

**IN THE MATTER** of the Resource Management  
Act 1991

**AND**

**IN THE MATTER** of hearing submissions and  
further submissions on the  
Proposed Waikato District Plan

**AND**

**IN THE MATTER** of Implementing the National  
Planning Standards

## **MINUTE AND DIRECTIONS FROM HEARING COMMISSIONERS**

**20 February 2020**

### **Introduction**

1. The National Planning Standards (“**NPS**”) came into force in April 2019, the purpose of which is to provide for a nationally consistent approach to the plan development process undertaken by regional and district councils, thereby improving efficiency and effectiveness. Importantly, the NPS does not prescribe any planning outcomes that must be achieved – that remains the prerogative of the various regional and district councils - but rather how plans should be structured.
2. Because the NPS post-dates the preparation of the proposed Waikato District Plan (“**proposed plan**”), the Waikato District Council (“**the Council**”) has until April 2024 to implement the required amendments mandated by the NPS.
3. A number of submitters have made submissions on the proposed plan, seeking that it implements the NPS now, thereby creating certainty for plan users and reducing the need for /scope of a subsequent plan review in the short term (i.e. before April 2024). As indicated by our questioning of a number of parties during recent hearings, the panel is attracted to that approach, provided of course, that doing so is practically achievable and within the scope of the submissions received.
4. Council staff provided a memorandum to the panel, dated 11 February 2020, relating to implementing the NPS (“**Council memorandum**”), in which they:
  - a. Explained the process they went through to consider options, including liaison with the submitters seeking implementation of the NPS;

- b. Explore the pros and cons of various options for how/the extent to which the NPS could be implemented during the current hearing process; and
  - c. Invited us to issue Directions on how we consider the matter should be progressed.
5. We set out those Directions below, but first present and discuss the key matters raised in the Council memorandum.

## The Council Memorandum

6. The Council memorandum stated:

6. .... There appears to be four main approaches available to the Panel which are set out below.
7. **Option 1: Implement the standards after the plan review** – This would mean that the decision version of the Proposed District Plan looks and feels similar to that which was notified. Council would be required to notify a plan change before 3 May 2024 (that being 5 years of the date the National Planning Standards came into force) to implement the National Planning Standards in their entirety and would be a separate process. It is worth noting that there is no legislative obligation on the panel, or Council, to implement the National Planning Standards through the current Proposed District Plan process.
8. **Option 2: Implement the National Planning Standards structure for single-topic chapters** - There are a number of “topics” in the Proposed District Plan which have their own chapter with objectives and policies (although their attendant rules may be scattered through the zone chapters). Topics include:
- a. Historic Heritage (Chapter 7),
  - b. Natural Environment (Chapter 3) which could further be split into landscapes and biodiversity;
  - c. and Infrastructure (Chapters 6 and 14);
  - d. Reserves (Chapters 8 and 25); and
  - e. Specific zones in Chapters 9, 26-28 (Hampton Downs Motorsport and Recreation Zone, Te Kowhai Airpark Zone, Rangitahi Peninsula Zone)

This option would involve collating the rules on these topics from the zone chapters, and relocating them, together with their objectives and policies, as a package in accordance with the structure of the National Planning Standards. The structure of the remaining Proposed District Plan chapters would remain largely unchanged, other than the relocation of the rules out of the zone chapters. The remainder of the National Planning Standards requirements would be implemented through a separate plan change process. The subsequent plan change would be substantial.

9. **Option 3: Implement structure for single-topic chapters and deconstruction of Chapters 4 and 5** - This is Option 2 combined with the deconstruction of Chapters 4 and 5. Chapters 4 and 5 contain the objectives and policies for the urban and rural environments respectively, and thus apply to more than one zone. For example, section 4.4 applies to Residential and Village Zones so these objectives and policies would either need to be duplicated into each of the Residential Zone and Village Zone or be tailored to each of those zones (doing so would be dependent on scope provided by submissions). Chapters 4 and 5 also contain all the amenity objectives and policies such as for noise and lighting. These would also be deconstructed into new chapters on each of these matters in accordance with the planning standards. There are likely to be some sections of the National Planning Standards where there is no content in the notified plan. As an example, there are no objectives specific for subdivision in the notified plan, so there would be an objective gap in the Subdivision chapter. This Option would see these gaps being filled through a subsequent plan change. The subsequent plan change/variation would not be as substantial as for Option 2. It would be very specific and ring-fenced in its scope. Such a variation could be notified soon after the notification of the decision.

