

9 August 2018

Planning Standards
Ministry for the Environment
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Re: Draft National Planning Standards

1. INTRODUCTION

- 1.1. The New Zealand Law Society welcomes the opportunity to comment on the draft National Planning Standards (draft standards).
- 1.2. This submission identifies issues in the practical application of the draft standards and suggests further consideration of some provisions. The Law Society's recommendations focus on ensuring the draft standards are clear and workable in practice. (For ease of reference all recommendations are listed in Appendix A.)
- 1.3. The submission only addresses the parts of the draft standards on which the Law Society has a specific comment or recommendation; however, it should be noted that some of the comments regarding ordering and formatting may also have wider application.

2. OVERVIEW OF DRAFT STANDARDS

- 2.1. The *Draft National Planning Standards* consultation document (consultation document) gives an overview of the draft standards, what they aim to achieve and considerations for implementation.
- 2.2. The draft standards are broken down into the following individual planning standards:
 - a) structure standards (S-);
 - b) form standards (F-); and
 - c) content and metric standards (CM-).
- 2.3. For example, the draft plan structure standards (S-) "set a common framework for plan provisions that all plans must use. The structure is made up of parts, then chapter, then sections."¹
- 2.4. The draft standards are required to be consistent with the Resource Management Act 1991 (RMA), including section 58B which sets out the purpose of the planning standards:

¹ *Draft National Planning Standards* consultation document, at p 15.

- (1) The purposes of national planning standards are—
 - (a) to assist in achieving the purpose of this Act.
 - (b) to set out requirements or other provisions relating to any aspect of the structure, format, or content of regional policy statements and plans to address any matter that the Minister considers—
 - (i) requires national consistency:
 - (ii) 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 this Act:
 - (iii) is required to assist people to comply with the procedural principles set out in section 18A.
- (2) In this section and sections 58C to 58K, references to the Minister are to be read as references to the Minister of Conservation if, and to the extent that, a matter relates to the coastal marine area.

2.5. As outlined in the consultation document the “planning standards direct a standard structure and form and some standard content for RMA plans and policy statements in New Zealand.”² The intention of the draft standards is to reduce variation that currently exists between RMA planning documents, with the aim of achieving plans that are easier to make and use.

3. DRAFT STRUCTURE STANDARDS (S-)

Draft Regional Policy Statement Structure Standard (draft S-RPS)

Part 4 – Themes

- 3.1. Part 4 of the draft S-RPS sets out relevant themes and matters that may be included in different chapters of the policy statement. However, there are obvious overlaps between the various themes. For example:
 - The *Coastal Environment* theme includes Landscapes, Landforms, Natural Character, Ecosystems, Indigenous Biodiversity, Environmental Risks, Infrastructure, Land and Water. It may also include items of Historic Heritage.
 - Landscapes and Landforms are by definition “*Land*”.
 - Infrastructure and Energy will be located in, on, over or under Land or Water, or both.
 - Ecosystems (and Indigenous Biodiversity) similarly occur on Land, or in Water, or both.
- 3.2. In each case the mandatory instruction is that if matters falling under the relevant theme are addressed in the Regional Policy Statement, they must be included in the relevant chapter.³ The overlap between different themes means that compliance with this mandatory instruction could produce a potentially significant degree of duplication of provisions within each theme. It would be more efficient, and would assist the readability of regional policy

² Ibid at p 10.

³ Draft National Planning standards, draft S-RPS, at pp 8-9.

statements (which are already inaccessible to the general public because of their length and complexity), if the themes were redefined to minimise overlaps.

