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Draft National Planning Standards

Local Government New Zealand's submission to the Ministry for the Environment

15 August 2018

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand, representing all 78 councils, which are members. As the national body we promote the national interests of councils, lead best practice in the local government sector, and advocate for policy and legislative change. LGNZ also provides business support, advice and training to our members to assist them to build successful communities throughout New Zealand.

Our purpose is summed up in our Vision - “local democracy powering community and national success.”

Introduction

LGNZ is pleased to submit on the draft National Planning Standards. We urge you to amend the RMA to remove the requirement that prescribes their preparation.

We note the Standards are a legislative requirement and that the RMA prescribes the mandatory content and timing for the first set of Standards. LGNZ submitted on the empowering legislation for the standards and we raised a number of issues at that time. Having considered the draft Standards and councils’ reaction to them, we consider they should not proceed. The costs of implementation, including opportunity costs, are significant, the cited benefits are questionable and have not been quantified.

Of note, if the draft Standards are run across the Government’s proposed Living Standards Framework, it doesn’t tick any boxes. The cost benefit analysis states that the Standards will not improve environmental outcomes and our concern is that by diverting attention and funds from the work in train that does improve environmental outcomes (such as giving effect to the NPS for Freshwater Management), the Standards will actually do the opposite.

LGNZ supported the general concept of National Planning Standards as improving national consistency, but we raised issues during the legislative phase about the scope of the Standards and the timing for plans to transition to the Standards. We reiterate those concerns now.

We also urge caution about the potential to open plan content to challenge. Our analysis supports the view of others: that many consequential changes will be required that are beyond those allowed by Section 58I, RMA. These changes will require the Schedule 1 process to be used, even though the actual content of the plan will not be amended. The Schedule 1 process is expensive, lengthy and subject to appeal to the Environment Court.

We do appreciate the changes that have already been made taking into account the earlier consultation. Specifically, this relates to the timeframe for implementation and some councils being allowed seven years to make the required changes, based on where the plans are in the planning cycle.

We urge you to consider in detail the submissions of councils. Many have analysed the effect of the Standards on their planning documents and they have raised some serious concerns, including that the Standards will require some councils to re-visit the policy framework of some plans. This is clearly not the intention of the Standards but some councils, including Auckland Council, have identified that this will indeed be the outcome.

Given the issues that have been raised by local authorities, we suggest the best course of action is to amend the RMA to remove the requirement for compulsory National Planning Standards and support the rollout of Eplans.

Costs to councils

Of significance is that the Ministry's own analysis confirms that there will be no benefit to the natural environment with these changes. Councils are concerned with the **opportunity cost** associated with implementing these Standards. Councils are focused on giving effect to national direction generally, and regional councils are focused in particular on giving effect by 2025 to the NPSFM while awaiting another set of amendments to the NPSFM. Councils have advised they will be forced to make a choice as to whether they implement the Standard or give effect to other national instruments.

Implementing the National Planning Standards will, in part, be an administrative process but it will be a very complex administrative process which requires attention to ensure it is not open to legal challenge; for instance, determining what is a "consequential amendment" and will require use of the Schedule 1 Process.

As well as the opportunity cost, councils have done some work on estimating the actual costs to implement the Standards, assuming the Schedule 1 process will be necessary in many cases because the scope of change will not be considered to be consequential amendments.

Castalia, in their cost benefit analysis of the proposal, identified the 10 year timeframe as the preferred option for implementation of the Standard. The cost benefit analysis has not factored in the time and resources to undertake engagement with the community, explaining why plans are being changed.

Problem definition

The problem definition which has given rise to the concept of National Planning Standards is somewhat opaque. However, statements made in various documents suggest that one problem the standards are hoping to address is to provide some consistency for parties who work across multiple plans and improving usability.

With respect to plan usability, no evidence is provided which shows that the plans that communities have decided through a public process will be more usable in the new format. While acknowledging this has not been tested, some councils are concerned that their plans will be far less usable to those users that probably only or mainly use just the one plan but probably also the much smaller percentage of users that work across multiple plans.

Robust user testing is needed to determine whether and how much the standard will actually improve plan usability for a range of customers based on real content before determining if a standard achieves the benefit and is worthy of the significant cost. This is necessary before deciding whether to proceed with the National Planning Standards .

Lastly, experience shows that most consenting activity is focused on district rules, not regional rules, therefore consideration could be given to alignment of district plans and minimising the focus on regional planning instruments which appear, based on submissions, to be more problematic to align into National Planning Standards.

