



NZCPS 2010 Implementation Guidance

Introductory note

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Purpose

This introductory note explains the guidance prepared by the Department of Conservation (DOC) to support implementation of the New Zealand Coastal Policy Statement 2010 (NZCPS 2010). It also sets out overview guidance to be noted when working with the NZCPS 2010 and discusses the relationship between the NZCPS 2010 and other national policy statements prepared under the Resource Management Act 1991 (RMA).

The NZCPS 2010 replaces the NZCPS 1994

The NZCPS 2010 came into force on 3 December 2010 and replaces the New Zealand Coastal Policy Statement 1994 (NZCPS 1994).

A New Zealand coastal policy statement (NZCPS) is the only mandatory national policy statement under the RMA. The purpose of an NZCPS is to state policies to achieve the purpose of the RMA, in order to promote the sustainable management of natural and physical resources in relation to New Zealand's coastal environment (section 56 RMA).

Many policies in the NZCPS 2010 build on and are similar to those that were in the NZCPS 1994. The NZCPS 2010 contains some new policy topics that were not specifically included in the NZCPS 1994, such as:

- Extent and characteristics of the coastal environment (Policy 1)
- Aquaculture (Policy 8)
- Ports (Policy 9)
- Harmful aquatic organisms (Policy 12)
- Surf breaks of national significance (Policy 16)
- Vehicle access (Policy 20)
- Sedimentation (Policy 22).

While these policy topics are new in the NZCPS 2010 they are not new coastal planning topics. Many of these policies reflect and build on approaches developed through prior planning practice.

Another difference between the two policy statements is that there were no objectives in the NZCPS 1994. The NZCPS 2010 identifies 7 policy objectives as national priorities and 29 related policies. Most policies relate to one or more objectives and are not referenced to a particular objective.

Explanation of the NZCPS 2010 guidance notes

DOC has prepared implementation guidance as an online resource to support the implementation of the NZCPS 2010. This includes guidance on each policy of the NZCPS 2010 and does not form part of the NZCPS 2010. This guidance was prepared with support and input from local government. It is not legal advice.

The audience for this online resource is the agencies and practitioners that have responsibilities for coastal planning and management under the RMA. Local

authorities have a key role to play in achieving the RMA's purpose in the coastal environment in New Zealand. This material has been developed primarily for local authorities but is likely to be of interest to anyone involved in coastal management and planning.

Guidance notes are provided on Policies 1-28 of the NZCPS 2010. These notes again emphasise the necessity of considering the whole NZCPS 2010 and the RMA statutory framework when implementing the individual NZCPS 2010 objectives and policies. Policy 29 of the NZCPS 2010 (Restricted coastal activities) is a transitional provision. Advice on any activity specified as a restricted coastal activity (RCA) was provided on DOC's website in December 2010 at the time the NZCPS 2010 came into force. No additional guidance on Policy 29 is provided.

Common matters that arise in implementing the objectives and policies in the NZCPS 2010 are covered in 'Overview guidance' below.

Where there are existing resources to aid implementation of the NZCPS 2010, links to these resources are provided. The Board of Inquiry's report and recommendations to the Minister of Conservation is such a resource.¹ A number of technical, guidance and background reports are available on the DOC², Ministry for the Environment³, Quality Planning⁴ and NIWA⁵ websites, and can be referred to directly for additional technical guidance.

This guidance will be updated periodically as policy, case law, practice and methodologies develop further. While this guidance may be amended in the future to reflect new case law, it should not be relied on for up-to-date summaries of relevant case law.

¹ <http://www.doc.govt.nz/getting-involved/consultations/results/new-zealand-coastal-policy-statement/proposed-new-zealand-coastal-policy-statement-2008-board-of-inquiry-report-and-recommendations/>

² <http://www.doc.govt.nz>

³ <http://www.mfe.govt.nz>

⁴ <http://qp.org.nz>

⁵ <http://www.niwa.co.nz>

Overview guidance

When implementing any of the provisions in the NZCPS 2010 it is necessary to consider how to give effect to the full NZCPS 2010. As with all management of natural and physical resources, particular situations must be looked at in context. Individual policies should be considered together with objectives and other policies in the NZCPS 2010 which address activities in or affecting the coastal environment. Decision-makers will need to carefully consider these matters when considering what is required to promote sustainable management.