- 3.3. In comparison, Part 4 of the draft District Plan Structure Standard (S-DP) uses a slightly different structure which better addresses these areas of overlap. However, that standard only applies, by definition, to district-wide matters and so, to the extent that there is ambiguity in the regional context, this is left unresolved. The Law Society suggests that Part 4 of the draft S-RPS could be amended (where applicable) to better address potential areas of overlap, as discussed further below.
- 3.4. Part 4 of the draft S-RPS also states that local authorities must consider whether to combine the *Land* and *Water* chapters. While there is an obvious requirement to integrate land use activities with management of water quantity and quality, it is not clear why this is the only area where a combination of chapters is foreshadowed (and impliedly encouraged), and it may be helpful to adopt this approach in other chapters given the extent of overlaps between other themes.
- 3.5. It may be that the Ministry took the approach discussed at [3.4] as it intends that management of other overlaps between themes will be addressed in guidance documentation yet to be drafted. However, such guidance instruction could not contradict the clear instruction contained in the draft S-RPS.
- 3.6. A useful way of addressing this overlap may be to make the *Coastal Environment* theme a code which includes all relevant provisions that might otherwise fall within other themes. Other themes could then be expressed to relate to matters outside the *Coastal Environment*. The draft S-RPS should similarly clarify whether elements of natural character associated with ecosystems and indigenous biodiversity are addressed under that theme or under the *Landscape, Landforms and Natural Character* theme (but not both). It might similarly be desirable if it is made clear that the *Land* and *Water* chapters apply to land and water matters respectively, to the extent that they are not addressed under other themes.
- 3.7. In addition to the overlaps already noted, the requirement that all water matters be addressed in the water chapter of a regional policy statement appears to preclude separate consideration of geothermal resources - given that “*water*” is defined by the RMA to include geothermal water. The two regions best known for the quantity and quality of their geothermal resources (Waikato and Bay of Plenty) both treat the management of these resources as a separate issue from management of freshwater quantity and quality. Given most other regions do not have significant geothermal resources this might be appropriate to address as a “*special topic*” in those two regions. However, a precondition for the use of the special topic chapter in the draft S-RPS is that the topic “*cannot*” be addressed under other chapters. That would not be the case for geothermal resources. This poses too high a standard, and it may be more appropriate to allow regions the discretion to carve out resource issues of particular importance to them, for separate treatment.
- 3.8. Lastly, the order of the themes in Part 4 (assuming local authorities are required to strictly follow that order of themes) could be reconsidered. Starting with *Air Quality* implies an alphabetical approach. However, if that were the objective then the *Landscape, Landforms and Natural Character* theme is out of place. By the same token, if the objective is to allow local authorities to order themes according to their significance to regions (which would seem appropriate), then the draft S-RPS should specifically state this (given *Air Quality* would not be the issue of greatest importance for all regions).

Minor observations

- 3.9. In relation to Part 1 – Introduction and General Provisions, reference could usefully be made to Water Conservation Orders since such orders are a national instrument, and regional policy statements must not be inconsistent with them (see RMA section 62(3)).

Recommendations:

- 3.10. To address the issues identified in the draft S-RPS, the Law Society recommends the following:
- (a) Redefine the themes to minimise overlaps between them and clarify how any residual overlaps should be addressed.
 - (b) Amend the description of special topics to provide that this applies where a local authority determines that other matters or topics are more appropriately dealt with separately by reason of the particular characteristics of their region.
 - (c) Reorder the draft themes in Part 4 to aid navigability (e.g. by placing them in alphabetic order), or make it clear that local authorities are able to order these themes as appropriate for their region.
 - (d) Add a reference to Water Conservation Orders under the heading of National Direction Instruments.

Draft Regional Plan Structure Standard (draft S-RP)

Part 1 – Introduction and General Provisions

- 3.11. Part 1 of the draft S-RP requires an overview of national instruments but not of the Regional Policy Statement, which provides direction at a regional level. Where regional plans are promulgated as separate documents to the Regional Policy Statement, this would appear to be a useful potential addition. As discussed above at [3.9], reference might also be made to Water Conservation Orders as a relevant form of national instrument in many regions.

Part 4 – Themes

- 3.12. The issues identified above at [3.1] – [3.8], regarding the ordering and content of Part 4, similarly arise in the draft S-RP. In addition, Part 4 creates uncertainty as to whether the structure of the themes set out in that part is a mandatory direction or not. Section C of the draft S-RP states that this structure is “mandatory”,⁴ but then Part 4 suggests that Councils have the option of whether they choose to address matters on a “Theme” basis or not.⁵ It is not clear why Part 4 provides this “option”, and it appears inconsistent with the direction given in Part 4 of the draft S-RPS, which regional plans must give effect to. (The same issue also arises with respect to Part 5 – Catchments of the draft S-RP.)

Minor observations

- 3.13. The draft S-DP includes a “strategic direction” chapter. However, there is no parallel provision for strategic direction in the draft S-RP for regional plans. The Law Society suggests

⁴ Draft National Planning standards, draft S-RP, at p 10.

⁵ Ibid, at p 12.

that some consideration be given as to whether strategic direction is equally applicable in a regional context.

Recommendations:

- 3.14. To address the issues identified above at [3.11] – [3.13], the Law Society recommends the following:
- (a) The draft S-RP incorporate provision for a discussion of regional direction in Part 1.
 - (b) Parts 1 and 4 are clarified consistently with any changes to S-RPS, following from the recommendations as above at [3.10].
 - (c) Provision be made for a strategic direction chapter, as an option available to regional councils.

Draft District Plan Structure Standard – (draft S-DPS)

Part 1 – Introduction and General Provisions

- 3.15. The Law Society considers the same issues identified above at [3.9] and [3.11], in relation to the absence of any reference to national direction via water conservation orders, and regional direction via the Regional Policy Statement, also exist in the draft S-DPS.

Part 3 – Strategic Direction

- 3.16. In relation to Part 3, it is suggested that the description of when a strategic direction chapter is required might usefully be amended to make it clear that a strategic direction chapter is required when the local authority is including “*separate*” provisions on significant resource management matters relevant to the district. If this is not made clear, every District Plan will need to have such a chapter because the District Plan will necessarily include provisions of greater significance to the district, along with provisions of lesser significance. The utility of a strategic direction chapter is to collect together the more significant matters in order to provide higher level direction.

