better understand the traits that are sought to be transferred from one plant to another, but the process of creating the new organism is based on traditional non-GM techniques - such that the result is not a GMO. MAS is generally capable of delivering the same scope of new varieties as GM.⁵⁸

Therefore, as GM is almost never a unique route to a particular productivity enhancement, and non-GM techniques can generally achieve similar outcomes, in principle there need not be any foregone benefits arising from prohibiting the release of GMOs. Actual costs will be scenario dependent, and in particular could depend on whether a New Zealand-based company has devoted its research effort to use of a GM route (versus a non-GM route) and whether competing non-GM options have been pursued locally or not.

Forecasting outcomes is further complicated at this point due to the potential for circularity in the analysis. If councils do not have controls to manage GMO activities in place, then developers are less likely to avoid GM routes to productivity enhancement, whereas if a number of councils have adopted such rules, local developers will tend to choose non-GM routes. In the long run, because of the availability of non-GM routes, the cost of prohibiting GMO release activities will tend to zero.

The overall analysis is however simplified by the ability to alter a plan so as to make a particular GMO or class of GMOs a discretionary activity as new information becomes available. As described in Section 4.3, where a GMO is considered to provide net benefits to the jurisdiction, a plan can be changed in a manner that minimizes the

⁵⁷ Professor Jack Heinemann, Presentation to Hastings District Council, 24 October 2012.

⁵⁸ GM does not enjoy a timing advantage either. Dr Robert Reiter, a molecular biologist and VP Biotechnology at Monsanto recently stated that: "Conventional crop breeding requires a 7 – 8 year cycle, compared to 10 – 15 years from inception to development for genetically modified crops..." <http://www.sciencemediacentre.co.nz/2012/09/04/gm-biotech-players-outline-their-science-roadmaps/>

potential for delay in securing those benefits. The existence of this option to reverse the constraint effectively caps the potential value of any lost opportunities arising from a GMO release at the cost of making a further plan change.

With respect to field trials, many of the controls set by the Plan Change are common to those required under the HSNO Act for a field trial – for example the prohibition on altered genetic material moving beyond the boundary of the test site. The financial accountability provisions are additional costs to the developer but as they are intended to internalise any costs otherwise externalised, there is no net cost to the community. A further overall feature of field trials is that these can generally be conducted in another part of New Zealand without affecting the prospects for later use of the GMO in question within a council's jurisdiction. There would nonetheless be additional transaction costs to the GMO proponent involved in making a separate application to a council as well as the EPA if a field trial were sought to be conducted in the council's area, but these costs will be minor. It is not unusual for consent applications to be made under different statutory codes in respect of a particular land use.

The residual cost that is not contingent (other than on this Plan Change proceeding) is the administrative cost of making the Plan Change. As described in Section 4.3, costs on a par with a plan change, if not actually a plan change of some form, may prove difficult to avoid if a community is strongly minded to seek a precautionary response.

4.5.3 Benefits

The principal benefit of the Plan Change is the ability to set community determined levels of risk and cost exposure with respect to GMO activities within a council's jurisdiction. Establishing appropriate standards of protection will have benefits that are financial and non-financial.

Financial benefits arise from avoiding the risk of lost income due to GM contamination of non-GM crops, avoiding the need to curb or eradicate a GMO in the environment that proves to be unwanted, and potentially from price premiums delivered by branding that is in part reliant on a GM Free status for an area.

Pastoral farming, horticulture and forestry constitute the predominant land uses in the Northland Region and are also important land uses in the Auckland Region, though these are considerably less significant to its overall economy. GM varieties relevant to each of these sectors are either commercially available today or under active development. Both regions are also home to ecologically sensitive areas.

The main relevant land-based industries in Northland and Auckland are:

- Pastoral agriculture accounts for over half of land use in Northland,⁵⁹ and carries 6% of the nation's dairy stock and 10% of its beef stock, while Auckland carries 2% of the nation's dairy stock and 3% of its beef stock.⁶⁰ Potential uses of live GMOs in pastoral farming include GM feed and pasture grasses and GM livestock.

⁵⁹ <http://www.nrc.govt.nz/special/soe.2002/regional.profile/2-3-index.shtml>

⁶⁰ Statistics New Zealand, 2011 data from table builder for agriculture at: http://www.statistics.govt.nz/tools_and_services/tools/TableBuilder/agriculture-statistics.aspx

- Auckland accounts for 12% of national horticultural production and Northland 5%.⁶¹ Many of the principal fruit and vegetable crops grown in these regions are the subject of GM research and development.
- Northland accounts for 9% of the nation's planted production forest area, and Auckland 2%.⁶² Scion (a Crown Research Institute) is currently conducting field trials of GM pine and other species in Rotorua.

As set out in Section 2.2.2, there are a number of different risk pathways capable of triggering market or environmental damage that could result in significant financial consequences. The value of avoiding any one of these is scenario dependent. Experience with GM contamination events indicates that losses from a single event can amount to millions or tens of millions of dollars.⁶³ Similarly, experience with unwanted new organisms has shown that the costs of eradicating one of these can amount to tens of millions of dollars, and attempts to even limit the rate of spread can require millions of dollars.⁶⁴ The level of cost that could be expected within a particular jurisdiction depends on the type of GMO and the nature of the problem, but exposures to constituents in the millions of dollars per incident are reasonable to assume.

While the government is obliged to remove any GMO that is illegally present, it has complete discretion over whether it assists financially with the removal of a GMO that was approved for release by the EPA but later is seen as an unwanted new organism. Losses arising from GM contamination will tend to be faced by those in the community (whichever way claims between GM and non-GM growers are settled) and attenuated only to the extent that insurance can be obtained.

A further important benefit is avoiding the foreclosure of opportunities to enhance the value of a jurisdiction's production through branding and marketing. The Northern Peninsula (north of the Auckland Isthmus) is geographically distinct and this provides a demonstrable physical separation from other areas. If the area were to be marketed as having distinct food production characteristics, including being GM Free, such a geographic separation could be pointed to in order to underscore the distinction.

Even within Europe, where GMO cultivation is very rare and constitutes 0.01% of global acreage, a number of regions have branded themselves GM Free. This includes 21 regions in France and 16 in Italy – many that evoke premium food attributes such as Tuscany, Salzburg, Burgundy and Provence.

In Australia, the South Australian Government legislated for the Eyre Peninsula to be provided with separate and stronger powers to exclude GM cultivation from an area in which quite strong restrictions already apply.⁶⁵ Tasmania has gone further and adopted a policy of state-wide exclusion of GMOs and a branding strategy emphasising the region's pristine character.⁶⁶

⁶¹ Statistics New Zealand, 2011 data from table builder for agriculture.

⁶² MAF, 2007 data, "Agricultural Areas in Hectares by Usage and Region", http://www.stats.govt.nz/browse_for_stats/industry_sectors/agriculture-horticulture-forestry/2007-agricultural-census-tables/land-use-farm-counts.aspx

⁶³ Simon Terry Associates and Mitchell Partnerships, *Community Management of GMOs II: Risks and Response Options*, 2005, Section 2.3. In well-defined markets, the cost of a particular risk can be revealed by insurance contracts but the issue at hand is not suitable for this.

⁶⁴ Simon Terry Associates and Mitchell Partnerships, *Community Management of GMOs II: Risks and Response Options*, 2005, Section 6.2.2.

⁶⁵ Parliament of South Australia, House of Assembly Select Committee on Genetically Modified Organisms (2003) *Final Report*.

⁶⁶ See: www.brandtasmania.com

New Zealand currently enjoys *de facto* recognition as a GM free growing area and this has allowed maize producers as a group to secure higher returns than would otherwise be the case. As the spread of GM contamination makes it harder for producers in a number of countries to be GM free, and at the same time many high value consumer markets remain resistant to GM content in food, premiums for GM free production can be expected to remain if not expand.

A plan change that excludes GMO releases would provide the underpinning for individual companies and potentially for regional bodies to further develop and promote a brand capable of adding value to existing production as part of a wider promotion of local attributes.⁶⁷

Other non-financial benefits of the Plan Change include:

- Avoidance of adverse effects on Māori cultural values;
- Reduced risk to biodiversity; and
- Reduced scope for tension between neighbours arising from any GM plantings.

Overall, the largest potential benefit is the avoidance of the risk of incurring costs that are measured in the millions to tens of millions of dollars per serious incident, whereas the cost of this Plan Change and any contingent costs (including subsequent plan amendment) together would be considerably less than the cost of even one of the minor GM contamination events that have occurred in New Zealand to date.⁶⁸ The administrative costs involved in establishing the Plan Change are in effect the cost of avoiding these risks. While the prospect of any particular event occurring would be difficult to attach a probability to, the differential between the risks and the remedy is so large that the cost can be viewed as an insurance policy premium.

⁶⁷ Northland's current branding initiative, led by Enterprise Northland, is called "Northland Naturally", "rich in natural beauty and resource".

⁶⁸ At least three GM contamination events have occurred in New Zealand that have involved financial consequences, with each resulting in losses of \$0.5 to \$1 million. One of these is detailed in: Simon Terry Associates and Mitchell Partnerships, *Community Management of GMOs II: Risks and Response Options*, 2005, p13.

Table 2: Assessment of the proposed policies, rules and other methods under sections 32(3)(b) and 32(4)(a) of the Act.

Proposed Objective 1.4.1 The environment, including people and communities and their social, economic and cultural well-being and health and safety, is protected from potential adverse effects associated with the outdoor use, storage, cultivation, harvesting, processing or transportation of GMOs through the adoption of a precautionary approach, including adaptive responses, to manage uncertainty and lack of information.	
Proposed Objective 1.4.2 The sustainable management of the natural and physical resources of the district/region with respect to the outdoor use of GMOs, a significant resource management issue identified by the community.	
Policy / Rule / Method	Assessment under section 32(4)(a) of the Act Benefits Costs Assessment under section 32(3)(b) of the Act Having regard to their efficiency and effectiveness, the appropriateness in achieving the objective
Proposed Policy 1.4.1.1 and 2.3.1.1 To adopt a precautionary approach by prohibiting the general release of a GMO, and by making outdoor field trialling of a GMO a discretionary activity.	This policy specifies what outdoor GMO activities can be undertaken in the Northern Peninsula, and prohibits those activities that are considered inconsistent with the Objectives. The outdoor use of GMOs has the potential to cause adverse effects on the environment, economy, and social and cultural well-being. As the level of risk inherent in the release of a GMO is not tolerable to the community for economic, environmental and cultural reasons, this policy adopts a precautionary approach by prohibiting the outdoor release of GMOs (other than vaccines). This will provide certainty to the community as to the nature of GMO activities that cannot be undertaken, and avoid the risk to the environment, economy and socio-cultural values from such activities. The policy requires outdoor field trials to gain consent as a discretionary activity enabling Council the ability to decline an activity where the potential risks are deemed to be too great, and to attach conditions to a consent approval to address liability and monitoring requirements. Community consultation has determined that a precautionary approach in the management of GMOs is warranted. The policy achieves this. If the community were to depend on the EPA, approval process as currently is the case, there is no requirement for the EPA to be precautionary, and community preferences may not be achieved. The prescriptive nature of the policy results in prescriptive rules, thus foreclosure of potential opportunities associated with certain GMO developments that could benefit the district or region. This cost is remedied through the ability to reverse a prohibited activity in a plan. A council or a GMO developer can initiate a plan change, if it were to become evident during the field trial stage, and in light of new information, that a particular GMO activity would be of net benefit to the Northern Peninsula. The lead time involved in gaining an EPA consent would be similar to that required to achieve a plan change. Processing a plan change would however result in costs to the Council and/or the applicant, and would be specific to a particular class or GMO variety. Administration costs to the Council to receive and process an application for a field trial as a discretionary activity and associated compliance monitoring costs. This cost is partially remedied as the application costs and costs of monitoring are fully recoverable from the applicant. General compliance costs are also generated by all other activities under a plan. This policy is effective in clearly stating that general releases of GMOs are prohibited, apart from veterinarian vaccines, while resource consent is required for any GMO field trial, enabling the Council to manage any potential effects through conditions. This policy is efficient and effective and will assist in achieving the Objectives. It has been determined that this policy is appropriate.
Proposed Policy 1.4.1.2 and 2.3.1.2 To ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to conditions that ensures the consent holder is financially accountable (to the extent possible) for any adverse effects associated with the activity, including clean-up costs and remediation, including via the use of bonds.	Due to the weak liability and financial assurance arrangements under the HSNQ Act, councils are exposed to meeting the costs of clean-up if the polluter does not pay. The Ministry of Primary Industries is only obliged to clean up illegal releases, not those approved by the EPA that have unexpected effects. Further GMO contamination could have a potentially significant impact on returns to non-GM growers in the district or region and could affect other parts of the country as well. This policy requires the consent holder to be financially accountable for adverse effects to the extent possible, reducing risk to the community and environment, and Some costs for the Council in respect to administering the bond, clean-up activities and any remediation required. The policy will achieve the Objectives as it requires GMO field trials that are granted resource consent to be subject to conditions that deems the consent holder financially liable for ensuring that the potential adverse effects of the activity are appropriately avoided, remedied or mitigated. While civil action may be taken using tort law, this is an inappropriate, onerous and generally ineffective way to seek compensation. The proposed policy is a more efficient way of ensuring those responsible for any adverse effects cover the costs they cause to innocent parties.

Policy / Rule / Method	Assessment under section 32(4)(a) of the Act		Assessment under section 32(3)(b) of the Act
	Benefits	Costs	Having regard to their efficiency and effectiveness, the appropriateness in achieving the objective
	provisions for potential clean-up costs to be met. The community has indicated a desire that a liability regime be implemented that requires those engaging in a GM release to pay compensation for any harm caused by an approved release, as this is not provided for under the HSNO Act. This policy is designed to avoid the costs for clean-up being met by the Council or its constituents, and greatly reduces the burden of proof required by Council to obtain compensation, as well as the time and costs involved in doing so.		The benefits of ensuring the consent holder is financially accountable for any adverse effects associated with a GMO activity, far exceed the cost. The Objectives and rules have been designed to ensure the environment is protected from adverse effects associated with outdoor GMO use. This policy is efficient and effective in achieving the Objectives.
Proposed Policy 1.4.1.3 and 2.3.1.3 To ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to conditions that serve to avoid, as far as can reasonably be achieved, risk to the environment from the use, storage, cultivation, harvesting, processing or transportation of a GMO.	It is recognised that while GM techniques are expected to offer benefits in many sectors, there are risks associated with their use. These risks could be substantial and certain consequences irreversible. This policy enables Council to apply more stringent measures than those required under the provisions of the HSNO Act, to manage potential risks.	There is a cost to Council to monitor compliance with conditions. There is an opportunity cost in forgoing the potential release of GMOs, however traditional non-GM techniques as well as new techniques (for example MAS) are currently capable of producing the same deliverables as GM varieties.	The cost to Council to monitor compliance with consent conditions is no greater than for other activities that require resource consent as a discretionary activity. The benefits of ensuring adverse effects on the environment are avoided, remedied or mitigated for the community far outweigh these costs. This policy is efficient and effective in addressing the Objectives to protect the environment from potential adverse effects, and ensures targeted outcomes are achieved.
Proposed Policy 1.4.1.4 and 2.3.1.4 To ensure that a resource consent granted for the outdoor field trialling of a GMO is subject to a condition requiring that monitoring costs are met by the consent holder.	The EPA is not obligated to set monitoring requirements (including beyond the consent duration) as a part of its approval process, and can only require monitoring where it is relevant to assessing environmental risk. Under section 35 of the RMA a council has a duty to monitor, which can be expensive. Requiring the consent holder to meet the costs of monitoring ensures the costs aren't borne by the Council or its constituents. This policy provides a clear statement of financial requirements on the consent holder, resulting in increased certainty for all parties. The policy is designed to reduce the likelihood that activities will impact on the environment or the economy, or financial costs will be borne by the Council or its constituents.	There are few costs associated with this policy, as monitoring costs will be borne by the consent holder. Council's obligations are limited to ensuring compliance and auditing the results of monitoring.	This policy is efficient and ensures that Council obtains the monitoring it requires to adequately protect against risk, and it is not burdened with significant expense to achieve this. This policy is effective and will ensure the consent holder is financially accountable for any monitoring required.
Proposed Policy 1.4.1.5 and 2.3.1.5 To require consent holders for a GMO activity to be liable (to the extent possible) for any adverse effects caused beyond the site for which consent has been granted for the activity.	Accidental or unintentional migration of GMOs that result in GM contamination and require subsequent clean-up and remediation can be expensive. Further, GM contamination of non-GM food can trigger product rejection or other forms of economic loss. Requiring the consent holder to be liable for any adverse effects beyond the site the extent possible addresses the significant Resource Management issue.	No costs identified with this policy.	This policy is efficient and effective in achieving the Objectives by limiting the area in which GM materials may be used such that dispersal beyond the area is a breach of consent and costs or damages are recoverable.

Policy / Rule / Method		Assessment under section 32(4)(a) of the Act		Assessment under section 32(3)(b) of the Act	
		Benefits	Costs	Having regard to their efficiency and effectiveness, the appropriateness in achieving the objective	
Proposed Policy 1.4, 1.5 and 2.3, 1.6 To adopt an adaptive approach to the management of the outdoor use, storage, cultivation, harvesting, processing or transportation of a GMO in the district or region through periodic reviews of these plan provisions, particularly if new information on the benefits and/or adverse effects of a GMO activity becomes available.		Avoids foreclosure of potential opportunities associated with a GMO development that could benefit the Northern Peninsula. Can be initiated by either Council or GMO operator. Must go through plan review process and timetables to process are similar to those to obtain GMO approval from the EPA.	Costs will be incurred by Council to implement a plan change, unless a private plan change is initiated. Transaction costs and opportunity costs to the GM proponent of having to go through two processes (EPA approval and plan change under the RMA).	This policy ensures that if a particular GMO or group of GMOs demonstrates potential to provide net benefits then a plan change could make them subject to discretionary activity status. This policy is efficient and effective in ensuring any potential future benefits of GMOs are provided for.	
Permitted Activity Rule 1.7.2 and Rule 2.6.2 GMOs that are not specifically provided for in Rules 1.7.3 (2.6.3) and 1.7.4 (2.6.4) are a permitted activity. These include (but are not limited to): (a) Research within contained laboratories involving GMOs. (b) Medical applications involving the manufacture and use of non-viable GM products. Such activities may require consents and / or permits under other legislation / plans.		The permitted activity rule provides clear guidance to plan users and Council alike on what GMO activities can be undertaken without need for resource consent.	There are no costs identified with this rule.	This rule is considered to be efficient as the absence of a permitted activity rule would mean all GMO activities would require a consent. This rule is efficient and effective as it permits medical applications involving the manufacture and use of non-viable GM products, and vaccines that tend not to persist in the environment, appear to be low risk and are difficult to monitor. This rule is efficient and effective in achieving the Objectives.	
Discretionary Activity Rule 1.7.3 and Rule 2.6.3 The following are discretionary activities throughout the district or region: (a) GMO field trials.		Providing for field trials as a discretionary activity allows Council to decide on what GMO activities are suitable for the district or region, presents a low level of risk to the community, and provides Council the opportunity to decline high risk or information poor applications. As an application requirement is that the EPA has already approved the activity, Council's role is limited to determining whether there are additional conditions required to make the activity acceptable, or whether to decline the application. Assessment criteria under the HSNO Act does not include liability provisions, therefore the discretionary activity status enables councils to address liability through general development and performance standards. Activities can be undertaken subject to conditions designed to avoid more than minor effects on the environment. Council can set higher standards for control than the EPA has or could be expected to.	No certainty for GMO operators who may wish to undertake an activity in the area, even though they have EPA approval. This may result in an unwillingness to seek a consent and foreclosure of potential opportunities that could benefit the district or region. Resources and costs required by Council to implement and administer the rules.	The discretionary rule is effective as conditions can be tailored to uniquely fit each activity. It is also efficient as it is supported by a range of compliance and enforcement powers under the RMA.	
General Development and Performance Standards Rule 1.7.4 and Rule 2.6.4 Discretionary activities are to comply with the following general development and performance standards in order to establish in the district or region. The general development and performance standards are in addition to any controls/conditions imposed by the EPA.		Provides clear guidance to applicants and Council alike on the standards GMO field trials must achieve.	Resources and costs to Council to implement and administer the standards.	Listing the general development and performance standards that the consent holder must achieve is efficient in that it provides clear guidance to applicants of the required standards that must be met in undertaking the activity. It is effective to set performance standards under the RMA, such that certain outcomes are assured. Performance standards are effective in mitigating risks.	

Policy / Rule / Method	Assessment under section 32(4)(a) of the Act		Assessment under section 32(3)(b) of the Act
	Benefits	Costs	Having regard to their efficiency and effectiveness, the appropriateness in achieving the objective
1.7.4.1 Approvals All GMO discretionary activities shall: (a) Have the relevant approval from the EPA. (b) Be undertaken in accordance with EPA approval conditions for the activity. 1.7.4.2 Bond Requirements Council requires the applicant for the resource consent to provide a performance bond (akin to a bank guarantee) in respect of the performance of any one or more conditions of the consent, including conditions relating to monitoring required of the GMO activity (prior to, during and after the activity), and that this be available for payment to redress any adverse environmental effects and any other adverse effects to third parties (including economic effects) that become apparent during or after the expiry of the consent. The exact time and manner of implementing and discharging the bond shall be decided by, and be executed to the satisfaction of Council.			The requirement to post a performance bond rather than commit cash resources means the applicant's available capital is not reduced by the requirement.
Prohibited Activity Rule 1.7.5 and Rule 2.6.5 The following is a prohibited activity in the district or region for which no resource consent shall be granted: (a) Outdoor GMO releases (food-related and non-food-related) not otherwise provided for by Rules 1.7.2 and 1.7.3.	Costs to Council associated with administering this rule are limited as the activity is prohibited. No costs can arise from legal challenges to individual decisions that could be made under a discretionary regime. The potential adverse effects of GMO releases on the environment, economy and socio-cultural values have been identified by the community as key concerns. The prohibited activity status is consistent with a precautionary approach and provides certainty to the community that no GMO releases can be undertaken without specific further consideration and subsequent plan change. Prohibited activity status avoids entirely the high levels of potential harm and uncertainties about costs associated with an unforeseen event. The matter of provision of compensation and its adequacy, particularly in terms of opportunity costs is avoided. Prohibited activity status would not be subject to the option, as under a discretionary approach, that the EPA could call in an application or it could be referred directly to the Environment Court. Therefore the Council and the community it represents would retain the capacity to determine its own policy in terms of outdoor release of GMOs.	By prohibiting certain activities from establishing, new developments/technologies face uncertainty and delay in seeking approval by way of a plan change. This could result in foreclosure of potential opportunities associated with a GMO development that could benefit the Northern Peninsula. This cost is remedied through the ability to reverse a prohibited activity in a plan. A council or a GMO developer can initiate a plan change to make it subject to discretionary provisions, if it were to become evident during the field trial stage and in light of new information that a particular GMO activity would be of net benefit to the Northern Peninsula. The lead time involved in gaining an EPA approval would not be dissimilar from that required to achieve a plan change. The change would however be specific to a particular class or GMO variety. The District/Unitary Plan will need to be amended if a prohibited activity demonstrates it would be of benefit. Time and monetary costs associated with the plan change process for the Council, GMO developer and community.	The rule will achieve the Objectives, as it will ensure that potential adverse effects from general releases of GMOs will be avoided. The rule also provides clarity to the Council and the community about what GMO activities can and cannot be undertaken. The policy is effective in addressing cross-boundary effects and associated risks, such as perception, opportunity costs and transportation risk, through a consistent application of the rule throughout the Northern Peninsula. Periodic review can consider whether clear benefits of GMO technology can be identified and risks managed, and whether specific classes of GMO releases could be made a discretionary activity. The prohibited activity status places the onus on the GMO proponent to provide sufficient information on the level of risk in resource management terms when proposing a plan change. The rule is specific to GMO releases, which makes it efficient in achieving the Objectives and addressing the significant Resource Management Issue. It recognises the potential risk associated with GMO releases and the lack of provisions for strict liability in the District/Unitary Plan. This rule is particularly effective in achieving the Objectives.
Application of the prohibited rule throughout the Northern Peninsula will provide for consistency in the			

Policy / Rule / Method		Assessment under section 32(4)(a) of the Act		Assessment under section 32(3)(b) of the Act
		Benefits	Costs	Having regard to their efficiency and effectiveness, the appropriateness in achieving the objective
		approach to GMO releases and will largely eliminate cross-boundary controls (apart from the southern boundary).		
Introduction of Definitions		Including definitions will result in greater certainty and efficiencies in plan administration, and for potential applicants. GMO activities (field trials and releases) are not currently provided for in the District/Unitary Plan. The introduction of these definitions provides certainty around what GMO activities are provided for in the Plan Change.	If the definitions do not accurately define the GMO activities they are intended to provide for, there could be confusion in determining what activities are specified in the provisions. To mitigate against these risks, the definitions are intended to be consistent with the national level regulation.	The definitions are necessary to enable the new policies and rules to be workable, and to provide certainty to consenting authorities. It is an appropriate way to ensure that specific GMO activities are provided for. The efficiency and effectiveness of the new definitions will make progress towards achieving the Objectives.

5. NEXT STEPS

Schedule 1 of the RMA outlines the requirements for consultation in the plan development process. In respect to a section 32 evaluation, consultation is important as it assists to identify and assess issues, gather information from, and understand the needs of, resource users and others in the community, including tangata whenua.

The initial evaluation of community responses has indicated that the Northern Peninsula community, including tangata whenua, seek a relatively strong degree of precaution in respect to the management of GMOs, but also remain open to opportunities that new GMOs may provide. This community preference has informed the development of the Plan Change.

Schedule 1 requires targeted consultation and allows for public consultation during the preparation of a plan or change to a plan. It is proposed that the Plan Change and Section 32 Report are now subject to consultation as required under Schedule 1 of the Act to assess community views on the Plan Change.

The consultation process should acknowledge the Waitangi Tribunal Wai 262 findings and should include engagement with Mana Whenua iwi authorities and with Mataawaka.

A good opportunity to undertake consultation in the context of the Auckland Council jurisdiction is in the form of the proposed March 2013 Unitary Plan Discussion Draft. The inclusion of the Plan Change provisions associated with this section 32 evaluation is a matter for the determination of the Auckland Council.

6. CONCLUSION

This report, along with the supporting documentation in Volume 2, provides a section 32 analysis with respect to a Plan Change that proposes new provisions for the Northern Peninsula's respective District / Unitary Plans to manage the outdoor use of GMOs. While there may be a range of benefits associated with the outdoor use of GMOs, there are also environmental, economic and socio-cultural risks that could be substantial, and irreversible. A wide range of GMO products are being researched and developed, including ones that GMO developers/operators may consider introducing to the Northern Peninsula. The current lack of provisions to manage GMOs in the District / Unitary Plans with respect to GMO activities does not protect the environmental, economic or socio-cultural resources of the Northern Peninsula, nor does the absence of provisions reflect the level of control desired by the communities (including Māori) to manage GMO activities.

There are key gaps in the national regulation of GMOs, namely the absence of adequate liability provisions and applicant financial fitness requirements, the absence of a mandatory precautionary approach, and a lack of surety of outcome for local government and communities. Changes to the national level regulatory regime to address these gaps have not been forthcoming, despite substantial on-going local government pressure for such change. Where a local authority has determined that a precautionary approach to GMO risks is warranted, and that higher standards than those set by the EPA are warranted, or that the EPA can not be relied on to undertake the level of monitoring or financial accountability sought, it has jurisdiction under the LGA and RMA to manage land and water uses involving GMOs. This interpretation is based on legal advice provided to the Working Party, and is consistent with Crown Law and Ministry for the Environment advice.

The purpose of the Plan Change is to apply a precautionary approach to manage the outdoor use of GMOs to minimise the risk to the environment, economy and socio-cultural resources and values. The Plan Change is established such that Northern Councils are employing supplementary, not duplicative, regulation. Local government is determining to impose stricter provisions to ensure community determined outcomes can be achieved and that it can fulfil its duty of care to its constituents.

The Plan Change inserts a new significant Resource Management Issue, Objectives, Policies and Methods (including new definitions) into the District / Unitary Plan. The purpose of this is to ensure that the outdoor use of GMOs, including in the CMA, is managed in accordance with the purpose of the RMA. The Plan Change provisions have been drafted generically, to enable individual councils to tailor the provisions to their specific District / Unitary Plan.

Initial consultation has found strong support for local authorities to have a role in regulating GMOs in their areas. Local or regional level regulation of the outdoor use of GMOs is supported by the Northern Peninsula communities, including Māori. Issues raised during consultation have been addressed through the commissioning of technical assessments, the refinement of the Plan Change provisions, and this section 32 evaluation.

An assessment of the proposed provisions under section 32 of the Act has determined that the Objectives are appropriate to achieve the purpose of the Act, and that the proposed policies, rules and other methods are the most appropriate way to achieve the Objectives. The provisions are an appropriate response to community aspirations to manage risks associated with GMO activities, and are consistent with the

precautionary approach provided for under the RMA, where activities may be prohibited if there is uncertain or insufficient information. The assessment has also determined that the risk (and cost) arising from acting is low, but that the risks and potential costs arising from not acting are high.

Targeted consultation and discussion with key interest groups and the community is required to assist the Northern Councils to further refine the significant Resource Management Issue and determine the appropriateness, costs and benefits of the Plan Change.

The various provisions detailed within this report are considered to be the most appropriate way to address the significant Resource Management Issue. Based on the assessment provided in this report, it is appropriate for the Northern Councils to proceed with the Plan Change.

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APPENDIX C

SECLECTED CASELAW

Federated Farmers of New Zealand v Northland Regional Council

[2015] NZEnvC 89

Environment Court, Auckland
(ENV-2013-AKL-161)
Judge Newhook

24 April;
12 May 2015

Environment and natural resources — Hazardous substances — Northland Regional Policy Statement — Whether there is jurisdiction under the Resource Management Act 1991 for policy statements and plans to make provision for control of Genetically Modified Organisms — Hazardous Substances and New Organisms Act 1996, ss 2, 4, 5, 6, 142; Resource Management Act 1991, ss 5, 30, 59, 61, 62.

Environment and natural resources — New organisms — Northland Regional Policy Statement — Whether there is jurisdiction under the Resource Management Act 1991 for policy statements and plans to make provision for control of Genetically Modified Organisms — Hazardous Substances and New Organisms Act 1996, ss 2, 4, 5, 6, 142; Resource Management Act 1991, ss 5, 30, 59, 61, 62.

Resource management — Plans and schemes — Regional — Regional policy statement — Northland Regional Policy Statement — Whether there is jurisdiction under the Resource Management Act 1991 for policy statements and plans to make provision for control of Genetically Modified Organisms — Hazardous Substances and New Organisms Act 1996, ss 2, 4, 5, 6, 142; Resource Management Act 1991, ss 5, 30, 59, 61, 62.

Federated Farmers of New Zealand appealed against the precautionary Genetically Modified Organisms (GMO) provisions in the proposed *Regional Policy Statement for Northland*.

The sole point remaining before final resolution of the appeals concerned the question as to whether there was power under the Resource Management Act 1991 for regional councils to make provision for control of use of GMOs through regional policy statements and plans.

The appeal centred around whether the regulation of GMOs in New Zealand was undertaken solely under the Hazardous Substances and New Organisms Act 1996, as Federation Farmers contested, or whether some level of regulation could also be undertaken under the Resource Management Act 1991.

Federated Farmers contended that Hazardous Substances and New Organisms Act 1996 was the only code to address GMOs.

The Northland Regional Council submitted that consideration of the control of GMOs could be addressed under the comprehensive Resource Management Act 1991 framework for promotion of the sustainable management of natural and physical resources, including the avoiding, remedying or mitigating of any adverse effects of activities on the environment. The Council argued that Hazardous Substances and New Organisms Act 1996 played a more confined role in the overall legislative

picture, addressing the more limited issue of the granting of approvals to import, develop, field test, or release, new organisms, somewhat as a more one-off regulatory transaction.

Held, (1) the starting point was exemplified in a strong statement by the High Court in its *Meridian Energy* decision (cited below), such that “in general terms, all resource use is amenable to its framework, unless expressly exempted from consideration.” This statement is one of legal principle, not merely *obiter dicta* as argued by Federated Farmers. The *Meridian* case was authority for the proposition that a statutory interpretation exercise of the kind before the Court should not be confined to an assessment of whether express exemption occurs under the Resource Management Act 1991, because express exemption may be found in other legislation. (paras 36, 40, 42, 44)

Meridian Energy Ltd v Southland District Council [2014] NZHC 3178, (2014) 18 ELRNZ 473, applied

(2) Regulatory jurisdiction under the Hazardous Substances and New Organisms Act 1996 is limited to the activity of introduction of new organisms to New Zealand. The argument that Hazardous Substances and New Organisms Act 1996 is the exclusive code for control of GMOs would bring about an awkward proposition creating a disparity under the Resource Management Act 1991 between control of new organisms on the one hand and all other organisms on the other, which was contrary to the broad regulatory approach under the Resource Management Act 1991. There was no express exemption for consideration of the control of new organisms under the Resource Management Act 1991 in either that Act or the Hazardous Substances and New Organisms Act 1996. This indicates that the Hazardous Substances and New Organisms Act 1996 was not an exclusive code for regulatory control of GMOs in New Zealand. The Resource Management Act 1991 and Hazardous Substances and New Organisms Act 1996 offer significantly different functional approaches to the regulation of GMOs. (paras 45, 47, 49)

Bleakley v Environmental Risk Management Authority [2001] 3 NZLR 213 (HC), considered

(3) The doctrine of implied repeal of relevant provisions of the Resource Management Act 1991 by enactment of the Hazardous Substances and New Organisms Act 1996 was not open in the present circumstances. The two Acts had complimentary rather than overlapping roles. Even if the regulatory provisions of the Hazardous Substances and New Organisms Act 1996 are more precise in some respects than the broad provisions in the Resource Management Act 1991, there was no context for taking the extreme approach of an implied repeal. (paras 57-59)

Terminals (NZ) Ltd v Comptroller of Customs [2013] NZSC 139, [2014] 1 NZLR 121, considered

Cases referred to

Bleakley v Environmental Risk Management Authority [2001] 3 NZLR 213 (HC)

Meridian Energy Ltd v Southland District Council [2014] NZHC 3178, (2014) 18 ELRNZ 473

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West Coast ENT Inc v Buller Coal Ltd [2013] NZSC 87, [2014] 1 NZLR 32, (2013) 17 ELRNZ 688

Appeal

This was an unsuccessful appeal against the precautionary genetically modified organisms provisions in the *Regional Policy Statement for Northland* over whether there is jurisdiction under the Resource Management Act 1991 for regional councils to make provision for the control of the use of Genetically Modified Organisms through regional policy statements and plans.