Amending plans to give effect to the NZCPS 2010

Section 55 of the RMA requires local authorities to amend regional policy statements (RPSs), proposed RPSs, plans, proposed plans, and variations to give effect to any provision in the NZCPS that affects those documents. The RMA and the NZCPS 2010 require the necessary amendments to be made as soon as practicable. The NZCPS 2010 does not specify a time within which the necessary amendments must be made. All amendments necessary to give effect to the NZCPS 2010 must be made using the process in Schedule 1 of the RMA, except the amendments required by Policy 29: Restricted Coastal Activities⁶. In a practical sense this means that council documents need to be amended at the first reasonable opportunity.

What is practicable or reasonable will depend on the particular facts of a situation. Development of amendments to give effect to some policies is likely to require significant work and time. Amendments requiring less work could be made more quickly. Whether it is 'practicable' to make amendments gradually to different documents or to make all amendments at the same time will be a matter for the individual local authority, although there is clearly a requirement to act expeditiously.

Most local authorities are in the process of deciding whether a variation to a proposed document should be commenced under a separate Schedule 1 process to give effect to the NZCPS 2010 or whether any required amendments should be made by a later change (keeping in mind the requirement to amend the document as soon as practicable). The timing of any amendments will vary depending on individual circumstances. In respect of proposed plans, changes or variations notified before 3 December 2010, the NZCPS 2010 may assist the decision-maker in determining whether a proposed policy statement or plan will achieve the Act's purpose.

Under section 62 of the RMA, an RPS must give effect to an NZCPS. Under sections 67 and 75 respectively a regional plan and a district plan must give effect to an NZCPS. To ensure it is meeting its obligations, a local authority must assess all relevant RMA plans and RPSs. Where those plans and RPSs do not already give effect to an NZCPS, they must be amended. There is no discretion about giving effect to an NZCPS.

⁶ <http://www.doc.govt.nz/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement/questions-and-answers/#11-policy-29>

Application of NZCPS 2010 to resource consent applications

Decision-makers on resource consent applications need to have regard to the provisions of the NZCPS 2010 as a result of section 104(1)(b) of the RMA, regardless of when the application was lodged. In this respect, the situation is similar to the situation when a new plan has legal effect or becomes operative between a resource consent application being lodged and determined (refer to section 88A(2) of the RMA). Consideration of requirements for designations, heritage orders, and applications for water conservation orders are similarly affected.

‘Have regard to’ imposes an obligation on decision-makers to give attention and thought to the NZCPS 2010. The consideration is still subject to Part 2.

The NZCPS 2010 will not determine whether or not an application is notified but may assist in identifying relevant effects to consider in a notification determination.

Roles and responsibilities

The majority of the NZCPS 2010 objectives and policies set expectations on local authorities to manage the coastal environment consistent with the functions of regional councils under section 30 and district councils under section 31 of the RMA.

A number of the policies in the NZCPS 2010 provide specific direction about who is to do what. RPSs must give effect to the NZCPS 2010 and regional and district plans must give effect to the RPS in their area and the NZCPS 2010. An integrated approach is promoted. Some policies of the NZCPS 2010 (such as Policies 1-7) are about processes, approaches and directions that are relevant to all those implementing the NZCPS 2010.

Local authorities are directed in the NZCPS 2010 to work in a collaborative way with other agencies with responsibilities and interests in order to achieve the sustainable management of the coastal environment, such as DOC, the Ministry for Primary Industries, and Maritime New Zealand. This approach also includes working with tangata whenua, communities and other stakeholders.

Relationship with other national policy statements

There are a number of documents, including other national policy statements (NPSs), relevant to the implementation of the NZCPS 2010.