Part 4 – District Wide Matters

- 3.17. Some consideration might appropriately be given to the order in which matters under this Part are addressed. While this might involve alphabetical ordering (for consistency in approach with other provisions), there may also be logic in linking *natural environmental values* and *community values* as communities may (and often are) concerned with the matters listed as *natural environmental values* (for example, coastal environment, landscape/landform, ecosystems/indigenous biodiversity).
- 3.18. Further, the specific reference to hazardous substances as an aspect of *environmental risk* appears inconsistent with the deletion of the specific reference to the “prevention or mitigation of adverse effects of the storage, use, disposal or transportation of hazardous substances” as a function of territorial authorities in section 31(1)(b)(ii) of the RMA (following enactment of the Resource Legislation Amendment Act 2017).
- 3.19. It is also unclear why *Infrastructure and Energy* and *Subdivision* are listed separately from *General District-Wide Matters* since they also apply to matters throughout the district.

Part 5 – Area-Specific Matters

- 3.20. Part 5 sets out the area-specific matters that local authorities must implement. It is not helpful to have a specific zone that is the same as the general description in the area-specific matter (for example, there is a separate “*Residential Zone*” under the area-specific heading “*Residential Zones*” and a “*Rural Zone*” under the area-specific heading “*Rural Zones*”). This may be problematic, particularly where, as in the residential case, it has quite a specific role and does not (unlike the “*Rural Zone*”) operate as the default zone. The duplication of language may confuse plan users.
- 3.21. As a final observation, some consideration might be given to how the different provisions are ordered. While there is a logic to the ordering of the more specific provisions, it is suggested that the special purpose zones might more appropriately be listed in alphabetical order.

Recommendations:

- 3.22. To address the issues identified above at [3.15] – [3.21], the Law Society recommends the following:
- (a) Clarify Parts 1 and 4 consistently with any changes to S-RPS, following from the recommendations above at [3.10].
 - (b) Amend the description of when a *Strategic Direction* chapter is required in Part 3 of the draft S-DPS to include a reference to separate provisions on significant resource management matters to the district i.e. “*Local authorities must consider whether separate sections on significant resource management matters to the district should be included in this chapter and include them if required*”.
 - (c) Consider whether it is appropriate to require plans to address hazardous substances as an issue, given the deletion of that as a District Council function.⁶
 - (d) Reconfigure the list of chapters in Part 4 to make *Infrastructure and Energy*, and *Subdivision* District-Wide chapters.
 - (e) Rename those zones in Part 5 with labels that currently do not distinguish them from the general zone headings.

Draft Combined Plan Structure Standard – (draft S-CP)

- 3.23. The issues and recommendations identified above in relation to the draft S-RPS and draft S-RP, similarly apply to the draft S-CP.

Draft Introduction and General Provision Standard – (draft S-IGP)

- 3.24. Direction 9 of the draft S-IGP discusses cross-boundary issues.⁷ The Law Society considers that it would also be useful to make reference to the cross-boundary issues that arise for regional councils dealing with activities crossing their boundary with the Exclusive Economic Zone (EEZ).
- 3.25. In relation to directions 17 and 18, a distinction appears to be drawn between the use of te reo Māori terms in rules on the one hand, and in objectives, policies and other text on the

⁶ Following the Resource Legislation Amendment Act 2017, section 13.

⁷ Draft National Planning standards, draft S-IGP, at p 29.

other. (Direction 17 states that “if a te reo Māori term is used in a rule it must be defined in the definitions section”;⁸ by contrast, direction 18 states that “the glossary of te reo Māori terms must be used when terms are used in or relevant to the interpretation of objectives, policies and other text...”.⁹) It would be helpful to consider whether te reo Māori terms used in rules need to be treated differently to terms used elsewhere in Plans.

Recommendations:

- 3.26. To address the issues identified in relation to the draft S-IGP, the Law Society recommends the following:
- (a) Consider including a reference in direction 9 to cross-boundary issues arising at the boundary with the EEZ.
 - (b) Consider whether te reo Māori terms used in rules need to be treated differently to terms used elsewhere in Plans.

Draft Strategic Direction Structure Standard – (draft S-SD)

- 3.27. Direction 3 of the draft S-SD identifies matters to be located in the *Strategic Direction* chapter of a district plan. For the same reasons as discussed above at [3.16], the Law Society suggests the focus should be on the situation where the listed matters are to be addressed “*separately*” in District Plans.
- 3.28. As a minor observation, the final point under direction 3 (re consultation with tangata whenua) appears to be a duplication of the fifth point under direction 3 of the draft Tangata Whenua Structure Standard. It would be helpful if this was clarified.