M R Christensen and *R Gardner* for appellant

J A Burns for respondent

G J Mathias for Whangarei District Council

R A Makgill for Soil & Health Association of NZ Inc, GE Free NZ (Northland) Inc (and the other parties under s 274, numbers of whom had written to the Court expressly opposing the Federated Farmers' position)

Cur adv vult

JUDGE NEWHOOK

Introduction and statement of the issue

[1] The current argument arises in one of a set of appeals concerning decisions on submissions about the proposed *Regional Policy Statement for Northland*. Almost all points in the appeals have been quickly settled in mediation, and the Court is in the process of considering draft consent orders on those. The subject matter of the present decision follows a hearing about what is almost the sole point remaining before final resolution of the appeals.

[2] The question before the Court is as to whether there is power under the RMA for regional councils to make provision for control of use of GMOs through regional policy statements and plans. Some parties endeavoured to extend the question by analogy to the promulgation of district plans as well. I have maintained the focus on regional instruments in this decision, because the appeal concerns a regional policy statement.

[3] Subject to the detail that follows, the argument is whether the regulation of GMOs in New Zealand is undertaken solely under the Hazardous Substances and New Organisms Act 1996 (HSNO), or whether some level of regulation may also be undertaken under the RMA. (No party sought to argue that the RMA in any way takes precedence over HSNO.)

[4] The argument is a strictly legal one, involving statutory interpretation. It does not address the merits of the RPS provisions under appeal.

[5] My approach, having heard the lengthy submissions on behalf of the parties, will be as follows:

- (a) The task should commence with consideration of the text of relevant sections of the two statutes, informed to the extent necessary by the purpose and context of them.
- (b) It is appropriate in taking that first step, to seek to reconcile the enactments if possible, and if it is not, then to consider which of the enactments should prevail.
- (c) There are various approaches available should it be necessary to consider which of the enactments should prevail, including "express repeal", "express exclusion", and in the last resort, "implied repeal".

[6] One final introductory matter is that the relationship in question between the RMA and HSNO has been discussed in an Environment Court Decision on one occasion previously. That case was *NZ Forest Research Institute Ltd v Bay of Plenty Regional Council*.¹ Having noted that s 30 RMA makes no reference to “genetically modified organisms”, but only to “hazardous substances”, and noting the absence of a definition of a “genetically modified organism” in the RMA; also that HSNO is silent on any relationship between the two Acts concerning GMOs, the Court observed:

[15] Taken that far, the inclusion of *hazardous substances* in both pieces of legislation, and the complete absence of *genetically modified organisms* in the RMA, might be thought of some significance, perhaps leading to the conclusion that the omission is deliberate, and thus the RMA has no place in the management of GMOs.

[7] Mr Christensen, counsel for Federated Farmers, placed some emphasis on those findings early in his submissions, but very properly acknowledged that they were *obiter dicta*.² I observe that I have the distinct sense that the point was not nearly as thoroughly argued as it was in the case before me, where in contrast it was the very subject matter of the argument I heard.

Text, purpose and context

[8] The term “genetically modified organism” is not defined in the RMA, but is defined in s 2 of HSNO in the following terms:

Genetically modified organism means, unless expressly provided otherwise by regulation, any organism in which any of the genes or other genetic material—

- (a) Have been modified by *in vitro* techniques; or
- (b) Are inherited or otherwise derived, through any number of replications, from any genes or other genetic material which has been modified by *in vitro* techniques.

[9] The purpose, principles and matters relevant to the purpose of HSNO are set out in its ss 4, 5 and 6. They are as follows:

4. Purpose of Act

The purpose of this act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.

5. Principles relevant to the purpose of the Act

All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, recognise and provide for the following principles:

- (a) The safeguarding of the life-supporting capacity of air, water, soil and ecosystems;
- (b) The maintenance and enhancement of the capacity of people and communities to provide for their own economic, social and cultural wellbeing and for the reasonably foreseeable needs of future generations.

6. Matters relevant to purpose of Act

All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, take into account the following matters:

- (a) The sustainability of all native and valued introduced flora and fauna;
- (b) The intrinsic value of ecosystems;
- (c) Public health;

¹ [2013] NZEnvC 298, [2014] NZRMA 181.

² That is, not part of the reasoning for the decision in that case.

- (d) The relationship of Maori and their culture and traditions with the ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga;
- [(e) the economic and related benefits and costs of using particular hazardous substance or new organism;]
- (f) New Zealand's international obligations.

[10] Section 7 of that Act sets out a requirement for a precautionary approach to be taken where there is scientific and technical uncertainty about adverse effects. Section 8 requires all persons exercising powers and functions under the Act to take account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[11] The purpose of the RMA is set out in s 5 of that Act. It is well known, but I will set it out for the purposes of comparison with the relevant provisions of HSNO:

5. Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources;
- (2) In this act, **sustainable management** means managing the use, development and protection of natural and physical resources in a way, or at a rate, which 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; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[12] Section 6 RMA sets out, in some detail, seven matters of national importance which people are to recognise and provide for when exercising functions and powers under the Act, which include (in summary), natural character of the coastal environment and other water bodies; outstanding natural features and landscapes; areas of significant indigenous vegetation and significant habitats of indigenous fauna; public access to and along water bodies; the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; historic heritage; and protected customary rights.

[13] Section 7 sets out other principles at a slightly lower level of importance than those under s 6, and they include (in summary), kaitiakitanga; the ethic of stewardship; the efficient use and development of natural and physical resources; the efficient end use of energy; maintenance and enhancement of amenity values; intrinsic values of ecosystems; maintenance and enhancement of the quality of the environment; finite characteristics of natural and physical resources; the protection of the habitat of trout and salmon; the effects of climate change; and benefits to be derived from the use and development of renewable energy.

[14] Section 8 RMA concerns the Treaty of Waitangi, and is fairly similar to s 8 HSNO, except that it commences with the words "In achieving the purpose of this Act," a difference which is probably not important for present purposes.

[15] Sections 5, 6, 7 and 8 of each Act bear some similarities to each other.

[16] The RMA originally included a pt XIII, repealed by the enactment in 1996 of HSNO. Indeed, that Part was never in force, given absence of a required Order in Council. That former Part foreshadowed a Hazards Control Commission to assist in the control of hazardous substances and new organisms. Section 345(2) required the Commission to balance the benefits which might be obtained from hazardous substances and new organisms against the risks and damage to the environment and to

the health, safety and economic, social and cultural wellbeing of people and communities. The Commission was (if formally established) to have regard to pt 2 RMA in carrying out its functions. It would have had a range of functions recorded under s 347 RMA. Those functions were principally of an advisory, consultative, and recording nature, but were to involve licencing, monitoring and enforcement of hazardous substances or new organisms “if required by any legislation”.

[17] Some similarities also exist between the two Acts as to the definition in each of “effect.”

[18] In HSNO, **effect** includes:

- (a) Any potential or probable effects; and
- (b) Any positive or adverse effects; and
- (c) Any temporary or permanent effects; and
- (d) Any past, present or future effects; and
- (e) Any acute or chronic effect; and
- (f) Any cumulative effect which arises over time or in combination with other effects.

[19] In the RMA, the meaning of **effect** is found in its own separate section, s 3, which provides as follows:

In this Act, unless the context otherwise requires, the term **effect** includes—

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects—regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) Any potential effect of high probability; and
- (f) Any potential effect of low probability which has a high potential impact.

[20] The two main differences between the respective provisions are, first that the issue of *potential* effects under the RMA is separated out from the definition section and incorporated into provisions relating to process, for instance s 104 concerning consideration of applications for consent; secondly that cumulative effects are dealt with in somewhat more detail in the RMA. The first difference is probably semantic only, while the second may be of more significance for present purposes.

[21] RMA provisions concerning regional government plan-making have long included functions in respect of hazardous substances, but not concerning GMOs. Interestingly, while pt XIII RMA was repealed by HSNO in 1996, references to regional government control of hazardous substances were not.

[22] Section 30 RMA sets out the functions of regional councils under that Act. It provides as follows:

30. Functions of regional councils under this Act

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
 - (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
 - (b) The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
 - (c) The control of the use of land for the purpose of—
 - (i) Soil conservation:
 - (ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:

- (iii) The maintenance of the quantity of water in water bodies and coastal water:
- [(iiia) The maintenance and enhancement of ecosystems in water bodies and coastal water:]
- (iv) The avoidance or mitigation of natural hazards:
- (v) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
- [(ca) the investigation of land for the purposes of identifying and monitoring contaminated land:]
- (d) In respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
 - (i) Land and associated natural and physical resources:
 - [(ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:]
 - (iii) The taking, use, damming, and diversion of water:
 - (iv) Discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - [(iva) The dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:]
 - (v) Any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - (vi) The emission of noise and the mitigation of the effects of noise:
 - (vii) Activities in relation to the surface of water:
- (e) The control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
 - (i) The setting of any maximum or minimum levels or flows of water:
 - (ii) The control of the range, or rate of change, of levels or flows of water:
 - (iii) The control of the taking or use of geothermal energy:
- (f) The control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
- [(fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:
 - (i) the taking or use of water (other than open coastal water):
 - (ii) the taking or use of heat or energy from water (other than open coastal water):
 - (iii) the taking or use of heat or energy from the material surrounding geothermal water:
 - (iv) the capacity of air or water to assimilate a discharge of a contaminant:]
- [(fb) if appropriate, and in conjunction with the Minister of Conservation,—
 - (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:]
- (g) In relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
 - (i) Soil conservation:

- (ii) The maintenance and enhancement of the quality of water in that water body:
- (iii) The maintenance of the quantity of water in that water body:
- (iv) The avoidance or mitigation of natural hazards:
- [(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:]
- [(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:]
- (h) Any other functions specified in this Act.
- [(2) A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996.]
- [(3) However, a regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control aquaculture activities for the purpose of avoiding, remedying, or mitigating the effects of aquaculture activities on fishing and fisheries resources.]
- [(4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:
 - (a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and
 - (b) nothing in paragraph (a) affects section 68(7); and
 - (c) the rule may allocate the resource in anticipation of the expiry of existing consents; and
 - (d) in allocating the resource in anticipation of the expiry of existing consents, the rule may—
 - (i) allocate all of the resource used for an activity to the same type of activity; or
 - (ii) allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and
 - (e) the rule may allocate the resource among competing types of activities; and
 - (f) the rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).]

[23] Subject to some confined exceptions (eg concerning control of fisheries), it can be seen that the functions of regional councils under the Act are very broad, and cover a multitude of matters.

[24] Section 59 RMA provides the purpose of regional policy statements, in the following terms:

59. Purpose of regional policy statements

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

[25] Section 60 RMA provides process for the preparation and change of regional policy statements.

[26] Section 61 RMA lists matters to be considered by regional councils in policy statements as follows:

61. Matters to be considered by regional council (policy statements)

- [(1) A regional council must prepare and change its regional policy statement in accordance with—
- (a) its functions under section 30; and
 - (b) the provisions of Part 2; and
 - (c) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
 - (d) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and
 - (e) any regulations.]
- (2) In addition to the requirements of section 62(2), when preparing or changing a regional policy statement, the regional council shall have regard to—
- (a) any—
 - (i) management plans and strategies prepared under other Acts; and
 - (ii) *Repealed*
 - [(iia) Relevant entry on the New Zealand Heritage List/Rarangi Korero required by the Heritage New Zealand Pouhere Taonga Act 2014; and]
 - (iii) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing); and
 - (iv) *Repealed*
 to the extent that their content has a bearing on resource management issues of the region; and
 - (b) The extent to which the regional policy statement needs to be consistent with the policy statements and plans of adjacent regional councils; and]
 - [(c) the extent to which the regional policy statement needs to be consistent with regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and]
- [2A) When a regional council is preparing or changing a regional policy statement, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region:
- (a) the council must take into account any relevant planning document recognised by an iwi authority; and
 - (b) in relation to a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the council must, in accordance with section 93 of that Act,—
 - (i) recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
 - (ii) take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.]
- [(3) In preparing or changing any regional policy statement, a regional council must not have regard to trade competition or the effects of trade competition]].]
- [27] Section 62 RMA provides for contents of regional policy statements:

[62. Contents of regional policy statements]

- (1) A regional policy statement must state—
- (a) the significant resource management issues for the region; and
 - [[b) the resource management issues of significance to iwi authorities in the region; and]]

- (c) the objectives sought to be achieved by the statement; and
 - (d) the policies for those issues and objectives and an explanation of those policies; and
 - (e) the methods (excluding rules) used, or to be used, to implement the policies; and
 - (f) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and
 - (g) the environmental results anticipated from implementation of those policies and methods; and
 - (h) the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and
 - (i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—
 - (i) to avoid or mitigate natural hazards or any group of hazards; and
 - (ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - (iii) to maintain indigenous biological diversity; and
 - (j) the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and
 - (k) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.
- (2) If no responsibilities are specified in the regional policy statement for functions described in subsection (1)(i)(i) or (ii), the regional council retains primary responsibility for the function in subsection (1)(i)(i) and the territorial authorities of the region retain primary responsibility for the function in subsection (1)(i)(ii).
- (3) A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement.]

[28] Sections 65 and 66 provide for preparation and change of regional plans, and matters to be considered by the regional council in them. These are again very broad in similar fashion to the sections relating to regional policy statements. Of some note, s 66(1) requires regional councils to prepare and change any regional plan in accordance with its functions under s 30, the provisions of pt 2, directions from the Minister for the Environment under s 25A, obligations under s 32, and any regulations.

[29] Counsel for Federated Farmers, Mr Christensen, stressed the repeal of pt X111 RMA by HSNO in 1996. He contrasted the retention of reference to control of hazardous substances in sections of the Act concerning regional policy statements and plans, with the complete absence of any provision relating to the control of GMOs.

[30] Mr Christensen then developed an argument that HSNO is a *code* for regulation and control of GMOs, based on the last two factors. He pointed to s 142 HSNO about relationship with other acts:

142. Relationship to other acts

- (1) Nothing in this Act shall affect the requirements of the Biosecurity Act 1993 in relation to any organism.
- (2) Every person exercising a power or function under the Resource Management Act 1991 relating to the storage, use, disposal, or transportation of any hazardous substance shall comply [with the provisions of this Act and with Regulations and Notices of Transfer made under this Act].
- (3) Nothing in ss (2) shall prevent any person lawfully imposing more stringent requirements on the storage, use, disposal or transportation of any hazardous

substance and may be required by or under this Act where such requirements are considered necessary by that person for the purposes of the Resource Management Act 1991,

(4) Nothing in this Act shall apply to any resource consent, being:

- (a) A land use consent relating to the storage, use, disposal, or transportation of any hazardous substance; or
- (b) A coastal permit to do something that would otherwise contravene s 15 of the Resource Management Act 1991; or
- (c) A discharge permit,—

where that resource consent was granted before the coming into force of any regulations made under this Act (other than regulations made under Parts 11-16) until such time as the conditions on the resource consent are reviewed in accordance with s 128 of the Resource Management Act 1991.

(5) For the purposes of this section, *resource consent* has the same meaning as in the Resource Management Act 1991.

(6) Any controls prescribed under any other Act for any other hazardous substance shall not contravene the provisions or regulations made under ss 75 and 76 unless—

- (a) There is a provision in that Act that expressly provides that controls made under that Act for specified purposes may contravene the provisions and regulations made under this Act; and
- (b) The controls are made for the purposes provided for in that Act.

[31] Mr Christensen submitted about the express reference to *hazardous substances* in that section, noting that HSNO directs how the RMA is to be interpreted in relation thereto. He noted the continuing absence of reference to GMOs.

[32] He submitted that this was analogous to the relationship between the RMA and the Building Act 2004, on the basis that he considered that such relationships were detailed in their respective pieces of legislation, in effect leaving regulation of GMOs as a point of difference. He referred to cross-references between the Building Act and the RMA, each to the other. Control of GMOs standing in contrast to such relationships, he submitted that HSNO is a code in relation to the control of GMOs, it being, he submitted, “exhaustive”. He submitted that therefore there was no role for local authorities to regulate and control them.

[33] The burden of the detail of submissions in opposition to the Federated Farmers’ position was carried by Mr Matthias, counsel for Whangarei District Council.³

[34] Mr Matthias submitted that it was inappropriate for Federated Farmers to have focussed almost solely on provisions relating to hazardous substances and new organisms in the respective pieces of legislation. He submitted that absence of careful comparison of the purposes of the two Acts was a notable oversight. He discounted the reference to pt XIII RMA because it had never actually come into force in the manner required, by Order in Council.

[35] Mr Matthias focussed on the provisions of s 5 RMA, particularly in the regional context. He submitted that this was achieved by public law process which recognises two main concepts in the Act, namely the provision for the development of environmental policies to promote the goal of sustainable management, and the use of integrated environmental management to implement that goal. He noted that s 5(2) contains a multitude of considerations, offering an environmental decision-maker considerable leeway for making policy and strategic decisions in order to attain the

3 Mr Burns, counsel for Northland Regional Council, adopted and supported the submissions on behalf of WDC and provided brief reasons which entirely aligned with Mr Mathias’s submissions.

goal of the legislation. In that regard, consideration needed to be given to the functions of regional councils. In particular, he noted that in addition to protection of the biophysical environment, a regional council could incorporate social and economic development into its approach. In doing so it could take into account the potential effects of the use or release of GMOs not only in an ecological sense, but also in economic and social terms.

[36] Mr Matthias made reference to what he considered an important and relevant statement by the High Court in *Meridian Energy Ltd v Southland District Council*⁴ at [23]:

The RMA provides a comprehensive framework for the regulation of the use of land, water and air. It signalled a major change from the direct and control emphasis of the previous planning regime to the sustainable management of resources, with its composite objective of enabling people and communities to provide for their wellbeing while, among other things, mitigating, avoiding or remedying adverse effects on the environment. The Act is carefully framed to provide control of the effects of resource use, including regulatory oversight given to functionaries at national, regional and district levels. *In general terms, all resource use is amenable to its framework, unless expressly exempted from consideration.* [emphasis added. Original footnotes omitted.]

[37] Mr Matthias noted that the sentence I have emphasised in the quote is drawn from the decision of the Supreme Court in *West Coast ENT Inc v Buller Coal Ltd*.⁵ The Supreme Court had identified that the effects of climate change could be exempted from consideration on a resource consent application because there had been specific provision in the Resource Management (Energy and Climate Change) Amendment Act 2004 which specifically directed local authorities not to have regard to the effects of discharges into air of greenhouse gases on climate change on certain applications, referring to s 104E RMA. Mr Matthias emphasised the stated requirement for express exemption, and submitted that an example was to be found in s 30(2) RMA, where regional councils have certain broad functions in respect of the coastal marine area that specifically exclude certain matters such as the taking, allocation, or enhancement of fisheries resources for the purpose of managing fishing or fishing resources controlled under the Fisheries Act 1996.

Analysis

[38] The question that needs to be addressed is as to whether the two pieces of legislation provide separate codes, with HSNO being the only code to address GMOs. As against this, it can be asked whether consideration of the control of GMOs can be addressed under the undoubted comprehensive RMA framework for promotion of the sustainable management of natural and physical resources including the avoiding, remedying or mitigating of any adverse effects of activities on the environment, while HSNO plays a more confined role in the overall legislative picture, addressing the more limited issue of the granting of approvals to import, develop, field test, or release, new organisms, somewhat as a more one-off regulatory transaction. Federated Farmers advocated the former situation, and the parties opposing it, advocated the latter.

[39] After consideration of all submissions, I have decided that the opposing parties are correct.

[40] I consider that the starting point is exemplified in the passage already quoted from *Meridian Energy Ltd v Southland District Council*. Faced with that strong statement by the High Court, Federated Farmers sought to persuade me that it was

4 [2014] NZHC 3178, (2014) 18 ELRNZ 473 (Justice Whata).

5 [2013] NZSC 87, [2014] 1 NZLR 32, (2013) 17 ELRNZ 688.

merely *obiter dicta*, not one of legal principle. Federated Farmers criticised the opposition parties' submission essentially that the RMA does not expressly exempt controls related to GMOs such that the RMA can address control of GMOs.

[41] Mr Christensen for Federated Farmers submitted that the *Meridian* passage was *obiter* because the Court was considering whether the specific provisions of 1963 Manapouri — Te Anau Development Act over-rode the general provisions in s 9 RMA. He submitted that the "comments" were made in the particular context of that case and not intended to be general statements of the law.

[42] I disagree, and accept the submissions of Mr Makgill for opposing parties that the statement by the High Court in *Meridian* is the *ratio decidendi* (rationale) for the decision. I consider that the statement was the starting point for the result reached in *Meridian*, past which the Court looked to see whether the provisions of the Manapouri-Te Anau Act were an exception, which is what the Court found, for six reasons, in that case. I also agree with Mr Makgill that *Meridian* is authority for the proposition that a statutory interpretation exercise of the kind before me should not be confined to assessment of whether express exemption occurs under the RMA, because express exemption may be found in the other legislation. I consider that to be correct in law, and that the exercise presently being undertaken should be to endeavour to identify whether either of the RMA or HSNO demonstrates express exemption from consideration of new organisms under the RMA.

[43] Federated Farmers cited a decision of the Environment Court *Petone Planning Action Group Inc v Hutt City Council*⁶ as supporting its argument focussing on apparent lack of express exemption in the RMA in relation to building code matters. Mr Makgill cited the *Petone* decision as further authority for the analysis not being confined simply to indications in the RMA — s 7(2) of the Building Act 2004 having been identified as presenting such exemption in the *Petone* decision.

[44] I hold that not only was the passage quoted from the High Court Decision in *Meridian*, *ratio decidendi*, but also that statutory analysis seeking the identification of express exemption from consideration of a topic under the RMA, should not be confined to that Act alone.

[45] The opposing parties argued strongly that the regulatory jurisdiction under HSNO is limited to the activity of introduction of new organisms to New Zealand. (A more careful phrasing of the proposition would have one cite s 34 HSNO where the relevant wording refers to importation for release and/or release from containment of new organisms). I accept that the clear words of the section limit the regulatory considerations under HSNO to *new* organisms. If I were to accept Mr Christensen's argument that HSNO is the exclusive code for control of GMOs, there would seem the creation of a disparity under the RMA between control of new organisms on the one hand and all other organisms on the other. This could be thought contrary to the broad regulatory approach under the RMA described in the *Meridian* decision. To explain the concern a little more, the overall legislative scheme of things would then be to the effect that there would be no requirement to regulate the potential adverse effects of GMOs beyond the act of approving them for release, thereby elevating animals and plants containing GMOs into a special category not amenable to regulation under the RMA as are animals and plants already present in New Zealand. Further, that integrated management of them would not be possible. That apparently awkward proposition needs to be viewed against analysis of both pieces of legislation to ascertain whether there is exemption of RMA regulation of GMOs expressed in either statute.

6 EnvC W20/08, 2 May 2008.

[46] I have already referred to the provisions of s 142 HSNO (Relationship to other Acts), which is where one finds reference the RMA. As already noted, s 142 focuses on the issue of hazardous substances. It does not deal with GMOs.

[47] I can find no express exemption for consideration of control of new organisms under the RMA in either the RMA or HSNO. This is one factor pointing to HSNO not being an exclusive code for regulatory control of GMOs in New Zealand. There is nothing in the scheme of either Act, or the two read together, to call for an interpretative limitation to be placed on the definition of *natural and physical resources*, which is:

includes land, water, air, soil, minerals, and energy, *all forms of plants and animals (whether native to New Zealand or introduced)*, and all structures. [emphasis added]

[48] The “awkward proposition” I have just referred to is not, logically on this statutory interpretation analysis, brought into play. I find that there is nothing present in these pieces of legislation to prevent the establishment of objectives, policies and methods to achieve integrated management of natural and physical resources in the broad terms directed by the RMA.

[49] I consider that there is a readily identifiable policy reason for that in these pieces of legislation, read together. Once having been approved for import and release into New Zealand under HSNO, regional authorities can provide for use and protection of them together with other resources in a fully integrated fashion, taking account of regional needs for spatial management that might differ around the country for many reasons, not the least of which might include climatic conditions, temperatures, soils, and other factors that might drive differing rates of growth of new organisms and/or of other organisms, as just a few of perhaps many examples. I agree with the opposition parties that the RMA and HSNO offer significantly different functional approaches to the regulation of GMOs.

[50] There is a further decision of the High Court that I consider provides a strong pointer to a finding that the provisions of the RMA go significantly beyond the narrower provisions of HSNO. That case is *Bleakley v Environmental Risk Management Authority*⁷ in which the Court held at [114]:

[114] Given that the authority found that there was no such danger of escape, there was no obligation in law — and it certainly was not appropriate — for the Authority to venture into more orthodox pollution issues. It is true that the Act has an environmental protection purpose, as does the Resource Management Act, however that prima facie wide purpose is to be read in the context of its subject matter and specifics. It is to protect the environment against hazardous substances and organisms, and not on a wider scale. The wider scale is the role of others under general legislation in the RMA. Thus, if spraying milk on pastures were to raise a concern that heritable material might escape, that would be a concern for the Authority. If after Authority action, there was a risk of escape of heritable material, but there remained a risk of another environmental character — eg destruction of aquatic life in streams — that would be a concern to be dealt with under the Resource Management Act. It would not be an Authority matter, despite the breadth of the opening sections of the Act. It is a not unfamiliar judicial problem to reconcile legislation relating to specific activities, and a general legislation in the resource management field.

[51] Essentially, the High Court found against excluding the jurisdiction of a local authority should it deem it appropriate following an evaluation under s 32 RMA, to, for instance, identify areas more (or less) suited to the establishment of activities involving approved GMOs. For instance, regional authorities might, with community

⁷ [2001] 3 NZLR 213 (HC) at [114].

input, consider particular regional approaches acknowledging social, economic and cultural wellbeing (amongst other things), somewhat beyond the more limited policy considerations for regulation of import and release of new organisms under HSNO. These aspects in s 5 RMA are underpinned by the statutory requirements for preparing and publishing evaluation reports under s 32, including by way of just one example, the requirement for assessment of benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of proposed provisions, including opportunities for economic growth and employment.⁸ Particular regional considerations would come in for study in a way not anticipated by HSNO.

[52] Mr Matthias gave further examples including policy positions representative of strong cultural concerns of Maori, and if thought appropriate “marketing and branding advantages” based on an approach to limiting the use of GMOs in an area, for instance by encouraging price premia for agricultural production and tourism activities in the locality. I accept these submissions.

[53] Mr Matthias went on to refer to a statement found on the website of the Ministry for the Environment in relation to genetic modification and local government, which appeared to offer an opinion that councils’ functions under the RMA theoretically include addressing environmental risks arising from the development of GMOs in their regions. He also pointed to a Government paper on proposals for Resource Management reform in 2013 advising that “the explicit function for councils to control hazardous substances and the ability for councils to control new organisms through the RMA will be removed. This is considered to be best managed under the *Hazardous Substances and New Organisms Act 1996* and by the Environmental Protection Authority ...”. Needless to say I am not here concerned with future central Government policy; that is a matter entirely for Parliament. My finding on Mr Matthias’s reliance on these quotes is that while they may be indicative of policy thinking on the part of officials, I can place little weight on them for assistance with the interpretation of law currently found on the statute books.

Implied repeal

[54] I will address this topic purely for completeness and out of caution. Section 5(1) of the Interpretation Act 1999 requires that *the meaning of an enactment must be ascertained from its text in the light of its purpose*.⁹ This principle has properly been the foundation for many judicial exercises in statutory interpretation, including recently and importantly in the decision of the Supreme Court in *Terminals (NZ) Ltd v Comptroller of Customs*.¹⁰ It is widely accepted that the doctrine of implied repeal is one of last resort, to be applied only where all attempts at reconciliation have failed¹¹ (which I have found is not the case here).

[55] The Court of Appeal wrote of the principles of implied repeal in *R v McNeish*¹² in the following terms:

The general legal principles are well settled. One provision repeals the other by implication if, but only if it is so inconsistent or repugnant to the other that the two are incapable of standing together. If it is reasonably possible to consider the provisions so as to give effect to both, that must be done ...

⁸ s 32(2) RMA.

⁹ I acknowledge that this core statutory principle applies equally to the previous parts of this decision, as much as it does to this one.

¹⁰ [2013] NZSC 139, [2014] 1 NZLR 121.

¹¹ See, for instance, John Burrows & Ross Carter *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 453.

¹² [1982] 1 NZLR 247 (CA) at 248.

[56] Mr Christensen submitted on behalf of Federated Farmers, that the doctrine of implied repeal of relevant provisions of the RMA 1991 by enactment of HSNO in 1996, is open in the present circumstances. Having offered the careful concession that there is a presumption that Parliament does not intend that statutes contradict one another, but operate instead within their respective spheres where possible, Mr Christensen developed his argument about implied repeal. Moving to counter opposition arguments that regional social, economic or cultural matters in the RMA range beyond biophysical and health and safety matters in HSNO, Mr Christensen said:¹³

However, such an argument does not properly reflect the extent of controls which can be imposed on the development, field testing and release of GMOs by the EPA under HSNO. Those controls are extensive and detailed. They require the EPA to give wide consideration of socio-economic and cultural matters.

[57] Mr Christensen endeavoured to argue, without close analysis of such HSNO provisions, that one could draw the conclusion that HSNO and RMA can be interpreted as having overlapping rather than complementary roles. He further developed the argument by submitting that the expression *expressio unius est exclusio alterius* is apt.¹⁴ He submitted that the express mention of a role for local authorities regarding *hazardous substances* in ss 30 and 31 RMA, and in s 142 HSNO, and the absence of mention of a role for local authorities in either Act regarding GMOs, indicates that regulation of GMOs is removed from the control of local authorities.

[58] I have dealt with these issues in some measure in earlier sections of this decision. I refer to my findings about comparison of purposes and regulatory functions in each Act. I do not consider that these matters “overlap” as between these statutes, certainly not to the extent that there has been an implied repeal of the general RMA provisions by HSNO provisions. It is relevant again to refer to the decision of the Supreme Court in *Terminals NZ Ltd v Comptroller of Customs*, in particular the following passage:¹⁵

The proper approach to statutory construction is set out in the Interpretation Act. The primary task is to interpret the text in light of this purpose. In undertaking this task, we accept that there may be some place for the old canons of construction. However, the maximum *expressio unius* does little more than draw attention to what might be seen as the obvious proposition that *in many contexts mentioning a particular matter may warrant an inference that other relevant matters were intentionally excluded. But whether that is so or not depends on the context.* The exclusion might have been accidental or there might have been good reason for it. [emphasis provided. Original footnotes omitted.]

[59] Given the absence of complete overlap, even if regulatory provisions of HSNO are more precise in some respects than the broad provisions in the RMA, I find that there is no context for taking this quite extreme approach. The reasons are found in the earlier section of this decision, and I will not repeat them.

Conclusion

[60] I find against the propositions advanced on behalf of Federated Farmers. I hold that there is power under the RMA for regional councils to make provision for control of the use of GMOs through regional policy statements and plans.

[61] Costs are reserved. Any application should be made in writing within fifteen working days of the date of this decision.

¹³ Submissions on behalf of Federated Farmers dated 9 March 2015, [36].

¹⁴ Interpreted by him to the effect that the express mention of one of them excludes all others.

¹⁵ [2013] NZSC 139, at [74].

Appeal dismissed

Reported by Philippa Breden

**IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY**

**CIV-2015-488-0064
[2016] NZHC 2036**

UNDER the Resource Management Act 1991
IN THE MATTER of an appeal from a decision of the
Environment Court under s 299 of the Act
BETWEEN FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED
Appellant
AND NORTHLAND REGIONAL COUNCIL
Respondent

Hearing: 9 and 10 February 2016

Appearances: P R Gardner for Applicant
J A Burns for Respondent
G J Mathias for Whangarei District Council
R J Somerville QC and M S Makgill for Soil & Health
Association of NZ Inc

Judgment: 31 August 2016

JUDGMENT OF PETERS J

This judgment was delivered by Justice Peters on 31 August 2016 at 11 am
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date:

Solicitors: John Burns, Auckland
Lewis' Law, Cambridge
Thompson Wilson, Whangarei

Counsel: R J Somerville QC, Dunedin

Copy for: Federated Farmers of New Zealand, Auckland

[1] The Appellant (“Federated Farmers”) appeals against a decision of the Environment Court (“Court”) dated 12 May 2015, in which the Court determined that “there is power under the RMA for regional councils to make provision for control of the use of GMOs through regional policy statements or plans”.¹

Background

[2] In October 2012, the Northland Regional Council (“Council”) notified its proposed regional policy statement for Northland (“statement”). At the time of notification, the statement did not include provisions concerning or referring to genetically modified organisms (“GMOs”).

[3] The Council appointed Commissioners to hear submissions on the statement. The Council’s decisions on the submissions, notified in about September 2013, included a decision to make provision in the statement relating to the use of GMOs (“GMO decision”). In particular, references were made in that part of the statement which identified issues of resource management significance to iwi and which identified policies to be adopted. This latter section included a statement to the effect that a “precautionary” approach should be taken to the introduction of GMOs in circumstances of scientific uncertainty.

[4] Federated Farmers appealed to the Court against several of the Council’s decisions, including the GMO decision. Although the parties were able to resolve some issues, they were unable to resolve their dispute regarding the GMO decision.

[5] The matter came before the Court on the basis that it would determine whether the Council had jurisdiction to make any provision for GMOs at all. If that issue were determined against Federated Farmers, then any dispute as to individual provisions in the statement would be argued in a separate hearing.

[6] In summary, Federated Farmers’ case then, and now, was that the regulation of GMOs is the sole province of the Environmental Protection Agency (“EPA”) under the Hazardous Substances and New Organisms Act 1996 (“HSNO”) and is not a matter for which a regional council may make provision in a regional policy

¹ *Federated Farmers of New Zealand v Northland Regional Council* [2015] NZEnvC 89, (2015) 18 ELRNZ 603 at [60].

statement or plan. The Council, the Whangarei District Council and Soil & Health Association of NZ Inc (and other parties associated with it) opposed that submission.

[7] The Court rejected Federated Farmers' submission and reached the conclusion stated in [1] above.

Appeal to the High Court

[8] Federated Farmers has a right of appeal to the High Court on a question of law.² French J summarised the principles to be applied in determining such an appeal as follows:³

[34] Appellate intervention is therefore only justified if the Environment Court can be shown to have:

- i) applied a wrong legal test; or,
- ii) come to a conclusion without evidence or one to which on the evidence it could not reasonably have come; or,
- iii) taken into account matters which it should not have taken into account; or,
- iv) failed to take into account matters which it should have taken into account.

[35] The question of the weight to be given relevant considerations is for the Environment Court alone and is not for reconsideration by the High Court as a point of law.

[36] Further, not only must there have been an error of law, the error must have been a "material" error, in the sense it materially affected the result of the Environment Court's decision.

[9] Broadly, Federated Farmers appeals on the grounds that the Court:

- (a) applied a wrong legal test in reaching its conclusion; and
- (b) took:⁴

[62] ... into account matters it should not have taken into account, or came to a conclusion without evidence, or failed to take into account matters which it should have taken into account ...

² Resource Management Act 1991, s 299.

³ *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* [2012] NZHC 735, [2013] NZRMA 126 (footnotes omitted).

⁴ Submissions of Counsel for the Appellant at [62].

