



Guidance on consequential amendments to policy statements and plans

Purpose

This guidance is for councils implementing the 2019 first set of National Planning Standards (the standards) who will update their existing policy statements or plans rather than implement the standards within proposed policy statement or plan review processes. It focuses mainly on consequential amendments to existing plans but is also relevant to amendments to existing policy statements.¹

Introduction

Implementing the standards is now underway, as required by the timeframes set out in 17. *Implementation Standard*. To implement the standards, you will need to revise your plans or proposed plans in accordance with the standards.

Most revisions will be primary amendments, necessary to meet the new structural and other requirements as set out in section 581(2)(a) and (3)(a) of the Resource Management Act 1991 (RMA). Where these amendments are required by a mandatory direction in the standards, they must be made without using any of the processes set out in Schedule 1 of the RMA, unless part of a full plan review. If the mandatory directions in the standards are implemented in a full plan review those aspects may not be changed through the submissions process.

Adopting the standards may also require changes to existing provisions to avoid duplication or conflict – so the provisions maintain their effect and the plan remains coherent after the standards have been applied. These ‘consequential amendments’ also must be made without a Schedule 1 process.

How to determine whether an amendment is consequential or not was a common issue raised during the preparation of the standards. Many of you were keen to have a better idea about what would fall within the scope of a consequential amendment (and therefore permissible without a full Schedule 1 process).

¹ Where this guidance refers to ‘plans’, references are also relevant to proposed plans, policy statements and proposed policy statements.

Primary amendments

Making a direct change to a plan as required by the standards is a primary amendment and therefore not consequential.

Examples of primary amendments include:

- a. Inserting the unique identifiers of requiring authorities as specified by table 15 of 9. *Designations Standard* and in accordance with Directions 27 and 28 of 10. *Format Standard*.
- b. Inserting material into the location required by the standards. For example, for district plans, placing material on cross-boundary issues into the 'Cross-boundary matters' chapter to comply with 4. *District Plan Structure Standard* and Direction 7 of 6. *Introduction and General Provisions Standard*. Or, for regional plans, inserting relevant objectives in the 'Integrated objectives' chapter to comply with Direction 6 of 3. *Regional Plan Structure Standard*.
- c. Including objectives, policies and rules into a multi-zone precinct where they were previously located in several chapters. According to Direction 11 of 4. *District Plan Structure Standard*, the content must be included in a relevant chapter under the Precincts (multi zone) heading in 'Part 3 – Area-specific matters'. It must also be appropriately identified eg, PREC1. Directions 1, 2 and 25 of 10. *Format Standard* require provisions to be grouped together according to type, and re-numbered eg, PREC1-O1 Character of towns, PREC1-O2 Housing options, PREC1-P1 Development and so on.
- d. Inserting a term and its definition as set out in 14. *Definitions Standard*, in the Definitions list of a policy statement or plan, if the term is used by that policy statement or plan in the same context.

Consequential amendments

The RMA anticipates in section 58I(3)(d) that consequential amendments will be required when plans are updated to implement the standards. The first set of standards focuses on creating a common structure, form and definitions for plans and policy statements. These standards are not intended to alter the effect or outcomes of policy statements or plans. The standards are deliberately neutral about the way plans manage activities and their effects to achieve particular outcomes.

The factors required to meet section 58I(3)(d) are:

- there must be a primary amendment directed by the standards
- the change must be consequential to that primary amendment, and
- the change must also be necessary to avoid duplication or conflict with the primary amendment.

So for an amendment to be considered consequential and not go through a Schedule 1 process, it must meet two tests. First, it must be consequential and second, it must also be 'necessary to avoid duplication or conflict with the amendments'. If a proposed amendment passes these two tests it will not trigger Schedule 1 and can be made directly into the plan. If only one of the tests is met then the amendment is beyond the scope of the section and a Schedule 1 process will be required.

We envisage many of the consequential amendments will occur as a result of revising plans to make the new definitions from 14. *Definitions Standard* work well. Direction 3 of that standard states:

When a definition in the Definitions List is used, consequential amendments may be required to the policy statement or plan to ensure that the application of the definition does not alter the effect or outcomes of policy statements or plans.

New standards developed in the future may contain specific plan content. This means the scope of consequential amendments may be different for future standards.

