



Submission: National Planning Standards Discussion Papers

Prepared by New Zealand Planning Institute (NZPI)

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Summary

NZPI offers this submission on behalf of the New Zealand Planning Profession about proposed Ministry for Environment National Planning Standards (NPSs). Background to the submission is contained in the next two sections (Introduction and Overview). The next section reports feedback provided by members to an MfE administered survey which explored attitudes to proposed NPSs and aspects of the consultation process. The final section highlights important advice contained in officer reports about the proposed NPSs prepared by Auckland and Wellington City Councils.

Introduction

The RLAA 2017 introduced a new type of national direction in the form of national planning standards (NPSs) which seek to improve the consistency of resource management plans and policy statements.

The Minister for the Environment has two years to produce the first set of standards which must cover, at the minimum:

- A standard structure and form for policy statements and plans, including how plans reference national directions including national policy statements, national environmental standards and regulations;
- Standardized definitions; and
- The requirements for functionality and accessibility of plans and policy statements

During this initial NPSs preparation phase, the Ministry for the Environment (MfE) is consulting in several ways including seeking feedback on options contained in nine discussion papers. NZPI with Resource Management Law Association (RMLA) worked with MfE arranging a “roadshow” of meetings up and down the country to which members of both organisations have been invited to provide feedback direct to MfE officials. NZPI is aware that considerable concern has been expressed at those roadshow meetings by experienced resource management planners and lawyers.

NZPI has examined advice prepared by officials for Auckland Council and Wellington City Council, responses to an MfE survey of attendees of the above-mentioned “roadshow” about NPSs and the quality of planning, and is in receipt of correspondence from concerned members who have asked NZPI to prepare submissions for the planning profession as a whole. Hence this submission.

Overview

NZPI's preliminary examination of the feedback it has reviewed suggests there are huge costs and other risks associated with a full scale implementation of the set of NPSs that are envisioned in the discussion papers which could lead to nationwide standardization of planning.

This could result in a situation where the professional planner is only doing inspections, approvals and audits of the present situation. Future planners would undertake very little policy, spatial planning, urban form or other planning work because that work would have been deemed already done – built into centrally produced national planning standards.

It is important that a good and productive balance is struck between central government objectives and Local Government's purpose. These issues are complex and multi-faceted. Central Government must, of course, pass the empowering laws that permit planning. But the Government must then stand back and let local government get on with preparing the 'regional', the 'district' and the 'community' plans. NPSs could provide useful cost savings tools for Local Government because they won't have to reinvent the wheel. However planning is the most senior function undertaken by Local Government. Regional Plans and District Plans are not a function for central government. Some uniformity of style and definitions may be desirable. But the plans need inspiration, best practice, and forward thinking, reflecting the particular characteristics of each and every region, district and community and ultimately be a tool that communities can engage with and rely on. The NZPI knows from the experience of its members that many policy issues are unique to a region or territory, and cannot and should not be accommodated at a national planning level. Intelligence, skill and effective leadership is what is required not a wholesale reliance on 'National Planning Standards'.

If MfE would make thorough and professionally rigorous assessments of the most successful planning provisions in a selection of current Regional and District Plans and 'seed' their contribution through the publication of brief quality assessments, (rather than seeking to drive the system using central government standardisation), they would be providing effective and practical exemplars rather than one-size-fits-all standards, and doing a greater service to the nation's planning.

Nevertheless, NZPI accepts that the law now requires the implementation of National Planning Standards. The issues and considerations that have emerged in NZPI's analysis of what is contained in the discussion papers are summarized as follows:

- **District Differences:** Particular planning issues differ across New Zealand and between districts and defy standardisation. Examples include sunlight angles, ground geology, rainfall patterns, urban heritage and urban morphology. District Plan policies and rules that relate to these issues differ in different parts of the country because the effects are different;
- **Costs and Staging:** Given the likely costs and resource requirements of wholesale implementation of MfE's proposed NPSs, NZPI considers that a staged approach would be more appropriate, with the first stage emphasizing NPSs changes to statutory documents which do not require full review of District Plans or Regional Policy Statements;
- **District Plan Structural Differences:** Most of the building blocks of District Plans consist of elements that are interpreted and defined in definition sections. cursory examination indicates these building blocks vary between Districts, reflecting their different histories and morphologies, with consequential differences that persist throughout the detailed provisions in the plan, but generally with the same overall planning outcomes. Standardising definitions will require significant consequential redrafting but with minimal changes in outcomes;

