

13 October 2026

Ministry for Cities, Environment, Regions and Transport
via [Citizen Space](#)

Tēnā koe

Testing the Approach to National Policy Direction: public consultation

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the invitation to provide feedback on the consultation document: *New Zealand's New Planning System: Testing the Approach to National Policy Direction* (August 2026).
2. The Law Society's submission has been prepared with input from our Environmental Law Committee,¹ and follows the structure of the consultation document.
3. We first provide some general comments.

General comments

4. According to the consultation document, the Government is particularly interested in feedback on:
 - whether the thematic structure is clear and easy to understand;
 - whether the illustrative National Policy Direction (**NPD**) helps provide a clear picture of how such direction could work in practice;
 - any important priorities, gaps or trade-offs that are not adequately reflected; and
 - how NPD could be made more useful and effective.
5. It is unclear at this stage what parts of the illustrative document will make their way into the NPD that will be put out for formal consultation. However, in the Law Society's view the drafting of the document requires amendment to address inconsistencies across themes, uncertainty in meaning, use of undefined words, and inclusion of very specific examples that single out certain activities (on which we comment further below).
6. We find the inclusion of two different categories of directives that "apply across the planning system" to be a particularly unhelpful aspect of the proposed structure. We recommend that this is revised.
7. Even so, we consider that the primary purpose of NPD, of resolving conflicts, will not be achieved if the approach set out in the illustrative document is to be the basis of the forthcoming NPD draft. Further comments on revisions to this illustrative draft are dealt

¹ More information about the Law Society's law reform sections and committees is available on the Law Society's website: [NZLS | Law reform committees](#).

with under individual headings below, with the intention to improve its usefulness and effectiveness if retained and included in the next iteration.

Two categories of directives: “cross-cutting” and “system-wide”

8. The consultation document refers to matters that “apply across the planning system rather than sitting within a single theme”. These are said to include two types of directives: NPD cross-cutting directives,² and system-wide directives.³
9. The Law Society considers that the distinction between the cross-cutting directives and the system-wide directives is unclear. Both categories appear to contain provisions that apply broadly and influence multiple themes. The rationale for separating these directives into two categories is not sufficiently explained.
10. If the intention is to identify directives with overarching application, they should be consolidated into a single chapter or category.

Use of examples unclear

11. In various places, the consultation document refers to terms that are defined in the interpretation section and provides examples of things or activities that fall within the scope of the definition. For example, Theme 2: Infrastructure refers to certain types of infrastructure and indicates that a reference to the interpretation section may be included. If the examples are to remain in the body of the text, careful consideration should be given to whether doing so appears to be confining the definition in some way. We suggest that it may be better to simply refer to the interpretation section itself.

Purpose not met of resolving conflicts

12. The purpose of NPD is to (among other things) provide national direction that, as far as practicable, resolves conflicts between the goals of the Natural Environment and Planning Acts.⁴ However, the illustrative draft lacks guidance on how competing objectives and outcomes are to be reconciled and, in some instances, defers this task to subsequent planning instruments.
13. While we note that the intention of the cross-cutting directives may be to assist in addressing conflicts, directives in the illustrative draft refer only to private property rights, economic growth, and managing land use and reverse sensitivity. These directives do not specify whether these matters are intended to be given additional weight and/or prevail in the event of a conflict. Additional clarification and provisions which directly address conflicts would be useful.

Undefined terms

14. In the Law Society’s view, use of terms such as “abundant development opportunities”, “important public values”, “reasonable expansion”, “acceptable levels”, “identified Māori land” and “private property” will make NPD difficult to implement if they are not defined. If they are left undefined, there is a risk this will lead to extensive litigation. We recommend the terms identified above are defined through the Standards. Further, and

² At 11.

³ At 80.

⁴ Natural Environment Act 2026, s 70; Planning Act 2026, s 47.

with respect to the latter two examples, it is unclear whether Māori land is recognised as a subset of “private property” or a separate category of its own.

Cross-cutting directives

CC-Directive 3(b)

15. It seems unusual to include guidance in NPD on how local authorities should manage enforcement issues. Consideration should be given to whether this is appropriate and/or necessary.

CC-Directive 5(e)

16. As currently worded, the illustrative draft appears to be directing the prioritisation of growth and change in areas that provide for significant environmental and cultural values. We query whether this is the intention, or whether the direction instead needs to be qualified so it is prioritising growth in areas other than those areas, or areas where those values can be upheld.

CC-Directive 8

17. The word “regulatory” before the word “requirements” could be deleted, as there is reference in the remainder of the sentence to the requirements being regulated under other legislation.

CC-Directive 9

18. This directive does not appear necessary. It simply notes that various information and views may be provided through a process, but it is the decisionmaker that decides.

Theme 1: Housing and development

Policy intent

19. The second paragraph states that the plan system should ensure development is enabled “wherever suitable, and particularly in places where this is high demand for new development, existing infrastructure capacity, **or** where people can easily access their workplace, services and green spaces”.⁵
20. As currently worded, the drafting is disjunctive, meaning it would be directing capacity to areas where there is high demand for new development even if no infrastructure capacity or services are available there.
21. That appears at odds with other national direction like the National Policy Statement for Urban Development. We recommend rewording for clarification.