Court decision

[10] Before addressing the questions of law raised by Federated Farmers, it is appropriate to summarise the approach the Court took to determining the issue before it, which the Court recorded as:⁵

... whether there is power under the RMA for regional councils to make provision for control of use of GMOs through regional policy statements and plans.

[11] As the Court said, determination of the issue required it to interpret the Resource Management Act 1991 (“RMA”) and HSNO. The Court said:⁶

- (a) The task should commence with consideration of the text of relevant sections of the two statutes, informed to the extent necessary by the purpose and context of them.
- (b) It is appropriate in taking that first step, to seek to reconcile the enactments if possible, and if it is not, then to consider which of the enactments should prevail.
- (c) There are various approaches available should it be necessary to consider which of the enactments should prevail, including “express repeal”, “express exclusion”, and in the last resort, “implied repeal”.

[12] The Court then gave detailed consideration to the “purpose and principles” provisions of the RMA and their equivalent in HSNO.⁷ Having conducted this analysis, the Court noted that the provisions in each Act bore some similarity to each other. The Court also considered other provisions from the RMA, including those relating to the functions of regional councils and the preparation of regional policy statements.

[13] Counsel for the Whangarei District Council had referred the Court to the following passage in Whata J’s decision in *Meridian Energy Ltd v Southland District Council*:⁸

[23] The RMA provides a comprehensive framework for the regulation of the use of land, water and air. It signalled a major change from the direct and control emphasis of the previous planning regime to the sustainable management of resources, with its composite objective of enabling people

⁵ *Federated Farmers of New Zealand v Northland Regional Council*, above n 1, at [2].

⁶ At [5].

⁷ At [8] – [37].

⁸ *Meridian Energy Ltd v Southland District Council* [2014] NZHC 3178, (2014) 18 ELRNZ 473 (footnotes omitted).

and communities to provide for their wellbeing while, among other things, mitigating, avoiding or remedying adverse effects on the environment. The Act is carefully framed to provide control of the effects of resource use, including regulatory oversight given to functionaries at national, regional and district levels. *In general terms, all resource use is amenable to its framework, unless expressly exempted from consideration.*

[Emphasis added.]

[14] The Court considered that the final sentence of this passage was the “starting point” for its analysis, and that it should:⁹

... endeavour to identify whether either of the RMA or HSNO demonstrates express exemption from consideration of new organisms under the RMA.

[15] Having reviewed the RMA and HSNO, the Court concluded that no express provision of either exempted a “new organism” (and a GMO is a “new organism” for the purposes of HSNO) from control under the RMA. The Court considered this “one factor” that suggested HSNO was not an exclusive code for regulatory control of GMOs in New Zealand.¹⁰

[16] Moreover, the Court also considered that there was nothing in the scheme of either Act, or the two read together, that warranted reading down the definition of “natural and physical resources” in s 2 of the RMA which provides:¹¹

natural and physical resources includes land, water, air, soil, minerals, and energy, *all forms of plants and animals (whether native to New Zealand or introduced)*, and all structures.

[Emphasis added.]

[17] Indeed, rather than considering that GMOs were excluded from consideration under the RMA, the Court considered that there was a:¹²

... readily identifiable policy reason for that in these pieces of legislation, read together. Once having been approved for import and release into New Zealand under HSNO, regional authorities can provide for use and protection of them together with other resources in a fully integrated fashion, taking account of regional needs for spatial management that might differ around the country for many reasons, not the least of which might include climatic conditions, temperatures, soils, and other factors that might drive differing rates of growth of new organisms and/or of other organisms, as just

⁹ At [40] and [42].

¹⁰ At [47].

¹¹ At [47].

¹² At [49].

a few of perhaps many examples. I agree with the opposition parties that the RMA and HSNO offer significantly different functional approaches to the regulation of GMOs.

[18] Consistently with this, the Court also referred to (a full) High Court decision in *Bleakley v Environmental Risk Management Authority*, in which the Court held that the RMA and HSNO have complementary purposes.¹³

[19] Lastly, the Court addressed the possibility of implied repeal.¹⁴ The Court referred to s 5(1) Interpretation Act 1999 (“Interpretation Act”), which requires the meaning of an enactment to be ascertained from its text and in light of its purpose, and the Supreme Court’s decision in *Terminals (NZ) Ltd v Comptroller of Customs*.¹⁵ It noted that the doctrine of implied repeal was “one of last resort” if it were impossible to reconcile the two statutes – which the Court had found was not the case with the RMA and HSNO.¹⁶

[20] The Court did not consider that there was sufficient overlap between the subject matter of the two statutes so as to require a conclusion of implied repeal of the relevant provisions of the RMA.¹⁷

[21] Accordingly, the Court was not persuaded by Federated Farmers’ submission and reached the conclusion in [1] above.¹⁸

Question one

[22] Federated Farmers’ first question of law on appeal is:

Whether the Environment Court applied the correct test in determining that there is jurisdiction for a regional council to include the regulation of GMOs in its RPS.

[23] Counsel for Federated Farmers submits that the Court erred by adopting what counsel referred to as an “express exemption test”. This is said to have derived from *Meridian Energy*.

¹³ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC).

¹⁴ At [54].

¹⁵ *Terminals (NZ) Ltd v Comptroller of Customs* [2013] NZSC 139, [2014] 1 NZLR 121.

¹⁶ *Federated Farmers of New Zealand v Northland Regional Council*, above n 1, at [54].

¹⁷ At [59].

¹⁸ At [60].

[24] I do not consider the Court adopted an “express exemption test”. The Court made it clear that it took Whata J’s statement in *Meridian Energy* as a “starting point” and as “one factor” only to be considered in determining the issue before it.¹⁹

[25] An exercise in statutory interpretation begins with s 5(1) Interpretation Act: the meaning of an enactment is to be ascertained from its text and in light of its purpose. In the context of this case, that required the Court to consider the text and purpose of both the RMA and HSNO.

[26] As is apparent from the outline above, the Court undertook that analysis. Although the first express reference to s 5(1) Interpretation Act is towards the end of the judgment, the Court made it clear that the principle applied to the analysis throughout.²⁰

[27] The statement in *Meridian Energy* was an observation made in the course of a detailed consideration of the provisions of the RMA, and no more than that. The lack of an express exclusion is not determinative. As the Court recognised, other factors may affect the construction of the statute.

[28] For these reasons, I do not accept Federated Farmers’ submission that the Court erred in that it determined the issue solely by reference to whether there was an “express exemption” of GMOs from the ambit of the RMA. However, in deference to the submissions made to me, I shall address the specific errors that Federated Farmers contends were made, these being:

- (a) An “express exemption test” cannot be the proper test for establishing the jurisdictional boundary between the RMA and HSNO because:
 - (i) the exclusion of the RMA by way of “express exemption” arises in some, but not all, cases: see *Meridian Energy*;²¹
 - (ii) although “express exemptions” exist in other legislation, such exemptions are not always sufficient to exclude the operation

¹⁹ At [40] and [47].

²⁰ At [54].

²¹ *Meridian Energy Ltd v Southland District Council*, above n 8.

of the RMA: see *Christchurch International Airport Ltd v Christchurch City Council*,²²

(iii) in some cases, Courts have excluded the operation of the RMA, even where no “express exemption” is provided for in the legislation: see *Dome Valley Residents Society Inc v Rodney District Council*,²³

(b) the Court incorrectly identified the decision of the Supreme Court in *West Coast ENT Inc v Buller Coal Ltd* as authority for the “express exemption” test,²⁴ and

(c) the Court erred in determining that the “express exemption test” set out in *Meridian Energy* is *ratio decidendi*, rather than obiter.

[29] In support of the submission referred to in [28](a) above, counsel for Federated Farmers referred me to three cases in which the Court has considered the interaction between the RMA and other legislation. Counsel submitted that in each case the Court determined the issue before it with differing regard to “express exemptions”.

[30] I accept that submission. In each of those cases it is apparent that the Court determined the issue before it having regard to the text and purpose of the applicable provisions in the RMA and the other enactment. That is always the critical issue and that is what was done in this case. In so far as concerns the cases to which Federated Farmers referred me, it is only to be expected that the different wording and purposes of different legislation will affect the conclusion reached.

[31] As to the submission made in [28](b) above, Federated Farmers contends that the Court incorrectly identified the Supreme Court decision in *Buller Coal* as authority for the “express exemption test”. I am not satisfied that is correct. Whata J cited *Buller Coal* in his judgment in *Meridian Energy* as an instance in which a matter (in that case, the effect of greenhouse gas emissions) was held to be excluded

²² *Christchurch International Airport Ltd v Christchurch City Council* [1997] 1 NZLR 573 (HC).

²³ *Dome Valley Residents Society Inc v Rodney District Council* [2008] 3 NZLR 821 (HC).

²⁴ *West Coast ENT Inc v Buller Coal Ltd* [2013] NZSC 87, [2014] 1 NZLR 32.

from consideration under the RMA. In the present case, the Court simply referred to the fact that Whata J had done so. Nothing more should be read into it.

[32] As to the matter referred to in [28](c) above, Federated Farmers submits that the Court erred in finding that the passage quoted from *Meridian Energy* was *ratio decidendi*. I accept that the Court may have overstated the significance of the passage but the error was not material, given the breadth of the analysis the Court conducted.

[33] For these reasons, the answer to the first question is that the Court did not err in the manner in which it determined the issue before it.

Question two

[34] Given the conclusion reached as regards question one, it is unnecessary to determine Federated Farmers' second question, which is:

Whether the correct test for determining whether there is jurisdiction for a regional council to include the regulation of GMOs in its RPS is something along the lines [sic]:

Is there a resource management purpose for controlling GMOs to achieve environmental standards which are other than those that are able to be specified by way of HSNO.

Question three

[35] Federated Farmers' third question is:

Whether the Environment Court took into account matters that it should not have taken into account, or came to a conclusion without evidence, when it determined, at [60] that "... there is power under the RMA for regional councils to make provision for control of the use of GMOs through regional policy statements."

[36] Federated Farmers submits that the following matters were wrongly taken into account:

- (a) the Court misconstrued one of Federated Farmers' submissions. The Court understood Federated Farmers to be submitting that HSNO is the "exclusive code" for the regulation of GMOs whereas Federated Farmers had submitted that it was an "exhaustive code";

- (b) the Court misquoted a passage from *Bleakley*;²⁵
- (c) the Court erred in concluding that the RMA is concerned with “cumulative effects” to a greater extent than HSNO; and
- (d) the Court considered matters of policy which are substantive, rather than jurisdictional, considerations.

[37] The first error is immaterial. The Court accurately recorded Federated Farmers’ submission that HSNO is an “exhaustive code” at an earlier point in the judgment.²⁶

[38] Secondly, as Federated Farmers submits, it is correct that the Court reproduced a passage from *Bleakley* inaccurately.²⁷ The passage quoted should have read:

[116] Given that the authority found there was no such danger of escape, there was no obligation in law – and it certainly was not appropriate – for the authority to venture into more orthodox pollution issues. It is true that the Act has an environmental protection purpose, as does the Resource Management Act, however, that prima facie wide purpose is to be read in the context of its subject-matter and specifics. It is to protect the environment against hazardous substances and organisms, and not on a wider scale. The wider scale is the role of others under general legislation in the RMA. Thus, if spraying milk on pastures were to raise a concern that heritable material might escape, that would be a concern for the authority. If after authority action, *there was no risk of escape* of heritable material but there remained a risk of another environmental character – eg destruction of aquatic life in streams – that would be a concern to be dealt with under the Resource Management Act. It would not be an authority matter, despite the breadth of the opening sections of the Act. It is a not unfamiliar judicial problem to reconcile legislation relating to specific activities, and a general legislation in the Resource Management field. [Emphasis added.]

[39] In fact, as it appeared in the Court’s judgment, “a” was substituted for “no” in the italicised words.²⁸

[40] However, nothing turns on this error. The Court referred to this passage as supporting a submission that the scope and purpose of the RMA may be wider than

²⁵ *Bleakley v Environmental Risk Management Authority*, above n 13.

²⁶ *Federated Farmers of New Zealand v Northland Regional Council*, above n 1, at [32].

²⁷ *Bleakley v Environmental Risk Management Authority*, above n 13.

²⁸ *Federated Farmers of New Zealand v Northland Regional Council*, above n 1, at [50].

the scope and purpose of HSNO.²⁹ The typographical error does not detract from the point the Court was making.

[41] Thirdly, Federated Farmers submits that the Court found, wrongly, that the RMA addresses “cumulative effects” in more detail than HSNO.³⁰

[42] In its decision, the Court set out the different definitions of “effect” in each Act. In HSNO, the word “effect” is defined in s 2 as:

effect includes—

- (a) any potential or probable effect; and
- (b) any positive or adverse effect; and
- (c) any temporary or permanent effect; and
- (d) any past, present, or future effects; and
- (e) any acute or chronic effect; and
- (f) any cumulative effect which arises over time or in combination with other effects.

[43] In the RMA, the word “effect” is defined in s 3:

3 Meaning of effect

In this Act, unless the context otherwise requires, the term *effect* includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects—

regardless of the scale, intensity, duration, or frequency of the effect, and also includes—

- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.

²⁹ At [50].

³⁰ At [8] – [37].

[44] After setting out these definitions, the Court commented on the difference between them:

[20] The two main differences between the respective provisions are, first that the issue of *potential* effects under the RMA is separated out from the definition section and incorporated into provisions relating to process, for instance s 104 concerning consideration of applications for consent; secondly that cumulative effects are dealt with in somewhat more detail in the RMA. The first difference is probably semantic only, while the second may be of more significance for present purposes.

[45] I do not consider that the Court erred in this observation but, in any event, it was not significant in the scheme of the analysis the Court conducted. It is not a material error, if an error it was.

[46] Fourthly, Federated Farmers submits that the Court took into account policy issues in reaching its conclusion, and that they were irrelevant to the issue it was required to determine.

[47] However, as Mr Somerville QC for Soil & Health submitted, policy considerations may be relevant to ascertaining the meaning of an enactment.³¹ In any event, the Court did not place great weight on policy matters, as appears from the following:³²

... Needless to say I am not here concerned with future central Government policy; that is a matter entirely for Parliament. My finding on Mr Matthias's reliance on these quotes is that while they may be indicative of policy thinking on the part of officials, I can place little weight on them for assistance with the interpretation of law currently found on the statute books.

[48] For the reasons given, I answer this third question: No, the Environment Court did not take into account matters that it should not have taken into account, or come to a conclusion without evidence, when it determined at [60] that “there is power under the RMA for regional councils to make provision for control of the use of GMOs through regional policy statements.”

Question four

[49] Federated Farmers' fourth question of law on appeal is:

³¹ *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22]; *Auckland City Council v Glucina* [1997] 2 NZLR 1 (CA) at 4.

³² *Federated Farmers of New Zealand v Northland Regional Council*, above n 1, at [53].

Whether the Environment Court failed to take into account matters which it should have taken into account when it determined, at [60] that “... there is power under the RMA for regional councils to make provision for control of the use of GMOs through regional policy statements.”

[50] Federated Farmers submits that the Court failed to take into account that both the RMA and HSNO:³³

... cover the full gamut of social, economic and cultural considerations, such that HSNO covers all the matters which the RMA covers, meaning that there is no substantive difference between the purposes of HSNO and the RMA as regard the control of GMOs. ...

[51] Again, I do not accept that the Court erred in the respect contended. The Court was conscious of the overlap between the RMA and HSNO but it was not persuaded that overlap required a conclusion that GMOs (and other new organisms) are required to be excluded from consideration in the promulgation of a regional policy statement or plan.

[52] It follows that I answer this fourth question of law: No, the Environment Court did not fail to take into account matters which it should have taken into account when it determined, at [60] that “there is power under the RMA for regional councils to make provision for control of the use of GMOs through regional policy statements or plans”.

Result

[53] I dismiss this appeal.

[54] The parties may make submissions on costs if they are unable to agree.

.....
Peters J

³³ Submissions of Counsel for the Appellant, above n 4, at [104].

Submission on the draft first set of National Planning Standards

To: Planning Standards
c/- Ministry for the Environment
PO Box 10362
Wellington 6143

By email: planningstandards@mfe.govt.nz

Name of submitter: HOUSING NEW ZEALAND CORPORATION (“the Corporation”)

Type of submitter: Business / Industry

HOUSING NEW ZEALAND CORPORATION (“the Corporation”) at the address for service set out below makes the following submission on the draft first set of National Planning Standards (“**Draft Standards**”).

Introduction

1. This submission on the Draft Standards is made by the Corporation.

Background to the Corporation

2. The Corporation’s role includes the efficient and effective management of social housing throughout New Zealand. Reconfiguring this housing stock is a priority for the Corporation so as to better provide efficient and effective social and affordable housing for those in need.
3. The Corporation was formed in 2001 as a statutory corporation established under the Housing Corporation Act 1974 (as amended by the Housing Corporation Amendment Act 2001). It is also a Crown agency under the Crown Entities Act 2004.
4. The Housing Corporation Act 1974 sets out the Corporation’s functions to provide housing and housing-related services to support the Crown’s social objectives. Under the Crown Entities Act 2004, the Corporation is listed as a Crown agent and is required to give effect to Government policies.

5. The Corporation's statutory objectives are to give effect to the Government's social objectives by providing housing and related services. To this end:
 - (a) The Corporation owns or manages approximately 64,000¹ rental properties throughout New Zealand, including about 1,480 homes for community groups that provide housing services. Approximately two-thirds of the total state housing portfolio was built before 1980, and half of it before 1960.
 - (b) The Corporation has approximately 180,000² people occupying Corporation tenancies, with 1,524 new homes delivered, including 1,421 social, emergency and transitional homes and 103 market and affordable homes during the 2016/2017 financial year.
6. Within the Auckland Region, the Corporation manages a portfolio of approximately 28,600 dwellings.³
7. The Corporation's portfolio is made up of complexes, residential and Community Group Housing and is currently valued at more than \$25.2.⁴ The Corporation's properties make up 4% of the country's housing stock and, although operating as a nationwide portfolio, 44% of the Corporation's houses are in Auckland.
8. There has been a marked change in the type of social housing that is required by the Corporation's tenant base:
 - (a) Demand has increased for single bedroom housing required for single persons, the elderly or disabled, and larger homes with four to six bedrooms for larger families.
 - (b) As a result, the size of many state houses in the Auckland region do not match the changing demand for social housing, with a large proportion of the Corporation's housing stock comprising older 2-3 bedroom homes, on large lots, which are too large for smaller households and too small for larger households.

¹ As at 30 June 2018.

² This figure excludes Community Group Housing tenancies.

³ As at 30 June 2018.

9. This has meant that the Corporation has had to review its housing portfolio and assess how it can respond to the changes in demand, given that some of its current housing supply does not meet the current or future needs of tenants and/or are uneconomic to maintain.
10. The Corporation has a long-term national Asset Management Strategy which is focused on providing houses that are the right size, in the right place and in the right condition. As part of that strategy, the Corporation will look to redevelop existing sites, using them more efficiently in order to improve the quality and quantity of social housing available.
11. Redevelopment of existing brownfield land, especially in high demand locations, will enable the replenishment of existing housing stock and assist in appropriately meeting current and future social housing demand by:
 - (a) making more effective use of the Corporation's land;
 - (b) designing houses that sympathetically integrate with existing communities. Applying the principles of 'blind tenure' will make it virtually impossible to distinguish a state house from a private house in the future; and
 - (c) reconfiguring the portfolio to meet the needs of families now and into the future. Traditional state homes of 2 or 3 bedrooms built 50+ years ago on larger sections no longer meet the needs of today's families. Nationwide, the most common household composition requiring social housing is now one parent with one or more children. This is closely followed by single, elderly or disabled tenants. In Auckland there is also an increasing demand from large families with many children.
12. When redeveloping the portfolio the Corporation looks to make better use of land that has reasonable access to public transport; commercial centres; community services and facilities (such as public open space, educational facilities, or other social infrastructure); or areas of employment.
13. Over time the reconfiguration of the portfolio will enable improvements in the form, function and quality of the housing within the Corporation's portfolio.
14. The Corporation is a major user of planning instruments nationwide. As such, the Corporation is uniquely placed to be able to provide feedback on this process.

Scope of the Submission

15. This submission relates to the Draft Standards as a whole.

The Submission is:

16. In general, the Corporation supports the intent of the Draft Standards, particularly standardising those aspects of plan making that will make plan development and implementation more efficient and transferrable throughout the Country.

Consideration of submissions on the Draft Standards

17. The Corporation considers that, if the Draft Standards are either to contain substantive provisions (eg: definitions) or be mandatory, they should be the subject of rigorous testing via a public hearing process so that the decision makers are fully informed. That approach would increase the probability that errors are identified and corrected before becoming operative.

The Draft Standards in the Auckland and Christchurch Context

18. In summary, the Corporation submits that the Minister for the Environment (“**the Minister**”) should consider exempting large councils, particularly Auckland Council and Christchurch City Council and those facing distinctive local issues, from complying with the Draft Standards.
19. By way of background, the Corporation was extensively involved in the proposed Auckland Unitary Plan (“**Unitary Plan**”) hearings process, making submissions and lodging evidence in relation to 50 hearings topics across the whole plan. The outcome of this process was a plan, of which it is submitted, provides a significant step change to planning in the Auckland Region, particularly as it relates to the provision of increased housing capacity and choice.
20. A number of appeals were lodged challenging the Unitary Plan, and the issue of intensification was at the heart of many of these challenges. The Corporation was involved in a significant number of these appeals, including 4 judicial review proceedings, 26 High Court appeals and 23 Environment Court appeals. While almost all appeals have been resolved, there are still 3 Court of Appeal appeals that

are outstanding.⁵ Meaning that it will have been a five plus year process to make the Unitary Plan fully operative.

21. In that regard, the *Albany North Landowners v Auckland Council* [2017] NZHC 138 “scope” case was the first to consider the intensification issue (as a ‘test’ case addressing a number of appeals on that point). The High Court found that the broad ‘upzonings’ across Auckland were in scope of submissions on the Unitary Plan. Since that decision, however, there have been numerous attempts to revisit the intensification through subsequent plan changes to the Auckland Unitary Plan (Operative in Part), for example, Plan Changes 3 and 4, by those unhappy with the intensification of the Region, in an attempt to find a way to re-litigate the matter.
22. In summary, even though the Unitary Plan process was subject to fast track legislation, the process itself has still been reasonably long and we are finally at a stage where there is a near completed planning instrument which can be used as a blue print for future development, and which provides certainty for those developing and using land within the Region.
23. The risk in an Auckland context of requiring the implementation of the Draft Standards into a newly operative Unitary Plan is that it has the potential to reopen the debate regarding the need for the Region to intensify. As the Council undertakes to implement the Draft Standards there is the potential for appeals and/or judicial reviews which risk once again putting the Auckland planning context in a state of flux.
24. A similar issue also arises in respect of the Christchurch context, albeit for different reasons. Namely that the Christchurch District Plan reflects the unique post-earthquake circumstances of the Region, and the outcomes of a process driven by the need to enable recovery. For that reason, the Corporation considers that there is a risk in the Christchurch context that requiring implementation of Draft Standards could compromise the outcomes sought to be achieved through that Christchurch Replacement Plan process.
25. In light of that risk, the Corporation asks that the Minister consider excluding at least Auckland Council and Christchurch City Council from compliance with the Draft Standards until their next plan review. Such an approach, it is submitted, will in the

⁵ *Belgiorno-Nettis v Auckland Council* CA645/2018; *Belgiorno-Nettis v Auckland Council* CA184/2018; and *North Eastern Investments Ltd & Anor v Auckland Council & Ors* CA287/2018.

Auckland context also promote the Draft Standards objectives of reducing the cost of creating plans and policy statements.

Technical Issues

26. While the Corporation appreciates that the predominant focus of the first set of the Draft Standards is on the format and structure of Plans ('regional', 'combined' and 'district') themselves, the Corporation considers there is the potential (through future versions / 'sets') for further consideration and inclusion of national / standardised provisions (such as rules and development controls for instance) within the Draft Standards.
27. Currently the proposed Draft Standards are 'structure / format focussed', with little in the way of content in relation to particular provisions which could be standardised across the country (e.g. building height, HiRB controls, how height / HiRB recession planes are to be measured etc).
28. The Corporation considers that the identified benefits set out in the consultation document will be better achieved through a greater inclusion of national standards / controls through the Draft Standards. The intended benefits are potentially unlikely to be achieved in full where objectives, policies, rules and controls / standards continue to differ from Plan to Plan, across varying territorial and regional authorities. For example, while the zone names / colours themselves may be standardised, continuing to have differing zone provisions from Plan to Plan has the potential to undermine the intent of the creation of National Planning Standards which seek to provide greater efficiency through both Plan preparation and implementation / administration, as well as practitioner and wider public education and understanding of consistent planning provisions.
29. Some suggestions for content related matters which could be considered for inclusion in future Draft Standards sets / versions could include:
 - (a) Direction on the use of Activity Status within 'Rules Tables', whereby the use of Activity Status relates to the certainty of identifying the matters and effects that need to be considered when assessing a resource consent application. An Activity Status is frequently used as a mechanism to 'discourage' certain types of activity or development. By way of example, particular residential activities in a Residential Zone, are often identified as Discretionary or Non-Complying Activities (i.e.: the 'Single House Zone' in the Unitary Plan

identifies a second dwelling as a Non-Complying Activity). There should rarely be a need for the primary activity or land use in which a zone seeks to provide for, to be identified as a Non-Complying Activity in the relevant District Plan. In the Auckland Region Single House Zone example above, it is a relatively straightforward process to identify particular matters and criteria in which an application for two (rather than one) dwellings in a Residential Zone should be assessed against. Such an activity could be provided for a Restricted Discretionary Activity, with clear identification of appropriate matters of discretion and assessment criteria.

30. There is also the potential for a standardised, consistent approach nationally for minor non-compliances with development controls and performance standards, such as the application of the 'control flexibility' approach utilised in the previous 'legacy' North Shore City Council District Plan. Through the use of 'control flexibility' provisions in the 'legacy North Shore District Plan', non-compliances of up to 10% for example (i.e.: permitted building height may be 8m, with 'control flexibility' providing for up to 8.8m) are processed as a Restricted Discretionary Activity. There could also be the ability for applications with minor non-compliances to be processed on a non-notified basis. This has the benefit of setting a consistent approach and expectation across the country for both practitioners as well as the general public as to how non-compliances with permitted standards and controls will be assessed by Councils.

Draft Combined Plan Structure Standard (S-CP) – Part 3: Regional Policy Statement

31. The Corporation considers that the draft regional policy statement structure should contain a mandatory section for 'development capacity' or 'urban growth'. All Councils are required to address the objectives and policies of the National Policy Statement on Urban Development Capacity 2016 in their plans so the Draft Standards should provide a mandatory section.

Draft Area Specific Matters Standard (S-ASM)

32. Given the relatively limited list of standard zones (particularly the four Residential Zones), there would appear to be the potential to add further zones. The Corporation further notes that the current zone names / purposes have a focus on 'density'. Density, however, may not be an actual outcome sought by a particular zone. This was an approach adopted through the recent Auckland Unitary Plan process, with

the residential zones typically focused on the built form outcomes the zones were seeking to achieve over time (such as the 'Terrace Housing and Apartment Buildings' zone). While the four standardised Residential Zone types currently refer to varying 'densities', the addition of further zones (and attendant amendments to the zone names as discussed below) would provide the opportunity for Councils to draft Plan provisions more targeted to achieving identified built form / typology and quality outcomes, rather than simply more generic references to achieving expected 'densities'.

Draft Area Specific Matters Standard (S-ASM) - Zone chapters (S-Zones): Purpose Statements

33. The Draft Standards specify a purpose statement for each zone option. The Corporation agrees that purpose statements are useful tools, however considers that the statements contained in the Draft Standards need to be redrafted to:
 - (a) Reflect the outcomes the zone is seeking to achieve, rather than reflecting what is existing, so that the zone locations are not predetermined by reference to the current environment; and
 - (b) Make reference to the 'environment' rather than the 'character'.
34. The names of the zones should be recast to remove reference to the word density entirely, noting that (with the exception of the Single House Zone) the Unitary Plan removed density controls from the residential zones entirely meaning that if these zone names were implemented in this context this would result in confusion to plan users.
35. By way of example:

<u>Large Lot zone</u>	The purpose of the <u>Large Lot zone</u> is to provide for <u>Large Lot residential development on the periphery of urban areas where urban development is not appropriate.</u>	
<u>Low-density residential zone</u> <u>Single House zone</u>	The purpose of the <u>Low-density Single House residential zone</u> is to provide primarily for low intensity residential activities where <u>land hazards prevent greater urban intensity</u> ~~there may be constraints on urban density.~~	<u>Comment:</u> The Draft Standards should clarify what is intended by the reference to "constraints".
<u>Residential zone</u>	The purpose of the <u>Mixed Housing Suburban Residential zone</u> is to provide primarily for residential	<u>Comment:</u> Zoning should not be a tool used to reflect

<u>Mixed Housing Suburban zone</u>	activities ~~at a suburban intensity in areas of suburban character.~~	existing land use patterns. As such, the zone purpose should not identify the existing environment of land as a means by which future land is to be zoned. Rather it should identify the built form outcomes that this zoning is seeking to generate. Otherwise, the risk is that this will predetermine where a zone may be located.
~~Medium-density residential zone~~ <u>Mixed Housing Urban zone</u>	The purpose of the ~~Mixed Housing Urban Medium-density residential zone~~ is to provide primarily for <u>medium intensity residential activities in areas of urban character.</u>	
~~High-density residential zone~~ <u>Terrace Housing and Apartment Buildings zone</u>	The purpose of the ~~Terrace Housing and Apartment Buildings High-density residential zone~~ is to provide primarily for <u>high intensity residential activities in areas of high density, urban character.</u>	

36. In addition to purpose statements for the zones themselves, where methods, particularly in relation to development standards and controls, are being utilised in Plans, a standardised requirement to identify a purpose statement for each standard and control proposed or used would be beneficial. This will assist with the potential streamlining of 'assessment frameworks' (matters of control and discretion and assessment criteria) by having an identified purpose for standards and controls, particularly for applications that will infringe controls and standards and will need to be assessed against the extent of which such a non-compliance will still create an appropriate development outcome. This is an approach that has been adopted in the Unitary Plan, particularly in relation to the Residential Zones provisions. Having an identified purpose statement for each proposed standard and control would also assist in identifying places where potentially duplicitous regulation is taking place (i.e.: where multiple controls and standards are being applied to manage a consistent, single issue of outcome). By way of example, the use of 'max height', 'HiRB', 'yard setback' as well as 'building setback at upper floors' are often all used to manage the potential for adverse dominance effects to immediately adjoining properties.

Draft Area Specific Matters Standard (S-ASM) - Precincts Chapter (S-PREC)

37. The Corporation agrees that the inclusion of the Precinct tool is important in the Draft Standards. In that regard, it considers that the reference at page 45 should be amended as follows:

A precinct spatially identifies and manages an area where ~~two or more~~ additional provision(s) apply which modify the policy approach of the underlying zone(s) or refine or modify land use outcomes.

38. There is no basis for a precinct only applying where two or more additional provisions apply. One additional provision may be sufficient to modify the policy approach of the underlying zone or land use outcomes and necessitate a precinct approach.

Draft Mapping Standard (F-2) Table 21: Zone colour palette table

39. The Corporation considers that the colour palette for the residential zones requires greater total variation so as to enable users to easily distinguish between zones when viewing maps on screens or using printed copies, both of which may be of poorer quality.