Recommendations:

- 3.29. To address the issues identified in relation to the draft S-SD, the Law Society recommends the following:
- (a) Amend direction 3 to refer to “*separate*” treatment of issues.
 - (b) Clarify the apparent duplication with the tangata whenua standard regarding consultation with tangata whenua.

Draft District Wide Matters Standard – (draft S-DWM)

Natural Environmental Values chapter (draft S-NEV)

- 3.30. Directions 6(c) and 7(b) of the draft S-NEV use identical language, referring to objectives, policies and methods, including rules (if any) “*that will ensure the life-supporting capacity of these systems are safeguarded*”. These directions raise both a drafting and a substantive issue.
- 3.31. In respect of the drafting of these directions, the use of the word “*systems*” to describe the coastal environment, landscape, landforms and natural character may be problematic, as such elements would not normally be categorised in that way.
- 3.32. A substantive issue then arises from the selected use of only one element from the purpose of the RMA (section 5), namely “*safeguarding the life-supporting capacity of air, water, soil,*

⁸ Ibid.

⁹ Ibid.

and ecosystems”, to the apparent exclusion of other aspects of the purpose section (such as meeting the “foreseeable needs of future generations” through objectives, policies and methods relating to the coastal environment/landforms – see section 5(2)(a)).

- 3.33. Singling out one element from the RMA purpose section, through these provisions, may have unintended results which might be considered contrary to the purpose of the RMA.

Infrastructure and Energy chapter (draft S-IE)

- 3.34. Direction 23(c) in the draft S-IE directs that provisions governing reverse sensitivity effects on infrastructure should be contained in the *Infrastructure and Energy* chapter. While it will be more convenient to approach the issue of reverse sensitivity as it relates to infrastructure in one location, there may be potential for lay plan users to overlook the potential restrictions on their actions contained in the *Infrastructure and Energy* chapter in the draft S-DWM, focusing solely on the zone provisions applying to their properties in the draft Area-Specific Matters Standard (S-ASM). While it involves duplication of plan provisions, embedding such provisions in each zone would reduce that risk.

Recommendations:

- 3.35. To address the issues identified above at [3.30] – [3.34], the Law Society recommends the following:
- (a) Consider whether directions 6(c) and 7(b) of the draft S-NEV are required, and if so, whether they should be amended and/or augmented by directions related to other aspects of the purpose section, in section 5 of the RMA.
 - (b) Consider whether reference in direction 23(c) of the draft S-IE to reverse sensitivity might be better addressed in the draft Area Specific Matters Standard (instead or in addition to the infrastructure and energy chapter).

Draft Area Specific Matters Standard – (draft S-ASM)

Zone Chapters (draft S-ZONES)

- 3.36. The intention expressed in directions 6 and 7 of the draft S-ZONES is that the number and nature of zones is to be tightly controlled. It also assumes that the purpose of zones is to *enable* activities, whereas, in many cases, activities are enabled at best on a qualified basis. The Law Society queries whether the preconditions for additional zones being specified in a plan might be better expressed in a slightly less constraining manner (for example, where the Local Authority determines it is both necessary and appropriate to do so). This will still achieve the objective of standardising zone provisions. The Law Society suggests the Ministry give consideration to substituting the words “*provided for*” for “*enabled*” in directions 7(b) and (c).

Direction 8 – Purpose Statements

- 3.37. Direction 8 of the draft S-ASM states that local authorities must choose at least one of the listed zones to use in their Plans. Establishing universal purpose statements, while potentially helpful for plan users, raises issues, particularly if provision for additional zones remains tightly constrained as currently proposed. There is also the issue noted earlier in the

draft S-DP section of having a specific zone (such as residential or rural) that is the same as the general description.¹⁰

3.38. Further comments on the purpose statements of particular zones, as outlined in direction 8 of the draft S-ASM, are addressed below:

- *Low-Density Residential Zone*

The language used in the purpose statement “*where there may be constraints on urban density*” means that the purpose is effectively circular. Zone provisions will be the source of constraints, by definition. It is suggested that the purpose might be framed as providing for residential activities “*where there is reason for urban density to be constrained*”. That formulation would leave it open as to whether the constraints are the result of external considerations (e.g. topographical constraints or natural hazard issues) or alternatively, through a desire to provide for an enhanced level of urban amenity.

- *Residential Zone*

The stated purpose of the residential zone refers to residential activities “*in areas of suburban character*”. This purpose assumes there is an existing character, which will not be the case in greenfield areas. It is suggested that the closing words might be reframed to read “*... in areas where it is desired that a suburban character be established or maintained*”.

- *Medium-Density Residential Zone*

The stated purpose of the medium-density residential zone has the same issue identified above for the Residential Zone purpose, because it assumes there is an existing urban character. In addition, it fails to take account of the fact that areas of suburban character necessarily also have an urban character. There is accordingly a significant overlap between the purpose for this zone and that for the Residential Zone. It is suggested that this might be addressed by amending the final words of the purpose to read:

“... in areas where a higher density, more urbanised character is desired than that provided for in the Residential Zone.”