- **District Admin System Differences:** Given the differences in computer data systems that form the heart of district plan administration systems and which have been developed to deliver local district plan requirements and functions that have evolved over time (eg the GIS), it is likely that high impact NPS changes will not be able to be implemented in the same way across New Zealand. In addition changes made in one part of the planning system often lead to unintended and unpredictable consequences in other parts of the system;
- **Timing:** Given the momentum toward a full redesign of NZ's planning systems, NZPI considers that this is not the right time to be requiring expensive reviews of most of NZ's RM statutory planning documents.

In closing this overview, NZPI advises strongly that the principle: “form follows function” has always been an appropriate organizing principle for planning and for planning systems. Fundamentally, changing word definitions and document structures risks putting the cart before the horse, forcing a reversal of rational planning processes. NZPI suggests that a more productive approach to standardization of New Zealand planning systems would have been to prepare a set of function standards. These would prescribe in functional terms the types of processes and actions that citizens and administrators should expect from their District Plan. How those functions would be actioned (ie the form of the plan) would be the necessary and particular form for each District.

There may be benefits to standardizing those matters that always cross boundary lines – such as infrastructure provisions – to ensure that network utility providers have greater certainty of approach and outcome.

NZPI / RMLA Member Feedback in MfE Survey

NZPI responded to an invitation from MfE to provide a question in an online survey about MfE's June regional workshops on Planning Standards and the Resource Legislation Amendment Act (RLAA). The survey attracted 77 respondents - which is about 10% of the number of workshop participants. While the sample size is not large it provided useful and informed qualitative research information.

NZPI's question put in the MfE survey was this:

NZPI would like to know attendees' professional opinion about the effect that the National Planning Standards will have on the quality of New Zealand's planning system. Please write your thoughts on this below.

Extracts from this feedback that is representative of all of the feedback are provided below under various headings. Comments are cut and pasted from MfE's survey report and recorded against the New Zealand city where the respondent is based.

Overall comment

Several respondents provided comprehensive feedback addressing a number of issues. Given the time and effort put into such survey comments – and their frequency – NZPI considers they should form a significant part of MfE's consideration. They include:

Auckland	I generally support having NPS's available for Councils to adopt at their discretion but am extremely concerned about and oppose the compulsory adoption. I consider the NPSs should be voluntary. If there is a strong mandate for NPSs to become mandatory, they should be adopted at the next plan review so new provisions can be appropriately drafted to accommodate the NPSs. I oppose mandatory adoption for the following reasons: <ul style="list-style-type: none">- compulsory introduction will nullify the investments Councils have made in existing Plans (especially those recently through the hearings process). This applies to large and smaller Councils.- plans have been carefully crafted; introducing new definitions or provisions will result in unforeseeable consequences- formulation of NPSs and the proposed introduction process into Plans almost excludes community participation (and the ability of planning professionals to ensure the document is "workable").
Nelson	Very much an open question - not all planning challenges are equal in size, complexity/simplicity, locational and resource differences mean there are not universal answers for all things. Planning is not a 'paint by numbers' discipline. There may be some attributes and definitions that can be standardised but zones, overlays, policies and objectives are not easily nationalised. NPS work was very biased to TA planning functions - did not fit well with RC or unitary challenges - in danger of losing the benefits that go with 'integrated' resource management.
Dunedin	I have serious doubts that the proposed National Planning Standards will improve the quality of New Zealand's planning system. I think they would do better to work on National Policy Statements and National Environmental Standards on appropriate matters. Working on definitions, and specific activities such as Port activities may also be of general benefit. The current proposal appears to run rough-shod over community engagement and local decision making, and it is difficult to see how this will be of benefit.

Costs and Benefits

Most survey comments raised questions about the likely costs and benefits of implementation of the full range of NPSs proposed by MfE. A number advised of alternative actions that could be taken to improve statutory documents at similar cost but with greater proportionate benefit.