Draft Definitions Standard (CM-1)

40. The Corporation generally supports the inclusion of some level of standardised definitions, however, considers that there needs to be greater consideration of the extent to which these definitions should provide a level of detail such that they are of assistance to local authorities (or specifically enable a level of detail to be provided by a local authority).
41. The Corporation further considers that there are a number of definitions which could reference the relevant definition from other (relevant) legislation, for example, use of the definition of “Building” from the Building Act 2004. This is not an unusual approach in the Resource Management Act 1991 (“**RMA**”) context, and most District Plans cross reference to non-RMA but relevant legislation for consistency and clarity purposes.
42. The Corporation also makes the following specific comments in relation to the following definitions:

Term	Definition	HNZC Comment
building	means any structure , whether temporary or permanent, moveable or fixed, that is	The Corporation considers that there are a number of abnormalities that

Term	Definition	HNZC Comment
	enclosed, with 2 or more walls and a roof, or any structure that is similarly enclosed	arise from this definition in terms of structures which would be included or excluded from the definition inappropriately. One option could be to consider using the definition of "building" set out in ss8-9 of the Building Act 2004.
building damage from vibration	means any permanent effect of vibration that reduces the serviceability of a structure or one of its components	The Corporation does not consider a definition of this is necessary or appropriate in Draft Standards, particularly given its very narrow definition of requiring that there is a permanent effect that reduces the serviceability of the structure in order for there to be building damage.
community facility	means a non-profit facility primarily for recreational, sporting, cultural, safety and welfare, religious or similar community purposes	The Corporation considers that this definition is unclear and leaves open for debate what would or would not be encompassed by the definition. For example, would it include a police station or women's refuge? The Corporation also queries the relevance of the non-profit element of this definition in an RMA context.
coverage	means the percentage of the net site area covered by the footprint of structures as identified in the relevant rule	The Corporation considers that the reference to structures should be a reference to "buildings" (as defined in Building Act 2004). As set out below in relation to the definition of "structures", this definition is problematic in that it could encompass unintended items such as trailers, which would then have the consequence of being included in the calculation of coverage.
drain	means any artificial watercourse, open or piped, that is designed and constructed, or used, for the purpose of the drainage of surface or subsurface water	The Corporation considers this definition needs to be reworded to read: "...any artificial open watercourse...". A drain cannot be "piped" and this reference should be removed.
earthworks	means any land disturbance that changes the existing ground contour or ground level	As with other definitions, the Corporation considers the need for this definition to be amended by at least listing exclusions. As currently worded, the definition could inadvertently capture activities such as rotary hoeing a garden, for example.
footprint	means the total area of structures at ground floor level and the area of any section of any of those structures that	Again, the Corporation considers that the reference to 'structure' should be amended to 'building'. This definition as currently worded could lead to a

Term	Definition	HNZC Comment
	protrudes directly above the ground	perverse outcome whereby a single level building with eaves could have a greater footprint than a two level building with eaves.
gross floor area	means the sum of the total area of all floors of all buildings on the site (including any void area in those floors, such as service shafts or lift or stairwells), measured from the exterior faces of exterior walls or from the centre lines of walls separating 2 buildings and, in the absence of a wall on any side, measured to the exterior edge of the floor	This is another example of a definition which requires a list of exclusions, particularly given the definition already specifies inclusions. By way of example, as currently worded, the atrium of a building would be included which could have consequences in terms of the level of carparking required to be provided as part of a development. The definition of 'net floor area' excludes such areas.
ground level	means— (a) the actual finished surface level of the ground after the most recent subdivision that created at least one additional allotment was completed (at the issue of the section 224c Certificate or the previous legislative equivalent), but excludes any excavation or filling associated with the construction or alteration of a building ; (b) if the ground level cannot be identified under paragraph (a), the existing surface level of the ground, excluding areas of cut or fill associated with the construction or alteration of a building ; (c) if, in any case under paragraph (a) or (b), a retaining wall or retaining structure is located on the boundary , the level on front of the retaining wall or retaining structure where it intersects the boundary	The Corporation opposes this definition as notified because of the potentially perverse outcomes that might flow from such a definition, for example, the way subsection (c) is currently worded, if a neighbouring site modified the level of the boundary where the retaining wall or structure intersected it, this could have unintended consequences for the way standards such as Height in Relation to Boundary are applied.
habitable room	means any room in a residential unit , visitor accommodation , educational facility , commercial activity or healthcare facility used for the purposes of teaching or respite care or used as a living room, dining room, sitting room, bedroom, or similarly occupied room	The Corporation suggests that this definition be amended to reflect the definition of "habitable rooms" used in the Unitary Plan, such as: " <i>Any room in a building used for a residential activity and in a care centre or healthcare facility with an overnight stay facility, excluding a laundry, bathroom, toilet or any room used solely as an entrance hall, passageway, garage, or other space of a specialised nature occupied neither frequently nor for extended periods.</i> "
height	means the vertical distance between ground level at any point and the highest	These definitions require both a method of measurement to be

Term	Definition	HNZC Comment
[in relation to a district plan]	part of the structure immediately above that point	specified and explained (i.e. rolling height and/or average ground level) as well as a list of exclusions. This is an overly simplistic definition of height which the Corporation considers will not assist in clarifying how height is determined across various planning documents. While standardised 'height limits' may not be required, providing a standard approach in the definition for how height can be measured would enable efficiency by removing the need for this to be addressed individually, and potentially inconsistently, across various District Plans.
height [in relation to a regional plan or regional policy statement or a combined plan that includes a regional plan or regional policy statement]	means is the vertical distance between the highest part of a structure and a reference point. The reference point outside the coastal marine area is ground level unless otherwise stated in a rule. The reference point inside the coastal marine area is mean sea level	
height relation boundary	in to means the maximum height of a structure relative to its distance from the boundary of a site or other specified location	Like height, this definition is overly simplistic and requires methods of measurements to be specified and explained, and a list of inclusions and exclusions to be included.
home business	means an occupation, craft, service or profession that is secondary to the use of the site for a residential activity	The Corporation considers this definition is missing a link to the commercial element of home businesses, and could result in perverse outcomes in interpretation and application as a result.
minor residential unit	means a self-contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the principal residential unit on the same site , which can be attached to the principal building or be a detached stand-alone building .	The Corporation queries whether or not this encompasses (or is intended to encompass) a situation where the dwellings are unit titled.
net site area	means the total area of the site , but does not include: a) any area of land that legally provides access to another site : b) any area of land used primarily for legal access to a rear site : c) any area of land subject to a designation that is intended to be taken or acquired under the Public Works Act 1981	The Corporation considers that the net site area should not exclude land which is subject to a designation but has yet to be taken or acquired. If land has yet to be taken or acquired then that land forms part of the site. A designation can be uplifted at any time, and an owner should not be penalised as a result.
outdoor living space	means an area of open space for the use of the occupants of the residential unit or units to which the space is allocated	Again, the Corporation considers that this is a definition which requires appropriate exclusions to be listed. As currently worded 'outdoor living space' might encompass parking or manoeuvring areas which is clearly not

Term	Definition	HNZC Comment
		the intention.
quarry	means an area of land where the excavation, with or without the processing, of minerals and other solid natural substances occurs	This definition is too broad and requires amendment to reference the commercial element of quarries to avoid capturing unintended activities.
residential unit	means a building or part of a building that is used for a residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities.	The Corporation considers that the reference to “one household” is unclear (i.e. does it encompass flat mates or only a family unit?). In the Corporation’s view a distinction can be drawn between dwellings (i.e. used for a residential purpose as a single household residence contained within one or more buildings, and served by a kitchen) and units (a defined part of a building under different ownership), and this definition appears to conflate the two.
retirement village premises	has the same meaning as in section 226A of the RMA (as set out in the box below) means premises (including any land and associated buildings) within a complex of premises for occupation as residences predominantly by persons who are retired and any spouses or partners of such persons	The Corporation considers that the definition of “Retirement village” used in the Unitary Plan is more appropriate. That definition reads: <i>Retirement village</i> <i>A managed comprehensive residential development used to provide accommodation for aged people,</i> <i>Includes:</i> • <i>the use or development of any site(s) containing two or more units that provides accommodation, together with any services or facilities, predominantly for persons in their retirement, which may also include their spouses or partners; and</i> • <i>recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities accessory to the retirement village.</i>
setback	means the distance between a structure or activity and the boundary of its site , or other feature specified in the Plan	Again, this definition should refer to ‘building’ not ‘structure’. The reference to structure could lead to perverse outcomes, given what structure currently encompasses.
sign	(a) means any device, character, graphic or electronic display, whether temporary or permanent, that is visible from beyond the site boundary, for the purposes of— (i) identification of and provision of information about any activity, site or structure:	As currently worded, this would include letter box numbers. As such, something more aligned to the current Unitary Plan definition is considered more appropriate. That definition reads: <i>Sign</i> <i>A visual device which can be seen from a public open space (including the coastal marine area) or an adjoining property, to attract people’s attention by:</i>

Term	Definition	HNZC Comment
	(ii) providing directions; (iii) promoting goods, services or forthcoming events; and (b) includes the frame, supporting device and any associated ancillary equipment whose principal function is to support the message or notice; and (c) may be two- or three-dimensional, and manufactured, painted, written, printed, carved, embossed, inflated, projected onto, or fixed or attached to, any structure or natural object; and (d) may be illuminated by an internal or external light source.	• <i>providing directions;</i> • <i>giving information; and</i> • <i>advertising products, businesses, services, events or activities.</i> <i>Includes</i> • <i>the frame, supporting device and any associated ancillary equipment whose principal function is to support the message or notice;</i> • <i>murals, banners, flags, posters, balloons, blimps, light projections, footpath signs, hoardings, projections of lights; and</i> • <i>signs affixed to or incorporated within the design of a building.</i>
structure	means any building , equipment, device or other facility made by people and which is fixed to or located on land; and includes any raft , but excludes motorised vehicles that can be moved under their own power	As currently worded, this definition is problematic because it would include things such as trailers and caravans parked in a driveway, even temporarily. This definition should include a list of exclusions, particularly given the number of other definitions which refer back to the definition of “structure” and the perverse outcomes in those terms if structure did encompass things such as trailers parked in driveways.
Territorial Authority	has the same meaning as in section 5 of the Local Government Act (as set out in the box below) means a city council or a district council named in Part 2 of Schedule 2	This should include reference to the full name of the Act “Local Government Act 2002”.
visitor accommodation	Means land and/or buildings used primarily for accommodating non-residents, subject to a tariff being paid	The Corporation does not consider it is necessary for this definition to reference the need for a tariff being paid.

Relief Sought

43. The Corporation seeks the following decision from the Minister on the Draft Standards:

- (a) That the Draft Standards be amended as set out in this submission.

- (b) That Auckland and Christchurch are excluded from compliance with the Draft Standards until their next plan review to address the matters raised in this submission so as to promote the Draft Standards objectives of reducing the cost of creating plans and policy statements.
- (c) Such further or other relief, or other consequential or other amendments, as are considered appropriate and necessary to address the concerns set out herein.

44. The Corporation wishes to be heard in support of this submission.

45. If others make a similar submission, the Corporation would be willing to consider presenting a joint case with them at hearing.

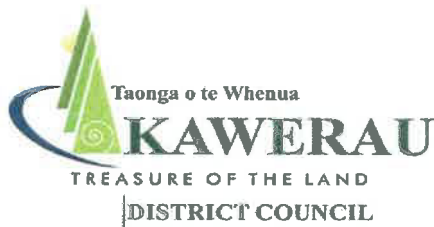
DATED 17 August 2018



Dr Claire Kirman / Alex Devine

Counsel for **HOUSING NEW
ZEALAND CORPORATION**

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[REDACTED]
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Phone:
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File Reference: 301009

17 August 2018

Planning Standards
c/- Ministry for the Environment, Wellington
email: planningstandards@mfe.govt.nz

Organisation: Kawerau District Council
Postal Address: [REDACTED]
Telephone: [REDACTED]
Contact: [REDACTED]
Email: [REDACTED]

Submission by Kawerau District Council (KDC)

Draft National Planning Standards

Thank you for providing us with an opportunity to comment on the draft National Planning Standards.

KDC's primary concerns relate to the requirements for electronic accessibility and functionality and the level of support that would be available from MfE to transition to the e-standards. This submission therefore deals specifically with the questions relevant to these issues.

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?

The cost to KDC to achieve 'Level 5' of the Electronic Accessibility and Functionality Scale is unknown at this stage. However, given the known status of KDC's e-capability (including mapping), it is anticipated that there would be considerable expenditure required to achieve this level, particularly given that there is no indication that a national platform will be developed and made available for the transition.

KDC's District Plan was made operative on 1 May 2012.

During the subsequent period, KDC has processed the following yearly numbers of resource consents (includes Certificates of Compliance):

2017/18 – 13

2016/17 – 12

2015/16 – 6

2014/15 – 7

2013/14 – 12

2012/13 – 6 (part-year from 1 May)

KDC responded to 205 service requests in the 2017/18 year for District Plan/Resource Consent related issues.

1% of KDC rates spending is the equivalent of \$100,000.

At a cost of \$60,000 (a conservative estimate) to achieve the proposed standard, transition to the system would equate to:

- On the basis of 15 resource consents per annum over 5 years, an equivalent of an additional \$800 per consent (an average residential consent would be \$350 currently).
- On the basis of 200 service request enquiries per annum over 5 years, an average of \$60 additional per enquiry.

The cost of compliance appears very high relative to the benefits that would be obtained.

A less ambitious objective for KDC would appear to be appropriate.

The aim of the standards is to improve the customer experience making it easier for them to interact and understand plans. We consider that the service we currently provide achieves this aim with customers having direct access to a person for enquiries and easy reference to documents and maps (which are currently available online).

'Level 2' accessibility and functionality would seem an appropriate level for KDC activities and community interaction. We suggest that flexibility is incorporated within the planning standards to recognise the uniqueness and difference of each community.

Q11: For Councils: what type of support would be useful to help you implement the ePlan standard?

A significant amount of IT support both in terms of implementation and ongoing maintenance of the system would be required. In order to achieve this we would require both a significant upfront and ongoing financial commitment.

It is understood that MfE is considering the development of a software option that smaller councils could access and utilise for the transition.

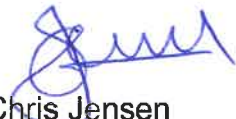
In the event that a variable standard relative to the size and structure of territorial communities and the associated number of resource consent applications and enquiries (and mode of response to these) is not made available, it is submitted that a common package capable of deployment within the existing IT platform made available at no cost to relevant Councils for implementation would be of significant benefit.

General

KDC has been party to discussions on the draft standards with the other local authorities comprised in the Bay of Plenty Region and supports the individual submissions made by these authorities.

If I can be of any further assistance then please do not hesitate to contact me.

Yours sincerely



Chris Jensen

Manager, Planning, Compliance & Capability

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SUBMISSION - DRAFT FIRST SET OF NATIONAL PLANNING STANDARDS

Name: gerard hoyle

Address:

Phone:

Email:

Submitter type: Individual

CM-2: Draft noise and vibration metrics standard

1. This is a submission in relation to the CM-2: Draft noise and vibration metrics standard.
2. The submitters are involved in proceedings with Auckland Council and others concerning the correct approach to the assessment of impulsive sound from gunfire.
3. The purpose of the submission is to address apparent confusion in the draft standard in relation to the measurement and assessment of impulsive sound such as gunfire and blasting, which are characterised as a peak sound level (with the descriptor L_{peak}). Impulsive sounds are not properly assessed and measured by applying a rating level expressed in L_{eq} (for a continuous steady sound) or L_{max} in NZS 6802:2008 as implied in paragraph 4 of the draft standard.
4. Paragraph 3 of the draft standard states:

Any plan rule to manage an emission of noise must be consistent with noise measurement methods in the New Zealand Standards listed in table 30: Acoustic New Zealand Standards below.
5. Paragraph 4 of the draft standard states:

Any plan rule to manage **an emission of noise** must be consistent with the assessment methods in section 6 Rating Level and section 7 LMAX in New Zealand Standard 6802:2008 Acoustics – Environment Noise.
6. At least as it relates to impulsive sound, paragraphs 3 and 4 of the draft standards appear to be in conflict. This is because for impulsive sound such as gunfire or blasting (impulsive sound being transient sound having a peak level a very short duration, typically less than 100 milliseconds) should be described by the measurement of its peak level as indicated by the descriptor L_{peak} (refer clause 8.6, New Zealand Standard 6801:2008).
7. In comparison, the descriptor for a continuous steady sound is the L_{eq} which is a time average level i.e. L_{eq} is 'a different thing' from the peak level.

8. The assessment and determination of the rating level (as expressed in L_{eq} with adjustments for duration and special audible characteristics) and L_{MAX} in New Zealand Standard 6802:2008 will only be applicable and relevant if the type of sound is generally within the scope of NZS 6801:2008 and NZS 6802:2008.
9. Impulsive sound (gunfire and blasting) is generally outside the scope of NZS 6802:2008 (refer clause 1.2 NZS 6802:2008).
10. An (unintended) implication from the current drafting to the draft New Zealand standard may be a possible interpretation that gun clubs in New Zealand are subject to the assessment criteria requiring the calculation of a rating level (in L_{eq}) and the application of L_{MAX} - when these are not the correct descriptors for impulsive sound.
11. It is submitted that it would not be logical to have a plan rule or draft national standard implying that emission of impulsive sound is to be assessed in a manner consistent (per paragraph 4 of the draft standards) with section 6 Rating Level and section 7 L_{MAX} in New Zealand Standard 6802:2008 Acoustics – Environment Noise – when L_{eq} and L_{max} are not applicable to the assessment of impulsive sound.

It is important to ensure validity of any draft standard that the draft standard not “overreach” the application of a rating level to types of sounds (such as gunfire and blasting) not intended to be addressed by the descriptors L_{eq} or L_{max} .

12. In the New Zealand context in *Brooks v Western Bay of Plenty District Council*, the Environment Court expressly recognised (based on expert evidence) that general amenity noise standards in New Zealand Standard 6802:2008 were not applicable to impulsive noise.¹

Outcome sought

13. Suggested drafting to resolve the conflict would be to amend clause 4 of the draft national standard (CM-2: Draft noise and vibration metrics standard) to read (or to same or similar effect):

Any plan rule to manage an emission of noise must be consistent with the assessment methods in section 6 Rating Level and section 7 L_{MAX} in New Zealand Standard 6802:2008 Acoustics – Environment Noise, provided the emission of noise in question is generally within the scope New Zealand Standard 6802:2008.

14. The submitter requests to be heard in relation to this submission.

Date: 17 August 2018

Gerard hoyle

¹ *Brooks v Western Bay of Plenty District Council* [2011] NZEnvC 216 at [20].

17 August 2018

Planning Standards Team
C/- Ministry for the Environment
PO Box 10362
Wellington 6143



Submitted to: planningstandards@mfe.govt.nz

Submission on the Ministry for the Environment draft National Planning Standards

Please find enclosed the Greater Wellington Regional Council's submission on the Ministry for the Environment's draft National Planning Standards.

Please feel free to contact me on [REDACTED] or [REDACTED] if you have any questions or concerns.

Yours sincerely

Lucy Harper
Team Leader, Environmental Policy

Encl: Submission

The Ministry for the Environment draft National Planning Standards

Opening statement

Thank you for the opportunity to comment on the Ministry for the Environment draft National Planning Standards (planning standards). We are grateful for the opportunity to provide further input on the planning standards, and acknowledge the changes already taken into account from earlier consultation. In particular, we appreciate the extended timeframe to implement the standards, which would allow Greater Wellington Regional Council (GWRC) up to 7 years to make the required changes. We also note and support the flexibility of the regional policy statement (RPS) and regional plan (RP) structures proposed for these regional planning documents.

However, GWRC is concerned that the planning standards as currently designed will not achieve the stated outcome of 'less time and fewer resources required to prepare and use plans'. The economic benefits of the planning standards do not sufficiently outweigh the actual costs for regional councils, and the associated risks from the significant mandatory changes. Any requirement to implement substantive standards outside of a scheduled regional planning documents review will create significant costs to Councils and ratepayers, delay existing planning priorities and implementation work, and create further uncertainty for our stakeholders. This is particularly relevant for our freshwater work, and we need to be clearing roadblocks rather than adding new ones.

We are disappointed to see that the Ministry's own analysis confirms that there will be **no benefit to the natural environment** with these changes. In addition, it was confirmed in the consultation workshops that the main beneficiaries of the standards are large infrastructure providers and corporates who work across multiple plans. Regional councils will be faced with a choice to invest in either complying with the planning standards or continuing our efforts to improve land and water management. We cannot do both at the same time.

Recommendation

We ask that MfE:

- a. Remove the requirement for regional planning documents to be part of the mandatory planning standards as the benefits have not been shown and the costs are substantial.
- b. If regional policy statements and regional plans remain part of the standards, then we ask that our concerns are addressed and our recommendations (below) accepted.

Principal issues

We raise three principal issues with the standards as currently drafted for your consideration.

1. Evaluation of economic efficiency

The costs and risks to regional councils have been seriously underestimated

We appreciate that the planning standards enable plan changes without the associated time and financial costs of following the Schedule 1 process. We recognise that a cost-benefit analysis of the planning standards has been undertaken by Castalia, showing considerable savings in time and resources once implemented, however, we do not believe this analysis adequately reflects the actual additional costs to regional councils. It is further interesting to note that the Ministry has adopted the sub-optimal timeframe that was not the preferred option in the cost-benefit analysis (the 10-year timeframe).

It seems that the analysis has adopted an approach that has grouped councils together meaning that the costs and benefits between district and regional planning cannot be separated out. The greatest benefits lie with district planning and not regional planning. This is a serious shortcoming of the analysis.

One omitted cost will be the time and resources needed to undertake further significant engagement with our community, for the purpose of explaining what the changes are and why these changes are required. Despite the mandatory changes being effected without requiring a Schedule 1 process, and as reflected in subsequent sections of this submission, the Proposed Natural Resources Plan (PNRP) in its current form has been developed through 6 years of review, stakeholder and community engagement and working closely with our iwi partners. We consider therefore that we have a duty to inform the community on the changes. Having to repeat this process outside of the usual planning cycle will not only induce community concern, but also waste scarce resources that could be put to better use.

We consider that there will be significant planning costs associated with detailed analysis and restructure of the GWRC RPS and PNRP to ensure there are no gaps and especially, no unintended consequences of implementing the standards. We appreciate and are willing to forego the Schedule 1 process until required to do so; however given the significance of some of the required changes, particularly around some definitions, we believe that this will ultimately lead to a Schedule 1 process being followed. This is essentially requiring a re-write of our resource management planning documents (and the PNRP is still in hearings).

As well as costs, the standards impose greater risk for regional councils if changes are made out of the usual planning cycle. There is an enhanced litigation risk from two aspects:

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

The current costs of the PNRP development and hearings are very significant. The PNRP was notified in 2015 and the current hearings are the culmination of a seven year process integrating the five existing first generation plans. There has been

approximately \$6 million invested over the past five years. This figure is expected to double in the next years as the NPS-FM limit setting process is finalised and appeals are worked through. In their current form, the draft standards will **increase** litigation risks and costs, not reduce them. Timing is crucial in order to fully realise the benefits of the standards (as the Castalia analysis showed).

We note that there is a more compelling argument for the planning standards to guide district plans only. The planning standards have recognised that there are fewer district plans available, with less cross boundary issues, and an integral difference in the way the RMA is addressed. We do not see the proposed benefit to regional planning should such consistency between planning documents be made mandatory. We would like to reiterate that the perceived benefits of these planning standards will have the greatest impact on smaller councils, or for any council starting the plan process from scratch.

When aggregated across all regional councils we see this as a very expensive exercise with no demonstrable benefit to the environment, as stated in purpose of the planning standards – *'to help achieve the purpose of the RMA: promoting the sustainable management of natural and physical resources'*. In fact in their present form and at the stage GWRC is at in the regional plan development, we will be forced to make a choice when implementing national direction; the national planning standards or the National Policy Statement for Freshwater Management (NPS-FM) obligations to maintain and improve water quality. A substantial increase in work load and costs and a subsequent resourcing shortfall leads to the inevitability that we may no longer be able to meet the deadline of 2025 for implementing the NPS-FM.

While there may be wider benefits that the planning standards are trying to show, we request an approach is taken that minimises the potential risk and cost to regional councils. It has become clear through the consultation process that MfE has not tested a regional policy statement or a regional plan through the standards. We consider it would be highly desirable for this to occur **before** the standards are gazetted.

A further option to consider to reduce risk and cost would be to align the mandatory requirements for regional planning documents with the review cycle in the RMA. This would leave the option for regional councils to implement any planning standards changes which are assessed as being low risk without using the Schedule 1 process, and to implement the others as part of the plan review cycle. This would then align with the findings of the Castalia analysis.

Recommendation

We ask that MfE:

- c. Undertake an exercise to test the planning standards for regional policy statements and regional plans.
- d. Consider aligning the mandatory implementation of the planning standards to the regional planning review cycle, prior to the implementation of the standards.

2. Suitability of definitions for regional policy statements and regional plans

Definitions will result in reviews and re-writes of regional planning documents

It is clear that a considerable amount of time and effort has spent on creating the standardised list of definitions for the planning standards. We recognise that through current regional and district planning processes there is a large and diverse range of definitions utilised by each council, making it difficult to find common ground. We understand that this was particularly the case for regional council plans, with a lot of variation seen between them.

We support the use of definitions which are provided in the RMA in principle. We note however that this may lead to further repetition within plans as the exceptions which apply to a particular region or district will need to be repeated in the rule structure.

Due to the complexity of this issue, and from the examples provided in workshops, it is clear that a lot of definition analysis was based on the range of district plan definitions in use. We note that this has caused some definitions to become irrelevant or unusable in their current wording for regional planning, given that regional planning documents are designed to cover specific environmental effects from an RMA perspective. If the planning standards definitions were to become mandatory in their current form, while written from a district plan perspective, this could cause perverse outcomes for regional plans in particular.

More detailed comments on the definitions are included in the appendix but in particular we draw your attention to three definitions of concern to GWRC:

1. **Site:** The definition of site is used purely in a legal sense around land tenure, titles and lots. Site in a regional plan and the rules it applies to sometimes refers to an area where an activity is occurring and in that sense is not incongruent with the definition as proposed. However site is also commonly used to define areas which have a common value, for example, 'sites of significance' and where the property boundary is only relevant for a resource consent application. If retained in its present definition, regional plans and probably regional policy statements would have to use some other term to refer to these areas, as 'overlay' does not suit.
2. **Stormwater:** The definition of stormwater captures all precipitation, i.e. water, not just precipitation or runoff which has been concentrated in some form. As written the definition would exclude rain and stormwater which enters common stormwater management devices such as a soakage pit, or stormwater retention areas which are not necessarily a waterbody.
3. **Intensive primary production:** The definition does not take into account the environmental effects caused by intensification that occurs outside of buildings. It may be suitable for district plan land use effects, but would not be sufficient to allow provisions to address the effects on water in particular, arising from the increased intensification of farming methods. The issue was also not addressed by the previous proposed definitions of 'factory farming' and 'primary production'. A definition which includes the concepts of intensifying by importing of resources or of reducing the soil to a substrate on which animals stand has some merit, but still is

difficult to define as some extra resource is often brought into the farming cycle over the seasons.

We consider that new definitions used in regional planning, which are not consistent with the wording of the RMA should be subject to further review and are not made mandatory at this stage for regional planning documents.

Recommendation

We ask that MfE:

- a. Review new definitions used in regional planning and/or provide for their non-mandatory for regional planning documents.
- b. Undertake an exercise to test the new definitions for regional policy statements and regional plans.

3. Status of Māori concepts

The standards still need to reflect the integrated nature of regional planning

We are pleased to see that the idea of a separate tangata whenua chapter is not mandatory in the planning standards. We wish to emphasise that resource management partnership with mana whenua requires that the plans reflect that partnership in both form and content. This approach is consistent with the intent of National Policy Statement for Freshwater Management (NPS-FM) Section D, which requires council to ensure mana whenua are actively involved in the management of freshwater and that their values and interests are reflected in management and decision making.

The NPS-FM prioritises a localised spatial approach to management under matters of national significance, Te Mana o Te Wai. The framework asks communities and mana whenua to focus on the health of individual water bodies and that councils develop “tailored responses for freshwater management that work within their region”. The NPS-FM provisions also now requires councils to engage with hapū. This is consistent with the tighter requirement to implement at a freshwater management unit (FMU) scale. Together these requirements demand flexibility in planning documents to reflect and respond to the increased specificity of local conditions and relationships. Councils must retain the necessary flexibility to ensure that community and mana whenua values can be managed and described appropriately in planning documents.

While we can see the benefits of having a separate chapter to cover administrative provisions, we are concerned about the overall status the mana whenua chapter and how it will be represented throughout a council plan. At the request of Te Upoko Taiao, Natural Resources Plan Committee, GWRC uses the term “mana whenua” rather than “tangata whenua” in its plans and publications. This clearly differentiates GWRC’s mana whenua partners who have recognised kaitiaki responsibilities within their own rohe boundaries and across shared statutory acknowledgement areas from the other tangata whenua of Aotearoa who reside in the Wellington region and are usually referred to as mātāwaka or taurahere. We recommend that minor editorial changes of this kind do not require a national standard and should be waived in favour of Councils working with mana whenua to agree how they wish to be identified in plans.

The PNRP for the Wellington region in its current form has been developed through 6 years of review, stakeholder engagement and working closely with our iwi partners. This has enabled GWRC to develop a framework that allows for expression of that iwi partnership *throughout* the provisions in the plan, rather than in separate provisions or a separate chapter.

Our submission on the draft ideas for tangata whenua provisions emphasised that with our methodology we have established a very good working practice with the iwi of our region. A single integrated plan recognises the multiple overlapping strategies needed to achieve effective outcomes and reflects how our community wants to engage with resource management. We expect considerable criticism from our partners and stakeholders should this change, and as mentioned previously, considerable costs from this and support the flexibility to provide for both integration of provisions, but also whaitua or rohe specific provisions.

Recommendation

We ask that MfE:

- a. Provide for councils working with mana whenua to agree how they wish to be identified in plans.
- b. Ensure that plans are able to retain flexibility in how mana whenua information is presented in order that mana whenua perspective and values are able to be expressed in both form and content.
- c. Ensure that all plans state how and where mana whenua perspective is expressed and provide clear direction to plan users as to how to access and interpret the information through provision of glossaries, guides and explanatory text.

Conclusion

We appreciate the opportunity to comment on the planning standards from a regional council perspective. We request that the planning standards strive for flexibility, ease of use and decreased costs and consider that this can be best achieved by removing regional planning documents from the regulations and concentrating the effort on the district plans where the benefits are greatest in the short term. In the event that the draft planning standards for regional documents proceed, GWRC requests that our recommendations are considered and amendments as sought in the appendix. GWRC welcomes the opportunity to clarify and further discuss the matters raised.

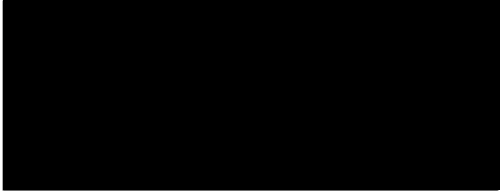


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Chris Laidlaw
GWRC Council Chair



Address for service:

Lucy Harper



Attached: Appendix - Specific issues and recommendations

Appendix - Specific issues and recommendations

Standard type	Reference or definition	Issue identified	Recommendation
Regional plan structure (S-RP)		Confirmation that there are two potential structures for a regional plan- objectives, policies, methods, rules as separate chapters, or integrated into theme chapters	Support and retain the flexibility of alternate structures
Tangata Whenua (S-TW)		Confirmation on the status of the tangata whenua chapter	Support and retain option that tangata whenua provisions can be provided across the plan
Schedules, Appendices, Maps (S-SAM)	Table 17 Pt 6 (pg. 48)	Schedule Table – final column 'reference to study/material used for identification'. This is potentially the same for the entire table so the reference will be the same for each row in the column. This refers only to district wide overlays – is that intentional?	Consider making the final column optional when there is a common reference to avoid repetition. Amend to include RPS and regional plans
Electronic Functionality & Accessibility (F-1)	Table 18, Pt7, (pg. 50)	Requirement to provide a 'note' within any district or regional plan rule (and hyperlink to relevant plan) that clarifies an activity may also require consent from another plan. Though we understand the intent, this is potentially an extensive exercise for a regional plan which covers a number of districts and could end up being confusing for plan users. A second concern is the method for updating and how risk and cost free the process can be made. Hyperlinks can easily get out of date.	Reconsider the necessity of this as a mandatory standard. Confirm the process for updating can be achieved without undue process.
Draft Mapping Standard (F-2)	Table 22 (pg. 55)	Refers to 'sites of significance to Maori' which may not fit the proposed definition of 'site'. These sites in our regional plan are a polygon rather than a point to show the area valued. Colour of hazard symbol may not be appropriate as blue colour may not be	Reconsider use of the word, or amend the definition of 'site' to be more applicable to the common usage in 'sites of significance'.

Standard type	Reference or definition	Issue identified	Recommendation
Spatial Planning Tools (Region) (F-3)		seen when used on coastal areas We note that there is no symbols given for the regional plan spatial planning.	Provide for sites as appoint or polygon and a symbology for the latter. Reconsider colour of hazard symbol
Status of Rules and other Text and Numbering Format (F-6)		If the regional plan can have two different structures then this numbering may not work for the structure with chapters, provisions- objectives, policies, methods, rules. If there is a theme chapter it would be e.g. NH – O1. If there is no theme chapter but chapters by provisions, it is unclear if it would be NH- O1, NH-O2 or O1, O2, O3 etc. If the former does the numbering start again with the new prefix, e.g. AQ- O1. Our preference would be to keep the numbers sequential as starting new number sequences in the chapter proved difficult to navigate in a draft of our regional plan. We agree with the use of common abbreviations for activity status for the rules.	Clarify that an alphabetic prefix by theme does not have to be used as well as the provision prefix if grouping objectives, policies and rules in chapters, rather than themes.
Status of Rules and other Text and Numbering Format (F-6)	Table 28 (pg71)	A regional coastal plan is not provided for in the standards, only the coastal environment.	Provide for a regional coastal plan, either integrated in the regional plan with a common indicator, or as a separate plan with coastal marine area provisions.
Consequential amendments		Giving effect to the planning standards will inevitably led to consequential amendments. The standards and the implementation guidance is silent on the issue of the scope that would be acceptable for consequential amendments and whether they are major or minor changes.	Further guidance is provided based on legal advice to decrease the opportunities for legal challenge and litigation costs when giving effect to the mandatory requirements of the standard.
Definitions (CM-1)	Abrasive blasting	We note there has been very little confusion over the use of the term and query its usefulness in the National Planning Standard. Wet-abrasive blasting may not include any material, and use only 'water'.	Consider if the difference can be better defined in a rule.