Test 1: Does it flow from the primary amendment?

In the standards, consequential amendments are a matter of cause and effect, following ‘as a result or consequence of’ the primary amendment to the plan. ‘Consequential’ does not imply the amendment is minor, technical or insignificant. To be consequential, the proposed amendment needs to occur as a result of the primary amendment. Provided the amendment follows as a result or consequence of amendments required by the standards, it can be consequential even if it has an important or substantive effect.

In submissions on the draft standards, some submitters sought to make a connection between amendments made under RMA Schedule 1 clause 16(2) for minor errors, and consequential amendments for the standards under section 58I(3)(d).

Clause 16(2) states:

A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.

Submitters suggested the scope of consequential amendments for the standards would therefore be quite narrow. However, we see clause 16 as being distinct and serving a different purpose. It is concerned with minor effects and errors, whereas the requirement for ‘minor’ does not appear in section 58I.

Our view is that the limits to consequential amendments are around their function (to avoid duplication or conflict), not their size.

Some factors to consider

While there are no statutory limits on the size or significance of a consequential amendment, we think there are some general factors that indicate the amendment may be beyond the limits of a consequential amendment. These can be considered to reduce the risk of these amendments being successfully challenged. For example where:

- a proposed consequential amendment results in an effect on the plan which is greater than the primary amendment
- the nature of property rights changes and there is no consultation on those changes
- a consequential amendment is proposed to a provision that sits higher in the planning hierarchy than the primary amendment (ie, a consequential change to an objective or policy related to a primary amendment to a rule). Consequential changes usually flow in accordance with the planning cascade from objectives and policies down to rules. However, this is not always the case. We can envisage a situation where a consequential change to objectives and policies could be justified where a change to a definition or rule causes it to conflict with a pre-existing objective or policy.

Test 2: Is it ‘necessary to avoid duplication or conflict’?

Being caused by a primary amendment is only part of the test under section 58I(3)(d). In addition, amendments also need to be ‘necessary to avoid duplication or conflict with the amendments’.

Avoid duplication

Having inserted the amendments required by the standards, you will need to carefully check whether any amendment creates a repetition of a provision (such as a definition, objective, policy or rule) or a component of one of those provisions already in a document. You can remove the pre-existing duplicate as a consequential amendment. For example, implementing *4 District Plan structure standard* will require particular provisions to be moved into the named chapters, with any duplicate provisions being removed from their existing locations.

Avoid conflict

The provision ‘to avoid conflict’ allows standards to be implemented and flow-on changes to be made so plans or policy statements don’t become incoherent or internally inconsistent. This ensures the intent behind the standards is not hampered by inconsistencies elsewhere in the planning document.

Because policy statements and plans must give effect to the standards, any conflict or inconsistency must be resolved in favour of the standards. This means some pre-existing content may have to be removed or amended. This may change how the plan is intended to function for a given plan provision. Making consequential amendments allows the plan to return to its intended policy outcome.

Some examples of conflicts could include where:

- the policy statement or plan contains a pre-existing, different definition of a term defined in the standards
- the policy statement or plan uses a different term for a matter defined in the standards (ie, a synonym)
- the plan contains a rule that relies on a definition that has been changed by the standards, preventing the rule from functioning in its intended form
- maps contain a symbol or colour which the standards now assign to a different purpose
- the plan refers to methods of measurement which differ from what the standards require, such as with rules managing noise emissions.

Examples of consequential amendments

Building and structure

The standards define ‘building’ as:

“a temporary or permanent movable or immovable physical construction that is:

(a) partially or fully roofed; and

(b) fixed or located on or in land;

but excludes any motorised vehicle or other mode of transport that could be moved under its own power.”

‘Structure’ has the same meaning as in section 2 of the RMA which is “means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft”.

In many plans, adopting the definition of ‘building’ will require new or amended rules because existing definitions of ‘building’ often specify a number of exclusions which are not then bound by the rules that apply to buildings. For example, a new permitted activity rule might be needed to

describe buildings that are permitted in terms of their area and height. Similarly, many existing plan definitions of 'building' require buildings to be 'structures' and, as such, fixed to land. However, this is not a requirement of the standards' definition of 'building'. Amendments to rules may be required to ensure buildings not fixed to land are not controlled by rules if they previously were not. The policy intent is that this kind of rule amendment is consequential provided it does not alter the effect or outcomes of the plan. Definitions by themselves are planning-neutral; their impact is determined by the plan's objectives, policies and rules. If you wish to use the standards as an opportunity to change your plan's approach to planning for structures, that amendment would not be consequential and a Schedule 1 process will be required.