- *High-Density Residential Zone*

For similar reasons, it is suggested that the purpose of the high-density residential zone be reframed to refer to residential areas “*in areas where a high-density-urban character is desired*”.

- *Rural Zone*

Reference to the rural zone also providing for a limited range of activities supporting rural production implies that it does not provide for any other activities. Typically, tourism activities, for instance, are located in the Rural Zone. In addition, there is an increasing demand for Rural Residential/Rural Living type developments in rural areas. It is suggested that the second sentence of the rural zone purpose might simply be

¹⁰ As discussed at [3.20] above.

deleted. Alternatively, the purpose could be amended to read “... *primarily for primary production activities and activities which support rural production*”.

- *Rural Production Zone*

A minor change to the wording from “*providing for associated rural industry*” to “*provide for associated rural industry*” is suggested.

- *Rural Residential Zone*

Stating that the purpose of the rural residential zone is to provide primarily “*for a residential lifestyle within a rural environment*” implies that rural residential living (i.e. houses) will be appropriate at all locations within the zone. (It also suggests that people do not live (and have a rural lifestyle) in Rural Zoned land.) The rural residential zone purpose might appropriately be amended to read “... *to provide greater opportunities for a residential lifestyle within a rural environment than within the Rural Zone, while still enabling ...*”.

- *Rural Settlement Zone*

The intention of the rural settlement zone purpose might be better captured if it read: “... *located within small rural settlements that support the surrounding rural area*”.

- *Neighbourhood Commercial Zone*

This purpose may read more clearly if the words “*within which the Neighbourhood Commercial Zone is located*” were added at the end.

- *Local Commercial Zone*

As with the previous neighbourhood commercial zone purpose, this purpose might read more clearly if the words “*within which the Local Commercial Zone is located*” were added.

- *Mixed-Use Zone*

The way in which the mixed-use zone purpose is framed would require the zone to provide for all of the listed activities, which may not always be desirable. The concept stated in the Commercial Zone purpose, of activities not being sensitive to other activities, is also a key consideration. The wording of the mixed-zone purpose would be clearer if it read, “... *provide primarily for a mix of activities including potentially residential, commercial, light industrial, recreational and/or community activities not sensitive to the effects generated within the zone*”.

3.39. In addition to the specified zones identified above, it may be appropriate to provide a separate Transport Zone to cover the locations of train and bus stations and ferry terminals.

Minor Observations

3.40. The implication of direction 9, of the Precincts chapter, is that a precinct prevails over underlying zones.¹¹ It would be helpful if this was clarified.

¹¹ Draft National Planning standards, draft S-ASM, at p 45.

- 3.41. Direction 17 of the Development Areas chapter requires that when developments are completed, development plan sections must be removed from the Plan.¹² The Law Society queries whether this is always going to be desirable. In cases where structure plans and the like identify areas within which development is constrained, the structure plan may have ongoing relevance to the development area.
- 3.42. In direction 18, reference in the table is made to “*designation hierarchy (primary or secondary)*”.¹³ It is assumed that this relates to situations where there are overlapping designations and it is necessary to specify which designation was first in time. However, further clarification would be desirable.

Recommendations:

- 3.43. To address the issues identified in relation to the draft S-ASM, the Law Society recommends the following:
- (a) Consider whether the degree of direction in directions 6 and 7 is desirable, or whether Local Authorities might be allowed greater discretion in the formulation of additional zones.
 - (b) Amend directions 7(b) and 7(c) to substitute “*provided for*” for “*enabled*”.
 - (c) Consider amendments to the purpose of each zone in direction 8 in the manner discussed above at [3.38].
 - (d) Consider including a “Transport” zone provision.
 - (e) Make clear the priority as between precincts and underlying zones in direction 9.
 - (f) Consider whether it is desirable in all cases that Development Plans be removed from Plans when the development is ‘completed’ in direction 17.
 - (g) Clarify the reference to “*designation hierarchy*” in Table 16, direction 18.

4. DRAFT FORM STANDARDS

Draft Electronic Accessibility and Functionality Standard – (draft F-1)

- 4.1. Table 18 of draft F-1 sets out the standard for baseline electronic accessibility and functionality requirements.
- 4.2. In regard to plan accessibility and functionality, instruction 2 requires a maximum of three clicks between a local authority home page and all policy statements and plans. Instruction 3 then directs the labelling of the final landing page as ‘District Plan’ or ‘Regional Policy Statements and Plans’. The draft F-1 makes no reference to the labelling of any intermediate steps (such as council documents or plan and policy document links) that would assist plan accessibility (or otherwise).
- 4.3. Instruction 7, while highly desirable, involves a substantial amount of work and considerable potential for relevant connections to be omitted, meaning that the assistance sought to be provided by the standard may not assist plan users. A less onerous requirement might be

¹² Ibid.