Standard type	Reference or definition	Issue identified	Recommendation
Definitions (CM-1)	Addition	The current definition is not broad enough to cover regional plan requirements. Regional rules using the term 'addition' often to relate to additions to structures. The draft definition of 'addition' refers to the definition of 'building' which includes structures but requires them to be enclosed. This wouldn't include some structures which our 'addition to structures' rules apply to, for example, fords, sea walls, culverts.	Amend definition so that 'addition' relates to structures controlled by regional rules.
Definitions (CM-1)	Boundary	The definition refers to site, but boundary is commonly used in respect of the landward side of the CMA.	Make it clear in the definition of 'boundary' that the boundary of the CMA is defined elsewhere under the definition of 'coastal marine area'
Definitions (CM-1)	Cleanfill	The word "cleanfill" is more about the activity itself, rather than the material that goes into a cleanfill, which is often referred to as "cleanfill material". The definition provided is an excellent definition of "cleanfill material", but not of a "cleanfill", as the definition fails to capture the activity. Focusing on the activity rather than just the material may be beneficial in that it would align this definition more closely to the approach used for "landfill".	Acknowledge the linkage and overlap between cleanfill and landfill, and amend definitions so both are activity focused or material focused.
Definitions (CM-1)	Drain	The definition of 'artificial watercourse' takes it out of the RMA. There is still a need to define watercourses which, though highly modified and managed for stormwater or land drainage retain ecosystems values and are in essence the aquatic habitat remaining in the area. Providing such a definition has been difficult in our plan process.	Consider defining highly modified streams which have drainage and aquatic habitat or other values.
Definitions (CM-1)	Drinking Water	A regional plan may have different provisions relating to human and stock drinking water. Because the draft definition refers to 'human consumption' this would refer all references in our regional plans to stock or animal drinking water to be changed despite 'drinking water' being the most appropriate description. The RMA (s14) and NES distinguish between 'human drinking water' and	Consider distinguishing between human and animal/stock drinking water

Standard type	Reference or definition	Issue identified	Recommendation
		drinking water for animals.	
Definitions (CM-1)	Earthworks	As in this definition, earthworks without any exceptions are a relatively simple term to define. Individual plans can define variations of earthworks to be controlled though rules as opposed to a long list of exceptions, but this will lead to repetition in the rules.	Note concern about repetition
Definitions (CM-1)	Footprint	Draft definition refers to structures only. However, regional plan provisions are sometimes in relation to the footprint of an activity (rather than a structure).	Amend definition of 'footprint' so that it would also apply to the footprint of the activity
Definitions (CM-1)	Functional need	Functional need is referred to in a higher order document - the NZCPS (Policy 6). Functional need is an important term and means that certain activities have a requirement to locate in a particular environment or place; a port is the obvious example in the coastal marine area for marine shipping and activities.	Retain wording of provision
Definitions (CM-1)	Green infrastructure	The intent of using the terms 'natural ecosystems' and natural elements' appears to be to acknowledge the natural processes that are occurring in green infrastructure, but referring to natural ecosystems potentially confuses the application of provisions in a plan. The use of these terms could create more ambiguity than clarity. Our plan process has had difficulty using terms such as 'modified'.	Support the intent of the definition and recommend further detail
Definitions (CM-1)	Greywater	The definition could be read to mean all untreated liquid waste from sources so adding 'domestic sources' could be clearer.	Support intent of definition
Definitions (CM-1)	Ground level	It is possible the definition of "ground level" may constrain the common-sense application of the term. It defines ground level primarily in terms of when the last subdivision activity occurred and specifically excludes earthworks to create new buildings etc. "Ground level" in an engineering (and lay person's) sense is the current level of the ground as in (b)	Reverse the presumption of the definition so that existing ground level is the initial premise

Standard type	Reference or definition	Issue identified	Recommendation
Definitions (CM-1)	Height Regional Plan	Sea level varies around the New Zealand coast and MSL has to be determined by local measurements and pegged to a local vertical datum. Because of this variation, the local vertical datum's are not compatible with each other. Because sea level is rising, it is important that the latest figures for surveying are used as published by LINZ, rather than pulling figures out of a tide chart. LINZ states in the nautical almanac that those figures are not be used for cadastral or administrative purposes. If the figure used is pegged to the local vertical datum it can then be linked to the national vertical datum NZVD2016 as maintained by LINZ. This ensures there will be nationwide consistency in these measurements which has not always been the case in the past.	Recommend that figures used for surveying are as published by LINZ Provide explanation and methodology in guidance material.
Definitions (CM-1)	Intensive farming	As in the body of the submission, the definition needs to address intensive farming land use that does not take place in buildings but which affects soil and water quality as it also does not rely solely on the physical properties of the site.	Amend definition to be applicable to regional plan concerns
Definitions (CM-1)	Landfill	Agree with the use of the umbrella term "waste", and the use of the phrase "primary purpose". See above comments on "cleanfill" – having one definition being activity focused and one being material focused is not ideal.	Align with cleanfill definition
Definitions (CM-1)	Mana whenua	At the request of our mana whenua partners through Te Upoko Taiao, GW uses the preferred term 'mana whenua' not 'tangata whenua'. This differentiates between iwi that have mana over and kaitiaki responsibilities within their own boundaries and statutory acknowledgement areas within our region and other tangata whenua of Aotearoa (also known as mātāwaka) who reside in our region	Retain flexibility in the use of mana whenua or tangata whenua
Definitions (CM-1)	Site	Concerns as identified in the body of the submission.	Consider using 'property' instead for this definition, or providing another definition for regional plans and regional policy

Standard type	Reference or definition	Issue identified	Recommendation
			statements.
Definitions (CM-1)	Stormwater	Concerns as identified in the body of the submission.	Consider the following alternative 'Runoff that has been intercepted, channelled, diverted, intensified or accelerated by human modification of a land surface, or runoff from the external surface of any structure, as a result of precipitation and including any contaminants contained therein.' The <u>redline</u> version of the Plan also adds this note for further clarity: "For the avoidance of doubt, stormwater excludes the discharges associated with earthworks, vegetation clearance, break-feeding and cultivation."
Definitions (CM-1)	Swale	The definition may distinguish a swale from an overland flow path which has formed naturally.	Consider if the distinction is necessary
Definitions (CM-1)	Water sensitive design	The definition as worded seems to be setting a policy approach within the definition - 'minimise adverse effects' which is not appropriate.	Consider deleting second half of definition or amending to general wording such as 'in order to achieve a desired environmental outcome'

SUBMISSION - DRAFT FIRST SET OF NATIONAL PLANNING STANDARDS

Name: Michael West

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Submitter type: Individual

CM-2: Draft noise and vibration metrics standard

1. This is a submission in relation to the CM-2: Draft noise and vibration metrics standard.
2. The submitters are involved in proceedings with Auckland Council and others concerning the correct approach to the assessment of impulsive sound from gunfire.
3. The purpose of the submission is to address apparent confusion in the draft standard in relation to the measurement and assessment of impulsive sound such as gunfire and blasting, which are characterised as a peak sound level (with the descriptor L_{peak}). Impulsive sounds are not properly assessed and measured by applying a rating level expressed in L_{eq} (for a continuous steady sound) or L_{max} in NZS 6802:2008 as implied in paragraph 4 of the draft standard.
4. Paragraph 3 of the draft standard states:

Any plan rule to manage an emission of noise must be consistent with noise measurement methods in the New Zealand Standards listed in table 30: Acoustic New Zealand Standards below.
5. Paragraph 4 of the draft standard states:

Any plan rule to manage **an emission of noise** must be consistent with the assessment methods in section 6 Rating Level and section 7 LMAX in New Zealand Standard 6802:2008 Acoustics – Environment Noise.
6. At least as it relates to impulsive sound, paragraphs 3 and 4 of the draft standards appear to be in conflict. This is because for impulsive sound such as gunfire or blasting (impulsive sound being transient sound having a peak level a very short duration, typically less than 100 milliseconds) should be described by the measurement of its peak level as indicated by the descriptor L_{peak} (refer clause 8.6, New Zealand Standard 6801:2008).

7. In comparison, the descriptor for a continuous steady sound is the L_{eq} which is a time average level i.e. L_{eq} is 'a different thing' from the peak level.
8. The assessment and determination of the rating level (as expressed in L_{eq} with adjustments for duration and special audible characteristics) and L_{MAX} in New Zealand Standard 6802:2008 will only be applicable and relevant if the type of sound is generally within the scope of NZS 6801:2008 and NZS 6802:2008.
9. Impulsive sound (gunfire and blasting) is generally outside the scope of NZS 6802:2008 (refer clause 1.2 NZS 6802:2008).
10. An (unintended) implication from the current drafting to the draft New Zealand standard may be a possible interpretation that gun clubs in New Zealand are subject to the assessment criteria requiring the calculation of a rating level (in L_{eq}) and the application of L_{MAX} - when these are not the correct descriptors for impulsive sound.
11. It is submitted that it would not be logical to have a plan rule or draft national standard implying that emission of impulsive sound is to be assessed in a manner consistent (per paragraph 4 of the draft standards) with section 6 Rating Level and section 7 L_{MAX} in New Zealand Standard 6802:2008 Acoustics – Environment Noise – when L_{eq} and L_{max} are not applicable to the assessment of impulsive sound.

It is important to ensure validity of any draft standard that the draft standard not “overreach” the application of a rating level to types of sounds (such as gunfire and blasting) not intended to be addressed by the descriptors L_{eq} or L_{max} .

12. In the New Zealand context in *Brooks v Western Bay of Plenty District Council*, the Environment Court expressly recognised (based on expert evidence) that general amenity noise standards in New Zealand Standard 6802:2008 were not applicable to impulsive noise.¹

Outcome sought

13. Suggested drafting to resolve the conflict would be to amend clause 4 of the draft national standard (CM-2: Draft noise and vibration metrics standard) to read (or to same or similar effect):

Any plan rule to manage an emission of noise must be consistent with the assessment methods in section 6 Rating Level and section 7 L_{MAX} in New Zealand Standard 6802:2008 Acoustics – Environment Noise, provided the emission of noise in question is generally within the scope New Zealand Standard 6802:2008.

14. The submitter requests to be heard in relation to this submission.

Date: 17 August 2018

¹ *Brooks v Western Bay of Plenty District Council* [2011] NZEnvC 216 at [20].



17 August 2018

Planning Standards Team
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Wellington 6143

Submitted to: planningstandards@mfe.govt.nz

Nelson City Council (NCC) Officer Submission to the Draft National Planning Standards

General Comments

Thank you for providing NCC officers the opportunity to provide feedback on the Draft National Planning Standards. This feedback is on behalf of officers as there has not been an opportunity to report this to the Council due to time constraints.

The focus of feedback is on Combined Plans given NCC's drive to have an integrated Nelson Plan. While the Combined plan structure closely aligns with where the Nelson Plan is heading some improvements and refinements should be made.

NCC is in a relatively unique position in that we are currently in the process of reviewing our resource management plans to create a combined plan as these standards are being developed. NCC therefore supports the combined structure in principal noting that there could be some improvements to better align with s18A of the RMA, which promotes plans being worded in a clear and concise way, and improve alignment with councils regional and district functions.

Recommended changes also seek better alignment with requirements for regional policy statements, regional plans, and district plans.

NCC supports the need for a separate Regional Policy Statement (RPS) so that Council can set the strategic direction for the region and lower order plans will then have to give effect to this direction pursuant to s67(3)(c) and 75(3)(c) RMA.

NCC supports the lack of reference to Climate changes as a specific theme as this will be addressed across topics such as Environmental risk, natural environmental values, water etc, given the cross cutting nature of Climate change.

NCC also supports the 5 year timeframe for alignment with the national standards given that we are currently undertaking a full review of our resource management plans and aim to notify this review following the gazettal of the new standards. NCC also intends to migrate to an EPlan that would meet the level 5 requirements within the required timeframe.

NCC is aware that no actual plan has been tested against the Draft National Planning Standards, particularly a combined plan, and would welcome the opportunity to work with the Ministry for the Environment (MfE) as the Nelson Plan develops to try and improve the combined plan template.

Given the likely volume of feedback anticipated and the lack of a further submission process it would be appropriate for MfE to engage with Regional Chief Executive Officers, The Resource Managers Group, and the Policy Managers Special Interest Group prior to

making final recommendations on the standards to see that responses are appropriately integrated across the sector.

NCC would support the opportunity to consider joint Environment Court declarations to help define which matters can be considered without using the first schedule process as part of the Planning standards implementation.

Improvements to Combined Plan structure

Part 2 Tangata whenua– Be clear that significant resource management issues for iwi need to be included in this Part or in Part 3. This is a requirement pursuant to S62(1)(b) RMA.

Ensure that “The Strategic Direction Structure Standard” (S-SD p 35) also applies to Combined Plans and RPS. At the moment this is only referenced in the District Plan structure (p16) but not in the RPS(p8) or combined Plan structure (p21). This is potentially where regional councils would set the strategic direction and targets for growth and development required by the National Policy Statement Urban Development Capacity and fulfil requirements under s61(1)(a), s61(1)(da), s30(1)(ba). It is noted that there is an absence of growth and amenity in the themes identified in Part 3 (RPS) of the Combined Plan structure (p27) and in Part 4 of the Regional Policy Statement Structure (p8). Alternatively add a theme to both the RPS and Combined Plan structure addressing growth, development, and amenity. MfE have indicated that growth, development, and amenity could sit under the Land theme however housing and business land (30(1)(ba)) are dealt with quite separately to the control and use of land (s30(1)(c) in terms of regional council functions. Accordingly growth, development, and amenity should sit separately from Land in the plan structure.

Remove duplication of describing significant resource management issues for the region by theme in part 3 (p21) and Part 4 region wide matters – Issues and objectives. While issues are mandatory at the RPS level (S62(1)(a) RMA) they are not in regional Plans (s67(2)(a) RMA). Expressing issues once will better achieve the direction for plans to be concise outlined in s18A RMA. The same issue applies to reference to methods, principal reasons for policies, and Environmental results (refer s62 (1) and s67(2)) below RPS level throughout the Planning standards as these are not compulsory in lower order plans either (EG) see clause 17(a) on page 39.

Coastal Environment

The coastal environment spans both the coastal marine area and parts of the land that are influenced by coastal processes. The Nelson resource management plans reflect this in their structure with a Coastal Environment Chapter at the RPS level, district wide objectives and policies for the coastal environment and the port as well as objectives policies and rules for the Coastal Marine Area zone, Coastal Environment Overlay, and relevant land based rules in general zones such as the industrial zone for port activities in the combined regional/district/coastal plan. In combining these plans into a single unitary plan the same structure is proposed to be maintained with the exception of combining the RPS and district wide objectives for the coastal environment at the RPS level.

The Planning Standard provides for the Coastal Environment as a specific chapter/section or even as a separate plan (p22). There is ambiguity as to how councils should deal with regional/district matters that occur both within and outside the Coastal Environment, for example discharges, landscape, buildings and land use activities. The Planning Standard enables this

issue to be addressed in a separate Coastal Environment Plan, but provides no further guidance as to what form the plan will take.

Furthermore the Draft Spatial Planning Tools (Regional) standard (p58) provides for a coastal marine area zone but this is not reflected in the Combined Plan Structure Standard – Part 6 Area Specific Matters (p24) or in the Draft Mapping Standard (p54).

It is therefore recommended that a Coastal Marine Area zone is added to Part 6 of the combined plan structure and that the combined plan structure is tested against unitary plans before the combined plan structure is finalised given the integrated nature of coastal issues. It is also recommended that a Coastal Marine Area zone is added to the draft mapping standard (table 21) particularly as the regional spatial planning tool standard provides for this.

District Wide Matters Standard – Subdivision Chapter (S-SUB) s 26 and 27 (P40).

This seems to be suggesting that subdivision provisions have to be grouped together at the District Plan level but that it may be appropriate to separate this chapter into different sections. This chapter is also required to have objectives and policies relating to subdivision.

It is assumed that the different sections would be by zone. On this basis it would be more concise to locate subdivision provisions by zone so that objectives and policies do not need to be duplicated at the zone level and in the subdivision chapter.

Subdivision is typically assessed against whether the objectives and policies of the zone are to be achieved therefore it is more appropriate to group subdivision standards with zones (EG) Subdivision in the rural environment should not compromise rural productivity and character and amenity objectives of the zone whereas subdivision in the residential area should maintain neighbourhood character and amenity. Similar non-residential activities and bulk and location standards are also designed to achieve these outcomes. Saying this once at the zone level is more clear and concise than repeating this or cross referencing back to the zones standards from the subdivision standards. This is particularly important given the move to EPLan which is largely property query related (ie) zone based.

Draft Area Specific Matters Standard - Open Space (p44)

The options for open space zones is very limited (Open Space zone, Sport and Active recreation zone)and does not align with the NZ Recreation Association guidance. NCC has recently aligned our Parks Asset Management Plan with "NZRA Parks Categories Framework" and are proposing to more closely align our resource management plan with these standards so that there is greater national consistency. This includes the following categories:

- Camping Ground
- Cemetery
- Esplanade and Foreshore Reserve
- Landscape Reserve
- Neighbourhood Park
- Public Garden
- Regional Sports and Recreation
- Sports and Recreation

While clause 6 (p43) indicates that Local authorities may include additional special purpose zones that could not be enabled by another zone or overlay, it is requested that the Open Space zone options are broadened to align with national guidance to ensure conciseness in plan terminology across NZ.

Draft Electronic Accessibility and Functionality Standard – (p50)

Table 18 outlines baseline accessibility and functionality requirements that must be implemented within 12 months of gazettal. This includes the need to “upload publically accessible existing digital data such as plotted features, polypoints and polygons to www.data.govt.nz in machine readable format”. Clarification is needed as to what “machine readable” means. This should instead refer to “standard Geographical Information Systems” for improved understanding.

Table 19 and 20 outlines standards for Eplan functionality that must be met within five years of gazettal including the “ability to download, print out and provide, without alteration, a hard copy version of the plan, which includes planning maps (in part or whole document)”. With Councils working towards digital versions for spatial mapping the time taken to produce and maintain hard copy maps would be significant for the whole plan as opposed to particular areas of interest. This clause should be amended as follows:

“ability to download, print out and provide, without alteration, a hard copy version of the plan, which includes planning maps (to an appropriate scale)”

Draft Mapping Standard – p54

While clause 5 allows Councils to include additional symbols in maps and Eplans it does not allow additional zones. As outlined above additional Open space categories should be added to align with NZRA standards. Also there is only a limited colour palette for all Hazards in table 22 (p55). It is important to be able to distinguish between different types of hazard including flood, fault, liquefaction, and contaminated land (Hail sites). These should be individually provided for.

Draft Spatial Planning tools (regional) standard – (p58)

Table 23 outlines components of plans. The table makes reference to “Specific controls” and “Areas”. While this is supported it is unclear how these provisions fit within the plan structure standards.

Draft Chapter Form Standard – (p62)

NCC supports that the need for an introduction, issue statement, principal reasons, methods, and environmental results anticipated is up to the Local authority particularly as these matters are not mandatory below RPS level.

Clause 12(c) indicates that the rule table must be presented as outlined in table 25 and 26. While the content is appropriate the format (running down the page) would not fit with Nelson’s resource management plans which are read left to right. It is therefore requested that clause 12 (c) is rephrased to read as follows:

“If the local authority includes a rule overview table, rules, or a rule requirement table they must be presented as include the content identified in tables 25, 26 and 27 below”

Definitions - (p77)

It is unclear how the proposed definitions will be used and their value particularly given a number of definitions are repeating RMA definitions. Should definitions be retained a number of adjustments should be made as follows.

Boundary adjustment (p79)

"Boundary adjustment means a subdivision that alters the existing boundary between adjoining sites, without altering the number of sites" This definition does not anticipate amenity impacts that might arise if one lot is made considerably smaller than the standard in the zone and would benefit from the addition of a limit such as "and does not decrease the site area of any site by more than 10%". The actual percentage may be different nationally due to the range of amenity issues subdivision standards are required to address.

Community facility (p79)

"means a non-profit facility primarily for recreational, sporting, cultural, safety and welfare, religious or similar community purposes" Community facilities are not necessarily non-profit facilities. This needs further consideration.

Drain (p80)

"means any artificial watercourse, open or piped, that is designed and constructed, or used, for the purpose of the drainage of surface or subsurface water. There is concern that this definition may include ephemeral streams and other streams that have been highly modified over time but would still be considered watercourses. This definition should be amended as follows:

"means any artificial watercourse, open or piped, that has been designed and constructed (manmade) solely for the purpose of the drainage of surface or subsurface water and is not replacing, diverting or altering any waterbody.

Educational Facility (p81)

"means the use of land or building for the primary purpose of regular teaching or training in accordance with a pre-set syllabus by suitably qualified or experienced instructors, but does not include any industrial activity." Industrial activity includes research laboratories used for scientific and medical research and training facilities. This would seem to exclude universities and technical institutes from the definition of educational facility. This needs further consideration in light of what the definition will be used for.

Root protection area (p87)

"means the circular area surrounding a tree, which is the greater of the radius, measured from the base of the trunk to:

- a) The outer extent of the branch spread; or
- b) Half the height of the tree"

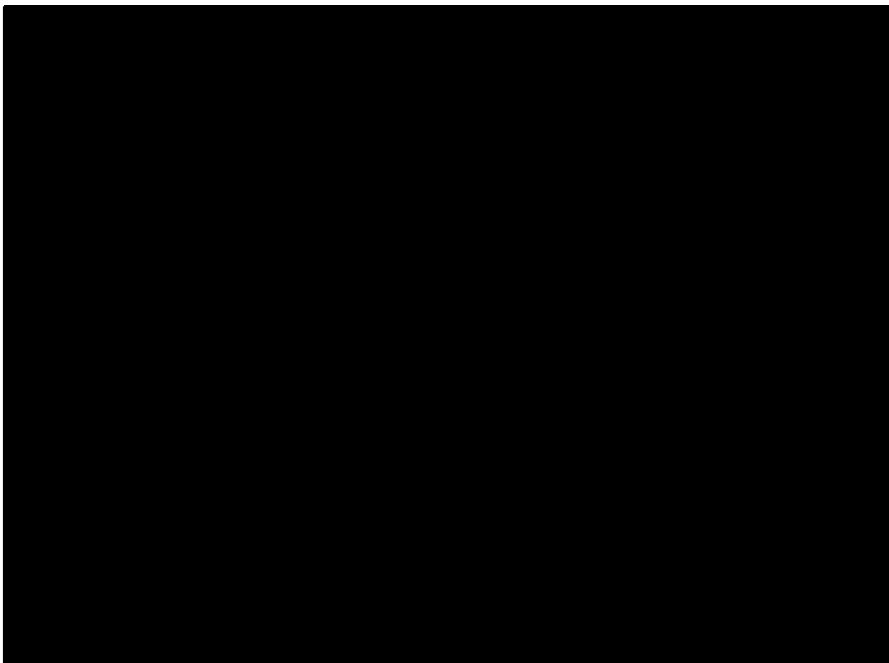
It is unclear what this definition seeks to achieve. The root zone does not necessarily follow the extent of branches or the height of the tree particularly when trimming and pruning is undertaken. A more acceptable method is one that recognises when changes to the scale of the tree are made. NCC defines the root protection zone as a factor of the diameter of the trunk at breast height. It is considered that the NCC approach is more appropriate given that this approach recognises that the root zone does not necessarily follow the branch spread or the height of the tree once trimming and pruning has been undertaken.

Sign (p88)

"means.....(d) may be illuminated by an internal or external light source"

By including illumination in the definition of sign it would be difficult for rules to differentiate between whether it is appropriate to have an illuminated sign or not.

It is requested that clause d is removed from the definition so that the determination about whether a sign can be illuminated or not should be considered when rules are developed rather than by needing to meet a national definition. Including illumination in the definition may have a perverse outcome as Councils will have to make all signs require consent if they are to control illumination.



17 August 2018

Ministry for the Environment
PO Box 10362
WELLINGTON 6143

By email: planningstandards@mfe.govt.nz

Dear Sir/Madam,

Submission on the National Planning Standards

Please find **attached** to this letter WEL Networks' submission on the National Planning Standards.

If you have any questions relating to this submission, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'KL Broughton'.

Karleen Broughton
Commercial Legal Counsel

E-mail: [REDACTED]

Submission by WEL Networks Limited on the Draft National Planning Standards – District Plan Structure

INTRODUCTION

WEL Networks Limited (“WEL”) is an electricity distributor operating under the Electricity Act 1992, which owns, operates and develops electricity distribution infrastructure in the Waikato region to provide line function services to approximately 91,000 installation connection points. This includes the distribution of electricity to residences and businesses within Hamilton City and the Waikato and Waipa Districts.

WEL owns and manages utilities within the road reserve (both overhead and underground), owns sites which contain substations and/or switching stations and has utilities within private land authorised by easements or protected under the Electricity Act (usually overhead lines, underground cables and distribution transformers).

WEL, as a network utility operator under the Resource Management Act 1991 (“RMA”), has the responsibility of providing a secure and efficient supply of electricity to the community within WEL’s distribution network area. WEL’s network of cables and lines allows every household, business, school, medical facility and other types of consumer to have access to electricity.

Other infrastructure such as substations, switching stations, ring main units, transformers, service pillars and pillar boxes allow WEL to convert electricity from a higher voltage (taken from the national grid) to a useable voltage for consumers to access, and to provide an enhanced level of security of supply through built-in redundancy in the network. WEL is classified as a lifeline utility under the Civil Defence Emergency Act 2002 and is also a requiring authority under the RMA.

DRAFT NATIONAL PLANNING STANDARDS SUBMISSION

WEL supports the proposal by the Ministry for the Environment to implement Draft National Planning Standards for regional and district plans. The Draft National Standards as proposed will provide more consistency and a greater understanding of plans in addition to being more user-friendly.

WEL has reviewed the draft standard and provides comments under the following headings:

Individual draft planning standards

WEL supports the level of standardisation proposed in the plan structure standards.

Currently there is a lack of consistency in plans for electricity infrastructure and associated activities where the same activity could be permitted under one plan and discretionary in the next. This creates difficulties for WEL as its infrastructure is linear and crosses over multiple district boundaries within the network area.

WEL’s operations usually fit under a network utilities chapter within district plans.

WEL supports the implementation of a standalone network utilities chapter, rather than network utility rules contained in separate zone chapters. Other provisions such as noise and lighting should have standalone chapters as these activities occur at a district-wide scale and are not confined to a single zone.

Standard network utility provisions

WEL supports the inclusion of standard network utility provisions for distribution infrastructure. If standard network utility provisions for distribution companies such as WEL were established and incorporated into district plans on a nation-wide scale, this would provide consistency and certainty, and reduce costs for all parties participating in planning processes.

WEL has found it increasingly difficult to communicate the importance of its infrastructure during reviews of district plans. An example of such difficulties was a district plan that was notified several years ago. This plan as drafted would have created huge implications for WEL in that it required comprehensive resource consenting for almost all of WEL's day-to-day activities within road reserve where the effects of such equipment were minor. Upon attending a number of meetings with Council, it was apparent that those responsible for drafting the network utilities chapter of the district plan did not have a full appreciation of the equipment required to operate a distribution network. Due to the lack of understanding, it took a number of years to create appropriate rules to enable WEL to operate its network effectively and efficiently.

A few years later another draft district plan was released for comment in WEL's network area and WEL requested the same amendments in order to effectively operate its network. WEL expended a lot of cost and effort to ensure these plans did not hinder WEL's operation of its network, and resulted in almost identical outcomes for each Council plan.

Lack of consistency in District Plans

An example of the lack of consistency across plans is where WEL proposed to install a new overhead electricity line within a rural area, which would cross two local authority boundaries. While the activity was permitted in the first district area, the second Council required resource consent for earthworks associated with the proposed works as a discretionary activity, due to the area having a catchment policy overlay.

The incorporation of standard network utility provisions would ensure that essential works are not delayed or otherwise impacted by inconsistent rules within district plans.

Mapping

WEL supports a consistent approach to zones, overlays and other spatial layers in plans. A simple structure with standard zone and overlay names will enable WEL to easily identify the section of the plan relevant to its network utility infrastructure.

In particular, WEL supports the inclusion of a standardised designation overlay for all district plans. A standardised designation overlay will ensure that WEL can easily identify each of its designations on planning maps in the district plans within its network area.

Chapter Form

WEL supports a standard form of plans and, in particular, supports the activity status of each rule being located within the heading of the rule (or in the rule row, when using a table format). Having a standard format for each plan will improve the consistency and user-friendliness.

Definitions

WEL supports the inclusion of standardised definitions within plans. In particular, WEL supports the inclusion of a standard definition for Infrastructure, Network Utility, Notional Boundary, Earthworks, Telecommunication, Building, Utility/Utility Service, Line and Minor Upgrading.

In particular, WEL supports a definition of Minor Upgrading as currently the definitions of minor upgrading vary within district plans in its network area. WEL relies upon such definition for day-to-day activities in order to maintain and upgrade its network equipment.

SUBMISSION - DRAFT FIRST SET OF NATIONAL PLANNING STANDARDS

Name: Tony O'Brien

Address:



Phone:



Email:



Submitter type: Individual

CM-2: Draft noise and vibration metrics standard

1. This is a submission in relation to the CM-2: Draft noise and vibration metrics standard.
2. The submitters are involved in proceedings with Auckland Council and others concerning the correct approach to the assessment of impulsive sound from gunfire.
3. The purpose of the submission is to address apparent confusion in the draft standard in relation to the measurement and assessment of impulsive sound such as gunfire and blasting, which are characterised as a peak sound level (with the descriptor L_{peak}). Impulsive sounds are not properly assessed and measured by applying a rating level expressed in L_{eq} (for a continuous steady sound) or L_{max} in NZS 6802:2008 as implied in paragraph 4 of the draft standard.
4. Paragraph 3 of the draft standard states:

Any plan rule to manage an emission of noise must be consistent with noise measurement methods in the New Zealand Standards listed in table 30: Acoustic New Zealand Standards below.
5. Paragraph 4 of the draft standard states:

Any plan rule to manage **an emission of noise** must be consistent with the assessment methods in section 6 Rating Level and section 7 LMAX in New Zealand Standard 6802:2008 Acoustics – Environment Noise.
6. At least as it relates to impulsive sound, paragraphs 3 and 4 of the draft standards appear to be in conflict. This is because for impulsive sound such as gunfire or blasting (impulsive sound being transient sound having a peak level a very short duration, typically less than 100 milliseconds) should be described by the measurement of its peak level as indicated by the descriptor L_{peak} (refer clause 8.6, New Zealand Standard 6801:2008).
7. In comparison, the descriptor for a continuous steady sound is the L_{eq} which is a time average level i.e. L_{eq} is 'a different thing' from the peak level.

8. The assessment and determination of the rating level (as expressed in L_{eq} with adjustments for duration and special audible characteristics) and L_{MAX} in New Zealand Standard 6802:2008 will only be applicable and relevant if the type of sound is generally within the scope of NZS 6801:2008 and NZS 6802:2008.
9. Impulsive sound (gunfire and blasting) is generally outside the scope of NZS 6802:2008 (refer clause 1.2 NZS 6802:2008).
10. An (unintended) implication from the current drafting to the draft New Zealand standard may be a possible interpretation that gun clubs in New Zealand are subject to the assessment criteria requiring the calculation of a rating level (in L_{eq}) and the application of L_{MAX} - when these are not the correct descriptors for impulsive sound.
11. It is submitted that it would not be logical to have a plan rule or draft national standard implying that emission of impulsive sound is to be assessed in a manner consistent (per paragraph 4 of the draft standards) with section 6 Rating Level and section 7 L_{MAX} in New Zealand Standard 6802:2008 Acoustics – Environment Noise – when L_{eq} and L_{max} are not applicable to the assessment of impulsive sound.

It is important to ensure validity of any draft standard that the draft standard not “overreach” the application of a rating level to types of sounds (such as gunfire and blasting) not intended to be addressed by the descriptors L_{eq} or L_{max} .

12. In the New Zealand context in *Brooks v Western Bay of Plenty District Council*, the Environment Court expressly recognised (based on expert evidence) that general amenity noise standards in New Zealand Standard 6802:2008 were not applicable to impulsive noise.¹

Outcome sought

13. Suggested drafting to resolve the conflict would be to amend clause 4 of the draft national standard (CM-2: Draft noise and vibration metrics standard) to read (or to same or similar effect):

Any plan rule to manage an emission of noise must be consistent with the assessment methods in section 6 Rating Level and section 7 L_{MAX} in New Zealand Standard 6802:2008 Acoustics – Environment Noise, provided the emission of noise in question is generally within the scope New Zealand Standard 6802:2008.

14. The submitter requests to be heard in relation to this submission.

Date: 17 August 2018



Tony O'Brien

¹ *Brooks v Western Bay of Plenty District Council* [2011] NZEnvC 216 at [20].

Draft first set of National Planning Standards

SUBMISSION FORM

The Government is seeking views on the draft first set of National Planning Standards.

For more information about the Government's proposals read our National planning standards consultation document available at <http://www.mfe.govt.nz/consultation/draft-national-planning-standards>.

Submissions close at 5:00 pm on Friday 17 August 2018.

Making a submission

You can provide feedback in three ways:

1. Use the online submission form available at <http://www.mfe.govt.nz/consultation/draft-national-planning-standards>. This is our preferred way to receive submissions.
2. Complete this submission form and send it to us by email or post.
3. Write your own submission and send it to us by email or post.

Publishing and releasing submissions

All or part of any written submission (including names of submitters) will be published on the Ministry for the Environment's website www.mfe.govt.nz. Unless you clearly specify otherwise in your submission, we will consider that you have consented both your submission and your name being posted to the Ministry's website.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to the Ministry for the Environment. Please advise if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions under the Official Information Act.

The Privacy Act 1993 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including the Ministry for the Environment. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in relation to the matters covered by this consultation. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

Submission form

The questions below are a guide only and all comments are welcome. You do not have to answer all of the questions. To ensure your point of view is clearly understood, please explain your rationale and provide supporting evidence where appropriate. The structure of this form is in line with the draft first set of national planning standards as shown in the overview section tables 1 and 2.

Contact information

Name*	Torrey McDonnell, Acting Manager Environment & City Planning	
Organisation (if applicable)	Porirua City Council	
Address		
Phone	Click here to enter text.	
Email*		
Submitter type*	Individual☐ NGO☐ Business / Industry☐ Local government☒ Central government☐ Iwi☐ Other (please specify)☐ Click here to enter text.	

* Questions marked with an asterisk are mandatory.

Draft first set of National Planning Standards

1. Do you support the draft first set of National Planning Standards?

- ☒ Yes
- ☐ No

The Porirua City Council (PCC) supports the intent behind the National Planning Standards and considers they will help reduce cost and increase efficiencies when developing District Plans and policy. We value being involved in the formulation of the National Planning Standards as a pilot Council and would like to continue to give meaningful feedback throughout their development. Currently the PCC is undertaking a full District Plan review which is occurring in conjunction with the development of the National Planning Standards. The alignment of these two processes means that the District Plan will be drafted in accordance with the standards, saving considerable cost that would occur if we needed to align our District Plan with the Planning Standards after the plan becomes operative. We therefore support the current timing of the National Planning Standards being gazetted.

2. S-RPS: Regional policy statement structure standard

[Click here to enter text.](#)

a. Parts 3 and 4 – Core policy statement provisions

[Click here to enter text.](#)

b. Part 5 – Evaluation and Monitoring

[Click here to enter text.](#)

3. S-RP: Regional plan structure standard

[Click here to enter text.](#)

a. Parts 3, 4 and 5 – Core plan provisions

[Click here to enter text.](#)

b. Part 6 – Evaluation and Monitoring

[Click here to enter text.](#)

4. S-DP: District plan structure standard

PCC generally supports the proposed District Plan Structure Standard, with the following minor amendments.

Location of definitions: The proposal to locate the definitions within the Interpretation chapter could make interpreting the plan more difficult. While an e-plan format will make definitions easy to link to within the document, there may be instances where definitions need to be accessed independent of a hyperlink and a stand-alone chapter would make this easier.

Relief Sought: Amend position of Definitions to form a stand-alone chapter in Part 1.

Order of District-Wide Matters: While PCC supports the grouping of topics (e.g. Natural Environment Values and Community Values), it would be more logical to have the values chapters located together, rather than separated by the Environmental Risk chapter.

Relief sought: Amend the order of the chapters so that the Environmental Risk chapter is located either before the Natural Environment Values chapter or after the Community Values chapter.

5. S-CP: Combined plan structure standard

[Click here to enter text.](#)

6. S-IGP: Introduction and general provisions standard – Part 1 of all plans and policy statements

Click here to enter text.

a. Introduction chapter

Click here to enter text.

b. How plan works chapter

Click here to enter text.

c. Interpretation

Click here to enter text.

d. Plan integration

Click here to enter text.

e. Formation of standards with tangata whenua

Click here to enter text.

f. National direction

Click here to enter text.

7. S-TW: Tangata whenua structure standard – Part 2 of all plans and policy statements

Click here to enter text.

a. Recognition of iwi/hapū chapter

Click here to enter text.

b. Tangata whenua local-authority relationships chapter

Click here to enter text.

c. Iwi and hapū planning documents chapter

Click here to enter text.

d. Consultation chapter

Click here to enter text.

e. Use of te reo Māori

Click here to enter text.

8. S-SD: Strategic direction structure standard – Part 3 of District plans

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9. S-DWM: District wide matters standard – Part 4 of District plans

PCC generally supports the overall proposed structure of the District Wide Matters standard, with the following amendment that the Natural Environment Values and the Community Values chapters are located together.

Relief Sought: Reorder chapter positions so that Natural Environment Values chapter and the Community Values chapter are located sequentially.

a. Natural Environment Values Chapter

There is no requirement within the S-NEV to cross reference to the schedules chapter, where there is a list of the specific location of areas and sites of significance. There are similar cross-referencing requirements in the Community Values chapter. It seems like a similar requirement would be useful for the S-NEV and would be a consistent approach across chapters.

Relief Sought: Insert a requirement into the Natural Environment Values Chapter (S-NEV) that where a schedule is used then there is an appropriate cross reference to the schedules chapter.

b. Environmental Risks Chapter

[Click here to enter text.](#)

c. Community Values Chapter

[Click here to enter text.](#)

d. Infrastructure and Energy Chapter

[Click here to enter text.](#)

e. Subdivisions Chapter

[Click here to enter text.](#)

f. General District Wide Matters Chapter

[Click here to enter text.](#)

10. S-ASM: Draft area specific matters standard – Part 5 of District plans, Part 6 – Combined plans

[Click here to enter text.](#)

a. Zone framework (individual and range)

[Click here to enter text.](#)

b. Purpose statements

[Click here to enter text.](#)

c. Additional special purpose zones and criteria

PCC supports the flexibility to include Special Purposes Zones. However, it is not clear whether all or only one of the three criteria (7a-c) must be met.