Nationally and regionally significant issues

Councils have identified that the proposed structure does not provide for a Regional Policy Statement (RPS) to address a national significant issue – urban growth. The NPS requires all councils to meet the requirements of the NPSUDC and the RMA requires district and regional plans to give effect to an RPS. The Standards should ensure it is integrated with other national directions.

Regarding matters of regional significance, the Standard should not predetermine what these are by prescribing the themes. Regions are different and each RPS will reflect the significant issues for the region.

The standard should also reflect that Regional Policy Statements and regional plans are different planning instruments.

The Standard should also make clear that a plan only needs to include the mandatory headings and then set out the matters to be included in each section if the matters are addressed in the plan and/or policy statement (the Standards do not direct the heading and content to be included).

Related to this is whether “themes” is the best way to structure plans. Councils have raised that this will require extensive cross-referencing that will result in very complex documents.

Definitions

LGNZ supports the approach to standardise and provide for definitions. However, a significant amount of re-writing of plan content will be required to implement these definitions and these are unlikely to fall within the scope of “consequential amendment.”

Submissions have raised concerns about some of the proposed definitions. A particular matter raised is that a definition that might work for district plans (eg “site”) does not work for regional plans and will have very real consequences for drafting. Again, we urge officials to take on board the very detailed submissions that are made by councils.

Applicability to different types of plans

A related issue is how to treat combined plans. Auckland Council in particular has raised some serious issues with integrating the Standard into the Unitary Plan (a combined plan) and other unitary councils have raised similar issues.

The proposal to provide some flexibility to how regional plans are structured is supported.

Consequential amendments

Consequential amendments are enabled under section 58I, as necessary to avoid duplication or conflict.

This is a very narrow scope and councils will typically make use of the Schedule 1 process, sometimes making a decision to proceed with caution and remove the risk of legal challenge. RMA processes are often very litigious and challenges to the High Court on “process matters” are not uncommon. However, using the Schedule 1 process to integrate the standards opens up the ability for appeal to the Environment Court so councils will tread carefully and there is no straightforward pathway.

We understand that officials have worked with pilot councils as the Standards have been developed. We urge you to fully test some existing plan content (from both regional instruments and district plans) to determine the following:

1. Whether Standards can easily be integrated into existing plans/policy statements.
2. How many changes would be considered “consequential amendments”?
3. What changes would not be considered “consequential amendments”?
4. Whether some existing content is “left over” and does not fit into the Standard.
5. Whether some definitions should be regional or district plan specific or removed altogether

Implementation of the Standards

Councils have either five or seven years to amend plans/policy statements from gazettal of the Standard. The timing will have different consequences for different councils, depending on where they are in the planning cycle. It is likely to be felt most acutely in Auckland, where officers have determined that a full review of the Unitary Plan will be required, initiated some three to four years ahead of what is required.

Electronic accessibility

E planning has the potential to improve accessibility to planning documents and LGNZ encourages central support for this, including working with a single provider. If the same software provider is used there will be a similar “look and feel” to navigating plans. This can occur, irrespective of what decision is ultimately made on progressing the Standards.

Declarations

It is expected that there will be some legal questions that arise in the process of Standards being integrated into plans and policy statements. LGNZ hopes that MfE, as owner of the Standards, will consider either seeking declaratory judgements on matters or partnering with councils in this.

Conclusion

Councils have raised significant concerns in their submissions, particularly the opportunity cost of integrating Standards into plans and policy statements, and the monetary cost of doing so.

The integration of Standards will require some policy frameworks to be revisited due to the effect of the Standards, including definitions, on their planning documents. Councils are concerned that the scope of what can be amended via a consequential amendment is very narrow and that significant use of the Schedule 1 process (with the associated cost) will be required.

At a minimum LGNZ considers that a selection of plans and policy statements needs to be tested to enable all parties to fully understand exactly what is involved to integrate existing content into the Standards. This will give a much clearer picture of the costs involved.

Given the issues that have been raised by local authorities, we suggest the best course of action is to:

- (1) amend the RMA in the next set of amendments to remove the requirement for compulsory National Planning Standards; and
- (2) instead support the rollout of Eplans.

In the event the Standards are to proceed, then:

- (1) Focus on district plans;
- (2) Pare back the Standards as they relate to regional planning instruments;
- (3) Increase the length of time that local authorities have to implement the Standard to 10 years;
- (4) Align the mandatory requirements with the plan review cycle, allowing integration of changes that require the Schedule 1 process with the plan review cycle. Consequential amendments can be made separately;
- (5) Reconsider the definition of “consequential amendment” in the next set of amendments to the RMA;

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- (6) Undertake robust testing with users to determine whether there are gains regarding “usability”; and
- (7) Actively support the rollout of Eplans.