In implementing the NZCPS 2010, the following NPSs, which are currently in force under the RMA, must be considered as they also apply in the coastal environment:

- The National Policy Statement on Electricity Transmission 2008 (NPSET)⁷
- The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG)⁸
- The National Policy Statement for Freshwater Management 2011 (NPSFM)⁹

⁷ <http://www.mfe.govt.nz/rma/central/transmission/index.html>

⁸ <http://www.mfe.govt.nz/rma/central/nps/generation.html>

⁹ <http://www.mfe.govt.nz/rma/central/nps/freshwater-management.html>

Implementation guidance has been prepared for each of these NPSs and the links to this guidance are provided below:

- National Policy Statement on Electricity Transmission 2008: Implementation Guidance for Local Authorities¹⁰
- National Policy Statement for Renewable Electricity Generation 2011: Implementation Guide¹¹
- National Policy Statement for Freshwater Management 2011: Implementation Guide¹²

There will be situations where there is more than one NPS that is relevant. In these situations all relevant NPSs will need to be given effect to. In cases of uncertainty legal advice can be obtained.

The National Policy Statement for Freshwater Management 2011 (NPSFM) came into effect on 1 July 2011. The NPSFM applies to freshwater resources including freshwater within the coastal environment. Therefore some of the objectives and policies of the NZCPS 2010 apply to the same waterbodies and subject matter as the NPSFM and both will need to be considered and given effect to.

Other relevant legislation

Coastal management to the outer limit of the territorial sea is guided principally although not solely through the RMA. When implementing the NZCPS 2010 other laws are often relevant in relation to matters such as statutory management priorities, agency responsibilities and implementation methods. The guidance notes identify related legislation where there are links with a particular policy.

The NZCPS 2010 does not affect Treaty settlement obligations.

For the coastal environment of the Hauraki Gulf, the Hauraki Gulf Marine Park Act 2000 requires that sections 7 and 8 of that Act must be treated as an NZCPS issued under the RMA. Section 10(2) of the Hauraki Gulf Marine Park Act 2000 states that if there is a conflict between sections 7 and 8 of that Act and the provisions of any NZCPS, the NZCPS prevails.

The NZCPS 2010 and Māori

The NZCPS 2010 has a number of provisions relating to Māori and their relationship with the coastal environment. This includes Policy 2 and Policy 17 in particular. The NZCPS 2010 provides some direction on how to incorporate Māori into the coastal planning and decision-making process. Experience with the RMA suggests that there could be improvements in recognising and providing for Māori values. Provisions

¹⁰ <http://www.mfe.govt.nz/publications/rma/nps-electricity-transmission-implementation-guidance-jan2010/index.html>

¹¹ <http://www.mfe.govt.nz/rma/central/nps/generation.html#guidance>

¹² <http://www.mfe.govt.nz/publications/rma/nps-freshwater-guide-2011/>

addressing Māori interests are an important aspect of many policies and objectives in the NZCPS 2010 and Policy 2 in particular aims to improve practice in this area.

NZCPS 2010 National Implementation Plan

Successful implementation of the NZCPS 2010 requires a close working relationship between DOC and local government. The NZCPS 2010 National Implementation Plan¹³ was prepared by the NZCPS 2010 Implementation Steering Group and details actions to support implementation of the NZCPS 2010.

Four priority work streams are outlined in the plan:

- **Stream A – Engagement**
Outcome: District and regional councils are well informed about the requirements and statutory obligations of the NZCPS 2010 and are supported to implement its policies.
- **Stream B – Guidance and supporting measures**
Outcome: Councils find web-based guidance and other resources helpful to their role of implementing the NZCPS 2010.
- **Stream C – Implementation**
Outcome: Councils review or change plans and policy statements appropriately.
- **Stream D – Monitoring**
Outcome: The success of NZCPS 2010 implementation is effectively monitored and evaluated, and the information used in annual reviews.

High-level actions for each work stream are described in the National Implementation Plan. This guidance is prepared under Stream B of the Plan.

¹³ <http://www.doc.govt.nz/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement/implementation-project/>

Acknowledgements

DOC would like to thank the local government members of the NZCPS 2010 Implementation Steering Group, other planning and consent staff from regional and district councils and the external coastal management specialists who provided advice and feedback in the preparation of the implementation guidance.

Disclaimer

This guidance, including the guidance on policies of the NZCPS 2010, is intended as general guidance on implementing the NZCPS 2010. It has been written primarily for local government practitioners. This guidance does not substitute for professional advice where and when that is needed. It should not be taken as providing legal advice or the Crown's legal position. This guidance is not official government policy.

Feedback

Please send any feedback on the NZCPS 2010 implementation guidance to nzcps@doc.govt.nz.