Relief sought: Clarify the requirements for the establishment of Special Purposes Zones.

d. Precincts chapter

[Click here to enter text.](#)

e. Development areas chapter

[Click here to enter text.](#)

f. Designations chapter

The proposed Designations Table 16 includes a row for conditions. However, there is also a requirement to include designation conditions as a schedule. This would result in duplication of content.

Relief Sought: Amend the proposed Designations chapter (S-DES) requirements to specify designations conditions are required to be laid out either in the table or in the schedule, not both.

11. S-SAM: Schedules, appendices and maps standard – Part 6 – Regional policy statements, Part 7 – Regional plans, Part 6 – District plans, Part 8 – Combined plans

PCC supports the standardisation of schedules, but suggests that an additional column identifying the related Planning Map number would help with plan navigation, noting that this would be particularly useful in an e-plan format. Flexibility to add additional columns to allow relevant information to be included in an easy to read way could also avoid a lot of information potentially being combined into the Site Type/Description of Values column, which could make it harder to interpret.

Relief Sought: Include an additional 'Related maps' column, and increase flexibility to add additional columns where required.

12. F-1: Electronic accessibility and functionality standard

[Click here to enter text.](#)

a. Standard baseline requirements

Standards 11 & 12: The compiling of historic District Plan documentation is anticipated to be a time-consuming and resource-intensive exercise, with no real benefit to the plan user. Any historical information is able to be provided to individual users, on request.

Relief Sought: Provide greater clarity in requirements to provide historical District Plan documentation, restricting the scope to not include every previous Plan or Scheme. The requirement should also be updated allow 5 years to implement.

b. Level 5 requirements

E-Plan Functionality Scale: The scale intervals accurately reflect the different types of plans currently in use and set an achievable level of functionality.

Relief Sought: None.

13. F-2: Mapping standard

[Click here to enter text.](#)

a. Zone colour palette

The tone of yellow between low, medium, and residential zoning is too similar and could easily be confused. The same could also be said for the Open Space/Sport and activity recreation/conservation zones.

Relief Sought: Either use a different colour, or use hatching over a colour to differentiate between low to medium density areas, for example.

b. Symbolology

Overall, there are too many blue areas used across symbols - increasing the risk of areas being confused with one-another.

Relief Sought: Diversify the colours and fill of geometry polygons used.

Protected tree group symbol: This would be difficult to implement for District Plans with larger tree groups. Proposed Standards provide no clear ability for Councils to choose otherwise. This could result in removal of some tree groups, by proxy, with individual symbols unable to correctly identify the complete extent of tree protection.

Relief Sought: Symbol needs to be a polygon and a symbol to properly identify the complete extent. This could be a hatched overlay as not to confuse with zoning.

Heritage Area and heritage item symbols: The heritage area symbol is limiting in nature by not being able to distinguish between heritage areas and heritage orders. The colour used could also easily blend into any underlying aerial image. Similarly, the use of a single symbol only for a heritage item would limit the identification of the extent of a heritage item (and where relevant any identified heritage setting /surrounding to the heritage item).

Relief Sought: Add a hatched version of the polygon for heritage orders. Colour should be updated to be more vivid to stand out from any underlay, and once again could be hatched to avoid confusion. Provide for the use of a symbol and/or polygons for identifying heritage items and heritage settings.

Natural Hazard Polygon: The combination of four distinct natural hazards in one polygon does not allow communities, business, and/or insurers to evaluate the level of risks they may be exposed to. This combination could also result in the associated rule structure to be quite long and impractical. Hazards should be defined in line with GNS, MCDEM, and FENZ. RMA s6(h) & s106 require hazards to be evaluated, including the scale of the effect, therefore there should be an ability to map this graphically.

Relief Sought: Assign a different polygon type for each hazard, representative of standards set by GNS, MCDEM, and FENZ. Different colours/treatments should be available to denote the level of risk and show scale, and there should be a level of local discretion permissible to reflect localised hazard types.

Faultline Hazard: Faultlines are inherently difficult to define and have a tendency to influence a wide area either side of a faultline. Modern District Plans have responded to this by creating bands of varying widths, reflecting the level of certainty of location of the particular faultline. This is in line with practice standards from GNS and the recently-notified Kapiti Coast District Plan is an example of this. Using a single line does not allow for the nature of faultlines to be mapped in a manner

which reflects the severity and extent of hazard.

Relief Sought: Change the line to a band with different colours to show how well defined a fault may be. Should reflect best-practice standards from GNS.

Missing Mapping Tools: There is no description for how the likes of precincts or development areas would be mapped, or what symbology should be used.

Relief Sought: Extend mapping labels to provide direction on precincts and development areas.

Zoning names: Zones detailed in S-ASM do not align with those covered in F-2. Zones excluded are: Airport; Port; Hospital; Education; Stadium; Future urban; and, Maori Culture. The label used for 'Special Activity Zone' does not allow for multiple zones, being one colour.

Relief Sought: Extend labels to include missing zones and allow TA discretion for the labelling of Special Activity Zones.

14. F-3: Spatial planning tools (Regional) standard

[Click here to enter text.](#)

a. Range of tools

[Click here to enter text.](#)

b. Zone

[Click here to enter text.](#)

c. Overlay

[Click here to enter text.](#)

d. Specific control

[Click here to enter text.](#)

e. FMU

[Click here to enter text.](#)

f. Airshed

[Click here to enter text.](#)

g. Area

[Click here to enter text.](#)

15. F-4: Spatial planning tools (District) standard

[Click here to enter text.](#)

a. Range of tools

[Click here to enter text.](#)

b. Zone

[Click here to enter text.](#)

c. Overlay

[Click here to enter text.](#)

d. Precinct

[Click here to enter text.](#)

e. Specific control

[Click here to enter text.](#)

f. Development areas

[Click here to enter text.](#)

g. Designation

16. F-5: Chapter Form standard

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a. Chapter form

[Click here to enter text.](#)

b. Rules

[Click here to enter text.](#)

c. Rule tables

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17. F-6: Status of rules and other text and numbering form standard

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a. Status of rules and other text

[Click here to enter text.](#)

b. Numbering

[Click here to enter text.](#)

18. CM-1: Definitions standard

The proposed National Planning Standards seeks to provide a standardised set of conditions for District Plans across the country. While the majority of these definitions appear to be

appropriate, several of the definitions would result in unintended consequences, including:

- a) triggering the need for unnecessary resource consents;
- b) the establishment of out of zone activities; and
- c) changes to established rule structures within District Plans.

Such outcomes would result in additional costs to the community (from triggering the need for resource consent applications), and costs to Council to have to undertake plan change reviews to stop the establishment of activities that are not appropriate in certain zones (but may become permitted activities as a result of some of the definition changes). The definitions that potentially create issues are identified below, along with a description of the issue and the relief sought.

Additionally, draft Standards are unclear on how resource consent applications should be evaluated once the final Standards have been released and District Plans have yet to give effect to Standards. It is likely that many councils in a rolling review cycle will be in this position and additional guidance from the Ministry should therefore be provided to assist decision making.

a. Individual definition

Accessory Building: The definition of accessory building requires the construction of the principal building first. However, it is not uncommon for accessory buildings such as garages to be constructed on vacant allotments to provide storage before the building of the principal building. Under this definition these garages would not be considered to be an accessory building, thereby triggering the need for consent.

Relief Sought: Amend the definition of an accessory building as follows: "means a detached building, the use of which is ancillary to the use of the principal buildings or activity on the same site, including any future principal building, but does not include any minor residential unit."

Building: The definition of building is very broad and captures structures such as dog kennels, play houses, and sheds from hardware stores. Most bulk and location rules in the District Plan relate to buildings, rather than structures. Given the broad definition of building, these bulk and location rules will now apply to structures that have no perceivable effect on the environment.

Relief Sought: Amend the definition so that there is a height and size requirement for structures to be considered buildings (for example they need to be greater than 10sq meters and over 2m in height to be considered a building). This limit should relate to a threshold where buildings have an effect on the environment.

Commercial Activity: The definition of commercial activities is very broad and includes the trading of goods. Traditionally, many District Plans limit commercial activities to the provision of services. The purpose of this limitation is to allow for commercial activities to establish in business/industrial areas, without unintentionally allowing for retail activities to be established, which may undermine the CBD, or detract from commercial areas. The proposed definition would allow for the establishment of retail activities in these business/industrial areas, thereby resulting in unintended planning outcomes.

Relief Sought: Remove the term trading of goods from the definition of commercial activities, and/or add a new definition for retail activities which does not overlap with the definition of commercial activities.

Community Activity: The definition of a community activity is very broad, but is reliant on the activity being a 'non-profit facility'. Many councils provide a number of

community venues through council owned enterprises (e.g. museums, swimming pools, community halls, etc.). These facilities are often commercial in nature, requiring a charge for use or services provided, but are heavily subsidised by councils themselves. While their main purpose is not profit-driven, there may be instances where a profit is made. The draft definition for Community Activity would therefore exclude such activities from being a community activity, resulting in adverse planning outcomes.

Relief Sought: Either remove the "non- profit" component from the definition of Community Activities, or provide a definition for community activities that do generate profits (for example using the term Places of Assembly).

Footprint: The definition of footprint links back to the definition of structures. Under many District Plans, the footprint of a building is used to determine the site coverage of a structure. However, District Plans often exclude eaves that are less than 0.6m in depth as they do not result in building bulk.

Under the proposed definition, eaves would not be excluded from the calculation of a building footprint (as the definition of structures includes roofs), thereby changing significantly how site coverage is calculated (and potentially resulting in an increase in consent applications as a result. Established practice for many councils would be changed and this would take time to move through the industry, thereby meaning that many dwellings would be designed to a site coverage based on the footprint of a building, excluding eaves).

Relief Sought: Either amend the definition of footprint so that eaves less than 0.6m in depth are excluded from the calculation, or amend the definition of structures so that eaves less than 0.6m deep are excluded.

Ground Level: The definition of ground level is broken up into three tests. In terms of the first test, it is common for the ground level of the site to be determined by the level of the ground at the time of subdivision. However, the first test takes this further and excludes any excavation or filling associated with the construction of dwellings. This component of the test overly complicates the definition, especially in relation to flood hazard areas. If a party was to apply for a subdivision and land use together, then ground level would be determined by what activity was undertaken first. For example, if the applicant was to undertake a subdivision first, and was to fill the site to ensure the ground level was above the flood level, then the ground level at the time of the title would be the filled level. However, if the applicant constructed a dwelling on a filled platform, and then subdivided the site, the fill level would not represent ground level (even though the outcome is the same and is related to the timing of the subdivision). This creates a difficulty with the definition and could result in unintended internal non-compliances and complications when trying to determine the ground level of a site.

Relief Sought: Simplify the first test of the definition by removing the following: "...but excludes any excavation or filling associated with the construction or alteration of a building". This change would mean that the ground level would simply be the level of the site when section 224C approval is obtained. This would also make the determination of heights and recession planes simpler for future dwelling constructions.

Home Business: The proposed definition of home business is broad and allows for the establishment of a wide range of activities. Many District Plans require an occupant of the dwelling to be employed in the business, in order for the activity to fall under the definition of a home business (this requirement prevents the

proliferation of non-residential activities in the residential zone). While it is acknowledged that this requirement could be a Permitted Activity Standard, it would be simpler if the definition of a home business included the requirement for the resident(s) of the dwelling to be the business operator.

Relief Sought: Amend the definition of home business to as follows: “means an occupation, craft, service or profession, which is secondary to the use of the site for a residential activity, where a resident of the dwelling is the business operator.”

Minor Residential Unit: It seems the definition of Minor Residential Unit is intended to provide for housing extended families. The definition however is broad and would allow for additional houses to be established on a site under the pretence of it being a minor residential unit. If the intent is to provide this housing choice for family members, then the definition should reflect this.

Relief Sought: Amend the definition so that it directly references that this housing typology is intended to house family members on the same site.

Quarry: The definition of a quarry is overly broad and captures all areas of excavation. As a result, all earthworks that involve excavation could accidentally be considered to be a quarrying activity, thereby created unnecessary consents. This issue could be addressed through a small change to the definition.

Relief Sought: Amend the definition of quarrying as follows: “means an area of land where the excavation, with or without the processing of minerals and other solid natural substances, is intended to generate a profit.”

Structure: The definition of a structure is broad and would capture items such as trailers, fences, low level retaining walls, boats, and caravans. As a result, if one of these items is located too close to the boundary, technically there would be a structure within a yard setback. The resulting unintended outcome could be the need for resource consent applications to ensure that these activities meet yard setback requirements. Many District Plans specifically exclude items of this nature (or set height limits) to ensure that these items do not trigger the need for resource consent.

Relief Sought: Amend the definition to ensure that items that could reasonably be expected to be located on or close to a boundary are not captured by the proposed definition of a structure.

b. Additional definitions

[Click here to enter text.](#)

19. CM-2: Draft noise and vibration metrics standard

[Click here to enter text.](#)

a. Technical support

[Click here to enter text.](#)

20. Implementation

[Click here to enter text.](#)

a. ePlanning implementation

[Click here to enter text.](#)

b. Timing

[Click here to enter text.](#)

c. Support

[Click here to enter text.](#)

d. District plan structure guidance

[Click here to enter text.](#)

e. Regional policy statement and regional plan structure guidance

[Click here to enter text.](#)

f. District plan spatial planning tools and zone framework guidance

[Click here to enter text.](#)

g. Regional plan and policy statement spatial tools guidance

[Click here to enter text.](#)

h. Chapter form and status of rule and other text numbering guidance

[Click here to enter text.](#)

i. Additional guidance materials required

[Click here to enter text.](#)

21. Future content for standards

[Click here to enter text.](#)

a. Utilities provisions

[Click here to enter text.](#)

Other comments

22. Do you have any further comments you wish to make about the Government's proposal?

[Click here to enter text.](#)

Releasing submissions

Your submission may be released under the Official Information Act 1982 and will be published on the Ministry's website. Unless you clearly specify otherwise in your submission, we will consider that you have consented to both your submission and your name being posted on the Ministry's website.

Please check this box if you would like your name, address, and any personal details withheld. ☐

Note that the name, email, and submitter type fields are mandatory for you to make your submission.

When your submission is complete

If you are emailing your submission, send it to PlanningStandards@mfe.govt.nz as a:

- PDF
- Microsoft Word document.

If you are posting your submission, send it to National Planning Standards, Ministry for the Environment, PO Box 10362, Wellington 6143.

Submissions close at 5:00 pm on Friday 17 August 2018.

Draft first set of National Planning Standards

Submission form

Name	Rafael Krzanich
Address	[REDACTED]
Email	[REDACTED]
Submitter type	Individual

1. Submission on Draft first set of National Planning Standards ("DNPS")

- 1.1 I am a resource management and environmental lawyer who utilises planning documents from all over the country on a regular basis. This submission is made in my personal capacity and does not represent the views of my employer or any of my clients.
- 1.2 I generally support the DNPS subject to the changes set out in **Appendix A** to this submission. My suggested changes are primarily intended to ensure that the implementation of the DNPS does not result in unnecessary complexity for plan users. I also request all necessary collateral changes to the DNPS that may be required to give effect to the relief described in Appendix A.
- 1.3 I request that my address and email contact details are not posted on the Ministry for the Environment's website.

Kind regards,

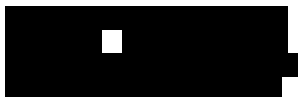


Rafael Krzanich

Appendix A

Requested changes to the Draft first set of National Planning Standards ("DNPS")

#	Part of the DNPS	Requested change
1	S-ASM: Draft Area Specific Matters Standard – Development Areas chapter (S-DEV)	Delete S-DEV and all other references to "Development areas" in the DNPS. Provision for "Development areas" such as conceptual plans, structure plans, framework plans, outline development plans or growth area plans as planning tools in the DNPS does not align with case authorities that have considered similar mechanisms to be ultra vires the RMA. See generally <i>Queenstown Airport Corporation Limited v Queenstown Lakes District Council</i> [2014] NZEnvC 93.
2	S-ASM: Draft Area Specific Matters Standard – Designations chapter (S-DES)	Amend S-DES to reflect the structure used in the Auckland Unitary Plan for designations, whereby all designation conditions and attached diagrams are incorporated in sub-chapters for each requiring authority. As currently proposed, S-DES adds to the complexity of district plans by splitting the relevant information for designations across two parts of the district plan (Table 16 and the separate condition schedules).
3	F-2: Draft Mapping Standard – Table 21: Zone colour palette table	Use a higher contrasting range of zoning colours to assist user viewing. The proposed zone colours lack contrast and may be difficult to distinguish on a computer screen when closely located next to each other (particularly the colours used for residential zones, rural residential and rural settlement and mixed use).
4	CM-1 Draft Definitions standard	Delete all non-statutory definitions contained in CM-1. The implementation of standardised definitions for commonly used terms such as "building" or "functional need" is likely to add to the complexity of, and cause integration issues for, existing planning documents that already provide bespoke definitions for such words.



**MARLBOROUGH
DISTRICT COUNCIL**



22 August 2018

File Ref: L225-NPS01
Ask For: Pere Hawes

National Planning Standards
Consultation 2018



Dear Liz

Marlborough District Council Submission on the Draft National Planning Standards

Thank you for providing an opportunity to submit on the draft National Planning Standards. As is set out in the Marlborough District Council (Council) submission attached to this letter, the Council notified an integrated Regional Policy Statement, Regional Coastal Plan, Regional Plan and District Plan, called the Proposed Marlborough Environment Plan, in June 2016. This Plan is currently proceeding through the First Schedule Process with submissions currently being heard.

The Council has considered the draft planning standards, particularly those that apply to a combined plan, and has serious concerns about the effect of the draft planning standards on the integrity and effectiveness of the Proposed Marlborough Environment Plan. The reasons for that concern are set out in the submission. The Council has developed an additional option for a combined plan structure that recognises that Section 80 allows for RMA planning provisions to be totally integrated under Section 80 of the RMA. The Council would welcome the opportunity to discuss this alternative option further prior to the national planning standards being gazetted in early 2019.

Without substantive changes to the draft planning standards or the provision of an alternative option for combined plans (particularly for unitary plans), the Proposed Marlborough Environment Plan will have to be re-written and re-cast and then re-notified under the First Schedule of the RMA. The Council has raised a concern about whether this would involve an effective use of ratepayers' money as it will not result in any improvement in the management of regionally significant issues in a Marlborough context.

Please contact myself if you have any queries with respect to the content of the Council submission.

Yours sincerely

PERE HAWES
ENVIRONMENTAL POLICY MANAGER

ENCL

Applying S-CP to the Proposed Marlborough Environment Plan

The Council has serious concerns regarding the effect of S-CP on the structure of the Proposed Marlborough Environment Plan (MEP). The MEP is a combined regional policy statement, regional coastal plan, regional plan and district plan and was notified on 9 June 2016. Hearings are currently underway and the Hearings Panel will publicly notify its decision on the MEP in 2019.

Section 80(2) of the RMA allows for the combining of regional policy statements, regional plans, regional coastal plans and district plans. A combined plan can be achieved by at least two methods. The first method is the “stapling” of the planning documents (i.e., having separate plans in the same document). The second method is integrating planning documents so that the resulting provisions serve both regional and district functions at the same time.

As a Unitary Authority, the Marlborough District Council has a history of preparing integrated planning documents. The operative Marlborough Sounds Resource Management Plan and Wairau/Awatere Resource Management Plan are combined regional coastal plans, regional plans and district plans. More recently, the Council took the opportunity to also integrate the Regional Policy Statement into the same planning framework as the plans, resulting in the notification of MEP.

The draft national planning standards effectively require standalone planning documents. There must be a regional policy statement, separate content to address region wide matters not covered in the regional policy statement and separate content (including objectives and policies) to discuss area specific matters (by way of catchment or zone provisions). This structure is reflected in instructions contained in the direction column of Table 6.

The MEP provisions do not follow this structure. In the MEP, an objective, policy or method can be a regional policy statement provision, and/or a regional plan provision and/or a district plan provision at the same time. Coding is used to identify the nature of provision(s) as required by Section 80(8) of the RMA.

It is understood that the Tasman District Council is also seeking to integrate its regional policy statement and resource management plan through a review process.

Except for those rules that apply across the District, all rules in the MEP are zone based. However, there are no zone based objectives and policies.

The benefit of this structure is that a single set of resource management issues is identified for the District, which is then addressed through a single management response (in terms of objectives, policies and methods). In summary, the integration of regional policy statement, regional coastal plan, regional plan and district plan provides a dramatically simpler but more coherent resource management framework than that represented in S-CP.

In the usual structure of local government, it is understandable why an RPS in particular should be a separate document: Territorial authorities have to give effect to the direction through their (normally) separate district plans. In the Council's experience, there is no sustainable management benefit to having standalone regional policy statement provisions in a unitary authority setting, nor is there any benefit to the plan user. Indeed, there are real risks of losing integration and coherency if the planning standards continue to require policy statement and plan content to be separate for unitary planning documents.

Allowing for an integrated resource management document arguably best achieves Outcome 2 of the consultation document in a unitary setting: A single set of planning provisions is easier to access and relevant content is easier to find. This is Council's experience with the administration of the operative resource management plans. After 20 years of application in practice, and as tested as part of the review process, local plan users prefer this simpler plan framework for the delivery of regional and district functions.

Summary

The RMA contains a hierarchy of planning documents that reflects the usual two tiered system of local government. However, in a unitary setting there is no compelling reason to maintain this hierarchy and there are environmental and user benefits to integrating the content of regional policy statements, regional plans and district plans.

Changes Sought

1. That the S-CP should be reconsidered in light of this submission and submissions made by other unitary authorities. At the very least, a second option should be provided for S-CP that provides an opportunity for the integration of regional policy statement, regional coastal plan, regional plan and district plan provisions. This is a more efficient and effective means of delivering regional and district functions in a unitary authority setting. An option has been worked up by the Council and is set out in Appendix 1. The Council would welcome the opportunity to discuss this option further. Tasman District Council is also likely to be interested in such discussions, as might other unitary authorities.

The following comments on S-CP are made in the context that S-CP does not enable provisions to be totally integrated. As such, these comments build upon the matter raised above.

Appropriateness/Applicability of themes/region wide issues

The existing provisions of the MEP could be included in the regional policy statement, in a region wide issue or as an area specific issue. This reflects the “direction” provided in Table 6. Those directions force councils to select which mutually exclusive planning function the provision is seeking to fulfil. As highlighted above, such a determination is not necessary in a unitary setting where a provision can fulfil multiple functions.

The Council has considered the themes/region wide issues carefully in the context of the MEP. After doing so, it remains unsure how existing content would be restructured.

A good example is the provisions for the coastal environment. The coastal environment obviously includes both the coastal marine area and land adjoining the coastal marine area. It would appear that provisions managing activities in the coastal environment could be restructured in the regional policy statement as a theme or, depending on circumstances, a regional wide matter, or in the natural environmental values theme, or indeed in a separate regional coastal plan. In addition, the MEP also contains a coastal environment zone and a coastal marine zone, so coastal environment objectives and policies could also be included in area specific matters.

The Council is left confused as to where MEP provisions related to the coastal environment are to be located under S-CP. There are other similar examples.

The MEP also contains policies that address multiple themes within the same policy. Typically these apply to the management of activities in specific environments such as coastal environment, urban environments or rural environments. Implementing S-CP will again require these policies to be recast into the various themes or region wide issues or area specific matters. To stay with the emphasis on coastal matters, Policy 13.2.1 of the MEP is a typical example. It has provisions that could be split across 7 themes. To do so would result in duplication of policy provision.

Arguably, there could be a case made for “urban environments” and “rural environments” themes to also be included in the planning standards, perhaps instead of or in addition to the “land” theme. The former would assist councils giving effect to the NPS for Urban Development Capacity. The majority of issues that regional councils and unitary authorities manage are within a rural environment setting, so the latter would provide for those issues.

There is a risk that a requirement to restructure the MEP according to a structure of regional policy statement, theme based provisions and area specific provisions will potentially result in the same set of existing objectives and policies being repeated in different parts of the S-CP structure. Any such duplication and repetition will cause confusion as a plan user will naturally question the relationship between these provisions.

The Council does not understand why the “Environmental Risk” heading is used to group natural hazards and hazardous substances. Most resource management issues involve some form of environmental risk, usually a risk of degradation of a natural resource or an adverse effect on a physical resource. The risk involved is why these matters are resource management issues in the first place.

Changes Sought

1. In the absence of adopting the Council’s request regarding a second option for S-CP, that greater clarity where existing plan provisions are to be located in S-CP be provided.

2. The Council understands that the draft planning standards have yet to be applied to a plan. The Council encourages the Ministry to “test run” plans (including a unitary plan) as part of the process of providing the clarity requested.

Area Specific Matters Standard (S-ASM)

As set out earlier in this submission, except for those MEP rules that apply across the District, all MEP rules are zone based. However, there are no zone based objectives, policies or methods. All of the MEP objectives, policies or methods are contained in a separate volume to the rules and are based on particular natural or physical resources or environmental settings.

To comply with S-CP and S-ASM the Council would have to develop zone specific objectives, policies or methods. This would obviously involve a significant first schedule process.

The RMA does not specify that there must be zone based objectives and policies and instead specifies that a plan must contain objectives, policies to implement the objectives and rules to implement the policies (and may contain other methods to implement the policies).

S-ASM is an example of the draft planning standard pre-determining plan content. A zone is simply a tool that allows a set of rules to apply to a spatially defined area of land. Those rules either permit, require resource consent for or prohibit identified activities occurring within the area, usually based on the actual or potential adverse effects of the activity. Any application for resource consent would be determined having regard to the relevant objectives and policies. The nature of the proposal and the nature of the surrounding environment will be influential in determining relevant objectives and policies.

The Council has operative resource management plans that were notified in the late 1990s. These follow the same structure as the MEP in terms of objectives, policies and rules. After 20 years of practical application, the Council, upon review, did not see a need to deviate from the approach used in the operative plans. This decision was informed by feedback by local plan users.

Changes Sought

1. That S-CP is amended so that there is no requirement to have zone specific objectives and policies when the regional policy statement themes and/or region wide matters provide an adequate policy framework.

Tangata Whenua Structure Standard

Chapter 3 of Volume 1 of the MEP was developed in partnership with Marlborough’s tangata whenua iwi through an “Iwi Working Group” consisting of one mandated representative from each iwi authority. The Iwi Working Group effectively prepared the provisions of Chapter 3 with the assistance of Council staff. This process involved 27 hui over a six year period.

Although Chapter 3 of the MEP covers many of the matters that are set out in S-TW, S-TW involves a level of prescription that is not evident in Chapter 3. In this context, it is not clear what the term “If the following matters are addressed in policy statements and plans...” means in practice. Given the requirements of the RMA, the Council questions whether there is an expectation for all of the matters in S-TW to be addressed in its planning documents. If this is the case, additional content will have to be developed by the Council and iwi authorities, and these would require first schedule changes to be introduced.

Iwi authorities will reasonably want to know why the content that it co-authored is being changed and repackaged after such an extensive process to complete an agreed set of provisions.

S-TW requires the content of Chapter 3 to be split between four discrete chapters. This may again result in a loss of integration between the existing provisions.

Ideally, the structure of contextual information of the type set out in S-TW should be able to be determined in consultation with tangata whenua iwi.

As an aside, the Council would take the opportunity to note that from its experience that recording iwi histories is a risky exercise that will result in tension between iwi. Each iwi will have its own history and this may conflict with the account of another iwi, especially if there is a history of conquest.

Given the level of prescription set out in S-TW, the Council requests that past processes to include tangata whenua iwi content in existing plans be respected. It is recommended that if S-TW is to be retained in its current form, then it be applied upon statutory review so that the provisions can be developed in consultation with iwi authorities.

S-TW also does not provide for issues of significance to iwi authorities to be included in this section. Presumably, these issues are to be identified in regional policy statement content given Section 62 of the RMA. Iwi may have a preference, as they did in the preparation of the MEP, to identify these issues separately. It is considered that there should be the flexibility to either include issues of significance to tangata whenua iwi in S-TW or include a separate theme in the regional policy statement structure.

Changes Sought

1. That S-TW is amended so that it applies upon the statutory review of operative planning documents. In this way, existing provisions that were often developed in partnership with iwi authorities will be given appropriate respect for the life of the operative document.
2. That greater flexibility is provided with respect to the location of issues of significance to tangata whenua iwi within S-CP.
3. That flexibility is provided for the packaging of the content in 3, 4, 5 and 6 of S-TW so that the package can reflect local circumstances and the partnership between the relevant tangata whenua iwi and the Council.

Line of sight for policy direction

For regional policy statement issues under S-CP, the draft planning standard requires issues to be separately contained in a standalone chapter to the objectives, policies and methods. The objectives, policies and methods are then structured according to themes.

For region wide issues under S-CP, the draft planning standard requires issues and objectives to be separately contained in a standalone chapter to the policies and methods. The latter are to be structured according to themes.

F5 requires objectives to be grouped together and policies to be separately grouped together.

The requirement to group issues, objectives and policies separately risks a loss of coherency in responses to resource management issues. The MEP packages relevant issues, objectives, policies and methods together so that there is clear line of sight through the sequence of provisions applied to the management of each resource management issue.

There is no explanation provided for the alternative (and inconsistent) structure, so it is difficult to evaluate the relative merits of the structures.

F5 also requires rules to be packaged with the relevant objectives and policies. There are examples of where the integration achieved through the MEP will be lost as a result of implementing F5. For example, all of the permitted activity standards for constructing a building or structure in a particular zone are packaged together. A plan user can establish compliance by considering one set of plan standards. Those standards serve a number of purposes including amenity outcomes, natural hazard management, landscape protection and natural character preservation. Under the S-CP, a plan user will have to seek out the standards in different parts of the MEP.

The splitting of rule content and the distribution of this throughout the plan will not assist plan users to find relevant material. This appears inconsistent with Outcome 2 of the consultation document.

As rules are simply a trigger for resource consent, there would seem no barrier to allow for standards to the rules to provide for multiple themes/matters.

Changes Sought

1. That S-CP is reconsidered in light of this submission and submissions made by other unitary authorities. At the very least, a second option should be provided for S-CP that provides an opportunity for the integration of regional policy statement, regional coastal plan, regional plan and district plan provisions

as this is a more efficient and effective means of delivering regional and district functions in a unitary authority setting. This option has been worked by the Council up and is set out in Appendix 1.

2. In the absence of 1 above being adopted, that F5 be amended to remove the requirement for objectives to be grouped with objectives and policies to be grouped with policies. Instead provisions should be able to cascade so that all of the provisions addressing an issue are able to follow the statement of that issue.
3. In the absence of 1 above being adopted, that F5 be amended to provide greater flexibility for rules/standards to implement policy direction from multiple themes/matters.

Electronic accessibility

The Council was the second in the country to offer its operative planning documents in an e-plan format. After 4 years of use, the e-plan consistently receives between 600 and 1000 hits per month. The Council is convinced that not only does the integration of GIS with plan content enhance plan accessibility, in doing so e-plans also make the plans more relevant because plan content can be accessed on a property specific basis.

There is no information to identify where the Council currently rates relative to the scale shown in Figure 1. It is assumed that the Council is at scale 4, even if it does include some of the functionality of scale 5.

The Council has investigated activity specific queries in the past and has found this area to be problematic to provide for. In particular, the accuracy of the result of the query relies on the correct identification of the scale and location of the proposed activity given that some rule standards are sensitive to location and/or proximity to specific features.

Notwithstanding the above concern, the Council remains supportive of electronic accessibility. To this end, the Council is in the process of developing a digital consenting tool which it will seek to be integrated with the e-plan.

It is noted that 11 of F-1 requires all versions of the current plan since first becoming operative must be available from the Council website. The Council has historically undertaken a very large number of changes to the operative plans as a result of plan changes, plan change requests, Clause 20A changes and to incorporate new or amended designations. The plan content is provided to hardcopy plan users (internal and external) by way of a physical update and the version of the plan on the website is updated electronically.

The Council saves the existing version of the plan so would be able to comply with 11 of F-1, but the amount of plan content accessible would be vast. We provide this electronic content now upon request. The only requests we have had are from the Environment Court in the context of prosecution hearings (as they want to consider the plan as it existed at the time of the alleged offending).

The Council can foresee the Council website becoming jammed with plan content in order to comply with 11 of F-1. Any time there is a straight forward Clause 20A change or a new designation, the Council would be required to repeat all plan content on its website at that date.

Changes Sought

1. That 11 of F-1 be deleted.
2. That councils be encouraged to record all plan versions as good practice.

Mapping

The colour palette contained in Table 21 sets out the colours to be utilised for the various zones established via the planning standards. The Council notes that although the colours are distinguished by R, G and B, the tones of the various zones are very similar. At its extreme, low-density residential is almost indistinguishable from medium density residential. It is recommended that consideration be given to greater differentiation in the colour palette.

The symbology for hazards is inadequate. It uses one transparent colour to depict all hazards that are mapped spatially (with the exception of faultlines). The symbology needs to enable distinction to be made between the different types of hazard, as different regulatory methods will be applied to the management of each hazard. The MEP also maps the degree of risk involved with flood hazard (Level 1, Level 2 and Level 3). Each level of risk has different rules apply.

Changes Sought

1. That more detailed hazard mapping is enabled by providing greater flexibility in the mapping of hazard overlays.

Definitions

As the Council has been focussing on the impact of S-CP on the MEP, it has not considered all of the definitions included in the draft standards in detail. It has noted circumstances where inconsistent definitions will result in the need to adjust provisions in Volume 1 of the MEP (issues, objectives, policies and methods). As the planning standard definitions will alter policy intent, these changes will likely necessitate First Schedule plan changes to implement.

There are examples where the planning standard definitions do not extend as far as or go beyond Section 2 of the RMA and it is arguable whether it is *vires* to do so. A critical example, given the frequency of use of the term, is the definition of “structure”.

In some cases, the Council has had to provide more than one definition for the same term as the term is used differently in a regional and district function context. For example, the term site has a different meaning when constructing a structure at a specific location compared to taking water from a river (for which there is usually not a title¹) and using that water to irrigate a property. For this reason, the term “site” in the MEP has four meanings, each used in a different context.

The definitions of site used in the planning standards are based on legal property descriptions. However, in most contexts, “site” is used to describe the location at which an activity or proposed activity occurs or is proposed to occur. Where a discrete activity is proposed to occur at a specific location, relying on a computer freehold register to describe the site does not assist the person proposing to undertake the activity, the Council or anybody else. The larger the property, the greater the uncertainty over the nature of the “site”.

Changes Sought

1. That further consideration is given to the definition of “site” in the context of S-CP (and probably for all other structure standards) to take into account the range of settings in which the term can be used. The definition should focus on identifying the discrete site of an activity or proposed activity as opposed to the property on which it is proposed to occur.

S-Sam

The draft standard uses the term schedule and appendix but makes no distinction between these terms. It is therefore not clear whether there is intent for each to be used for different purposes.

In 4, there is a very prescriptive structure for schedules that implies that schedules are to be used for site specific matters. However, not all matters included in schedules are of this nature. For example, and picking up on the direction in 6, the MEP content for ONFL and coastal natural character are very broad due to the scale of assessment. It is doubtful that the existing content of Appendix 1 or Appendix 2 of the could be restructured to conform to the schedule table of the draft planning standard in 4. Yet, Appendix 1 and Appendix 2 contain critical information to allow the policy framework for both landscape and natural character to function effectively.