Sub-theme 1: Competitive urban land markets

22. The policy intent refers to land use rules being “as permissive as possible”.⁶ There are likely to be differing views as to what this means and should enable, and whether “possible” is the appropriate standard.
23. We recommend this phrase is clarified.

⁵ At 16.

⁶ At 18.

HD-Directive 1.3

24. This directive uses the terms “most permissive planning provisions possible” and “not unduly undermine”.⁷ Again, these terms are subjective and would benefit from clarification.

Theme 2: Infrastructure

INFR-Directive 2.2(a)

25. This states that land use and natural environment plans “must enable all sources of energy...”⁸ Unlike directives relating to other uses, there is no qualification to that directive, for example “in appropriate places”, or “subject to effects being appropriately managed”.
26. If that is not the intention, then this should be amended.

Theme 4: Resources

RW-Directive 4.1(b)

27. This directs the mitigation of any significant natural hazard risks “as far as is reasonably practicable”.⁹ This could be interpreted to mean that if it is not reasonably practicable to mitigate the risk, the activity could still be undertaken.
28. If that is not the intention, consideration should be given to qualifying the directive in some way, such as by referring to mitigating the risks to a safe level taking into account the nature of the activity and significance of the risk, or proportionate to the level of natural hazard risk.

Theme 5: Public values

PV-Directive 2.6

29. Under the subheading “indigenous biodiversity and urban growth and infrastructure”,¹⁰ it is noted that conflicts may arise, but no direction is given as to how these may be resolved. Further direction to clarify this would assist.

PV-Directive 2.7(a)

30. This directs that natural environment plans include provisions to “maintain and enhance biodiversity on identified Māori land”.¹¹ There is no similar requirement on other private land. It is unclear what the rationale is for a different approach and, depending on how “identified Māori land” is defined, there is a risk of constraining development of that land in a way that other private land is not subject to.

⁷ At 19.

⁸ At 31.

⁹ At 62.

¹⁰ At 71.

¹¹ At 71.

System-wide directives

SW-Directive 1.3(c)

31. This directs that regional spatial plans, land use plans and natural environment plans must only include sites of significance (to Māori) that meet evidential requirements. No information is given as to what these requirements are, who sets them, and what the process is for determining whether these requirements are met. The approach outlined in *Ngāti Hōkōpū* is the well-established approach for testing Māori evidence and could provide useful guidance here.¹²

SW-Directive 2.1(a)

32. This directs housing growth, infrastructure and investment towards areas where natural hazard risks can be avoided or mitigated. The degree of mitigation required is not specified. This could be clarified by requiring that such risks are “appropriately” mitigated, mitigated to a level which is safe for the intended use, or proportionate to the level of natural hazard risk.

SW-Directive 2.6(b)

33. There is reference to considering the cost-effectiveness of mitigation measures relative to the level of anticipated risk. The directive does not address what happens if mitigation measures are not cost-effective. Is it intended that the activity could continue with lesser mitigation measures, even if they are not effective to properly mitigate the level of anticipated risk or proportionate to the level of natural hazard risk?

Interpretation

“Competitive urban land market”

34. The “competitive urban land market” definition includes reference to land prices not materially and persistently reflecting premiums caused by constraints on land use. This is likely to give rise to significant debate and therefore litigation. Consideration should be given to rewording this definition to provide greater clarity and guidance.

“Constructed wetland”

35. The “constructed wetland” definition has broadly worded exclusions. It is unclear what, if any, wetland would fall within its remit. Further clarity would assist.

“Infrastructure”

36. Regarding the “infrastructure” definition:
- The definition is very detailed and appears to seek to list all potential types of infrastructure. As it is an exhaustive definition, anything not in the list will be excluded. Given the rate of technological change, it is possible that other infrastructure may emerge or become relevant (for instance, data centres). This could perhaps be addressed by making the definition inclusive and/or by referring to the broader definition in the Planning Act.¹³

¹² *Ngāti Hōkōpū ki Hōkōwhitu v Whakatāne District Council* (2002) 9 ELRNZ 111.

¹³ Planning Act 2026, s 3.

- Clause (a) refers to facilities associated with certain energy. A similar point arises to that made above, if new forms of energy are subsequently developed and used. This could perhaps be addressed by adding "or other forms of energy".
- Clause (g) specifically refers to North Port. A similar point arises if a new port should be consented and established in the future.
- Clause (q) refers to a drainage or sewerage system but does not qualify it as being a public system. As drafted, it could therefore potentially include domestic scale systems on rural properties.

Next steps

37. We hope that this feedback is useful. You are welcome to contact me via the Law Society's Senior Law Reform and Advocacy Advisor, Skye Stewart (skye.stewart@lawsociety.org.nz), if you have any questions or wish to discuss this feedback further.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Mark Sherry'.

Mark Sherry
Vice President