Auckland	Overall I think the concept is great, particularly the definitions work, but the devil will be in the detail as to how the standards are implemented and at how much cost to councils to introduce. Definitely need to allow sufficient time for councils to implement the standards effectively, and to avoid any loop holes in provisions.
Auckland	Strongly disagree with them... Implementation will be complicated and expensive. Need to focus on issues and robust and integrated approaches.
Auckland	The standards will as currently crafted cause a significant diversion of the planning profession for negligible real gain to planning outcomes, costs of consenting, time for processing. Opportunity cost is ability to implement other NPS, NES and to address real natural and physical env planning issues in each district / region in the meantime.
Hamilton	Some Council's have worked hard to get their second generation plans notified and are working to resolve appeals. It would be costly and a waste of time and process to have to re-notify plans and re-litigate issues that have been/or are being resolved.
Tauranga	Personally, I am iffy about the standards. In some areas, it may improve efficiencies. However, for a rurally based Council, such as Opotiki District Council, which may receive a limited number of consent applications a year, undertaking the changes to their District Plan may be more costly than the monetary value of consent fees and to the public over the standard Plan review timeframe. The mandated changes are likely to incur additional costs to the Council, which will need to be transferred back to the public.
Wellington	I ... think that problems caused by inconsistencies in planning policies is overstated and that the national standards may not directly benefit the average member of the public. Very few people have a real need to review multiple Council provisions and financial pressures are likely to encourage greater consistency, even without the project. I think it is reasonable to expect larger scale developments (eg. value over \$1 million) to need a planning professional, in the same way that it is expected most businesses will seek tax and legal advice. Considerable effort needs to be taken to ensure that standards help lift the lowest performing Councils, rather than bringing down the standards of higher performing Councils. Similiar outcomes may be able to be achieved by greater stocktakes of Council provisions, and identification of good and bad practices, without the use of legislative force.
Wellington	The Ministry must also consider the funding required to make some of these changes, as not all councils are adequately resourced for multiple Plan Changes. For Example, for Westland District Council, a spend of \$80,000 will increase rates by 1%, while the same in Upper Hutt is a spend of \$300,000. This means that the effect on resourcing across the country will be very different between Councils.
Palmerston North	I do believe that standardisation of definitions will be useful, however I am concerned that reformatting of plans into static templates will be costly, resource intensive and TA's would be better placed to invest in more critical areas such as three waters infrastructure.

Queenstown	Sounds like it will take years for these to come into effect, just after lots of Councils have completed their 2nd generation plans and spent millions of ratepayers' money...
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Local Planning

Many survey comments related to concerns with local planning issues and appropriate planning systems and decision-making, and the effects on those processes of NPSs.

Hamilton	The intent of the Act is that communities - at as lower level as possible - make decisions about resource management within their local context. There is an inherent danger that the national planning standards erode that principle of local decision making in pursuit of uniformity.
Christchurch	Good idea to standardise basic things like map colours, zones and definitions. However need to retain discretion for local issues.
Christchurch	Places more control at the national level of government for matters which are a council responsibility under the Act.
Invercargill	I have some concern that setting standards for zones, definitions etc will reduce the ability for Plans to take into account local differences.
Christchurch	The drive for standardised definitions is only relevant for those national organisations and enterprises which cross t.l.a. boundaries, and there is a risk that local variations in circumstances will be ignored.
Wellington	Careful consideration is needed as to the limiting effects provisions may have on local character, identity and community, as well as flow-on effects.

Innovation

A number of survey comments express concerns about the potential loss of innovation that might arise from standardisation, and losses in choice and flexibility.