The nature of the content of the MEPs 26 appendices varies significantly. Amongst the content, the appendices contain tables of values, criteria, methodology, maps, lists and diagrams. Appendices are typically used to provide further information that would unnecessarily “clutter” the provision to which it relates if it was included with the provision. Given the variation in appendix content, the need for S-Sam is questioned by the Council.

In 8, appendices (as opposed to schedules) must only contain technical or descriptive specifications required to be complied with to meet a **rule** or **rule requirement**. It is not clear why the draft planning standard has this focus. The provision to which an appendix relates could be an objective, policy or non-regulatory method. Of the 26 appendices included in the MEP, seven appendices relate to policy matters only. Under

¹ River bed in a Marlborough context is normally unallocated Crown land administered by Land Information New Zealand.

the draft planning standard, these matters could not be included as an appendix (and it is not clear where this content would be housed). Some of these existing appendices are large in size: Appendix 1 and Appendix 2 both exceed 30 pages.

Changes Sought

1. That the need for a planning standard for appendices and schedules be reconsidered.
2. If it is determined that a planning standard is required, that the relationship between an appendix and a schedule be clarified.
3. If it is determined that a planning standard is required, that “rule” in 8 be replaced with “provision” to allow for the wider application of appendices to plan content.

Implementation

Consequential amendments are enabled under Section 58I of the RMA to avoid duplication or conflict. As highlighted in this submission, it will be very difficult to apply S-CP to the MEP given its integrated nature. Unless changes requested in this submission are made to S-CP, the MEP content would have to be recast and rewritten. This is certainly beyond the scope of any change envisaged by Section 58I and would have to proceed through the First Schedule process at Council’s cost.

The restructuring and rewriting of provisions is a significant task and will require considerable resource to implement. Although that work can be programmed according to the final timetable (see comments below), the resource will realistically have to be applied at the expense of other plan work.

The Council is also conscious that implementation of the planning standards will be occurring at the same time as the Council will be required to give effect to other national policy statements and implement national environmental standards. The National Policy Statement for Freshwater Management is particularly relevant in this regard.

The notification of the MEP in June 2016 was the culmination of a comprehensive review exercise that commenced in 2009 and involved extensive landowner and community consultation and engagement.

Although a seven year timeframe has been provided for the transition between the MEP and the application of the planning standards, for the reasons outlined above it is considered that the Council will have to commence a review process sooner than the statutory timeframe. This review would be driven by a compliance requirement and would have nothing to do with identifying and addressing resource management issues in Marlborough. The Council questions whether this is an efficient use of ratepayer funds given the review process has not long been completed.

The Council believes that this issue is best addressed by reconsidering the draft planning standard for combined plans and not by providing councils more time to transition.

As an aside, it is not anticipated that local plan users will understand the reason for restructuring MEP content, nor the need for additional First Schedule processes. Regardless of the final form of the planning standards, the Ministry for the Environment should provide communication support to all councils regarding the implementation of the planning standards. This should cover both the intent of the planning standards and their content.

Implementation timeframes

The Council supports the extension of the implementation timeframes set out in the consultation document. In particular, it supports the concept that councils that have recently completed first schedule process should be provided with an additional two years (i.e., a seven year implementation timeframe). The Council notes the criterion applied in this regard in the consultation document and also notes that the Council is included on the list of councils to which the criterion applies.

Please note that the correct name for the Council is not used in the mandatory directions. “Marlborough District Council” should replace “Marlborough Council”.

The Council is aware that other councils have expressed concerns over timeframes and have sought that implementation timeframes be linked to statutory review cycles. The Council also supports this as an

alternative given the concerns over costs of implementation highlighted in this submission. It makes practical sense to co-ordinate any restructuring of plan content with the renotification of the content itself.

Changes sought

1. That the planning standards be implemented on statutory review of operative plans; or
2. If an implementation timeframe is to be retained that is less than 10 years, then those councils that have commenced First Schedule process should continue to be provided an additional two years to implement the planning standards.
3. That in the event of the status quo or 2 above being adopted, that “Marlborough Council” be replaced by “Marlborough District Council”.
4. That the Ministry for the Environment develop communication support to all councils regarding the implementation of the planning standards. This should cover both the intent of the planning standards and their content.

Appendix 1

S-CP: Draft Combined Plan Structure Standard

Mandatory Directions

- 3 All combined Plans must contain mandatory headings (ie, part, chapter or section headings) in the order provided in either Table 6: Combined Plan Structure—Option A or Table 7: Combined Plan Structure—Option B (for integrated regional policy statements) to the extent relevant for the combined plan.
- 4 Amend to add the words, “If using Option A,” to the beginning of clause 4.
5. Add the words “regional policy statement,” before the words “regional coastal plan”.

Amend title of Table 6 by adding “—Option A” to the end of the title.

Insert new Table 7: Combined Plan Structure—Option B

Chapter	Section	Direction
PART 1 – INTRODUCTION AND GENERAL PROVISIONS		As for Table 6
PART 2 – TANGATA WHENUA		As for Table 6
Part 3 – REGION-WIDE MATTERS (Issues, Objectives, Policies & methods (except rules))		This part must be used If a matter in the first column is included in the plan, each of the matters specified in the second column must be addressed in relation to that matter
Introduction		General discussion of significant issues
Air Quality		Significant resource management issues for the region
Coastal environment		
Landscape, landforms and natural character		
Ecosystems and indigenous biodiversity		Objectives sought to be acheived by the statements of issues
Natural hazards, hazardous substances and contaminated sites		The policies for those issues and objectives and an explanation of those policies
Community values including historic heritage, sites of significance to Maori and protected trees		The methods (excluding rules) used, or to be used, to implement the policies
Infrastructure and energy		The principal reasons for adopting the objectives, policies and methods
Land		The anticipated environmental results of those policies and methods
Water including catchments and freshwater management units		The processes to be used to deal with cross

Subdivision		boundary issues Procedures to monitor the efficiency and effectiveness of the policies or methods Any other information required
General region-wide matters including temporary activities, noise and light, earthworks, signs, activities on the surface of water and mining		
Special topics		
PART 4—AREA SPECIFIC MATTERS INCLUDING RULES AND DESIGNATIONS		
General regional-wide rules	All zones	For the zones that the local authority chooses, the zones must follow the order, and the chapter and section heading set out in this standard. If only one zone is chosen under a chapter heading, the section heading becomes the chapter heading and the provisions are housed there.
Residential zones	Low-density residential zone	
	Residential zone	
	Medium-density residential zone	
	High-density residential zone	
Rural zones	Rural zone	
	Rural production zone	
	Rural residential zone	
	Rural settlement zone	
Commercial zones	Neighbourhood commercial zone	
	Local commercial zone	
	Commercial zone	
	Mixed use zone	

	Town centre zone	
	City centre zone	
Industrial zones	Light industrial zone	
	Industrial zone	
	Heavy industrial zone	
Open space and recreation zones	Open space zone	
	Sprot and active recreation zone	
	Conservation zone	
Special purpose zones	Airport zone	
	Port zone	
	Hospital zone	
	Education zone	
	Stadium zon	
Precincts		
Development areas		
Designations		
PART 5 – SCHEDULES, APPENDICES AND MAPS		Local authorities must implement the Schedules, Appednices and Maps Standard (S-SAM).
Schedules		
Appendices		
Maps		

Submission

To Ministry for the Environment

Draft National Planning Standards

August 2018

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We welcome the opportunity to make this joint submission on the Ministry for the Environment's "[Draft National Planning Standards](#)". Minerals and aggregates are essential for modern life in New Zealand and eventually mines and quarries are rehabilitated and returned – often as a community asset. It is important that we have a planning regime that recognises this and does not put the sector at an unnecessary disadvantage.

General Comments

3. We support the intent of National Planning Standards. Standardising plan format and definitions make it easier for councils to write consistent plans across the country and easier for businesses operating across the country to comply. Much of the minerals sector working through multiple planning documents has reported frustration with the challenges of grappling with the differing controls placed on its activities.
4. However we do have a number of concerns with the Draft Standards which we raise in this submission.
5. An important issue for mines and quarries operating in areas of expanding residential areas is reverse sensitivity. A key consideration for the Standards should

be protection of existing activities in the community. This would help to avoid future conflicts when unrelated or conflicting activities cohabitate in one area.

6. Reverse sensitivity effects on aggregate and quarry resources, as well as residential area mines, have the potential to sterilise existing and future resource which means lost opportunities for the local economy. Public sector revenue (through ownership of crown mineral rights) is also at stake.
7. We think there is merit, in the longer term, for the government to address this issue by looking at the Australian model of Key Resource Areas. These recognise and protect the importance of natural resources (including mines and quarries) and at the same time protect residents from any negative effects¹.
8. In the past zoning, along with centrally imposed prescriptive setback distances, have been used to address reverse sensitivity.
9. Adequate provision must be made in planning documents recognising mineral deposits (including aggregates) and providing for their extraction. Minerals, can only be extracted from where they are located and so without adequate provision at the relevant locations there is the real risk of sterilisation of the resource.
10. The reservations we have about zones for mining and quarrying are that they remove flexibility for mines and quarries to be sited where appropriate. For example, it cannot be known where economic mineral deposits are located and zoning could make it more difficult to access a deposit. Zoning not only requires identification of appropriate locations for the activity but also an understanding of the values at the location, the effects of the activity and what would be appropriate development controls, something which is not able to be pre-empted in the case of mining and often quarrying.
11. If these issues can be resolved zoning may be appropriate.

Specific Comments

12. Special Purpose Zones are for unique things that can't be provided for in another way or are at odds with their surrounds or the planning provision for that zone. We suggest a specific Minerals Extraction Zone could be introduced in the list of Special Purpose Zones on page 17.
13. A number of rural zones are proposed in the Draft Standards (ie Rural Zone, Rural Production Zones, Rural Residential Zones and Rural Settlement Zone) but these

¹ For example, the State of Victoria has just released a joint Ministerial Statement on [Extractive Resources](#)

could exclude mining under the way they are defined. One way to address this, and enable mining activities in rural areas, is to incorporate 'location of minerals' in the definition of the rural zones and defined on pages 43 and 44. For example, Rural Production Zone "... *to prioritise primary production activities that rely on the productive nature of the soils, **the location of minerals**, intensive primary production, and also providing for associated rural industry.*

14. There would also need to be a tweak to the definition of Primary Production (page 86). a way to address this is:

- under a) insert ", mining/quarrying and related" after the word "forestry"
- under c) insert "except for mining/quarrying" before "the word "does"

15. So it would read:

Primary Production

- a) *means any agricultural, pastoral, horticultural, forestry, **mining/quarrying and related** or aquaculture activities for the purpose of commercial gain or exchange; and*
- b) *includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but*
- c) ***except for mining/quarrying** does not include processing of those products*

Other Issues

General District-wide Matters (page 16)

16. Mining is a specific land use *activity* so it is unclear why it appears alongside generic *effects* of land use such as noise and light etc under General District-wide Matters on page 16.

Definition of Mining (page 85)

17. The definition of 'mining' in the draft standards is taken from the Crown Minerals Act 1991. We support this approach as it is a generally accepted definition of mining.

18. However we note that unlike the Crown Minerals Act there are no definitions of the associated mining activities namely prospecting, exploration and other mining operations.
19. Prospecting and exploring, which generally have much less or no adverse impacts, are necessary ancillary operations to mining and need to be enabled by the National Standards.
20. To ensure that prospecting and exploring are also accounted for, one option is to include the Crown Minerals Act definitions of these in the National Standards. As with 'mining', these are also generally accepted definitions. Provision should also be made for "mining operations".

Definition of Earthworks (pg80) and Land Disturbance (page 84)

21. As a general comment the Standards will need to avoid overlapping definitions as these could result in additional unnecessary controls, and sometimes contradictory requirements.
22. The definitions of earthworks and land disturbance, which are very broad, are examples likely to cause problems for mining (and quarrying) through overlap and double up.
23. Clearly the nature and scale of associated earthworks and land disturbance will be considered when prospecting, exploration and mining are undertaken and therefore those activities should be excluded from these definitions.

Draft first set of National Planning Standards

SUBMISSION FORM

The Government is seeking views on the draft first set of National Planning Standards.

For more information about the Government's proposals read our National planning standards consultation document available at <http://www.mfe.govt.nz/consultation/draft-national-planning-standards>.

Submissions close at 5:00 pm on Friday 17 August 2018.

Making a submission

You can provide feedback in three ways:

1. Use the online submission form available at <http://www.mfe.govt.nz/consultation/draft-national-planning-standards>. This is our preferred way to receive submissions.
2. Complete this submission form and send it to us by email or post.
3. Write your own submission and send it to us by email or post.

Publishing and releasing submissions

All or part of any written submission (including names of submitters) will be published on the Ministry for the Environment's website www.mfe.govt.nz. Unless you clearly specify otherwise in your submission, we will consider that you have consented both your submission and your name being posted to the Ministry's website.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to the Ministry for the Environment. Please advise if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions under the Official Information Act.

The Privacy Act 1993 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including the Ministry for the Environment. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in relation to the matters covered by this consultation. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

Submission form

The questions below are a guide only and all comments are welcome. You do not have to answer all of the questions. To ensure your point of view is clearly understood, please explain your rationale and provide supporting evidence where appropriate. The structure of this form is in line with the draft first set of national planning standards as shown in the overview section tables 1 and 2.

Contact information

Name*			
Organisation (if applicable)	Winstone Aggregates		
Address			
Phone	Click here to enter text.		
Email*			
Submitter type*	Individual	☐	
	NGO	☐	
	Business / Industry	☒	
	Local government	☐	
	Central government	☐	
	Iwi	☐	
	Other (please specify)	☐	Click here to enter text.

Draft first set of National Planning Standards

Introduction

1. Winstone Aggregates supports the draft first set of National Planning Standards (The Standards) in principle. The purpose of enabling plans to be changed easily and as a way of integrating national policies consistently is welcomed.
2. We understand this round of The Standards relates more to making the general structure mandatory rather than focusing on content. However, we still wish to highlight a few areas where the standards could be improved to afford the aggregate industry a certain level of prominence that befits its importance.
3. Aggregates are generally recognised as regionally significant resources in existing regional policy statements. In many instances, this is then diminished and diluted throughout regional and district plans, to a level that places quarrying and aggregate extraction as discretionary or non-complying activities.
4. This is contrary to the industry's recognised regional importance and places the industry immediately on the back foot. A considerable amount of time and money is then spent either on extensive professional reports and monitoring or lengthy Environment Court appeals.
5. The Standards present an opportunity for the importance of quarries and aggregates to be recognised throughout all national planning documents and for the issues that the industry face to be clearly outlined and understood.

Specific Points

6. The Standards have proposed 27 zones. Neither of these zones adequately accommodate the quarrying and aggregate industry. The major constraint for the quarrying and aggregate industry is that the resource can only be extracted from where it exists, whereas development, such as housing is more flexible in where it can be located.

A specific quarry and aggregates zone (or mining zone) as a 28th zone would offer protection to existing quarries, but could hamper the industry in the future if a new aggregate deposit is discovered in a zone which requires a plan change.

Therefore, it is recommended that The Standards offer protection to existing quarries and known aggregate sources through an appropriate spatial planning tool that prevents resource sterilisation and incompatible development near these locations. This also decreases the chances of introducing reverse sensitivity issues.

Should this not be workable, it is recommended that quarrying and aggregates (or mineral extraction) be included within the District Wide Matters Standard under S-IE 23 a. The importance of minerals and aggregates to each region and districts prosperity needs to be recognised and is considered appropriate at this level.

7. There are a few issues regarding the definitions, which are –
 - **Cleanfill:** The definition allows for the disposal of exclusively inert, non-decomposing material. This unfortunately includes material such as plastic, fibreglass, fibrous asbestos – all of which are excluded from the well-used MfE definition of cleanfill material. A

more appropriate definition could be – *‘means an area used for the disposal of material that when discharged to the environment will have no adverse effect on people or the environment.’*

- **Greywater:** Shower and washing machine water can inadvertently include sewage and can have adverse effects on the environment similar to blackwater (toilet water). This definition should be removed.
- **Quarry:** We support this definition, but it lacks scale and relevancy to what it is trying to define. It could go further to explain the extractive industry activities linked to quarrying, which could be exhaustive (e.g. similar to the Waipa District Plan definition of mineral extraction activities).

Releasing submissions

Your submission may be released under the Official Information Act 1982 and will be published on the Ministry’s website. Unless you clearly specify otherwise in your submission, we will consider that you have consented to both your submission and your name being posted on the Ministry’s website.

Please check this box if you would like your name, address, and any personal details withheld. ☐

Note that the name, email, and submitter type fields are mandatory for you to make your submission.

When your submission is complete

If you are emailing your submission, send it to PlanningStandards@mfe.govt.nz as a:

- PDF
- Microsoft Word document.

If you are posting your submission, send it to National Planning Standards, Ministry for the Environment, PO Box 10362, Wellington 6143.

Submissions close at 5:00 pm on Friday 17 August 2018.



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Contact information

Name	
Organisation	Whangarei District Council
Address	Private Bag 9023, Whangarei 0148
Phone	
Email	
Submitter type	Local Government

Draft first set of National Planning Standards

1. Do you support the draft set of National Planning Standards?

Whangarei District Council generally supports the concept of National Planning Standards, however, issues have been identified where clarification is required or where the Standards fail to meet practical requirements.

2. S-RPS: Regional policy statement structure standard

- a. Parts 3 and 4 – Core policy statement provisions
- b. Part 5 – Evaluation and Monitoring

3. S-RP: Regional plan structure Standard

- a. Parts 3, 4 and 5 – Core plan provisions
- b. Part 6 Evaluation and Monitoring

4. S-DP: District plan structure standard

No consideration has been given to referenced documents in the structure. The ability to include an additional section for reference documents should be included.

5. S-CP: Combined plan structure standard



6. S-IGP: Introduction and general provisions standard – Part 1 of all plan and policy statements

a. Introduction Chapter

Listing versions of the District Plan is impractical where the rolling review process is used as the resulting list would be too long and not user friendly. Generally, this would limit accessibility and the length of this list would invalidate its usefulness. This will be particularly unmanageable prior to the transition to an ePlan.

b. How plan works chapter

c. Interpretation

d. Plan integration

e. Formation of standards with tangata whenua

f. National direction

Some of this information seems more appropriate in s32 documents rather than in the District Plan. Guidance is needed to ensure there is not an expectation to have an overly detailed assessment within the Plan.

7. S-TW: Tangata Whenua structure standard – Part 2 of all plans and policy statements

a. Recognition of iwi/hapū chapter

Whangarei District Council generally supports the concept of the Recognition of iwi/hapū chapter.

b. Tangata Whenua local-authority relationships chapter

c. Iwi and hapu planning documents chapter

d. Consultation chapter

e. Use of Te Reo Maori

8. S-SD: Strategic direction structure standard – Part 3 of District plans

9. S-DWM: District wide matters standard – Part 4 of District plans

a. Natural Environment Values Chapter

b. Environmental Risks Chapter

c. Community Values Chapter



d. Infrastructure and Energy Chapter

The Whangarei District Plan uses district wide overlays to provide for the operation, maintenance, upgrading and development of the National Grid and some other infrastructure which has been identified as regionally significant (by the Northland Regional Policy Statement).

The draft National Planning Standards clearly provide for the use of special purpose zones, requirements or designations to address the matters specified for a district wide Infrastructure and Energy (S-IE) chapter; the draft National Planning Standards for not appear to provide for the use of a district wide overlay.

Whangarei District Council introduced district wide overlay provisions for the National Grid in PC123A recently as part of the rolling review of the Whangarei District Plan. The risk of re-litigation of this plan change because of potential unavailability of district wide overlays to use for Infrastructure and Energy matters is concerning to us.

Whangarei District Council seeks that the use of district wide overlays complement objectives, policies and methods (rules) for Infrastructure and Energy is explicitly provided for within the National Planning Standards.

e. Subdivisions Chapter

Support point 27. However, it is unclear what rules are meant to be within the Subdivision Chapter. For example, are there meant to be rules around geotechnical/stability issues or transport/access matters when subdividing? Or do those rules sit within the Infrastructure and Energy Chapter? Is the subdivision chapter meant to just be rules around minimum lot sizes, frontage widths site shapes, etc.? If so this could be difficult for plan users as they will need to refer to many chapters when subdividing.

f. General District Wide Matters Chapter

10. S-ASM: Draft area specific matters standard – Part 5 of District plans, Part 6 – Combined plans

a. Zone Framework (individual (and range)

A zone for a “Waterfront” or “Tourism” type Zone would be a useful addition. Many Districts include waterfront type areas with a focus on tourism that do not neatly fit into a mixed-use type zone.

Additionally, a zone for Large Format or Bulk Format Retail would be a useful addition. Many Districts within New Zealand have areas designated for these types of activities and none of the proposed standard zones capture this concept well.

b. Purpose Statements

c. Additional special purpose zones and criteria

d. Precincts chapter

e. Development areas chapter

f. Designations chapter

Whangarei District Council supports the use of alpha numerically presented tables to present designations within a district plan.



Use of a separate schedule for designations is not supported because numerous conditions are often attached to designations and do not suit presentation in table form. Designation conditions are often altered using RMA processes outside of a district plan review and if they are listed within the district plan then an alteration to the district plan must also be made.

Whangarei District Council considers that the use of a reference to a designations conditions (for example a resource consent file number or consent order number) within each designation table would be a much more pragmatic and user friendly approach.

Whangarei District Council seeks that conditions of designations are explicitly provided for by way of incorporation by reference within each designation table.

From an accessibility viewpoint, ePlans provide the ability for those interested in specific designations to access referenced content via click to view and mouse over functionality. Given that Draft Standard F-1.18.7 requires the referencing of other plans and acknowledges the ability to utilise hyperlinking to achieve this it is consistent to also allow referencing of other materials in this way.

11. S-SAM: Schedules, appendices and maps standard – Part 6 – Regional policy statements, Part 7 – Regional plans, Part 6 – District plans, Part 9 – Combined plans

Point 6 requires more clarity as it appears to indicate that all sites with an overlay will need to be scheduled (e.g. any site that contains an ONL would need to be listed in a schedule).

12. F-1: Electronic accessibility functionality standard

a. Standard baseline requirements

The standard baseline requirements are generally supported however, the use of embedded hyperlinks within PDF documents suggested in instruction 8 is counter intuitive, these are not universally compatible and there is no practical way to monitor the health of these hyperlinks, as a result accessibility and functionality may be reduced. The use of embedded hyperlinks should be discouraged in PDF plans.

Point 7 is could result in an excessive amount of notes within District Plans which would not assist in simplifying and streamlining.

Instruction 11 is also impractical for authorities undertaking a rolling review, the quantity of versions and specific nature of changes would result in a quantity of similar versions which would both be unmanageable and not user-friendly.

b. Level 5 requirements

13. F-2: Mapping standard

a. Zone colour palette

Whangarei District Council supports the concept of a consistent colour palette however the use of a single colour for special purpose zones does not offer enough ability to distinguish between zones and will cause an oversaturation of that colour.

Several zone colours are too similar and hard to distinguish between – need more variety in colour pallets.



It is suggested that a colour palette could be established for section 6 matters such as Outstanding Natural Landscapes, Features, Vegetation to improve consistency.

b. Symbolology

Whangarei District Council does not support the 1 symbol for coastal hazards, flood hazards, volcanic hazards and fault hazards will not work and would be confusing for plan users. In addition, there are other symbols that could be standardised such as Outstanding Natural Landscapes, High Natural Character, instability hazard areas, roading hierarchies, etc.

14. F-3: Spatial planning tools (Regional) standard

a. Range of tools

b. Zone

c. Overlay

d. Specific control

e. FMU

f. Airshed

g. Area

15. F-4: Spatial planning tools (District) standard

a. Range of tools

b. Zone

c. Overlay

d. Precinct

e. Specific control

f. Development areas

g. Designation

16. F-5: Chapter From standard

a. Chapter form

b. Rules



c. Rule tables

It is not entirely clear how the rule tables are meant to work. Further guidance, and possibly examples of the rule tables in practice, would be useful.

17. F-6: Status of rules and other text and numbering form standard

a. Status of rules and other text

b. Numbering

18. CM-1: Definitions standard

Whangarei District Council generally supports the concept of standard definitions however, more consideration is required as to the potential effects of introducing these definitions as a mandatory direction without a Schedule 1 process. Introducing these definitions will have significant effects on the rules and more guidance is required as to what constitutes “consequential amendments”.

a. Individual definition

The term “non-profit” within the ‘community facility’ definition is not appropriate as it will create uncertainty. For example, would a church that accepts donations or a sports club that has monthly fund raising events be non-profit? It is suggested to delete the term “non-profit” as the RMA effects of an activity are still the same whether it is profit or non-profit.

The definition for “intensive primary production” is too broad and would capture too many small-scale activities.

The definition for “outdoor living space” lacks clarity as it does not specify within the definition if the area has to be outdoor or whether or not balconies and decks would meet the definition. Suggested wording could be: “An area of outdoor open space including balconies, decks and roof terraces, available for the exclusive use of the occupants of the residential unit to which the space is allocated, that has direct access to a main living space and that does not contain structures that would impede its use for outdoor living purposes.”

b. Additional definitions

The following common and useful terms should also be included:

- *Existing Use Rights*
- *Forestry*
- *Front Site*
- *Frontage*
- *Impervious area*
- *Indigenous vegetation*
- *Minor Upgrade / alteration*
- *Rear Site*
- *Sensitive Activities*
- *Temporary activities*

19. CM-2: Draft noise and vibration metrics standard

a. Technical support

20. Implementation



a. ePlanning implementation

b. Timing

Whangarei District Council does not support the timing. Council has competing timeframes to review and undertake plan changes as dictated by National and Regional policy. To meet these requirements Council will have to progress plan changes early in the 5-year timeframe to implement the Standards.

The National Policy Statement for Urban Capacity requires a plan change to ensure feasible capacity within 12 months of completing the capacity assessment.

The Northland Regional Policy Statement requires plan changes within 2 years of the operative date to implement protection of biodiversity and hazard management. Northland Regional Council have a 7-year timeframe to meet the Standards, there is a risk that the district plan will fall out of step with the regional direction.

Implementation timeframes need to be reconsidered as Northland Regional Council has been afforded 7 years but Whangarei District Council has only been afforded 5. In order to give effect to Regional Plans and Policy Statements the District Plan will need to be reviewed after regional policy in which case the District Plan will need a timeframe of at least 9 years.

c. Support

d. District plan structure guidance

Additional guidance for district councils that are currently undertaking rolling reviews of their district plans would be beneficial as to how it is envisaged that the standards will be implemented in a rolling review.

e. Regional policy statement and regional plan structure guidance

f. District spatial planning tools and zone framework guidance

g. Regional plan and policy statement spatial tools guidance

h. Chapter form and status of rule and other text numbering guidance

i. Additional guidance materials required

21. Future content for standards

a. Utilities provisions

Other Comments

22. Do you have any further comments you wish to make about the Government's proposal?

Releasing submissions

Your submission may be released under the Official Information Act 1982 and will be published on the Ministry's website. Unless you clearly specify otherwise in your submission, we will consider that you have consented to both your submission and your name being posted on the Ministry's website.

Please check this box if you would like your name, address, and any personal details withheld.

Note that the name, email, and submitter type fields are mandatory for you to make your submission.

When your submission is complete

If you are emailing your submission, send it to PlanningStandards@mfe.govt.nz as a:

- PDF
- Microsoft Word document.

If you are posting your submission, send it to National Planning Standards, Ministry for the Environment, PO Box 10362, Wellington 6143.

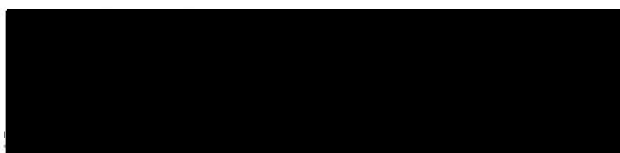
Submissions close at 5:00 pm on Friday 17 August 2018.

17 August 2018



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DRAFT NATIONAL PLANNING STANDARDS – KEY SUBMISSION POINTS OF TAURANGA CITY COUNCIL

Tauranga City Council welcomes the opportunity to make submission to the Draft National Planning Standards (NPS).

While a detailed submission document is attached, the key submission points of the Council are as follows:

Timeframes for NPS compliance

1. Tauranga City Council (TCC) supports the extension for compliance with the NPS to five years for most councils, i.e. 2024. Notwithstanding, TCC would prefer that the implementation of the first set of National Planning Standards be provided for as part of next review of RMA Plans after the gazettal date of 2019.
2. The Operative Tauranga City Plan is due to be reviewed in 2023. While TCC is aware of the potential to bring the review forward, the Council is currently at a point where plan changes for two new urban growth areas for the City are being finalised for notification in 2019 after two years of intensive planning work in partnership with landowners and affected persons.
3. As a Council that is facing high growth demands, it is a priority that these plan changes be progressed as soon as possible and that they be in a format that is consistent with the current plan so that development can commence.
4. The implementation of the NPS, being required shortly after these plan changes have completed their process, could impact on the development of these urban growth areas if a further Schedule 1 process was triggered.
5. The timing of the City Plan Review and its nature, e.g. staged or reviewed in full could also result in "double reviewing" of plan provisions in quick succession for a) the NPS, and b) the required City Plan Review.
6. If the National Planning Standards could be complied with as part of the review of the Operative Tauranga City Plan, this would allow for growth pressures to be addressed in the short term ahead of the NPS related changes and avoid the doubling of work for the City Plan Review in the medium term.

7. As an alternative, TCC requests that Tauranga City Council be included in the list of councils with seven years to implement the National Planning Standards to allow for their urban growth area plan changes to progress to completion ahead of changes to the Plan to implement the National Planning Standards.

Clarity around Mandatory and Discretionary Provisions

8. The draft NPS contains directions which are mandatory (e.g. the definitions) and can be incorporated into plan documents without a full Schedule 1 plan change process as long as there are no further changes to content. The second type of planning standard is discretionary and provides for a choice of options, at least one of which the Council must select (a range of 27 zones of which councils must select at least one). This 'selection' must be made via a Schedule 1 process with formal consultation, etc.
9. There is a lack of clarity in the draft NPS around what are mandatory or discretionary directions, including between directions relating to different sections of Plans. This has time and resource implications for councils in developing plan changes or review processes (including legal review as to whether or not the plan change/review has produced NPS compliant provisions). Submissions are proposed, seeking that mandatory and discretionary directions be more clearly and consistently identified in the NPS and that the guidance documents provide more detailed advice to councils in respect of these directions.

Assistance to Councils – Planning, Legal and GIS resources

10. Achieving compliance with the NPS will require resourcing in terms of planning advice and legal advice in relation to compliance with the NPS. A further advice/resourcing area is required for GIS based mapping.
11. This is a particular concern for smaller councils who have limited staff and budgets available but is also an effectiveness and efficiency issue for larger councils who have already invested in software programmes and GIS systems for their current plans. Central government has already signalled they are considering funding for smaller councils to address some of these issues and has asked for feedback on this point.
12. In discussing this issue with other councils it has been identified that a better way to assist all councils would be for the Government to provide a web-based platform which provides both a plan text template and a mapping programme to all councils. This would address resourcing issues and also provide consistency across all plans as to format, text and diagram presentation.

Tauranga City Council City Planning Staff are available to assist with any clarification of the detailed submission and are also available for discussion/testing, in conjunction with MfE staff, of any potential amendments to the draft NPS. Please contact in the first instance Damon Mathfield, Acting Team Leader City Plan on [REDACTED] or at [REDACTED].

