
Draft Set of National Planning Standard Released for Consultation

The first draft set of National Planning Standards have been released for consultation under the Resource Management Act 1991. Designed to reduce unnecessary variation across regional policy statements and regional and district plans, the proposed standards direct a templated structure, form and some content across these documents. Once these final standards have been notified, councils will have between 5 – 7 years to amend their planning documents accordingly. While we do not anticipate that compliance with the proposed structure and form standards will be overly challenging (particularly for the bigger councils such as Auckland and Christchurch), standardisation of the definitions is more controversial.

Background

The mechanism for allowing central government to design and implement standards which could be applied nationally or for specific localities or regions was introduced in 2017 among a suite of other changes to the Resource Management Act 1991 (RMA).

The change sought to recognise that while the RMA is necessarily a devolved system in which councils have the ability to tailor their individual regional and district plans and policy statements, the large amount of variation that has consequently occurred has made these documents harder to prepare and use (impacting on efficiency) and has detracted from councils' ability to invest more time and resource into addressing truly local planning matters. Some basic standardisation of these documents led by central government is considered to assist in addressing these issues, in addition to creating better alignment and information sharing between councils, and increasing navigability of these documents for professionals and plan users.

To qualify for standardisation, the Minister for the Environment (or Minister for Conservation if the matter relates to the coastal marine area) must consider that the matter in question:

- requires national consistency;
- is required to support the implementation of a national environmental standard, a national policy statement, a New Zealand coastal policy statement or regulations made under the RMA;
- is required to assist people to comply with the new procedural principles set out in section 18A of the RMA.

There are a range of matters to which the Minister may have regard when developing a national planning standard, and a range of higher order documents to which those standards must either give effect to or be consistent with.

For mandatory directions, councils are not required to use the normal Schedule 1 process to amend their plans to align with these standards, avoiding any added cost and delay associated with the standard consultative process of plan changes. For discretionary directions (where councils have options over which provisions they implement), one of the Schedule 1 processes must be used. Further, while the RMA stipulates that councils have a year to implement mandatory directives, it also authorises the Minister to amend that timeframe in the direction.

Conceptually, these standards make perfect sense. However as usual, the devil is in both the detail of the standards and implementation requirements, which brings us to the first draft set of national planning standards which have been notified for consultation.

Round 1: the first set of planning standards

The first set has been produced in accordance with a specific direction in the RMA, which required them to include a structure and form for policy statements, definitions, and requirements for the electronic functionality and accessibility of policy statements and plans. In summary:

- The structure standards set a common framework for plan provisions that all plans must use. The structure is made up of parts, then chapters then sections. Some chapters are required in all plans, while others are only required if they are relevant to a district or region. Most notably, a set of 27 zones (divided into 'zone families') will be standardised, and will include a purpose statement for each of the zones which guides what it does and their colour(!). Councils may still create special purpose zones but only in specific circumstances where they do not overlap with the purposes of other zones. Because Councils have discretion over which zones they will include, a Schedule 1 RMA process must be used to make these changes.
- The form standards are principally concerned with:
 - improving the electronic accessibility and functioning of plans across New Zealand;
 - standardising mapping formats (colours and symbols) and the use of specific spatial planning tools such as zones, overlays, notations, precincts and structure plans; and
 - combining objectives and policies with rules which are to be included in a table format.

- Discussed in further detail below, the content standards require the adoption of 109 terms and their definitions, and the use of specific noise and vibration metric standards. Nearly half these terms use the definitions given in the RMA, NZ Standards and other Acts.

While the default RMA timeframe for implementing planning standards is one year, in response to feedback from Councils, the Minister has decided to extend the implementation timeframes for these standards to seven years for councils that have recently adopted their second generation plans, and five years for others.

Interestingly, the decision to extend the timeframes was made in preference to the request from Councils that implementation simply be required when Councils undertake the next review of their plans. For reasons we discuss in further detail below, some of these standards will require potentially significant re-drafting of the existing plans and policy statements which arguably could be more effectively achieved as part of a wider review.

Discussion

While many of the proposed standards will be (to varying degrees) administratively burdensome for councils (and certainly teething issues can be expected), reducing variation in structure and form in the manner proposed should largely avoid any impacts on the substance of the planning documents. However, two areas which are bound to cause more headaches for councils are the inclusion of standard zones and new definitions (being those not already defined in the RMA, NZ Standards or other legislation).