Hamilton	The ... aspect of the national standards that concerns me as a professional is the impact on innovation. Uniformity driven through a standard will help to reduce some costs and improve useability, however it is also likely to hamper innovative approaches to managing resource management issues. Council planners already look at that work that others do and look to take the best parts, learn from the mistakes and ensure that the next generation of planning provisions are better. The result is not always perfect but there is a striving to be better. That will eroded by a standardised system that pushes conformity.
Auckland	Although this was not clear on the evening, if the standards are an opportunity for Pick and Mix of policies, rules and procedures with a 'bare minimum ' requirements of a high standard in place, then there is a great opportunity for improving what is not working well and enhancing the good things that are already in place.
Hamilton	Has potential to speed up development process; consistency is supported; support an approach that is not rigid; extreme care needed to avoid stifling innovation.
Wellington	Considerable effort needs to be taken to ensure that standards help lift the lowest performing Councils, rather than bringing down the standards of higher performing Councils. Similiar outcomes may be able to be achieved by greater stocktakes of Council provisions, and identification of good and bad practices, without the use of legislative force.

Auckland Council and Wellington City Council Feedback

MfE will be in receipt of submissions from a number of parties including Auckland Council and Wellington City Council. NZPI has sought and obtained those latter two submissions and briefly highlights below relevant extracts which support NZPI's submissions.

Notable Wellington City Council submissions include (*italics*):

Exec Summary: *It is noted that the discussion papers cover a very broad range of topics and potential content. A wider set of planning standards are not opposed in principle. However, it is recommended that **MfE focuses on the topics and issues of the greatest significance for the first set of planning standards** i.e. provisions most regularly used and subject to litigation. In particular, a prioritisation of the types of zones, definitions and metrics MfE seeks to prescribe is recommended. In addition, WCC officers consider that **the level of detail prescribed by the planning standards should be carefully considered so that council's retain enough flexibility to implement policy direction in response to their local context.*** (bold added by NZPI)

Key Issue: *Due to the current structure and content of the Wellington City District Plan it is unlikely the planning standards will be able to be adopted without significant amendment. **This will require a RMA Schedule 1 process and may warrant the need for a whole plan review – a lengthy and costly process.** Alternative options for implementing the planning standards that minimises the impact on ratepayers will be necessary. We make the following suggestions in this regard:*

- *Clear guidance should be provided on how the Streamlined Planning Process (SPP) will be available to implement the planning standards. In particular, we seek guidance on how the SPP process can be used by all councils to align their plans with the structure specified in the planning standards and **to make minor amendments that do not warrant a full review.***
- ***Consider enabling a staged approach to implement standards** as scheduled plan changes are progressed. (bold added by NZPI)*

Key Issue: *Officers also seek information about **how MfE will support councils to implement the planning standards on an ongoing basis.** It is expected that MfE will support councils over and above the existing relationship manager function. This may take the form of reviewing draft plan changes to check alignment with the planning standards as well as responding to specific queries on the planning standards. (bold added by NZPI)*

Recommendation: ***MfE should provide more flexibility in the timeframes where a Schedule 1 process is required** to implement the National Planning Standards. This **should include ongoing guidance and support to Councils on the use of the Streamlined Planning Process to align district plans** with the planning standards in a timely manner. (bold added by NZPI)*

Submission: ***Adopting a similar approach to zone names as Auckland is not considered appropriate** for the rest of the country and is not supported. The approach adopted in the AUP was developed specific to the Auckland context with a policy framework aimed to cover the range of residential areas specific to the region. **The zones are named to represent the anticipated built forms in the region, and it is not considered appropriate to adopt these as blanket zone names.....** Given MfE's desire **to prevent the creation of new zones WCC may need to utilise additional overlays or map layers to delineate key features of the different zones.** The extent to which councils may use additional overlays or map layers is not clear in the discussion paper, and more guidance is required on this. (bold added by NZPI)*

Recommendation: *That any plan content included in the first set of planning standards remains high level, optional, and is limited to the residential zones.* (bold added by NZPI)

Definitions: *In terms of the criteria (NZPI – for selecting definitions to include in NPSs), MfE should consider those terms that create the biggest issues across District Plans e.g. those that are the subject of case law or are commonly submitted on and appealed. It is not clear whether this aspect formed part of the research or not. **Defined terms should be prioritised by those that cause the greatest interpretation issues and which apply to activities that cross council boundaries.** It appears the indicative terms largely include those most commonly used in plans, which is not considered to be the most significant issue. We consider deeper analysis of the terms should be undertaken, particularly if one of the aims of the planning standards is to reduce the significant costs associated with litigation on definitions.* (bold added by NZPI)