Yours sincerely



Howard Severinsen

Acting General Manager: Growth and Infrastructure

17/8/18

**Acting General Manager
Growth & Infrastructure**

Draft first set of National Planning Standards (NPS) - Tauranga City Council (TCC) - SUBMISSION - August 2018

DFS NPS Section	Theme	Term	TCC Comments	Suggested Amendments
n/a	Extension of NPS timeframes	n/a	TCC supports the extension of the implementation timeframe for the NPS to five years. Notwithstanding, TCC would prefer that the implementation of the first set of National Planning Standards be provided for as part of next review of RMA Plans after the gazettal date of 2019. The Operative Tauranga City Plan is due to be reviewed in 2023. While TCC is aware of the potential to bring the review forward, the Council is currently at a point where plan changes for two new urban growth areas for the City are being finalised for notification in 2019 after two years of intensive planning work in partnership with landowners and affected persons. As a Council that is facing high growth demands, it is a priority that these plan changes be progressed as soon as possible and that they be in a format that is consistent with the current plan so that development can commence. The implementation of the NPS, being required shortly after these plan changes have completed their process, could impact on the development of these urban growth areas if a further Schedule 1 process was triggered. If the National Planning Standards could be complied with as part of the review of the Operative Tauranga City Plan this would allow for growth pressures to be addressed in the short term ahead of the NPS related changes. As an alternative TCC requests that Tauranga City Council be included in the list of Councils with 7 years to implement the National Planning Standards to allow for their urban growth area plan changes to progress to completion ahead of changes to the Plan to implement the National Planning Standards.	TCC requests the implementation of the first set of National Planning Standards be provided for as part of next review of RMA Plans after the gazettal date of 2019. Alternatively, TCC requests that the Tauranga City Council be included in the list of Councils with 7 years to implement the National Planning Standards.
n/a	Clarity of Mandatory and Discretionary nature of Standards	n/a	In drafting this submission, it has been difficult to determine what chapters and sections are mandatory or discretionary. Some sections within standards have directions that state the Plan must contain the chapter e.g. "If a district has a coastline, a coastal environment plan must be provided" (Standard S-DP) being clearly mandatory. Other Standards have directions which clearly state where chapters do not need to be included in the plan (Standard S-ASM) and other Standards have directions opening with "if the following matters are addressed" (Standard S-DWM and Standard S-TW), which implies a discretion. A further matter for clarification is whether Standards override each other. Standard S-DP, direction 3 states that "All district plans must contain mandatory headings in the order provided in Table 5: District plan structure below, unless otherwise stated." Further clarification is needed as to whether the "otherwise stated" is to be found in S-DP or in any other Standard. For example, in Standard S-DP it is stated that local authorities must implement the Introduction and General Provisions Standard S-IGP, however in turning to Standard S-IGP directions of that standard under (S-Intro) there appears to be an implied discretion not to include sections, appearing to require text only – "if the following matters are addressed." If a local authority chooses not to have any of these sections apart from the definitions it would be odd to continue to require a mandatory heading for these sections under Standard S-DP. Therefore it could be assumed that S-IGP gives the effect to the "unless otherwise stated" reference in S-DP.	Further clarity and guidance is required where standards use the phrase "if the following matters are addressed" as to the mandatory or discretionary nature of that part of the standard. Clarity of what parts are mandatory and discretionary could be easily addressed by providing in the guidance notes a "contents page" of the mandatory provisions which excludes discretionary components e.g: • Part 1 Introduction and General Provisions • Chapter Interpretation • Chapter National direction instruments • Part 2 Tangata Whenua provisions, or by further clauses such as those found in the S-ASM Standard "if no precinct is required, do not include this chapter in the Plan."

n/a	Implementation	n/a	The scope of the proposed changes to Plans required by the NPS are extensive and therefore implementation support is necessary in the form of specialised knowledge and resources.	It is submitted that the Government, through the MfE, provide for a dedicated national team (capable of providing legal, technical and planning advice) to assist Councils in implementing the NPS. This should include a peer and legal review function for Plans that are being drafted/ redrafted into the NPS structure. Such a team would be able to be contacted by Councils with queries and where requested “audit” plans before they are notified. This would support a consistent implementation and compliance across the country in an efficient and effective manner. The use of a government platform for templates and electronic mapping programmes is also requested. These requests are covered in more detail in submission points below.
n/a	National direction	n/a	TCC queries the requirement for a separate chapter on national direction instruments, as information and linkages relating to national direction can be covered in the statutory context section of the “How the Plan Works” chapter. The mandatory text of Tables 13 and 15 includes options for Councils to select from and appears to serve the purpose of monitoring the implementation of national instruments. It is considered that this purpose could be better served through the annual National Reporting to MfE.	Information and linkages relating to national direction should form part of the "How the Plan Works" chapter and Tables 13 and 15 should ideally be deleted. Further guidance is needed as to whether amendments to Tables 13 and 15 can be undertaken without a Schedule 1 process, if there are no other changes needed to comply with a National Direction. Further clarity and guidance is also requested on the inclusion of links in Plan text to the national direction instrument document and how this can be practically achieved for hard copy plans.
n/a	Potential Utilities NPS	n/a	TCC notes that specific reference is made to the development of a NPS for Utilities in the future. Many Councils have Infrastructure Development Codes (IDCs)/ technical specifications that set out the design standards required for assets to vest. It is felt that the potential impacts of a NPS for utilities on design standards requires a dedicated discussion with local authorities.	A NPS for Utilities needs to be thoroughly consulted on with Councils given that provision of utilities is part of subdivision and land use activity.
S-DP: District Plan structure standard	Plan structure	n/a	TCC generally supports the draft order of plan chapters set out in the draft National Planning Standard 2-DP. The structure of TCC's current operative plan has a reasonable level of consistency with the District plan structure standard. That is, it has a section addressing strategic directions, both topic (district wide) and zone chapters and rules placed in the same chapters as objectives and policies. It is noted that the current guidance notes for the S-DP District Plan structure standard indicate that reference can be made to the S-RPS and S-RP standards for further guidance. It is suggested that for effectiveness, efficiency and clarity for all parties, that all guidance matters relating to a standard is found within the Guidance for that actual standard.	All guidance matters relating to a standard is found packaged within the Guidance for that actual standard (even if that means the guidance will have to be duplicated elsewhere).
S-DP District Plan Structure (S-DP) and S-SD Draft Strategic Direction	Inconsistency between standards	n/a	S-DP at Part 3 Strategic Direction states that Local Authorities must implement the Strategic Direction Standard (S-SD). The Instruction then goes on to state that “if” local authorities are including provisions on significant resource management matters relevant to the district, it must provide a strategic direction part. In S-DP which is mandatory, the wording continues to be “if” the various matters are to be addressed in district plans, they may be located in the "Strategic Direction" chapter. It would appear that in practice S-SD is not mandatory unless the matters it covers are put into plans by local authorities at their discretion. If the matters are not covered then it would seem a strategic direction chapter is not needed?	The following should be further clarified: the Instructions for S-DP at Part 3 Strategic Direction and the nature of S-SD e.g. it should be mandatory only if the matters specified in the section are included in a Plan?
S-IGP: Introduction and general provisions standard	How the Plan Works	n/a	In reviewing the draft standards for regional, combined and district plans, it is noted that each set of headings for the "How the Plan Works" section are inconsistent with the headings for "How the Plan Works" section of Standard S-IGP.	Guidance is needed as to which of the standards take precedent in terms of the headings to be used for the "How the Plan Works" section.

S-TW: Tangata Whenua structure standard	Clarification on nature and status of the standard	n/a	It is noted that all of the material in this standard appears to be discretionary -“e.g. If the following matters are addressed”. The nature of the standard is a very important aspect to clarify. The expectations raised by the development of a NPS standard, without clarity of mandatory or discretionary components, has the potential to negatively impact on relationships between Councils and the iwi/hapu of their area. In areas with a large number of iwi and hapu - such as the Bay of Plenty Region matters such as history, environmental management perspectives and values, would need to be supplied by each iwi and hapu. Providing links to mana whakahono or other relationship agreements and iwi/hapu management plans has implications for Councils and iwi/hapu alike. This is in terms of whether these documents become by implication “referenced documents” in terms of the Part 3 Section 30 of the RMA. This has implications for local authorities plans, as iwi hapu management plans are not subject to a Schedule 1 process. The review and updating of iwi/hapu management plans may be affected by Schedule 1 requirements if they are referenced in this manner.	A considerable amount of information in this section could sit within the Section 32 reports for plans, rather than in the plans themselves. Further clarity is required as to the detail/level of reference expected in the Plan, given the significance and the volume of material involved. With respect to the provision of links to mana whakahono or other relationship agreements and iwi/hapu management plans, further guidance is needed as to whether these documents become by implication “referenced documents,” in terms of the Part 3 Section 30 of the RMA.
S-SD: Strategic direction structure standard	Strategic direction	n/a	TCC supports S-SD: Strategic direction structure standard	Retain Standard S-SD: Strategic direction.
S-DWM: District wide matters standard	Coastal Environment	n/a	It is queried why a specific section is required for the Coastal Environment? Matters such as development in the coastal environment can be covered in the strategic directions section of plans and within relevant sections for landscape, landforms and natural character, ecosystems and indigenous biodiversity.	Guidance is sought as to what matters other than landscape, landforms and natural character, ecosystems and indigenous biodiversity within the Plan the Coastal Environment Chapter is intended to cover.
S-DWM District Wide Matters Standard	Environmental Risks chapter (S-ER)	n/a	Direction 31 makes reference to the coastal marine area. District Plans do not generally apply to the coastal marine area.	Further guidance is needed in relation to the inclusion of the coastal marine area within this direction.
S-DWM District Wide Matters Standard	Community Values chapter (S-CV)	n/a	Direction 18 b. makes reference to “Maori Cultural Landscape” but this is not defined.	A national definition for Maori Cultural Landscape should be provided.
S-DWM District Wide Matters Standard	Subdivision chapter (S-SUB)	n/a	Code of Practices (COPs) are identified as needing to be “referenced” in the District Plan. If a document by reference is created under terms of the Part 3 Section 30 of the RMA then COPs cannot be changed quickly in order to deal with changing practice/technology.	There needs to be clarity as to whether reference to a Code of Practice makes such a document a referenced document under Part 3 Section 30 of the RMA, noting these can only be updated through a plan change.
S-ASM: Area specific matters standard	Zone framework	n/a	The proposed NPS zoning does not include a road zone. The TCC City Plan currently incorporates a road zone which provides for traffic related activities including safety signage and traffic lights; pedestrian/cycle facilities and road maintenance works as permitted activity. This provides for these activities to be addressed efficiently and effectively without the need for resource consent applications for individual activities relating to the road's operation.	TCC requests that a Road Zone is included in the NPS zones.
S-ASM Area Specific Matters Standard	Role of NPS Purpose Statement for Zones Clarification of ability to exclude activities from zones where the “purpose guidance” refer to them.	n/a	TCC supports and seeks reconfirmation in the relevant Guidance documents, that the NPS purpose statements for zones and zone characteristic materials are intended as a guide, rather than a mandatory text. In particular, TCC seeks confirmation that the provision for light industry in the new proposed mixed-use zone can be removed, if desired by individual councils, whose mixed-use zones are not foreseen as containing industrial activities.	Confirmation should be provided in the guidance materials that the NPS purpose and zone characteristic materials are fully intended as a guide to the purpose for the zones and provisions development, rather than mandatory text. Confirmation should be further provided by way of additional guidance notes on the following: 'Councils can decide on activities provided in a zone and can exclude activities which may be listed in guidance material for the zone, if these are not compatible with the local context.'
S-ASM: Area specific matters standard	Additional Special Purpose zones	n/a	TCC supports the provision for Additional Special Purpose zones and criteria within the standard.	Provision for 'additional special purpose' zones and criteria within the standard need to be retained.
S-ASM Area Specific Matters Standard	Future Urban Zone	n/a	TCC supports the provision for future urban zones. Such a zone is an important tool in protecting the maximum opportunity without further fragmentation for future urbanisation of land and enables more efficient planning and land use. It also enables Council to use a regulatory tool to clearly provide for meeting the land use capacity requirements of the NPS UDC.	TCC supports the retention of the future urban zone as one of the 27 zones provided for in the NPS.

S-ASM Area Specific Matters Standard	Use of “primarily for” in zone purpose/guidance	n/a	TCC seeks the removal of the reference to the term “primarily for” from the zone statements. This term indirectly implies that other uses not provided for in the zone can be undertaken which potentially blurs the purpose of a zoned based approach and the separation of incompatible activities from the primary activity of a zone.	TCC seeks the removal of the reference to “primarily for” from the zone purpose guidance statements.
S-ASM: Area specific matters standard	Precincts/ Use of a standalone Precincts chapter	n/a	TCC supports the use of precincts. However it is suggested that where precincts are being used, which modify the underlying zones, it would be more intuitive for plan users to find the appropriate provisions, if precinct chapters followed the base zone chapter which they are modifying e.g. “residential precincts” chapters follow the Residential Zones chapters.	TCC seeks that the standard structure for district plans be amended, so that the precincts chapters follow the chapters for the base zone that they are amending.
S-ASM: Area specific matters standard	Development areas	n/a	TCC supports the use of development areas chapters.	Further guidance is sought in relation to removal of development area provisions (and a method for doing so) without a Schedule 1 process.
S-ASM: Area specific matters standard	Designations	n/a	TCC does not support designation conditions being reproduced in full in Plans. The volume and proposed table format of material required, to fully encompass designation conditions, has the potential to greatly increase the size of the plans for provisions, that may only be considered by a few plan users. Clarity is also required regarding the expected process to update the schedule of designation conditions if a change of conditions, removal of conditions or removal of designation in full, occurs. A further question is whether this can be updated without a Schedule 1 process?	Designation conditions can be covered by making reference to where this material can be found outside of the Plan text. Further guidance is requested as to the process to update the schedule of designation conditions, if a change of conditions, removal of conditions or removal of designation in full, occurs.
F-1: Electronic accessibility and functionality standard	Funding	n/a	Exploration by the Government of ways of providing funding and/ or support to smaller Councils in relation to assisting them in meeting the F-1 Standard is noted.	The Government could assist all Councils by procuring and providing access to the software for e-plans. A national platform for e-plans could be provided with technical support, that could be used by all Councils.
F-1: Electronic accessibility and functionality standard	Publically accessible datasets	n/a	TCC GIS staff advise that TCC uses NZGD2000, but uses Moturiki Datum for our vertical datum. This includes reference to this datum in rules e.g. in parts of Tauranga that are inundation prone ground floor levels above Moturiki Datum – e.g. 2.5m above Moturiki Datum are specified. This type of use of datum in rules may apply elsewhere across the country, particularly in relation to environmental and natural hazards provisions.	TCC seeks confirmation that the local vertical datum for rules relating to local natural hazards within Plans can continue to be used.
F-1: Electronic accessibility and functionality standard	Standard baseline requirements	n/a	It is submitted that the requirements of standard F-1 for hyperlinks between relevant district and regional plan provisions represents a larger task than a Level 1 baseline timeframe would accommodate. This would also be difficult to achieve during the period when all Councils will be at the very least reformatting and renumbering existing e-plans (with some moving to e-plans).	Further guidance as to what is actually meant by the rule linkage requirement between district and regional plans is needed. Does this require hyperlinks from a district council website to a regional council website, where these documents can be found and vice versa; or hyperlinks between a district plan rule on a district council website to a regional plan rule on a regional council website, and vice versa? TCC submits that the standard should provide for a general link between websites, where the documents can be found and direction to consult on regional plans for earthworks, discharge consents etc. This link and commentary would be best located in the Introductory sections of Plans.
F-1: Electronic accessibility and functionality standard	Level 5 requirements	n/a	The requirement in National Planning Standard F1 Level 5 to provide both a hard copy of the plan and an e-plan means Councils will have to operate and maintain two “copies” and systems for the production of plans. There is also the assumption that repetition of content in all chapters, due to the structure of the plan, is balanced by e-plan functionally. It is noted that this level of accessibility and functionality includes the ability to print out hard copies, including maps. It is assumed that this provides for the “split layers” of zones and symbology on a series of maps to address layering and readability issues in hard copies.	The provision by Central government of a national platform where both ‘hard and soft’ plan formats could be accessed and utilised by local authorities would address the costs of dual copies and systems and reduce inefficiencies and time costs for local authorities. It is also submitted that further guidance should be provided for this standard including examples of plans that meet Level 5 standards for illustration and comparison purposes.

F-2: Mapping Standard	Legibility	n/a	In urban areas maps often have a number of layers and symbols and if they are all shown on one hard copy or electronic map they can be difficult to decipher. TCC, operate a two maps per “area” approach to show zone and some plan area features on one map and other layers on a facing identical base map. This also includes an aerial view on one of the maps, which is often very useful for plan users to identify where their property etc. is, off landmarks and/or features. A question is whether this map series approach can continue to be applied?	TCC seeks confirmation that a map series approach can still be taken in relation to district plan maps.
F-2: Mapping Standard	Legibility	n/a	The colour for heritage areas and statutory acknowledgement areas in the "outline polygons" is very similar in the examples provided which could easily lead to confusion if applied.	TCC submit that these outline polygons need to be further apart in terms of the colour tone and/or hue used.
F-2: Mapping Standard	Map layout & scale	n/a	At present, Standard F-2 of the NPS includes insufficient information/ guidance relating to the format and scale of maps within plans.	The amendment of F-2 Mapping Standard is required in relation to the provision of guidance on the format and scale of maps within plans, to ensure the standardisation of style e.g. symbol size.
F-2: Mapping Standard	Zone colour palette	n/a	It is suggested that the overall colour palettes for zones does not include sufficient variation between shading, which will impact on the clarity of hard copy plans in particular. Additional special purpose zones are permitted by the NPS. At present, special purpose zones are represented by a single colour (grey) in the Draft Mapping standard (F-2). This lack of variation is likely to result in confusion for 'lay' users.	It is submitted that there needs to be further amendments to the range of shading of colour palettes for zones, in particular between the shadings for the residential zones. To avoid misinterpretation of zones, special purpose zones should include a transparent hatching, that would enable the easy identification of each distinct special purpose zone especially when viewed on hard copies.
F-2: Mapping Standard	Symbology	n/a	The hazard symbology will result in ambiguity on the Plan maps. Plans will be subject to colour change due to the inclusion of a blue hazard overlay over a zone colour. We further note that there is no symbol to represent archaeological sites within the NPS. It is however acknowledged that archaeological considerations are included within the definition of historic heritage at CM -1: Draft Definitions Standard. Whilst Table 22 of standard F-2 includes a Heritage item symbol, this is identified as specifically relating to a 'building or structure' and thus specifically excludes 'sites' of archaeological importance. Also, although Table 22 of standard F-2 includes some symbology relating to infrastructure/ utilities features, we note that a number of significant features are not included within the symbology e.g. local transmission lines and National Grid "buffer areas". TCC considers that the colour of many of the proposed symbols in Table 22 of standard F-2 will not be visible and potentially conflict with the proposed zone colours included in Table 21 of Standard F-2.	It is submitted that the blue hazard overlay should be reconsidered in favour of a separate “transparent” hatching over the zone colours. In addition, each hazard should have a different colour hatching rather than a 'one size fits all' approach as this would be more effective and efficient for plan user application, in relation to areas where more than one hazard applies. Such an approach will potentially enable plan users to determine at a glance what the hazard is, without the need to “drill down” further where an extent of a hazard overlay is being ascertained over a wider area (as opposed to a property by property analysis/search). A symbol to represent archaeological sites should be included at Standard F-2 within the NPS, in order to ensure archaeological sites can be represented on Plan maps. Additional symbolism is required within Standard F-2 that provides for other forms of significant infrastructure/ utilities e.g. local transmission lines and National Grid "buffer areas" . Further consideration should be given to the appropriateness/ suitability of the proposed symbol colours. Amendments should be made where necessary to ensure that they are visible over the zone layers and do not conflict with the zone colours.
F-2: Draft Mapping Standard	Noise Contours	n/a	It is noted that the same geometry polygon is proposed for noise contours for port and airports and that there needs to be further clarification of the distinction between them, particularly in cases where the airport and port are situated very close to each other as they are in Tauranga. In addition, the colour of this geometry polygon and hatching is very similar to the base colours for the residential zones and therefore could be potentially hard to differentiate in hard copy.	It is submitted that a different colour be used for each noise contour so that they can be differentiated easily and that the colour of the polygon itself be reconsidered in terms of its similarity to residential zone colours.
F-4: Spatial planning tools (District) standard	Formatting of planning tools	n/a	In considering both F-2 and F-4 further guidance and clarification is required in relation to the way precincts, specific controls and development area “polygons” are to be shown on maps.	It is submitted that a better approach to that suggested for an outline polygon (no colour identified), would be to provide for a hatched/symbol transparent overlay, (so that the zone beneath can be clearly identified) for each spatial tool and for these to be numbered and/or named on the plan maps so that individual precinct, specific control and development area can be identified with confidence.

F-4: Spatial planning tools (District) standard	Designations	n/a	The draft standard proposed a blue outline for designations. It is submitted that this will clash with the use of “blue” overlays areas for hazards.	It is submitted that designations should stand out clearly and that a red or bold black margin should be used as this is visually easy to identify.
F-5: Chapter Form standard	Relationship between Objectives and Supporting Policies	n/a	TCC submits that the separation of objectives and the policies that support them into two separate groups, overrides a bright line approach/ test between objectives and the policies that implement them and that this is at odds with good plan drafting practice. It is noted that this may be addressed through hyperlinks in an electronic plan, but unfortunately breaks the logical flow of hard copy text.	TCC submits that Objectives and their supporting policies should be grouped together for clarity of intent and connection between the provisions e.g. RES O1 Urban Design RES P1 Use of Urban Design Guides
F-5: Chapter Form standard	Table 25: Rule Overview Table; Table 26: Rule Table and Table 27: Rule Requirements table	n/a	It is difficult to visualise how these tables work without actual rule content. Greater Clarity is required around: The text for Table 25- what is actually required? It is noted that this appears to be discretionary and mandatory in different places in the Guidance Documents, and mandatory in the NPS text. (It is noted that the table numbers in the guidance documents do not match those numbers in the NPS). In Table 26 (although it refers to rule number) it is assumed that a specific activity is to be individually identified and then all the rules that might apply to that activity e.g. residential unit and all rules which apply are cross referenced There is then provision for activity status compliance where rule requirements are met and then all the matters that apply if a rule is not met. It is assumed that this is material is to be repeated for every separate rule that is broken, if there are individual different statuses or matters to be assessed, depending on the rule content? The actual rule requirements then follow in a separate table.	TCC submits that detailed guidance including working examples of these tables with actual text content, is required. This guidance should have priority over all the other guidance documents. (Note: Reference has been made to the Residential Chapter of the New Plymouth Draft District Plan to assist with visualisation, however this plan seems to vary from the NPS in that it mixes rule requirements, rule references and matters of control or discretion, in the activity and effects tables) In addition, a standard text and diagrammatic material on how the provisions work should be provided by MfE for the “How the Plan Works Chapter,” to ensure consistency across the country as to how the rule structure is developed and read. Clarification of the nature (discretionary or mandatory) of Table 25, is also sought.
CM-1: Definitions standard	Timescales for implementation of definitions	n/a	TCC supports the extension of the timeframe for implementation of CM-1 Definitions Standard from 1 year to at least 5 years (noting that Tauranga City Council is seeking alternative implementation timelines in the first point of this submission above). As noted by MfE in their evaluation report, definitions are an intrinsic part of RMA planning provisions and it is likely that the changes may be contested as being substantive or may trigger substantive issues. It is agreed that providing for a longer and “all standards together” implementation process will minimise potential risk, conserve resources and produce aligned plan provisions.	TCC supports the extension of the timeframe for implementation of CM-1 Definitions Standard from 1 year to at least 5 years. However TCC requests the implementation of the first set of National Planning Standards be provided for as part of next review of RMA Plans after the gazettal date of 2019. Alternatively, TCC requests that the Tauranga City Council be included in the list of Councils with 7 years to implement the National Planning Standards for the reasons set out in the first point of this submission.
CM-1: Definitions standard	Inclusion of guidance advice in the Standard	n/a	In reviewing the definitions standard it is noted that many of the definitions are further discussed in the Section 32 documents with clear "guidance" as to what definitions did or did not include; or where Councils could further split definitions into subsets e.g. commercial activity into specific commercial activities and community facilities further defined allow for "places of assembly"; or that Councils could further specify types of materials they would allow for in "cleanfill". It is of concern to TCC that, while this is generally reflected in mandatory direction 3 and this direction is supported, that legally it could be argued that the mandatory term stands alone and that it is the NPS term that must be used without any further specification. This would lead to outcomes unintended by the drafters of the standard. It is submitted that this material be moved from the Section 32 section and placed directly in the text of the Standard itself against the term being defined as a further mandatory direction rather than left in the Section 32 report or in guidance notes which it is assumed will not have legal weight in the event of a legal challenges.	It is submitted that material relating to specific detail of what is and is not included in a definition or where further specification is permitted be moved from the Section 32 section/guidance notes and placed directly in the text of the Standard/term itself thus having the legal weight of the standard itself.
CM-1: Definitions standard	Definitions standard - Matters Tauranga City Council support	n/a	TCC supports the mandatory direction 3(c), which advises that plans may include definitions that only apply to a subcategory or a narrower application of the terms defined in the Definitions table.	TCC seeks the retention of mandatory direction 3(c), which advises that plans may include definitions that only apply to a subcategory or narrower application of term defined in the Definitions table.
CM-1: Definitions standard	Definitions standard - Matters Tauranga City Council support	n/a	TCC supports the mandatory direction 3(d), which advises that plans may include locally defined terms that are not synonyms of a term in the Definitions table.	TCC seeks the retention of mandatory direction 3(d), which advises that plans may include locally defined terms that are not synonyms of a term in the Definitions.
CM-1: Definitions standard	Definitions standard - Matters Tauranga City Council support	n/a	TCC supports the mandatory direction 3 (g), which advises that if a definition included in a plan or policy statement, uses a definition from relevant New Zealand legislation, reference to the legislation and the definition must be included in the Definition table.	TCC seeks the retention of mandatory direction 3 (g) , which advises that if a definition included in a plan or policy statement, uses a definition from relevant New Zealand legislation, reference to the legislation and the definition must be included in the Definition table.

CM-1: Definitions standard	Definitions standard - Matters Tauranga City Council support	n/a	TCC supports the mandatory direction 3 (g), which advises that any definition may include diagrams to aid in the interpretation of the definition.	TCC seeks the retention of mandatory direction 3 (g), which advises that any definition may include diagrams to aid in the interpretation of the definition.
CM-1: Definitions standard	Definitions standard - Matters Tauranga City Council support	n/a	TCC supports mandatory direction 3 (h), which advises that guidance on how definitions relate to one another may be included. This may be, but is not limited to, the use of nesting tables or Venn diagrams.	TCC submits that the mandatory direction 3 (h) could be retained, which advises that guidance on how definitions relate to one another may be included. This however should not be limited to the use of nesting tables or Venn diagrams.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Appropriateness of term 'primarily' in relation to purposes	TCC considers that the use of subjective terminology e.g "primarily for" within several definitions at standard CM-1 introduces ambiguity to the inclusive purposes.	TCC seeks the removal of all reference to “primarily for” from the definitions to remove ambiguity.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Boundary	The definition refers specifically to "sites". On this basis, all other forms of boundary are excluded from the definition. Boundary is however used as part of a number of rules such as those relating to zone boundaries etc.	TCC request that the definition be amended so as to not exclude other forms of boundary e.g zone, precinct, property or activity.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Building	The reference to enclosed with two or more walls and a roof is clear. The "similarly enclosed" part of the definition is vague and uncertain.	TCC request that the definition be amended to remove "similarly enclosed" in favour of less ambiguous and subjective terminology.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Coverage	TCC do not consider that the proposed definition is the most effective way of illustrating the concept of "coverage" and this definition should be accompanied by a standard diagram to be used nationally for consistency.	The coverage definition should include a standard diagram to be used nationally for consistency.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Earthworks	The definition does not exclude gardening or landscaping works. Clarification on this matter is requested.	The definition should confirm what activities (e.g. gardening or landscaping) are excluded from the definition. Consideration should be given to a amalgamating this definition with the definition for land disturbance.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Footprint	This definition refers to "total area", which is not a defined term and is not measurable. In addition, the definition relates to structures only. This terminology is not consistent with the linkage between structures and buildings that is incorporated in other definitions. It is suggested a diagram be proved to clarify whether cantilevered parts of buildings are included in this definition.	Reference to "total area" should be amended to a defined and measurable term (i.e. Gross Floor Area). For consistency and informational purposes, the definition should refer to buildings/ structures - not just structures. It is suggested a diagram be proved to clarify whether cantilevered parts of buildings are included in this definition.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Functional need	The definition as currently worded is ambiguous in that it states “because the activity can only occur in that environment.” Significant regional infrastructure activity can occur in all environments but in coastal/harbour areas may need to traverse the CMA for network connections/efficiencies and the current definition wording could be said to exclude such activities in terms of a functional need, in these circumstances an operational need should also be provided for.	A further amendment to the definition of functional need is needed to provide for the specific circumstance where significant regional infrastructure activity traverses, locates or operates in an coastal environment and particularly a coastal marine environment.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Gross floor area	The definition is ambiguous in its scope and intent. Clarification is required on (a) the purpose of the definition and (b) what forms of development the definition is intend to be used for. It is considered that limiting the types of development where GFA is applicable (e.g. to commercial development only) is restrictive and unworkable in practice. TCC notes that the definition refers to "the total area of all floors of all buildings on the site", however a gross floor area does not inherently relate to ALL buildings on a site and can relate to the GFA of one building within a wider site. In the same vein, the definition is conflicting with other proposed definitions (e.g. allotments), which refers to a building (singular) GFA. Confirmation is sought that this definition would not conflict with the ability to use gross leasable floor area as a definition which is often used in commercial zones.	The scope and purpose of the definition should be defined within the definition and must include all forms of development. In addition, the wording must be amended to include building (singular) as well as buildings (plural) within a site. Confirmation is sought that this definition would not conflict with gross leasable floor area which is often used in commercial zones and that this term could continue to be seperated defined by Councils.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Height	TCC notes that this definition currently relates to structures only and not buildings.	For consistency with the other definitions in standard CM-1, this definition should be amended to include both buildings and structures.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Home business	At present, the definition excludes any reference as to whether there is a requirement for at least one individual who resides at the property full time to be involved in the business for the business to be "home based". Not making this specific means that stand alone small commercial activities (with no residential component) would be able to occupy buildings in the Residential Zones which is not the intent of the the home based business provisions.	TCC requests that the definition is amended to provide that a home business must involve an individual who is a full time residential occupant of the property.

CM-1: Draft Definitions standard	Table 29: Definitions Table	Land disturbance	The definition references "cleanfill", which is fundamentally incorrect as "cleanfill" is defined as the area where inert material is placed. Conversely, the definition is referring to the material not the area.	TCC request that the definition is amended to reference the material rather than the area.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Minor residential unit	The definition provides insufficient clarification on what constitutes a "self-contained" residential unit, in comparison to an accessory building.	For avoidance of doubt TCC request that the definition should include clarification on the minimum requirements for a self contained unit. In addition, reference should be made in relation to the intention for floor area limits to be set locally.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Net floor area	The definition specifies that the term "net floor area" specifically relates to buildings/structures that include tenancy occupation, thereby excluding all buildings/structures of non tenanted occupation from net floor area considerations. The issue here is that the calculation of area is not related to/ should not be restricted by the use of that building.	TCC requests that this definition is amended to remove the proposed association with tenanted buildings/ structures or the purpose/use of the definition is clarified.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Net site area	As proposed, the definition does not exclude land providing legal access into the subject site from the net site area calculation. TCC considers that this exclusion is necessary to protect the interests of future occupants, particularly for residential developments. It is also queried whether it is vehicle access that is to be excluded not pedestrian etc.	TCC request that the proposed definition is amended to incorporate an exclusion from the net site area for land, within the site, that provides legal access to that site. It is also requested that it be clarified that it is vehicle access that is to be excluded not pedestrian etc.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Reverse sensitivity	It is submitted that this definition should also address the issue of impacts of a sensitive activity on future activities that are anticipated by zoning but not yet established.	TCC request that this definition be amended to address the issue of a sensitive activity impacting on future activities that are anticipated by zoning but not yet established.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Residential activity	The definition is ambiguous in relation to exactly what living accommodation encompasses e.g. Airbnb or private holiday accommodation.	TCC request that clarification is included within the definition in relation to the term "living accommodation".
CM-1: Draft Definitions standard	Table 29: Definitions Table	Residential unit	The reference to household is problematic as it is open to arguments as to what constitutes a household - can this be addressed by a further definition or standards within a plan?	Clarification is requested on whether what constitutes a household can be further defined or addressed by standards within a plan.
CM-1: Draft Definitions standard	Table 29: Definitions Table	Visitor accommodation	As identified above, the use of the term "primarily for" is ambiguous.	TCC request that the wording of this definition is amended to include a definable measurement for the amount of time land / buildings must be used for the accommodation of non-residents to become "visitor accommodation".
CM-2: Draft Noise and Vibration Metrics Standard	Noise and vibration	n/a	The Draft NPS refers to the management of noise emissions and vibration effects. The Resource Management Act however refers to noise but not to vibration.	Clarification is needed as to whether the control of vibration is a discretionary matter where Councils can make the decision to not have provisions for vibration.

24 August 2018

Ministry for the Environment
PO Box 10362
Wellington 6143
Attn: Adam McCutcheon
Policy Analyst, National Planning Standards

Email: [REDACTED]

Dear [REDACTED]

Submission on the draft first set of National Planning Standards

The Department of Corrections (the Department) supports in principle the draft first set of National Planning Standards.

The Department's submission on the draft first set of National Planning Standards is outlined in the **attached** document.

We acknowledge the engagement to date between the Ministry for the Environment and the Department and welcome ongoing discussion as the National Planning Standards are developed.

Yours sincerely,

[REDACTED]

Enclosed: Submission on the draft first set of National Planning Standards, dated 24 August 2018

Ministry for the Environment
PO Box 10362
Wellington 6143
Attn: [REDACTED]
Policy Analyst, National Planning Standards

Email: [REDACTED]

Dear [REDACTED]

Thank you for providing the opportunity to meet with the team last week and discuss the Draft National Planning Standards. We appreciate being able to discuss the Department of Corrections' feedback with you in the first instance at that meeting. We have taken into account your responses to our preliminary feedback and set out in this letter our suggestions where we think the National Planning Standards would assist Corrections.

Background

By way of background, the Department of Corrections ("the Department") is responsible under the Corrections Act 2004 for enforcing sentences and orders of the criminal court and the New Zealand Parole Board. In meeting this responsibility, the Department establishes and operates custodial and non-custodial corrections facilities.

The Department acknowledges that a different RMA approach is necessary for custodial and non-custodial facilities in Plans and Policy Statements and this feedback seeks different provisions for each.

Custodial corrections facilities include prisons and detention facilities. The purpose of custodial corrections facilities is to protect public safety and provide rehabilitation services to prevent re-offending in the future. Custodial corrections facilities address re-offending through education and training, therefore increasing an offender's opportunities for employment by providing relevant work skills. This will subsequently result in a reduction in re-offending and increase social and cultural wellbeing within communities. Custodial corrections facilities typically include a wide range of activities in addition to prisoner accommodation. These include industries and training to assist in prisoner rehabilitation, staff and visitor facilities.

Custodial facilities are designated in district plans by the Minister of Corrections. Their underlying zoning varies according to location, which ranges from urban to remote rural. This feedback seeks that the National Planning Standards are structured in a manner that will provide proper policy recognition of these facilities in planning documents in recognition that they are critical social infrastructure. The feedback also seeks that appropriate underlying zoning for custodial facilities is available for territorial authorities to use in District Plans, and that the risk of reverse sensitivity effects on custodial facilities is recognised and managed.

Non-custodial community corrections sites include service centres and community work facilities. Non-custodial services and their associated infrastructure play a valuable role in reducing reoffending. Community work helps offenders learn vital skills and give back to their community, and in return the community benefits from improved facilities.

The service centres provide for probation, rehabilitation and reintegration services. Offenders report to probation officers as required by the courts or as conditions of parole. Department staff also use service centres to undertake assessments and compile reports for the courts, police and probation officers. Service centres may also be used as administrative bases for staff involved in community-based activities. The overall activity is effectively one of an office where the generic activities involved are meetings and workshop type sessions, activities which are common in other office environments.

In addition to these service centres, the Department operates community work facilities. Community work is a sentence where offenders are required to undertake unpaid work for non-profit organisations and community projects. Offenders will report to a community work facility where they subsequently travel by vans to their community work project under the supervision of a Community Work Supervisor. Service centres and community work facilities may also be co-located on the same site.

Community corrections sites support offenders living in that community. The Department therefore locates its sites in areas accessible to offenders, and near other supporting governing agencies. Commonly sites are located in commercial or business areas, but may also be located in industrial areas. Some are designated by the Minister of Corrections, but the majority are subject to District Plan zone provisions.

The Department has spent considerable time and effort in recent years to achieve standard definitions for community corrections facilities in District Plans throughout New Zealand as they are reviewed. In each instance the case has been consistently argued that its facilities are an essential part of social infrastructure and necessary for the wellbeing and safety of communities. Standard provision for the Department's facilities in District and Regional Plans reduces consenting risk and allows for the Department to plan with greater certainty where its facilities will be located. Certainty in forward planning is necessary for the Department where it is faced with an increasing prisoner muster and typically long lead in times to plan, consent and commission new facilities. The nature of community corrections facilities is such that they typically feature the same or similar range of activities, their effects are similar, and a limited number are provided in each locality. This means they are entirely suited to a standardised approach in District Plan. The Draft National Planning Standards offer the opportunity to establish a standardised nationwide approach for community corrections facilities, as distinct from the more generic 'community facilities', which often do have the same locational requirements.

The National Planning standards should also recognise and provide for opportunities for co-location of Government services, for example community corrections facilities with Police facilities. This feedback offers some suggestions in this regard.

The Department's custodial and non-custodial assets throughout the country are likely to be affected in some capacity by the implementation of the National Planning Standards. As discussed in this feedback, the National Planning Standards provide the opportunity for the Department to achieve standard Plan and Policy Statement provisions throughout New Zealand for its facilities in doing so provide greater certainty.

The Department's specific feedback on the draft provisions of the National Planning Standards are outlined below.