10. **Option 4: Full implementation as part of this plan review** – This option is essentially Option 3 with additional content added where there is not text available in the notified district plan. It is expected that there will be some gaps identified that may not be able to be filled easily and the Panel would have to consider if, by doing this full implementation, whether any person can be prejudiced in this action. This option carries some procedural risk if there is no submission specifically seeking inclusion of a particular provision, and the submissions seeking implementation of the National Planning Standards are relied upon for scope. As an example, a specific objective for the Subdivision chapter could be crafted, although there were none in the notified Proposed District Plan and there may not be any submissions specifically seeking such an objective. If additional text is required, the Panel must be alive to the matter of scope provided by submissions. Council’s opening legal submissions by Ms Bridget Parham are particularly relevant to this matter.<sup>1</sup> Pursuing this option would mean no further plan change or process would be required to implement the National Planning Standards.
7. Having discussed the advantages and disadvantages of these options (which we don’t repeat here), the Council memorandum stated:
11. **Following the contact with the submitters’ representatives, our recommendation is to undertake Option 3.**
- .....
13. Feedback from submitters’ representatives identified the main risk with implementing the standards as part of the plan review process is that the Plan will come out looking considerably different and some parties may be concerned that they were not given the opportunity to comment. This risk can be somewhat mitigated through:
- a. Directions issued by the Panel to implement the structure of the National Planning Standards which could be circulated to all submitters for comment;
  - b. Raising awareness of the National Planning Standards on Council’s website and in the decision;
  - c. Discussing the migration of proposed zones to National Planning Standards’ zones in each of the Section 42A reports; and
  - d. Careful roadmapping of the provisions to show where they started and where they ended up.
14. While there is a risk of mistakes, errors and unintended consequences, this is no greater than with the current process of addressing submissions.
15. There will be gaps in content where this is no scope provided by a submission but partial implementation of the National Planning Standards will highlight any gaps. These can subsequently be filled through a variation or plan change.
16. For ease of process for both submitters and Section 42A report authors, I recommend that the Section 42A reports retain the structure and format of the notified Proposed District Plan. The transition to the National Planning Standards (whether it’s option 2, 3 or 4) can be undertaken as a parallel process, whereby the provisions as they are amended in the Section 42A reports are mapped to a new structure (notwithstanding that the Hearing Panel’s decision may further amend the provisions). The decision version will thus be in the form of the National Planning Standards, accompanied by a document that indicates where each provision started and where it ended up. **[emphasis ours]**

## Directions

8. The panel is appreciative of the careful consideration given by Council staff to this matter, and to the contributions made by the various submitter representatives.

9. The panel considers that Option 3 should be the “bottom line” for the process going forward, but that our decisions version of the District Plan should aim, even if only aspirationally, to achieve Option 4 – i.e. full implementation of the NPS - to the extent that this is practically achievable and within scope of the submissions and further submissions received.
10. On that basis, we issue the following Directions:
- a. The Hearings Administrator is to provide these Directions to all parties listed in paragraph 3 of the Council memorandum<sup>1</sup> **as soon as possible** and post them on the Council’s website.
  - b. Council staff are to provide the panel with a memorandum setting out a proposed methodology and timetable for implementing the Directions set out in e. – h. below. This memorandum is to be provided **no later than 5pm on Tuesday 31 March 2020**.
  - c. Any party listed in paragraph 3 of the Council memorandum who wishes to comment on the methodology and timetable prepared by the Council under b. above is to provide these in writing to the Hearings Administrator **no later than 5pm on Tuesday 7 April 2020**.
  - d. In the event of any disagreement regarding timing the panel will issue any further Directions considered necessary.
  - e. Council staff are to provide the panel and the parties listed in paragraph 3 of the Council memorandum a document setting out a re-structured version of the Proposed District Plan that they consider implements, as a minimum, Option 3, as outlined in the 11 February 2020 Council memorandum, and, to the extent they consider possible, also implements Option 4. This document is to be provided **as per the timetable required under b. above**. This document should, where possible, also raise any issues of scope.
  - f. The Hearings Administrator is to post the document prepared in accordance with e. above on the District Council’s website **as soon as possible following its receipt**.
  - g. Any submitter or further submitter (and not just those listed in paragraph 3 of the Council memorandum) who wishes to comment on the document prepared by the Council under e. above is to provide these in writing to the Hearings Administrator **no later than 5pm on Friday 1 May 2020, or the date specified in the memorandum required under b. above, whichever is the earlier**.
  - h. The Hearings Administrator is to post any material received in accordance with g. above on the District Council’s website **as soon as possible following its receipt**.
  - i. Following the completion of the process set out in a. – h. above, the panel will issue any necessary further Directions.
  - j. If any submitter or further submitter wishes to raise any matters concerning these Directions, they are to advise the Hearings Administrator, Ms Sandra Kelly, in

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<sup>1</sup> Property Council New Zealand, Kainga Ora, The Surveying Company, Ta Ta Valley Limited, Pokeno Village Holdings, Zeala Limited, Anna Noakes, Heritage NZ, Withers Family Trust, Spark New Zealand Trading Limited, Chorus New Zealand Limited, Vodafone New Zealand Limited

writing, **no later than 5 pm on Friday 28 February 2020**, either by email or in hard copy at the following addresses:

**Email**                    <mailto:Districtplan@waidc.govt.nz>

or

**Hard copy**

Either

**Mailed to:**            The District Plan Hearings Administrator  
Waikato District Council  
Private Bag 544  
**Ngaruawahia 3742**

Attention: Sandra Kelly

or

**Delivered to:**        The District Plan Hearings Administrator  
Waikato District Council  
15 Galileo Street  
**Ngaruawahia 3720**

Attention: Sandra Kelly.



**P H Mitchell (Chair)**

**On behalf of Commissioners P Mitchell, P Cooney, J Gibb, D Fulton, L Te Aho, J Sedgwick and W Maag**

**20 February 2020**