As set out above, councils have discretion to choose at least one of the 27 zones for inclusion in their plans. The prescribed zones are accompanied by broadly drafted purpose statements (which the zone provisions must fulfill), but the drafting of the objectives, policies and rules for the zone remains with councils. While it is not clear from the drafting, it would seem that councils cannot comply with this directive by simply including one of the 27 zones. The discretion to not include a prescribed zone may be exercised only where the prescribed zone is not relevant for the council in question (i.e. they have no port for which a zone could be used). Further, councils can only add special purpose zones where proposed land use activities and anticipated development within a defined area are:

- significant to the district or region;
- could not be enabled by another zone; and
- could not be enabled by the introduction of an overlay, precinct, designation, development area, or specific control.

In summary, the onus appears to be on councils to demonstrate that any inconsistency between its zones and the prescribed zones are because the prescribed zones or the use of the spatial planning tools are somehow inadequate.

We anticipate that existing zones in most plans would be largely consistent with the prescribed zones, meaning that implementation is unlikely to cause significant

issues. However, the Auckland Unitary Plan is possibly the most notable exception to this, given the plethora of particularly residential zones which were designed to account for the significant growth and associated housing pressures being experienced.

While some of these zones may fit within the prescribed residential zones, others (for example the Mixed Housing Urban Zone or Mixed Housing Suburban Zone) would more appropriately be identified as a sub-zone rather than a precinct or an overlay (which Auckland Council would need to use if it wanted to differentiate between similar density zones but for different areas). Given the resource that has gone into the creation of the current zones, simply removing them or subsuming even some of them into the same prescribed zone may be extremely unpalatable. While overlays and precincts could assist in distinguishing these zones, using these tools to affect what is really a zoning matter seems akin to trying to fit a square peg into a round hole.

In summary, even with the seven year implementation time frames for some councils, we are expecting to see some push back on this standard. One solution may be amending the timeframes for implementation of the prescribed zones to the point when the relevant Council is undertaking its next full review.

The prescribed definitions are another area likely to cause some challenges for councils. While some of the definitions are uncontroversial, others may have significant impact on the broader operation of the relevant plans which may in turn require more widespread amendment. Because the inclusion of the definitions is a mandatory directive, councils do not have to use the Schedule 1 process. However, consequential amendments to the plan beyond the scope of section 581(3)(d) do require the full Schedule 1 process. (Section 581(3)(d) refers only to consequential amendments needed to avoid duplication or inconsistency).

Plan for example, will require consequential amendments to many other rules simply in order to make those rules coherent. The current definition of “building” in the Christchurch District Plan includes *“any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land”*. In that sense, the definition effectively operates as a rule in itself. The prescribed definition of “building” in the standards however is: *“any structure, whether temporary or permanent, moveable or fixed, that is enclosed with 2 or more walls and a roof or any structure that is similarly enclosed”*. Consequently, if the prescribed definition is included in the Christchurch District Plan, any activity description for “building” must also be amended (possibly using the Schedule 1 process) to include the action of erection, reconstruction, placement, alteration or demolition of any structure.

There are a number of other examples of prescribed definitions which will not only impact on the operation of the wider plan, but which may also inadvertently exclude activities which have relied on existing definitions to establish in certain areas. The prescribed definition of “community facility” for example requires the facility to be “non-profit”, a somewhat arbitrary characteristic which does not feature as an exclusive requirement in the Auckland Unitary Plan definition or the Christchurch District Plan definition.

Similarly with the zoning, it would seem to us to make a great deal more sense to require councils to include these definitions when they next undertake a review of their district plan, rather than requiring them (even within seven years) to override the existing provisions (and consequently the significant resource expended to develop them) and replace them with new provisions which have been developed without reference to each particular setting in which they will operate. Again we expect to see feedback to that effect when submissions are published.

From here

The Ministry for the Environment is now accepting submissions on the draft planning standards which are available for your review here

<http://www.mfe.govt.nz/publications/rma/draft-national-planning-standards>.

Submissions close on Friday 17 August 2018. The indicative timeframes suggest that the finalised version of these will be gazetted in April next year.

Greenwood Roche is following the development of these planning standards closely and our resource management team is more than happy to answer any questions you may have or assist you if you would like to draft a submission.