Earthworks

The standards define earthworks as:

“the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation and disturbance of land for the installation of fence posts.”

Let's say that a plan has a slightly different definition which makes greater use of exclusions:

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

- (a) the placement of cleanfill material, or*
- (b) land preparation, or*
- (c) construction, repair, alteration or maintenance of bores, or*
- (d) the maintenance of walking and other recreational tracks, or*
- (e) the placement of roading aggregates during road and track works, or*
- (f) digging post holes, or*
- (g) planting trees.”*

Some of these exclusions align with the new definition (for example 'digging postholes'), while others conflict (for example, the construction of bores). The effect of any rules in the plan which rely on bore construction not being earthworks will need to be reviewed. The intent of 14. *Definitions Standard* is not to alter the effect or outcomes of plans. Instead, the earthworks rules would need to be amended to ensure they do not capture the previously excluded activities.

Changes that are not directly related to the standards and require a Schedule 1 process

In restructuring your plan, you might come across aspects of the plan which could be improved. For example, rules which aren't obviously linked to objectives or policies. Creating new objectives and policies to support these 'orphan rules' would likely require a Schedule 1 process.

Other examples where a Schedule 1 process may be required include proposed amendments that:

- are not related to the standards (ie, fixing a pre-existing problem with the plan)
- make major, sweeping changes to objectives and policies

- enlarge the effect of the primary amendment made by the standard. For example, the standards do not change the specific thresholds for noise rules, only how they are measured. So a change to permitted noise levels is unlikely to be consequential
- introduce additional restrictions to property rights.

Final comment

The checklist on the next page is designed to help you decide whether or not an amendment would require a Schedule 1 process. We expect to update this, and other standards guidance, as we learn more from your experiences implementing the standards, and user groups working with plans. Further support and examples may also be available by checking the RMA-PS discussion group on the [SOLGM LGConnect](#).

Checklist for consequential amendments

Use this checklist to test if a consequential amendment may be within the scope of section 58I(3)(d).

Question	Decision	Comment
Is the amendment directly required to comply with the standards?	Yes	This is a primary amendment. No further consideration required.
Requirement		
Does the proposed consequential amendment follow as a result of the primary amendment required by the standards?	Yes	Record which provision of the standards and plan triggers the amendment.
Indicating factor		
Is the proposed consequential amendment a <i>logical and reasonably foreseeable</i> result of the primary amendments?	Yes	Is it more than just desirable? Does it align with the scope and intent of the standards amendment? Is it consistent with retaining the nature and effect of the rule framework unaltered?
Requirements		
Does the proposed consequential amendment avoid <i>duplication</i> or does it avoid <i>conflict</i> , where those are caused by an amendment required by the standards?	Yes	State which one, and how the amendment avoids the duplication or conflict.
Is the proposed consequential amendment <i>necessary</i> for avoiding this duplication or conflict?	Yes	Is it more than just desirable? Are there any other ways that the duplication or conflict could be resolved? Are any of them practical? What are the risks and benefits?
Indicating factors		
Does the proposed consequential amendment occur at the same or lower level in the planning cascade than the primary amendment (eg, methods)? Is the orthodox planning cascade maintained? Is the proposed consequential amendment necessary to ensure the primary amendment	Yes	“The tail should not wag the dog” – objectives and policies drive methods of implementation, not the other way around. If the primary amendment is to a rule or a definition, it may be difficult to justify a change to objectives and policies as ‘consequential’; although this may be the case in some circumstances.

Question	Decision	Comment
required by the standards, including the intent behind it, is fully adopted?		
Does the proposed consequential amendment enlarge the primary amendment or affect private property rights and/or use of land? Are the effects of the amendment otherwise significant?	No	If yes, seek legal advice.
Does the proposed consequential amendment still align with existing objectives and policies?	Yes	If no, seek legal advice.

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