Metrics: *... similar to previous comments on definitions, it is considered that reliance on a numerical method (e.g. frequency of use) to select the themes is inappropriate. **It is recommended that MfE explore case law and submissions to understand where the key issues may lie.** The planning standards should address metrics that are commonly the subject of litigation and contention, not just those that are common across plans.* (bold added by NZPI)

Conclusion: *Overall, we generally support MfE's initial thinking and possible direction of the standards. However, this document highlights **some key aspects that will need careful consideration particularly in relation to timeframes for implementation, prioritisation of standards for the first set, and more detailed aspects of the planning standards.*** (bold added by NZPI)

Notable Auckland Council submissions include:

Auckland Council officials appear to have conducted a detailed, standard by standard, analysis of the impact of NPSs. Its submission classifies each proposed NPS according to whether it will be of low, medium or high impact, where, for example, a high impact NPS change would mean “a significant change is required with consequential amendments through the Auckland Unitary Plan”. NZPI does not list those changes in its submission – as they are clearly set out in Auckland Council’s submission.

However NZPI does wish to draw attention to particular Auckland Council submissions. The following comments relate to the potential impact the proposed NPSs will have on the Auckland Unitary Plan:

*The introduction of National Planning Standards could have a significant impact on the council. Depending on the scale and timing of changes needed to the Auckland Unitary Plan, **the National Planning Standards could trigger a full review of the Auckland Unitary Plan up to five years earlier than would otherwise be timetabled.*** (bold added by NZPI)

*...implementing the National Planning Standards could be a determining factor in the council’s decision on whether to embark on a rolling review or a full review of the Auckland Unitary Plan. **The National Planning Standards, as currently proposed in the discussion documents, would be difficult to incorporate into the Auckland Unitary Plan without triggering broad scale plan changes that re-open policy debates that have only recently been resolved.*** (bold added by NZPI)

*Officers are focused on achieving consistency between the National Planning Standards and the Auckland Unitary Plan so that implementing the standards does not cause large scale plan changes that become akin to a full review of the Plan. This approach will continue through the upcoming formal submission phase starting April 2018. **Officers are mindful of the need for the planning resources of the council to be focused on the management of growth and the environment and not***

unnecessarily deployed on intensive and complex planning processes needed to support the implementation of these National Planning Standards. (bold added by NZPI)

Specific submissions relating to proposed NPSs and which support the broad submissions of NZPI are listed below, by keyword (AC subs in italics):

Zones: *The preferred zones in the discussion paper will fundamentally change the zoning framework in the Plan through the deletion and merger of key zones as well as the potential standardisation of objectives, policies and provisions. More flexibility will be required for combined plans to support the use of a zoning approach for different locations within the coastal marine area.*

Geospatial data: *To restructure the Auckland Unitary Plan (AUP) geospatial data as specified in a planning standard would require change to not just the data but also the Unitary Plan GIS viewer, where there has been substantial costly technical development to produce the added value of a 'Property Report' which is also used for Land Information Memorandums and where there is integration with the text.*

Definitions: *The AUP contains approximately 52 of the 87 definitions which are proposed to be standardised. The introduction of these standardised definitions will have a high impact on the AUP because significant consequential changes to the plan provisions are likely to be required to ensure the integrity of the whole plan is maintained. AND The standardising of definitions will also have a high impact on the resource consents department and the ongoing interpretation of plan provisions. The resource consents department may struggle to achieve the outcomes anticipated by the AUP if the standardised definitions have not been tested within the context of the plan provisions. The AC submissions contain useful illustrations of problems that can arise with standardised approaches to Historic Heritage for example. The submissions examine many of 52 definitions that would need to change in the AUP, and in most instances have inclusions and exclusions meaning that changes will impact on rules that rely on them.*

Edelivery: The AC submissions explain that “systems evolve” and “cannot be changed overnight” (an understatement). Standardisation of structure and format of text and geomaps would have high impact. Esystems are notoriously expensive and difficult to price – particularly as they will be on different software and hardware platforms. This underlines the need for standardised functional capability, rather than standardised technical methodology.

ENDS