¹³ Ibid, at p 46.

more practicable, particularly given the timeframes required for implementation of the standard.

- 4.4. Instruction 10 requires the legal status of provisions to be displayed electronically. The Law Society supports this requirement and notes the Environment Court recently commented on the need for the legal status of provisions at each stage of the process and the legitimacy and certification of the provisions to be made clear.¹⁴ This includes noting where provisions are made 'operative', 'treated as operative', or of 'legal effect'.¹⁵
- 4.5. Instruction 11 should also require local authorities to make copies of all plan changes to their current (operative) plan available on their website.
- 4.6. Under instruction 12, for plans that have been the subject of amendment, it may also be critical to know when the Plan was amended after it became operative since that may determine the lawfulness of an existing activity and/or the extent of any existing use rights. It is suggested that the historical record note the dates on which amendments to previous plans became legally effective.

Recommendations:

- 4.7. The Law Society makes the following recommendations to draft F-1:
 - (a) Provide direction to ensure website labelling assists accessibility of policy statements and plans at each step.
 - (b) Consider whether the work directed at instruction 7 is practicable given the time within which it has to be completed, particularly for regions with different regional and district councils.
 - (c) Consider requiring local authorities to maintain an electronic record of all plan changes to the current (operative) plan and amendments to superseded plans.

Draft Chapter Form Standard – (draft F-5)

- 4.8. Instruction 3 of draft F-5 states "chapters within *Part 2 – Tangata Whenua*, *Part 3 – District-Wide Matters* and *Part 4 – Area-Specific Matters* must use the order of headings below."¹⁶ At present, this cross-referencing is not correct (or does not make sense in respect of) any of the main structure standards (S-RPS, S-RP, S-DP or S-CP).
- 4.9. Instructions 7 and 8 relate to objectives, where required for chapters or sections, and could be read to require that objectives for the relevant chapter or section be grouped together (impliedly separated from the objectives in other chapters or sections). This appears inconsistent with Table 4 of the draft S-RP,¹⁷ which appears to require that all objectives should be grouped together, at least for regional planning documents

Recommendations:

- 4.10. To address the issues identified in relation to draft F-5, the Law Society recommends that:
 - (a) The instruction 3 cross referencing is corrected or clarified.

¹⁴ *Cabra Rural Developments Limited v Auckland Council* [2018] NZEnvC 90.

¹⁵ Ibid at paragraphs [11], [76] to [78], and [82] to [83].

¹⁶ Draft National Planning Standards, draft F-5, at p 63.

¹⁷ Ibid, at pp 11-13.

- (b) The extent to which it is intended that objectives be grouped together is clarified as between draft S-RP and draft F-5.

5. DRAFT CONTENT AND METRIC STANDARDS

Draft Definitions Standard – (draft CM-1)

5.1. The purpose of draft CM-1 is to “provide mandatory definitions across local authority policy statements and plans to improve plan consistency and enable greater certainty around the meaning of terms across the country.”¹⁸ The definitions table (29) contains a number of terms defined in the RMA. In each case it is stated that the defined term has the same meaning as in section 2 of the RMA, and that meaning is then set out. While this provides clarity for the plan user, that approach means that both the standard and the relevant plan have to be amended in the event of a change to the statutory definition. Consideration could be given to the standard merely stating as a general rule that all terms defined in the draft CM-1 have the same meaning as that set out in the RMA.

5.2. Turning to the specific terms defined, the Law Society makes the following comments:

- *Aquifer*

The way in which this term is defined in draft CM-1 would anticipate an enquiry as to whether subsurface geological formations “*are capable of*” receiving, storing, transmitting and yielding water irrespective of whether they actually do so, either continuously or intermittently. The Law Society queries whether that is the intention of the definition, given that it might have significant implications for general rules seeking to manage contamination of aquifers.

- *Community Facility*

The Law Society queries whether the term “*non-profit*” is sufficiently clear to convey that facilities which on occasion hire out their facilities (for example, for fundraising) still fall within this definition (as appears to be the intention from the section 32 assessment).¹⁹

- *Coverage*

The Law Society queries whether the cross-reference to identification in a relevant rule is useful given that the defined term might well be used in District Plan objectives and policies. In addition, it is reasonably foreseeable that the term might be used with reference to actual coverage already on the ground, as opposed to what might or might not be provided for in a relevant rule.

- *Drain*

The definition of drains might usefully be distinguished from modified natural water courses, since this is a common source of contention.

¹⁸ Ibid at p 76.

