



AHM News

NATIONAL PLANNING STANDARDS

The 2017 amendments to the Resource Management Act require the production of National Planning Standards (“Planning Standards”). The requirement for Planning Standards arose as a response to the wide variation which exists in the regional and district plans and policy statements. The aim is to address the costs, time, complexity and inaccessibility, as well as a lack of true implementation of national direction, which has arisen from ‘unnecessary plan variation’. However, under the Planning Standards plans and policy statements will contain sufficient flexibility to address local planning issues.

In this article we look at what the Planning Standards may address, the process for developing the Standards, how you can get involved in the process, and our thoughts on the matter.

We also provide a brief update on the *RJ Davidson* case.



What are Planning Standards?

The Planning Standards are a tool kit to improve consistency in plans where it makes sense to do so. Planning Standards can be applied generally, to specific regions or districts, or to areas of New Zealand. The timeframes for implementation can also be set in the Standards.

Planning Standards must give effect to national policy statements, and be consistent with, national environmental standards, regulations made under RMA,

and water conservation orders. Subject to these requirements, Planning Standards may:

- a) specify objectives, policies, methods (but not rules¹) and other provisions to be included in regional policy statements;
- b) specify objectives, policies, methods, rules, and other provisions to be included in plans;
- c) require that a local authority review a discharge, coastal, water, or land use consent required in relation to a regional rule;



- d) specify the structure and form of regional policy statements and plans;
- e) direct local authorities to use a particular structure or form or include specific provisions in their policy statements and plans; and/or
- f) require electronic accessibility of policy statements and plans.²

If a proposed policy statement or plan departs from a Planning Standard, it can be appealed to the Environment Court, and the Court may direct changes to give effect to the Planning Standard.³

The first set of Planning Standards must be approved no later than April 2019.⁴



Process for development of first set of Standards

The first set of Planning Standards must, at a minimum, include⁵:

- a) a structure and form for plans, including references to relevant national policy statements, national environmental standards, and regulations made under the RMA;
- b) definitions; and
- c) requirements for the electronic functionality and accessibility of plans.

There is a “Drafting and Testing” phase from June 2017 to April 2018. During this time, initial drafts of the Planning Standards will be made available for targeted feedback which will be released to selected groups so they can be tested and improved before being released to the public.

In April 2018 the draft Standards will be given to the public, local authorities and iwi authorities who will be given the opportunity to make submissions on the drafts. A report and recommendations will be made to the Minister for the Environment on those submissions, and the Minister may (but is not required to) make changes to the draft Standards.

Following the Minister’s review, the Planning Standards will be presented to the House of Representatives in early 2019 and are planned to be brought into force and notified in the New Zealand Gazette in April 2019.

Councils have one year to align their plans with the mandatory content in the Planning Standards (until April 2020), and five years (until April 2024) to select and integrate discretionary elements of the Planning Standards. It is yet to be decided which elements of the Planning Standards are mandatory and which are discretionary.

The Planning Standards will have a long term impact on resource management plans. If you wish to be involved there are [Regional Workshops](#) over the next few months for NZPI and RMLA members throughout the country for information and consultation.

Planning Standards discussion papers

Currently 10 Planning Standards discussion papers are available. These papers are intended to form the basis for early consultation on the scope and direction of the Standards. One is an introduction paper, and the other nine deal with substantive issues:

1. District plan structure (chapter organisation, structure, reference to specific provisions);

2. Regional plan and policy statement structure (RPS, plans and coastal plans structure);
3. Zones and overlays (consistent framework for zoning and spatial layers, and common content for urban zones);
4. Form of plans and policy statements (formats for rules, objectives and policies, design elements, E-planning);
5. Mapping standards (colours and visual display standardised);
6. Definitions (proposed set of around 90 standardised definitions);
7. Electronic functionality and accessibility of plans (RMA plans, all planning functions, services and processes delivered online);
8. Metrics (standardised metrics); and
9. General provisions in plans (miscellaneous standardisation).

National Planning Standards, a welcome planning tool?

In our view, the Planning Standards will bring much needed consistency to many aspects of plans – reducing transaction costs for plan users and Councils. However it will be important that appropriate scope remains for local decisions in respect of local issues. The anticipated benefits of the Standards include increased efficiency and affordability, consistency among councils, clear national/regional/local policy hierarchy, accessibility, and ease of use.

RJ DAVIDSON FAMILY TRUST V MARLBOROUGH DISTRICT COUNCIL [2017] NZCA 194 - LEAVE TO APPEAL TO THE COURT OF APPEAL

In our March newsletter we discussed the High Court decision in *RJ Davidson*. The High Court upheld the Environment Court’s decision to decline resource consent to establish a mussel farm in Pelorus Sound and held that the *King Salmon* approach applies to resource consent applications. This approach means it is not necessary, or permissible,



to refer back to Part 2 of the RMA when considering resource consents, except in cases of invalidity, incomplete coverage of uncertainty of meaning in an applicable plan.

The RJ Davidson Family Trust applied for leave to appeal the decision of the High Court to the Court of Appeal. The Court of Appeal granted leave to appeal on the following grounds:

- 1. Did the High Court err in holding that the Environment Court was not able or required to consider Part 2 of the RMA directly and was bound by its expression in the relevant planning documents?*
- 2. If the first question is answered in the affirmative, should the High Court have remitted the case back to the Environment Court for reconsideration?*

The Court of Appeal did not grant leave to appeal on the procedural question of whether the Environment Court should have put the parties on notice of its proposed approach to Part 2, so they could reframe their submissions accordingly. The Court of Appeal determined this

question was not of general or public importance, and that there had been no procedural unfairness.

The High Court decision in Davidson is seemingly at odds with the requirement in Schedule 4 RMA that an application for resource consent must include an assessment of the activity against the matters set out in Part 2. There is also an apparent tension with the High Court's decision in *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 which held in the context of analogous statutory language ("subject to part 2") that recourse to Part 2 is available.

This appeal is significant all those involved in resource consent application processes as it creates uncertainty as to the correct assessment approach. Recently in the *MV Rena* decision the Environment Court commented on uncertainty as to the applicability of *King Salmon*, and the ability to refer back to Part 2 in resource consent considerations, in light of leave to appeal being granted. The Court decided to take the cautious approach and "assume that the *King Salmon* case does apply to resource consents" but also undertake an "overall assessment" of the application in light of the purpose of the RMA contained in Part 2, thereby hedging their bets.

We will watch how this appeal progresses and keep you updated as to the outcome and its implications.

End notes

1. Resource Management Act 1991 s58C (2)(c).
2. Resource Management Act 1991 s58C.
3. Resource Management Act 1991 s293(3)(ba).
4. Resource Management Act 1991 s58G. Reference to the "first set" of Planning Standards indicates that the Government has plans to do subsequent sets of Planning Standards, however this future possibility is not further discussed in this article.
5. Resource Management Act 1991 s58C.

Questions, comments and further information

If you have any questions, comments or would like any further information on any of the matters in this newsletter, please contact the authors:

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