¹⁹ Proposed National Planning Standards evaluation report 2018: Part 2C Definitions, at p 78,

- Footprint*

This definition requires clarification in two respects. First, the word “*and*” in the first line might better be framed as “*together with*” in order to capture the concept that it is the total area of all of the matters listed. Second, the concept of structures that “*protrudes directly*” does not clearly capture cantilevered buildings, which is understood to be the intended meaning. The Law Society recommends the definition should be amended to read “... *and any section of those structures that extends horizontally beyond the structure limits at ground level (e.g., any cantilevered section of a building)*”.
- Functional Need*

The final words of this definition (“*because the activity can only occur in that environment*”) are problematic because they exclude networks that operate across a number of environments. A local electricity (or telecommunication) network, for instance, needs to be and is located both in rural and urban environments. It is suggested that the definition is amended to include provision for operational characteristics by stating “the need for a proposal or activity to traverse, locate or operate in a particular environment *because of technical or operational characteristics or constraints.*”
- Ground level*

The definition of ‘ground level’ might appropriately incorporate a precondition that whatever level is adopted, recent changes to the ground level must have been accomplished lawfully, to avoid any unlawful manipulation of height level restrictions and the like. For instance, point (a) of the definition should refer to the actual finished surface level complying with the terms of both the most recent subdivision and any separate resource consent for earthworks (not just “*after*” it). Point (b) should similarly refer to the existing ground level unless it has been altered unlawfully within some nominal period (for example, the previous five years).
- Height [in relation to a regional plan etc]*

The reference point for height outside the coastal marine area might be stated in provisions of a Plan other than rules – a policy perhaps, or the definition section. The Law Society suggests that the cross-reference should be to ground level unless otherwise stated “*in a Plan*”.
- Intensive Primary Production*

Several regional plans categorise primary production occurring outside buildings as being “*intensive*” by reference to standards such as nutrient production and/or stocking levels. Commercial vegetable or fruit production within a glasshouse or crop shelter might similarly be regarded as an intensive primary production activity. The Ministry may wish to consider permitting relevant plans to have a broader definition than that provided.
- Residential Activity*

Typically, District Plans distinguish residential activity from visitor accommodation. However, the current definition of ‘residential activity’ would not do so. It is suggested

that the definition could be amended by adding “...(excluding visitor accommodation)”.

- *Site*

Point (b) of the definition of ‘site’ refers to allotments that cannot be ‘administered’ separately. ‘Administration’ connotes the actions of utilities or governmental authorities. The intention underlying this provision is presumably to capture the actions of the landowner. The Law Society recommends the definition should refer to allotments that cannot be “dealt with” separately. Further, point (d) refers to “the cross-lease system” suggesting that there is a single system in existence, however this is not accurate, and it would be clearer to refer to “by a cross-lease”.

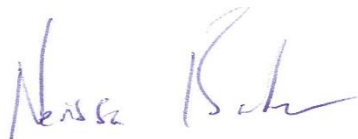
- *Stormwater*

The reference to water from natural precipitation (including any contaminants it contains) implies that the focus of the definition is on contaminants contained in the natural precipitation. If the intention is to capture added contaminants, the definition should be clarified to include the word ‘originating’ added after ‘water’.

6. CONCLUSION

- 6.1. This submission has been prepared with assistance from the Law Society’s Environmental Law Committee. If you wish to discuss the submission, please contact the committee convenor, Bronwyn Carruthers, via the committee secretary Amanda Frank at amanda.frank@lawsociety.org.nz / (04) 463 2962.

Yours faithfully



Nerissa Barber
Vice President

Appendix A: Recommendations on draft standards

Appendix A

Draft National Planning Standards – NZLS recommendations

Rec #	Submission: paragraph #	Topic (draft standards page #)	Recommendation
Draft Structure Standards			
Draft Regional Policy Statement Structure Standard (S-RPS)			
1	3.10 (a)	Part 4 – Themes (p8)	Redefine the themes to minimise overlaps between them and clarify how any residual overlaps should be addressed.
2	3.10 (b)	As above	Amend the description of special topics to provide that this applies where a local authority determines that other matters or topics are more appropriately dealt with separately by reason of the particular characteristics of their region.
3	3.10 (c)	As above	Reorder the draft themes in Part 4 to aid navigability (e.g. by placing them in alphabetic order) or make it clear that local authorities are able to order these themes as appropriate for their region.
4	3.10 (d)	Part 1 – Introduction and General Provisions (p7)	Add a reference to Water Conservation Orders under the head of National Direction Instruments.
Draft Regional Plan Structure Standard (S-RP)			
5	3.14(a)	Part 1 – Introduction and General Provisions (p11)	The draft S-RP incorporate provision for a discussion of regional direction in Part 1.
6	3.14(b)	Part 1 – Introduction and General Provisions and Part 4 – Themes (pp11-13)	Parts 1 and 4 are clarified consistently with any changes to S-RPS, following from the recommendations as above at [3.10].
7	3.14(c)	Other	Provisions be made for a Strategic Direction chapter, as an option available to regional councils.

Draft District Plan Structure Standard – S-DPS			
8	3.22(a)	Part 1 – Introduction and General Provisions and Part 4 – District Wide Matters (pp15-17)	Clarify Parts 1 and 4 consistently with any changes to S-RPS, following from the recommendations as above at [3.10].
9	3.22(b)	Part 3 – Strategic Direction (p16)	Amend the description of when a <i>Strategic Direction</i> chapter is required in Part 3 of the draft S-DPS to include a reference to separate provisions on significant resource management matters to the district i.e. “ <i>Local authorities must consider whether separate sections on significant resource management matters to the district should be included in this chapter and include them if required</i> ”.
10	3.22(c)	Part 4 – District Wide Matters (p16)	Consider whether it is appropriate to require plans to address hazardous substances as an issue, given the deletion of that as a District Council function.
11	3.22(d)	As above	Reconfigure the list of chapters in Part 4 to make <i>Infrastructure and Energy</i> , and <i>Subdivision</i> District-Wide chapters.
12	3.22(e)	Part 5 – Area-Specific Matters (p17)	Rename those zones in Part 5 with labels that currently do not distinguish them from the general zone headings.
Draft Combined Plan Structure Standard (S-CP)			
13	3.23	As above for S-RPS and S-RP (pp21-25)	The issues and recommendations identified in the table at 1-7 are also applicable to the draft S-CP.
Draft Introduction and General Provision Standard (S-IGP)			
14	3.26(a)	Direction 9 – cross-boundary issues (p29)	Consider including a reference in direction 9 to cross-boundary issues arising at the boundary with the EEZ.
15	3.26(b)	Directions 17 and 18 – te reo Māori terms (p29)	Consider whether te reo Māori terms used in rules need to be treated differently to terms used elsewhere in Plans.

Draft Strategic Direction Structure Standard (S-SD)			
16	3.29(a)	Direction 3 – strategic direction (p36)	Amend direction 3 to refer to “ <i>separate</i> ” treatment of issues.
17	3.29(b)	As above and also Direction 3 draft Tangata Whenua Structure Standard (p33 and 36)	Clarify the apparent duplication with the tangata whenua standard regarding consultation with tangata whenua.
Draft District Wide Matters Standard – S-DWM			
18	3.35(a)	Natural Environmental Values Chapter – S-NEV (p38)	Consider whether directions 6(c) and 7(b) of the draft S-NEV are required, and if so, whether they should be amended and/or augmented by directions related to other aspects of the purpose section, in section 5 of the RMA.
19	3.35(b)	Infrastructure and Energy Chapter – S-IE (p40)	Consider whether reference in direction 23(c) of the draft S-IE to reverse sensitivity might be better addressed in the draft Area Specific Matters Standard (instead or in addition to the infrastructure and energy chapter.
Draft Area-Specific Matters Standard – S-ASM			
20	3.43(a)	Zone Chapters – directions 6 and 7 (S-ZONES) (p43)	Consider whether the degree of direction in directions 6 and 7 is desirable, or whether Local Authorities might be allowed greater discretion in the formulation of additional zones.
21	3.43(b)	As above	Amend directions 7(b) and 7(c) to substitute “ <i>provided for</i> ” for “ <i>enabled</i> ”.
22	3.43(c)	Direction 8 – Purpose Statements (p43-45)	Consider amendments to the purpose of each zone in direction 8 in the manner discussed above at [3.38].

23	3.43(d)	As above	Consider including a “Transport” zone provision.
24	3.43(e)	Precincts Chapter – direction 9 (p45)	Make clear the priority as between precincts and underlying zones in direction 9.
25	3.43(f)	Development Areas Chapter – direction 17 (p45)	Consider whether it is desirable in all cases that Development Plans be removed from Plans when the development is ‘completed’ in direction 17.
26	3.43(g)	Direction 18 (p46)	Clarify the reference to “ <i>designation hierarchy</i> ” in Table 16, direction 18.
Draft Form Standards			
Draft Electronic Accessibility and Functionality Standard – F-1			
27	4.7(a)	Instruction 2 (p50)	Provide direction to ensure website labelling assists accessibility of policy statements and plans at each step.
28	4.7(b)	Instruction 7 (p50)	Consider whether the work directed at instruction 7 is practicable given the time within which it has to be completed, particularly for regions with different regional and district councils.
29	4.7(c)	Instructions 11 and 12 (p50)	Consider requiring local authorities to maintain an electronic record of all plan changes to the current (operative) plan and amendments to superseded plans.
Draft Chapter Form Standard – F-5			
30	4.10(a)	Instruction 3 (p63)	The instruction 3 cross referencing is corrected or clarified.
31	4.10(b)	Instructions 7 and 8 (p63)	The extent to which it is intended that objectives be grouped together is clarified as between draft S-RP and draft F-5.

Draft Content and Metric Standards			
Draft Definitions Standard – CM-1			
32	5.1	Terms defined in draft Definitions Standard (draft CM-1)	Consider stating as a general rule that all terms defined in the draft CM-1 have the same meaning as in the RMA.
33	5.2	Definitions Table (29) (pp78-90)	Consider the suggestions provided for each of the specific terms outlined at para 5.2.